



# City of Santa Clara

## REVISED

### Meeting Agenda

### Council and Authorities Concurrent Meeting

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Tuesday, October 8, 2019

4:30 PM

City Hall Council Chambers  
1500 Warburton Avenue  
Santa Clara, CA 95050

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**\*\*Revisions:**

- (1) Removed Closed Session - will be heard at a later date.
- (2) The meeting start time is at 4:30 PM.
- (3) Removed Item #8 - 19.1117.

#### **4:30 PM STUDY SESSION**

Call to Order in the Council Chambers

Confirmation of a Quorum

- 19-539**     [Joint Study Session with Planning Commission on the Zoning Code Comprehensive Update: Uses in Single-Family Districts and Short-Term Rental Regulations](#)

#### **6:00 PM COUNCIL REGULAR MEETING**

Call to Order

Pledge of Allegiance and Statement of Values

Roll Call

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

#### **CONTINUANCES/EXCEPTIONS**

#### **SPECIAL ORDER OF BUSINESS**

- 1.A     19-836**     [Recognition of Community and Corporate Partners of the Santa Clara City Library Foundation and Friends](#)
- 1.B     19-1169**     [Proclamation of Breast Cancer Awareness Month](#)
- 1.C     19-1170**     [Proclamation of Domestic Violence Awareness Month](#)

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## **CONSENT CALENDAR**

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

**2.A 19-783** [Council and Authorities Concurrent Meeting Minutes of August 27, 2019 and City Council Special Meeting Minutes of September 4, 2019](#)

**Recommendation:** Note and file the Council and Authorities Concurrent Meeting Minutes of August 27, 2019 and City Council Special Meeting Minutes of September 4, 2019.

**2.B 19-036** [Board, Commissions and Committee Minutes](#)

**Recommendation:** Note and file the Minutes of:  
Historical and Landmarks Commission - May 2, 2019  
Planning Commission - August 28, 2019  
Senior Advisory Commission - August 26, 2019

**2.C 19-845** [Action on the Award of a Purchase Order to Charles Electric for Electrical Support Services](#)

**Recommendation:** 1. Authorize the City Manager to execute a purchase order with Charles Electric for an initial term starting on or about November 1, 2019 and ending on October 31, 2020, for a maximum compensation not-to-exceed \$225,500 during the initial term; and  
2. Authorize the City Manager to exercise up to four one-year options to renew the purchase order through October 31, 2024, subject to the annual appropriation of funds.

**2.D 19-963** [Action on the Award of Purchase Order to RWG USA, Inc. for Turbine Engine Major Overhaul Services for Silicon Valley Power](#)

**Recommendation:** 1. Authorize the City Manager to execute a Purchase Order with RWG USA, Inc., for an amount not to exceed \$844,635; and  
2. Authorize the City Manager to execute an option for a major overhaul of the second Alison 501-KB5 gas turbine engine at the Cogeneration Plant, subject to the same terms and the appropriation of funds.

- 2.E 19-966** [Action on the Transmission Agency of Northern California Project Agreement No. 6 for Regulatory Engagement in Participating Transmission Owner Cases before the Federal Energy Regulatory Commission](#)

**Recommendation:** Authorize the City Manager to execute the Transmission Agency of Northern California Project Agreement No. 6 for Regulatory Engagement in Participating Transmission Owner Cases before the Federal Energy Regulatory Commission.

- 2.F 19-986** [Action on Amendment No. 1 to Call 17-1 with Nexant, Inc. to Provide the Specialized Commercial and Industrial Operational Optimization Program Third Party Energy Efficiency Program](#)

**Recommendation:** Authorize the City Manager to execute Amendment No. 1 to Call 19-1 Agreement with Nexant, Inc. to provide the Specialized Commercial and Industrial Operational Optimization Program Third Party Energy Efficiency Program extending the service provided until January 24, 2022 in an amount not to exceed \$474,000, subject to annual appropriation of funds.

- 2.G 19-998** [Update on project located at 2330 Monroe Street with Freebird Development Company, LLC: Status of Disposition and Development Agreement and Project Approvals](#)

**Recommendation:** Note and File the Informational Memo on the project located at 2330 Monroe Street with Freebird Development Company, LLC.

2.H 19-1002 [Approve City Position on Proposed League of California Cities' 2019 Annual Conference Resolutions](#)

**Recommendation:** Approve “Take No Position” positions for the proposed Resolution #1, Call on the California Public Utilities Commission to Amend Rule 20A to Add Projects in Very High Fire Hazard Severity Zones to the List of Eligible Criteria and to Increase Funding Allocations for Rule 20A Projects, and Resolution #2, Call Upon the Federal and State Governments to Address the Devastating Impacts of International Transboundary Pollution Flows into the Southernmost Regions of California and the Pacific Ocean, and authorize the City’s voting delegate/alternate to cast votes consistent with the City Council’s adopted positions.

2.I 19-1051 [Action on the Appointment of Additional Members to the Tourism Improvement District \(TID\) Advisory Board](#)

**Recommendation:** Appoint Additional Members Representing AC Hotel and Element Santa Clara Hotel to the Tourism Improvement District (TID) Advisory Board.

2.J 19-1075 [Action on Amendment No. 1 to the Agreement with FIS AvantGard LLC \(“FIS”\), formerly known as SunGard AvantGard LLC, for an Investment Management and Portfolio Accounting Solution](#)

**Recommendation:** Authorize the City Manager to execute Amendment No. 1 to the Agreement with FIS AvantGard LLC for APS2 SaaS/WEB investment and portfolio accounting software for a term of two years ending September 30, 2021, with the option of an additional two-year term.



- 2.K     19-1084** [Adoption of a Resolution Calling and Giving Notice of a Special Municipal Election to be held on Tuesday, March 3, 2020 for the Office of Elected Chief of Police; Requesting that the Board of Supervisors of the County of Santa Clara Consolidate the Special Election with the Statewide Presidential Primary Election; and Adopt Regulations for Candidate Statements of Qualifications Submitted to the Voters and Levying a Share of the Cost of the Candidates' Statements](#)

**Recommendation:** Adopt a Resolution Calling and Giving Notice of a Special Municipal Election to be held on Tuesday, March 3, 2020 for the Office of Elected Chief of Police; Requesting that the Board of Supervisors of the County of Santa Clara Consolidate the Special Election with the Statewide Presidential Primary Election; and Adopt Regulations for Candidate Statements of Qualifications Submitted to the Voters and Levying a Share of the Cost of the Candidates' Statements.

- 2.L     19-1098** [Resolution Establishing the Political Campaign Voluntary Expenditure Limit and Campaign Contribution Limit for March 3, 2020](#)

**Recommendation:** Adoption of a Resolution establishing the Political Campaign Voluntary Expenditure Limit and Campaign Contribution Limit for the March 3, 2020 Special Municipal Election.

- 2.M 19-1106** [Action on Adoption of Ordinance No. 2006 Amending Chapter 5.40 \("Massage Services And Massage Establishments"\) of Title 5 \("Business Licenses And Regulations"\), and Chapters 18.34 \("Regulations For CN-Neighborhood Commercial Zoning Districts"\), 18.36 \("Regulations For CC-Community Commercial Zoning Districts"\), 18.42 \("Regulations For CP-Commercial Park Zoning Districts"\), 18.56 \("Planned Development-Master Community Zoning Districts"\), 18.70 \("Use Regulations Applicable To Specified Regulated Businesses"\) and 18.104 \("Massage Establishments"\) of Title 18 \("Zoning"\) of "The Code of The City of Santa Clara, California" to Amend Regulations Relating To Massage Establishments](#)

**Recommendation:** Adopt Ordinance No. 2006, Amending Chapter 5.40 ("Massage Services And Massage Establishments") of Title 5 ("Business Licenses And Regulations"), and Chapters 18.34 ("Regulations For CN-Neighborhood Commercial Zoning Districts"), 18.36 ("Regulations For CC-Community Commercial Zoning Districts"), 18.42 ("Regulations For CP-Commercial Park Zoning Districts"), 18.56 ("Planned Development-Master Community Zoning Districts"), 18.70 ("Use Regulations Applicable To Specified Regulated Businesses") and 18.104 ("Massage Establishments") of Title 18 ("Zoning") of "The Code of The City of Santa Clara, California" to Amend Regulations Relating To Massage Establishments.

## **PUBLIC PRESENTATIONS**

*[This item is reserved for persons to address the Council or authorities on any matter not on the agenda that is within the subject matter jurisdiction of the City or Authorities. The law does not permit action on, or extended discussion of, any item not on the agenda except under special circumstances. The governing body, or staff, may briefly respond to statements made or questions posed, and appropriate body may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on the speaker card available in the Council Chambers.]*

## **CONSENT ITEMS PULLED FOR DISCUSSION**

## **PUBLIC HEARING/GENERAL BUSINESS**

- 3. 19-1042** [Presentation and Possible Action on the 2019 Employee Survey Findings](#)

**Recommendation:** Note and File 2019 Employee Survey Findings.

4.      19-1006    [Action on the Award of Agreement to Wallace Roberts & Todd, LLC for Downtown Precise Plan Consultant Services and Related Budget Amendment](#)

**Recommendation:** 1. Authorize the City Manager to execute an agreement with Wallace Roberts & Todd, LLC to provide Downtown Precise Plan Consultant Services for an initial three-year term ending September 30, 2022, for a maximum compensation not to exceed \$578,346, subject to the annual appropriation of funds;

2. Approve the related budget amendment recognizing appropriations of an additional \$268,346 in FY 2019/20 in the Downtown Master Plan Capital Improvement Project for the development of a Downtown Precise Plan funded by the General Fund Advanced Planning Reserve; and

3. Authorize the City Manager to execute an amendment to extend the Agreement for an additional three-year period ending September 30, 2025 and increase maximum compensation in the event that additional services are required, subject to the annual appropriation of funds.

5.      19-1101    [Direction on Santa Clara's Participation in Collaborative Efforts by the Cities Association of Santa Clara County to Address the Regional Housing Need Allocation](#)

**Recommendation:** Alternative 1:  
Direct staff to work with the Cities Association RHNA Task Force on a planning collaborative.

6.    Action on Stadium Authority Items:

A.      19-1121    [Report on Letter from attorney for Forty-Niners Stadium Management Co. and ratification of Stadium Authority Counsel's issuance of Notice of Termination](#)

**Recommendation:** Ratify the Stadium Authority Counsel's issuance of the Notice of Termination.

- B. 19-1110 [Action on Adoption of Ordinance No. 2005 Amending Sections 17.30.080 \("Best Value Selection Procedures"\), 17.30.090 \("Formal Bidding Procedure"\), And 17.30.120 \("Service Contracts-Signature Authority"\) Of Title 17 \("Development"\) Of "The Code Of The City Of Santa Clara, California"](#)

**Recommendation:** Adopt Ordinance No. 2005 Amending Sections 17.30.080 ("Best Value Selection Procedures"), 17.30.090 ("Formal Bidding Procedure"), And 17.30.120 ("Service Contracts-Signature Authority") Of Title 17 ("Development") Of "The Code Of The City Of Santa Clara, California".

7. 19-1172 [Deferral on Amendment to Resolution No. 19-8749 to establish the Park In-Lieu Fee Schedule for New Residential Development and to determine the Park Improvement Cost to be used in Fee Calculations](#)

**Recommendation:** Note and File this report.

#### **REPORTS OF MEMBERS AND SPECIAL COMMITTEES**

#### **CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

8. 19-911 [Informational Report to Council on the Implementation of an Unmanned Aircraft System Program](#)
9. 19-1057 [Monthly Update on City Council and Stadium Authority Staff Referrals](#)

#### **ADJOURNMENT**

The next regular scheduled meeting is on Tuesday evening, October 29, 2019 in the City Hall Council Chambers.

#### **MEETING DISCLOSURES**

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Santa Clara, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

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

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

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA)

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

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



## Agenda Report

19-539

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Joint Study Session with Planning Commission on the Zoning Code Comprehensive Update: Uses in Single-Family Districts and Short-Term Rental Regulations

#### **BACKGROUND**

The Community Development Department is preparing a comprehensive update to the City of Santa Clara Zoning Code. The City of Santa Clara's current Zoning Code has not been comprehensively updated since it first came into effect in 1969. This is the fourth in a series of study sessions to address specific items of interest for the Zoning Code update.

#### **DISCUSSION**

The study session will highlight potential areas of change within the Zoning Code Update including developing new regulations related to: 1) uses in single-family districts; and 2) short-term rental regulations.

##### **1) Uses in Single-Family Districts**

On an ongoing basis, the City receives complaints directed to the City's Code Enforcement team or through the public hearing process about existing and potential high-occupancy single-family residences. Community members indicate that their quality of life is being negatively impacted by single-family residences that house a large number of occupants and as a result lead to noise disturbances, inadequate property maintenance and insufficient on-site parking. Many of these complaints are for residences located within the Old Quad neighborhood, in proximity to Santa Clara University. In recent years the City and Santa Clara University have invested additional resources to focus on Code Enforcement and nuisance abatement for this neighborhood. Santa Clara University has also taken measures to better educate students on responsible tenant behavior and to increase the percentage of off-site housing that they own and manage. Despite these activities, the community continues to feel negative impacts from high occupancy single-family residences.

The definitions and regulations provided in the current Zoning Code thus do not appear to be effective tools to fully address concerns these concerns. Federal and state laws, and specifically the Federal Fair Housing Act, establish certain strict limitations upon the regulation of household composition and any changes enacted by the City should conform with those restrictions. After conducting extensive research on potential regulatory approaches, reviewing community input received over several years, and conducting a series of community meetings for the current Zoning Code updates, staff is proposing to modify the existing Zoning Code regulations to include specific requirements for single-family residences to better address community concerns in a manner that aligns with applicable federal and state laws.

#### *Regulatory Framework*

Several laws now govern how the City can create regulations that affect housing. The Federal Fair Housing Act and the California Unruh Civil Rights Act prohibit discrimination in the provision of housing on a number of bases, such as race, gender, religion, disability, and most significantly here, familial status. Restricting the number of individuals based on their familial status is not consistent with the fair housing laws and there have been several important cases in which the courts have restricted what cities can do with respect to single family uses. As a consequence, the City's Zoning Code is limited in its ability to restrict the number people who choose to reside as a household or "housekeeping unit" in a single-family house.

### *Current Zoning Regulations*

The current Zoning Code establishes definitions applicable to occupancy in single-family districts are as follows:

- "Housekeeping unit" means an individual or group of persons occupying a dwelling unit that has a single kitchen. 18.06.010(h).
- "Boarding house or rooming house" means a dwelling, other than a hotel, where lodging or lodging and meals for two or more persons is provided for compensation. 18.06.010(b)

Based on these definitions, a housekeeping unit can be any number of people that share a single kitchen. At the same time, the presence of two renters would meet the criteria for a boarding house. The use regulations for the various Zoning Code districts potentially allow boarding houses through a Use Permit in the OG-General Office, CC-Community Commercial, CT-Thoroughfare Commercial, and CD-Downtown Commercial zoning districts.

The community considers the current Zoning Code definitions and regulations to be ineffective because they do not address the use of a single-family residence rented out to a large number of individuals within a single-family zoning district. While such a use is commonly referred to as a "boarding house" by community members, it does not easily fit into the definition for boarding house included in the Zoning Code.

For example, the Zoning Code's definitions do not address the practice of renting a residence to two individual tenants, which is very common and is perceived as being a consistent activity within a single-family residential district, but does address when a residence may be rented to a large number of individuals, an activity perceived as inconsistent with a single-family zoning district. Staff is recommending modifications to City regulations to allow for greater consistency and more meaningful enforcement.

### *Proposed Changes to Zoning Code*

Staff is proposing the following Zoning Code modifications, which were created to be consistent with fair housing laws, and which change existing definitions and create new occupancy and common habitable area standards:

- Revise the definition of a "Housekeeping Unit" as follows (Text to be added to the Zoning Code is indicated by underline): "Single Housekeeping unit" to mean an individual or group of persons occupying a dwelling unit used as a common living arrangement. The primary single housekeeping unit can either be renters or owners of the unit/house. Evidence of a common living arrangement may include some or all of the following: sharing living expenses, such as rent or mortgage payments, food and utility costs, a single lease, or shared chores.

- Remove the definition of “Boarding House or Rooming House” or modify it so it aligns with occupancy criteria proposed below.
- Limit occupancy within a residence to create a cap on the number of guests who are not part of a single housekeeping unit, who may reside long-term (30 or more days). For a single-family dwelling, the proposed cap would be three guests in addition to the single housekeeping unit. For a duplex, the proposed cap would be two guests, in addition to a single housekeeping unit in each dwelling unit of the duplex.
- Require a minimum of 25% of floor area for new construction in a single-family dwelling to be common habitable area, which is area available to all residents for common use (ex: dining room, living room, kitchen). Garages and hallways are not considered common use areas.

The proposed cap on guests would regulate the number of individuals in addition to a single housekeeping unit, but consistent with fair housing laws, would not regulate the number of individuals who are members of a single housekeeping unit.

The proposed minimum common habitable area standard is intended to address concerns that have been raised about the practice of constructing dwellings with excessive numbers of bedrooms with relationship to the amount of common areas, by creating walls within living rooms or dining rooms. Such structures that have been broken up without retaining adequate common areas do not allow a single housekeeping unit to communicate, organize and socialize inside the house. A consequence of inadequate common area is the cross-over of the use of the dwelling from a single housekeeping use to individual room rentals that have spillover activities into front yards or backyards, which can be a nuisance to neighbors. Staff’s proposed standard of 25% floor area was determined based on analysis of building and planning permits previously issued by the City. Based on this review, 25% is a very achievable standard for the vast majority of homes within the City of Santa Clara.

The habitable common open space standard would be used to evaluate new single-family homes or additions to existing homes through the Planning or Building permit process. This standard could also be applied to existing dwellings as a factor in determining whether the use is as a single housekeeping unit.

Staff proposes that enforcement of the new regulations will be complaint-based. All property owners will be encouraged to discontinue any practices that do not meet the proposed code changes sooner, as existing tenants move out, in order to minimize disruption.

### *Community Feedback*

Staff has held several outreach meetings in the last few years, specifically with the Old Quad neighborhood and through the Neighborhood University Relations Committee (NURC). As noted in the Public Contact section below, additional noticed community meetings were conducted and live-streamed in the Spring of 2019. In these community meetings, staff received feedback on the proposed Zoning Code changes described in this report.

Many community members felt that the definition of single housekeeping unit was too vague. Specifically, some community members requested that the requirement of having only one lease be a



part of the definition of a single housekeeping unit. They expressed that allowing for only one lease covering all the rental occupants would foster collective cooperation with the terms of the lease. While there may be some benefit of requiring one lease, it also means that violation of the lease by one occupant may have consequences for all occupants.

Some community members also expressed that the proposed regulations would not adequately address potential impacts to the availability of on-street parking attributed to high occupancy dwellings. To address this, the proposed Zoning Code changes could include a provision that existing two car garages in single-family districts must be open and available for two vehicles, which would be verified if necessary, in the event of a Code Enforcement complaint.

## **2) Short-Term Rental Regulations**

In recent years, short-term rental activity (stays of fewer than 30 days) has been popularized throughout the country as online platforms such as Airbnb and Vacation Rental By Owner (VRBO) have facilitated the practice. The use of short-term rental platforms can allow single-family home owners to leverage their properties for income, either when they are also in residence or when they are not present. Use of the same platforms on a continuous basis, and for multiple renters, can result in neighborhood impacts related to a high-occupancy residence and similarly affect neighborhood character more broadly across the City.

Many neighboring cities have adopted short-term rental regulations that limit the days per year that a property may be made available for short-term rental with or without a host present and that also limit the number of short-term rental occupants.

### *Current Regulations*

Properties that engage in short-term rentals are required to collect and remit Transit Oriented Tax (TOT) to the City. The City has a current Memorandum of Understanding with Airbnb whereby the company provides the City TOT collected through the platform and provides the City with limited short-term rental activity information.

Santa Clara currently does not have land-use regulations regarding short term rental activity. As such, the City does not regulate the duration of time a property may be made available for short-term rental nor any other limitations.

### *Proposed Regulations*

A summary of neighboring regulations/practices in use in neighboring cities is included with this report (Attachment 1). This information was presented to community members at two citywide community workshops in February 2019 and through a subsequent Zoning Code update online survey. Staff also reviewed code enforcement complaints received on short-term rental properties in general and public testimony regarding the architectural review application for a new single-family residence at 2892 Sycamore Way, which was the subject of code enforcement complaints regarding the high-volume, short-term rental practice on the property. Based on this research and community input, staff proposes the following new regulations for short-term rental activity:

- Limit the number of days properties are available for short-term rental, without a permanent host present, to a maximum of 90 calendar days per year.

- Do not limit number of days a property can be made available for short-term rental with the presence of a host who permanently resides in the dwelling. The host must be authorized and responsible to quickly address any issues raised by neighbors.
- Limit short-term rental occupancy to 2 people in a studio unit, 3 people in a one-bedroom unit and 2 people per bedroom for each bedroom in excess of one bedroom, but not to exceed eight short-term occupants total.

As part of this proposed approach, the property owner would be required to secure an annual administrative permit, including payment of a fee to address the cost of verification and enforcement activities. Through the administrative permit, the property owner would provide the Community Development Department sufficient information to verify compliance with the terms of city regulations.

### **Next Steps**

A public review draft of the proposed zoning code will be available in the November/ December 2019 timeframe, with a public hearing by the Planning Commission anticipated in December 2019/January 2020 and a City Council hearing anticipated in February 2020.

### **ENVIRONMENTAL REVIEW**

This is an information report only and no action is being taken by the City Council and no environmental review under the California Environmental Quality Act ("CEQA") is required at this time. The Comprehensive Zoning Update will undergo environmental review and an environmental document will be brought to the City Council when the Council considers the Update for approval in 2020.

### **FISCAL IMPACT**

A future annual administrative permit fee is anticipated to generate additional revenue that would cover the cost of administering a short-term rental registration program. In addition, the City currently receives TOT revenue through a voluntary collection agreement with Airbnb. Approval of STR regulations may have an impact on TOT revenues.

### **COORDINATION**

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

### **PUBLIC CONTACT**

Community participation is a key part of the Zoning Code Update. In addition to meetings with the Old Quad Neighborhood on June 19, 2018, August 20, 2018, September 17, 2018, October 15, 2018, and December 3, 2018, staff organized community meetings with the general public on February 13 and 28, 2019 to discuss topics for change within the Zoning Code. The topics discussed with community members included the codification of elements of the City's single-family design guidelines; the creation of new zoning districts to implement existing General Plan designations; possible changes to the number of parking spaces required for residential and non-residential uses; and regulation of short-term rentals, such as Airbnb. Community meetings to gain input on the topic of potential occupancy criteria in single-family districts were noticed and held on April 29, May 16, and May 29, 2019. The May 16 and May 29 meetings were also live-streamed.

The City received over 500 responses to a community survey on the Zoning Code Update, which was released on June 20, 2019 and made available through July 12, 2019. The survey was announced on the City's social media accounts, sent to interested parties through e-notify lists and posted on the City's website.

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. Additionally, notice of the Study Session was sent via email notification to participants of previous community meetings on the topics. 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.

### **ATTACHMENTS**

1. Matrix of Short-Term Rental Regulations

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

## Short-Term Rental Regulation Examples

City	Hosted	Requirements	Unhosted	Permit	Registration Process
Sunnyvale	Permitted in any zoning district where residential uses are permitted subject to requirements	<ul style="list-style-type: none"> <li>* Max 4 overnight lodgers per night.</li> <li>* With facilities for sleeping, bathing, and toileting inside.</li> </ul>	Prohibited	Required; Business License required for separate listings for three or more spaces or rooms	<ol style="list-style-type: none"> <li>1) Register as a host, fill out short-term rental application</li> <li>2) Register with Finance to pay TOT</li> <li>3) Bring completed short-term rental application and TOT registration to the One-Stop Permit Center for approval and pay a one-time registration fee</li> <li>4) Report TOT payment each month (Airbnb will collect and remit TOT on behalf of hosts. Hosts must still remit TOT for non-Airbnb bookings.)</li> </ol>
Pasadena	Permitted in single-family residences, duplexes, condominiums, townhomes, and multi-family rental units, except covenant restricted (affordable) units. No limit on number of days for hosted stays.	<ul style="list-style-type: none"> <li>* Parking for the short-term rental to be provided on-site.</li> <li>* 3 violations may result in the automatic suspension of the permit. (wait at least one year before applying again)</li> <li>* Occupancy is limited to 2 guests per bedroom plus 2 additional guests. For example, a 2-bedroom home could be rented to a party of up to 6 guests.</li> </ul>	Limited to a max of 90 days per year (Vacation rentals and properties where the property owner does not reside for a minimum of nine (9) months out of the year are not permitted to be used for the purpose of short-term renting.)	<p>Required (valid for one year); Business License not required</p> <p>Type 1 Permit: hosted short-term rentals Type 2 Permit: unhosted short-term rentals</p>	<ol style="list-style-type: none"> <li>1) Complete supplemental application forms</li> <li>2) Apply online for short-term rental permit (\$100 fee applies)</li> <li>3) Include short-term rental permit number on all listings</li> <li>4) Remit TOT records to the City on a quarterly basis (due on January 20, April 20, July 20, October 20); can only be submitted online via Host Compliance</li> <li>5) Renew short-term rental permit annually (only online), annual permit fee</li> </ol>
San Francisco	The Residential Unit is offered for Tourist or Transient Use by the Permanent Resident of the Residential Unit	<ul style="list-style-type: none"> <li>* Be the permanent resident of the unit (spend at least 275 nights a year in the unit )</li> <li>* Rentals for more than 30 consecutive nights</li> </ul>	Limited to a max of 90 days per year	<ol style="list-style-type: none"> <li>1) Obtain a Business Registration Certificate</li> <li>2) Obtain a host certificate (valid for 2 years)</li> </ol>	<ol style="list-style-type: none"> <li>1) Register as a business; application fee</li> <li>2) Apply with the Office of Short-Term Rentals (OSTR)</li> <li>3) Register to become a certified host, certificate number must be posted on all listings advertising your short-term rental</li> <li>4) File a quarterly report</li> </ol>

City	Hosted	Requirements	Unhosted	Permit	Registration Process
San Jose	Permitted in any one-family dwelling, two-family dwelling, multiple family dwelling, mobile home, live/work unit, secondary dwelling or guest house * 365 days per calendar year with host present	* Transient occupancy (not to exceed 30 days in duration per rental period) as an incidental use to primary residential uses * up to 3 transient users in a one-family dwelling * up to 2 transient users in each dwelling unit in a two-family dwelling or multiple family dwelling	* limited to 2 people in a studio unit, 3 people in a one bedroom unit and 2 people per bedroom for each bedroom in excess of one bedroom, but not to exceed 10 persons total * 180 days per calendar year, no host present.	Does not require hosts to obtain a special permit or provide information for a public registry.	
Mountain View	No limit on number of days for hosted stays.	* Must have 10 or fewer occupants	*60 day annual limit (\$500 fee/day for exceeding limit)	Required	1) Get a business license (submit in person or email finance) 2) Submit an Short Term Rental (STR) registration application (online) 3) Complete the TOT registration (in person or email finance) 4) Must renew registration by January 30, late fees applicable 5) TOT collection is the responsibility of the STR host/operator and is due quarterly: April 30, July 31, October 31, January 31 (signed, dated, and mailed to finance)



## Agenda Report

19-836

Agenda Date: 10/8/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

Recognition of Community and Corporate Partners of the Santa Clara City Library Foundation and Friends

#### **BACKGROUND**

The Santa Clara City Library Foundation and Friends is a non-profit organization dedicated to supplementing public funding to expand and enhance the Library's programs and services. The Foundation raises funds by selling donated books, actively seeking gifts, grants, and bequests, and through their annual fundraiser, Librarypalooza. Their ongoing support to the City would not be possible without the many contributions by key partners within the community.

#### **DISCUSSION**

Harbir Bhatia, President of the Board of the Santa Clara City Library Foundation and Friends, will present recognition plaques to acknowledge significant contributions made by corporations and community groups that have partnered with the Library and Santa Clara City Library Foundation and Friends this past year. Honorees include:

- A Slice of New York Pizza for their support of literacy and lifelong learning
- AMD for their support of STEM learning
- Bandai-Namco for their support of Comic Con and Graphic Novel Contest
- Barry Swenson Builders for their support of the Mission Library Renovation
- Vinicius Brazil, the Santa Clara Real Estate Guy, for his support of literacy and lifelong learning
- Enterprise Holdings for their support of Summer Reading
- Historic Preservation Society of Santa Clara 2018 Historic Home Tour for their support of the Local History Collection and programs
- Irvine Company for their support of literacy and lifelong learning
- KLA for their support of Girls Who Code
- Kaiser Permanente in the Community for their support of the Mamava Lactation Station
- KeyPoint Credit Union for their support of Summer Reading

- Kylli, Inc. for their support of literacy and lifelong learning
- Mei Ling, Sereno Group, for her support of literacy and lifelong learning
- Mission City Community Fund for their support of Read Santa Clara's Literacy Outreach and Summer Reading
- Related Company for their support of literacy efforts
- Rotary Club of Santa Clara for their support of literacy and lifelong learning
- SiliconSage Builders for their support of literacy and lifelong learning
- Soroptomist International of Santa Clara Silicon Valley for their support of Girls Who Code
- SummerHill Homes for their support of literacy and lifelong learning
- Westfield Valley Fair for their support of literacy through the pop-up bookstore at the mall

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

There is no fiscal impact other than staff time.

### **PUBLIC CONTACT**

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

Reviewed by: Hilary Keith, City Librarian

Approved by: Deanna J. Santana, City Manager



## Agenda Report

19-1169

Agenda Date: 10/8/2019

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### REPORT TO COUNCIL

#### SUBJECT

Proclamation of Breast Cancer Awareness Month

#### BACKGROUND

The month of October has been observed as Breast Cancer Awareness Month since 1985. Breast Cancer Awareness Month is celebrated throughout the month of October to increase awareness of the disease, to raise funds for research into its cause, prevention, diagnosis, treatment, and cure, as well as to educate people about the importance of early screening and detecting breast cancer early.

#### DISCUSSION

The American Cancer Society estimates there will be 271,270 new cases of breast cancer in 2019, 99% of which will be diagnosed in women. However, if found and treated early, most women can survive breast cancer. A mammogram, the screening test for breast cancer, can help find breast cancer early when it is easier to treat. Breast Cancer Awareness Month is a chance to raise awareness about the importance of finding breast cancer early.

In honor of Breast Cancer Awareness Month, the Mayor has signed a City Proclamation, proclaiming the month of October 2019, as Breast Cancer Awareness Month in the City of Santa Clara.

#### ENVIRONMENTAL REVIEW

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

#### PUBLIC CONTACT

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Reviewed by: Genevieve Yip, Staff Analyst I

Approved by: Deanna J. Santana, City Manager





## Agenda Report

19-1170

Agenda Date: 10/8/2019

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### REPORT TO COUNCIL

#### SUBJECT

Proclamation of Domestic Violence Awareness Month

#### BACKGROUND

October is Domestic Violence Awareness Month. In 1981, the National Coalition Against Domestic Violence convened battered women's advocates from across the country for a Day of Unity to bring awareness to the issue of domestic violence.

In 1989 Congress passed Public Law 101-112, officially designating October of that year as National Domestic Violence Awareness Month. Since then, cities across the nation have joined with battered women's advocates to proclaim the month of October as Domestic Violence Awareness month.

#### DISCUSSION

Each year, Domestic Violence Awareness Month is observed to encourage individuals, advocates, and communities to take actions to help end domestic violence. Community events are held to raise public awareness of domestic violence issues, to educate victims on how to access available resources, and to send a powerful statement to abusers that domestic violence will not be tolerated.

In honor of Domestic Violence Awareness Month, the Mayor has signed a City Proclamation, proclaiming the month of October 2019, as Domestic Violence Awareness Month in the City of Santa Clara.

#### ENVIRONMENTAL REVIEW

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

#### PUBLIC CONTACT

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Reviewed by: Genevieve Yip, Staff Analyst I

Approved by: Deanna J. Santana, City Manager



# City of Santa Clara

1500 Warburton Avenue  
Santa Clara, CA 95050  
[santaclaraca.gov](http://santaclaraca.gov)  
[@SantaClaraCity](https://twitter.com/SantaClaraCity)

## Agenda Report

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19-783

**Agenda Date: 10/8/2019**

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### **REPORT TO COUNCIL**

#### **SUBJECT**

Council and Authorities Concurrent Meeting Minutes of August 27, 2019 and City Council Special Meeting Minutes of September 4, 2019

#### **RECOMMENDATION**

Note and file the Council and Authorities Concurrent Meeting Minutes of August 27, 2019 and City Council Special Meeting Minutes of September 4, 2019.



# City of Santa Clara

## Meeting Minutes

### Council and Authorities Concurrent Meeting

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08/27/2019

3:30 PM

City Hall Council Chambers  
1500 Warburton Avenue  
Santa Clara, CA 95050

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#### 3:30 PM CLOSED SESSION

##### Call to Order in the Council Chambers

**Vice Mayor Mahan** called the Closed Session to order at 3:30 PM.

##### Confirmation of a Quorum

**Assistant City Clerk Pimentel** confirmed a quorum.

##### Public Comment

**None.**

#### [19-972](#)

Conference with Legal Counsel-Existing Litigation (SOSA)  
Pursuant to Gov. Code § 54956.9(d)(1)  
The Sports and Open Space Authority of the City of Santa Clara v. D.E. Restaurants, Inc., Santa Clara County Superior Court Case No. 17CV311968 and Santa Clara County Superior Court Appellate Department Case No. 18AP002411

#### [19-973](#)

Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: 2525 Tasman Drive (Tasman Garage), APN 104-03-040  
City Negotiator: Deanna J. Santana, City Manager (or designee)  
Negotiating Parties: Stephen Eimer, Related Companies  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

#### [19-976](#)

Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: 5001 Great America Parkway, APNs 104-55-016 and 104-55-017  
City Negotiator: Deanna J. Santana, City Manager (or designee)  
Negotiating Parties: Stephen Eimer, Related Companies  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

- [19-977](#) Conference with Legal Counsel-Anticipated Litigation (CC)  
Pursuant to Gov. Code § 54956.9(a) - Exposure to litigation  
Number of potential cases: 1  
Facts and Circumstances:  
City as potential defendant: Letter from Gibson Dunn law firm, representing  
Related Santa Clara LLC, dated September 24, 2018 regarding Force  
Majeure under DDA
- [19-978](#) Conference with Legal Counsel-Existing Litigation (CC)  
Pursuant to Gov. Code § 54956.9(d)(1)  
Gaffney, et al. v. City of Santa Clara, United States District Court, Northern  
District of California Case No. 5:18-cv-6500-NC
- [19-980](#) Conference with Legal Counsel-Existing Litigation (CC)  
Pursuant to Gov. Code § 54956.9(d)(1)  
D.E. Restaurants, Inc. v. City of Santa Clara, et al., Santa Clara County  
Superior Court Case No. 115CV275606

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

**6:00 PM COUNCIL REGULAR MEETING**

**Call to Order**

**Mayor Gillmor** called the Regular Meeting to order at 6:03 PM.

**Pledge of Allegiance and Statement of Values**

**Roll Call**

**Present:** 7 - Vice Mayor Patricia M. Mahan, Councilmember Teresa O'Neill,  
Councilmember Kathy Watanabe, Councilmember Karen Hardy,  
Councilmember Debi Davis, Councilmember Raj Chahal, and Mayor  
Lisa M. Gillmor

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

**City Attorney Doyle** reported there was no reportable action from Closed  
Session.

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## **CONTINUANCES/EXCEPTIONS**

**City Manager Santana** noted that Item 2.H had a typographical error that will be corrected.

**Director of Community Development Crabtree** clarified for the record, Item 2.H, Ordinance No. 2003: Condition C23 to reflect the insertion of the words "**an additional**" as provided below.

C23. The total parking required for the project as shown on the development plans shall incorporate 6% of the parking spaces with EV charging facilities. **An additional** nine percent (9%) of the total parking spaces must be prewired for future electrical charging facilities.

**A motion was made by Vice Mayor Mahan, seconded by Councilmember Davis, to approve the addition to correct Item 2.H, Ordinance No. 2003: Condition C23, and leave the item with the correction on the Consent Calendar.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

## **SPECIAL ORDER OF BUSINESS**

[19-1021](#)

City Manager Presents Community Gardens One Year Anniversary Video Post Meeting Material

**City Manager Santana** shared that the first publication of the City Hall Newsletter was recently released to reach those who don't use social media or subscribe to the blog and will be published every two weeks in paper format.

**City Manager Santana** presented a video of the one-year anniversary of the Community Gardens, which is the first of upcoming story telling videos highlighting various residential city services.

1.A [19-824](#)

Recognition of Police Reserve Dan Magnane

**Mayor Gillmor** expressed gratitude for **Police Reserve Magnane's** 42-years of service.

**Chief Sellers** acknowledged **Police Reserve Magnane** for his dedicated 42-years of service.

1.B [19-910](#)

Proclamation of Muslim Appreciation and Awareness Month

**Mayor Gillmor and Councilmembers** presented a Proclamation of Muslim Appreciation and Awareness Month.

1.C [19-866](#)

Recognition of Better Together Leadership Program

**Mayor Gillmor** called representatives from the **Fire Department, Better Together Leadership Program** and **Planet Granite** to speak.

**Mayor Gillmor** on behalf of the **Council** expressed appreciation for the great work that's being done by **Better Together Leadership Program** and their community partner **Planet Granite**.

**Firefighter McGhie** gave comments about the program and invited **Planet Granite representative Nick Gerard** to speak.

**Nick Gerard** introduced the Planet Granite representatives.

**Councilmember Watanabe** shared her positive experience at a **Better Together Leadership Program** Valentine's Day event she attended.

**Mayor Gillmor and Councilmembers** presented certificates to **Better Together Leadership Program, Zachary McGhie (Fire Department), and Planet Granite and Nick Gerard (Planet Granite Representative)**.

**Mayor Gillmor** also read the names of the many facilitators involved in the program.

1.D [19-960](#) Recognition of Michael "Mike" J. Sellers, Chief of Police

**Chief Sellers** expressed words of appreciation and gratitude for the many years of support he has received and thanked all the employees he has worked with past and present.

**CONSENT CALENDAR**

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to approve the balance of the Consent Calendar (except Item 2.I).**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

2.A [19-033](#) Board, Commissions and Committee Minutes

**Recommendation:** Note and file the Minutes of:  
Cultural Commission - July 1, 2019  
Parks & Recreation Commission - July 16, 2019

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to approve staff recommendation.**

2.B [19-1299](#) Action on Monthly Financial Status and Investment Reports for May 2019

**Recommendation:** Note and file the Monthly Financial Status and Investment Reports for May 2019 as presented.

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to approve staff recommendation.**

- 2.C     [19-665](#)     Action to Approve Amendments to the Hourly Rate for the As-Needed Classifications of Per Diem Dispatcher and Traffic Control Officer, and to Adopt a Resolution Approving and Adopting an Updated As-Needed Salary Plan Reflecting the Amended Hourly Rates

**Recommendation:** 1. Approve amendments to the Hourly Rate for the As-Needed Classifications of Per Diem Dispatcher and Traffic Control Officer; and  
2. Adopt a Resolution approving and adopting the updated As-Needed salary plan reflecting the amended hourly rates.

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to approve amendments to the Hourly Rate for the As-Needed Classifications of Per Diem Dispatcher and Traffic Control Officer; and adopt Resolution No. 19-8747 approving and adopting the updated As-Needed salary plan reflecting the amended hourly rates.**

- 2.D     [19-792](#)     Action on a Vesting Tentative Parcel Map for Three Commercial Condominium Units Located at 651, 725 and 825 Mathew Street

**Recommendation:** Adopt Resolution to Approve the Vesting Tentative Parcel Map to allow for three Commercial Condominium Units on an existing single lot located at 651, 725 and 825 Mathew Street.

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to adopt Resolution No. 19-8748 to approve the Vesting Tentative Parcel Map to allow for three Commercial Condominium Units on an existing single lot located at 651, 725 and 825 Mathew Street.**

- 2.E     [19-902](#)     Action on a request for a Special Permit to allow seasonal Pumpkin Patch and Christmas Tree sales events at 3590 Benton Street from September 20, 2019 through December 24, 2019. (File No PLN2019-14006)

**Recommendation:** Approve the request of a Special Permit to allow for a seasonal Pumpkin Patch and Christmas Tree sales events at 3590 Benton Street from September 20, 2019 through December 24, 2019, File No PLN2019-14006, subject to conditions.

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to approve staff recommendation.**



- 2.F     [19-904](#)     Action on a request for a Special Permit to allow seasonal Pumpkin Patch and Christmas Tree sales events at 2610 El Camino Real from September 20, 2019 through December 24, 2019. (File No PLN2019-14007)

**Recommendation:** Approve the request of a Special Permit to allow for a seasonal Pumpkin Patch and Christmas Tree sales events at 2610 El Camino Real from September 20, 2019 through December 24, 2019, File No PLN2019-14007, subject to conditions.

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to approve staff recommendation.**

- 2.G     [19-906](#)     Action on the Recommendation to Pre-Qualify Vendors and Award Purchase Orders on an As-Required Basis for Sanitary Sewer Cleaning and Closed-Circuit Television Inspection Services

**Recommendation:** Approve the pre-qualified vendor list and authorize the City Manager to execute purchase orders for sanitary sewer cleaning and inspection services with National Plant Services, Inc. (Hayward, CA), AIMS Companies (San Leandro, CA), and Pipe and Plant Solutions Inc. (Oakland, CA) for a maximum aggregate amount not-to-exceed \$5,000,000 through June 30, 2024. Final purchase orders will be awarded to the low bidder for each project, and subject to the appropriation of funds.

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to approve the staff recommendation.**

- 2.H**      [19-916](#)      Action on Adoption of Ordinance No. 2003 Approving a Development Agreement between the City of Santa Clara and TOD Brokaw, LLC for the Property Located at 1205 Coleman Avenue and Ordinance No. 2004 Amending Chapter 18.22, "Regulations for Various Mixed Use Combining Zoning Districts" of Title 18, "Zoning" of "The Code of the City of Santa Clara, California" to add a New Article III, "Regulations for VHDMU - Very High Density Mixed Use Zoning Districts" and Approving a Rezoning of the 21.4 Acre Project Site Located at 1205 Coleman Avenue, Santa Clara, to the New VHDMU Zoning District

**Recommendation:** 1. Adopt Ordinance No. 2003 approving a Development Agreement between the City of Santa Clara and TOD Brokaw, LLC for the Property Located at 1205 Coleman Avenue; and  
2. Adopt Ordinance No. 2004 amending Chapter 18.22, "Regulations for Various Mixed Use Combining Zoning Districts" of Title 18, "Zoning" of "The Code of the City of Santa Clara, California" to add a New Article III, "Regulations for VHDMU - Very High Density Mixed Use Zoning Districts" and approving a rezoning of the 21.4 acre project site located at 1205 Coleman Avenue, Santa Clara, to the new VHDMU zoning district.

**A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to adopt Ordinance No. 2003 with the correction to Condition C23 to reflect the insertion of the words "an additional": C23. The total parking required for the project as shown on the development plans shall incorporate 6% of the parking spaces with EV charging facilities. An additional nine percent (9%) of the total parking spaces must be prewired for future electrical charging facilities.**

#### **PUBLIC PRESENTATIONS**

**Public Speaker(s):** Public Speaker shared that the County Board of Supervisors declared that the County is in a climate emergency.

#### **CONSENT ITEMS PULLED FOR DISCUSSION**

- 2.I [19-955](#) Action on Declaring a Vacancy on the Board of Library Trustees to Fill a Partial Term Ending June 30, 2021

**Recommendation:** 1. Accept resignation and declare a vacancy on the Board of Library Trustees;  
2. Set September 20, 2019 as the application deadline; and  
3. Set the Interviews for a future Council meeting, to fill the partial term ending June 30, 2021.

**Mayor Gillmor** pulled this item and noted that along with the Board of Library Trustees vacancy, there is still an open recruitment to fill the vacancy on the Housing Rehabilitation Loan Committee.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to declare the partial term vacancy for the Board of Library Trustees with an application deadline of September 20, 2019.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

#### **PUBLIC HEARING/GENERAL BUSINESS**

3. [19-713](#) Public Hearing: City North Framework

**Recommendation:** Alternative 1:  
Accept the report on the City North Framework as presented by staff.

**Director of Community Development Crabtree** presented a PowerPoint.

**Public Speaker(s):** Public Speakers (2)

**A motion was made by Councilmember Davis, seconded by Vice Mayor Mahan, to close the Public Hearing.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**A motion was made by Vice Mayor Mahan, seconded by Councilmember Hardy, to accept the report on the City North Framework and return to Council with specific policies to each framework.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

4. [19-712](#) Discussion and Direction on the Freedom Circle Specific Plan and General Plan Amendment for the Greystar Development Application

**Recommendation:** Alternative 2:  
Direct City Manager to evaluate the potential designation of the Freedom Circle area as a Phase III Future Focus Area in the General Plan with incorporated review of the Greystar General Plan Amendment.

**Director of Community Development Crabtree** presented a PowerPoint.

**A motion was made by Councilmember Watanabe, seconded by Councilmember O'Neill, to approve Alternative 2: direct City Manager to evaluate the potential designation of the Freedom Circle area as a Phase III Future Focus Area in the General Plan with incorporated review of the Greystar General Plan Amendment.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

5. [19-153](#) Action on Petition Requesting an Item Be Added to a Future Council Agenda to Proclaim Section of El Camino as Korea Town

**Recommendation:** Staff has no recommendation.

**Assistant City Manager Shikada** presented the staff report.

**Petitioner Ken Kim** addressed **Council** questions and comments.

**Public Speaker(s):** Public Speaker (1)

**A motion was made by Councilmember Watanabe, seconded by Councilmember Davis, to agendize this item to a future Council meeting for further discussion.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

6. [19-817](#) Action on a Bicycle and Pedestrian Advisory Committee Recommendation regarding Council Drafting a Letter for the Preservation of the Freedom Bridge

**Recommendation:** 1. Staff makes no recommendation regarding City Council drafting a letter or not to the Santa Clara Valley Water District; and  
2. Note and file the Minutes of the Bicycle and Pedestrian Advisory Committee.

**Public Works Director Mobeck** presented the staff report.

**Public Speaker(s):** Betsy Megas  
Public Speaker (1)

**A motion was made by Councilmember Davis, seconded by Councilmember Wantanbe, to (1) draft a letter to the Santa Clara Valley Water District and (2) note and file the Bicycle and Pedestrian Advisory Committee minutes of March 25, 2019.**

**Aye:** 6 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**Nay:** 1 - Councilmember Hardy

7. [19-800](#) Action on a Resolution Establishing the Average Per-Acre Land Values and Parkland In Lieu Fee Schedule for New Residential Development FY2019/20

**Recommendation:** Alternatives 2 and 4:

2. Adopt a Resolution Establishing the Average Per-Acre Land Values and Parkland In Lieu Fee Schedule for New Residential Development for FY2019-20 In Accordance with Title 17 ("Development") Chapter 35 ("Park and Recreational Land") of the Code of the City of Santa Clara with the exception that the total allowable amount for increases in park improvement values will be phased in over a three year period at 25% per year and the land appraisal will be conducted annually as required per City Code 17.35 and new fees effective July 1 of each year.
4. Conduct a Feasibility of Residential Development Study that will evaluate the effects of total development fee levels on developers' ability to provide housing of various types.

**Director of Parks and Recreation Teixeira** presented the staff report.

**Director of Parks and Recreation Teixeira** addressed **Council** questions and concerns.

**Public Speaker(s):** Mathew Reed  
Suds Jain  
Dennis Martin (Lobbyist)

**A motion was made by Councilmember Davis, seconded by Vice Mayor Mahan, to adopt Resolution No. 19-8749 approving staff recommendation Alternative 2 for longer than a 3-year period and return to the September 24, 2019 Council meeting with a new improved phasing in the fee increase to help ease impact and approving Alternative 4.**

**Aye:** 6 - Vice Mayor Mahan, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**Nay:** 1 - Councilmember O'Neill

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## **REPORTS OF MEMBERS AND SPECIAL COMMITTEES**

**Councilmember O'Neill** reported on her attendance at the Senior Advisory Commission meeting.

**Councilmember Watanabe** reported on her attendance at a Caltrain meeting in San Carlos and discussed the upcoming Coffee with a Cop meeting.

## **CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

**City Manager Santana** noted two Special Meetings:

- September 4, 2019 Special City Council Meeting - Items: City's Response Grand Jury Report on Public Records and Chief of Police vacancy

- September 5, 2019 - Items: Part II Governance Study Session

**City Manager Santana** reported that the City is currently recruiting for 100 vacant positions and there are 142 unique Public Records Act requests.

**City Manager Santana** reported that the City received \$1.8 million dollars from the County for the Magical Bridge Foundation to construct an inclusive park along with a signing ceremony on September 19, 2019 at the Central Park Arbor Center.

**Councilmember Hardy** reported that she will not be able to attend the September 4, 2019 Special City Council meeting because she is contractually required to attend Back-to-School night.

Tentative Meeting Agenda Calendar (TMAC)

[19-971](#)

## **ADJOURNMENT**

The meeting was adjourned at 10:43 PM in **memory** of **William (Bill) R. Shaddle** (Former Parks and Recreation Commissioner and Civil Service Commissioner).

**A motion was made by Vice Mayor Mahan, seconded by Councilmember Hardy, to adjourn the meeting.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

19-1015

Adjournment of the August 27, 2019 City Council Meeting Post Meeting  
Material

The next regular scheduled meeting is on Tuesday evening, September 17, 2019 in the City Hall Council Chambers.

**MEETING DISCLOSURES**

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Santa Clara, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

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

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

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA)

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





# City of Santa Clara

## Meeting Minutes

### City Council Special Meeting

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09/04/2019

4:30 PM

City Hall Council Chambers  
1500 Warburton Avenue  
Santa Clara, CA 95050

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NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Mayor calls for a Special Meeting of the City Council of the City of Santa Clara to commence and convene on September 4, 2019, at 4:30 PM for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

**Closed Session - 4:30 PM | Study Session - 5:00 PM | Special Meeting - 6:00 PM**

#### **4:30 PM CLOSED SESSION**

##### **Call to Order in the Council Chambers**

**Mayor Gillmor** called the Closed Session to order at 4:32 PM.

##### **Confirmation of a Quorum**

**Assistant City Clerk Pimentel** confirmed a quorum.

##### **Public Comment**

**None.**

[19-1026](#)

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

**Convene to Closed Session (Council Conference Room)****5:00 PM STUDY SESSION****Call to Order in the Council Chambers**

**Mayor Gillmor** called the Joint Study Session with the Planning Commission to order at 5:04 PM.

**Confirmation of a Quorum**[19-540](#)

Joint Study Session with Planning Commission on the Zoning Code Comprehensive Update: Safe Parking, Assisted Living, and Continuation of August 20 Study Session Topics

**Director of Community Development Crabtree** presented a PowerPoint on the Zoning Code Comprehensive Update: Safe Parking, Assisted Living, and Continuation of August 20 Study Session Topics.

**Public Speaker(s):** Public Speakers (2)

**Council** took a recess at 5:57 PM.

**6:00 PM SPECIAL MEETING**

**Call to Order**

**Mayor Gillmor** called the Special Meeting to order at 6:09 PM.

**Pledge of Allegiance and Statement of Values****Roll Call**

**Present:** 6 - Vice Mayor Patricia M. Mahan, Councilmember Teresa O'Neill, Councilmember Kathy Watanabe, Councilmember Debi Davis, Councilmember Raj Chahal, and Mayor Lisa M. Gillmor

**Absent:** 1 - Councilmember Karen Hardy

**19-1048**

Moment of Silence - September 4, 2019 Council Meeting Post Meeting Material

Mayor Gillmor on behalf of Council called for a moment of silence to and offered heartfelt condolences to the families and friends of the individuals who tragically lost their lives from the mass shooting event on August 31, 2019 in Odessa, Texas.

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

**City Attorney Doyle** reported there was no reportable action from Closed Session.

**CONTINUANCES/EXCEPTIONS**

**None.**

**SPECIAL ORDER OF BUSINESS**

1. **19-843** Proclamation of September 2019 as Community Preparedness Month

**Mayor Gillmor and Council** presented a Proclamation to **Emergency Services Coordinator Schoental** and the Office of Emergency Services Staff.

**CONSENT CALENDAR**

**A motion was made by Councilmember O'Neill, seconded by Vice Mayor Mahan, to approve the Consent Calendar.**

**Aye:** 6 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**Absent:** 1 - Councilmember Hardy

- 2.A**     [19-887](#)     Action on Amended Council Policy 043 Entitled "Official Travel by Elected Officials"

**Recommendation:** Adopt a Resolution repealing Resolution No. 17-8432 and adopting the amended Council Policy on Official Travel by Elected Officials.

**A motion was made by Councilmember O'Neill, seconded by Vice Mayor Mahan, to adopt Resolution No. 19-8751 repealing Resolution No. 17-8432 and adopting the amended Council Policy on Official Travel by Elected Officials.**

- 2.B**     [19-888](#)     Action on Amended Council Policy 035 Entitled "Naming of Facilities"

**Recommendation:** Adopt a Resolution amending Council Policy 043 on Naming of Facilities.

**A motion was made by Councilmember O'Neill, seconded by Vice Mayor Mahan, to adopt Resolution No. 19-8752 amending Council Policy 043 on Naming of Facilities.**

- 2.C**     [19-921](#)     Action on Amendment No. 3 to the Agreement with Hulberg and Associates, Inc., DBA Valbridge Property Advisors for consulting services associated with the Related Santa Clara (CityPlace) Development Project

**Recommendation:** Approve and authorize the City Manager to execute Amendment No. 3 to the Agreement with Hulberg and Associates, Inc., DBA Valbridge Property Advisors to increase compensation by \$70,000 for a revised not to exceed compensation amount of \$169,000 for consulting services related to the CityPlace Santa Clara Development Project.

**A motion was made by Councilmember O'Neill, seconded by Vice Mayor Mahan, to approve the staff recommendation.**

#### **PUBLIC PRESENTATIONS**

**Public Speaker(s):** Jerry Patrignani

#### **CONSENT ITEMS PULLED FOR DISCUSSION**

#### **PUBLIC HEARING/GENERAL BUSINESS**

3. [19-981](#) Action on the City's Response to the 2018-2019 Santa Clara County Civil Grand Jury Report: "City of Santa Clara Public Records Access: The Paper Chase"

**Recommendation:** It is recommended the City Council approve this response and authorize Mayor Gillmor to submit the City's Response to the Civil Grand Jury Report to the Honorable Deborah A. Ryan, Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, California 95113, no later than **Monday, September 16, 2019.**

**City Manager Santana and City Attorney Doyle** presented the staff report and PowerPoint presentation.

**Public Speaker(s):** Public Speakers (3)

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to approve this response and authorize Mayor Gillmor to submit the City's response to the Civil Grand Jury Report to the Honorable Deborah A. Ryan, Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, California 95113, no later than Monday, September 16, 2019.**

**Aye:** 6 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**Absent:** 1 - Councilmember Hardy

4. [19-1016](#) Charter Review Committee Update

**City Clerk Haggag** gave a verbal report and addressed Council questions and comments.

**Public Speaker(s):** Public Speakers (2)

**A motion was made by Councilmember Davis, seconded by Vice Mayor Mahan, to note and file the Charter Review Committee update.**

**Aye:** 6 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**Absent:** 1 - Councilmember Hardy

5. [19-975](#) Declaring the Vacancy for the Position of Elected Chief of Police and discussion on process for filling the vacancy by appointment or special election in March 2020

**Recommendation:** Staff makes no recommendation.

City Clerk Haggag presented the staff report.

**Public Speaker(s):** Public Speakers (3)

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to declare the vacancy for the position of elected Chief of Police.**

**Aye:** 6 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**Absent:** 1 - Councilmember Hardy

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to approve to conduct an election on March 3, 2020 to fill the elected Chief of Police vacancy.**

**Aye:** 6 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**Absent:** 1 - Councilmember Hardy

#### **REPORTS OF MEMBERS AND SPECIAL COMMITTEES**

None.

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**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

**City Manager Santana** noted the following:

- Special Meeting - City Council Session on Governance at the Central Park Library on September 5, 2019;
- due to noticing requirements, the Park Fees amendment language item will be on the October 8, 2019 agenda; and that
- on September 17, 2019 the Beta website will be presented to **Council**.

6. [19-959](#) Informational Report on the State of California's Preferred Alternative for the California High-Speed Rail Project

**Recommendation:** Note and file the Informational Report on the State of California's Preferred Alternative for the California High-Speed Rail Project and have the City Manager submit a Letter to the California High-Speed Rail Authority in support of the Preferred Alternative.

**Assistant Director of Public Works Liw** presented the staff report.

**California High Speed Rail representative Dave Shpak** was called to speak.

**Councilmember Hardy** joined the meeting at 8:40 PM.

**A motion was made by Vice Mayor Mahan, seconded by Councilmember Davis, to approve the staff recommendation.**

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

**ADJOURNMENT**

The meeting was adjourned at 8:44 PM.

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

**Aye:** 7 - Vice Mayor Mahan, Councilmember O'Neill, Councilmember Watanabe, Councilmember Hardy, Councilmember Davis, Councilmember Chahal, and Mayor Gillmor

The next regular scheduled meeting is on Tuesday evening, September 17, 2019 in the City Hall Council Chambers.

## MEETING DISCLOSURES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Santa Clara, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

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

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

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA)

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

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





# City of Santa Clara

1500 Warburton Avenue  
Santa Clara, CA 95050  
[santaclaraca.gov](http://santaclaraca.gov)  
[@SantaClaraCity](https://twitter.com/SantaClaraCity)

## Agenda Report

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19-036

Agenda Date: 10/8/2019

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### REPORT TO COUNCIL

#### SUBJECT

Board, Commissions and Committee Minutes

#### RECOMMENDATION

Note and file the Minutes of:

Historical and Landmarks Commission - May 2, 2019

Planning Commission - August 28, 2019

Senior Advisory Commission - August 26, 2019



# City of Santa Clara

## Meeting Minutes

### Historical & Landmarks Commission

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05/02/2019

7:00 PM

City Hall Council Chambers  
1500 Warburton Avenue  
Santa Clara, CA 95050

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#### CALL TO ORDER AND ROLL CALL

**Chair Cherukuru** called the meeting to order at 7:02 p.m.

**Present** 6 - Commissioner Patricia Leung, Commissioner Priya Cherukuru, Vice Chair Stephen Estes, Commissioner J.L. "Spike" Standifer, Commissioner Ana Vargas-Smith, and Commissioner Michael Celso

#### DECLARATION OF COMMISSION PROCEDURES

**Chair Cherukuru** reviewed the Historical and Landmarks Commission procedures.

#### REQUEST FOR EXCEPTIONS, WITHDRAWALS AND CONTINUANCES

None

#### CONSENT CALENDAR

##### 1.A Action on Historical and Landmarks Commission Minutes of April 4, 2019

**A motion was made by Commissioner Biagini and seconded by Commissioner Estes to approve the Historical and Landmarks Commission Minutes of April 4, 2019.**

**Aye:** 6 - Commissioner Leung, Commissioner Cherukuru, Vice Chair Estes, Commissioner Standifer, Commissioner Vargas-Smith, and Commissioner Celso

#### PUBLIC PRESENTATIONS

Lou Faria informed the Commission that Bob Byrd is retiring after 19 years of service, the last 11 as President of the Historic Preservation Society of Santa Clara. Celebration is set for Saturday, June 22, 2019, 2:00 pm at Harris-Lass Garden.

#### PUBLIC HEARING / GENERAL BUSINESS

**2. Public Hearing: Consideration of HLC Referral for projects near  
Historic Resource Inventory Properties for the property located at 580 Park Court.**

**Public Speaker(s):** Jayant Sanders, Christine Haynes

**A motion was made by Commissioner Estes and seconded by Leung to forward a recommendation to the Architectural Committee, that the project design is generally consistent with the City's Single-family and Duplex Residential Design Guidelines and is compatible with the neighborhood design, subject to the following condition:**

**1. The as-installed front door with sidelight window shall be replaced with a new all wood door reduced in size with no sidelight.**

**Aye:** 6 - Commissioner Leung, Commissioner Cherukuru, Vice Chair Estes, Commissioner Standifer, Commissioner Vargas-Smith, and Commissioner Celso

**COMMISSIONERS REPORT**

**3. Informational Report: Architectural Approval for the Repair of a Water Tower at  
2050 Scott Boulevard**

**A motion was made by Commissioner Leung and seconded by Commissioner Vargas-Smith to note and file report.**

**Aye:** 6 - Commissioner Leung, Commissioner Cherukuru, Vice Chair Estes, Commissioner Standifer, Commissioner Vargas-Smith, and Commissioner Celso

**4. [19-520](#) Informational Report: Correspondence Received**

**Recommendation:** Staff recommends the Historical and Landmarks Commission note and file the correspondence received.

- Santa Clara Parade of Champions Crab Feast Dinner and Dance, May 18, 2019.
- Santa Clara's Californio Community Lecture Co-Sponsored by the Santa Clara Woman's Club, May 18, 2019.

**A motion was made by Commissioner Leung and seconded by Commissioner Vargas-Smith to note and file report.**

**Aye:** 6 - Commissioner Leung, Commissioner Cherukuru, Vice Chair Estes, Commissioner Standifer, Commissioner Vargas-Smith, and Commissioner Celso

#### Announcements / Other Items

No additional items reported.

#### Board or Committee Assignments

**Commissioners** present reported on assignments.

Commissioner Travel and Training Reports, Requests to Attend Training

#### **HLC LIAISON REPORT**

##### City Council and Planning Commission Actions

**Staff Liaison Yen Han Chen** reported on Council and Planning Commission items.

##### Upcoming Agenda Items

**Staff Liaison Yen Han Chen** provided updates on upcoming agenda items.

#### **ADJOURNMENT**

The next regular scheduled meeting is on Thursday, June 6, 2019 at 7:00 p.m. in the City Council Chambers.

**A motion was made by Commissioner Estes and seconded by Commissioner Leung to adjourn the meeting. The meeting was adjourned at 9:00 p.m.**

**Aye:** 6 - Commissioner Leung, Commissioner Cherukuru, Vice Chair Estes, Commissioner Standifer, Commissioner Vargas-Smith, and Commissioner Celso



# City of Santa Clara

Draft

## REVISED

### Meeting Minutes Planning Commission

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08/28/2019

6:00 PM

City Hall Council Chambers

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#### **6:00 PM REGULAR MEETING**

##### **Call to Order**

**Chair Becker** called the meeting to order at 6:02 p.m.

##### **Pledge of Allegiance and Statement of Values**

##### **Roll Call**

**Present** 7 - Commissioner Steve Kelly, Commissioner Yuki Ikezi, Commissioner Sudhanshu Jain, Vice Chair Lance Saleme, Chair Anthony Becker, Commissioner Nancy A. Biagini, and Commissioner Priya Cherukuru

#### **DECLARATION OF COMMISSION PROCEDURES**

**Chair Becker** read the Declaration of Commission Procedures.

#### **CONTINUANCES/EXCEPTIONS**

**None.**

#### **CONSENT CALENDAR**

**Commissioner Biagini pulled Item 1.A**

**Commissioner Cherukuru pulled Item 1.B**

**A motion was made by Commissioner Jain, seconded by  
Commissioner Ikezi to approve Item 1.C**

**Aye:** 7 - Commissioner Kelly, Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Chair Becker, Commissioner Biagini, and Commissioner Cherukuru

- 1.C [19-893](#) Action on Use Permit for ABC License Type 47 for iChina Jiuba Restaurant and Lounge Located at 2855 Stevens Creek Boulevard

**Recommendation:** Adopt a resolution approving a Use Permit for the sale and consumption of beer, wine and distilled spirit (ABC License Type 47) in the new iChina Jiuba restaurant and lounge located at 2855 Stevens Creek Boulevard, subject to conditions of approval.

- 1.A [19-881](#) Planning Commission Meeting Minutes of August 14, 2019

**Recommendation:** Approve the Planning Commission Minutes of the August 14, 2019 Meeting.

**A motion was made by Commissioner Cherukuru, seconded by Commissioner Biagini, that this item be approved with the following amendment: on page 4, Item 1.B add 'at applicant's expense'.**

**Aye:** 7 - Commissioner Kelly, Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Chair Becker, Commissioner Biagini, and Commissioner Cherukuru

- 1.B [19-878](#) Action on Use Permit for ABC License Type 47 for Pruneridge Golf Course located at 400 Saratoga Avenue

**Recommendation:** Adopt a resolution approving a Use Permit for the sale and consumption of beer, wine and distilled spirits (ABC License Type 47) for the existing Pruneridge Golf Course located at 400 Saratoga Avenue, subject to conditions of approval.

**Commissioner Cherukuru had questions regarding the Conditions of Approval noting that on other items for ABC license approval, prior approval was needed from the Water and Sewer Utilities Department and the County's Department of Health. She questioned why these conditions were not on this project.**

**A motion was made by Commissioner Cherukuru, seconded by Commissioner Biagini to approve this item with the additional condition of approval to be added: All food service projects conducting commercial cooking operations including dishwashing activities and equipment cleaning that generate grease-laden wastewater are subject to review from the Water and Sewer Utilities Department, for FOG Control and grease interceptor installation requirements. All food service projects are required to have an approved stamp from the Santa Clara County Department of Environmental Health before plans can be accepted for review.**

**Aye:** 7 - Commissioner Kelly, Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Chair Becker, Commissioner Biagini, and Commissioner Cherukuru

## **PUBLIC PRESENTATIONS**

None.

## **PUBLIC HEARING**

2. [19-721](#) Public Hearing: Action on Appeal of Architectural Committee Adoption of a Mitigated Negative Declaration and Approval of a Data Center Project Located at 1150 Walsh Avenue

**Recommendation:** Alternatives 1 and 2:

1. Deny the appeal and uphold the Architectural Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Deny the appeal and uphold the Architectural Committee's approval of the data center project located at 1150 Walsh Avenue, subject to conditions.

**Associate Planner Debby Fernandez** provided a presentation.

**Public Speakers:**

**Appellant Aaron Messing representing California Unions for Reliable Energy** provided a presentation.

**Applicant Michael Downey, Gensler, representing Raging Wire** provided a presentation.

**Murray Feldman, Attorney for Raging Wire PreConstruction Manager for ATPD**

**Chair Becker and Commissioner Kelly abstained from voting and left the dais. Commissioner Saleme presided as Chair for this item. A motion was made by Commissioner Ikezi, seconded by Commissioner Biagini to close public hearing.**

**Aye:** 5 - Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Commissioner Biagini, and Commissioner Cherukuru

**Abstained:** 2 - Commissioner Kelly, and Chair Becker

**Assistant City Attorney Alexander Abbe** addressed comments made during the Public Hearing regarding rebuttal to the comments and letter received from the Appellant including the fourth letter received the day of the meeting at 4:39 p.m.

**Brianna Bohonok, Environmental Consultant with CirclePoint** spoke.

**A motion was made by Commissioner Cherukuru, seconded by Chair Jain to approve Alternative 1 to deny the appeal and uphold the Architectural Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.**

**Aye:** 5 - Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Commissioner Biagini, and Commissioner Cherukuru

**Abstained:** 2 - Commissioner Kelly, and Chair Becker

**A motion was made by Commissioner Jain, seconded by Commissioner Biagini to deny the appeal and uphold the Architectural Committee's approval of the data center project located at 1150 Walsh Avenue, subject to an additional condition of approval to add aesthetic treatment to the data center.**

**Aye:** 5 - Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Commissioner Biagini, and Commissioner Cherukuru

**Abstained:** 2 - Commissioner Kelly, and Chair Becker

#### **REPORTS OF COMMISSION/BOARD LIAISON AND COMMITTEE:**

##### 1. Announcements/Other Items

**Commissioner Jain** announced that the Board of Supervisors for the County of Santa Clara declared a Climate Emergency.

**Commissioner Cherukuru** also added that it also brought forward the need for regional contributions.

##### 2. Board or Committee Assignments

##### 3. Architectural Committee

**Chair Becker** filled in for Commissioner Biagini at the last Architectural Committee meeting.



4. Commissioner Travel and Training Reports, Requests to attend Trainings

**Commissioner Jain** requested funds to attend Getting to Zero Forum, October 9-11, 2019, in Oakland.

**A motion was made by Commissioner Ikezi, seconded by Commissioner Kelly to allocate up to \$1000 for Commissioner Jain to attend the Getting to Zero event.**

**Aye:** 7 - Commissioner Kelly, Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Chair Becker, Commissioner Biagini, and Commissioner Cherukuru

**DIRECTOR OF COMMUNITY DEVELOPMENT REPORTS:**

1. Planning Commission Budget Updates

**Planning Manager Reena Brilliot** provided updates.

2. Upcoming Agenda Items

**Planning Manager Reena Brilliot** provided updates and thanked Commissioners for attending joint Study Sessions. **Commissioner Jain** requested that conditions of approval on upcoming minutes include exact wording of revised conditions and that this item be presented at a future meeting.

3. City Council Actions

**Planning Manager Reena Brilliot** provided updates.

**ADJOURNMENT:**

**A motion was made by Commissioner Ikezi, seconded by Commissioner Biagini to adjourn the meeting at 8:02 p.m. The next regular scheduled meeting is on September 25, 2019 at 6:00 p.m. in the City Hall Council Chambers. The September 11, 2019 meeting was canceled.**

**Aye:** 7 - Commissioner Kelly, Commissioner Ikezi, Commissioner Jain, Vice Chair Saleme, Chair Becker, Commissioner Biagini, and Commissioner Cherukuru



# City of Santa Clara

## Meeting Minutes

### Senior Advisory Commission

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08/26/2019

10:00 AM

Central Park Library  
2635 Homestead Road  
Santa Clara, CA 95051

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

The regular meeting was called to order by Chair Nancy Toledo at 10:10 a.m.

**Present** 5 - Commissioner Wanda Buck, Commissioner Barbara "Bobbi" A. Estrada, Vice Chair Grant L. McCauley, Commissioner Carolyn Seeger, and Chair Nancy Toledo

**Excused** 1 - Commissioner Judy Hubbard

A motion was made by Commissioner Seeger, seconded by Commissioner McCauley to excuse Commissioner Hubbard.

**Aye:** 4 - Commissioner Buck, Commissioner Estrada, Vice Chair McCauley, and Chair Toledo

**Nay:** 1 - Commissioner Seeger

**Excused:** 1 - Commissioner Hubbard

#### **CONSENT CALENDAR**

**1.A**     [19-924](#)     Senior Advisory Commission Minutes of July 22, 2019

**Recommendation:** Approve the Senior Advisory Commission Minutes of July 22, 2019.

A motion was made by Commissioner Buck, seconded by Commissioner Seeger, to approve the Senior Advisory Commission Minutes of July 22, 2019.

**Aye:** 4 - Commissioner Buck, Vice Chair McCauley, Commissioner Seeger, and Chair Toledo

**Excused:** 1 - Commissioner Hubbard

**Abstained:** 1 - Commissioner Estrada

**PUBLIC PRESENTATIONS****GENERAL BUSINESS****2.     [19-919](#)     Senior Advisory Commission FY2019-20 Work Plan and Goals**

Commissioners asked that 2.a. be moved under the Health, Wellness, and Nutrition domain.

Commissioners asked that one of the future Senior Advisory Commission meetings be held at City Hall.

Commissioners asked that we continue to send a representative of the Senior Advisory Commission to any future ADA Committee meetings.

**A motion was made by Commissioner Buck, seconded by Commissioner Seeger, to adopt the 2019-20 Senior Advisory Commission Work Plan and Goals.**

**Aye:** 4 - Commissioner Buck, Vice Chair McCauley, Commissioner Seeger, and Chair Toledo

**Excused:** 1 - Commissioner Hubbard

**Abstained:** 1 - Commissioner Estrada

**STAFF REPORT**

Recreation Supervisor Herb invited Commissioners to attend the Senior Center Ice Cream Social on Wednesday, August 28, between 11 a.m. and 1 p.m.

Recreation Supervisor Herb invited Commissioners to attend the encore screening of Lives Well Lived before or after the Ice Cream Social. The first viewing will be at 10 a.m, with the second viewing at 1 p.m.

Recreation Supervisor Herb informed the Commissioners that interviews for the two Senior Advisory Commission vacancies will be held tonight on August 26.

**COMMISSIONERS REPORT**

**Commissioner Toledo** inquired about the Parade of Champions and asked if there's a way to have an Age-Friendly City banner at the event.

**Commissioner Toledo** informed the Commission that she will be taking part in the Citizen's Police Academy.

**Commissioner McCauley** informed the Commission that he will be attending Chief Sellers retirement party on August 28 at 1:30 p.m.

**ADJOURNMENT**

The meeting was adjourned at 11:36 a.m.

**A motion was made by Commissioner McCauley, seconded by Commissioner Buck, that the meeting be adjourned.**

**Aye:** 5 - Commissioner Buck, Commissioner Estrada, Vice Chair McCauley, Commissioner Seeger, and Chair Toledo

**Excused:** 1 - Commissioner Hubbard

The next scheduled meeting is on September 23, 2019 at the Senior Center



## Agenda Report

19-845

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on the Award of a Purchase Order to Charles Electric for Electrical Support Services

#### BACKGROUND

The Water & Sewer Utilities Department (Department) is responsible for maintaining 26 water well sites, four water storage tank sites, and seven sewer pump station sites. The associated components supporting the operation of the utility sites include electronic control panels, generators, motors, pumps, communication equipment, and various electrical devices, such as wiring, conduit, relays, switches, and breakers. The Department requires the use of a licensed electrical contractor to assist staff in troubleshooting, testing, calibrating, and repairing site equipment and controls to ensure proper operation.

#### DISCUSSION

On May 3, 2019, staff issued a Request for Bid (RFB) to procure the services of a qualified vendor to provide as-needed electrical support services for the City's water and sewer assets using BidSync, the City's e-procurement system. A total of 46 companies viewed the RFB and three bids were received as follows:

Vendor Name	Bid Price
Charles Electric	\$225,500
True Blue Automation Services	\$309,250
Mongoose Electric Incorporated	\$344,500

It is estimated that the annual aggregate spend will be \$225,500 based on 1,500 hours of work annually. Staff recommends issuing a purchase order to Charles Electric in the amount of \$225,500 as the lowest responsive and responsible bidder.

The initial term of the purchase order (Attachment 1) is approximately 12 months starting on or about November 1, 2019 and ending on October 31, 2020, with four one-year options to extend the purchase order.

The hourly rates are detailed in the Bid Pricing Form (Attachment 2). In addition, there is a materials markup of 10% over cost for as-needed electrical parts such as relays, breakers, switches, and wiring. Charles Electric may request annual adjustments to the compensation after the initial 12-month term, subject to the vendor demonstrating that the requested increases are justified.

**ENVIRONMENTAL REVIEW**

The action being considered is exempt from formal environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301(b) (Class 1 - "Existing Facilities") as the activity consists of the operation, repair, and maintenance of existing public structures, facilities, and mechanical equipment, including publicly-owned utilities, involving negligible or no expansion of the existing use.

**FISCAL IMPACT**

The cost of the proposed work shall not exceed \$225,500 during the initial one-year term. There is sufficient funding in the Water & Sewer Utilities Department's adopted operating budget to cover this agreement. The Sewer Utility Fund will cover 60% (\$135,300) of the cost, while the remaining 40% (\$90,200) will be funded by the Water Utility Fund.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Authorize the City Manager to execute a purchase order with Charles Electric for an initial term starting on or about November 1, 2019 and ending on October 31, 2020, for a maximum compensation not-to-exceed \$225,500 during the initial term; and
2. Authorize the City Manager to exercise up to four one-year options to renew the purchase order through October 31, 2024, subject to the annual appropriation of funds.

Reviewed by: Gary Welling, Director, Water & Sewer Utilities Department

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Sample Purchase Order for Charles Electric
2. Bid Pricing Form for Charles Electric



# City of Santa Clara

The Center of What's Possible

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

**Supplier:** 0000032783  
CHARLES ELECTRIC  
412 LEE AVENUE  
HALF MOON BAY CA 94019

## Purchase Order

**PENDING APPROVAL**

**Dispatch via Print**

<b>Purchase Order</b> 24049	<b>Date</b> 09/05/2019	<b>Revision</b>	<b>Page</b> 1
<b>Payment Terms</b> 30 Days	<b>Freight Terms</b> FOB Prepaid	<b>Ship Via</b> Common Carrier	
<b>Buyer</b> Grace Dougherty	<b>Phone</b> 408/615-2039	<b>Currency</b> USD	

**Ship To:** S17  
City of Santa Clara  
Water & Sewer - City Hall  
1500 Warburton Ave.  
Santa Clara CA 95050-3796

**Attention:** Not Specified

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

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Delivery Date
1 - 1	WATER ALLOCATION FOR ELECTRICAL SUPPORT	1.00	JOB	90,200.0000	90,200.00	09/15/2019
2 - 1	SEWER ALLOCATION FOR ELECTRICAL SUPPORT	1.00	JOB	135,300.0000	135,300.00	09/15/2019

**Sub-Total** 225,500.00

**Total PO Amount** 225,500.00

Unauthorized

## TERMS & CONDITIONS

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1. **CONTRACT:** This purchase order, which consists of these standard terms and conditions, and any attachments hereto, evidences acceptance by the City of Santa Clara ("City") of the offer from the provider of goods and services ("Vendor") which are the subject of this purchase order and constitutes a binding contract upon the terms and conditions set forth herein without further action or agreement of Vendor. In the event of conflict between these standard terms and conditions and the provisions of any attachment hereto these standard terms and conditions shall control.
2. **SCHEDULE; TIME OF PERFORMANCE:** Vendor shall supply the goods and perform the services, with the schedule and term, as specified herein. Time is of the essence.
3. **COMPENSATION; SCHEDULE OF PAYMENT:** Compensation, and method of payment, shall be as set forth herein. Vendor shall submit an invoice within thirty (30) calendar days after satisfactory completion of performance. City shall make payment within thirty (30) calendar days after receipt of such invoice. Vendor is responsible for all costs and expenses incident to the performance of this purchase order, including without limitation all costs, taxes, and all other costs of doing business.
4. **DISCOUNT PERIODS:** Payment discount periods shall be calculated from the later of the date this purchase order is completed or the date City receives an acceptable invoice, to the date City's payment is sent.
5. **SALES TAXES:** Vendor shall separately state on all invoices any sales, use or similar taxes imposed by federal or state government applicable to furnishing of the goods; provided, however where a tax exemption is available, such tax shall be subtracted from the total compensation and identified. Exemption certificates will be furnished upon request.
6. **PACKING AND SHIPPING OF GOODS; TITLE AND RISK OF LOSS:** All goods shall be delivered "free on board destination" to the location specified herein, full freight prepaid except for special or expedited orders, which shall be agreed upon prior to shipment. Deliveries of goods shall be made without charge for boxing, crating, carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. City's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge. Title to and risk of loss on all goods pass to City only upon City's acceptance of such goods.
7. **WARRANTIES:** Vendor represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Vendor's representations regarding its skills and knowledge. Vendor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California. Vendor warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Vendor assumes design responsibility, and warrants that all goods shall be delivered or performed free of design defect and suitable for the purposes intended by City, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Vendor's warranties shall run to City and shall not be deemed to be exclusive. Vendor agrees to promptly replace or correct any incomplete, inaccurate or defective goods or services at no further cost to City when defects are due to the negligence, errors or omissions of Vendor.
8. **CHANGES:** City shall have the right by written notice to change the extent of the work covered by this purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. Notice of change must be signed by the Director of Finance ("Director") or his/her designee. Upon receipt of any such notice, Vendor shall promptly make the changes in accordance with the terms of the notice. If Vendor believes that the change will cause an increase or decrease in the cost of or time for performance, then Vendor must deliver to City a statement showing the effect of any such changes within ten (10) calendar days of receipt of the City's notice of change. An equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Failure of Vendor to submit the statement within the time limit shall constitute its consent to perform the change without increase in compensation or time for performance. Changes may only be made in writing.
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10. **INDEMNITY: TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIM, LOSS OR LIABILITY (COLLECTIVELY, "CLAIMS"), INCLUDING WITHOUT LIMITATION CLAIMS FOR INJURIES OR DEATH TO PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY, INCLUDING ECONOMIC LOSS, CAUSED BY OR RESULTING FROM THE ACTS OR OMISSIONS OF VENDOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS PURCHASE ORDER, OR THE BREACH BY VENDOR OF ANY OF ITS OBLIGATIONS UNDER THIS PURCHASE ORDER. VENDOR'S OBLIGATION TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS, SHALL SPECIFICALLY EXTEND TO ANY AND ALL EMPLOYMENT-RELATED CLAIMS OF ANY TYPE BROUGHT BY EMPLOYEES, CONTRACTORS, SUBCONTRACTORS OR OTHER AGENTS OF VENDOR. CONTRACTOR WARRANTS THAT IT IS MEETING ITS OBLIGATIONS UNDER THE AFFORDABLE CARE ACT ("ACA") AND/OR ANY OTHER SIMILAR FEDERAL OR STATE LAW, AND WILL FULLY INDEMNIFY AND HOLD HARMLESS CITY FOR ANY PENALTIES, FINES, ADVERSE RULINGS, OR TAX PAYMENTS ASSOCIATED WITH VENDOR'S RESPONSIBILITIES UNDER THE ACT.**
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12. **COMPLIANCE WITH THE LAW:** Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.
13. **GOVERNING LAW; VENUE:** This purchase order shall be governed and construed in accordance with the laws of the State of California. The venue of any suit filed by either Party shall be in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose Division.
14. **ASSIGNMENT:** Vendor shall not assign any of the work to be performed under this purchase order nor shall Vendor subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent.
15. **WAIVER:** Vendor agrees that City's waiver of any breach or violation of any provision of this purchase order, or acceptance of any performance, or tender of any payment, shall not be deemed a waiver of any other provision or any subsequent breach of the same or any other provision. City's inspection and warranty rights are not waived by payment or any other action by City.
16. **INDEPENDENT CONTRACTOR:** It is understood and agreed that Vendor and all person(s) employed or contracted by Vendor shall act as, and be, an independent contractor and not an employee, agent, joint venturer, or partner of City. Vendor has full rights to manage its employees and contractors under this Agreement. Vendor shall retain the right to provide goods or perform services for others during the term of this purchase order.
17. **CONFIDENTIAL INFORMATION:** All data, documents, discussions or other information developed or received by or for Vendor in performance of this purchase order are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
18. **VENDOR'S BOOKS AND RECORDS:** Vendor shall maintain all records evidencing or relating to performance and amounts charged to or paid by City for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to Vendor pursuant to this purchase order. Any such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by City. Copies of such documents shall be provided to City for inspection at City Hall if requested and if practical to do so, otherwise records will be inspected at Vendor's business location.
19. **NON-DISCRIMINATION:** Vendor and all of Vendor's subcontractors shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
20. **CONFLICTS OF INTEREST:** Vendor certifies that no City officer, employee or authorized representative has any financial interest in the business of Vendor and that no person associated with Vendor has any interest, direct or indirect, which could conflict with the faithful performance of this Purchase Order. Vendor is familiar with the provisions of California Government Code section 87100, et seq., and certifies that it does not know of any facts which would violate these laws. Vendor will promptly advise City if a conflict arises. Vendor has read and agrees to comply with City's Ethical Standards (<http://santacalaraca.gov/home/showdocument?id=58299>).
21. **SEVERABILITY:** In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.



**ATTACHMENT 2 - BID PRICING FORM**  
**Electrical Support Services for the City's Water and Sewer Assets**

Company Name:	Charles Electric
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**Please Note: Bidder must submit this worksheet. Upload completed worksheet and enter Total Base Bid Amount on BidSync.**

**Bidder agrees to provide Electrical Support Services for City's Water & Sewer Assets as specified in Attachment 1 (Scope of Services) at the below pricing.**

**Section A: Labor Rates**

Row	Description	Estimated Annual Hours	Unit of Measure	Hourly Rate	Extended Price	Comments (if applicable)
1	Regular Business Hours (Monday - Friday, 7:00 a.m. - 5:00 p.m.)	1000	HR	\$130.00	\$130,000.00	
2	Overtime Rate (Monday - Friday, after 5 p.m.)	250	HR	\$165.00	\$41,250.00	
3	Saturday/Sunday/Holiday	250	HR	\$195.00	\$48,750.00	
	<b>Subtotal Section A (Rows 1 through 3)</b>				\$220,000.00	

**Section B: Material @ Cost Plus % Markup**

Row	Description	Estimated Annual Amount	% Markup	Extended Price	Comments (if applicable)
4	Material Markup Over Cost	\$5,000.00	10%	\$5,500.00	

**Section C: Total Base Bid**

5	<b>Total Base Bid Amount (Sum of Sections A &amp; B)</b> <b>(Enter Total Base Bid Amount online on BidSync.)</b>	<b>\$225,500.00</b>
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**Section D: Supplemental Services** (Additional labor rates not specified above. Provide if applicable.)

Row	Labor	Hourly Rate Regular Business Hours (Monday - Friday, 7:00 a.m. - 5:00 p.m.)	Hourly Rate Overtime Rate (Monday - Friday, after 5 PM)	Hourly Rate Saturday/Sunday/Holiday
6	<i>Please specify</i>			
7	<i>Please specify</i>			
8	<i>Please specify</i>			

**Notes:**

1. Please provide cost in all yellow-highlighted cells. All lines must be priced or clearly show "No Charge" or "Included" not left blank or zero. If "Included" or "No Charge" please note this in the last column of the price sheet titled "Comments".

2. Hourly rates shall be inclusive, unless specified to the contrary, of all costs including all salaries, overhead costs, general and administrative costs, travel, and profit. Overhead costs shall include all tools, equipment, and related items that may be required to perform the work.

3. Do not include sales tax in your bid. Prior to award of contract, the City will confer with the successful Bidder(s) to review applicable sales and use taxes and make required adjustments.

4. Prices shall remain fixed for the initial one (1) year term. After the initial term, the City reserves the right to exercise four (4) additional one-year period extensions for a total of five (5) years. In the event the City elects to exercise options after the initial term, price adjustments may be considered by the City. The Vendor must demonstrate to the satisfaction to the City that a price increase is justified.

5. The low price determination shall be based on the Total Base Bid Amount on Row 5. Consideration for Local Business Preference will be applied to the score by the City if applicable.

6. In case of an error in the extension of prices in the bid, unit price shall govern and the City will re-calculate a corrected total.



## Agenda Report

19-963

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on the Award of Purchase Order to RWG USA, Inc. for Turbine Engine Major Overhaul Services for Silicon Valley Power

#### BACKGROUND

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP) operates three gas fired power generation facilities within the city limits. The Donald Von Raesfeld Power Plant (DVR), the main facility, is a 2x1 combined cycle power plant rated at 147 Megawatts of electrical power generation. The Gianera Generating Station, the City's peaking generation facility, is rated at 49.5 Megawatts of electrical power generation. The Cogeneration Plant, rated at 7 Megawatts, utilizes two Allison 501-KB5 gas turbine engines for power generation.

The turbine engines at the Cogeneration Plant require periodic inspections, repairs, and replacement of parts to maintain optimum availability and reliability. Engine number ASP-758 was removed from service in 2009 due to an extension shaft bearing failure. The extension shaft bearing was replaced, and repairs were also made to the turbine section due to impact damage. However, in 2010 another extension shaft bearing failure occurred and all engine mainline bearings were replaced. Repairs were also made to the turbine section to repair impact damage found during disassembly. In 2014, all engine bearings were replaced, and the extension shaft was upgraded to a high torque configuration. A mid-life repair was also completed in 2016.

The engine was recently removed from service due to vibration and further bearing failure issues; the engine shut down on multiple magnetic material detection alarms and the magnetic plug has progressively collected more metallic debris. SVP performed an evaluation with an outside consultant and determined the engine requires a major overhaul.

#### DISCUSSION

On May 7, 2019, the City published a Request for Proposal (RFP) for turbine engine major overhaul services, using BidSync, the City's e-procurement system. A total of 28 companies viewed the RFP and the City received proposals from two companies by the June 13, 2019 deadline:

- RWG USA, Inc. (Houston, TX)
- Standard Aero Limited-Energy Services (Manitoba, Canada)

The selected Contractor shall be expected to provide all labor, materials and equipment required to perform a major overhaul of SVP's Allison 501-KB5 turbine engine.

Evaluation:

The proposals were evaluated by a three-member team from SVP. Each team member independently evaluated and scored the proposals.

Proposal Responsiveness: Staff determined that all proposals were responsive and met the initial pass/fail review of the stated minimum qualifications.

Project Approach (20% weight): The evaluation team evaluated the proposers' project approach including the major tasks and services to be provided, list of materials to be used, and proposed subcontractors.

Project Schedule (20% weight): A thorough review of each company's proposed project schedule including the timing of each task and deliverable, and the identification of any hold points during the overhaul.

References (10% weight): The proposers were required to submit with their proposal three references for similar engine overhauls performed.

Cost (50% weight): Cost proposals were opened and scored at the end of the technical proposal evaluation.

Best and Final Offer (BAFO): A Best and Final Offer was issued to the proposers in order to make clarifications to the City's requirements, and obtain best and final pricing.

The evaluation results are summarized in the table below.

<b>Criteria</b>	<b>Maximum Points</b>	<b>RWG (Houston, TX)</b>	<b>Standard Aero (Manitoba, Canada)</b>
Project Approach	20	13	13
Project Schedule	20	13	12
References	10	6	6
Cost	50	50	49
Totals	100	82	80

Notice of Intended Award:

A Notice of Intended Award (NOIA) announcing the City's recommended contractor was published on August 8, 2019. The RFP process included a ten-day protest period which ended on August 18, 2019. No protests were received.

Turbine Engine Major Overhaul Services - Staff Recommendation:

Staff recommends award of Purchase Order to RWG USA, Inc. The evaluation team unanimously agreed that the proposed solution is the most advantageous and provides the best value to the City. Their solution included the following key attributes:

- Over 45 years of demonstrated experience working on similar engines.
- Lowest cost.
- Capacity to support 50 engine overhauls per year.

References were checked with Aera Energy (California), LAISD Olive View Medical Center (California), and DTE Energy, LLC (Ohio). The references checked positive.

The purchase order not-to-exceed amount is \$844,635, which includes a 20% contingency for additional as-needed labor and materials.

The major cost elements of the overhaul project are summarized below:

<b>COST ELEMENTS:</b>	
Labor	\$ 97,000
Materials	\$479,889
Outside Services	\$106,835
Testing	\$ 16,575
Freight	\$ 8,636
Contingency (20%)	\$135,700
<b>GRAND TOTAL</b>	<b>\$844,635</b>

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

Total cost of the turbine engine major overhaul services, including contingency, shall not exceed \$844,635. Funds are available in Electric Department Capital Improvement Program's Major Engine Overhaul and Repair Project.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Authorize the City Manager to execute a Purchase Order with RWG USA, Inc., for an amount not to exceed \$844,635; and
2. Authorize the City Manager to execute an option for a major overhaul of the second Alison 501-KB5 gas turbine engine at the Cogeneration Plant, subject to the same terms and the appropriation of funds.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Purchase Order with RWG USA, Inc.



# City of Santa Clara

The Center of What's Possible

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

**Supplier:** 0000002328  
RWG (REPAIR & OVERHAULS) USA, INC.  
6223 W SAM HOUSTON PKWY  
HOUSTON TX 77041

## Purchase Order

**PENDING APPROVAL**

**Dispatch via Print**

<b>Purchase Order</b> 23988	<b>Date</b> 08/22/2019	<b>Revision</b>	<b>Page</b> 1
<b>Payment Terms</b> 30 Days	<b>Freight Terms</b> FOB Prepaid	<b>Ship Via</b> Common Carrier	
<b>Buyer</b> Dave Oeschger	<b>Phone</b> 408/615-2043	<b>Currency</b> USD	

**Ship To:** S6P  
City of Santa Clara  
DVR Power Plant  
850 Duane Ave.  
Santa Clara CA 95054

**Attention:** Not Specified

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

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Delivery Date
1 - 1	LABOR	1.00	LOT	97,000.0000	97,000.00	09/01/2019
2 - 1	MATERIALS	1.00	LOT	479,889.0000	479,889.00	09/01/2019
3 - 1	OUTSIDE SERVICES	1.00	LOT	106,835.0000	106,835.00	09/01/2019
4 - 1	TESTING	1.00	LOT	16,575.0000	16,575.00	09/01/2019
5 - 1	FREIGHT	1.00	LOT	8,636.0000	8,636.00	09/01/2019

**Sub-Total** 708,935.00

**Total PO Amount** 708,935.00

ALL SPECIFICATIONS & REQUIREMENTS PER CITY OF SANTA CLARA RFP 18-19-33 DATED 5/7/19 ARE HEREBY INCORPORATED BY REFERENCE HEREIN. PRICING PURSUANT TO RWG USA, INC'S RFP RESPONSE DATED 6/13/19 IS HEREBY INCORPORATED BY REFERENCE.

Unauthorized

## TERMS & CONDITIONS

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1. **CONTRACT:** This purchase order, which consists of these standard terms and conditions, and any attachments hereto, evidences acceptance by the City of Santa Clara ("City") of the offer from the provider of goods and services ("Vendor") which are the subject of this purchase order and constitutes a binding contract upon the terms and conditions set forth herein without further action or agreement of Vendor. In the event of conflict between these standard terms and conditions and the provisions of any attachment hereto these standard terms and conditions shall control.
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14. **ASSIGNMENT:** Vendor shall not assign any of the work to be performed under this purchase order nor shall Vendor subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent.
15. **WAIVER:** Vendor agrees that City's waiver of any breach or violation of any provision of this purchase order, or acceptance of any performance, or tender of any payment, shall not be deemed a waiver of any other provision or any subsequent breach of the same or any other provision. City's inspection and warranty rights are not waived by payment or any other action by City.
16. **INDEPENDENT CONTRACTOR:** It is understood and agreed that Vendor and all person(s) employed or contracted by Vendor shall act as, and be, an independent contractor and not an employee, agent, joint venturer, or partner of City. Vendor has full rights to manage its employees and contractors under this Agreement. Vendor shall retain the right to provide goods or perform services for others during the term of this purchase order.
17. **CONFIDENTIAL INFORMATION:** All data, documents, discussions or other information developed or received by or for Vendor in performance of this purchase order are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
18. **VENDOR'S BOOKS AND RECORDS:** Vendor shall maintain all records evidencing or relating to performance and amounts charged to or paid by City for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to Vendor pursuant to this purchase order. Any such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by City. Copies of such documents shall be provided to City for inspection at City Hall if requested and if practical to do so, otherwise records will be inspected at Vendor's business location.
19. **NON-DISCRIMINATION:** Vendor and all of Vendor's subcontractors shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
20. **CONFLICTS OF INTEREST:** Vendor certifies that no City officer, employee or authorized representative has any financial interest in the business of Vendor and that no person associated with Vendor has any interest, direct or indirect, which could conflict with the faithful performance of this Purchase Order. Vendor is familiar with the provisions of California Government Code section 87100, et seq., and certifies that it does not know of any facts which would violate these laws. Vendor will promptly advise City if a conflict arises. Vendor has read and agrees to comply with City's Ethical Standards (<http://santacalaraca.gov/home/showdocument?id=58299>).
21. **SEVERABILITY:** In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.



## Agenda Report

19-966

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Action on the Transmission Agency of Northern California Project Agreement No. 6 for Regulatory Engagement in Participating Transmission Owner Cases before the Federal Energy Regulatory Commission

#### **BACKGROUND**

The Transmission Agency of Northern California (TANC) is a joint powers agency established by a group of California publicly-owned utilities, including the City of Santa Clara doing business as Silicon Valley Power (SVP), the Cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, and Ukiah, as well as the Modesto Irrigation District, the Sacramento Municipal Utility District, the Turlock Irrigation District, and the Plumas-Sierra Rural Electric Cooperative (Participating Members), with the purpose of providing electric transmission operation and maintenance services for the California Oregon Transmission Project (COTP). The COTP consists of 340 miles of 500-kV AC transmission line between Southern Oregon and Central California. In addition, TANC, on behalf of its Participating Members, also engages in certain regulatory forums, including before the Federal Energy Regulatory Commission (FERC), in order to protect the value of TANC's transmission assets and to support the Participating Members by striving to limit the Participating Members' exposure to transmission cost when transacting in the California Independent System Operator (CAISO) markets.

TANC has historically placed particular focus on the Pacific Gas and Electric Company's (PG&E) transmission owner (TO) rate cases due to the significant impact that rate cases may have on the transmission rates under TANC's South of Tesla Principles (SOTP) existing transmission contract with PG&E. Currently, TANC's cost associated with TO rate cases is allocated to TANC Members based on their transmission capacity entitlements under the South of Tesla Agreement (SOT). Some Participating Members have opted to temporarily lay off their SOTP transmission entitlement and therefore currently are not paying for TANC's cost of engaging in TO rate cases. TANC and the Participating Members have determined that it is appropriate to implement a revised cost allocation mechanism to be used by TANC for allocating certain legal and subject matter expertise costs that are associated with TANC's engagement in TO rate cases and other related transmission activities to all SOTP owners, including SOTP owners who have laid off their transmission entitlement. Project Agreement No. 6 (PA6) sets forth the revised cost allocation mechanism that is fair and equitable to all Participating Members.

#### **DISCUSSION**

The cost of TANC's engagement in TO rate cases are reimbursed at actual cost up to a budgeted maximum amount of \$825,000 for FY 2019-2020. Prior to the proposed Project Agreement No. 6 (PA6), SVP's portion would be a maximum of \$222,750. Under the proposed cost allocation in PA6, the SVP's portion would be reduced to a maximum of \$214,500.



Staff recommends the City Council authorize the City Manager to execute the Transmission Agency of Northern California Project Agreement No. 6 for Regulatory Engagement in Participating Transmission Owner Cases before the Federal Energy Regulatory Commission

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

The cost proposed by PA6 was included in the FY 2019-2021 budget. Under the proposed PA6 cost allocation, SVP will realize a maximum savings of \$8,250. Staff will continue to monitor Resources and Production costs and bring forward any budget amendment at a later date, if necessary.

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

Authorize the City Manager to execute the Transmission Agency of Northern California Project Agreement No. 6 for Regulatory Engagement in Participating Transmission Owner Cases before the Federal Energy Regulatory Commission.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Transmission Agency of Northern California Project Agreement No. 6

TRANSMISSION AGENCY OF NORTHERN CALIFORNIA  
PROJECT AGREEMENT NO. 6 FOR REGULATORY ENGAGEMENT IN PARTICIPATING  
TRANSMISSION OWNER CASES BEFORE THE FEDERAL ENERGY REGULATORY  
COMMISSION

This Project Agreement No. 6 (Agreement) is entered into as of \_\_\_\_\_, 2019 by and among the Transmission Agency of Northern California, hereinafter referred to as TANC; and the Cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah; the Modesto Irrigation District; the Sacramento Municipal Utility District, the Turlock Irrigation District; and the Plumas-Sierra Rural Electric Cooperative (hereinafter collectively referred to as the “Participating Members” and together with TANC are “Parties” to this Agreement) with regard to the following:

RECITALS

WHEREAS:

- A. TANC, acting on behalf of the Participating Members, has engaged in certain regulatory forums, including before the Federal Energy Regulatory Commission (FERC), to protect the value of TANC’s transmission assets and to support the Participating Members by striving to limit the Participating Members’ exposure to transmission costs when transacting in the California Independent System Operator (CAISO) markets, or as otherwise may be applicable.
- B. TANC has historically placed particular focus on the Pacific Gas and Electric Company’s (PG&E) transmission owner (TO) rate cases due to the potential impact such rate cases may have on the transmission rates under TANC’s South of Tesla Principles (SOTP) existing transmission contract on PG&E’s transmission system.

- C. Prior to the effective date of this Agreement, costs associated with TANC's engagement in TO rate cases have been allocated to TANC Members based on their transmission capacity entitlements under the South of Tesla Agreement (SOT Allocation Percentages) due to the potential impact of PG&E's transmission costs on the SOTP transmission rate.
- D. TANC has also pursued engagement in FERC and other regulatory matters based on the potential impacts of TO rates or on industry matters generally and these costs have been shared based on either Project Agreement No. 3 (PA3) or Project Agreement No. 5 (PA5) allocation percentages.
- E. Certain SOT Members have entered into a settlement agreement with PG&E, and based on such are not subject to specific SOTP transmission rates for use of their SOTP transmission rights, but are rather subject to the CAISO's transmission rates.
- F. In addition to the potential impacts to the SOTP transmission rates, TANC Members may also be impacted by changes in the transmission rates charged by the CAISO for use of the CAISO controlled transmission system.
- G. The CAISO provides transmission service under a single statewide high-voltage transmission access charge (TAC) rate, where certain transmission investments made by the Participating Transmission Owners (PTOs) and other transmission rights holders, impact transmission costs for all users of the CAISO transmission system and therefore TANC has reviewed certain California and regional transmission projects for purposes of forecasting the high-voltage TAC.
- H. TANC Members are situated differently with respect to exposure to CAISO transmission rates, depending how a TANC Member receives transmission service

from the CAISO, or depending where they choose to procure their energy resources.

- I. TANC has conducted outreach with the Members to provide transparency for TANC's past activities in the FERC regulatory TO proceedings, and to provide an initial estimate of the benefits and costs of TANC's recent engagement in TO rate cases before FERC.
- J. TANC and the Participating Members have determined that it is appropriate to implement a revised cost allocation mechanism to be used by TANC for allocating certain legal and subject matter expertise costs, that are associated with TANC's engagement in TO rate cases and other related transmission activities.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, TANC and the Participating Members hereby agree as follows:

## AGREEMENT

### 1. SCOPE OF ACTIVITY

Pursuant to the terms and conditions of this Agreement, TANC may be directed by the Commission to act on behalf of the Participating Members to engage in certain activities, either directly, indirectly, or in conjunction with legal counsel and subject matter experts, pertaining to proceedings that effect the CAISO Transmission Access Charge (Scope of Activity). The Scope of Activity contemplated herein generally includes:

- Representing the interests of the Participating Members by monitoring, analyzing, and participating in TO rate cases before FERC and any related judicial appeals;
- Engaging in other related filings or industry developments that affect the cost or provision of transmission service under TO rate cases; and,

- Engaging in other activities as may be approved by the Participating Members.

The Scope of Activity shall be supported by legal services and other specialized services relevant to TANC's participation in proceedings that are performed by qualified subject matter experts and/or witnesses. It may also include TANC Management and staff as required, or as determined to be beneficial, to advance TANC's and the Participating Members' interests.

The Scope of Activity shall apply to the TO rate cases and new related transmission activity matters that are filed subsequent to the effective date of this Agreement, and shall include all future activities and costs associated with PG&E's TO 18, TO 19 and TO 20 rate cases, but only for costs incurred after the effective date of this Agreement.

## 2. COORDINATION WITH OTHER ENTITIES

As part of TANC's duties under this Agreement, TANC shall strive to work collaboratively with other intervenors and relevant parties, and where practicable, build alliances and find common interest in promoting TANC's and the Participating Members' interest in the Scope of Activity. Such efforts include building coalitions, where strategically and economically viable, to support the alignment with other intervenors or to form "joint intervenor" perspectives for engaging in the Scope of Activity. This may include coordinating and sharing responsibilities on areas of common interest to ensure the most efficient advancement of TANC's interest on behalf of the Participating Members, and to reduce redundancy in the Scope of Activity of TANC and other similarly situated parties on issues of importance to TANC and the Participating Members.

To the extent coordination with other entities, including direct coordination with a Participating Member, or subset of Participating Members, results in gained efficiencies and benefits for TANC, or directly or indirectly reduces TANC's costs for performing the Scope of Activity contemplated herein, the Commission shall evaluate and consider such joint benefits and the individual Participating Member's funding obligations when establishing annual funding amounts. The

evaluation of joint benefits will occur prior to the development of the annual funding under this Agreement and may reflect completed work activities and planned activities, by a Participating Member or subset of Participating Members.

### 3. ROLE OF THE COMMISSION

The Commission shall provide TANC management policy and strategic direction, and set budgetary authorizations for TANC's overall engagement in the Scope of Activity, taking into consideration recommendations from TANC management, which may be further informed by guidance from legal counsel, relevant subject matter experts, and recommendations from the Contracts Committee.

Upon receiving direction from the Commission, TANC management is responsible for implementing the direction of the Commission with respect to Scope of Activity under this Agreement. TANC management will coordinate the Scope of Activity through the Contracts Committee, where the Contracts Committee will be responsible for reviewing and providing feedback regarding TANC's Scope of Activity, and will advise TANC's management for advancing the policy and strategic direction provided by the Commission. Notwithstanding the responsibility of the Contracts Committee described herein, all activities and decisions considered by TANC's management related to the Scope of Activity that involves potential legal action, or that is of a legal strategy, shall be further coordinated with legal representatives of the Participating Members through the Contracts Committee and/or the Commission.

This coordination will include when reasonably practicable: (i) draft materials for filing in advance to the Contracts Committee for review and comment prior to submission to FERC; (ii) access to any relevant filings in connection with the Scope of Activity; and (iii) analysis from legal counsel and subject matter experts supporting the positions of TANC or other intervenors related to the Scope of Activity.

TANC management shall provide briefings and supporting material to the Commission and the Contracts Committee at each regularly scheduled meeting regarding the status of the Scope of Activity under this Agreement. Briefing materials may include the following:

- An overview of the relevant proceedings and known schedules;
- Assessment of the financial impact to TANC and, to the extent practicable, each of the Participating Members;
- The scope of TANC's potential initial engagement and each recommended change in scope;
- Identification of potential legal actions that TANC should consider and the likelihood of success (by argument if practicable);
- An estimate of the potential benefits and costs associated with engagement (periodically updated as may be necessary recognizing progress of proceedings under the Scope of Activity); and
- Scope of Activity progress reports identifying:
  - Status of the proceeding
  - Summary of TANC's issues and the position(s) of relevant intervenors
  - Costs incurred for engagement, tracking, and monitoring, as well as any changes to the estimated benefits and costs
  - Identification of key decision points in the proceeding

#### 4. VOTING

The Commission shall direct all policy and legal action required in connection with this Agreement. The Contracts Committee will direct the implementation of the Commission's policy and legal direction. The Participation Percentages set forth in Appendix 1, as attached hereto and made part of this Agreement, shall govern voting rights for actions taken under this Agreement. In order for a formal action to be taken by the Commission or the Contracts Committee under this Agreement related to the Scope of Activity, a quorum of the Participating Members shall be

established, where the Participation Percentages of the Participating Members present must be at least 60%. An affirmative vote representing 60% of the Participation Percentages of the Participating Members under the Agreement is required to provide authorization.

The Participating Percentages as set forth in Appendix 1 may be modified by a unanimous vote of the Participating Members. The Participating Members may determine additional Participating Percentages for cost allocation and voting for specific regulatory or legal proceedings, based on unanimous approval of the Participating Members.

## 5. FUNDING AND OBLIGATIONS FOR ACTIVITIES

All costs attributed to the Scope of Activity performed in accordance with this Agreement shall be allocated to the Participating Members based on the Participation Percentages set forth in Appendix 1; provided, however, as described in Section 2 of this Agreement, the funding obligation of a Participating Member, or subset of Participating Members, shall be considered and may be adjusted by the Commission to account for any contributions or benefits associated with joint coordination and activities among the Participating Members. Any adjustments by the Commission of the funding obligation for Participating Members contemplated under this Section 5 shall be by the voting under Section 4..

All costs that are estimated to be incurred under this Agreement shall be included in the annual TANC Budget, and the total amount of expenses TANC is authorized to incur during any fiscal year for performing the Scope of Activity under this Agreement shall be subject to annual caps and not exceed the Budget or the annual funding caps unless additional funding is approved by the Commission. Costs shall be itemized by proceeding for the sole purpose of TANC's work under the Scope of Activity, including accounting for distinct legal costs, subject matter experts and witnesses. TANC management costs may be included upon approval of the Commission.



## 6. TERM AND TERMINATION.

This Agreement shall take effect as of the date hereof and shall remain in full force and effect for three years from the date that TANC and the Participating Members execute the Agreement. At least 120 days in advance of the initial three-year term of this Agreement, the Participating Members may extend the term for an additional one to three years by a unanimous vote. In accordance with Section 15.6 of PA3, the provisions of Section 15 of PA3 shall be incorporated by reference.

In the event that one or more Participating Members choose to terminate its participation in this Agreement, by providing written notice 100 days prior to the end of the initial three-year term or pursuant to the provisions of Section 15 of PA3, the remaining Participating Members may elect to adjust the cost allocation percentages shown in Appendix 1 and continue this Agreement. If by the end of the initial three-year term of this Agreement the remaining Participating Members have not agreed to adjust the allocation percentages shown in Appendix 1, TANC shall terminate this Agreement.

Upon termination of this Agreement, or termination of any individual Participating Member's participation in this Agreement pursuant to this Section 6, any costs and liabilities associated with the Scope of Activity approved in accordance with this Agreement shall remain the obligation of the Participating Members until such Scope of Activity is completed.

Prior to the termination of this Agreement, the TANC Commission shall review TANC's role with respect to the Scope of Activity and take action regarding TANC's continued work and related cost allocation.

## 7. AMENDMENTS

This Agreement may be amended only by the written agreement of all the parties hereto.

## 8. DEFAULT

Upon the failure of any Participating Member to meet its obligations hereunder, TANC shall give written notice of the failure to such Participating Member and, if such failure has not been cured within forty-five (45) days after the date of such notice, it shall constitute a default at the expiration of such forty-five (45) day period. Upon such default, TANC may terminate this Agreement as to the defaulting Participating Member, and protect and enforce its rights hereunder by suit or suits in equity or at law, whether for the specific performance of any covenant herein or for damages or in aid of the execution of any power granted herein or any other remedy available under any provision of applicable law. The cost allocation percentages may be adjusted amongst the remaining Participating Members.

## 9. INDEMNIFICATION

Each Party and its officers, agents, employees, commissioners and board members, undertake no legal liability to the other Parties to this Agreement ("Indemnitees") and each Party releases, holds harmless, and covenants not to sue any Indemnitees for any cause, claim, injury, damage, or death arising from a negligent act or omission of any other Party in connection with this Agreement.

## 10. SEVERABILITY

If any provision of this Agreement is finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in full force and effect as though the invalid provision had not been included herein.

11. MEMBERS' OBLIGATIONS SEVERAL

The obligation of each Participating Member to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Participating Members.

12. WAIVER OF DEFAULT

Any waiver at any time by any party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

13. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute a single Agreement.

15. SIGNATURES

In witness whereof, the parties have caused this Agreement to be executed as of the date first above written. The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

PARTICIPATING MEMBERS

CITY OF ALAMEDA

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF HEALDSBURG

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF LODI

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF LOMPOC

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

MODESTO IRRIGATION DISTRICT

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF PALO ALTO

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF REDDING

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF ROSEVILLE

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF SANTA CLARA

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

TURLOCK IRRIGATION DISTRICT

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF UKIAH

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

TRANSMISSION AGENCY OF NORTHERN  
CALIFORNIA

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Appendix 1  
Participating Percentages and Voting Rights

TANC Member	Percentage (%)
MID	23.0000
Redding	8.0000
SMUD	11.0000
SVP	26.0000
TID	8.0000
Alameda	4.0000
Healdsburg	1.0000
Lodi	4.0000
Lompoc	1.0000
Palo Alto	9.0000
Plumas	1.0000
Roseville	3.0000
Ukiah	1.0000
Total	100.0000





## Agenda Report

19-986

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on Amendment No. 1 to Call 17-1 with Nexant, Inc. to Provide the Specialized Commercial and Industrial Operational Optimization Program Third Party Energy Efficiency Program

#### BACKGROUND

In accordance with Public Utilities Code (PUC) Section 385 covering Public Benefits Charge, and with the City's Public Benefits Program Policy Statement adopted by Council on May 12, 1998, Staff has developed a wide range of cost-effective energy efficiency and renewable energy programs for customers. State law requires that the utility spend a minimum of 2.85% of retail revenue on these programs, in order to encourage customer investments by reducing the payback period in these areas.

In order to expand its programs, Silicon Valley Power (SVP) periodically issues a Request for Proposals (RFP) for Third Party Energy Efficiency Programs. An RFP was issued in August 2016 and the City selected the Specialized Commercial and Industrial Operational Optimization Program Third Party Energy Efficiency Program offered by Nexant, Inc. to complement its existing energy efficiency programs. In January 2017 SVP entered into an agreement with Nexant (titled "Call 17-1 Agreement"). Measured by the number of projects completed to date and current Program enrollment, customer interest exceeds initial expectations, and the original budget will be fully committed by November 2019. Additional customers have expressed interest in enrolling in the Program and show significant opportunity for energy savings through the Program offering. This Amendment to the Call 17-1 Agreement will extend the Program until January 24, 2022, and with the allocation of additional funds, the Program will continue to contribute to SVP's energy efficiency goals and serve additional customers.

#### DISCUSSION

The Specialized Commercial and Industrial Operational Optimization Program ("Program") provides engineering support and analysis to large customer facilities to effectively engage these customers in taking a long-term view in developing energy savings strategies geared towards implementing measures that will optimize the operations of their facilities. The Program also provides project management support to customers during the implementation phase to make the recommended energy efficiency improvements and data analytics support to assist with ongoing savings validation. Incentives to customers are paid through the Customer Directed Rebate program. Extending the Program timeline an additional 30 months (to January 2022) and adding additional funding of \$474,000 is anticipated to achieve an additional 1 million kWh in first year energy savings.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

The total cost of Amendment No. 1 to Call 17-1 with Nexant, Inc. will not exceed \$474,000 over the additional 30 months. Sufficient funds in FY 2019/2020 and FY 2020/21 are available in the Electric Department’s Public Benefits Program operating Materials, Services, and Supplies budget. Expenditures for future fiscal years are subject to appropriation of funds.

**COORDINATION**

This report has been coordinated with the Finance Department and City Attorney’s office.

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Authorize the City Manager to execute Amendment No. 1 to Call 19-1 Agreement with Nexant, Inc. to provide the Specialized Commercial and Industrial Operational Optimization Program Third Party Energy Efficiency Program extending the service provided until January 24, 2022 in an amount not-to exceed \$474,000, subject to annual appropriation of funds.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Amendment No. 1 to Call 17-1 Agreement with Nexant, Inc.

**AMENDMENT NO. 1  
TO CALL 17-1 AGREEMENT  
FOR PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
NEXANT INC.**

**PREAMBLE**

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Nexant Inc., a Delaware, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. The Parties previously entered into an agreement entitled "Call Agreement by and Between the City of Santa Clara, California and Nexant, Inc. for Third Party Energy Efficiency Program Services and Call No. 17-1 for Professional Services to be Provided to the City of Santa Clara, California by Nexant Inc.", dated January 26, 2017 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide Specialized Commercial and Industrial Operation Program, and the Parties now wish to amend the Original Agreement to extend the Agreements by two years.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AMENDMENT TERMS AND CONDITIONS**

That paragraph number one of the Original Agreement, entitled "Call No. 17-1 for Professional Services to be provided to the City of Santa Clara, California by Nexant Inc." is hereby amended to read as follows:

The Parties to this Call No. 17-1 ("Call") agree that this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and Nexant, Inc.," dated January 26, 2017, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by Nexant, Inc. ("Contractor"), which are more fully described in Contractor's proposal to City entitled "Specialized Commercial and Industrial

Operation Optimization Program” dated December 1, 2016 and May 24, 2019 (“Proposal”), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on January 25, 2017 and ending on January 24, 2022. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed four hundred seventy-four thousand dollars (\$474,000.00), subject to budgetary appropriations.”

## **2. TERMS**

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

## **3. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

[Signatures continue on next page.]

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The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

APPROVED AS TO FORM:

Approved as to Form:

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

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

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

“CITY”

**NEXANT INC.**  
a Delaware corporation

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

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

Name: PETER NOLAND

Title: Vice President, Business Development

Principal Place of  
Business Address: 101 2<sup>nd</sup> Street #1000

Email Address: San Francisco, CA 94105

Telephone: (415) 369-1000

Fax: (415) 369-9700

“CONTRACTOR”

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## Agenda Report

19-998

Agenda Date: 10/8/2019

### INFORMATIONAL REPORT TO HOUSING AUTHORITY

#### **SUBJECT**

Update on project located at 2330 Monroe Street with Freebird Development Company, LLC: Status of Disposition and Development Agreement and Project Approvals

#### **EXECUTIVE SUMMARY**

Following an extensive community outreach process, the City issued a Request for Proposals (RFP) for the development of an affordable housing project (Project) on the City owned property located at the southeast corner of Monroe Street and San Tomas Expressway (2330 Monroe Street). In December 2018, City Council approved an Exclusive Negotiation Agreement (ENA) with Freebird Development Company, LLC (Developer) to allow the Project to proceed. The Developer has been working with the City to process its entitlements and to negotiate the terms of a Disposition and Development Agreement. The purpose of this informational memo is to provide a summary of current activity and next steps leading to a Disposition and Development Agreement and Land Use Entitlements.

#### **BACKGROUND**

The vacant City-owned parcel is located at 2330 Monroe Street at the southeast corner at the intersection of San Tomas Expressway and Monroe Street. The site adjoins the rear yards of eleven (11) single family residential properties to the east and south on Sheraton Drive and El Capitan Ave. Multifamily development is located to the north on the opposite side of Monroe Street. A new City park is located to the west on the opposite side of San Tomas Expressway.

#### ***Land Use and Zoning***

The site is currently zoned as Single Family (R1-6L). The land is designated as right-of-way on the General Plan Land Use diagram. Redevelopment of the site for new housing will subsequently require City Council and Planning Commission approvals of a General Plan Amendment, Rezoning, Architectural Review and California Environmental Quality Act (CEQA).

#### ***Community Feedback***

From the time City Council approved Freebird's development concept, the Developer has conducted four community outreach meetings in October 2018 (#1), November 2018 (#2), February 2019 (#3), and July 2019 (#4), each with 25-35 participants. Residents and businesses within a 1,000-foot radius of the project site received direct mailings notifying them of all community meetings for. In addition, everyone who attended a prior community meeting or contacted City staff or the developer by phone or email to inquire about the project received direct mailings and email invitations. Finally, all meetings were publicized on the City's email blasts and online forums. In all, approximately 75 people have attended at least

one of the community meetings hosted by the Developer.

In response to community concerns about density and privacy, the proposed Project is a 65-unit multi-family building ranging from 2 to 3 stories in height. It will utilize several measures to mitigate proximity to single-family homes, including placing the building along San Tomas Expressway with a generously sized “All Abilities” play area, courtyard, and surface parking between the bulk of the building and the neighboring single-family homes. The proposal also includes an attractive privacy fence along the property line shared with the neighboring single-family homes.

In addition to privacy, another main concern raised through the community meetings was parking. As initially proposed, the Project included 75 parking spaces but has subsequently been revised to increase parking to 94 spaces, 3 electric vehicle charging spaces, and 1 paratransit loading space (a 1.5 space per unit ratio). Staff believes that ratio is sufficient, particularly given that nearly 50% of the units are studios and one-bedrooms, and 25% of the units will be occupied by persons with intellectual and developmental disabilities, many of which hold stable employment but do not own cars.

## **DISCUSSION**

This report provides a comprehensive status update on key elements of the Project, including the Project’s entitlement process, site and architectural design, financing and affordability structure.

### ***Project Entitlements***

Following the submission of an application to the City in February 2019 for site rezoning, general plan amendment, and other related project approvals, the Developer met with the Project Clearance Committee in March 2019, July 2019, August 2019, and was finally deemed complete in September 2019. The proposed building has not changed significantly from the time concept drawings were presented during the ENA approval through today-the main changes have been to the parking lot layout, which allows for a more efficient fire truck turnaround, increased open space and additional parking spaces. As a result of the review process, City agencies have also required significant off-site improvements to Monroe Street including streetscape improvements and reconfiguration of the porkchop island at Monroe Street and San Tomas Expressway to improve roadway safety.

Concurrent with the above, Environmental Science Associates, the environmental consultant for the project, has been working with the Planning Division and other City staff to complete the necessary environmental studies, and draft and publish the CEQA Final Initial Study/Mitigated Negative Declaration and Mitigation and Monitoring Report. The final study was published in September 2019 for a 30-day public comment period. In addition to typical construction-related mitigation measures such as air quality mitigation and protection of natural and archaeological resources, mitigation measures will include a noise performance standard for the operations of the building and the roadway safety modifications discussed above.

It is anticipated that the Project entitlements and associated approvals will be before the Planning Commission in November 2019 and be presented for Council consideration in December 2019 or January 2020.

### ***Site Plan and Design***

The Project involves the development of an approximately 74,000 square-foot building ranging in height from two to three stories containing 65 residential units in a mix of studios and one-, two- and three-bedroom units. Specifically, the project proposes 7 studio, 23 one-bedroom, 29 two-bedroom and 6 three-bedroom units. All units will be deed restricted for use by households at income tiers between 25-120 percent of area median income and 25 percent of the units will be reserved for intellectually and/or developmentally disabled persons. The project will also include on-site amenities such as a fitness center located on the second floor, a game room on the third floor, a laundry room and community room located on the ground floor, a patio with barbecue, a universal design (all abilities) outdoor play area, and garden beds for residents, along with additional landscaping and pedestrian trail around the site perimeter.

The Project site will be accessible from Monroe Street. The proposed 26-foot wide driveway will lead to the surface parking lot with a two-way drive aisle 26 feet wide. The surface parking lot will provide 98 parking stalls. In addition, the Project will provide 37 bicycle parking spaces.

Approximately 32,000 square feet of open space will provide area for active recreational uses, intended for use by building residents and guests. Included are a children's play area (separate play areas for ages 2-5 and 5-12), a landscaped and furnished park-like quiet area with half-size bocce court, recreational community gardens, a family picnic area, a fitness pathway with outdoor fitness equipment and a putting green (artificial turf).

### ***Financing***

The Project is in the process of securing the necessary funding. In total, there are six main potential sources of capital financing to be utilized for the Project as follows:

- **Low Income Housing Tax Credit Equity (LIHTC).** LIHTC is a limited partner equity generated through 4% low income housing tax credits that serve as both construction and permanent financing. The net equity to the project is \$13,000,000, which is based on an 86% applicable fraction given that 14% of the units are above 80% AMI tax credit rents (recent federal and state LIHTC regulation changes allows for 80% AMI units to qualify for tax credits as long as the overall income average of tax credit units is 59% AMI). The amount of equity is based on the published July 2019 tax credit rate of 3.23% and a raise of \$1.00 on the dollar, which is similar to tax credit pricing on recent projects in the Bay Area post tax reform.



- **Tax Exempt Bonds** Tax exempt bonds in the amount of \$25,000,000 during construction and \$11,200,000 during the permanent period are the second source of financing. The tax-exempt bonds will be interest only and non-amortizing during construction. The projected construction term is 21 months with up to an additional 7 months to meet the permanent loan take-out requirements (conservatively assumes 10 units leased per month plus a stabilization period). The permanent loan amount is based a minimum 1.15 debt coverage ratio, and 40-year amortization (consistent with current terms in the market place). Interest rates are 4.50% during construction and 5.50% during the permanent period.
- **City of Santa Clara Residual Receipts Loan.** Developer is requesting a \$5,000,000 construction period and permanent residual receipts loan from the City of Santa Clara (\$77,000/unit), which is slightly higher than the \$4.9 million-dollar request considered in the original RFP Response. The current underwriting shows 2% interest on the loan, which can be repaid during the 55-year term of the loan using 3% income and 3% expense inflators. The 55-year cash flow shows that based on the City and County/State receiving 50% of the residual receipts on a pro rata basis, the loan will be repaid in Year 54 and, over that period, the City will receive roughly \$5,300,000 in interest on the loan in addition to the \$5,000,000 repayment of principal.
- **Santa Clara County Funds.** The fourth source of financing is \$3,200,000 in County funds under a new funding source for projects with set-asides for people with intellectual and developmental disabilities (I/DD). The loan has been structured as a 3% residual receipts loan with a 55-year term sized at \$200,000 per I/DD unit (16 units). The Developer is applying for this funding in August 2019 to get in the County's pipeline even though funding might not be awarded this round since entitlements are not in place yet.
- **State Multifamily Housing Program (MHP) Funds.** The fifth source of financing is \$5,500,000 in MHP funds. The State recently launched new funding for the MHP program, which they intend to award twice annually through an RFP process. The first round is currently underway with a second round expected to be released in January of 2020. The project will need entitlements in place to be competitive for the MHP funding. The loan has been structured as a 0.42% residual receipts loan (the State will reduce interest down to 0.42% for financial feasibility) with a 55-year term. To maximize points under the MHP scoring system, the City and County funds must equal at least 150% of the MHP funds; therefore, the MHP loan has been sized at \$5,500,000. MHP funds have been structured as a permanent source only given State guidelines.
- **Deferred Developer Fee and Deferred Reserves.** The final source of financing is deferred costs including deferred developer fees and reserves. \$2,500,000 is anticipated to be deferred during construction with \$750,000 remaining deferred during permanent period to be repaid from residual receipts. \$750,000 is the amount that can be repaid during the first 10 years of operations per County guidelines.

The following is a summary of a potential financing structure:

<b>Project Funding - Permanent Sources</b>	
	<b>Amount</b>
Tax Credit Equity	\$ 13,000,000
Tax Exempt Bonds	\$ 11,200,000
City of Santa Clara Loan	\$ 5,000,000
County Loan	\$ 3,200,000
State MHP Loan	\$ 5,500,000
Deferred Developer Fee	\$ 750,000
<b>Total Sources</b>	<b>\$ 38,650,000</b>

### ***Affordability***

The Developer's proposal to provide housing for moderate-income, "workforce" households addresses the community's desire to create homes in the City for people who work in a variety of lower-paying jobs that provide key services to the community. The City's existing market rate rental housing is out of reach for many working families, including those supported by workers in public service, health care, education, retail, hospitality, and social services. While workers in the lowest-paid jobs (from minimum wage to 60% AMI) can apply for five-year wait lists for affordable housing, families in the 60% to 120% AMI range are excluded even from typical affordable housing. The following is a summary of the project's proposed affordability structure:

<b>Proposed Project Unit Mix</b>		
<b>Income</b>	<b>Total Units</b>	<b>Percentage</b>
25% AMI	16	25%
50% AMI	10	15%
60% AMI	13	20%
80% AMI	16	25%
100% AMI	9	14%
Manager	1	1%
<b>Total</b>	<b>65</b>	<b>100%</b>

A unique aspect of the Developer proposal is its set-aside of 25% of the units (16 units at 25% AMI) for Santa Clara's growing population of adults with developmental and/or intellectual disabilities. This provision would address a previously unmet goal of the City's 2014-2022 Housing Element: to collaborate with developers to create inclusive housing for people with developmental disabilities served by the San Andreas Regional Center.

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***Project Transaction and Key Terms***

Key terms of the anticipated DDA include the following:

**The Project:**

2330 Monroe Street, an affordable rental residential development, is to be constructed on a 2.5-acre site at 2330 Monroe Street, Santa Clara, APN: 224-37-068 ("Site"). The development will contain approximately 65 affordable housing units.

**Borrower:**

Freebird Development Company, LLC, a California limited liability company ("Freebird"), or a limited partnership for which Freebird serves as administrative general partner.

**Service Provider:**

Housing Choices Coalition for Persons with Developmental Disabilities, Inc. ("Housing Choices Coalition") through a Memorandum of Understanding with Freebird and the San Andreas Regional Center. Funding for social services for the households with intellectual and/or developmental disabilities to be provided by the San Andreas Regional Center.

**Unit Mix:**

The unit mix includes 12% studios, 34% one-bedroom units, 45% two-bedroom units and 9% three-bedroom units. The Project will include a community room, property management and social services offices, an exercise room, a library/game room, onsite laundry, an All Abilities play area and an outdoor fitness path.

**City Funding:**

Up to \$5,000,000, subject to underwriting acceptable to the City of Santa Clara ("City").

**Loan Term:**

The Construction/Permanent Loan shall have a term commencing at the close of construction financing and ending fifty-five (55) years from the date the Project receives its certificate of occupancy (or equivalent).

**Property Ownership and Ground Lease:**

The City will retain fee ownership of the parcel through a ground lease. The City shall ground lease the Site to the Borrower for a term of fifty-five (55) years, or longer as may be required by the California Department of Housing and Community Development and/or the Project's senior lender or tax credit investor. The Construction/Permanent Loan shall be repaid on a residual receipts basis, with the City receiving a pro-rata share of fifty percent (50%) of the net cash flow of the Project, to be split proportionally with the County and, if applicable, the State, based on the proportionate amount of each public agency's financial contribution to the Project.

***Next Steps***

City staff and the Developer are working closely to document the transaction in a Disposition and Development Agreement (DDA); form of Ground Lease; Loan Agreement; Affordability Agreement and several other documents. The basic framework of these documents is outlined in this staff report.

The DDA documents the terms and conditions of the anticipated Project and for the conveyance of the property to the Developer. The draft form of Ground Lease and Loan Agreement will be attached

to the DDA. These documents will control how the Project will be developed and the terms and conditions of the relationship between the City and Developer over a 55-year term. An Affordability Agreement will restrict AMI levels for the affordable residential units.

The Project entitlements are pending approval by the Planning Commission and will be brought forward for Council consideration together with a request to approve the DDA and other documents related to the property transaction.

It is currently anticipated that the 2330 Monroe Street project will be brought forward for Council consideration in December 2019 or January 2020.

### **ENVIRONMENTAL REVIEW**

The CEQA Final Initial Study/Mitigated Negative Declaration and Mitigation and Monitoring Report was published in September 2019 for a 30-day public review period.

### **COORDINATION**

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

### **FISCAL IMPACT**

There is no additional cost to the City to prepare this report other than administrative staff time and expenses. Third party costs associated with the negotiation and preparation of the Disposition and Development Agreement have been paid by the Developer from a deposit to the City.

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

Note and File the Informational Memo on the project located at 2330 Monroe Street with Freebird Development Company, LLC.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Project Site Plan
2. Project Rendering (1)
3. Project Rendering (2)
4. Exclusive Negotiation Agreement (ENA)
5. 2330 Monroe Street RFP and Community Report

Three Story Height

Sound Wall

SAN TOMAS EXPRESSWAY

MONROE STREET

Two-Story Height

Two-Story Height

BBQ and Play Area

98 Parking Spaces

Community Garden and  
Bocce Ball Court

Fire Truck  
Turnaround

Trees and Privacy Fence











## EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

(APN 224-37-068)

This Exclusive Negotiating Rights Agreement (this "Agreement") is entered into as of this 12/19/18, 2018 by and between the **City of Santa Clara** (the "City") and **Freebird Development Company, LLC** (the "Developer"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

### RECITALS

A. The City is the owner of a 2.474 acre parcel of real property in the City of Santa Clara located at 2330 Monroe Street (APN 224-37-068), as shown on the map attached to this Agreement as Exhibit A and incorporated herein by this reference (the "Property").

B. After redevelopment agencies (RDA) were dissolved on February 1, 2012, the City, as Housing Successor to the dissolved RDA, was designated to assume all housing assets (including land) of the former redevelopment agency and these assets were placed into a Housing Successor Fund. The Housing Successor must initiate development activities on any land that it obtained from the former RDA consistent with the intent to provide housing that is 100% affordable to persons and families of low and moderate income.

C. On March 31, 2018, a Request for Proposals (RFP) was issued for the development of 2330 Monroe Street. On September 11, 2018, City Council noted and filed staff's recommendation of Freebird Development Company for development of the site and directed staff to draft an Exclusive Negotiations Agreement for Council consideration.

D. The Developer has proposed to develop the Property with 55-70 units of affordable housing, including a 20% set-aside of units targeted to persons with developmental disabilities (the "Project"). The entire project is proposed to be affordable to households with income between 30% and 120% Area Median Income (AMI).

E. The City is interested in exploring the feasibility of the Project and has selected the Developer as a potential developer of the Project. The City will retain long-term ownership of the Property through a ground lease structure and is considering offering a maximum subsidy of \$75,000 per affordable housing unit to facilitate project financing.

F. The site is currently zoned as Single Family (R1-6L). The land is designated as right-of-way on the General Plan Land Use diagram. Redevelopment of the site for new housing will subsequently require City Council and/or Planning Commission approvals of a General Plan Amendment, Rezoning, Architectural Review and California Environmental Quality Act (CEQA) and potentially National Environmental Policy Act (NEPA) review.

G. The development of this Project will allow the City to meet its obligations as Housing Successor to provide low and moderate income housing on the Property and meet the deadline required by the State to commence development of the site within five years after the Department of Finance confirmed the Property as a housing asset.



H. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City and the Developer of a Disposition and Development Agreement (the “DDA”) pursuant to which the Developer will conduct specified development activities related to the Property. As more fully set forth in Section 21, the Developer acknowledges and agrees that this Agreement in itself does not grant the Developer the right to develop the Project, nor does it obligate the Developer to any activities or costs to develop the Project, except for the preliminary analysis and negotiations contemplated by this Agreement.

## **AGREEMENT**

The Parties mutually agree as follows:

### EXCLUSIVE NEGOTIATIONS RIGHT

1. Good Faith Negotiations. The City and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 2, the terms of a DDA for the development of the Project on the Property. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined herein in Exhibit B to facilitate the negotiation of a mutually satisfactory DDA.

Among the issues to be addressed in the negotiations are the physical and land title conditions of the Property and remediation of any adverse conditions, the development schedule for the Project, and financing of the Project.

2. Negotiating Period. The negotiating period (the “Negotiating Period”) under this Agreement shall be eighteen (18) months, commencing on the date this Agreement is fully executed, which may be extended for a period of an additional two periods of six (6) months each upon presentation of a written request from the Developer together with a schedule of tasks to be accomplished during the additional period. Granting of such extension(s) shall be at the discretion of the City Manager and shall only be effective upon the execution of an amendment to the Agreement.

If a DDA has not been executed by the City and the Developer by the expiration of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except as set forth in Section 4 and Section 23. If a DDA is executed by the City and the Developer then, upon such execution, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

3. Exclusive Negotiations. During the Negotiating Period, the City shall not negotiate with any entity, other than the Developer, regarding development of the Property, or solicit or entertain bids or proposals to do so.

4. City Consultant Costs Deposit. The Developer acknowledges that the City shall expend resources in the negotiation of the DDA and performance of the tasks provided in Exhibit B. In order for this Agreement to remain in effect, the Developer and the City shall agree on an amount that the Developer shall submit to the City as a good faith and initial third-party consultant costs deposit, the sum of TWENTY-FIVE THOUSAND Dollars (\$25,000) (the “Deposit”) to be paid within thirty (30) days following execution of this Agreement by the City

and the Developer. The Deposit shall be provided in the form of a cashier's check made to the order of the City and be placed in a separate City deposit account. Any interest earned on the Deposit and any subsequent deposits shall be added to the total Deposit amount and may be used in accordance with this Agreement.

The City shall have no obligation to begin the negotiation of the DDA or to retain third-party consultants until the Developer delivers the Deposit to the City. For the period of six (6) months following the date of the Agreement ("Due Diligence Period"), the Deposit shall be fully refundable, except for any costs incurred by the City as described below.

The Deposit may be used by the City to pay for the City's third party consultant costs and expenses in negotiating and preparing the DDA (collectively, the "Transaction Documents"). Such costs may include, but are not limited to reasonable fees and services of third party consultants and attorneys, selected by the City at its sole discretion, relating to the Project and the preparation of the Transaction Documents ("Consultant Costs"). Prior to incurring any Consultant Costs, the City shall submit an outline budget for use of the Deposit describing the general scope of work, cost and timing of expenditure.

Following the Due Diligence Period, the Developer shall be responsible for all of the City's Consultant Costs subject to the restrictions contained in this Section 4. Prior to the City incurring Consultant Costs in excess of the Deposit, the City shall provide the Developer with a schedule of the Consultant Costs incurred to date and an estimate of the additional Consultant Costs anticipated to be incurred. The Developer shall reasonably approve or disapprove the Consultant Costs within seven (7) days following the City's submittal of the anticipated Consultant Costs. If Developer disapproves the City's Consultant Costs, the City and Developer will meet and in good faith evaluate the estimate and attempt to reach a compromised budget acceptable to both parties. The Developer shall deposit with the City the amount of the additional Consultant Costs as approved by the Developer within fourteen (14) days of such approval. The additional amount shall be added to the Deposit. The City shall be reimbursed for all additional Consultant Costs approved by the Developer and incurred by the City prior to the date of the termination of this Agreement. To the extent this Agreement is terminated prior to or as of the end of the Negotiating Period and the City has incurred Consultant Costs that are less than the Deposit, and Developer has negotiated in good faith and is not in breach of this Agreement, the City shall return the unexpended balance of the Deposit to the Developer along with an accounting of the Consultant Costs incurred by the City.

If this Agreement is terminated by the City due to a failure by the Developer to negotiate in good faith under this Agreement the Deposit and any interest earned thereon shall be retained by the City, as more fully provided in Section 25. Conversely, if this Agreement is terminated by the Developer due solely to a City default, the Deposit and any interest earned thereon shall be returned to the Developer.

5. Identification of Developer Representative. The Developer's representative to negotiate the DDA with the City is: Robin Zimpler.

## GENERAL PROVISIONS

6. Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the Developer to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the City is not committing itself to or agreeing to undertake acquisition, disposition, or exercise of control over any property. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City and City Council action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City.

7. Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City:	City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Attention: City Manager
Developer:	Freebird Development Company, LLC 1111 Broadway Oakland, CA 94607 Attention: Robin Zimblar

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered.

8. Costs and Expenses. Except for the Developer's obligation to fund certain City consultant costs under Section 4, above, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.

9. No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA that may result from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Developer.

10. Defaults and Remedies.

(a) Default. Failure by either Party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. Failure of the City to comply with its obligations under Section 3 shall constitute an event of default by the City hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured

thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the City, the Developer's sole remedy shall be to terminate this Agreement, upon which termination the Developer shall be entitled to the return of the uncommitted portion of the Deposit, as set forth in Section 4, and any interest earned thereon. Following such termination and the return of the appropriate amount of the Deposit and any interest earned thereon, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Section 25 shall survive such termination.

In the event of an uncured default by the Developer, the City's sole remedy shall be to terminate this Agreement and to retain any unexpended funds remaining in the Deposit and any interest earned thereon. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement; provided; however, that the Developer's indemnification obligation pursuant to Section 24 shall survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

11. Developer's Obligation to Indemnify City. Developer shall defend, indemnify, and hold harmless the City from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, damage or liability of any nature whatsoever, arising directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with performance of this Agreement on the part of the Developer or any contractor or subcontractor of the Developer. The Developer shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of the Developer to indemnify includes the duty to defend the City, at the City's choosing, to pay the City's costs of its defense in any court action, administrative action, or other proceeding brought by any third Party arising in any manner by reason of or incident to the performance of this Agreement on the part of the Developer or any contractor or subcontractor of the Developer. The City shall have the right to approve any attorneys retained by the Developer to defend the City pursuant to this Section 23 and shall have the right to approve any settlement or compromise. The Developer's duty to indemnify the City shall survive the termination of this Agreement. Notwithstanding the above, the Developer shall have no obligation to defend, indemnify or hold harmless the City, for any and all suits and causes of action, claims, losses, demands and expenses caused by, arising from, or related in any part to, any gross negligence, fraud or misconduct on the part of the City or its employees, agents, assigns, officers, or officials.

12. Compliance with Laws. Developer shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Developer's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section

3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Developer has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

13. Nonliability of Officials, Officers, Members, and Employees. No member, official, officer, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

No member, officer, or employee of the Developer shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or to its successor, or on any obligations under the terms of this Agreement.

14. Assignment. The Developer shall not assign its rights or responsibilities under this Agreement, in whole or in part, except with the written consent of the City. Any attempted assignment without such prior written consent shall be invalid and void.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Entire Agreement. This Agreement, including the Exhibits, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.


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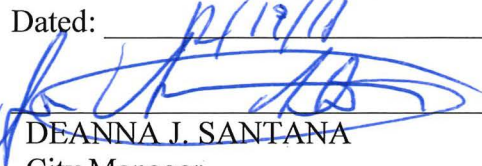
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The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

APPROVED AS TO FORM:


  
BRIAN DOYLE  
City Attorney

Dated: 12/12/18  
  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

**FREEBIRD DEVELOPMENT COMPANY, LLC**

Developer

Dated: 12-12-18  
By:   
Name: Robin Zimble  
Title: Founder  
Local Address: 1111 Broadway  
Oakland, CA 94607  
Email Address: robin@freebirddev.com  
Telephone: 510-319-6959  
Fax: N/A

“CONTRACTOR”

**EXHIBIT A**  
**PROPERTY MAP**  
(APN: 224-37-068 )

Prepared by City of Santa Clara

## **EXHIBIT B**

### **NEGOTIATION PERIOD & TENTATIVE WORK PLAN**

#### **NEGOTIATION PERIOD**

1. **Overview.** To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in Exhibit B in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period. Within the first thirty (30) days of this Agreement, the Parties will agree upon a work plan for tasks to be accomplished.

2. **Site Plan.** The Developer shall prepare and submit to the City a proposed site plan identifying the size and shape of the parcels which comprise the Property (the "Development Parcels") and the location of the Project improvements to be constructed on each of the Development Parcels.

3. **Developer Cooperation and Coordination with Adjacent Parcels.** Developer acknowledges the adjacent parcels and shall plan the site to be sensitive to these neighborhoods.

4. **Financing and Costs of Development.** The Developer shall provide the City with a detailed financial pro forma for the Project containing, among other matters, a detailed development budget setting forth the costs of the tasks to be undertaken by the Developer. The financial pro forma will be used to evidence the financial feasibility of the Project and to assist in the negotiation of terms regarding payment of costs of land and development.

5. **Documents.** Prior to execution of a DDA, the Developer shall provide the City with its organizational documents as well as organization chart outlining key personnel's roles and responsibilities. Developer shall also submit to the City for its approval, copies of all operating agreements, joint venture agreements or other agreements between the members of the development entity, and such financial statements or tax returns reasonably required by the City to determine the Developer's financial capability, excluding confidential or proprietary information.

6. **Environmental Review.** The City shall prepare or cause to be prepared any environmental documentation required by the California Environmental Quality Act ("CEQA") for consideration of approval of the DDA; if any, provided, that nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to such environmental documentation. The Developer shall provide such information as may be required to enable the City to prepare or cause preparation and consideration of any CEQA-required document, and shall otherwise generally cooperate with the City to complete this task. The Developer shall be responsible for all costs associated with the preparation of the required CEQA documentation.

7. **Due Diligence.** During the Negotiating Period, the Developer shall conduct the following due diligence activities:



(a) Property Adequacy Determination. The Developer shall determine whether the Property is suitable for development of the Project, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the zoning of the Property, the massing of the proposed Project improvements and the parking requirements imposed on projects of this type and the other environmental and regulatory factors that the Developer deems relevant. If, in the Developer's judgment based on such investigations and analyses, the Property is not suitable for development, the Developer may notify the City in writing prior to the expiration of the Negotiating Period of its determination. Upon such timely notification by the Developer, the remaining balance of the Deposit shall be immediately refunded to the Developer and this Agreement shall be terminated without further action of either Party, and thereafter neither Party shall have any further duties, obligations, rights, or liabilities under this Agreement; except as set forth in Section 24 and Section 25.

(b) Objections to Title. Promptly following the execution of this Agreement, the Developer shall cause Old Republic Title Company at 675 N. 1<sup>st</sup> St., #900, San Jose, California, to issue a Preliminary Title Report (the "Report") on the Property to the Developer and the City. If the Developer objects to any exception appearing on the Report or should any title exception arise after the date of the Report, the Developer may object to such exception, provided such objection is made to the City in writing on or before 5:00 P.M. on the thirtieth (30th) day following the date the Developer and the City receive the Report. If the Developer objects to any exception to title, the City, within fifteen (15) days of receipt of Developer's objection shall notify Developer in writing whether City elects to (i) cause the exception to be removed off record, (ii) obtain a commitment from Old Republic Title Company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception, or (iii) terminate this Agreement, unless the Developer elects to take title subject to such exception. If either Party elects to terminate this Agreement pursuant to this subsection, the remaining balance or the Deposit shall be immediately refunded to the Developer and neither Party shall thereafter have any obligations to or rights against the other hereunder, except as set forth in Section 24 and Section 25. If the Developer fails to provide any notification to the City regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this subsection shall be deemed satisfied and this Agreement shall continue in effect. Notwithstanding the foregoing, City shall use good faith best efforts to keep the Property free and clear of any new liens or encumbrances during the Negotiating Period.

8. Site Access. No later than ten (10) days following execution of this Agreement, Developer and the City will enter into a separate agreement to provide Developer and its consultants with rights to enter, examine and conduct tests on the Property.

9. Reports. The Developer shall provide the City with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Developer with respect to this Agreement and the Project, promptly upon their completion. The City shall provide the Developer with copies of all reports, studies, analyses, correspondence and similar documents (collectively, "documents") prepared or commissioned by the City with respect to this Agreement and the Project, promptly following execution of this Agreement with respect to documents then in its possession or under

its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the City will need sufficient, detailed information about the proposed Project (including, without limitation, the financial information described in Section 10) to make informed decisions about the content and approval of the DDA. The City will work with the Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on the City by the Public Records Act (Government Code Sections 6253, et seq.). The Developer acknowledges that the City may, subject to the limitations set forth in the preceding sentence, share information provided by the Developer of a financial and potential proprietary nature with third party consultants and City Council members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of a DDA, the City shall return to the Developer any information submitted by the Developer under this Agreement.

10. Schedule of Performance. During the Negotiating Period, the Developer and City will complete initial work and studies as described in Exhibit B. Following the Negotiating Period, the Developer shall provide the City with a detailed schedule of performance for the Project which shall include, but not be limited to: a plan setting forth the proposed timeline for the preparation of development concepts, community outreach, and planning and environmental review/approval.

11. Progress Reports. Each Party on a monthly basis shall make oral or written progress reports advising the other party on studies being made and matters being evaluated by the reporting Party with respect to this Agreement and the Project.

## TENTATIVE WORK PLAN

### CITY

- Begin environmental documentation required by the California Environmental Quality Act (“CEQA”);
- Facilitate meeting to review submittal for Planned Development Zoning, Planning and Development Permits and Tentative Map Application and circulation of Draft CEQA Analysis;
- Provide confirmation of all applicable City fees and waivers, including parks fees;
- Arrange meetings for the negotiation of the DDA;
- Schedule Planning Commission Hearing;
- Schedule City Council Hearing;
- Provide City financing documentation for public finance applications; and
- Other tasks as appropriate to meet project goals.

### DEVELOPER

- Prepare a Scope of Development and Proposed Site Plan describing location and land uses of the proposed Project;
- Prepare detailed Schedule of Performance for the Project and key partners;
- Submit a detailed pro forma and begin negotiating a Term Sheet to discuss and evaluate the financial and operational components, including any requirements pertaining to the applicability of any prevailing wage requirements;
- Provide the City with organizational documents as well as an organization chart outlining key personnel’s roles and responsibilities;
- Preliminary Analysis of toxic and hazardous waste conditions throughout the Property;
- Preliminary Analysis of geotechnical conditions of site surface and subsurface;
- Preliminary Assessment of traffic and parking issues/constraints that may affect site development;
- Assessment of major public and private utility capacities and connections for providing service to the Project;
- Assessment of site drainage and waterway issues that may affect site development;
- Determine form of payments for the City’s financial benefits from the Project;
- Discuss with the City any subsequent deposits necessary, to offset the costs for retention of further consultants;
- Identify key stakeholders; Conduct and document Project Community Meetings for public input on site design and operations;
- Review of any site easements or other use restrictions that may affect site development;
- Review of Title as it may affect site development and financing of development;
- Process planning applications and obtain Planning and Development permits and tentative map;
- Create Design development drawings;
- Pursue necessary financing commitments; and
- Other tasks as appropriate to meet project goals.



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

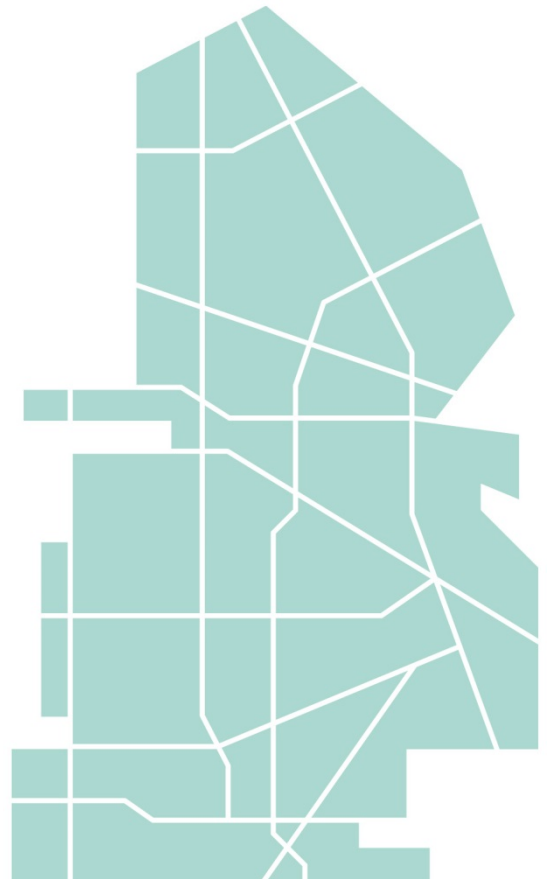
Housing & Community Services Division  
1500 Warburton Avenue,  
Santa Clara, CA 95050  
(408) 615-2490

# REQUEST FOR PROPOSALS

For  
2330 MONROE STREET / SAN TOMAS AND MONROE  
March 30, 2018

PROPOSALS DUE:  
May 31, 2018 4:00 PM

Attn: Jonathan Veach  
Division Manager  
City of Santa Clara  
Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, CA 95050  
(408) 615-2490  
[jveach@santaclaraca.gov](mailto:jveach@santaclaraca.gov)



## A. INVITATION

The City of Santa Clara is seeking proposals from qualified housing developers to create a transformative project ("Project") that facilitates the construction of a minimum of 50 affordable housing units on a vacant parcel of City-owned land. The site for this Project, known as San Tomas and Monroe ("Site"), is owned by the City and is located at 2330 Monroe Street in the Los Padres neighborhood of Santa Clara. The development proposal should assume a long-term ground lease of the entire site of approximately 2.5 acres. The Project will produce high-quality affordable housing across a range of incomes and transform a currently vacant site, while providing adequate open space and parking at a density that is appropriate for the surrounding neighborhood.

The City of Santa Clara's Housing and Community Services Division is inviting all qualified developers ("Respondents") to submit complete responses ("Submissions") to this RFP for the development of the Project.

## B. PROJECT OVERVIEW

### Site Summary

Location: 2330 Monroe Street (San Tomas Expressway and Monroe Street)

APN: 224-37-068

Property: 2.474 acres

Existing Use: Vacant

Current Zoning: R1-6L (Single Family)

### Site Description

The site is a City-owned parcel at the southeast corner at the intersection of San Tomas Expressway and Monroe Street. The site is irregularly shaped, and slopes upward sharply from the Monroe Street sidewalk to an elevation of approximately 3 feet above the Monroe Street curb, and from there a gradual incline to approximately 5 feet above curb toward the south end. The site adjoins the rear yards of eleven (11) single family residential properties to the east and south on Sheraton Drive and El Capitan Ave.

### Governmental Approvals Needed

Redevelopment of the site for new housing will require City Council and/or Planning Commission approvals of a General Plan Amendment, Rezoning, CEQA and potentially NEPA review, and Architectural Review.

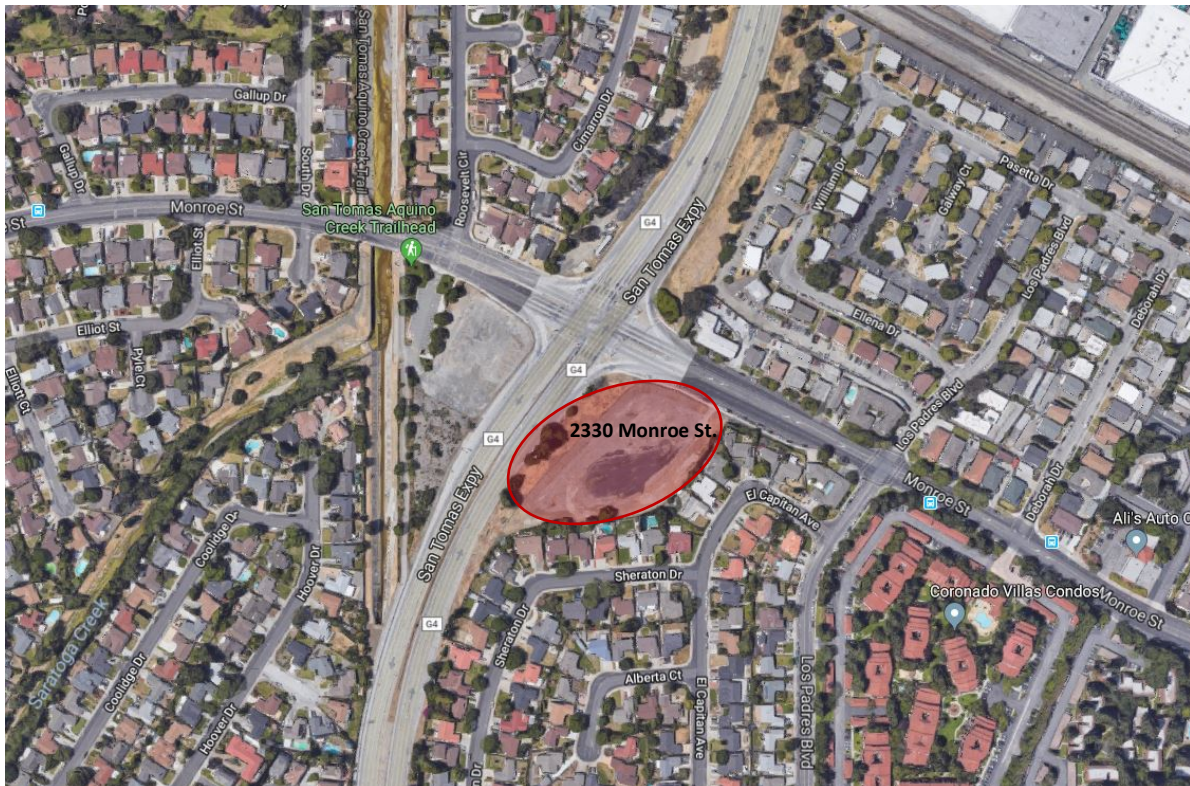
### Land Use / Zoning

The currently vacant site is located in a Single Family (R1-6L) zoning district. The land appears as a right-of-way on the General Plan map, and has no official General Plan designation.

After redevelopment agencies (RDA) dissolved on February 1, 2012, the City, as Housing Successor to the dissolved RDA, was designated to assume all housing assets (including land) of the former redevelopment agency and these assets were placed into a Housing Successor Fund. The Housing Successor must initiate development activities on any land that it obtained from the former redevelopment agency within five years after the Department of Finance confirmed the property as a housing asset and consistent with the intent to provide housing that is 100% affordable to persons and families of low and moderate income. This site was confirmed as a housing asset by the Department of Finance on July 13, 2013, and the City's evaluation and selection of a developer properly initiates development activities within the appropriate time period.



### C. SITE MAP OF 2330 MONROE STREET



### D. ATTACHMENTS, EXHIBITS AND OTHER RELEVANT DOCUMENTS

The attachments below are included with this Request for Proposals (“RFP”). The items identified with an asterisk (\*) must be completed, signed by the appropriate representative of the company, and returned with the submittal.

Attachment A – Respondent’s Information Form\*  
Attachment B – Certification of Non-Discrimination\*  
Exhibit 1 – Parcel Map  
Exhibit 2 – Community Visioning Report

Other relevant documents available upon request:  
Grant Deed

### E. SUBMISSION OF PROPOSALS

The Respondent shall submit four (4) copies, with a USB flash drive of its proposal in a sealed envelope, including one (1) unbound original, clearly marked “Original”, addressed as noted below, bearing the Respondent’s name and address clearly marked, “RFP for 2330 Monroe Street.”

**Jonathan Veach, Division Manager  
Housing and Community Services Division  
1500 Warburton Avenue  
Santa Clara, CA 95050**

To be considered, proposals must be received at the address in the above paragraph by 4 p.m. on Friday, May 31, 2018. Late proposals will not be considered.

## **F. INSTRUCTIONS TO RESPONDENTS**

### **1. Question and Answer Period**

There will be a Question and Answer period open until April 16, 2018. Any questions by the Respondent regarding this RFP or the project must be submitted in writing and received by the City no later than April 16, 2018 at 5 p.m.

Correspondence shall be addressed to:

Jonathan Veach, Division Manager – Housing and Community Services  
1500 Warburton Avenue  
Santa Clara, CA 95050  
[jveach@santaclaraca.gov](mailto:jveach@santaclaraca.gov)

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

Responses from the City to questions by any Respondent will be published on the City's website on April 23, 2018 and shall be deemed as addenda to this RFP. Questions received after the date and time stated above will not be accepted.

### **2. Examination of Proposal Documents**

The proposal submission shall be deemed a representation and certification that the Respondent:

- Has carefully read and fully understand the information that was provided by the City to serve as the basis for submission of this proposal;
- Has the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted;
- Represents all information contained in the proposal is true and correct;
- Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other in regard to any terms or conditions of this proposal; and
- Acknowledges that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Respondent, and Respondent hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Respondent was not fully informed of any fact or condition.

### **3. Addenda**

Any addenda issued by City shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Respondent.

### **4. Withdrawal of Proposals**

A Respondent may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Respondent.

## G. BACKGROUND

Section 8.12-7.1 of the Housing Element in the General Plan identifies the City's goals for neighborhood conservation, housing production, and housing opportunities.

These goals include the following:

- Create and maintain high-quality, livable, and unique residential neighborhoods and preserve established single-family neighborhoods.
- Manage growth in the City by designating suitable vacant or underutilized sites for new residential development and ensuring compatibility with community goals and existing neighborhoods.
- Provide housing within the community for persons of all economic levels, regardless of religion, gender, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or mental or physical disability.
- Provide an adequate variety of individual choices of housing tenure, type and location, including higher density where possible, especially for low and moderate income and special needs households.

The City acquired the Site with the intent that it be developed to increase the City's affordable housing supply.

## H. COMMUNITY VISION

On December 7, 2017, the City's Housing and Community Services Division held a Community Engagement Meeting at City Hall to discuss plans for the future development of the Site. Approximately 50 community members heard a presentation from City staff and participated in guided workshops covering the following topics:

- Affordability
- Site Layout and Density
- Housing Preferences
- Amenities
- General Feedback

Presentation materials can be found on the City's website. Using past development initiatives of the Site as a guidepost, this approach recognizes the importance of community engagement and transparency, while allowing the City to obtain the innovative development proposals that will meet both City and community goals, while leveraging a very valuable City asset.

The outreach process consisted of community visioning and planning workshops that facilitated meaningful community engagement, identified community priorities, and gathered ideas from those who live and work in the projects areas. These individuals have an intimate understanding of neighborhood conditions and needs, which will inform responsive and sensitive development proposals. Exhibit 2 – Community Visioning Report summarizes the results of the workshops and shares additional feedback received through email, questionnaires, and other meetings. Respondents will be evaluated on how well their project responds to community priorities and concerns as outlined in Exhibit 2.



## I. RIGHTS OF THE CITY OF SANTA CLARA

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals for its own convenience;
- Remedy errors in the Request for Proposals process;
- Approve or disapprove the use of particular sub-consultants;
- Negotiate with any, all or none of the Respondents;
- Accept other than the highest offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Respondent in the event the originally selected Respondent defaults or fails to execute an agreement with the City.

An agreement shall not be binding or valid with the City unless and until it is approved by the City Council, if so required, and executed by authorized representatives of the City and of the Respondent.

## J. TIMELINE

Upon the proposal deadline on May 31, 2018, proposals will be evaluated and interviews set for the most qualified developers. The time from the close of RFP selection of the most qualified team to preparation of a contract for City Council consideration is anticipated to last four (4) to six (6) weeks. Upon Council approval of a contract, the development team and staff will begin strategy sessions immediately within 3-6 weeks. The anticipated deadline to commence development of the project is to begin no later than January 6, 2020. Below dates are subject to change at the City's discretion.

RFP Available	March 30, 2018
Question and Answer Period	April 16, 2018
Proposals due	May 31, 2018
Evaluation	June 18, 2018
Selection of Developer	June/July, 2018
Target Start of Construction	January 6, 2020

## K. PROPOSAL CONTENT

The proposal shall include the following information:

1. Executive summary including written description of project objectives, proposed uses, densities and building configurations;
2. Respondent's complete name, business address, and telephone number and the name, mailing address, and telephone number of person the City should contact regarding the proposal;
3. A description of the Respondent's organization, including names of principals, number of employees, examples of comparable developments including development value, affordable housing client base (if any), and any other pertinent information in such a manner that proposal evaluators may reasonably formulate an opinion about the stability and financial strength of the developer;
4. An organizational chart along with names, qualifications, and experience of the Respondent and its development team;
5. Financing strategy, including detailed financial plan to fund at least 50 unit affordable housing units, gap funding/subsidy requirement, and/or financial offer if feasible; Respondents should provide an excel based pro-forma that includes sources and uses, development budget, rents and income, operating budget, and cash flow analysis that demonstrates project feasibility for a term of 30 years.
6. Community engagement strategy and narrative;
7. Land Use Plan for entire site including, but not limited to, traffic and parking narrative, and site access diagram;
8. Architectural and design narrative, including at least 1 rendering;
9. A development schedule of significant milestones for completion of the project from project award to project completion;
10. Three references from which Respondent has performed developments of similar scope within the past three years; preferably within the Bay Area or in a locale that shares similar characteristics to City of Santa Clara. Include the organization name and address, the name and telephone number of a contact person, and a brief description of the development performed by the developer, and type(s) of funding sources used;
11. The signature(s) of the company officer(s) empowered to bind the firm, with the title of each (e.g. president, general partner);
12. A complete disclosure of any prior or ongoing incidents as to which it is alleged that Respondent has defaulted or failed to perform which has led the other party to terminate the contract. Identify the parties involved and the circumstances of the default or termination. Also describe any civil or criminal litigation or investigation pending which involves Respondent or in which Respondent has been judged guilty or liable;
13. Most recent independent audit, if available.

## L. PROJECT GOALS

Respondent shall develop a proposal that incorporates a minimum of 50 affordable housing units with open space and parking, and utilizes financing strategies, including a project pro-forma that maximizes potential economic benefit to the City. Development scenarios and building heights for any development on the site shall be compatible and considerate of existing nearby development in the vicinity. Please refer to Exhibit 2 – Community Visioning Report for guidance on sight layout and density considerations. Project shall be compliant with all City codes and development standards.

### Development Team Experience and Capacity

- Procure a Development Team that brings the resources, understanding, and experience to implement the proposed Project, which includes high-quality affordable housing across a range of incomes to transform a currently vacant site, while providing adequate open space and parking at a density that is appropriate for the surrounding neighborhood.
- Procure a Development Team that has experience successfully executing similar projects and is capable of fulfilling the vision set forth in its development proposal in a timely manner.

### Financing and Affordability

- Ensure that the Project is 100% affordable to households at or below 120% AMI (Moderate Income). Preference will be given to proposals that provide at least 50% of the residential units affordable to households at or below 80% of AMI (Low Income).
- Respondents should provide a cash flow analysis that demonstrates project feasibility for a term of 30 years and the project will be expected to remain affordable for a minimum of 55 years.
- Respondents may submit an alternative financing proposal with 100% of the units at 120% AMI provided that a competitive ground lease payment can be offered to the City on an annual basis.
- All proposals should establish a sound financial capital and operating budget that addresses the various elements of the development program.

### Development Program and Community Development

- Implement a development program that clearly addresses the Site and neighborhood context, as well as the priorities and needs outlined in Exhibit 2 – Community Visioning Report.
- The Respondent should incorporate strong community outreach efforts to ensure impacted residents are heard. The Project should ensure privacy barriers are implemented to minimize adverse impact on adjacent property owners and surrounding neighborhood.
- The Project should also provide a thoughtful and adequate parking strategy that prevents overflow parking to the surrounding community and identify any potential traffic issues, while optimizing the site's access points.

### Design and Performance

- Design and develop a high-quality affordable building that is financially feasible and consistent with the surrounding built environment and addresses community needs and priorities as outlined in Exhibit 2 – Community Visioning Report.
- Incorporate an active publicly-accessible open space that interacts with the variety of uses on the Site; articulate buildings to relate and transition to surrounding context.
- The Project should adhere to the City's design guidelines and seek to implement environmentally conscious design principals where appropriate.

## M. EVALUATION OF PROPOSALS

### Competitive Criteria Weight

- |   |     |
|---|-----|
| • Development Team Experience and Capacity      | 20% |
| • Financing and Affordability                   | 30% |
| • Development Program and Community Development | 30% |
| • Design and Performance                        | 20% |

### Threshold Criteria

- Completeness and adherence to the requirements of this Request for Proposals;
- Respondent's experience, including the experience of staff to be assigned to the project, with engagements of similar scope and complexity;
- Depth of developer's experience and its relevance to the project described in this Request for Proposals;
- Respondent's ability to provide equity, access to project financing, and Project feasibility
- Respondent's financial stability and length of time in business;
- Responsiveness to Exhibit 2 – Community Visioning Report;
- Respondent's ability to perform the work within the time specified;
- Respondent's record of performance with City of Santa Clara or other public agencies;
- Respondent's compliance with applicable laws, regulations, policies (including city council policies), guidelines and orders governing prior or existing contracts performed by the contractor.

The City will evaluate proposals on the basis of each Respondent's written submittal. The top-rated Respondents will be invited to the City for panel interviews.

## N. SELECTION PROCESS

The City's Housing and Community Services Division under the direction of the City Manager will recommend to the Santa Clara City Council an award of contract based on the proposal that provides the best value to the City. The City's selection and evaluation timeline is as follows:

Proposals due	May 31, 2018
Interviews	June 18, 2018
Selection of Developer	June/July, 2018

## O. NEGOTIATION PROCESS

The purpose of this RFP is to describe the affordable housing development opportunity and to solicit proposals from developers that are qualified and capable of developing a high-quality affordable housing product. The City intends to compile a shortlist of developers, conduct a series of interviews, and ultimately select a preferred developer(s). The selected developer and proposal will be brought before City Council as a staff recommendation for approval. The Respondent will enter into an Exclusive Negotiation Agreement (ENA) with the City while negotiating the terms of a Disposition and Development Agreement (DDA). The Respondent will also be required to conduct at least two community engagement meetings as part of the design process to solicit feedback and community input.

## P. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the City of Santa Clara. At such time as the City awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Respondent as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary," or if disclosure, in the City's sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Santa Clara may determine, in its sole discretion that the information that a Respondent submits is not a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City shall provide the Respondent who submitted the information reasonable notice to allow the Respondent to seek protection from disclosure by a court of competent jurisdiction, at the Respondent's sole expense.

## Q. COLLUSION

By submitting a proposal, each Respondent represents and warrants that its proposal is genuine and made in the interest of or on behalf of any person not named therein; that the Respondent has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Respondent has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

## R. DISQUALIFICATION

Factors, such as, but not limited to, any of the following, may disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Respondents in regard to the amount, terms or conditions of this proposal;
- Any attempt to improperly influence any member of the evaluation team;
- Existence of any lawsuit, unresolved contractual claim or dispute between Respondent and the City;
- Evidence of incorrect information submitted as part of the proposal;
- Evidence of Respondent's inability to successfully complete the responsibilities and obligations of the proposal; and
- Respondent's default under any previous agreement with the City.

## S. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

## ATTACHMENT A Respondent's Information Form

RESPONDENT (please print): \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

Contact person, title, telephone number, email address and fax number:

\_\_\_\_\_

Respondent, if selected, intends to carry on the business as (check one)

☐ Individual

☐ Joint Venture

☐ Partnership

☐ Corporation

When incorporated? \_\_\_\_\_

In what state? \_\_\_\_\_

When authorized to do business in California? \_\_\_\_\_

☐ Other (explain): \_\_\_\_\_

### ADDENDA

To assure that all Respondents have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received:

☐ 1

☐ 2

☐ 3

☐ 4

☐ 5

☐ 6

Or,

☐ \_\_\_\_\_ No Addendum/Addenda Were Received (check and initial).

## RESPONDENT'S SIGNATURE

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Respondent that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Respondent was not fully informed as to any fact or condition.

**1. If Respondent is *INDIVIDUAL*,  
sign here:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Respondent's Name and Title (type or print)

**2. If Respondent is *PARTNERSHIP*  
or *JOINT VENTURE*, at least two  
(2) Partners or each of the Joint  
Venturers shall sign here:**

\_\_\_\_\_  
Partnership or Joint Venture Name (type or print)

Date: \_\_\_\_\_

\_\_\_\_\_  
Member of the Partnership or Joint Venture Signature

\_\_\_\_\_  
Respondent's Name (type or print)

Date: \_\_\_\_\_

\_\_\_\_\_  
Member of the Partnership or Joint Venture Signature

\_\_\_\_\_  
Respondent's Name (type or print)

3. If Respondent is a **CORPORATION**, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

\_\_\_\_\_ (Title) and

\_\_\_\_\_ (Title)

of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

\_\_\_\_\_  
Corporation Name (type or print)

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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



**ATTACHMENT B**  
**Certification of Nondiscrimination**

As suppliers of goods or services to the City of Santa Clara, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, or familial status; and that they are in compliance with all Federal, State and local laws, directives and executive orders regarding nondiscrimination in employment.

**1. If Respondent is *INDIVIDUAL*,  
sign here:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Respondent's Name and Title (type or print)

**2. If Respondent is *PARTNERSHIP*  
or *JOINT VENTURE*, at least two  
(2) Partners or each of the Joint  
Venturers shall sign here:**

\_\_\_\_\_  
Partnership or Joint Venture Name (type or print)

Date: \_\_\_\_\_

\_\_\_\_\_  
Member of the Partnership or Joint Venture Signature

\_\_\_\_\_  
Respondent's Name (type or print)

Date: \_\_\_\_\_

\_\_\_\_\_  
Member of the Partnership or Joint Venture Signature

\_\_\_\_\_  
Respondent's Name (type or print)

3. If Respondent is a **CORPORATION**, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

\_\_\_\_\_ (Title) and

\_\_\_\_\_ (Title)

of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

\_\_\_\_\_  
Corporation Name (type or print)

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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



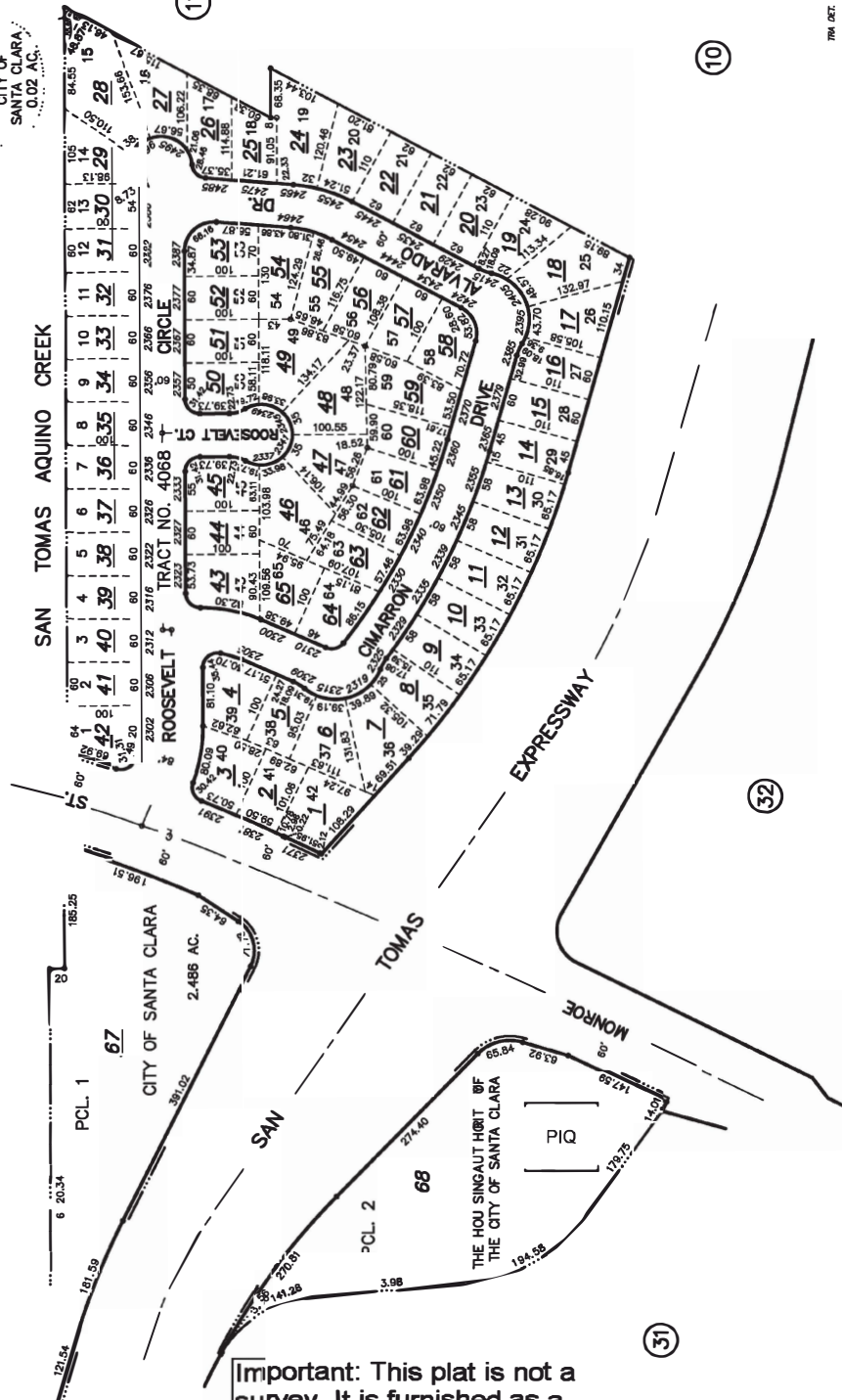
**City of  
Santa Clara**  
The Center of What's Possible

City of Santa Clara  
Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, CA 95050



216  
10

66 LOT A  
CITY OF  
SANTA CLARA  
0.02 AC.



Important: This plat is not a survey. It is furnished as a convenience to locate the land in relation to adjoining streets and other lands and not to guarantee any dimensions, distances, bearings or acreage.



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

March 23, 2018

# 2330 MONROE STREET

## Community Meeting & Survey Report

Housing and Community Services Division  
1500 Warburton Avenue  
Santa Clara, CA 95050



# INTRODUCTION

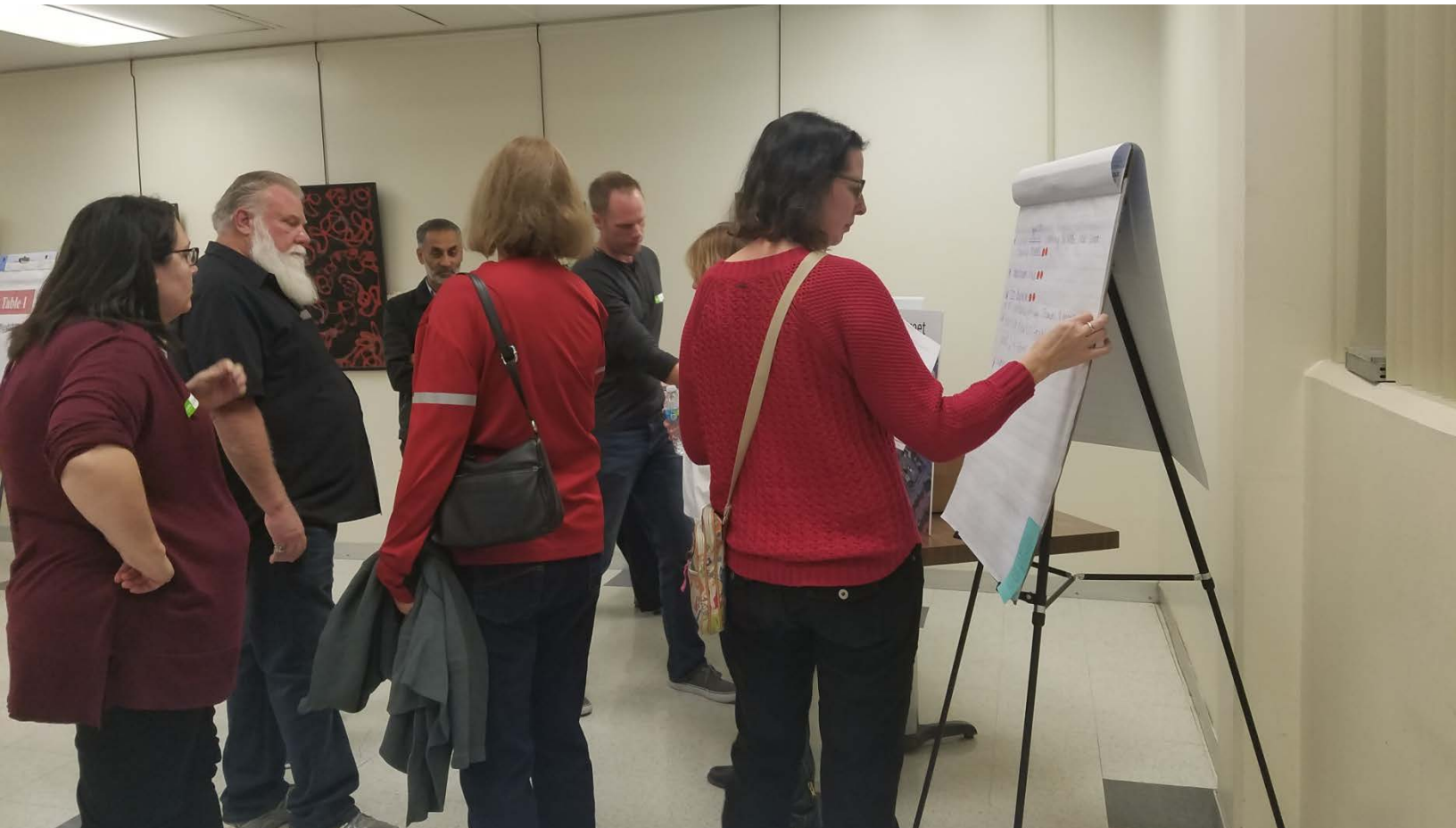
## Development, Informed by the Community

On December 7th, 2017, the Housing and Community Services Division held a Community Engagement Meeting at City Hall to discuss plans for the future development of the City-owned site at 2330 Monroe Street.

The purpose of the meeting was to gather public input for the future development of new affordable housing and potential public amenities at the site, which is currently vacant. City staff provided a brief overview of affordable housing and then guided participants in a series of workshops that were meant to facilitate meaningful community engagement, identify community priorities, and gather ideas from those who live and work near the site and have a deep understanding of neighborhood conditions and needs.

This report summarizes the results of the workshop and shares additional feedback received through email, a questionnaire, and meetings. This report is also available on the City's website at [www.santaclaraca.gov](http://www.santaclaraca.gov).

The final report is attached as an addendum to the Request for Proposals (RFP) issued for this site. RFP respondents are encouraged to consult this report in developing their proposals and will be evaluated on how well they respond to community priorities and concerns.





## Project Background

### Site Summary

Location: 2330 Monroe Street  
(San Tomas Expressway and Monroe Street)  
APN: 224-37-068  
Property: 2.474 acres  
Existing Use: Vacant

### Description

The site is a City-owned parcel at the intersection of San Tomas Expressway and Monroe Street. The site is irregularly shaped, slopes upward sharply from the Monroe Street sidewalk to an elevation of approximately 3 feet above the Monroe Street curb, and from there a gradual incline to approximately 5 feet above curb toward the south end. The site adjoins the rear yards of eleven (11) single family residential properties to the east and south on Sheraton Drive and El Capitan Ave.

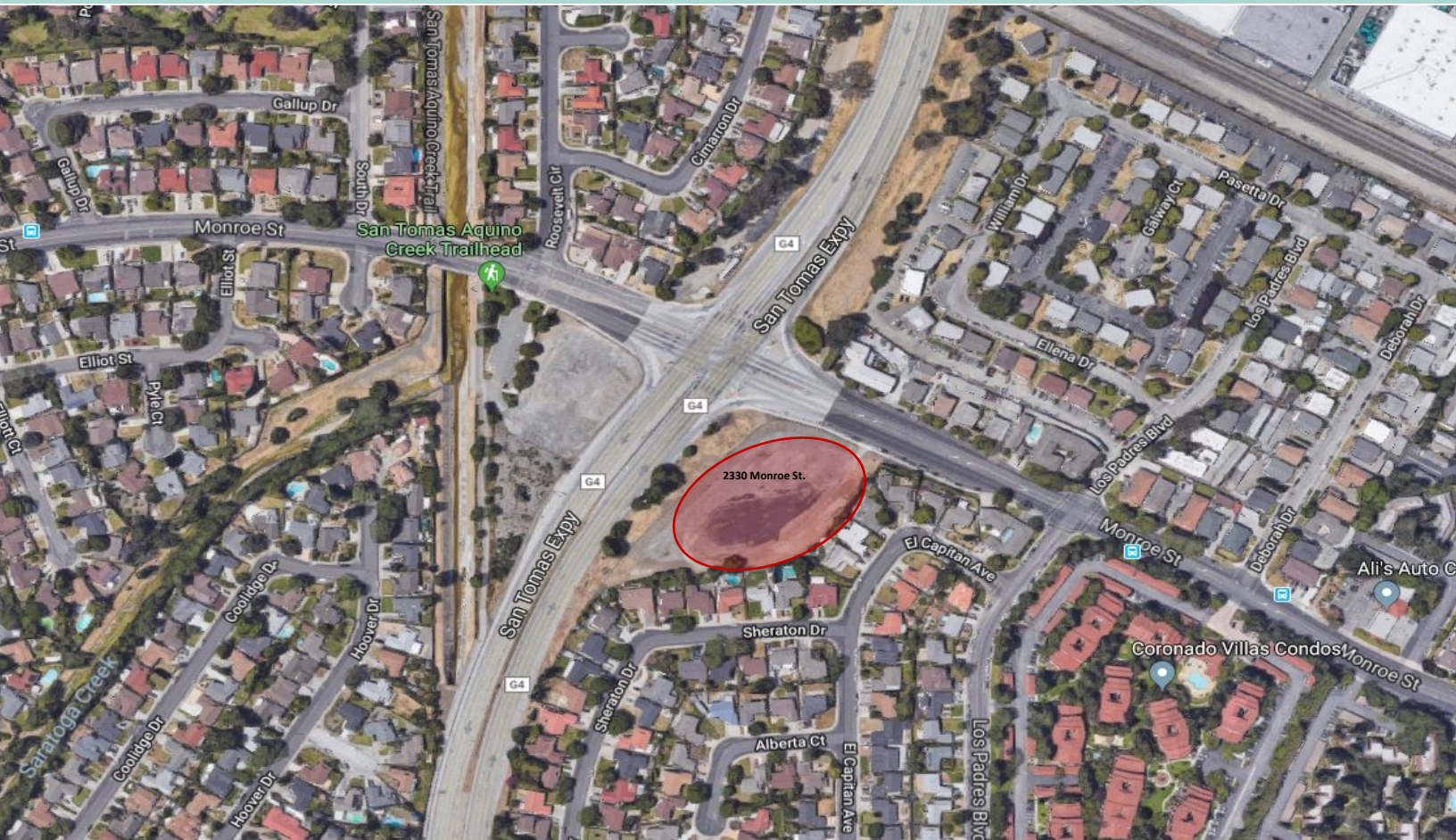
### Governmental Approvals Needed

Redevelopment of the site will require a General Plan Amendment, Rezoning, potential CEQA review, and Architectural Review.

### Land Use / Zoning

The currently vacant site is located in a Single Family (R1-6L) zoning district. The land appears as a right-of-way on the General Plan map and has no official General Plan designation.

After redevelopment agencies (RDA) dissolved on February 1, 2012, the City, as Housing Successor to the dissolved RDA, was designated to assume all housing assets (including land) of the former redevelopment agency and these assets were placed into a Housing Successor Fund. The Housing Successor must initiate development activities on any land that it obtained from the former redevelopment agency within five years after the Department of Finance confirmed the property as a housing asset and consistent with the intent to provide housing affordable to persons and families of low and moderate income.



## Community Visioning Workshop and Survey

Housing and Community Services staff gathered a wide range of feedback through workshops and survey responses. The workshop was held at the City Hall Cafeteria located at 1500 Warburton Ave. on Thursday, December 7, 2017 from 7:00pm – 9:00pm.

The outreach for the event was conducted with the help of the Planning Department of the City of Santa Clara. Notices of the Community Meeting were sent out to the property owners within 1000 ft. of the subject property. The event was also advertised on the City web-site, the City Manager's weekly blog, and through various social media outlets such as NextDoor and Facebook.

**Each discussion table had visuals, information, and a facilitator on the following topics:**

- **Affordability**
- **Site Layout & Density**
- **Housing Preferences**
- **Amenities**
- **General Feedback / Q&A**

In all, more than 50 community members participated, including families, seniors, neighborhood representatives, local groups, and elected officials. In addition, eight staff members and one community development consultant attended the workshops to facilitate activities and discuss the site with the community.

In addition to the workshop, the Housing Division published all meeting materials online and issued an online survey to collect feedback.

~650 Flyers distributed to nearby residents

50+ Community participants attended

8 City staff facilitated the workshop

~250 Survey Responses collected

250+ Additional written comments submitted through workshop activities and survey write-in responses

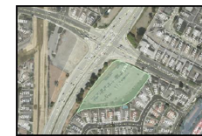


## NOTICE

### OF COMMUNITY MEETING

You are hereby notified that on **Thursday, December 7, 2017**, the City of Santa Clara will hold a Community Engagement Meeting from 7:00 P.M. to 9:00 P.M. in the **City Hall Cafeteria** located at **1500 Warburton Avenue, Santa Clara**. Following brief presentations on affordable housing and development parameters dictated by State law, you are invited to provide feedback regarding the development of a request for proposals (RFP) for the following property:

**Site Summary**  
Location: 2300 Monroe Street (San Tomas Expressway and Monroe Street)  
APN: 226-37-080  
Property: 2.67± acres  
Existing Use: Vacant



**Site Description**  
The site is a City-owned parcel at the intersection of San Tomas and Monroe Street. The site is irregularly shaped, and slopes upward sharply from the Monroe Street right-of-way to an elevation of approximately 3 feet above the Monroe Street curb, and from there a gradual incline to approximately 5 feet above curb toward the south end. The site address is the rear parcel of eleven (11) single family residential properties to the east and south on Sheraton Drive and El Capitan Ave.

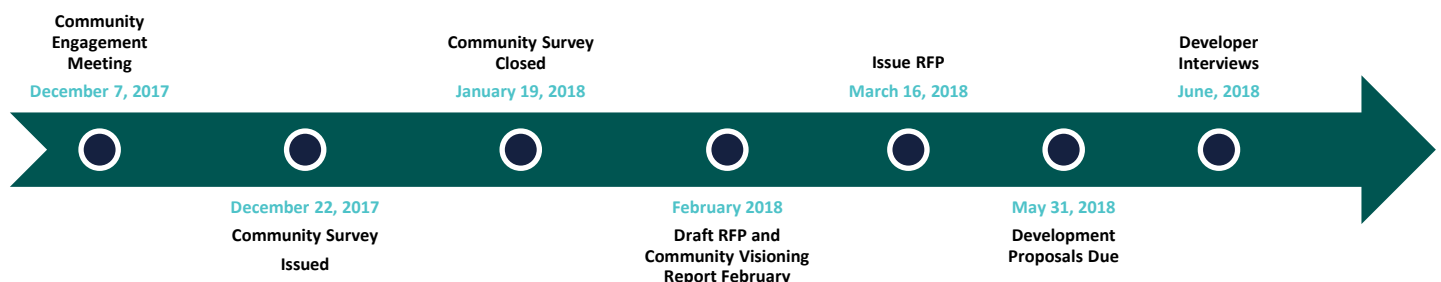
**Governmental Approvals Needed**  
Redevelopment of the site for new housing will require a General Plan Amendment, Rezoning, potential CEQA review, and Architectural Review.

**Land Use / Zoning**  
The currently vacant site is located in a Single Family (SF-AL) zoning district. The land appears as a right-of-way on the General Plan map, and has no official General Plan designation.

After redevelopment agencies (RDAs) dissolved on February 1, 2012, the City, as Housing Successor to the dissolved RDA, was designated to ensure all housing assets (including land) of the former redevelopment agency and those assets were placed into a Housing Successor Fund. The Housing Successor must initiate development activities on any land that it obtained from the former redevelopment agency within five years after the Department of Finance confirmed the property as a housing asset and consistent with the intent to provide housing affordable to persons and families of low and moderate income.

This notice has been mailed to property owners within 1,000 feet of the subject property.

## Engagement Timeline

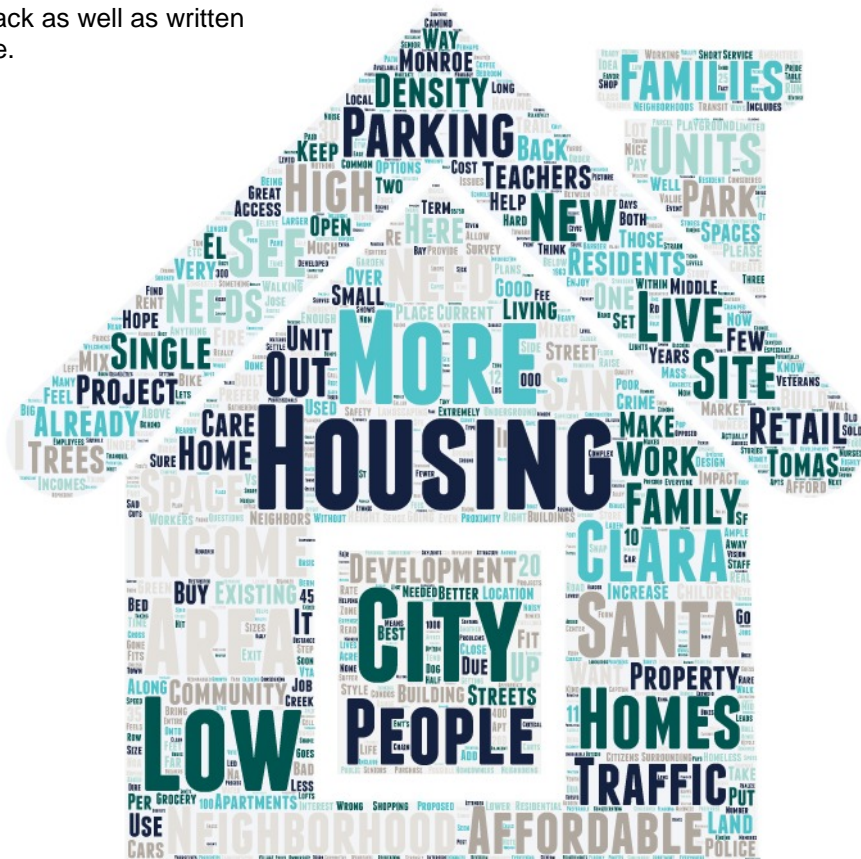




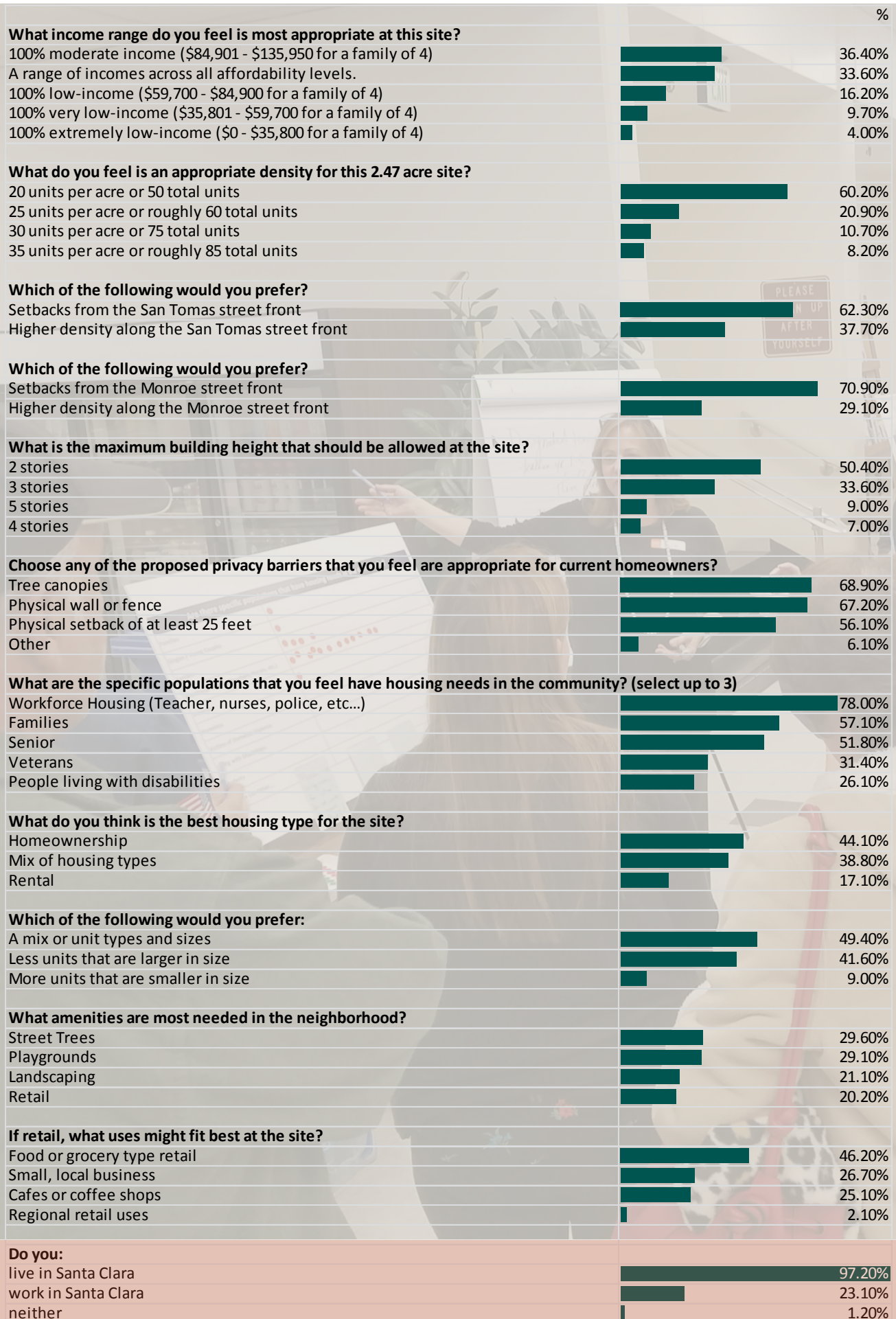
Through outreach conducted to date, respondents articulated their vision for the future development of the site. Residents had a broad range of viewpoints. Priorities were largely focused on protecting adjacent residents through privacy barriers, controlling density at the site, targeting workforce housing, and ensuring that affordable housing is targeted towards Santa Clara residents. Some community members also recommended that the site not be redeveloped for affordable housing and instead be used for parking.

Community feedback suggests that proposals should target a range of incomes, preferably in the workforce housing range of 51% - 120% AMI. The ideal density for the site would be somewhere between 50-65 units and 2-3 stories in height. If retail is provided as an amenity, the community would like to see a grocery store or some other food-type use.

Following is a summary of quantitative feedback as well as written responses that outline future visions for the Site.



## Around 250 Responses from the Online Survey



## Describe your vision for a new development at the San Tomas and Monroe site:

New affordable housing development should provide housing to public workers like teachers, police, firefighters etc who contribute to the development of the community and are not able to afford to buy a home closer to where they work. It will be incredible to have them realize the dream of a home as a token gift of the great work they do to make this community and the world a better and safer place.

Easy access to buses...ample parking area for tenants and visitors...trees to provide shade and sound barrier.

Something that does not affect the nearby neighborhood as far as traffic, height, and density are concerned. Everything should be done in order to make sure the nearby neighborhoods are not at all affected. This is just as much about the current neighborhoods and their residents as it is about low income housing.

Suitable for both low income families and singles and those with disabilities or veterans. Low income housing is needed to (eventually) replace the old apartments along Monroe, which need to be redeveloped. The location is inappropriate for retail or food as it would push unmanageable traffic onto residential streets.

Plots like this are rare and should be developed as much as possible.

I would like to see a cycling/walking trail to get across STX to the new community garden park and the ST Aquino Trail that goes under the overpass in order to connect the entire community on that side of the expressway (including this new project) without stopping the traffic on the expressway.

I am deeply concerned. Ideally, parking is under the buildings, with a grocery store and coffee shop on site. Setbacks from Monroe should reflect the neighborhood. We need to improve the walking and biking of Santa Clara. With more people and more cars being lured in, we need to find places for the cars that doesn't jeopardize bicyclists or pedestrians.

I would like it to be affordable housing for low-middle incomes. I want the building to fit the surrounding neighborhood in terms of style and size. I want to make sure that there are adequate infrastructures resources for the expansion.

I have a young family and while I care about making affordable housing options available for all, I am worried about safety. I think providing housing for teachers and people in other services is greatly needed and will help serve both purposes.

The information in the powerpoint about how unaffordable housing is in Santa Clara is shocking and sad. This is an unacceptable crisis. We need to do more to make sure that the most vulnerable in our community and people who make our community work are able to live here. We need to maximize the density of these rare opportunity sites where we have city land to build affordable housing...

The primary limitation on affordability is the poor bus service in that area. (Compare to El Camino Real) So, new residents will need a bicycle or car to get around. However, if the development can include a large bike parking area that includes those share bikes and some way to access them if one doesn't own a cell phone, that could solve that problem since the San Tomas Aquino Creek Trail is right there.

I live on El Capitan, probably one of the most effected streets by this project. I hope that there will be ample parking as we are a restricted parking neighborhood due in part to the mismanaged run of Monroe street. Also that we will not see increased traffic or safety issues due to this project. I hope that the city plans for the obvious traffic short cuts down El Capitan from this project and plans ahead to correct them... speed bumps and turnabouts.

Would prefer it would not be developed!

Having lived over there years back, I know the area. I would like to see three stories, the buildings set back away from the streets, and make it like an open looking space not all crammed together.

We need more housing. My children can't afford to live here. I would like to see more mixed use housing that includes shops/cafes and housing units above (like Santana Row). But there has got to be enough parking so that it doesn't impact the neighborhood too much.

Very affordable to low and middle income residences, landscaped multistory high density housing. Homeownership preferred.



# AFFORDABILITY

- 1 We need to find a way to filter out criminals, drug addicts, emotional issues that are neglected and so forth. I'm just trying to make sure we keep our area safe
- 2 If we have to build now, we want a max of 20 units per acre.
- 3 Maybe a hybrid of low/moderate income of median income
- 4 Owned or rented-very different
- 5 Want to see City house teachers, fireman and police
- 6 No homeless or permanent supportive housings on this site, no repeat of Sobrato project
- 7 As much as possible because people will be priced out as rent rise and incomes stay stagnant for low income.
- 8 A combination of each of these income ranges

*Community feedback from the Affordability workstation*

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**“I live really nearby. I think it needs to be a mix with some retail as it's underserved now. Underground parking would be good to best use space. Some kind of green space with playground is critical as not enough in that area.”**

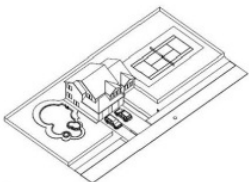
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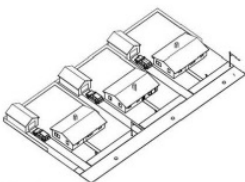
# SITE LAYOUT & DENSITY

Design Elements	Votes
Scaling Density - lowering heights near single family homes	9
Townhome style	7
20 du/acre	10
No entrance at San Tomas and Monroe	3
Scaling elevation (townhome style near SFH) and 2-3 stories near San Tomas	5
Higher parking ratio	4
Development facing San Tomas & Monroe, not SFH - units oriented inwards	7
Higher fence/wall (loft) for privacy	3
Tree canopy for privacy	12
Parking near SFH side	4
Similar scale to Kaiser site	1
Underground parking - no surface	4
Guest parking	0
Publicly accessible open space	1

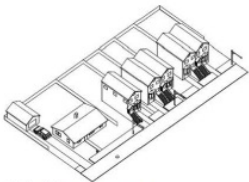
Community feedback from the Layout and Density workstation



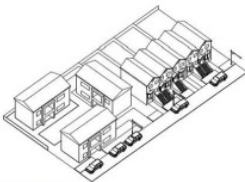
1 dwelling unit per acre



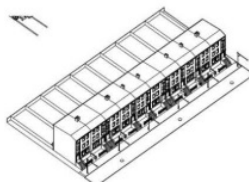
3 dwelling units per acre



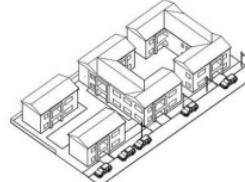
10 dwelling units per acre



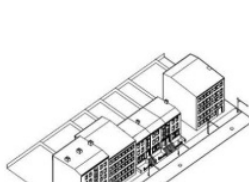
20 dwelling units per acre



30 dwelling units per acre



40 dwelling units per acre



50 dwelling units per acre



75 dwelling units per acre

## Visualizing Density

**Klamath Garden, 2105 Klamath Ave**  
 17 units (10 two bed, 6 three bed, 1 four bed)  
 Density: 21 du/acre



**Bracher Apartments, 2665 South Drive**  
 72 Units (1 bed for age 55+)  
 Density: 30 du/acre

**Presidio, 1450 El Camino Real**  
 40 units (20 1 bed, 20 studio)  
 Density: 49 du/acre



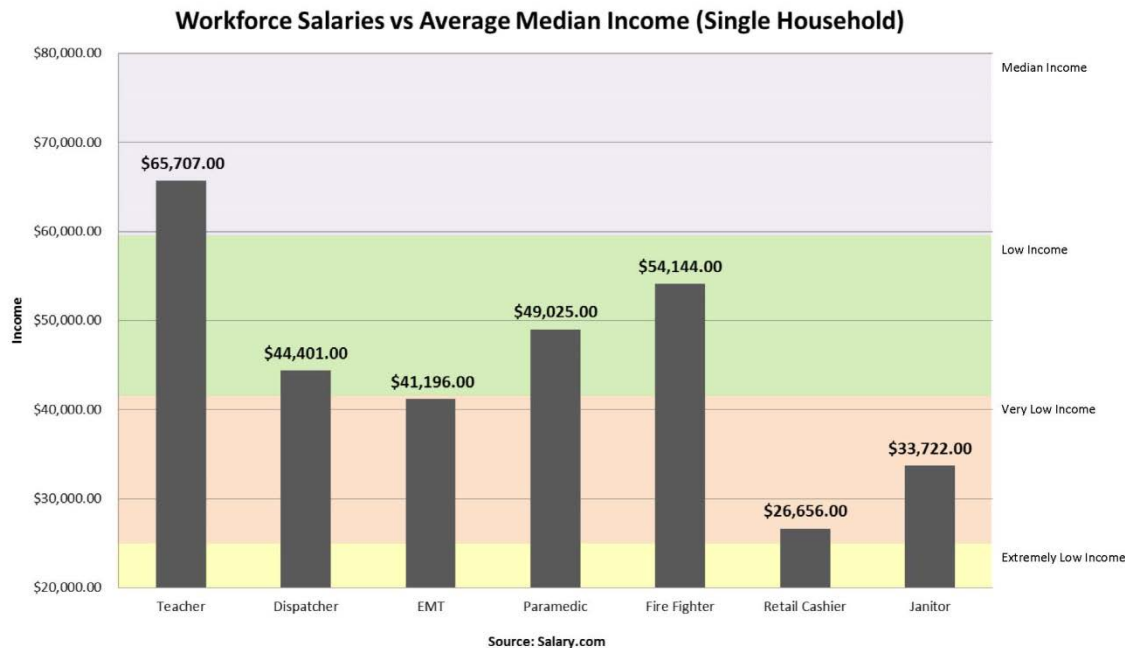
# HOUSING PREFERENCES

1	Transportation should be first priority
2	Public school should go on site
3	No more housing
4	Approach is wrong, fighting economic rules of Supply and Demand - market place housing only
5	More parks and trees
6	Designate tenure, teacher year 1-5 or 5-12 then move; allow everyone same help
7	City to be property manager so they can control all leases and conduct background checks on tenants
8	Senior Housing without Assisted Living (independent/active seniors)
9	Specify to help the administrative level of the workforce
10	teachers only
11	Preferences and Priorities to Current Santa Clara Residence and Employees (1st responders)
12	-Informed this is violation of Fair Housing Act by Esq.
13	Compliance is critical - need to make sure residence stay eligible or move
14	Set-Asides for people with severe disabilities with care on site
15	Mixed AMI to help range of people
16	Housing for Employed Homeless; single parent families can be homeless, we need to reach out to them
17	50% units for Sale and 50% for Rent
18	2 entrance points/exits for the property, Monroe too congested
19	housing for families/people who were former S.C. residents that have been priced out
20	Youth and foster youth 18-24
21	Workforce housing including police/fire/1st responders; critical to have these people in the city in case of emergency
22	Seniors and young couples would fit well in existing community
23	EMT/Fire Fighters/Paramedics earn \$150k per year with OT - do not designate for them
24	We need teachers in this area and families
25	More family housing, 3-4 bedrooms
26	resident preferences and workforce preferences are illegal depending on funding source

**“Senior Housing without Assisted Living (independent/active seniors)”**

*Community feedback from the Housing Preferences workstation*

**“Mixed AMI to help range of people”**



*One of the visuals from the Housing Preferences workstation*



# AMENITIES



Voting results from the "Amenities" workstation

**"Yes to Trees!!"**

**"If the amenities will increase height – NO amenities"**

- 1 Direct route to the bus stop on San Thomas to San Thomas. Not through El Capitan
- 2 No Retail
- 3 Landscaping
- 4 Increase Bus Lines to accommodate more people to decrease traffic
- 5 No 5 story buildings
- 6 No high Rise
- 7 I don't think there should be retail because it would be taller and impact traffic even more
- 8 Too small for a large development
- 9 No other retail needed
- 10 Traffic, traffic, traffic
- 11 Low density housing
- 12 no more traffic w/o more mass transit
- 13 No high density w/o more infrastructure
- 14 A gym / exercise room is a great idea for yoga, aerobics, and strength training opportunity right on site, much like the success of the Sr.Ctr Exercise floor!
- 15 Community Center with park facilities
- 16 Transportation first!
- 17 Delay any building until a mass transit solution is in place
- 18 Bullet train with connection buses
- 19 Playground not beside properties
- 20 lowest possible DU/acre
- 21 Traffic Issues
- 22 No stores or restaurants
- 23 Limit # of stories
- 24 No Retail
- 25 Bike Racks
- 26 Underground parking
- 27 The biggest concern for residents living on Sheraton Drive would be that people in these low cost dwelling can see directly into their backyards
- 28 Yes to Trees!!
- 29 Skip the gym
- 30 Think of limited income family needs. Not Santa Clara homeowners
- 31 Lots of or at least enough parking
- 32 Med - High density
- 33 I was sorry to see the shipping containers plan fail
- 34 Adequate parking
- 35 Low density residential
- 36 Small retail compatible with the bike trail; ride your bike home from work stop in for groceries on your way home
- 37 Parcel should be dedicated for housing as a community park will be built across from the San Tomas Parkway
- 38 Please plant more trees and other plants along El Camino and all streets of Santa Clara
- 39 If the amenities will increase height - NO amenities
- 40 Think traffic nightmare. You did not listen when we said no to Levi Stadium. LISTEN NOW PLEASE!
- 41 Less density the better please
- 42 We need more plants and trees, landscaping and parks
- 43 Area for water development & filtration for growing population
- 44 Street Trees
- 45 Protected Sidewalks
- 46 Landscaping
- 47 If retail is involved it should not be much corner coffee shop that's it
- 48 Ideally, no retail
- 49 Bike lanes
- 50 Traffic Direction / Calming on Monroe; Scott to Lawrence Expressway

Community feedback from the Amenities workstation

# GENERAL FEEDBACK

- 1 How are the RHNA numbers calculated?
- 2 Where do RHNA requirements come from?
- 3 There is a need for family sized units. 2,3, and 4+ bd.
- 4 Townhomes of 20-25 du per acre are appropriate for this site.
- 5 Managing density relative to current homeowners is important
- 6 Can we do homeownership at this site?
- 7 Development needs to interface with neighbors well.
- 8 Parking is a priority
- 9 The property management company matters!
- 10 Keep single family zoning
- 11 Need setbacks from current property owners
- 12 Can we do 50% homeownership and 50% rentals?
- 13 Development should be a maximum of 50 units
- 14 No retail needed at this location
- 15 Parking should be 2 spaces per unit
- 16 What happens if we build less than 20 du per acre
- 17 No homeless populations at this site
- 18 Eliminate prop 13 to solve crisis
- 19 50 units max housing
- 20 Please post PPT to website
- 21 What happened if we do nothing?
- 22 Current property owners need a physical wall / sound barrier
- 23 3 stories max height
- 24 Streetline can have more density than interior and back of site
- 25 No retail
- 26 Traffic calming is needed
- 27 Need to protect kids and families from traffic on San Tomas
- 28 Is underground parking feasible?
- 29 keep density on the streetfront
- 30 2-3 stories should be max
- 31 Make sure there is adequate parking
- 32 There should be adequate setbacks from San Tomas to protect families
- 33 Please provide a walkway that connects the site to Bus Stop via San Tomas
- 34 Too much traffic
- 35 Access to the site has to be on Monroe, not San Tomas
- 36 Traffic modifications would be necessary
- 37 Developer should provide traffic analysis
- 38 Adequate parking!
- 39 Should target teachers and workforce housing
- 40 Taller buildings along Monroe
- 41 Shorter building near houses
- 42 30-40 du per acre looks fine but not taller
- 43 Needs trees!
- 44 Small scale retail would be okay
- 45 Small groceries and café
- 46 Keep 1 story single family as zoned
- 47 2-3 stories along San Tomas is okay
- 48 No High Density
- 49 Do not rezone
- 50 Not higher than 3 stories
- 51 No micro unit proposals
- 52 No cargo units
- 53 Build something similar to Franklin Street Family @ Mt View
- 54 Too much traffic!

Community feedback from the Q&A workstation



Community feedback from the Housing Preferences workstation

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**"I would I like to see a mixed unit size, few lofts, some 1-bed, most 2-bed, more 3-bed. It should be affordable because finding anything affordable for a family is hard."**

---



**Community feedback from the online survey. Responses have not been altered for grammar or spelling errors.**

	In a few words, briefly describe your vision for a new affordable housing development at the San Tomas and Monroe site:
1	It would be wonderful to see more families with average incomes afford homes in Santa Clara or be able to rent housing that is affordable and not take up more than half of their incomes.
2	High density apartments along San Tomas with limited parking and some guaranteed method of getting people to and from Caltrain and VTA transit options.
3	It should not interfere with the lives of those already living in the area and should fit in with the neighborhood. Consider Traffic which is unbearable in Santa Clara now as it is.
4	Town homes or condos for purchase by mid-income families like work force employees like teachers, fire fighters, police, EMT's with some units also open to veterans, disabled, and seniors. In particular, only open to residents of the city of Santa Clara.
5	Townhome style with HOA to be sure landscaping, etc is maintained. This style should fit into a single-family area and allow the most homes.
6	Hope to create a site where people can feel like they could settle there for a longer term (10+ years), enjoy local amenities, and feel tranquil in their home with a sense of neighborhood (trees, birds, green-space, skylights/big windows, common gathering spaces), as opposed to cramped, noisy, concrete-laden stressful spaces that they just want to get out of as soon as they can/if they can (which leads to stressed out citizens that are more ready to snap).
7	Hope to create a site where people can feel like they could settle there for a longer term (10+ years), enjoy local amenities, and feel tranquil in their home with a sense of neighborhood (trees, birds, green-space, skylights/big windows, common gathering spaces), as opposed to cramped, noisy, concrete-laden stressful spaces that they just want to get out of as soon as they can/if they can (which leads to stressed out citizens that are more ready to snap).
8	Can we please get some upscale chain restaurant options in Santa Clara????? Way too many mom & pop ethnic spots.
9	Veterans , seniors, teachers, firemen, police are a welcome addition to the neighborhood and supportive of building a village like community.
10	Affordable housing should be considered a step up, not a hand out. Encourage personal growth and develop Civic Pride.
11	No homeless site! Unsafe especially with a family garden and park across the street.
12	Single family homes.
13	Welcoming for all incomes, low, moderate & middle.
14	Wrong area to increase housing. What about availability of public transportation? Impact on the schools?
15	The questions asked in this review require a professional analysis of the situation. No way can a layman answer these questions with any degree of basic understanding of the local needs. BTW, clicking to "...read about Presidio Santa Clara." only shows a picture. There is nothing to read. Where is this development?
16	We need more housing. My children can't afford to live here. I would like to see more mixed use housing that includes shops/cafes and housing units above (like Santana Row). But there has got to be enough parking so that it doesn't impact the neighborhood too much.
17	Set back from the road high quality construction with good landscaping high berm separating STE. The use of trees to help as a barriers from road noise. Parking under units.
18	Having lived over there years back, I know the area. I would like to see three stories, the buildings set back away from the streets, and make it like an open looking space not all crammed together.
19	A few condos/townhomes, no more than 20, that are owned and not rentals. Medium income only.
20	few homes, playground and small businesses / grocery stores
21	I would like to see a mixed unit size, few lofts, some 1-bed, most 2-bed, more 3-bed. It should be affordable because finding anything affordable for a family is hard.
22	Would prefer it would not be developed
23	Please no low income housing, it brings crime and irresponsibility with it. Santa Clara should be a safe haven from the issues plaguing San Jose, lets keep it safe and crime free!
24	Build Build Build!
25	I live on El Capitan, probably one of the most effected streets by this project. I hope that there will be ample parking as we are a restricted parking neighborhood due in part to the mismanaged run of Monroe street. Also that we will not see increased traffic or safety issues due to this project. I hope that the city plans for the obvious traffic short cuts down El Capitan from this project and plans ahead to correct them... speed bumps and turnabouts. I guess in short our neighborhood feels that you, the city, completely sold us out to Sobrato and we are all hoping that you redeem yourselves and represent us responsibly with the safety of our children, families, and neighborhoods remembered during this planning process.
26	Housing that matches with the current single family homes neighboring the lot. Create a community of homes vs housing.
27	2-3 story apt. homes for low-middle income homeowners. Retail space is within walking distance to this project, and is not needed on site. Underground parking would be preferred, however, proximity to the creek may present problems (water table). Access to and exit from this development would put a strain on Monroe & surrounding residential streets - there are currently no residential streets that cross San Tomas without traffic lights, and this would not be appropriate for the current location.
28	That it help assuage the dire need for housing in our city. That it would by design style fit well with the surrounding neighborhood. That it not be so dense that traffic issues are a problem.
29	Senor housing pleasing to eye and not obtrusive to existing property owners
30	One that helps people of low income but not high density enough to further damage an already crowded area.
31	Any more than 20 units per acre should not be considered. We want more open space to offset all the new development this city has already seen. The builders should also pay a mass transit impact fee so we can upgrade our mass transit and bike routes. This impact fee is long over due. The park impact fees should be used to buy land for new parks, not pave over the existing parks, i.e; the Hall of Fame Swim Center.
32	The site should be developed with housing that is compatible with both the adjacent SF neighborhood and the apartments across the street.
33	This location is actually a poor location for housing, with the noise, and emissions from the expressway it's a bad place to raise humans. It would be better suited to retail or dining establishments.

- 34 I'm extremely disappointed when the Sobrato proposal for extremely low income / homeless was rejected, especially with its close proximity to El Camino (and potential jobs), bike trail, and new park across the street which will have a community garden where food grown could have gone to these residents. Now I would like to see this development be used for a range of incomes because it's expensive to live in this area.
- 35 No retail. There is NO street parking on this side of San Tomas. New park is being built across San Tomas. Keep at 20 units per acre, mix of unit sizes
- 36 The primary limitation on affordability is the poor bus service in that area. (Compare to El Camino Real) So, new residents will need a bicycle or car to get around. However, if the development can include a large bike parking area that includes those share bikes and some way to access them if one doesn't own a cell phone, that could solve that problem since the San Tomas Aquino Creek Trail is right there. Also because of the trail, it would be good to disallow dogs unless there is a significant barrier between the development and the trail.
- 37 Please no more building in Santa Clara. We already have heavy, congested traffic on our streets -El Camino Real, Homestead Rd, and Benton. We already have street closures because of the so called building developments now. (Surveys do not include questions like this.) Did you know there was a Downtown Santa Clara that was destroyed in 1963? Bring back this promise to us - and let us help with the decision. Keep Lawrence Square shopping as is. Keep old shopping center on Kiely and Homestead. Keep Moonlight shopping as is and bring back the bowling alley
- 38 I'm just sick of seeing 1 and 2 bedroom apartments going up everywhere. At some point all the 20 and young 30 something's are going to get married and want kids and there will be nothing left but 2 bedroom apartments. We need to build homes for families
- 39 The information in the powerpoint about how unaffordable housing is in Santa Clara is shocking and sad. This is an unacceptable crisis. We need to do more to make sure that the most vulnerable in our community and people who make our community work (grocery store workers, post office workers, teachers, my daycare provider) are able to live here. We need to maximize the density of these rare opportunity sites where we have city land to build affordable housing. A max of 35 duu sounds very low. Why are we limited to that? Good design (transitions from the surrounding lower height neighborhood) is more important than focusing on the density and number of units. People need somewhere to live and it's morally wrong to say "not in my neighborhood."
- 40 my backyard is shared with this property and i am really concerned about what goes in here. I strongly suggest relatively higher income people with families to live here .prefer teachers or senior citizens ..with Higher stories along San Tomas and setbacks toward our backyards with a physical wall barrier in between
- 41 I live really nearby. I think it needs to be a mix with some retail as it's underserved now. Underground parking would be good to best use space. Some kind of green space with playground is critical as not enough in that area.
- 42 A place for city professionals, veterans, and healthcare workers whose local pay is insufficient for supporting a household in the high priced bay area. We need our city workers close and veterans who may be able to acclimate better if provided safe and clean housing.
- 43 IMHO, affordable housing is (i) a fool's errand (ii) not in the best interest of most people, definitely not of neighbors. Why? Because vast majority of people having a hard time affording a place to live WILL NOT live in this (or other) affordable housing location. In this way, you are helping a tiny fraction of people at the expense of everyone else, including families with low incomes. In fact, taking away these units from the market will not ease prices on everyone else, especially those which are not eligible but need help. Moreover, for the many existing neighbors which barely managed to save enough to buy a home, you will probably introduce a reduction in property value, with potentially unsavory people living at your development, living at everyone else's expense. If you want to do this foolishness, why do we have to suffer a financial hit as a result? Affordable housing is a bad idea. By creating it, you work "against" my wishes and interest as a citizen. I could not care less about bureaucratic land designations and other requirements. It is not in my interest to waste this land for this purpose. What you should do? Build homes/apartments (potentially at different sizes) at "market value". This would be the most fair for everyone. I will hold you accountable in the next election
- 44 Mixed incomes in a park like setting. Xeriscape with trees, and a playground for youth.
- 45 small single family affordable housing for family households
- 46 It cannot interfere with the bike/walking path along the creek and should also incorporate sufficient parking so that residents are not parking on Monroe
- 47 Minimum density and height required by law for this disproportionately crowded intersection. Numbers of existing low-income apartment buildings has created an overflow of cars into neighboring areas. Appropriate amounts of parking spaces for any housing at the proposed site should be a major consideration.
- 48 Less density across all projects. Traffic is getting to critical mass.
- 49 This survey is one sided. If the site must be used for affordable housing then it should be according to the current requirements which I believe is limited to 11 units. The City should sell the units to homeowners but when the property is sold it should only back to the City at a predetermined price. As a side note, the city staff has gone out of its way to make participation in this process extremely. At the meeting the staff was not accepting of anything other than mass density housing. Keep the current limit on the number of units to be built to what the City originally accepted when the property was transferred.
- 50 Lowest density possible, single family homes (or townhouses) - no high rise buildings, no retail. Plenty of parking for the number of units, and added trees, landscaping. Does not take privacy away from the existing homes. Available to families who are getting pushed out of Santa Clara because their income has not risen as quickly as the cost of living here.
- 51 I have a young family and while I care about making affordable housing options available for all, I am worried about safety. I think providing housing for teachers and people in other services is greatly needed and will help serve both purposes.
- 52 This is a very small plot of land and the area is already over run with people in the apts off Los Padres and Debra off Monroe. Crime and parking is a huge issue. We don't need to add to it by putting in more high density rental units where people don't care about the property and trash it. I call every week already for shopping carts to be picked up. Please do not ruin our neighborhood even more with more people who are not owners and don't care. The families on Sheraton behind the property are already all moving because they do not trust the city to do the right thing based on what you already tried to put on the property. Our city council is horrible and doesn't care about current home owners.
- 53 Our police department is already horribly understaffed. Please consider that with all residential development and the expected increase in calls for service.
- 54 Below market-rate home ownership, with profits at eventual re-sale split with the developer or the city (there's multiple ways to prevent windfall profits for the initial owner and keep the homes affordable through subsequent re-sales) . This would be the type of project that residents envision when they request affordable housing: homes that working people, after a few years on the job, can reasonably be able to buy. It's been done in many towns and cities in California, I know of specific projects in Davis and in San Jose.
- 55 Wrong area to increase housing.
- 56 A well maintained complex for folks who are working in the service fields like nurses, police officers, fire fighters/EMS, teachers and others. It needs to be a complex that looks physically and aesthetically to our neighborhood. It needs to blend into our neighborhood and not standing out.
- 57 Low income housing is needed to (eventually) replace the old apartments along Monroe, which need to be redeveloped. The location is inappropriate for retail or food as it would push unmanageable traffic onto residential streets.
- 58 I would like to see housing that serves low-income people and fits within the needs of the neighborhood. We need housing that is affordable, safe, appealing

	and welcoming to residents. I hope that this development can prove to neighboring home owners that poverty is not a crime and that low income people can be great neighbors.
59	I am deeply concerned. Ideally, parking is under the buildings, with a grocery store and coffee shop on site. Set backs from Monroe should reflect the neighborhood. We need to improve the walking and biking of Santa Clara. With more people and more cars being lured in, we need to find places for the cars that doesn't jeopardize bicyclists or pedestrians.
60	A nice, small, housing community that blends into the existing community. Trees and open space are available for children and families.
61	Fits the neighborhood.
62	A development that is complimentary to the current surroundings. Traffic coming in and out of the development will need to be reviewed since that intersection is very busy.
63	Housing that reflects the surrounding neighborhoods. Neighboring homeowners should not be negatively impacted. Their property values should increase and the new development should make it a nicer place to live and raise a family.
64	A nice affordable place for families of lower income, outside open space and larger spaces for larger families.
65	Would prefer something as close to single family housing as possible
66	Low density housing, not rental property. Underground parking and at most two level living levels. The area is very small - should not have more than 25-30 units. Would prefer single unit dwellings - homes - do not re-zone the area from single home dwellings. The area is already extremely congested. Have you even considered what you will do about the traffic. The quality of life in Santa Clara is diminishing due to congestion and traffic. You can design dwellings for people that would pay \$300,000 - \$400,000 (this is low cost housing in this area) and make the developer reserve a small percentage of homes for low income families. This is far more preferable than having the entire complex for low income people. Think of the middle class that need homes too. It is the middle class that pays for everything, vote, volunteer - makes your community. The middle class (family members) has to commute to this area from 1.5 - 2 hours both ways on a daily basis to work and have a home outside of silicon valley. Clearly by your survey response selections to choose from you are not considering anything but low cost housing - perhaps just one step above the homeless shelter you previously planned. I attended your 12/7/17 event - you provided misinformation to those who attended under the guise of considering community input. You documented that teachers were highly paid and Fire/Paramedics were low income earners. As City personnel you have access to what your Fire personnel earn. They earn between \$100,000 and \$200,000 with OT and you know they do not live in the area they work. They work 2 days on and 4 days off - you led the people at this event, who knew no better to believe that Fire personnel are low income families that would live and benefit from this housing development. Santa Clara City Council members and employees of the City of Santa Clara please have some consideration for the people that own property within a 1000 feet of this proposed development. I realize this is just a job to you and you may have another job next year, on to bigger and better things, but this is where we live, some of us for more than 30 years. Your decisions affect us for life.
67	2-3 story apt. homes for low-middle income homeowners. Retail space is within walking distance to this project, and is not needed on site. Underground parking would be preferred, however, proximity to the creek may present problems (water table). Access to and exit from this development would put a strain on Monroe & surrounding residential streets - there are currently no residential streets that cross San Tomas without traffic lights, and this would not be appropriate for the current location.
68	There's already an abundance of new housing so I'd rather see an outdoor plaza/park for residents to enjoy.
69	affordable housing for good teachers
70	Though categorized as affordable housing, it should be harmonic to the homes around it to maximize the benefit of resident in the new building and existing buildings. Two story is strongly recommended in respect to the single family zone plan that is promised by the city. Also, the residents in existing single family zone will be mostly happy to live with senior citizens, working force, and families.
71	A welcoming and attractive site of affordable housing with grass and trees and coffee shop or grocery to invite in rest of neighborhood as well.
72	TrueType affordable. With money reserved for upkeep. Occupants screened for need. Zero tolerance policy for drugs and weapons and violence.
73	This lot is in an area of single family homes. It should be designed to be consistent with the existing construction. That is single family homes with a maximum of 2 floors, off-street parking for two cars per dwelling, and additional parking spaces for visitors.
74	Even though it is an affordable housing goal here, the project should be high density with incentives for fewer cars and more bicycles. There should be amenities onsite like a community/recreation room to reduce the need to drive. Housing should be highly efficient to reduce the cost of utilities for residents. The project should be architecturally interesting so as to enrich the lives of the residents. In order for Santa Clara to be able to meet its RHNA numbers and to not get in trouble with the new State laws for affordable housing, there needs to be some low and very low income housing on site.
75	This area should contain as few houses as possible; this will minimize number of cars and hence not increasing traffic. No retail store should be included. If retail is absolutely required, put a grocery store so people have quick access to walk and buy groceries. A park for gathering is also a great idea. There should be solid plans to minimize an increase traffic (i.e., providing residents alternative options to driving).
76	Plots like this are rare and should be developed as much as possible.
77	I would actually prefer no more housing to continue to go up, as a long time resident of Santa Clara I can not express the discontent my neighbors and myself feel for this congestion in the city.
78	I would like to see a cycling/walking trail to get across STX to the new community garden park and the STAquino Trail that goes under the overpass in order to connect the entire community on that side of the expressway (including this new project) without stopping the traffic on the expressway. This project should offer a mix of affordable housing which allows low-income individuals and families to rent in our city. (Why does this survey have a link to the El Camino Real Presidio Santa Clara on this page of the Monroe St. survey?)
79	Somewhere that people can afford to live who can't currently find any housing options.
80	The City needs to address the needs of lower income seniors and those with disabilities, as well as provide housing for families. These diverse groups can form a microcosm of a vibrant community, just as in the early days of Santa Clara,
81	Let's focus on teachers, nurses, police officers, firefighters ... who serve our community and have a really hard time living here. We need to make our schools better, and enhance safety by attracting more families.
82	I am in favor of building single family homes that teachers and nurses, with families, will be able to afford.
83	Need to address affordable housing for Moderate Income category.
84	Lower density, nicely landscaped, more permanent housing.

85	It should provide reasonably prized housing options for working families
86	I would like to see both Senior housing and affordable housing for city employees (this also includes teachers that teach in the Santa Clara Unified School District)
87	There is nothing wrong with vacant land. Build housing and we get more traffic, more pollution, not enough parking. There should be one parking space for each bedroom. Otherwise there be problems with parking in the neighborhood.
88	I tend to believe all housing should be market rate.
89	I would like to see housing that serves families with children. Townhomes preferable since that will serve a large need in the area. I do not think ground floor retail (mixed use) is necessary at this site. It will just increase the cost of the development, increase the height/massing of the buildings, and may not be sustainable without sufficient foot traffic.
90	Non-monstrous building that fits the architecture of the neighborhood. None of the awful modern crate designs.
91	I would urge the city to approve non-rental housing on this parcel. Put in some below market rate units that will allow families to buy property. Pride of ownership shows when someone actually owns vs rents the property. Do not cram too may units onto the parcel.
92	Retail/commercial with 1-2 storeys of housing above would be the best use of space. Those living there and neighbors will be able to access closer retail points, while we gain much-needed housing. I would love to see every unit be at least BMR housing.
93	High density. Wall alongside the recreation path. Coordinate traffic signals.
94	none
95	Prefer to have less density and housing not apartment style homes.
96	A nice residential neighborhood. Leave out the retail. Not too high density.
97	I've lived in Santa Clara all my life and I don't want to see any more building here in Santa Clara.
98	Fewer housing until traffic can be alleviated.
99	No opinion yet. I'm willing to wait to judge various proposals
100	This area is already over done with low income properties and renters who don't care about our city. The high crime in the highly ignored apts across the street is proof. The amount of shopping carts and garbage left in the streets and sidewalks near this property is all the proof you need. Anything you add to the neighborhood needs to be for owners who will take care of the properties and not be absentee landlords. The city needs to start holding landlords more accountable. The poor neighborhood behind these proposed units will suffer the most and the city needs to protect their right first. I am so sorry the city didn't purchase this property for a dog park and do a walk over to the other side of San Thomas to the new park. That is what makes the best sense. Parking of course is going to be a nightmare. What is the city's plans on that.
101	Housing for Bay Area "low income"
102	Frankly, there is so much new housing going in everywhere in Santa Clara, I'm not sure why we need any more! But if there has to be more (as you seem to be pushing), then I'd prefer fewer units that are affordable so that someone has a chance to own them. People tend to care for the property better if they have worked hard to own it rather than rent it.
103	I would hope a good portion of this would be used as transitional housing to help people get on their feet.
104	Something unobtrusive and not infringing on the homes of existing neighbors (height or proximity). Housing for residents who are self-sufficient and have the means to take care of their homes - and not raise levels of crime in the neighborhood.
105	Housing to support community workers
106	Low density structures with decent amount of green space and trees. We don't need another ugly super high density complex marring the city. Also want to target stable residents families and teachers or other service professionals. We don't want transients/short term renters who have no stake in the city.
107	Some that adds value to the city.
108	This is a relatively small site and adding parking for retail in addition to housing could be problematic. Given the close proximity to single family housing, I would not create a structure more than three, preferably two, stories high. If your going to utilize the space for retail, there appears to be a lack of larger grocery stores in that general area. If you try for a mixed facility, parking would be my concern.
109	Very affordable to low and middle income residences, landscaped multistory high density housing. Homeownership preferred
110	Suitable for both low income families and singles and those with disabilities or veterans. Range of smaller and larger units depending on the people in the unit with yards patios or a common building yard setting. Pet friendly.
111	My vision for the proposed affordable housing development is an attractive, perhaps modular, collection of homes with ample parking and open/play space. Creatively re-purposed shipping containers might work. The heavy traffic in the area means special attention must be given to the placement and design of the entrance/exit. Buy-in from neighbors is essential. Perhaps a contest to submit architectural drawings would build interest.
112	There should NOT be more high density housing developments.
113	Something that does not affect the nearby neighborhood as far as traffic, height, and density. Everything should be done in order to make sure the nearby neighborhoods are not at all affected. This is just as much about the current neighborhoods and their residents as it is about low income housing. I'm not a fan of having retail at this site, as it could add traffic to an already congested area. If retail were to be built here, it would need to be in the form of a small coffee shop or something like it. I picture a project that takes advantage of Santa Clara's mission theme and offers beautiful landscape. My property sits right up against this property, so a wall (like the one being built along San Tomas Expressway) needs to be built.
114	These housing developments should either be for the elderly or families with children. Having raised your children and having visits on and off with your grandchildren can be very hectic for the elderly. Don't combine families with children and adult living.
115	It would not be a bad idea to provide a space for all the RVs and campers that are proliferating in Santa Clara. Parking and a few amenities like bathrooms, showers, electricity would go a long way toward helping these people instead of ignoring them.
116	proposed situs should not infringe on rear facing neighborhood homes. I recently moved to Elk Grove, Ca 95758 and am appreciative of the opportunity to not experience the coming disaster. I was a resident of Santa Clara for 45 years. Shame, shame on the city.
117	I don't like the term "Affordable Housing"...It is just another word for "Projects"...Lets upgrade our City. We are the heart of Silicon Valley", act like it!!!
118	This survey is biased in that it assumes you are in favor of a housing development. There should have been a "none of the above" option listed for most of the questions. I don't think this parcel is suitable for housing at all. What the neighborhood could use is a playground or dog park in the area. Cramming

	people into ever denser housing units is not a solution, and no way for people to live permanently. I understand the purchase of the land from the county using redevelopment money requires that the land be used for affordable housing. That was a poor decision that should never have been made. Can the money be paid back and/or the property sold back to the County?
119	Sustainable community with garden and market easily accessible to residents, so they're able to walk. There's no other near-by market at that location.
120	Easy access to buses. Ample parking area for tenant and visitors. Trees to provide shade and sound barrier.
121	Less is more. Tract homes like the neighborhood behind it.
122	single family homes with yards
123	No homeless housing, do not bring them into this nice and well established neighborhood. No rentals, no transitional housing. Allow police/nurses/firefighters/teachers into these affordable homes.
124	New affordable housing development should provide housing to public workers like teachers, police, firefighters etc who contribute to the development of the community and are not able to afford to buy a home closer to where they work. It will be incredible to have them realize the dream of a home as a token gift of the great work they do to make this community and the world a better and safer place.
125	I would like this site to be a park, or converted to a woods.
126	I go to this Family homeless shelter in San Jose for some volunteering work. <a href="http://familysupportivehousing.org">http://familysupportivehousing.org</a> This is how it should be - we should follow this model.
127	Santa Clara needs affordable housing that targets extremely and very low income populations, particularly families with children and mixed-generation households, which are more and more common due to rent costs and cultural norms of residents. This means a unit mix that includes some 3-4 bedrooms apartments. I'd also like to see some sort of set aside for people with developmental or severe mental health disabilities coupled with case management. It's becoming harder and harder for these people to find and maintain housing, and units at or below 30% AMI with services is the best option for long-term housing.
128	The most housing that can fit in the space, with underground parking and modest retail on the ground floor. Trees around it.
130	Great work by City Staff!!

**The quotes and online survey comments in this report have not been reviewed for grammatical and spelling errors.**



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

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## Agenda Report

19-1002

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### SUBJECT

Approve City Position on Proposed League of California Cities' 2019 Annual Conference Resolutions

#### BACKGROUND

The League of California Cities' (League) *2019 Annual Conference Resolutions Packet* (Attachment 1) has two resolutions presented for consideration by the League Policy Committee and membership. As part of the August 20, 2019 Council Meeting, the Council designated Mayor Lisa M. Gillmor as the voting delegate and Councilmember Debi Davis as the alternate voting delegate.

#### DISCUSSION

This report transmits the League's *2019 Annual Conference Resolutions Packet* (Attachment 1) which contains the proposed resolutions that will be considered at the League's Annual Conference in Long Beach from October 16-18, 2019. As recommended by the League, staff requests Council approval of the position the voting delegate should take regarding the resolutions discussed in this report. Below are descriptions of the resolutions followed by staff analysis and recommendation. Staff recommendation options are: Support, Oppose, or Take No Position. Staff may recommend that Council abstain from taking a position due to a variety of reasons (e.g., the pros and cons of the business impact cancel each other out, the resolution calls for an unfunded mandate, etc.). When this option is recommended, the reason will be explained in staff's analysis.

Any resolution submitted to the General Assembly must be concurred by five cities or by city officials from at least five or more cities. The concurring cities and city officials are noted for each resolution.

#### ***Resolution #1 - Call on the California Public Utilities Commission to Amend Rule 20A to Add Projects in Very High Fire Hazard Severity Zones to the List of Eligible Criteria and to Increase Funding Allocations for Rule 20A Projects***

This Resolution seeks to respond to the increased frequency and intensity of California wildfires in recent years by addressing undergrounding lines in extreme high-fire areas. The California Public Utilities Commission's (CPUC) Rule 20 program lays out the guidelines and procedures for converting overhead electric and telecommunications to underground electric facilities. Under the program, Rule 20A was created to provide consistent and structured means of undergrounding utility lines throughout the state with costs covered broadly by utility ratepayers. Each year, Investor Owned Utilities (IOUs) propose their Rule 20A allocation amounts to the CPUC during annual general rate case proceedings. CPUC then reviews, amends and approves the IOU rates. The funding set aside for Rule 20A is allocated to local governments through a credit system, which was created so that local governments and IOUs can complete undergrounding projects without municipal funding. Through Rule 20A, municipalities that have developed and received city council approval for an undergrounding plan receive annual credits from the IOU in their service area.

While these credits have no inherent monetary value, they can be traded in or banked for the conversion of overhead lines. Municipalities can choose to accumulate their credits until their credit balance is sufficient to cover these conversion projects or choose to borrow future undergrounding allocations for a period of up to five years. Once the cumulative balance of credits is sufficient to cover the cost of a conversion project, the municipality and the utility can move forward with the undergrounding. All of the planning, design, and construction is performed by the participating utility. Upon the completion of an undergrounding project, the utility is compensated through the local government's Rule 20A credits. The current budget allocations made by IOUs total \$95.7 million a year, however, the cumulative balance of credits throughout the state totals over \$1 billion dollars. Currently undergrounding project must meet the following criteria in order to qualify for the Rule 20A program: Project must have a public benefit, eliminate an unusually heavy concentration of overhead lines, involve a street or road with a high volume of public traffic, benefit a civic or public recreation area or area of unusual scenic interest, and be listed as an arterial street or major collector as defined in the Governor's Office of Planning and Research (OPR) Guidelines.

This Resolution would direct the League of California Cities to call upon the CPUC to amend the Rule 20A program by expanding the criteria for undergrounding overhead utilities to include projects in Very High Fire Hazard Severity Zones and to increase utilities' funding allocations for Rule 20A projects.

Concurrence: City of Hidden Hills; City of La Canada Flintridge; City of Laguna Beach; City of Lakeport; City of Malibu; City of Moorpark; City of Nevada City; City of Palos Verdes Estates; City of Rolling Hills Estates; City of Rolling Hills; and City of Ventura

Related City Policy:

- PG&E Bankruptcy and State Wildfire Liability Legislation Legislative Advocacy Position
- Public Safety Legislative Advocacy Position

Analysis: Santa Clara has been fortunate to not have experienced any recent wildfires. However, the problem does impact City operations because Silicon Valley Power and Fire Department deploys resources (personnel and equipment) to respond to such fires in the state through mutual aid. While the City supports legislation and initiatives that aim to prevent and mitigate catastrophic fires, passage of this Resolution may also negatively impact the City's electric utility, Silicon Valley Power (SVP), in the future. In its current form, it is unlikely that the Resolution will directly impact the City of Santa Clara since there are currently no designated high fire hazard severity zones within City limits and SVP is also a publicly owned utility that is governed by the Santa Clara City Council, not by the CPUC. However, it is important for the City to be aware of the implications of any risk or liability assigned to electric utilities since those outcomes may also impact SVP. For these reasons, staff recommends that Council takes no position on this Resolution.

Recommended Position: Take No Position

***Resolution #2 - Call Upon the Federal and State Governments to Address the Devastating Impacts of International Transboundary Pollution Flows into the Southernmost Regions of California and the Pacific Ocean***

This Resolution seeks to address contaminated flows from the Tijuana River into California that have resulted in the degradation of water quality and water recreational areas in Southern California. The Tijuana River flows north through highly urbanized areas in Mexico before it enters into the Tijuana River Estuary and eventually the Pacific Ocean via waterways in San Diego County. Urban growth in Tijuana has contributed to a rise in rates of upstream flows from water treatment facilities in Mexico. These treatment facilities have in turn raised the amount of untreated sewage and waste in the Tijuana River due to faulty infrastructure and improper maintenance. The federal government refers to the river as an “impaired water body” because of the presence of pollutants in excess, which pose significant health, environmental, and safety concerns to the communities on both sides of the border. California’s statewide tourism may be negatively impacted if there continues to be a decline in the state’s beach quality and reputation.

The U.S. and Mexico entered into a treaty in 1993 that established the North America Bank (NADB), which certifies and funds infrastructure projects located within 100 kilometers of the border line. The NADB supports federal programs like the Border Water Infrastructure Program. Over the years, funding for the Border Water Infrastructure Program has decreased significantly and the Federal FY 2020 budget proposes eliminating funding for the program altogether.

This Resolution would direct the League of California Cities to call upon the State and Federal governments to restore and ensure proper funding for the U.S. - Mexico Border Water Infrastructure Program and recommit to working bi-nationally to develop and implement long-term solutions to address serious water quality issues and contamination issues resulting from transboundary flows from Mexico’s Tijuana River into the United States.

Concurrence: City of Calexico; City of Coronado; City of Imperial Beach; City of San Diego; and in their Individual Capacities: Mayor Pro Tem Korma Kastner-Jauregui and Council Members Sam Couchman, Luke Hamby, and George Nava of City of Brawley; Deputy Mayor Consuelo Martinez of City of Escondido; Council Member Bill Baber of City of La Mesa; Mayor John Minto of City of Santee; and Mayor Judy Ritter and Council Member Amanda Young Rigby of City of Vista

Related City Policy:

- Environmental Regulatory & Conservation Issues Legislative Advocacy Position
- Protect Local Revenue Sources and Prevent Unfunded Mandates Guiding Principle for Legislative Advocacy

Analysis: The City of Santa Clara’s stormwater runoff travels through a network of creeks and rivers that flow into the San Francisco Bay. The Tijuana River infrastructure does not directly impact the City, although it is a benefit to protect the environment. The City should remain neutral because the Resolution doesn’t identify a corresponding funding source. There is potential that a program that is beneficial to the City may have its funding reduced in order to fund this project. For these reasons, staff recommends that Council takes no position on this Resolution.

Recommended Position: Take No Position

As stated, the staff recommended positions are consistent with existing City policies and adopted



Legislative Advocacy Positions and provides Councilmembers who serve on policy committees, on the resolutions committee, or as the City's voting delegate/alternates, guidance on how to vote on the issues as they pertain to City business.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

There is no fiscal impact other than staff time.

### **COORDINATION**

The report has been coordinated with the City Attorney's Office, Silicon Valley Power, and the Fire and Public Works Departments.

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

Approve "Take No Position" positions for the proposed Resolution #1, Call on the California Public Utilities Commission to Amend Rule 20A to Add Projects in Very High Fire Hazard Severity Zones to the List of Eligible Criteria and to Increase Funding Allocations for Rule 20A Projects, and Resolution #2, Call Upon the Federal and State Governments to Address the Devastating Impacts of International Transboundary Pollution Flows into the Southernmost Regions of California and the Pacific Ocean, and authorize the City's voting delegate/alternate to cast votes consistent with the City Council's adopted positions.

Reviewed by: Nadine Nader, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. League of California Cities 2019 Annual Conference Resolutions Packet



***Annual Conference  
Resolutions Packet***

***2019 Annual Conference Resolutions***



***Long Beach, California***

***October 16 – 18, 2019***

## INFORMATION AND PROCEDURES

**RESOLUTIONS CONTAINED IN THIS PACKET:** The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to League policy committees.

**POLICY COMMITTEES:** Two policy committees will meet at the Annual Conference to consider and take action on the resolutions referred to them. The committees are: Environmental Quality and Transportation, Communication & Public Works. The committees will meet from 9:00 – 11:00 a.m. on Wednesday, October 16, at the Hyatt Regency Long Beach. The sponsors of the resolutions have been notified of the time and location of the meeting.

**GENERAL RESOLUTIONS COMMITTEE:** This committee will meet at 1:00 p.m. on Thursday, October 17, at the Hyatt Regency Long Beach, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president. Please check in at the registration desk for room location.

**ANNUAL LUNCHEON/BUSINESS MEETING/GENERAL ASSEMBLY:** This meeting will be held at 12:30 p.m. on Friday, October 18, at the Long Beach Convention Center.

**PETITIONED RESOLUTIONS:** For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 17. Resolutions can be viewed on the League's Web site: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

Any questions concerning the resolutions procedures may be directed to Carly Shelby [cshelby@cacities.org](mailto:cshelby@cacities.org) 916-658-8279 or Nick Romo [nromo@cacities.org](mailto:nromo@cacities.org) 916-658-8232 at the League office.

## **GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS**

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

### **Guidelines for Annual Conference Resolutions**

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
  - (a) Focus public or media attention on an issue of major importance to cities.
  - (b) Establish a new direction for League policy by establishing general principles around which more detailed policies may be developed by policy committees and the board of directors.
  - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
  - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

## **LOCATION OF MEETINGS**

### **Policy Committee Meetings**

Wednesday, October 16, 9:00 – 11:00 a.m.

Hyatt Regency Long Beach

200 South Pine Avenue, Long Beach

### **The following committees will be meeting:**

1. Environmental Quality 10:00 - 11:00 a.m.
2. Transportation, Communication & Public Works 9:00 - 10:00 a.m.

### **General Resolutions Committee**

Thursday, October 17, 1:00 p.m.

Hyatt Regency Long Beach

200 South Pine Avenue, Long Beach

### **Annual Business Meeting and General Assembly Luncheon**

Friday, October 18, 12:30 p.m.

Long Beach Convention Center

300 East Ocean Boulevard, Long Beach

## KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3
		1 - Policy Committee Recommendation to General Resolutions Committee 2 – General Resolutions Committee 3 - General Assembly		

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### ENVIRONMENTAL QUALITY POLICY COMMITTEE

		1	2	3
1	Amendment to Rule 20A			
2	International Transboundary Pollution Flows			

### TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
1	Amendment to Rule 20A			

Information pertaining to the Annual Conference Resolutions will also be posted on each committee's page on the League website: [www.cacities.org](http://www.cacities.org). The entire Resolutions Packet is posted at: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

## KEY TO ACTIONS TAKEN ON RESOLUTIONS (*Continued*)

Resolutions have been grouped by policy committees to which they have been assigned.

### **KEY TO REVIEWING BODIES**

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

### **KEY TO ACTIONS TAKEN**

- |     |   |
|-----|---|
| A   | Approve   |
| D   | Disapprove  |
| N   | No Action   |
| R   | Refer to appropriate policy committee for study             |
| a   | Amend+  |
| Aa  | Approve as amended+   |
| Aaa | Approve with additional amendment(s)+                       |
| Ra  | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+                            |
| Da  | Amend (for clarity or brevity) and Disapprove+              |
| Na  | Amend (for clarity or brevity) and take No Action+          |
| W   | Withdrawn by Sponsor  |

### **ACTION FOOTNOTES**

- \* Subject matter covered in another resolution
- \*\* Existing League policy
- \*\*\* Local authority presently exists

### **Procedural Note:**

The League of California Cities resolution process at the Annual Conference is guided by League Bylaws. A helpful explanation of this process can be found on the League's website by clicking on this link: [Guidelines for the Annual Conference Resolutions Process](#).

## League of California Cities Resolution Process

### REGULAR RESOLUTIONS

Policy Committee Action	General Resolutions Committee Action	Calendar
Approve	Approve	Consent Calendar <sup>1</sup>
Approve	Disapprove or Refer	Regular Calendar <sup>2</sup>
Disapprove or Refer	Approve	Regular Calendar
Disapprove or Refer	Disapprove or Refer	Does not proceed to General Assembly

### PETITION RESOLUTIONS

Policy Committee Action	General Resolutions Committee Action	Calendar
Not Heard in Policy Committee	Approve	Consent Calendar
Not Heard in Policy Committee	Disapprove or Refer	Regular Calendar
Not Heard in Policy Committee	Disqualified per Bylaws Art. VI	Does not proceed to General Assembly

### **Resolutions**

- Submitted 60 days prior to conference *Bylaws Article VI, Sec. 4(a)*
- Signatures of at least 5 supporting cities or city officials submitted with the proposed resolution *Bylaws Article VI, Sec. 2*
- Assigned to policy committee(s) by League president *Bylaws Article VI, Sec. 4(b)(i)*
- Heard in policy committee(s) and report recommendation, if any, to GRC *Bylaws Article VI, Sec. 4(b)(ii)*
- Heard in GRC
  - Approved by policy committee(s) and GRC, goes on to General Assembly on consent calendar *2006 General Assembly Resolution Sec. 2(C)*
  - If amended/approved by all policy committee(s) to which it has been referred and disapproved by GRC, then goes on to General Assembly on the regular calendar. If not all policy committees to which it has been referred recommend amendment or approval, and the GRC disapproves or refers the resolution, the resolution does not move to the General Assembly *2006 General Assembly Resolution Sec. 2(A),(C); 1998 General Assembly Resolution, 1<sup>st</sup> Resolved Clause*
  - If disapproved by all policy committees to which it has been referred and disapproved by the GRC, resolution does not move to the General Assembly *2006 General Assembly Resolution Sec. 2(C)*
- Heard in General Assembly

<sup>1</sup> The consent calendar should only be used for resolutions where there is unanimity between the policy committees and the GRC that a resolution should be approved by the General Assembly, and therefore, it can be concluded that there will be less desire to debate the resolution on the floor.

<sup>2</sup> The regular calendar is for resolutions for which there is a difference in recommendations between the policy committees and the GRC.



### **Petitioned Resolutions**

- Submitted by voting delegate *Bylaws Article VI, Sec. 5 (a)*
- Must be signed by voting delegates representing 10% of the member cities *Bylaws Article VI, Sec. 5 (c)*
- Signatures confirmed by League staff
- Submitted to the League president for confirmation 24 hours before the beginning of the General Assembly. *Bylaws Article VI, Sec. 5 (d)*
- Petition to be reviewed by Parliamentarian for required signatures of voting delegates and for form and substance *Bylaws Article VI, Sec. 5(e)*
- Parliamentarian's report is presented to chair of GRC
- Will be heard at GRC for action (GRC cannot amend but may recommend by a majority vote to the GA technical or clarifying amendments) *2006 General Assembly Resolution sec. 6(A), (B)*
- GRC may disqualify if:
  - Non-germane to city issues
  - Identical or substantially similar in substance to a resolution already under consideration *Bylaws Article VI, Sec. 5(e), (f)*
- Heard in General Assembly
  - General Assembly will consider the resolution following the other resolutions<sup>3</sup> *Bylaws Article VI, Sec. 5(g)*
  - Substantive amendments that change the intent of the petitioned resolution may only be adopted by the GA *2006 General Assembly Resolution sec. 6(C)*

### **Voting Procedure in the General Assembly**

**Consent Calendar:** Resolution approved by Policy Committee(s) and GRC. Petitioned resolution approved by GRC)

- GRC Chair will be asked to give the report from the GRC and will ask for adoption of the GRC's recommendations
- Ask delegates if there is a desire to call out a resolution for discussion
- A voting delegate may make a motion to remove a resolution from the consent calendar for discussion
- If a motion is made to pull a resolution, the General Assembly votes on whether to pull the resolution from the consent calendar.
- If a majority of the General Assembly votes to pull the resolution, set "called out" reso(s) aside. If the motion fails, the resolution remains on the consent calendar.
- If reso(s) not called out, or after 'called out' reso is set aside, then ask for vote on remaining resos left on consent
- Move on to debate on reso(s) called out
- After debate, a vote is taken
- Voting delegates vote on resolutions by raising their voting cards.<sup>4</sup>

<sup>3</sup> Petitioned Resolutions on the Consent Calendar will be placed after all General Resolutions on the Consent Calendar. Petitioned Resolutions on the Regular Calendar will be placed after all General Resolutions on the Regular Calendar.

<sup>4</sup> Amendments to League bylaws require 2/3 vote

**Regular Calendar:** Regular resolutions approved by Policy Committee(s)<sup>5</sup>, and GRC recommends disapproval or referral; Regular resolutions disapproved or referred by Policy Committee(s)<sup>6</sup> and GRC approves; Petitioned resolutions disapproved or referred by the GRC.

- Open the floor to determine if a voting delegate wishes to debate a resolution on the regular calendar.
- If no voting delegate requests a debate on the resolution, a vote to ratify the recommendation of the GRC on the resolution is taken.
- Upon a motion by a voting delegate to debate a resolution, a debate shall be held if approved by a majority vote of the General Assembly. If a majority of the General Assembly to debate the resolution is not achieved, then a vote shall be taken on whether to ratify the GRC's recommendation. If a majority of the General Assembly approves of the motion to debate the resolution, debate will occur. After debate on the resolution, a vote is taken based upon the substitute motion that was made, if any, or on the question of ratifying the GRC's recommendation.
- Voting delegates vote by raising their voting cards.

<sup>5</sup> Applies in the instance where the GRC recommendation of disapproval or refer is counter to the recommendations of the policy committees.

<sup>6</sup> Applies in the instance where the GRC recommendation to approve is counter to the recommendations of the policy committees.

**1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES CALLING ON THE CALIFORNIA PUBLIC UTILITIES COMMISSION TO AMEND RULE 20A TO ADD PROJECTS IN VERY HIGH FIRE HAZARD SEVERITY ZONES TO THE LIST OF ELIGIBILITY CRITERIA AND TO INCREASE FUNDING ALLOCATIONS FOR RULE 20A PROJECTS**

Source: City of Rancho Palos Verdes

Concurrence of five or more cities/city officials

Cities: City of Hidden Hills, City of La Cañada Flintridge, City of Laguna Beach, City of Lakeport, City of Malibu, City of Moorpark, City of Nevada City, City of Palos Verdes Estates, City of Rolling Hills Estates, City of Rolling Hills, City of Ventura

Referred to: Environmental Quality Policy Committee; Transportation, Communications, and Public Works Policy Committee

**WHEREAS**, the California Public Utilities Commission regulates the undergrounding conversion of overhead utilities under Electric Tariff Rule 20 and;

**WHEREAS**, conversion projects deemed to have a public benefit are eligible to be funded by ratepayers under Rule 20A; and

**WHEREAS**, the criteria under Rule 20A largely restricts eligible projects to those along streets with high volumes of public traffic; and

**WHEREAS**, the cost of undergrounding projects that do not meet Rule 20A criteria is left mostly or entirely to property owners under other parts of Rule 20; and

**WHEREAS**, California is experiencing fire seasons of worsening severity; and

**WHEREAS**, undergrounding overhead utilities that can spark brush fires is an important tool in preventing them and offers a public benefit; and

**WHEREAS**, brush fires are not restricted to starting near streets with high volumes of public traffic; and

**WHEREAS**, expanding Rule 20A criteria to include Very High Fire Hazard Severity Zones would facilitate undergrounding projects that would help prevent fires; and

**WHEREAS**, expanding Rule 20A criteria as described above and increasing funding allocations for Rule 20A projects would lead to more undergrounding in Very High Fire Hazard Severity Zones; and now therefore let it be,

**RESOLVED** that the League of California Cities calls on the California Public Utilities Commission to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility and to increase funding allocations for Rule 20A projects.

## **Background Information on Resolution No. 1**

**Source:** City of Rancho Palos Verdes

### **Background:**

Rancho Palos Verdes is the most populated California city to have 90 percent or more of residents living in a Cal Fire-designated Very High Fire Hazard Severity Zone. Over the years, the Palos Verdes Peninsula has seen numerous brush fires that were determined to be caused by electrical utility equipment.

Across the state, some of the most destructive and deadly wildfires were sparked by power equipment. But when it comes to undergrounding overhead utilities, fire safety is not taken into account when considering using ratepayer funds to pay for these projects under California's Electric Tariff Rule 20 program. The program was largely intended to address visual blight when it was implemented in 1967. Under Rule 20A, utilities must allocate ratepayer funds to undergrounding conversion projects chosen by local governments that have a public benefit and meet one or more of the following criteria:

- Eliminate an unusually heavy concentration of overhead lines;
- Involve a street or road with a high volume of public traffic;
- Benefit a civic or public recreation area or area of unusual scenic interest; and,
- Be listed as an arterial street or major collector as defined in the Governor's Office of Planning and Research (OPR) Guidelines.

As we know, brush fires are not restricted to erupting in these limited areas. California's fire season has worsened in severity in recent years, claiming dozens of lives and destroying tens of thousands of structures in 2018 alone.

Excluding fire safety from Rule 20A eligibility criteria puts the task of undergrounding power lines in Very High Fire Hazard Severity Zones squarely on property owners who are proactive, willing and able to foot the bill.

The proposed resolution calls on the California Public Utilities Commission to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the proposed resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

If adopted, utilities will be incentivized to prioritize undergrounding projects that could potentially save millions of dollars and many lives.

## **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Rony Berdugo, Legislative Representative, Derek Dolfie, Legislative Representative, Caroline Cirrincione, Legislative Policy Analyst  
Committees: Environmental Quality; Transportation, Communications, and Public Works

### **Summary:**

This Resolution, in response to intensifying fire seasons and hazards associated with exposed energized utility lines, proposes that the League of California Cities (League) call upon the California Public Utilities Commission (CPUC) to amend the Rule 20A program by expanding the criteria for undergrounding overhead utilities to include projects in Very High Fire Hazard Severity Zones (VHFHSZ). This Resolution also proposes that the League call upon the CPUC to increase utilities' funding allocations for Rule 20A projects.

### **Background**

#### **California Wildfires and Utilities**

Over the last several years, the increasing severity and frequency of California's wildfires have prompted state and local governments to seek urgent prevention and mitigation actions. Record breaking wildfires in Northern and Southern California in both 2017 and 2018 have caused destruction and loss of life. This severe fire trend has local officials seeking solutions to combat what is now a year-round fire season exacerbated by years of drought, intense weather patterns, untamed vegetation and global warming.

These conditions create a dangerous catalyst for wildfires caused by utilities as extreme wind and weather events make downed power lines more of a risk. In response to recent catastrophic wildfires, Governor Newsom established a Strike Force tasked with developing a "comprehensive roadmap" to address issues related to wildfires, climate change, and utilities. [The Strike Force report](#) acknowledges that measures to harden the electrical grid are critical to wildfire risk management. A key utility hardening strategy: undergrounding lines in extreme high-fire areas.

Governor Newsom's Wildfire Strike Force program report concludes, "It's not a question of "if" wildfire will strike, but "when."

#### **Very High Fire Hazard Severity Zones**

This Resolution seeks to expand the undergrounding of overhead utility lines in VHFHSZ. California [Government Code Section 51178](#) requires the Director of the California Department of Forestry and Fire Protection (CalFIRE) to identify areas in the state as VHFHSZ based on the potential fire hazard in those areas. VHFHSZ are determined based on fuel loading, slope, fire weather, and other relevant factors. These zones are in both local responsibility areas and state responsibility areas. Maps of the statewide and county by county VHFHSZ can be found [here](#).<sup>1</sup>

<sup>1</sup> <https://osfm.fire.ca.gov/divisions/wildfire-prevention-planning-engineering/wildland-hazards-building-codes/fire-hazard-severity-zones-maps/>

More than 25 million acres of California wildlands are classified under very high or extreme fire threat. Approximately 25 percent of the state's population, 11 million people, live in those high-risk areas. Additionally, over 350,000 Californians live in cities that are nearly encompassed within Cal Fire's maps of VHFHSZ. Similar to the proponents of this Resolution, City of Rancho Palos Verdes, over 75 communities have 90 percent or more of residents living in a VHFHSZ.

### **CPUC Rule 20 Program**

The CPUC's Rule 20 program lays out the guidelines and procedures for converting overhead electric and telecommunication facilities to underground electric facilities. Rule 20 funding and criteria is provided at four levels. Levels A, B, and C, reflect progressively diminishing ratepayer funding for undergrounding projects. Recently added Rule 20D is a relatively new program that is specific to San Diego Gas and Electric (SDG&E), which was created in response to the destructive 2007 wildfires. Each of these levels will be discussed below:

### **Rule 20A**

The first California overhead conversion program, Rule 20A, was created in 1967 under then Governor Ronald Reagan. The program was created to provide a consistent and structured means of undergrounding utility lines throughout the state with costs covered broadly by utility ratepayers.

Each year, Investor Owned Utilities (IOUs) propose their Rule 20A allocation amounts to the CPUC during annual general rate case proceedings. In this process, IOUs propose revised utility customer rates based on expected service costs, new energy procurement and projects for the following year, including Rule 20 allocations. The CPUC then reviews, amends, and approves IOU rates. Currently, the cumulative budgeted amount for Rule 20A for Pacific Gas and Electric (PG&E), Southern California Edison (SCE), and San Diego Gas and Electric (SDG&E) totals around \$95.7 million.

The funding set aside by IOUs for Rule 20A is allocated to local governments through a credit system, with each credit holding a value to be used solely for the costs of an undergrounding project. The credit system was created so that local governments and IOUs can complete undergrounding projects without municipal financing. Through Rule 20A, municipalities that have developed and received city council approval for an undergrounding plan receive annual credits from the IOU in their service area. At the last count by the CPUC, over 500 local governments (cities and counties) participate in the credit system.

While these credits have no inherent monetary value, they can be traded in or banked for the conversion of overhead lines. Municipalities can choose to accumulate their credits until their credit balance is sufficient to cover these conversion projects, or choose to borrow future undergrounding allocations for a period of up to five years. Once the cumulative balance of credits is sufficient to cover the cost of a conversion project, the municipality and the utility can move forward with the undergrounding. All of the planning, design, and construction is performed by the participating utility. Upon the completion of an undergrounding project, the utility is compensated through the local government's Rule 20A credits.

At the outset of the program, the amount of allocated credits were determined by a formula which factored in the number of utility meters within a municipality in comparison to the utilities' service territory. However, in recent years the formula has changed. Credit allocations for IOUs, except for PG&E, are now determined based on the allocation a city or county received in 1990 and is then adjusted for the following factors:

- 50% of the *change from the 1990* total budgeted amount is allocated for the ratio of the number of overhead meters in any city or unincorporated area to the total system overhead meters; and
- 50% of the *change from the 1990* total budgeted amount is allocated for the ratio of the number of meters (which includes older homes that have overhead services, and newer homes with completely underground services) in any city or the unincorporated area to the total system meters.

As noted, PG&E has a different funding formula for their Rule 20A credit allocations as they are not tied to the 1990 base allocation. Prior to 2011, PG&E was allocating approximately five to six percent of its revenue to the Rule 20A program. The CPUC decided in 2011 that PG&E's Rule 20A allocations should be reduced by almost half in an effort to decrease the growing accumulation of credits amongst local governments. Since 2011, PG&E's annual allocations for Rule 20A have been around \$41.3 million annually, which is between two and three percent of their total revenue.

### **Criteria for Rule 20A Projects**

For an undergrounding project to qualify for the Rule 20A program, there are several criteria that need to be met. The project must have a public benefit and:

1. Eliminate an unusually heavy concentration of overhead lines
2. Involve a street or road with a high volume of public traffic
3. Benefit a civic or public recreation area or area of unusual scenic interest,
4. Be listed as an arterial street or major collector as defined in the Governor's Office of Planning and Research (OPR) Guidelines

Notably, fire safety is excluded from the list of criteria that favors aesthetic and other public safety projects.

### **Rule 20A Credit System Imbalance Threatens Program Effectiveness**

Allocations are made by utilities each year for Rule 20A credits. These current budget allocations total \$95.7 million a year. Currently, the cumulative balance of credits throughout the state totals over \$1 billion dollars. The Rule 20A cumulative balances aggregated by region can be found [here](#).<sup>2</sup>

<sup>2</sup> Program Review, California Overhead Conversion Program, Rule 20A for Years 2011-2015, "The Billion Dollar Risk," California Public Utilities Commission.  
[https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/About\\_Us/Organization/Divisions/Policy\\_and\\_Planning/PPD\\_Work\\_Products\\_\(2014\\_forward\)\(1\)/PPD\\_Rule\\_20-A.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Policy_and_Planning/PPD_Work_Products_(2014_forward)(1)/PPD_Rule_20-A.pdf)

Note: The existing credit allocation formulas do not consider a municipality's need or plans for overhead conversion projects, resulting in large credit balances in some jurisdictions.

Cities and counties are, however, able to trade or sell unallocated Rule 20A credits if they will not be used to fund local undergrounding projects. There have been several cases where one agency has sold their unused credits, often for less than the full dollar value of the credits themselves to another agency.

### **Rule 20B**

Rule 20B projects are those that do not fit the Rule 20A criteria, but do, however, involve both sides of the street for at least 600 feet. These projects are typically done in conjunction with larger developments and are mostly paid for by the developer or applicant. Additionally, the applicant is responsible for the installation.

### **Rule 20C**

Rule 20C projects are usually small projects that involve property owners. The majority of the cost is usually borne by the applicants. Rule 20C applies when the project does not qualify for either Rule 20A or Rule 20B.

### **Rule 20D--Wildfire Mitigation Undergrounding Program**

Rule 20D was approved by the CPUC in January of 2014 and only applies to SDG&E. The Rule 20D program was established largely in response to the destructive wildfires that occurred in San Diego in 2007 as a wildfire mitigation undergrounding program. According to SDG&E, the objective of the Rule 20D undergrounding is exclusively for fire hardening as opposed to aesthetics. The program is limited in scope and is restricted to communities in SDG&E's Fire Threat Zone (now referred to as the [High Fire Threat District or HFTD](#)). As of this time, the program has yet to yield any projects and no projects are currently planned.

For an undergrounding project to qualify for the Rule 20D program, a minimum of three of the following criteria must be met. The project must be near, within, or impactful to:

- Critical electric infrastructure
- Remaining useful life of electric infrastructure
- Exposure to vegetation or tree contact
- Density and proximity of fuel
- Critical surrounding non-electric assets (including structures and sensitive environmental areas)
- Service to public agencies
- Accessibility for firefighters

Similar to Rule 20A, SDG&E must allocate funding each year through their general rate case proceedings to Rule 20D to be approved by the CPUC. This funding is separate from the allocations SDG&E makes for Rule 20A. However, the process of distributing this funding to localities is different. The amount of funding allocated to each city and county for Rule 20D is based on the ratio of the number of miles of overhead lines in SDG&E Fire Threat Zones in a city or county to the total miles of SDG&E overhead lines in the entire SDG&E fire zone. The



Rule 20D program is administered by the utility consistent with the existing reporting, engineering, accounting, and management practices for Rule 20A.

The Committee may want to consider whether Rule 20D should instead be expanded, adapted, or further utilized to support funding for overhead conversions within VHFHSZ throughout the state.

**Fiscal Impact:**

The costs to the State associated with this Resolution will be related to the staff and programmatic costs to the CPUC to take the necessary measures to consider and adopt changes to Rule 20A to include projects in VHFHSZ to the list of criteria for eligibility.

This Resolution calls for an unspecified increase in funding for Rule 20A projects, inferring that portions of increased funds will go towards newly eligible high fire hazard zones. While the Resolution does not request a specific amount be allocated, it can be assumed that these increased costs will be supported by utility ratepayers. According to the CPUC, the annual allocations towards Rule 20A are \$95.7 million.

The CPUC currently reports a cumulative credit surplus valued at roughly \$1 billion that in various regions, given the approval of expanded eligibility called for by this Resolution, could be used to supplement and reduce the level of new dollars needed to make a significant impact in VHFHSZ. The CPUC follows that overhead conversion projects range from \$93,000 per mile for rural construction to \$5 million per mile for urban construction.

The Resolution states that “California is experiencing fire seasons of worsening severity” which is supported by not only the tremendous loss of property and life from recent wildfires, but also in the rising costs associated with clean up, recovery, and other economic losses with high estimates in the hundreds of billions of dollars.

The Committee may wish to consider the costs associated with undergrounding utility lines in relation to the costs associated with past wildfires and wildfires to come.

**Comments:**

***CPUC Currently Exploring Revisions to Rule 20***

In May 2017, the CPUC issued an Order Instituting Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters. The CPUC will primarily focus on revisions to Rule 20A but may make conforming changes to other parts of Rule 20. The League is a party in these proceedings will provide comments.

***Beyond Rule 20A: Additional Options for Funding Undergrounding Projects***

There are various ways in which cities can generate funding for undergrounding projects that fall outside of the scope of Rule 20A. At the local level, cities can choose to forgo the Rule 20A process and opt to use their own General Fund money for undergrounding. Other options are also discussed below:

### ***Rule 20D Expansion***

The City of Berkeley in a 2018 study titled [“Conceptual Study for Undergrounding Utility Wires in Berkeley.”](#) found that the city could possibly qualify for Rule 20D funding if they actively pursued this opportunity in partnership with PG&E and the CPUC.

One of the study’s recommendations is to advocate for release of 20D funds (now earmarked exclusively for SDG&E) to be used for more aggressive fire hardening techniques for above-ground utility poles and equipment, for undergrounding power lines, and for more aggressive utility pole and vegetation management practices in the Very High Hazard Fire Zone within Berkeley’s city limits.

As an alternative to changing the criteria for Rule 20A, the Committee may wish to consider whether there is the opportunity to advocate for the expansion of Rule 20D funding more broadly, expanding its reach to all IOU territories.

### ***Franchise Surcharge Fees***

Aside from Rule 20 allocations, cities can generate funding for undergrounding through franchise fee surcharges. For example, SDG&E currently operates under a 50-year City franchise that was granted in 1970. Under the franchises approved by the San Diego City Council in December 1970, SDG&E agreed to pay a franchise fee to the City equivalent to 3% of its gross receipts from the sales of both natural gas and electricity for 30 years.

These fees were renegotiated in 2000 and in 2001 an agreement was between the City of San Diego, SDG&E, and the CPUC to extend the existing franchise fee to include revenues collected from surcharges. SDG&E requested an increase of 3.88% to its existing electric franchise fee surcharge. The bulk, 3.53% of this increase is to be used for underground conversion of overhead electric wires.

Based on SDG&E's revenue projections, the increase would result in an additional surcharge revenue amount of approximately \$36.5 million per year. SDG&E estimates that this would create a monthly increase of approximately \$3.00 to a typical residential customer's electric bill. These surcharge revenues would pay for additional undergrounding projects including those that do not meet the Rule 20A criteria. The City of Santa Barbara has also adopted a similar franchise surcharge fee.

Having this funding source allows the City of San Diego to underground significantly more miles of above ground utility lines than other municipalities. However, the surcharge is currently being challenged in court, as it is argued that the City had SDG&E impose a tax without a ballot measure.

### ***Utility Bankruptcy and Undergrounding Funding***

In considering this Resolution, it is important to understand that Rule 20A allocations have been more substantial in the past. As mentioned earlier, prior to 2011, PG&E was allocating approximately 5% to 6% of its revenue to the Rule 20A program. Therefore, it is not unreasonable to encourage an increase in Rule 20A allocations as history shows that utilities had the capacity to do so in the past.

However, in a time where IOUs such as PG&E are facing bankruptcy as the result of utility caused wildfires, there is the possibility that expanding rule 20A funding will generate more costs for the ratepayers.

### **Questions to Consider:**

- 1) Is Rule 20A or Rule 20D the more appropriate program to advocate for such an expansion?
- 2) Are there any wildfire risks outside of VHFHSZ that could be mitigated by undergrounding projects?

### **Existing League Policy:**

#### ***Public Safety:***

The League supports additional funding for local agencies to recoup the costs associated with fire safety in the community and timely mutual aid reimbursement for disaster response services in other jurisdictions. (pg. 43)

The League supports the fire service mission of saving lives and protecting property through fire prevention, disaster preparedness, hazardous-materials mitigation, specialized rescue, etc., as well as cities' authority and discretion to provide all emergency services to their communities. (pg. 43)

#### ***Transportation, Communication, and Public Works:***

Existing telecommunications providers and new entrants shall adhere to local city policies on public utility undergrounding. (pg. 54)

The League supports protecting the additional funding for local transportation and other critical unmet infrastructure needs. (pg. 51)

The League supports innovative strategies including public private partnerships at the state and local levels to enhance public works funding. (pg. 52)

#### ***Environmental Quality***

The League opposes any legislation that interferes with local utility rate setting authority and opposes any legislation that restricts the ability of a city to transfer revenue from a utility (or other enterprise activity) to the city's general fund. (pg. 9)

Cities should continue to have the authority to issue franchises and any program should be at least revenue neutral relative to revenue currently received from franchises. (pg. 9)

The League is concerned about the impacts of escalating energy prices on low income residents and small businesses. The League supports energy pricing structures and other mechanisms to soften the impacts on this segment of our community. (pg. 10)

### ***2019 Strategic Goals***

Improve Disaster Preparedness, Recovery and Climate Resiliency.

- Provide resources to cities and expand partnerships to better prepare for and recover from wildfires, seismic events, erosion, mudslides and other disasters.
- Improve community preparedness and resiliency to respond to climate-related, natural and man-made disasters.

### **Support:**

The following letters of concurrence were received:

The City of Hidden Hills

The City of La Cañada Flintridge

The City of Laguna Beach

The City of Lakeport

The City of Malibu

The City of Moorpark

The City of Nevada City

The City of Palos Verdes Estates

The City of Rolling Hills Estates

The City of Rolling Hills

The City of Ventura

# **LETTERS OF CONCURRENCE**

Resolution No. 1

Amendment to Rule 20A



## City of Hidden Hills

6165 Spring Valley Road \* Hidden Hills, California 91302  
(818) 888-9281 \* Fax (818) 719-0083

August 14, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, California 95814

Dear President Arbuckle:

The City of Hidden Hills supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

Larry G. Weber  
Mayor



City Council  
Leonard Pieroni, Mayor  
Gregory C. Brown, Mayor Pro Tem  
Jonathan C. Curtis  
Michael T. Davitt  
Terry M. Walker

August 14, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear President Arbuckle:

The City of La Cañada Flintridge supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The City of La Cañada Flintridge is one of the few Southern California cities in which 100% of the community within a Very High Fire Hazard Severity Zone. The City, in 1987, committed 100% of its 20A allocation for forty-five years from this year for a major downtown undergrounding project. Therefore, the only way our City can directly benefit from this Resolution is if there is an additional annual increased allocation for this purpose. Due to the extreme threat the City experienced at the time of the Station Fire, the City is keenly aware of the damage a fire may potentially cause, whether from utility issues or from natural causes. The City strongly supports any effort, including this Resolution, to reduce fire danger for the City's residents.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly with the City of La Cañada Flintridge in support.

Sincerely,

Leonard Pieroni  
Mayor





July 25, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear President Arbuckle:

The City of Laguna Beach supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. Ten to the Top 20 most destructive fires in California were caused by electrical sources. The California's Rule 20A program, which allows local governments to pay for undergrounding of utilities costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it. We also believe that this program should redirect unused Rule 20A allocations from cities who have no undergrounding projects planned to the cities in Very High Fire Hazard Severity zones.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects. The City of Laguna Beach recommends that the resolution also be amended to call on the CPUC to redirect unused Rule 20A allocations from cities who have no undergrounding projects planned to the cities in Very High Fire Hazard Severity zones.

Nearly 90% of the City of Laguna Beach land area is designated under State Law and local ordinance as Very High Fire Hazard Severity Zone. While the City has used Rule 20A and 20B funding in the past to underground more than half of its overhead utilities, sufficient funding is not available to underground the remaining parts of the City.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.





July 25, 2019  
Page 2

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Whalen", with a stylized, cursive script.

Bob Whalen  
Mayor

## **CITY OF LAKEPORT**

*Over 125 years of community  
pride, progress and service*



August 7, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear President Arbuckle:

The City of Lakeport supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

Tim Barnes  
Mayor  
City of Lakeport

A handwritten signature in blue ink, appearing to read "Tim Barnes", is written over a faint, circular official stamp.



# City of Malibu

Jefferson Wagner, Mayor

23825 Stuart Ranch Road · Malibu, California · 90265-4861  
Phone (310) 456-2489 · Fax (310) 456-3356 · [www.malibucity.org](http://www.malibucity.org)

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August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

RE: City of Rancho Palos Verdes Proposed Resolution to Amend California Public Utilities Commission Rule 20A – SUPPORT

Dear Ms. Arbuckle:

At its Regular meeting on August 12, 2019, the Malibu City Council unanimously voted to support the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state, but California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, as well as willing and able to foot the bill. The City of Malibu agrees with Rancho Palos Verdes that Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission (CPUC) should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects. As a recent series of news stories on wildfire preparedness in California pointed out, there are more than 75 communities across the state with populations over 1,000, including Rancho Palos Verdes and Malibu, where at least 90 percent of residents live in a Cal Fire-designated Very High Fire Hazard Severity Zone.

It is well-known that electric utility equipment is a common fire source, and has sparked some of the most destructive blazes in our state's history. Moving power lines underground is, therefore, a critical tool in preventing them. Currently, Rule 20A primarily addresses visual blight, but with fire seasons worsening, it is key that fire safety also be considered when local governments pursue Rule 20A projects, and that annual funding allocations for the program be expanded.


It is worth noting that the State does have a program, Rule 20D, that factors in fire safety for funding undergrounding projects. However, this is limited to San Diego Gas & Electric Company projects in certain areas only. This needs to be expanded to include projects in all projects within designated Very High Fire Hazard Severity Zones.

*Rancho PV League Resolution*  
*Amend Rule 20A*  
*August 15, 2019*  
*Page 2 of 2*

The proposed resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, the City of Malibu strongly concurs that the resolution should go before the General Assembly.

Sincerely,



Jefferson Wagner  
Mayor

Cc: Honorable Members of the Malibu City Council  
Reva Feldman, City Manager  
Megan Barnes, City of Rancho Palos Verdes, [mbarnes@rpvca.gov](mailto:mbarnes@rpvca.gov)



# CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021  
Main City Phone Number (805) 517-6200 | Fax (805) 532-2205 | moorpark@moorparkca.gov

July 24, 2019

**SUBMITTED ELECTRONICALLY**

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

RE: SUPPORT FOR RANCHO PALOS VERDES RESOLUTION RE: POWER LINE  
UNDERGROUNDING

Dear President Arbuckle:

The City of Moorpark supports the City of Rancho Palos Verdes effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

All cities in Ventura County, including Moorpark, have wildfire prevention fresh in our memories following the highly destructive 2017-2018 Thomas Fire, which was caused by above-ground power lines. The 2018 Woolsey Fire similarly affected Ventura County, and lawsuits have been filed alleging it was also caused by above-ground power lines. Each of these fires caused billions of dollars in damages and highlight the importance of undergrounding power lines.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

A handwritten signature in blue ink that reads "Janice Parvin". The signature is fluid and cursive, with the first name "Janice" and last name "Parvin" clearly distinguishable.

Janice Parvin  
Mayor

cc: City Council  
City Manager



Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear President Arbuckle:

The City of Nevada City supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission (CPUC) should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The City of Nevada City would also like to add that the local agency be given the power to use private firms to do design, inspect and construct Rule 20A projects in local jurisdiction rather than be required to use the designated local utility. In addition, the City of Nevada City wants the CPUC to allow local jurisdictions to transfer excess funds between agencies to better serve projects in high fire hazard severity zones.

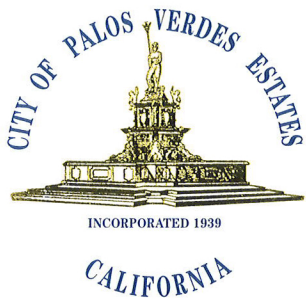
The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

Reinette Senum  
Mayor  
City of Nevada City





CITY OF  
*Palos Verdes Estates*

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July 25, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear President Arbuckle:

The City of Palos Verdes Estates supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's current Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

Mayor Kenneth J. Kao  
City of Palos Verdes Estates

cc: PVE City Council  
PVE Interim City Manager Petru  
RPV City Manager Willmore





**City of  
Rolling Hills Estates**

**Judith Mitchell**  
*Mayor*

**Velveth Schmitz**  
*Mayor Pro Tem*

**Britt Huff**  
*Council Member*

**Frank V. Zerunyan**  
*Council Member*

**Steven Zuckerman**  
*Council Member*

August 14, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear President Arbuckle:

The City of Rolling Hills Estates supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

  
Judith Mitchell  
Mayor



# City of Rolling Hills

INCORPORATED JANUARY 24, 1957

NO. 2 PORTUGUESE BEND ROAD  
ROLLING HILLS, CALIF. 90274  
(310) 377-1521  
FAX: (310) 377-7288

August 14, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear Board of Directors:

The City of Rolling Hills supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,

Leah Mirsch  
Mayor

July 29, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St., Ste. 400  
Sacramento, CA 95814

Dear President Arbuckle:

The City of Ventura supports the City of Rancho Palos Verdes' effort to bring a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.


Undergrounding power lines is an important tool in preventing destructive wildfires that have devastated communities across our state. But California's Rule 20A program, which allows local governments to pay for these costly projects with ratepayer funds, does not factor in fire safety for eligibility. Unless projects meet the program's limited eligibility criteria, they are left to be funded by property owners who are proactive, willing and able to foot the bill. We believe Rule 20A offers an important opportunity for fire prevention and that the California Public Utilities Commission should expand this program so more communities can utilize it.

The resolution calls on the CPUC to amend Rule 20A to include projects in Very High Fire Hazard Severity Zones to the list of criteria for eligibility. To facilitate more undergrounding projects in these high-risk zones, the resolution also calls on the CPUC to increase funding allocations for Rule 20A projects.

The resolution is also in line with one of the League's 2019 Strategic Goals of improving disaster preparedness, recovery and climate resiliency.

For these reasons, we concur that the resolution should go before the General Assembly.

Sincerely,



Alex D. McIntyre  
City Manager

## **2. A RESOLUTION CALLING UPON THE FEDERAL AND STATE GOVERNMENTS TO ADDRESS THE DEVASTATING IMPACTS OF INTERNATIONAL TRANSBOUNDARY POLLUTION FLOWS INTO THE SOUTHERNMOST REGIONS OF CALIFORNIA AND THE PACIFIC OCEAN**

Source: San Diego County Division

Concurrence of five or more cities/city officials

Cities: Calexico; Coronado; Imperial Beach; San Diego

Individual City Officials: City of Brawley: Mayor Pro Tem Norma Kastner-Jauregui; Council Members Sam Couchman, Luke Hamby, and George Nava. City of Escondido: Deputy Mayor Consuelo Martinez. City of La Mesa: Council Member Bill Baber. City of Santee: Mayor John Minto, City of Vista: Mayor Judy Ritter and Council Member Amanda Young Rigby

Referred to: Environmental Quality Policy Committee

**WHEREAS**, international transboundary rivers that carry water across the border from Mexico into Southern California are a major source of sewage, trash, chemicals, heavy metals and toxins; and

**WHEREAS**, transboundary flows threaten the health of residents in the United States and Mexico, harm important estuarine land and water of international significance, force closure of beaches, damage farmland, adversely impact the South San Diego County and Imperial County economy; compromise border security, and directly affect U.S. military readiness; and

**WHEREAS**, a significant amount of untreated sewage, sediment, hazardous chemicals and trash have been entering southern California through both the Tijuana River Watershed (75 percent of which is within Mexico) and New River flowing into southern California's coastal waterways and residential and agricultural communities in Imperial County eventually draining into the Salton Sea since the 1930s; and

**WHEREAS**, in February 2017, an estimated 143 million gallons of raw sewage flowed into the Tijuana River and ran downstream into the Pacific Ocean and similar cross border flows have caused beach closures at Border Field State Park that include 211 days in 2015; 162 days in 2016; 168 days in 2017; 101 days in 2018; and 187 days to date for 2019 as well as closure of a number of other beaches along the Pacific coastline each of those years; and

**WHEREAS**, approximately 132 million gallons of raw sewage has discharged into the New River flowing into California through communities in Imperial County, with 122 million gallons of it discharged in a 6-day period in early 2017; and

**WHEREAS**, the presence of pollution on state and federal public lands is creating unsafe conditions for visitors; these lands are taxpayer supported and intended to be managed for recreation, resource conservation and the enjoyment by the public, and

**WHEREAS**, the current insufficient and degrading infrastructure in the border zone poses a significant risk to the public health and safety of residents and the environment on both

sides of the border, and places the economic stress on cities that are struggling to mitigate the negative impacts of pollution; and

**WHEREAS**, the 1944 treaty between the United States and Mexico regarding *Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande* allocates flows on trans-border rivers between Mexico and the United States, and provides that the nations, through their respective sections of the International Boundary Water Commission shall give control of sanitation in cross border flows the highest priority; and

**WHEREAS**, in 1993, the United States and Mexico entered into the *Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank* which created the North American Development Bank (NADB) to certify and fund environmental infrastructure projects in border-area communities; and

**WHEREAS**, public concerns in response to widespread threats to public health and safety, damage to fish and wildlife resources and degradation to California's environment resulting from transboundary river flow pollution in the southernmost regions of the state requires urgent action by the Federal and State governments, and

**WHEREAS**, Congress authorized funding under the U.S. Environmental Protection Agency's (EPA) Safe Drinking Water Act and established the State and Tribal Assistance Grants (STAG) program for the U.S.-Mexico Border Water Infrastructure Program (BWIP) in 1996 to provide grants for high-priority water, wastewater, and storm-water infrastructure projects within 100 kilometers of the southern border; and

**WHEREAS**, the EPA administers the STAG and BWIP programs, and coordinates with the North American Development Bank (NADB) to allocate BWIP grant funds to projects in the border zone; and

**WHEREAS**, since its inception, the BWIP program has provided funding for projects in California, Arizona, New Mexico and Texas that would not have been constructed without the grant program; and

**WHEREAS**, the BWIP program was initially funded at \$100 million per year, but, over the last 20 years, has been continuously reduced to its current level of \$10 million; and

**WHEREAS**, in its FY 2020 Budget Request, the Administration proposed to eliminate the BWIP program; and

**WHEREAS**, officials from EPA Region 9, covering California, have identified a multitude of BWIP-eligible projects along the southern border totaling over \$300 million; and

**WHEREAS**, without federal partnership through the BWIP program and state support to address pollution, cities that are impacted by transboundary sewage and toxic waste flows are

left with limited resources to address a critical pollution and public health issue and limited legal remedies to address the problem; and

**WHEREAS**, the National Association of Counties, (NACo) at their Annual Conference on July 15, 2019 and the U.S. Conference of Mayors at their Annual Conference on in July 1, 2019 both enacted resolutions calling on the federal and state governments to work together to fund and address this environmental crisis; and

**WHEREAS**, local governments and the public support the State's primary objectives in complying with environmental laws including the Clean Water Act, Porter-Cologne Water Quality Control Act, and Endangered Species Act and are supported by substantial public investments at all levels of government to maintain a healthy and sustainable environment for future residents of California, and

**WHEREAS**, League of California Cities policy has long supported efforts to ensure water quality and oppose contamination of water resources; and

**NOW, THEREFORE, BE IT RESOLVED** at the League General Assembly, assembled at the League Annual Conference on October 18, 2019 in Long Beach, that the League calls upon the Federal and State governments to restore and ensure proper funding to the U.S- Mexico Border Water Infrastructure Program (BWIP) and recommit to working bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental, and safety concerns in communities along California's southern border impacting the state.



## **Background Information on Resolution No. 2**

Source: San Diego County Division

### **Background:**

Along California's southern border with Mexico, the New River in Imperial County and the Tijuana River in San Diego County are a major sources of raw sewage, trash, chemicals, heavy metals, and toxins that pollute local communities. Sewage contaminated flows in the Tijuana River have resulted in significant impacts to beach recreation that includes the closure of Border Field State Beach for more than 800 days over the last 5-years. Similarly, contaminated flows in the New River presents comparable hazards, impacts farm land, and contributes to the ongoing crisis in the Salton Sea. These transboundary flows threaten the health of residents in California and Mexico, harms the ecosystem, force closures at beaches, damage farm land, makes people sick, and adversely affects the economy of border communities. The root cause of this cross border pollution is from insufficient or failing water and wastewater infrastructure in the border zone and inadequate federal action to address the problem through existing border programs.

The severity of cross border pollution has continued to increase, due in part to the rapid growth of urban centers since the passage of the North American Free Trade Agreement (NAFTA). While economic growth has contributed to greater employment, the environmental infrastructure of the region has not kept pace, which is why Congress authorized the Border Water Infrastructure Program (BWIP) in 1996. The U.S. Environmental Protection Agency (EPA) administers the BWIP and coordinates with the North American Development Bank (NADB) to provide financing and technical support for projects on both sides of the U.S./Mexico border. Unfortunately, the current BWIP funding at \$10 million per year is only a fraction of the initial program budget that shares funding with the entire 2,000 mile Mexican border with California, Arizona, New Mexico and Texas. EPA officials from Region 9 have identified an immediate need for BWIP projects totaling over \$300 million just for California. Without federal partnerships through the BWIP and state support to address cross border pollution, cities that are impacted by transboundary sewage and toxic waste flows are left with limited resources to address a critical pollution and public health issue.

The International Boundary and Water Commission (IBWC) is another important federal stakeholder that, under the Treaty of 1944 with Mexico, must address border sanitation problems. While IBWC currently captures and treats some of the pollution generated in Mexico, it also redirects cross border flows without treatment directly into California.

Improving environmental and public health conditions for communities along the border is essential for maintaining strong border economy with Mexico. The IBWC, EPA, and NADB are the important federal partners with existing bi-national programs that are able to immediately implement solutions on cross border pollution. California is in a unique position to take the lead and work with local and federal partners to implement real solutions that will addresses the long standing and escalating water quality crisis along the border.

For those reasons, the cities of Imperial Beach and Coronado requested the San Diego County Division to propose a resolution at the 2019 League Annual Conference calling upon the federal

and state governments to address the devastating impacts of international transboundary pollution flows into the waterways of the southernmost regions of California, San Diego and Imperial Counties and the Pacific Ocean.

On August 12, 2019 at the regularly scheduled meeting of the San Diego County Division, the membership unanimously endorsed submittal of the resolution, with close to 75% membership present and voting.

The Imperial County Division does not have a schedule meeting until after the deadline to submit proposed resolutions. However, the City of Calexico, which is most directly impacted by initial pollution flow of the New River from Mexicali, sent a letter in concurrence of this resolution as well as numerous city official from cities within Imperial County and the Imperial County Board of Supervisors. The League Imperial County Division will place a vote to support this resolution on the agenda of their September 26, 2019 meeting.



## **League of California Cities Staff Analysis on Resolution No. 2**

Staff: Derek Dolfie, Legislative Representative  
Carly Shelby, Legislative and Policy Development Assistant  
Committees: Environmental Quality

### **Summary:**

This Resolution states that the League of California Cities should call upon the State and Federal governments to restore and ensure proper funding for the U.S. – Mexico Border Water Infrastructure Program (BWIP) and work bi-nationally to address water quality issues resulting from transboundary flows from Mexico’s Tijuana River into the United States containing untreated sewage, polluted sediment, and trash.

### **Background:**

The League of California Cities’ San Diego County Division is sponsoring this resolution to address their concerns over the contaminated flows from the Tijuana River into California that have resulted in the degradation of water quality and water recreational areas in Southern California.

The Tijuana River flows north through highly urbanized areas in Mexico before it enters the Tijuana River Estuary and eventually the Pacific Ocean via waterways in San Diego County in California. Urban growth in Tijuana has contributed to a rise in rates of upstream flows from water treatment facilities in Mexico. These treatment facilities have raised the amount of untreated sewage and waste in the Tijuana River due to faulty infrastructure and improper maintenance. The federal government refers to the river as an “impaired water body” because of the presence of pollutants in excess, which pose significant health risks to residents and visitors in communities on both sides of the border.

### ***Federal Efforts to Address Pollution Crisis***

To remedy the Tijuana River’s low water quality, the United States and Mexico entered into a Treaty in 1944 entitled: *Utilization of Waters of the Colorado River and Tijuana Rivers and of the Rio Grande – the International Boundary and Water Commission (IBWC)*. The IBWC was designed to consist of a United States section and a Mexico section. Both sections were tasked with negotiating and implementing resolutions to address water pollution in the area, which includes overseeing the development of water treatment and diversion infrastructure.

After the formation of the IBWC, the U.S. and Mexico entered into a treaty in 1993 entitled: *Agreement Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank*. This agreement established the North American Development Bank (NADB), which certifies and funds infrastructure projects located within 100 kilometers (62 miles) of the border line. The NADB supports federal programs like the Border Water Infrastructure Program (BWIP), which was initially funded at \$100 million, annually.

The degradation of existing water treatment infrastructure along the border coincides with the federal government’s defunding of the BWIP, which has steadily decreased from \$100 million in 1996 to \$10 million today. The Federal FY 2020 Budget proposes eliminating BWIP funding

altogether. EPA's regions 6 and 9 (includes U.S. states that border Mexico) have identified a number of eligible projects that address public health and environmental conditions along the border totaling \$340 million.

The NADB has funded the development of water infrastructure in both the U.S. and Mexico. Water diversion and treatment infrastructure along the U.S – Mexico border includes, but is not limited to, the following facilities:

- *The South Bay International Wastewater Treatment Plant (SBIWTP)*. This facility was constructed by the U.S. in 1990 and is located on the California side of the border and is operated under the jurisdiction of the IBWC. The SBIWTP serves as a diversion and treatment sewage plant to address the flow of untreated sewage from Mexico into the United States.
- *Pump Station CILA*. CILA was constructed by Mexico in 1991 and is located along the border in Mexico. This facility serves as the SBIWTP's Mexican counterpart.

Both the SBIWTP and CILA facilities have had a multitude of overflows containing untreated sewage and toxic waste that spills into the Tijuana River. The cause of overflows can be attributed to flows exceeding the maximum capacity that the infrastructure can accommodate (this is exacerbated during wet and rainy seasons) and failure to properly operate and maintain the facilities. Much of the existing infrastructure has not had updates or repairs for decades, causing overflows to become more frequent and severe. The most notable overflow occurred in February 2017, wherein 143 million gallons of polluting waste discharged into the Tijuana River; affecting the Tijuana Estuary, the Pacific Ocean, and Southern California's waterways.

### ***State Actions***

In response to the February 2017 overflow, the San Diego Water Board's Executive Officer sent a letter to the U.S. and Mexican IBWC Commissioners which included recommendations on how to improve existing infrastructure and communications methods between both nations.

In September of 2018, California Attorney General Xavier Becerra submitted a lawsuit against IBWC for Violating the Clean Water Act by allowing flows containing sewage and toxic waste to flow into California's waterways, posing a public health and ecological crisis. The cities of Imperial Beach, San Diego, Chula Vista, the Port of San Diego, and the San Diego Regional Water Quality Board have also filed suit against the IBWC. The suit is awaiting its first settlement conference on October 19, 2019. If parties are unable to reach a settlement, the case will go to trial.

### **Fiscal Impact:**

California's economy is currently the sixth largest in the world, with tourism spending topping \$140.6 billion in 2018. In the past five years, San Diego's Border Field State Park has been closed for over 800 days because of pollution from the Tijuana River. A decline in the State's beach quality and reputation could carry macroeconomic effects that could ripple outside of the San Diego County region and affect coastal communities throughout California.

### **Existing League Policy**

The League of California Cities has extensive language on water in its Summary of Existing Policy and Guiding Principles. Fundamentally, the League recognizes that beneficial water quality is essential to the health and welfare of California and all of its citizens. Additionally, the League advocates for local, state and federal governments to work cooperatively to ensure that water quality is maintained.

The following policy relates to the issue of water quality:

- Surface and groundwater should be protected from contamination.
- Requirements for wastewater discharge into surface water and groundwater to safeguard public health and protect beneficial uses should be supported.
- When addressing contamination in a water body, water boards should place priority emphasis on clean-up strategies targeting sources of pollution, rather than in stream or end-of-pipe treatment.
- Water development projects must be economically, environmentally and scientifically sound.
- The viability of rivers and streams for instream uses such as fishery habitat, recreation and aesthetics must be protected.
- Protection, maintenance, and restoration of fish and wildlife habitat and resources.

Click here to view the [Summary of Existing Policy and Guiding Principles 2018](#).

### **Comments:**

1. Water quality issues are prevalent across California and have been a constant priority of the State's legislature and residents. In 2014, California's voters approved Proposition 1, which authorized \$7.5 billion in general obligation bonds to fund water quality improvement projects. In 2019, the Legislature reached an agreement to allocate \$130 million from the State's Greenhouse Gas Reduction Fund (GGRF) to address failing water infrastructure and bad water qualities for over one million of California's residents in rural communities. Water quality is not an issue unique to the County of San Diego and communities along the border.
2. Tijuana River cross-border pollution has caught national attention. Members of Congress have proposed recent funding solutions to address the pollution crisis, including:
  - In February of 2019, California Congressional Representatives Vargas, Peters, and Davis helped secure \$15 million for the EPA to use as part of its BWIP.
  - *H.R. 3895 (Vargas, Peters, 2019), The North American Development Bank Pollution Solution Act*. This bill seeks to support pollution mitigation efforts along the border by increasing the NADB's capital by \$1.5 billion.
  - *H.R. 4039 (Levin, 2019), The Border Water Infrastructure Improvement Act*. This bill proposes increasing funding to the BWIP from the existing \$10 million to \$150 million as a continuous appropriation until 2025.Additionally, the National Association of Counties (NACo) and the U.S. Conference of Mayors enacted resolutions in support of increased funding for U.S. – Mexico border water infrastructure to address the environmental crisis in 2019.

3. The border pollution problem has sparked action from local, state, and federal actors. Should this resolution be adopted, League membership should be aware that future action will be adapted by what is explicitly stated in the resolution's language. In current form, the resolution's resolve clause cites the BWIP as the only program that should receive reinstated and proper funding. League staff recommends the language be modified to state:

**“NOW, THEREFORE, BE IT RESOLVED** at the League General Assembly, assembled at the League Annual Conference on October 18, 2019 in Long Beach, that the League calls upon the Federal and State governments to restore and ensure proper funding for environmental infrastructure on the U.S. – Mexico Border, including to the U.S.–Mexico Border Water Infrastructure Program (BWIP), and recommit to working bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental, and safety concerns in communities along California's southern border impacting the state.”

Modifying the language would ensure enough flexibility for the League to support funding mechanisms outside of the prescribed federally-operated BWIP.

4. It remains unclear if there is an appetite in Washington to fund border-related infrastructure projects that address environmental quality. Given the high probability of another overflow containing waste and sewage from the existing infrastructure operated by the IBWC, League membership should consider the outcome if no resolution is reached to address the issue.

**Support:**

The following letters of concurrence were received:

**Cities:**

The City of Calexico

The City of Coronado

The City of Imperial Beach

The City of San Diego

**In their individual capacity:**

Amanda Young Rigby, City of Vista Council Member

Bill Baber, City of La Mesa Council Member

Consuelo Martinez, City of Escondido Deputy Mayor

George A. Nava, City of Brawley Council Member

John Minto, City of Santee Mayor

Judy Ritter, City of Vista Mayor

Luke Hamby, City of Brawley Council Member

Norma Kastner-Jauregui, City of Brawley Mayor Pro-Tempore

Sam Couchman, City of Brawley Council Member

# **LETTERS OF CONCURRENCE**

Resolution No. 2

International Transboundary  
Pollution Flows



# CITY OF CALEXICO

608 Heber Ave.  
Calexico, CA 92231-2840  
Tel: 760.768.2110  
Fax: 760.768.2103  
[www.calexico.ca.gov](http://www.calexico.ca.gov)

August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Environmental and Water Quality Impacts Of International Transboundary River  
Pollution Flow Resolution**

President Arbuckle:

The city of Calexico strongly supports the San Diego County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

The Division's resolution calls upon the Federal and State governments to restore and ensure proper funding of the Border Water Infrastructure Program (BWIP) to address the devastating impacts of international transboundary pollution flows into the waterways of the southernmost regions of California (San Diego and Imperial Counties) and the Pacific Ocean.

Local government and the public support the State's water and environmental quality objectives and League policy has long supported efforts to ensure water quality and oppose contamination of water resources. This resolution addresses the critical need for the federal and state governments to recommit to work bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental and safety concerns in communities along California's southern border impacting the state.

As members of the League, our city values the policy development process provided to the General Assembly. We appreciate your time on this issue.

*Viva Calexico!*

If you have any questions or require additional information, please do not hesitate to contact me at 760/768-2110.

Sincerely,

***CITY OF CALEXICO***

A handwritten signature in blue ink that reads "David Dale". The signature is written in a cursive, flowing style.

David Dale  
City Manager

Cc: Honorable Mayor Bill Hodge

*Viva Callexico!*



## CITY OF CORONADO

1825 STRAND WAY  
CORONADO, CA 92118

OFFICE OF THE CITY MANAGER  
(619) 522-7335  
FAX (619) 522-7846

August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Environmental and Water Quality Impacts of International Transboundary River Pollution Flows Resolution**

This letter is written on behalf of and with the support of the Coronado City Council. The City of Coronado wholeheartedly supports the resolution adopted by the San Diego County and Imperial County Division of the California League of Cities.

The San Diego County Division's resolution calls upon the federal and state governments to restore and ensure proper funding of the U.S.-Mexico Border Water Infrastructure Program (BWIP) to address the devastating impacts of international transboundary pollution flows into the waterways of the southernmost regions of California (San Diego and Imperial Counties) and the Pacific Ocean.

The City has been working closely with the Environmental Protection Agency and other federal partners on the matter since early 2018. City leaders are committed to finding long-term, sustainable solutions to this problem. Through its advocacy and education efforts, the City of Coronado has raised national awareness of the problem among legislators, political appointees and career staff at federal agencies. These efforts have been successful. However, the City along with our coalition partners, look forward to more action to swiftly resolve this issue.

Local government and the public support the state's water and environmental quality objectives and League policy has long supported efforts to ensure water quality and oppose contamination of water resources. This resolution addresses the critical need for the federal and state governments to recommit to work bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental and safety concerns in communities along California's southern border impacting the state.

As members of the League, Coronado values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact me if you have any questions.

Sincerely,



Blair King  
Coronado City Manager

cc: Coronado Mayor and City Council  
Bill Baber, President, San Diego County Division  
c/o Catherine Hill, Regional Public Affairs Manager, San Diego County Division [chill@cacities.org](mailto:chill@cacities.org)





# *City of Imperial Beach, California*

OFFICE OF THE CITY MANAGER

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

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August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K St. Suite 400  
Sacramento, CA 95814

RE: Environmental and Water Quality Impacts Of International Transboundary River  
Pollution Flow Resolution

President Arbuckle:

The city of Imperial Beach appreciates and supports the San Diego County Division's effort to submit a resolution for consideration by the full membership of the League of California Cities.

The Division's resolution calls on Federal and State government to address the impacts of transboundary pollution flows into the Southwestern regions of California. The pollution in these areas is an environmental disaster that threatens the health and general welfare of residents near the Mexican border in Imperial and San Diego Counties.

I encourage all voting delegates and elected officials in attendance at the 2019 Annual League of California Cities Conference in Long Beach to support this important resolution as it addresses the critical need for the federal and state government to recommit to work bi-nationally to address the serious contamination issues and to develop and implement long-term solutions.

I am available for any questions or additional information related to this letter of support.

Sincerely,

Andy Hall  
City Manager

Cc: Honorable Mayor Serge Dedina  
Honorable Mayor Pro Tem Robert Patton  
Honorable Councilmember Paloma Aguirre  
Honorable Councilmember Ed Spriggs  
Honorable Councilmember Mark West



# City of Imperial Beach, California

OFFICE OF THE MAYOR

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

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August 16, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

RE: Environmental and Water Quality Impacts Of International Transboundary River Pollution Flow Resolution

President Arbuckle:

The city of Imperial Beach strongly supports the San Diego County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

The Division's resolution calls upon the Federal and State governments to restore and ensure proper funding of the Border Water Infrastructure Program (BWIP) to address the devastating impacts of international transboundary pollution flows into the waterways of the southernmost regions of California (San Diego and Imperial Counties) and the Pacific Ocean.

Local government and the public support the State's water and environmental quality objectives and League policy has long supported efforts to ensure water quality and oppose contamination of water resources. This resolution addresses the critical need for the federal and state governments to recommit to work bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental and safety concerns in communities along California's southern border impacting the state.

As members of the League, our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions or require additional information, please do not hesitate to contact me at 619-423-8303.

Sincerely,

Serge Dedina  
Mayor



THE CITY OF SAN DIEGO

**KEVIN L. FAULCONER**

Mayor

August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Environmental and Water Quality Impacts of International Transboundary River  
Pollution Flow Resolution**

President Arbuckle:

The City of San Diego supports the San Diego County Division in their effort to submit a resolution to the General Assembly at the League of California Cities' 2019 Annual Conference in Long Beach.

To suppress the flow of pollution between the Mexico and Southern California's water channels, the Division requests for the Federal and State governments to give proper funding to the Border Water Infrastructure Program (BWIP).

The City of San Diego and its citizens have expressed their concerns about untreated sewage, polluted sediment and trash flowing from Mexico, into California, causing health, environmental and safety concerns. The State's water and environmental quality objectives and League policy has long supported efforts to ensure water quality and oppose contamination of water resources. With the Division's resolution, the great need for federal and state governments to reconsider working together, will help in developing a long-term solution to address serious water quality and contamination issues.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue.

Please contact me at (619)453-9946 if you have any questions.

Sincerely,

Denice Garcia  
Director of International Affairs

Cc: Honorable Mayor Kevin L. Faulconer





AMANDA YOUNG RIGBY

CITY COUNCILWOMAN

August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

Re: Border Sewage Issues

Dear President Arbuckle;

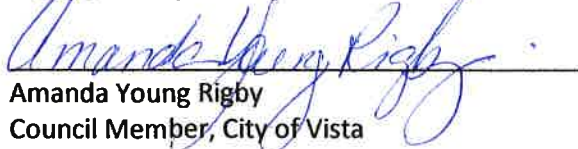
As a Council Member in the City of Vista, and solely in my individual capacity as such, I write in **support** of the League of California Cities 2019 Annual Conference Resolution proposed by the San Diego County Division to address the constant sewage pollution issues at the international border with Mexico.

This Resolution requests that the federal and state governments recognize the paramount importance of this issue and address the devastating impacts that this constant contamination has on the southernmost regions of California and the Pacific coastline by requesting the necessary funding to develop and implement effective and long term solutions to the raw sewage contamination coming into San Diego and Imperial Counties from Mexico.

Although I have lived in Vista for 27 years now, I grew up in Imperial Beach and know well the severe health and environmental impact that this situation has had on our border communities for the **decades**.

As a member of the League, I value the League's ability to effectively advocate on behalf of not only our cities but in effect, our citizens, and this is an important issue for our entire state. Should you have any questions or comments, please contact me at the number below. Thank you for your consideration.

Most Sincerely,

  
Amanda Young Rigby  
Council Member, City of Vista

cc: Vista City Council  
Vista City Manager  
Vista City Attorney  
City of Imperial Beach  
City of Coronado  
City of Calexico  
City of San Diego



**CITY OF  
LA MESA**  
*JEWEL of the HILLS*

---

August 16, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Environmental and Water Quality Impacts Of International Transboundary River Pollution Flows Resolution**

President Arbuckle:

As a Council Member for the City of La Mesa and in my individual capacity, not on behalf of the full La Mesa City Council as a body or the City, I am writing you in support of the San Diego County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2019 Annual Conference in Long Beach.

The Division's resolution calls upon the Federal and State governments to restore and ensure proper funding of the Border Water Infrastructure Program (BWIP) to address the devastating impacts of international transboundary pollution flows into the waterways of the southernmost regions of California (San Diego and Imperial Counties) and the Pacific Ocean.

As San Diego County Division President and a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at 619-667-1106, should you have any questions.

Sincerely,

BILL BABER  
COUNCIL MEMBER CITY OF LA MESA  
PRESIDENT, LEAGUE SAN DIEGO COUNTY DIVISION



Consuelo Martinez, Deputy Mayor  
201 North Broadway, Escondido, CA 92025  
Phone: 760-839-4638

August 16, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

Dear President Arbuckle:

As one Council Member of the city of Escondido, and in my individual capacity and not on behalf of the Council as a body or the City, I write in support of the League of California Cities 2019 Annual Conference Resolution proposed by the San Diego County Division to address the transboundary river flow pollution impacting cities in San Diego and Imperial Counties.

This resolution calls upon the federal and state governments to address the devastating impacts of international transboundary pollution flows into the southernmost regions of California and the Pacific Ocean by requesting the necessary funding to develop solutions for pollution coming into San Diego County and Imperial County waterways through the Tijuana River and New River, respectively.

The passage of the proposed resolution by the San Diego County Division would provide support for the restoration of much needed funding and development and implementation of long-term solutions to address serious water quality and contamination issues, such as discharge of untreated sewage and polluted sediment and trash-laden transboundary flows that result in significant health, environmental, and safety concerns in communities along California's southern border impacting the state.

As a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at [cmartinez@escondido.org](mailto:cmartinez@escondido.org) if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Martinez", written over a horizontal line.

Consuelo Martinez  
Deputy Mayor

cc: Honorable Mayor and City Council Members  
Jeffrey R. Epp, City Manager



# CITY OF BRAWLEY

## ADMINISTRATIVE OFFICES

383 Main Street  
Brawley, CA 92227  
Phone: (760) 351-3048  
FAX: (760) 351-3088

August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

Dear President Arbuckle:

As one Council Member of the City of Brawley, and in my individual capacity and not on behalf of the Council as a body or the City, I write in support of the League of California Cities 2019 Annual Conference Resolution proposed by the San Diego County Division to address the transboundary river flow pollution impacting cities in San Diego and Imperial Counties.

This resolution calls upon the federal and state governments to address the devastating impacts of international transboundary pollution flows into the southernmost regions of California and the Pacific Ocean by requesting the necessary funding to develop solutions for pollution coming into San Diego County and Imperial County waterways through the Tijuana River and New River, respectively.

The passage of the proposed resolution by the San Diego County Division would provide support for the restoration of much needed funding and development and implementation of long-term solutions to address serious water quality and contamination issues, such as discharge of untreated sewage and polluted sediment and trash-laden transboundary flows that result in significant health, environmental, and safety concerns in communities along California's southern border impacting the state.

As a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at (City email) if you have any questions.

Sincerely,

George A. Nava  
City Council Member  
City of Brawley



MAYOR  
John W. Minto



# CITY OF SANTEE

CITY COUNCIL  
Ronn Hall  
Stephen Houlahan  
Laura Koval  
Rob McNelis

August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

Dear President Arbuckle:

As Mayor of the city of Santee, and in my individual capacity and not on behalf of the Council as a body or the City, I write in support of the League of California Cities 2019 Annual Conference Resolution proposed by the San Diego County Division to address the transboundary river flow pollution impacting cities in San Diego and Imperial Counties.

This resolution calls upon the federal and state governments to address the devastating impacts of international transboundary pollution flows into the southernmost regions of California and the Pacific Ocean by requesting the necessary funding to develop solutions for pollution coming into San Diego County and Imperial County waterways through the Tijuana River and New River, respectively.

The passage of the proposed resolution by the San Diego County Division would provide support for the restoration of much needed funding and development and implementation of long-term solutions to address serious water quality and contamination issues, such as discharge of untreated sewage and polluted sediment and trash-laden transboundary flows that result in significant health, environmental, and safety concerns in communities along California's southern border impacting the state.

As a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at (JMinto@cityofsantee.ca.gov) if you have any questions.

Sincerely,

JOHN W. MINTO  
Mayor  
City of Santee





JUDY RITTER

MAYOR

August 16, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

Dear President Arbuckle:

As Mayor of the city of Vista, and in my individual capacity and not on behalf of the Council as a body or the City, I write in support of the League of California Cities 2019 Annual Conference Resolution proposed by the San Diego County Division to address the transboundary river flow pollution impacting cities in San Diego and Imperial Counties.

This resolution calls upon the federal and state governments to address the devastating impacts of international transboundary pollution flows into the southernmost regions of California and the Pacific Ocean by requesting the necessary funding to develop solutions for pollution coming into San Diego County and Imperial County waterways through the Tijuana River and New River, respectively.

The passage of the proposed resolution by the San Diego County Division would provide support for the restoration of much needed funding and development and implementation of long-term solutions to address serious water quality and contamination issues, such as discharge of untreated sewage and polluted sediment and trash-laden transboundary flows that result in significant health, environmental, and safety concerns in communities along California's southern border impacting the state.

As a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at [jritter@cityofvista.com](mailto:jritter@cityofvista.com) if you have any questions.

Sincerely,

Judy Ritter  
Mayor  
City of Vista



# CITY OF BRAWLEY

## ADMINISTRATIVE OFFICES

383 Main Street  
Brawley, CA 92227  
Phone: (760) 351-3048  
FAX: (760) 351-3088

August 15, 2019

Jan Arbuckle, President  
League of California Cities  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

Dear President Arbuckle:

As one Council Member of the City of Brawley, and in my individual capacity and not on behalf of the Council as a body or the City, I write in support of the League of California Cities 2019 Annual Conference Resolution proposed by the San Diego County Division to address the transboundary river flow pollution impacting cities in San Diego and Imperial Counties.

This resolution calls upon the federal and state governments to address the devastating impacts of international transboundary pollution flows into the southernmost regions of California and the Pacific Ocean by requesting the necessary funding to develop solutions for pollution coming into San Diego County and Imperial County waterways through the Tijuana River and New River, respectively.

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As a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at (City email) if you have any questions.

Sincerely,

Luke Hamby  
City Council Member  
City of Brawley



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As a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at (City email) if you have any questions.

Sincerely,

Norma Kastner-Jauregui  
Mayor Pro-Tempore  
City of Brawley



# CITY OF BRAWLEY

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As a member of the League, I value the policy development process provided to the General Assembly. I appreciate your time on this issue. Please feel free to contact me at (City email) if you have any questions.

Sincerely,

Sam Couchman  
City Council Member  
City of Brawley



## Agenda Report

19-1051

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Action on the Appointment of Additional Members to the Tourism Improvement District (TID) Advisory Board

#### **BACKGROUND**

In 1989, the State Legislature passed the Parking and Business Improvement Area Law, which added Sections 36500, et seq., to the California Streets and Highways Code ("Code"). The Code was created to "promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent erosion of the business districts." The Code had the further goal of promoting tourism. To achieve this goal, the Code allowed cities to fund property related improvements and activities through the levy of assessments upon the businesses which benefit from those improvements and activities.

Pursuant to the authority granted under the Code, on January 11, 2005, City Council adopted Ordinance No. 1797 (the "Ordinance") amending the Santa Clara City Code to add Article IX entitled "Santa Clara Tourism Improvement District" to Chapter 16.10 ("Local Improvements -Acquisition and Improvement Procedure"), establishing the Tourism Improvement District ("TID") and its boundaries.

Section 16.10.1140 of the City Code creates the TID Advisory Board, which shall be constituted of representatives of businesses within the TID. On December 11, 2018, City Council appointed the members of the TID Advisory Board to include the general managers of the nine hotels that were then within the TID boundaries: Mark Salquist (Avatar Hotel), Jon Siebring (Biltmore Hotel & Suites), Peter Hart (Embassy Suites), Joseph Eustice (Hilton Santa Clara), Alan Mass (Hyatt House), Eron Hodges (Hyatt Regency), Callette Nielson (Marriott Santa Clara), Jean-Philippe Rolle (The Plaza Suites), and Virginia Scimeca (TownPlace Suites by Marriott).

#### **DISCUSSION**

Since Council action on December 11, 2018, two new hotels have recently opened within the TID boundaries. The Element Santa Clara opened August 9, 2019 and the AC Hotel Santa Clara opened September 5, 2019. As the hotels are subject to the current TID assessment of \$1.00 for hotel guests on each occupied hotel/motel room night, staff is recommending that the hotel general managers, Jordan Austin (Element Santa Clara) and Mike Lerman (AC Hotel Santa Clara), be formally appointed to the TID Advisory Board, effective September 1, 2019 to assist with the administration of TID affairs. If approved, the number of board members will increase from nine to 11.

**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)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

**FISCAL IMPACT**

There is no fiscal impact.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Appoint Additional Members Representing AC Hotel and Element Santa Clara Hotel to the Tourism Improvement District (TID) Advisory Board.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager



## Agenda Report

19-1075

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Action on Amendment No. 1 to the Agreement with FIS AvantGard LLC ("FIS"), formerly known as SunGard AvantGard LLC, for an Investment Management and Portfolio Accounting Solution

#### **BACKGROUND**

In September 2004, the City entered into an agreement with SunGard Treasury Systems Inc. to provide AvantGard/APS2 software for investment management and portfolio accounting purposes.

Staff is seeking approval to transition to FIS's web/cloud-based software and amend the current agreement by extending the term for two years ending on September 30, 2021, with an option to extend the agreement for an additional two-year term upon mutual agreement by both parties.

#### **DISCUSSION**

The Finance Department has the authority and responsibility to deposit and invest all City funds. In order to assist with carrying out its investment and accounting responsibilities, the City has purchased an investment management and portfolio accounting software from FIS. The current software resides on a City server and is maintained by the City's Information Technology (IT) Department. IT is in the process of transitioning server-based applications to web/cloud-based applications when available and reasonable to do so, as they are usually a more cost-effective solution.

FIS now offers a web-based version of their AvantGard APS2 software (SaaS/WEB), which the City desires to purchase. The SaaS/WEB solution offers the following advantages:

- No software or database to maintain
- Software upgrades are seamless with no City involvement required
- No City server required
- Increased reliability

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Furthermore, the action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.



**FISCAL IMPACT**

The total cost of Amendment No. 1 for the SaaS/WEB solution will not exceed \$37,000 over the initial two-year term. This includes a maximum one-time set up fee of \$18,000 and ongoing monthly service fees of \$780/month during the first year, increasing by CPI in the second year and any subsequent years. To date, the City has paid FIS AvantGard LLC a total amount of \$77,761. As such, this extension will increase the total value of the agreement, exceeding the \$100,000 delegated City Manager authority for contracts. Sufficient funds are available in the Finance Department to cover the cost of this agreement.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Authorize the City Manager to execute Amendment No. 1 to the Agreement with FIS AvantGard LLC for APS2 SaaS/WEB investment and portfolio accounting software for a term of two years ending September 30, 2021, with the option of an additional two-year term.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Amendment No. 1 to the Agreement with FIS AvantGard LLC
2. SunGard Treasury Systems Inc. Agreement



**AMENDMENT No. 1  
TO  
SOFTWARE LICENSING AND SERVICES AGREEMENT  
effective September 1, 2004 (the "Agreement")**

This Amendment, effective as of July 12, 2019 ("Amendment Effective Date"), by and between FIS AvantGard LLC, formerly known as SunGard AvantGard LLC ("FIS") and City of Santa Clara ("Customer"), is made to the Agreement. Capitalized terms shall have the meanings ascribed to them in the Agreement, unless otherwise defined herein.

**BACKGROUND**

Whereas, the parties entered into the Agreement under which Customer acquired certain limited scope licenses and services from FIS; and

Whereas, Customer now wishes to convert from an installed license of the Software to a SaaS deployment, and FIS wishes to grant this conversion.

**INTENDING TO BE LEGALLY BOUND**, and in consideration of the mutual agreements stated herein, FIS and Customer do hereby amend the Agreement as of the Amendment Effective Date as follows:

1. **INCORPORATION OF SCHEDULE A-1.** Schedule A-1 for the provision of APS2 SaaS is hereby incorporated in the Agreement.
2. **TERMINATION OF SCHEDULE A (LICENSE ORDER).** Schedule A will terminate as of the SaaS go-live date under Schedule A-1. As of such date of termination, neither party will have any further obligation thereto.
3. **TERM OF AGREEMENT.** Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall commence on the Amendment Effective Date and terminate on September 30, 2021, with an option to extend the term of this Agreement for an additional two year term, which option may be exercised upon mutual agreement of the parties. Exercise of the foregoing option shall be in writing via an Amendment executed by the parties no later than thirty (30) calendar days prior to expiration, unless such other time frame is mutually agreed to by Customer and FIS. The initial 3 months will be free of any fees.

Except as expressly provided herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. To the extent any of the terms of this Amendment are inconsistent with the terms of the Agreement, the provisions of this Amendment shall control.

**By signatures of their duly authorized representatives below, FIS and Customer agree to all of the provisions of this Amendment and ratify the terms of the Agreement.**

<b>FIS AvantGard LLC ("FIS")</b>	<b>City of Santa Clara ("Customer")</b>
By: _____ (Signature)	By: _____ (Signature)
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

---

**APS2 SAAS**


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**1. SOLUTION: APS2**

The Base accounting module of AvantGard APS 2 fully tracks all transactions associated with Fixed, Equity, and Variable Rate instruments including:

Bonds, Corporate & Municipal, Callable Securities, Cash Accounts (e.g. Passbook, Foreign Bank Account, etc.), CD's, Money Markets, Variable Rate Securities

GASB 31, GASB 40 and GASB 72 Regulatory reporting

**2. DOCUMENTATION:** Standard user documentation (APS2 User Guide)**3. SCOPE OF USE**

**NUMBER OF USERS:** Five (5)

**NUMBER OF PRODUCTION DATABASES:** One (1)

(i) **START UP FEE:** Included in the Professional Services Fees

(ii) **MONTHLY FEES:**

USD \$780.00 per month

Payable from the Amendment Effective Date billed monthly in advance.

(iii) **ANNUAL INCREASE LIMITATION:**  
CPI

**4. SCHEDULED INSTALLATION DATE:** A date to be agreed between FIS and Customer which shall be no later than forty-five (45) days from the Amendment Effective Date.

**5. PROFESSIONAL SERVICES**

a. **DESCRIPTION OF THE PROFESSIONAL SERVICES:** FIS shall perform certain Professional Services as described in the Professional Services section herein.

It is estimated these Professional Services will take 10 days. This estimate is provided based on Customer's known requirements documented at the time this Agreement is signed and does not represent a commitment to complete the Professional Services within this estimate, with actual effort potentially more or less than this estimate. Any Professional Services required in excess of 10 days must be approved in writing by Customer.

The minimum commitment in relation to these Professional Services shall be 7.5 days ("**Minimum Days**") and an amount of USD \$13,500. ("**Minimum Fee**"). In the event that the Minimum Days have not been utilized by December 31, 2019 (or such earlier date if this Agreement is cancelled by Customer as expressly permitted under this Agreement), FIS may invoice Customer for the unused days at the applicable rate, together with any expenses incurred by FIS and not yet invoiced (which expenses FIS cannot have waived by taking reasonable steps).

b. **PROFESSIONAL SERVICES FEES APPLICABLE TO THE PROFESSIONAL SERVICES DESCRIBED IN THIS AGREEMENT:** The Professional Services will be provided on a time and materials basis, invoiced monthly in arrears. The applicable rate is:

\$1,800.00 per day / \$225 per hour, excluding expenses and applicable taxes, valid for the period twelve (12) months from the Amendment Effective Date.

c. **OVERTIME:** If the Customer requests, and FIS agrees that FIS will provide the Professional Services outside of FIS' normal working hours (i.e. overtime), the rate shall be one hundred fifty percent (150%) of the applicable rate. Any request for Professional Services outside of FIS' normal working hours shall be made by the Customer in writing.

d. **POSTPONEMENT, RESCHEDULING OR CANCELLATION:** If Customer postpones, reschedules or (if expressly permitted in this Agreement) cancels all or part of the Professional Services (which

in the case of training services includes non-attendance), unless such postponement, rescheduling or cancellation is due to circumstances not in the reasonable control of the Customer, by notice in writing to FIS, the following charges (if any) shall apply, together with any expenses incurred by FIS (and which FIS cannot have waived by taking reasonable steps):

- i. If FIS receives the notice of postponement, rescheduling or cancellation less than ten (10) working days prior to (but before) the agreed commencement date of the relevant Professional Services, a charge equal to the following shall apply: the applicable rate multiplied by the number of days of Professional Services postponed, rescheduled or cancelled, based on the estimate (up to a maximum of five (5) days).
- ii. If FIS receives the notice of postponement, rescheduling or cancellation on or after the agreed commencement date of the relevant Professional Services, a charge equal to the following shall apply: the applicable rate multiplied by the number of days of Professional Services postponed, rescheduled or cancelled, based on the estimate (up to a maximum of ten (10) working days). Such Professional Services shall be rescheduled and provided by FIS at the rate provided herein, less any charges paid by Customer pursuant to this Section 7(d).

For the sake of clarity: (i) all fees due for the Professional Services performed up to the effective date of the postponement, rescheduling or cancellation shall also be payable by Customer and (ii) in the event of the cancellation of this Agreement, the charges payable under this clause shall be at least the Minimum Fee.

## **6. ADDRESSES**

### **CUSTOMER ADDRESS FOR INVOICES:**

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
ATTN: Finance Department - Treasury

### **CUSTOMER ADDRESS FOR NOTICES:**

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
ATTN: Finance Department - Treasury

### **FIS' ADDRESS FOR NOTICES:**

FIS AvantGard LLC  
601 Riverside Avenue  
Jacksonville, FL 32204  
ATTN: Contract Administration

## **7. PERSONAL DATA: - No personal data on the system.**

Customer will not use FIS as a Processor of Personal Data under this Agreement.

- 8. OTHER TERMS: Third Party Providers; Market Database Usage.** Customer hereby acknowledges and agrees that the Third-Party Data and Services that may be required for Customer's use of the Solution, including the Market Databases, are subject to the terms and conditions set forth below.

<b>Third-Party Data; Market Database Usage</b>
--

**A. Third-Party Providers.**

(i) Customer hereby acknowledges and agrees that the Third-Party Data and Services provided under this Agreement contain information obtained, selected and consolidated by the Third Party Providers under the authority of the Third Party Providers, that Customer's use of the Third Party Data and Services is authorized and regulated by the Third Party Providers and further that the Third Party Providers may require to be provided with information and data about Customer and its Affiliates, employees, agents, customers and other third parties

using, accessing or whose information is stored on Customer's System ("Third Party Users") in connection with their provision of Third Party Data and Services. Customer also acknowledges that the Third-Party Providers may modify the Third-Party Data and Services, discontinue availability of Third Party Data and Services or modify the rules concerning availability and applicable royalty fees of any of the Third-Party Data and Services or require changes to the Third-Party Data and Services, in which case none of FIS or the Third-Party Providers may be held responsible for such modification and discontinuance. Any changes required by the Third-Party Providers shall be made a part of this Agreement by FIS's written notice of any such changes to Customer. For a thirty (30) day period after receiving such notice from FIS, Customer may reject such changes and terminate the affected Third-Party Data or Service by written notice to FIS. If such notice is not received by FIS within such thirty (30) day period, this Agreement shall be modified by such changes, and shall remain in full force and effect.

(ii) Customer shall comply with all applicable laws and obtain all necessary consents from any person, including its employees and the Third-Party Users and their respective employees, if any, regarding the collection, use and distribution to FIS of any information or data regarding any Third-Party User and the use by Customer and the Third-Party Users of the Third-Party Data and Services for the purposes set forth herein. The information and data may include personal and other information about Customer, its employees, the Third-Party Users and their employees, including their use of the market data. FIS may use this information and data only to carry out its obligations under this Agreement, including the provision of such information to the Third-Party Providers pursuant to this Agreement or for its own internal purposes in carrying out its obligations hereunder. FIS shall provide Customer with advance written notice of the nature of all such reporting requirements.

(iii) Other than as may apply to royalties, costs, expenses and/or fees, Customer represents and warrants to FIS, its Third-Party Providers, agents, successors and assigns and their respective employees (collectively, the "Indemnified Group") that agreements between it and Third Party Users expressly provide, and covenants that all such agreements will provide, that none of the Indemnified Group have or will have any liability for any representation, warranty or condition, express or implied, with respect to any services offered to the Third Party Users ("Customer's Services"), the data and information provided thereby to the Third Party Users or for any lost revenues, lost profits, loss of business, or any incidental, indirect, consequential, special, or punitive damages relating to the Third Party Users' use of the Customer's Services. Subject to any exception applicable solely to a particular Third Party Provider pursuant to the express terms of a written agreement between that entity and Customer, Customer shall indemnify and defend the Indemnified Group from and against any of the following: any and all claims, liabilities, and obligations (including reasonable lawyer's fees) asserted by any third party, including Third Party Users, against the Indemnified Group and arising out of Customer's or Third Party Users' use of the Solution or the Documentation.

(iv) The fees payable by Customer to FIS in accordance with this Agreement do not include any applicable royalties, costs, expenses and/or fees that may be imposed by the Third-Party Providers for the Third-Party Data and Services provided in accordance with this Agreement. FIS reserves the right to charge for any increases in the pricing to FIS of Third Party Data and Services Providers for the collection and distribution of the Third-Party Data. In the event of an increase in pricing to Customer, FIS shall provide written notice to Customer of the increase in pricing and Customer shall have the option to terminate use of the specific security database that is the subject of the price increase ("Increase Cost Database") by written notice to FIS. If Customer does not elect to terminate its use of the Increase Cost Database prior to the effective date of the cost increase, Customer shall be solely responsible for, and shall pay, all such third-party fees as and when directed by FIS or the Third-Party Providers.

B. All databases made available for Customer's use with the Solution will be made available on an "AS-IS" basis without warranty from FIS. Any warranty from a Third-Party Provider shall be only as set forth with respect to that particular Third-Party Provider pursuant to the express terms of a written agreement between that entity and Customer. FIS makes no representations or warranties as to the accuracy, content or availability of the information contained in any such database made available for Customer's use with the Solution. FIS agrees that in the event it decides to change such database(s) at any time during the term of this Agreement, FIS shall provide thirty (30) days advance written notice to Customer.

## **9. ADDITIONAL SAAS TERMS.**

**11.1 Provision of Services.** FIS shall provide to Customer remote use of and access to FIS' proprietary applications software identified in this Schedule ("**Solution**") and the APS2 User Guide listed in this Schedule ("**Documentation**").

**11.2. Support Services.** During the Term, FIS shall provide the ongoing support services to Customer as set forth in this Schedule. Such on-going support services are included in the monthly

fee and therefore are not separately terminable. In consideration of the foregoing, the parties agree that for the purposes of this Schedule, Section 8.4 of the Agreement shall not apply.

**11.3 Customer Data.** Customer shall supply, or cause to be supplied, into the Solution the data to be processed by the Solution ("**Customer Data**") as described in the Documentation. Customer shall transmit the data to FIS by communications link or in another manner described in this Schedule. Customer shall be responsible for ensuring that any information or data which it introduces into the Solution is accurate and complete. Customer Data shall at all times remain the Customer's sole property. Customer may, once during any twelve (12) month period during the term, or upon termination, of this Schedule, request (in writing or as otherwise mutually agreed by the parties) that FIS provide a complete copy of all Customer Data in a format agreed upon by FIS and Customer. FIS shall use commercially reasonable efforts to fulfill such request within seventy-two (72) hours of receipt of such written request.

**11.4 Scope of Use.** Customer may use, and permit its Affiliates to use, the Solution and Documentation only in the ordinary course of Customer's and its Affiliates' internal business operations. Customer shall be liable for any breach of the terms of this Agreement by its Affiliates or their respective employees or agents ("**Authorized Users**"). Customer shall use the Solution only in accordance with the Documentation. Access to and use of the Solution and Documentation by Customer shall be limited to the Scope of Use, subject to increase by execution by the parties of an additional Schedule A hereto. Customer may copy the Documentation to the extent reasonably necessary for use of the Solution under this Schedule.

**11.5. Security.** FIS will implement commercially reasonable administrative, technical and physical safeguards as further detailed in the security annex referenced below to: (i) ensure the security and confidentiality of Customer Data, (ii) protect against any anticipated threats or hazards to the security or integrity of Customer Data, and (iii) protect against unauthorized access to or use of Customer Data. The current version of the FIS Statement on Technical and Organizational Measures for Information Security and Data Protection located at <https://www.fisglobal.com/solutions/legal/fis-information-security> is incorporated herein by reference. Customer assumes responsibility for determining and implementing Customer's own internal technical and procedural security measures with respect to the access and use of the Solution, including protection of passwords and grants of administration rights. FIS may provide assistance to Customer in determining security requirements with respect to Customer's access and use of the Solution, however, Customer acknowledges that FIS has limited ability to control or monitor access to any of Customer's information and FIS shall have no liability hereunder with respect to such Customer security requirements or access granted by Customer to persons with authorized passwords.

**11.6. Passwords and Solution Access.** Each of Customer's Authorized Users will be provided a unique access code in order to access the Solution (a "**Password**"). Customer agrees to hold the Passwords in strict confidence and will not assign, share, sell, barter, transfer, exchange, misuse or abuse the Passwords in any way or attempt in any way to disable, deactivate or render ineffective the password protection of the Solution. If Customer suspects or learns that a Password is being used to gain unauthorized access to the Solution, Customer will immediately notify FIS at which time FIS will change the Password. FIS may suspend access to the Solution without advance notice if FIS reasonably believes the Solution is being used or accessed in an unauthorized, illegal or disruptive manner.

**11.7. Data Exclusion.** **UNDER NO CIRCUMSTANCES SHALL FIS OR ITS AFFILIATES BE LIABLE FOR TRUTH, ACCURACY, SEQUENCE, TIMELINESS OR COMPLETENESS OF ANY INFORMATION (INCLUDING THIRD PARTY DATA AND SERVICES) PROVIDED BY OR PROCESSED BY THE SOLUTION OR SUCH THIRD PARTY PROVIDERS, FOR ANY INCONVENIENCE CAUSED BY THE LOSS OF THE THIRD PARTY DATA AND SERVICES OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN.**

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**SPECIFIED CONFIGURATION**

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**Internet Explorer 10.0 or higher**

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**PROFESSIONAL SERVICES**

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The Professional Services provided under this Schedule include:

Software setup  
Software configuration  
Data base implementation  
Portfolio Validation tables setup  
Portfolio data conversion with full history of the Installed portfolio  
Reports currently provided to Customer and other reports provided to FIS' customer base generally, as requested by Customer  
Training

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**SAAS SUPPORT**

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**NORMAL SUPPORT HOURS:** 8 AM to 6 PM PST (Monday through Friday excluding FIS holidays)

**METHOD OF REPORTING ERRORS:** FIS Service Desk

**SUPPORT TERMS:**

1. FIS product specialists shall provide to Customer, during FIS' normal support hours as set forth above ("Normal Support Hours"), assistance regarding Customer's proper and authorized use of Customer's Latest Release (as defined in Section 3.1.1 of the Agreement)
2. FIS product specialists shall provide to Customer, during Normal Support Hours, commercially reasonable efforts in solving failures of the Solution to conform with the Documentation ("Errors") reported by Customer in accordance with this Agreement. Customer shall provide to FIS reasonably detailed documentation and explanation, together with underlying data, to substantiate any Error and to assist FIS in its efforts to diagnose, reproduce and correct the Error. If a reported Error did not, in fact, exist or was not attributable to a defect in the Solution or an act or omission of FIS, then Customer shall pay for FIS' investigation and related services at FIS' professional services rates then in effect.
3. FIS' periodic Releases shall be installed such that Customer remains on Customer's Latest Release . The preceding sentence notwithstanding, any Upgrade provided by FIS shall be promptly installed and/or use to avoid or mitigate a performance problem or infringement claim. All modifications, revisions and updates to the Solution shall be furnished by means of Upgrades to the Solution and shall be accompanied by updates to the Documentation whenever FIS determines, in its sole discretion, that such updates are necessary.
4. During project implementation Customer shall channel all requests for assistance ("Support Requests") through their nominated FIS project team. Following the first day that Customer uses the Solution in a live production environment, all Support Requests shall be logged with FIS by Key Users (as defined below) via the FIS Service Desk online incident logging system. "**Key Users**" are those users nominated by Customer who have working knowledge of the Solution and for whom use of the Solution is core to their day to day activities. When an Error is believed to have occurred, the Key Users shall first investigate internally to substantiate the Error and use good faith efforts to determine the cause of such Error before referring the Error to FIS (if still necessary).
5. The FIS Service Desk may be contacted via the on-line incident reporting system located at the following URL - <https://support.sungard.com/avantgard>. FIS shall notify Customer of any change in the foregoing URL. Where such incident logging system is not accessible at the then current URL, then Customer personnel shall notify FIS using the contact details provided by FIS to Customer from time to time. Support Request logging documentation is made available within the FIS Service Desk to users of the Solution.
6. Each Support Request shall be assigned a mutually agreed priority level based on the reported Impact and Urgency of the Error, as such terms are defined below.

**“Impact”** means a measure of how widespread the Error is based on the percentage of Customer’s users impacted by the Error.

**“Urgency”** means a measure of the severity of the Error based on its potential effect on Customer’s business and the time period in which such effect is expected to occur.

**Priority Levels:**

<b>Priority Classification</b>	<b>Definition</b>	<b>Initial Response Target (during Normal Support Hours)</b>	<b>Guideline for Escalation of Unresolved Support Request (during Normal Support Hours)</b>
A	An Error that renders the Solution inoperative, or causes the Solution to fail so as to make use of the Solution seriously impractical, and significantly interrupts production use by Customer.	1 business hour	2 business hours
B	An Error that materially impacts the performance of the Solution in a negative manner or materially restricts Customer’s use of the Solution.	4 business hours	1 business day
C	An Error that causes only minor impact on Customer’s use of the Solution or an Error that is not a Priority Classification A or B.	1 business day	3 business days
D	A general question concerning the use or implementation of the Solution.	Promptly, in light of the nature of the question.	No escalation

7. A Support Request shall be deemed to have commenced at the time when the issue is logged in FIS’ on-line incident logging system (or, if such system is not accessible, at the time otherwise reported to FIS). FIS shall provide an email notification to Customer when it begins working on the issue.

8. In the course of handling a Support Request, it may become necessary to escalate issues to FIS’ senior support staff and/or such other FIS resources as deemed appropriate. Escalation will occur when a product specialist is unable to resolve a Support Request within the Escalation Target timeframe. Customer acknowledges that product specialists may also request the advice of senior FIS resources when analyzing Support Requests without officially escalating the case to them.

9. Through the incident management process, it may also become necessary for Customer to escalate issues within its organization, including Customer’s IT department or third-party hardware and software vendors. FIS may request Customer’s escalation plan under such circumstance. During escalation of a Support Request, both FIS and Customer will provide timely progress updates covering their own responsibilities.

10. Where Customer is not able to provide the FIS product specialist(s) with access to the Solution remotely during the investigation process or is not able to provide sufficient information to document or resolve the Error, as is reasonably requested by FIS, Customer acknowledges that a site visit may be required to facilitate a resolution. If Customer approves such a site visit, Customer shall be separately charged fees at FIS’ then current standard professional fee rates for time spent at Customer’s site, as well as any required travel and out of pocket expenses in accordance with the Agreement. If Customer does not approve the site visit, then FIS shall not be liable in relation to the unresolved Error.

**SOFTWARE LICENSING  
AND SERVICES AGREEMENT**

**BETWEEN**

**SUNGARD TREASURY SYSTEMS INC.**

(a California corporation)

("SUNGARD")

**AND**

**City of Santa Clara**

("CUSTOMER")

**September 1, 2004**

("Effective Date")

By the signatures of their duly authorized representatives below, SUNGARD and CUSTOMER, intending to be legally bound, agree to all of the provisions of the agreement and all Schedules and Addenda to this agreement (collectively, the "Agreement").

SUNGARD	CUSTOMER
By: <u>Bryan Cheney</u>	By: <u>Jennifer Sparacino</u>
Print Name: <u>BRYAN CHENEY</u>	Print Name: <u>Jennifer Sparacino</u>
Print Title: <u>CONTROLLER</u>	Print Title: <u>CITY MANAGER</u> <u>CITY OF SANTA CLARA</u>
Date: <u>9/28/04</u>	Date: <u>9/20/04</u>

**ATTEST:**

J. E. Boccardo  
City Clerk

**APPROVED AS TO FORM**

Date: 9/13/04  
[Signature]  
DEPUTY CITY ATTORNEY



## 1. LIMITED LICENSE

**1.1. Grant.** SUNGARD grants to CUSTOMER a personal, non-transferable (except as provided herein), non-exclusive, limited-scope license to use, in accordance with this Agreement, SUNGARD's proprietary applications software identified on Schedule A to this Agreement ("Software") and the related standard user documentation ("Documentation"), as the Software and Documentation may be modified, revised and updated in accordance with this Agreement.

**1.2. Scope.** CUSTOMER (on behalf of itself and its affiliates) may use the Software and Documentation only in the ordinary course of its business operations and that of its affiliates. CUSTOMER shall be liable for any breach of this Agreement by its affiliates. CUSTOMER shall use the Software only in accordance with the Documentation. The Software may be installed only at CUSTOMER's location(s) listed on Schedule A to this Agreement ("Designated Location(s)"). CUSTOMER and CUSTOMER's affiliates may access and use the Software remotely for the purposes of entering and processing data and receiving reports for local use. CUSTOMER may change a Designated Location by giving prompt written notice thereof to SUNGARD, provided that a change of a Designated Location to another country shall require SUNGARD's prior consent. Access to and use of the Software by CUSTOMER shall be limited to the Scope of Use, subject to increase by execution by the parties of additional license order(s) including any additional costs, a blank copy ("Exhibit A-1") of which is attached. CUSTOMER may copy and use the Software for inactive back-up and disaster recovery purposes. CUSTOMER may copy the Documentation to the extent reasonably necessary for use of the Software under this Agreement.

## 2. INSTALLATION AND TRAINING

**2.1. Initial Installation and Training.** SUNGARD shall provide and CUSTOMER shall accept the Minimum Installation Support and training described on Schedule A. This shall include delivery, F.O.B. SUNGARD's shipping point, to CUSTOMER of the Software and Documentation, installation of the Software on or before the Installation Date stated on Schedule A at the Designated Location(s), basic training in the use of the Software for a reasonable number of CUSTOMER's employees, and assistance with any other implementation or related activities described on Schedule A.

## 3. SUNGARD'S OTHER OBLIGATIONS

**3.1. Ongoing Support Services.** SUNGARD shall provide the following ongoing support services to CUSTOMER:

**3.1.1.** SUNGARD shall provide to CUSTOMER, during SUNGARD's normal business hours, as described on Schedule A ("Normal Business Hours"), telephone assistance regarding CUSTOMER's proper and authorized use of the latest release of the Software that is generally available to SUNGARD's customer base or a version or release of the Software that was provided by SUNGARD to CUSTOMER within the previous twelve (12) months ("CUSTOMER's

Latest Release").

**3.1.2.** SUNGARD shall provide to CUSTOMER, during SUNGARD's Normal Business Hours, commercially reasonable efforts in investigating and solving failures of the Software to conform to Documentation that arise in connection with CUSTOMER's proper and authorized use of CUSTOMER's Latest Release. CUSTOMER shall provide to SUNGARD reasonably detailed documentation and explanation, together with underlying data, to substantiate any such failures and to assist SUNGARD in its efforts to investigate, diagnose and correct the failure. These support services shall be provided by SUNGARD at CUSTOMER location(s) if and when SUNGARD and CUSTOMER agree that on-site services are necessary to diagnose or resolve the failure.

**3.1.3.** SUNGARD shall provide at no additional charge SUNGARD's periodic Upgrades. CUSTOMER shall be eligible for all Upgrades provided to SUNGARD's general customer base as part of SUNGARD's general ongoing support services. All Upgrades shall be furnished by means of new releases of the Software and shall be accompanied by updates to the Documentation whenever SUNGARD determines, in its sole discretion, that such updates are necessary. CUSTOMER agrees to promptly install such Upgrades.

**3.2. Optional Features.** Beginning on the Installation Date, SUNGARD shall offer to CUSTOMER the opportunity to purchase Optional Features at SUNGARD's then prevailing prices.

**3.3. Professional Services.** At CUSTOMER's reasonable request and subject to the availability of SUNGARD's personnel, SUNGARD shall provide to CUSTOMER any CUSTOMER-approved additional installation services, additional training, consulting services, custom programming, assistance with data transfers or CUSTOMER system or database upgrades, system restarts and reinstallations and other specialized support services that are outside the scope of ongoing support services described in Section 3.1.2 (including any diagnostic or programming services requested by CUSTOMER that are not due to a failure of the Software to conform to Documentation or an act or omission of SUNGARD) at SUNGARD's standard professional service fees for the type of service requested. In addition, SUNGARD reserves the right to charge a premium for any ongoing support services requested by Customer to be performed outside of Normal Business Hours subject to availability of such off hours services and upon prior arrangement with Customer.

## 4. CUSTOMER'S OTHER OBLIGATIONS

**4.1. Procurement of Hardware.** CUSTOMER shall be responsible, at its expense, for procuring and maintaining the computer hardware, systems software and other items which comprise the Specified Configuration described on Schedule B, and for updating the Specified Configuration in accordance with SUNGARD's published updates to Schedule B.

**4.2. Access to Facilities and Employees.** CUSTOMER

shall provide to SUNGARD access to the Designated Location(s) and CUSTOMER's equipment and employees, and shall otherwise cooperate with SUNGARD, as reasonably necessary for SUNGARD to perform its installation, training, support and other obligations under this Agreement and CUSTOMER shall provide all other resources reasonably necessary to install the Software and begin using the Software in production on a timely basis as contemplated by this Agreement. SUNGARD shall not be responsible for any delays or additional fees and costs associated with CUSTOMER's failure to timely perform its obligation under this Section 4.2.

**4.3. Data Security.** If the Software or data maintained by the Software is accessible through the Internet or other networked environment, CUSTOMER shall maintain, in connection with the operation of the Software, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, and virus detection and eradication. To the extent that CUSTOMER's Affiliates or clients have access to the Software through the Internet or other networked environment, CUSTOMER shall maintain agreements with such end-users that adequately protect the confidentiality and intellectual property rights of SUNGARD in the Software and Documentation, and disclaim any liability or responsibility of SUNGARD with respect to such end-users.

## **5. PAYMENTS**

**5.1. Initial License Fee.** CUSTOMER shall pay to SUNGARD an initial license fee in the amount stated on Schedule A, and shall be invoiced by SUNGARD in accordance with the payment terms stated on Schedule A.

**5.2. Support Fees Payments.** Beginning on the Effective Date and continuing for thirty (30) months (the "Initial Maintenance Term"), CUSTOMER shall pay to SUNGARD quarterly support fees in the amount stated on Schedule A. Upon expiration of the Initial Maintenance Term, ongoing support services shall automatically renew and CUSTOMER shall be obligated to pay for, one additional thirty-month renewal period ("Renewal Maintenance Terms"), unless CUSTOMER gives SUNGARD notice of its intent to terminate on-going support services (in accordance with Section 9.1) at least sixty (60) days before the end of the Initial Maintenance Term. On an annual basis, by giving at least ninety (90) days prior written notice to CUSTOMER, SUNGARD may increase the support fees payable under this Agreement, provided that the annual percentage increase in the support fees shall not exceed the limitation described on Schedule A.

**5.3. Service Fees.** CUSTOMER shall pay to SUNGARD the service fees stated on Schedule A for installation support and training services under Section 2.1. In each case where service fees are not specified on Schedule A, then the fees for such services shall be based upon SUNGARD's standard professional service fee rates then in effect.

**5.4. Expense Reimbursements.** CUSTOMER shall reimburse SUNGARD for its reasonable travel, lodging, meal and related expenses incurred by SUNGARD personnel in providing such services under this Agreement.

**5.5. Taxes.** The fees and other amounts payable by CUSTOMER to SUNGARD under this Agreement do not include any taxes of any jurisdiction that may be assessed or imposed upon the copies of the Software and Documentation delivered to CUSTOMER, the license granted under this Agreement or the services provided under this Agreement, or otherwise assessed or imposed in connection with the transactions contemplated by this Agreement, including sales, use, excise, value added, personal property, export, import and withholding taxes, excluding only taxes based upon SUNGARD's net income. CUSTOMER shall directly pay any such taxes assessed against it, and CUSTOMER shall promptly reimburse SUNGARD for any such taxes payable or collectable by SUNGARD.

**5.6. Payment Terms.** Support fees shall be invoiced by SUNGARD quarterly in advance. All other fees and all expense reimbursements shall be invoiced by SUNGARD as and when incurred. All invoices shall be sent to CUSTOMER's address for invoices stated on Schedule A. Except as otherwise specified on Schedule A, CUSTOMER's payments shall be due within thirty (30) days after receipt of invoice. Interest at the rate of twelve percent (12%) per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue on any amount not paid by CUSTOMER to SUNGARD when due under this Agreement, and shall be payable by CUSTOMER to SUNGARD on demand. Except as provided in Section 6.2.3, all fees and other amounts paid by CUSTOMER under this Agreement are non-refundable.

## **6. WARRANTIES AND LIMITATIONS**

**6.1. Performance.** SUNGARD warrants to CUSTOMER that for a period of thirty (30) days from the Installation Date, the Software, in the form delivered to CUSTOMER by SUNGARD and when properly used for the purpose and in the manner specifically authorized by this Agreement, will perform as described in the Documentation in all material respects. SUNGARD's sole obligation under this warranty is to comply with the provisions of Section 3.1.2.

**6.2. Right to License; No Infringement.** SUNGARD warrants to CUSTOMER that it has the full legal right to grant to CUSTOMER the license granted under this Agreement, and that the Software and Documentation, as and when delivered to CUSTOMER by SUNGARD and when properly used for the purpose and in the manner specifically authorized by this Agreement, do not infringe upon any United States patent issued as of the date of this Agreement, copyright, trade secret or other proprietary right of any Person. SUNGARD shall defend and indemnify CUSTOMER against any third party claim to the extent attributable to a violation of the foregoing warranty. SUNGARD shall have no obligation under this Section 6.2 unless CUSTOMER promptly gives written notice to SUNGARD after any applicable infringement claim is

initiated against CUSTOMER and allows SUNGARD to have sole control of the defense or settlement of the claim. The remedies provided in this Section 6.2 are the sole remedies for a breach of the warranty contained in this Section 6.2. If any applicable infringement claim is initiated, or in SUNGARD's sole opinion is likely to be initiated, then SUNGARD shall have the option, at its expense, to:

**6.2.1.** modify or replace all or the infringing part of the Software or Documentation so that it is no longer infringing, provided that the Software functionality does not change in any material adverse respect; or

**6.2.2.** procure for CUSTOMER the right to continue using the infringing part of the Software or Documentation; or

**6.2.3.** remove all or the infringing part of the Software or Documentation, and refund to CUSTOMER the corresponding portion of the initial license fee paid by CUSTOMER to SUNGARD under Section 5.1 with respect to the applicable Software, less a reasonable rental charge equal to one-sixtieth (1/60) of the initial license fee for each month of use, in which case the applicable Schedule A shall terminate with respect to the Software or part thereof removed.

**6.3. Exclusion for Unauthorized Actions.** SUNGARD shall have no liability under any provision of this Agreement with respect to any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Software, any unauthorized combination of the Software with other Software (other than software included in the Specified Configuration), any use of any version of the Software other than CUSTOMER's Latest Release or any breach of this Agreement by CUSTOMER.

**6.4. Force Majeure.** Neither party shall be liable for, nor shall it be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (excluding payment obligations) as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.

**6.5. General Indemnity.** SUNGARD and CUSTOMER each agrees to indemnify and hold harmless the other and its directors, officers, shareholders, agents and employees from and against any claims, demands, actions, or expenses arising out of any injury to any person or damages to any tangible property (excluding CUSTOMER data contained on tapes or other media) arising as a result of the services furnished by SUNGARD to CUSTOMER under this Agreement.

**6.6. Disclaimer and Exclusions.** EXCEPT AS EXPRESSLY SPECIFIED IN SECTION 6 OF THIS AGREEMENT, THE SOFTWARE, DOCUMENTATION, AND SERVICES ARE PROVIDED "AS IS" AND SUNGARD MAKES NO

REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INTERFERENCE. SUNGARD MAKES NO REPRESENTATIONS OR WARRANTIES, NOR SHALL SUNGARD HAVE ANY LIABILITY WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES. SUNGARD SHALL NOT BE RESPONSIBLE FOR ANY APPLICATION OF RESULTS OBTAINED FROM THE USE OF SOFTWARE OR FOR UNINTENDED OR UNFORESEEN RESULTS OBTAINED IN THE USE OF THE SOFTWARE.

**6.7. Limitations.** EXCEPT FOR DAMAGES REIMBURSABLE UNDER SECTION 6.2, SUNGARD'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED FIFTY PERCENT (50%) OF THE INITIAL LICENSE FEE ACTUALLY PAID BY CUSTOMER TO SUNGARD UNDER THIS AGREEMENT.

**6.8. Consequential Damage Exclusion.** UNDER NO CIRCUMSTANCES SHALL SUNGARD (OR ANY OF ITS AFFILIATES PROVIDING SOFTWARE OR SERVICES UNDER THIS AGREEMENT) BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING SUCH DAMAGES ARISING FROM ANY BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE AND WHETHER OR NOT FORESEEABLE, EVEN IF SUNGARD HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

**6.9. Open Negotiation.** CUSTOMER AND SUNGARD HAVE FREELY AND OPENLY NEGOTIATED THIS AGREEMENT, INCLUDING THE PRICING, WITH THE KNOWLEDGE THAT THE LIABILITY OF THE PARTIES IS TO BE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.

**6.10. Other Limitations.** The warranties made by SUNGARD in this Agreement, and the obligations of SUNGARD under this Agreement, run only to CUSTOMER and not to its Affiliates, its customers or any other Persons. Under no circumstances shall any Affiliate or customer of CUSTOMER or any other Person be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement, even if such

Affiliates, customers or other Persons are provided access to the Software or data maintained in the Software via the Internet or other networked environment. CUSTOMER shall have no rights or remedies against SUNGARD except as specified in this Agreement. No action or claim of any type relating to this Agreement may be brought or made by CUSTOMER more than one (1) year after CUSTOMER first has knowledge of the basis for the action or claim.

## **7. CONFIDENTIALITY OWNERSHIP AND RESTRICTIVE COVENANTS**

**7.1. Disclosure Restrictions.** All Confidential Information of one party ("Disclosing Party") in the possession of the other ("Receiving Party"), whether or not authorized, shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality thereof. The Disclosing Party's Confidential Information shall not be used or disclosed by the Receiving Party for any purpose except as necessary to implement or perform this Agreement, or except as required by law, provided that the other party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees and agents whose responsibilities require such use or access. The Receiving Party shall advise all such employees and agents, before they receive access to or possession of any of the Disclosing Party's Confidential Information, of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party shall be liable for any breach of this Agreement by any of its employees, agents or any other Person who obtains access to or possession of any of the Disclosing Party's Confidential Information from or through the Receiving Party.

**7.2. SUNGARD's Proprietary Items, Ownership Rights.** The Proprietary Items are trade secrets and proprietary property of SUNGARD, having great commercial value to SUNGARD. All Proprietary Items provided to CUSTOMER under this Agreement are being provided on a strictly confidential and limited use basis. CUSTOMER shall not, directly or indirectly, communicate, publish, display, loan, give or otherwise disclose any Proprietary Item to any Person, or permit any Person to have access to or possession of any Proprietary Item. Title to all Proprietary Items and all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights shall be and remain exclusively with SUNGARD, even with respect to such items that were created by SUNGARD specifically for or on behalf of CUSTOMER. This Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights to any Proprietary Items are transferred to CUSTOMER by virtue of this Agreement. All copies of Proprietary Items in CUSTOMER's possession shall remain the exclusive property of SUNGARD and shall be deemed to be on loan to CUSTOMER during the term of this Agreement.

**7.3. Use Restrictions.** Except as expressly permitted under this Agreement or in writing by SUNGARD,

CUSTOMER shall not do, attempt to do, nor permit any other Person to, (a) use any Proprietary Item for any purpose, at any location or in any manner not specifically authorized by this Agreement; (b) make or retain any copy of any Proprietary Item except as specifically authorized by this Agreement; (c) create or recreate the source code for the Software, or re-engineer, reverse engineer, decompile or disassemble the Software; (d) modify, adapt, translate or create derivative works based upon the Software or Documentation, or combine or merge any part of the Software or Documentation with or into any other software or documentation; (e) refer to or otherwise use any Proprietary Item as part of any effort either (i) develop a program having any functional attributes, visual expressions or other features similar to those of the Software, or (ii) to compete with SUNGARD; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Item, or fail to preserve all copyright and other proprietary notices in any copy of any Proprietary Item made by CUSTOMER; (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, consultant or partner, any right to use any Proprietary Item, whether on CUSTOMER's behalf or otherwise; or (h) use the Software to conduct any type of service bureau or time-sharing operation.

**7.4. Audit.** From time to time, but no more than once in a twelve (12) month period, at SUNGARD's expense and by giving reasonable notice, SUNGARD may enter CUSTOMER locations during normal business hours and audit the Scope of Use and information pertaining to CUSTOMER's compliance with Section 7.

**7.5. Enforcement.** Each party shall promptly give written notice to the other of any actual or suspected breach by it of any of the provisions of this Section 7, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach. Each party acknowledges that any breach of any of the provisions of this Section 7 will result in irreparable injury to the other party for which money damages could not adequately compensate. If there is a breach, then the non-breaching party will be entitled, in addition to all other rights and remedies which it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach. The existence of any claim or cause of action which the breaching party may have against the non-breaching party will not constitute a defense or bar to the enforcement of any of the provisions of this Section 7.

## **8. TERMINATION**

**8.1. Term of Agreement.** This Agreement shall commence upon the Effective Date and automatically terminate at the end of five (5) years unless a license for an additional term has been purchased by such expiration date or the Agreement has been terminated pursuant to Section 8.2.

**8.2. Termination.** If either party (a) breaches, in any

material respect, any of the provisions of Section 7 or Section 9.5, (b) breaches any of its other obligations under this Agreement (except for Customer's failure support fees during a Renewal Maintenance Term) and does not cure the breach within thirty (30) days after written notice by the other party describing the breach in reasonable detail, or (c) dissolves or liquidates or otherwise discontinues all or a significant part of its business operations, in addition to any other rights available to it under law or equity, this Agreement may be terminated by such other party by its giving a written notice of termination to the breaching party. In addition, except for CUSTOMER's failure to pay Support Fees in accordance with Section 5.2 during a Renewal Maintenance Term, SUNGARD shall have the right to terminate this Agreement if CUSTOMER fails to pay SUNGARD, within thirty (30) days after SUNGARD makes written demand therefor, any past-due amount payable under this Agreement that is not subject to a Good Faith Dispute as defined in Section 9.3.4.

**8.3. Effect of Termination of the Agreement.** Upon a termination of this Agreement, whether under this Section 8 or otherwise, CUSTOMER shall discontinue all use of the Software and Documentation, CUSTOMER shall promptly return to SUNGARD all copies of the Software, the Documentation and any other Proprietary Items then in CUSTOMER's possession, and CUSTOMER shall give written notice to SUNGARD certifying that all copies of the Software have been permanently deleted from its computers. CUSTOMER shall remain liable for all payments due to SUNGARD with respect to the period ending on the date of termination. The provisions of Sections 5, 6 and 7 (excluding 6.1 and 6.5) shall survive any termination of this Agreement, whether under this Section 8 or otherwise.

**8.4 Termination of On-going Support.** Upon the effective date of termination of support services by CUSTOMER in accordance with Section 5.2 ("Support Termination Date"), (i) SUNGARD shall discontinue providing all on-going support services, including SUNGARD's obligations under Section 3.1, (ii) any SUNGARD warranties under this AGREEMENT shall cease to apply for the period after the Support Termination Date, and (iii) SUNGARD shall have no liability with respect to CUSTOMER's use of the product after the Support Termination Date.

## **9. OTHER PROVISIONS**

**9.1. Notice.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class, certified, air mail, or the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, provided that a signed written original is sent by one of the foregoing methods within twenty-four (24) hours thereafter. CUSTOMER's address for notices is stated on Schedule A. SUNGARD's address for notices is 23975 Park Sorrento, 4<sup>th</sup> Floor, Calabasas, CA 91302 - Attention: Contract Administration. In the case of (a) any notice by CUSTOMER alleging a breach of this Agreement by SUNGARD or (b) a

termination of the Agreement, CUSTOMER shall also send a copy to SUNGARD Data Systems Inc., 680 Swedesford Road, Wayne, Pennsylvania 19087, Attention: General Counsel. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section 9.1.

**9.2. Publicity.** SUNGARD shall be permitted to publicize the license sale hereunder as long as such publicizing does not infringe the terms of Section 7.1.

**9.3. Defined Terms.** As used in this Agreement, the following terms have the following meanings:

**9.3.1. "affiliate" or "Affiliate"** means, with respect to a specified person, any person which directly or indirectly controls, is controlled by, or is under common control with the specified person as of the date of this Agreement, for as long as such relationship remains in effect.

**9.3.2. "Confidential Information"** means all business information disclosed by one party to the other in connection with this Agreement unless it is or later becomes publicly available through no fault of the other party or it was or later is rightfully developed or obtained by the other party from independent sources free from any duty of confidentiality. Without limiting the generality of the foregoing, Confidential Information shall include Customer's data and the details of Customer's computer operations and shall include SUNGARD's Proprietary Items. Confidential Information shall also include the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of the products licensed hereunder.

**9.3.3. "Export Laws"** means all laws, administrative regulations and executive orders of any Applicable Jurisdiction relating to the control of imports and exports of commodities and technical data, use or remote use of software and related property, or registration of this Agreement, including the Export Administration Regulations of the U.S. Department of Commerce, the International Traffic in Arms Regulations of the U.S. Department of State, and the Enhanced Proliferation Control Initiative. "Applicable Jurisdiction" means the U.S. and any other jurisdiction where any Proprietary Items will be located or from where any Proprietary Items will be accessed under this Agreement.

**9.3.4. "Good Faith Dispute"** means a good faith dispute by CUSTOMER of certain amounts invoiced under this Agreement. A Good Faith Dispute will be deemed to exist only if (1) CUSTOMER has given written notice of the dispute to SUNGARD promptly after receiving the invoice and (2) the notice explains CUSTOMER's position in reasonable detail. A Good Faith Dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice have been disputed.

**9.3.5. "including"** means including but not limited to.

**9.3.6. "Optional Features"** means such refinements, improvements and enhancements to the Software which SUNGARD, in its sole discretion, offers to its customers for an additional fee.

**9.3.7. "person" or "Person"** means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or

other entity of any nature.

**9.3.8. "Proprietary Items"** means, collectively, the Software and Documentation, the object code and the source code for the Software, the visual expressions, screen formats, report formats and other design features of the Software, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Software or Documentation, all future modifications, revisions, updates, releases, refinements, improvements and enhancements of the Software or Documentation, all derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing and all copies of the foregoing.

**9.3.9. "Scope of Use"** means the Designated Computer(s), Designated Location(s), License Term, Number of Work Stations, Number of Users, Number of Production Databases, Number of Production Servers, and/or other parameters as appropriate, stated on Schedule A.

**9.3.10. "Upgrades"** means periodic modifications, revisions and updates to the Software which SUNGARD, in its sole discretion, incorporates into the Software and makes available to its general customer base under its general ongoing support service program and at no additional charge to CUSTOMER.

**9.4. Parties in Interest.** This Agreement shall bind, benefit and be enforceable by and against SUNGARD and CUSTOMER and, to the extent permitted hereby, their respective successors and assigns. Neither party shall assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without the other party's prior written consent which consent shall not be required in the case of an assignment to a purchaser of or successor to substantially all of such party's business, or to an affiliate of such party provided that the scope of the license granted hereunder does not change and assignor guarantees the obligations of the assignee. For the purposes of this Section 9.4, any change in control of either party and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement.

**9.5. Export Laws and Use Outside of the United States.** CUSTOMER shall comply with the Export Laws. CUSTOMER shall not export or re-export directly or indirectly (including via remote access) any part of the Software or Confidential Information to any Applicable Jurisdiction to which a license is required under the Export Laws without first obtaining a license.

**9.6. Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint venturers or agents.

**9.7. Entire Understanding.** This Agreement, which includes and incorporates the Schedules referred to herein, states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement. Any written, printed or other materials which SUNGARD provides to CUSTOMER that are not included in the Documentation are provided on an

"as is" basis, without warranty, and solely as an accommodation to CUSTOMER.

**9.8. Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

**9.9. Severability.** A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.

**9.10. Headings.** Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

**9.11. Jurisdiction and Process.** In any action relating to this Agreement, (a) each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the Commonwealth of Pennsylvania, and (b) the prevailing party shall be entitled to recover its reasonable attorneys' fees (including, if applicable, charges for in-house counsel), court costs and other legal expenses from the other party.

**9.12. Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED SOLELY THEREIN, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS PROVIDED, HOWEVER, THAT THE TERMS OF ANY APPLICABLE LAW NOW OR HEREAFTER ENACTED THAT IS BASED ON OR SIMILAR TO THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT DRAFTED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS SHALL NOT APPLY.

**SCHEDULE A**  
**TO SOFTWARE LICENSING AND SERVICES AGREEMENT**  
**DATED \_\_\_\_\_**

**LICENSE ORDER**

CUSTOMER	:	City of Santa Clara
DESIGNATED LOCATION(s)	:	1500 Warburton Ave Santa Clara CA 95050
SOFTWARE	:	AvantGard/APS2(as described in Attachment 1 to this Schedule A)
DOCUMENTATION	:	1 Copy on CD-ROM
SCOPE OF USE		
PLATFORM	:	Windows XP or Windows 2000
NUMBER OF WORKSTATIONS	:	1
NUMBER OF PRODUCTION DATABASES	:	1
NUMBER OF USERS	:	1
INITIAL LICENSE FEE	:	USD \$16,800.00
PAYMENT OF INITIAL LICENSE FEE	:	The Initial License Fee is payable as follows: <input type="checkbox"/> 100% upon the Effective Date
QUARTERLY SUPPORT FEE	:	USD \$ 840.00 per quarter.
INCREASE LIMITATION OF QUARTERLY SUPPORT FEE	:	CPI+3% per year
CUSTOMER ADDRESS FOR INVOICES	:	1500 Warburton Ave Santa Clara CA 95050
CUSTOMER ADDRESS FOR NOTICES	:	1500 Warburton Ave Santa Clara CA 95050
INSTALLATION DATE	:	September 10, 2004
MINIMUM CONVERSION, INSTALLATION SUPPORT & TRAINING DAYS	:	\$1,800.00 via phone
STANDARD PROFESSIONAL SERVICES FEES IN EFFECT ON DATE OF AGREEMENT	:	\$200.00 per hour
NORMAL BUSINESS HOURS	:	7 AM to _6_PM EST (Monday through Friday excluding SunGard holidays)
OTHER TERMS	:	NONE

## **ATTACHMENT 1 TO SCHEDULE A**

### **SOFTWARE DESCRIPTION**

**AvantGard/APS2 - Base Portfolio Module**

**Interface to FT Interactive Data Corporation for market pricing**



## SCHEDULE B

### TO SOFTWARE LICENSING AND SERVICES AGREEMENT

DATED \_\_\_\_\_

#### SPECIFIED CONFIGURATION

#### HARDWARE AND SOFTWARE REQUIREMENTS

#### APS 2 In-House Hardware & Operating Environment Requirements

01/04

		Minimum (Small User Base)	Recommended (Mid-Large User Base)
10. Client	11. Processor Memory Hard Drive (Type) Hard Drive (Size) CD ROM Floppy Disk Monitor Modem 12. Other	Pentium-class PC (300MHz) or higher 128 MB of RAM or higher Ultra ATA/100 HDD Minimum of 350 MB available Yes Yes SVGA monitor capable of 1024/768 resolution Intel (or compatible); Microsoft Internet Explorer 5.01 (with SP 2) or higher (for installation usage only); LAN card that can be configured for TCP/IP; Laser Printer; pcANYWHERE 10.0 for remote support (optional, but highly recommended)	Pentium-class PC (300 MHz) or higher 256 MB of RAM or higher Ultra ATA/100 HDD Minimum of 350 MB available Yes Yes SVGA monitor capable of 1024/768 resolution Intel (or compatible); 56.6K baud Modem; Microsoft Internet Explorer 5.01 (with SP 2) or higher (for installation usage only); LAN card that can be configured for TCP/IP; Laser Printer; pcANYWHERE 10.0 for remote support
	13. Operating Systems	Win '98, Win 2000 (Professional) Win XP or NT 4.0 (with Service Pack 6A) or higher for installation usage only	

14. Server	15. Processor Memory Hard Drive (Type) Hard Drive (Size) CD ROM Floppy Disk Monitor 16. Other	Pentium-class PC (900 MHz or higher) 128 MB of RAM or higher Ultra ATA/100 HDD Minimum of 350 MB available Yes Yes SVGA monitor capable of 1024/768 resolution Microsoft Internet Explorer 5.01 (with SP 2) or higher (for installation usage only); Network Card (Ethernet) with at least 100 Megabits; TCP/IP protocol; Backup System (daily backup recommended)  C-Tree SQL Server	Pentium-class PC (1 GHz or higher) 512 MB of RAM or higher Ultra ATA/100 HDD Minimum of 500 MB available Yes Yes SVGA monitor capable of 1024/768 resolution Microsoft Internet Explorer 5.01 (with SP 2) or higher (for installation usage only); Network Card (Ethernet) with at least 100 Megabits; TCP/IP protocol; Backup System (daily backup recommended)  C-Tree SQL Server
	17. Databases  18. Operating Systems	Proprietary  Win XP. Win 2000 with Service Pack 2 or NT 4.0 with Service Pack 6A or higher for installation usage only	

(TO BE COMPLETED BY FT INTERACTIVE DATA)  
USER ID AND PASSWORD: D460#SC  
ACCOUNT NUMBER:

**Services Agreement for Use with RemotePlus™ Customers Using  
Software Provided by an Authorized Third Party Vendor**

RETURN COMPLETED SERVICES AGREEMENT TO:

FT Interactive Data  
Attn: Micro Client Support, MS B1-1  
22 Crosby Drive  
Bedford, MA 01730  
USA

Fax Number: 781-687-8166  
(Please do not fax to any other phone number.)

NAME AND ADDRESS OF CUSTOMER ("CUSTOMER")

CITY OF SANTA CLARA  
FINANCE - ADMIN. SVCS.  
1500 WARBURTON AVENUE  
SANTA CLARA, CA 95050

ATTENTION OF: VICTOR IP

TELEPHONE #: (408) 615-2348

Customer hereby requests that FT Interactive Data Corporation ("FT Interactive") furnish certain services to Customer, as described below, and Customer agrees to take and pay for such services, pursuant to the terms and conditions of this Agreement.

**1. Service**

FT Interactive agrees to provide to Customer, as available to FT Interactive through existing or future agreements with its data suppliers, certain data available through FT Interactive's RemotePlus service (the "Service"). The data which Customer may access is set forth on the Price List (defined in Section 13 below). The Service is a workstation-mainframe/mini computer data and data delivery service consisting of a series of mainframe/mini computer and workstation-based programs which enable data access, retrieval, and/or transmission of securities pricing, descriptive and fundamental data resident on FT Interactive's computer system. RemotePlus includes workstation-resident software (the "RemotePlus Software") for lookup of securities, online data retrieval, and/or setup and transmission of data files. The Service serves as an intermediary between certain FT Interactive securities databases and the software provided to Customer by a third party vendor authorized by FT Interactive (the "Authorized Software") which requires external data for use on a micro-computer or workstation. The Service includes access to Evaluations (as defined in Section 12 below) of fixed income securities and technical assistance which shall be subject to those additional terms and conditions set forth in Section 12 of this Agreement.

This Agreement is subject to any requirements of FT Interactive's data suppliers under FT Interactive's agreements with such data suppliers, including those requirements which may be imposed from time to time. FT Interactive's agreement to make any data available to

Customer under this Agreement that is provided to FT Interactive by third party data suppliers is expressly conditioned on the effectiveness of FT Interactive's agreements with such data suppliers. FT Interactive shall no longer make such data available to Customer upon termination of the license granted by such data suppliers to FT Interactive to distribute such data.

**2. Term of Agreement**

This Agreement is effective from the date it is accepted by FT Interactive and shall remain in full force and effect until terminated as hereinafter provided. Either party may, in its discretion, terminate this Agreement effective at the end of any calendar month by giving the other party at least ninety (90) days prior written notice of termination. Customer may terminate this Agreement on the effective date of any change, as contemplated in Section 6 hereof, in the charges, terms or conditions contained in this Agreement by giving FT Interactive at least two weeks prior written notice of termination. Either party may immediately terminate this Agreement for failure of the other party to comply with any of its terms and conditions by giving the other party written notice of termination.



**Interactive Data**

FINANCIAL TIMES

### 3. Charges

Customer agrees to pay FT Interactive's charges for the Service as set forth on the RemotePlus Price List applicable to the Authorized Software, as such Price List may be updated from time to time. Customer acknowledges receipt of the RemotePlus Price List applicable to the Authorized Software setting forth, as of the date of such Price List, FT Interactive's charges for the Service.

Payment for the Service shall be due within thirty (30) days of receipt of invoice. Customer shall reimburse FT Interactive for all costs and expenses, including reasonable attorneys' fees, incurred by FT Interactive to collect any charges due under this Agreement.

### 4. Terminal and Common Carrier Equipment and Service

Customer shall obtain, at its sole cost and expense, terminal equipment, if any, required for use with the Service. Customer shall also obtain, at its sole cost and expense, common carrier communication devices or services, if any, required to communicate with the location at which FT Interactive's services are available.

### 5. Taxes and Exchange User Fees

Customer agrees to pay all exchange user fees and federal, state and local taxes however designated or levied based on FT Interactive's charges, the Service or otherwise arising out of this Agreement, exclusive, however, of taxes based on FT Interactive's net income.

### 6. Charges, Terms and Conditions Subject to Change

All charges, terms and conditions contained in this Agreement are subject to change by FT Interactive upon one month's prior written notice. Subject to Customer's right to terminate this Agreement, pursuant to Section 2 above, such changed charges, terms and conditions shall become effective on their effective date, as designated by Interactive. Notwithstanding any other provision herein to the contrary, FT Interactive reserves the right to pass through to Customer any third party supplier change in cost. Charges for new service features shall be effective when such new features are introduced.

### 7. Warranties; Limitations of Liability

(a) Except as set forth in Section 11 below, FT INTERACTIVE AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

(b) The Service provided hereunder is obtained or derived by FT Interactive from sources, in a manner that Interactive, using commercially reasonable resources, has reason to believe are reliable, such as pricing services, standard financial periodicals or publications, newspapers, brokers, dealers, underwriters and securities exchanges.

While FT Interactive shall exercise good faith in delivering the Service, FT Interactive's or its suppliers' liability and Customer's remedy for any form of action shall not exceed one-half of the fees paid hereunder during the twelve (12) calendar months preceding the alleged injury or damage. Neither FT Interactive nor its suppliers shall have any liability to Customer, or a third party, for errors, omissions or malfunctions in the Service, other than FT Interactive's obligation to endeavor, upon receipt of notice from Customer, to correct a malfunction, error, or omission in the Service.

(c) Customer accepts responsibility for, and acknowledges it exercises its own independent judgment in, its selection of the Service, its selection of the use or intended use of such, and any results obtained. Nothing contained herein shall be deemed to be a waiver of any rights existing under applicable law for the protection of investors.

(d) Customer shall indemnify FT Interactive and its suppliers against and hold FT Interactive harmless from any and all losses, damages, liability, and costs, including attorney's fees, resulting directly or indirectly from any claim or demand against FT Interactive by a third party arising out of or related to the accuracy or completeness of the Service received by Customer, or any data, information, service, report, analysis or publication derived therefrom. FT Interactive shall not be liable for any claim or demand against Customer by a third party, except as provided in Section 11.

(e) Neither party shall be liable for (i) any special, indirect or consequential damages (even if advised of the possibility of such), (ii) any delay by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, labor difficulties, fire, mechanical breakdown, flood or catastrophe, acts of God, insurrection, war, riots, or failure beyond its control of transportation or power supply, or (iii) any claim that arose more than one year prior to the institution of suit therefor.

### 8. Protection of Confidential or Proprietary Information

(a) FT Interactive shall treat as confidential and shall not knowingly copy or duplicate (other than for use as emergency back-up and in the normal course of performing processing on FT Interactive's computer facility) or knowingly disclose to any person or organization any confidential information which is submitted by Customer for processing.

(b) Customer acknowledges that the data and information contained in the Service constitutes copyrighted, trade secret or proprietary information of substantial value to FT Interactive or its suppliers (collectively the "Proprietary Information"). Customer shall treat Proprietary Information as proprietary and shall not divulge, nor permit any of its employees or agents to divulge, any Proprietary Information to any person, except as expressly permitted under Section 9 of this Agreement.

## 9. Limitations on Use of Service

(a) Subject to Subsection 9(b) below, Customer agrees to use the Service solely for its internal use and benefit and not for resale or other transfer or disposition to, or use by or for the benefit of, any other person or organization, except as permitted in subsection 9(b) below. In addition, Customer agrees that the Service (including the Data as defined below) shall be used only in conjunction with the Authorized Software and shall not be used for Customer's general use, transfer or copying.

(b) For the purposes of this Agreement, "Workstation" shall mean one personal computer or other type of workstation designed for use by one individual at a time. Use of the Service is limited to productive use on the number of Workstations indicated in Section 14 of this Agreement and not for any other productive use. All Workstations must be located at the street address of Customer set forth above in this Agreement.

Customer does not include Customer's affiliates, parent organization or any joint venture. The information and data contained in the Service, or any portion thereof (the "Data"), may not be transferred to or used on any other computer system. Customer may disseminate reports and analyses that contain "insubstantial" portions of Data by either hard copy or view only access; provided that such dissemination is for human cognition only and not for manipulation in machine readable form ("Hard Copy Reports"). "Insubstantial" means those portions of Data which in the aggregate do not form a significant part of the Service. Other than the Hard Copy Reports, no other distribution of the Data is permitted. Customer agrees to pay any incremental fee for any use it makes of the Data not expressly permitted under this Agreement. Upon reasonable advance notice, FT Interactive is hereby granted the right to audit and examine Customer's books and records relating to Customer's use of the Service and all computer equipment, devices, components, transmission equipment and software used by Customer in connection with the Service.

Each party shall take reasonable measures to advise its employees and agents of their obligations pursuant to this Section 9.

Customer shall not use the Services for any unlawful purpose.

Customer shall not, nor permit its employees or agents to, disassemble, decompile, reverse engineer, or reengineer the RemotePlus Software.

## 10. Marks

In providing the Services FT Interactive may from time to time make reference to product names or other names or marks that Interactive, or its suppliers, consider proprietary ("Marks"), such as the identification numbers and descriptions of securities created by Standard & Poor's CUSIP Service Bureau ("CSB") and known as CUSIP

Numbers and CUSIP Uniform Descriptions. The Customer acknowledges that such numbers and descriptions were created by CSB through the expenditure of considerable work, time and money. The Customer agrees to protect the proprietary and copyright position of CSB and of the American Bankers Association in such numbers or descriptions both during and after the term of this Agreement. The Customer will not transfer such numbers or descriptions, or extracts therefrom or summaries thereof, to any other person or organization. It is not intended hereby to publish any or all of such numbers or descriptions furnished hereto; provided, however, that this Section shall not be deemed to prohibit the use of such numbers and descriptions in the normal course of processing security transactions or in the normal course of business of Customer, so long as the use of such numbers and descriptions is not intended to and does not serve in any way for the purpose of the creation or maintenance of a file of CUSIP numbers or descriptions for itself or for any other person or organization and is not intended to create and maintain and does not serve in any way as a substitute for any CUSIP service offered generally by CSB. Customer shall not use the Marks alone or in connection with other words, without the consent of FT Interactive or the relevant supplier as applicable.

## 11. Patents, Copyrights, and Proprietary Rights

If any action is instituted against Customer based upon a claim that the use of the Service provided to Customer by FT Interactive constitutes a direct infringement of any United States patent, copyright or other proprietary right, FT Interactive will defend such action at its expense and will pay all costs and damages attributed to such claim and finally awarded against Customer; provided that Customer promptly notifies FT Interactive of such action and gives FT Interactive the sole authority and all information and assistance necessary (at FT Interactive's expense) to defend or settle said action. FT Interactive shall have no liability to Customer for any infringement action or claim which arises out of an unauthorized use of the Service by Customer, or Customer's employees or agents, or for any costs or expenses incurred without FT Interactive's written authorization.

If such claim has occurred, or in FT Interactive's opinion is likely to occur, FT Interactive may, at its election and expense, either obtain for Customer the right to continue using the Service at issue or replace or modify the same so that it becomes non-infringing. If neither of the foregoing alternatives is reasonably available, Customer agrees to discontinue use of said Service.

This Section sets forth the exclusive remedy of Customer against FT Interactive or any of its suppliers for patent, copyright or other proprietary right infringement.

## 12. Evaluated Data

In the event that Customer at any time receives Data from FT Interactive containing evaluations, rather than market quotations, for certain securities or certain other data related to such securities, the following provisions will apply:

(i) evaluated securities are typically complicated financial instruments. There are many methodologies (including computer-based analytical modeling and individual security evaluations) available to generate approximations of the market value of such securities, and there is significant professional disagreement about which is best. No evaluation method, including those used by FT Interactive, may consistently generate approximations that correspond to actual "traded" prices of the instruments; (ii) FT Interactive's methodologies used to provide the pricing portion of certain Data may rely on evaluations; however, Customer acknowledges that there may be errors or defects in FT Interactive's software, databases, or methodologies that may cause resultant evaluations to be inappropriate for use in certain applications; and (iii) Customer assumes all responsibility for edit checking, external verification of evaluations, and ultimately the appropriateness of use of evaluations and other pricing data provided via the Service in Customer's applications, regardless of any efforts made by FT Interactive in this respect. Customer shall indemnify and hold FT Interactive completely harmless in the event that errors, defects, or inappropriate evaluations are made available via the Service or the Data.

For purposes of this Agreement, "Evaluation" means (i) mathematically derived approximations of estimated value, or (ii) individual security evaluations for miscellaneous issues, such as non-investment grade issues and issues with special terms and conditions which may not fit into any of FT Interactive's current evaluation models. Evaluations are not the transaction price at which an investment can be purchased or sold in the market, since no evaluation can correspond to or approximate the actual market price which could be obtained by the end user on any given day for any particular security. Mathematically derived Evaluations are based upon certain market assumptions and evaluation methodologies reflected in proprietary algorithms and may not conform to trading prices or information available from third parties. In evaluating those miscellaneous issues described above, FT Interactive's evaluators concentrate on market integrity within both market sector and issuer, examine the individual characteristics of each issue and confer with broker/dealers and other information sources. Evaluations are sometimes referred to as "pricing services" or "prices" solely for convenience of reference.

## 13. General

(a) This Agreement and the RemotePlus Price List (the "Price List"), as such Price List may be updated from time to time, constitute the entire understanding of the parties with respect to the Service and supersedes all prior or collateral agreements, or understandings. In the event that

any supplier of data provided hereunder requires that a separate agreement or schedule be executed by Customer, such agreement or schedule shall be deemed an addendum hereto and a part hereof. No waiver or modification shall be valid or binding unless in writing and signed by the party to be charged thereby. The Customer acknowledges that in executing this Agreement, it has not relied on any representation by FT Interactive or its employees or agents other than those incorporated herein, and further it has had the time and opportunity to obtain the advice of legal counsel concerning the terms and conditions hereof.

(b) The laws of the State of New York shall govern the construction and interpretation of this Agreement.

(c) No assignment (as that term is defined in the Investment Advisers Act of 1940) of a party's rights or obligations under this Agreement may be effectuated without the prior written consent of the other party; provided, however, that FT Interactive may assign this Agreement and any of its rights hereunder to any affiliate of FT Interactive; and provided further, that FT Interactive's consent to an assignment of this Agreement by Customer shall not be unreasonably withheld, except in the event that the proposed assignment is to a competitor or customer of FT Interactive, in which case FT Interactive may withhold its consent to assignment in its sole discretion. Customer acknowledges and agrees that (i) a transfer by operation of law or otherwise of Customer's interest in this Agreement and (ii) a Change of Control affecting Customer shall be deemed to constitute an assignment by Customer of Customer's rights, duties and obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. The rights under this Agreement shall inure to the benefit of any third party holding any rights, interest or title in the Proprietary Information, or the property from which the Proprietary Information was derived. For purposes hereof, "Change of Control" shall mean, with respect to any entity, a transfer (whether in a single transaction or a series of related transactions) of more than fifty percent (50%) of the stock or other equity interests having voting or other rights to direct the management of such entity.

(d) Wherever possible the provisions of this Agreement shall be interpreted in a manner to be effective and valid under applicable law, but if prohibited or invalid, such provision shall only be ineffective to the extent required by law, without invalidating (to the extent possible) the intent of or remainder of such provision or other provisions.

(e) Unless otherwise notified in writing, notices required under this Agreement shall be sent to the address given above if to Customer, and to 22 Crosby Drive, Bedford MA 01730, USA, Attn: Customer Setup MS B1-1, if to FT Interactive.

(f) The provisions of Sections 5, 7, 8, 9, 10, 11, 12 and 13 shall survive any termination or expiration of this Agreement.

(g) FT Interactive is a registered investment adviser. Pursuant to the provisions of the Investment Advisers Act of 1940, FT Interactive offers to supply Customer with Part II of FT Interactive's Securities and Exchange Commission Form ADV upon written request of Customer.

(h) This Agreement may be signed in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument.

#### 14. Customer Usage and Contact Information

CUSTOMER SHALL USE THE SERVICE ON _____ WORKSTATIONS.	
NAME AND VERSION # OF THIRD PARTY SOFTWARE PACKAGE YOU ARE USING TO CONNECT TO INTERACTIVE: <u>Sungard APS2</u>	
BILLING ADDRESS OF CUSTOMER:	<u>CITY OF SANTA CLARA</u> <u>FINANCE-ADMIN. SVCS.</u> <u>1500 WARBURTON AVENUE</u> <u>SANTA CLARA, CA 95050</u>
ATTENTION OF:	<u>VICTOR IP</u>
TELEPHONE #:	<u>(408) 615 2348</u>

<b>Requested by:</b> CUSTOMER: <u>CITY OF SANTA CLARA</u> BY: <u>Jennifer Sparacino</u> AUTHORIZED SIGNATURE TITLE: <u>CITY MANAGER</u> DATE: <u>9/20/04</u>	<b>Agreed to and accepted by:</b> FT INTERACTIVE DATA CORPORATION BY: <u>Susan Buel</u> TITLE: <u>Sr. Director, Client Services</u> DATE: <u>10/6/04</u>
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RemotePlus™ is a trademark of FT Interactive Data Corporation. Other products, services, or company names mentioned herein are the property of, and may be the service mark or trademark of, their respective owners.

APPROVED AS TO FORM  
Date 9/13/04  
[Signature]  
DEPUTY CITY ATTORNEY

© 2003 FT Interactive Data Corporation  
7926 (0403)

ATTEST:

[Signature]  
City Clerk



Interactive Data  
FINANCIAL TIMES



RemotePlus Fee Schedule 7/1/04

For Services through an Authorized Software Vendor  
U.S. and Canadian Price List

Current Business Day Data Or any request within last 30 calendar days				Time-Series Pricing Data Historical Pricing		
Monthly Per Security Fees				Per Hit Fees		
	Daily >10/mo	Weekly 2-10/mo	Monthly 1/mo	Daily >10 dates	Weekly > 2 dates	Mo/Qu/Yrly > 1 date
<b>Pricing Data</b>						
<b>US &amp; Canadian Data</b>						
U.S. & Canadian Equities	\$0.7042	\$0.2817	\$0.1408	\$0.0174	\$0.0487	\$0.1057
FASTPRICE™ for Equities	\$3.9125	\$0.8317	\$0.1878	Not Available		
Pink Sheets <sup>1</sup>	\$0.7042	\$0.2817	\$0.1408	\$0.0174	\$0.0487	\$0.1057
Indices	\$1.2023	\$0.4809	\$0.2404	\$0.0296	\$0.0831	\$0.1803
Preferreds	\$1.1476	\$0.4590	\$0.2295	\$0.0281	\$0.0794	\$0.1722
Unlisted ADRs	\$4.0950	\$1.6379	\$0.8191	\$0.1009	\$0.2835	\$0.6142
Money Market Mutual Fund Yields	\$0.7042	\$0.2817	\$0.1408	\$0.0174	\$0.0487	\$0.1057
Listed Bonds	\$0.7253	\$0.2902	\$0.1450	\$0.0179	\$0.0502	\$0.1089
FASTPRICE for Corporate Bonds	\$13.4324	\$2.7939	\$0.6447	Not Available		
Evaluated Bonds and Medium Term Notes	\$2.6609	\$1.0644	\$0.5318	\$0.0655	\$0.1843	\$0.3989
High Yield Securities	\$2.6609	\$1.0644	\$0.5318	\$0.0655	\$0.1843	\$0.3989
Treasuries and Agencies Discount Notes	\$1.1820	\$0.4728	\$0.2384	\$0.0289	\$0.0818	\$0.1774
MBS/SBA	\$2.6609	\$1.0639	\$0.5318	\$0.0655	\$0.1841	\$0.3989
Munis				No Scale Available		
1 - 500	\$2.0353	\$0.9124	\$0.3509	\$0.0379	\$0.1657	\$0.2762
> 500	\$1.1697	\$0.6082	\$0.2807	\$0.0368	\$0.1609	\$0.2682
FASTPRICE for Munis	\$15.3516	\$3.1931	\$0.7369	Not Available		
CMOs & Asset-Backeds				No Scale Available		
1 - 50	\$15.3516	\$7.6736	\$3.4540	\$0.3973	\$1.3944	\$2.7200
51 - 100	\$11.5015	\$6.9083	\$2.8902	\$0.3973	\$1.3944	\$2.7200
101 - 500	\$8.0413	\$5.6514	\$2.4305	\$0.3973	\$1.3944	\$2.7200
> 500	\$5.0440	\$4.2980	\$1.7563	\$0.3973	\$1.3944	\$2.7200
Long Term CDs	\$2.6609	\$1.0639	\$0.5318	\$0.0655	\$0.1843	\$0.3989
Canadian Bonds and T-bills	\$2.6609	\$1.0639	\$0.5318	\$0.0655	\$0.1841	\$0.3989
Options	\$1.3509	\$0.5404	\$0.2702	\$0.0332	\$0.0934	\$0.2026
Commodities and Futures	\$1.3509	\$0.5404	\$0.2702	\$0.0332	\$0.0934	\$0.2026
Money Market Securities	\$3.3466	\$1.3387	\$0.6692	\$0.0824	\$0.2318	\$0.5020
UIT Pricing	\$1.1476	\$0.4590	\$0.2295	\$0.0281	\$0.0794	\$0.1722
<b>International Data</b>						
Listed Pricing	\$2.3909	\$1.6120	\$0.6988	\$0.0589	\$0.2789	\$0.5239
Indices	\$4.0820	\$2.7517	\$1.1924	\$0.1005	\$0.4764	\$0.8942
Bond Evaluations	\$11.8207	\$8.2223	\$3.5198	Not Available		
Spot Rates <sup>2</sup>	\$5.3730	\$1.3942	\$0.3868	\$0.1324	\$0.2412	\$0.2902
<b>Spread/Yield Data</b>						
Corporate Bond Spread/Yield	\$0.7057	\$0.2712	\$0.1355	Not Available		
<b>Announcement Data</b>						
			Monthly Fee			
<b>US and Canadian Data</b>						
Corporate Actions & Dividends			\$0.8213			
Reorganization Data			\$1.3688			
Registered Bond Interest			\$0.5199			
CMO & Asset-Backed Factors			\$1.1498			
Mortgage-Backed Factors			\$0.5749			
Indicated Annual Dividend			\$0.2828			
Shares Outstanding			\$0.1366			
Earnings			\$0.1366			
Current Coupon			\$0.3090			
<b>International Data</b>						
Corporate Actions & Dividends			\$2.2174			
Indicated Annual Dividend			\$0.5257			
Shares Outstanding			\$0.3379			
Earnings			\$0.3379			
<b>Ratings and Miscellaneous Data</b>						
<b>US and Canadian Ratings</b>						
Moody's <sup>®</sup>			\$0.1578			
S&P <sup>®</sup>			\$0.1578			
Fitch			\$0.1578			
<b>International Ratings</b>						
Moody's			\$0.2101			
S&P			\$0.2101			
<b>Miscellaneous Data</b>						
NAICS			\$0.1366			
North American Beta			\$0.7885			
Section 13f			\$0.1702			
Original Issue Discount (OID)			\$0.1702			
FFIEC Final Test Result			\$1.0888			

Descriptive Data		Initialization	Update Fee
<b>US and Canadian Data</b>			
Basic Information		\$1.7773	\$0.2087
Terms & Conditions		\$2.0400	\$0.2408
<b>International Data</b>			
Basic Information		\$4.9309	\$0.6028
Terms & Conditions		\$15.7817	\$1.8887

Subscription Fees	Annual Fee (Billed Monthly)
Basic Service Fee	\$790
Compustat® Industrial	\$12,758
Compustat Research	\$8,381
Pink Sheet Pricing Access	\$2,400
Forward Rates <sup>2</sup>	\$4,007

#### Pricing Data Fees - Current and Time-Series

Pricing Data fees are broken down into two categories: Current Pricing and Time-Series Pricing.

Current Pricing fees cover data requests for either latest pricing or pricing within the last thirty calendar days for a particular security. Fees are charged on a per security basis covering a calendar month. For Current Pricing data fees, there are three periodicities (Daily, Weekly and Monthly) which are determined based upon the number of unique days a security is accessed within a calendar month. If a security is accessed one time in a given calendar month, we assume Monthly periodicity. If a security is accessed between two and ten times in a given calendar month, we assume Weekly periodicity. If a unique security is accessed more than ten times in a given calendar month, we assume Daily periodicity.

Time-Series fees are per-hit transaction fees for data retrievals greater than thirty days for a particular security. If any date requested is thirty days earlier than today's date, the accounting system will charge both a Current Pricing fee and a Time-Series Pricing fee. For the Time-Series Pricing fee, the available periodicities (Daily, Weekly and Monthly/Quarterly/Annual) are determined by looking at the dates requested. If more than ten dates are requested for a particular security in a given calendar month, Daily data retrieval is assumed. If the data request contains more than two dates but less than ten, Weekly periodicity is assumed. If a user requests one or two dates, Monthly/Quarterly/Annual periodicity is assumed.

#### Spread/Yield Data Fees

Spread/yield data fees are treated like pricing fees. Only current data is available.

#### Announcement Data

Announcement Data includes corporate action, dividend, and split data, reorganization data, registered bond interest data, CMO, asset-backed, and mortgage-backed factor data, indicated annual dividend data, shares outstanding data, and earnings data.

If data for corporate action, dividend, and split data is requested for dates within the past year or for the latest announcement only, a Current Monthly fee is charged. If no date is specified as part of the data request and more than four announcements are requested, this request will fall under the Current and Historical Monthly Fee category.

Reorganization data is only available for the past six months. Only the latest data is available for indicated annual dividend data and earnings data. Thus, only the Current Monthly fee is applicable.

CMO, asset-backed, and mortgage-backed factor data for the latest available three months would be treated as Current Monthly data. If more than three factors are requested or a data retrieval is greater than three months for a particular security in a given calendar month, the Current and Historical Monthly fee applies.

If data for North American shares outstanding is requested for dates within the past year or for the latest data only, a Current Monthly fee is incurred. If no date is specified as part of the data request and more than twelve shares outstanding data values are requested, the Current and Historical Monthly Fee will apply.

Only the latest international shares outstanding data is available. Thus, only the Current Monthly fee is applicable.

Current coupon data for the latest available two months would be treated as Current Monthly data. If three or more instances of data are requested or a data retrieval is greater than two months for a particular security in a given calendar month, the Current and Historical Monthly fee applies.

#### Ratings and Miscellaneous Data

Only the latest Moody's, Standard & Poor's, Fitch rating data, NAICS, beta data, Section 13F data, and OID data are available. Thus, only the Current Monthly fee is applicable.

#### Descriptive Data

Descriptive Data consists of Basic Information data and Terms & Conditions data. For each category of Descriptive Data, there is an Initialization fee and an ongoing Monthly Update fee. The Initialization fee for Basic Information is charged if a user did not pull Basic Descriptive data in the previous month. The Initialization fee for Terms & Conditions is charged if a user did not pull Terms & Conditions data in the previous month.

#### Service Fee and Annual Subscription Fees

There is a basic service fee of \$790 per year per user. The data sets in this Subscription fee section are billed monthly at 1/12th of the annual fee. Any items that fall into these categories are not subject to any other per security or per transaction fee.

#### Invoices

A monthly invoice that itemizes data charges will be sent to all customers. Fees are listed and payable in U.S. dollars. Prices may be changed on 30 days' prior written notice.

#### Additional Notes

<sup>1</sup> Pink Sheet Pricing Access - Effective May 1, 2001 as a result of a new agreement with Pink Sheets LLC, the new monthly fee for current day pricing access to this data is \$200/month. This fee is in addition to FT Interactive Data fees.

<sup>2</sup> WM Company will now apply their own end-user charges for spot and forward rates. These end-user charges are per site and in addition to any current FT Interactive Data fees. These end-user charges are subject to change at any time upon notification by the supplier of this data. It is anticipated that WM Company will be billing customers directly for these end-user charges.





## Agenda Report

19-1084

Agenda Date: 10/8/2019

### REPORT TO CITY COUNCIL

#### **SUBJECT**

Adoption of a Resolution Calling and Giving Notice of a Special Municipal Election to be held on Tuesday, March 3, 2020 for the Office of Elected Chief of Police; Requesting that the Board of Supervisors of the County of Santa Clara Consolidate the Special Election with the Statewide Presidential Primary Election; and Adopt Regulations for Candidate Statements of Qualifications Submitted to the Voters and Levying a Share of the Cost of the Candidates' Statements

#### **BACKGROUND**

At the September 4, 2019 special Council meeting the Council considered whether to make an appointment to fill the vacancy of recently retired Police Chief Mike Sellers, or to call a special election to fill the unexpired term ending November 2020. The City Council voted in favor (6-1-0) to conduct a special election on March 3, 2020 to fill the vacancy.

#### **DISCUSSION**

Attached for Council consideration is a Resolution: 1) calling and giving notice of holding a Special Municipal Election to be held on March 3, 2020 for the office of elected Chief of Police; 2) requesting that the Board of Supervisors of the County of Santa Clara consolidate the special election with the Statewide Presidential Primary Election; and 3) adopt regulations for Candidate Statements of Qualifications and determining to levy a share of the costs of the Candidates' Statements on the candidates.

#### **FISCAL IMPACT**

The estimated cost received by the Santa Clara County Registrar of Voters for holding the special election is approximately \$174,100, which is included in the City Clerk's Fiscal Year 2018-19 budget.

#### **COORDINATION**

This report was coordinated with the City Attorney's office.

#### **PUBLIC CONTACT**

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

**RECOMMENDATION**

Adopt a Resolution Calling and Giving Notice of a Special Municipal Election to be held on Tuesday, March 3, 2020 for the Office of Elected Chief of Police; Requesting that the Board of Supervisors of the County of Santa Clara Consolidate the Special Election with the Statewide Presidential Primary Election; and Adopt Regulations for Candidate Statements of Qualifications Submitted to the Voters and Levying a Share of the Cost of the Candidates' Statements.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Hosam Haggag, City Clerk

**ATTACHMENTS**

1. Resolution

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, MARCH 3, 2020, FOR THE PURPOSE OF ELECTING ONE PERSON TO THE OFFICE OF ELECTED CHIEF OF POLICE; REQUESTING THE CONSOLIDATION OF THE SPECIAL MUNICIPAL ELECTION WITH THE STATEWIDE PRESIDENTIAL PRIMARY ELECTION TO BE HELD IN SANTA CLARA COUNTY ON MARCH 3, 2020; AND ADOPT REGULATIONS FOR CANDIDATE STATEMENTS OF QUALIFICATIONS SUBMITTED TO THE VOTERS FOR AN ELECTION AND LEVYING A SHARE OF THE COST OF THE CANDIDATES' STATEMENTS ON THE CANDIDATES**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, the City of Santa Clara is duly organized a charter city, and pursuant to Section 703 of the City Charter of the City of Santa Clara, a vacancy in any elective office of the City, including Mayor, City Council, Chief of Police Department, and City Clerk, from whatever cause arising, shall be filled by appointment by the City Council. In the event the City Council shall fail to fill a vacancy by appointment within thirty (30) days after such office shall have been declared vacant, it shall forthwith cause an election to be held to fill such a vacancy; and

**WHEREAS**, the City Council intends to consolidate the City of Santa Clara Special Municipal Election with the Statewide Presidential Primary Election to be held on the same date, and that the County Elections Department of the County of Santa Clara canvass the returns of the Special Municipal Election, and that the election be held in all respects as if it were only one election.

**WHEREAS**, California Elections Code Section 13307 contains certain requirements regarding a candidate's ballot statement of qualifications, including that the governing body of any local agency may adopt regulations pertaining to materials prepared by any candidate for a municipal election; and

**WHEREAS**, California Elections Code Section 13307 further provides that a local agency may

require candidates to bear all or part of the costs attributable to the candidate's statement.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. Pursuant to the requirements of the laws of the State of California relating to elections there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, March 3, 2020, a Special Municipal Election for the purpose of electing one person to the office of Chief of Police for a partial term commencing March 2020 and expiring November 2020.
2. Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a Special Municipal Election with the Statewide Presidential Primary Election on Tuesday, March 3, 2020, for the purpose of the electing one person to the City officer as stated above meeting the requirements set forth in the California Constitution and applicable state law.
3. The Board of Supervisors is requested to issue instructions to the Santa Clara County Registrar of Voters to take any and all steps necessary to hold the consolidated election which shall be held in all respects as if there were only one election.
4. The Santa Clara County Registrar of Voters is authorized to canvass the returns of the Special Municipal Election.
5. That the Board of Supervisors is requested to direct the County Registrar of Voters to provide all necessary election services in order to properly and lawfully conduct said election including precinct workers and the procurement and furnishing of all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.
6. The City of Santa Clara recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for those costs.

7. That the City Clerk is authorized, instructed and directed to coordinate with the Santa Clara County Registrar of Voters Office as necessary in order to properly and lawfully conduct the election.

8. The polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, except as provided in Section 10242, except as provided in Section 14401, of the Elections Code of the State of California.

9. Notice of the time and place of holding the election is given and the City Clerk and Santa Clara County Registrar of Voters are authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

10. In all particulars not recited in this resolution, the elections shall be held and conducted as provided by law for holding municipal elections.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. **General Provisions.** Each candidate for elective office to be voted for in the Special Municipal Election held in the City of Santa Clara on March 3, 2020 may prepare a candidate's ballot statement of qualifications on the form provided by the City Clerk. The statement may include the name, age and occupation of the candidate, and a brief description of no more than 200 words regarding the candidate's education and qualifications. The statement shall not include any reference to party affiliation of the candidate, including membership or activity in partisan political organizations. The statement shall be filed in typewritten form in the office of the City Clerk at the same time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, until 5:00 p.m. of the next working day after the close of the nomination period.

2. **Foreign Language Policy.** Pursuant to the Federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq., as amended from time to time), the County of Santa Clara Registrar of Voters is

Resolution/2019 Special Municipal Election

required to translate and print the candidate's statement into five languages: Chinese, English, Spanish, Tagalog and Vietnamese.

3.     **Payment.** The candidate shall be required to pay for the cost of printing the candidate's statement in English in the voter's pamphlet and translating and printing the candidate's statement into any of the languages referred to in Paragraph 2. If a candidate agrees to adhere to the City of Santa Clara Voluntary Campaign Expenditure Limit, as stated in Section 2.130.160 of the City Code of the City of Santa Clara, the candidate will be responsible for one-half of the estimated cost of the voter's pamphlet, calculated on a pro-rata shared basis per candidate. It is estimated that each such candidate is responsible for \$1,845 toward the cost of the voter's pamphlet, which shall be paid at the time of filing of nomination papers to the City of Santa Clara. If the ultimate cost to the City of the voter's pamphlet exceeds the \$1,845 estimated amount, the City will pay the additional costs. If the \$1,845 is more than the actual cost, there will be no refund to the candidate. Based on the foregoing, the City Council of the City of Santa Clara hereby determines to levy the pro-rata charge of \$3,690 (to be reduced to the \$1,845 amount if the expenditure limit is accepted) for each candidate's statement of 200 words or less.

4.     No candidate will be permitted to include additional materials in the sample ballot package (voter's pamphlet).

5.     The City Clerk shall provide a copy of this Resolution to each candidate or the candidate's representative at the time nominating petitions are issued.

6.     This resolution shall take precedence over all previous and/or conflicting resolutions establishing Council policy on payment for candidate's statements.

7.     The City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the Registrar of Voters Office of the County of Santa Clara.

8. The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original resolutions.

9. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 8th DAY OF OCTOBER 2019, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

\_\_\_\_\_  
HOSAM HAGGAG  
CITY CLERK  
CITY OF SANTA CLARA



## Agenda Report

19-1098

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Resolution Establishing the Political Campaign Voluntary Expenditure Limit and Campaign Contribution Limit for March 3, 2020

#### **BACKGROUND**

The City of Santa Clara Political Campaign Finance Reform Act (the "Act") established an initial base for a candidate's voluntary campaign expenditures at \$25,000 for the November 2000 City election. The Act contains a cost of living adjustment using the index from the U.S. Department of Labor, Bureau of Consumers (CPI-U), San Francisco, Oakland, San Jose subgroup - all items ("CPI"), to be adjusted on an annual basis. The expenditure limit was last adjusted to \$43,400 by the City Council on June 26, 2018.

With the inception of the Act, limits on individual campaign contributions were originally \$500 for candidates who accepted the voluntary expenditure limit and \$250 for those who did not. In 2014, the Act was amended to require that the applicable contribution limits also be adjusted by the CPI, rounded to the nearest ten dollar figure. As adjusted in 2018, the applicable contributions limits were \$590 and \$290, respectively.

The Act was amended in May 2018 to provide maximum transparency to the voters of the City of Santa Clara about who is spending money on local campaigns and to create specific disclosure requirements for contributions to organizations that have historically refused to disclose contributions ("dark money"). The Act now includes mandatory disclosure of all contributions of one hundred dollars (\$100.00) or more to any organization that makes expenditures that affect or are intended to affect a local Santa Clara election to City office or for or against a local Santa Clara ballot measure. Contributions must be reported in the same manner as campaign contributions are required to be reported under SCCC [2.130.280 <http://www.codepublishing.com/CA/SantaClara/>](http://www.codepublishing.com/CA/SantaClara/).

#### **DISCUSSION**

Pursuant to City Code Chapter 2.130 - Political Campaign Finance Reform Act, the Council must adjust the contribution limits by Resolution. Accordingly, the attached Resolution has been prepared accounting for the cost of living adjustment applicable to the expenditure limit for the 2020 March Special Municipal Election, which shall be set at \$45,590, a 5.04% increase since 2018 applying the annual CPI adjustment based on the month of August. Similarly, the same CPI adjustments were calculated for the individual campaign contributions. For candidates who accept the voluntary expenditure limit, the limit on individual campaign contributions shall be \$620 and for candidates who do not accept the voluntary expenditure limit, the limit on individual campaign contributions shall be \$300.

Pursuant to City Code section 2.130.050, the last day a campaign contribution may be deposited



shall be eleven (11) calendar days before the election date (i.e., a Tuesday, March 3rd election date would make Friday, February 21<sup>st</sup> the last day to deposit a contribution) and the last day a payment for campaign expenses may be made shall be the last day of the month following the election month (i.e., a March election would require that all campaign expenses be paid by April 30<sup>th</sup> - the last day of the month following the election month).

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

There is no cost associated with this action other than staff time and expense.

**COORDINATION**

This report was prepared in coordination with the Finance Department and City Attorney's Office.

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Adoption of a Resolution establishing the Political Campaign Voluntary Expenditure Limit and Campaign Contribution Limit for the March 3, 2020 Special Municipal Election.

Reviewed by Nora Pimentel, Assistant City Clerk

Reviewed by Hosam Haggag, City Clerk

**ATTACHMENTS**

1. Resolution

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA ESTABLISHING THE POLITICAL CAMPAIGN VOLUNTARY EXPENDITURE LIMIT AND THE CAMPAIGN CONTRIBUTION LIMIT FOR THE MARCH 3, 2020 SPECIAL ELECTION**

#### **BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, Chapter 2.130 (Political Campaign Finance Reform Act) of "The Code of the City of Santa Clara, California" (City Code) contains provisions (i) limiting the expenditure of campaign funds by the candidates and (ii) controlling the campaign contributions to candidates for elective office in the City of Santa Clara;

**WHEREAS**, Section 2.130.160 (Candidate acceptance or rejection of expenditure limits) of the City Code provided for an initial voluntary expenditure limit of \$25,000, but further provided that the \$25,000 limit was to be adjusted for the cost of living prior to each election. The expenditure limit was last adjusted to \$43,400 by the City Council on June 26, 2018;

**WHEREAS**, Section 2.130.050 (Limits on contributions from persons) of the City Code provided for an initial individual contribution limit of \$500 from any candidate that accepted the voluntary expenditure limit and \$250 for any candidate that did not. The contribution limit was last adjusted to \$590 and \$290, respectively; and

**WHEREAS**, contribution limits established by City Code shall be adjusted on an annual basis by a percentage equal to the Consumer Price Index for All Urban Consumers for the San Francisco Bay Area (CPI).

#### **NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the political campaign voluntary expenditure limit for the March 3, 2020 special election is established at \$45,590.
2. That the campaign contribution limits are established at \$620 for those who accept the voluntary expenditure limit and \$300 for those who do not accept the voluntary expenditure limit.

3. The political campaign voluntary expenditure limit and campaign contribution limits established by Resolution No. 18-8561 (adopted June 26, 2018) are hereby repealed.

4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 8<sup>th</sup> DAY OF OCTOBER 2019, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: \_\_\_\_\_

HOSAM HAGGAG  
ACTING CITY CLERK  
CITY OF SANTA CLARA



## Agenda Report

19-1106

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Action on Adoption of Ordinance No. 2006 Amending Chapter 5.40 ("Massage Services And Massage Establishments") of Title 5 ("Business Licenses And Regulations"), and Chapters 18.34 ("Regulations For CN-Neighborhood Commercial Zoning Districts"), 18.36 ("Regulations For CC-Community Commercial Zoning Districts"), 18.42 ("Regulations For CP-Commercial Park Zoning Districts"), 18.56 ("Planned Development-Master Community Zoning Districts"), 18.70 ("Use Regulations Applicable To Specified Regulated Businesses") and 18.104 ("Massage Establishments") of Title 18 ("Zoning") of "The Code of The City of Santa Clara, California" to Amend Regulations Relating To Massage Establishments

#### **BACKGROUND**

At the September 24, 2019 Council meeting, proposed Ordinance No. 2006 was introduced and passed for the purpose of publication. Pursuant to City Charter Sections 808 and 812, a summary of proposed Ordinance No. 2006 was published by The Weekly on October 2, 2019, and copies were posted in three public places. The Ordinance now comes to Council for final adoption.

#### **DISCUSSION**

The proposed ordinance would modify Title 5 ("Business Licenses and Regulations") and Title 18 ("Zoning") of the Santa Clara City Code (SCCC) to modify regulatory and land use regulations applicable to massage establishments. The revisions to Title 5 would modify the massage establishment permit process by providing a streamlined appeal process, establishing new visibility requirements, requiring the posting of human trafficking notices, and enhancing the responsibilities of establishment owners. The ordinance would also eliminate the requirement for a conditional use permit to open a new massage establishment, and would allow existing legal nonconforming establishments to continue to operate in their current locations. Without this change, legal nonconforming establishments would have been forced to close by December 31, 2019.

The proposed amendments to the Zoning Ordinance would change the permissible locations for new massage establishments within the City to (1) 10-acre sites with at least 20,000 square feet of retail space; (2) wellness centers in businesses with 500 employees or more; and (3) hotels with at least 100 guest rooms. At the September 24, 2019 Council meeting, the City Council also instructed staff to allow for massage establishments at certain kinds of gymnasiums or fitness centers. Staff is in the process of preparing appropriate verbiage to allow for this additional location, and will return to the Council in the near future with an additional amendment to allow for such uses. Given the need for the other changes to be effective by December 31, 2019, however, the ordinance before the Council tonight does not include the provision for gymnasiums.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

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

**COORDINATION**

This report has been coordinated with the Police Department and Community Development Department.

**PUBLIC CONTACT**

A summary of proposed Ordinance No. 2006 was published to the Santa Clara Weekly on October 2, 2019, and copies were posted in three public places.

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

**RECOMMENDATION**

Adopt Ordinance No. 2006, Amending Chapter 5.40 (“Massage Services And Massage Establishments”) of Title 5 (“Business Licenses And Regulations”), and Chapters 18.34 (“Regulations For CN-Neighborhood Commercial Zoning Districts”), 18.36 (“Regulations For CC-Community Commercial Zoning Districts”), 18.42 (“Regulations For CP-Commercial Park Zoning Districts”), 18.56 (“Planned Development-Master Community Zoning Districts”), 18.70 (“Use Regulations Applicable To Specified Regulated Businesses”) and 18.104 (“Massage Establishments”) of Title 18 (“Zoning”) of “The Code of The City of Santa Clara, California” to Amend Regulations Relating To Massage Establishments.

Reviewed by: Brian Doyle, City Attorney

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Introduction Ordinance No. 2006

## ORDINANCE NO. 2006

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTERS 5.40 "MASSAGE SERVICES AND MASSAGE ESTABLISHMENTS" OF TITLE 5 ("BUSINESS LICENSES AND REGULATIONS"), AND CHAPTERS 18.34 ("REGULATIONS FOR CN-NEIGHBORHOOD COMMERCIAL ZONING DISTRICTS"), 18.36 ("REGULATIONS FOR CC-COMMUNITY COMMERCIAL ZONING DISTRICTS"), 18.42 ("REGULATIONS FOR CP-COMMERCIAL PARK ZONING DISTRICTS"), 18.56 ("PLANNED DEVELOPMENT-MASTER COMMUNITY ZONING DISTRICTS"), 18.70 ("USE REGULATIONS APPLICABLE TO SPECIFIED REGULATED BUSINESSES") AND 18.104 ("MASSAGE ESTABLISHMENTS") OF TITLE 18 ("ZONING") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO AMEND REGULATIONS RELATING TO MASSAGE ESTABLISHMENTS

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, prior to 2009, the jurisdiction of massage-related businesses fell under the purview of local municipalities, but was later preempted by passage of Senate Bill 731 creating the California Massage Therapy Council (CAMTC) and from 2009-2015, CAMTC conducted the permitting process for massage therapists;

**WHEREAS**, due to the passage of Assembly Bill 1147, also known as the "Massage Therapy Act," which went into effect on January 1, 2015, the authority of local jurisdictions to impose land use, business licensing, and health and safety regulations on massage establishments including local permit requirements was re-established;

**WHEREAS**, due to changes in the State laws, the City of Santa Clara adopted new local regulations to permit massage establishments within the City on October 13, 2015;

**WHEREAS**, the Planning Commission recommended approval of the amendments to Title 18 ("Zoning") on May 22, 2019, with the addition of allowing massage establishments in

hotels with over one hundred (100) guest rooms; and,

**WHEREAS**, the City Council desires to amend those regulations for massage establishments within the City to protect the public health, peace and welfare of its residents.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:**

**SECTION 1:** That Chapter 5.40 (entitled "Massage Services and Massage Establishments") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

**"Chapter 5.40**

**MESSAGE SERVICES AND MESSAGE ESTABLISHMENTS**

Sections:

- 5.40.010 Purpose and intent.
- 5.40.020 Definitions.
- 5.40.030 Massage certification required.
- 5.40.040 Massage establishment permit required.
- 5.40.050 Business tax requirement.
- 5.40.060 When a permit is not required.
- 5.40.070 Massage establishment permit application and fee.
- 5.40.080 Amendments to massage establishment permit.
- 5.40.090 Annual renewal of massage establishment permits.
- 5.40.100 Massage establishment operating requirements.
- 5.40.110 Massage establishment facilities regulations.
- 5.40.120 Inspection by officials.
- 5.40.130 Permits nonassignable.
- 5.40.140 Application of regulations to existing massage establishments and massage therapists.
- 5.40.150 Prohibited conduct.
- 5.40.160 Enforcement – Suspension or revocation of massage establishment permit.
- 5.40.170 Procedure for revocation or suspension of massage establishment permit.

**5.40.010 Purpose and intent.**

(a) Purpose.

(1) The City of Santa Clara is authorized to regulate massage establishments pursuant to Government Code Section 51030 et seq., Business and Professions Code Sections 460 and 4600 et seq. and Section 7 of Article XI of the California Constitution.

(2) In enacting these regulations, the City of Santa Clara City Council ("City Council") recognizes that massage is a viable professional field offering the public valuable health and therapeutic services.

(3) It is the purpose and intent of the City Council that the operation of massage establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered.

(4) It is the intent of this chapter to enact regulations to ensure those offering massage services are qualified and trained and can be expected to conduct their work in a lawful and professional manner. The City Council finds that existing controls have not satisfactorily addressed or regulated serious criminal and public health problems, nor have the existing controls regulated the profession so as to sufficiently encourage compliance with State and local laws.

(b) Conflicts with other Provisions of this Code. In the event of any conflicts or inconsistencies between the provisions of this chapter and the provisions of any other chapter(s) of this Code, the provisions of this chapter shall control, unless to do so would



be inconsistent with the stated purpose of this chapter.

(c) Responsibility for Enforcement. The primary responsibility for enforcement of the provisions of this chapter shall be vested in the Chief of Police.

#### **5.40.020 Definitions.**

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

(a) Reserved for future use.

(b) Reserved for future use.

(c) "C" definitions:

(1) "California Massage Therapy Council (CAMTC)" shall mean the State organized nonprofit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing with Section 4600).

(2) "CAMTC certificate" shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage therapist.

(3) "Chief of Police" means the elected Chief of the Santa Clara Police Department, or his/her duly authorized agents and representatives.

(4) "City Attorney" means the City of Santa Clara's City Attorney, or his/her duly authorized agents and representatives.

(5) "City Manager" means the City of Santa Clara's City Manager, or his/her duly authorized agents and representatives.

(d) "D" definitions:

(1) "Days" means calendar days, unless specified differently.

(e) Reserved for future use.

(f) Reserved for future use.

(g) Reserved for future use.

(h) Reserved for future use.

(i) Reserved for future use.

(j) Reserved for future use.

(k) Reserved for future use.

(l) "L" definitions:

(1) "License" means a business tax certificate obtained from the municipal services/business tax division of the Finance Department to operate a massage establishment and/or provide massage service as required by this chapter.

(m) "M" definitions:

(1) "Massage" means any method of friction against, pressure on, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

(2) "Massage establishment" means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on, for consideration, massages or health treatments involving massages as regular functions.

(3) "Massage therapist" means any person who administers massages, or nonmedical health treatments involving massage, or any nonmedical health care therapy using massage as the principal therapeutic approach in caring for clients, to another person for any consideration whatsoever.

(n) Reserved for future use.

(o) "O" definitions:

(1) "Owner" shall mean any of the following individuals: (A) the sole proprietor of a sole proprietorship operating a massage establishment; (B) any general partner of a general or limited partnership that owns a massage establishment; (C) any person who has ten percent (10%) or greater ownership interest in a corporation that owns a massage establishment; (D) any person who is a member of a limited liability company that owns a massage establishment; (E) all owners of any other type of business entity that owns a massage establishment; and, (F) any person identified as an owner on the massage establishment permit.

(p) "P" definitions:

(1) "Permit" means the Santa Clara Police Department-issued permit to engage in the business activity of operating a massage establishment, which shall be obtained through the process required by this chapter. Unless specifically provided otherwise, permits are not transferable.

(2) "Permittee" means a person, as defined hereinbelow, who has obtained a massage establishment permit. Permittee shall include the owner, operator, manager, and/or responsible, managing officer/employee. The term "responsible, managing officer/employee" includes partner(s).

(3) "Person" means any individual, firm, association, partnership, corporation, joint venture or combination of individuals.

(q) Reserved for future use.

(r) Reserved for future use.

(s) "S" definitions:

(1) "Sole proprietorship" means a massage establishment where the owner owns one hundred percent (100%) of the business and has no employees or independent contractors.

(t) Reserved for future use.

(u) Reserved for future use.

(v) Reserved for future use.

(w) Reserved for future use.

(x) Reserved for future use.

(y) Reserved for future use.

(z) Reserved for future use.

#### **5.40.030 Massage certification required.**

It shall be unlawful for any person to engage in, conduct or carry on, in or upon any premises within the city the business of providing massage, for any compensation, without being in possession of a valid CAMTC certificate.

#### **5.40.040 Massage establishment permit required.**

It is unlawful for any owner, as defined herein, to own, manage, or operate in or upon any premises within the city a massage establishment without first having obtained a massage establishment permit issued by the Chief of Police pursuant to the provisions hereinafter set forth. A permit shall be valid for twelve (12) months from the date of

issuance, unless revoked or suspended. A separate massage establishment permit is required for each location if an owner owns, manages, or operates multiple massage establishments. The City may immediately order a business that fails to have a valid massage establishment permit to cease operation.

**5.40.050 Business tax requirement.**

A massage establishment owner, as defined herein, and massage therapists that are independent contractors and/or sole proprietorships shall pay the required business license tax for such business and occupation based on location. It is unlawful for massage therapists who are required to pay the business license tax under this section to give, provide, or administer to another person for any form of compensation whatsoever a massage as defined in this chapter at a massage establishment or any location from a massage establishment within the city in the absence of a valid business license pursuant to this chapter and Chapter 3.40 SCCC. A separate business license is required for each location if a massage therapist works at multiple massage establishments.

**5.40.060 When a permit is not required.**

The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

(a) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly State-licensed to practice their respective professions in the State of California.

(b) Barbers, beauticians, and cosmetologists who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, and businesses operating with this class of individuals, like nail salons; except that this

exemption from a City permit shall apply solely to the massaging of the neck, face, scalp, foot, ankle and/or calf of the customers.

(c) Hospitals, nursing homes, sanatoriums, or any other health facilities duly licensed by the State of California.

(d) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(e) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons or similar single-occurrence athletic or recreational events.

(f) Other single-event massage practice occurring within the workplace or similar business location where the massage shall be restricted to the shoulders, neck, face and/or scalp of the customer.

(g) A duly licensed acupuncturist providing massage therapy services to his or her clients. However, if an individual(s) other than the acupuncturist provides massage therapy services to his or her clients, said individual(s) must have a valid CAMTC certificate and the office of the acupuncturist shall be subject to all the provisions of this chapter, as well as any other applicable provisions of the SCCC.

#### **5.40.070      Massage establishment permit application and fee.**

The following provisions shall apply to the permit application process:

(a) Any person, as defined herein, desiring to obtain a permit to operate a massage establishment shall make application to the Chief of Police.

(b) Each application for a massage establishment permit shall be accompanied by a nonrefundable fee. The fee paid shall be to defray in part the cost of the investigation and report required by this chapter. This massage establishment permit registration fee shall be determined from time to time by the City Council by resolution to properly reflect cost recovery adjustments it deems appropriate. A copy of the receipt for the nonrefundable fee shall accompany the application.

(c) The massage establishment permit application and fee required under this section shall be in addition to any license, permit, or fee required under any other section of this Code or other City law or regulation.

(d) The application and fee for a massage establishment permit does not authorize a massage establishment to operate until such permit has been granted and the business tax has been paid to the municipal services/business tax division of the Finance Department.

(e) Each applicant for a permit shall submit the following information under penalty of perjury:

- (1) The full, true name under which the business will be conducted.
- (2) The present or proposed address where the business is to be conducted.
- (3) The applicant's full, true name, and other names used, date of birth, valid California driver's license number (or California identification number), Social Security number (unless prohibited by law), present residence address and telephone number. Additionally, applicant shall provide original documentation to verify both the applicant's identity and employment authorization (if applicable). Documentation to satisfy this

requirement may include, but is not limited to, a California driver's license, California identification card, Social Security card, resident alien ("green") card, United States passport, unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States government.

(4) The previous two residences of the applicant and the inclusive dates at each address.

(5) The applicant's business, occupation, and employment history for seven years preceding the date of application and the inclusive dates of same. Applicant shall provide proof that within the seven years preceding submission of the application, the applicant has not:

(A) Had a massage establishment, massage therapist, or other similar permit or license denied, suspended, or revoked by the City, or any other State or local agency;

(B) Engaged in conduct or operated a massage or similar establishment in a manner that would be grounds for denial, suspension, or revocation of a permit under this chapter; or

(C) Owned or managed a massage or similar establishment where persons required to be licensed were allowed to work without the required license or permit.

(6) A statement of the permit history of the applicant by identifying whether or not such person has ever held a professional or vocational license or permit issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license; whether or not the permit or license is still in effect; if the permit or



license is no longer in effect, was it revoked or suspended, and, if so, the reason(s) therefor.

(7) A statement that within the seven years preceding submission of the application, no injunction has been issued under the Red Light Abatement Law (Penal Code Section 11225 et seq.) against the applicant or against a business establishment where the applicant was a permittee or employee, and that the applicant has not been convicted in a court of competent jurisdiction of an offense involving:

(A) Conduct which requires registration under California Penal Code Section 290;

(B) Conduct which is a violation of the provisions of California Penal Code Section 314, 315, 316, 318, or 647;

(C) Crimes that are designated in Government Code Section 51032; or,

(D) Any other crime involving dishonesty, fraud, deceit, violence or moral turpitude.

Convictions under the laws of other states or countries which proscribe the same or similar conduct as the afore-designated California crimes shall be considered. Convictions that have been expunged must be reported, and all injunctions for nuisances under Penal Code Section 11225 or similar laws must also be reported.

For purposes of this criminal conviction portion of the statement, if the applicant is a corporation, the statement shall apply to the stockholders holding more than five percent of the stock of that corporation, the officers, and/or directors. If the applicant is a partnership, the statement shall apply to all partners, both general and limited.

(8) A complete list of all services to be provided with definitions and/or descriptions attached.

(9) The name and address of each massage therapist or employee who will be employed at the massage establishment.

(10) A copy of a valid certificate issued by CAMTC, a copy of a valid CAMTC issued identification card, and a copy of a valid California's Driver License or valid California Identification card for each massage therapist who will work in the massage establishment.

(11) The name and address of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.

(12) Upon request of the Chief of Police, the applicant shall be required to furnish fingerprints for the purpose of establishing identification. The fingerprints will be taken at a place designated by the Chief of Police. Any required fingerprinting fee shall be the responsibility of the applicant.

(13) A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the applicant.

(14) The name, address, and phone number of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease between the applicant and the property owner that includes specific authorization of the use of the premises for a massage establishment or a notarized acknowledgment from

the owner of the property that a massage establishment will be located on his/her property operated by the applicant.

(15) Written authorization for the City, its agents and employees, to seek information and to conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible, managing officer/employee.

(16) Proof of massage malpractice insurance in the sum of not less than one million dollars (\$1,000,000) per massage therapist licensed, or to be licensed, at the massage establishment; this requirement can be satisfied by malpractice insurance being provided in the name of the individual massage therapist.

(17) The applicant shall advise the City in writing of any change of address or change in fact(s) represented to City which may occur during the City's processing of the application for a massage establishment permit.

(18) A copy of a floor plan, drawn to scale showing: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including, but not limited to, closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs.

(19) Proof of bona fide employment must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of income tax, unemployment insurance contributions and disability contributions from the employee and written payroll documentation of the employers.

(20) A statement that within the last five years the applicant has not failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

(f) The Chief of Police has up to sixty (60) days after submission of all required information to investigate the application and the background of the applicant. Upon the completion of the investigation, the Chief of Police may grant the permit, with or without conditions, if, upon review of the requirements listed in subsections (e)(1) through (19) of this section, inclusive, all of the following are found:

- (1) The required fee has been paid;
- (2) The applicant has not made a material misrepresentation in the application;
- (3) The permit as requested by the applicant would comply with all applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards; and,
- (4) The applicant complies with the requirements of this chapter.

(g) If, following investigation of the applicant, the Chief of Police cannot make the findings required in subsection (f) of this section, the application shall be denied by dated, written notice which sets forth the reasons for denial.

**5.40.080 Amendments to massage establishment permit.**

(a) Whenever the information provided in the application for a massage establishment on file with the Chief of Police changes, the owner or designated person shall file an application to amend the permit to reflect such change. An application to amend a massage establishment permit shall be made by submitting an application provided by the Chief of Police.

(b) Each application for a massage establishment permit amendment shall be accompanied by a nonrefundable fee, the amount of which is determined from time to time by the City Council by resolution to properly reflect cost recovery adjustments it deems appropriate. A copy of the receipt for the nonrefundable fee shall accompany the application.

(c) The application shall not be approved unless the Chief of Police determines compliance with all requirements of this chapter and all other local, state, and federal laws, and the massage establishment has no outstanding violations or unpaid administrative citations or fees. Inspection of the massage establishment may be required prior to approval of the amended massage establishment permit.

(d) An amendment shall not be used to change the location or owners of a massage establishment. Any such change will require a new massage establishment permit under this chapter.

(e) No permittee shall operate or conduct any massage establishment under any name or designation not specified in the approved permit. Any such change in name will require an amendment to the massage establishment permit, as set forth in SCCC 5.40.080.

(f) Amendments shall be processed and investigated. The amendment shall not be approved unless the Chief of Police determines that the massage establishment complies with all requirements of this chapter and all other local, state, and federal laws, and that it has no outstanding violations or unpaid citations or fees. Inspection of the massage establishment may be required prior to approval of the amendment.

(g) A denial of an application to amend a massage establishment permit may be appealed as set forth in Chapter 2.115 SCCC.

#### **5.40.090 Annual renewal of massage establishment permits.**

Renewal of permits for massage establishments issued under SCCC 5.40.070 shall be as follows:

(a) Massage establishment permits shall expire on the one-year anniversary date of issuance, unless sooner suspended or revoked.

(b) At least thirty (30) days prior to expiration of the one-year permit period, holders of the respective permit(s) shall apply for renewal. If the renewal request is not timely submitted, upon expiration of the one-year period for the permit, the permit shall be deemed expired and no privilege to provide massage shall exist until a new application has been approved.

(c) The applicant is required to submit, under penalty of perjury, any information that has changed from the last application or renewal.

(d) Renewals shall be processed and investigated. The renewal shall not be approved unless the Chief of Police determines that the massage establishment complies with all requirements of this chapter and all other local, state, and federal laws, and that it has no outstanding violations or unpaid citations or fees. Inspection of the massage

establishment may be required prior to approval of the renewal.

(e) A renewal fee shall be paid in a sum that shall be determined from time to time by the City Council by resolution to properly reflect cost recovery adjustments it deems appropriate.

(f) Nonrenewal of a massage establishment permit may be appealed as set forth in Chapter 2.115 SCCC.

#### **5.40.100 Massage establishment operating requirements.**

No person shall engage in, conduct, carry on, or permit to be engaged in, conducted, or carried on any massage establishment activity or conduct unless each and all of the following requirements are met:

(a) Each person employed or acting as a massage therapist shall display on his/her person a valid CAMTC-issued identification card at all times while on the premises of the massage establishment. It shall be unlawful for any owner, operator, manager, and/or responsible, managing officer/employee to employ or permit a person to act as a massage therapist who is not in possession of a valid CAMTC certificate or to permit him/her to provide services without carrying on his/her person a valid CAMTC-issued identification card.

(b) The possession of a valid massage establishment permit does not authorize the permit holder or any other person to perform work for which a valid CAMTC certificate is required.

(c) It is unlawful for a person to own or operate a massage establishment that does not meet one of the following conditions: (1) the massage establishment is a sole proprietorship and the sole proprietor possesses a valid CAMTC certificate; or (2) the

massage establishment is permitted pursuant to this chapter and only employs or uses massage therapists who possess a valid CAMTC certificate.

(d) Massage shall be provided or given only between the hours of 8:00 A.M. and 10:00 P.M. No massage establishment shall be open and no customer shall be in the establishment between 10:00 P.M. and 8:00 A.M. Patrons and visitors shall only be permitted in the reception area of the massage establishment during the hours of operation, and patrons shall only be permitted in massage treatment areas if at least one massage therapist is on the premises.

(e) A list of services available and the cost of such services shall be posted in an open and conspicuous public place within the premises. The list of services shall be in English, and in any other languages as may be convenient. No owner, operator, manager, and/or responsible managing officer/employee shall permit, and no massage therapist shall offer or perform, any service other than those posted.

(f) The massage establishment permit, an original valid CAMTC certificate, and a copy of the CAMTC-issued identification card of each and every massage therapist providing services in the establishment shall be displayed in an open and conspicuous place on the premises.

(g) Every massage establishment shall keep a written record in English of:

- (1) The date and hour of each service provided;
- (2) The name of each patron and the service received; and,
- (3) The name of the massage therapist administering the service.

Said records shall be open to inspection by City officials, including, but not limited to, the Police Department and the City Attorney's Office, which are charged with enforcement



of this chapter. These records may not be used by the permittee for any other purpose than as records of service provided, and they shall not be provided to other parties by the massage establishment or service. Said records shall be retained on the premises of the massage establishment business office for a period of not less than two years.

(h) Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Towels and linens shall not be used on more than one patron, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

(i) Instruments utilized in performing massage shall not be used on more than one patron unless they have been sterilized using approved sterilization methods.

(j) All employees, including massage therapists, shall wear clean, nontransparent outer garments. All employees shall not be dressed in attire that has been deemed by CAMTC and/or the California Business & Professions Code to constitute unprofessional attire based on the custom and practice of the profession in California.

(k) No person shall enter, be or remain in any part of a massage establishment while in possession of an open container of alcohol, or while consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, manager, and/or responsible managing officer/employee shall not permit any such person to enter or remain upon such premises.

(l) No alcoholic beverages shall be stored, sold, served, or furnished on the premises of any massage establishment.

(m) No massage establishment granted a permit under the provisions of this

chapter shall place, publish or distribute or cause to be placed, published or distributed, including, but not limited to, on the Internet, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available other than those services described in SCCC 5.40.020(m)(1), nor shall any massage establishment employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services as described in SCCC 5.40.020(m)(1).

(n) No massage may be carried on within any cubicle, room, booth or any area within a massage establishment with a door capable of being locked. All doors to dressing rooms and treatment rooms shall open inward. Draw drapes, curtain enclosures, or accordion-pleated closures are acceptable on all inner dressing and treatment rooms in lieu of doors.

(o) A massage shall not be given unless the patron's genitals are fully covered.

(p) No massage establishment shall be open for business without at least one massage therapist on the premises at all times who is in possession of a valid unrevoked CAMTC certificate.

(q) A massage table or chair shall be used for massage. No mattresses shall be placed on the floor. All massage tables shall be at least two feet away from all walls at all times.

(r) No condoms shall be kept in the establishment unless they are the personal property of persons on site, and they are for the individual's personal use.

(s) Unlicensed massage therapists and those persons other than scheduled customers shall not loiter, congregate or remain on the premises during the massage

establishment's business hours.

(t) No massage establishment shall be used for residential purposes.

(u) The massage establishment shall comply with the requirements in California Civil Code section 52.6, as amended from time to time, related to the posting of notices for victims of human trafficking.

**5.40.110 Massage establishment facilities regulations.**

Every massage establishment shall maintain facilities meeting the following requirements:

(a) Any signs shall be in conformance with the current ordinances of the City.

(b) Minimum lighting shall be provided in accordance with the California Electrical Code, and, in addition, at least one artificial light of not less than four hundred fifty (450) lumens shall be provided in each room or enclosure where massage services are performed on patrons.

(c) Minimum ventilation shall be provided in accordance with the California Building Code.

(d) Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided and utilized.

(e) Hot and cold running water shall be provided at all times.

(f) Closed cabinets shall be provided for storage of clean linens.

(g) Adequate dressing, locker and toilet facilities shall be provided for patrons.

(h) A minimum of one wash basin for employees shall be provided at all times.

The basin shall be located within or as close as practicable to the area devoted to performing massage services. Sanitary towels shall also be provided at each basin.

(i) Pads used on any massage tables shall be covered with a durable, washable plastic or other acceptable waterproof material capable of being thoroughly cleaned and disinfected.

(j) All exterior doors (except those used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours. There shall be no buzzer, alarm, or intercom system for purposes of entering the exterior doors during business hours.

(k) Proof of compliance with all applicable provisions of the City Code shall be provided prior to the issuance of any permit.

(l) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, whirlpool baths and pools shall be thoroughly cleaned and disinfected with a commercial disinfectant, as needed, but at least once each day the premises are open. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair, and maintained in a clean and sanitary condition.

(m) No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the massage establishment.

#### **5.40.120 Inspection by officials.**

(a) The City officials charged with investigating and enforcing compliance with this chapter, including, but not limited to, the City's Police Department, Fire Department,

and the City's Building Official, or their designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, and plumbing regulations, and to enforce compliance with applicable regulations, laws, and the provisions of this chapter.

(b) The Permittee shall take immediate action to correct each violation noted by the City official. The City may perform subsequent inspections to ensure that each violation noted by the City official has been corrected.

#### **5.40.130 Permits nonassignable.**

No massage establishment permit may be sold, transferred or assigned by the permittee, or by operation of law, to any other person or persons; any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be deemed terminated and void, except for the following:

(a) If the permittee is a partnership and one or more of the partners should die or cease to be a partner, one or more of the surviving/remaining partners may acquire, by purchase or otherwise, the interest of the deceased/departed partner or partners without effecting a surrender or termination of such permit. An original partner must remain a partner for this exception. In each case the permittee shall thereafter be deemed to be the surviving/remaining partner(s); or,

(b) If the permit is issued to a corporation, stock may be sold, transferred, issued, or assigned to stockholders who have been named on the application. If any stock is sold, transferred, issued, or assigned to a person not listed on the application as a stockholder,

the permit shall be deemed terminated and void unless the new stockholders are identified within ten days of transfer and they meet all requirements under this chapter for stockholders.

**5.40.140 Application of regulations to existing massage establishments and massage therapists.**

All persons currently holding a valid massage establishment permit shall have six (6) months following the effective date of this chapter in which to comply with the requirements of this chapter. If a permittee does not attain compliance with this chapter within the prescribed time limits, the Chief of Police shall immediately suspend or revoke the permittee's permit.

**5.40.150 Prohibited conduct.**

Prohibited conduct shall include, but not be limited to:

(a) It shall be unlawful for (1) any massage therapist, or other person present on the business premises, to massage the genital area of any patron or (2) for any operator of a massage establishment to allow or permit such massage.

(b) It shall be unlawful for (1) any massage therapist to be other than fully clothed at all times in nontransparent clothing that does not expose their genitals, pubic area, buttocks or chest or (2) for any operator of a massage establishment to allow or permit clothing that does not conform to this requirement.

(c) It shall be unlawful for any holder (permittee) of a massage establishment permit and/or holder of a CAMTC certificate to engage in prohibited conduct as defined in Business and Professions Code Section 4609 or any other State or local law and in violation of any of the requirements of this chapter.

**5.40.160 Enforcement – Suspension or revocation of massage establishment permit.**

(a) Violations of any provisions of this chapter shall be treated as a strict liability offense, regardless of intent. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in an amount not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail not to exceed six months, or both. Any violation may also be subject to civil penalties and any other legal remedy provided in this Code or State law. Each violation described in this chapter may be charged as a separate count for each day the violation occurs.

(b) In addition to the legal remedies provided for in this Code, the violation of any provision of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance. The City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law. The City Attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.

(c) Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

(d) The Chief of Police may revoke or suspend a massage establishment permit if any of the following are found:

(1) The holder of the permit does not possess the qualifications for the permit as required by this chapter;

(2) The holder of the permit has been convicted of any violation of the provisions of this chapter or any lesser included offense;

(3) The holder of the permit has made a material misrepresentation on the permit application or renewal; or,

(4) The holder of the permit has operated the massage establishment in a manner which violates any of the provisions of this chapter, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit.

The Chief of Police may consider previous and/or repeat violations of this chapter, any conditions of the permit, or any other applicable laws as evidence of a pattern of noncompliance by the holder of the permit.

For purposes of this section, the holder of the permit (permittee) in the massage establishment permit context shall include the managing, responsible officer/employee. Furthermore, the holder of the permit shall be responsible for those acts of employees and massage therapists which are done in the course and scope of their employment. The course and scope of employment is evidenced by a course of conduct occurring on the premises of the massage establishment.

**5.40.170 Procedure for revocation or suspension of massage establishment permit.**

Revocations and suspensions shall be administered as set forth in Chapter 2.115 SCCC."

**SECTION 2:** That Section 18.34.030 (entitled "Permitted Uses") of Chapter 18.34 (entitled "Regulations for CN—Neighborhood Commercial Zoning Districts") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:



**“18.34.030 Permitted uses.**

All uses shall be conducted wholly within a completely enclosed building, except as provided in this section or in SCCC 18.34.040. Only the following uses, or uses that, in the opinion of the Planning Commission, are of a similar nature, will be permitted:

(a) Retail sales or rentals of new merchandise or service:

- (1) Clothing stores.
- (2) Pharmacies.
- (3) Grocery stores or delicatessens.
- (4) Hardware stores.
- (5) Stores which sell alcoholic beverages (packaged goods off-sale).
- (6) Restaurants, excluding those which sell or serve alcoholic beverages.

Outdoor use of designated seating areas for twelve (12) or fewer customers of such restaurants, within an area of two hundred fifty (250) square feet or less, is allowed if architectural committee approval is obtained and such outdoor use is operated in conformance with any conditions of approval.

(7) Bookstores and video stores, provided more than fifty percent (50%) of the displayed inventory or stock on hand, at any one time, is not adult oriented as defined and regulated in Chapter 18.70 SCCC.

(b) Sales of personal or financial services:

- (1) Barber shops and beauty parlors.
- (2) Banks and savings and loans.
- (3) Clothes cleaning, laundry pickup stations, laundrettes, and pressing

shops.

(4) Professional offices, such as accountants, architects, or doctors.

(5) Nurseries and preschools.

(6) Studios and instructional facilities, such as dance studios, music studios, or similar establishments, in which a specific subject is taught, as distinguished from a public or private general educational school. This category does not include facilities in which industrial training is provided, such as welding or automotive repair, involving the use of tools and materials appropriate to an industrial use area.

(7) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(c) Incidental and accessory buildings and uses on the same lot with, and necessary for, the operation of any permitted use. Such uses may include a parking lot, if constructed at, or within thirty-six (36) inches of, the elevation of the top of the nearest street curb.”

**SECTION 3:** That Section 18.36.030 (entitled “Permitted Uses”) of Chapter 18.36 (entitled “Regulations for CC - Community Commercial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

**“18.36.030 Permitted uses.**

None but the following uses or uses that, in the opinion of the Planning Commission, are of a similar nature will be permitted.

All uses shall be conducted wholly within a completely enclosed building, except as provided in SCCC 18.36.040.

(a) Any use permitted in the CN or OG district subject to the regulations set forth

in this chapter.

(b) The following retail business establishments, shops, and offices supplying commodities or performing services for residents of the surrounding community:

- (1) Animal hospital – clinic or veterinarian (no kennel).
- (2) Antique shop.
- (3) Appliance sales and service.
- (4) Art goods.
- (5) Auto accessory sales facility not involving installation on the premises.
- (6) Bakery.
- (7) Beauty college.
- (8) Bicycle sales and repair.
- (9) Book store including rental.
- (10) Candle shop.
- (11) Carpets, rugs, draperies.
- (12) Confectionery.
- (13) Department store.
- (14) Florist.
- (15) Furniture store.
- (16) Hobby shop.
- (17) Import store.
- (18) Jewelry sales and repair.
- (19) Pet shop.
- (20) Pipe and tobacco shop.

- (21) Radio and television sales and service.
- (22) Repair shop for domestic appliances, radios, shoes.
- (23) Second hand sales.
- (24) Shoe store.
- (25) Sporting goods.
- (26) Stationery store.
- (27) Tailoring and custom dressmaking.
- (28) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(c) Incidental storage and accessory uses including repair operations and services, provided such uses shall be clearly incidental to the sale of products at retail on the premises and shall be so located, constructed and operated as not to be offensive or objectionable because of dust, gas, smoke, noise, fumes, odors, vibrations, or other public nuisances.”

**SECTION 4:** That Section 18.42.030 (entitled “Permitted Uses”) of Chapter 18.42 (entitled “Regulations for CP - Commercial Park Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

**“18.42.030 Permitted uses.**

None but the following uses or uses that, in the opinion of the Planning Commission, are of a similar nature will be permitted:

- (a) The following uses shall be conducted wholly within a completely enclosed building, except as provided in SCCC 18.42.040, and shall be so located, constructed, and operated as not to be offensive or objectionable because of dust, gas, smoke, noise,

fumes, odors, vibrations, or other public nuisances:

- (1) Hotels and motels.
- (2) Professional, financial, and general business offices.
- (3) Restaurants serving food and nonalcoholic beverages.
- (4) Recreational and cultural facilities, exhibition halls, museums, auditoriums, and theaters.
- (5) Accessory retail and service establishments, which are physically located within a building in which any of the above-referenced permitted uses are located.
- (6) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(b) The following outdoor uses are allowed, except as provided in SCCC 18.42.040; provided, that such uses are so located, constructed, and operated as not to be offensive or objectionable because of dust, gas, smoke, noise, fumes, odors, vibrations, or other public nuisances:

- (1) Restaurants serving food and nonalcoholic beverages.
- (2) Walk-up service facilities.”

**SECTION 5:** That Section 18.56.040 (entitled “Permitted Uses”) of Chapter 18.56 (entitled “Planned Development - Master Community Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

**“18.56.040 Permitted uses.**

Certain uses may be specifically permitted or permitted by use permit or may be disallowed from any PD-MC plan in accordance with provisions hereinbelow. The PD-MC

approval by the City may also require that specific types of uses be incorporated into the overall plan.

(a) Any residential, commercial, office, research and development or public uses may be authorized if they are in harmony with other authorized uses and serve to fulfill the function of the planned development while complying with the City's general plan.

(b) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(c) The following uses may be permitted in this zoning district if they are approved specifically through the zoning entitlement process or approved through a use permit process as specified in Chapter 18.110 SCCC, Use Permits.

- (1) Auto service or repair;
- (2) Drive-through restaurants and services;
- (3) Beer and wine or alcoholic beverage service;
- (4) Live entertainment and dancing.

(d) The following uses are prohibited:

- (1) Auto sales;
- (2) Appliances and bulk item sales;
- (3) Industrial uses and uses involving quantities of hazardous materials that may have potentially significant health consequences;
- (4) Wholesaling, warehousing and storage (indoor and outdoor) operations;
- (5) Contractor's yards and other similar uses;
- (6) Other uses that, in the opinion of the City Council, are incompatible

with the character and nature of the uses provided and approved in the master community plan.”

**SECTION 6:** That Section 18.70.010 (entitled “Policy”) of Chapter 18.70 (entitled “Use Regulations Applicable to Specified Regulated Businesses”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

**“18.70.010 Policy.**

The purpose of this chapter is to provide reasonable regulations to prevent the adverse effect of the concentration or clustering of certain uses of real property, specifically adult book stores, adult cabarets, adult motion picture theaters, nude encounter studios, nude photography studios, and other uses, as specified in SCCC 18.70.090 (hereinafter referred to collectively as “regulated businesses”). Such uses have serious objectionable characteristics especially when several of them are located in close proximity to each other. Such concentration tends to create a “skid-row” atmosphere and has a deleterious effect upon the adjacent area. Regulation of the locations of these uses is necessary to ensure that such adverse effects will not cause or contribute to the blight or the downgrading of neighborhoods and businesses situated in proximity to said “regulated businesses.”

The regulations hereinafter set forth in this chapter are necessary and will tend to prevent the clustering of such “regulated businesses.” The regulations hereinafter set forth will serve to help prevent the deleterious effects of blight and the resultant downgrading of real property values. The regulations will also serve to promote the orderly planning, development and utilization of neighborhood and business premises.”

**SECTION 7:** That Section 18.70.030 (entitled “Definitions”) of Chapter 18.70 (entitled “Use Regulations Applicable to Specified Regulated Businesses”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

**“18.70.030 Definitions.**

(1) “Adult book store” means a building or portion thereof used by a business which has as a substantial or significant portion of its stock in trade for sale to the public, or certain members thereof, books, magazines or other publications which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” (as hereinafter defined).

(2) “Adult cabaret” means a building or portion thereof or area used for the presentation or exhibition or featuring of topless and/or bottomless dancers, persons engaging in “specified sexual activities” (as hereinafter defined), strippers, male or female impersonators or similar entertainers for observation by patrons or customers.

(3) “Adult motion picture theater” means a building or portion thereof or area, open or enclosed, used for the presentation of motion pictures distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” (as hereinafter defined) for observation by patrons or customers.

(4) “Adult novelty store” means a building or portion thereof used by a business which has a substantial or significant portion (over twenty-five percent (25%) of the business’ stock in trade for sale or rental to the public or over twenty-five percent (25%) of its gross dollar of business or, if applicable, over twenty-five percent (25%) of the actual



display area of the store) of its stock in trade for sale or rental to the public, or certain members thereof, adult-oriented novelty items which are distinguished or characterized by their emphasis or use for "specified sexual activities" (as hereinafter defined).

(5) "Nude encounter studio" means a building or portion thereof or area used, upon payment of any compensation (as hereinafter defined), for permitting the patron or customer to meet, be present privately, or otherwise "encounter" a person or persons who are topless and/or bottomless and are employed for such purpose (as hereinafter defined) by the operator of such establishment.

(6) "Nude photography studio" means a building or portion thereof or area used upon payment of any compensation (as hereinafter defined), for permitting the patron or customer to photograph a person or persons who are topless and/or bottomless and who are employed for such purpose (as hereinafter defined) by the operator of such establishment."

**SECTION 8:** That Chapter 18.104 (entitled "Massage Establishments") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California," ("SCCC") is amended to read as follows:

## **"18.104**

### **MASSAGE ESTABLISHMENTS**

#### Sections:

- 18.104.010 Definitions.
- 18.104.020 Location restrictions on massage establishments.
- 18.104.030 Violations.
- 18.104.040 Regulations nonexclusive.
- 18.104.050 Application to existing businesses.

#### **18.104.010 Definitions.**

- (a) "Massage establishment" shall have the same definition set forth in

SCCC 5.40.020. The exemptions under SCCC 5.40.060 apply to this chapter.

(b) "Massage Establishment Zoning Verification" shall mean a written form completed by the Planning Division of the Department of Community Development verifying that the proposed massage establishment complies with SCCC 18.104.020.

**18.104.020 Location restrictions on massage establishments.**

No lot or parcel of property or any building or structure thereon, or any portion thereof, within the City, shall be used to operate as a massage establishment unless said lot, parcel, building or structure is located in one of the following:

(a) In a hotel with at least one hundred (100) guest rooms.

(b) In a commercial zoning district or Planned Development (PD) zoning district that allows for commercial use, and the location must also meet one of the following criteria, which must be confirmed by obtaining a Massage Establishment Zoning Verification from the Planning Division of the Department of Community Development:

(1) The massage establishment is located in a minimum ten (10) acres size contiguously functioning mixed use or commercial site with shared parking and circulation and a minimum of 20,000 square foot of retail space; or,

(2) The massage establishment is located in a wellness center of an employment center with five hundred (500) employees or more.

**18.104.030 Violations.**

(a) Any person operating or causing the operation of a massage establishment on any parcel in which no application for a massage establishment permit under Chapter 5.40 SCCC has been granted, or any person violating or causing the violation of any of the terms and conditions of the existing use permit (if applicable), shall be subject to

the revocation/suspension of the massage establishment permit issued pursuant to Chapter 5.40 and may be subject to penalties pursuant to SCCC 1.05.070. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

(b) In addition to the remedies set forth in subsection (a) of this section, any violation of this chapter is hereby declared to constitute a public nuisance and may be abated or enjoined pursuant to Chapter 18.114 SCCC and any other applicable state or local laws relating to nuisance abatement.

(c) If a massage establishment permit is revoked, or not renewed as a result of violations of Chapter 5.40 SCCC or of this chapter, no massage establishment shall operate at that location for a period of five (5) years from the date of revocation or nonrenewal.

**18.104.040 Regulations nonexclusive.**

The provisions of this chapter regulating massage establishments are not intended to be exclusive, and compliance therewith shall not excuse noncompliance with any other provisions of the City Code and/or any other applicable regulations.

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#### **18.104.050 Application to existing businesses.**

Any massage establishment in possession of a valid massage establishment permit issued by the Santa Clara Police Department on the effective date of this chapter, which becomes a nonconforming use by reason of the adoption of this chapter, shall be considered as a legal nonconforming use pursuant to Chapter 18.94 SCCC at its existing location as long as the massage establishment complies with all of the following:

- (a) Meeting all requirements of Chapter 5.40 SCCC, and in possession of a current massage establishment permit issued by the Chief of Police;
- (b) Compliance with all applicable building code regulations; and,
- (c) Free of repeated violations and/or criminal citations, as confirmed by the Santa Clara Police Department.”

**SECTION 9: Ordinances repealed.** Ordinance No. 1945 and all ordinances amendatory thereto, and, with exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

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**SECTION 10: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 11: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 24<sup>TH</sup> day of September, 2019, by the following vote:


AYES:	COUNCILORS:	Chahal, Davis, Hardy, Mahan, O'Neill, and Watanabe and Mayor Gillmor
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NOES:	COUNCILORS:	None
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ABSENT:	COUNCILORS:	None
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ABSTAINED:	COUNCILORS:	None
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ATTEST:

  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA



## Agenda Report

19-1042

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### SUBJECT

Presentation and Possible Action on the 2019 Employee Survey Findings

#### BACKGROUND

In summer of 2018, the City began researching options for conducting an employee engagement survey to better assess the level of engagement and satisfaction within the organization. Funding in the amount of \$30,000 was approved in the FY2018/19 Annual Operating Budget to support this effort. Per the City's procurement guidelines, the City solicited proposals from the following vendors:

- EMC Research
  - One-year agreement (\$15,000)
- Mercer | Sirota, Inc.
  - One-year agreement (\$42,000)
  - Three-year agreement (Year 1: \$39,900; Year 2 & 3: \$33,250; Total: \$106,400)
- FM3 Research
  - Did not provide proposal
- National Business Research Institute, Inc. (NBRI)
  - Did not provide proposal

After a review of submitted proposals, EMC Research (EMC) was selected to conduct an employee engagement survey.

EMC has worked with other municipal agencies in the region to provide similar services, including Santa Clara County and Alameda County. They are also familiar with the organization after working on the City's robust community outreach and engagement process related to identifying the community's perspectives on issues related to Levi's Stadium in FY 2018/19.

EMC will provide a presentation of the results at the Oct. 8, 2019 City Council Meeting.

#### DISCUSSION

The City's first employee engagement survey was conducted from May 23 through July 3, 2019. The survey was released to all full-time City of Santa Clara employees and included questions about their experiences working for the City, professional priorities, environmental factors, and interest in future workplace initiatives. These questions were designed to identify opportunities to improve operational efficiencies and create a more positive working environment.

Though the survey was primarily provided via employee's City emails, weblinks were also made available to City employees without City emails or with limited computer access. Computer kiosks were set up in our Human Resources Department where employees without computer access could

fill out the survey.

575 responses were submitted, which represents 45% of the overall organization (49% of regular employees and 33% of temporary employees) with an overall margin of error of  $\pm 4.09$  percentage points. EMC has provided a presentation reflecting a high-level summary of employee responses and opportunities (Attachment 1).

The survey demonstrated the following:

- Overall, employees are satisfied with the City as an employer
- People feel their jobs support the work of the City and that the City plays an important role in the community
- The performance of direct supervisors and peer coworkers receive the highest marks

The following topics were identified as possible focus areas:

- Communication from the top down or between departments
- Coordinating across departments
- Allowing for more innovation
- Providing opportunities for employees to give input

The City has begun addressing some of the opportunities identified in this survey, including increased email communications from the City Manager and exploring ways for cross-departmental collaboration.

The City will use these results in the continued effort to provide a positive, supportive work environment for our employees. Employee satisfaction and engagement has a huge impact on the capacity of our organization and the services we provide to the community.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

The City Council approved funds of \$30,000 in the FY 2018/19 Annual Operating Budget to develop and conduct an employee engagement survey. It is a bi-annual expenditure, so it was included in the proposed FY 2020/21 budget but not in FY 2019/20.

The agreement with EMC Research was for \$15,000, which falls within the approved budget amount.

### **COORDINATION**

This report has been coordinated with the Human Resources Department and City Manager’s Office.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a

Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

Note and File 2019 Employee Survey Findings.

Reviewed by: Teresia Zadroga-Haase, Human Resource Director

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Presentation of Santa Clara 2019 Employee Survey Results





# City of Santa Clara Employee Survey

*Presented October 8, 2019*

# Methodology

- ▶ Email-to-web survey of City of Santa Clara employees
  - Link also made available to City employees without employee email addresses
- ▶ Survey conducted May 23 - July 3 2019
- ▶ 575 interviews; overall margin of error  $\pm 4.09$  percentage points
- ▶ Email response rate: 45% Overall, 49% for Regular and 33% for Temporary Employees
- ▶ Data was weighted to be representative to the City of Santa Clara's employee population on department and classification.

Please note that due to rounding, some percentages may not add up to exactly 100%.

# Key Findings

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- ▶ For the most part, employees are satisfied with the City as an employer.
- ▶ People feel their jobs support the work of the City, and most feel the City plays an important role in the community.
- ▶ The performance of direct supervisors and peer coworkers get the best marks.
- ▶ Improving communication from the top down or between departments is the greatest opportunity to improve
  - Employees are highly interested in coordinating across departments.
- ▶ Allowing for more innovation and opportunities to give input are also opportunities to improve.

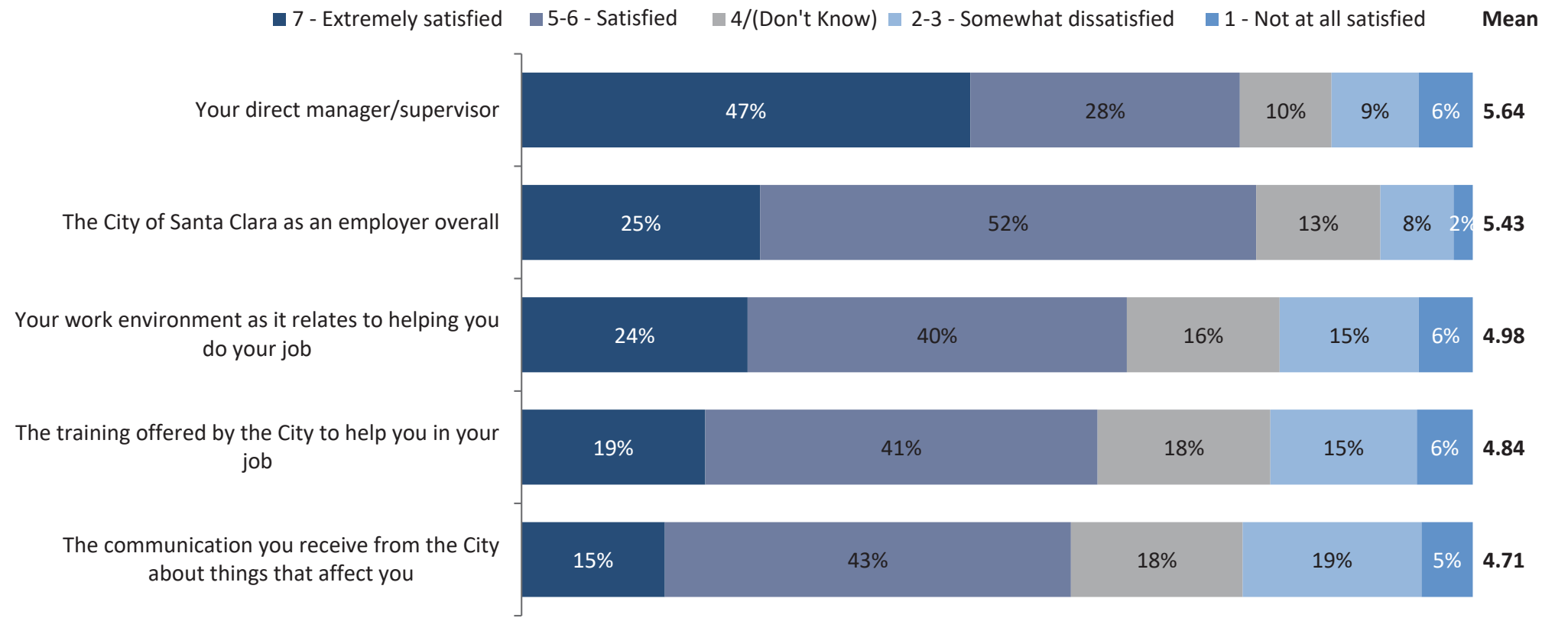


**Overall Impressions of  
Employer**

# Satisfaction Ratings



*In general, employees are more satisfied than dissatisfied with the City as an employer. Nearly half are “7 – Extremely Satisfied” with their direct supervisor. Communication from the City has the lowest satisfaction rating, but it is still more positive than negative.*



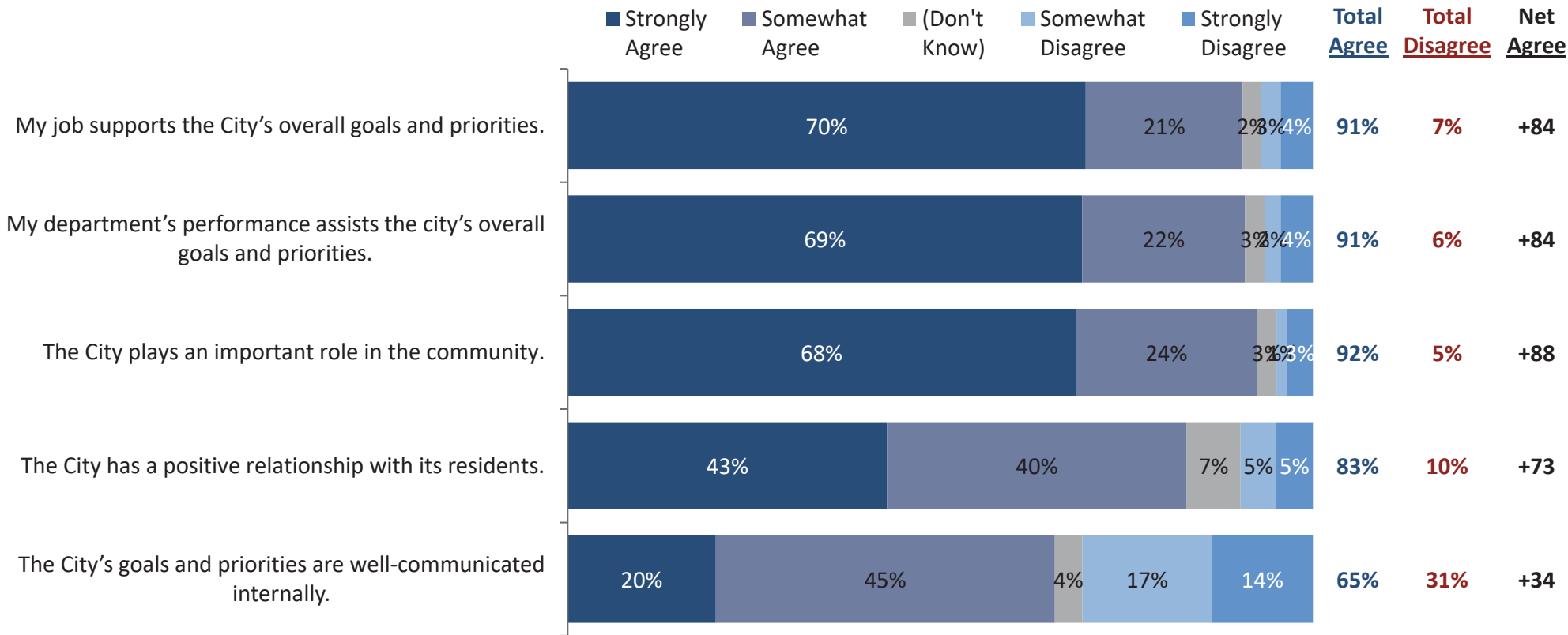


## Perceptions of City As Employer

# Working at the City Agree Statements



Two-thirds strongly agree that their job and their department support the City’s goals, and that the City plays an important role in the community. While the City’s internal communication shows the strongest disagreement, more than half still agree with this statement.



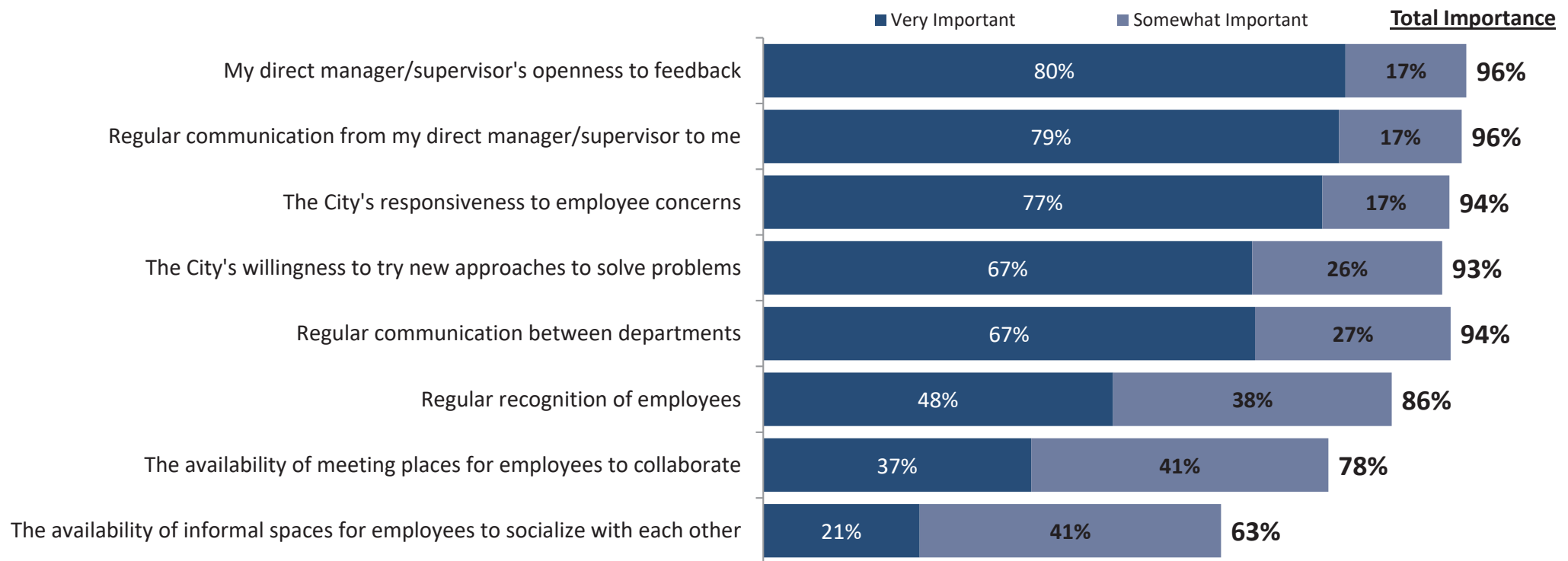


## Employee Priorities



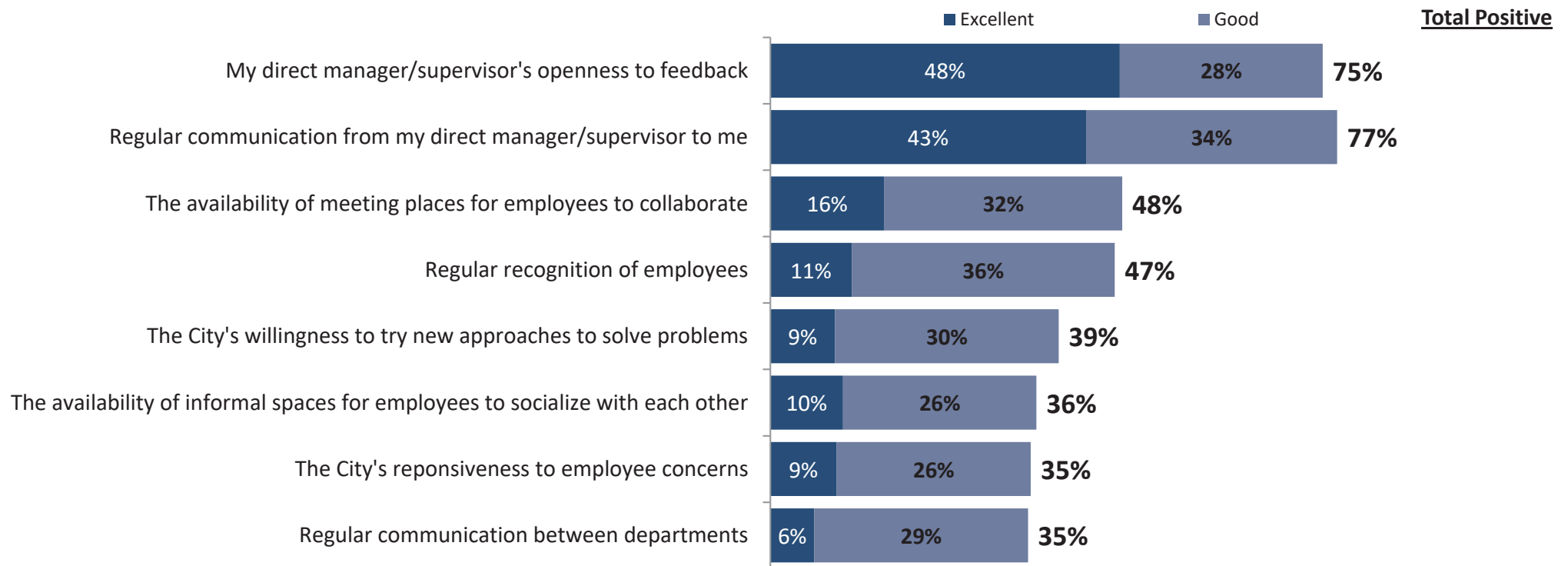
# Importance of Key Employer Functions

*All of these are important to employees, but receiving direct feedback, getting regular communication, and being responsive to employee concerns are of top importance.*



# Performance on Key Employer Functions

*The only functions in which a majority give positive (good or excellent) ratings are related to direct supervisors, specifically direct manager's openness to feedback and the regularity of their communications. All other functions are rated less than positively by more than half of all employees.*



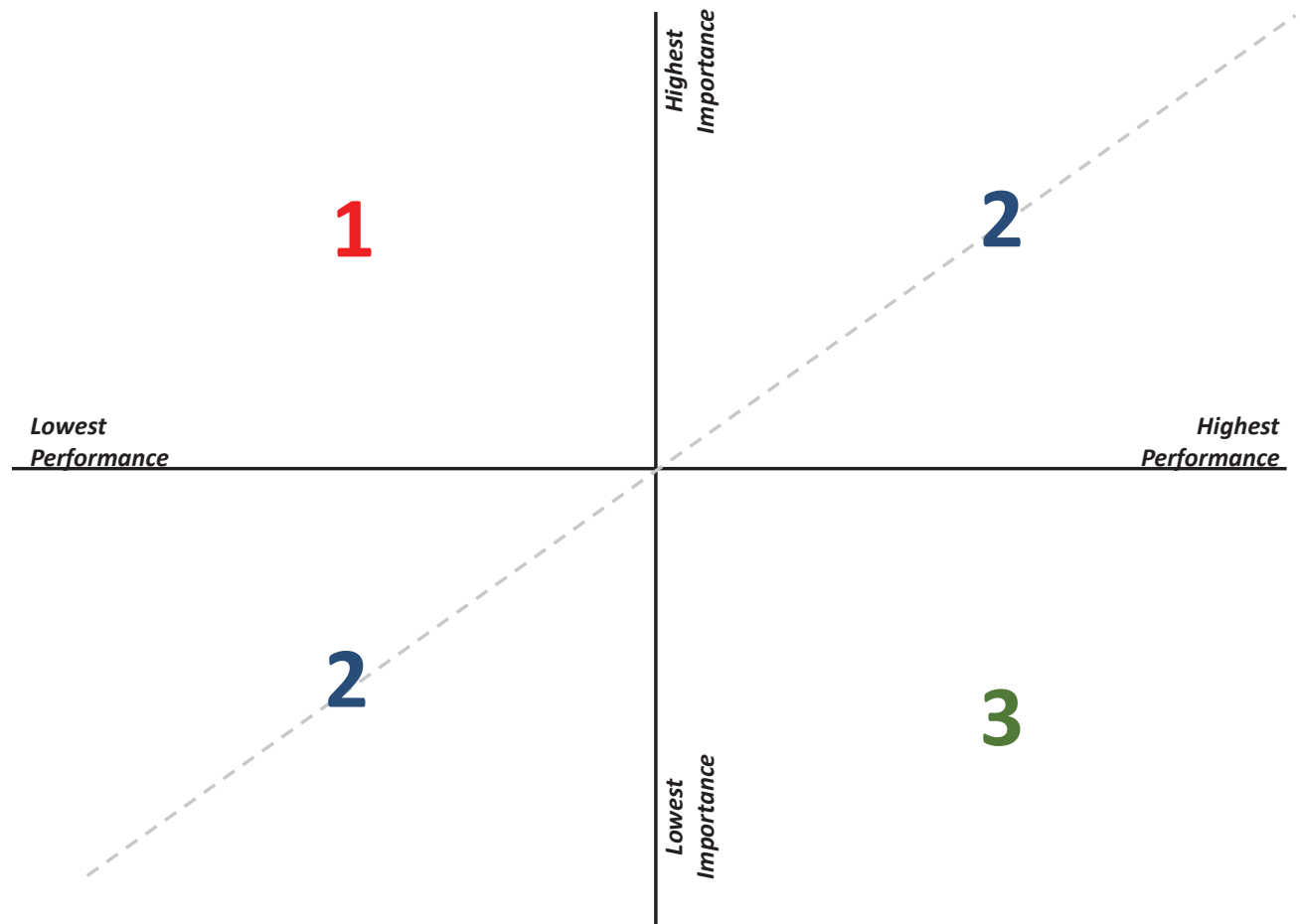
Q5a-5h. Using the scale below, please indicate how well you think the City of Santa Clara as your employer is doing in each of the following areas.

# Quadrant Chart

**1) High Importance, Low Performance** (top-left quadrant) – Items falling into this category should be viewed as **opportunities for improvement**. These are the items that employees feel are very important but that the City could be doing a better job delivering. Improving the items in this quadrant are likely to have the greatest impact on improving employees' overall satisfaction with the City as an employer.

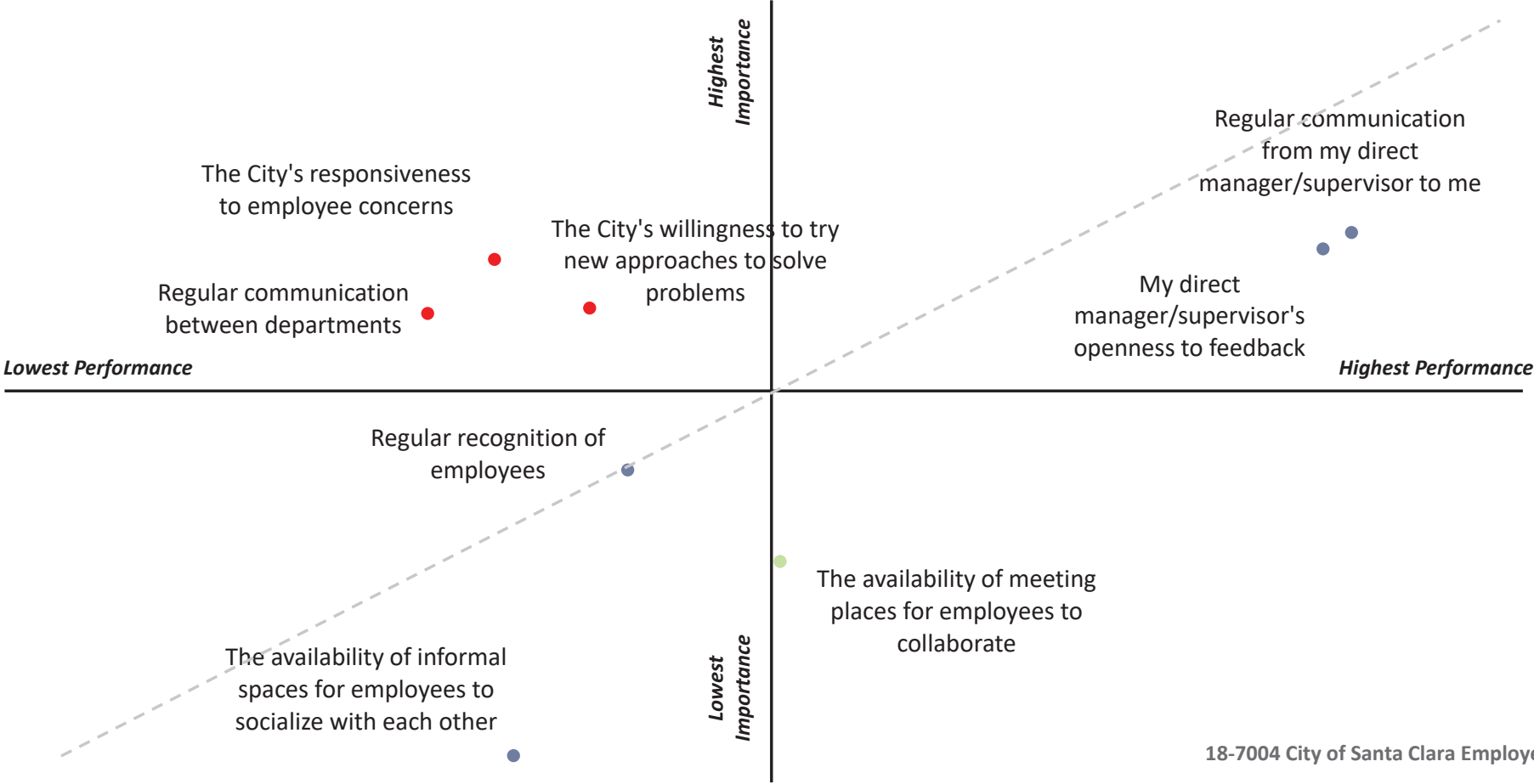
**2) Importance & Performance Comparable** (bottom-left and top-right quadrants) – Items in these two categories may be rated differently by employees; but in both scenarios, City performance for these items matches the importance that employees attribute to them.

**3) Low Importance, High Performance** (bottom-right quadrant) – This quadrant represents items that employees think the City is doing very well with but are believed to be less important. While items in this quadrant can be considered successes with certain niche groups, for most employees, they are **not major drivers** of overall satisfaction with the City as an employer.



# Quadrant Chart

Three items (being responsive to employee concerns, regular cross-departmental communication, and willingness to try new approaches) represent the best opportunities to make efforts to improve performance relative to employee expectations.



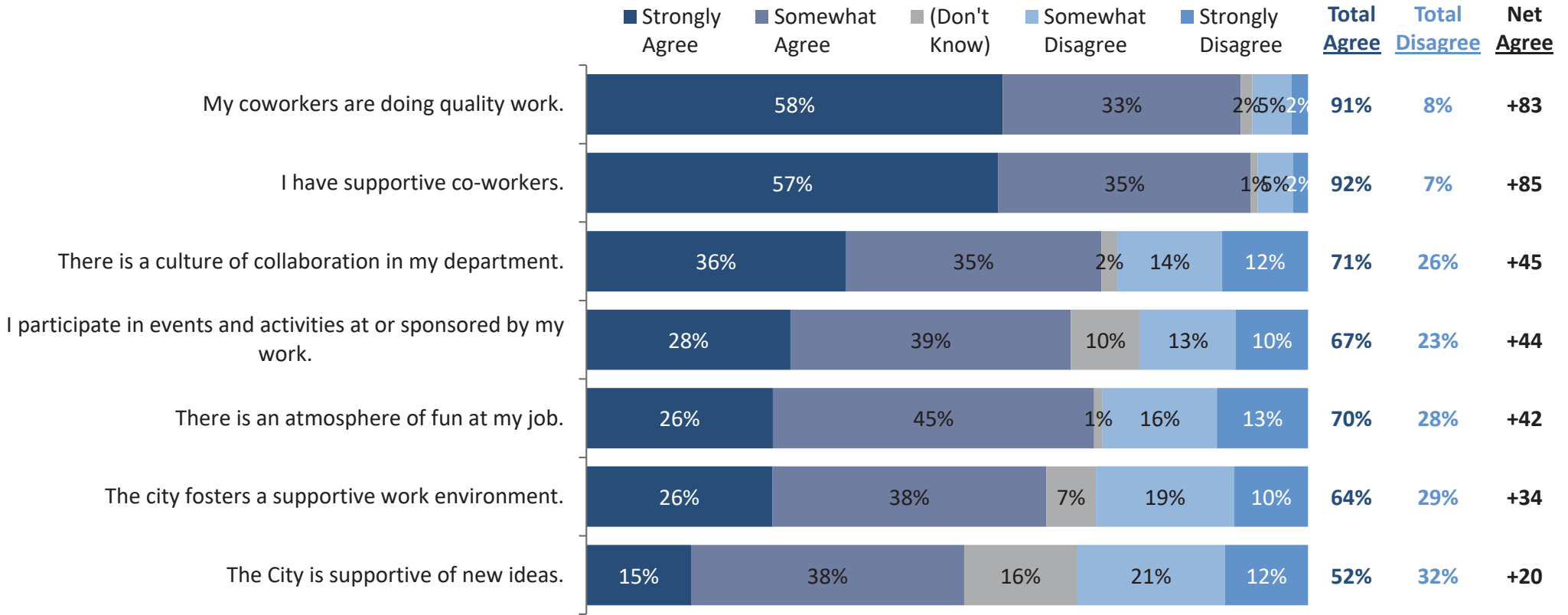


**Evaluation of Environment**

# Culture

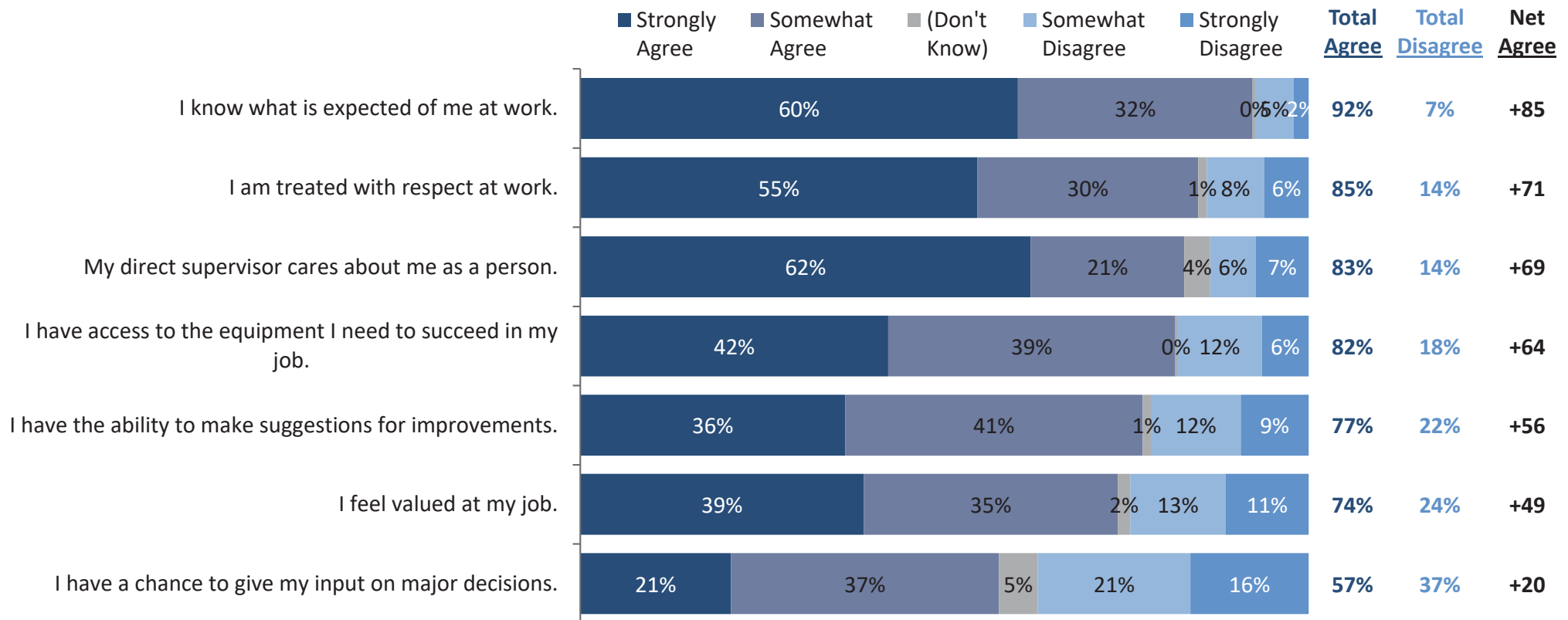


City employees rate their co-workers particularly highly, with over 90% agreeing that their co-workers are supportive and doing quality work.



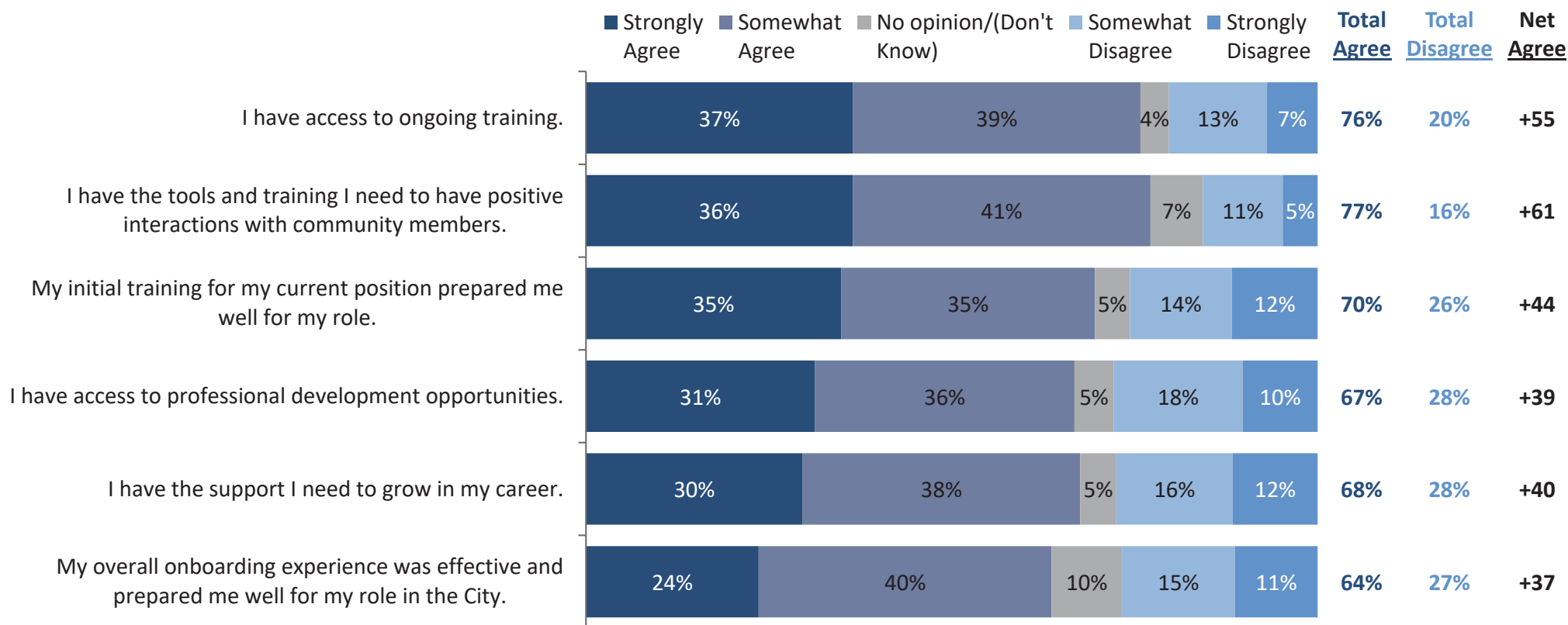
# Expectations and Resources

*More than half of all employees strongly agree that they know what is expected of them at work, that they are treated with respect, and that their direct supervisor cares about them. The chance to give input on major decisions has the most disagreement, but agreement is still net positive.*



# Training & Growth

*While over two-thirds of employees feel they have access to ongoing training, professional development opportunities and general career support, about one in four feel that these opportunities are lacking for them.*



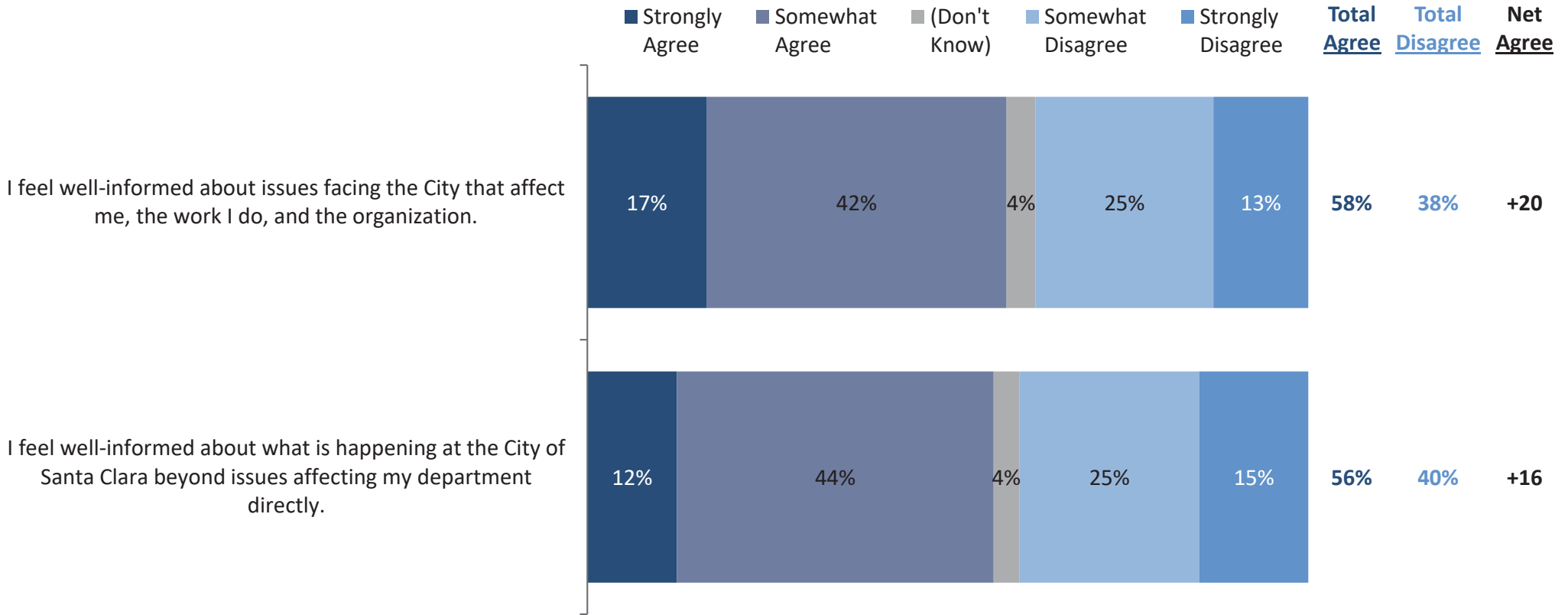
Q7. Please indicate whether you agree or disagree with each of the following statements.



# City Keeping Employees Informed



While a majority of employees agree that they are well-informed about issues affecting their jobs and their department, intensity is weak, with less than 1-in-five strongly agreeing with either of these statements.



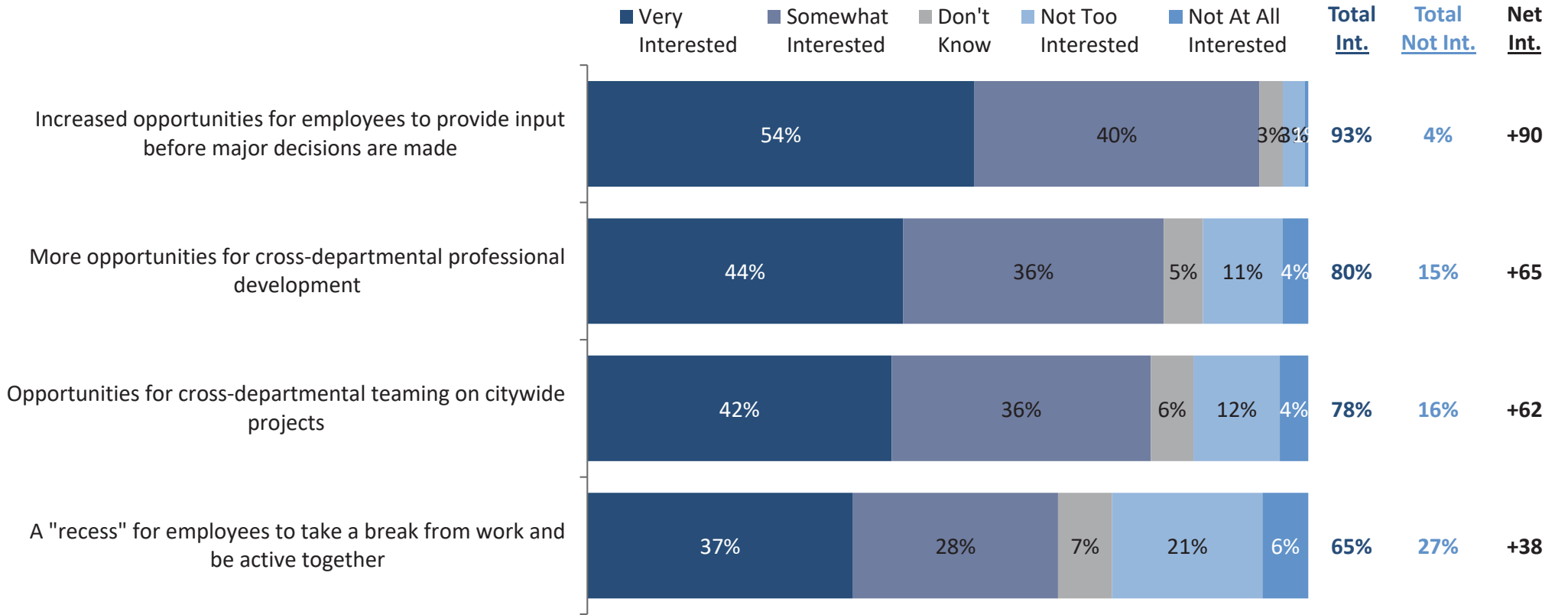


# Interest in Future Workplace Initiatives

# Changes in Policies And Organization



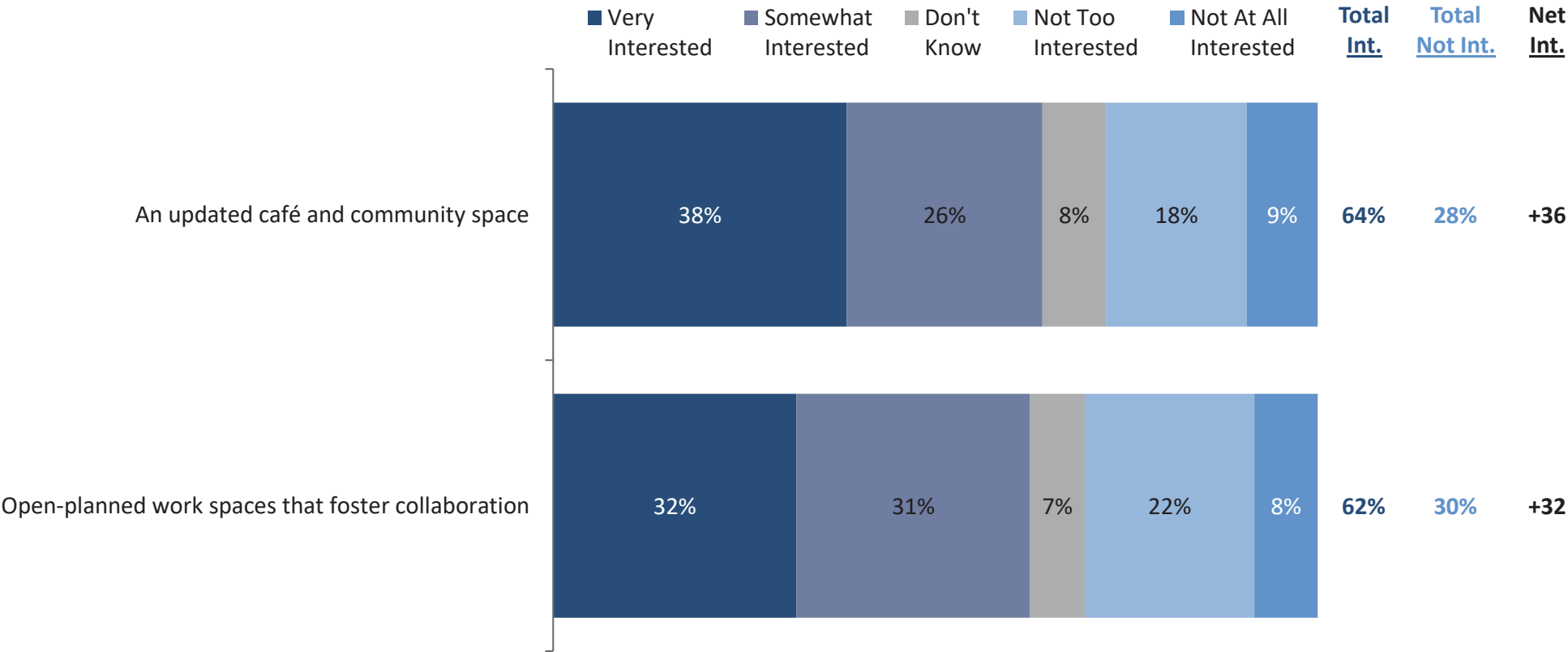
94% of City employees are interested in having the opportunity to provide input before major decisions are made, with over half reporting a high-intensity of interest in such an opportunity.



# Changes in Workspaces



Employees are also interested in changes to their work spaces; compared to an interest in new opportunities for input and collaboration, though, interest in changes like open-planned offices or an updated café is less universal.





Andrew Thibault  
[andrew@emcresearch.com](mailto:andrew@emcresearch.com)  
Ph: 206-204-8031

Riley Jones  
[riley@emcresearch.com](mailto:riley@emcresearch.com)  
Ph: 206-204-8042



## Agenda Report

19-1006

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Action on the Award of Agreement to Wallace Roberts & Todd, LLC for Downtown Precise Plan Consultant Services and Related Budget Amendment

#### **BACKGROUND**

The City of Santa Clara's 2010-2035 General Plan identifies focus areas throughout the City, including the Downtown area, to promote the City's diverse economic base and meet the demand for housing that addresses job growth in the City and region.

In August 2015, the Santa Clara City Council adopted a Strategic Objective to evaluate a Santa Clara Downtown/Super Block project. The City then hired an urban design consultant to help facilitate a series of workshops and meetings between October 2015 and November 2017, which were used to gather community input on a vision for the Downtown area's future development. Through this process the community identified several objectives for the redevelopment of the Downtown area as a vibrant, pedestrian-oriented destination. The restoration of Franklin Street as a public right-of-way open to vehicular traffic was identified as a primary objective.

The possibility of revitalizing the City's historic Downtown area has engaged City community members, including organizations such as Reclaiming Our Downtown and the Old Quad Resident's Association. In response to community interest, the City Council approved the Biennial 2018/19 and 2019/20 Capital Improvement Program Budget that includes \$400,000 to support the preparation of a Precise Plan that will provide guidance for new development within the Downtown area through policies, guidelines, and illustrations that implement the community vision and objectives for a vibrant, pedestrian-oriented destination. As part of this effort, the City requires a consultant to assist in the preparation of the Precise Plan.

#### **DISCUSSION**

In February 2019, the City issued a Request for Qualifications (RFQ) for Downtown Precise Plan Consultant Services, using the City's e-procurement system. A total of 75 companies viewed the RFQ and the City received proposals from four companies by the March 25, 2019 deadline:

- Dyett & Bhatia Urban & Regional Planners (Oakland, CA)
- Lisa Wise Consulting, Inc. (San Francisco, CA)
- M. Arthur Gensler, Jr. & Associates dba Gensler (Los Angeles, CA)
- Wallace Roberts & Todd, LLC (San Francisco, CA)

Evaluation: A seven-member evaluation team with representation from the Community Development Department, Public Works Department, City Manager's Office, and the Downtown Community Task Force was formed to evaluate the proposals. Each team member independently evaluated and scored the proposals.

Proposal Responsiveness: Staff determined all proposals were responsive and met the initial pass/fail review of the stated minimum qualifications.

Cover Letter and Qualifications (25% weight): A letter identifying the proposer's firm and highlights of the proposal package. Additionally, each proposer submitted a statement of qualifications for their firm and proposed project staff including resumes and relevant project lists.

Project Approach (25% weight): The evaluation team evaluated the proposers' project approach including the major tasks and services to be provided, and proposed subconsultants.

Draft Scope of Work (40% weight): The proposers were required to submit a draft scope of work for the project including a project schedule that outlined the timing of each task and deliverable.

References (5% weight): The proposers were required to submit with their proposal three references for similar services performed.

Cost (5% weight): Cost proposals were opened and scored at the end of the technical proposal evaluation.

Oral Presentations: On June 28, 2019, the four proposers were invited to participate in oral presentations to demonstrate their knowledge and understanding of the City's requirements and introduce key personnel who would be assigned to the project.

The evaluation results are summarized in the table below.

<u>Criteria</u>	<u>Maximum Points</u>	<u>Dyett &amp; Bhatia</u>	<u>Lisa Wise Consulting</u>	<u>Gensler</u>	<u>Wallace Roberts &amp; Todd</u>
Cover Letter	5	4	4	4	4
Firm Qualifications	10	8	8	8	8
Staff Qualifications	10	8	8	8	8
Draft Scope of Work	40	27	29	32	33
Project Approach	25	19	19	18	21
References	5	3	4	4	5
Cost	5	5	4	4	4
Totals	100	74	76	78	83

Notice of Intended Award:

A Notice of Intended Award (NOIA) announcing the City's recommended Consultant was published on July 1, 2019. The RFQ process included a ten-day protest period; no protests were received.

Recommendation:

Staff recommends award of agreement to Wallace Roberts & Todd, LLC. The evaluation team unanimously agreed that their expertise and project approach is the most advantageous and provides the best value to the City. The Consultant's team is comprised of industry experts in town planning, placemaking, transportation, economic development, environmental analysis, and community engagement. Additionally, their solution included the following key attributes.

- Integrated community engagement that is built upon the efforts conducted in 2015 and 2017;
- Balance between community needs and development realities;
- Pro forma financial feasibility testing of prototypical opportunities to provide an assessment of current planning parameters and the economic challenges to creating the desired development pattern; and
- Development of a plan framework that is based on good town-making principles.

References were checked with Universal Paragon Corporation (California), the City of Millbrae (California), and the Town of Windsor (California). The references checked positive.

Pending Council's approval, the Agreement shall be executed to provide the required consulting services for the Downtown Precise Plan development. The initial term of the Agreement shall be for three years ending on September 30, 2022, with an option to extend the Agreement for an additional three-year term through September 30, 2025.

The agreement is fixed-price with payments tied to the successful completion of the milestones listed in the table below. The cost elements include the tasks from the scope of work that were identified in the RFQ, as well as the optional tasks identified by the Consultant in their RFQ response.

<b>COST ELEMENTS:</b>	
Project Initiation	\$67,025
Issue Identification and Vision	\$58,270
Financial Analysis	\$31,260
Development Scenarios/Conceptual Plans	\$74,740
Workshops	\$22,121
Draft Precise Plan Chapter Development	\$68,380
Public Services and Implementation	\$10,520
Draft Precise Plan Refinement	\$12,880
CEQA Clearance	\$72,880
Planning Commission & City Council Public Hearings	\$20,000
Reimbursable Expenses	\$14,295
<b>Services Subtotal</b>	<b>\$452,371</b>
<b>Optional Services</b>	<b>\$125,975</b>
<b>GRAND TOTAL</b>	<b>\$578,346</b>



Scope of Work Summary:

The Consultant shall work closely with the City and Downtown Community Task Force in the development of the Precise Plan. The Plan process shall include periodic check-ins with the City Council to report on community and Task Force input, and to receive Council feedback at key milestones in the planning process such as the completion of the market assessment; the proposed vision scenarios; and the preferred land use plan. Preparation of the Plan is anticipated to require approximately 18 months and includes the following key work program elements.

- Analysis of existing conditions;
- Development of a public outreach strategy for the planning process;
- Analysis of potential market demand for housing, commercial, office, and mixed-use development in the Precise Plan area;
- Development of three (3) long-term vision scenarios that represent the planned build out of the Plan area including, land use and development intensities, multi-modal connectivity improvements, open space plans, and streetscape and public space improvements;
- Analysis of the economic feasibility of each land use scenario, along with a summary of community input, to inform the selection of a preferred scenario;
- Design guidelines that build upon the City's existing General Plan design policies, as well as the information gathered during the community outreach activities; and
- The Precise Plan document, including the preferred land use scenario.

The unanimous selection of the Consultant by the evaluation team reflects the expertise the Consultant demonstrated in areas reflective of the work program, including the preparation of downtown plans, conducting community engagement, real estate economics, and form-based codes and other zoning tools.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

Funds in the amount of \$400,000 were allocated for the development of a Downtown Precise Plan, including the Franklin Street restoration, in the CIP budget (CIP 539-6559). From this budget, \$90,000 was spent on a non-refundable deposit for an option on the acquisition of the Franklin Street Right-of-Way easement.

The Consultant's proposal for the scope of work requested by the City has a cost of \$452,371. Additionally, the Consultant's proposed optional tasks total \$125,975. The combined total cost of the Consultant's services is \$578,346. Currently the available budget amounts to \$310,000. Therefore, staff is requesting that funds in the amount of \$268,346 be allocated from the Advanced Planning Reserve to cover the total cost of the Agreement.

The budget amendment below allocates funding from the Advanced Planning Reserve account to the Downtown Master Plan Capital Project in the amount of \$268,346.

**Budget Amendment  
FY 2019/20**

	Current	Increase/ (Decrease)	Revised
<b><u>General Fund</u></b>			
<b><u>Reserve</u></b>			
Advanced Planning	\$368,749	(\$268,346)	\$100,403
<b><u>Transfers Out</u></b>			
Transfer to the General Government Capital Fund	\$933,535	\$268,346	\$1,201,881
<b><u>General Government Capital Fund</u></b>			
<b><u>Transfers In</u></b>			
Transfer from the General Fund	\$933,535	\$268,346	\$1,201,881
<b><u>Expenditures</u></b>			
Downtown Master Plan Project	\$310,000	\$268,346	\$578,346

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Authorize the City Manager to execute an agreement with Wallace Roberts & Todd, LLC to provide Downtown Precise Plan Consultant Services for an initial three-year term ending September 30, 2022, for a maximum compensation not to exceed \$578,346, subject to the annual appropriation of funds;
2. Approve the related budget amendment recognizing appropriations of an additional \$268,346 in FY 2019/20 in the Downtown Master Plan Capital Improvement Project for the development of a Downtown Precise Plan funded by the General Fund Advanced Planning Reserve; and

3. Authorize the City Manager to execute an amendment to extend the Agreement for an additional three-year period ending September 30, 2025 and increase maximum compensation in the event that additional services are required, subject to the annual appropriation of funds.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Agreement with Wallace Roberts & Todd, LLC

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
WALLACE ROBERTS & TODD, LLC**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, a chartered California municipal corporation (hereinafter "City") and Wallace Roberts & Todd, LLC, A Delaware Corporation (hereinafter "Consultant"). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

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

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions

of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the Initial Term of this Agreement shall begin on October 9, 2019 and expire on September 30, 2022.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional three-year period ending September 30, 2025 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Consultant shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence. However, any modifications or delays to the project schedule resulting from circumstances beyond the Consultant's reasonable control shall not be deemed to be the fault of the Consultant.

## **4. WARRANTY**

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

## **5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE**

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

## **6. COMPENSATION AND PAYMENT**

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Five Hundred Seventy-Eight Thousand Three Hundred Forty-Six Dollars (\$578,346), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

## **7. TERMINATION**

- A.** Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.
- B.** Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.
- C.** Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Consultant will deliver to City all City information or material that Consultant has in its possession.

## **8. ASSIGNMENT AND SUBCONTRACTING**

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

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

## **9. NO THIRD-PARTY BENEFICIARY**

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

## **10. INDEPENDENT CONSULTANT**

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

## **11. CONFIDENTIALITY OF MATERIAL**

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

## **12. OWNERSHIP OF MATERIAL**

Provided City has complied with its obligations under this Agreement including, but not limited to, payment in full to Consultant according to the terms of this Agreement, all material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Consultant may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

## **13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

#### **14. HOLD HARMLESS/INDEMNIFICATION**

- A.** To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B.** Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C.** To the extent Consultant is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Consultant warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Consultant's responsibilities under the Act.

#### **15. INSURANCE REQUIREMENTS**

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

#### **16. WAIVER**

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review,



acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## **17. NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara  
Attention: Community Development Department  
Andrew Crabtree, Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
acrabtree@santaclaraca.gov, and  
manager@santaclaraca.gov

And to Consultant addressed as follows:

Wallace Roberts & Todd, LLC  
Attention: Atisha Varshney  
478 Tehama Street, Suite 2B  
San Francisco, CA 94103  
(415) 575-4722  
avarshney@wrtddesign.com

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

## **18. COMPLIANCE WITH LAWS**

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

## **19. CONFLICTS OF INTEREST**

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect,

which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

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

**21. NO USE OF CITY NAME OR EMBLEM**

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

**22. GOVERNING LAW AND VENUE**

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

**23. SEVERABILITY CLAUSE**

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

**24. AMENDMENTS**

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

## 25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:

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

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

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

"CITY"

**WALLACE ROBERTS & TODD, LLC**

a Delaware Corporation

Dated: 09.20.19.  
By (Signature):   
Name: James Stickley  
Title: Principal  
Principal Place of Business Address: 478 Tehama Street, Suite 2B  
San Francisco, CA 94103  
Email Address: jstickley@wrtdesign.com  
Telephone: (415) 575-4722  
Fax: (215) 732-2551

"CONSULTANT"

## **EXHIBIT A SCOPE OF SERVICES**

### **1. GENERAL**

- 1.1.** Consultant shall assist the City in developing the Downtown Precise Plan.
- 1.2.** Project Schedule:
  - 1.2.1.** Consultant shall submit a draft project schedule to the City for review and approval. The City shall not unreasonably withhold approval.
  - 1.2.2.** The project schedule shall include the tasks listed below as well as the completion dates for each.
  - 1.2.3.** Consultant shall complete the tasks listed below by the scheduled date for each task in the final project schedule.
- 1.3.** Subconsultants: The following subconsultants have been approved to perform services under this Agreement.
  - 1.3.1.** CSW/Stuber-Stroeh Engineering Group (Civil Engineering);
  - 1.3.2.** David J. Powers & Associates (CEQA);
  - 1.3.3.** Economic & Planning Systems, Inc. (Economics);
  - 1.3.4.** Greensfelder Real Estate Strategy (Place-making);
  - 1.3.5.** Kimley-Horn and Associates, Inc. (Transportation); and
  - 1.3.6.** Sargent Town Planning (Retail Strategy).

### **2. DOWNTOWN PRECISE PLAN CONSULTANT SERVICES**

Consultant shall complete each task listed below.

#### **Task No. 1: Project Initiation**

Consultant will complete the subtasks outlined below.

##### **Subtask No. 1.1: Kick-off Meeting w/ Consultant Team**

- A. Services:** Consultant and subconsultants will meet with City staff to review the project description, scope of work, timeline and budget.
- B. Deliverable:** Attend kick-off meeting.

##### **Subtask No. 1.2: Base Map Development**

- A. Services:** Consultant shall assist City staff in preparing base maps. The base maps shall include:
  - 1.** A map that demonstrates the adjacent context, public transit and major transportation routes, parks, schools, and project boundary;
  - 2.** The location of the Downtown Precise Plan Area ("Plan Area") in the greater context of the other focus areas and the City of Santa Clara;

3. Aerial maps, General Plan land use and zoning maps;
4. A map of the Plan Area showing streets, curbs, parcels, buildings, landscape features, and parking areas; and
5. Any other tasks in this scope that require mapping.

**B. Deliverable:**

Base map development.

**Subtask No. 1.3 Existing Conditions Report (Data Collection & Analysis):**

- A. Services:** Consultant team, with City assistance, shall collect and analyze existing data and existing conditions and create a brief report. The analysis of the study area—including the Plan Area and its immediate context will include, but not be limited to:
1. Demographic and socioeconomic characteristics, including population, households, age, ethnicity, language, place of birth and residence, disability, income and poverty status;
  2. Property ownership;
  3. Employment (number of jobs by wage/salary and occupation);
  4. Planned land use and zoning designations, and relevant planning guidance in the form of policies pertaining to land use, development, urban design, parks and public facilities, historic preservation;
  5. Summary of previous planning efforts for the project area;
  6. Summary of other relevant Planning documents that will inform the Precise Plan;
  7. Development projects in the pipeline and underway;
  8. Existing affordable housing (including existing restricted and unrestricted affordable housing sites);
  9. Historic structures and places and historic background of the Downtown;
  10. Site Character;
  11. Block Pattern, building pattern, parking surfaces, community anchors, character areas, critical linkages, streetscape, public realm, and vocabulary of landscape and development features;
  12. Existing/proposed public transportation (including stop locations and frequencies), roadway facilities, bike and pedestrian routes;
  13. Transit ridership and multimodal traffic volume data; i.e. vehicle, bicycle and pedestrian, travel mode to work, travel and circulation patterns;
  14. Existing operations of each transportation system component based on available data;

15. Existing/proposed infrastructure capacity;
16. Existing land use (inventory of housing, jobs, parks, neighborhood amenities/retail, community facilities, social services, and schools/playgrounds) and physical characteristics; and
17. Natural hazards data.

**B. Deliverable:** Submission of Existing Conditions Report in editable Microsoft Word and PDF formats.

#### **Subtask No. 1.4: Opportunities and Constraints Analysis**

**A. Services:** The vision for the Downtown is to promote it as the historic, economic, and cultural heart of the City in such a way that enhances its strong business climate and bolsters the City's high quality of life. Consultant shall identify opportunities for development, and where the development will be constrained. Specific objectives include:

1. Identifying assets on which to build, such as the character of surrounding neighborhoods; successful businesses, programs and gathering spaces; proximity to transit and the university;
2. Identifying design goals and policies necessary for future development to successfully meet the vision for the Plan Area;
3. Considering how to support historic preservation and sensitively transition new development to the adjacent single-family neighborhood;
4. Exploring options for connecting the area to transit, particularly to the Santa Clara Transit Station, and re-stitching the street grid;
5. Identifying curb-side management strategies to incorporate evolving transportation technologies and the shared economy;
6. Identifying potential future development sites within the Plan Area, and how future development could proceed in phases;
7. Site Constraints;
8. Development parameters and opportunities based on current zoning regulations;
9. Ground truthing the development capacity identified in the General Plan (129,300 square feet of new commercial uses and 396 new residential units) and considering the "fit" between realistic development outcomes under the existing plan and the emerging vision for the Plan Area.

**B. Deliverable:** Opportunities and Constraints report, including maps, graphics, and narrative necessary to convey the results of the analysis.

## **Task No. 2: Issue Identification and Vision**

Consultant will complete the tasks outlined below.

### **A. Services: Develop Community Involvement / Public Outreach Strategy**

The Consultant shall develop a collaborative public outreach strategy for the project. The strategy shall outline the process for engaging stakeholders, leaders, community groups, minority populations, and other interested citizens in crafting a Precise Plan for the Downtown Focus Area. The Public Outreach Strategy shall include, but not be limited to:

1. Online Engagement Tools. Consultant will provide graphics and interactive materials for the City's website and social media, to mirror and augment in-person engagement and expand the community outreach to a diverse population. Consultant will revise or monitor the online engagement tool based on the feedback from City staff or community if necessary.
2. Establish Technical Advisory Committee (TAC). The focus of the TAC will be to provide technical feedback at key points in the planning process. City staff will take the lead in establishing and coordinating the TAC and identifying specific members. The Consultant will provide feedback to the TAC members and facilitate and lead discussions, present technical materials, and take summary notes at three (3) TAC meetings. The following are the anticipated meeting topics requiring Consultant attendance.
  - Meeting 1: Project overview and input from participants on the Public Outreach Strategy, Existing Conditions Report, and Opportunities and Constraints Analysis.
  - Meeting 2: Review of potential plan scenarios and input on preferred direction.
  - Meeting 3: Review of and input on plan framework, urban design and streetscape characteristics.
3. Downtown Community Task Force (DCTF). The focus of the DCTF will be to provide project updates, review the progress of the work and plan specifics, discuss issues and direction, and provide input. City staff has established the DCTF and identified the specific members. The Consultant team shall prepare meeting agendas, act as the facilitator for each of the task force meetings and lead discussions, present technical materials, and take summary notes. The following are the anticipated meeting topics requiring Consultant attendance. Additional meetings may be needed as the project progresses.
  - Meeting 1: Project overview (including Existing Conditions Report) and input from participants on identifying community assets, anchors and challenges, opportunity development sites to address in the development of the Plan, and to help the DCTF articulate the vision for the Plan Area.
  - Meeting 2: Overview of financial analysis. Review of potential plan

scenarios (created in Task 4 below) and input on preferred direction.

- Meeting 3: Review and input on plan framework, which may include land use, multi-modal connectivity, streetscape alternatives, and urban design standards.
  - Meeting 4: Review of public draft or adoption draft plan, and input on any refinements or additional details necessary.
4. Public Meetings. Facilitate events such as workshops, town halls, and open houses, and direct engagement such as pop-up workshops, focus groups, or interviews with stakeholders and/or focus groups. The Consultant team will work with City staff to identify residents, businesses, property owners, relevant public agencies, community groups, neighborhood associations, nonprofits, and faith-based organizations for outreach. The City will provide noticing and outreach for all community workshops. At a minimum, there shall be three (3) public meetings, two (2) workshops and one (1) open house.
  5. Planning Commission / City Council Study Sessions. The Consultant shall assume presentations of draft material for at least two (2) Planning Commission and two (2) City Council study sessions.

To ensure meaningful engagement opportunities across the Plan Area's population, the strategy will identify any needed translation services required at the engagement activities defined in this task—using the demographic data gathered for the existing conditions report to understand level of need by specific language.

**B. Deliverables:**

1. Public Outreach Strategy memo that includes an outline of the key steps of the outreach process and anticipated schedule of when various engagement activities would occur.
2. Graphics and interactive materials for the City's website and social media.
3. Materials necessary to facilitate community, DCTF, and TAC meetings, including but not limited to; a PowerPoint Presentation; Exhibition boards; and meeting agenda.
4. Meeting summaries documenting input at TAC, DCTF, and stakeholder meetings.
5. Attendance at three (3) Technical Advisory Committee meetings.
6. Attendance at four (4) Downtown Community Task Force meetings.
7. Attendance at five (5) Stakeholder meetings.
8. Attendance at two (2) Planning Commission hearings and two (2) City Council Study Sessions.



### **Task No. 3: Financial Analysis – Economic Sustainability**

Consultant will complete the tasks outlined below.

#### **A. Services: Develop a Financial Analysis and Commercial Retention Strategy**

1. The Consultant will analyze potential market demand for housing, commercial, office, and mixed-use development in the Precise Plan Area. This analysis shall include the following.
  - a) **Market Assessment:** Consultant will establish and document real estate market potential and development factors relevant to the Downtown Plan Area. As part of its market assessment, Consultant will consider broad market trends as well as detailed information concerning new, high-performing local and regional comparable projects, including their market positioning, architectural format, amenity offerings, and market value.
    - **Socioeconomic and Market Trends:** Consultant will establish and document real estate market potential and development factors relevant to the Downtown Plan Area. As part of its market assessment, Consultant will consider broad market trends as well as detailed information concerning new, high-performing local and regional comparable projects, including their market positioning, architectural format, amenity offerings, and market value
    - **Market Valuations:** Consultant will study real estate market product values in the local and regional market, including sale values and lease rates for product types that may be most appropriate for development for the Downtown. This focus on product valuation will home in on specific building sale and lease transactions. Consultant will consider a range of potentially comparable projects, developing case studies as appropriate, to establish market data for subsequent financial pro forma feasibility analysis.
  - b) **Financial Feasibility:** Consultant will develop a pro forma financial analysis to inform the financial viability of potential projects for the Downtown.
  - c) **Retail Strategy:** Greensfelder Real Estate will work with Consultant on the economic analysis around commercial space, providing greater depth of experience in the specific retail segments and space needs that may be suited to Downtown Santa Clara to include:
    - Analysis of potential key retail sites; and
    - Recommendations on how ground floor commercial should be laid out along the connection axis between the Downtown area and transportation hubs.
2. The Consultant shall review the planned development program (129,300 square feet of new commercial uses and 396 new residential units) against real estate market conditions and trends within the Plan Area and the larger

surrounding market area and assess the potential competitiveness of the Plan Area in capturing enough demand to support the planned build-out and assess the economic challenges to creating the desired development pattern. Consultant shall make recommendations on what type and amount of development and density will be needed to make it feasible to redevelop the Plan Area and support infrastructure needs and desires.

3. Based on the findings from the work above, the Consultant shall develop a recommended strategy that the City can take to overcome any identified challenges.

- B. Deliverable:** Financial analysis report including findings from the market assessment and financial feasibility testing. Specifically, the report will include recommendations on the amount, size, type, and location of commercial uses, and assessment of the potential of the Plan Area to support the planned build-out. The report also will make suggestions for Plan implementation that seek to achieve the City's vision of an active Downtown destination.

#### **Task No. 4: Development Scenarios / Conceptual Plans**

Consultant will complete the subtasks outlined below.

##### **Subtask No. 4.1: Land Use and Circulation Scenario Development**

- A. Services:** Consultant team will develop three (3) long-term vision scenarios for the Plan Area. The scenarios shall represent the planned build-out of the Plan Area and could include different land use and development intensities, key development sites, multi-modal connectivity improvements, open space plans, streetscape and public space improvements, infrastructure improvements, preserved or enhanced community anchors, and other physical changes to illustrate the various alternatives and potential concepts for the future of the area. The water, sewer, electrical and natural gas demand associated with development under each scenario will also be assessed.

The intent of the scenarios is to enable long-term creative thinking for the Plan Area around several topics, by providing a small number of initial concepts for the community, City staff, elected officials, and other stakeholders to respond to. The concepts will be informed by the market and financial feasibility analysis (Task 3 above) and be feasible under current or potential future market conditions. The land use scenarios will be vetted with the DCTF and the TAC and used as a starting point for community feedback and creative problem solving in a workshop format.

- B. Deliverable:** Land Use Scenarios Memorandum, including maps and graphics for each scenario; a "fact sheet" that provides an overview of development potential, land use mix, potential intensities and heights, anticipated growth in residents and/or workers, potential new public spaces, and consideration of tradeoffs; and precedent images that illustrate development types associated with each scenario. The Consultant team will refine the concepts and finalize them for Workshop #1 based on the comments received from City staff, the TAC

and the DCTF.

#### **Subtask No. 4.2: Plan Framework and Urban Design Team Charrette**

- A. Services:** Based on feedback on the land use concepts, including critical feedback from the first workshop, the Consultant team will create a “plan framework” that best expresses the community’s vision for the fundamental elements, relationships, and character of future Downtown development. This plan framework will be the starting point for discussions with the DCTF and TAC in a second round of meetings that will also be the launching point for a 3-day team charrette.
- B. Deliverable:** Plan Framework and Urban Design Team Charrette.

#### **Subtask No. 4.3: Opportunity Site Development Scenarios**

- A. Services:** The Consultant, with assistance from the City and the DCTF (meeting #1 in Task 2 above) and based on the land use scenario development in Subtask 4.1 above, shall identify at least three (3) opportunity sites for which to model three (3) physical development options, including photo-simulations and/or other visual graphics necessary to depict potential new development. These graphics shall illustrate design concepts for vision, land use, open space and placemaking, urban design and streetscape and circulation chapters. The outcomes of this task shall inform the content of Workshop # 2 in Subtask 5.2 below and the development of the design guidelines for the Draft Plan in Subtask 6.6 below.

- B. Deliverable:**

- 1. Opportunity Site Development Scenarios Memorandum. The opportunity site development scenarios memorandum shall include diagrams used to illustrate the development of at least three (3) opportunity sites each with three (3) physical development options that may be depicted using 3D models, photo simulations, plans, and sections. These graphics shall illustrate design concepts for vision, land use, open space and place making, urban design and streetscape and circulation chapters.

Each of the development options shall be accompanied by descriptions, diagrams, development tables, pros and cons comparisons, and a summary of the effectiveness of each alternative in meeting project goals and indicators or addressing significant issues project issues.

It is expected that some of these graphics will be used in the final Plan document and will therefore require multiple revisions based on City staff and public comments. As such, the Consultant shall make changes to the graphics to the satisfaction of City staff.

## **Task No. 5: Workshops**

Consultant will complete the subtasks outlined below.

### **Subtask No. 5.1: Workshop #1: Identifying Plan Principles, Opportunities and Constraints, Land Use**

**A. Services:** The first workshop shall introduce community members to the project, present existing conditions and background research, summarize the public outreach strategy, and gather public input on the opportunities, constraints, goals, principles, and a vision for the Plan Area as determined by City staff and the Consultant. The workshop shall build on the work completed in Subtask 4.1 above. The presentation should include context-sensitive development examples and sketches that can be used for gauging community preferences.

#### **B. Deliverables:**

1. Facilitate Workshop #1.
2. Provide an agenda, PowerPoint presentation, and a minimum of five exhibition boards and other graphic materials necessary for community engagement activities.
3. Provide a workshop summary report that will be published on the City's website and shared with the community. This shall be done in a maximum of two weeks after the workshop.
4. Prepare the draft guiding principles/vision. The draft guiding principles/vision report shall identify the guiding principles and vision inspired by community input and will be used for the entire planning process.

### **Subtask No. 5.2: Workshop #2: Urban Design & Circulation / Streetscape**

**A. Services:** The second workshop shall present the results of stakeholder and community feedback from Workshop #1, build upon the work completed in Subtask 4.3 above, and introduce urban design, streetscape, and circulation concepts, as well as conceptual development alternatives. The workshop shall be geared towards receiving feedback on the draft concepts, alternatives, and features that are desired in the Plan Area, which will be used to help shape the draft Precise Plan.

#### **B. Deliverables:**

1. Provide an agenda, PowerPoint presentation, and a minimum of eight (8) exhibition boards and other graphic materials necessary for community engagement activities.
2. Provide a workshop summary report that will be published on the City's website and shared with the community. This shall be done in a maximum of two weeks after the workshop.

## **Task No. 6: Develop Draft Precise Plan Chapters**

Consultant will complete the subtasks outlined below.

### **A. Services:**

The Consultant team will create the draft Plan based on the results of the Land Use Scenarios and Opportunity Site Development Scenarios memorandums, existing conditions report and the results of the public engagement process.

The Consultant team shall develop a template for the draft Precise Plan document in Adobe InDesign. The draft Precise Plan shall address the topics discussed in the subtasks below. Each chapter shall identify principles for the given topic supported by goals, policies, standards, and guidelines as appropriate. The Plan shall include supporting illustrations and graphics that support the narrative.

- 1. Task 6.1: Introduction:** Description of the project setting, purpose of the document, relationship to other City plans and policies, and a description of the planning process used to develop the Plan and the role the public played in creating the Plan.
- 2. Task 6.2: Vision & Guiding Principles:** Describes the overall vision and principles of the Plan.
- 3. Task 6.3: Goals & Policies:** The goals and policies for the Precise Plan shall provide a framework for the physical development of the Plan Area and support the vision for the Plan. The goals and policies shall include, and build upon, the existing policies in the General Plan for the Downtown Focus Area, as well as the City-wide policies related to areas of historic sensitivity, in Section 5.6, and neighborhood compatibility, in Section 5.5.
- 4. Task 6.4: Land Use Plan**
  - a)** The land use fabric shall be designed to facilitate the development of a complete community with a mix of land uses that promote increased pedestrian activity and contribute towards the development of a strong community identity with vibrant public spaces. The land use plan shall also reflect historic structures and transitions to single-family homes.
  - b)** Development within the Plan Area could be at intensities of almost 2.0 FAR, with building heights between five and eight stories. Allowed building intensity and heights in the remainder of the Plan Area are typically lower, with maximum heights between three and four stories. Description of land use designations should reflect the planned total number of units and square footage of non-residential uses. Population and job projections should also be included.

### **5. Task 6.5: Circulation & Parking**

- a)** To support the development of the preferred alternative and to create “complete” streets for all modes and improve access and safety in and around the Plan Area, the Consultant shall identify conceptual circulation and roadway improvements, and policies and guidelines to support such improvements. The circulation and roadway

improvements will be identified through the results of a transportation and circulation analysis. The analysis shall focus particularly on improving bicycle, pedestrian, and transit access within and to the Plan Area. Specifically, connections to nearby destinations, such as the Santa Clara Transit Station, Santa Clara University, the Old Quad neighborhood, El Camino Real, and City Hall, should be emphasized for pedestrian and bicycle movement. The vision in the General Plan for the Downtown Focus Area includes a future transit loop to connect the Downtown area to the Santa Clara Transit Station, and possibly the aforementioned areas.

- b) The circulation network for the Precise Plan shall serve all modes of travel and may include new streets, paths and connections to existing roadways. Specifically, the General Plan calls for reconnecting Franklin Street and returning the street grid. Storm water management in the public right-of-way shall also be addressed. Circulation maps, graphics, and cross section recommendations for streets and path facilities in the Plan Area shall be prepared.
- c) Parking management strategies and Transit Oriented Development (TOD) parking ratios shall be identified, as well as a range of Transportation Demand Management (TDM) measures that may be applied to future development projects.
- d) Wayfinding Program: The Consultant shall develop a comprehensive wayfinding and community identification sign program to promote the identity of the Downtown Plan Area and make it easier for visitors to find their way around and enhance the overall experience. As a part of this program, gateway locations should be identified.

## **6. Task 6.6: Design Guidelines**

The design guidelines shall build upon the City's existing General Plan design policies, as well as the information gathered at the community workshops, TAC, and DCTF meetings, to identify additional guidelines that should apply specifically to this Plan. These guidelines shall be designed to facilitate attractive pedestrian, bicycle, and transit-oriented development that is also consistent with sustainability and green building best practices. The design guidelines shall be supported with illustrations and graphics necessary to provide a clear understanding of the intent of key guidelines.

- a) Building Design Guidelines: For new development within the Plan Area the building design guidelines shall address: building siting; bulk and massing; height; setbacks; transitions to adjacent existing low scale uses; transitions and sensitivity to adjacent historic resources; building articulation; architecture; landscape design strategies; and parking design.
- b) Open Space Design Guidelines: Open space design guidelines shall address the provision for adequate public and private open space as

an integral part of the conceptual land-use alternatives and site planning for new development. These guidelines shall also address creating a network of open spaces connected by greenways and/or pedestrian-priority streets that complement and connect with other existing open spaces within a half mile distance of the Plan Area.

- c) Streetscape / Public Realm Design Guidelines: The Consultant shall develop “public realm” streetscape plans that identify conceptual improvements for specific locations from the range of options discussed with the community. Streetscape improvements should include enhanced bikeways, widened and enhanced sidewalks and park strips, street trees, medians, pedestrian bulb-outs and pedestrian crossing refuge areas, transit stop improvements, enhanced crosswalks, placemaking strategies, public space and plazas, lighting, landscape and furnishings, signage, etc. The Consultant shall provide graphic representations of the streetscape plans, including:
- Before/after photomontage (simulation) illustrations for streetscape and circulation improvements;
  - Streetscape sections; and
  - Diagrams/graphics that illustrate streetscape improvement concepts, including, but not limited to, crosswalks, bike lanes, intersection improvements, curb ramps, and pedestrian refuge islands.

## **7. Public Services and Implementation**

- a) The Consultant shall include information about services and infrastructure needed to implement the Plan, including specific policies regarding utilities, public safety, and parks.
- b) The Plan shall also identify actions and strategies for its implementation, including needed infrastructure improvements, such as roadways and parkland, and financing strategies to enable these improvements. An evaluation of projected costs and revenues associated with the proposed new streets (including utility infrastructure) and trolley loop and its potential effect on the City’s budget should also be included.

### **B. Deliverables:**

1. Administrative Draft Downtown Precise Plan:
- a) One (1) Microsoft Word copy of the Plan (text only);
  - b) One (1) Adobe InDesign template for the Plan document;
  - c) One (1) Adobe InDesign copy of the Plan;
  - d) All electronic source files used to create the document; and
  - e) All electronic supplementary files to the report.

**Task No. 7: Community Open House**

Consultant will complete the tasks outlined below.

**A. Services:** The Consultant team shall assist staff in hosting an open house to present the Draft Plan to the community and provide an opportunity for the community to comment.

**B. Deliverables:**

1. Prepare and provide an agenda, PowerPoint presentation, and exhibition boards.
2. Facilitate the Community Open House.
3. Provide a workshop summary report that will be published on the City's website and shared with the community. This shall be done in a maximum of two weeks after the workshop.

**Task No.8: Draft Plan Refinement**

Consultant will complete the tasks outlined below.

**A. Services:** Refine the Plan document based on the comments received from the open house and TAC and DCTF meetings. The plan refinement may require multiple revisions in coordination with City staff.

**B. Deliverables:**

1. One (1) Adobe InDesign copy of the refined Draft Plan.
2. All electronic source files used to create the document.
3. All electronic supplementary files to the report.
4. One (1) fully editable PDF copy of the refined Draft Plan.

**Task No. 9: California Environmental Quality Act (CEQA) Clearance**

Consultant will complete the subtasks outlined below.

**Subtask No. 9.1: Define Project, Review Data, Determine Existing Conditions, and Determine CEQA Strategy**

**A. Services:** The Consultant shall work with City staff to define and determine the CEQA strategy necessary to prepare and complete the necessary CEQA documentation for adoption of the Precise Plan. The Consultant shall participate in a kick-off meeting to help determine the CEQA strategy and schedule. The meeting agenda shall include, but not be limited to, defining the scope, identifying the sections to include in the environmental document, collecting the necessary data and research, and determining the existing conditions.



**B. Deliverables:**

1. Attend Kick-off meeting.
2. CEQA Strategy and Schedule.

**Subtask No. 9.2: Prepare Draft Environmental Review Clearance Documents**

**A. Services:** Consultant shall prepare draft environmental review clearance documents. The environmental review scope is anticipated to include a program level Initial Study with technical studies, and Negative Declaration or Mitigated Negative Declaration that tier off the certified Environmental Impact Report (EIR) for the City of Santa Clara 2010-2035 General Plan. The document shall address all required CEQA topics. At a minimum, technical studies will be required for cultural resources, traffic, and air quality.

**B. Deliverables:**

1. Notice of Determination, one draft and one final version.
2. Attend one Planning Commission and one City Council hearing.
3. Prepare final Initial Study.

However, if an EIR is required, the report shall include the following deliverables:

1. Prepare a Notice of Preparation (NOP) (one draft and one final).
2. Assist City staff with scoping meeting(s); review, compile, and respond to comments received.
3. Prepare Administrative and public draft EIR.
4. Prepare a Notice of Completion (NOC) and Notice of Availability (NOA) (one draft and one final).
5. Prepare the First Amendment to the Draft EIR; including Response to Comments, Mitigation Monitoring and Reporting Program, CEQA Findings, and Statement of Overriding Considerations, if applicable.
6. Prepare Notice of Determination (NOD) (one draft and one final).
7. Attend one (1) Planning Commission and one (1) City Council hearing.
8. Prepare final environmental document.

**Task No. 10: Planning Commission and City Council Public Hearings**

Consultant will complete the subtasks outlined below.

**Subtask No. 10.1: Planning Commission Hearing**

**A. Services:** The Consultant team shall make changes to the draft document (text and/or graphics) based on the Planning Commission's recommendations.

**B. Deliverables:**

1. Attendance at Planning Commission Hearing.
2. Preparation of material content for staff report and PowerPoint presentation.

**Subtask No. 10.2: City Council Hearing**

**A. Services:** The Consultant team shall make changes to the draft document (text and/or graphics) based on the City Council's recommendations.

**B. Deliverable:**

1. Attendance at City Council Hearing.
2. Preparation of material content for staff report and PowerPoint presentation.

**3. OPTIONAL TASKS**

At the City's sole option, the Consultant may assist the City with the development of a Request for Proposals (RFP) for the sale or lease for the development of City-owned properties located within the Downtown Precise Plan Area, by performing one or more of the services described below. All optional tasks performed shall be priced pursuant to the pricing stated in the Optional Task Price List in Exhibit B, Section 4.

**3.1. Optional Tasks**

- 5.4.1. Developer Round Table Conference:** Consultant shall engage with the developer community to form a panel that reflects the various project types that may be appropriate to different areas of the Downtown study area. Consultant shall facilitate a round table conference where the developers will show the projects they have built and explain how they may be appropriate to certain downtown infill opportunities and what project characteristics would be attractive to them.
- 5.4.2. Student Engagement:** Consultant shall perform targeted outreach to students at Santa Clara University, local high schools and other youth organizations to engage them in shaping the future of Downtown Santa Clara.
- 5.4.3. Summer Event Pop-Ups:** Consultant shall facilitate up to three (3) pop-up booths at city-wide events such as farmers markets, art & wine festivals, street dance events, the Fourth of July City picnic, etc.
- 5.4.4. Meeting in A Box:** Consultant shall provide a complete package of engagement tools to City staff or partner organizations to conduct outreach and engagement meetings. Consultant shall also perform an audit of the meeting(s) with TAC/DCTF members and stakeholders.

- 5.4.5. Retail “101” Workshop: Consultant shall present a workshop discussing how retailers determine if a new store is warranted; how data is collected and analyzed; how real estate is evaluated; and how internal decision processes work. Participant takeaways shall include an understanding of retailer processes, so they can determine whether a retailer cares about a particular property, and how to communicate a property’s compelling attributes to a potential retail tenant.
- 5.4.6. Ground-Floor Retail Best Practices Guidance Document: Consultant will prepare a guidance document for City staff (and developers) to use to make sure that ground floor space is designed appropriately for retail uses.
- 5.4.7. Illustrations: Consultant shall provide artist renderings of the preferred concept.
- 5.4.8. Phase 1 Environmental Assessment: The Initial Study’s Hazardous Materials section will be augmented by a Phase I Environmental Site Assessment prepared by Consultant, or Subconsultant. Mitigation measures to reduce significant hazard and hazardous material impacts will be identified, as appropriate.
- 5.4.9. Environmental Impact Report: Consultant shall prepare an Environmental Impact Report.
- 5.4.10. Support Preparation of Developer RFP: Consultant shall assist the City in the preparation and review of a developer RFP.

**EXHIBIT B**  
**SCHEDULE OF FEES**

**1. Maximum Compensation**

The maximum amount of compensation to be paid to Consultant shall not exceed Five Hundred Seventy-Eight Thousand Three Hundred Forty-Six Dollars (\$578,346).

**2. Project Tasks**

City shall pay Consultant for completed Downtown Precise Plan preparation tasks as set forth in the Scope of Services (Exhibit A) at the rates listed in Table B1- Payment Schedule below.

**3. Reimbursable Expenses**

City shall pay Consultant for approved reimbursable expenses. The total not-to-exceed compensation for reimbursable expenses is listed in Table B1- Payment Schedule below.

**Table B1 – Payment Schedule**

<b>Task Number</b>	<b>Deliverable</b>	<b>Cost</b>
1.1	Project Initiation Kick-off Meeting	\$19,910
1.3	Existing Conditions Report	\$33,945
1.4	Opportunities and Constraints Report	\$13,170
2	Public Outreach Strategy Memo	\$1,850
2	Online Community Engagement Tool	\$6,970
2	Materials for Meetings	\$3,660
2	Meeting Minutes and Comment Summaries	\$3,120
2	Attend Three TAC Meetings	\$11,230
2	Attend Four DCTF Meetings	\$15,880
2	Attend up to Five Public Meetings	\$5,240
2	Attend Two Planning Commission Hearings and Two City Council Study Sessions	\$10,320
3	Financial Analysis Report	\$31,260
4.1	Land Use Scenarios Memo	\$38,235
4.2	Opportunity Site Development Scenarios Memorandum	\$36,505
5	Plan, Schedule, and Facilitate Two Workshops	\$21,014

5	Draft guiding principles/vision report for Workshop #1	\$540
5	Workshop summary report for two workshops	\$567
6	Administrative Draft Downtown Precise Plan	\$68,380
7	Prepare agenda, PowerPoint Presentation, and exhibition boards, and attend Community Open House	\$9,994
7	Workshop summary report for Community Open House	\$526
8	Refine the draft Plan document	\$12,880
9.1	Attend CEQA project meeting	\$2,930
9.1	Prepare CEQA strategy and schedule documents	
9.2	Administrative draft environmental document	\$69,950
9.2	Notice of Preparation	
9.2	Assist City staff with scoping meeting(s); review, compile, and respond to comments received	
9.2	Prepare Administrative and public draft EIR	
9.2	Prepare a Notice of Completion and Notice of Availability	
9.2	Prepare amendment to draft EIR	
9.2	Notice of Determination	
9.2	Attend one Planning Commission hearing and one City Council hearing	
9.2	Final draft of the EIR	
10.1	Attend Planning Commission Hearing	\$5,160
10.2	Attend City Council Hearing	\$5,160
10.2	Materials for the staff report and PowerPoint presentation	\$9,680
	Reimbursable Expenses	\$14,295
<b>TOTAL</b>		<b>\$452,371</b>

#### **4. Optional Tasks**

- 4.1.** At the City's sole option Consultant shall perform the optional task(s) listed in Exhibit A, Section 3 entitled "Optional Tasks".
- 4.2.** City shall pay Consultant for completed optional tasks at the rates listed in Table B2-Optional Task Price List below.

**Table B2 – Optional Task Price List**

<b>Task</b>	<b>Cost</b>
Developer Round Table Conference	\$8,320
Student Engagement	\$7,500
Summer Event Pop-Ups	\$8,020
Meeting in A Box	\$2,940
Retail "101" Workshop	\$2,500
Ground-Floor Retail Best Practices Guidance Document	\$4,000
Phase 1 Environmental Assessment	\$14,375
Prepare EIR	\$30,000 - \$70,000
Support Preparation of Developer RFP (per site)	\$8,320

#### **5. Invoicing**

- 5.1.** Consultant shall submit to the City a monthly invoice by the fifteenth (15th) day of each month, in arrears, for payment for services performed the previous month, pursuant to this Agreement.
- 5.2.** Each invoice shall include the task costs for the previous month. The invoiced task costs shall be in a separate section from the reimbursable expenses.
- 5.3.** The City shall review the invoice submitted by Consultant and within ten (10) working days of receipt of the invoice, the City shall notify Consultant of any discrepancies or deficiencies in said invoice.
- 5.4.** If the City disputes an expense in an invoice, the City may deduct the disputed expense from the payment of that invoice, provided that the City submits to the Consultant a written explanation of why the expense is being disputed.

## **8. Payment to Consultant**

- 8.1.** Except as otherwise provided in this Agreement, the City shall make monthly payments within thirty (30) calendar days from the City's approval of Consultant's invoice.

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

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

#### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:  
  
\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated



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

#### C. WORKERS' COMPENSATION

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

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85

or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

#### F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance

documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subconsultant (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

#### H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara, Parks and Recreation Department

P.O. Box 100085 – S2

or

1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

## I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.



## Agenda Report

19-1101

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Direction on Santa Clara's Participation in Collaborative Efforts by the Cities Association of Santa Clara County to Address the Regional Housing Need Allocation

#### **BACKGROUND**

Under state law, the California Department of Housing and Community Development (HCD) identifies the total statewide housing need at all income levels and assigns a corresponding regional allocation of housing units to each of the State's Councils of Governments (COGs) for an eight-year period to meet this need. In the Bay Area, the Association for Bay Area Governments (ABAG) is the COG. Once HCD assigns a quantified housing goal to each COG, the COGs then distribute a share of the region's housing need to each city, town and county in the region. This state-mandated housing goal is called the Regional Housing Need Allocation, or RHNA, and is the basis of each jurisdiction's housing element.

Although this is the standard process for establishing RHNAs, there is also a process for local jurisdictions to form a subregion through which participating cities and counties cooperatively allocate their subregion's RHNA units. A subregion cannot change its overall allocation, but can develop a methodology, consistent with state law, to distribute the total allocation amongst the jurisdictions in the subregion. The most common subregion is a single county plus each of the cities in that county, though a subregion can also consist of other combinations of contiguous local governments.

The Cities Association of Santa Clara County (Cities Association) is an association of the 15 cities of the county that meet monthly to collaborate on issues that affect each jurisdiction. In 2015, the Cities Association set up a RHNA Task Force for the purpose of determining whether to pursue the formation of a RHNA subregion prior to the next eight-year RHNA period, 2023-2031. The intent of the RHNA Subregion Task Force is to allow local governments and the County to cooperatively re-distribute State mandated affordable housing allocations within the region with the intent to better facilitate and implement countywide housing production and to provide an opportunity for unified advocacy around housing production issues.

#### **DISCUSSION**

For several years the Cities Association has been discussing the formation of a RHNA subregion and formally initiated the process in mid-2018. In June of 2018 the Cities Association asked local jurisdictions including Santa Clara to adopt a Resolution in support of or in opposition to the formation of a Regional Housing Needs Allocation (RHNA) subregion for Santa Clara County. The Santa Clara City Council voted on September 18, 2018 to participate in and support this effort. Following similar actions by other jurisdictions within the County, the Subregion Task Force began preparation of a Memorandum of Understanding (MOU) to form a RHNA sub-region with the intent that each jurisdiction adopt the MOU and the subregion formation process could be commenced by early 2020.

On September 6, 2019 new information was shared by ABAG regarding the timeline for establishing a RHNA subregion. Specifically, state statutes created different timelines for independent subregions versus a COG. Previously, the Subregion Task Force understood that the subregion process would need to be completed by the end of 2022; however, it is now understood that they were working off an incorrect timeline and in actuality only have until January 2021 to complete the process. Because of this change, the Subregion would not have access to the ABAG RHNA allocations and would need to develop its own methodology by February 2020 for determining a distribution of units. This shortened timeline is unrealistic for forming a RHNA subregion.

At the September 12, 2019 Cities Association of Santa Clara County Board of Directors (CASCC Board of Directors) meeting, the CASCC Board of Directors was intending to discuss four potential alternatives for formation of a subregion, but with the new information it was communicated that two of the alternatives ("RHNA All-in" and "RHNA Light") were no longer feasible. At the conclusion of the CASCC Board of Directors meeting the CASCC Board of Directors decided to discuss the remaining two alternatives ("Planning Collaborative" and "Do Nothing") at their October 10, 2019 meeting. This report is being provided to the City Council to provide information in advance of the October 10 CASCC Board of Directors meeting on the following remaining alternatives:

1. "Planning Collaborative: Embrace the goals of working as a region without forming the RHNA subregion and instead form a planning collaborative to further positive outcomes to the housing and homelessness challenges faced in Santa Clara County. Similar to San Mateo County's 21 Elements initiative, increase collaborative efforts among the County's jurisdictions. Collaboration opportunities may include planning, housing element, "Home for All"/Accessory Dwelling Units (ADUs) effort, RV dwellers, homelessness, and legislative guidance by consultants. Initial investment cost per jurisdiction is estimated at \$3,000."
2. "Do nothing: No effort, no cost, no changes to outcomes."

At this meeting the Cities Association Executive Board may vote on either of the two above options or send the item back to the RHNA Subregion Task Force to further study and define a planning collaborative.

The full scope of the Planning Collaborative option has yet to be determined. The Cities Association has prepared a list of potential activities (Attachment 1) that range from initiating the development of a methodology to allow formation of a RHNA subregion for a future RHNA cycle to the sharing of resources to work collaboratively on a variety of activities to support housing production. Collaborative efforts could include sharing consultant costs to support the production of each jurisdiction's Housing Element for the upcoming RHNA cycle or to produce outreach materials such as a brochure on how to construct an Accessory Dwelling Unit (ADU). The alternative references San Mateo County's 21 Elements, a local example of subregion that engages in this type of collaboration and which has also previously allowed transfer of allocations between participating jurisdictions.

Staff had concerns with the draft MOU on formation of a subregion that was distributed in advance of the September CASCC Board of Directors meeting because the MOU did not clearly outline the

process for determining each jurisdiction's allocation nor did it clearly indicate what would happen if a jurisdiction within the County choose not to participate. These concerns were communicated to the Cities Association staff by letter on August 28, 2019 (Attachment 2). Similar communications were also sent by staff from the City of Sunnyvale and the County. Staff continues to be concerned that formation of a subregion is a very complicated process which could alter each city's affordable housing obligation and which may not be the best approach for the City of Santa Clara as the City is fully committed to the production of the City's share of affordable housing within our jurisdictional boundaries.

For the October 10 CASC Board of Directors meeting staff recommends that the City support formation of a planning collaborative. This approach will allow the City to continue to be visibly active and to have a leadership role at the County level in meeting the region's housing needs. Staff also recommends that it be communicated to the CASC Board of Directors that the City would like to better understand the full intent and scope of such a collaboration as the City is not committed at this time to the formation of RHNA subregion.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

At this time, there is no impact to the City other than administrative staff time.

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **ALTERNATIVES**

1. Direct staff to work with the Cities Association RHNA Task Force on a planning collaborative.
2. Direct staff to not participate in a planning collaborative.
3. Any other direction by the City Council

### **RECOMMENDATION**

Alternative 1:

Direct staff to work with the Cities Association RHNA Task Force on a planning collaborative.

Reviewed by: Andrew Crabtree, Director, Community Development Department  
Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Planning Collaborative Outline
2. August 28, 2019 Letter to the Cities Association Staff





## Planning Collaborative: How to Kick Off the Effort with \$50,000

### Setting up and undertaking coordination and peer learning opportunities

1. Meetings involving all jurisdictions that could cover presentations from outside experts (maybe HCD, ABAG, etc.), new state laws, housing element requirements, sharing needs and best practices, etc.
2. Organizing mechanisms — email lists and jurisdiction contacts, website? etc.
3. Relationship with other entities — SCAPO, etc.
4. Participation in regional discussions, such as the ABAG Methodology committee, implementation of the CASA enabling law (if its signed by the Governor), etc.
5. Query jurisdictions about countywide strategies they might want to pursue (such as and linkage with PDA's, etc.)
6. Become a resource to answer staff questions about housing related topics

### Informational Materials (for housing elements primarily but other as well, such as new state laws, etc.)

1. Provide other informational materials and important messaging points (such as fact sheets, etc.)
2. Presentation materials (PowerPoints, props, etc.) — such as presentation and materials explaining RHNA and housing elements and the importance of housing element certification
3. Draft staff reports
4. Other background materials as identified
5. Sharing SB2 technical assistance and planning grants materials

### Immediate Housing Element update assistance

1. Help in identifying sites and development capacity based on new state law requirements
2. Provide support around the linkage between land use types and housing development feasibility (examples of successes in the county)
3. Confirm approach to special issues, such as counting ADU's, etc.
4. Other



August 28, 2019

Ms. Andi Jordan  
Cities Association of Santa Clara County  
PO Box 3144  
Los Altos, CA 94024

RE: Santa Clara County RHNA Subregion Draft MOU

Dear Ms. Jordan:

Thank you for providing a draft MOU regarding the proposed RHNA Subregion structure and formation process for our review. The City of Santa Clara is eager to have continuing and expanded opportunities to provide input into the development of a Subregion. At this time, the City of Santa Clara has the following comments and questions:

#### State's Role in Allocation

As described in the draft MOU and follow-up communication with ABAG/MTC staff, the proposed Subregion structure would give the primary responsibility to the Subregion for determining each agency's housing allocations, through a mutually agreed upon methodology and based on a single allocation from the State for the entire Subregion. Based upon earlier presentations at SCCAPO (Santa Clara County Association of Planning Officials) meetings, we had the expectation that the State and ABAG/MTC staff continue to identify an allocation for each jurisdiction and then the Subregion would provide an opportunity for jurisdictions to make mutually agreed upon voluntary transfers of allocations. The City of Santa Clara echoes the comments relayed to the Cities Association by Sunnyvale as well as the County of Santa Clara on behalf of other cities participating in SCCAPO that the described allocation process is a change in understanding of how the allocation process was conveyed earlier. We have significant concern that the Subregion structure may not provide adequate representation for each member jurisdiction and/or that it may be a significant burden for the Subregion to take on the traditional role of ABAG/MTC staff to develop a distribution methodology, which can require considerable technical expertise as well as measures to guarantee equity.

#### Voluntary Participation

It is noted in the draft MOU that 2/3 approval by the Policy Committee is needed to approve agency allocations. An appeal process to the Policy Committee is provided for an Agency that disputes their allocation and withdrawal from the Subregion is also an available option for any Agency disputing their allocation. The Subregion procedures should include additional opportunities for member agencies to work through potential concerns, such as a comment period for early drafts or a meet and confer process prior to any action taken by the Subregion Policy Committee on agency allocations.

Andi Jordan  
August 28, 2019  
Page 2

Withdrawal Process

In the event that an agency should withdraw from the Subregion due to disagreement over the allocation process, will the agency allocations be determined by the State or ABAG/MTC? Will this result in a change to the allocations for the remaining agencies? If not, then will the allocations made by the Subregion essentially become mandated even if an agency withdraws? What are the provisions that the State or ABAG/MTC will use to determine the allocation for the withdrawing agency? Does the RHNA process timeline impact when an agency cannot feasibly withdraw from the Subregion? These issues should be addressed within the MOU documents.

We look forward to continuing to work with you and through the Cities Association to develop an equitable Subregion structure based upon input from all participating agencies.

Should you have any questions regarding this letter, please contact me at [acrabtree@santaclaraca.gov](mailto:acrabtree@santaclaraca.gov) or 408-615-2451.

Sincerely,



Andrew Crabtree  
Director of Community Development



## Agenda Report

19-1121

Agenda Date: 10/8/2019

### REPORT TO STADIUM AUTHORITY BOARD

#### SUBJECT

Report on Letter from attorney for Forty-Niners Stadium Management Co. and ratification of Stadium Authority Counsel's issuance of Notice of Termination

#### BACKGROUND

On September 17, 2019 the Stadium Authority Board (Board Member Mahan absent) met in closed session to consider the initiation of legal proceedings to terminate the Stadium Management Agreement with the Forty-Niners Stadium Management Co. Immediately following the Closed Session, the Stadium Authority Counsel announced that the Board had voted unanimously to authorize the initiation of legal proceedings to terminate the Management Agreement. After the Board's action, Stadium Authority Counsel Brian Doyle made the decision to commence the legal proceedings by issuing a Notice of Termination which was served on the Management Company early on the morning of September 18, 2019.

#### DISCUSSION

On September 20, 2019, the Forty Niners filed a lawsuit against the City of Santa Clara and the Stadium Authority regarding the termination, marking the **fifth** legal action brought by the Forty Niners. On September 24, 2019, counsel for the Forty Niners sent a letter claiming either Mr. Doyle did not have authority to issue a Notice of Termination on his client's behalf, or the Board had violated the Brown Act in authorizing the Notice of Termination. A copy of the letter is attached.

The Forty Niners' counsel is incorrect. He provides no legal authority for his assertions that there was Brown Act violation. Neither logic nor the Government Code nor any reported case requires the Board to vote on the specific means by which its Counsel accomplishes the direction he has been given.

However, the Board need not limit the transparency of its decision-making to the requirements of the Brown Act. Although the Board's actions were fully compliant with the Brown Act, the meritless contentions in the Forty Niners' recent letter portend further litigation aimed at delay in legal proceedings. In order to avoid further waste of public funds and judicial resources, we are recommending that the Stadium Authority Board vote to ratify the Notice of Termination sent by its Counsel, and in so doing allow for any associated public comment, including from the Forty Niners.

#### ENVIRONMENTAL REVIEW

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

**FISCAL IMPACT**

Not currently calculable but expected to save litigation costs.

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Ratify the Stadium Authority Counsel's issuance of the Notice of Termination.

Approved by: Brian Doyle, Stadium Authority Counsel

**ATTACHMENTS**

1. Notice of Termination
2. Letter from Management Company's Attorney





*Sent Via Certified Mail, Return Receipt Requested  
and Email al.guido@49ers.com*

September 17, 2019

Al Guido, President  
San Francisco Forty Niners Management Company  
4900 Marie P. De Bartolo Way  
Santa Clara, California 95054

**SUBJECT: Notice of Termination of Management Agreement in regards to  
the Stadium Authority, Non-NFL Operations and Non-NFL Events**

Dear Mr. Guido:

PLEASE TAKE NOTICE that Santa Clara Stadium Authority (Stadium Authority) is hereby terminating the Management Agreement with Forty Niners Stadium Management Company LLC (Stadium Manager) for the management of Non-NFL Operations and Non-NFL Events. This Notice is not to terminate Stadium Manager's management and operation of NFL games at Levi's Stadium.

This termination is pursuant to Section 8.1.1 of the March 28, 2018 Stadium Management Agreement, as amended (collectively, Management Agreement), and based on (1) Stadium Manager's fraud, intentional misrepresentation, and material omissions of facts in connection with the Management Agreement; (2) Stadium Manager's misappropriation and self-dealing; and (3) Stadium Manager's willful misconduct that resulted in two Events of Defaults, which Stadium Manager failed to cure.

First, Stadium Manager committed fraud and intentionally misrepresented facts in connection with its performance under the Management Agreement. Stadium Manager represented that it has "substantial experience and expertise in the management and operation of public assembly facilities" (Management Agreement, Recital E). This representation was false, as demonstrated by Stadium Manager's failure to comply with legal requirements and obligations, including but not limited to prevailing wage laws, conflict of interest laws, and the Public Records Request Act. The representation was also false, as demonstrated by the continued and substantial decline of Stadium Authority Operating and Net Revenues based on Stadium Manager's performance and omissions. Stadium Authority's net revenue for the recent 2018-2019 fiscal year is only estimated at \$18,591, and Stadium Manager projects the net revenue for the current 2019-2020 fiscal year to be \$0.00. Performance Rent payments to the City of Santa Clara is significantly reduced by these minimal to non-existent Non-NFL Net Revenue earnings, which results in the City of Santa Clara no longer receiving fair market value for the land as required by Measure J.

Stadium Manager also committed fraud, intentionally misrepresented facts, and omitted material facts in connection with its presentation of claims for payment of the NEx Agreement and for services for the Stadium. Stadium Authority paid for approximately \$308,568 of NEx services based on Stadium Manager's representations. Stadium Manager affirmatively represented in writing that the services complied with prevailing wage laws, which was a false statement. In addition, Stadium Manager requested and submitted for Stadium Authority's retroactive approval a NEx contract that included a total of \$643,567 for costs and services, a total that the Stadium Manager also represented in writing. When the prevailing wage law violations became known and undisputed, Stadium Manager refunded to Stadium Authority the previously paid amounts of only \$308,568, without any reconciliation or explanation of why Stadium Manager had presented a claim to the Stadium Authority for the higher contract amount of \$643,567.

Second, Stadium Authority also terminates the Management Agreement based on Stadium Manager's misappropriation and self-dealing under the Management Agreement, and violation of its fiduciary duties to Stadium Authority. Stadium Manager booked Non-NFL Events for the Stadium Authority that lose money for the Stadium Authority. Stadium Authority is informed and believes that a 49ers entity is a part owner of some of these events, and that Stadium Manager and StadCo receive additional Suite revenues by reason of the booking of these events. Thus, Stadium Manager, StadCo or its affiliates, receive a financial benefit from these actions at the expense of the Stadium Authority. Accordingly, Stadium Manager's actions constitute breaches of its fiduciary duties as agent of Stadium Authority to conduct the management and operation of the Stadium at all times with integrity and good faith, as well as control Manager Operating Expenses, StadCo Operating Expenses and Stadium Authority Operating Expenses, and maximize Operating Revenues. Stadium Manager's actions are self-dealing and have resulted in misappropriation based upon Stadium Manager charging Stadium Authority the costs and expenses for the money losing events even when other 49ers entities receive the financial benefit of those events.

Finally, Stadium Authority's termination of the Management Agreement is also based on Stadium Manager's willful misconduct that resulted in two Events of Defaults, which have not been cured. On March 21, 2019, Stadium Authority served a Notice of Breach pertaining to the NEx Agreement and services, which demanded a cure that Stadium Manager provide the documentation showing that the agreement, services and work is in compliance with prevailing wage laws. Stadium Manager did not cure this breach. Thus, on April 26, 2019, Stadium Authority served a Notice of Default. On June 14, 2019, Stadium Authority served a second Notice of Breach pertaining Stadium Manager's failure to comply with prevailing wage laws, conflict of interest laws, and procurement obligations. Stadium Authority had partially suspended payment of Shared Stadium Expenses based on these violations, with the stated position that payments would be made upon Stadium Manager's production of records supporting each invoice or expense. This Notice of Breach demanded a cure that Stadium Manager produce its records of procurement activity on behalf of Stadium Authority, as well as



the supporting records for the recent or any upcoming Shared Stadium Expenses. Stadium Manager did not cure this breach either. Thus, on August 16, 2019, Stadium Authority served a second Notice of Default. Each of these defaults resulted from Stadium Manager's willful misconduct, including Stadium Manager's substantial disregard and gross negligence for Stadium Authority's interests, the legal requirements for a public facility and public works, and Stadium Manager's legal obligations and contractual duties.

**For all these reasons, the Stadium Authority hereby terminates the Management Agreement as to Non-NFL Operations pursuant to Section 8.1.1 of the Management Agreement.**

This Notice of Termination pertains the Stadium Manager's duties, rights and obligations pertaining to the Stadium Authority, including but not limited to the Stadium Authority Season and the Non-NFL Season or events. Stadium Authority is terminating the Management Agreement without Forty Niners SC Stadium Company LLC (StadCo)'s written consent, as expressly provided and allowed under Section 8.1.1 of the Management Agreement. Accordingly, this Notice of Termination does not pertain to Stadium Manager's duties, rights and obligations pertaining to StadCo, or the NFL Season and NFL events.

This Termination will become effective on November 15, 2019, due to the practical needs for a transition to a new manager, including coordination with StadCo and Stadium Manager. Until that termination date, Stadium Manager's obligation to comply with its legal and contractual obligations continues. Stadium Authority reserves all rights.

Sincerely,



Brian Doyle  
Stadium Authority Counsel

cc: Deanna Santana, Stadium Authority Executive Director  
Jihad Beauchman, Stadium Manager Counsel  
Jeffrey Knowles, Esq.  
Hannah Gordon, Esq.  
Mohammad Walizadeh, Esq.

I:\49ers\Stadium Management Agreement\Termination Notice 9-17-19.docx



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Jonathan R. Bass  
D 415.772.5726  
jbass@coblentzlaw.com

September 24, 2019

**VIA E-MAIL AND U.S. MAIL**

Lisa Gillmor, Mayor and Chair  
Board and Council Members  
City of Santa Clara  
Santa Clara Stadium Authority  
1500 Warburton Avenue  
Santa Clara, CA 95050

Re: Demand To Cure And Correct Brown Act Violation In Authorizing Issuance Of Notice Of Termination Of Stadium Management Agreement

Dear Mayor and Chair Gillmor and Members of the Santa Clara City Council and Stadium Authority:

This office represents Forty Niners Stadium Management Company LLC ("Stadium Manager") and Forty Niners SC Stadium Company LLC ("StadCo"). We write with respect to the action taken by the Santa Clara Stadium Authority Board (the "Board") at its meeting of September 17, 2019.

The September 17 agenda identified a closed session pursuant to Government Code §54956.9(d)(4). The reportable action announced by City Attorney/Authority Counsel was that the Stadium Authority "authorized the initiation of legal proceedings to terminate the Stadium Management Agreement...as of non-NFL events."

The September 17 agenda also listed as items 2 A, B, and C, with each relating to the City and to the Stadium Authority. Agenda item 2 A relates to existing litigation and states it is informational, with the recommended action as "note and file." Agenda item 2 B is introduction of an ordinance by the City. Agenda item 2 C relates to action on a fiscal year 2018-2019 audit, with the recommended action as "note and file."

The September 17 agenda does not list discussion and possible action by the Stadium Authority as to the Stadium Management Agreement, much less authorization to modify or terminate. Nonetheless, the Stadium Authority sent a September 17 notice ("Notice") that it was terminating the Stadium Management Agreement in any respect. While authority to file suit was issued, there was no authorization to send the Notice on the same day as the Council/Authority meeting.

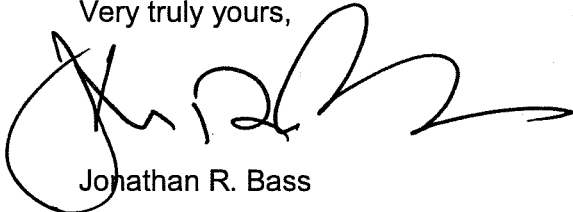
Lisa Gillmor, Mayor and Chair  
September 24, 2019  
Page 2

Therefore, it is the position of the Stadium Manager and StadCo that either the Notice is invalid as having been issued without approval by the Stadium Authority, or the Stadium Authority approved the Notice in violation of the Brown Act.

If your position is that the Stadium Authority approved the Notice, then please consider this letter a demand, pursuant to Government Code §54960.1, that the Stadium Authority cure and correct this violation. Again, if the Stadium Authority's position is that it approved the Notice, then the Board utterly failed to inform the public that it was considering such action. No item on its agenda provides reasonable notice that the Board would consider acting to terminate, in whole or in part, the as-amended Stadium Management Agreement. A decision to terminate the Management Agreement is not appropriate to be made under the cloak of a closed session. Rather such a decision must be properly agendaized and made in open session. The Council and Stadium Authority often criticize the Stadium Manager and StadCo for lack of transparency; transparency should apply equally to the Stadium Authority's actions.

The Stadium Manager and StadCo hereby demand that the Board cure or correct its violation of the Brown Act within 30 days or we will consider all available options, including seeking a judicial determination that the action taken violated the Brown Act. If that becomes necessary, we will seek reasonable attorneys' fees and costs in bringing such an action.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jonathan R. Bass', with a large, stylized initial 'J'.

Jonathan R. Bass

JRB:fls

cc: Deanna Santana  
Brian Doyle, Esq.  
Hannah Gordon, Esq.  
Jihad Beauchman, Esq.



## Agenda Report

19-1110

Agenda Date: 10/8/2019

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Action on Adoption of Ordinance No. 2005 Amending Sections 17.30.080 ("Best Value Selection Procedures"), 17.30.090 ("Formal Bidding Procedure"), And 17.30.120 ("Service Contracts-Signature Authority") Of Title 17 ("Development") Of "The Code Of The City Of Santa Clara, California"

#### **BACKGROUND**

At the September 17, 2019 Council meeting, proposed Ordinance No. 2005 was introduced and passed for the purpose of publication. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 2005 was published by the Weekly on September 25, 2019, and copies were posted in three public places. The Ordinance is before Council for final adoption.

#### **DISCUSSION**

Upon the effectiveness of this Ordinance all Stadium Authority procurement contracts must be approved by the Stadium Authority Board before execution by the Stadium Manager.

#### **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.

#### **PUBLIC CONTACT**

A summary of proposed Ordinance No. 2005 was published to the Santa Clara Weekly on September 25, 2019, and copies were posted in three public places.

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

#### **RECOMMENDATION**

Adopt Ordinance No. 2005 Amending Sections 17.30.080 ("Best Value Selection Procedures"), 17.30.090 ("Formal Bidding Procedure"), And 17.30.120 ("Service Contracts-Signature Authority") Of Title 17 ("Development") Of "The Code Of The City Of Santa Clara, California".

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Introduction Ordinance No. 2005

**ORDINANCE NO. 2005**

**AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING SECTIONS 17.30.080 ("BEST VALUE SELECTION PROCEDURES"), 17.30.090 ("FORMAL BIDDING PROCEDURE"), AND 17.30.120 ("SERVICE CONTRACTS-SIGNATURE AUTHORITY") OF TITLE 17 ("DEVELOPMENT") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA"**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, the Santa Clara Stadium Authority Executive Director's authority to execute contracts has been delegated to the Stadium Manager for the Forty Niners Stadium Management Company;

**WHEREAS**, the Forty Niners Stadium Management Company has failed to provide adequate assurance that it is using the delegated authority in compliance with the law; and,

**WHEREAS**, the Santa Clara Stadium Authority Board acting as the City Council has determined that the public deserves accountability and transparency of all contracts for the procurement of goods and services with Stadium Authority funds.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:**

**SECTION 1:** That Subsection (f) of Section 17.30.080 (entitled "Best value selection procedures") of Chapter 17.30 (entitled "Stadium Authority Procurement Policy") of Title 17 (entitled "Development") of "The Code of the City of Santa Clara, California" is amended to read as follows:

"(f) Board Approval. All contracts or agreements to acquire supplies, materials, and equipment shall require the approval of the Stadium Authority Board."

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**SECTION 2:** That Subsection (h) of Section 17.30.090 (entitled "Formal bidding procedure") of Chapter 17.30 (entitled "Stadium Authority Procurement Policy") of Title 17 (entitled "Development") of "The Code of the City of Santa Clara, California" is amended to read as follows:

"(h) Board Approval. All contracts or agreements to acquire supplies, materials, and equipment shall require the approval of the Stadium Authority Board."

**SECTION 3:** That Section 17.30.120 (entitled "Service contracts – Signature authority") of Chapter 17.30 (entitled "Stadium Authority Procurement Policy") of Title 17 (entitled "Development") of "The Code of the City of Santa Clara, California" is amended to read as follows:

"17.30.120 Service contracts – Signature authority.

The Executive Director shall have no authority to execute contracts with third parties for services provided to the Stadium Authority. All Stadium Authority contracts shall be approved by the Stadium Authority Board prior to execution by the Executive Director."

**SECTION 4: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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**SECTION 5: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 17<sup>TH</sup> day of SEPTEMBER, 2019, by the following vote:


AYES: COUNCILORS: Chahal, Davis, Hardy, O'Neill and  
Watanabe and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: Mahan

ABSTAINED: COUNCILORS: None

ATTEST:

  
\_\_\_\_\_  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None



# City of Santa Clara

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## Agenda Report

19-1172

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Deferral on Amendment to Resolution No. 19-8749 to establish the Park In-Lieu Fee Schedule for New Residential Development and to determine the Park Improvement Cost to be used in Fee Calculations

#### **BACKGROUND**

On August 27, 2019, Council approved Resolution No. 19-8749 which included the statutory findings required pursuant to Quimby and MFA as well as the report entitled "Santa Clara Park and Recreation Facilities Impact Fee Update Study" ("Nexus Study") dated April 9, 2019, which computed the fair share values necessary to fund the acquisition and development of new parks and facilities at the current City standards.

Council directed staff to return to Council on September 24, 2019 with policy alternatives for phasing in the increased park improvement/construction portion of the In-Lieu Fees for "longer than three years", and to provide pros and cons associated with these alternatives.

The timing was problematic due to legal noticing requirements. Specifically, a three-week lead time is required for noticing of a new public hearing. (The hearing must be noticed twice, and the content of the notice must be submitted the Wednesday of the week prior to publishing).

A public hearing will be noticed, and a report and fee resolution will be considered by Council on October 29, 2019.

#### **PUBLIC CONTACT**

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

#### **RECOMMENDATION**

Note and File this report.

Reviewed by: James Teixeira, Director of Parks and Recreation

Approved by: Deanna J. Santana, City Manager



## Agenda Report

19-911

Agenda Date: 10/8/2019

### REPORT TO COUNCIL

#### SUBJECT

Informational Report to Council on the Implementation of an Unmanned Aircraft System Program

#### BACKGROUND

Unmanned Aircraft Systems (UAS) are portable systems flown remotely without a pilot onboard and are controlled from an operator(s) on the ground. UAS have shown to be a valuable resource to police and fire organizations by providing an aerial view of a crime and/or disaster scene that may not otherwise be seen, locate survivors or send information about their whereabouts to responders on the ground, expedite incident solutions and provide safety to all parties involved in the incident. This technology, commonly referred to as a "drone," has been successfully utilized by various police and fire organizations to enhance emergency services in their respective communities.

UAS programs have been successfully implemented throughout the nation. According to the Department of Homeland Security, 599 law enforcement agencies across the United States including 60 organizations in California, have implemented UAS programs. Locally, the cities of Campbell, San José and Sunnyvale have UAS programs.

#### DISCUSSION

The Police Department has drafted a policy through collaboration with other law enforcement agencies throughout California who have previously implemented UAS programs. The Police Department policy incorporates best practices related to recommendations from research conducted by the International Association of Chiefs of Police (IACP), the California Police Chiefs Association (CPCA) and the International Association of Fire Chiefs (IAFC) and takes into consideration public interest groups and constituents' concerns regarding the use of this technology.

The proposed policy authorizes use by a UAS Pilot in accordance with policy, constitutional rights, and Federal Aviation Administration (FAA) regulations for:

- Disaster response and damage assessment (e.g. earthquake, flood)
- Locating missing persons and rescue events
- Identifying, locating and apprehending non-compliant, threatening or combative persons who pose a threat of injury or death to themselves, others or officers
- Suspected explosive devices
- Dangers that would benefit from situational intelligence exposed from an aerial perspective
- Video / photographic documentation of crime scenes or collision locations
- Reconnaissance of incident locations that are inaccessible for fire apparatus
- Response to fires or post-fire investigations



- HazMat response
- Training flights as required to meet FAA and department certification standards
- Conduct inspections of the City's utility infrastructure (e.g. electric, fiber, water, sewer, etc.) to detect leaks or stressed assets

The policy incorporates reasonable constraints to the operational use of this technology. The policy strictly forbids certain activities that were found to be of concern in other jurisdictions, such as:

- To target a person(s) based solely on individual characteristics, such as, but not limited to, race, ethnicity, national origin, religion, disability, gender or sexual orientation
- To harass, intimidate or discriminate against any individual or group
- To conduct personal business of any type
- To conduct random surveillance activities

City departments will maintain strict accountability in the management of the program and security of capture footage. Parameters include, but are not limited to:

- Direct program oversight assigned to a program manager, as appointed by the Chief of Police or Fire Chief, to ensure policy compliance
- Coordination with the Federal Aviation Administration for the appropriate registration, training, inspection, maintenance and record keeping protocol
- Required department specific command staff knowledge and approval prior to deployment
- Mandatory contact with the City's Communications Center prior to deployment
- Captured photos or video following evidence handling protocol and retained in Police Department's digital evidence system pursuant to all laws and the City's retention schedule. Fire department photos and video will be incorporated into inspection, incident or investigation reports as applicable and retained pursuant to all laws and the City's record retention schedule.
- FAA compliance, program implementation, review of policy and best-practices

The Police Department plans to launch the City's initial UAS program in Fall 2019. To ensure an inclusive and comprehensive process, the Police Department included a question in its' Citywide survey, conducted by My90 in September, 2017, inquiring, "Would you support SCPD acquiring and using drones in the future?" 55.3% of respondents indicated that they would absolutely or probably support the Santa Clara Police Department acquiring and using drones in the future. 25.2% indicated that they probably or definitely would not. 19.6% felt they needed more information. In addition, the Police Department facilitated a meeting with the Chief's Advisory Committee (CAC) in April, 2019. Participants were presented information from Chief Sellers and Assistant Chief Winter about the proposed UAS program including industry best practices, anticipated uses, UAS prohibitions and management of the program. Participants were also provided a copy of the draft Police Department policy. There was strong support for the program, and a few concerns arose regarding authorization to activate a UAS, public privacy, and program transparency. The Police Department policy addresses CAC concerns and recommendations.

Per the proposed policy, all participating departments will publish complete flight logs of UAS utilization on the City website with the exception of those directly related to an on-going criminal

investigation. In those cases, whenever possible, redacted information will be published. Flight log information will include date, time, case number(s), location(s), operator(s), reason(s) for the deployment, and department launching the drone.

The Chief of Police and Fire Chief will continue to monitor the use of this technology for their respective operations. The cost effectiveness and availability of this technology assists in the circumstances where aerial assets such as airplanes or helicopters are not readily available or are cost prohibitive.

### **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**

Funding to establish the Fire Department’s UAS program, including the purchase of appropriate UAS equipment, was approved by Council on December 5, 2017. Agenda Item 13.A9, “Appropriation of Developer Contributions Received from The Irvine Company to Purchase Specialized Firefighting and Inspection Equipment,” approved the appropriation of \$25,248 in developer contributions to the Fire Department Capital Outlay account for the department’s UAS program. The developer funding was part of an Alternative Materials and Methods request associated with the fire permits for the Santa Clara Square Phase II Office project.

The Police Department has available funding through Citizens’ Option for Public Safety Grant to address this equipment purchase.

### **COORDINATION**

This report has been coordinated with the Finance Department, City Attorney’s Office, and Fire Department.

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

Note and file informational report to Council on the implementation of an unmanned aircraft system program.

Written by: Daniel Winter, Assistant Chief of Police

Written by: Ruben Torres, Fire Chief

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Police Department Unmanned Aircraft Systems Policy
2. Fire Department Unmanned Aircraft Systems Policy

**SANTA CLARA POLICE DEPARTMENT GENERAL ORDER X.X**

**UNMANNED AIRCRAFT SYSTEMS**

**OCTOBER 2019**

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**X.X.1 Purpose of Policy**

The purpose of this policy is to promote the safe, lawful and considerate use of the Santa Clara Police Department (SCPD) unmanned aircraft system (UAS).

**X.X.2 Definitions**

*Unmanned Aerial System* – An unmanned aircraft of any type, capable of sustaining direct flight, whether preprogrammed or remotely controlled and all of the supporting or attached systems designed for gathering information through imaging, recording or any other means.

*UAS Flight Crewmember* – A pilot, visual observer or other person assigned to duties of a UAS for flight purposes.

*UAS Pilot* – A person exercising control over an UAS during flight. The UAS Pilot is responsible for the flight operation of the UAS. The UAS Pilot shall be Remote Pilot Certified by the Federal Aviation Agency (14 CFR Part 107).

*Observer* – The observer attempts to maintain a visual observation of the UAS while in flight and alerts the pilot of any conditions which may affect the safety of the flight.

*Remote Pilot Certification* (14 CFR Part 107) – UAS Pilots may lawfully operate a registered UAS with a Remote Pilot Certificate issued by the FAA and under specific rules listed in 14 CFR Part 107.

*Certificate of Authorization* (COA) – Written permission granting UAS flight by the FAA within specific boundaries and perimeters.

**X.X.3 Use of Unmanned Aerial Systems**

A supervisor may authorize the deployment of an unmanned aerial system(s) in special circumstances when;

- There reasonably appears to be a danger to the public. This includes, but is not limited to, the following:

- Identifying, locating and apprehending non-compliant, threatening, or combative persons who pose a threat of injury or death to themselves, officers, or others.
  - Locating missing persons
  - Rescue events
  - Disaster response and recovery
  - Suspected explosive devices
- The law enforcement response would benefit from situational intelligence exposed from an aerial perspective
- The UAS is capable of being safely deployed
- The UAS is capable of detecting dangers that could otherwise not be seen
- The UAS is operated by a designated UAS Pilot in accordance with this policy, constitutional rights and FAA regulations

#### **X.X.4 Privacy Considerations**

The use of the UAS potentially involves privacy considerations. Personnel should consider the protection of individual civil rights and the reasonable expectation of privacy as a key component of any decision made to deploy the UAS.

#### **X.X.5 UAS Program Manager**

The Chief of Police shall appoint a supervisor to be the UAS Program Manager who will be responsible for the management of the UAS program. The program manager will ensure UAS deployments, policies and procedures conform to current laws, regulations and department policies. The program manager will have the following responsibilities including, but not limited to:

- Coordinating with the FAA Certificate of Waiver of Authorization (COA) application process and ensuring the COA is current.
- Ensuring all authorized operators and required observers have completed all required FAA and department-approved training in the operation, applicable laws, policies and procedures regarding use of the UAS.
- Ensuring all department drones are registered with the FAA.
- Develop a protocol for fully documenting UAS deployments, including flight logs available to the public on the City's website.
- Develop a protocol to ensure all data intended to be used as evidence are accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements.
- Develop a UAS inspection, maintenance and record-keeping protocol to ensure continuing airworthiness of a UAS.

#### **X.X.6 Prohibited Use**

Deployment of the UAS shall not be used for the following:

- To target a person(s) based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- To harass, intimidate or discriminate against any individual or group.
- To conduct personal business of any type.
- To conduct random surveillance activities.

# Unmanned Aerial System (UAS) Operations

## 721.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

### 721.1.1 DEFINITIONS

Definitions related to this policy include:

**Unmanned Aerial System (UAS)** - An unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached systems designed for gathering information through imaging, recording or any other means.

## 721.2 POLICY

Unmanned aerial systems may be utilized to enhance the department's mission of protecting lives and property when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations.

## 721.3 PRIVACY

The use of the UAS potentially involves privacy considerations. Absent exigent circumstances, such as an imminent threat of loss of lives or property, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

### *Unmanned Aerial System (UAS) Operations*

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#### **721.4 PROGRAM COORDINATOR**

The Fire Chief will appoint a program coordinator who will be responsible for the management of the UAS program. The program coordinator will ensure that policies and procedures conform to current laws, regulations and best practices and will have the following additional responsibilities.

- Coordinating the FAA Certificate of Waiver or Authorization (COA) application process and ensuring that the COA is current.
- Ensuring that all authorized operators and required observers have completed all required FAA and department-approved training in the operation, applicable laws, policies and procedures regarding use of the UAS.
- Developing uniform protocol for submission and evaluation of requests to deploy a UAS, including urgent requests made during ongoing or emerging incidents. Deployment of a UAS shall require authorization of the Fire Chief or the authorized designee, depending on the type of mission.
- Developing an operational protocol governing the deployment and operation of a UAS including, but not limited to, safety oversight, use of visual observers, establishment of lost link procedures and secure communication with air traffic control facilities.
- Developing a protocol for fully documenting all missions.
- Developing a UAS inspection, maintenance, and record-keeping protocol to ensure continuing airworthiness of a UAS, up to and including its overhaul or life limits.
- Developing protocols to ensure that all data intended to be used as evidence are accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, authenticity certificates and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.
- Developing protocols that ensure retention and purge periods are maintained in accordance with established records retention schedules.
- Facilitating Department access to images and data captured by the UAS.
- Recommending program enhancements, particularly regarding safety and information security.
- Ensuring that established protocols are followed by monitoring and providing periodic reports on the program to the Fire Chief.

#### **721.5 USE OF UAS**

Only authorized operators who have completed the required training shall be permitted to operate the UAS.



### *Unmanned Aerial System (UAS) Operations*

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Use of vision enhancement technology (e.g., thermal and other imaging equipment not generally available to the public) is permissible in viewing areas only where there is no protectable privacy interest or when there is an imminent threat of loss of lives or property. In all other instances, legal counsel should be consulted.

Absent exigent circumstances, UAS operations should only be conducted during daylight hours and a UAS should not be flown over populated areas without FAA approval.

#### **721.6 PROHIBITED USE**

The UAS video surveillance equipment shall not be used:

- To conduct random surveillance activities, or to conduct fire and life safety inspections without the express written consent of the Fire Chief or designee.
- To harass, intimidate or discriminate against any individual or group.
- To conduct personal business of any type.
- To target a person(s) based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

#### **721.7 RETENTION OF UAS DATA**

Data collected by the UAS shall be retained as provided in the established records retention schedule.



# City of Santa Clara

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## Agenda Report

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19-1057

Agenda Date: 10/8/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

Monthly Update on City Council and Stadium Authority Staff Referrals

#### **BACKGROUND AND DISCUSSION**

During Council and Stadium Authority meetings, the City Council or Stadium Authority Board provide direction on policy issues or refer information requests to staff for follow-up.

The purpose of the City Council and Stadium Authority Referrals Update is to provide the City Council/Stadium Authority Board and the public a monthly status report. Completion of the referrals may be communicated by various means such as: Report to Council, Information Memorandum provided through a Council Agenda, City Manager Biweekly Report/Blog, or a City Manager/Executive report out during a future Council meeting.

The Referrals list will be published monthly in the agenda packet for the first Council meeting of the month at the "City Manager/Executive Director Report" section of the Council Agenda.



Date Assigned	Referral Description	Assigned Department	Projected Completion	Completed
9/30/19	Referrals from the 9/5 Governance Session and the 9/18 Economic Development, Communications and Marketing Committee will be included in the next Council Referral Report	TBD	TBD	
9/24/19	Staff to review the potential for rebates for the purchase of electric bicycles	SVP	TBD	
9/24/19	Staff to review the Ordinance and enforcement of illegal street food vendors	Police	TBD	
9/17/19	Stadium Financial Audits – Forward comments and suggestions from the Stadium Authority Board to KPMG regarding the financial audits and seeking support documentation for the data in the audit reports	Finance	November 2019	
9/17/19	Ask the Mercury News why an article published in the print edition concerning the Rolling Stones concert contained some different information than the one that was published in an earlier version online	City Manager	TBD	
9/17/19	Complete community outreach for garbage contracts	Public Works	TBD	
9/4/19	Civil Grand Jury Report – Prepare a letter to the Honorable Deborah A. Ryan Presiding Judge, Santa Clara County Superior Court, for the Mayor's signature emphasizing the City Council's concern regarding: the lack of benchmarking that should have taken place during the investigation and inquiring why has the City of Santa Clara been targeted	City Manager/ City Clerk	9/13/19	<b>9/13/19</b>
9/4/19	Staff was asked if the names of Public Records Act (PRA) requestors could be provided	City Clerk	9/20/19	<b>9/20/19</b>
8/27/19	Parkland In Lieu Fee – Return to Council on 9/24/19 with alternatives to phase in the park improvement portion of the fee to longer than 3 years to lessen impact on new housing development and provide the pros and cons. (Remove paragraph 3.C of page 9 of the resolution)	Parks & Rec	10/8/19	
8/27/19	Agendize Korea Town designation for a future Council meeting and return with information about outreach and what Sunnyvale is doing on El Camino Real	City Manager	TBD	
8/27/19	City North Framework – Accept report to allow staff to continue work on the project with direction to staff to return with more specific policies for density, building height, and traffic mitigation	Community Development	11/5/19	
8/20/19	Staff to return with report on establishing an ad-hoc committee to make recommendations regarding VTA Governance	City Manager/ Public Works	TBD	
7/9/19	Worker Cooperative – referred to a future Economic Development, Communication and Marketing Committee Meeting for City support options	City Manager	Winter 2019	<b>9/18/19</b>



Date Assigned	Referral Description	Assigned Department	Projected Completion	Completed
7/9/19	Add Lawn Bowl Clubhouse Project to a future agenda and return with information on costs of installation of module. Staff to notify Lawn Bowl Club of Council meeting date so they may update Council on their fundraising efforts.	Parks & Rec	December 2019	
7/9/19	Update on age-friendly activities per commission annual Work Plan	Parks & Rec	February 2020	
7/9/19	Review if any legal restrictions exist for the City to post or advertise non-City sponsored events on the City's website or social media outlets	City Attorney	TBD	
7/9/19	Provide a status report on the City's existing billboard contract and termination status of contract	City Attorney	9/18/19	<b>9/18/19</b>
7/9/19	Procure additional resources to support communications and marketing of local activities to enhance community's awareness of municipal services and activities	City Manager	TBD	
6/25/19	Council, by consensus, requested that the City Attorney/staff review the matter related to the Cross at Memorial Cross Park (recent U.S. Supreme Court ruling)	City Attorney	November 2019	
6/4/19	Comparison study on how the staffing budget and expenses is less in other cities from the general fund; provide a written update on the 1% Development Impact Fee	Finance	TBD	
6/4/19	Councilmember O'Neill to provide more clarity on Innovation Zone referral	City Manager	TBD	
6/4/19	Regarding bicycle and scooter share devices: staff to bring back final plan for Council approval – Council asked staff to further look into items such as outreach events, insurance, speed monitoring, data, fee structure and drop-off locations	Public Works	TBD	
5/21/19	User Fee Study Session Follow-up: report on Proposed Housing Fee, Recreation Costs as related to Senior Center Space Use (implement space feedback forms and studying the marginal costs) and Nonprofit Room Rental Fees Rates, and Unit or Plot Costs for the Cemetery	Finance	10/22/19	
5/7/19	Silicon Valley Power (SVP) Strategic Plan: provide information on rebate and community benefits programs	SVP	September 2019	
4/30/19	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
4/30/19	Ask Stadium Manager for analysis to support their position that reducing the cost of parking would likely adversely impact public transit ridership, resulting in more cars on the roads	49ers Stadium Manager	TBD	
4/25/19	City Clerk Haggag to work with City Attorney's Office on next steps for enforcing the Dark Money Ordinance and the Lobbyist Ordinance	City Attorney/ City Clerk	January 2020	
4/23/19	Children's Health Screening Service Model: statistics on case management and procurement of services	Parks & Rec	October 2019	



Date Assigned	Referral Description	Assigned Department	Projected Completion	Completed
4/9/19	Work with Civil Service Commission on a Job Fair	Human Resources	9/20/19	<b>9/20/19</b>
4/9/19	Street Racing and Sideshows: take steps to make the 2004 ordinance operative and increase enforcement within existing resources	Police	Fall 2019	
1/29/19	Monitor and update to Council if the City of San Jose waives fees for developments along Steven Creek Blvd	Public Works	Ongoing	
11/27/18	Massage Ordinance: recover administrative enforcement actions; explore charging a fee for non-conforming uses; develop a community engagement program (letters, workshops, in multiple languages)	Police/Finance	9/24/19	<b>9/24/19</b>
11/27/18	TID: Reconciliation of reserve fund; disclosure of legal fees as determined by the performance auditor; and develop a subsidy policy	Finance	January 2020	
11/13/18	Review post-agenda material distribution to reduce paper	Clerk's Office	Fall 2019	
10/9/18	Dedicate Jerry Marsalli Community Center at grand opening of the facility	Parks & Rec	Spring 2020	
10/2/18	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	Spring 2020	
7/10/18	Annual update on PD community engagement efforts	Police	November 2019	
3/13/18	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	December 2019	
1/19/18	Explore joint golf course use with City of Sunnyvale due to the forthcoming closure of the Santa Clara golf course	Parks & Rec	October 2019	