



City of Santa Clara

Revised Meeting Agenda

Council and Authorities Concurrent Meeting

Tuesday, January 28, 2020

3:30 PM

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

Revision - Councilmember Mahan will be attending remotely from the following location:

Kaiser Permanente Hospital
Santa Clara Medical Center
700 Lawrence Expressway
Room 3357
Santa Clara, CA 95051

3:30 PM CLOSED SESSION

Call to Order in the Council Chambers

Confirmation of a Quorum

Public Comment

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

20-129 [Conference with Legal Counsel-Existing Litigation \(CC\)](#)
[Pursuant to Gov. Code § 54956.9\(d\)\(1\)](#)
[Bloom Energy Corporation, et al. v. City of Santa Clara, et al.,](#)
[Santa Clara County Superior Court Case No. 19CV348838](#)

- 20-130** [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 \(Public Safety Non-Sworn Employees Association\)](#)
- 20-131** [Conference with Labor Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54957.6](#)
[City representative: Mayor Lisa M. Gillmor](#)
[Unrepresented employee: City Attorney](#)
- 20-154** [Public Employee Performance Evaluation \(CC\)](#)
[Pursuant to Gov. Code § 54957](#)
[Title: City Attorney](#)
- 20-155** [Conference with Legal Counsel-Anticipated Litigation \(CC\)](#)
[Pursuant to Gov. Code § 54956.9\(d\)\(2\) - Exposure to litigation](#)
[Number of potential cases: 1](#)
[Facts and Circumstances: Letter from All Vision LLC dated January 17, 2020 regarding termination of Agreement and costs incurred](#)

Convene to Closed Session (Council Conference Room)

5:30 PM COUNCIL REGULAR MEETING

Call to Order

Pledge of Allegiance and Statement of Values

Roll Call

1. 20-146 [Informational Report on Councilmember Patricia Mahan's resignation from City Council](#)

Recommendation: Note and File the staff report.

2. 20-1376 [Study Session: Census 2020 Update - Communication and Outreach Plan \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

Recommendation: Review and provide input on the Census 2020 Update
- Communication and Outreach Plan

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

CONTINUANCES/EXCEPTIONS

3. 20-150 [Request to Defer: Information on Alternate Leasing Plan for Department Stores at Related Santa Clara Project \[Council Pillar: Promote and Enhance Economic and Housing Development\]](#)

Recommendation: Note and file the request to defer an Information Report on Alternate Leasing Plan for Department Stores at Related Santa Clara Project.

SPECIAL ORDER OF BUSINESS

4. 20-1352 [Recognition of Holiday Decoration Contest Winners](#)

Recommendation: Recognize the winners of the Cultural Commission's citywide Holiday Decoration Contest.

CONSENT CALENDAR

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

- 5.A 20-74 [Action on Special City Council Meeting Minutes of July 10, 2019, Stadium Authority and Special City Council Meeting Minutes of December 3, 2019, and Special City Council Meeting Minutes of December 9, 2019 \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

Recommendation: Note and file Special City Council Meeting Minutes of July 10, 2019, Stadium Authority and Special City Council Meeting Minutes of December 3, 2019, and Special City Council Meeting Minutes of December 9, 2019.

- 5.B 20-02 [Board, Commissions and Committee Minutes \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

Recommendation: Note and file the Minutes of:

Senior Advisory Commission - October 28, 2019
Cultural Commission - November 4, 2019
Cultural Commission - December 2, 2019
Youth Commission - December 10, 2019

- 5.C 20-1269 [Action on Amendment No. 1 to an Agreement with Waterproofing Associates, Inc. for On-Call Roofing Repair \[Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure\]](#)

Recommendation:

1. Approve and authorize the City Manager to execute Amendment No. 1 with Waterproofing Associates, Inc. for on-call roofing repair and maintenance services for an amount not-to-exceed \$290,000, subject to future budget appropriations;
2. Authorize the City Manager to make minor modifications to Amendment No. 1, if necessary; and
3. Authorize the City Manager to extend the term of the agreement with no increase in compensation in the event that the work is not completed by the agreement end date.

- 5.D 20-1428 [Action on Power Purchase and Sale Agreements between Silicon Valley Power and West Valley-Mission Community College District and SunPower Corporation, Systems \[Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure\]](#)

Recommendation:

1. Authorize the City Manager to execute a Power Purchase and Sale Agreement with West Valley-Mission Community College District;
2. Authorize the City Manager to execute a Power Purchase and Sale Agreement with SunPower Corporation, Systems; and
3. Authorize the City Manager to make any minor modifications and amendments as required for the life of these Power Purchase and Sale Agreements to maintain the balance of benefits to SVP and the other parties.

- 5.E 20-1467 [Action on the Adoption of a Resolution Accepting the AB1600 Report on Development Impact Fees for Fiscal Year Ended June 30, 2019 \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

Recommendation: Adopt a Resolution accepting the status report on the receipt and use of AB1600 Development Impact Fees during fiscal year ending June 30, 2019.

- 5.F 20-2456 [Action on Adoption of a Resolution Declaring Weeds a Public Nuisance and Setting February 25, 2020 for Public Hearing \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

Recommendation:

1. Adopt a Resolution ordering the abatement of nuisance consisting of growing weeds in the City; and
2. Set February 25, 2020 as the date for the required Public Hearing.

- 5.G 20-1388 [Approval of the Annual Investment Policy Statement for the City of Santa Clara, its Agencies and Corporations \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

Recommendation:

Approve the Investment Policy for the City of Santa Clara, its agencies and corporations.

- 5.H 20-84 [Supplementary Declaration of Covenants, Conditions and Restrictions \(CC&Rs\) for the Catalina Townhomes \[Council Pillar: Promote and Enhance Economic and Housing Development\]](#)

Recommendation: Note and file the proposed Supplemental Declaration of Covenants, Conditions and Restrictions For the Catalina Townhomes.

- 5.I 20-73 [Action on Confirming Strategic Direction for the Civic Center Master Plan from December 17, 2019 Study Session \[Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure\]](#)

Recommendation: Direct the City Manager to proceed with a phased approach for the development of the Civic Center Master Plan with no private commercial or residential development at City Hall or adjacent parkland. The initial phase shall comprise of the Utility Building and associated Civic Center shared amenities.

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

6. 20-148 [Action on Approval of First Amendment to the City Manager Employment Agreement, and a Resolution to Amend the City Manager Employment Agreement and Approve and Adopt the Updated Salary Plan that includes the Classification of City Manager \[Enhance Community Engagement and Transparency\]](#)

Recommendation: Adopt a Resolution approving the First Amendment to the City Manager's Employment Agreement by and between the City of Santa Clara and Deanna J. Santana to eliminate a provision to pay a housing allowance and adjusting the City Manager's base salary to \$448,491 effective October 6, 2019; authorizing the Mayor to execute the Amendment; and updating the salary plans for the classification of City Manager.

7. 20-1437 [Public Hearing: Action on Project Approvals for the Proposed 65 Residential Unit Affordable Housing Project at 2330 Monroe Street \[Council Pillar: Promote and Enhance Economic and Housing Development\]](#)

Recommendation: Alternatives 1, 2, 3, and 4:

1. Adopt a resolution to adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Affordable Housing Project at 2330 Monroe Street;
2. Adopt a resolution to approve a General Plan amendment from Right of Way to Medium Density Residential for the property at 2330 Monroe Street;
3. Adopt a resolution to approve a rezoning from Single Family Residential (R1-6L) to Planned Development (PD) to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements; and
4. Adopt a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement with Monroe Street Housing Partners L.P. for the development of 65 units of housing at 2330 Monroe Street and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement) in a form consistent with the DDA and all other documents necessary or convenient to close escrow and implement the purposes and terms of the DDA

8. 20-88 [Public Hearing: Action on Resolution Amending the Municipal Fee Schedule Regarding New and Increased Alarm System and False Alarm Fees; Action on Adoption of Ordinance No. 2012 Amending Chapter 8.40 of the City Code \("False Alarm Regulation"\) \[Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure\]](#)

Recommendation: 1. Adopt a Resolution amending the 2019-20 Municipal Fee Schedule to add new regulatory fees and amend existing regulatory fees relating to alarm systems and false alarm responses; and
2. Adopt Ordinance No. 2012 amending Chapter 8.40 of the City Code ("False Alarm Regulation").

9. 20-135 [Action on Introduction of Ordinance No. 2011 Amending Chapter 18.76, \("Architectural Review"\) of Title 18 \("Zoning"\) and Making Other Clarifying Changes \[Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure\]](#)

Recommendation: Introduce Ordinance No. 2011 Amending Chapter 18.76, ("Architectural Review") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" and Making Other Clarifying Changes.

10. 20-144 [Action on Written Petition received from Santa Clara Valley Transportation Authority \(VTA\) regarding VTA's BART Phase 2 Transit Oriented Communities \(TOCs\) Strategy Study and the Santa Clara Station Area Playbook \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

Recommendation: There is no staff recommendation for this issue.

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

- 20-54 [Update on City Council and Stadium Authority Staff Referrals \[Council Pillar: Enhance Community Engagement and Transparency\]](#)
- 20-151 [Tentative Meeting Agenda Calendar \(TMAC\) \[Council Pillar: Enhance Community Engagement and Transparency\]](#)



City of Santa Clara

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

Agenda Report

20-129

Agenda Date: 1/28/2020

SUBJECT

Conference with Legal Counsel-Existing Litigation (CC)

Pursuant to Gov. Code § 54956.9(d)(1)

Bloom Energy Corporation, et al. v. City of Santa Clara, et al., Santa Clara County Superior Court
Case No. 19CV348838



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Agenda Report

20-130

Agenda Date: 1/28/2020

SUBJECT

Conference with Labor Negotiators (CC)

Pursuant to Gov. Code § 54957.6

City representative: Deanna J. Santana, City Manager (or designee)

Employee Organization(s):

Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171

Unit #2-Santa Clara Police Officer's Association

Unit #3-IBEW Local 1245 (International Brotherhood of Electrical Workers)

Unit #4-City of Santa Clara Professional Engineers

Units #5, 7 & 8-City of Santa Clara Employees Association

Unit #6-AFSCME Local 101 (American Federation of State, County and Municipal Employees)

Unit #9-Miscellaneous Unclassified Management Employees

Unit #9A-Unclassified Police Management Employees

Unit #9B-Unclassified Fire Management Employees

Unit #10-PSNSEA (Public Safety Non-Sworn Employees Association)



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Agenda Report

20-131

Agenda Date: 1/28/2020

SUBJECT

Conference with Labor Negotiators (CC)

Pursuant to Gov. Code § 54957.6

City representative: Mayor Lisa M. Gillmor

Unrepresented employee: City Attorney



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Agenda Report

20-154

Agenda Date: 1/28/2020

SUBJECT

Public Employee Performance Evaluation (CC)

Pursuant to Gov. Code § 54957

Title: City Attorney



City of Santa Clara

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Santa Clara, CA 95050
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Agenda Report

20-155

Agenda Date: 1/28/2020

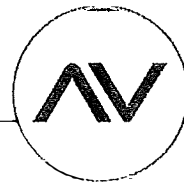
SUBJECT

Conference with Legal Counsel-Anticipated Litigation (CC)

Pursuant to Gov. Code § 54956.9(d)(2) - Exposure to litigation

Number of potential cases: 1

Facts and Circumstances: Letter from All Vision LLC dated January 17, 2020 regarding termination of Agreement and costs incurred



January 17, 2020

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Attn: City Manager's Office
Deanna J. Santana

RECEIVED

JAN 21 2020

Office of the City Manager
City of Santa Clara

Via Overnight Carrier

Re: Agreement (the "Agreement") for the Performance of Services by and between the City of Santa Clara (the "City") and All Vision LLC ("Contractor"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the License Agreement.

NOTICE OF TERMINATION

Dear Ms. Santana,

Pursuant to Section 9.A of the Agreement, this letter is to notify the City that Contractor is hereby terminating the Agreement as of February 17, 2020. Despite the City's actions (and non-action) and our communications with the City, we maintained hope that the City would be willing to allow us to complete our work and move forward with the development of billboards on City property, as previously identified and proposed by Contractor, to add value for the City. Unfortunately, based on your letter dated January 9, 2020, it is now clear that the City is not going to allow us to move forward during the Term of the Agreement or at any point thereafter.

As such, we hereby terminate the Agreement as set forth above. Pursuant to Section 9.A, Contractor is submitting the attached spreadsheet reflecting the costs incurred by Contractor in its performance of the Services under the Agreement in the amount of \$498,079.48. Contractor believes that it is owed such amount pursuant to the terms of Section 9.A, and requests that the City promptly reimburses Contractor.

Nothing in this letter shall constitute a waiver of any rights or remedies of Licensor, nor shall any failure to mention any fact or matter, or act in any respect hereunder, bar or estop Licensor in any way with regard to any claims it has or may have concerning its rights and remedies under the License Agreement. Licensor expressly reserves all rights and remedies under the License Agreement, at law and in equity.

Please feel free to contact us with any questions.

Sincerely,


Robert Goldberg
General Counsel



420 LEXINGTON AVENUE, STE 1601
NEW YORK, NY 10170
PHONE: 212.661.7500

WWW.ALLVISION.COM

Date	Type	Document Number	Name	Amount	Memo	Period	Name	Account
12/20/2013	Bill	1	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	11/15-12/1	December	Santa Clar: 66200 Consultants	GR
1/17/2014	Bill	2	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	12/15-1/15	January 20	Santa Clar: 66200 Consultants	GR
2/21/2014	Bill	3	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	1/15/14-2/1	February 2	Santa Clar: 66200 Consultants	GR
3/20/2014	Bill	4	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	2/15/14-3/1	March 201	Santa Clar: 66200 Consultants	GR
4/18/2014	Bill	5	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	3/15/14-4/1	April 2014	Santa Clar: 66200 Consultants	GR
5/16/2014	Bill	6	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	4/15/14-5/1	May 2014	Santa Clar: 66200 Consultants	GR
6/18/2014	Bill	7	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	5/15/14-6/1	June 2014	Santa Clar: 66200 Consultants	GR
7/28/2014	Bill	8	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	6/15/14-7/1	July 2014	Santa Clar: 66200 Consultants	GR
8/21/2014	Bill	9	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	7/15/14-8/1	August 201	Santa Clar: 66200 Consultants	GR
9/18/2014	Bill	993	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00		September	Santa Clar: 66200 Consultants	GR
9/18/2014	Bill	25	MOORE & MOORE COMMUNITY RELATIONS	2,500.00		September	Santa Clar: 66200 Consultants	GR
10/16/2014	Bill	10	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	8/15/14-9/1	October 20	Santa Clar: 66200 Consultants	GR
10/21/2014	Bill	1015	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00		October 20	Santa Clar: 66200 Consultants	GR
11/17/2014	Bill	27	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	NOV 14 FE	November	Santa Clar: 66200 Consultants	GR
11/20/2014	Bill	1040	MCGOVERN & ASSOCIATES CONSULTING, INC.	7,500.00		November	Santa Clar: 66200 Consultants	GR
12/29/2014	Bill	28	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	DEC 14 FE	December	Santa Clar: 66200 Consultants	GR
12/30/2014	Bill	1059	MCGOVERN & ASSOCIATES CONSULTING, INC.	7,500.00	DEC 14 FE	December	Santa Clar: 66200 Consultants	GR
1/23/2015	Bill	29	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	JAN 15 FE	Jan 2015	Santa Clar: 66200 Consultants	GR
1/30/2015	Bill	1077	MCGOVERN & ASSOCIATES CONSULTING, INC.	7,500.00	JAN 15 FE	Jan 2015	Santa Clar: 66200 Consultants	GR
2/28/2015	Bill	669	HADLEY LAW FIRM, LLC	1,351.50		Feb 2015	Santa Clar: 66010 Legal Fees	
2/28/2015	Bill	1110	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	FEB 15 FE	Feb 2015	Santa Clar: 66200 Consultants	GR
2/28/2015	Bill	30	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	FEB 15 FE	Feb 2015	Santa Clar: 66200 Consultants	GR
3/24/2015	Bill	1126	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	March 15 F	Mar 2015	Santa Clar: 66200 Consultants	GR
4/9/2015	Bill	31	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	MAR 15 FE	Apr 2015	Santa Clar: 66200 Consultants	GR
4/17/2015	Bill	32	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	APR 15 FE	Apr 2015	Santa Clar: 66200 Consultants	GR
4/23/2015	Bill	1141	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	APR 15 FE	Apr 2015	Santa Clar: 66200 Consultants	GR
4/30/2015	Bill	709616	DAVIS GRAHAM & STUBBS LLP	1,026.00		Apr 2015	Santa Clar: 66010 Legal Fees	
4/30/2015	Bill	GREG SMITH APR 2015	JPMORGAN CHASE BANK	75.00		Apr 2015	Santa Clar: 70010 Travel - Entertainment	
4/30/2015	Bill	GREG SMITH APR 2015	JPMORGAN CHASE BANK	482.99		Apr 2015	Santa Clar: 70020 Travel - Meals	
4/30/2015	Bill	GREG SMITH APR 2015	JPMORGAN CHASE BANK	207.00		Apr 2015	Santa Clar: 70030 Travel - Transportation	
4/30/2015	Bill	GREG SMITH APR 2015	JPMORGAN CHASE BANK	2,239.65		Apr 2015	Santa Clar: 70040 Travel - Other	
5/20/2015	Bill	1159	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	May 15 FE	May 2015	Santa Clar: 66200 Consultants	GR
5/22/2015	Bill	681	HADLEY LAW FIRM, LLC	178.50		May 2015	Santa Clar: 66010 Legal Fees	
5/31/2015	Bill	MAY 15 EXPENSES	BELENSON, ALEX	25.00		May 2015	Santa Clar: 70020 Travel - Meals	
5/31/2015	Bill	MAY 15 EXPENSES	BELENSON, ALEX	105.61		May 2015	Santa Clar: 70030 Travel - Transportation	
5/31/2015	Bill	GREG SMITH MAY 2015	JPMORGAN CHASE BANK	666.59		May 2015	Santa Clar: 70040 Travel - Other	
5/31/2015	Bill	MAY 15 EXPENSES	BELENSON, ALEX	5.50		May 2015	Santa Clar: 70060 Parking	
6/19/2015	Bill	33	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	MAY 15 FE	Jun 2015	Santa Clar: 66200 Consultants	GR
6/19/2015	Bill	34	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	JUN 15 FE	Jun 2015	Santa Clar: 66200 Consultants	GR
6/30/2015	Bill	JUN 15 EXPENSES	BELENSON, ALEX	21.00		Jun 2015	Santa Clar: 61050 Postage & Delivery	
6/30/2015	Bill	JUN 15 EXPENSES	BELENSON, ALEX	10.18		Jun 2015	Santa Clar: 61060 Print & Reprod	
6/30/2015	Bill	1176	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	JUN 15 FE	Jun 2015	Santa Clar: 66200 Consultants	GR
7/20/2015	Bill	1190	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	JUL 15 FE	Jul 2015	Santa Clar: 66200 Consultants	GR
7/22/2015	Bill	35	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	JUL 15 FE	Jul 2015	Santa Clar: 66200 Consultants	GR
7/31/2015	Bill	002	BETH SCHISSLER	400.00		Jul 2015	Santa Clar: 66030 Consult Fees	
8/20/2015	Bill	1207	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	AUG 15 FE	Aug 2015	Santa Clar: 66200 Consultants	GR
8/31/2015	Bill	AUG 15 EXPENSES	BENTLER, CHRISTOPHER	538.69		Aug 2015	Santa Clar: 12193 Due From AV to TDONG	
9/18/2015	Bill	1222	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	SEP 15 FE	Sep 2015	Santa Clar: 66200 Consultants	GR

9/18/2015 Bill	36	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	AUG 15 FE Sep 2015	Santa Clar:66200 Consultants GR
9/18/2015 Bill	37	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	SEP 15 FE Sep 2015	Santa Clar:66200 Consultants GR
10/23/2015 Bill	40	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	OCT 15 FE Oct 2015	Santa Clar:66200 Consultants GR
10/27/2015 Bill	SEP & OCT 15 EXPENSES	MANFREDI, JAMES	49.95	Oct 2015	Santa Clar:64020 Telephone - Wireless
10/27/2015 Bill	OCT 15 EXPENSES	MANFREDI, JAMES	49.95	Oct 2015	Santa Clar:64020 Telephone - Wireless
10/27/2015 Bill	1240	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	OCT 15 FE Oct 2015	Santa Clar:66200 Consultants GR
10/27/2015 Bill	OCT 15 EXPENSES	MANFREDI, JAMES	65.37	Oct 2015	Santa Clar:70020 Travel - Meals
10/27/2015 Bill	SEP & OCT 15 EXPENSES	MANFREDI, JAMES	816.00	Oct 2015	Santa Clar:70030 Travel - Transportation
10/27/2015 Bill	OCT 15 EXPENSES	MANFREDI, JAMES	641.70	Oct 2015	Santa Clar:70030 Travel - Transportation
10/27/2015 Bill	OCT 15 EXPENSES	MANFREDI, JAMES	423.19	Oct 2015	Santa Clar:70040 Travel - Other
10/31/2015 Bill	OCT 15 EXPENSES	BENTLER, CHRISTOPHER	1,536.04	Oct 2015	Santa Clar:12193 Due From AV to TDONG
10/31/2015 Bill	OCT 15 EXPENSES	BELENSON, ALEX	2,324.00	Oct 2015	Santa Clar:12350 Work In Progress
11/6/2015 Bill	708112	DAVIS GRAHAM & STUBBS LLP	1,603.12	Nov 2015	Santa Clar:66010 Legal Fees
11/20/2015 Bill	1256	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	NOV 15 FE Nov 2015	Santa Clar:66200 Consultants GR
11/20/2015 Bill	41	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	NOV 15 FE Nov 2015	Santa Clar:66200 Consultants GR
12/31/2015 Bill	1275	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	DEC 15 FE Dec 2015	Santa Clar:66200 Consultants GR
12/31/2015 Bill	42	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	DEC 15 FE Dec 2015	Santa Clar:66200 Consultants GR
1/21/2016 Bill	1293	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	JAN 16 FE Jan 2016	Santa Clar:66200 Consultants GR
1/21/2016 Bill	43	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	JAN 16 FE Jan 2016	Santa Clar:66200 Consultants GR
2/19/2016 Bill	1323	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	FEB 16 FE Feb 2016	Santa Clar:66200 Consultants GR
2/19/2016 Bill	44	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	FEB 16 FE Feb 2016	Santa Clar:66200 Consultants GR
3/15/2016 Bill	1343	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	Mar 16 Fee Mar 2016	Santa Clar:66200 Consultants GR
3/21/2016 Bill	45	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	2/16-3/16/1 Mar 2016	Santa Clar:66200 Consultants GR
4/7/2016 Bill	Mar 16 Expenses	SCHARFBERG, JOSHUA	21.95	Expenses : Apr 2016	Santa Clar:64020 Telephone - Wireless
4/7/2016 Bill	Mar 16 Expenses	SCHARFBERG, JOSHUA	99.95	Expenses : Apr 2016	Santa Clar:70020 Travel - Meals
4/7/2016 Bill	Mar 16 Expenses	SCHARFBERG, JOSHUA	653.45	Expenses : Apr 2016	Santa Clar:70030 Travel - Transportation
4/7/2016 Bill	Mar 16 Expenses	SCHARFBERG, JOSHUA	125.10	Expenses : Apr 2016	Santa Clar:70070 Travel-Local
4/19/2016 Bill	1392	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	April 2016 Apr 2016	Santa Clar:66200 Consultants GR
4/19/2016 Bill	46	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	3/16-4/15/1 Apr 2016	Santa Clar:66200 Consultants GR
5/10/2016 Bill	Apr 16 Expenses	SCHARFBERG, JOSHUA	110.00	Expenses : May 2016	Santa Clar:70030 Travel - Transportation
5/18/2016 Bill	1408	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	May 2016 May 2016	Santa Clar:66200 Consultants GR
5/18/2016 Bill	47	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	May 2016 - May 2016	Santa Clar:66200 Consultants GR
6/3/2016 Bill	May 16 Expenses	SCHARFBERG, JOSHUA	9.76	Expenses : Jun 2016	Santa Clar:61140 Office Expense
6/3/2016 Bill	May 16 Expenses	SCHARFBERG, JOSHUA	130.35	Expenses : Jun 2016	Santa Clar:70020 Travel - Meals
6/3/2016 Bill	May 16 Expenses	SCHARFBERG, JOSHUA	1,432.41	Expenses : Jun 2016	Santa Clar:70030 Travel - Transportation
6/3/2016 Bill	May 16 Expenses	SCHARFBERG, JOSHUA	693.95	Expenses : Jun 2016	Santa Clar:70040 Travel - Other
6/3/2016 Bill	May 16 Expenses	SCHARFBERG, JOSHUA	63.34	Expenses : Jun 2016	Santa Clar:70070 Travel-Local
6/16/2016 Bill	May 2016 Retainer	ACEBO & ASSOCIATES, LLC	2,500.00	May 2016 Jun 2016	Santa Clar:66200 Consultants GR
6/16/2016 Bill	1427	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	June 2016 Jun 2016	Santa Clar:66200 Consultants GR
6/16/2016 Bill	48	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	June 2016 Jun 2016	Santa Clar:66200 Consultants GR
7/6/2016 Bill	Jun 16 Expenses	SCHARFBERG, JOSHUA	23.19	Expenses : Jul 2016	Santa Clar:70020 Travel - Meals
7/6/2016 Bill	Jun 16 Expenses	SCHARFBERG, JOSHUA	385.84	Expenses : Jul 2016	Santa Clar:70030 Travel - Transportation
7/6/2016 Bill	Jun 16 Expenses	SCHARFBERG, JOSHUA	159.41	Expenses : Jul 2016	Santa Clar:70030 Travel - Transportation
7/6/2016 Bill	Jun 16 Expenses	SCHARFBERG, JOSHUA	330.10	Expenses : Jul 2016	Santa Clar:70030 Travel - Transportation
7/6/2016 Bill	Jun 16 Expenses	SCHARFBERG, JOSHUA	120.66	Expenses : Jul 2016	Santa Clar:70070 Travel-Local
7/21/2016 Bill	1443	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	July Fees Jul 2016	Santa Clar:66200 Consultants GR
7/22/2016 Bill	49	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	7/15/16 No Jul 2016	Santa Clar:66200 Consultants GR
8/5/2016 Bill	Jul 16 Expenses	BELENSON, ALEX	42.00	Expenses : Aug 2016	Santa Clar:70020 Travel - Meals
8/5/2016 Bill	Jul 16 Expenses	SCHARFBERG, JOSHUA	66.81	Expenses : Aug 2016	Santa Clar:70020 Travel - Meals

8/5/2016 Bill	Jul 16 Expenses	SCHARFBERG, JOSHUA	1,230.20	Expenses . Aug 2016	Santa Clar: 70030 Travel - Transportation
8/5/2016 Bill	Jul 16 Expenses	SCHARFBERG, JOSHUA	293.33	Expenses . Aug 2016	Santa Clar: 70040 Travel - Other
8/5/2016 Bill	Jul 16 Expenses	BELENSON, ALEX	7.00	Expenses . Aug 2016	Santa Clar: 70060 Parking
8/5/2016 Bill	Jul 16 Expenses	SCHARFBERG, JOSHUA	118.02	Expenses . Aug 2016	Santa Clar: 70070 Travel-Local
8/17/2016 Bill	1459	MCGOVERN & ASSOCIATES CONSULTING, INC.	2,500.00	August 201Aug 2016	Santa Clar: 66200 Consultants GR
8/17/2016 Bill	50	MOORE & MOORE COMMUNITY RELATIONS	2,500.00	Northern C Aug 2016	Santa Clar: 66200 Consultants GR
10/1/2016 Bill	Greg Smith Jul 16	JPMORGAN CHASE BANK	612.25	G. Smith C Oct 2016	Santa Clar: 70030 Travel - Transportation
11/15/2016 Bill	Nov 16 Expenses	BELENSON, ALEX	46.00	Expenses I Nov 2016	Santa Clar: 12350 Work In Progress
10/4/2017 Bill	Sep 17 Expenses	BELENSON, ALEX	46.00	Expenses I Oct 2017	Santa Clar: 65050 BB Permits/Fines
11/16/2018 Bill	Expenses Oct18	BELENSON, ALEX	49.00	Expenses I Nov 2018	Santa Clar: 65050 BB Permits/Fines
Overall Total			181,712.60		
	Salary allocation		316,366.88		
	Total expenses incurred		498,079.48		



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
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Agenda Report

20-146

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Informational Report on Councilmember Patricia Mahan's resignation from City Council

BACKGROUND AND DISCUSSION

This report transmits the notice received by the City of Councilmember Patricia Mahan's notice of resignation, effective February 1, 2020. With her notice, a vacancy is created in Council District 5 for an unexpired balance of the term of office ending in November 2020.

The City Charter requires the Council to declare the Councilmember's seat vacant. This action will be scheduled for the February 11 Council & Concurrent Authorities Meeting.

FISCAL IMPACT

There was no fiscal impact in the preparation of this report.

COORDINATION

This report was coordinated with the City Attorney's Office.

PUBLIC CONTACT

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

RECOMMENDATION

Note and File the staff report.

Approved by: Brian Doyle, City Attorney and Hosam Haggag, City Clerk

ATTACHMENTS

1. Resignation Email

From: Patricia Mahan <>
Sent: Wednesday, January 22, 2020 1:26 PM
To: Aracely Azevedo <AAzevedo@SantaClaraCA.gov>
Subject: Retirement

Dear Aracely:

Please accept this email as my resignation and retirement from the Santa Clara City Council due to ver serious medical issues. Although I am cancer free, the treatment has caused serious liver damage which will some significant surgeries or the coming weeks and months.
Please accept my resignation and retirement effective February 1, 2020.

Thanks,
Pat Mahan

Santa Clara, CA 95050



Agenda Report

20-1376

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Study Session: Census 2020 Update - Communication and Outreach Plan [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

Every 10 years, as required by the U.S. Constitution, the U.S. Government conducts a census that counts every person living in the United States. This data is used to determine seats in the U.S House of Representatives, electoral college votes, legislative boundaries and the distribution of over \$675 billion in federal funding that supports public health, transportation, infrastructure, education, housing and more. The next census will be in 2020. As part of the FY2019/20 Adopted Budget, City Council authorized \$100,000 to support the 2020 Census, and the City has been actively participating in various regional efforts to conduct census outreach in the community.

DISCUSSION

The purpose of this report is to provide information about the upcoming 2020 Census and the City of Santa Clara's involvement.

At the Jan. 28, 2020 Council study session, staff will provide an informational briefing on the 2020 Census, including:

- An outline of the 2020 Census and what to expect,
- An update on current regional activities, and
- An overview of activities and outreach in Santa Clara (Attachments 1 & 2)

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

There is no cost to the City associated with this report other than administrative time and expense.

PUBLIC CONTACT

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

RECOMMENDATION

Review and provide input on the Census 2020 Update - Communication and Outreach Plan

Prepared by: Kendra Davis, Management Analyst

Reviewed by: Cynthia Bojorquez, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. 2020 Census Activities - City of Santa Clara

2. 2020 Census Activities at the Santa Clara Library



Past Events

- **Mar. – Jul. 2018:** City staff participated in the Local Update of Census Addresses (LUCA) and submitted information to the County as part of their update effort
- **Sept. 2018:** Joined the Santa Clara County Complete Count Committee and the Neighborhoods and Cities Subcommittee
- **Sept. 2018 – Feb. 2019:** Worked with Neighborhoods and Cities Subcommittee to draft outreach plan and coordinate shared resources
- **Mar. 2019:** Created Santa Clara 2020 Census website SantaClaraCA.gov/census2020 and began posting information in City Manager's Biweekly Report and City's social media (#SantaClaraCounts)
- **May 2019:** Presented information to Santa Clara Challenge Team, part of the Healthier Kids Foundation, which includes representatives from school districts, non-profit organizations, city and county services, and parent and student groups who serve youth and strengthen the City of Santa Clara community
- **Aug. 7, 2019:** Presented Census 2020 information and discussed outreach opportunities at City-School Liaison Committee meeting
- **Sept. 14-15, 2019:** Hosted Census 2020 booth at Art & Wine Festival with U.S. Census Bureau representatives to provide resources; invited kids to help decorate the Census 2020 float for Parade of Champions
- **Sept. 28, 2019:** Participated in the Parade of Champions with a Census 2020 parade float that included the Mayor and City Councilmembers and available Santa Clarans of the Year, as well as hosted an informational booth in their Homestead Community Village
- **Oct. 12, 2019:** Hosted Census 2020 booth at Central Park Library's ComicCon
- **Nov. 2019 – Jan. 2020:** Included Census 2020 advertising at seasonal Santa Clara on Ice skating rink
- **Jan. 2020:** Census information was included in the 2020 City Calendar and a whole page was dedicated to Census 2020 in the Winter/Spring 2020 edition of Inside Santa Clara
- **Jan. 2020:** Census information was included in Mission City Scenes and included in all utility bills for January (also available online)
- **Jan. 10, 2020:** Facilitated Census 2020 informational session at S.E.S. Portuguese Hall with U.S. Census Bureau and the Portuguese American Leadership Council of the United States (PALCUS)
- **Jan. 14, 2020:** Presented to Youth Commission about Census 2020 and ways for Commissioners to get involved
- **Jan. 28, 2020:** City Council held study session to discuss Census 2020 outreach opportunities
- **Feb. 2020:** Census information was included in Mission City Scenes and included in all utility bills for February (also available online)

Census 2020 - Library Activities

Goal

Promote Census 2020 to community by incorporating Census 2020 into existing programming, library activities, and facilities between February 2020 and May 2020.

Programming

- Census Storytimes - March & April 2020
- Historical & Genealogy Program focusing on Census in the Past – April 2020
- Census 2020 Public Information Sessions
- Existing weekly Bilingual & ESL Conversation Club topics to incorporate Census 2020 Messaging

Technology & Computer

- “All Census / All Day” Technology Lab at Central Park with Tech Help – Dates TBD
- Desktop links to Census 2020 on all 177 publicly accessible computers beginning March 2020
- Laptops in Lobby – Three Tabling events March & April 2020
- Modify Checkout receipts to incorporate Census 2020 messaging

Social Media & Instagram

- “I Count” Photo-Op in Lobby at Central Park / Backdrop with Props & Signs
- *Census & Sensibility*, *Count of Monte Cristo*, other book related displays
- “I Count”, “Libraries Count,” “Santa Clara Counts” prop signs – Coordinate with CMO – Communications
- Historical Santa Clara Census Facts added to Library Facebook
- Button on Library Home Page to go directly to Online Census 2020

Book Displays & Book Lists

- Feature lists on Library Catalog and Website with Census tie-ins and resources
- Central Park Boulevard, Mission Branch Library & Northside Branch Library book displays



Agenda Report

20-150

Agenda Date: 1/28/2020

INFORMATION REPORT TO COUNCIL

SUBJECT

Request to Defer: Information on Alternate Leasing Plan for Department Stores at Related Santa Clara Project [Council Pillar: Promote and Enhance Economic and Housing Development]

BACKGROUND

In accordance with the 2016 Disposition and Development Agreement (DDA) with Related Santa Clara, LLC (Developer) for the development of a 240-acre mixed use project (Project) located north of Tasman Drive on the former Santa Clara Golf & Tennis site, on December 3, 2019, the Developer submitted a letter requesting approval of an Alternate Leasing Plan, removing best effort leasing obligations for Major Department stores within the CityCenter (Phases 1, 2, and 3).

The DDA requires that the City Manager provide an informational report to Council concerning the Developer's leasing efforts and the Alternate Leasing Plan. The Council may provide feedback on the request for best efforts relief and the Alternate Leasing Plan, but no formal action needs to be taken. The City may suggest alternate marketing efforts or revisions to the Alternate Leasing Plan, including contacting certain tenants or other options.

Prior to 90 days following the Developer's submission of the letter (i.e., March 1, 2020), the City Manager must issue a letter relieving the Developer of the best effort requirement so long as the Developer has complied with the substantive requirements in the DDA.

DISCUSSION

The Alternate Leasing Plan was scheduled for Council discussion on the January 28, 2020 agenda. On January 23, 2020, the City received a letter from Developer requesting that the item be suspended until further notice. Upon notice from the Developer of its interest to move forward with the Alternate Leasing Plan, the City will be provided 60 days to respond to the Developer's request.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Note and file the request to defer an Information Report on Alternate Leasing Plan for Department Stores at Related Santa Clara Project.

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

ATTACHMENTS

1. January 23, 2020 Letter from Related Santa Clara



January 23, 2020

By Email and Overnight Mail, Next Business Day

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Deanna J. Santana, City Manager

Re: Alternate Leasing Plan for Major Department Stores within Phase 1, Phase 2 and Phase 3, under that certain Disposition and Development Agreement, dated as of August 12, 2016, by and between Related Santa Clara, LLC ("**Developer**") and the City of Santa Clara ("**City**") (the "**DDA**"), in connection with the City Place Santa Clara project (the "**Project**")

Dear Ms. Santana:

Reference is hereby made to that certain letter from Related Santa Clara, LLC ("**Developer**") to the City of Santa Clara ("**City**"), dated December 3, 2019, pursuant to which Developer submitted its written request that it be relieved of the best efforts obligation under DDA Section 5.3.7(b) with regard to Major Department Stores within Phase 1 , Phase 2 and Phase 3 (the "**Alternate Leasing Plan Request**").

By this letter, Developer (i) hereby suspends its Alternate Leasing Plan Request until such time that Developer notifies the City that such request should move forward and (ii) hereby agrees to toll the time periods for the City's processing of and response to Developer's Alternate Leasing Plan Request under Section 5.3.7(b) of the DDA for a period of 60 days following the date that Developer notifies the City that such request should move forward.

Very truly yours,

RELATED SANTA CLARA, LLC,
a Delaware limited liability company

By: 

Name: Steve Eimer
Title: Executive Vice President and Co-Managing Partner



Agenda Report

20-1352

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Recognition of Holiday Decoration Contest Winners

BACKGROUND

Since the early 2000's, the City of Santa Clara has hosted a Holiday Decoration Contest. The contest inspires residents and businesses to decorate their home or business with entertaining displays to create a sense of place and community holiday cheer. This year, the Cultural Commission hosted the contest. Residents and businesses were encouraged to upload their entries onto the City's website in four categories. The contest submission period closed on December 16, 2019 with nine (9) entries across the categories. The People's Choice award was determined through a social media campaign. The other three categories were judged by a Cultural Commission sub-committee. The contest winners were announced on City communication channels on December 23, 2019, and the contest winners were given a coveted lawn sign for display.

DISCUSSION

The winners of the citywide Holiday Decoration Contest are being recognized by Special Order of Business on January 28, 2020.

Awardees for 2019 are:

1. Best Residential Display - Berner Family
2. Best Business Display - (no entries)
3. Best Neighborhood Display - Burdick Lane
4. The "People's Choice" Award - Cocker Family

The City thanks our many residents for participating in the annual citywide Holiday Decoration Contest by exhibiting their creativity in fun and entertaining displays. The City also appreciates the over 120 residents who visited and voted through social media on their neighbors' entries for the People's Choice Award. This participation demonstrates the best of Santa Clara's placemaking and community building.

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 cost to the City associated with this report other than administrative time and expense.

COORDINATION

This report was coordinated with the City Manager's Office.

PUBLIC CONTACT

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

RECOMMENDATION

Recognize the winners of the Cultural Commission's citywide Holiday Decoration Contest.

Reviewed by: James Teixeira, Director of Parks & Recreation

Approved by: Deanna J. Santana, City Manager



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
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Agenda Report

20-74

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Special City Council Meeting Minutes of July 10, 2019, Stadium Authority and Special City Council Meeting Minutes of December 3, 2019, and Special City Council Meeting Minutes of December 9, 2019 [Council Pillar: Enhance Community Engagement and Transparency]

RECOMMENDATION

Note and file Special City Council Meeting Minutes of July 10, 2019, Stadium Authority and Special City Council Meeting Minutes of December 3, 2019, and Special City Council Meeting Minutes of December 9, 2019.



City of Santa Clara

Meeting Minutes

Special City Council Meeting

07/10/2019

6:00 PM

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

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 July 10, 2019, at 6:00 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.

6:00 PM COUNCIL SPECIAL MEETING

Call to Order

Mayor Gillmor called the meeting to order at 6:03 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

Assistant City Clerk Pimentel noted Councilmember Hardy is expected to join the meeting at a later time (not present during Roll Call).

[19-826](#)

Interviews and Appointments to the Charter Review Committee

Recommendation: Staff has no recommendation.**City Clerk Haggag** presented the staff report.**Council** comments and questions followed.

A motion was made by Vice Mayor Mahan, seconded by Councilmember O'Neill, to approve Option 2: Interview by district and each Councilmember selects a representative from their district and the Mayor to select from the balance of the candidate pool and one vote to commemorate the appointment.

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

Absent: 1 - Councilmember Hardy

Councilmember Hardy arrived shortly before interviews started.

A motion was made by Councilmember Davis, seconded by Vice Mayor Mahan, to approve appointments to the Charter Review Committee.

District 1 - Benjamin Cooley**District 2 - Steven Silva****District 3 - Christine Koltermann****District 4 - Katherine Almazol****District 5 - Sudhanshu Jain****District 6 - Stephen Ricossa****At-Large - Richard Bonito**

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

PUBLIC PRESENTATIONS**None.**

ADJOURNMENT

A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, 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, July 16, 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."



Draft

City of Santa Clara

Meeting Minutes

Santa Clara Stadium Authority Meeting

Special City Council

12/03/2019

5:00 PM

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

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 December 3, 2019, at 5:00 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.

5:00 PM CLOSED SESSION

Call to Order in the Council Chambers

Mayor/Chairperson Gillmor called Closed Session to order at 5:01 PM.

Confirmation of a Quorum

Assistant City Clerk Pimentel confirmed a quorum.

Public Comment

None.

19-1380

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)

6:00 PM STADIUM AUTHORITY & SPECIAL MEETING

Call to Order

Mayor/Chairperson Gillmor called the meeting to order at 6:05 PM.

Pledge of Allegiance and Statement of Values

Roll Call

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

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

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

CONTINUANCES/EXCEPTIONS

None.

SPECIAL ORDER OF BUSINESS

1. [19-1342](#) Recognition of Santa Clara University Students' Downtown Plan Scroll Concept
- Council** recognized **Eleanore Lammers-Lewis** and **Vidya Pingali** (Santa Clara University Students) for their efforts on the Downtown Plan Scroll Concept.

- [19-7408](#) 41st Annual Santa Clara Historic Home Tour Post Meeting Material
- Nancy Biagini** (Chair of Santa Clara Historic Home Tour) gave a PowerPoint presentation on the 41st annual Santa Clara Historic Home Tour.

CONSENT CALENDAR

A motion was made by Councilmember/Boardmember Davis, seconded by Councilmember/Boardmember Hardy, to approve the Consent Calendar.

Aye: 7 - Vice Mayor/Vice Chair Mahan, Councilmember/Boardmember Hardy, Councilmember/Boardmember O'Neill, Councilmember/Boardmember Davis, Councilmember/Boardmember Watanabe, Councilmember/Boardmember Chahal, and Mayor/Chairperson Gillmor

- 2.A [19-1205](#) Action on Bills and Claims for the month of September 2019

Recommendation: Approve the list of Bills and Claims for September 2019.

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

- 2.B [19-934](#) Action on an Agreement with HSQ Technology for the Upgrade of an Existing MISER Supervisory Control and Data Acquisition (SCADA) Core System

Recommendation: Authorize the City Manager or designee to negotiate and execute an agreement with HSQ Technology to upgrade the SCADA system used to monitor and control Water, Sewer, and Storm Infrastructure for a not-to-exceed amount of \$452,353 plus an additional 10% of the final negotiated not-to-exceed amount as contingency to cover any unanticipated costs that may result due to changes in final configuration or issues encountered during the implementation phase.

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

- 2.C [19-1217](#) Action on an Affordable Housing Agreement with LS-Santa Clara, LLC for Project located at 1433-1493 El Camino Real

Recommendation: 1. Approve and authorize the City Manager to execute the Affordable Housing Agreement with LS-Santa Clara, LLC (Attachment 1), to execute amendments thereto, and to take any other action necessary to implement the requirement for the provision of four (4) Below Market Purchase homes within a 39-unit townhome project at 1433-1493 El Camino Real; and
2. Authorize the recordation thereof.

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

- 2.D [19-1264](#) Action on Appointment of Members to the Bicycle and Pedestrian Advisory Committee

Recommendation: Appoint Betsy Megas, Diane Harrison, and Yury Perzov to serve three-year terms on the Bicycle and Pedestrian Advisory Committee, expiring on December 31, 2022.

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

- 2.E [19-1296](#) Action on Confirmation 0144 under NCPA Support Services Agreement for Efficiency Services Group, LLC to Provide the Commercial Refrigeration Direct Install Program

Recommendation: Authorize the City Manager to execute Confirmation Number 0144 under the NCPA Support Services Agreement Efficiency Services Group, LLC to provide the Commercial Refrigeration Direct Install Program until June 30, 2021 in an amount not-to exceed \$815,000, subject to annual appropriation of funds.

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

PUBLIC PRESENTATIONS

None.

CONSENT ITEMS PULLED FOR DISCUSSION

None.

PUBLIC HEARING/GENERAL BUSINESS

3. [19-1382](#) Action on Councilmember Watanabe's Request Related to Airport Noise Monitoring

Recommendation: Staff makes no recommendation.

Council directed **City Manager Santana** to expedite the request to install a noise monitor across Montague Expressway and return with a verbal report at the December 10th meeting to meet the January 13 deadline. (No Motion Taken)

Public Speaker(s): Public Speaker (1)

4. [19-806](#) Public Hearing: Action on a Successor Agreement with Recology South Bay, dba Recology Santa Clara for Residential Curbside Recycling Services and Related Budget Amendment

Recommendation:

1. Approve and authorize the City Manager to execute a successor agreement with Recology South Bay, dba Recology Santa Clara for residential curbside recycling services;
2. Authorize the City Manager to make minor modifications to the proposed agreement, if necessary; and
3. Approve the Related FY 2020/21 Budget Amendment increasing the Solid Waste Fund appropriations and revenues in the amount of \$199,860.

Deputy Director of Public Works Staub presented a PowerPoint Presentation on the staff report.

City Attorney Doyle addressed Council comments and questions.

Public Speaker(s): John Bouchard
Tom Freitas

A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to close the Public Hearing.

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

A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to approve staff recommendation.

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

5. [19-1355](#) Action on Substation Service Agreement with Related Santa Clara, LLC for Esperanca Substation

Recommendation: 1. Approve the Substation Service Agreement with Related Santa Clara, LLC to allow the City to design, procure equipment, and construct Esperanca Substation to provide permanent electric service to City Place; and
2. Delegate authority to the City Manager to approve long lead time material procurement agreements and purchase orders.

Chief Electric Utility Officer Pineda presented a PowerPoint Presentation on the staff report.

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

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

6. [19-074](#) Consideration of Silicon Valley Power Quarterly Strategic Plan Update

Recommendation: Note and file the SVP Quarterly Strategic Plan Update.

Chief Electric Utility Officer Pineda presented a PowerPoint Presentation on the staff report.

A motion was made by Councilmember Davis, seconded by Vice Mayor Mahan, to note and file the SVP Quarterly Strategic Plan Update.

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

7. [19-1383](#) Discussion and Possible Action on Report from City Attorney on Taking Action by Council Consensus

Recommendation: Note and file the report.

City Attorney Doyle presented the staff report.

Council comments and questions followed.

A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to direct staff to return to a future meeting with an amended Policy 030 by removing "Consensus" and replace with "Action" and place the amended Policy 030 on a future agenda.

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

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

Councilmember Davis reported that at the Marketing Committee, Butch Coyne (Director, Santa Clara University Presents) spoke on their 20th Annual Festival of Lights to be held on December 6, 2019 thru December 7, 2019.

Vice Mayor Mahan reported on her attendance at the Triton Museum Board Meeting.

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

City Manager Santana reported on the following:

- December 5, 2019 at the Central Park Library will be the first community meeting to talk about the Civic Center rehabilitation/build-up project to engage with the community to gather input on future development;
- Details on the December 6, 2019 annual Tree Lighting Ceremony; and
- Acknowledged the efforts and hard work of City staff during the recent storms.

[19-1315](#) Update on City Council and Stadium Authority Staff Referrals

[19-320](#) Tentative Meeting Agenda Calendar (TMAC)

ADJOURNMENT

The meeting was adjourned at 8:22 PM in Memory of **Janice (Jan) Lieberman** (long-term Santa Clara resident, former City of Santa Clara employee and former Board of Library Trustee member).

A motion was made by Councilmember/Boardmember Davis, seconded by Vice Mayor/Vice Chair Mahan, to adjourn the meeting.

Aye: 7 - Vice Mayor/Vice Chair Mahan, Councilmember/Boardmember Hardy, Councilmember/Boardmember O'Neill, Councilmember/Boardmember Davis, Councilmember/Boardmember Watanabe, Councilmember/Boardmember Chahal, and Mayor/Chairperson Gillmor

[19-1412](#)

Adjournment of the December 3, 2019 City Council Meeting Post Meeting Material

The next regular Council and Authorities Concurrent meeting is scheduled on Tuesday evening, December 10, 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

Special City Council Meeting

12/09/2019

5:00 PM

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

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 December 9, 2019, at 5:00 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.

5:00 PM SPECIAL CITY COUNCIL MEETING

Call to Order

Mayor Gillmor called the meeting to order at 5:04 PM.

Pledge of Allegiance and Statement of Values

Roll Call

Present: 4 - Councilmember Teresa O'Neill, Councilmember Debi Davis, Councilmember Kathy Watanabe, and Mayor Lisa M. Gillmor

Absent: 3 - Vice Mayor Patricia M. Mahan, Councilmember Karen Hardy, and Councilmember Raj Chahal

Councilmember Chahal was not present during Roll Call but was present during the remainder of the meeting.

INTERVIEWS

Mayor Gillmor noted that the Housing Rehabilitation Loan Committee interviews would take place first.

1. [19-0141](#) Interviews and Action on Appointment to fill one vacancy to serve on the Board of Library Trustees

Recommendation: Appoint one candidate to the Board of Library Trustees to serve a partial-term ending June 30, 2021.

A motion was made by Councilmember Watanabe, seconded by Councilmember O'Neill, to appoint Joshua Briefman to a partial-term ending June 30, 2021 to the Board of Library Trustees.

Aye: 5 - Councilmember O'Neill, Councilmember Davis, Councilmember Watanabe, Councilmember Chahal, and Mayor Gillmor

Absent: 2 - Vice Mayor Mahan, and Councilmember Hardy

2. [19-1411](#) Interviews and Action on Appointment to fill one vacancy to serve on the Housing Rehabilitation Loan Committee

Recommendation: Appoint one candidate to the Housing Rehabilitation Loan Committee to serve a full-term ending June 30, 2023.

A motion was made by Councilmember Davis, seconded by Councilmember Chahal, to appoint Darius Brown to a full-term ending June 30, 2023 to the Housing Rehabilitation Loan Committee.

Aye: 5 - Councilmember O'Neill, Councilmember Davis, Councilmember Watanabe, Councilmember Chahal, and Mayor Gillmor

Absent: 2 - Vice Mayor Mahan, and Councilmember Hardy

PUBLIC PRESENTATIONS

None.

ADJOURNMENT

The meeting was adjourned at 6:20 PM.

A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to adjourn the meeting.

Aye: 5 - Councilmember O'Neill, Councilmember Davis, Councilmember Watanabe, Councilmember Chahal, and Mayor Gillmor

Absent: 2 - Vice Mayor Mahan, and Councilmember Hardy

The next regular scheduled meeting is on Tuesday evening, December 10, 2019 in the City Hall Council Chambers.

MEETING DISCLOSURES

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City of Santa Clara

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

Agenda Report

20-02

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Board, Commissions and Committee Minutes [Council Pillar: Enhance Community Engagement and Transparency]

RECOMMENDATION

Note and file the Minutes of:

Senior Advisory Commission - October 28, 2019

Cultural Commission - November 4, 2019

Cultural Commission - December 2, 2019

Youth Commission - December 10, 2019



City of Santa Clara

Meeting Minutes

Senior Advisory Commission

10/28/2019

10:00 AM

Senior Center
1303 Fremont Street
Santa Clara, CA 95050

CALL TO ORDER AND ROLL CALL

The regular meeting was called to order by Chair Nancy Toledo at 10:16 a.m.

- Present** 5 - Commissioner Wanda Buck, Vice Chair Grant L. McCauley, Chair Nancy Toledo, Commissioner Helen Narciso, and Commissioner Ana Segovia
- Absent** 2 - Commissioner Judy Hubbard, and Commissioner Carolyn Seeger

A motion was made by Commissioner Buck, seconded by Commissioner McCauley to excuse Commissioners Hubbard and Seeger

Aye: 5 - Commissioner Buck, Vice Chair McCauley, Chair Toledo, Commissioner Narciso, and Commissioner Segovia

Absent: 2 - Commissioner Hubbard, and Commissioner Seeger

CONSENT CALENDAR

- 1.A [19-1158](#) Senior Advisory Commission Minutes of September 23, 2019

Recommendation: Approve the Senior Advisory Commission Minutes of September 23, 2019

A motion was made by Commissioner McCauley, seconded by Commissioner Buck, to approve the Senior Advisory Commission minutes of September 23, 2019.

Aye: 5 - Commissioner Buck, Vice Chair McCauley, Chair Toledo, Commissioner Narciso, and Commissioner Segovia

Excused: 2 - Commissioner Hubbard, and Commissioner Seeger

1.B [19-1161](#) Senior Advisory Commission 2020 Calendar of Meetings

Recommendation: Approve the Senior Advisory Commission 2020 Calendar of Meetings

A motion was made b Commissioner McCauley, seconded by Commissioner Segovia, to approve the Senior Advisory Commission 2020 Calendar of Meetings.

Aye: 5 - Commissioner Buck, Vice Chair McCauley, Chair Toledo, Commissioner Narciso, and Commissioner Segovia

Excused: 2 - Commissioner Hubbard, and Commissioner Seeger

PUBLIC PRESENTATIONS

GENERAL BUSINESS

2. [19-1159](#) Senior Advisory Commission FY2019/20 Work Plan and Goals

Senior Advisory Commission FY2019/20 Work Plan and Goals

Relating to goal 1.a. The 2020 Calendar is set for meeting dates, times, and locations.

Relating to goal 2.a. Milpitas and Cupertino have shuttles. The VA has a program called NAVARRE for veterans. There will be a presentation from the Community Development Department at an upcoming meeting regarding the El Camino Real Project. **Recreation Supervisor Herb** encouraged the Commission to research shuttle stops in Santa Clara

Relating to goal 3.a. The Senior Center front desk staff will be taking part in the online awareness training.

Relating to goal 3.b. **Commissioner Buck** mentioned that she would like to focus on "Quality of Life" and how it pertains to the arts.

Relating to goal 4.a. **Commissioner McCauley** informed the Commission that the date for the Health & Wellness Fair has been moved to Friday, May 29, 2020.

Relating to goal 4.c. **Recreation Supervisor Herb** shared with the Commission about the Heart of the Valley Home Assistant device program that helps place devices in individuals home that can help with reminders, or assist in turning on and off the lights.

STAFF REPORT

Recreation Supervisor Herb invited the Commission to attend the Halloween BBQ at the Senior Center on Thursday, October 31 starting at noon.

Recreation Supervisor Herb reminded the Commission about the date change for the Joint Meeting with City Council. The new date is December 17.

Recreation Manager Castro informed the Commission about the Central Park Master Plan, asking for feedback by November 12. This phase will include the Magical Bridge all inclusive playground.

COMMISSIONERS REPORT

Commissioner Segovia introduced herself to the Commission and shared that she's excited to be a part of the Commission.

Commissioners Buck and McCauley shared that they both attended the State of the Arts event on October 10 at the Triton Museum. Both thought the event was wonderful and were so impressed with the event and the education on the importance of art and the quality of life for older adults.

Mayor Gillmor shared with the Commission about the upcoming place making for Mission Park Plaza, as well as encouraged the Commission to continue the research for a shuttle system in Santa Clara and to determine whether an on-call or route system would be more useful.

ADJOURNMENT

The next scheduled meeting is November 25, 2019 at the Northside Branch Library

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

Aye: 3 - Commissioner Buck, Vice Chair McCauley, and Chair Toledo

Excused: 2 - Commissioner Hubbard, and Commissioner Seeger

Abstained: 2 - Commissioner Narciso, and Commissioner Segovia



City of Santa Clara

Meeting Minutes Cultural Commission

11/04/2019

7:00 PM

Senior Center
1303 Fremont Street
Santa Clara, CA 95050

CALL TO ORDER AND ROLL CALL

Chair Samara called the meeting to order at 7:04 p.m. Commissioners were notified that Commissioner Bhatia would arrive late to the meeting.

Present 7 - Chair Louis Samara, Commissioner Harbir Bhatia, Commissioner Niha Mathur, Commissioner Debra von Huene, Commissioner Candida Diaz, Vice Chair Jonathan Marinaro, and Commissioner Teresa Sulcer

CONSENT CALENDAR

1.A [19-1262](#) Cultural Commission Regular Meeting Minutes of October 7, 2019

Recommendation: Approve the Cultural Commission Regular Meeting Minutes of October 7, 2019.

A motion was made by Commissioner Marinaro, seconded by Commissioner Sulcer to approve the minutes as amended for the Regular Cultural Commission meeting on October 7, 2019.

Aye: 6 - Chair Samara, Commissioner Mathur, Commissioner von Huene, Commissioner Diaz, Vice Chair Marinaro, and Commissioner Sulcer

Absent: 1 - Commissioner Bhatia

Commissioner Bhatia arrived at 7:10 p.m.

PUBLIC PRESENTATIONS

GENERAL BUSINESS

2. [19-1259](#) Cultural Commission Discussion of Draft Work Plan for FY2019/21

Recommendation: Recommend a Final Work Plan with three to five specific goals with no more than 2 activities/objectives per goal for FY2019/21.

The Commission discussed the work plan and provided updates to each of the goal areas. No action was taken on this item.

3. [19-1261](#) Cultural Commission 2020 Calendar of Meetings

Recommendation: Approve the Cultural Commission 2020 Calendar of Meetings.

A motion was made by Commissioner Marinaro, seconded by Commissioner von Huene to approve the Cultural Commission 2020 Calendar of Meetings.

Aye: 7 - Chair Samara, Commissioner Bhatia, Commissioner Mathur, Commissioner von Huene, Commissioner Diaz, Vice Chair Marinaro, and Commissioner Sulcer

STAFF REPORT

Recreation Manager Castro invited the Commission to the Bowers Park Playground Ribbon Cutting event on November 6, 2019. Commissioners Marinaro and von Huene confirmed attendance at the Halloween Home Decorating Contest Special Order of Buisness at the November 5, 2019 City Council meeting.

COMMISSIONERS REPORT

Chair Samara and Commisisoner Sulcer attended the State of the Arts in our City event that was held at the Triton Museum on October 10, 2019.

Commissioner Mathur enjoyed a recent visit to the San Francisco Museum of Modern Art.

Commissioner Marinaro enjoyed many art and music events during a recent buisness trip to the East Coast.

Commissioner Bhatia visited India and World Equality Day in Washington DC.

Commissioner von Huene attended two downtown community taskforce meetings in October. Last month co-led a creative community and placemaking workshop at Esalen Institue.

Commissioner Sulcer enjoyed a recent visit to a pop up park on the City Plaza in the City of Mountain View .

ADJOURNMENT

A motion was made by Commissioner Marinaro, seconded by Commissioner Bhatia to adjourn the meeting at 8:42 p.m.

Aye: 7 - Chair Samara, Commissioner Bhatia, Commissioner Mathur, Commissioner von Huene, Commissioner Diaz, Vice Chair Marinaro, and Commissioner Sulcer



City of Santa Clara

Meeting Minutes Cultural Commission

12/02/2019

7:00 PM

Senior Center
1303 Fremont Street
Santa Clara, CA 95050

CALL TO ORDER AND ROLL CALL

The meeting was called to order by **Chair Samara** at 7:00 p.m. There were not sufficient Commissioners present to meet a quorum.

Present 3 - Chair Louis Samara, Commissioner Debra von Huene, and Commissioner Teresa Sulcer

Absent 4 - Commissioner Harbir Bhatia, Commissioner Niha Mathur, Commissioner Candida Diaz, and Vice Chair Jonathan Marinaro

CONSENT CALENDAR

1.A [19-1359](#) Cultural Commission Regular Meeting Minutes of November 4, 2019

Recommendation: Approve the Cultural Commission Regular Meeting Minutes of November 4, 2019.

Not considered due to lack of quorum.

Not considered

PUBLIC PRESENTATIONS

Resident **Gabrielle Seagvrave** spoke to the Commission in favor of public art, specifically Utility Box art and Sidewalk art that was LGBTQ friendly.

Resident **LaDonna Silva** spoke to the Commission in favor of public art, specifically Utility Box art and Sidewalk art that was LGBTQ friendly.

GENERAL BUSINESS

2. [19-1350](#) Discussion of Cultural Commission Work Plan for FY2019/21

Recommendation: Provide an update to the Work Plan for FY 2019/21 and notate accomplishments to date.

Not considered due to lack of quorum.

Not considered

3. [19-1390](#) Presentation by the Magical Bridge Foundation

Not considered due to lack of quorum.

Not considered

STAFF REPORT

COMMISSIONERS REPORT

ADJOURNMENT

The meeting was adjourned to January 6, 2020 at 7:15 p.m.

Adjourned

Absent: 4 - Commissioner Bhatia, Commissioner Mathur, Commissioner Diaz,
and Vice Chair Marinaro



City of Santa Clara

Meeting Minutes Youth Commission

12/10/2019

6:00 PM

Cafeteria - City Hall East Wing
1500 Warburton Avenue
Santa Clara, CA 95050

CALL TO ORDER AND ROLL CALL

Chair Yerramaneni called the meeting to order at 6:09 p.m.

Commissioner Lim seconded.

Present 15 - Commissioner Aarav Gupta , Commissioner Ahmad Ismail, Commissioner Jasmine Kelly-Tanti, Vice Chair Vincent Kloes, Commissioner Adrienne Krivokapic-Zhou , Commissioner Colin Lim , Commissioner Kayla Phan, Commissioner Raksha Sen , Commissioner Siya Sharma, Commissioner Kavya Sriram , Commissioner Meera Suresh, Commissioner Smrithi Suresh , Commissioner Natasha Yen , Chair Sanjana Yerramaneni, and Commissioner Amy Zuo

CONSENT CALENDAR

1.A [19-1372](#) Youth Commission Minutes of November 12, 2019

Recommendation: Approve the Youth Commission Minutes of November 12, 2019.

A motion was made by Commissioner Smrithi Suresh, seconded by Vice Chair Kloes, that this item be recommended for approval. The motion carried by the following vote:

Aye: 15 - Commissioner Gupta, Commissioner Ismail, Commissioner Kelly-Tanti, Vice Chair Kloes, Commissioner Krivokapic-Zhou, Commissioner Lim, Commissioner Phan, Commissioner Sen, Commissioner Sharma, Commissioner Sriram, Commissioner Suresh, Commissioner Suresh, Commissioner Yen, Chair Yerramaneni, and Commissioner Zuo

PUBLIC PRESENTATIONS

GENERAL BUSINESS

2. [19-1373](#) Presentation by the Magical Bridge Foundation

Olenka Villarreal, founder and CEO of Magical Bridge Foundation provided an overview of the project coming to Santa Clara's Central Park. Magical Bridge All Inclusive Playgrounds are designed for everybody, regardless of ability, size, or age and removes the physical and social barriers giving everyone a place to play. A target goal of \$1 million dollars in fundraising is being sought through individual, community, and corporate support. www.magicalbridge.org/santa-clara

3. [19-1374](#) Youth Commission 2019-20 Work Plan & Goals

Commissioners reviewed the areas of emphasis for the FY 2019-20 Work Plan including environmentalism, inclusiveness, and public outreach. Based on the discussion with Mayor and City Councilmembers at the Joint Meeting, commissioners will integrate discussions and provide feedback on current City-wide topics and projects and report back to Mayor and City Council with their recommendations. The following times were scheduled for committee meetings on Thursday, December 12: Inclusiveness at 4:00 p.m., Environmentalism at 4:30 p.m., and Public Outreach at 5:00 p.m.

STAFF REPORT

4. [19-1375](#) Youth Commission Calendar of Upcoming Events - Spring 2020

Dates for upcoming conferences were shared with commissioners, which will also be sent via email to confirm participation. The Commission discussed Holiday Tree Lighting and food booth sales. To date, the Commission has not received the invoice for food items. The Commission will be updated on net sales upon receipt and payment of the invoice. Commissioners chose Friday, January 4 as the date for a winter social to participate in team-building, and prepare for spring activities.

COMMISSIONERS REPORT

ADJOURNMENT

The next Youth Commission meeting will be held January 14, 2020 at 6:00 p.m. at the Santa Clara Teen Center.

A motion was made by Chair Yerramaneni, seconded by Vice Chair Kloes, that this meeting be adjourned at 7:43 p.m. The motion carried by the following vote:

Aye: 15 - Commissioner Gupta, Commissioner Ismail, Commissioner Kelly-Tanti, Vice Chair Kloes, Commissioner Krivokapic-Zhou, Commissioner Lim, Commissioner Phan, Commissioner Sen, Commissioner Sharma, Commissioner Sriram, Commissioner Suresh, Commissioner Suresh, Commissioner Yen, Chair Yerramaneni, and Commissioner Zuo



Agenda Report

20-1269

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Amendment No. 1 to an Agreement with Waterproofing Associates, Inc. for On-Call Roofing Repair [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

BACKGROUND

The Department of Public Works Facility Services Division oversees maintenance and repairs for approximately 900,000 square feet of buildings throughout the City. In order to continue to provide services in a timely and efficient manner, DPW periodically uses various specialty contractors to assist with the maintenance workload.

A Request for Proposal (RFP) process was utilized to solicit proposals for on-call roofing repair. The RFP was advertised in March 2018 and two proposals were received and evaluated by DPW staff in May 2018. Waterproofing Associates, Inc. was selected as the top ranked proposal for various reasons, including past performance, qualified staffing, experience, and cost. The scope of the Agreement with Waterproofing Associates, Inc. provides on-call roofing repair services for various City buildings. The original Agreement contains a section covering Prevailing Wages.

DISCUSSION

The original three-year Agreement (Attachment 1) expires on June 30, 2021 and is for a total cost of \$90,000. The Agreement amount was predicated on an expectation of potential repairs based on past experience. Amendment No. 1 (Attachment 2) is being proposed to increase funding and time for performance to accommodate various departmental requests that have recently been made for services over the next fiscal year. Roof repairs needed at this time are for the Northside Library, Senior Center, Triton Museum and the Corporation yards. DPW is currently working on numerous work orders for roof repair services that were not contemplated in the original Agreement. Most recently, Waterproofing Associates, Inc. performed significant roofing repairs at the Central Library. These costs are expected to be approximately \$21,000.

In order to keep up with the current roof maintenance and repair needs, staff is recommending a cost and time increase to the existing Agreement with Waterproofing Associates, Inc. The Amendment adds \$200,000 to the Agreement for a total not-to-exceed amount of \$290,000 and increases it from a three-year agreement to a five-year agreement, expiring on June 30, 2023.

ENVIRONMENTAL REVIEW

The action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301 "Existing Facilities" as the activity consists of the restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment.

FISCAL IMPACT

The amount to be paid to Waterproofing Associates, Inc. for on-call services over the three-year term of this Agreement may not exceed \$290,000. This cost consists of the original \$90,000 service agreement, and an additional \$200,000 in requested funding to cover the anticipated expenses due to various pending projects. The estimated cost of services is based on past years' expenditures and estimated projected needs. For the current fiscal year, these costs were included in the FY 2019/20 and FY 2020/21 budget in the capital budget (Repairs - Modifications to City Buildings), the Department of Public Works Operating Budget and was included in other various department operating budgets. Subsequent years will be subject to future budget appropriations.

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>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Approve and authorize the City Manager to execute Amendment No. 1 with Waterproofing Associates, Inc. for on-call roofing repair and maintenance services for an amount not-to-exceed \$290,000, subject to future budget appropriations;
2. Authorize the City Manager to make minor modifications to Amendment No. 1, if necessary; and
3. Authorize the City Manager to extend the term of the agreement with no increase in compensation in the event that the work is not completed by the agreement end date.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Agreement with Waterproofing Associates, Inc.
2. Amendment No. 1 with Waterproofing Associates, Inc.

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
WATERPROOFING ASSOCIATES, INC.
FOR
ON-CALL ROOFING REPAIR SERVICES**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Waterproofing Associates, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on September 1, 2018 and terminate on June 30, 2021.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is ninety thousand dollars (\$90,000), subject to budget appropriations, which includes all payments that may be authorized for

Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury,

liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Building Maintenance
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at kwinland@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Waterproofing Associates, Inc.
975 Terra Bella Avenue
Mountain View, California 94043
and by e-mail at kevin@roofwa.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

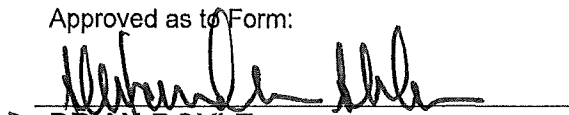
25. COUNTERPARTS

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

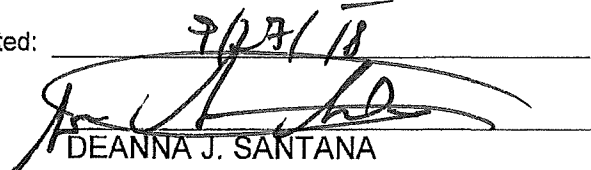
The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:


BRIAN DOYLE
City Attorney

Dated:

9/27/18

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

"CITY"

WATERPROOFING ASSOCIATES, INC.
a California corporation

Dated: September 17, 2018

By (Signature):

Name: Steve Nash

Title: Vice-President

Principal Place of Business Address: 975 Terra Bella Avenue
Mountain View, California 94043

Email Address: dennis@roofwa.com

Telephone: (650)937-1299

Fax: (650)965-9005

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

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

Contractor shall provide Roofing Repair on a time and material basis for the City of Santa Clara in Santa Clara, CA.

Contractor shall provide all work and materials as described in this Agreement, including all labor, transportation, supplies, materials, parts, tools, scaffolding, machinery, hoists, employee safety equipment, supervision, applicable taxes, and all other work and materials required under this Agreement. All work shall be done in a first class, complete and workmanlike manner, conforming to best industry practices and applicable original manufacturer specifications.

Contractor shall provide proactive preventive maintenance to maximize equipment life and beneficial usage of the electrical equipment covered by this Agreement. Contractor shall communicate with City's representative on a regular basis on services performed at the site.

Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Services and shall comply with all applicable safety laws, best industry standards, and take all reasonable precautions for safety of the public, property tenants and employees, City employees, and other persons on or about the property site.

Scope of work is to include, but is not limited to, the following:

Roofing Repair & Replacement at various City Facilities per service call.

EXHIBIT B
SCHEDULE OF FEES

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

In no event shall the amount billed to City by Contractor for services under this Agreement exceed ninety thousand dollars (\$90,000), subject to budget appropriations.

1. Labor Rate (including benefits, overhead and profit):

Year 1	\$99	Per hour
Year 2	\$105	Per hour
Year 3	\$111	Per hour

2. Overtime Rate:

Year 1	\$125	Per hour
Year 2	\$132	Per hour
Year 3	\$140	Per hour

Materials Mark-up: 15%

EXHIBIT C

INSURANCE REQUIREMENTS

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

COMMERCIAL GENERAL LIABILITY INSURANCE

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

Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

- i. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
- ii. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
- iii. 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.

BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated

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

WORKERS' COMPENSATION

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.

The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

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.

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.

Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

Cancellation.

- iv. 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.
- v. 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.

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.

ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara Building Maintenance

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

QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT D LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

A. **Prevailing Wage Requirements**

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified

payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is

practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

C. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
WATERPROOFING ASSOCIATES, INC.
FOR
ON-CALL ROOFING REPAIR SERVICES**

PREAMBLE

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

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Services between the City of Santa Clara, California, and Waterproofing Associates, Inc. for On-Call Roofing Repair Services", dated September 28, 2018 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide roofing repair and replacement at various City facilities, and the Parties now wish to amend the Original Agreement to extend the term of the Agreement by two (2) years ending on June 30, 2023, and increase maximum compensation by \$200,000 for a new not-to-exceed amount of \$290,000, subject to budget appropriation.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

- 1. Exhibit B ("Schedule of Fees") is hereby replaced in its entirety by the attached Revised Exhibit B ("Schedule of Fees").
- 2. Section 2 of the Original Agreement, entitled "Term of Agreement" is hereby amended by deleting the existing Section 2 in its entirety and replacing it with the following:

"Unless otherwise set forth in the Agreement or unless this paragraph is subsequently modified by a written amendment to this

Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate June 30, 2023.”

3. 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.

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.

(Signatures continue on Page 3 of 4)

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"

WATERPROOFING ASSOCIATES, INC.
a California corporation

Dated: 12/2/2019

By (Signature): 

Name: Steve Nash

Title: Vice-President

Principal Place of Business Address: 975 Terra Bella Avenue
Mountain View, California 94043

Email Address: dennis@roofwa.com

Telephone: (650) 937-1299

Fax: (650) 965-9005

"CONTRACTOR"

**AGREEMENT FOR THE PERFORMANCE OR SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WATERPROOFING ASSOCIATES, INC.
FOR
ON-CALL ROOFING REPAIR SERVICES**

REVISED EXHIBIT B

SCHEDULE OF FEES

1) Roofer Labor Rate (fully loaded including all benefits, overhead, and profit):

Year 1	\$ 99 per hour
Year 2	\$ 105 per hour
Year 3	\$ 111 per hour
Year 4	\$ 118 per hour
Year 5	\$ 125 per hour

2) Overtime Rate

Year 1	\$125 per hour
Year 2	\$132 per hour
Year 3	\$140 per hour
Year 4	\$177 per hour
Year 5	\$187.50 per hour



Agenda Report

20-1428

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Power Purchase and Sale Agreements between Silicon Valley Power and West Valley-Mission Community College District and SunPower Corporation, Systems [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

BACKGROUND

West Valley-Mission Community College District (Mission College) is an electric retail customer of Silicon Valley Power (SVP), currently with 1.1 megawatts (MW) of solar output generating capacity installed on site. Mission College has submitted an interconnection application to install additional 2.5 MW of solar photovoltaic generation and 2 MW / 4 MWh battery energy storage system on its campus. Due to the size of its solar system exceeding the qualification for Mission College to be served under SVP Rate Schedule NM (Net Energy Metering "NEM" Schedule), and the potential for energy production from the generation facility to exceed the customer demand which would cause flows of power onto SVP's distribution system, it is necessary to define the commercial terms under which SVP will purchase this excess generation production under a wholesale power purchase and sale agreement.

NEM Service is offered to SVP's retail customers under Rate Schedule NM provided that the installed capacity of customer owned onsite renewable generation does not exceed 1000 kilowatts (kW) of generating capacity. With the Mission College's new facility, this 1000 kW limit will be exceeded, and the Mission College's system will not qualify for NEM and therefore will not be entitled to the annual payment for the excess solar output. However, it is still economically and environmentally beneficial in both parties' interests to move forward with the project under terms and conditions mutually agreed to by both parties. It was determined that the compensation for any excess solar production should be tied to the avoided cost of purchasing power at the wholesale market price that SVP would be purchasing to serve its load in the absence of Mission College's solar system and therefore avoid any subsidization of the solar project by other SVP customers. As such, the rate SVP will pay for this excess power will be aligned with the California Independent System Operator (CAISO) day ahead market price and the metered output during intervals of time that exceed the customer's energy consumption. These terms and conditions are intended to reflect wholesale energy prices SVP would expect to pay any other market participant when it is purchasing power to serve load.

In addition to a solar generation project the customer is also installing a Battery Energy Storage System (BESS) that has the capability to store some of the excess solar production and shift that production to other hours of the day. Under SVP's current rate structure, appropriate price signals would not be sent to ensure that the BESS is operated in a manner that would necessarily be beneficial to all SVP customers. While Mission College could simply use the BESS to minimize their own monthly bills, there is the potential to derive more value from the system by allowing it to be operated and managed by SVP at times when wholesale prices are at the highest.

As a pilot program, SVP, Mission College, and SunPower (as the BESS system operator) have drafted a Purchase Power and Sale Agreement (PPSA) that allows for operation of the BESS that brings the most economic value of the system to all customers, and ensures that the system is operated as efficiently as possible to reduce Greenhouse gas (GHG) emissions and maximize value relative to the wholesale market. Under this PPSA with SunPower, SVP will make a fixed payment to SunPower to operate BESS under SVP's instructions, provided that the BESS meets the performance requirements set forth in the PPSA with Sunpower. SunPower will pass through to Mission College a share of these fixed payments to cover the capital expense of the BESS.

DISCUSSION

As California transitions to higher levels of renewable power, the role of distributed energy resources, energy storage, and intermittent renewable resources is going to be very important. Fully understanding the economics and operating characteristics, as well as, the limitations of various technologies are crucial to being able to achieve California's zero carbon goals at a reasonable cost. These PPSAs, in combination, will allow SVP, distributed energy resource developers, and SVP's retail customers to explore potential solutions to providing reliable electric service in the future where customers are both consumers and distributed electricity producers.

The Mission College PPSA provides the terms and conditions that SVP will purchase the excess solar production not consumed by Mission College. This energy is purchased at a price equivalent to what SVP would otherwise pay for this energy from the CAISO. The Mission College PPSA also has terms and conditions that allow a credit or charge on the wholesale bill to account for the potential higher or lower retail bill as a result of the BESS operation. For example, when the BESS is charging while there is little solar production, the BESS is taking power from SVP grid, which combines with customer's retail consumption might set a monthly peak demand on its retail bill. Likewise, when the BESS is discharging, the customer will take less power from SVP grid, which results in lower metered usage, and therefore lower energy charge and demand charge on customer's retail bill. Since SVP is paying for the operation of the BESS through a fixed monthly payment, the operation of the BESS will be netted out of the customer's retail meter as if the BESS was instead not connected to the customer's retail meter. This may result in either charge or credit to the customer's monthly retail bill and such charge or credit will be invoiced through SVP's wholesale energy settlements group, as is done with other wholesale power purchase agreements.

The SunPower PPSA provides the terms and conditions that SVP will pay for the operation of BESS. This will amount to a monthly fixed payment based on SVP's forecasted value of the BESS operated over the 15-year life of the BESS. The PPSA provides specific operational parameters that must be followed with regard to when it is charged and discharged. Failure to follow these parameters may result in liquidated damage provisions of the PPSA that would reduce these monthly fixed payments.

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

SVP estimates the combination of these PPSAs will have neutral fiscal impact. In the case of the Mission College PPSA, SVP is simply passing on to Mission College the price of power that SVP would otherwise pay the CAISO in the absence of the solar facility. With regard to the SunPower PPSA, SVP has modelled the expected value that will be generated by operating the BESS as defined in the PPSA, and structured the agreement such that these modelled savings are passed through to the BESS operator and customer.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

1. Authorize the City Manager to execute a Power Purchase and Sale Agreement with West Valley-Mission Community College District;
2. Authorize the City Manager to execute a Power Purchase and Sale Agreement with SunPower Corporation, Systems; and
3. Authorize the City Manager to make any minor modifications and amendments as required for the life of these Power Purchase and Sale Agreements to maintain the balance of benefits to SVP and the other parties.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Power Purchase and Sale Agreement with West Valley-Mission Community College District
2. Power Purchase and Sale Agreement with SunPower Corporation, Systems

**POWER PURCHASE AND SALE AGREEMENT
BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA
AND WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**

This Power Purchase and Sale Agreement (“Agreement”) is by and between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power (hereinafter referred to as “SVP”, “City” or “Buyer”) and West Valley–Mission Community College District (hereinafter referred to as “Mission College” or “Seller) who are referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

WHEREAS:

- A. This Agreement will serve as a Master Service Agreement to enable SVP to purchase Services from Mission College, and to enable Mission College to sell Services to SVP (“Transaction”) in accordance with the following terms and conditions; and
- B. The pricing under this exhibit is established as part of a pilot program under a cooperative research project. Terms and prices may not apply to future customers. This Agreement does not obligate either Party to engage in a Transaction, but it does provide the terms and conditions that shall govern Transactions entered into by the Parties in accordance with this Agreement; and
- C. Mission College is one of the SVP’s retail customers who uses solar as an electrical generating facility on its premises, interconnected and operating in parallel with SVP’s grid, to manage its own electrical requirement; and
- D. Mission College currently has 1.1 MW of solar output generating capacity installed on the Mission College campus and desires to install an additional 2.5 MW of solar projects on the Mission College campus (“Solar Plant”). At various times the total Electrical Output of the Solar Plant is expected to exceed Mission College’s instantaneous electricity usage resulting in a Net Electrical Output; and
- E. Mission College desires to sell the resulting Net Electrical Output to SVP under this Agreement and agrees its retail load will not be qualified to be served under SVP’s Net Energy Metering Schedule in effect as of the date of this Agreement, and its retail load will be on Time of Use rate under its applicable Rate Schedule.

In consideration of the following mutual covenants, agreements, and obligations, the Parties agree as follows:

AGREEMENT PROVISIONS

1.0 Definitions

Definitions of the terms used in this Agreement with initial capitalization are found either in the body of this Agreement, or in Exhibit A.

2.0 Term of Agreement

- 2.1. Term. This Agreement shall become binding upon the Parties on the Effective Date

and shall remain in effect for twenty-five (25) years thereafter.

- 2.2. Default Termination. Notwithstanding the Term of this Agreement set forth above, this Agreement shall be subject to termination for default of a Party pursuant to Paragraph 11.0 of this Agreement.
- 2.3. Net Energy Metering Successor Rate Schedule; Termination by Agreement. If at any time during the Term, SVP adopts a NEM Successor Rate Schedule and Mission College qualifies for service under such Schedule, Mission College may notify SVP in writing of its election to enroll in such Schedule, in which event, this Agreement shall be deemed terminated as of the effective date for Mission College to be served under such Schedule.

3.0 Availability and Sale of Energy Capacity and/or, Transmission Service, or Other Services

- 3.1. Transactions. At any time during the term of this Agreement, the Parties may notify each other that specified amounts of Services are available for purchase, sale or exchange. The general terms and conditions for any Transaction with the other Party shall be in accordance with the terms and conditions of this Agreement. The specific terms and conditions of each Transaction shall be as agreed to by the Parties in advance of the Transaction and are referred to herein as "Economic Terms."
- 3.2. Economic Terms. The Economic Terms of each Transaction shall be agreed upon by the Operating Representatives, shall be reflected in a Transaction Sheet substantially in the form of the Transaction Sheet attached hereto as Exhibit "B." The Transaction Sheet shall include, at a minimum, the following terms and conditions: (1) Description of Product (e.g., financial, physical); (2) Buying Party; (3) Selling Party; (4) Delivery Period/Term; (5) Delivery Rate; (6) Delivery Point; (7) Contract Price (\$ US); (8) Interruption Rights (i.e.; firm, non-firm); and (9) Special Conditions.
- 3.3. Transaction Sheets. A Transaction Sheet shall be completed prior to the commencement of the Transaction. The terms and conditions of a Transaction may supplement, but shall not conflict with, the terms and conditions of this Agreement. Said Transaction Sheet may be sent via facsimile, by United States mail, or by other means, which reduces the Transaction to writing, as agreed upon by the Parties. Each Transaction Sheet shall constitute an integral part of this Agreement and shall be read and construed as one with this Agreement. In the event of any conflict between the language of this Agreement and the Transaction Sheet, the language contained in this Agreement shall control, except with regard to Economic Terms, the Transaction Sheet shall control unless contradicted by the oral recording.
- 3.4. Conditions Precedent. City's obligation to purchase the output from the Facility under this Agreement will commence upon the Delivery Date, provided that Buyer's obligation to purchase The "Delivery Date" is the date identified by Seller in the Delivery Date Notice as the date upon which Seller attests that all of the conditions (a) through (e) below have been completed or otherwise satisfied.
 - (a) All Facility systems necessary for continuous operation and metering are tested and certified, in each case as required by SVP for the purpose of telemetry of real-time data to the City, as required;

- (b) All applicable agreements between Seller and SVP which are required for Seller's performance of this Agreement are signed and delivered, including but not limited to an Interconnection Agreement and any other agreements required by SVP, provided such other agreements do not vary from or modify the terms of this Agreement.
 - (c) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility ("Governmental Approvals") are obtained; and
 - (d) Seller may have obtained the CEC Certification for the Facility for RPS Qualification.
 - (e) Seller may have obtained WREGIS account for the transfer of renewable attributes for the Facility.
- 3.5. Dedication of Output. Throughout the Term of this Agreement, Seller agrees that the Net Electrical Output from the Photovoltaic (PV) Facility shall be sold exclusively to the City, (except for any period in which the Parties' obligations are suspended due to a Force Majeure).
- 3.6. Purchase and Sale of Services. Throughout the Term of this Agreement, Seller shall sell and deliver to City at the Delivery Point, and City shall purchase, receive at the Delivery Point, and pay for, the Services produced by the Facility, as measured by the meter at the Delivery Point.
- (a) Seller shall arrange and be responsible for all costs associated with metering and telemetry.
 - (b) Buyer shall arrange and be responsible for receipt of energy and transmission service of Net Electrical Output at and from the Delivery Point.

4.0 Title and Risk of Loss

As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Services prior to the Delivery Point and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Services at and from the Delivery Point. Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, claims and encumbrances arising prior to the Delivery Point.

- 4.1. Seller and Buyer, respectively, shall be responsible for any costs or charges imposed on or associated with the delivery of the Services, including control area services, inadvertent energy flows, emission allowances and environmental charges, transmission losses and loss charges relating to the transmission of the Services (i) up to the Delivery Point in the case of Seller and (ii) at and from the Delivery Point in the case of Buyer.
- 4.2. Seller shall arrange and be responsible for transmission service to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule or arrange for scheduling services with its transmission providers to receive the Services at the Delivery Point.

5.0 Billing, Netting and Payment

- 5.1. All Transactions initiated under the terms of this Agreement shall be accounted for on the basis of delivered Services. The billing cycle for Transactions under this Agreement shall be one calendar month. The Parties shall maintain records of delivered Services for accounting and billing purposes.
- 5.2. On or before the 10th day of each calendar month (the "Invoice Month"), SVP shall furnish Mission College with an accounting setting out its calculation of the amount owed from SVP to Mission College for the previous Transaction Month. The balance owed by SVP to Mission College shall be paid by SVP to Mission College within fifteen (15) days of such accounting ("Settlement Date"). If the Settlement Date falls on a Saturday, Sunday, or Federal Energy Regulatory Commission ("FERC") holiday or other non-banking day, payment shall be made on the next banking day. Seller will render the statement as supporting documents for invoice to Buyer based on actual quantities of RECs transferred to Buyer in the Buyer's WREGIS account.
- 5.3. The Parties shall make a good faith effort to confer and attempt to promptly resolve any disagreements regarding items contained in any statement or invoice or any claim or dispute arising out of or relating to this Agreement in an amicable, prompt and mutually agreeable manner. Neither Party may refuse to participate in the netting-out process provided for in this Agreement due to a disputed statement or invoice. In the event the Parties disagree about an amount owed, the Parties shall nevertheless agree to the payment of the disputed amount, pending resolution of the dispute, and shall proceed with the netting-out process. After a dispute is settled, any amount which is determined to be payable by either Party shall bear interest at the Interest Rate set forth in Exhibit A. If an overpayment existed, the refund shall bear interest from the date payment was made until the date of refund. If an underpayment existed, the payment shall bear interest from the original due date to the date payment is made. If, following reasonable efforts to amicably resolve the dispute, the Parties cannot reach resolution then the dispute resolution procedures set forth in this Agreement shall be followed.
- 5.4. All invoices to SVP shall be sent to:
- City of Santa Clara
Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Account Clerk
Telephone No.: (408) 261-5292
Facsimile No.: (408) 261-2758
- 5.5. All accounting statements to MISSION COLLEGE shall be sent to:
- MISSION COLLEGE
Address:
Attn:
- 5.6. All payments to MISSION COLLEGE shall be wire transferred to:
- Name of Bank:
ABA Routing No.:

Account Number:

6.0 Metering Requirements

- 6.1. Meters. The transfer of all Net Electrical Output from Seller to Buyer shall be measured by certified revenue quality Meters at the Delivery Point or corrected to the Delivery Point. Such Meters shall be selected, provided, installed, owned, maintained and operated by Seller at Seller's sole cost and expense. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. In addition, Customer-Generator's Facility shall be required to install a separate production meter(s) provided by SVP and paid for by the customer on all customer generation equipment. The meter will have the capability of being read remotely utilizing SVP's remote metering system within one year of installation. If the radio frequency is insufficient, provisions must be made by the customer to pay for and install equipment to boost the signal as required. Metering intervals for calculating Excess Energy Production will be no greater than 15 minutes.
- 6.2. Access by Buyer. Except in the event of emergency circumstances, Buyer's representatives shall have access to the Solar Plant only upon advance written notice to the Mission College Director of Facilities setting forth the date, time, anticipated duration and anticipated activities at least twenty-four (24) hours in advance of the requested access. Mission College and/or the Mission College Director of Facilities may impose reasonable limitations or constraints on any access to Mission College as reasonably determined by Mission College and/or the Mission College Director of Facilities. In the event of emergency access to the Solar Plant by Buyer's representatives, the Mission College Director of Facilities shall be notified of such emergency access within one (1) hour of Buyer's representatives' access to the Solar Plant.

7.0 Confidentiality

- 7.1. Confidential Information. The Contract Price and rate terms of each Transaction shall be treated as Confidential Information by each Party to this Agreement. Except as may be required by applicable law or order of any regulatory agency, court, or commodities exchange, neither Party will, without the express written agreement of the other Party, publish, disclose or otherwise divulge Confidential Information to any third party.
- 7.2. Public Records. Counterparty acknowledges that SVP is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. SVP acknowledges that Counterparty may submit information to SVP that Counterparty considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254). Counterparty acknowledges that SVP may submit to Counterparty information that SVP considers confidential or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection, and/or copying

of information designated as “Confidential Information” by a Party disclosing the Confidential Information (“Disclosing Party”), the Party receiving the Confidential Information (“Receiving Party”) shall, as soon as practical but within three (3) days of receipt of the request, notify the Disclosing Party, in accordance with the notice provisions of this Agreement, that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

- 7.3. Liability. The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pending demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Counterparty and SVP hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

8.0 Notice

All notices given pursuant to this Agreement shall be in writing and delivered by means of the United States Postal Service first-class mail, or private overnight delivery systems addressed as follows:

To City:

City of Santa Clara
Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Risk Manager
Telephone No.: (408) 261-5292
Facsimile No.: (408) 249-0217

To Mission College:

Chancellor
West Valley-Mission Community College District
14000 Fruitvale Avenue
Saratoga, CA 95070

With a copy to:

President, Mission College
3000 Mission College Boulevard
Santa Clara, CA 95054-1897

Notices shall be deemed received, the day following the date on which the Notice was sent via an overnight mail service, and five (5) days from the date postmarked by the United States Postal Service if sent by first-class mail. If Notice is given pursuant to two different methods receipt, shall be deemed to occur on the earlier date.

9.0 Necessary Authorization

Each Party represents that it has the necessary corporate and/or legal authority to enter into this Agreement and any Transaction[s] which it agrees to hereunder, and to perform each and every duty and obligation imposed by this Agreement, and that this Agreement, when executed by each Party, represents a valid, binding, and enforceable legal obligation of each Party. Each individual affixing a signature to this Agreement represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the Party he or she represents, and that by signing the Agreement a valid, binding, and enforceable legal obligation of said Party has been created. The foregoing notwithstanding, this Agreement is binding and enforceable against Seller only if the Seller's Board of Trustees approves this Agreement in an open public meeting of Seller's Board of Trustees. Provided that Buyer has executed this Agreement and the Agreement constitutes a binding agreement enforceable against the Buyer, the Effective Date of this Agreement shall be the date of the Seller's Board of Trustees approval of this Agreement pursuant to the foregoing.

10.0 Liability and Damages

- 10.1. Limitation of Remedies, Liability and Damages. For breach of any provision for which an express remedy or measure of damages is provided in this Agreement, such express remedy or measure of damages shall be the sole and exclusive remedy, and the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct actual damages only, and all other remedies or damages at law or in equity are waived.
- 10.2. Consequential Damages. Unless agreed to in writing with respect to a specific Transaction, neither Party shall be liable to the other for any incidental, consequential, punitive, exemplary, or indirect damages, lost profits, other business interruption damages or other special damages arising out of the performance or nonperformance of any obligation under this Agreement, by statute, in tort or in contract or under any indemnity provision or otherwise.
- 10.3. Damages for Failure to Deliver or Receive. If either Party fails to deliver or receive, as the case may be, the Contract Quantity due under a Transaction (thereby becoming the Defaulting Party), the Non-Defaulting Party shall be entitled to receive from the Defaulting Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces).
 - 10.3.1. Buyer Takes Less Than Contract Quantity. If the amount the Buyer scheduled or received in any hour is less than the hourly Contract Quantity agreed upon in the Transaction, then Buyer shall pay to the Seller an amount calculated as the product of:
 - a. the amount, if any, by which the Contract Price exceeded the price for which Buyer's Contract Quantity, or portion thereof, was

ultimately sold to a third Party, or absent such a resale, the market price for such quantity at the Delivery Point as determined by the Seller in a commercially reasonable manner (the “Re-sale Price”), and

- b. the amount by which the quantity received by the Buyer was less than the Contract Quantity; plus
- c. all other reasonable costs related to the replacement transaction (e.g. fixed charges, transmission losses, transmission service charges, commissions or other selling costs).

10.3.2. Seller Provides Less Than Contract Quantity. If the amount the Seller scheduled or delivered in any hour is less than the hourly Contract Quantity agreed upon, then Seller shall pay to the Buyer an amount calculated as the product of:

- a. the amount, if any, by which the quantity delivered was less than the Contract Quantity, and
- b. the amount, if any, by which the Contract Price is exceeded by the price at which Buyer purchases Services to replace the Services not delivered by Seller, or absent such a purchase, the market price for such quantity at the Delivery Point, as determined by Buyer in a commercially reasonable manner (the “Replacement Price”); plus,
- c. all other reasonable costs related to the replacement transaction (e.g. fixed charges, losses incurred, transmission source charges, commissions or other purchasing costs).

11.0 Default and Remedies for Default

11.1. Immediate Default. This Agreement may be terminated immediately, without prior notice, by the Non-Defaulting Party upon the occurrence of any of the following:

- 11.1.1. The failure of Defaulting Party to pay any fee or charge when due, or if payment is not received in by 12 o’clock noon, Pacific Prevailing Time, on the last business day of the Invoice Month, the Non-Defaulting Party may elect to be relieved of all obligations under this Agreement, including but not limited to the obligation to schedule or deliver future electric power and shall be entitled to collect any and all damages resulting therefrom, unless there is a good faith dispute of all or any amount of such fee or charge, in which case only the undisputed portion shall be paid, until such dispute is resolved;
- 11.1.2. Assignment or transfer of Defaulting Party’s interest in this contract, whether voluntarily or by operation of Law, in violation of the provisions of this Agreement;
- 11.1.3. General assignment of assets for the benefit of Defaulting Party’s creditors;
- 11.1.4. Approval of an order or decree concerning a petition for bankruptcy protection

or reorganization or other arrangement under any law relating to the bankruptcy or insolvency of Defaulting Party;

11.1.5. In the event the Party owing damages for failure to deliver or receive fails to pay when due, the other Party shall have the right to (i) suspend performance under the Transaction for which the amounts are due until such amounts plus interest at the legal rate of interest have been paid, (ii) suspend performance under this Agreement, and/or (iii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest; and

11.1.6. Failure to provide Assurances when demanded.

11.2. Default. This Agreement may be terminated by the Non-Defaulting Party upon the occurrence of a default by the Defaulting Party under this Agreement, and the Defaulting Party fails to cure the same within thirty (30) days or such longer period of time or times as are provided below, after its receipt of notice thereof from the Non-Defaulting Party, or, when the cure reasonably requires more than thirty (30) days, the failure of the Defaulting Party to commence curing the default within such thirty-day period and thereafter diligently and continuously prosecute such cure to completion, including, but not limited to, any of the following:

11.2.1. Failure to pay any tax when due;

11.2.2. Failure to observe, perform or comply with any material covenant, term, condition, or provision of this Agreement required to be observed, performed or complied with by the Defaulting Party; or

11.2.3. Any representation, warranty, or statement made in this contract that shall prove to have been incorrect in any material respect when made.

11.3. Remedies for Default. In addition to all other rights and remedies provided by law or otherwise provided in this contract, to which the Non-Defaulting Party may resort cumulatively, or in the alternative, the Non-Defaulting Party is entitled to any of the following:

11.3.1. Except as otherwise provided herein, keep this contract in effect and enforce all of its rights and remedies hereunder, including the right to collect fees and charges as they become due, by appropriate legal action. Buyer acknowledges and agrees Seller will have no obligation to mitigate or to find an alternative buyer for the Net Electrical Output in the event of Buyer default;

11.3.2. Seek the specific performance of the Defaulting Party or other rights or remedies at law or in equity; or

11.3.3. Elect to mutually terminate the Agreement in favor of allowing the Non-Defaulting Party to instead net the value of Excess Energy Production, calculated in the same manner as specified in this agreement, against any charges on the customer monthly retail bill.

12.0 Uncontrollable Force

12.1. Neither Party shall be in default in the performance of any obligation under this Agreement when a failure to perform its obligations under this Agreement shall be due

to an Uncontrollable Force (as defined in Exhibit A). For the duration of the Uncontrollable Force, but for no longer period, the obligations of the Party claiming the event (other than the obligations to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent required.

- 12.2. Either Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt written notice and full details of the event to be confirmed in writing to the other Party, as soon as possible, but in no event later than five (5) days after the occurrence. The Party claiming Uncontrollable Force shall exercise due diligence to remove such inability within a reasonable time period.
- 12.3. In the event a Party becomes aware of an Uncontrollable Force that will affect or may affect its ability to perform under this Agreement, it shall provide notice to the other Party as soon as possible after that Party becomes aware of the anticipated Uncontrollable Force, and in accordance with the notice procedures set forth in this Agreement.

13.0 Assignment

Neither Party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Upon any assignment made in compliance with this paragraph, this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the assigning Party. Notwithstanding the foregoing, either Party may, following written notice to the other Party, but without the need for consent from the other Party (and without relieving itself from liability hereunder), (a) transfer, pledge, or assign this Agreement as security for any financing; (b) transfer or assign this Agreement to a legally related business entity of such Party, or (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, City may consider, without limitation, the following matters: the net worth of the proposed assignee, its intended or proposed use of the Premises of the Facility, and such assignee's reputation and experience in the energy industry, and any such assignee shall agree to be bound by the terms and conditions of this Agreement.

14.0 Taxes

Seller will be responsible for payment of all Taxes due on the generation or transmission of the power prior to its delivery at the Delivery Point(s). Buyer will be responsible for payment of all Taxes applicable to the Transaction at or after the Delivery Point(s). Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax. Either Party with knowledge of a tax on the purchase or sale of power that may be applicable to a Transaction under this Agreement shall notify the other Party in advance of entering into a Transaction under this Agreement of the applicability of such tax, and shall also notify the other Party of any proposal to implement a new tax or apply an existing tax to the purchase, sale, delivery, or receipt of power hereunder. If either Party is required by a taxing authority to remit Taxes for which the other Party is responsible hereunder, such responsible Party will reimburse the remitting Party for such Taxes paid by the non-responsible Party hereunder.

15.0 Alternative Dispute Resolution

- 15.1. Any controversies between the Parties regarding the construction or application of this Agreement, and claims arising out of this Agreement or any Transaction subject to this Agreement, or breach thereof, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- 15.2. The Parties may agree on one (1) mediator. If they cannot agree on one (1) mediator, the Party demanding the mediation shall request that the Superior Court of the county in which the party is situated appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- 15.3. Each Party shall bear their own attorney's fees.
- 15.4. The costs of mediation shall be borne by the Parties equally.
- 15.5. Mediation under this paragraph is a condition precedent to filing an action in any court.

16.0 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law rule. State and federal courts situated in the state of California shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement.

17.0 Entire Agreement

This Agreement, the Exhibits hereto, and the Transaction Sheet for each Transaction constitute the entire agreement between the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral, between the Parties concerning such subject matter.

18.0 Binding Effect

The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, its successors and assigns.

19.0 Non-Waiver of Defaults

No waiver by either Party of any default of the other Party under this Agreement shall operate as a waiver of a future default, whether of a like or different character.

20.0 Required Licenses

Each Party guarantees that it has obtained, and will continue to maintain throughout the term of this Agreement, all licenses required by the State of California, Federal, or local governments, and all applicable regulatory agencies for the work to be performed by each Party under the Agreement.

21.0 Credit Reports

If required, each Party agrees to supply the other Party with information regarding its creditworthiness, including but not limited to, agreeing to promptly fill out and return any credit information forms.

22.0 Independent Contractor

The Parties acknowledge that no agency, joint, or other fiduciary relationship shall be deemed to exist or arise with respect to the matters addressed in this Agreement.

23.0 Headings

The headings of the various sections, paragraphs, and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

24.0 Written Amendments

No amendment, modification or change of the terms and provisions of this Agreement shall become effective unless by written amendment executed by the Parties.

25.0 Severability and Renegotiation

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions of the Agreement, and the remaining portions shall remain in force and effect as if this Agreement had been executed without the invalid portion. In the event any provision of this Agreement is declared invalid, the Parties shall promptly renegotiate such provision(s) to restore this Agreement as near as possible to its original intent and effect.

26.0 Affordable Care Act Obligations

To the extent Counterparty 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, Counterparty 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.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

27.0 Audit

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Energy delivered at the Delivery Point. If any such examination reveals inaccuracies in any invoice, a new invoice shall be prepared reflecting corrected amounts owed. Such amounts shall be due within ten (10) days of receipt, after which time interest shall accrue at the Interest Rate. No adjustment for any statement or payment will be made unless objection to the accuracy was made prior to the lapse of twelve (12) months from the Settlement Date.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation
doing business as Silicon Valley Power

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

“SVP”

***COUNTERPARTY**

***CHOOSE ONE: ENTER STATE NAME CORPORATION/PARTNERSHIP/INDIVIDUAL**

Dated: _____

By: _____

(Signature of Person executing the Agreement on behalf of Counterparty)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

Fax: _____

“Counterparty”

S:\Attorney\AGREEMENTS\Electric\Power Purchase (Form).doc

EXHIBIT “A” DEFINITIONS

BESS: means an Electrical Battery Energy Storage System.

Business Day: Any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: The Party to a Transaction which is obligated to purchase and receive, or cause to be received, energy during a Delivery Period.

CEC: means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission.

CEC Certification: means that the California Energy Commission (or its successor agency) has certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR for purposes of the Facility.

Claiming Party: has the meaning set forth in Exhibit A.

Conditions Precedent: has the meaning set forth in Section 3.9.

Contract Price: The agreed price in US dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Energy and any other required charges, as specified in a Transaction.

Contract Quantity: The Excess Energy Production that Seller agrees to deliver, or cause to be delivered to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, Expressed in hourly, daily, or monthly amounts and quantities for the life of the Transaction.

Contract Year: means a twelve (12) month period beginning on the Delivery Date and each successive twelve (12) month period thereafter during the Term.

Customer-Generator: means a residential or commercial Customer who uses an electrical generating or electric storage facility, or a hybrid system of both, on its premises, interconnected and operating in parallel with SVP’s grid, to manage that Customer-Generator’s own electrical requirements.

Delivery Period: The period of time from the date physical delivery of Energy is to commence to the date physical delivery is to terminate under a Transaction.

Delivery Point: The agreed point (or points) of delivery and receipt of Energy, on an electric system, as specified in a Transaction.

Energy: means three-phase, 60-cycle alternating current electric energy generated by the Generating Facility pursuant to this Agreement, as expressed in units of kWh or MWh as measured at the Meter(s) at the Delivery Point.

Excess Energy Production: energy production produced by Seller’s solar facility in excess of the Seller’s actual onsite electrical usage that flows into SVP’s distribution system measured by the

SVP meter. BESS output or consumption is not included.

Facility: means an electric generating facility that is located on Customer-Generator's premises, is interconnected and operates in parallel with SVP's electric grid, and is intended to manage Customer-Generator's own electrical requirements.

ERR: means Eligible Renewable Resource as defined in the Renewables Portfolio Standard (RPS) Eligibility Guidebook (Ninth Edition, Revised), publication # CEC-300-2016-006-ED9-CMF-REV, adopted April 27, 2017.

Firm Power: With respect to a Transaction, the only excuse of nonperformance or non-receipt of the Contract Power subject to the Transaction shall be the existence of Uncontrollable Force.

Interest Rate: For any day, the Prime Rate of interest established by the Bank of America, or its successor, at the close of business on such day or if not a Business Day, the proceeding Business Day, plus a differential of two percent (2%), but in no event greater than the maximum interest rate permitted by law.

Interconnection Agreement: An agreement between a customer and SVP that defines how a customer generation system can connect to SVP's electric grid.

Invoice Month: The month in which invoices are sent out for the prior Transaction Month.

Net Electrical Output: The amount of electricity, measured in kWh or MWh, and which is a positive quantity, that reaches the Delivery Point from the Seller's side of the Delivery Point.

Net Energy Metering Schedule: Rate Schedule NM posted on SVP website and is applicable to all qualified customers served by SVP, who own and operate a solar or a wind turbine electrical generating facility, or a hybrid system of both.

Net Remittance Amount: After netting the total amount each Party owes to the other Party under the Transactions, any resulting difference in the balance owed between the Parties shall be paid by the Party owing the greater amount to the Party owing the lesser amount.

Non-Firm Power: With respect to a Transaction, delivery or receipt of Energy may be interrupted for any reason at any time, without liability by either Party, subject to notice and any other agreed limitations contained in the terms of the Transaction.

Schedule or Scheduling: The acts of Seller, Buyer, and/or their designated representatives, including each Party's transmission providers, if applicable, of notifying, requesting, and confirming to each other the quantity and type of Energy to be delivered hourly on any given day or days during the Period of Delivery at a specified Delivery Point.

Rate Schedule: is the set of rates for electric service adopted by the City Council of the City of Santa Clara from time to time.

RECs or Renewable Energy Credits: are tradable, non-tangible energy commodities in the United States that represent proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource

RPS or Renewable Portfolio Standard Program: A regulation that places an obligation on electricity supply companies to produce a specified fraction of their electricity from renewable energy sources such as hydro, wind, solar, biomass, and geothermal.

Seller: The Party to a Transaction which is obligated to sell and deliver or cause to be delivered

the Services covered by the Transaction during a Delivery Period.

Services: Provision of capacity, energy, or transmission.

Taxes: Shall include, but not be limited to: all ad valorem, occupation, utility, gross receipts, sales, use, excise or other income or net worth. Excluded from the forgoing definition of Taxes are any charges associated with restructuring of the electric utility industry, including but not limited to: public benefits charges, grid management charges, or any other governmentally mandated charges imposed or collected as a result of deregulation of the electric industry.

Transaction: Each sale, purchase, or transfer entered into under this Agreement.

Transaction Month: Each calendar month in which wholesale transaction(s) occur. For energy product, the Transaction Month is when energy is physically delivered and for RECs, the Transaction Month is when RECS are transferred to Buyer's WREGIS account.

Transaction Sheet: Written confirmation of the oral agreement between the Parties regarding the sale and purchase of electric energy and/or transmission capacity under the Agreement containing the following terms and conditions: (1) Description of Product (i.e.; Physical, Financial); (2) Buying Party; (3) Selling Party; (4) Delivery Period/Term; (5) Delivery Rate; (6) Point of Delivery; (7) Contract Price (\$ US); (8) Interruption Rights (i.e.; Firm, Non-firm); and (9) Special Conditions.

Uncontrollable Force: Any cause that renders a Party ("Claiming Party") unable to meet its obligations to the other Party, in the exercise of due diligence, to avoid, overcome, or obtain a commercially reasonable substitute therefore, and is beyond the reasonable control of the Claiming Party, including, without limitation: acts of God, such as floods, earthquakes, landslides, tornadoes, hurricanes, blizzards, or unusually severe storms; fires; explosions; civil or public disturbances, strikes, lockouts, or labor disputes; acts of the public enemy; invasions; wars; insurrections or riots; sabotage; action or restraint of any government or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); labor or material shortage; force majeure under any supply contract affecting a transmission provider or supplier of electric services; fuel or supply curtailments; and threatened or actual system emergencies. The settlement of strikes, walkouts, lockouts, and other labor disputes shall be entirely within the discretion of a Party.

- a. Neither (i) the loss of Buyer's market nor Buyer's inability economically to use or resell Energy purchased hereunder, nor (ii) Seller's ability to sell Energy at a more advantageous price, shall constitute an event of Uncontrollable Force.
- b. In a firm Transaction, interruption by a transmission provider shall not be deemed to be an event of Uncontrollable Force unless (i) the Party contracting with the transmission provider shall have made arrangement with such transmission provider for the firm transmission of energy to be delivered hereunder, as defined in the transmission provider's tariff, and (ii) such interruption is due to Uncontrollable Force as defined under the transmission provider's tariff.
- c. The term "Uncontrollable Force" shall also specifically include unscheduled power flows which reduce transmission capacity used for the Transaction and are not anticipated, unanticipated deratings of transmission lines used for the Transaction, and forced outages of transmission facilities used for the Transaction.

- d. If a Party specifies the transmission path for the transaction, then neither Party shall be required to use due diligence to find alternate transmission paths in the event of an interruption. If a Party specifies a Delivery Point, then the Seller must use due diligence to deliver to the Delivery Point and the Buyer must take the energy delivered to the Delivery Point unless the Seller cannot deliver to the Delivery Point after exercising due diligence.
- e. In Transaction for financial derivatives, Uncontrollable Force will not stand as an excuse for nonperformance.

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking system for implementing California's Renewables Portfolio Standard.

**EXHIBIT “B”
TRANSACTION SHEET**

This Transaction Letter confirms the agreement between City of Santa Clara, California, a chartered California municipal corporation dba Silicon Valley Power (“SVP”) and West Valley-Mission Community College District (“Mission College”) regarding the sale and purchase of electric energy and/or transmission capacity under the following terms and conditions:

- 1) **Description of Product:** Excess Energy Production, and RECs that are eligible to be classified as Portfolio Contract Category 1 (PCC1) under California’s Renewable Portfolio Standard (RPS) from the same Mission College Photovoltaic (PV) facility for which energy is delivered to SVP as measured by the meter and RECs are transferred to SVP’s WREGIS account.
- 2) **Buying Party:** City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power
- 3) **Selling Party:** West Valley-Mission Community College District
- 4) **Term/Delivery Period:**
 - a. Photovoltaic (PV) Capacity: Twenty-five (25) years
 - b. Battery Energy Storage System Energy and Capacity: Fifteen (15) years
- 5) **Delivery Rate and Delivery Hours:**
 - a. Photovoltaic (PV) Facility: Variable throughout the term of the agreement depending on Mission College’s actual onsite electrical usage and output of the solar facility.
 - b. Battery Energy Storage System:
 - i. The terms and conditions of the Battery Energy Storage System Agreement are subject to the agreement provisions set forth in the Power Purchase and Sale Agreement between SVP and Mission College’s mutually approved third party.
 - ii. Seller shall operate, maintain, and schedule the BESS, or shall designate a mutually agreed upon qualified third party to fulfill such role for the Project in order to deliver BESS energy and capacity to Buyer during the Delivery Term in accordance with the terms between SVP and Mission College’s mutually approved third party. Seller shall be solely responsible for all costs associated to schedule and deliver BESS energy and capacity to Buyer.
- 6) **Facility Capacity:**
 - a) **Photovoltaic Capacity**

Current Photo Voltaic Power Capacity (kW)	1.135 MW
Phase I Photo Voltaic Power Capacity (MW)	1.8 MW
Phase II Photo Voltaic Power Capacity (MW)	0.7MW

b) Battery Energy Storage System Capacity:

BESS Power Capacity (MW)	2 MW
BESS Energy Capacity at Commercial Operation Date (COD) (MWh)	4 MWh
Equipment	[[[energy storage system comprised of [[[battery cells and [[[inverter

- 7) **Price (\$ US):** The contract price for Energy under this Agreement will be calculated using the CAISO day ahead market Hourly Default Load Aggregation Point (DLAP) Locational Marginal Price (LMP) (DLAP_PGAE-APND) + 2% transmission loss credit + Transmission Access Charge Credit + Grid Management Charge Credit + Ancillary Service + Renewable Energy Credits (only if Facility is registered with WREGIS and RECs are transferred to SVP and qualify as PCC1 RPS eligible RECs).
- a. PG&E Day Ahead Hourly DLAP Price which is the CAISO DLAP_PGAE - APND for the Day Ahead Market (DAM).
 - b. Transmission loss credit which is calculated as 2% of the PG&E Day Ahead Hourly DLAP price.
 - c. Transmission Access Charge Credit is the sum of the high voltage (HV) and low voltage (LV) Transmission Access Charges as follows:
 - i. The volumetric component of the CAISO High Voltage Transmission Access Charge ("HV TAC") in (\$/MWh). The CAISO HV TAC price is the daily average CAISO effective HV TAC rate for Santa Clara during the applicable billing month at the time the invoice is determined, and is obtained using the following site(s) information:
<http://www.caiso.com/market/Pages/Settlements/Default.aspx>
 - ii. The volumetric component of the CAISO Low Voltage Transmission Access Charge ("LV TAC") price is the daily average PG&E effective LV TAC rate for Santa Clara for the applicable month, expressed in \$/MWh, and multiplied by 0.5. The CAISO LV TAC monthly price is the PG&E listed price for Santa Clara, and is obtained using the following site(s) information:
<http://www.caiso.com/market/Pages/Settlements/Default.aspx>
 - d. CAISO Grid Management Charge ("GMC") (\$/MWh) = Charge Code 4560 (Market Services Charge) + Charge Code 4561 (System Operations Charge)
The CAISO GMC is obtained using the following site(s) information (and will be updated as it is published by the CAISO:
<http://www.caiso.com/Documents/GMCRatesfor2004-2019EffectiveJuly12019.pdf>
 - e. Ancillary Service ("AS") is the average ancillary service clearing prices from the

Day Ahead Market for Non-Spin, Spin, Regulation Up, and Regulation Down and is calculated as follows:

- i. Non-Spin multiplied by 0.3 + Spin multiplied by 0.3 + Regulation Up multiplied by 0.2 + Regulation Down multiplied by 0.2. The prices that are applicable to the billing month at the time the invoice is determined, and is obtained using the AS Clearing Prices published by the CAISO:
<http://oasis.caiso.com/mrioasis/logon.do>
- f. RECs price = \$19/MWh if Facility is registered with WREGIS and RECs are transferred to SVP as PCC1 product.
- g. Adjusted Excess Energy Production: The BESS is owned by Mission College and operated by a mutually approved third party under SVP's instruction, and compensated through a separate contract by SVP, Mission College's invoice in accordance with this PPA will correct the monthly retail bill of Mission College such that the impact the BESS has on both monthly energy consumption and demand are calculated as if the BESS was in front of the customer retail meter. SVP meters will be required for both PV and BESS facilities. SVP meters will be required for both PV and BESS facilities. Meter specifications will be outlined in the interconnection agreement.

If any of the sources for the above described rate components are no longer available, SVP will diligently seek an alternative but equivalent source for that rate component. The net electrical output to SVP distribution is not to exceed the specifications of the Photovoltaic Capacity listed above.

- 8) **Special Conditions:** This unit is a Photovoltaic facility and the output is limited based on the solar conditions.
- 9) **Non-Applicable Agreement Sections to Exhibit:** For the services in this transaction sheet, section 3.3 (Schedule Imbalances), section 4.2 (Transmission Service to Delivery Point under Title and Risk Loss), and section 10.3.2 (Seller Provides Less Than Contract Quantity) do not apply to Exhibit B.

This Transaction Letter is being provided pursuant to and in accordance with the Transaction Enabling Agreement dated the ____ day of ____, 2019_ between the parties and constitutes part of and is subject to all the terms and conditions of such Agreement.

ACKNOWLEDGED AND AGREED TO:

City of Santa Clara, a chartered
California municipal corporation,
dba Silicon Valley Power

West Valley-Mission Community College District

Per:_____

Per:_____

Title:_____

Title:_____

Date:_____

Date:_____

For any single Transaction whose Delivery Term exceeds three hundred and sixty five (365) days, the undersigned acknowledges that he/she has the necessary authorization to enter into such a Transaction.

**POWER PURCHASE AND SALE AGREEMENT
BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA
AND SUNPOWER CORPORATION, SYSTEMS, CALIFORNIA**

This Power Purchase and Sale Agreement (“Agreement”) is by and between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power (“SVP”) and SunPower Corporation, Systems (“SunPower” or “Counterparty”). SVP and SunPower may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

WHEREAS:

- A. This Agreement will serve as a Master Service Agreement to enable either Party to purchase, sell or exchange Services from, to, or with the other Party (“Transaction”) in accordance with the following terms and conditions; and
- B. This Agreement does not obligate either Party to engage in a Transaction, but it does provide the terms and conditions that shall govern Transactions entered into by the Parties in accordance with this Agreement; and
- C. SunPower will install on the premises of an SVP customer (the “Host Customer”) solar photovoltaic generating systems and/or energy storage systems that SunPower will operate the BESS in accordance with instructions provided by SVP in order to provide Services to SVP; and
- D. SVP wishes to purchase such Services from SunPower.

In consideration of the following mutual covenants, agreements, and obligations, the Parties agree as follows:

AGREEMENT PROVISIONS

1.0 Definitions

Definitions of the terms used in this Agreement with initial capitalization are found either in the body of this Agreement, or in Exhibit A.

2.0 Term of Agreement

This Agreement shall become binding upon the Parties on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days advance written notice to the other Party. However, no termination (except for default) shall be effective until the completion of any ongoing Transaction agreed to by the Parties.

3.0 Availability and Sale of Energy Capacity and/or, Transmission Service, or Other Services

- 3.1 Transactions. At any time during the term of this Agreement, the Parties may notify each other that specified amounts of Services are available for purchase, sale or exchange. The general terms and conditions for any Transaction with the other Party shall be in accordance with the terms and conditions of this Agreement. The specific terms and conditions of each Transaction shall be as agreed to by the Parties in advance of the Transaction and are referred to herein as "Economic Terms."
- 3.2 Economic Terms. The Economic Terms of each Transaction shall be agreed upon by the Operating Representatives, shall be reflected in a Transaction Sheet substantially in the form of the Transaction Sheet attached hereto as Exhibit "B." The Transaction Sheet shall include, at a minimum, the following terms and conditions: (1) Description of Product (e.g., financial, physical); (2) Buying Party; (3) Selling Party; (4) Delivery Period/Term; (5) Delivery Rate; (6) Delivery Point; (7) Contract Price (\$ US); (8) Interruption Rights (i.e.; firm, non-firm); and (9) Special Conditions.
- 3.3 Schedule Imbalances. Any discrepancy between (i) the amount scheduled by a Party with the other Party and (ii) the amount scheduled with an interconnecting utility shall be corrected by the Party responsible for the discrepancy in scheduled quantities without affecting the other Party. Any discrepancy between scheduled deliveries and actual receipts as recorded by Seller and as recorded by an interconnecting utility, shall be resolved by Seller and such interconnecting utility without affecting Buyer.
- 3.4 Transaction Sheets. A Transaction Sheet shall be completed prior to the commencement of the Transaction. The terms and conditions of a Transaction may supplement, but shall not conflict with, the terms and conditions of this Agreement. Said Transaction Sheet may be sent via facsimile, by United States mail, or by other means, which reduces the Transaction to writing, as agreed upon by the Parties. Each Transaction Sheet shall constitute an integral part of this Agreement and shall be read and construed as one with this Agreement. In the event of any conflict between the language of this Agreement and the Transaction Sheet, the language contained in this Agreement shall control, except with regard to Economic Terms, the Transaction Sheet shall control unless contradicted by the oral recording.
- 3.5 Recording of Transactions. Each Party consents to the recording of its Operating Representatives' telephone conversations and such recordings may be introduced into evidence to prove the existence and terms of any oral Transaction. To the extent terms in the Transaction Sheet contradict the oral recording, the oral recording shall govern. Unless such Transaction Sheet is signed by both Parties, only the additional Economic Terms that are in the tape recording of the oral agreement shall be deemed included in the Economic Terms for the Transaction.

- 3.6 Operating Representatives. Within thirty (30) calendar days after execution of this Agreement, each Party shall designate in writing one or more persons with authority to act on its behalf with respect to matters contained herein (“Operating Representatives”). Operating Representatives shall have the authority to negotiate the Economic Terms of a Transaction provided, however, such Operating Representatives shall have no authority to modify any provision of this Agreement in any manner. Each Party shall give written notice to the other Party of the identity of its designated Operating Representatives and shall promptly notify the other Party of any subsequent changes in such designation.
- 3.7 Term of Transactions. For any single Transaction whose Delivery Term exceeds three hundred and sixty five (365) days, each Party shall provide the other Party with proof of authority to enter into such a Transaction.
- 3.8 Curtailment. In the event of sudden or emergency curtailment or interruption of energy deliveries or Services hereunder, whichever Party first receives notice of the interruption or curtailment (whether by experiencing such curtailment or otherwise) shall contact the other Party’s Operating Representatives as soon as possible after that Party becomes aware of the necessity for such curtailment or interruption. Such notification shall include the cause of the curtailment or interruption, the expected duration of the curtailment or interruption, and such other information as appropriate.
- 3.9 Conditions Precedent. City’s obligation to purchase Services or output from a Facility under this Agreement will commence upon the Delivery Date. The “Delivery Date” is the date identified by Seller in a written notice to Buyer as the date upon which Seller attests that all of the conditions (a) through (e) below have been completed or otherwise satisfied.
- (a) All Facility systems necessary for continuous operation and metering are tested and certified, in each case as required by SVP for the purpose of telemetry of real-time data to the City, as required;
 - (b) All applicable agreements between Seller and SVP which are required for Seller’s performance of this Agreement are signed and delivered, including but not limited to a Interconnection Agreement and any other agreements required by SVP.
 - (c) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility (“Governmental Approvals”) are obtained; and
 - (d) Seller may have obtained the CEC Certification for the Facility for RPS Qualification.
 - (e) Seller may have obtained WREGIS account for the transfer of renewable attributes for the Facility.
- 3.10 Dedication of Output or Services. Throughout the Term of and Transaction under this Agreement, Seller agrees that the net Product from a Facility or Services shall

be sold exclusively to the City, (except for any period in which the Parties' obligations are suspended due to a Uncontrollable Force).

3.11 **Purchase and Sale of Product or Services.** Throughout the Term of this Agreement, Seller shall sell and deliver to City at the Delivery Point, and City shall purchase, receive at the Delivery Point, and pay for, the Product produced by the Facility or Services, as measured by the meter at the Delivery Point.

- (a) Seller shall arrange and be responsible for all costs associated with metering and telemetry.
- (b) Buyer shall arrange and be responsible for receipt of energy and transmission service associated with the Net Electrical Output at and from, or associated with Seller's provision of Services at or from the Delivery Point.

4.0 Title and Risk of Loss

As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Services prior to the Delivery Point and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Services at and from the Delivery Point. Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, claims and encumbrances arising prior to the Delivery Point.

- 4.1 Seller and Buyer, respectively, shall be responsible for any costs or charges imposed on or associated with the delivery of the Contract Quantity, including control area services, inadvertent energy flows, emission allowances and environmental charges, transmission losses and loss charges relating to the transmission of the Contract Quantity (i) up to the Delivery Point in the case of Seller and (ii) at and from the Delivery Point in the case of Buyer.
- 4.2 Seller shall arrange and be responsible for transmission service to the Delivery Point and shall schedule or arrange for scheduling services with its transmission providers to deliver the Services to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule or arrange for scheduling services with its transmission providers to receive the Services at the Delivery Point.

5.0 Ancillary Services

For purposes of this section, Ancillary Services are defined as scheduling services and other services required to maintain voltage and supply reactive power requirements in accordance with standard practices within the electric utility industry. The Seller shall provide such Ancillary Services as are necessary or appropriate to effect the Transactions agreed to hereunder up to the Delivery Point and the Buyer shall provide such Ancillary Services as are necessary or appropriate to effect the Transactions agreed hereunder at and after the Delivery Point.

6.0 Billing, Netting and Payment

- 6.1 All Transactions initiated under the terms of this Agreement shall be accounted for on the basis of scheduled hourly quantities or Services rendered. The billing cycle for Transactions under this Agreement shall be one calendar month. The Parties shall maintain records of hourly schedules for accounting and billing purposes.
- 6.2 Beginning on the Effective Date of this Agreement, and for each calendar month hereafter in which Transactions occur (the "Transaction Month" in which Product or Services are delivered and for RECs, Transaction Month is when RECs are transferred to Buyer's WREGIS account), each Party shall determine the price(s) for the Services sold to the other Party and agreed to by the Parties in advance of the Transactions plus any interest and damages, to determine the total amount owed by each Party during such Transaction Month. During each Transaction Month, the Parties shall confer by telephone, or by other mutually agreeable means of communication, regarding the total amounts owed by and /or to each other. The payment under this Agreement is not netted against retail sales made to Host Customer.
- 6.3 On or before the 10th day of each calendar month (the "Invoice Month"), each Party shall furnish the other Party with an accounting setting out its calculation of the amount owed by the other Party for the previous Transaction Month. After netting the total amount each Party owes to the other Party under the Transactions, any resulting difference in the balance owed between the Parties shall be paid by the Party owing the greater amount to the Party owing the lesser amount (the "Net Remittance Amount"). On or before the 15th day of the Invoice Month, the Party owed the Net Remittance Amount shall furnish the other Party with an invoice. Payment of the Net Remittance Amount shall be made by wire transfer in immediately available funds on or before the 20th day of the Invoice Month ("Settlement Date"). If the Settlement Date falls on a Saturday, Sunday, or Federal Energy Regulatory Commission ("FERC") holiday or other non-banking day, payment shall be made on the next banking day. Seller will render the statement as supporting documents for invoice to Buyer based on actual quantities of RECs transferred to Buyer in the Buyer's WREGIS account.
- 6.4 The Parties shall make a good faith effort to confer and attempt to promptly resolve any disagreements regarding items contained in any statement or invoice or any

claim or dispute arising out of or relating to this Agreement in an amicable, prompt and mutually agreeable manner. Neither Party may refuse to participate in the netting-out process provided for in this Agreement due to a disputed statement or invoice. In the event the Parties disagree about an amount owed, the Parties shall nevertheless agree to the payment of the disputed amount, pending resolution of the dispute, and shall proceed with the netting-out process. After a dispute is settled, any amount which is determined to be payable by either Party shall bear interest at the Interest Rate set forth in Exhibit A. If an overpayment existed, the refund shall bear interest from the date payment was made until the date of refund. If an underpayment existed, the payment shall bear interest from the original due date to the date payment is made. If, following reasonable efforts to amicably resolve the dispute, the Parties cannot reach resolution then the dispute resolution procedures set forth in this Agreement shall be followed.

- 6.5 All invoices to SVP shall be sent to:
City of Santa Clara
Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Account Clerk
Telephone No.: (408) 261-5292
Facsimile No.: (408) 261-2758
- 6.6 All billings to SUNPOWER shall be sent to:
SunPower
Address:
Attn:
- 6.7 All payments to SVP shall be wire transferred to:
Name of Bank: Bank of America
ABA: 121-000-358
Credit: City of Santa Clara - Silicon Valley Power
Account no.: 14363-80211
- 6.8 All payments to SunPower shall be wire transferred to:
Name of Bank:
ABA Routing No.:
Account Number:
- 6.9 The terms and conditions of this Billing, Netting and Payment section apply to the physicals purchased and sold pursuant to an exchange of futures for physicals, and to any financial derivative transactions between the Parties, such as, but not limited to, swaps and options.

7.0 Metering Requirements

- 7.1 Meters. The transfer of all Net Electrical Output or provision of Services from Seller to Buyer shall be measured by certified revenue quality Meters at the Delivery Point or corrected to the Delivery Point. Such Meters shall be selected, provided, installed, owned, maintained and operated by Seller at Seller's sole cost and expense. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. In addition, Customer-Generator's Facility shall be required to install a separate production meter(s) provided by SVP and paid for by the customer or Seller on all customer generation equipment. The meter will have the capability of being read remotely utilizing SVP's remote metering system within one year of installation. If the radio frequency is insufficient, provisions must be made by the customer or Seller to pay for and install equipment to boost the signal as required.
- 7.2 Access by Buyer. Buyer, at its discretion, shall be provided access to all monitored SCADA points to be used for real time monitoring. Seller shall permit Buyer or Buyer's representative access to its Generating Facility for the purpose of installing and maintaining such check meters.

8.0 Confidentiality

- 8.1 Confidential Information. The Contract Price and rate terms of each Transaction shall be treated as Confidential Information by each Party to this Agreement. Except as may be required by applicable law or order of any regulatory agency, court, or commodities exchange, neither Party will, without the express written agreement of the other Party, publish, disclose or otherwise divulge Confidential Information to any third party.
- 8.2 Public Records. Counterparty acknowledges that SVP is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. SVP acknowledges that Counterparty may submit information to SVP that Counterparty considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254). Counterparty acknowledges that SVP may submit to Counterparty information that SVP considers confidential or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection, and/or copying of information designated as "Confidential Information" by a Party disclosing the Confidential Information ("Disclosing Party"), the Party receiving the Confidential Information ("Receiving Party") shall, as soon as practical but within three (3) days of receipt of the request, notify the Disclosing Party, in accordance with the notice provisions of this Agreement, that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are

necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

- 8.3 **Liability.** The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pending demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Counterparty and SVP hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

9.0 Creditworthiness

- 9.1 As a condition to entering into this Power Purchase Agreement, either Party may demand a letter of credit, guarantee, or other satisfactory security ("Assurance") if the other Party's creditworthiness does not meet the required standards formally adopted and non-discriminately imposed by the Party requiring the Assurance.
- 9.2 If at any time one Party gives the other Party reasonable grounds to believe that it will commit a breach by non-performance of the terms or conditions of this Agreement, then the other Party may demand Assurance (regardless of whether or not Assurance was required as of the Effective Date of this Agreement) to the extent necessary to fully protect the demanding Party. Such Assurance shall be in a form satisfactory to the demanding Party and shall be delivered to the Party making the demand with forty eight (48) hours of receipt of the demand.

10.0 Notice

All notices given pursuant to this Agreement shall be in writing and delivered by means of the United States Postal Service first-class mail, or private overnight delivery systems, or by facsimile transmission, provided that a copy of the facsimile is also sent on that same date by United States mail or by private express delivery systems, addressed as follows:

To City:
City of Santa Clara
Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Risk Manager

Telephone No.: (408) 261-5292
Facsimile No.: (408) 249-0217

To SunPower:

Name
Address
Attn.:
Telephone No:
Facsimile No.:

Notices shall be deemed received on the same day as a facsimile is sent, the day following the date on which the Notice was sent via an overnight mail service, and five (5) days from the date postmarked by the United States Postal Service if sent by first-class mail. If Notice is given pursuant to two different methods receipt, shall be deemed to occur on the earlier date.

11.0 Necessary Authorization

Each Party represents that it has the necessary corporate and/or legal authority to enter into this Agreement and any Transaction[s] which it agrees to hereunder, and to perform each and every duty and obligation imposed by this Agreement, and that this Agreement, when executed by each Party, represents a valid, binding, and enforceable legal obligation of each Party. Each individual affixing a signature to this Agreement represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the Party he or she represents, and that by signing the Agreement a valid, binding, and enforceable legal obligation of said Party has been created.

12.0 Liability and Damages

- 12.1 Limitation of Remedies, Liability and Damages. For breach of any provision for which an express remedy or measure of damages is provided in this Agreement, such express remedy or measure of damages shall be the sole and exclusive remedy, and the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct actual damages only, and all other remedies or damages at law or in equity are waived.
- 12.2 Consequential Damages. Unless agreed to in writing with respect to a specific Transaction, neither Party shall be liable to the other for any incidental, consequential, punitive, exemplary, or indirect damages, lost profits, other business interruption damages or other special damages arising out of the performance or nonperformance of any obligation under this Agreement, by statute, in tort or in contract or under any indemnity provision or otherwise.
- 12.3 Damages for Failure to Deliver or Receive. If either Party fails to deliver or receive, as the case may be, the Contract Quantity due under a Transaction (thereby

becoming the Defaulting Party), the Non-Defaulting Party shall be entitled to receive from the Defaulting Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces).

12.3.1 Buyer Takes Less Than Contract Quantity. If the amount the Buyer scheduled or received in any hour is less than the hourly Contract Quantity agreed upon in the Transaction, then Buyer shall pay to the Seller an amount calculated as the product of:

- a. the amount, if any, by which the Contract Price exceeded the price for which Buyer's Contract Quantity, or portion thereof, was ultimately sold to a third Party, or absent such a resale, the market price for such quantity at the Delivery Point as determined by the Seller in a commercially reasonable manner (the "Re-sale Price"), and
- b. the amount by which the quantity received by the Buyer was less than the Contract Quantity; plus
- c. all other reasonable costs related to the replacement transaction (e.g. fixed charges, transmission losses, transmission service charges, commissions or other selling costs).

12.3.2 Seller Provides Less Than Contract Quantity. If the amount the Seller scheduled or delivered in any hour is less than the hourly Contract Quantity agreed upon, then Seller shall pay to the Buyer an amount calculated as the product of:

- a. the amount, if any, by which the quantity delivered was less than the Contract Quantity, and
- b. the amount, if any, by which the Contract Price is exceeded by the price at which Buyer purchases Services to replace the Services not delivered by Seller, or absent such a purchase, the market price for such quantity at the Delivery Point, as determined by Buyer in a commercially reasonable manner (the "Replacement Price"); plus,
- c. all other reasonable costs related to the replacement transaction (e.g. fixed charges, losses incurred, transmission source charges, commissions or other purchasing costs).

13.0 Default and Remedies for Default

13.1 Immediate Default. This Agreement may be terminated immediately, without prior notice, by the Non-Defaulting Party upon the occurrence of any of the following:

- 13.1.1
 - 13.1.2 Assignment or transfer of Defaulting Party's interest in this contract, whether voluntarily or by operation of Law, in violation of the provisions of this Agreement;
 - 13.1.3 General assignment of assets for the benefit of Defaulting Party's creditors;
 - 13.1.4 Approval of an order or decree concerning a petition for bankruptcy protection or reorganization or other arrangement under any law relating to the bankruptcy or insolvency of Defaulting Party;
 - 13.1.5 Failure to provide Assurances when demanded.
 - 13.1.6 In the event of a termination of this Agreement for a default under this Section 13.1, the Non-Defaulting Party may elect to be relieved of all obligations under this Agreement, including but not limited to the obligation to schedule or deliver future electric power and shall be entitled to collect any and all damages resulting therefrom, unless there is a good faith dispute of all or any amount of such fee or charge, in which case only the undisputed portion shall be paid, until such dispute is resolved.
- 13.2 Default. This Agreement may be terminated by the Non-Defaulting Party upon the occurrence of a default by the Defaulting Party under this Agreement, and the Defaulting Party fails to cure the same within thirty (30) days or such longer period of time or times as are provided below, after its receipt of notice thereof from the Non-Defaulting Party, or, when the cure reasonably requires more than thirty (30) days, the failure of the Defaulting Party to commence curing the default within such thirty-day period and thereafter diligently and continuously prosecute such cure to completion, including, but not limited to, any of the following:
- 13.2.1 The failure of Defaulting Party to pay any fee or charge by 12 o'clock noon, Pacific Prevailing Time, on the last business day of the Invoice Month
 - 13.2.2 Failure to pay any tax when due;
 - 13.2.3 Failure to observe, perform or comply with any material covenant, term, condition, or provision of this Agreement required to be observed, performed or complied with by the Defaulting Party; or
 - 13.2.4 Any representation, warranty, or statement made in this contract that shall prove to have been incorrect in any material respect when made.

13.3 Remedies for Default. In addition to all other rights and remedies provided by law or otherwise provided in this contract, to which the Non-Defaulting Party may resort cumulatively, or in the alternative, the Non-Defaulting Party is entitled to any of the following:

13.3.1 Except as otherwise provided herein, keep this contract in effect and enforce all of its rights and remedies hereunder, including the right to collect fees and charges as they become due, by appropriate legal action;

13.3.2 Seek the specific performance of the Defaulting Party or other rights or remedies at law or in equity; or

14.0 Uncontrollable Force

14.1 Neither Party shall be in default in the performance of any obligation under this Agreement when a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force (as defined in Exhibit A). For the duration of the Uncontrollable Force, but for no longer period, the obligations of the Party claiming the event (other than the obligations to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent required.

14.2 Either Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt written notice and full details of the event to be confirmed in writing to the other Party, as soon as possible, but in no event later than five (5) days after the occurrence. The Party claiming Uncontrollable Force shall exercise due diligence to remove such inability within a reasonable time period.

14.3 In the event a Party becomes aware of an Uncontrollable Force that will affect or may affect its ability to perform under this Agreement, it shall provide notice to the other Party as soon as possible after that Party becomes aware of the anticipated Uncontrollable Force, and in accordance with the notice procedures set forth in this Agreement.

15.0 Assignment

Neither Party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Upon any assignment made in compliance with this paragraph, this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the assigning Party. Notwithstanding the foregoing, either Party may, following written notice to the other Party, but without the need for consent from the other Party (and without relieving itself from liability hereunder), (a) transfer, pledge, or assign this Agreement as security for any financing; (b) transfer or assign this Agreement to a legally related business entity of such Party, or (c) transfer or assign this

Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, City may consider, without limitation, the following matters: the net worth of the proposed assignee, its intended or proposed use of the Premises of the Facility, and such assignee's reputation and experience in the energy industry, and any such assignee shall agree to be bound by the terms and conditions of this Agreement.

16.0 Taxes

Seller will be responsible for payment of all Taxes due on the generation or transmission of the power prior to its delivery at the Delivery Point(s) or for the provision of Services. Buyer will be responsible for payment of all Taxes applicable to the Transaction at or after the Delivery Point(s). Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax. Either Party with knowledge of a tax on the purchase or sale of power or Services that may be applicable to a Transaction under this Agreement shall notify the other Party in advance of entering into a Transaction under this Agreement of the applicability of such tax, and shall also notify the other Party of any proposal to implement a new tax or apply an existing tax to the purchase, sale, delivery, or receipt of power or Services hereunder. If either Party is required by a taxing authority to remit Taxes for which the other Party is responsible hereunder, such responsible Party will reimburse the remitting Party for such Taxes paid by the non-responsible Party hereunder.

17.0 Alternative Dispute Resolution

- 17.1 Any controversies between the Parties regarding the construction or application of this Agreement, and claims arising out of this Agreement or any Transaction subject to this Agreement, or breach thereof, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- 17.2 The Parties may agree on one (1) mediator. If they cannot agree on one (1) mediator, the Party demanding the mediation shall request that the Superior Court of the county in which the party is situated appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- 17.3 Each Party shall bear their own attorney's fees.
- 17.4 The costs of mediation shall be borne by the Parties equally.
- 17.5 Mediation under this paragraph is a condition precedent to filing an action in any court.

18.0 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law rule. State and federal courts situated in the state of California shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement.

19.0 Entire Agreement

This Agreement, the Exhibits hereto, and the Transaction Sheet for each Transaction constitute the entire agreement between the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral, between the Parties concerning such subject matter.

20.0 Binding Effect

The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, its successors and assigns.

21.0 Non-Waiver of Defaults

No waiver by either Party of any default of the other Party under this Agreement shall operate as a waiver of a future default, whether of a like or different character.

22.0 Required Licenses

Each Party guarantees that it has obtained, and will continue to maintain throughout the term of this Agreement, all licenses required by the State of California, Federal, or local governments, and all applicable regulatory agencies for the work to be performed by each Party under the Agreement.

23.0 Credit Reports

If required, each Party agrees to supply the other Party with information regarding its creditworthiness, including but not limited to, agreeing to promptly fill out and return any credit information forms.

24.0 Independent Contractor

The Parties acknowledge that no agency, joint, or other fiduciary relationship shall be deemed to exist or arise with respect to the matters addressed in this Agreement.

25.0 Headings

The headings of the various sections, paragraphs, and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

26.0 Written Amendments

No amendment, modification or change of the terms and provisions of this Agreement shall become effective unless by written amendment executed by the Parties.

27.0 Severability and Renegotiation

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions of the Agreement, and the remaining portions shall remain in force and effect as if this Agreement had been executed without the invalid portion. In the event any provision of this Agreement is declared invalid, the Parties shall promptly renegotiate such provision(s) to restore this Agreement as near as possible to its original intent and effect.

28.0 Affordable Care Act Obligations

To the extent Counterparty 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, Counterparty 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.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

29.0 Audit

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Energy delivered at the Delivery Point. If any such examination reveals inaccuracies in any invoice, a new invoice shall be prepared reflecting corrected amounts owed. Such amounts shall be due within ten (10) days of receipt, after which time interest shall accrue at the Interest Rate. No adjustment for any statement or payment will be made unless objection to the accuracy was made prior to the lapse of twelve (12) months from the Settlement Date.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation
doing business as Silicon Valley Power

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

“SVP”

***COUNTERPARTY**

***CHOOSE ONE: ENTER STATE NAME CORPORATION/PARTNERSHIP/INDIVIDUAL**

Dated: _____

By: _____

(Signature of Person executing the Agreement on behalf of Counterparty)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

Fax: _____

“Counterparty”

S:\Attorney\AGREEMENTS\Electric\Power Purchase (Form).doc

EXHIBIT “A” DEFINITIONS

BESS: means an electrical battery energy storage system.

Business Day: Any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: The Party to a Transaction which is obligated to purchase and receive, or cause to be received, energy during a Delivery Period.

CEC: means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission.

CEC Certification: means that the California Energy Commission (or its successor agency) has certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR for purposes of the Facility.

Claiming Party: has the meaning set forth in Exhibit A.

Conditions Precedent: has the meaning set forth in Section 3.9.

Contract Price: The agreed price in US dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Energy and any other required charges, as specified in a Transaction.

Contract Quantity: The quantity of Services that Seller agrees to deliver, or cause to be delivered to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, Expressed in hourly, daily, or monthly amounts and quantities for the life of the Transaction.

Contract Year: means a twelve (12) month period beginning on the Delivery Date and each successive twelve (12) month period thereafter during the Term.

Customer-Generator: means a residential or commercial Customer who uses an electrical generating or electric storage facility, or a hybrid system of both, on its premises, interconnected and operating in parallel with SVP’s grid, to manage that Customer-Generator’s own electrical requirements.

Delivery Period: The period of time from the date physical delivery of Energy is to commence to the date physical delivery is to terminate under a Transaction.

Delivery Point: The agreed point (or points) of delivery and receipt of Energy, on an electric

system, as specified in a Transaction.

Energy: means three-phase, 60-cycle alternating current electric energy generated by the Generating Facility pursuant to this Agreement, as expressed in units of kWh or MWh as measured at the Meter(s) at the Delivery Point.

Facility: means an electric generating facility, including a BESS that is located on Customer-Generator's premises, is interconnected and operates in parallel with SVP's electric grid, and is intended to manage Customer-Generator's own electrical requirements.

ERR: means Eligible Renewable Resource as defined in the Renewables Portfolio Standard (RPS) Eligibility Guidebook (Ninth Edition, Revised), publication # CEC-300-2016-006-ED9-CMF-REV, adopted April 27, 2017.

Firm Power: With respect to a Transaction, the only excuse of nonperformance or non-receipt of the Contract Power subject to the Transaction shall be the existence of Uncontrollable Force.

Interest Rate: For any day, the Prime Rate of interest established by the Bank of America, or its successor, at the close of business on such day or if not a Business Day, the immediately proceeding Business Day, plus a differential of two percent (2%), but in no event greater than the maximum interest rate permitted by law.

Interconnection Agreement: An agreement between a customer and SVP that defines how a customer generation system can connect to SVP's electric grid.

Invoice Month: The month in which invoices are sent out for the prior Transaction Month.

Net Remittance Amount: After netting the total amount each Party owes to the other Party under the Transactions, any resulting difference in the balance owed between the Parties shall be paid by the Party owing the greater amount to the Party owing the lesser amount.

Non-Firm Power: With respect to a Transaction, delivery or receipt of Energy may be interrupted for any reason at any time, without liability by either Party, subject to notice and any other agreed limitations contained in the terms of the Transaction.

Schedule or Scheduling: The acts of Seller, Buyer, and/or their designated representatives, including each Party's transmission providers, if applicable, of notifying, requesting, and confirming to each other the quantity and type of Energy to be delivered hourly on any given day or days during the Period of Delivery at a specified Delivery Point.

Rate Schedule: is the set of rates for electric service adopted by the City Council of the City of Santa Clara from time to time.

RECs or Renewable Energy Credits: are tradable, non-tangible energy commodities in the United States that represent proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource

RPS or Renewable Portfolio Standard Program: A regulation that places an obligation on electricity supply companies to produce a specified fraction of their electricity from renewable energy sources such as hydro, wind, solar, biomass, and geothermal.

Seller: The Party to a Transaction which is obligated to sell and deliver or cause to be delivered the Services covered by the Transaction during a Delivery Period.

Services: Provision of capacity, energy, or transmission.

Taxes: Shall include, but not be limited to: all ad valorem, occupation, utility, gross receipts, sales, use, excise or other income or net worth. Excluded from the foregoing definition of Taxes are any charges associated with restructuring of the electric utility industry, including but not limited to: public benefits charges, grid management charges, or any other governmentally mandated charges imposed or collected as a result of deregulation of the electric industry.

Transaction: Each sale, purchase, or transfer entered into under this Agreement.

Transaction Month: Each calendar month in which wholesale transaction(s) occur. For energy product, the Transaction Month is when energy is physically delivered and for RECs, the Transaction Month is when RECS are transferred to Buyer's WREGIS account.

Transaction Sheet: Written confirmation of the oral agreement between the Parties regarding the sale and purchase of electric energy and/or transmission capacity under the Agreement containing the following terms and conditions: (1) Description of Product (i.e.; Physical, Financial); (2) Buying Party; (3) Selling Party; (4) Delivery Period/Term; (5) Delivery Rate; (6) Point of Delivery; (7) Contract Price (\$ US); (8) Interruption Rights (i.e.; Firm, Non-firm); and (9) Special Conditions.

Uncontrollable Force: Any cause that renders a Party ("Claiming Party") unable to meet its obligations to the other Party, in the exercise of due diligence, to avoid, overcome, or obtain a commercially reasonable substitute therefore, and is beyond the reasonable control of the Claiming Party, including, without limitation: acts of God, such as floods, earthquakes, landslides, tornadoes, hurricanes, blizzards, or unusually severe storms; fires; explosions; civil or public disturbances, strikes, lockouts, or labor disputes; acts of the public enemy; invasions; wars; insurrections or riots; sabotage; action or restraint of any government or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); labor or material shortage; force majeure under any supply contract affecting a transmission provider or supplier of electric services; fuel or supply curtailments; and threatened or actual system emergencies. The settlement of strikes, walkouts, lockouts, and other labor disputes shall be entirely within the discretion of a Party.

- a. Neither (i) the loss of Buyer's market nor Buyer's inability economically to use or resell Energy purchased hereunder, nor (ii) Seller's ability to sell Energy at a more advantageous price, shall constitute an event of Uncontrollable Force.

- b. In a firm Transaction, interruption by a transmission provider shall not be deemed to be an event of Uncontrollable Force unless (i) the Party contracting with the transmission provider shall have made arrangement with such transmission provider for the firm transmission of energy to be delivered hereunder, as defined in the transmission provider's tariff, and (ii) such interruption is due to Uncontrollable Force as defined under the transmission provider's tariff.
- c. The term "Uncontrollable Force" shall also specifically include unscheduled power flows which reduce transmission capacity used for the Transaction and are not anticipated, unanticipated deratings of transmission lines used for the Transaction, and forced outages of transmission facilities used for the Transaction.
- d. If a Party specifies the transmission path for the transaction, then neither Party shall be required to use due diligence to find alternate transmission paths in the event of an interruption. If a Party specifies a Delivery Point, then the Seller must use due diligence to deliver to the Delivery Point and the Buyer must take the energy delivered to the Delivery Point unless the Seller cannot deliver to the Delivery Point after exercising due diligence.
- e. In Transaction for financial derivatives, Uncontrollable Force will not stand as an excuse for nonperformance.

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking system for implementing California's Renewables Portfolio Standard.

**EXHIBIT “B”
TRANSACTION SHEET**

This Transaction Letter confirms the agreement between Silicon Valley Power and SunPower Corporation, Systems regarding the sale and purchase of Services under the following terms and conditions:

- 1) **Description of Services:** Daily cycling (charge and discharge) program of a BESS located at the Host Site according to the Operating Schedule set forth in Section 8 of this Transaction Sheet and the Performance Requirements set forth in Section 9 of this Transaction Sheet.
- 2) **Buying Party:** City of Santa Clara, DBA. Silicon Valley Power (“SVP”)
- 3) **Selling Party:** SunPower Corporation, Systems (“SunPower”)
- 4) **Host Site & Delivery Point:**

Host Site Name	Mission College
Host Site Address	3000 Mission College Blvd Santa Clara, CA 95054
Host Site SVP [Account/Meter] Number	[###]
Delivery Point	Charge and discharge of the BESS shall be measured by an interval meter located at the inverter of the BESS (the “BESS Meter”). Meter specifications will be outlined in the Interconnection Agreement

- 5) **Estimated Delivery Date & Term**

Estimated Delivery Date	September 30, 2020
Term	15 years

- 6) **Price (\$ US):** The pricing under this exhibit is established as part of a pilot program under a cooperative research project. Terms and prices may not apply to future customers. Monthly fixed payment of \$15,643.24 over the term of the project (the “Monthly Service Fee”).
- 7) **BESS Specifications:**

BESS Power Capacity (MW)	2 MW
BESS Energy Capacity at Commercial Operation Date (COD) (MWh)	4 MWh

Equipment	Fluence Advancion Energy Storage System consisting of DC energy storage cells, inverter and enclosure
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8) **Operating Schedule:**

- a. Each day of the year (365 days per year, 366 days per leap year) (an “Operating Day”) SunPower will:
 - i. charge the BESS (a) only during the four (4) lowest priced hours for an Operating Day as determined by the California Independent System Operator (“CAISO”) PG&E DLAP day ahead market hourly prices published on the day prior to the Operating Day (the “Daily Charging Period”).
 - ii. discharge the BESS during the two (2) highest priced hours for an Operating Day as determined by the CAISO PG&E DLAP Day Ahead Market hourly prices published on the day prior to the Operating Day (the “Daily Discharge Period”).
 - iii. On Operating Days when highest priced hours as described in Section 8.a.ii above occur prior to the lower priced hours as described in Section 8.a.i above such that SunPower cannot charge the battery completely before the Daily Discharge Period, SunPower shall be permitted to charge the BESS during the lowest priced hours before the first hour of the Daily Discharge Period such that SunPower can completely charge the BESS.
 - iv. The applicable price this Section 8.a will be for Market DAM, and Location DLAP_PGAE-APND, as currently published at the following website: <http://oasis.caiso.com/mrioasis/logon.do>.
- b. Changes to Operating Requirements:
 - i. SVP may request a change to the operating schedule set forth in Section 7.a. above no more than three (3) times per year. Upon receipt of a written request (a “Change Request”) from SVP to change the operating schedule, SunPower will respond within ten (10) business days with its approval or denial of such Change Request, based on the viability of complying with such Change Request based on the physical capabilities of the BESS and SunPower’s obligations to the Host. If approved, SunPower will be obligated to begin complying with the Change Request not later than forty-five (45) days from receipt of the Change Request.

9) **Performance Requirements:**

- a. **Annual Discharges.** SunPower guarantees to SVP that the total kWh to be discharged during the Daily Discharge Periods (the “Annual Discharges”) in each year of the Term (each, a “Performance Year”) shall be greater than or equal to the amounts set forth in the table below (the “Guaranteed Discharges”):

Performance Year	End of Year Guaranteed Discharges (kWh)
1	1,399,939
2	1,358,129

3	1,319,201
4	1,280,274
5	1,242,789
6	1,206,745
7	1,172,143
8	1,137,541
9	1,104,381
10	1,072,662
11	1,040,944
12	1,010,667
13	981,832
14	951,555
15	924,162

- b. **BESS Controller:** SunPower and SVP will cooperate to provide SVP with access to operating data about the BESS, provided that SunPower will only be obligated to provide such data to the extent permitted by the Host Customer.

- c. **Calculation of Annual Discharges.** Annual Discharges for each day of Performance Year shall be calculated according to the following formula:

$$\text{Annual Discharges} = \text{Metered Discharges} - \text{Non-Compliant Charges}$$

where:

Metered Discharges shall be equal to the total kWh discharged by the BESS during the Daily Discharge Periods during all Operating Days of a Performance Year

Non-Compliant Charges shall be equal to the product of (a) the total kWh charged by the BESS during hours outside of the Daily Charging Period during all of the Operating Days of a Performance Year, times (b) 85%.

- d. **Liquidated Damages.**

- i. **Annual Discharge Shortfall.** If, in any Performance Year, the Annual Discharges, as measured according to this Section 9, are less than the Guaranteed Discharges for that Performance Year, SunPower will pay to SVP an amount equal to the product of (a) the \$/kWh in the table below for the applicable Performance Year, times (b) the difference, if positive, of the Guaranteed Discharges minus the Annual Discharges (the “Annual Discharge Shortfall LD Amount”).

Performance Year	LD Amount /kWh	Total Daily LD	Total Peak Day LD	Total LD
1	\$0.050	\$69,999	\$117,720	\$187,719
2	\$0.052	\$69,999	\$117,720	\$187,719
3	\$0.053	\$69,999	\$117,720	\$187,719
4	\$0.055	\$69,999	\$117,720	\$187,719
5	\$0.056	\$69,999	\$117,720	\$187,719
6	\$0.058	\$69,999	\$117,720	\$187,719
7	\$0.060	\$69,999	\$117,720	\$187,719
8	\$0.062	\$69,999	\$117,720	\$187,719
9	\$0.063	\$69,999	\$117,720	\$187,719
10	\$0.065	\$69,999	\$117,720	\$187,719
11	\$0.067	\$69,999	\$117,720	\$187,719
12	\$0.069	\$69,999	\$117,720	\$187,719
13	\$0.071	\$69,999	\$117,720	\$187,719
14	\$0.074	\$69,999	\$117,720	\$187,719
15	\$0.076	\$69,999	\$117,720	\$187,719

- ii. **Peak Day Shortfall.** SunPower shall be obligated to discharge at least one-thousand nine hundred and sixty-two (1,962) kWh from the BESS during each Peak Day Max Price Hour in each Peak Day in each calendar month of the Term. To the extent SunPower fails to meet such obligation, SunPower will pay SVP an amount equal to the product of (a) \$5.00/kWh, times (b) the difference, if positive, of (i) one thousand nine hundred and sixty-two (1,962) kWh *minus* (ii) the minimum kWh discharged by the BESS during any single Peak Day Max Price Hour on any Peak Day in such calendar month. For the purposes of this Section 8.d.ii, “Peak Day” shall mean an Operating Day for which the maximum daily temperature as measured by the weather station at San Jose Airport, is one of the three (3) highest maximum daily temperatures for the calendar month during which the Operating Day occurs, and “Peak Day Max Price Hour” shall mean the single highest priced hour of a Peak Day as determined by the CAISO Day Ahead Market hourly prices published on the day prior to that Peak Day (the “Peak Day Shortfall LD Amount”).

- iii. **LD Payments.** Annual Discharge Shortfall LD Amounts and Peak Day

Shortfall LD Amounts will be measured at the end of each Performance Year and will be due with sixty (60) of the end of such Performance year upon an invoice from SVP, *provided that*, in no event shall the sum of any Annual Discharge Shortfall LD Amounts and Peak Day Shortfall LD Amounts owed by SunPower with respect to a Performance Year exceed the total Monthly Service Fees received by SunPower in that Performance Year.

10) **Non-Applicable Sections to Exhibit:** The following sections of the Agreement will not apply to the transaction governed by this Transaction Sheet:

- a. Section 3.3 Schedule Imbalances;
- b. Section 3.9 Conditions Precedent (d) and (e)
- c. Section 4.0 Title and Risk of Loss
- d. Section 5.0 Ancillary Services
- e. Under Section 6.0 Billing, Netting and Payment
 - i. The last sentence of Section 6.3 that reads as follows: "Seller will render the statement as supporting documents for invoice to Buyer based on actual quantities of RECs transferred to Buyer in the Buyer's WREGIS account."
 - ii. Section 6.9
- f. Under Section 7.0 Metering Requirements:
 - i. Section 7.2
- g. Under Section 12.0 Liabilities and Damages
 - i. Section 12.3, which shall be superseded by the Performance Requirements set forth in Section 9 of this Transaction Sheet
- h. Under Section 13.0 Default and Remedies for Default
 - i. Section 13.1.5

This Transaction Letter is being provided pursuant to and in accordance with the Transaction Enabling Agreement dated the ____ day of ____, 2019_ between the parties and constitutes part of and is subject to all the terms and conditions of such Agreement.

ACKNOWLEDGED AND AGREED TO:

Silicon Valley Power

SunPower

Per: _____

Per: _____

Title: _____

Title: _____

Date: _____

Date: _____

For any single Transaction whose Delivery Term exceeds three hundred and sixty five (365) days, the undersigned acknowledges that he/she has the necessary authorization to enter into such a Transaction.

EXHIBIT "C"

TERM

Term. Unless terminated earlier as provided herein, the term of this Agreement shall commence on the Delivery Date and shall terminate at 2400 hours PST on _____ following the _____ anniversary of the Delivery Date. Any renewals will require mutual written consent of intent to extend the term of this agreement for an additional _____ term.

Confidential Status. As noted in Section 8.2 above, City is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq.). Notwithstanding the previous sentence, both Seller and the City consider the information contained in this EXHIBIT B to be confidential and/or proprietary and/or protected from disclosure pursuant to exemptions to the California Public Records Act (Cal. Government Code sections 6254 and 6255). Consequently, the Parties agree to treat the contents of this EXHIBIT B as confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in this EXHIBIT B, City as soon practical but within three (3) days of receipt of the request, shall notify Seller that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 10 of this Agreement. Seller shall be responsible for taking whatever legal steps are necessary to protect information contained in this EXHIBIT B and to prevent release of information to the Requestor. If Seller takes no such action, after receiving the foregoing notice from City, City shall be permitted to comply with the Requestor's demand and is not required to defend against it.

City agrees to cooperate with Seller in any efforts to prevent release of the information contained in this EXHIBIT B; however, City shall not be required to expend any monies in excess of the cost of notifying Seller by telephone, facsimile and/or mail of the pendency of a demand for the information contained in this EXHIBIT B. So long as City complies with the provisions of notification set forth in this EXHIBIT B, City shall not be liable for, and Seller and City hereby release each other from, any liability for any damages arising from any requirement under the law that City release the information contained in this EXHIBIT B to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.



Agenda Report

20-1467

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on the Adoption of a Resolution Accepting the AB1600 Report on Development Impact Fees for Fiscal Year Ended June 30, 2019 [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

A development impact fee is a monetary exaction other than a tax or special assessment that is charged by a local governmental agency to an applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, with certain exceptions (Gov. Code § 66006(b)). The legal requirements for enactment of a development impact fee program are set forth in Government Code §§ 66000-66025 (the "Mitigation Fee Act"), the bulk of which were adopted as 1987's AB 1600 and thus are commonly referred to as "AB 1600 requirements." By definition, a fee is voluntary and must be reasonably related to the cost of the service provided by the local agency.

DISCUSSION

Attached is the AB1600 Report on Development Impact Fees for the fiscal year ended June 30, 2019. This report is supplied pursuant to Government Code Section 66006(b). Staff has also determined that the City has Traffic Mitigation funds of \$2,584,052, Sanitary Sewer Conveyance Fees of \$445,423, and Storm Drain Impact funds of \$220,044 exceeding the five-year limit. However, as these funds have been budgeted to fund future projects, the City does not have any refund exposure. Therefore, Staff is submitting the attached Resolution to accept the AB1600 Report and make findings that there is a continuing need for these unexpended balances of impact fees.

On December 18, 2019, the City posted notice and made copies of the report available for public review in the City Clerk's Office, the Finance Department, and online at www.Santaclaraca.gov/Finance. In addition, written notice of the time and place of the regularly scheduled City Council meeting on January 28, 2020, along with a copy of the AB1600 Report, were sent to interested parties as requested.

Staff has scheduled a review of this report for the regularly scheduled City Council meeting on January 28, 2020. More than 15 days will have elapsed as of the date of Council review since the report was made available to the public, as required by applicable state law.

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 cost to the City other than administrative staff time and expense to develop the report and resolution. There is no economic/fiscal impact since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to the Government Code Sections 66000-66003.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Adopt a Resolution accepting the status report on the receipt and use of AB1600 Development Impact Fees during fiscal year ending June 30, 2019.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. AB1600 Report on Development Impact Fees
2. AB1600 Resolution

AB1600 REPORT ON DEVELOPMENT IMPACT FEES

For Fiscal Year ended June 30, 2019

BACKGROUND

Cities and counties often charge fees on new development to fund public improvements, public amenities and public services. For example, Traffic Mitigation Fees are used to fund transit facilities, streets, bike lanes and sidewalks. These fees are commonly known as development impact fees (Developer Fees). In 1989, the State Legislature passed Assembly Bill 1600 (AB1600) which added Section 66000, et seq., to the California Government Code. The chapter sets forth a number of requirements that local agencies must follow if they are to collect fees from developers to defray the cost of the construction of public facilities related to development projects. Government Code Sections 66000-66025 apply to developer fees established, increased or imposed on or after January 1, 1989, and generally sets forth four broad requirements:

1. A local jurisdiction must follow the process set forth in the bill and make certain determinations regarding the purpose and use of the fees and to establish a "nexus" or connection between a development project or class of project and the public improvement being financed with the fee.
2. The fee revenue must be segregated from the General Fund in order to avoid commingling of public improvement fees and the General Fund.
3. If a local jurisdiction has had possession of a developer fee for five years or more and has not committed that money to a project or actually spent that money, then it must make findings describing the continuing need for that money each fiscal year after the five years have expired.
4. If a local jurisdiction cannot make the findings required under paragraph 3, then the city or county must go through a refund procedure.

The Traffic Mitigation Fee, Sanitary Sewer Outlet Fee, Sanitary Sewer Connection Fee, Sanitary Sewer Conveyance Fee, Storm Drain Fee, and Parks Mitigation Fee that the City of Santa Clara (City) collects qualify as Development Impact Fees and therefore must comply with the above referenced Government Code Sections. The amount of each of these development impact fees for fiscal year 2018-19 is reflected in the City's Municipal Fee Schedule, previously adopted by the City Council. The schedule is available at <https://www.santaclaraca.gov/home/showdocument?id=62327>. As required by law, these fees are segregated and accounted for as Special Revenue Funds. Government Code Section 66001 requires the City to make available to the public certain information regarding these fees for each fund within 180 days after the end of each fiscal year. Accordingly, the following report is presented to the City Council for review.

ANALYSIS

Using the accounting method known as first in, first out (FIFO), which means the first revenue received is assumed to be the first spent, staff analyzed the annual balances at the end of fiscal year 2018-19 to determine what portion, if any, of the balance was five or more years old. If a balance is more than five years old, a review of previously identified projects is undertaken to determine if any developer fees collected need to be refunded.

Many of the identified projects are already underway, and the City has appropriated funds for these projects as noted in the City's 2018-19 & 2019-20 Biennial CIP Budget Book. The book is available at <http://santaclaraca.gov/home/showdocument?id=61028>. The identification of each Capital Project on which fees were expended and the amount of the expenditures on each Capital Project including the total percentage of the cost of the Capital Project that was funded with fees are detailed in Exhibit A.

Traffic Mitigation Fee

The Traffic Mitigation Fee is levied to fund improvements or programs to mitigate City traffic problems that result either directly or indirectly from development projects. The following table summarizes the activity for the Traffic Mitigation Fund from 2014-15 through 2018-19.

Fund 123 & 533	2014-15	2015-16	2016-17	2017-18	2018-19
Beginning Balance	\$ 9,783,413	\$ 9,359,921	\$ 7,852,470	\$ 8,711,428	\$ 8,448,382
Developer Fees	231,671	1,242,270	1,370,084	855,324	1,958,563
Interest Income	51,522	50,840	81,481	115,449	196,524
Expenditures	(706,685)	(2,800,561)	(592,607)	(1,233,819)	(250,423)
Ending Balance	<u>\$ 9,359,921</u>	<u>\$ 7,852,470</u>	<u>\$ 8,711,428</u>	<u>\$ 8,448,382</u>	<u>\$ 10,353,046</u>

During 2018-19, the City collected \$1,958,563 of traffic mitigation fees and incurred \$250,423 of project expenditures. The grand total of the Traffic Impact Fee fund balance that is available at the end of 2018-19 is \$10,353,046 of which \$2,584,052 has been held for over five years. The identified projects, as detailed in Exhibit A, will make use of all unspent fees collected prior to 2013-14. During fiscal year 2018-19 Traffic Mitigation Special Revenue fund (123) was created to track unallocated Traffic Mitigation revenue. Capital Improvement Program, fund 525, Traffic Mitigation Fees, was consolidated with fund 533, Streets and Highways, and as a result multiple projects were closed or combined, and new project numbers issued.

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000, et seq.

Sanitary Sewer Outlet Fee

The Sanitary Sewer Outlet Fee is collected from developers to construct public sanitary sewer facilities. The following table summarizes the activity for the Sanitary Sewer Outlet Fees from 2014-15 through 2018-19.

Fund 594	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
Beginning Balance	\$ (2,637,626)	\$ (2,568,007)	\$ (2,547,612)	\$ (2,075,945)	\$ (1,831,352)
Developer Fees	69,619	20,395	471,667	244,593	242,488
Expenditures	-	-	-	-	-
Ending Balance	<u>\$ (2,568,007)</u>	<u>\$ (2,547,612)</u>	<u>\$ (2,075,945)</u>	<u>\$ (1,831,352)</u>	<u>\$ (1,588,864)</u>

The amount of developer fees collected in 2018-19 was \$242,488. The outstanding balance in the Sanitary Sewer Outlet Fee Fund at the end of 2018-19 is (\$1,588,864). Amounts have been transferred within the Sewer Enterprise Fund to make up the negative balance for Capital Projects financed with AB1600 development fees.

There is no impact on City resources since all qualified impact fees collected by the City have been spent, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Sanitary Sewer Connection Fee

The Sanitary Sewer Connection Fee was adopted to improve and expand the sewer collection system. The following table summarizes activity for the Sanitary Sewer Connection Fee from 2014-15 through 2018-19.

Fund 594	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
Beginning Balance	\$ (21,481,800)	\$ (26,936,382)	\$ (38,526,561)	\$ (50,329,856)	\$ (74,240,874)
Developer Fees	2,072,361	1,338,418	2,350,574	1,625,820	2,303,752
Expenditures	(7,526,943)	(12,928,597)	(14,153,869)	(25,536,838)	(15,800,877)
Ending Balance	<u>\$ (26,936,382)</u>	<u>\$ (38,526,561)</u>	<u>\$ (50,329,856)</u>	<u>\$ (74,240,874)</u>	<u>\$ (87,737,999)</u>

During 2018-19 fiscal year, the City collected \$2,303,752 from developer fees and spent \$15,800,877. The current year deficit along with prior cumulative deficits brought the impact fee balance to (\$87,737,999) as of 2018-19. Amounts have been transferred within the Sewer Enterprise Fund to make up the negative balance for Capital Projects financed with AB1600 development fees.

There is no impact on City resources since all qualified impact fees held by the City have been spent, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Sanitary Sewer Conveyance Fee

The Sanitary Sewer Conveyance Fee was adopted in 2006-07 to address Sewer Main capacity deficiencies resulting from increased development. The following table summarizes the activity for the Sanitary Sewer Conveyance Fees from 2014-15 through 2018-19.

Fund 594	2014-15	2015-16	2016-17	2017-18	2018-19
Beginning Balance	\$ 4,975,657	\$ 11,504,407	\$ 13,737,225	\$ 22,504,850	\$ 26,847,028
Developer Fees	8,407,364	2,851,396	8,630,774	4,136,935	6,916,161
Interest Income	69,163	103,444	211,354	307,104	515,362
Expenditures	(1,947,777)	(722,022)	(74,503)	(101,861)	(99,255)
Ending Balance	<u>\$ 11,504,407</u>	<u>\$ 13,737,225</u>	<u>\$ 22,504,850</u>	<u>\$ 26,847,028</u>	<u>\$ 34,179,296</u>

The current year's developer fees and interest income of \$6,916,161 and \$515,362, respectively, were partially offset by expenditures of \$99,255. The net change resulted in a current balance of \$34,179,296 of which \$445,423 has been held for over five years. Exhibit A identifies the project that will make use of all unspent fees held over five years.

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Storm Drain Fee

The Storm Drain Fee is levied to mitigate City storm drainage that results either directly or indirectly from development projects. The following table summarizes the activity for the Storm Drain Fees from 2014-15 through 2018-19.

Fund 535	2014-15	2015-16	2016-17	2017-18	2018-19
Beginning Balance	\$ 741,095	\$ 467,327	\$ 552,889	\$ 555,070	\$ 626,783
Developer Fees	11,120	239,376	10,375	67,194	5,749
Interest Income	2,809	4,163	5,213	4,760	8,845
Expenditures	(287,697)	(157,977)	(13,407)	(241)	(54,799)
Ending Balance	<u>\$ 467,327</u>	<u>\$ 552,889</u>	<u>\$ 555,070</u>	<u>\$ 626,783</u>	<u>\$ 586,578</u>

During 2018-19, the City collected \$5,749 from developer fees, earned \$8,845 from interest, and incurred \$54,799 of project expenditures. The grand total of the Storm Drain Fees that is available at the end of 2018-19 is \$586,578 of which \$220,044 has been held for over five years. Exhibit A identifies the projects that will make use of all unspent fees held over five years.

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

Parks Mitigation Fee

The Parks Mitigation Fee was adopted in fiscal year 2014-15 and went into effect for the 2016-17 fiscal year. Fees received can be used to provide (acquire) public parkland and/or make necessary park improvements according to the restrictions of the Mitigation Fee Act and help the City to address its park, recreation and open space needs.

Fund 532	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
Beginning Balance	\$ -	\$ -	\$ -	\$ 13,505,806	\$ 10,545,074
Developer Fees	-	-	14,780,447	-	268,091
Interest Income	-	-	90,301	147,253	111,431
Expenditures	-	-	(1,364,942)	(3,107,985)	(5,663,181)
Ending Balance	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 13,505,806</u>	<u>\$ 10,545,074</u>	<u>\$ 5,261,415</u>

During 2018-19, the City collected \$268,091 for Park Mitigation fees, earned \$111,431 from interest, and incurred \$5,663,181 of project expenditures. The grand total of the Parks Mitigation Fee that is available at the end of 2018-19 is \$5,261,415. There are no fees that have been held over five years.

There is no impact on City resources since all qualified impact fees held by the City for over five years are either spent or committed, thus eliminating the need to refund any fees to developers according to Government Code Sections 66000-66003.

PUBLIC NOTICE: Public notification was achieved by posting the availability of the report 15 days prior to the meeting, as required by Government Code Section 66006(b)(2).

Attachments:

Exhibit A: Summary of Development Impact Fees

Exhibit A
City of Santa Clara
Summary of Local Agency Improvement Fees
(AB 1600 Development Impact Fees)
Report for Fiscal Year Ended June 30, 2019

Streets and Highways (Fund 123 & 533)

Traffic Mitigation Fee (Fund 525)	
FY 2017-18 Ending Fund Balance	\$ 8,448,382
Fees Collected	1,958,563
Interest Earned	196,524
Expenditures	(250,423)
FY 2018-19 Ending Fund Balance	\$ 10,353,046
Funds Accumulated in Current and Last 5 Years	\$ 7,768,994
Funds Held Longer than 5 Years	\$ 2,584,052
Projects Programmed for Impact Fees	\$ 6,527,373

Project #	Description	Total Project Appropriation All Funding Sources	Traffic Mitigation Fee Since Inception Date Through June 30, 2019				FY 2018-19 Impact Fee Expenditure
			% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	
1209	Agnew Road/De La Cruz Blvd Signal Timing	\$ 1,118,000	50%	\$ 560,000	\$ 475,000	\$ 85,000	\$ -
1210	Mission College Bike Lanes	476,355	77%	366,855	265,500	101,355	-
1214	Coleman Avenue Widening	190,000	39%	74,332	79	74,253	-
1215	Sidewalk Installation Program	189,579	40%	75,832	30,208	45,624	-
1216	Traffic Studies and Signal Needs Assessment/Upgrade	500,000	64%	320,000	154,350	165,650	2,649
1217	Central Control Traffic Signal Upgrade	2,282,800	84%	1,910,871	1,488,449	422,422	29,006
1218	Traffic Pre-Emptors	845,259	90%	758,104	505,602	252,502	(23,628)
1219	Traffic Signal Enhancements	734,141	100%	734,141	530,004	204,137	2,127
1220	Pedestrian and Bicycle Enhancement Facilities	1,597,724	100%	1,597,724	1,333,556	264,168	1,500
1221	Traffic Monitoring at Various Locations- Phase "C"	324,500	100%	324,500	123,783	200,717	8,995
1222	Citywide Accessible Pedestrian Signal Installation	200,000	100%	200,000	11,232	188,768	-
1224	Traffic Signal Replacement - ECR-Lafayette, Homestead, Scott Area	2,149,000	35%	757,500	2,510	754,990	2,510
1229	Traffic Signal Installation Pruneridge at Cronin	730,859	11%	80,859	80,859	-	80,859
1233	Pedestrian Master Plan	307,135	9%	27,921	-	27,921	-
1236	Traffic Signal Modification	1,330,000	94%	1,250,000	7,100	1,242,900	1,127
1237	MCB/GAP Intersection Improvement	8,299,436	40%	3,330,400	1,154,452	2,175,948	85,178
1238	Pedestrian Crosswalk Sensors	150,000	100%	150,000	-	150,000	-
1243	Install Sidewalks on San Tomas Expressway	183,000	100%	183,000	182,982	18	60,100
1245	Benton Bike Lane	150,000	49%	73,000	-	73,000	-
1391	Bowers Ave Signal Timing	948,000	10%	98,000	-	98,000	-
Totals		\$ 22,705,788		\$ 12,873,039	\$ 6,345,666	\$ 6,527,373	\$ 250,423

Note

(1) During fiscal year 2018-19 Special Revenue fund 123 was created to track unallocated Traffic Mitigation revenue. Additionally fund 533, Traffic Mitigation Fees, merged with Fund 533, Streets and Highways, and as a result multiple projects were closed or combined and new project numbers issued.

Sanitary Sewer Outlet Fee (Fund 594)

Sanitary Sewer Outlet Fee (Fund 594)	
FY 2017-18 Ending Fund Balance	\$ (1,831,352)
Fees Collected	242,488
Interest Earned	-
Expenditures	-
FY 2018-19 Ending Fund Balance	\$ (1,588,864)
Funds Accumulated in Current and Last 5 Years	\$ 1,335,985
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ -

		Sanitary Sewer Outlet Fee Since Inception Date Through June 30, 2019					FY 2018-19 Impact Fee Expenditure
Project #	Description	Total Project Appropriation All Funding Sources	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining ⁽¹⁾	
1907	Development Extensions	\$ 220,445	100%	220,445	1,809,309	\$ (1,588,864)	\$ -

Note (1) Amounts have been transferred within the Sewer Enterprise Fund to make up the negative balance for Capital Projects financed with AB1600 Development Fees. There were no interfund loans.

Sanitary Sewer Connection Fee (Fund 594)

Sanitary Sewer Connection Fee (Fund 594)	
FY 2017-18 Ending Fund Balance	\$ (74,240,874)
Fees Collected	2,303,752
Interest Earned	-
Expenditures	(15,800,877)
FY 2018-19 Ending Fund Balance	\$ (87,737,999)
Funds Accumulated in Current and Last 5 Years	\$ 10,322,081
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ -

		Sanitary Sewer Connection Fee Since Inception Date Through June 30, 2019					FY 2018-19 Impact Fee Expenditure
Project #	Description	Total Project Appropriation All Funding Sources	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining ⁽¹⁾	
1908	S.J.- S.C. Regional Wastewater Facility	\$ 108,106,421	11%	12,155,000	99,892,999	\$ (87,737,999)	\$ 15,800,877

Note (1) Amounts have been transferred within the Sewer Enterprise Fund to make up the negative balance for Capital Projects financed with AB1600 Development Fees. There were no interfund loans.

Sanitary Sewer Conveyance Fee (Fund 594)

Sanitary Sewer Conveyance Fee (Fund 594)	
FY 2017-18 Ending Fund Balance	\$ 26,847,028
Fees Collected	6,916,161
Interest Earned	515,362
Expenditures	(99,255)
FY 2018-19 Ending Fund Balance	\$ 34,179,296
Funds Accumulated in Current and Last 5 Years	\$ 33,733,873
Funds Held Longer than 5 Years	\$ 445,423
Projects Programmed for Impact Fees	\$ 13,231,958

		Sanitary Sewer Conveyance Fee Since Inception Date Through June 30, 2019					FY 2018-19 Impact Fee Expenditure
Project #	Description	Total Project Appropriation All Funding Sources	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	
1909	Sanitary Sewer Capacity Improvements	\$ 25,326,124	100%	25,326,124	12,094,166	\$ 13,231,958	\$ 99,255

Storm Drain Fee (Fund 535)

Storm Drain Fee (Fund 535)	
FY 2017-18 Ending Fund Balance	\$ 626,783
Fees Collected	5,749
Interest Earned	8,845
Expenditures	(54,799)
FY 2018-19 Ending Fund Balance	\$ 586,578
Funds Accumulated in Current and Last 5 Years	\$ 366,534
Funds Held Longer than 5 Years	\$ 220,044
Projects Programmed for Impact Fees	\$ 278,469

		Storm Drain Fee Since Inception Date Through June 30, 2019					FY 2018-19 Impact Fee Expenditure
Project #	Description	Total Project Appropriation All Funding Sources	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	
1834	Storm Drain System Improvement	525,374	100%	525,374	392,106	133,268	-
1835	Storm Drain Outfall Reconstruction Program	1,373,000	47%	650,000	504,799	145,201	54,799
Totals		\$ 1,898,374		\$ 1,175,374	\$ 896,905	\$ 278,469	\$ 54,799

Parks Mitigation Fee (Fund 532)

Parks Mitigation Fee (Fund 532)	
FY 2017-18 Ending Fund Balance	\$ 10,545,074
Fees Collected	268,091
Interest Earned	111,431
Expenditures	(5,663,181)
FY 2018-19 Ending Fund Balance	\$ 5,261,415
Funds Accumulated in Current and Last 5 Years	\$ 9,466,251
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ 4,134,430

		Parks Mitigation Fee Since Inception Date Through June 30, 2019					
Project #	Description	Total Project Appropriation All Funding Sources	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	FY 2018-19 Impact Fee Expenditure
3001	Misc Park Improvments	\$ 2,115,274	28%	\$ 591,400	200,000	\$ 391,400	\$ 200,000
3177	Youth Soccer Fields & Athletic Facilities	38,790,964	15%	5,886,464	5,886,464	-	4,472,797
3178	Playground Construction	3,388,175	27%	920,121	525,383	394,738	274,893
3181	Park Impact Fees Monitoring Project	790,381	63%	495,609	254,280	241,329	91,663
3182	New Neighborhood Park & Community Garden (San Tomas & Monroe)	6,205,203	46%	2,850,000	2,850,000	-	559,300
3184	Montague Park Enhancement	3,190,000	100%	3,190,000	83,037	3,106,963	64,528
Totals		\$ 54,479,997		\$ 13,933,594	\$ 9,799,164	\$ 4,134,430	\$ 5,663,181

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,
ACCEPTING THE AB1600 REPORT ON DEVELOPMENT IMPACT
FEES FOR FISCAL YEAR ENDED JUNE 30, 2019 AND MAKING
FINDINGS REGARDING THE CONTINUING NEED FOR
UNEXPENDED BALANCES OF IMPACT FEES AS OF JUNE 30,
2019**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Government Code Sections 66000 and following (commonly known as, and referenced herein as, "AB1600") regulate the imposition, collection, maintenance, expenditure and reporting of impact fees imposed on developers for the purpose of defraying costs of public facilities;

WHEREAS, the City of Santa Clara ("City") has identified six (6) impact fees collected from developers that are subject to AB1600's requirements. Those funds are the Traffic Mitigation Fee (Funds 123/533), the Sanitary Sewer Outlet Fee (Fund 594), the Sanitary Sewer Connection Fee (Fund 594), the Sanitary Sewer Conveyance Fee (Fund 594), the Storm Drain Fee (Fund 535), and the Parks Mitigation Fee (Fund 532);

WHEREAS, in accordance with the provisions of AB1600, the City has set up separate special revenue funds for each type of fee, crediting earned interest to those funds, and spending the accumulated fees and related interest on appropriate expenditures;

WHEREAS, the City has prepared an annual report for fiscal year 2018-19 in accordance with AB1600, "AB1600 Report on Development Impact Fees For Fiscal Year ended June 30, 2019," reflecting the beginning and ending balances of each separate fund containing impact fees; the amount of fees collected and the interest earned for the year; the amount of expenditures and refunds made in the year; the percentage of expenditures paid for by fees; and a description of the type of fees. The amount of each of these development impact fees for FY 2019-20 is reflected in the City's Municipal Fee Schedule, previously adopted by this Council;

WHEREAS, a copy of the annual report has been on file and available for review in the City

Clerk's Office and the Finance Department at Santa Clara City Hall, and online at Santaclearaca.gov/Finance since December 18, 2019;

WHEREAS, AB1600 requires the City to make specific findings every five (5) years with respect to any portion of the fees remaining unexpended or uncommitted after a period of five (5) years to 1) identify the purpose to which the fee is to be put, 2) demonstrate a reasonable relationship between the fee and the purpose for which it was charged, 3) identify all sources and amounts of funding anticipated to complete financing of the improvement, and 4) designate the approximate date on which such funding will be available;

WHEREAS, the Traffic Mitigation Impact Fee, which was established for the purpose of providing a source of funding for traffic improvements, contains some fee revenues which were received more than five (5) years ago. The sum of \$2,584,052 representing fees and accrued interest collected for traffic mitigation remains unexpended five (5) or more years after deposit of the fees;

WHEREAS, the Storm Drain Fee, which was established for the purpose of mitigating storm drainage that results directly or indirectly from development projects, contains some fee revenues which were received more than five (5) years ago. The sum of \$220,044 representing fees and accrued interest collected for storm drainage mitigation remains unexpended five (5) or more years after deposit of the fees;

WHEREAS, the Sanitary Sewer Conveyance Fee, which was established for the purpose of mitigating sanitary sewer conveyance load that results directly or indirectly from development projects, contains some fee revenues which were received more than five (5) years ago. The sum of \$445,423 representing fees and accrued interest collected for sewer conveyance mitigation remains unexpended five (5) or more years after deposit of the fees;

WHEREAS, the City desires to make the findings required by law with respect to these unexpended fees.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS

FOLLOWS:

1. That the City Council hereby accepts the attached AB1600 Report on Development Impact Fees for Fiscal Year ended June 30, 2019 ("Report"), and makes the following findings:

A. The Traffic Mitigation Impact Fee revenues are to be used to construct traffic improvements needed by new development. The amount of the fee for different land use types is proportionate to the need for traffic improvements generated by such land use types. This fee is still necessary as several projects are tied to larger development projects that have yet to occur. These development projects are still anticipated to take place based on the City's General Plan. The traffic mitigation fee is set at a lower rate than justified, and as a result projects are underfunded. This has also slowed down progress on projects resulting in some project costs increasing. Periodically, as the City updates the General Plan and as new development occurs, additional improvement projects are identified and added to the Traffic Mitigation Fee Project List.

B. The portion of the \$10,353,046 fund balance in the Traffic Mitigation Fund that was at least five (5) years old as of June 30, 2019, totals \$2,584,052. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Traffic Mitigation Fund has projects scheduled in the current Capital Improvement Plan for the next five (5) years, and depends upon additional fees and interest each year. Projects identified in Exhibit A which are funded at less than 100% with Traffic Mitigation Impact fees are funded by other sources totaling \$9,832,749. Remaining appropriations totaling \$6,972,639 from the other sources are as follows: Reimbursable Grants \$738,003; Vehicle Registration Fees \$520,000; Bonds Proceeds \$1,666,789; Gas Tax Revenue \$772,743; and Developer Contributions \$3,275,104. All payments have been received and are available except the Reimbursable Grants. The City expects to receive Grant repayments in fiscal year 2020-21.

C. The Storm Drain Impact Fee revenues are to be used to mitigate City storm

drainage that results either directly or indirectly from development projects. The amount of the fee is proportionate to the need for storm drainage improvements generated by development projects. This fee is still necessary as several storm drain projects are tied to larger development projects that have yet to occur. These development projects are still anticipated to take place based on the City's General Plan. As new development occurs, additional improvement projects are identified and added to the Storm Drain Impact Fee Project List.

D. The portion of the \$586,578 fund balance in the Storm Drain Impact Fee Fund that was at least five (5) years old as of June 30, 2019, totals \$220,044. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Storm Drain Impact Fee Fund has projects scheduled in the current Capital Improvement Plan for the next five (5) years, and depends upon additional fees and interest each year. The project identified in Exhibit A which is funded at less than 100% with Storm Drain Impact Fees is funded by the General Fund Capital Project Reserve (CPR) totaling \$723,000. The remaining appropriation from the CPR is \$97,882.

E. The Sanitary Sewer Conveyance Fee was adopted in 2006-07 to address Sewer Main capacity deficiencies resulting from increased development.

F. The portion of the \$34,179,296 fund balance in the Sanitary Sewer Conveyance Fees Fund that was at least five (5) years old as of June 30, 2019, totals \$445,423. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Sanitary Sewer Conveyance Fee has projects scheduled in the current Capital Improvement Plan for the next five (5) years, and depends upon additional fees and interest each year. These projects are entirely funded by this fee and do not receive funding from any other sources.

2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING

THEREOF HELD ON THE 28TH DAY OF JANUARY, 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

NORA PIMENTEL
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. AB1600 Report on Development Impact Fees FYE June 30, 2019



Agenda Report

20-2456

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Adoption of a Resolution Declaring Weeds a Public Nuisance and Setting February 25, 2020 for Public Hearing [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

The City of Santa Clara has deemed the overgrowth of weeds on properties within the City a public nuisance. The City mandates that property owners conduct weed abatement activities through their own means in a timely manner. However, there are some property owners that, even with proper notification, do not comply with the weed abatement orders. As outlined in the City's Municipal Code Chapter 8.15, the City authorizes the Fire Department to abate weeds on any non-compliant property.

DISCUSSION

The Fire Department requests to commence the 2019-2020 Weed Abatement Program for the forthcoming season. It is requested that the City Council, in accordance with Section 8.15 of the City Code, adopt the attached Resolution declaring weeds to be a public nuisance. Additionally, the Fire Department requests that Council authorize the posting of a Notice of Public Hearing scheduled for February 25, 2020, to hear public input regarding the proposed destruction and/or removal of weeds from non-compliant properties. The City contracts with Santa Clara County to perform all weed abatement services within the City.

ENVIRONMENTAL REVIEW

Santa Clara County has determined the Weed Abatement Program to be categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Guideline 15308.

FISCAL IMPACT

The County's costs of abatement are assessed to the parcel owner and are managed by the County. Costs include inspection, correspondence, abatement services, and cost recovery collection. There is generally no cost to the City other than staff time and expense. However, in the event there is a programmatic shortfall at the County, the City will be charged for the shortfall based on our pro-rata share of expenses; any such shortfall is estimated to be less than \$2,500. Such costs are significantly less than a full abatement program implemented by City staff and would be absorbed by the existing adopted budget.

COORDINATION

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

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board

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

RECOMMENDATION

1. Adopt a Resolution ordering the abatement of nuisance consisting of growing weeds in the City;
and
2. Set February 25, 2020 as the date for the required Public Hearing.

Reviewed by: Ruben Torres, Fire Chief

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Resolution
2. Public Notice - Notice to Destroy Weeds

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
DECLARING WEEDS TO BE A PUBLIC NUISANCE AND SETTING
A HEARING DATE FOR THE CITY COUNCIL TO HEAR PUBLIC
INPUT REGARDING THE PROPOSED DESTRUCTION OR
REMOVAL OF WEEDS**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, weeds are growing in the City of Santa Clara upon streets, alleys, sidewalks and upon private property; these weeds bear seeds of a wingy or downy nature or may grow and, when dry, become a fire menace or those weeds that are otherwise noxious and dangerous; and,

WHEREAS, Santa Clara City Code § 8.15.030 authorizes the City Council to pass a resolution declaring such weeds to be a public nuisance, and states that unless such a nuisance is abated, the work of abating the nuisance shall be done by the City, with the expenses assessed upon the lots from which the weeds are removed.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That these weeds constitute and will continue to constitute a public nuisance, and it is ordered that this public nuisance be abated in the manner provided in Title 8 [entitled "Weeds" - Section 8.15 et seq.] of Chapter 8 of "The Code of the City of Santa Clara, California" and the "Agreement for the Abatement of Weeds by County of Santa Clara for City of Santa Clara" (a copy is on file in the office of the City Clerk).
2. That on February 25, 2020 at 6:00 p.m., or as soon as the matter may be heard, in the Council Chambers of the City of Santa Clara, public comment regarding the proposed destruction or removal of weeds shall be heard.
3. That the City Manager, or her designee, is hereby directed to cause notice of the adoption of this resolution and notice of this hearing to be given by posting and by publication in the manner and form provided in Sections 8.15.030, 8.15.040 and 8.15.080 of "The Code of the

City of Santa Clara, California.”

4. That the Santa Clara County Agricultural Commissioner is also directed to give notice by mail to the owner or owners of each individual parcel of land upon which weeds will be abated by the City at least ten (10) calendar days prior to such abatement. Before the expiration of the ten-day period, any owner may voluntarily proceed to abate the nuisance. The notice may be given by mail, addressed to the owner at the last known address as shown on the last County Equalized Assessment Roll.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

City of Santa Clara

Notice to Destroy Weeds

NOTICE IS HEREBY GIVEN that on January 28, 2020, pursuant to the provisions of Section 8.15 et seq. of the Code of the City of Santa Clara, California, the City Council passed a resolution declaring that all weeds growing upon any private property or in any public street or alley, as defined in Section 8.15.010 of the Code of the City of Santa Clara, constitute a public nuisance; this nuisance must be abated by the removal of the weeds.

NOTICE IS FURTHER GIVEN that property owners shall, without delay, remove all weeds from their property and the abutting half of the street in front and alleys, if any, behind the property and between the lot lines as extended, or the weeds will be destroyed or removed and the nuisance abated by the County authorities, in which case the cost of the destruction or removal will be assessed upon the lots and lands from which or from the front or rear of which, the weeds have been destroyed or removed, and the cost will constitute a lien upon the lots or lands until paid, and will be collected upon the next tax roll upon which general municipal taxes are collected.

All property owners wanting to provide input regarding the proposed destruction or removal of the weeds are hereby notified to attend a meeting of the City Council of the City of Santa Clara to be held in the Council Chambers of the City Hall, 1500 Warburton Avenue, Santa Clara, California, on **February 25, 2020, at 6:00 p.m.**, to have their comments heard by the City Council.

AMERICANS WITH DISABILITIES ACT (ADA). The City complies with the Americans with Disabilities Act (ADA). If you need additional information or assistance, please contact the City's ADA Coordinator at (408)615-3000 directly or through 711 the nationwide Telecommunication Relay Service.



Agenda Report

20-1388

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Approval of the Annual Investment Policy Statement for the City of Santa Clara, its Agencies and Corporations [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

Council Policy 017 Investment Policy: Annual Statement provides the framework and guidance for managing the City's investment portfolio. The City's Investment Policy expands on the Council Policy framework by providing further guidance and processes.

Section 904 of the City Charter states that the Director of Finance is required to have custody of all investments and invested funds of the City government, or in possession of such government in a fiduciary capacity, and have the safe-keeping of all bonds and notes of the City and the receipt and delivery of City bonds and notes for transfer, registration or exchange. In accordance with Government Code §53646, City Council adopted an investment policy and the Director of Finance brings that policy to Council on an annual basis, particularly highlighting any changes to the policy, for consideration and approval by Council. In addition, the Investment Policy itself (Section P) requires annual approval by Council.

The Investment Policy is a written document that governs the selection of investments and provides staff with guidance for consistent, informed investment decision making. The policy is reviewed and updated regularly in order to encourage prudent investment decisions and to stay compliant with State and Federal laws.

DISCUSSION

The City's Investment Policy is continually monitored to determine if periodic updates are necessary. As part of this review, staff is not recommending any substantive changes to the Investment Policy.

The approved Investment Policy will be included in the City of Santa Clara Council Policy Manual as Council Policy 017 (Attachment 1) and published on the City's website.

The Investment Policy (Attachment 2) as submitted is in compliance with the City Charter and the California Government Code relevant to the investment of public funds by local agencies.

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 cost to the City other than administrative staff time and expense.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Approve the Investment Policy for the City of Santa Clara, its agencies and corporations.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Council Policy 017 Investment Policy: Annual Statement
2. Investment Policy 2020



INVESTMENT POLICY: ANNUAL STATEMENT

PURPOSE

To provide the framework and guidance for managing the City's investment portfolio. It is the policy of the City of Santa Clara (City) to invest public funds, including bond proceeds, reserves and other special City funds, in a manner that maximizes safety and liquidity while earning a market rate of return commensurate with the investment risk; meets the daily cash flow demands of the City; and conforms to all state and local statutes governing the investment of public funds.

POLICY

The investment policy of the City (the "Investment Policy") is intended to provide for the prudent and efficient investment of the City's temporarily idle cash while safely maximizing returns within carefully defined investment parameters. The City shall invest public funds, including bond proceeds, reserves and other special City funds, in a manner consistent with this Investment Policy while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds.

Authority, Scope and Prudence

- **Authority** - The City Charter, Article IX, Section 904 gives the Director of Finance (the "Director") the authority and responsibility to deposit and invest all City funds.
- **Scope** - The Investment Policy applies to all deposits, investments and other assets of the City, its subsidiaries, the Successor Agency for the Redevelopment Agency of the City of Santa Clara, the Sports and Open Space Authority, the Stadium Authority, and the Housing Authority.
- **Prudence** - Employees delegated responsibility for the investment of public monies by the Director ("Investment Personnel"), as trustees of public monies, shall adhere to the "prudent investor" standard when managing the City's funds in light of the purposes, terms, and other circumstances of the City. Investment Personnel shall refrain from engaging in any activity that impairs, or has the potential to impair, their ability to make impartial investment decisions for the City.

PROCEDURE

Investment Objectives and Criteria

The primary objectives, in priority order, of the City's investment activities shall be safety, liquidity, and yield.

Internal Controls

The City's Finance Department shall establish internal controls that are designed to prevent losses due to fraud, negligence, third-party misrepresentation, and



INVESTMENT POLICY: ANNUAL STATEMENT

other foreseeable circumstances that may arise in the operations of the investment function. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

Reporting

The Director of Finance shall provide periodic investment reports to the City Council. The reports shall contain, but not be limited to, the following:

- A listing of individual securities held at the end of the reporting period by authorized investment category.
- The rate of return on the unrestricted investment portfolio compared to selected benchmark.
- Final maturity of all investments listed.
- Weighted average maturity of the unrestricted investment portfolio.
- Coupon, discount or earnings rate.
- Par value, amortized book value and market value.
- Percentage of the portfolio represented by each investment category.

Investment Policy Adoption

The Investment Policy shall be reviewed annually by the City Council and any modifications made thereto must be approved by the City Council.

Attachments:

1. Investment Policy



2020 Investment Policy

City of Santa Clara



**City of
Santa Clara**

1500 Warburton Avenue
Santa Clara, CA 95050

CITY OF SANTA CLARA INVESTMENT POLICY

A. Introduction

The investment policy of the City of Santa Clara (the "Investment Policy") is intended to provide for the prudent and efficient investment of the City of Santa Clara's temporarily idle cash while safely maximizing returns within carefully defined investment parameters. The City of Santa Clara (the "City") shall invest public funds, including bond proceeds, reserves and other special City funds, in a manner consistent with this Investment Policy while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds.

It is the City's full intent, at the time of purchase, to hold all investments until maturity in order to ensure the return of all invested principal. Through the maintenance of sufficient diversification of investments of varying maturities, the forced liquidation of investments at a loss shall be avoided, if at all possible.

For a list of terms and definitions commonly used in cash management, see "Appendix A - Glossary of Cash Management Terms".

B. Authority, Scope and Prudence

- **Authority** - The City of Santa Clara Charter, Article IX, Section 904 gives the Director of Finance (the "Director") the authority and responsibility to deposit and invest all City funds. It authorizes the Director to invest the City's idle cash in allowable investment vehicles with a maximum remaining maturity of five years at the time of purchase. The City Council may grant express authority either specifically or as part of an approved investment program to invest in securities with remaining maturities that exceed the five-year restriction. Authority must be given to the Director at least three months prior to the investment. California Government Code Section 53601 also allows the City to invest in the same investment securities as authorized by the City Council.
- **Scope** - The Investment Policy applies to all deposits, investments and other assets of the City, its subsidiaries, the Successor Agency for the Redevelopment Agency of the City of Santa Clara, the Sports and Open Space Authority, the Stadium Authority, and the Housing Authority. These funds are reported in the City's Comprehensive Annual Financial Report and include the General Fund, Special Revenue Funds, Debt Service Funds, Capital Project Funds, Trust and Agency Funds, and Enterprise Funds. Deposit of funds is in accordance with the provision of the State Constitution and the laws of the State of California (Government Code Sections 53601 and 53635) governing the handling, depositing and securing of public funds. Investment of City issued debt proceeds and debt reserve funds are separately governed by individual bond indentures adopted by the City Council.

Investment of the Forrest and Evalyne Bentzien Trust Fund is governed by the Agreement By and Between the City of Santa Clara, California and the Mission City Community Fund Regarding the Investment, Disbursement and Distribution of Funds in the Forrest and Evalyne Bentzien Non-Expendable Trust Fund approved by City Council and dated July 25, 2000 (the "Bentzien Trust Fund Agreement"), and is not subject to the provisions of this Investment Policy. The Bentzien Trust Fund Agreement defines the rights and responsibilities of the City in its capacity as Trustee and the Mission City Community Fund as the beneficiary of the Trust, to assure compliance with the California Probate Code and the Evalyne Bentzien Will.

- **Prudence** - Employees delegated responsibility for the investment of public monies by the Director ("Investment Personnel"), as trustees of public monies, shall adhere to the "prudent investor" standard when managing the City's funds in light of the purposes, terms, and other circumstances of the City. This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments in the context of the total portfolio and as part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the City. Duties must be performed with the care, prudence and diligence that a person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the City.

Investment Personnel shall refrain from engaging in any activity that impairs, or has the potential to impair, their ability to make impartial investment decisions for the City.

Investment Personnel acting in accordance with written procedures and the Investment Policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

C. Investment Objectives and Criteria

The primary objectives, in priority order, of the City's investment activities shall be:

- **Safety** - Safety of principal is the foremost objective of the investment program. Investment of City funds shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The City shall diversify its investments by investing funds among a variety of financial institutions and securities offering independent returns, all in accordance with this Investment Policy.
- **Liquidity** - The investment portfolio will remain sufficiently liquid to enable the City to meet all cash needs, which may be reasonably anticipated, for the operation of the City.
- **Yield** - The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow characteristics of the portfolio.

D. Delegation of Authority

Authority to manage the City's banking depository and investment program is derived from the City Charter. Management responsibility for the banking depository and investment program is hereby delegated to the Director of Finance who shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities and procedures of Investment Personnel.

E. Ethics and Conflicts of Interest

Officers and Investment Personnel involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or impair their ability to make impartial investment decisions. Officers and Investment Personnel shall disclose in their annual conflict of interest statement all material financial interests in financial institutions that conduct business within the City, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City.

F. Authorized Financial Institutions

The Director of Finance, or his/her designee, shall maintain a list of financial institutions and broker/dealers authorized to provide investment services to the City ("Authorized Financial Institutions"). Authorized Financial Institutions must be authorized to provide investment services in the State of California and may include "primary" dealers or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by State laws.

All financial institutions and broker/dealers who desire to become an Authorized Financial Institution must provide audited financial statements, proof of required licenses or registration, and written confirmation that they have read and shall abide by the City's Investment Policy.

Authorized Financial Institutions shall be expected to actively participate in the bid/offer process for securities in which they are market makers. In addition, it will be expected that the Authorized Financial Institutions will be able to fill the entire order being solicited and that there shall be no delay in completing the transaction on the contractual settlement date.

The Director of Finance, or his/her designee, periodically reviews the financial conditions and registrations of financial institutions and broker/dealers that deal with the City. The City is under no obligation to transact business with any financial institution and may at any time remove a financial institution from the list of Authorized Financial Institutions at the City's discretion.

G. Competitive Bidding Process

When practicable, Investment Personnel of the City shall enter into transactions for the purchase or sale of securities on a competitive bid basis. From time to time the City may enter into transactions involving securities for which there is not an active secondary market or where other Authorized Financial Institutions do not have the security available for sale and therefore, competitive bidding is not available. If competitive bidding on a security is not practicable or possible, Investment Personnel will seek to verify pricing by other reasonable means.

The bidding process shall be fully documented for all transactions and complete records shall be available for audit and reporting purposes.

In all cases, placement shall be made consistent with the safety, liquidity and yield objectives of this Investment Policy.

H. Authorized and Suitable Investments

Special care must be taken to ensure that the list of instruments includes only those allowed by law and those that local investment managers are trained and competent to handle. The City is empowered by the State of California Government Code and the City Charter to invest in the following types of securities. Additionally, bond proceeds are invested in accordance with the requirements outlined in the specific bond indenture of trust.

➤ U.S. Treasury Bills, Notes and Bonds

Maximum Holdings =	100% of portfolio dollars
Maximum per Issuer =	100% of portfolio dollars
Maximum Maturity =	5 year final maturity

➤ **Securities Guaranteed or Backed by the Full Faith and Credit of the U.S. Government**

Maximum Holdings = 100% of portfolio dollars
Maximum per Issuer = 100% of portfolio dollars
Maximum Maturity = 5 year final maturity

➤ **U.S. Government Agency Securities** (exclusive of Agency MBS or CMO Securities) such as the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Farm Credit Bank (FFCB), local agencies, and other U. S. government-sponsored enterprises. These investments must be rated in the top three rating categories by two of the three largest nationally recognized statistical rating organizations (NRSROs).

Maximum Holdings = 80% of portfolio dollars
Maximum per Issuer = 40% of portfolio dollars
Maximum Callable = 50% of portfolio dollars
Maximum Maturity = 5 year final maturity

➤ **Negotiable Certificates of Deposit** issued by a nationally or state-chartered bank or by a state-licensed branch of a foreign bank.

Maximum Holdings = 25% of portfolio dollars
Maximum per Issuer = 5% of portfolio dollars
Maximum Maturity = 1 year final maturity

➤ **Bankers Acceptances** of any domestic or foreign commercial bank that are acceptable to the Federal Reserve.

Maximum Holdings = 25% of portfolio dollars
Maximum per Issuer = 5% of portfolio dollars
Maximum Maturity = 180 days

➤ **Commercial Paper** of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided by Moody's Investors Service, Inc., Standard and Poor's Corporation, or Fitch Financial Services, Inc. Eligible paper is further limited to paper issued by any U.S. corporation having total assets in excess of \$500 million and having an "A" or higher rating for the issuer's debt.

Maximum Holdings = 25% of portfolio dollars
Maximum per Issuer = 10% of portfolio dollars
Maximum Maturity = 270 days

➤ **Local Agency Investment Fund of the State of California.** Purchases may be made up to the maximum amount allowed by the State of California. Securities owned in the Local Agency Investment Fund of the State of California will not count towards maximum percentages of other categories.

- **Repurchase Agreements** subject to requirements of the California Government Code Section 53601(j). A Master Repurchase Agreement must be signed with the bank or dealer. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly.

Maximum Holdings = 50% of portfolio dollars
Maximum per Issuer = 20% of portfolio dollars
Maximum Maturity = 60 days

- **Reverse Repurchase Agreements.** Reverse repurchase agreements with the prior approval of the City Council and subject to requirements of the California Government Code Sections 53601(j).

Maximum Holdings = 20% of portfolio dollars
Maximum per Issuer = 10% of portfolio dollars
Maximum Maturity = 92 days

- **Securities of Local Agencies of California.** Includes bonds, notes, warrants and other evidences of indebtedness of any local agency.

Maximum Holdings = 20% of portfolio dollars
Maximum per Issuer = 5% of portfolio dollars
Maximum Maturity = 5 year final maturity

- **Medium Term Corporate Notes** issued by corporations doing business in the United States. These corporations must be rated in the top three rating categories by two of the three largest NRSROs.

Maximum Holdings = 15% of portfolio dollars
Maximum per Issuer = 5% of portfolio dollars
Maximum Maturity = 5 year final maturity

- **Mutual Funds, Money Market Funds, and Investment Pools** consisting of investment vehicles permitted under Sections 53601 and 53635 of the California Government Code. To be eligible for City investments, companies providing mutual funds shall have the following:

1. The highest rating provided by not less than two of the three largest NRSROs.
2. An investment advisor registered with the Securities and Exchange Commission for not less than five years having investment experience in the underlying securities and with assets under management in excess of \$500 million.
3. The purchase price of the shares shall not include any commission fees.

Money Market Funds must meet either 1 or 2 above and 3. A thorough analysis of the pool/fund is required prior to investing, and on a continual basis. Analysis shall include creditworthiness, size, safety, ease of investment liquidation, frequency of earnings distributions, frequency of account statements, and investment portfolio strategy. Securities owned in mutual funds and investment pools will not count towards maximum percentages of other categories.

Maximum Holdings = 20% of portfolio dollars
Maximum per Issuer = 10% of portfolio dollars

- **Joint Powers Authority Investment Pools** organized pursuant to Section 6509.7 that invests in the securities and obligations under Sections 53601 of the California Government Code. To be eligible for City investments, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

1. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
2. The adviser has not less than five years of experience investing in the securities and obligations authorized in under Section 53601.
3. The adviser has assets under management in excess of \$500 million.

Maximum Holdings = 100% of portfolio dollars
Maximum per Issuer = 100% of portfolio dollars

I. Collateralization

Collateralization of marketable securities will be required on certificates of deposit and repurchase agreements in accordance with California Government Code Section 53601. In order to anticipate market changes and provide a level of security for all funds, the collateralization level shall be at least 102% of market value of principal and accrued interest. The City reserves the right to require additional collateral if the City believes such additional amount is warranted.

Collateral shall always be held by an independent third party with whom the City or the counterparty has a current custodial agreement. Clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained. The counterparty shall have the right to substitute substantially the same securities as originally deposited as collateral.

J. Safekeeping and Custody

All security transactions, including collateral for repurchase agreements, entered into by the City shall be conducted on a delivery-versus-payment (DVP) basis. Securities shall be held by a third party custodian designated by the Director of Finance, or his/her designee, and evidenced by safekeeping receipts.

K. Diversification

The City will diversify its investments by security type and institution. Maximum percentage holdings for each security type and institution shall conform to this Investment Policy and the maximum allowed under the California Government Code Section 53601.

All percentage restrictions on authorized investments are based on the amortized book value of the portfolio as of the trade date of the investment. In the event that portfolio percentage restrictions are violated due to a reduction in book value of the portfolio, the City may, but will not be required to, liquidate securities to meet the maximum holdings requirements.

L. Maximum Term of Investment

To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements. The City will not directly invest in securities maturing more than five years from the date of purchase without Council approval. Effective May 25, 1998, the City Council authorized staff to purchase securities with maturities greater than five years, specifically for the Electric Cost Reduction Fund.

Reserve funds may be invested in securities exceeding five years if the maturity of such investments is made to coincide as nearly as practicable with the expected use of the funds.

M. Internal Controls

The City's Finance Department shall establish internal controls that are designed to prevent losses due to fraud, negligence, third-party misrepresentation, and other foreseeable circumstances that may arise in the operations of the investment function. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- **Collusion** - Collusion is a situation where two or more employees are working together to defraud their employer.
- **Separation of duties** - By separating the persons who perform and authorize the transactions from the people who record or otherwise account for the transactions, a separation of duties is achieved.
- **Safekeeping** - Securities purchased from any broker or dealer shall be placed with the City's depository bank in its trust department for safekeeping. Securities shall be held in a manner that establishes the City's right of ownership. Evidence of ownership shall be demonstrated by a monthly safekeeping statement which shall be reconciled on a timely basis to internal holding reports.
- **Clear Delegation of Authority** - Subordinate staff members must have a clear understanding of their authority and responsibility to avoid improper actions.
- **Written Confirmation** - Due to the potential for error arising from telephone transactions, all telephone transactions shall be supported by written communications and approved by appropriate Investment Personnel.
- **Delivery** - Where applicable, investment transactions of the City shall be conducted using standard delivery-vs-payment procedures.
- **Daily Procedures** - Detailed written procedures shall be created and regularly maintained so that critical investment functions may be performed in the absence of the person normally responsible for performing such work. The procedures should include reference to custody and safekeeping, wire transfer agreements, banking service contracts and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in a depository or investment transaction except as provided under the terms of this Investment Policy and the procedures established by the Director of Finance.
- **Annual Audit** - On an annual basis, the City's financial statements and business practices are audited by an external auditor. Included in the annual audit shall be testing of the City's compliance with the Investment Policy.

N. Performance Standard

As preservation of capital is the City's top priority, the City's investment strategy shall assume that an investment is being held to maturity or other redemption date as set forth in the security's official offering documentation (i.e., callable securities). Trading in response to economic conditions and market valuations will be permitted if the sale of a security can be justified.

The City also recognizes the importance of obtaining an adequate rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and cash flow requirements. The investment portfolio shall be measured as follows:

- The portfolio's yield shall be compared to the 24-month moving average yield of 2-year Treasury Notes.
- The portfolio's weighted average maturity shall be less than three years.

In accordance with generally accepted accounting principles, the City shall mark-to-market its investments on a monthly basis using an independent pricing source. Market values will be looked upon as indications of market movements and volatility in making investment decisions rather than an indication of performance.

O. Reporting

The Director of Finance shall provide periodic investment reports to the City Council. The reports shall contain, but not be limited to, the following:

- A listing of individual securities held at the end of the reporting period by authorized investment category.
- The rate of return on the unrestricted investment portfolio compared to the 24-month moving average yield of 2-year Treasury Notes.
- Final maturity of all investments listed.
- Weighted average maturity of the unrestricted investment portfolio.
- Coupon, discount or earnings rate.
- Par value, amortized book value and market value.
- Percentage of the portfolio represented by each investment category.

P. Investment Policy Adoption

The Investment Policy shall be reviewed annually by the City Council and any modifications made thereto must be approved by the City Council.

APPENDIX A

GLOSSARY OF CASH MANAGEMENT TERMS

AGENCIES: A debt security issued by a federal or federally sponsored agency. Federal agencies are backed by the full faith and credit of the U.S. Government. Federally sponsored agencies (FSAs) are backed by each particular agency with a market perception that there is an implicit government guarantee. An example of a federal agency is the Government National Mortgage Association (GNMA). An example of an FSA is the Federal National Mortgage Association (FNMA).

ASK: The price at which securities are offered.

BANKERS' ACCEPTANCE (BA): A draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BASIS POINT - A unit of measurement used in the valuation of fixed-income securities equal to 1/100 of 1 percent of yield (e.g., 1/4 of 1 percent is equal to 25 basis points).

BID: The price offered by a buyer of securities. (When you are selling securities you ask for a bid.) See Offer.

BOOK VALUE - The value at which a security is carried on the financial records of an investor. The book value may differ significantly from the security's current value in the market.

BROKER: A broker brings buyers and sellers together for a commission.

CALLABLE BOND - A bond issue in which all or part of its outstanding principal amount may be redeemed prior to maturity by the issuer under specified conditions.

CALL PRICE - The price at which an issuer may redeem a bond prior to maturity.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMMERCIAL PAPER: Short-term obligations with maturity ranging from 2 to 270 days issued by banks, corporations, and other borrowers to investors with temporarily idle cash. Such instruments are unsecured and usually discounted, although some are interest-bearing.

COUPON: Interest rate on a debt security the issuer promises to pay to the holder until maturity, expressed as an annual percentage of face value.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT (DVP): There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DERIVATIVES: (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT RATE: Interest rate that the Federal Reserve charges member banks for loans, using government securities or eligible paper as collateral.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury Bills.

DISCOUNT YIELD: Yield on a security sold at a discount.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL DEPOSIT INSURANCE CORPORATON (FDIC): A federal agency that insures bank deposits.

FEDERAL FUNDS (FED FUNDS) - Funds placed in Federal Reserve banks by depository institutions in excess of current reserve requirements. These depository institutions may lend Fed Funds to each other overnight or on a longer term basis. Depository institutions may also transfer funds among each other on a same-day basis through the Federal Reserve banking system. Fed Funds are considered to be immediately available funds.

FEDERAL FUNDS RATE: The rate of interest at which Federal Funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): Government sponsored wholesale banks which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLBs is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

FEDERAL FARM CREDIT BANK (FFCB): The Federal Farm Credit Banks Funding Corporation is an integral part of the Farm Credit System, a leading provider of loans, leases and services to U.S. agriculture and rural America. FFCB is a government-sponsored enterprise that consolidates the financing activities of the Federal Land Banks, the Federal Intermediate Credit Banks, and the Banks for Cooperatives.

FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC): A publicly chartered agency that buys qualifying residential mortgages from lenders, packages them into new securities backed by those pooled mortgages, provides certain guarantees, and then resells the securities on the open market. FHLMC's stock is owned by savings institutions across the U.S. and is held in trust by the FHLB System.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA or Fannie Mae): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of

adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holders are protected by the full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FmHA mortgages. The term "pass-throughs" is often used to describe Ginnie Maes.

GUARANTEED INVESTMENT CONTRACT (GIC): A contract between an insurance company and a corporate profit-sharing or pension plan that guarantees a specific rate of return on the invested capital over the life of the contract.

IDLE FUNDS: Money in the treasury not required for the immediate needs of the local agency.

INVESTMENT-GRADE OBLIGATIONS - An investment instrument suitable for purchase by institutional investors under the prudent investor rule. Investment-grade is restricted to those obligations rated BBB or higher by a rating agency.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase---reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement often specifies, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, banker's acceptances, etc.) are issued and traded.

NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO): A credit rating agency that issues credit ratings that the U.S. Securities and Exchange Commission permits other financial firms to use for certain regulatory purposes.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Ask and Bid.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PREMIUM - The amount by which the price paid for a security exceeds the security's par value.

PORTFOLIO: A combined holding of a variety of investments. The purpose of a portfolio is to reduce risk by diversification.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include the Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRIMARY MARKET: A market for new issues of securities. A market is primary if the proceeds of sales go to the issuer of the securities sold.

PRIME RATE - A preferred interest rate charged by commercial banks to their most creditworthy customers. Many interest rates are keyed to this rate.

PRINCIPAL - The face value or par value of a debt instrument.

PRUDENT INVESTOR RULE: A guideline that states that a fiduciary must consider the needs of the beneficiaries, the provision of regular income, minimize risk and preserve assets. The Prudent Investor Rule applies to the investment decision-making process and no single investment decision should be judged in isolation, but rather as part of the entire portfolio. The Prudent Investor Rule mandates fiduciaries apply the principle of diversification when constructing portfolios.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price.

REPURCHASE AGREEMENT (RP or REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him/her for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money that is, increasing bank services.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vault for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES AND EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

STRUCTURED NOTES: Notes issued by Government Sponsored Enterprises (FHLB, FNMA, etc.) and Corporations that have imbedded options (e.g., call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months or one year.

TREASURY BONDS: Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturity more than ten years.

TREASURY NOTES: Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturity from two to ten years.

WEIGHTED AVERAGE MATURITY (WAM) - The average maturity of all the securities that comprise a portfolio.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in the purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

YIELD-TO-CALL (YTC) - The rate of return an investor earns from a security assuming the security is redeemed (called) prior to its stated final maturity date.

YIELD-TO-MATURITY (YTM) - The rate of return an investor earns on a security held to maturity when both interest payments and the investor's potential capital gain or loss are included in the calculation of return.



Agenda Report

20-84

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Supplementary Declaration of Covenants, Conditions and Restrictions (CC&Rs) for the Catalina Townhomes [Council Pillar: Promote and Enhance Economic and Housing Development]

BACKGROUND

The City's subdivision ordinance, Santa Clara City Code (SCCC) Chapter 17.05, and the Zoning Ordinance, SCCC Chapter 18.54, provide that the City shall review draft declarations of covenants, conditions and restrictions (CC&Rs) for proposed subdivisions. The Zoning Ordinance also provides that if a development subsequently proposes to amend its CC&Rs, the amendment must be filed with the City Council, which then has an opportunity to veto the proposed amendment. If the Council takes no action, the amendment automatically becomes effective, 60 days after filing.

In 2018, the City Council approved a Final Map for Phase 1 of the Catalina Residential Project located at 1375, 1385, and 1399 El Camino Real to allow the construction of 54 townhouse units, including 8 live-work units, with CC&Rs that were reviewed and approved by City staff. In 2019, the Council approved the Vesting Tentative Subdivision Map for Phase 2 of the Catalina Project, for an additional 39 townhomes, including 7 live-work units, directly adjacent to Phase 1, at 1433, 1453, 1483 and 1493 El Camino Real.

DISCUSSION

The CC&Rs for Phase 1 authorize the developer to annex Phase 2 into Phase 1, so that one condominium association will manage the entire development.

To allow this annexation to occur, it is necessary to address some minor variations in the conditions of approval between Phase 1 and Phase 2, such as a new requirement to submit a Transportation Demand Management plan and annual updates to the Director of Community Development. In order to comply with all of the conditions of approval for both phases, the Developer proposed executing the attached Supplemental Declaration, which amends the original CC&Rs.

As provided in SCCC Section 18.54.080(c)(2), the City Council has 60 days to veto any proposed amendment to existing CC&Rs. Staff has reviewed the proposed Supplemental Declaration and has no objection to the amendments, and has determined that they conform to all of the conditions of approval for both phases.

If the Council takes no action, the Supplementary Declaration can take effect and the developer will be able to proceed with selling units in both Phases. If the Council chooses to exercise its authority to veto the proposed Declaration, staff could work with the Developer to come up with an amendment that would be satisfactory to the Council.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

COORDINATION

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

ENVIRONMENTAL REVIEW

The action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

PUBLIC CONTACT

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

RECOMMENDATION

Note and file the proposed Supplemental Declaration of Covenants, Conditions and Restrictions For the Catalina Townhomes.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Supplemental Declaration of Covenants, Conditions and Restrictions for the Catalina Townhomes

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

LS-Santa Clara LLC
3130 Crow Canyon Place, #325
San Ramon, CA 94583
Attn: Jacquelyn Trommer

**SUPPLEMENTARY DECLARATION
OF CATALINA
(Conditions of Approval)**

This SUPPLEMENTARY DECLARATION OF CATALINA ("Supplementary Declaration") is made this ____ day of _____, 20__ by LS-Santa Clara LLC, a Delaware limited liability company ("Declarant") with reference to the facts set forth below.

RECITALS

A. Declarant caused that certain Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Catalina to be recorded on December 10, 2019 as Instrument No. 24354257 in the Office of the County Recorder of Santa Clara County, California ("Declaration"), which, as of the date of this Supplementary Declaration, encumbers the real property situated in the City of Santa Clara, County of Santa Clara, as more particularly described on Exhibit "A" attached hereto ("Property"). The additional real property listed on Exhibit "B" attached hereto may be annexed to the Declaration and upon such annexation shall be subject to the provisions of the Declaration and this Supplementary Declaration. Unless otherwise specified herein, the capitalized terms in this Supplementary Declaration shall have the meanings set forth in the Declaration.

B. In accordance with Section 1.81 and Section 9.8 of the Declaration, Declarant wishes to record this Supplementary Declaration in order to conform the Declaration with the conditions of approval imposed by the City for Catalina II (Tract Map No. 10515).

C. In the event any provision of this Supplementary Declaration is disapproved by the City, Declarant shall be obligated to, and shall have the unilateral right to, record an amendment to bring such provision into compliance with City requirements.

NOW, THEREFORE, Declarant declares as set forth below:

1. **Recital A.** Recital A of the Declaration is deleted in its entirety and replaced with the following:

A. Property Owned by Declarant. Declarant is the Owner of a residential community situated in the City of Santa Clara, County of Santa Clara, State of California known as "Catalina" ("Community"). If developed as planned, the Community may consist of two tracts located in separate Final Maps. The first tract – Catalina I (Tract Map 10474) consists of fifty four (54) Condominiums, forty six (46) of which are Residential Condominiums and eight (8) of which are Live Work Condominiums, together with Association Property, landscaped areas, a tot lot, Private Streets, limited guest parking spaces and other facilities. The second tract – Catalina II (Tract Map 10515) will consist of thirty-nine (39) Residential Condominiums, thirty two (32) of which will be Residential

Condominiums and seven (7) of which will be Live Work Condominiums, together with Association Property, landscaped areas, Private Streets, a recreation area, limited guest parking spaces and other facilities.

2. **Section 1.20.** Section 1.20 of the Declaration is hereby revised to add “Planned Development (PD) zoning” to the definition of “Community Entitlements” in such provision.

3. **Section 2.7.7.** Section 2.7.7 of the Declaration is hereby revised to add the following to the end of the first sentence of such provision: “provided that the required number of visitor parking spaces are provided at all times.”

4. **Section 3.4.5.** Section 3.4.5 of the Declaration is hereby revised to add the following to the list of items the Association shall provide for: “payment for garbage and trash disposal services for the Association Property and Association Maintenance Areas...”

5. **Section 3.4.13.** The first sentence of Section 3.4.13 of the Declaration is hereby deleted and replaced with the following: “Certain portions of the Property may have been or may be dedicated to the City on the Final Map.”

6. **Section 3.4.16.** The following provision is hereby added as Section 3.4.16 of the Declaration:

3.4.16 TDM Plan and Annual Reporting Requirement. Declarant has an obligation under the Community Entitlements to achieve a 20 percent reduction in project Vehicle Miles Traveled (VMT), half of which (a 10 percent reduction) must be achieved with Transportation Demand Management (“TDM”) measures. Such TDM measures may include, but are not limited to, unbundled parking, on-site bicycle parking, parking for car-sharing vehicles, and Eco Passes for residents. Declarant is required by the Community Entitlements to submit an initial TDM Plan to the City’s Director of Community Development for approval and implement the plan. Declarant shall submit to the City’s Planning Division by February 28th of each year an annual report covering the prior calendar year, in a format approved by the City’s Director of Community Development, detailing the TDM measures undertaken in the last calendar year and the percentage reduction achieved, and supporting data. Once Declarant has sold all Units in the Community to First Purchasers, the Association shall assume the reporting and implementation responsibilities for the TDM Plan.

7. **Section 3.5.3.** Section 3.5.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 3.5.3 Hours of Operation. The Association may not impose any limitations on the hours of operation of the businesses within the Live Work Units other than the restrictions set forth in Sections 3.3.15 and 6.3.4 below nor shall these Sections be amended, without the consent of at least a majority of the Live Work Owners.

8. **Section 6.1.4.** Section 6.1.4 of the Declaration is hereby revised to remove the following sentence from such provision: “No animal shall be permitted to be maintained, at any time, within any recreational areas within the Community.”

9. **Section 6.1.6(c).** Section 6.1.6(c) of the Declaration is hereby revised to add the following sentence to the end of such provision: “Owners are prohibited from utilizing garages for exclusive use storage and parking areas within the Community shall not be used for business purposes except to accommodate clients of the Live Work Units.”

10. **Section 6.1.6(e).** Section 6.1.6(e) of the Declaration is hereby revised to remove the following from the end of the first sentence of such provision: “unless otherwise approved by the Board and the City.”

11. **Section 6.1.7(c).** Section 6.1.7(c) of the Declaration is hereby revised to add the following to the end of such provision: “and subject to applicable Building Code requirements.”

12. **Section 6.1.15.** Section 6.1.15 of the Declaration is hereby revised to add the following to the end of the first sentence of such provision: “and the City.”

13. **Section 6.3.2.** Section 6.3.2 of the Declaration is hereby deleted in its entirety and replaced with the following:

6.3.2 Allowed Uses. The Live Work Unit Commercial Areas may be used for “work” purposes as described below provided, however, in the event such use is prohibited by the City, such use shall also not be permitted. Generally, Live Work Units are intended to be used for residential and/or home office and other professional office uses. Notwithstanding anything herein to the contrary, a “home based business” must comply with Applicable Laws and the requirements of the Community Entitlements. The following descriptions are not intended to be all inclusive and at all times are subject to compliance with City home based business requirements which as of the date of recordation of this Declaration are included in Chapter 18.100 SCCC, Home Occupations, approved permitted uses as set forth in the Community Entitlements, and uses that the City’s Zoning Administrator determines to be similar in nature to the listed uses. Except as otherwise provided below, all uses contemplated in a Live Work Unit shall be conducted entirely within the Unit and shall be operated so as not to be objectionable or detrimental to adjoining Occupants or the Community or the nearby environment generally. (a) Architect/Landscape Design; (b) Engineer/Land Planner; (c) Interior Decorator; (d) Financial or other Planning Consultant; (e) Attorney/Estate Planner; (f) Income Tax Service/Accountant; (g) Consulting and Business Services; (h) Esthetician; (i) Tutor; (j) Private music instruction (nonamplified); (k) Real Estate Developer/Contractor; (l) Cottage food operations (consistent with the California Homemade Food Act, AB 1616 (2012), and as amended); (m) Painting or sculpting arts; (n) Photography; (o) Graphic design; (p) Billing Service Provider; (q) Telecommuter; (r) Computer programing/consulting; (s) Telemarketing and computer industry related activities; and (t) Storage and use of chemicals and materials in use that in the opinion of the Santa Clara Fire Department would not create adverse conditions for residents and neighboring properties.

14. **Section 6.3.3.** Section 6.3.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

6.3.3 Other Permitted Uses. Notwithstanding the specific examples of permitted uses outlined above, an Owner may seek authorization from City’s Zoning Administrator to engage in other similar uses, so long as such other uses are for general professional purposes and are not otherwise precluded by the requirements of the Governing Documents, Community Entitlements or Applicable Laws.

15. **Section 6.3.4.** Section 6.3.4 of the Declaration is hereby revised to add the following prohibited uses: (r) Retail sales and services; (s) Auto repairs and services; (t) Repair services (such as electronics, clock, watch, shoe, bicycle); (u) Cleaning services; (v) Pool maintenance; (w) Pick-up and delivery services; (x) Landscape services; (y) Recording studio; (z) Animal clinic; (aa) Health clinic; (bb) Barber shop/beauty parlor; (cc) Welding and open flammable related activities; (dd) Research lab; (ee) Cabinet making or other woodworking; (ff) Dog grooming; (gg) Dry cleaning; (hh) Florist, flower arranging and plant services; (ii) Medical or dental office; (jj) Daycare; (kk) Manufacturing or assembly; and (ll) Storage and use of chemicals and materials in use that in the opinion of the Santa Clara Fire Department would create adverse conditions for residents and neighboring properties.

16. **Section 6.3.5.** Section 6.3.5 of the Declaration is hereby revised to provide that signage shall also be approved by the City.

17. **Section 7.3.** Section 7.3 of the Declaration is hereby revised to provide that the Association shall maintain the Association Property throughout the life of the Community and to add the

following to the last sentence of such provision: “and is required as a condition of the PD zoning approval of the Catalina II development entitlement.”

18. **Section 7.3.7.** Section 7.3.7 of the Declaration is hereby revised to delete the following from the second sentence of such provision: “bushes/shrubs shall not exceed two (2) feet in height at maturity, or maintained at that height, and...”

19. **Section 7.3.8.** Section 7.3.8 of the Declaration is hereby deleted in its entirety and replaced with the following:

7.3.8 Offsite Maintenance Areas. The Association shall maintain the irrigation system, trees, and plantings in the Offsite Maintenance Areas in good condition at all times. The Association shall also provide irrigation to the street trees and plantings bordering the Community as required by the City. Additional Offsite Maintenance Area obligations may be identified in a Supplementary Declaration. The Offsite Maintenance Areas include the areas depicted on Exhibit “D” to the Declaration and the irrigation system, street trees and plantings in the public right of way fronting Catalina II along El Camino Real and Civic Center Drive.

20. **Section 7.3.11.** Section 7.3.11 of the Declaration is hereby revised to add the following after the words “Association Property” in the first sentence of such provision: “and Offsite Maintenance Areas...”

21. **Section 7.7.** Section 7.7 of the Declaration is hereby revised to add the following to the beginning of the first sentence of such provision: “Subject to the limitations contained in the Community Entitlements,...”

22. **Section 8.2.** Section 8.2 of the Declaration is hereby revised to add the following to the end of the second to last sentence of such provision: “and approval of the City.” Section 8.2 of the Declaration is also hereby amended to replace the last sentence of such provision with the following: “An Owner shall also be obligated to obtain any approvals and permits required by the City or other Governmental Agencies.”

23. **Section 8.2.1.** Section 8.2.1 of the Declaration is hereby revised to add the following to the end of the first sentence of such provision: “approval, and issuance of any applicable permit.”

24. **Section 8.5.** Section 8.5 of the Declaration is hereby revised to replace the first sentence of such provision with the following: “Any Owner proposing to install or use a solar energy system, as defined in California Civil Code Section 801.5, shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Board and/or City pursuant to this Declaration.”

25. **Section 8.15.** Section 8.15 of the Declaration is hereby revised to add the following to the end of the first sentence of such provision: “following review and approval by the City.”

26. **Section 9.9.** Section 9.9 of the Declaration is hereby revised to add the following to the end of the first sentence of such provision: “and the City.”

27. **Section 11.5.7.** The following provision is added as Section 11.5.7 of the Declaration.

11.5.7 the alteration is reviewed and approved by the City.

28. **Section 11.7.** Section 11.7 of the Declaration is hereby revised to replace the first sentence of such provision with the following: “In the event of damage or destruction to any Unit, the Owner thereof shall (unless the Association is not required to repair surrounding damaged Association Property pursuant to the terms set forth above) reconstruct the same as soon as reasonably practicable

and substantially in accordance with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board and issuance of any requisite building permits, reconstruct or repair the same pursuant to new or changed plans and specifications.”

29. Section 16.2. Section 16.2 of the Declaration is hereby revised to add the following sentence to the beginning of such provision: “The covenants, conditions, and restrictions now or hereafter imposed by the provisions of the Governing Documents, or any amendment thereto, are enforceable equitable servitudes.”

30. Applicability. This Supplementary Declaration shall be applicable to all of the Property subject to the Declaration at the time this Supplementary Declaration is recorded. All additional property later annexed to the Declaration shall be subject to the Declaration and this Supplementary Declaration and any additional supplements or amendments thereto.

31. Affirmation. Except as amended or modified herein or to the extent inconsistent with this Supplementary Declaration, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first above written.

LS-Santa Clara LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

DESCRIPTION OF PROPERTY

LOT 3, LOT 4 AND PARCEL B AS SHOWN ON TRACT NO. 10474, IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, FILED FEBRUARY 20, 2019, IN BOOK 921 OF MAPS, PAGES 39 THROUGH 45, INCLUSIVE, OFFICIAL RECORDS OF SANTA CLARA COUNTY ("MAP").

EXHIBIT "B"

ANNEXABLE PROPERTY

LOTS 1, 2, 5 AND 6, AND PARCELS A, C AND D AS SHOWN ON TRACT NO. 10474, IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, FILED FEBRUARY 20, 2019, IN BOOK 921 OF MAPS, PAGES 39 THROUGH 45, INCLUSIVE, OFFICIAL RECORDS OF SANTA CLARA COUNTY; AND

COMMENCING AT A STAKE IN THE NORTHWESTERLY LINE OF CLAY STREET, DISTANT THEREON EIGHT HUNDRED AND TWENTY-FIVE FEET SOUTHWESTERLY FROM THE POINT OF INTERSECTION OF THE SAID NORTHWESTERLY LINE OF CLAY STREET WITH THE SOUTHWESTERLY LINE OF JACKSON STREET, THE SAID STAKE BEING ALSO DISTANT SOUTHWESTERLY ALONG THE SAID NORTHWESTERLY LINE OF CLAY STREET, FOUR HUNDRED AND SEVENTY-SIX FEET FROM THE EASTERLY CORNER OF SUBLOT NO. 17 OF THE TOWN OF SANTA CLARA; AND RUNNING THENCE NORTHWESTERLY ON A LINE PARALLEL WITH THE SOUTHWESTERLY LINE OF THE SAID SUBLOT NO. 17, THREE HUNDRED AND FOURTEEN AND FORTY-SEVEN HUNDREDTHS FEET TO A STAKE IN THE NORTHWESTERLY LINE OF THE SAID SUBLOT NO. 17; THENCE SOUTHWESTERLY ALONG THE SAID NORTHWESTERLY LINE OF THE SAID SUBLOT NO. 17, TWO HUNDRED AND SEVENTY-SEVEN FEET TO A STAKE STANDING IN THE MOST WESTERLY CORNER OF THE SAID SUBLOT NO. 17; THENCE SOUTHEASTERLY ALONG THE SAID SOUTHWESTERLY LINE OF THE SAID SUBLOT NO. 17, THREE HUNDRED AND FOURTEEN AND SEVENTY-FOUR HUNDREDTHS FEET TO A STAKE STANDING IN THE NORTHWESTERLY LINE OF CLAY STREET AT THE MOST SOUTHERLY CORNER OF THE SAID SUBLOT NO. 17; THENCE NORTHEASTERLY ALONG THE SAID NORTHWESTERLY LINE OF CLAY STREET, TWO HUNDRED AND SEVENTY-SEVEN FEET TO THE POINT OF COMMENCEMENT; AND BEING A PORTION OF THE SAID SUBLOT NO. 17 OF THE SAID TOWN OF SANTA CLARA.

EXCEPTING THEREFROM THE FOLLOWING:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF CLAY STREET, SAID POINT BEING DISTANT THEREON 606 FEET EASTERLY FROM THE INTERSECTION OF THE NORTHERLY LINE OF CLAY STREET WITH THE EASTERLY LINE OF LINCOLN STREET; AND RUNNING THENCE SOUTH 66° WEST ALONG THE NORTHERLY LINE OF CLAY STREET 277 FEET; THENCE NORTH 24° 25' WEST 52 FEET; THENCE ALONG THE ARC OF A CIRCLE HAVING A RADIUS OF 1450 FEET AND ITS CENTER TO THE LEFT AND A TANGENT BEARING OF NORTH 78° 56' EAST 280.08 FEET; THENCE SOUTH 24° 25' EAST 16 FEET TO THE NORTHERLY LINE OF CLAY STREET, AND POINT OF COMMENCEMENT, AND BEING A PART OF SUBLOT NO. 17 OF THE CITY OF SANTA CLARA. ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF SANTA CLARA BY INSTRUMENT RECORDED JUNE 1, 1970 IN BOOK 8938 OF OFFICIAL RECORDS AT PAGE 445, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EXISTING SOUTHEASTERLY LINE OF CIVIC CENTER DRIVE (FORMERLY SCOTT STREET), WHICH IS COINCIDENT WITH THE NORTHERLY COMMON CORNER OF THE LANDS OF IVANCOVICH AND THE LANDS CONVEYED TO BACON BY DEED FILED FOR RECORD IN BOOK 1319 OF SAID OFFICIAL RECORDS, AT PAGE 44; THENCE SOUTHEASTERLY, FOLLOWING THE COMMON BOUNDARY BETWEEN SAID LANDS OF IVANCOVICH AND BACON, SOUTH 24° 00' 00" EAST 21.32 FEET TO A POINT IN A LINE PARALLEL TO AND DISTANT SOUTHEASTERLY 35 FEET, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF CIVIC CENTER DRIVE, AS SAID CENTERLINE IS SHOWN ON THE MAP OF SAID DRIVE FILED FOR RECORD IN THE OFFICE OF SAID COUNTY RECORDER IN BOOK 3 OF OFFICIAL PLAN LINE MAPS, AT PAGE 47; THENCE FOLLOWING SAID PARALLEL LINE SOUTH 65° 48' 10" WEST 96.06 FEET TO THE POINT OF TANGENCY WITH A 788 FOOT RADIUS CIRCULAR CURVE DEFLECTING TO THE RIGHT; THENCE FOLLOWING THE ARC OF SAID CIRCULAR CURVE THROUGH A CENTRAL ANGLE OF 13° 16' 11" AN ARC DISTANCE OF 182.50 FEET TO A POINT IN THE EASTERLY LINE OF THOSE CENTER LANDS CONVEYED TO THE CITY OF SANTA CLARA, A

MUNICIPAL CORPORATION, BY DEED FILED FOR RECORD IN BOOK 5358 OF SAID OFFICIAL RECORDS, AT PAGE 332; THENCE NORTHWESTERLY, FOLLOWING THE COMMON BOUNDARY BETWEEN SAID LANDS OF THE CITY OF SANTA CLARA AND SAID LANDS OF IVANCOVICH, NORTH 24° 00' 20" WEST 1.29 FEET TO A POINT IN THE ABOVE MENTIONED SOUTHEASTERLY LINE OF CIVIC CENTER DRIVE; THENCE NORTHEASTERLY COINCIDENT WITH SAID SOUTHEASTERLY LINE OF CIVIC CENTER DRIVE NORTH 66°00' 44" EAST 277.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THE COURSE WITH A LENGTH OF 52.00 FEET AS SHOWN ON THE RECORD OF SURVEY, LANDS OF ANNA IVANCOVICH RECORDED MARCH 5, 1965 IN BOOK 191 OF MAPS, AT PAGE 47, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY PROLONGATION OF SAID COURSE NORTH 23° 25' 06" WEST 0.33 OF A FOOT; THENCE FROM A TANGENT THAT BEARS NORTH 82° 09' 02" EAST ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1490.00 FEET, THROUGH AN ANGLE OF 0° 19' 30" AN ARC LENGTH OF 8.45 FEET TO THE NORTHERLY LINE OF THE EXISTING EL CAMINO REAL; THENCE ALONG LAST SAID LINE FROM A TANGENT THAT BEARS SOUTH 79° 37' 22" WEST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1449.92 FEET, THROUGH AN ANGLE OF 0° 19' 50" AN ARC LENGTH OF 8.37 FEET TO THE POINT OF COMMENCEMENT.



Agenda Report

20-73

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Confirming Strategic Direction for the Civic Center Master Plan from December 17, 2019 Study Session [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

BACKGROUND

At the October 29, 2019 Council Meeting, Council approved the Santa Clara Civic Center Concept Plan and Utility Building Project consultant services agreement with SmithGroup (Consultant) to guide the future development of the Civic Center and Utility Building. The Scope of Work is structured as a three-phase process to develop the planning strategy for the Santa Clara Civic Center Concept Plan. Phase One "Define the Problem" deliverables were scoped to include the foundational concept work that included: financial and economic assessment, analysis of the existing conditions, funding limitations and implementation options, and a statement of Vision and Goals emanating from the engagement process.

At the December 17, 2019 Council Study Session, City staff and Consultant project team, including Land Econ Group and Directional Logic, presented the results and findings on: conceptual space needs, parcel strategies, market analysis & land values, cost planning, four alternative development concepts, financial considerations and project phased approach for the Santa Clara Civic Center Master Plan.

- Conceptual Space Needs - A new Civic Center would require approximately 243,000 square feet with the Utility Building of 80,500 square feet and all other Civic Center uses of 162,500 square feet assuming 20% growth to 2040.
- Alternative Development Concepts - Four alternative concepts were investigated with potential residential and commercial development areas, parking requirements (above and below ground) and expected benefits with long term lease revenues. Each of the concepts allowed for phasing flexibility to facilitate leasing and construction sequencing. These concepts ranged from the Alternative 1 Utility Building only with surface parking; Alternative 2 & 3, which included varying intensity of private residential or commercial development with a replacement City Hall and a new Utility Building; and Alternative 4, which examined the potential revenues for leasing the entire Civic Center property for new development and relocating of City Hall and Utilities to another site.
- Leasing Considerations - The City leasing process is subject to the Surplus Land Act where the City is required to offer the property to housing developers and governmental agencies. City would adopt a resolution declaring the City-owned as surplus property for sale, and begin the public notice process pursuant to Government Code Section 54222. If any eligible parties offer to purchase the property, the City would enter into good faith negotiations and return to

Council for consideration. If no offers are received pursuant to Government Code Section 54222 or price and terms cannot be agreed upon, then the City would proceed with the lease on the open market (RFP). Staff recommended not pursuing the leasing of land.

- Financial Considerations - The Utility Building (Alternative 1) has a conceptual cost of \$137 million in 2019 construction dollars. The Electric Utility has appropriated budget of \$18 million, and combined with future lease payments the total amount of available funding will be \$32.7 million. In terms of revenue sources for the City Hall (Alternatives 2 & 3) the realistic values of long-term leases range from \$9.8 million to \$32.2 million. Even with these possible leases, City Hall has a significant revenue shortfall between \$225 million and \$290 million, and will require significant new funding sources (e.g. sales tax, bond measure, impact fees).

DISCUSSION

Based on City Council Study Session discussion, staff has prepared the following summary and schematic as shown in Attachment 1 and Attachment 2 of the proposed strategic direction to proceed with the Civic Center Master Plan:

- Move forward with the complete vision of Master Planning the Civic Center Campus focused on a phased implementation
- Utility Building will be the initial phase of the Civic Center Master Plan which will include shared Civic Center amenities (e.g. conference rooms, training facilities, food service areas)
- Maintain ownership of existing public land with no private residential or commercial development
- No development on Civic Center Park

In addition, staff would like to explore the option of modifying or closing Civic Center Drive across from Civic Center Park. This would allow for a possible expansion of the park and better connections to the Civic Center Campus. This would only be an exploration of possible concepts and any proposed changes would require a separate future Council Action.

Financial Considerations

The Electric Utility has Capital Improvement Program (CIP) project budget of \$18 million; and combined with future lease payments, the total amount of available funding will be \$32.7 million. The Utility Building will require additional revenue and a new funding source. While additional analysis will be required, some preliminary work has been completed to determine additional funding options.

The remaining amount of construction costs is envisioned to be bonded from dedicating revenue of a one-time 1.0% to 1.5% increase in electric utility rates. Staff will perform additional analysis and review additional funding options as part of the process.

Next Steps

The project will continue with stakeholder and community engagement with a City employee survey to solicit input and develop a high-level understanding on the organization requirements, needs and work processes. The Consultant will also hold separate workshops with city departmental staff and leadership to obtain a deeper perspective on department's operations, services, needs and drivers for success of the project. These activities will achieve a better understanding of potential opportunities that should be pursued to help drive a strategic direction for the future workspaces.

The second community meeting on the Civic Center Master Plan will be held on the evening of

February 12th at City Council Chambers. This outreach and engagement process will allow the testing early ideas as the Consultant continue with an iterative problem solution phase to test alternative concepts. This Second Phase will illustrate multiple ways to achieve the vision and goals within the identified sustainable, physical, and financial constraints. At a future Council meeting the staff and consultant team will present the alternative ideas and develop two alternative plans with initial recommendations regarding design guidelines and implementation. This phase will culminate in a strategic direction and the selection by City Council, of one preferred planning option with a revised project cost estimate and funding plan.

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

As discussed in earlier section titled *Financial Considerations*, Silicon Valley Power Utility Center CIP project (project number 2126 in Electric Utility Capital Fund), currently has \$18 million available budget. No budget amendment is requested at this time. Future budget actions will be taken at time of contract award.

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>> or at the public information desk at any City of Santa Clara public library.

On December 5, 2019, the project held its first public workshop at the Santa Clara Central Park Library to engage with the Santa Clara community to elicit feedback for the future of the Civic Center and Utility Building and to make recommendations. The Master Plan meeting information is found on the special projects webpage at:

<https://www.santaclaraca.gov/our-city/departments-a-f/city-manager-s-office/special-projects/civic-center-concept-plan>.

RECOMMENDATION

Direct the City Manager to proceed with a phased approach for the development of the Civic Center Master Plan with no private commercial or residential development at City Hall or adjacent parkland. The initial phase shall comprise of the Utility Building and associated Civic Center shared amenities.

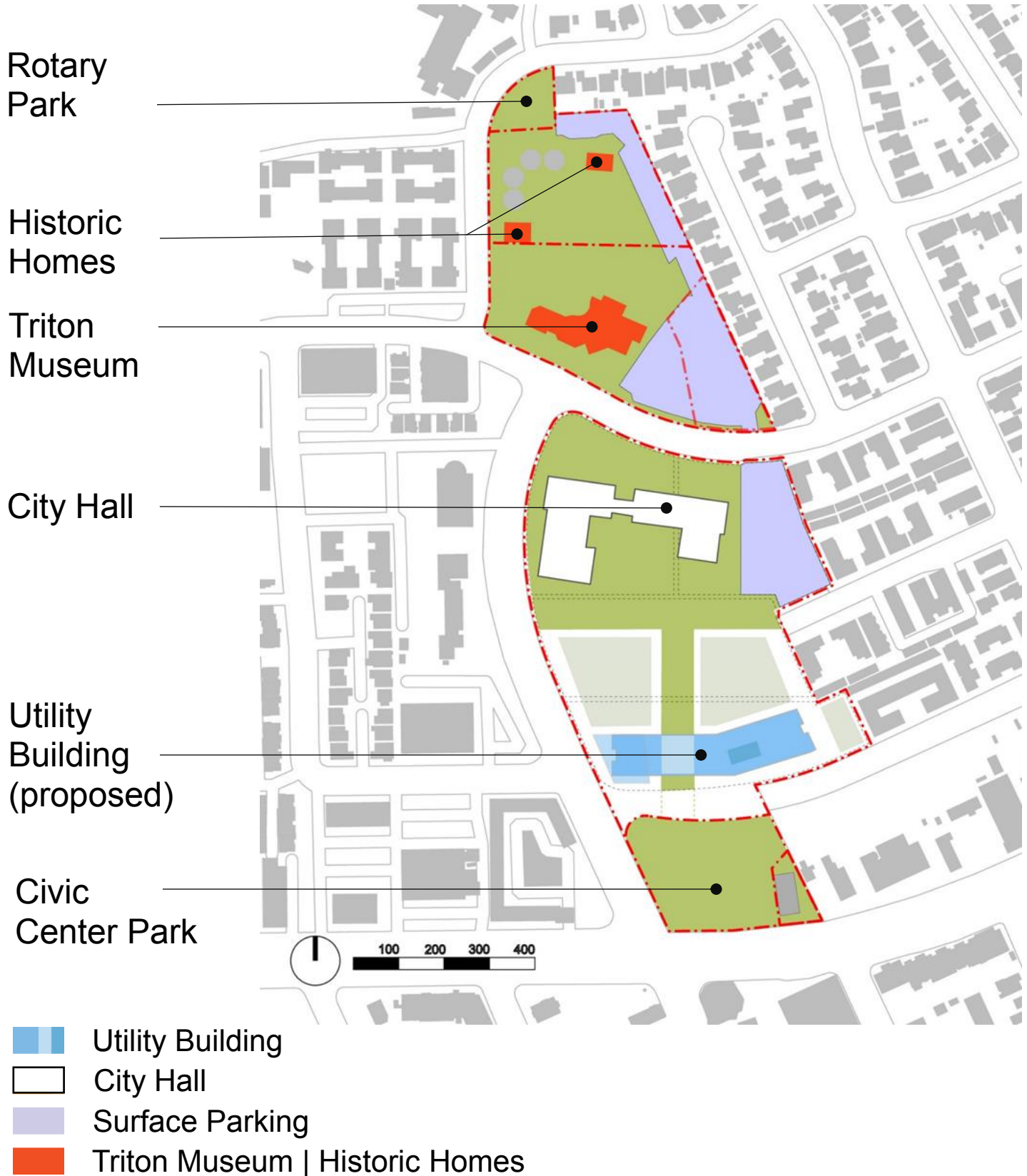
Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

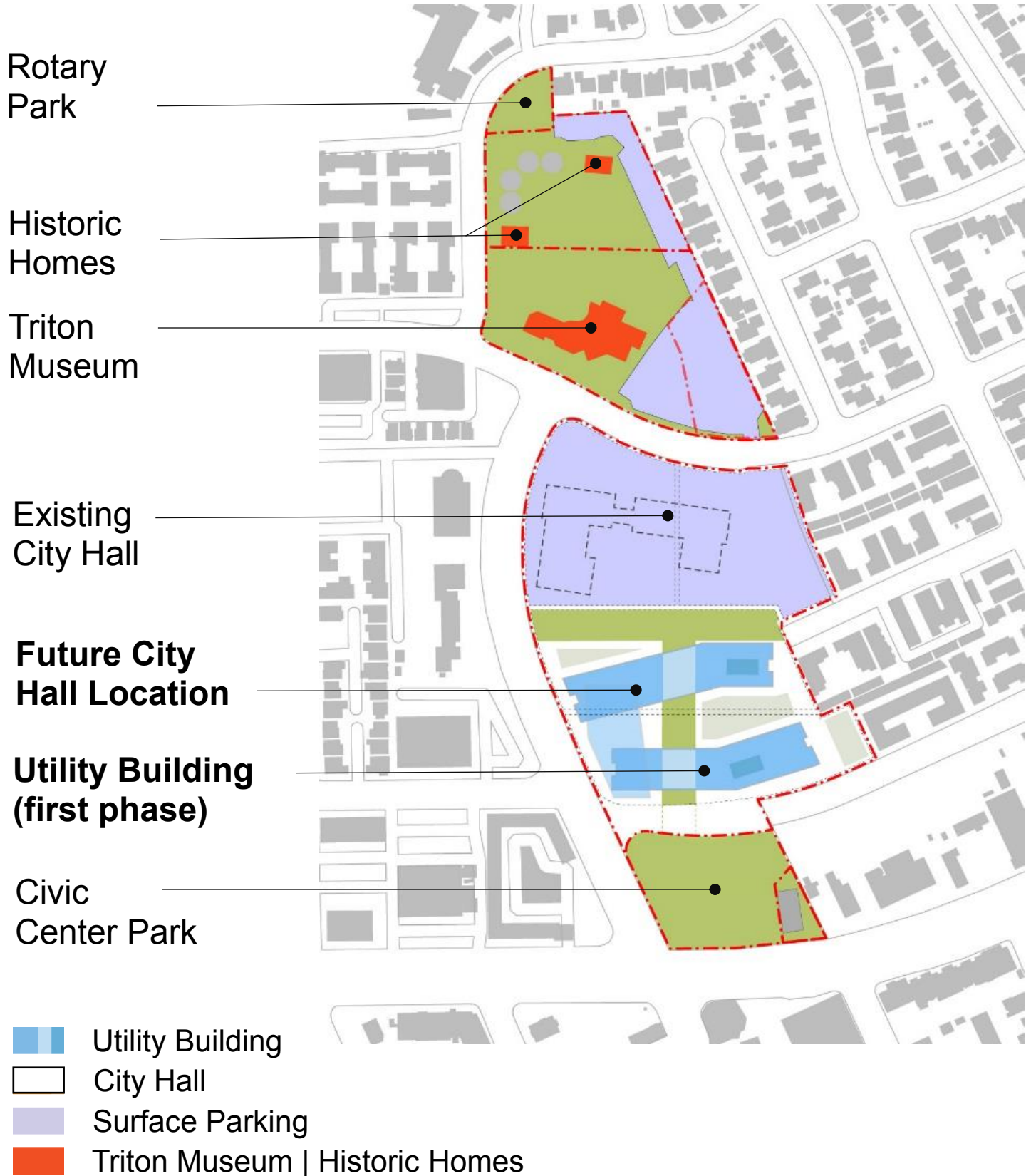
ATTACHMENTS

1. Utility Building
2. Utility Building with Civic Center Buildout

UTILITY BUILDING



UTILITY BUILDING WITH CIVIC CENTER BUILDOUT





Agenda Report

20-148

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Approval of First Amendment to the City Manager Employment Agreement, and a Resolution to Amend the City Manager Employment Agreement and Approve and Adopt the Updated Salary Plan that includes the Classification of City Manager [Enhance Community Engagement and Transparency]

BACKGROUND

The City Manager, Deanna J. Santana has been employed by the City of Santa Clara since October 2, 2017. The City entered into an employment agreement with Ms. Santana on August 22, 2017 and that agreement provides that the City Council shall periodically meet with the employee for the express purpose of determining any appropriate salary adjustment. The City Council held a Closed Session meeting for the purpose of evaluating the City Manager's performance and two subsequent meetings to discuss potential compensation action.

Government Code section 20636(b)(1) and California Code of Regulations section 570.5 require that public salary schedules include specific information and be approved by the governing body whenever they are updated or revised.

DISCUSSION

As allowed for by the City Manager's employment contract, the City Council has requested amendments to the City Manager's contract. The City Manager's current annual base salary is \$403,320.00. In addition, the City Manager receives various benefits, including a monthly housing allowance in the amount of three thousand seven hundred fifty dollars (\$3,750.00), or \$45,000 annually, to be used by the City Manager for housing no more than 20 miles from Santa Clara City Hall through the duration of the Employee's employment. It is recommended that the City Manager's employment agreement be amended to eliminate section 3.5 Monthly Housing effective September 30, 2019, and no further housing allowance shall be provided.

In addition, using those same funds assigned to the housing allowance, it is recommended that the City Manager's compensation be amended to include an 11.2% merit increase, retroactive to October 6, 2019. The City Manager did not receive a merit increase for 2017/18. The revised annual base salary for the City Manager shall be approximately \$448,491.84.

Updated Salary Plan

Section 9 of the Personnel and Salary Resolution requires City Council approval of compensation plans for both classified and unclassified positions. California Code Regulations section 570.5 requires the adoption of updated publicly available salary schedules by the governing body. The attached Resolution attaches and approves the updated salary plan for the classification of City

Manager.

Further Adjustment

Section 3.2 of the City Manager's employment contract states she will be "subject to the cost of living adjustments for City Miscellaneous Unclassified Management Employees in Unit 9." Accordingly, once the City's negotiations with Unit 9 are completed, the City Manager will be entitled to the adjustments provided for that unit. However, if those adjustments exceed the amount set forth in Government Code section 3511.2, they will not be automatic and will require the further express approval of the Council.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

The City Manager's current annual base salary is \$403,320 (total compensation \$749,015; \$599,212 General Fund and \$149,803 Stadium Allocation). With the elimination of the annual housing allowance of \$45,000, this amount shall be used to fund an 11.2% merit adjustment, which will increase the annual base salary to \$448,491 (total compensation \$767,605; \$614,084 General Fund and \$153,521 Stadium Allocation). The additional net increase in annual total compensation cost for this adjustment is approximately \$18,590 (\$14,872 General Fund and \$3,718 Stadium allocation), which is attributed primarily to increased retirement costs.

Department savings are anticipated to be available to absorb the additional cost impact in FY 2019/20 and FY 2020/21. Adjustments to factor in the higher FY 2021/22 costs will be included with the FY 2021/22 and FY 2022/23 Biennial Operating Budget.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Adopt a Resolution approving the First Amendment to the City Manager's Employment Agreement by and between the City of Santa Clara and Deanna J. Santana to eliminate a provision to pay a housing allowance and adjusting the City Manager's base salary to \$448,491 effective October 6, 2019; authorizing the Mayor to execute the Amendment; and updating the salary plans for the classification of City Manager.

Reviewed by: Aracely Azevedo, Director of Human Resources

Approved by: Lisa M. Gillmor, Mayor

ATTACHMENTS

1. First Amendment to Employment Agreement
2. Resolution of the City of Santa Clara to Amend the City Manager Employment Agreement and Approve and Adopt the Updated Salary Plan that includes the Classification of City Manager
3. Unclassified_Elected Salary Plan (effective 2019-10-06) approved 2020-01-28
4. Unclassified_Elected Salary Plan (effective 2019-10-22) approved 2020-01-28
5. Unclassified_Elected Salary Plan (effective 2019-11-17) approved 2020-01-28
6. Unclassified_Elected Salary Plan (effective 2019-12-15) approved 2020-01-28

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
DEANNA J. SANTANA**

PREAMBLE

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Deanna J. Santana ("Employee"). City and Employee 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 Employment Agreement by and between the City of Santa Clara, California and Deanna J. Santana dated August 22, 2017 (Agreement); and
- B. The Parties entered into the Agreement for the purpose appointing and employing Employee as its City Manager and establishing the terms and conditions of employment, and the Parties now wish to amend the Agreement to amend the terms and conditions of employment.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 3.1 of the Agreement, entitled "Salary" is amended to read as follows:

Effective October 6, 2019, Employee shall receive an annual salary of Four Hundred Forty-Eight Thousand Four Hundred Ninety-One and Eight Four Cents (\$448,491.84), less all authorized or appropriate deductions and withholdings, payable in pro-rata increments on regular City paydays. City and Employee agree that the amount of her annual salary shall not decrease, except as part of a decrease that is applicable to either all Council-appointed officers, (the City Attorney and City Auditor) or is applicable to all City Miscellaneous Unclassified Management Employees in Unit 9. Such decrease shall be effective when approved by the City Council.

2. Section 3.5 of the Agreement, entitled "Monthly Housing Allowance" is deleted effective September 30, 2019. The Employee shall be ineligible for this benefit effective October 1, 2019.

3. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

LISA M. GILLMOR
MAYOR
1500 Warburton Avenue
Santa Clara, CA 95050

“CITY”
DEANNA J. SANTANA

Dated: _____
By (Signature): _____
Name: Deanna J. Santana
Title: City Manager
Principal Place of
Business Address: 1500 Warburton Avenue
Email Address: dsantana@santaclaraca.gov
Telephone: (408) 615-2211
Fax: (408) 615-2227
“EMPLOYEE”

RESOLUTION NO. 20-

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
TO APPROVE A FIRST AMENDMENT TO THE EMPLOYMENT
AGREEMENT WITH THE CITY MANAGER AND TO APPROVE
AND ADOPT AN AMENDED SALARY PLAN FOR THE
CLASSIFICATION OF CITY MANAGER EFFECTIVE OCTOBER 6,
2019.**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on August 22, 2017, the Mayor and Employee entered into an Employment Agreement ("Agreement");

WHEREAS, the City Council now desires to amend the Agreement to eliminate the monthly housing allowance of \$3,750 effective September 30, 2019, and provide a merit-based wage increase effective October 6, 2019 to Deanna J. Santana in the amount of eleven-point two percent (11.2%);

WHEREAS, the City of Santa Clara contracts with CalPERS to provide retirement benefits;

WHEREAS, to comply with California Code Regulations Section 570.5, the City of Santa Clara shall among other things, have pay schedules approved and adopted by the City Council; and indicate an effective date and date of any revisions;

WHEREAS, as required by California Code Regulations section 570.5 and as mandated by CalPERS, the City Council deems it to be in the best interests of the City to approve and adopt the Amended Salary Plans for City of Santa Clara classifications when there are salary modifications to existing classifications, and when new classifications are created and salary ranges need to be established, with effective dates of October 6, 2019, as set forth in the attachment hereto.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. Section 3.5 Monthly Housing Allowance of the Agreement shall be eliminated effective

September 30, 2019.

2. Employee shall receive a merit-based wage increase of eleven-point two percent (11.2%) effective October 6, 2019. The amended annual base salary will be \$448,491.84.
3. The City hereby approves and adopts the Amended Salary Plans that includes the classification of City Manager, as set forth in the attachment hereto.
4. Effective date. In accordance with the California Code Regulations section 570.5 and to comply with CalPERS, the salary schedules, which includes the classification of City Manager shall be effective as of October 6, 2019.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28TH DAY OF JANUARY 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. First Amendment to Employment Agreement
2. Unclassified_Elected Salary Plan (effective 2019-10-06) approved 2020-01-28
3. Unclassified_Elected Salary Plan (effective 2019-10-22) approved 2020-01-28
4. Unclassified_Elected Salary Plan (effective 2019-11-17) approved 2020-01-28
5. Unclassified_Elected Salary Plan (effective 2019-12-15) approved 2020-01-28

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/6/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
ACCOUNTING DIVISION MANAGER	109	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
ASST BUILDING OFFICIAL	222	9	\$ 79.159615	\$ 13,721.00	\$ 164,652.00	\$ 102.450000	\$ 17,758.00	\$ 213,096.00
ASST CITY ATTORNEY	015	9	\$ 92.001923	\$ 15,947.00	\$ 191,364.00	\$ 119.065385	\$ 20,638.00	\$ 247,656.00
ASST CITY CLERK	010	9	\$ 61.534615	\$ 10,666.00	\$ 127,992.00	\$ 79.632692	\$ 13,803.00	\$ 165,636.00
ASST CITY LIBRARIAN	012	9	\$ 80.163462	\$ 13,895.00	\$ 166,740.00	\$ 103.742308	\$ 17,982.00	\$ 215,784.00
ASST CITY MANAGER	016	9	\$ 124.661538	\$ 21,608.00	\$ 259,296.00	\$ 161.319231	\$ 27,962.00	\$ 335,544.00
ASST DIR OF ELECTRIC UTIL	021	9	\$ 108.605769	\$ 18,825.00	\$ 225,900.00	\$ 140.550000	\$ 24,362.00	\$ 292,344.00
ASST DIR OF FINANCE	022	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF HUMAN RESOURCES	018	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF PUB WORKS/CITY ENG	071	9	\$ 95.319231	\$ 16,522.00	\$ 198,264.00	\$ 123.357692	\$ 21,382.00	\$ 256,584.00
ASST DIR OF WATER & SEWER UTIL	014	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
ASST FIRE CHIEF	024	9B	\$ 118.921154	\$ 20,613.00	\$ 247,356.00	\$ 153.905769	\$ 26,677.00	\$ 320,124.00
ASST FIRE MARSHAL	026	9B	\$ 91.211538	\$ 15,810.00	\$ 189,720.00	\$ 118.038462	\$ 20,460.00	\$ 245,520.00
ASST POLICE CHIEF	027	9A	\$ 130.234615	\$ 22,574.00	\$ 270,888.00	\$ 168.536538	\$ 29,213.00	\$ 350,556.00
ASST TO THE CITY MANAGER	028	9	\$ 84.496154	\$ 14,646.00	\$ 175,752.00	\$ 109.344231	\$ 18,953.00	\$ 227,436.00
ASST WATER & SEWER SUPERINTEND	029	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
AUDIT MANAGER	201	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
BATTALION CHIEF	036	9B	\$ 98.267308	\$ 17,033.00	\$ 204,396.00	\$ 127.159615	\$ 22,041.00	\$ 264,492.00
BATTALION CHIEF 24 HRS	036S	9B	\$ 66.848901	\$ 16,222.00	\$ 194,664.00	\$ 86.505495	\$ 20,992.00	\$ 251,904.00
BUILDING MAINTENANCE MANAGER	041	9	\$ 65.769231	\$ 11,400.00	\$ 136,800.00	\$ 85.113462	\$ 14,753.00	\$ 177,036.00
BUILDING OFFICIAL	042	9	\$ 87.080769	\$ 15,094.00	\$ 181,128.00	\$ 112.690385	\$ 19,533.00	\$ 234,396.00
CEMETERY OPERATIONS MANAGER	045	9	\$ 52.592308	\$ 9,116.00	\$ 109,392.00	\$ 68.059615	\$ 11,797.00	\$ 141,564.00
CHIEF ELECTRIC UTILITY OFFICER	108	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CHIEF OPERATING OFFICER	311	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CITY ATTORNEY	060	9	\$ 159.998077	\$ 27,733.00	\$ 332,796.00	\$ 159.998077	\$ 27,733.00	\$ 332,796.00
CITY CLERK	063	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY COUNCIL MEMBER	CNCL	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY LIBRARIAN	066	9	\$ 100.194231	\$ 17,367.00	\$ 208,404.00	\$ 129.663462	\$ 22,475.00	\$ 269,700.00
CITY MANAGER	069	9				\$ 215.621077	\$ 37,374.32	\$ 448,491.84
COMMUNICATIONS OPERATIONS MGR	068	9	\$ 67.655769	\$ 11,727.00	\$ 140,724.00	\$ 87.553846	\$ 15,176.00	\$ 182,112.00
COMPLIANCE MANAGER	081	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/6/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
CONTRACTS MANAGER	342	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
DEPUTY CITY ATTORNEY I	170	9	\$ 57.496154	\$ 9,966.00	\$ 119,592.00	\$ 74.405769	\$ 12,897.00	\$ 154,764.00
DEPUTY CITY ATTORNEY II	172	9	\$ 67.078846	\$ 11,627.00	\$ 139,524.00	\$ 86.809615	\$ 15,047.00	\$ 180,564.00
DEPUTY CITY CLERK	178	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
DEPUTY CITY MANAGER	079	9	\$ 92.948077	\$ 16,111.00	\$ 193,332.00	\$ 120.276923	\$ 20,848.00	\$ 250,176.00
DEPUTY FIRE CHIEF	080	9B	\$ 108.109615	\$ 18,739.00	\$ 224,868.00	\$ 139.915385	\$ 24,252.00	\$ 291,024.00
DEPUTY PARKS & REC DIRECTOR	175	9	\$ 75.109615	\$ 13,019.00	\$ 156,228.00	\$ 97.200000	\$ 16,848.00	\$ 202,176.00
DEPUTY PUBLIC WORKS DIRECTOR	176	9	\$ 75.242308	\$ 13,042.00	\$ 156,504.00	\$ 97.373077	\$ 16,878.00	\$ 202,536.00
DEVELOPMENT REVIEW OFFICER	144	9	\$ 72.790385	\$ 12,617.00	\$ 151,404.00	\$ 94.200000	\$ 16,328.00	\$ 195,936.00
DIRECTOR OF COMMUNITY DEVELOPM	090	9	\$ 110.151923	\$ 19,093.00	\$ 229,116.00	\$ 142.551923	\$ 24,709.00	\$ 296,508.00
DIRECTOR OF FINANCE	087	9	\$ 109.932692	\$ 19,055.00	\$ 228,660.00	\$ 142.263462	\$ 24,659.00	\$ 295,908.00
DIRECTOR OF HUMAN RESOURCES	088	9	\$ 101.342308	\$ 17,566.00	\$ 210,792.00	\$ 131.146154	\$ 22,732.00	\$ 272,784.00
DIRECTOR OF INF TECHNOLOGY/CIO	089	9	\$ 104.573077	\$ 18,126.00	\$ 217,512.00	\$ 135.334615	\$ 23,458.00	\$ 281,496.00
DIRECTOR OF PUBLIC WORKS	091	9	\$ 116.515385	\$ 20,196.00	\$ 242,352.00	\$ 150.784615	\$ 26,136.00	\$ 313,632.00
DIRECTOR OF WTR & SEWER UTILS	102	9	\$ 105.605769	\$ 18,305.00	\$ 219,660.00	\$ 136.661538	\$ 23,688.00	\$ 284,256.00
ELEC DIV MGR - ENGINEERING	104Q	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - GENERATION	104R	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - OPERATIONS	104P	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - SUBSTATIONS	104M	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - TRANSM, DISTRIB	104S	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR-MKT A & P	107F	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIVISION MANAGER	104	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC PROGRAM MANAGER	424	9	\$ 78.051923	\$ 13,529.00	\$ 162,348.00	\$ 101.001923	\$ 17,507.00	\$ 210,084.00
ELEC UTIL CHIEF OPER OFFICER	116	9	\$ 119.469231	\$ 20,708.00	\$ 248,496.00	\$ 154.609615	\$ 26,799.00	\$ 321,588.00
ELEC UTIL RISK CONTROL ANALYST	697	9	\$ 69.900000	\$ 12,116.00	\$ 145,392.00	\$ 90.461538	\$ 15,680.00	\$ 188,160.00
EMERGENCY SERVICES COORDINATOR	106	9	\$ 58.696154	\$ 10,174.00	\$ 122,088.00	\$ 75.963462	\$ 13,167.00	\$ 158,004.00
ENVIRONMENTAL PROGRAMS MGR	461	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
EXECUTIVE ASSISTANT	187	9	\$ 51.005769	\$ 8,841.00	\$ 106,092.00	\$ 66.005769	\$ 11,441.00	\$ 137,292.00
FIRE CHIEF	117	9B	\$ 129.334615	\$ 22,418.00	\$ 269,016.00	\$ 167.365385	\$ 29,010.00	\$ 348,120.00
FIRE MARSHAL	120	9B	\$ 98.267308	\$ 17,033.00	\$ 204,396.00	\$ 127.159615	\$ 22,041.00	\$ 264,492.00
FLEET MANAGER	034	9	\$ 62.665385	\$ 10,862.00	\$ 130,344.00	\$ 81.092308	\$ 14,056.00	\$ 168,672.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/6/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
HOUSING & COMM SVC DIV MGR	075	9	\$ 75.305769	\$ 13,053.00	\$ 156,636.00	\$ 97.459615	\$ 16,893.00	\$ 202,716.00
HOUSING DEVELOPMENT OFFICER	749	9	\$ 59.140385	\$ 10,251.00	\$ 123,012.00	\$ 76.534615	\$ 13,266.00	\$ 159,192.00
HUMAN RESOURCES DIV MGR	139	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
INFORMATION TECHNOLOGY SVC MGR	112	9	\$ 69.703846	\$ 12,082.00	\$ 144,984.00	\$ 90.196154	\$ 15,634.00	\$ 187,608.00
INSPECTION MANAGER	134	9	\$ 74.590385	\$ 12,929.00	\$ 155,148.00	\$ 96.536538	\$ 16,733.00	\$ 200,796.00
LIBRARY DIV MGR -SUPPORT SVCS	127G	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
MANAGEMENT ANALYST	008	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
MAYOR	MAYOR	Elected				\$ 14.423077	\$ 2,500.00	\$ 30,000.00
MUNICIPAL SERVICES DIV MGR	110	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
PARK MAINT & OPERATIONS SUPERV	131	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PARKS & RECREATION DIRECTOR	132	9	\$ 102.109615	\$ 17,699.00	\$ 212,388.00	\$ 132.132692	\$ 22,903.00	\$ 274,836.00
PARKS CONST, MTC & REPAIR MGR	130	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PERFORMANCE AUDITOR I	203	9	\$ 43.153846	\$ 7,480.00	\$ 89,760.00	\$ 55.850962	\$ 9,680.83	\$ 116,170.00
PERFORMANCE AUDITOR II	204	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PLAN REVIEW MANAGER	629	9	\$ 75.392308	\$ 13,068.00	\$ 156,816.00	\$ 97.557692	\$ 16,910.00	\$ 202,920.00
PLANNING MANAGER	072	9	\$ 78.623077	\$ 13,628.00	\$ 163,536.00	\$ 101.746154	\$ 17,636.00	\$ 211,632.00
POLICE CAPTAIN	138	9A	\$ 124.044231	\$ 21,501.00	\$ 258,012.00	\$ 160.523077	\$ 27,824.00	\$ 333,888.00
POLICE CHIEF	141	Elected				\$ 150.813462	\$ 26,141.00	\$ 313,692.00
POLICE RECORDS MANAGER	647	9	\$ 53.342308	\$ 9,246.00	\$ 110,952.00	\$ 69.034615	\$ 11,966.00	\$ 143,592.00
POWER SYSTEM SCHEDULER/TRADER	674	9	\$ 66.940385	\$ 11,603.00	\$ 139,236.00	\$ 86.630769	\$ 15,016.00	\$ 180,192.00
POWER TRADER	673	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
PRINCIPAL ACCOUNTANT	148	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL ELECTRIC UTILITY ENG	145	9	\$ 85.488462	\$ 14,818.00	\$ 177,816.00	\$ 110.630769	\$ 19,176.00	\$ 230,112.00
PRINCIPAL ENG/CITY SURVEYOR	140	9	\$ 87.037019	\$ 15,086.42	\$ 181,037.00	\$ 112.638462	\$ 19,524.00	\$ 234,288.00
PRINCIPAL ENGINEER	142	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL ENGINEER - WATER	142W	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL FINANCIAL ANALYST	149	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL PLANNER	143	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL POWER ANALYST	154	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL UTIL INFO SYSTEM MGR	146	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
PUBLIC INFORMATION OFFICER	077	9	\$ 81.248077	\$ 14,083.00	\$ 168,996.00	\$ 105.138462	\$ 18,224.00	\$ 218,688.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/6/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
PUBLIC RECORDS MANAGER	082	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PURCHASING DIVISION MANAGER	147	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
RECREATION MANAGER	150	9	\$ 67.488462	\$ 11,698.00	\$ 140,376.00	\$ 87.334615	\$ 15,138.00	\$ 181,656.00
RISK MANAGER	700	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
SR DEPUTY CITY ATTORNEY	161	9	\$ 71.301923	\$ 12,359.00	\$ 148,308.00	\$ 92.278846	\$ 15,995.00	\$ 191,940.00
SR ELEC DIV MGR	173	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR ELEC DIV MGR-MKT A&P	174A	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR INFORMATION TECH SVCS MGR	743	9	\$ 76.378846	\$ 13,239.00	\$ 158,868.00	\$ 98.844231	\$ 17,133.00	\$ 205,596.00
SR MANAGEMENT ANALYST	742	9	\$ 56.962981	\$ 9,873.58	\$ 118,483.00	\$ 73.723077	\$ 12,778.67	\$ 153,344.00
SR PERFORMANCE AUDITOR	202	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
SR POWER SYSTEM SCHEDLR/TRADER	772	9	\$ 71.948077	\$ 12,471.00	\$ 149,652.00	\$ 93.115385	\$ 16,140.00	\$ 193,680.00
SUPERINT OF STREET & SOLID WAS	159	9	\$ 68.400000	\$ 11,856.00	\$ 142,272.00	\$ 88.523077	\$ 15,344.00	\$ 184,128.00
TRAFFIC ENGINEER	171	9	\$ 83.648077	\$ 14,499.00	\$ 173,988.00	\$ 108.253846	\$ 18,764.00	\$ 225,168.00
UTILITY BUSINESS SYSTEMS MGR	898	9	\$ 66.744231	\$ 11,569.00	\$ 138,828.00	\$ 86.371154	\$ 14,971.00	\$ 179,652.00
UTILITY OPERATIONS ENGINEER	155	9	\$ 70.459615	\$ 12,213.00	\$ 146,556.00	\$ 91.176923	\$ 15,804.00	\$ 189,648.00
WATER & SEWER OPERATIONS MGR	180	9	\$ 69.253846	\$ 12,004.00	\$ 144,048.00	\$ 89.630769	\$ 15,536.00	\$ 186,432.00
WEB & DIGITAL MEDIA MANAGER	073	9	\$ 59.705769	\$ 10,349.00	\$ 124,188.00	\$ 77.261538	\$ 13,392.00	\$ 160,704.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/20/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
ACCOUNTING DIVISION MANAGER	109	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
ASST BUILDING OFFICIAL	222	9	\$ 79.159615	\$ 13,721.00	\$ 164,652.00	\$ 102.450000	\$ 17,758.00	\$ 213,096.00
ASST CITY ATTORNEY	015	9	\$ 92.001923	\$ 15,947.00	\$ 191,364.00	\$ 119.065385	\$ 20,638.00	\$ 247,656.00
ASST CITY CLERK	010	9	\$ 61.534615	\$ 10,666.00	\$ 127,992.00	\$ 79.632692	\$ 13,803.00	\$ 165,636.00
ASST CITY LIBRARIAN	012	9	\$ 80.163462	\$ 13,895.00	\$ 166,740.00	\$ 103.742308	\$ 17,982.00	\$ 215,784.00
ASST CITY MANAGER	016	9	\$ 124.661538	\$ 21,608.00	\$ 259,296.00	\$ 161.319231	\$ 27,962.00	\$ 335,544.00
ASST DIR OF ELECTRIC UTIL	021	9	\$ 108.605769	\$ 18,825.00	\$ 225,900.00	\$ 140.550000	\$ 24,362.00	\$ 292,344.00
ASST DIR OF FINANCE	022	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF HUMAN RESOURCES	018	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF PUB WORKS/CITY ENG	071	9	\$ 95.319231	\$ 16,522.00	\$ 198,264.00	\$ 123.357692	\$ 21,382.00	\$ 256,584.00
ASST DIR OF WATER & SEWER UTIL	014	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
ASST FIRE CHIEF	024	9B	\$ 118.921154	\$ 20,613.00	\$ 247,356.00	\$ 153.905769	\$ 26,677.00	\$ 320,124.00
ASST FIRE MARSHAL	026	9B	\$ 91.211538	\$ 15,810.00	\$ 189,720.00	\$ 118.038462	\$ 20,460.00	\$ 245,520.00
ASST POLICE CHIEF	027	9A	\$ 130.234615	\$ 22,574.00	\$ 270,888.00	\$ 168.536538	\$ 29,213.00	\$ 350,556.00
ASST TO THE CITY MANAGER	028	9	\$ 84.496154	\$ 14,646.00	\$ 175,752.00	\$ 109.344231	\$ 18,953.00	\$ 227,436.00
ASST WATER & SEWER SUPERINTEND	029	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
AUDIT MANAGER	201	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
BATTALION CHIEF	036	9B	\$ 98.267308	\$ 17,033.00	\$ 204,396.00	\$ 127.159615	\$ 22,041.00	\$ 264,492.00
BATTALION CHIEF 24 HRS	036S	9B	\$ 66.848901	\$ 16,222.00	\$ 194,664.00	\$ 86.505495	\$ 20,992.00	\$ 251,904.00
BUILDING MAINTENANCE MANAGER	041	9	\$ 65.769231	\$ 11,400.00	\$ 136,800.00	\$ 85.113462	\$ 14,753.00	\$ 177,036.00
BUILDING OFFICIAL	042	9	\$ 87.080769	\$ 15,094.00	\$ 181,128.00	\$ 112.690385	\$ 19,533.00	\$ 234,396.00
CEMETERY OPERATIONS MANAGER	045	9	\$ 52.592308	\$ 9,116.00	\$ 109,392.00	\$ 68.059615	\$ 11,797.00	\$ 141,564.00
CHIEF ELECTRIC UTILITY OFFICER	108	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CHIEF OPERATING OFFICER	311	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CITY ATTORNEY	060	9	\$ 159.998077	\$ 27,733.00	\$ 332,796.00	\$ 159.998077	\$ 27,733.00	\$ 332,796.00
CITY CLERK	063	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY COUNCIL MEMBER	CNCL	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY LIBRARIAN	066	9	\$ 100.194231	\$ 17,367.00	\$ 208,404.00	\$ 129.663462	\$ 22,475.00	\$ 269,700.00
CITY MANAGER	069	9				\$ 215.621077	\$ 37,374.32	\$ 448,491.84
COMMUNICATIONS & OUTREACH MGR	083	9	\$ 59.705769	\$ 10,349.00	\$ 124,188.00	\$ 77.261538	\$ 13,392.00	\$ 160,704.00
COMMUNICATIONS OPERATIONS MGR	068	9	\$ 67.655769	\$ 11,727.00	\$ 140,724.00	\$ 87.553846	\$ 15,176.00	\$ 182,112.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/20/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
COMPLIANCE MANAGER	081	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
CONTRACTS MANAGER	342	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
DEPUTY CITY ATTORNEY I	170	9	\$ 57.496154	\$ 9,966.00	\$ 119,592.00	\$ 74.405769	\$ 12,897.00	\$ 154,764.00
DEPUTY CITY ATTORNEY II	172	9	\$ 67.078846	\$ 11,627.00	\$ 139,524.00	\$ 86.809615	\$ 15,047.00	\$ 180,564.00
DEPUTY CITY CLERK	178	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
DEPUTY CITY MANAGER	079	9	\$ 92.948077	\$ 16,111.00	\$ 193,332.00	\$ 120.276923	\$ 20,848.00	\$ 250,176.00
DEPUTY FIRE CHIEF	080	9B	\$ 108.109615	\$ 18,739.00	\$ 224,868.00	\$ 139.915385	\$ 24,252.00	\$ 291,024.00
DEPUTY PARKS & REC DIRECTOR	175	9	\$ 75.109615	\$ 13,019.00	\$ 156,228.00	\$ 97.200000	\$ 16,848.00	\$ 202,176.00
DEPUTY PUBLIC WORKS DIRECTOR	176	9	\$ 75.242308	\$ 13,042.00	\$ 156,504.00	\$ 97.373077	\$ 16,878.00	\$ 202,536.00
DEVELOPMENT REVIEW OFFICER	144	9	\$ 72.790385	\$ 12,617.00	\$ 151,404.00	\$ 94.200000	\$ 16,328.00	\$ 195,936.00
DIRECTOR OF COMMUNITY DEVELOPM	090	9	\$ 110.151923	\$ 19,093.00	\$ 229,116.00	\$ 142.551923	\$ 24,709.00	\$ 296,508.00
DIRECTOR OF FINANCE	087	9	\$ 109.932692	\$ 19,055.00	\$ 228,660.00	\$ 142.263462	\$ 24,659.00	\$ 295,908.00
DIRECTOR OF HUMAN RESOURCES	088	9	\$ 101.342308	\$ 17,566.00	\$ 210,792.00	\$ 131.146154	\$ 22,732.00	\$ 272,784.00
DIRECTOR OF INF TECHNOLOGY/CIO	089	9	\$ 104.573077	\$ 18,126.00	\$ 217,512.00	\$ 135.334615	\$ 23,458.00	\$ 281,496.00
DIRECTOR OF PUBLIC WORKS	091	9	\$ 116.515385	\$ 20,196.00	\$ 242,352.00	\$ 150.784615	\$ 26,136.00	\$ 313,632.00
DIRECTOR OF WTR & SEWER UTILS	102	9	\$ 105.605769	\$ 18,305.00	\$ 219,660.00	\$ 136.661538	\$ 23,688.00	\$ 284,256.00
ELEC DIV MGR - ENGINEERING	104Q	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - GENERATION	104R	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - OPERATIONS	104P	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - SUBSTATIONS	104M	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - TRANSM, DISTRIB	104S	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR-MKT A & P	107F	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIVISION MANAGER	104	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC PROGRAM MANAGER	424	9	\$ 78.051923	\$ 13,529.00	\$ 162,348.00	\$ 101.001923	\$ 17,507.00	\$ 210,084.00
ELEC UTIL CHIEF OPER OFFICER	116	9	\$ 119.469231	\$ 20,708.00	\$ 248,496.00	\$ 154.609615	\$ 26,799.00	\$ 321,588.00
ELEC UTIL RISK CONTROL ANALYST	697	9	\$ 69.900000	\$ 12,116.00	\$ 145,392.00	\$ 90.461538	\$ 15,680.00	\$ 188,160.00
EMERGENCY SERVICES COORDINATOR	106	9	\$ 58.696154	\$ 10,174.00	\$ 122,088.00	\$ 75.963462	\$ 13,167.00	\$ 158,004.00
ENVIRONMENTAL PROGRAMS MGR	461	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
EXECUTIVE ASSISTANT	187	9	\$ 51.005769	\$ 8,841.00	\$ 106,092.00	\$ 66.005769	\$ 11,441.00	\$ 137,292.00
FIRE CHIEF	117	9B	\$ 129.334615	\$ 22,418.00	\$ 269,016.00	\$ 167.365385	\$ 29,010.00	\$ 348,120.00
FIRE MARSHAL	120	9B	\$ 98.267308	\$ 17,033.00	\$ 204,396.00	\$ 127.159615	\$ 22,041.00	\$ 264,492.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/20/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
FLEET MANAGER	034	9	\$ 62.665385	\$ 10,862.00	\$ 130,344.00	\$ 81.092308	\$ 14,056.00	\$ 168,672.00
HOUSING & COMM SVC DIV MGR	075	9	\$ 75.305769	\$ 13,053.00	\$ 156,636.00	\$ 97.459615	\$ 16,893.00	\$ 202,716.00
HOUSING DEVELOPMENT OFFICER	749	9	\$ 59.140385	\$ 10,251.00	\$ 123,012.00	\$ 76.534615	\$ 13,266.00	\$ 159,192.00
HUMAN RESOURCES DIV MGR	139	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
INFORMATION TECHNOLOGY SVC MGR	112	9	\$ 69.703846	\$ 12,082.00	\$ 144,984.00	\$ 90.196154	\$ 15,634.00	\$ 187,608.00
INSPECTION MANAGER	134	9	\$ 74.590385	\$ 12,929.00	\$ 155,148.00	\$ 96.536538	\$ 16,733.00	\$ 200,796.00
LIBRARY DIV MGR -SUPPORT SVCS	127G	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
MANAGEMENT ANALYST	008	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
MAYOR	MAYOR	Elected				\$ 14.423077	\$ 2,500.00	\$ 30,000.00
MUNICIPAL SERVICES DIV MGR	110	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
PARK MAINT & OPERATIONS SUPERV	131	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PARKS & RECREATION DIRECTOR	132	9	\$ 102.109615	\$ 17,699.00	\$ 212,388.00	\$ 132.132692	\$ 22,903.00	\$ 274,836.00
PARKS CONST, MTC & REPAIR MGR	130	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PERFORMANCE AUDITOR I	203	9	\$ 43.153846	\$ 7,480.00	\$ 89,760.00	\$ 55.850962	\$ 9,680.83	\$ 116,170.00
PERFORMANCE AUDITOR II	204	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PLAN REVIEW MANAGER	629	9	\$ 75.392308	\$ 13,068.00	\$ 156,816.00	\$ 97.557692	\$ 16,910.00	\$ 202,920.00
PLANNING MANAGER	072	9	\$ 78.623077	\$ 13,628.00	\$ 163,536.00	\$ 101.746154	\$ 17,636.00	\$ 211,632.00
POLICE CAPTAIN	138	9A	\$ 124.044231	\$ 21,501.00	\$ 258,012.00	\$ 160.523077	\$ 27,824.00	\$ 333,888.00
POLICE CHIEF	141	Elected				\$ 150.813462	\$ 26,141.00	\$ 313,692.00
POLICE RECORDS MANAGER	647	9	\$ 53.342308	\$ 9,246.00	\$ 110,952.00	\$ 69.034615	\$ 11,966.00	\$ 143,592.00
POWER SYSTEM SCHEDULER/TRADER	674	9	\$ 66.940385	\$ 11,603.00	\$ 139,236.00	\$ 86.630769	\$ 15,016.00	\$ 180,192.00
POWER TRADER	673	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
PRINCIPAL ACCOUNTANT	148	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL ELECTRIC UTILITY ENG	145	9	\$ 85.488462	\$ 14,818.00	\$ 177,816.00	\$ 110.630769	\$ 19,176.00	\$ 230,112.00
PRINCIPAL ENG/CITY SURVEYOR	140	9	\$ 87.037019	\$ 15,086.42	\$ 181,037.00	\$ 112.638462	\$ 19,524.00	\$ 234,288.00
PRINCIPAL ENGINEER	142	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL ENGINEER - WATER	142W	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL FINANCIAL ANALYST	149	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL PLANNER	143	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL POWER ANALYST	154	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL UTIL INFO SYSTEM MGR	146	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 10/20/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
PUBLIC INFORMATION OFFICER	077	9	\$ 81.248077	\$ 14,083.00	\$ 168,996.00	\$ 105.138462	\$ 18,224.00	\$ 218,688.00
PUBLIC RECORDS MANAGER	082	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PURCHASING DIVISION MANAGER	147	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
RECREATION MANAGER	150	9	\$ 67.488462	\$ 11,698.00	\$ 140,376.00	\$ 87.334615	\$ 15,138.00	\$ 181,656.00
RISK MANAGER	700	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
SR DEPUTY CITY ATTORNEY	161	9	\$ 71.301923	\$ 12,359.00	\$ 148,308.00	\$ 92.278846	\$ 15,995.00	\$ 191,940.00
SR ELEC DIV MGR	173	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR ELEC DIV MGR-MKT A&P	174A	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR INFORMATION TECH SVCS MGR	743	9	\$ 76.378846	\$ 13,239.00	\$ 158,868.00	\$ 98.844231	\$ 17,133.00	\$ 205,596.00
SR MANAGEMENT ANALYST	742	9	\$ 56.962981	\$ 9,873.58	\$ 118,483.00	\$ 73.723077	\$ 12,778.67	\$ 153,344.00
SR PERFORMANCE AUDITOR	202	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
SR POWER SYSTEM SCHEDLR/TRADER	772	9	\$ 71.948077	\$ 12,471.00	\$ 149,652.00	\$ 93.115385	\$ 16,140.00	\$ 193,680.00
STREET SUPERINTENDENT	159	9	\$ 68.400000	\$ 11,856.00	\$ 142,272.00	\$ 88.523077	\$ 15,344.00	\$ 184,128.00
TRAFFIC ENGINEER	171	9	\$ 83.648077	\$ 14,499.00	\$ 173,988.00	\$ 108.253846	\$ 18,764.00	\$ 225,168.00
UTILITY BUSINESS SYSTEMS MGR	898	9	\$ 66.744231	\$ 11,569.00	\$ 138,828.00	\$ 86.371154	\$ 14,971.00	\$ 179,652.00
UTILITY OPERATIONS ENGINEER	155	9	\$ 70.459615	\$ 12,213.00	\$ 146,556.00	\$ 91.176923	\$ 15,804.00	\$ 189,648.00
WATER & SEWER OPERATIONS MGR	180	9	\$ 69.253846	\$ 12,004.00	\$ 144,048.00	\$ 89.630769	\$ 15,536.00	\$ 186,432.00
WEB & DIGITAL MEDIA MANAGER	073	9	\$ 59.705769	\$ 10,349.00	\$ 124,188.00	\$ 77.261538	\$ 13,392.00	\$ 160,704.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 11/17/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
ACCOUNTING DIVISION MANAGER	109	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
ASST BUILDING OFFICIAL	222	9	\$ 79.159615	\$ 13,721.00	\$ 164,652.00	\$ 102.450000	\$ 17,758.00	\$ 213,096.00
ASST CITY ATTORNEY	015	9	\$ 92.001923	\$ 15,947.00	\$ 191,364.00	\$ 119.065385	\$ 20,638.00	\$ 247,656.00
ASST CITY CLERK	010	9	\$ 61.534615	\$ 10,666.00	\$ 127,992.00	\$ 79.632692	\$ 13,803.00	\$ 165,636.00
ASST CITY LIBRARIAN	012	9	\$ 80.163462	\$ 13,895.00	\$ 166,740.00	\$ 103.742308	\$ 17,982.00	\$ 215,784.00
ASST CITY MANAGER	016	9	\$ 124.661538	\$ 21,608.00	\$ 259,296.00	\$ 161.319231	\$ 27,962.00	\$ 335,544.00
ASST DIR OF ELECTRIC UTIL	021	9	\$ 108.605769	\$ 18,825.00	\$ 225,900.00	\$ 140.550000	\$ 24,362.00	\$ 292,344.00
ASST DIR OF FINANCE	022	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF HUMAN RESOURCES	018	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF PUB WORKS/CITY ENG	071	9	\$ 95.319231	\$ 16,522.00	\$ 198,264.00	\$ 123.357692	\$ 21,382.00	\$ 256,584.00
ASST DIR OF WATER & SEWER UTIL	014	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
ASST FIRE CHIEF	024	9B	\$ 118.921154	\$ 20,613.00	\$ 247,356.00	\$ 153.905769	\$ 26,677.00	\$ 320,124.00
ASST FIRE MARSHAL	026	9B	\$ 91.211538	\$ 15,810.00	\$ 189,720.00	\$ 118.038462	\$ 20,460.00	\$ 245,520.00
ASST POLICE CHIEF	027	9A	\$ 130.234615	\$ 22,574.00	\$ 270,888.00	\$ 168.536538	\$ 29,213.00	\$ 350,556.00
ASST TO THE CITY MANAGER	028	9	\$ 84.496154	\$ 14,646.00	\$ 175,752.00	\$ 109.344231	\$ 18,953.00	\$ 227,436.00
ASST WATER & SEWER SUPERINTEND	029	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
AUDIT MANAGER	201	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
BATTALION CHIEF	036	9B	\$ 98.267308	\$ 17,033.00	\$ 204,396.00	\$ 127.159615	\$ 22,041.00	\$ 264,492.00
BATTALION CHIEF 24 HRS	036S	9B	\$ 66.848901	\$ 16,222.00	\$ 194,664.00	\$ 86.505495	\$ 20,992.00	\$ 251,904.00
BUDGET & TREASURY DIVISION MGR	113	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
BUILDING MAINTENANCE MANAGER	041	9	\$ 65.769231	\$ 11,400.00	\$ 136,800.00	\$ 85.113462	\$ 14,753.00	\$ 177,036.00
BUILDING OFFICIAL	042	9	\$ 87.080769	\$ 15,094.00	\$ 181,128.00	\$ 112.690385	\$ 19,533.00	\$ 234,396.00
CEMETERY OPERATIONS MANAGER	045	9	\$ 52.592308	\$ 9,116.00	\$ 109,392.00	\$ 68.059615	\$ 11,797.00	\$ 141,564.00
CHIEF ELECTRIC UTILITY OFFICER	108	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CHIEF OPERATING OFFICER	311	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CITY ATTORNEY	060	9	\$ 159.998077	\$ 27,733.00	\$ 332,796.00	\$ 159.998077	\$ 27,733.00	\$ 332,796.00
CITY CLERK	063	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY COUNCIL MEMBER	CNCL	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY LIBRARIAN	066	9	\$ 100.194231	\$ 17,367.00	\$ 208,404.00	\$ 129.663462	\$ 22,475.00	\$ 269,700.00
CITY MANAGER	069	9				\$ 215.621077	\$ 37,374.32	\$ 448,491.84
COMMUNICATIONS & OUTREACH MGR	083	9	\$ 59.705769	\$ 10,349.00	\$ 124,188.00	\$ 77.261538	\$ 13,392.00	\$ 160,704.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 11/17/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
COMMUNICATIONS OPERATIONS MGR	068	9	\$ 67.655769	\$ 11,727.00	\$ 140,724.00	\$ 87.553846	\$ 15,176.00	\$ 182,112.00
COMPLIANCE MANAGER	081	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
CONTRACTS MANAGER	342	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
DEPUTY CITY ATTORNEY I	170	9	\$ 57.496154	\$ 9,966.00	\$ 119,592.00	\$ 74.405769	\$ 12,897.00	\$ 154,764.00
DEPUTY CITY ATTORNEY II	172	9	\$ 67.078846	\$ 11,627.00	\$ 139,524.00	\$ 86.809615	\$ 15,047.00	\$ 180,564.00
DEPUTY CITY CLERK	178	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
DEPUTY CITY MANAGER	079	9	\$ 92.948077	\$ 16,111.00	\$ 193,332.00	\$ 120.276923	\$ 20,848.00	\$ 250,176.00
DEPUTY FIRE CHIEF	080	9B	\$ 108.109615	\$ 18,739.00	\$ 224,868.00	\$ 139.915385	\$ 24,252.00	\$ 291,024.00
DEPUTY PARKS & REC DIRECTOR	175	9	\$ 75.109615	\$ 13,019.00	\$ 156,228.00	\$ 97.200000	\$ 16,848.00	\$ 202,176.00
DEPUTY PUBLIC WORKS DIRECTOR	176	9	\$ 75.242308	\$ 13,042.00	\$ 156,504.00	\$ 97.373077	\$ 16,878.00	\$ 202,536.00
DEVELOPMENT REVIEW OFFICER	144	9	\$ 72.790385	\$ 12,617.00	\$ 151,404.00	\$ 94.200000	\$ 16,328.00	\$ 195,936.00
DIRECTOR OF COMMUNITY DEVELOPM	090	9	\$ 110.151923	\$ 19,093.00	\$ 229,116.00	\$ 142.551923	\$ 24,709.00	\$ 296,508.00
DIRECTOR OF FINANCE	087	9	\$ 109.932692	\$ 19,055.00	\$ 228,660.00	\$ 142.263462	\$ 24,659.00	\$ 295,908.00
DIRECTOR OF HUMAN RESOURCES	088	9	\$ 101.342308	\$ 17,566.00	\$ 210,792.00	\$ 131.146154	\$ 22,732.00	\$ 272,784.00
DIRECTOR OF INF TECHNOLOGY/CIO	089	9	\$ 104.573077	\$ 18,126.00	\$ 217,512.00	\$ 135.334615	\$ 23,458.00	\$ 281,496.00
DIRECTOR OF PUBLIC WORKS	091	9	\$ 116.515385	\$ 20,196.00	\$ 242,352.00	\$ 150.784615	\$ 26,136.00	\$ 313,632.00
DIRECTOR OF WTR & SEWER UTILS	102	9	\$ 105.605769	\$ 18,305.00	\$ 219,660.00	\$ 136.661538	\$ 23,688.00	\$ 284,256.00
ELEC DIV MGR - ENGINEERING	104Q	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - GENERATION	104R	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - OPERATIONS	104P	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - SUBSTATIONS	104M	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - TRANSM, DISTRIB	104S	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR-MKT A & P	107F	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIVISION MANAGER	104	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC PROGRAM MANAGER	424	9	\$ 78.051923	\$ 13,529.00	\$ 162,348.00	\$ 101.001923	\$ 17,507.00	\$ 210,084.00
ELEC UTIL CHIEF OPER OFFICER	116	9	\$ 119.469231	\$ 20,708.00	\$ 248,496.00	\$ 154.609615	\$ 26,799.00	\$ 321,588.00
ELEC UTIL RISK CONTROL ANALYST	697	9	\$ 69.900000	\$ 12,116.00	\$ 145,392.00	\$ 90.461538	\$ 15,680.00	\$ 188,160.00
EMERGENCY SERVICES COORDINATOR	106	9	\$ 58.696154	\$ 10,174.00	\$ 122,088.00	\$ 75.963462	\$ 13,167.00	\$ 158,004.00
ENVIRONMENTAL PROGRAMS MGR	461	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
EXECUTIVE ASSISTANT	187	9	\$ 51.005769	\$ 8,841.00	\$ 106,092.00	\$ 66.005769	\$ 11,441.00	\$ 137,292.00
FIRE CHIEF	117	9B	\$ 129.334615	\$ 22,418.00	\$ 269,016.00	\$ 167.365385	\$ 29,010.00	\$ 348,120.00

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			Hourly	Monthly	Annual	Hourly	Monthly	Annual
FIRE MARSHAL	120	9B	\$ 98.267308	\$ 17,033.00	\$ 204,396.00	\$ 127.159615	\$ 22,041.00	\$ 264,492.00
FLEET MANAGER	034	9	\$ 62.665385	\$ 10,862.00	\$ 130,344.00	\$ 81.092308	\$ 14,056.00	\$ 168,672.00
HOUSING & COMM SVC DIV MGR	075	9	\$ 75.305769	\$ 13,053.00	\$ 156,636.00	\$ 97.459615	\$ 16,893.00	\$ 202,716.00
HOUSING DEVELOPMENT OFFICER	749	9	\$ 59.140385	\$ 10,251.00	\$ 123,012.00	\$ 76.534615	\$ 13,266.00	\$ 159,192.00
HUMAN RESOURCES DIV MGR	139	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
INFORMATION TECHNOLOGY SVC MGR	112	9	\$ 69.703846	\$ 12,082.00	\$ 144,984.00	\$ 90.196154	\$ 15,634.00	\$ 187,608.00
INSPECTION MANAGER	134	9	\$ 74.590385	\$ 12,929.00	\$ 155,148.00	\$ 96.536538	\$ 16,733.00	\$ 200,796.00
LIBRARY DIV MGR -SUPPORT SVCS	127G	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
MANAGEMENT ANALYST	008	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
MAYOR	MAYOR	Elected				\$ 14.423077	\$ 2,500.00	\$ 30,000.00
MUNICIPAL SERVICES DIV MGR	110	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
PARK MAINT & OPERATIONS SUPERV	131	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PARKS & RECREATION DIRECTOR	132	9	\$ 102.109615	\$ 17,699.00	\$ 212,388.00	\$ 132.132692	\$ 22,903.00	\$ 274,836.00
PARKS CONST, MTC & REPAIR MGR	130	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PERFORMANCE AUDITOR I	203	9	\$ 43.153846	\$ 7,480.00	\$ 89,760.00	\$ 55.850962	\$ 9,680.83	\$ 116,170.00
PERFORMANCE AUDITOR II	204	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PLAN REVIEW MANAGER	629	9	\$ 75.392308	\$ 13,068.00	\$ 156,816.00	\$ 97.557692	\$ 16,910.00	\$ 202,920.00
PLANNING MANAGER	072	9	\$ 78.623077	\$ 13,628.00	\$ 163,536.00	\$ 101.746154	\$ 17,636.00	\$ 211,632.00
POLICE CAPTAIN	138	9A	\$ 124.044231	\$ 21,501.00	\$ 258,012.00	\$ 160.523077	\$ 27,824.00	\$ 333,888.00
POLICE CHIEF	141	Elected				\$ 150.813462	\$ 26,141.00	\$ 313,692.00
POLICE RECORDS MANAGER	647	9	\$ 53.342308	\$ 9,246.00	\$ 110,952.00	\$ 69.034615	\$ 11,966.00	\$ 143,592.00
POWER SYSTEM SCHEDULER/TRADER	674	9	\$ 66.940385	\$ 11,603.00	\$ 139,236.00	\$ 86.630769	\$ 15,016.00	\$ 180,192.00
POWER TRADER	673	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
PRINCIPAL ACCOUNTANT	148	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL ELECTRIC UTILITY ENG	145	9	\$ 85.488462	\$ 14,818.00	\$ 177,816.00	\$ 110.630769	\$ 19,176.00	\$ 230,112.00
PRINCIPAL ENG/CITY SURVEYOR	140	9	\$ 87.037019	\$ 15,086.42	\$ 181,037.00	\$ 112.638462	\$ 19,524.00	\$ 234,288.00
PRINCIPAL ENGINEER	142	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL ENGINEER - WATER	142W	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL FINANCIAL ANALYST	149	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL PLANNER	143	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL POWER ANALYST	154	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00

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			Hourly	Monthly	Annual	Hourly	Monthly	Annual
PRINCIPAL UTIL INFO SYSTEM MGR	146	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
PUBLIC INFORMATION OFFICER	077	9	\$ 81.248077	\$ 14,083.00	\$ 168,996.00	\$ 105.138462	\$ 18,224.00	\$ 218,688.00
PUBLIC RECORDS MANAGER	082	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PURCHASING DIVISION MANAGER	147	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
RECREATION MANAGER	150	9	\$ 67.488462	\$ 11,698.00	\$ 140,376.00	\$ 87.334615	\$ 15,138.00	\$ 181,656.00
RISK MANAGER	700	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
SR DEPUTY CITY ATTORNEY	161	9	\$ 71.301923	\$ 12,359.00	\$ 148,308.00	\$ 92.278846	\$ 15,995.00	\$ 191,940.00
SR ELEC DIV MGR	173	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR ELEC DIV MGR-MKT A&P	174A	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR INFORMATION TECH SVCS MGR	743	9	\$ 76.378846	\$ 13,239.00	\$ 158,868.00	\$ 98.844231	\$ 17,133.00	\$ 205,596.00
SR MANAGEMENT ANALYST	742	9	\$ 56.962981	\$ 9,873.58	\$ 118,483.00	\$ 73.723077	\$ 12,778.67	\$ 153,344.00
SR PERFORMANCE AUDITOR	202	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
SR POWER SYSTEM SCHEDLR/TRADER	772	9	\$ 71.948077	\$ 12,471.00	\$ 149,652.00	\$ 93.115385	\$ 16,140.00	\$ 193,680.00
STREET SUPERINTENDENT	159	9	\$ 68.400000	\$ 11,856.00	\$ 142,272.00	\$ 88.523077	\$ 15,344.00	\$ 184,128.00
TRAFFIC ENGINEER	171	9	\$ 83.648077	\$ 14,499.00	\$ 173,988.00	\$ 108.253846	\$ 18,764.00	\$ 225,168.00
UTILITY BUSINESS SYSTEMS MGR	898	9	\$ 66.744231	\$ 11,569.00	\$ 138,828.00	\$ 86.371154	\$ 14,971.00	\$ 179,652.00
UTILITY OPERATIONS ENGINEER	155	9	\$ 70.459615	\$ 12,213.00	\$ 146,556.00	\$ 91.176923	\$ 15,804.00	\$ 189,648.00
WATER & SEWER OPERATIONS MGR	180	9	\$ 69.253846	\$ 12,004.00	\$ 144,048.00	\$ 89.630769	\$ 15,536.00	\$ 186,432.00
WEB & DIGITAL MEDIA MANAGER	073	9	\$ 59.705769	\$ 10,349.00	\$ 124,188.00	\$ 77.261538	\$ 13,392.00	\$ 160,704.00

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			Hourly	Monthly	Annual	Hourly	Monthly	Annual
ACCOUNTING DIVISION MANAGER	109	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
ASST BUILDING OFFICIAL	222	9	\$ 79.159615	\$ 13,721.00	\$ 164,652.00	\$ 102.450000	\$ 17,758.00	\$ 213,096.00
ASST CITY ATTORNEY	015	9	\$ 92.001923	\$ 15,947.00	\$ 191,364.00	\$ 119.065385	\$ 20,638.00	\$ 247,656.00
ASST CITY CLERK	010	9	\$ 61.534615	\$ 10,666.00	\$ 127,992.00	\$ 79.632692	\$ 13,803.00	\$ 165,636.00
ASST CITY LIBRARIAN	012	9	\$ 80.163462	\$ 13,895.00	\$ 166,740.00	\$ 103.742308	\$ 17,982.00	\$ 215,784.00
ASST CITY MANAGER	016	9	\$ 124.661538	\$ 21,608.00	\$ 259,296.00	\$ 161.319231	\$ 27,962.00	\$ 335,544.00
ASST DIR OF ELECTRIC UTIL	021	9	\$ 108.605769	\$ 18,825.00	\$ 225,900.00	\$ 140.550000	\$ 24,362.00	\$ 292,344.00
ASST DIR OF FINANCE	022	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF HUMAN RESOURCES	018	9	\$ 86.434615	\$ 14,982.00	\$ 179,784.00	\$ 111.859615	\$ 19,389.00	\$ 232,668.00
ASST DIR OF PUB WORKS/CITY ENG	071	9	\$ 95.319231	\$ 16,522.00	\$ 198,264.00	\$ 123.357692	\$ 21,382.00	\$ 256,584.00
ASST DIR OF WATER & SEWER UTIL	014	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
ASST FIRE CHIEF	024	9B	\$ 124.332058	\$ 21,550.89	\$ 258,610.68	\$ 160.908462	\$ 27,890.80	\$ 334,689.60
ASST FIRE MARSHAL	026	9B	\$ 95.361692	\$ 16,529.36	\$ 198,352.32	\$ 123.409212	\$ 21,390.93	\$ 256,691.16
ASST POLICE CHIEF	027	9A	\$ 130.234615	\$ 22,574.00	\$ 270,888.00	\$ 168.536538	\$ 29,213.00	\$ 350,556.00
ASST TO THE CITY MANAGER	028	9	\$ 84.496154	\$ 14,646.00	\$ 175,752.00	\$ 109.344231	\$ 18,953.00	\$ 227,436.00
AUDIT MANAGER	201	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
BATTALION CHIEF	036	9B	\$ 102.738462	\$ 17,808.00	\$ 213,696.00	\$ 132.945404	\$ 23,043.87	\$ 276,526.44
BATTALION CHIEF 24 HRS	036S	9B	\$ 97.846731	\$ 16,960.10	\$ 203,521.20	\$ 126.618115	\$ 21,947.14	\$ 263,365.68
BUDGET & TREASURY DIVISION MGR	113	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
BUILDING MAINTENANCE MANAGER	041	9	\$ 65.769231	\$ 11,400.00	\$ 136,800.00	\$ 85.113462	\$ 14,753.00	\$ 177,036.00
BUILDING OFFICIAL	042	9	\$ 87.080769	\$ 15,094.00	\$ 181,128.00	\$ 112.690385	\$ 19,533.00	\$ 234,396.00
CEMETERY OPERATIONS MANAGER	045	9	\$ 52.592308	\$ 9,116.00	\$ 109,392.00	\$ 68.059615	\$ 11,797.00	\$ 141,564.00
CHIEF ELECTRIC UTILITY OFFICER	108	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CHIEF OPERATING OFFICER	311	9	\$ 143.365385	\$ 24,850.00	\$ 298,200.00	\$ 185.526923	\$ 32,158.00	\$ 385,896.00
CITY ATTORNEY	060	9	\$ 159.998077	\$ 27,733.00	\$ 332,796.00	\$ 159.998077	\$ 27,733.00	\$ 332,796.00
CITY CLERK	063	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY COUNCIL MEMBER	CNCL	Elected				\$ 11.538462	\$ 2,000.00	\$ 24,000.00
CITY LIBRARIAN	066	9	\$ 100.194231	\$ 17,367.00	\$ 208,404.00	\$ 129.663462	\$ 22,475.00	\$ 269,700.00
CITY MANAGER	069	9				\$ 215.621077	\$ 37,374.32	\$ 448,491.84
COMMUNICATIONS & OUTREACH MGR	083	9	\$ 59.705769	\$ 10,349.00	\$ 124,188.00	\$ 77.261538	\$ 13,392.00	\$ 160,704.00
COMMUNICATIONS OPERATIONS MGR	068	9	\$ 67.655769	\$ 11,727.00	\$ 140,724.00	\$ 87.553846	\$ 15,176.00	\$ 182,112.00

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			Hourly	Monthly	Annual	Hourly	Monthly	Annual
COMPLIANCE MANAGER	081	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
CONTRACTS MANAGER	342	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
DEPUTY CITY ATTORNEY I	170	9	\$ 57.496154	\$ 9,966.00	\$ 119,592.00	\$ 74.405769	\$ 12,897.00	\$ 154,764.00
DEPUTY CITY ATTORNEY II	172	9	\$ 67.078846	\$ 11,627.00	\$ 139,524.00	\$ 86.809615	\$ 15,047.00	\$ 180,564.00
DEPUTY CITY CLERK	178	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
DEPUTY CITY MANAGER	079	9	\$ 92.948077	\$ 16,111.00	\$ 193,332.00	\$ 120.276923	\$ 20,848.00	\$ 250,176.00
DEPUTY FIRE CHIEF	080	9B	\$ 113.028577	\$ 19,591.62	\$ 235,099.44	\$ 146.281558	\$ 25,355.47	\$ 304,265.64
DEPUTY PARKS & REC DIRECTOR	175	9	\$ 75.109615	\$ 13,019.00	\$ 156,228.00	\$ 97.200000	\$ 16,848.00	\$ 202,176.00
DEPUTY PUBLIC WORKS DIRECTOR	176	9	\$ 75.242308	\$ 13,042.00	\$ 156,504.00	\$ 97.373077	\$ 16,878.00	\$ 202,536.00
DEVELOPMENT REVIEW OFFICER	144	9	\$ 72.790385	\$ 12,617.00	\$ 151,404.00	\$ 94.200000	\$ 16,328.00	\$ 195,936.00
DIRECTOR OF COMMUNITY DEVELOPM	090	9	\$ 110.151923	\$ 19,093.00	\$ 229,116.00	\$ 142.551923	\$ 24,709.00	\$ 296,508.00
DIRECTOR OF FINANCE	087	9	\$ 109.932692	\$ 19,055.00	\$ 228,660.00	\$ 142.263462	\$ 24,659.00	\$ 295,908.00
DIRECTOR OF HUMAN RESOURCES	088	9	\$ 101.342308	\$ 17,566.00	\$ 210,792.00	\$ 131.146154	\$ 22,732.00	\$ 272,784.00
DIRECTOR OF INF TECHNOLOGY/CIO	089	9	\$ 104.573077	\$ 18,126.00	\$ 217,512.00	\$ 135.334615	\$ 23,458.00	\$ 281,496.00
DIRECTOR OF PUBLIC WORKS	091	9	\$ 116.515385	\$ 20,196.00	\$ 242,352.00	\$ 150.784615	\$ 26,136.00	\$ 313,632.00
DIRECTOR OF WTR & SEWER UTILS	102	9	\$ 105.605769	\$ 18,305.00	\$ 219,660.00	\$ 136.661538	\$ 23,688.00	\$ 284,256.00
ELEC DIV MGR - ENGINEERING	104Q	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - GENERATION	104R	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - OPERATIONS	104P	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - SUBSTATIONS	104M	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR - TRANSM, DISTRIB	104S	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIV MGR-MKT A & P	107F	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC DIVISION MANAGER	104	9	\$ 89.751923	\$ 15,557.00	\$ 186,684.00	\$ 116.157692	\$ 20,134.00	\$ 241,608.00
ELEC PROGRAM MANAGER	424	9	\$ 78.051923	\$ 13,529.00	\$ 162,348.00	\$ 101.001923	\$ 17,507.00	\$ 210,084.00
ELEC UTIL CHIEF OPER OFFICER	116	9	\$ 119.469231	\$ 20,708.00	\$ 248,496.00	\$ 154.609615	\$ 26,799.00	\$ 321,588.00
ELEC UTIL RISK CONTROL ANALYST	697	9	\$ 69.900000	\$ 12,116.00	\$ 145,392.00	\$ 90.461538	\$ 15,680.00	\$ 188,160.00
EMERGENCY SERVICES COORDINATOR	106	9	\$ 58.696154	\$ 10,174.00	\$ 122,088.00	\$ 75.963462	\$ 13,167.00	\$ 158,004.00
ENVIRONMENTAL PROGRAMS MGR	461	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
EXECUTIVE ASSISTANT	187	9	\$ 51.005769	\$ 8,841.00	\$ 106,092.00	\$ 66.005769	\$ 11,441.00	\$ 137,292.00
FIRE CHIEF	117	9B	\$ 135.219346	\$ 23,438.02	\$ 281,256.24	\$ 174.980538	\$ 30,329.96	\$ 363,959.52
FIRE MARSHAL	120	9B	\$ 102.738462	\$ 17,808.00	\$ 213,696.00	\$ 132.945404	\$ 23,043.87	\$ 276,526.44

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 12/15/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
FLEET MANAGER	034	9	\$ 62.665385	\$ 10,862.00	\$ 130,344.00	\$ 81.092308	\$ 14,056.00	\$ 168,672.00
HOUSING & COMM SVC DIV MGR	075	9	\$ 75.305769	\$ 13,053.00	\$ 156,636.00	\$ 97.459615	\$ 16,893.00	\$ 202,716.00
HOUSING DEVELOPMENT OFFICER	749	9	\$ 59.140385	\$ 10,251.00	\$ 123,012.00	\$ 76.534615	\$ 13,266.00	\$ 159,192.00
HUMAN RESOURCES DIV MGR	139	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
INFORMATION TECHNOLOGY SVC MGR	112	9	\$ 69.703846	\$ 12,082.00	\$ 144,984.00	\$ 90.196154	\$ 15,634.00	\$ 187,608.00
INSPECTION MANAGER	134	9	\$ 74.590385	\$ 12,929.00	\$ 155,148.00	\$ 96.536538	\$ 16,733.00	\$ 200,796.00
LIBRARY DIV MGR -SUPPORT SVCS	127G	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
MANAGEMENT ANALYST	008	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
MAYOR	MAYOR	Elected				\$ 14.423077	\$ 2,500.00	\$ 30,000.00
MUNICIPAL SERVICES DIV MGR	110	9	\$ 74.267308	\$ 12,873.00	\$ 154,476.00	\$ 96.109615	\$ 16,659.00	\$ 199,908.00
PARK MAINT & OPERATIONS SUPERV	131	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PARKS & RECREATION DIRECTOR	132	9	\$ 102.109615	\$ 17,699.00	\$ 212,388.00	\$ 132.132692	\$ 22,903.00	\$ 274,836.00
PARKS CONST, MTC & REPAIR MGR	130	9	\$ 61.898077	\$ 10,729.00	\$ 128,748.00	\$ 80.094231	\$ 13,883.00	\$ 166,596.00
PERFORMANCE AUDITOR I	203	9	\$ 43.153846	\$ 7,480.00	\$ 89,760.00	\$ 55.850962	\$ 9,680.83	\$ 116,170.00
PERFORMANCE AUDITOR II	204	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PLAN REVIEW MANAGER	629	9	\$ 75.392308	\$ 13,068.00	\$ 156,816.00	\$ 97.557692	\$ 16,910.00	\$ 202,920.00
PLANNING MANAGER	072	9	\$ 78.623077	\$ 13,628.00	\$ 163,536.00	\$ 101.746154	\$ 17,636.00	\$ 211,632.00
POLICE CAPTAIN	138	9A	\$ 124.044231	\$ 21,501.00	\$ 258,012.00	\$ 160.523077	\$ 27,824.00	\$ 333,888.00
POLICE CHIEF	141	Elected				\$ 150.813462	\$ 26,141.00	\$ 313,692.00
POLICE RECORDS MANAGER	647	9	\$ 53.342308	\$ 9,246.00	\$ 110,952.00	\$ 69.034615	\$ 11,966.00	\$ 143,592.00
POWER SYSTEM SCHEDULER/TRADER	674	9	\$ 66.940385	\$ 11,603.00	\$ 139,236.00	\$ 86.630769	\$ 15,016.00	\$ 180,192.00
POWER TRADER	673	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00
PRINCIPAL ACCOUNTANT	148	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL ELECTRIC UTILITY ENG	145	9	\$ 85.488462	\$ 14,818.00	\$ 177,816.00	\$ 110.630769	\$ 19,176.00	\$ 230,112.00
PRINCIPAL ENG/CITY SURVEYOR	140	9	\$ 87.037019	\$ 15,086.42	\$ 181,037.00	\$ 112.638462	\$ 19,524.00	\$ 234,288.00
PRINCIPAL ENGINEER	142	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL ENGINEER - WATER	142W	9	\$ 82.892308	\$ 14,368.00	\$ 172,416.00	\$ 107.273077	\$ 18,594.00	\$ 223,128.00
PRINCIPAL FINANCIAL ANALYST	149	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL PLANNER	143	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL POWER ANALYST	154	9	\$ 66.853846	\$ 11,588.00	\$ 139,056.00	\$ 86.509615	\$ 14,995.00	\$ 179,940.00
PRINCIPAL UTIL INFO SYSTEM MGR	146	9	\$ 85.551923	\$ 14,829.00	\$ 177,948.00	\$ 110.723077	\$ 19,192.00	\$ 230,304.00

City of Santa Clara
Unclassified/Elected Salary Plan

Effective 12/15/2019
Approved 1/28/2020

Job Title	Job Code	Union Code	Minimum Salary			Maximum Salary		
			Hourly	Monthly	Annual	Hourly	Monthly	Annual
PUBLIC INFORMATION OFFICER	077	9	\$ 81.248077	\$ 14,083.00	\$ 168,996.00	\$ 105.138462	\$ 18,224.00	\$ 218,688.00
PUBLIC RECORDS MANAGER	082	9	\$ 51.784615	\$ 8,976.00	\$ 107,712.00	\$ 67.021154	\$ 11,617.00	\$ 139,404.00
PURCHASING DIVISION MANAGER	147	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
RECREATION MANAGER	150	9	\$ 67.488462	\$ 11,698.00	\$ 140,376.00	\$ 87.334615	\$ 15,138.00	\$ 181,656.00
RISK MANAGER	700	9	\$ 71.498077	\$ 12,393.00	\$ 148,716.00	\$ 92.526923	\$ 16,038.00	\$ 192,456.00
SR DEPUTY CITY ATTORNEY	161	9	\$ 71.301923	\$ 12,359.00	\$ 148,308.00	\$ 92.278846	\$ 15,995.00	\$ 191,940.00
SR ELEC DIV MGR	173	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR ELEC DIV MGR-MKT A&P	174A	9	\$ 98.723077	\$ 17,112.00	\$ 205,344.00	\$ 127.771154	\$ 22,147.00	\$ 265,764.00
SR INFORMATION TECH SVCS MGR	743	9	\$ 76.378846	\$ 13,239.00	\$ 158,868.00	\$ 98.844231	\$ 17,133.00	\$ 205,596.00
SR MANAGEMENT ANALYST	742	9	\$ 56.962981	\$ 9,873.58	\$ 118,483.00	\$ 73.723077	\$ 12,778.67	\$ 153,344.00
SR PERFORMANCE AUDITOR	202	9	\$ 60.646154	\$ 10,512.00	\$ 126,144.00	\$ 78.478846	\$ 13,603.00	\$ 163,236.00
SR POWER SYSTEM SCHEDLR/TRADER	772	9	\$ 71.948077	\$ 12,471.00	\$ 149,652.00	\$ 93.115385	\$ 16,140.00	\$ 193,680.00
STREET SUPERINTENDENT	159	9	\$ 68.400000	\$ 11,856.00	\$ 142,272.00	\$ 88.523077	\$ 15,344.00	\$ 184,128.00
TRAFFIC ENGINEER	171	9	\$ 83.648077	\$ 14,499.00	\$ 173,988.00	\$ 108.253846	\$ 18,764.00	\$ 225,168.00
UTILITY BUSINESS SYSTEMS MGR	898	9	\$ 66.744231	\$ 11,569.00	\$ 138,828.00	\$ 86.371154	\$ 14,971.00	\$ 179,652.00
UTILITY OPERATIONS ENGINEER	155	9	\$ 70.459615	\$ 12,213.00	\$ 146,556.00	\$ 91.176923	\$ 15,804.00	\$ 189,648.00
WATER & SEWER OPERATIONS MGR	180	9	\$ 69.253846	\$ 12,004.00	\$ 144,048.00	\$ 89.630769	\$ 15,536.00	\$ 186,432.00
WATER & SEWER SUPERINTENDENT	029	9	\$ 62.619231	\$ 10,854.00	\$ 130,248.00	\$ 81.046154	\$ 14,048.00	\$ 168,576.00
WEB & DIGITAL MEDIA MANAGER	073	9	\$ 59.705769	\$ 10,349.00	\$ 124,188.00	\$ 77.261538	\$ 13,392.00	\$ 160,704.00

\$ 20,613.00	21550.890	\$ 26,677.00	27890.800
\$ 15,810.00	16529.360	\$ 20,460.00	21390.930
\$ 17,033.00	17808.000	\$ 22,041.00	23043.870
\$ 16,222.00	16960.100	\$ 20,992.00	21947.140
\$ 18,739.00	19591.620	\$ 24,252.00	25355.470
\$ 22,418.00	23438.020	\$ 29,010.00	30329.960
\$ 17,033.00	17808.000	\$ 22,041.00	23043.870



Agenda Report

20-1437

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Public Hearing: Action on Project Approvals for the Proposed 65 Residential Unit Affordable Housing Project at 2330 Monroe Street [Council Pillar: Promote and Enhance Economic and Housing Development]

EXECUTIVE SUMMARY

The proposed project includes the development of 65 affordable residential units to be constructed by Freebird Development Company, LLC (Freebird).

The City, as Housing Successor to the dissolved redevelopment agency, was designated to assume all housing assets (including land) of the former redevelopment agency and these assets were placed into a Housing Successor Fund. As the Housing Successor, the City 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.

The City issued a Request for Proposals (RFP) in 2018 for the development of an affordable housing project on the City owned property located at the southeast corner of Monroe Street and San Tomas Expressway (2330 Monroe Street). Freebird was selected as the developer for the site through the RFP process and the City Council approved an Exclusive Negotiation Agreement (ENA) with Freebird in December 2018 to allow the project to proceed. Since that time, Freebird has been working with the City to process entitlements and to negotiate the terms of a Disposition and Development Agreement.

This report requests Council consideration of key project approvals that would allow for the development of up to 65 affordable housing units on City-owned land. These approvals include:

- Mitigated Negative Declaration (MND)
- Mitigation Monitoring and Reporting Program (MMRP)
- General Plan Amendment from Right of Way to Medium Density Residential
- Rezoning from Single Family (R1-6L) to Planned Development (PD)
- Disposition and Development Agreement

BACKGROUND

Freebird filed its development applications on February 21, 2019, which would collectively allow the development of a 65-unit affordable rental housing project at 2330 Monroe Street. The proposed entitlements include a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, a General Plan Amendment from Right of Way to Medium Density Residential, and a Rezone from Single Family Residential (R1-6L) to Planned Development (PD) (CEQ2019- 01067;

PLN2019-13723; PLN2019-13763, PLN2019-13764).

The subject property is currently a vacant City-owned site, bordered to the west by San Tomas Expressway and to the north by Monroe Street. Neighboring land uses include single-family houses to the north, south and east, two-story multifamily residential uses across Monroe Street to the northeast, and the San Tomas and Monroe Neighborhood Park across San Tomas Expressway to the west.

The proposed project consists of a single building ranging in height from two to three stories, approximately 32,000 square feet of open space for active recreational uses, and 98 surface parking spaces. The parking includes three stalls designated for future EV charging stations, a loading/drop-off/paratransit stall and six accessible stalls. All units within the project will be deed restricted as affordable housing. A unique aspect of the project is a 25 percent set-aside of units for intellectually and/or developmentally disabled persons.

The Planning Commission considered the proposed project at a publicly noticed meeting on November 13, 2019 and forwarded a recommendation to the City Council for approval with several amendments to the proposal as discussed later in the report. The Planning Commission staff report and excerpt meeting minutes are provided as Attachment 1 and Attachment 2 to this Council agenda report.

DISCUSSION

The following discussion provides a summary of the Planning Commission hearing and a description of the proposed project Disposition and Development Agreement (DDA). Under City procedures, the DDA is not part of the Planning Commission hearing process.

Planning Commission Meeting Summary

At the Planning Commission meeting on November 13, 2019, the Planning Commission discussed concerns about the proposed project density, need for a VTA bus stop closer to the project site to facilitate usage by residents, limiting removal of on-street parking along the Monroe Street project frontage, egress from the project site to Monroe Street, availability to the public for a proposed community room, the need for more parking spaces prewired for Electric Vehicle charging, and incorporation of more green building elements into the project proposal.

Commissioner Ikezi expressed concern over the proposed density (26 units per acre) of the project, noting that it is at the low end of the medium density designation (20-36 units per gross acre) and that it is reduced significantly from the previous proposal, a reference to a prior project proposed by the Sobrato Organization LLC in 2017. At that time, the Sobrato Organization entered into an exclusive negotiation agreement (ENA) with the City to construct approximately 200 affordable units and presented this development concept at community meeting on February 2, 2017 but determined not to pursue the project further due to strong community opposition. Staff explained that the current project density was the result of a community engagement process including a Community Visioning Workshop and a survey conducted in December 2017. A summary of community input was attached to the City's RFP issued in 2018 and projects submitted in response to the RFP were evaluated using the community input as a key criterion. The applicant also stated that the project is consistent with their response to the RFP in which they proposed to develop the site with 50-65 units.

Commissioner Cherukuru raised questions about the location of the bus stop in the project vicinity and suggested engaging with the VTA to relocate a bus stop closer to the project site. Currently there is an eastbound and a westbound VTA bus stop east of Los Padres along Monroe Street (approximately 500 feet, 2-5-minute walk). Staff noted that relocating the bus stop closer to the site would require approximately 100 feet of red curbing, resulting in the loss of additional street parking spaces.

Commissioner Jain requested that the project be modified to clearly delineate visitor parking spaces, provide outlets for charging electric bikes in the bike room, and make the proposed community room available to Santa Clara residents on a reservation basis. The applicant agreed to incorporate these changes into the project. Commissioner Jain further inquired if the proposal could limit the units to electricity and exclude gas as an energy source. The applicant explained that the project would include electric stoves, a centralized hot water system preheated with solar and a gas heat boiler.

Chair Becker expressed concern over the removal of the parking along the project frontage on Monroe Street and suggested that egress from the project onto Monroe Street should be limited to right-turn movements. Staff clarified that there were no conditions or mitigation measures in the environmental document from the traffic engineers to restrict a left turn. Further review with the traffic division after the Planning Commission meeting clarified that the proposed removal of the parking along Monroe is intended to ensure safety and visibility for drivers exiting from the property. In subsequent analysis staff concluded that allowing both left and right turn movements from the property would require removing approximately 8 cars to the west and 6 cars to the right of the driveway. Restricting the left turn and allowing only the right turn out would require removing only the 8 parking spaces to the west of the driveway. However, with the availability of the middle unprotected turn lane on Monroe Street, restricting the egress from the property to right turn only would be difficult to enforce. This may increase the possibility of more accidents.

Commissioner Saleme expressed the need for providing a designated space for short term drop off rideshare or delivery services such as Doordash or Uber. Chair Becker agreed that there is a need for a designated short-term parking space. The applicant explained that the guest parking spaces could be used for short term parking and that while providing a designated spot would take away from the spaces assigned to units, the project is expected to have a surplus of parking available based on actual observed parking demand at comparable developments. The applicant further explained that parking spaces will be assigned only to the units occupied by someone owning a car. Commissioner Saleme also expressed concern over how to monitor and regulate the use of the EV Charging spaces. The applicant explained that a property manager would be available on site to monitor that the residents move the cars from an EV charging space once the vehicles are charged.

Three members of the public were present at the meeting. Two spoke in favor of the project. One expressed concern about the need for more parking in the area. The applicant explained that based upon the intended resident population, the project includes adequate parking onsite.

The discussion concluded with the Planning Commission recommending that Council adopt the MND and MMRP and approve the General Plan amendment and rezoning with the following added conditions to the rezoning:

1. Provide outlets in the proposed bike room for electric bikes.
2. Applicant work with staff to see the feasibility of making the egress from the site to be

restricted to right turn only.

3. Five additional parking spots to be prewired for EV Charging.
4. Hot water to be provided utilizing a heat pump boiler instead of a natural gas boiler.
5. The proposed community room be made available to other Santa Clara residents for up to 20 events per year.
6. Provide a designated short-term parking space for rideshare or delivery services.
7. Applicant to work with staff to consider the feasibility of relocation of the VTA bus stop.

The Planning Commission further gave direction for staff to consider restricting parking along the project frontage on Monroe to smaller vehicles, but did not include this in their recommendation for the project.

The applicant conveyed that all the conditions were acceptable to them except for condition number 4, requiring them to use a heat pump boiler. The applicant further clarified that they propose to use a 95% efficient gas fired boiler, which requires lesser space and achieves the high energy efficiency standard as prescribed by the California Energy Code, effective January 1, 2020. The remaining conditions will be incorporated into the project either through the Planning Permit or Building Permit processes. A Permit condition (Condition #12) has been added to the Conditions of the Rezoning Approval, and agreed to by the applicant as follows:

- C12. The proposed community room shall be made available on a reservation basis to Santa Clara residents for up to 20 events per year.

Disposition and Development Agreement - Financing

The City is currently the fee owner of the Property. Approval of the recommended action would authorize the City Manager to execute a Disposition and Development Agreement (DDA) with Freebird, which provides the required terms and conditions for the conveyance and development of the Property (Attachments 11-20).

Consistent with the original project concept, at closing, the City will convey a ground lease to Developer for the affordable project and provide a supplemental capital loan of up to \$5,000,000 through a Loan Agreement. As a requirement of the loan, the Developer must maintain the affordable units for rent to qualified tenants for 55 years.

Attached to the DDA, among other documents, are the form of Ground Lease, Loan Agreement, and Affordability Agreements which would control how the Affordable Project will be developed and the terms and conditions of the relationship between the City and Developer over a 55-year term.

The Developer is in the process of securing the full funding necessary to build the project. In total, there are six anticipated 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 projected net equity to the project is \$13,000,000, 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** The second proposed source of financing is tax exempt bonds in the amount of \$25,000,000 during construction and \$11,200,000 during the permanent period. 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 with a conservative assumption of 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.** The 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 proposed 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). This loan is being structured as a 3% residual receipts loan with a 55-year term sized at \$200,000 per I/DD unit (16 units). The Developer applied for this funding in August 2019 and was awarded the full amount.
- **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 with the intent 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:

Project Funding - Permanent Sources	
	Amount
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
Total Sources	\$ 38,650,000

Disposition and Development Agreement - 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:

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

A unique aspect of the Developer proposal is a 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.

Disposition and Development Agreement - 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 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

The DDA documents the terms and conditions of the anticipated project and 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.

It is currently anticipated that the 2330 Monroe Street project will close financing and start construction by the end of 2020.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration (MND) was prepared for the project in accordance with the

California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on the City's website at www.santaclaraca.gov/ceqa and circulated for 30-day review on September 25, 2019 and closed on October 25, 2019, in accordance with CEQA requirements. The Planning Department received agency comments in response to the MND, which are attached to this staff report for review. Copies of the MND are available in the Planning Division office at City Hall.

The MND examined environmental impacts associated with project development and identified potential air quality, biological, cultural resources, geology and soils, hazardous materials, and noise impacts that with incorporation of mitigation measures into the project would reduce all potential impacts to less than significant. A detailed discussion of the potential impacts and mitigation measures to be applied to the project are specified in the MND and would be implemented through project conditions of approval and the Mitigation Monitoring and Reporting Program (MMRP) for the proposed project.

At the November 13, 2019 Planning Commission meeting, the Commission voted to recommend that the City Council adopt the MND and MMRP.

FISCAL IMPACT

If approved, the City's loan of up to \$5,000,000 for the affordable project would be drawn from the City's Housing Successor Fund, which currently has an unrestricted fund balance of \$11.8 million available. This loan is expected to be paid next fiscal year and depending on the timing of the project loan, may be incorporated into the FY 2020/21 budget development process.

The principal under this loan will bear simple interest at a rate of 3% per year, subject to final underwriting. The principal and interest due under this agreement would be paid 55 years from the date of the agreement. Annual payments would be made upon the availability of residual receipts and would be proportionally split between the subordinate lenders.

COORDINATION

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

PUBLIC CONTACT

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

Public Notices and Comments:

The notice of public hearing for this item was posted on January 16, 2020, in three conspicuous locations within 300 feet of the site and was mailed to property owners within 1,000 feet of the project site. In addition, a Notice of Hearing for the project applications was published in *The Weekly*, a newspaper of general circulation for the City, on January 15, 2020. At the time of this staff report, no further public comments were received.

Public Outreach Meetings

A total of four neighborhood community meetings were conducted to engage neighbors in the project planning process. Public notice of the community meetings was mailed to property owners within 1000 feet of the project site and posted on the City's Community Meetings webpage. Prior to submitting an application to the City, the developer conducted two noticed community meetings on October 17, 2018 and November 5, 2018 at the City Hall Cafeteria at 6:00 p.m. Both meetings were well attended by community members, who expressed general interest in the proposal with concerns mostly regarding the impact of the project on the adjacent residential development primarily focusing on parking.

Following submittal of the application the developer conducted two additional noticed community meetings to present the development proposal to neighbors and interested parties and engage public input. The meetings were held at the City Hall Cafeteria from 6:00 p.m. to 8:00 p.m. on February 21, 2019 and July 30, 2019; each meeting was attended by approximately 20-25 community members. City staff also informally discussed the project with neighborhood representatives on multiple occasions.

ALTERNATIVES

1. Adopt a resolution to adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Affordable Housing Project at 2330 Monroe Street.
2. Adopt a resolution to approve a General Plan amendment from Right of Way to Medium Density Residential for the property at 2330 Monroe Street.
3. Adopt a resolution to approve a rezoning from Single Family Residential (R1-6L) to Planned Development (PD) to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.
4. Adopt a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement with Monroe Street Housing Partners L.P. for the development of 65 units of housing at 2330 Monroe Street and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement) in a form consistent with the DDA and all other documents necessary or convenient to close escrow and implement the purposes and terms of the DDA
5. Deny the General Plan amendment from Right of Way to Medium Density Residential and direct staff to bring back a resolution of denial for adoption at a future Council meeting.
6. Deny the rezoning from Single Family Residential (R1-6L) to Planned Development (PD) for the development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements and direct staff to bring back a resolution of denial for adoption at a future Council meeting.
7. Any other alternate action as directed by Council

RECOMMENDATION

Alternatives 1, 2, 3, and 4:

1. Adopt a resolution to adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Affordable Housing Project at 2330 Monroe Street;
2. Adopt a resolution to approve a General Plan amendment from Right of Way to Medium Density Residential for the property at 2330 Monroe Street;
3. Adopt a resolution to approve a rezoning from Single Family Residential (R1-6L) to Planned Development (PD) to allow development of 65 rental affordable residential units, landscaped open

- space, surface parking and site improvements; and
4. Adopt a resolution approving and authorizing the City Manager to negotiate and execute a Disposition and Development Agreement with Monroe Street Housing Partners L.P. for the development of 65 units of housing at 2330 Monroe Street and further authorizing the City Manager to execute all other agreements (including a Ground Lease, Loan Agreements, Deeds of Trust, Promissory Notes, and Affordable Housing Agreement) in a form consistent with the DDA and all other documents necessary or convenient to close escrow and implement the purposes and terms of the DDA

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Planning Commission Report for November 13, 2019
2. Planning Commission Excerpt Meeting Minutes
3. Project Data
4. Web Link to 2330 Monroe MND and MMRP
5. Responses to Comments Received on the MND
6. Resolution to Adopt the MND and MMRP
7. Resolution to Approve the GPA
8. Resolution to Approve the Rezoning
9. Conditions of Rezoning
10. Planned Development Plans
11. Resolution Approving the Disposition and Development Agreement
12. Freebird DDA (Including Attachments A - F)
13. Freebird DDA Attach G & H Ground Lease
14. Freebird DDA Attach I City Loan Agreement
15. Freebird DDA Attach J City Promissory Note
16. Freebird DDA Attach K City Deed of Trust
17. Freebird DDA Attach L City Assignment of Rents and Leases
18. Freebird DDA Attach M City Assignment of Agreements
19. Freebird DDA Attach P City Regulatory Agreement
20. Freebird DDA Attach R City Environmental Indemnity

REPORT TO PLANNING COMMISSION

SUBJECT

..Title

Actions on a Proposed 65 Residential Unit Affordable Housing Project at 2330 Monroe Street

..Report

EXECUTIVE SUMMARY

On February 21, 2019, Freebird Development Company, LLC (Freebird) filed a development application to amend the General Plan designation and rezone the parcel located at 2330 Monroe Street to develop the site with 65 affordable units in a mix of studios, one, two- and three-bedroom units. The subject site is a vacant City-owned property located at the southeast corner of Monroe Street and San Tomas Expressway.

All units within the project will be deed restricted for affordable housing. A unique aspect of the project reserves 25 percent of the units for intellectually and/or developmentally disabled persons. The proposed entitlements include a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; a General Plan Amendment from Right of Way to Medium Density Residential and a Rezone from Single Family Residential (R1-6L) to Planned Development (PD). These entitlements together would allow construction of a 65-unit rental affordable housing development. The proposal is consistent with the goals and policies set forth in the General Plan for the site as discussed below.

BACKGROUND

After redevelopment agencies (RDA) were dissolved on February 1, 2012, the City, as Housing Successor to the dissolved RDA, assumed all housing assets (including land) of the former redevelopment agency and these assets were placed into a Housing Successor Fund. The parcel is a remnant of a larger parcel that was initially acquired by the County as part of the construction of San Tomas Expressway and subsequently acquired by the City's RDA as an affordable housing site once it became surplus land from the expressway project. This site was confirmed as a housing asset by the California Department of Finance on July 13, 2013.

Following an extensive community outreach process in 2017 and 2018, the City issued a Request for Proposals (RFP) for the development of an affordable housing project on the subject property. At the September 11, 2018 meeting, the City Council selected Freebird as the developer for the project and subsequently approved the Exclusive Negotiation Agreement (ENA) to allow the project to proceed on December 12, 2018.

On June 4, 2019, the City Council reviewed the proposed project, pursuant to the City's Early Consideration Policy for General Plan Amendments and indicated its support of a continued review of the proposal.

Existing Site Conditions

The project site is a single City-owned parcel that is currently vacant. It is located at the southeast corner of Monroe Street and San Tomas Expressway. San Tomas Aquino Creek and Trail are located adjacent to and west of San Tomas Expressway.

Surrounding land uses include single-family houses to the south, two-story multifamily residential uses across Monroe Street to the east, and San Tomas Expressway to the west and to the north. The site adjoins the rear yards of eleven (11) single family residential properties to the east and south on Sheraton Drive and El Capitan Avenue. A newly developed 2-acre City park is located across San Tomas Expressway to the west.

Project Description

The project would involve the development of an approximately 73,470 square-foot building ranging in height from two to three stories oriented towards the northern portion of the site along San Tomas Expressway and Monroe Street. The maximum height of the building would be 43 feet 4 inches. The project site will have a single point of ingress and egress from Monroe Street.

The 65 residential units consists of 7 studios, 23 one-bedroom units, 29 two-bedroom units and six three-bedroom units. All the units are designated as affordable allowing occupancy based on households at income tiers between 25-120 percent of area median income. The project utilizes one core floor plan for the studios, one- and three-bedrooms units, and two core floor plans for the two-bedroom units. There are few variations due to the design of the building shell, but generally studios range from 344 square feet to 390 square feet, one-bedroom units from 590 square feet to 629 square feet; two-bedroom units from 839 square feet to 900 square feet, and three-bedroom units from 1,180 square feet to 1,197 square feet. The Planned Development Rezoning includes conceptual architecture which may be further refined through subsequent architectural review, should the City Council approve the Planned Development Rezoning.

The project would 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 a community room located on the ground floor that opens up to the outdoor community area. The project includes approximately 32,000 square feet of open space that will provide area for active recreational uses intended for use by building residents and guests.

The project would construct a 6-foot-high precast concrete sound wall along San Tomas Expressway and an 8-foot-high wooden privacy fence along the southern boundary, where the site abuts existing single-family homes. The privacy fence near the entrance to the site will be precast concrete to further attenuate the noise from the incoming vehicles.

DISCUSSION

The primary issues for the project are consistency with the City's General Plan, conformance with the Zoning Code criteria for a Planned Development Zoning and quality of the project architecture and site design.

General Plan Conformance

The General Plan Major Strategies identify the importance of maintaining a land use plan that supports, preserving the City's fiscal health, promoting quality of life, preserving and cultivating existing neighborhoods and promoting sustainability. Providing affordable housing is identified in the General Plan as an important element for the overall development of a healthy and sustainable community.

The site is currently designated as Right of Way in the General Plan, reflecting the acquisition of the parcel and use of a portion of it for San Tomas Expressway. The project proposes to amend the General Plan designation to Medium Density residential which would support residential development at a density between 20 to 36 dwelling units per acre (du/ac). The proposed residential density of approximately 26 units/acre aligns with this General Plan land use designation.

By selling the land as surplus property, the County determined that additional right of way would not be needed at this location. The City as the housing successor assumed all former RDA housing assets (including land) with the intent to provide housing that is 100 percent affordable to persons and families of low and moderate income within five years after the Department of Finance confirmed the property as a housing asset.

The City has subsequently taken actions in support of residential use of the site consistent with the proposed General Plan Amendment, including actions by the Council on the Request for Proposals and Exclusive Negotiating Agreement. The City Council also determined that the application could proceed through the full entitlement process consistent with the City's Early Consideration policy for General Plan amendments.

The proposed project is also consistent with General Plan Policies as follows:

General Land Use Policies

- 5.3.1-P2: Encourage advance notification and neighborhood meetings to provide an opportunity for early community review of new development proposals.
- 5.3.1-P8 Work with property owners to improve or redevelop underutilized and vacant properties.
- 5.3.1-P9 Require that new development provide adequate public services and facilities, infrastructure, and amenities to serve the new employment or residential growth.

Considering the high degree of interest and sensitivity related to use the site for affordable housing, the City conducted a community engagement program prior to issuing the RFP and engagement with the developer. Thereafter, the developer conducted public outreach through mailings and conducting four community meetings to involve neighboring property owners in the design of the project. Notices were mailed by the applicant to property owners within 1,000 feet of the project boundaries and interested parties. The project would utilize the currently vacant city owned property for

the construction of 65 affordable units with onsite amenities and infrastructure improvements that include private street and utilities, guest parking, and landscape recreation and open space to serve the development.

- 5.3.1-P10: Provide opportunities for increased landscaping and trees in the community, including requirements for new development to provide street trees and a minimum 2:1 on- or of-site replacement for trees removed as part of the proposal to help increase the urban forest and minimize the heat island effect.
- 5.3.1-P12 Encourage convenient pedestrian connections within new and existing developments.

The proposed development plan includes landscaping of the site and the project street frontages with a variety of plant and tree species and would replace the four trees removed with redevelopment at a higher ratio for a total of 125 trees. The project includes the replacement of the existing sidewalks along Monroe Street fronting the project site with a landscape park strip and sidewalk consistent with the Complete Streets design standards including a 10-foot-wide sidewalk with a 4-foot-wide planter strip with street trees. Street trees are proposed within the park strips.

- 5.3.1-P26: Support a community-initiated planning process so that existing neighborhoods can participate in developing more detailed plans for street, landscape and pedestrian facility improvements.
- 5.3.1-P29 Encourage design of new development to be compatible with, and sensitive to, nearby existing and planned development, consistent with other applicable General Plan policies.

As mentioned previously, the community engagement process was initiated early on, in advance of the formal Planning application submittal. The single building ranging in height from 2-3 stories is oriented away from the existing single-family development to avoid any privacy concerns. The project would provide 94 surface parking spaces including six accessible spaces. In addition, there are three electric vehicle (EV) charging spaces and a paratransit loading stall, providing a ratio approaching 1.5 parking spaces per unit. Given that the 25 percent of the units are set aside for persons with developmental disabilities who mostly do not own cars, the ratio of available parking spaces to units is anticipated to be higher. The onsite parking provided addresses the public concerns about the parking spill over to the adjacent neighborhoods.

Residential Land Use Policies

- 5.3.2-G1 Equitable housing opportunities within the community for persons of all economic levels, regardless of religion, gender, sexual orientation, marital status, national origin, ancestry, familial status, race, color, age, source of income or mental or physical disability.
- 5.3.2-P6 Provide adequate choices for housing tenure, type and location, including higher density, and affordability for low- and moderate-income and

special needs households.

- 5.3.2-P10 Create opportunities for affordable housing and housing to support special needs populations, including Extremely Low-Income households.
- 5.3.2-P13 Participate in local, regional, State and federal programs that support affordable, transitional and permanent housing.

The project proposes to build 65 affordable units. All units will be deed restricted for use by households at income tiers between 25 to 120 percent of area median income and 25 percent of the units will be reserved for intellectually and/or developmentally disabled persons.

Transition Policies

- 5.5.2-P1: Require that new development incorporate building articulation and architectural features, including front doors, windows, stoops, porches or bay windows along street frontages, to integrate new development into the existing neighborhoods.

The project incorporates offsets along the building planes and a mixture of exterior materials, finishes and architectural features to create visual breaks and interest in the design for compatibility with the surrounding neighborhood.

- 5.5.2-P4 Provide adequate separation between incompatible land uses in order to minimize negative effects on surrounding existing and planned development.
- 5.5.2-P3: Implement site design solutions, such as landscaping and increased building setbacks, to provide buffers between nonresidential and residential uses.
- 5.5.2-P5 Require that new development provide an appropriate transition to surrounding neighborhoods.
- 5.5.2-P9 Improve pedestrian amenities, including sidewalks and bicycle paths, to promote neighborhood compatibility.

The proposed building is oriented towards the northern portion of site, away from the existing single-family development along the southern and eastern boundary, providing increased setbacks. The space south of the proposed building is developed as open community space, parking, internal private street and landscaping to provide adequate separation and transition from multifamily to single family development.

Zoning Conformance for a Planned Development Zoning

The site is currently zoned Single Family Residential (R1-6L). The proposal to rezone to Planned Development (PD) would allow the construction of 65-unit rental multi-family affordable housing project, consistent with the requested General Plan designation and the intent to develop an affordable housing project on this site. The City Code indicates that the intent of the PD Zoning district is to “accommodate development that is compatible with the existing community” and meet one of four possible objectives, including utilization of “imaginative planning and design concepts that would be restricted in other zone districts”.

The proposed zone change to PD meets this intent in that it would allow imaginative planning and design concepts that would be restricted in other zone districts and provide necessary flexibility in site design development standards to allow an efficient design and for the project to be situated on the site in a manner that minimizes impacts to the adjacent neighborhood and maximizes the open space area available to future residents. The PD Zoning is also necessary given the site shape and configuration which requires that the site take access from a single point on Monroe Street. The project includes additional beneficial design measures to address neighborhood compatibility as described below.

Project Architecture

The proposed building architecture would be reflective of a modern interpretation of farmhouse design. The proposed building would create the form of a L-shape with the longest length adjacent to, and set-back from, San Tomas Expressway, and shorter length along Monroe Street. Both ends of the L-shape building would be lower in height (two-stories), which would provide a step-up that would visually break up the bulk and height of the building. Overall, the building would contain a mix of exterior angles and materials, including cement panels with redwood finish, fiber cement lap siding with various color finishes, cementitious panels, decorative wall sconces, and perforated aluminum sunshades.

The mixture of material finishes applied to the exterior elevations, together with the offsets incorporated into the building design provide varied textures and create visual interest. The use of divided light windows and alternating use of materials provides a rhythmic cohesion and symmetry in the design. Offsets in the building elevations, recessed windows, and simplified roof forms provide breaks in mass and scale of the buildings and roof structures. Metal canopies are incorporated in the design over the entrance of the building adding to the visual interest.

Circulation and Parking

The project is accessed by a single point of ingress and egress from Monroe Street as the site cannot take access from San Tomas Expressway. The proposed 26-foot wide driveway would lead to the surface parking lot with a two-way drive aisle, also 26 feet wide. The surface parking lot would provide 94 universal parking stalls, 6 of which would be designated for ADA compliant use. In addition, there would be three stalls designated for future EV charging stations and a loading/drop-off/paratransit stall. There is no gate or fencing proposed along Monroe Street.

The proposed project would provide 37 bicycle parking spaces; 33 Class I bicycle parking spaces would be located within the building to serve residents, and four Class II bicycle parking spaces would be outdoors and uncovered to serve visitors.

The existing sidewalk along the project frontage on Monroe Street would be replaced with a separated 10-foot-wide sidewalk with a 4-foot-wide landscape strip next to the curb and sidewalk behind, enhancing the pedestrian access and connectivity to the adjacent neighborhood. The private street would provide access to the surface parking

spaces, the units within the building, and the community amenities. The private street would also serve as a utility corridor and emergency vehicle access easement. Due to its relatively small size, the project would generate fewer than 100 peak-hour vehicle trips.

The project provides the parking at about one and a half parking spaces for each unit with 10 percent of the total parking spaces dedicated for guest parking. The standard Santa Clara parking ratio for is two vehicle parking vehicle spaces per unit. However, the project would involve the approval of a zoning amendment as a Planned Development (PD), allowing for exceptions to the standard parking ratio. Additionally, the State density bonus law and the City's density bonus ordinance both provide for reduced parking ratios for affordable housing developments such as the proposed project. Based on survey results of recent projects similar in size and with similar levels of transit service as the project, Fehr & Peers identified peak-parking demands of between 1.40 and 1.52 spaces per unit in the late evening. Accounting for 25 percent of units to house individuals with developmental disabilities (and therefore, unlikely to have a vehicle), only 49 of the units would generate parking and the corresponding peak parking demand would be much lower than other comparably sized developments. The proposed on-site parking would therefore, accommodate this parking demand.

Landscaping and Open Space

The project would implement a landscape plan for the site and public right-of-way that includes a mixture of plant species and trees for planting the common areas and setbacks as well as the planter strips fronting the project site. The three trees removed with demolition of existing conditions on-site would be replaced in excess of the 2:1 requirement with a total of 125 trees which are to be planted around the entire perimeter of the site and within the common open space area. The replacement plan includes native and climate-adapted trees, many of which would serve to screen/line the project site perimeter. Of the nine species, six are proposed to be drought tolerant.

The project includes approximately 32,000 square feet of open space that will provide area for active recreational uses intended for use by building residents and guests. Included are a universal design (all abilities) outdoor play area, a landscaped and furnished park-like quiet area with half size bocce court, recreational community gardens, a family barbecue area, a fitness pathway with outdoor fitness equipment, and a putting green (artificial turf).

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration (MND) was prepared for the project in accordance with the California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on the City's website at www.santaclaraca.gov/ceqa and circulated for 30-day review on September 25, 2019 and closed on October 25, 2019, in accordance with CEQA requirements. The Planning Department received agency comments in response to the MND, which are attached to this staff report for review. Copies of the MND are available in the Planning Division office at City Hall.

The MND examined environmental impacts associated with project development and identified potential air quality, biological, cultural resources, geology and soils, hazardous materials, and noise impacts that with incorporation of mitigation measures into the project would reduce all potential impacts to less than significant. A detailed discussion of the potential impacts and mitigation measures to be applied to the project are specified in the MND and would be implemented through project conditions of approval and the Mitigation Monitoring and Reporting Program (MMRP) for the proposed project.

FISCAL IMPACT

There is no fiscal impact to the City for processing the requested application other than administrative staff time and expense typically covered by processing fees paid by the applicant.

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

Public Notices and Comments

On November 1, 2019, the notice of public hearing for this item was posted in three conspicuous locations within 300 feet of the project site and mailed to property owners within 1,000 feet of the project site. Newspaper notice of this item was published in *The Weekly* on October 30, 2019. At the time of this staff report, no public comment has been received.

Public Outreach Meetings

A total of four neighborhood community meetings were conducted to engage neighbors in the planning process of the proposed 65 affordable unit development. Two noticed community meeting were conducted to present the development proposal to neighbors and interested parties and engage public input. The meetings were held at the City Hall Cafeteria from 6:00 p.m. to 8:00 p.m. on February 21, 2019 and July 30, 2019; each meeting was attended by approximately 20-25 community members each time. Public notice of the community meetings was mailed to property owners within 1000 feet of the project site and posted on the City's Community Meetings webpage.

Prior to submitting an application with the City, the developer conducted two additional

noticed community meetings on October 17, 2018 and November 5, 2018 at the City Hall Cafeteria at 6:00 p.m. Both the meetings were well attended by community members, who expressed general interest in the proposal with concerns mostly regarding the impact of the project on the adjacent residential development.

ALTERNATIVES

1. Adopt a resolution to recommend the City Council adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Affordable Housing Project at 2330 Monroe Street.
2. Adopt a resolution to recommend the City Council approve a General Plan amendment from Right of Way to Medium Density Residential to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.
3. Adopt a resolution to recommend the City Council approve a rezoning from Single Family Residential (R1-6L) to Planned Development (PD) to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.
4. Recommend the City Council deny the General Plan amendment from Right of Way to Medium Density Residential for the development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.
5. Recommend the City Council deny the rezoning from Single Family Residential (R1-6L) to Planned Development (PD) for the development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.

RECOMMENDATION

..Recommendation

Alternatives 1, 2, and 3: That the Planning Commission adopt resolutions for the Affordable Housing Project located at 2330 Monroe Street recommending that the City Council:

1. Adopt a resolution to recommend the City Council adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Affordable Housing Project at 2330 Monroe Street.
2. Adopt a resolution to recommend the City Council approve a General Plan amendment from Right of Way to Medium Density Residential to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.
3. Adopt a resolution to recommend the City Council approve a rezoning from Single Family Residential (R1-6L) to Planned Development (PD) to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.

..Staff

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. 2330 Monroe St Affordable Housing Development Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
2. Responses to Comments Received on the Mitigated Negative Declaration
3. Project Data
4. Resolution Recommending Council Adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
5. Resolution Recommending Council Approve the General Plan Amendment
6. Resolution Recommending Council Approve the Rezoning
7. Conditions of General Plan and Rezoning Approval
8. Planned Development Plans

Excerpt Planning Commission Meeting Minutes of May 22, 2019

PUBLIC HEARING

2. [19-753](#) Actions on a Proposed 65 Residential Unit Affordable Housing Project at 2330 Monroe Street

Recommendation: Alternatives 1, 2, and 3: That the Planning Commission adopt resolutions for the Affordable Housing Project located at 2330 Monroe Street recommending that the City Council:

1. Adopt a resolution to recommend the City Council adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Affordable Housing Project at 2330 Monroe Street.
2. Adopt a resolution to recommend the City Council approve a General Plan amendment from Right of Way to Medium Density Residential to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.
3. Adopt a resolution to recommend the City Council approve a rezoning from Single Family Residential (R1-6L) to Planned Development (PD) to allow development of 65 rental affordable residential units, landscaped open space, surface parking and site improvements.

Associate Planner Nimisha Agrawal provided a presentation.

Applicant Robin Zimble, Freebird Development provided a presentation.

Public Speakers:

Public Speaker - a neighbor who lives next door to the project site requested that no changes be made to the project and requested a soundwall be 8' concrete.

Wanda Buck - spoke regarding inadequate parking.

Michael Petross - spoke in favor of the project.

Applicant Robin Zimble, Freebird Development provided a rebuttal.

Commissioner Ikezi inquired about higher density due to few City owned parcels of land and the need for affordable housing.

A motion was made by Commissioner Kelly, seconded by Commissioner Biagini to close public hearing.

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

A motion was made by Commissioner Jain, seconded by Commissioner Kelly to approve staff recommendation 1.

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

A motion was made by Commission Jain, seconded by Commissioner Kelly to approve staff recommendation 2 with following conditions:

- outlets be provided for electric bikes in the bike room
- applicant work with staff to explore feasibility for the driveway on Monroe to be right turn only
- 5 additional parking spots be pre-wired for EV parking
- to consider use of water heater boiler for hot water use heat pump
- community room be available to all residents of Santa Clara for up to 20 events per year
- Uber and Door Dash have designated parking spots

A friendly amendment was made by Commissioner Cherukuru to consider having staff work with VTA for relocation of bus stop

Aye: 6 - Commissioner Kelly, Commissioner Jain, Vice Chair Saleme, Chair Becker, Commissioner Biagini, and Commissioner Cherukuru

Nay: 1 - Commissioner Ikezi

A motion was made by Commissioner Cherukuru, seconded by Commissioner Biagini for staff to investigate removal of parking spots for large vehicles and limit parking spots to small vehicles on Monroe to be part of the proposal and approval.

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

Meeting went into Recess at 8:25 and reconvened at 8:30 p.m.

A motion was made by Chair Becker, seconded by Commission Jain to move Agenda item 5 to be heard before Item 3.

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

Project Data

File: PLN2019-13723; PLN2019-13763, PLN2019-13764, CEQA2019-01067

Location: 2330 Monroe Street, a 2.47 acre site located at the southeast corner of Monroe Street and San Tomas Expressway. The site is zoned R-1-6L Single-Family; APN: 224-37-068

Applicant/ Owner: Paul McElwee, HKIT Architect, Robin Zimblar, Freebird Development Company, LLC/ Housing Authority, City of Santa Clara

CEQA Determination: Mitigated Negative Declaration

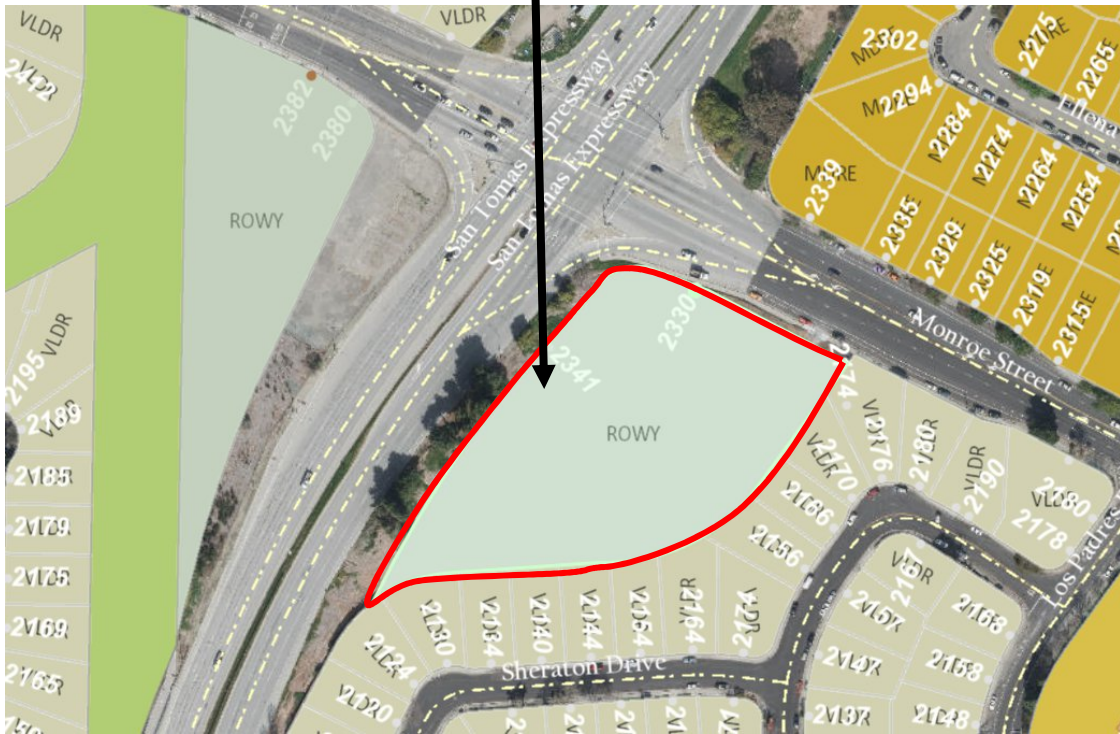
Project Planner: Nimisha Agrawal, Assistant Planner I

	Existing	Proposed
General Plan Designation	Right of Way	Medium Density Residential
Zoning District	Single Family Residential (R1-6L)	Planned Development (PD)
Lot Size	2.47 acres	Same
Land Use	vacant	Residential
Residential Units	-	65
Open Space	-	32,000 sq. ft.
Stories / Total Height	-	Two to Three-stories (up to 43 feet 4 inches)
Parking	-	88 universal stalls, 6 ADA, 3 EV Charging and 1 paratransit loading stall. 10 spaces will be dedicated as guest parking spaces.

Aerial Map

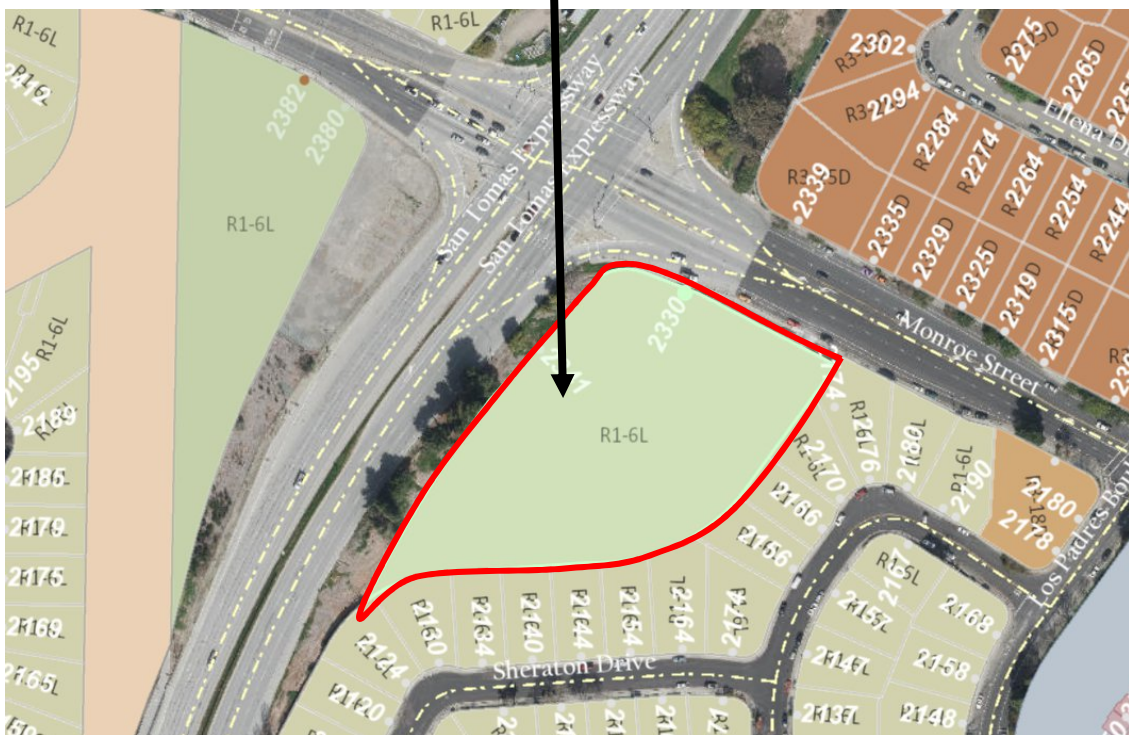
General Plan Map

Project Site – Right of Way



Zoning Map

Project Site – R1-6L



Attachment # 4

Link to 2330 Monroe St Affordable Housing Development Mitigated Negative Declaration; and Mitigation Monitoring and Reporting Program

<https://www.santaclaraca.gov/home/showdocument?id=65080>

memorandum

date October 31, 2019

to Nimisha Agrawal
Assistant Planner I
Community Development Department
City of Santa Clara

cc Jennifer Carvalho
Office Specialist III
Housing & Community Services
City of Santa Clara

from Karl F. Heisler and Jennifer Brown
Environmental Science Associates

subject 2330 Monroe Street Affordable Housing Initial Study Response to Comments

CEQA Process following Release of the Initial Study and Proposed Mitigated Negative Declaration (IS/MND)

A Initial Study and proposed Mitigated Negative Declaration (IS/MND) was prepared pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code [PRC], Section 21000 et seq by the City of Santa Clara (City) to disclose the potential environmental effects of the 2330 Monroe Street Affordable Housing Project (project). The IS/MND includes a description of the project, an assessment of its potential effects, and a description of mitigation measures to reduce significant effects that were identified. The IS/MND was released on September 25, 2019, for a 30-day review period, ending on October 24, 2019, and was made available to state, regional, and local agencies and members of the public. Comment letters on the IS/MND were received from two individuals listed below.

- Rachit Aggarwal (October 6, 2019)
- Unnamed Neighbor at 2250 Monroe Street (October 22, 2019)

In addition, an e-mail was received from an individual inquiring how to qualify for one of the residential units in the proposed project. The e-mail did not, however, contain any comments on the IS/MND.

In support of the City's review of the project, this memo provides a response to written comments on the IS/MND that were raised during the public review period. The responses in this document substantiate and confirm the analyses contained in the IS/MND. No new significant environmental impacts, no new significant information, and no substantial increase in the severity of an earlier identified impact have resulted from responding to

comments. Therefore, no revisions are required to the previously released IS/MND. As the lead agency, the City must adopt the Mitigated Negative Declaration before action can be taken on the project.

Responses to Comments on the Initial Study and Mitigated Negative Declaration (IS/MND)

Written comments on the IS/MND are included following the responses in this section (**Attachment A**). Written comments received were provided to the City of Santa Clara by email. Comments are addressed with respect to the letter from which they are sourced in order of the dates they were received.

Rachit Aggarwal – Comment Letter, October 6, 2019

The commenter suggests that the project could include a retail component.

With respect to the commenter's concern regarding the lack of retail space, City staff provided an email response to the commenter. As stated by staff, this parcel is a part of a larger parcel that was initially acquired by the County as part of the construction of San Tomas Expressway and subsequently acquired by the City as an affordable housing site. Therefore, it was never intended to have a retail component. Retail projects by the City can be anticipated in regions zoned for such uses, many existing retail uses already exist within 2,000 feet of the project site.

It is noted that the project site is within an area of the City designated for residential use in the Santa Clara General Plan. The El Camino Real corridor, about 0.75 miles south of the project site, is designated for retail uses, as are smaller areas at Monroe Street and Scott Boulevard (0.25 miles east of the site) and at Scott Boulevard and Warburton Avenue, about 0.65 miles southeast of the site.

Anonymous Neighbor at 2250 Monroe Street – Comment Letter, October 22, 2019

The commenter states that the Initial Study's analysis of traffic impacts is not supported by evidence, that there is heavy peak-hour traffic on both San Tomas Expressway and Monroe Street, and that the location is already prone to traffic accidents and that the project would exacerbate this condition. The commenter also states that the proposed project would provide insufficient parking and questions whether the project would provide services for the portion of project residents expected to have developmental disabilities.

With respect to the comment's concern regarding the IS/MND's lack of evaluation of traffic hazards at the intersection of Monroe Street and San Tomas Expressway, this analysis included under Section 5.17, *Transportation* of the IS/MND. Specifically, Impact c) addresses this topic, and included in its evaluation is a sight distance analysis (Appendix F), by Fehr & Peers and reviewed by the City transportation engineers. Based on this line of sight analysis, which factored in vehicle speed, and turning radius in proximity to the project site Driveway, Mitigation Measure TR-1: Roadway Safety Modification is presented to reduce the current rapid right turn movements from northbound San Tomas Expressway, which could result in vehicle related hazards along Monroe Street. Among other details, this measure requires that the project applicant prepare improvement plans for the intersection of San Tomas Expressway and Monroe Street and parking removal on Monroe Street to improve roadway safety.

Review of data from the California Highway Patrol's Statewide Integrated Traffic Records System indicates that, since January 21, 2016, there have been 21 motor vehicle collisions (5.6 per year over 3.75 years) at the intersection of Monroe Street and San Tomas Expressway and another 37 collisions (almost 10 per year) nearby—mostly on San Tomas Expressway north or south of the intersection, with six of these on Monroe Street. There have also been 11 collisions (almost 3 per year) on Monroe Street adjacent to or near the project site (i.e., at or near the intersection with Los Padres Boulevard). Although person(s) sustained injuries in 28 of these 69 total collisions (41 percent), there were no fatalities. The number of collisions at the San Tomas/Monroe intersection does not appear to be substantially greater, on average, than at other heavily trafficked intersections in Santa Clara.

With respect to the comment's concern that the project does not provide adequate parking, the IS/MND provides a parking analysis under Section 5.17, *Transportation* of the IS/MND. Specifically, Impact a), addresses the project's potential to conflict with plans, ordinances and policies. While parking is not a criterion under this list, the analysis considers projects of a similar nature and found that the project would generate a peak demand of 78 vehicles spaces in the evening time. Thus, the provision of 94 spaces would be adequate to meet demand.

With respect to the comment's request for clarification regarding the need for services and physicians at the project site, note that these services are not proposed with the project. As supported in the project applicant's Memorandum of Understanding with the Housing Choices Coalition, a provider of affordable housing for persons with developmental disabilities, and the San Andreas Regional Center, which provides services to such persons, the Housing Choices Coalition would provide the project sponsor with tenant referrals and resident coordination services in close collaboration with the San Andreas Regional Center, which maintains a waiting list of people and funds the supportive services. According to the project sponsor, residents who would be living in the 20-25 percent of units reserved for people with developmental and/or intellectual disabilities are people who are able to live independently. Most of these residents would have jobs and take public transportation. According to the sponsor, these residents would not necessarily be physically handicapped or have mental health issues such that they would require a facility with physicians to support daily living.

Attachment A

Comment Letters



Jennifer Ostner

From: Nimisha Agrawal <NAgrawal@SantaClaraCA.gov>
Sent: Tuesday, October 8, 2019 11:34 AM
To: Rachit Aggarwal
Subject: RE: 2330 Monroe St project

Hi Rachit,

Thank you for your email. The CEQA document with project details are available on the City's website at

<http://santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/291/2495>

This parcel is a part of a larger parcel that was initially acquired by the County as part of the construction of San Tomas Expressway and subsequently acquired by the City as an affordable housing site. Therefore, it was never intended to have a retail component. Hope that helps clarify, please let me know if you have any questions.

Thank you,

Nimisha

From: Rachit Aggarwal <rachit.nitk@gmail.com>
Sent: Sunday, October 6, 2019 7:00 PM
To: Nimisha Agrawal <NAgrawal@SantaClaraCA.gov>
Subject: 2330 Monroe St project

Hi Nimisha,

I am a resident of the area of Santa Clara around the site of planned project. Can you share some details of the project.

At one of the online forums, local residents are expressing their unhappiness around lack of retail space and was thinking if there is a constructive way to provide this feedback for the project.

RECEIVED

OCT 13 2019

PLANNING DIVISION

The proposal of building affordable house at 2330 Monroe streets has the following glaring issues.

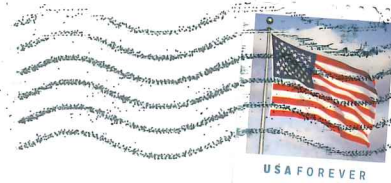
1. The proposal claims that the transportation impact can be mitigated without showing any convincing evidence. First, it does not consider the horrible rush hour traffic on both Monroe and San Tomas, which will make entering and exiting the plaza dangerous. This could easily cause accidents and exacerbate the already heavy traffic in both directions. Secondly, the location itself is already traffic accident prone. It would be dangerous to make it more crowded by adding a massive scale apartment at that corner. I myself witnessed one major traffic accidents when two cars were totally smashed with debriefs all over the place. One car eventually hit the island in the middle of Monroe street after being hit by the other car. The situation could have been worse if the car ran to the curbside, which was totally possible. Thus, given the potential danger of the location and the already super crowded reality, that tiny corner is not used as a residential area for good reasons. I still have the photo to show how terrible the accident was.
2. The project wants to build 65 units without carefully considering the parking limits. Assuming the ratio of units to parking space being 1: 1.8 (Coronado villa next to it has ratio of 1:1.8), it means it requires roughly 117 parking lots. However, the proposal only planned 94. This means that, likely more cars will have to park along the already crowded Monroe street, causing more both environmental trouble and safety problems.
3. 20% of the units are set aside for people with development disabilities, both mentally and physically. So, does the facility include the service these people need? For mentally disabled people, physicians are needed to make sure they are in stable condition. Who is going to pay for these facilities if they are needed?

2250 Monroe St, #332

Santa Clara, CA, 95050

SAN JOSE CA 950

17 OCT 2019 PM 4:1



city of Santa Clara - planning Division
Namisha Agrawal, Assistant planner II
1500 Warburton Avenue, Santa Clara,
CA, 95050
phone: 408-615-2950



Attachment B
Memorandum of Understanding
Among Freebird Development
Company, Housing Choices and
San Andreas Regional Center



**MEMORANDUM OF UNDERSTANDING
AMONG FREEBIRD DEVELOPMENT COMPANY, HOUSING CHOICES,
AND SAN ANDREAS REGIONAL CENTER
(2330 Monroe Street, Santa Clara, CA)**

Freebird Development Company LLC ("Freebird"), Housing Choices Coalition for Persons with Developmental Disabilities, Inc. (Housing Choices) and San Andreas Regional Center (SARC) hold a shared commitment to creating a supportive and sustainable living environment for individuals with developmental disabilities at the affordable housing property planned for development at 2330 Monroe Street, Santa Clara, CA. This tri-party Memorandum of Understanding is entered into by Freebird, Housing Choices and SARC effective on April 23, 2019 to set forth the mutually agreed upon roles and responsibilities of each party in achieving this common goal.

Freebird

Freebird is the developer of a planned 65-unit affordable housing development to be located at 2330 Monroe Street, Santa Clara, CA (the "Property"). Because of SARC's and Housing Choices' commitment to provide Housing Choices' program of housing services and other SARC-funded services to residents with developmental disabilities, Freebird agrees to set aside up to 25% of the rental units at the Property for rent to qualified low-income tenants with developmental disabilities, as referred by Housing Choices. Freebird will provide appropriate space on site for Housing Choices' provision of resident support services, including office or meeting space and use of a community room for tenant events organized by Housing Choices. Freebird will coordinate with Housing Choices, the property manager and other service providers as needed to facilitate the leasing process and maintain a healthy, supportive environment for Housing Choices' residents.

Housing Choices

Housing Choices has been working to create affordable housing opportunities for people with developmental disabilities since 1997. Housing Choices agrees to work with Freebird to provide Tenant Referral and Resident Coordination services for qualified households which include a person with developmental disabilities in the set-aside units at the Property. These services include but are not limited to the following:

Tenant Referral for Occupancy of Units Designated for SARC Clients

Housing Choices will work with SARC to refer SARC clients for units as they become available. This comprehensive referral process includes:

- Marketing units to appropriate households in the community, drawing from Housing Choices' registry of SARC clients seeking housing and other community marketing to people served by SARC, and also keeping SARC and other community partners educated and aware of the availability of designated units;
- Screening households to verify that they are clients of SARC and reviewing applicant's self-reports to help households determine whether they meet the other tenant selection criteria for the property, which will be verified by property management when the completed application for housing is submitted;

- Conducting a lottery to place applicants who are verified to be clients of SARC on a randomly generated wait list for designated units at the time of initial lease-up;
- Continuing to add SARC clients in date order to the wait list for designated units after the initial lottery is conducted;
- Interviewing the applicants and prospective roommates and helping them prepare for the application and move-in process;
- Referring clients to SARC Service Coordinators to ensure that appropriate Independent Living or Supported Living services are in place before a client signs a lease;
- Helping clients pursue all available sources of security deposit assistance and grants for basic household needs;
- Working with property management to ensure applicants fill out the formal housing application and other necessary paperwork;
- Providing support to the client in the property manager's initial interview when others are not available to provide this assistance;
- Assisting clients in following up on comments provided by property management on the applicant's application or supporting documentation;
- Making best efforts to ensure the designated units are occupied by clients of SARC but if Housing Choices is unable to provide qualified applicants to the property management in a timely manner, the property management may process the applications of other qualified applicants who are not clients of SARC.

Resident Coordination

In addition, Housing Choices will provide a Resident Coordinator whose job responsibilities will include:

- Providing a single point of contact for independent living services and supported living services (ILS/SLS) agencies, in home care providers, San Andreas Regional Center, conservators and property management with respect to the housing needs and issues of residents living in the units designated for occupancy by SARC clients;
- Assisting residents of the designated units in seeking reasonable accommodations for specific disabilities;
- Assisting residents of the designated units in preparing for unit inspections and annual re-certifications;
- Assisting residents of the designated units in understanding and complying with lease terms and property rules and regulations;
- Assisting residents in responding to adverse notices from property management resulting from unsatisfactory inspections, the annual re-certification process, or complaints about the residents' compliance with lease terms and property rules;
- Assisting in mediation of conflicts involving residents occupying units designated for SARC clients – between other residents, property management, service providers and other conflicts as necessary;
- Advocating on behalf of clients to ensure they are receiving all necessary services;
- Attending Circle of Support and Individual Program Plan meetings as invited with the client's individual service provider;

- Working to create a sense of community among Housing Choices' residents and encouraging a network of support among neighbors and friends. This includes:
 - Coordinating resident/community meetings;
 - Facilitating resident activities on a regular basis.

San Andreas Regional Center

San Andreas Regional Center (SARC) has been serving individuals with developmental disabilities since 1979. SARC is funded by the State of California to serve this population as required by the Lanterman Developmental Disabilities Act. The Lanterman Act is part of California law that sets out the rights and responsibilities of persons with developmental disabilities. SARC works with each of its clients to develop an individual service plan and contracts with qualified agencies to provide each client with the appropriate level of ILS/SLS or other services to meet his or her specific needs. SARC agrees to refer individuals with developmental disabilities to Housing Choices for assistance in applying for tenancy of the designated units at the Property and to provide funding to Housing Choices to provide the appropriate level of Tenant Referral and Resident Coordination services described above, pursuant to an approved Program Design and at an approved hourly rate. These services will be provided at no cost to tenants or property management on a regular and ongoing basis commencing at the time of initial lease-up for so long as SARC continues to contract with Housing Choices for the services. The minimum duration of services under this MOU shall be one year from the completion of initial lease-up.

Funding of Housing Choices' services at the Property is contingent upon SARC's receiving funding for such services through its contract with the California Department of Developmental Disabilities. In the event that SARC ceases to receive funding through the California Department of Developmental Services to pay for services, SARC may, as its option, give notice of termination of this MOU in accordance with the provisions below.

This MOU will automatically renew on an annual basis of July 1 of each year unless notice of termination for cause is provided in writing to all the parties by the party or parties seeking termination at least sixty days prior to the annual renewal date. Cause for termination consists of any of the following three reasons: (a) SARC's determination that DDS or other funding is no longer available for Housing Choices' services to the Property; or (b) Freebird and SARC agreeing that Housing Choices has materially failed to provide the services to the property that are described above; or (c) Housing Choices and SARC agreeing that the unit rents, qualifying income, property rules or other property conditions are no longer appropriate for people with developmental disabilities.

SIGNED:


 Robin Zimble, ~~CEO~~ Manager, Freebird Development Company, LLC


 Janette A. Stokley, Executive Director, Housing Choices Coalition


 Javier Zaldivar, Executive Director, San Andreas Regional Center

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SANTA CLARA, CALIFORNIA TO ADOPT THE MITIGATED
NEGATIVE DECLARATION AND THE MITIGATION
MONITORING AND REPORTING PROGRAM FOR THE MULTI-
FAMILY AFFORDABLE HOUSING DEVELOPMENT LOCATED
AT 2330 MONROE STREET, SANTA CLARA**

PLN2019-13763 (General Plan Amendment)
PLN2019-13723 (Application of Rezoning)
CEQ2019-01067 (Mitigated Negative Declaration)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on February 1, 2019, HKIT Architects and Freebird Development Company, LLC (“Applicant”) filed an application for the development of a 2.47 acre site at 2330 Monroe Street, a vacant city-owned property at the southeast corner of Monroe Street and San Tomas Expressway (“Project Site”);

WHEREAS, the application includes a proposed General Plan Amendment (GPA) to change the land use designation of the Project Site from Right of Way to Medium Density Residential;

WHEREAS, the Applicant applied to rezone the Project Site from Single Family Residential (R1-6L) to Planned Development (PD) to allow construction of a multi-family affordable housing development consisting of 65 units, onsite amenities, approximately 32,000 square foot of open space and surface parking (“Project”) as shown on the Development Plans, attached hereto as Exhibit “Development Plans” and incorporated herein by this reference;

WHEREAS, the Project approvals will include Resolution No. _____ (“City Council GPA Resolution”); Resolution No. _____ (“City Council Rezoning Resolution”); and this California Environmental Quality Act (“CEQA”) Resolution (collectively, the “Approvals”);

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), and the regulations implementing the Act, specifically 14 Cal. Code of Regs § 15070, this Project was determined after an Initial Study to identify potentially significant effects on the environment which could be

avoided with the implementation of mitigation measures, resulting in the drafting of a Mitigated Negative Declaration (“MND”) and Mitigation Monitoring and Reporting Program (“MMRP”);

WHEREAS, in conformance with CEQA, the MND was noticed and circulated for a 30-day public review period from September 25, 2019 and closed on October 25, 2019;

WHEREAS, notice of the public hearing for the City Council meeting on January 28, 2020 on the proposed General Plan Amendment was published in the *Weekly* (formerly the *Santa Clara Weekly*), a newspaper of general circulation for the City, on January 15, 2020;

WHEREAS, on January 16, 2020, the notice of public hearing for the City Council meeting on January 28, 2020 for this item was posted in three conspicuous locations within 300 feet of the Project Site and was mailed to property owners within a 1,000-foot radius of the project boundaries; and

WHEREAS, on January 28, 2020, the City Council held a duly noticed public hearing to consider the Project, MND, MMRP, and all pertinent information in the record during which the City Council invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to the Project.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby finds that all potentially significant environmental impacts that may directly or indirectly result from the Project would be reduced to a less-than-significant level by the mitigation measures specified in the MND and MMRP.
3. That the City Council hereby finds that the MND is complete, prepared in compliance with CEQA, and represents the independent judgment of the City Council.
4. That the City Council hereby finds that the MND and MMRP completed for this Project has been completed in compliance with CEQA, and that approval of this project as mitigated will

have no significant negative impacts on the area's environmental resources, cumulative or otherwise, as the impacts as mitigated would fall within the environmental thresholds identified by CEQA.

5. That the City Council hereby adopts the MND and MMRP for the Project as required by the CEQA Guidelines (14 Cal. Code of Regs. § 15074).

6. The City Council hereby designates the Planning Division of the Community Development Department as the location for the documents and other material that constitute the record of proceedings upon which this decision is based and designates the Director of Community Development as the custodian of records.

7. 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 COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28th DAY OF JANUARY 28, 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. Mitigated Negative Declaration (MND)
2. Mitigation Monitoring and Reporting Program (MMRP)
3. Development Plans

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SANTA CLARA, CALIFORNIA TO APPROVE A GENERAL
PLAN AMENDMENT FROM RIGHT OF WAY TO MEDIUM
DENSITY RESIDENTIAL LOCATED AT 2330 MONROE
STREET, SANTA CLARA**

PLN2019-13763 (General Plan Amendment)
PLN2019-13723 (Application of Rezoning)
CEQ2019-01067 (Mitigated Negative Declaration)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on February 1, 2019, HKIT Architects and Freebird Development Company, LLC (“Applicant”) filed an application for General Plan Amendment in connection with the development of a 2.47 acre site at 2330 Monroe Street, a vacant city-owned property at the southeast corner of Monroe Street and San Tomas Expressway (“Project Site”);

WHEREAS, the General Plan Amendment (GPA) proposes to change the land use designation of the Project Site from Right of Way to Medium Density Residential to allow residential densities ranging from 20 to 36 units per gross acre;

WHEREAS, the Applicant simultaneously applied to rezone the Project Site from Single Family Residential (R1-6L) to Planned Development (PD) to allow construction of a multi-family affordable housing development consisting of 65 units, onsite amenities, approximately 32,000 square foot of open space and surface parking (“Project”) as shown on the Development Plans, attached hereto as Exhibit “Development Plans” and incorporated herein by this reference;

WHEREAS, in conformance with CEQA, a Mitigated Negative Declaration (MND) was prepared for the Project and was noticed and circulated for a 30-day public review period from September 25, 2019 to October 25, 2019;

WHEREAS, the MND prepared for the project identified potential significant impacts of Project development that with implementation of the mitigation measures identified in the Mitigation

Monitoring and Reporting Program (“MMRP”) will reduce potential environmental impacts to less than significant levels and will be incorporated into the Project;

WHEREAS, Government Code Section 65355 requires the City Council to hold a public hearing prior to approve the General Plan Amendment;

WHEREAS, notice of the public hearing on the proposed General Plan Amendment was published in the *Santa Clara Weekly*, a newspaper of general circulation for the City, on January 15, 2020;

WHEREAS, notices of the public hearing on the General Plan Amendment were mailed to all property owners within 1,000 feet of the Project Site, according to the most recent assessor’s roll, on January 16, 2020;

WHEREAS, on January 16, 2020, notices of the public hearing on the General Plan Amendment were mailed to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the Project;

WHEREAS, before considering the General Plan Amendment for the Project Site, the City Council reviewed and considered the information contained in the MND document prepared for the project;

WHEREAS, the City Council has reviewed the General Plan Amendment; and,

WHEREAS, on January 28, 2020, the City Council conducted a public hearing to consider the GPA, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed General Plan Amendments.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council finds and determines that the General Plan Amendment is in the interest of the public good for the following reasons:

- A. The proposed amendment is deemed to be in the public interest, in that the project is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with medium density housing projects and providing affordable housing units;
 - B. The proposed General Plan amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected, in that the proposal includes different sized affordable housing units ranging from studio units to three-bedroom units, increasing the City's housing stock, while providing adequate choices of housing tenure, type and location which will assist in meeting the housing needs of the City;
 - C. The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that as proposed, it includes all feasible mitigation to address the potential environmental effects of the project; and
 - D. The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that a Mitigated Negative Declaration for the amendment has been prepared.
3. That pursuant to Government Code § 65358, the City Council hereby amends the General Plan by changing the General Plan Land Use Designation for the Project Site from Right of Way to Medium Density Residential to allow a medium density affordable housing development.

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 COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28th DAY OF JANUARY 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Conditions of Rezoning Approval
2. Development Plans

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SANTA CLARA, CALIFORNIA TO APPROVE A REZONING
FROM SINGLE FAMILY RESIDENTIAL (R1-6L) TO PLANNED
DEVELOPMENT (PD) TO ALLOW A MULTIFAMILY
AFFORDABLE HOUSING DEVELOPMENT CONSISTING OF 65
AFFORDABLE RESIDENTIAL UNITS LOCATED AT 2330
MONROE STREET, SANTA CLARA**

PLN2019-13763 (General Plan Amendment)
PLN2019-13723 (Application of Rezoning)
CEQ2019-01067 (Mitigated Negative Declaration)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on February 1, 2019, HKIT Architects and Freebird Development Company, LLC (“Applicant”) filed an application for the development of a 2.47 acre site at 2330 Monroe Street, a vacant city-owned property at the southeast corner of Monroe Street and San Tomas Expressway (“Project Site”);

WHEREAS, the application includes a proposed General Plan Amendment (GPA) to change the land use designation of the Project Site from Right of Way to Medium Density Residential;

WHEREAS, the Applicant applied to rezone the Project Site from Single Family Residential (R1-6L) to Planned Development to allow construction of a multi-family affordable housing development consisting of 65 units, onsite amenities, approximately 32,000 square foot of open space and surface parking (“Project”) as shown on the Development Plans, attached hereto as Exhibit “Development Plans” and incorporated herein by this reference;

WHEREAS, in conformance with CEQA, a Mitigated Negative Declaration (MND) prepared for the Project was noticed and circulated for a 30-day public review period from September 25, 2019 to October 25, 2019;

WHEREAS, the MND prepared for the project identified potential significant impacts of Project development that with implementation of the mitigation measures identified in the Mitigation

Monitoring and Reporting Program (“MMRP”) will reduce potential environmental impacts to less than significant levels and will be incorporated into the Project;

WHEREAS, Santa Clara City Code (SCCC) Section 18.112.040 provides for the review and recommendation of the City’s Planning Commission of all rezoning requests before action is to be taken by the City Council;

WHEREAS, on November 13, 2019, the Planning Commission held a duly noticed public hearing to consider the Project, MND, MMRP and all pertinent information in the record, including public testimony, at the conclusion of which the Planning Commission voted to recommend that the City Council adopt the MND and MMRP, approve the general plan amendment, and approve the rezoning to allow construction of a multi-family affordable housing development consisting of 65 units, onsite amenities, approximately 32,000 square foot of open space and surface parking to support the development; and

WHEREAS, on January 16, 2020, the notice of public hearing for the January 28, 2020 City Council meeting for this item was posted in three conspicuous locations within 300 feet of the project site and was mailed to property owners within a 1,000-foot radius of the Project Site; and

WHEREAS, on January 28, 2020, the City Council held a duly noticed public hearing to consider the Rezoning application, during which the City Council invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to the Project.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby rezones the Project Site from Single Family Residential (R1-6L) to Planned Development (PD) to allow construction of a multi-family affordable housing development consisting of 65 units, onsite amenities, approximately 32,000 square foot of open

space and surface parking, as shown on the attached Development Plans and conditioned as specified in the attached Conditions of Rezoning Approval, incorporated herein by this reference.

3. Pursuant to SCCC Code Section 18.112.010, the City Council determines that the following findings exist in support of the rezoning:

A. The existing zoning is inappropriate or inequitable in that, the existing zoning for the Project Site does not allow residential development and creation of housing opportunities consistent with the density range of the proposed General Plan land use designation for the Project Site. The Planned Development (PD) zoning would allow residential development to better implement the General Plan's vision for infill development than the existing Single Family zoning (R1-6L) for the Project Site.

B. The proposed zone change will conserve property values, protect or improve the existing character and stability of the area in question, and will promote the orderly and beneficial development of such area in that the project incorporates smart-growth elements such as redevelopment of underutilized properties and visually improves the Project Site and surrounding neighborhood with physical and financial investment in the construction of a modern and visually aesthetic development with on-site parking, site improvements, landscaping, and streetscape enhancements.

C. The proposed zone change is required by public necessity, public convenience, or the general welfare of the City in that the proposed zone change will allow development of all affordable housing units as contemplated by the General Plan and utilizes the currently vacant site to develop a residential development of scale and character that complements the surrounding uses and provides housing opportunities for persons of all economic levels, as well as for persons with mental or physical disabilities;

D. The proposed zone change would allow imaginative planning and design concepts to be utilized that would otherwise be restricted in other zoning districts in that the

proposed zone change would allow flexibility in the development standards to construct for-rent affordable housing units that are compatible with existing surrounding developments.

4. That based on the findings set forth in this resolution and the evidence in the City Staff Report, MND and MMRP, the City Council hereby rezones the Project Site as set forth herein.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28th DAY OF JANUARY 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Conditions of Rezoning Approval
2. Development Plans

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CONDITIONS OF APPROVAL

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

GENERAL

- G1. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.
- G2. Comply with all applicable codes, regulations, ordinances and resolutions.

ATTORNEY'S OFFICE

- A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

COMMUNITY DEVELOPMENT

- C1. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of 1 acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.
- C2. Submit plans for final architectural review to the Planning Division and obtain architectural approval prior to issuance of building permits. Said plans to include, but not be limited to: site plans, floor plans, elevations, landscaping, lighting and signage. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Planning and Inspection.
- C3. The Project shall comply with all mitigations identified in the Mitigation, Monitoring and Reporting Program for the project.
- C4. At least ten percent of the total parking spaces shall be conveniently arranged and assigned to visitors and the general use of the residents.
- C5. Identified existing mature trees to be maintained. Prepare a tree protection plan for review and approval by the City prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site. Provide 48-inch box trees for screening adjacent to the existing residential properties, type to be determined by City Arborist.
- C6. Construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. Saturdays for projects within 300 feet of a residential use and shall not be allowed on recognized State and Federal holidays.
- C7. It shall be the developer's responsibility through his engineer to provide written certification that the drainage design for the subject property will prevent flood water intrusion in the event of a storm of 100-year return period. The developer's engineer shall verify that the site will be protected from off-site water intrusion by designing the on-site grading and storm water collection system using the 100-year hydraulic grade line elevation provided by the City's Engineering Department or the Federal Flood Insurance Rate Map, whichever is more

restrictive. Said certification shall be submitted to the City Building Inspection Division prior to issuance of building permits.

- C8. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.
- C9. An erosion control plan shall be prepared, and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.
- C10. If there are site constraints present due to the easements on the site or the shape of the site, the required parking may be reduced to the satisfaction of the Community Development Director.
- C11. Applicant will be allowed to submit plans to the City for concurrent plan check review during the public review/comment period for CEQA review of the Initial Study/Mitigated Negative Declaration for the project. The applicant is aware and has acknowledged that submittal of plans for plan check is not an approval of the project or infers project approval. The applicant is also aware and has acknowledged that all fees are forfeited should the project require redesign and resubmittal for plan check review. Issuance of building permits is not to occur until: 1) after the public review period has closed; 2) the Director of Planning adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project; and 3) the Planning Department receives, conducts architectural review, and approves the project plans.
- C12. The community room shall be made available on a reservation basis to Santa Clara residents for up to 20 events per year.

BUILDING DIVISION

- B1.** Informational: Prior to overall construction permit application, submit to the Santa Clara Building Division, 3 copies of an addressing diagram request, to be prepared by a licensed architect or engineer. The addressing diagram(s) shall include all proposed streets and all building floor plans. The addressing diagram(s) shall conform to Santa Clara City Manager Directive #5; Street Name and Building Number Changes, and Santa Clara Building Division Address Policy for Residential and Commercial Developments. The addressing diagram(s) shall indicate all unit numbers to be based off established streets, not alleys nor access-ways to garages. Allow a minimum of 10 working days for initial staff review. The City approved addresses must be incorporated into the final plans stamped/ approved by City plan checker prior to permit issuance. The permit will not be issued if the addressing process is not complete. Provide digital pdf printed from design software, not scanned from printed paper sheet. Please note city staff policy that existing site addresses typically are retired.
- B2.** Informational: The construction permit application drawings submitted to the Santa Clara Building Division shall include a copy of the latest Federal Emergency Management Agency (FEMA) Flood Zone Map: <https://msc.fema.gov/portal/home>. The project drawings shall indicate how the project complies with the Santa Clara Flood Damage Prevention Code: <http://santaclaraca.gov/government/departments/public-works/engineering/flood-protection> as applicable.

- B3.** Informational: The construction permit application drawings submitted to the Santa Clara Building Division shall include Santa Clara Valley Urban Runoff Pollution Prevention Program Low Impact Development (LID) practices http://www.scvurpppw2k.com/nd_wp.shtml. All projects that disturb more than one acre, or projects that are part of a larger development that in total disturbs more than one acre, shall comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program Best Management Practices (BMP): http://www.scvurpppw2k.com/construction_bmp.shtml, and shall provide a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer (QSD). All site drainage and grading permit applications submitted to the Santa Clara Building Division will be routed to a contract consultant for review.
- B4.** Informational: no California construction code review is being done at this time. The construction permit application drawings submitted to the Santa Clara Building Division shall include an overall California Building Code analysis, including; proposed use and occupancy of all spaces (16' CBC Ch. 3), all building heights and areas (16' CBC Ch. 5), all proposed types of construction (16' CBC Ch. 6), all proposed fire and smoke protection features, including all types of all fire rated penetrations proposed (16' CBC Ch. 7), all proposed interior finishes fire resistance (16' CBC Ch. 8), all fire protection systems proposed (16' CBC Ch. 9), and all means of egress proposed (16' CBC Ch. 10).
Noncombustible exterior wall, floor, and roof finishes are strongly encouraged.
- B5.** Informational: The overall project construction permit application shall include the geotechnical, architectural, structural, energy, electrical, mechanical, and plumbing drawings and calculations. Prior to the issuance of the overall project construction permit, a conditions of approval review meeting must be held in city hall, which meeting must be attended by the on-site field superintendent (s). The meeting will not be held without the attendance of the on-site field superintendent (s). The on-site grading permit shall be a separate permit application to the building division.
- B6.** Informational: The construction permit application drawings submitted to the Santa Clara Building Division shall include all accessibility requirements of the 16' CBC Ch. 11 as applicable.
- B7.** Informational: For any pile foundation construction; drilled piles are recommended over driven piles. Any noise and/ or vibration complaints from surrounding addresses may result in stop work notices.
- B8.** Informational: The construction permit application drawings submitted to the Santa Clara Building Division shall include checklist(s) indicating compliance with the applicable Mandatory Measures of the 16' Cal. Green Building Standards Code (CGBSC). Provide a Construction Waste Management (CWM) Plan per the 16' CGBSC guides on pp 59-63 of the CGBSC. Provide a Phase 1 and/ or Phase 2 Hazardous Materials site assessment, as applicable. Note: The Santa Clara Public Works Department Environmental Programs Division will require compliance with the Santa Clara Construction & Demolition Debris Recycling Program: <http://santaclaraca.gov/government/departments/public-works/environmental-programs/commercial-garbage-recycling/construction-demolition-debris-recycling-program>.

Note: the Environmental Programs Division may require development projects to register with the Green Halo online waste tracking system: <https://www.greenhalosystems.com/>.

- B9.** Note: Temporary Certificates of Occupancy will not be routinely issued, and will be considered on a very limited basis only when there is a clear and compelling reason for city staff to consider a TCO. A TCO will be approved only after all applicable City staff have approved in writing; Planning, P.W./ Engineering, Fire Prev., Santa Clara Water, Silicon Valley Power, and any other applicable agencies such as the Santa Clara County Health Dept., with the Building Division being the final approval of all TCO.'s.

ENGINEERING

- E1. Obtain site clearance through Engineering Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a Single Encroachment Permit issued by the City Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.
- E3. Submit public improvement plans prepared in accordance with City Engineering Department procedures which provide for the installation of public improvements. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of parcel map and/or issuance of building permits.
- E4. Work within the County right-of-way shall require a Santa Clara County encroachment permit.
- E5. Developer shall provide a complete storm drain study for the 10-year and 100-year storm events. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at developer's expense.
- E6. Sanitary sewer and storm drain mains and laterals shall be outside the drip line of mature trees or 10' clear of the tree trunk whichever is greater.
- E7. Proposed trees shall be 5' minimum clear of sidewalks, excluding the landscape strip. Provide root barrier if trees are planted such that the drip line of the mature trees covers the sidewalk. Root barriers for sidewalk protection shall be 16' long or extend to drip line of the mature tree, whichever is greater, and be 1.5' deep, and centered on trees. Root barriers for curb and gutter protection shall be 16' long or extend to drip line of the mature tree, whichever is greater, and be 2' deep, and centered on trees.
- E8. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.
- E9. Dedicate, as required, on-site easements for new public utilities and/or sidewalk by means of a Subdivision Map or approved instrument at time of development.
- E10. File appropriate documentation with FEMA to remove project from the flood hazard area (Zone AO).

- E11. Privacy wall piers shall maintain the minimum offsets from public utilities. The wall and piers shall be structurally sound when utilities are excavated for replacement.
- E12. Obtain an Encroachment Agreement for precast concrete panel fence crossing easements.
- E13. Proposed monument sign and foundation shall be located outside of all easements.
- E14. Proposed trash enclosure shall include a roof.
- E15. No trees are allowed in easements and must maintain appropriate clearances from utility lines.
- E16. Entire width of Monroe Street along project frontage within City of Santa Clara right-of-way shall be treated with crack seal.
- E17. Project shall execute covenant to defer the construction of a sidewalk along the project frontage on San Tomas Expressway.
- E18. Show on the site plan and comply with City's driveway triangle of safety requirements at all driveways. Visual obstructions over three feet in height will not be allowed within the driver's sight triangle near driveways order to allow an unobstructed view of oncoming traffic.
- E19. On-street parking shall not be counted toward on-site parking requirements.
- E20. All proposed driveways shall be per City Standard ST- 9.
- E21. Provide pedestrian ADA walkways from proposed buildings to public sidewalk and parking areas.
- E22. Provide 5' min. sidewalk along Monroe frontage.
- E23. Unused driveways in the public right-of-way shall be replaced with City standard curb, gutter, and sidewalk per City Standard Detail ST-12.
- E24. Provide loading/unloading zone on-site. No loading zone will be allowed on-street.
- E25. Provide ADA compliant curb ramp at southeast corner of San Tomas and Monroe.
- E26. Remove the existing three curb ramps at the pork-chop island at southeast corner of San Tomas and Monroe and install ADA compliant curb ramps.
- E27. The project shall maintain a minimum driveway throat depth of 25' for the driveway on Monroe. All throat lengths measured from back of walk to first parking space.
- E28. Replace "No Stopping Vehicles Over 20 feet in Length" signs with "No Parking" signs along Monroe Street frontage, beginning at the curb return of the Monroe Street and San Tomas Expressway intersection to the project driveway. The City Traffic Engineer shall ultimately give final approval of the amount of parking to be restricted along Monroe Street.
- E29. Development shall comply with and implement environmental document and TIA identified mitigation measures (TR-1), upon approval from County of Santa Clara, which can include, but not limited to the following:
 - Modify existing island to reduce turning radius while maintaining at least an 11' wide right-turn lane
 - Adjust crosswalk location and install yield limit line, i.e., shark teeth
 - Reconstruct the existing ADA curb ramps
 - Preserve existing traffic signal equipment
 - Adjust the curb and sidewalk alignment and ADA curb ramps along Monroe Street
- E30. Provide a minimum of 33 Class I bicycle locker spaces and 4 Class II bicycle rack spaces at the main entrance and/or high visible areas.

ELECTRICAL

EL1. DWG C5

- a. 1.) 20' Utility Gate *Required* just North of MH installed on West side of Property. This is for Utility Truck Access for SVP.

- b. 2.) Stub Out duct bank into street.
 - c. 3.) Run 1 conduit to riser pole, remaining three conduits stub out at property line.
 - d. 4.) Tree to close to Vault, needs to be relocated to meet clearance requirement.
- EL2. Prior to submitting any project for Electric Department review, applicant shall provide a site plan showing all existing utilities, structures, easements and trees. Applicant shall also include a "Load Survey" form showing all current and proposed electric loads. A new customer with a load of 500KVA or greater or 100 residential units will have to fill out a "Service Investigation Form" and submit this form to the Electric Planning Department for review by the Electric Planning Engineer. Silicon Valley Power will do exact design of required substructures after plans are submitted for building permits.
- EL3. The Developer shall provide and install electric facilities per Santa Clara City Code chapter 17.15.210.
- EL4. Electric service shall be underground. See Electric Department Rules and Regulations for available services.
- EL5. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department standard UG-1000, latest version, and Santa Clara City Code chapter 17.15.050.
- EL6. Underground service entrance conduits and conductors shall be "privately" owned, maintained, and installed per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per Silicon Valley Power Standard MS-G7, Rev. 2.
- EL7. The developer shall grant to the City, without cost, all easements and/or right of way necessary for serving the property of the developer and for the installation of utilities (Santa Clara City Code chapter 17.15.110).
- EL8. If the "legal description" (not "marketing description") of the units is condominium or apartment, then all electric meters and services disconnects shall be grouped at one location, outside of the building or in a utility room accessible directly from the outside. If they are townhomes or single-family residences, then each unit shall have it's own meter, located on the structure. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed.
- EL9. If transformer pads are required, City Electric Department requires an area of 17' x 16'-2", which is clear of all utilities, trees, walls, etc. This area includes a 5'-0" area away from the actual transformer pad. This area in front of the transformer may be reduced from a 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" min. wide sidewalk. Transformer pad must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck.
- EL10. All trees, existing and proposed, shall be a minimum of five (5) feet from any existing or proposed Electric Department facilities. Existing trees in conflict will have to be removed. Trees shall not be planted in PUE's or electric easements.
- EL11. Any relocation of existing electric facilities shall be at Developer's expense.
- EL12. Electric Load Increase fees may be applicable.
- EL13. The developer shall provide the City, in accordance with current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by the City in the development of frontage and on-site property. Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his cost the service

facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. After completion of the facilities installed by developer, the City shall furnish and install all cable, switches, street lighting poles, luminaries, transformers, meters, and other equipment that it deems necessary for the betterment of the system (Santa Clara City Code chapter 17.15.210 (2)).

- EL14. Electrical improvements (including underground electrical conduits along frontage of properties) may be required if any single non-residential private improvement valued at \$200,000 or more or any series of non-residential private improvements made within a three-year period valued at \$200,000 or more (Santa Clara City Code Title 17 Appendix A (Table III)).
- EL15. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Electric Engineering Division. All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. Review process may take several months depending on size and type of generator. No interconnection of a generation facility with SVP is allowed without written authorization from SVP Electric Engineering Division.
- EL16. Encroachment permits will not be signed off by Silicon Valley Power until Developers Work substructure construction drawing has been completed.
- EL17. All SVP-owned equipment is to be covered by an Underground Electric Easement (U.G.E.E.) This is different than a PUE. Only publicly-owned dry utilities can be in a UGEE. Other facilities can be in a joint trench configuration with SVP, separated by a 1' clearance, providing that they are constructed simultaneously with SVP facilities. See UG 1000 for details.
- EL18. Proper clearance must be maintained from all SVP facilities, including a 5' clearance from the outer wall of all conduits. This is in addition to any UGEE specified for the facilities. Contact SVP before making assumptions on any clearances for electric facilities.
- EL19. Transformers and Switch devices can only be located outdoors. These devices MAY be placed 5' from an outside building wall, provided that the building wall in that area meets specific requirements. (See UG 1000 document for specifics) EXAMPLE: If there are any doors, windows, vents, overhangs or other wall openings within 5' of the transformer, on either side, then the transformer MUST be 10' or more away from the building. These clearances are to be assumed to be clear horizontally 5' in either direction and vertically to the sky.
- EL20. All existing SVP facilities, onsite or offsite, are to remain unless specifically addressed by SVP personnel by separate document. It is the Developers responsibility to maintain all clearances from equipment and easements. Developer to contact SVP outside of the PCC process for clear definitions of these clearance requirements. Developer should not assume that SVP will be removing any existing facilities without detailed design drawings from SVP indicating potential removals. *Simply indicating that SVP facilities are to be removed or relocated on conceptual plans does not imply that this action has been approved by SVP.*
- EL21. SVP does not utilize any sub-surface (below grade) devices in its system. This includes transformers, switches, etc.
- EL22. All interior meter rooms are to have direct, outside access through only ONE door. Interior electric rooms must be enclosed in a dedicated electric room and cannot be in an open warehouse or office space.

- EL23. In the case of podium-style construction, all SVP facilities and conduit systems must be located on solid ground (aka "real dirt") and cannot be supported on parking garage ceilings or placed on top of structures.
- EL24. Applicant is advised to contact SVP (CSC Electric Department) to obtain specific design and utility requirements that are required for building permit review/approval submittal. Please provide a site plan to Leonard Buttitta at 408-615-6620 to facilitate plan review.

WATER

- W1. The applicant must indicate the disposition of all existing water and sewer services and mains on the plans. If the existing services will not be used, then the applicant shall properly abandon these services to the main per Water & Sewer Utilities standards and install a new service to accommodate the water needs of the project.
- W2. The applicant shall submit a composite utility plan showing all utilities (including electrical) and landscaping (trees/shrubbery) so that the Water Department can verify conflicts for proposed water services. Note that all new water meters and backflow prevention devices shall be located behind the sidewalk in a landscape area.
- W3. Applicant shall adhere to and provide a note indicating all horizontal and vertical clearances. The applicant shall maintain a minimum 12" of vertical clearance at water service crossing with other utilities, and all required minimum horizontal clearances from water services: 10' from sanitary sewer utilities, 10' from recycled water utilities, 8' from storm drain utilities, 5' from fire and other water utilities, 3' from abandoned water services, 5' from gas utilities, and 5' from the edge of the propose or existing driveway. For sanitary sewer, water, and recycled water utilities, the applicant shall maintain a minimum horizontal clearance of 10' from existing and proposed trees. If applicant installs tree root barriers, clearance from tree reduces to 5' (clearance must be from the edge of tree root barrier to edge of water facilities).
- W4. Applicant shall submit plans showing proposed water, sanitary sewer, and fire service connected to a public main in the public right-of-way to the satisfaction of the Director of Water & Sewer Utilities. Different types of water use (domestic, irrigation, fire) shall be served by separate water services, each separately tapped at the water main. Tapping on existing fire service line(s) is prohibited.
- W5. Prior to issuance of Building Permits, the applicant shall submit design plans for construction of water utilities that comply with the latest edition of the Water & Sewer Utilities Water Service and Use Rules and Regulations, Water System Notes, and Water Standard Details and Specifications. In addition, prior to the City's issuance of Occupancy, the applicant shall construct all public water utilities per the approved plans. The Water & Sewer Utilities will inspect all public water utility installations and all other improvements encroaching public water utilities.
- W6. Prior to City's issuance of Building or Grading Permits, the applicant shall provide a dedicated water utility easement around the backflow prevention device onsite. The water utility easement for the water services and all other public water appurtenances shall be a minimum 15 feet wide and be adjacent to the public right-of-way without overlapping any public utility easement. Additionally, the applicant shall submit plans defining existing easements so Water Division can verify if there are any conflicts with proposed easements and water utilities.
- W7. No structures (fencing, foundation, biofiltration swales, etc.) allowed over sanitary sewer and/or water utilities and easements. No overhang or building foundation shall encroach into water easements.

- W8. The applicant shall submit plans showing any onsite storm water treatment system. The plan shall include a section detail of the treatment system. No water, sewer, or recycled water facilities shall be located within 5-feet of any storm water treatment system.
- W9. Approved backflow prevention device(s) are required on all potable water services. The applicant shall submit plans showing the location of the approved backflow prevention device(s). Note that all new water meters and backflow prevention devices shall be located behind the sidewalk in a landscape area.
- W10. Approved reduced pressure detector assembly device(s) are required on all fire services. The applicant shall submit plans showing existing and proposed fire service upgraded with reduced pressure detector assembly device, as per city standard 17, to the satisfaction of the Director of Water & Sewer Utilities.
- W11. Applicant must clearly identify between public and private water mains, indicating which services and mains belong to public and private streets. No public mains should be shown on private property or streets.
- W12. The applicant shall bear the cost of any relocation or abandonment of existing Water Department facilities required for project construction to the satisfaction of the Director of Water and Sewer Utilities.
- W13. The applicant must indicate the pipe material and the size of existing water and sewer main(s) on the plans.
- W14. A dedicated fire service line, with an approved backflow prevention device, shall be used for on-site fire hydrants
- W15. It is recommended to have two fire services for a loop system and a dual-service for the domestic system.
- W16. Upon completion of construction and prior to the City's issuance of a Certificate of Occupancy, the applicant shall provide "as-built" drawings of the on-site public water utility infrastructure prepared by a registered civil engineer to the satisfaction of the Director of Water & Sewer Utilities.
- W17. Prior to the issuance of Building Permits, the applicant shall provide documentation of water usage, so the Water Division can verify the appropriate size of all proposed water meters. Please note that if the existing water services are incapable of supplying the water needs to the site, the existing services shall be abandoned, and new separate dedicated water services shall be provided for each use (domestic and irrigation).
- W18. Prior to issuance of Building Permits, the applicant shall provide the profile section details for utilities crossing water, sewer, or reclaimed water mains to ensure a 12" minimum vertical clearance is maintained.

POLICE

- PD1. The developer shall meet with the Santa Clara Police Department to address the parking concerns of surrounding neighborhoods. Specifically, the neighborhoods on El Capitan, Sheraton and Los Padres. Please contact Community Services Unit - Sgt. Phan at CPhan@santaclaraca.gov.
- PD2. The property should be fenced off during demolition and construction as a safety barrier to the public and deterrent to theft and other crime. Consider not having any screening material on the fence so passing Police Patrol checks will be able to see into the site.
- PD3. Address numbers should be a minimum of twelve (12) inches in height for commercial or industrial buildings. Consider illuminated numbers during the hours of darkness, and in a color

that is contrasting to the background material. They shall be clearly visible from the street. Where multiple units or buildings occupy the same property, each unit/building address shall be clearly visible. A monument sign, preferably at all entrances to the property, should be prominently displayed showing all unit/building numbers, addresses, etc. A map is recommended for large complexes with multiple streets or walkways.

- PD4. In a development where there is an alley, driveway, etc. providing a rear entrance or access, the address shall be displayed to both the front and rear of the individual buildings. Where an alley, driveway, etc. provided vehicular access, address numbers shall be clearly visible from that access.
- PD5. Businesses with rear alley entrance doors shall be numbered with the same address numbers or suite numbers as the front doors. Numbers that are a minimum height of 4" are recommended.
- PD6. There shall be positioned near the entrance an illustrative diagram of the complex, which shows the location of the viewer and unit designations within the complex, including separate building designations. This diagram shall be illuminated and should be protected by vandal and weather resistant covers.
- PD7. Each distinct unit within the building shall have its address displayed on or directly above both front and rear doors.
- PD8. When there is an alley or driveway to the rear of the business or commercial establishment that provides pedestrian or vehicle access, that area should be fenced and locked after hours. A 'Knox Box' or key coded system shall be used for police and fire emergency access.
- PD9. Landscaping should follow the National Institute of Crime Prevention standards. That standard describes bushes/shrubs not exceeding 2' in height at maturity, or maintained at that height, and the canopies of trees should not be lower than 6' in height. Crime deterrent vegetation is encouraged along the fence and property lines and under vulnerable windows.
- PD10. Lighting for the project to be at the IES (Illuminating Engineering Society of North America) standards and include the features listed below: White light source, Pedestrian Scale, Full cut-off or shoebox design, Unbreakable exterior, Tamperproof Housings, Wall mounted lights/10' high. These features increase natural surveillance, support and/or enhance security camera capabilities, and increase Police Patrol effectiveness.
- PD11. Any required enclosure fencing (trash area, utility equipment, etc.) would preferably be see-thru. If for aesthetic reasons prohibit that, the fencing should have a six (6) inch opening along the bottom for clear visibility. Any gates or access doors to these enclosures should be locked.
- PD12. If the project includes any benches, these benches should not be longer than 5 feet in length, and should have arm rests at both ends. If the benches are longer than 5 feet in length, there should be a divider (arm rest or similar) in the middle of the bench in addition to the arm rests on both ends. This helps prevent unlawful lodging and/or skateboarding. Another option to benches could be cubes, knee walls, or other creative types of seating possibilities.
- PD13. The developer should install skate stoppers on any low clearance wall of 36 inches in height or lower to prevent vandalism/damage to the wall from skateboarding or similar activities. If there is outdoor seating associated with a restaurant or similar business which is near vehicle parking stalls, the outdoor space will be designed to ensure the safety of the public from possible vehicular related incidents.
- PD14. All exterior doors should be adequately illuminated at all hours with their own light source.
- PD15. All construction of dwelling units shall conform to the requirements of the Uniform Building Security Code as adopted by the City of Santa Clara City Council.

- PD16. All elevators should be well lit and equipped with a security mirror to provide interior and exterior visibility prior to entry or exit.
- PD17. Other line of sight obstructions (including recessed doorways, alcoves, etc.) should be avoided on building exterior walls and interior hallways.
- PD18. Exterior stairs shall be open style whenever structurally possible. The stairs should be well lit.
- PD19. "White" light meeting the IES standard should be considered. There should be no "dark" areas inside the structure.
- PD20. All entrances to the parking areas (structure, surface, subterranean, etc.) shall be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code section 22658(a) for guidance)
- PD21. A Coded Entry System is required for police access to enclosed parking lots and gated communities. This can be accomplished with a coded key pad system or the Police Department Knox Box key system. We understand security is a prime concern for the tenants of the project, which necessitates some sort of secure building and admittance process. By having either of these secure access systems for law enforcement, it will allow us to better respond to emergency situations should they arise in the development. Examples of these systems can be reviewed at the following projects: 2585 El Camino Real (Coded key pad access) and 3555 Monroe Street (Knox box key access)
- PD22. When in the opinion of the fire code official, a new structure obstructs the line of sight of emergency radio communications to existing buildings or to any other locations, the developer of the structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure.

FIRE

NOTE: The Fire Department's review was limited to verifying compliance per the 2016 California Fire Code (CFC), Section 503 (Fire Apparatus Access Roads), Section 507 (Fire Protection Water Supplies), Appendix B (Fire-Flow Requirements for Buildings) and Appendix C (Fire Hydrant Locations and Distribution) and City of Santa Clara Requirements.

- F1. The location of the fire hydrants as shown on Sheet C-5, "Preliminary Utility Plan" **is approved** with (3) onsite fire hydrants and (2) offsite fire hydrants. The average spacing between fire hydrants shall not exceed 300 feet.
- F2. The sizing of the underground piping shall be such that a minimum fire flow of 1,500 gpm shall be made available at any of the (3) onsite fire hydrants for the prescribed duration of 4 hours.
- F3. The onsite fire department access roadway as shown on Sheet A1.1.1 "Site Plan" **is approved.**
- F4. The project site has deficiencies related to aerial fire apparatus access (does not comply with min. 15 feet and max. 30 feet from building exterior wall) and several portions of the exterior wall of the building are more than 150 feet from an approved fire apparatus access road. **Alternate mitigations shall be proposed and approved via an AMMR prior to issuance of the Building permit.**
- F5. Prior to the start of construction, fire protection water supplies shall be installed and made serviceable prior to the time of construction or prior to combustible materials being moved onsite

- F6. Prior to the issuance of the Building Permit, construction documents for the fire department apparatus access roads are required submitted to the Fire Prevention and Hazardous Materials Division. Access roadways shall be provided to comply with all of the following requirements:
- a. Fire access roadways shall have a “minimum” unobstructed vertical clearance of not less than 13 feet 6 inches. Aerial apparatus access roads may require additional vertical clearance.
 - b. Fire access roadways shall All fire department access roadways shall be an all-weather surface designed to support the imposed load of fire apparatus with a gross vehicle weight of 75,000-pounds.
 - c. Fire apparatus access roadways shall have a “minimum” inside turning radius for fire department access roadways shall be 36 feet or greater.
 - d. The grade for emergency apparatus access roadways shall not exceed 10 percent to facilitate fire-ground operations.
 - e. Traffic calming devices are not permitted on any designated fire access roadway, unless approved by the Fire Prevention & Hazardous Materials Division.
- F7. Provisions shall be made for Emergency Responder Radio Coverage System (ERRCS) equipment, including but not limited to pathway survivability in accordance with Santa Clara Emergency Responder Radio Coverage System Standard. The infrastructure necessary for the installation of an emergency responder’s radio system is required to be incorporated into the design documents, including, but not limited to 2-hr rated rooms, shafts, etc.).
- F8. **Emergency Vehicle Access Easement.** The interior access roads located within the project’s property lines shall be recorded as an EVAE. No other instruments will be considered as substitutions (such as P.U.E, Ingress/Egress easements and/or City Right-of-Ways). The EVAE shall have a clear width of 26 feet.
- F9. Prior to the approval of construction related permits, project shall comply with Mitigation Measure M-HAZ-1 (outlined in the EIR).

STREETS

STORMWATER

- ST1. Prior to City’s issuance of Building or Grading Permits, the applicant shall develop a Final Stormwater Management Plan, update the SCVURPPP C.3 Data Form, prepare and submit for approval an Erosion and Sediment Control Plan. *Project’s contractor, sub-contractors and if applicable, Qualified SWPPP Practitioner (QSP) shall attend a pre-construction meeting prior to the start of construction, which will be coordinated through the Building Division.* Final C.3 Data Form is required.
- ST2. The Final Stormwater Management Plan and all associated calculations shall be reviewed and certified by a qualified 3rd party consultant from the SCVURPPP List of Qualified Consultants, and a 3rd party review letter shall be submitted with the Plan. Third-party verification on the Final C.3 Data Form is required.
- ST3. For projects that disturb a land area of one acre or more, the applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board for coverage under the State Construction General Permit (Order No. 2009-0009-DWQ) prior to issuance of any building permit for grading or construction. A copy of the NOI shall be submitted to the City Building Inspection Division, along with a stormwater pollution prevention plan (SWPPP). Active

projects covered under the Construction General Permit will be inspected by the City once per month during the wet season (October – April).

- ST4. The applicant shall incorporate [Best Management Practices \(BMPs\)](#) into construction plans and incorporate post-construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of Building or Grading Permits. Proposed BMPs shall be submitted to and thereafter reviewed by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.
- ST5. During the construction phase, all stormwater control measures shall be inspected for conformance to approved plans by a qualified 3rd party consultant from the [SCVURPPP List of Qualified Consultants](#), and a 3rd party inspection letter (with the signed C.3 Construction Inspection checklist as an attachment) shall be submitted to the Public Works Department (Contact Rinta Perkins, Compliance Manager for a copy of the C.3 Construction Inspection checklist). As-Built drawing shall be submitted to the Public Works Department. Building occupancy will not be issued until all stormwater treatment measures have been adequately inspected and O&M Agreement is executed. For more information contact Rinta Perkins at (408) 615-3081 or rperkins@santaclaraca.gov
- ST6. Stormwater treatment facilities must be designed and installed to achieve the site design measures throughout their life in accordance to the SCVRUPPP C.3 Stormwater Handbook (Chapter 6 and Appendix C). Soils for bioretention facilities must meet the specifications accepted by the Water Board. If percolation rate test of the biotreatment soil mix is not performed on-site, a certification letter from the supplier verifying that the soil meets the specified mix.
- ST7. The property owner shall enter into an Operation and Maintenance (O&M) Agreement with the City for all installed stormwater treatment measures in perpetuity. Applicants should contact Karin Hickey at (408) 615-3097 or KaHickey@santaclaraca.gov for assistance completing the Agreement. For more information and to download the most recent version of the O&M Agreement, visit the City's stormwater resources website at <http://santaclaraca.gov/stormwater>.
- ST8. Developer shall install an appropriate stormwater pollution prevention message such as "No Dumping – Flows to Bay" on any storm drains located on private property.
- ST9. Floor drains within trash enclosures shall be plumbed to the sanitary sewer system and not connected to the City's storm drain system.
- ST10. Any site design measures used to reduce the size of stormwater treatment measures shall not be removed from the project without the corresponding resizing of the stormwater treatment measures and an amendment of the property's O&M Agreement.
- ST11. Decorative and recreational water features such as fountains, pools, and ponds shall be designed and constructed to drain to the sanitary sewer system only.
- ST12. Developer shall select appropriate plant materials to promote stormwater treatment measure while implementing integrated pest management and water conservation practices in accordance to the SCVRUPPP C.3 Stormwater Handbook (Appendix D).
- ST13. The use of architectural copper is discouraged. If such material is used, all wastewater generated by the installation, cleaning, treating, or washing of the surface of copper architectural features, including copper roofs, shall not be discharged to the City's storm drain system.

SOLID WASTE

- ST14. For projects that involve construction, demolition or renovation of 5,000 square feet or more, the applicant shall comply with City Code Section 8.25.285 and recycle or divert at least sixty five percent (65%) of materials generated for discard by the project during demolition and construction activities. No building, demolition, or site development permit shall be issued unless and until applicant has submitted a construction and demolition debris materials check-off list. Applicant shall create a **Waste Management Plan** and submit, for approval, a Construction and Demolition Debris Recycling Report through the City's online tracking tool at <http://santaclara.wastetracking.com/>.
- ST15. Project applicant shall contact the Public Works Department, Street Maintenance Division at (408) 615-3080 to verify if the property falls within the City's exclusive franchise hauling area. If so, the applicant may be required to use the City's exclusive franchise hauler and rate structure for solid waste services. Project applicant shall submit to the Public Works Department a written approval (clearance) from the designated hauler on the project's Trash Management Plan.
- ST16. The applicant shall provide a site plan showing all proposed locations of solid waste containers, enclosure locations, and street/alley widths to the Public Works Department. All plans shall comply with the [City's Development Guidelines for Solid Waste Services](#) as specified by development type. Contact the Public Works Department at Environment@santaclaraca.gov or at (408) 615-3080 for more information.
- ST17. Pre-treatment devices and tallow bins shall be installed at all food establishments. Tallow bins shall be placed within a trash enclosure when possible. If enclosure is not sized to accommodate the tallow bin(s), a separate dedicated enclosure with drainage to the sanitary sewer system shall be provided.
- ST18. Building must have enclosures for garbage, recycling and organic waste containers. The size and shape of the enclosure(s) must be adequate to serve the estimated needs and size of the building(s) onsite and should be designed and located on the property so as to allow ease of access by collection vehicles. Roofed enclosures with masonry walls and solid metal gates are the preferred design. Any required enclosure fencing (trash area, utility equipment, etc.) if not see-thru, shall have a six (6) inch opening along the bottom for clear visibility. Any gates or access doors to these enclosures shall be locked.
- ST19. All refuse from all residential, commercial, industrial and institutional properties within the city shall be collected at least once a week, unless otherwise approved in writing (SCCC 8.25.120). Garbage service level required for residential developments (single-family and multi-family) as well as motels and hotels shall be no less than twenty (20) gallons per unit. All project shall submit to the Public Works Department the preliminary refuse service level assessment for approval.

PARKS AND RECREATION

- PR1. This memo assumes the Project is not a subdivision and the Mitigation Fee Act provisions will apply. The amount of public parkland required for this Project to mitigate the impact of the new resident demand is approximately 0.3131 acres (0.3684 acres less a 15% credit for housing developments of which 100% of the units are affordable to low- and/or moderate-income households). Developer will not owe a fee or additional parkland based on the onsite recreational amenity space provided (see PR2).

- PR2. Application for Credit. Developer is providing private onsite recreational amenities including: children's play apparatus; family picnic area; lawn area with log benches, table & chairs, and native plantings; recreational community garden; bocce ball half court; 8.5' radius putting green with artificial turf; fitness pathway with 3 fitness stations; community room with sitting area, dining area, kitchenette, entertainment center with tv and music equipment; fitness room with 4 treadmills, 2 TRX Pro 4 suspension training system, 4 spin bikes, and weight training equipment; game room with shared board games, seating, and a tv.
- PR3. A dwelling unit tax (DUT) is also due based on the number of units and additional bedrooms per City Code Chapter 3.15. The Project mix includes 8 studio units, 22 one-bedroom units, 29 two-bedroom units, and 6 three-bedroom units: [$\$15 \times 65$ bedrooms) + ($\$5 \times 41$ additional bedrooms)] for a total DUT of \$1,180.
- PR4. Calculations may change if the number of units change, if any areas do not conform to the Ordinance and City Code Chapter 17.35, if the fee schedule for new residential development fees due in lieu of parkland dedication changes before this Project is deemed complete by Planning, and/or if City Council makes any changes. Any in lieu fees imposed under Chapter 17.35 shall be due and payable to the City prior to issuance of a building permit for each dwelling unit. See details below:

Table 1. Computation of Parkland Dedication

Project Unit Type: Multi Fam Dwelling	Mitigation Fee Act
Persons/Dwelling Type	2.24
Multi Family Project Units	65
Total New Residents	146
Parkland Dedication Required (acres): $R/1,000 \times 2.53$	0.3684
Equivalent In Lieu Fee	\$1,365,455
100% Affordable Development entitled to 15% credit:	0.3131 acres / \$1,160,637

Table 2. Public Parkland Dedications Proposed, Service Level

Parkland Proposed	Square Feet	Acres	Type of Dedication
	0	0	N/A
Total to be dedicated:	0	0	
Total Proposed Dedicated Public Parkland Value:		\$0	

Table 3. Credit for Proposed Private Onsite Park & Recreation “Active Rec Uses”

	Square Feet	Acres
Children’s play apparatus	6331	0.1453
Lawn area w log benches, benches, table &	3562	0.0818
Recreational community garden	2370	0.0544
Family picnic area	3289	0.0755
Half court bocce ball	730	0.0168
Fitness pathway & 3 fitness stations	12354	0.2836
Community room: sitting area, dining area, kitchenette, entertainment center w tv & music equipment	1103	0.0253
Fitness room: 4 treadmill, 2 TRX Pro 4 suspension training systems, 4 spin bikes, & weight training equipment	655	0.0150
Game room: shared board games, seating & tv	655	0.0150
Putting green: artificial turf 8.5’ radius	787	0.0181
Total:	31836	0.7309
Credit at 50% for Private Active Recreation & Equivalent Value:		0.3654 / \$1,211,390

***This project meets its parkland obligation through onsite, active recreational amenities.**

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 P. M. McElwee
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C-28734
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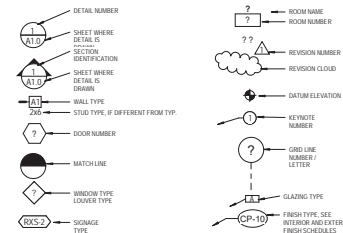
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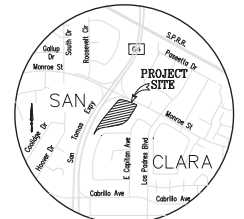
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ARCHITECTURAL SYMBOLS



PERIODS ARE NOT A NECESSARY CHARACTER IN ABBREVIATIONS AND MAY OR MAY NOT BE USED, WITH NO CHANGE TO THE MEANING.

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VICINITY MAP
NOT TO SCALE

TITLE REPORT

THE TITLE REPORT ISSUED IN THIS SURVEY WAS ISSUED BY OLD REPUBLIC TITLE COMPANY, PRELIMINARY REPORT ORDER NO. 1117018004-JM, EFFECTIVE DATE OCTOBER 26, 2018 AT 7:30 A.M., REFERRED TO HEREON AS THE "PIR".

TITLE OR INTEREST VESTED IN:

THE HOUSING AUTHORITY OF THE CITY OF SANTA CLARA, A PUBLIC BODY CORPORATE AND POLITICAL

THE ESTATE OR INTEREST IN THE LAND IS:

LEGAL DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE COUNTY OF SANTA CLARA, CITY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

REAL PROPERTY IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 3 DESCRIBED IN THE DEED TO THE COUNTY OF SANTA CLARA, RECORDED FEBRUARY 2, 1962, IN BOOK 5453 OF OFFICIAL RECORDS, PAGE 669, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 30 AS SHOWN ON THAT CERTAIN MAP OF TRACT 2886 FILED FOR RECORD ON MAY 11, 1961 IN BOOK 132 OF MAPS, PAGES 38 AND 39, SANTA CLARA COUNTY RECORDS;

THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 3, NORTH 28° 09' 22" EAST, 14.01 FEET; THENCE NORTH 44° 01' 08" WEST, 147.59 FEET; THENCE NORTH 73° 07' 44" WEST, 63.92 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET; THROUGH A CENTRAL ANGLE OF 62° 52' 15" FOR AN ARC LENGTH OF 65.84 FEET; THENCE SOUTH 44° 00' 01" WEST, 274.40 FEET;

THENCE ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 862.00 FEET, THROUGH A CENTRAL ANGLE OF 16° 07' 44" FOR AN ARC LENGTH OF 270.81 FEET, TO THE NORTHWESTERLY LINE OF LOT 19 AS SHOWN ON THAT CERTAIN MAP OF TRACT 2992 FILED FOR RECORD ON JUNE 21, 1961, IN BOOK 134 OF MAPS, PAGES 26 AND 27, SANTA CLARA COUNTY RECORDS;

THENCE ALONG THE NORTHWESTERLY AND NORTHERLY LINES OF LOTS 19 THROUGH 25 OF SAID MAP OF TRACT 2992 AND ALONG THE NORTHWESTERLY LINE OF LOTS 27 THROUGH 30 OF SAID MAP OF TRACT 2886, THE FOLLOWING FIVE COURSES:

1. THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1200.00 FEET, WHOSE CENTER BEARS SOUTH 59° 19' 45" EAST THROUGH A CENTRAL ANGLE OF 0° 10' 12" FOR AN ARC LENGTH OF 3.56 FEET;
2. THENCE ALONG A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 53° 58' 00" FOR AN ARC LENGTH OF 141.28 FEET;
3. THENCE NORTH 84° 48' 27" EAST, 213.98 FEET;
4. THENCE ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 225.00 FEET, THROUGH A CENTRAL ANGLE OF 49° 33' 01" FOR AN ARC LENGTH OF 194.58 FEET;
5. THENCE NORTH 35° 15' 26" EAST, 179.75 FEET, TO A POINT OF BEGINNING.

APN: 224-37-068

EXCEPTIONS

- [1] AN EASEMENT AFFECTING THAT PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN AND INCIDENTAL PURPOSES GRANTED TO CITY OF SANTA CLARA, A MUNICIPAL CORPORATION, FOR SANITARY SEWER PURPOSES, RECORDED JUNE 26, 1961 IN BOOK 5210 OF OFFICIAL RECORDS, PAGE 674 UNDER RECORDER'S SERIAL NUMBER 2018642, AFFECTS AS DESCRIBED THEREIN (EXC. 3 - PLOTTED).
- [2] AN EASEMENT AFFECTING THAT PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN AND INCIDENTAL PURPOSES GRANTED TO CITY OF SANTA CLARA, A MUNICIPAL CORPORATION, FOR STORM DRAIN PURPOSES, RECORDED JUNE 26, 1961 IN BOOK 5210 OF OFFICIAL RECORDS, PAGE 677 UNDER RECORDER'S SERIAL NUMBER 2018643, AFFECTS AS DESCRIBED THEREIN (EXC. 4 - PLOTTED).
- [3] AN EASEMENT AFFECTING THAT PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN AND INCIDENTAL PURPOSES GRANTED TO CITY OF SANTA CLARA, A MUNICIPAL CORPORATION, FOR STORM DRAIN PURPOSES, RECORDED SEPTEMBER 14, 1961 IN BOOK 5296 OF OFFICIAL RECORDS, PAGE 608 UNDER RECORDER'S SERIAL NUMBER 2060294, AFFECTS AS DESCRIBED THEREIN (EXC. 5 - PLOTTED).
- [4] RELEASE AND RELINQUISHMENT OF ABUTTER'S OR ACCESS RIGHTS TO AND FROM SAN TOMAS EXPRESSWAY, UPON WHICH PREMISES ABUTS, INSTRUMENT GRANT DEED INDIVIDUAL TO COUNTY OF SANTA CLARA, RECORDED FEBRUARY 2, 1962 IN BOOK 5453 OF OFFICIAL RECORDS, PAGE 669 UNDER RECORDER'S SERIAL NUMBER 2135068 (EXC. 6 - PLOTTED).
- [5] TERMS AND PROVISIONS AS CONTAINED IN AN INSTRUMENT ENTITLED ASSIGNMENT AND ASSUMPTION AGREEMENT (COOPERATION AGREEMENT FOR PAYMENT OF COSTS ASSOCIATED WITH CERTAIN REDEVELOPMENT AGENCY FUNDED LOW AND MODERATE INCOME HOUSING PROJECTS), EXECUTED BY CITY OF SANTA CLARA, CITY OF SANTA CLARA HOUSING AUTHORITY AND REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, RECORDED JUNE 23, 2011 IN OFFICIAL RECORDS UNDER RECORDER'S SERIAL NUMBER 21216118 (EXC. 7 - NOT PLOTTABLE).
- [6] TERMS AND PROVISIONS AS CONTAINED IN AN INSTRUMENT ENTITLED GRANT DEED, EXECUTED BY REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA AND CITY OF SANTA CLARA HOUSING AUTHORITY, RECORDED JUNE 23, 2011 IN OFFICIAL RECORDS UNDER RECORDER'S SERIAL NUMBER 21216119 (EXC. 8 - NOT PLOTTABLE).

NOTES

1. EASEMENTS AND/OR RIGHTS OF WAY ARE SHOWN HEREON PER THE "PIR". OTHER EASEMENTS AND/OR RIGHTS OF WAY OF RECORD, IF ANY, ARE NOT SHOWN HEREON.
2. THE UTILITIES SHOWN HEREON ARE BY SURFACE OBSERVATION AND RECORD INFORMATION ONLY AND NO WARRANTY IS GIVEN HEREIN AS TO THEIR EXACT LOCATION. IT IS THE RESPONSIBILITY OF THE DEVELOPER AND/OR CONTRACTOR TO VERIFY THE EXACT LOCATION OF THE UTILITIES WITH THE APPROPRIATE UTILITY COMPANY OR AGENCY.
3. UTILITY JURISDICTIONS / PROVIDERS ARE AS FOLLOWS:
STORM DRAINS: CITY OF SANTA CLARA
SANITARY SEWER: CITY OF SANTA CLARA
WATER: CITY OF SANTA CLARA
ELECTRICITY: PACIFIC GAS & ELECTRIC CO.
NATURAL GAS: PACIFIC GAS & ELECTRIC CO.
4. THE DATE OF THE FIELD SURVEY IS JANUARY 3 AND 4, 2019
5. THERE ARE NO CEMETERIES ON OR WITHIN 100 FEET OF THE SUBJECT PROPERTIES
6. THERE IS NO OBSERVED EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SLUMP OR SANITARY LANDFILL
7. THE SURVEYED PROPERTY IS THE SAME PROPERTY DESCRIBED IN THE TITLE REPORT

TABLE A NOTES

1. FOUND MONUMENTS ARE SHOWN ON SHEET 2.
 2. THE ADDRESS OF THE SUBJECT PROPERTY IS APN# 224-37-068, SANTA CLARA, CA 95050.
 3. FLOOD ZONE: THE PROPERTY IS LOCATED IN ZONE AD, DEFINED AS "SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD; FLOOD DEPTHS OF 1 TO 3 FEET (USUALLY SHEET FLOW ON SLOPING TERRAIN); AVERAGE DEPTHS DETERMINED. FOR AREAS OF ALLUVIAL FAN FLOODING, VELOCITIES ALSO DETERMINED.", PER FLOOD INSURANCE RATE MAP NUMBER 0605020270, DATED MAY 16, 2009.
 4. THE GROSS LAND AREA OF THE SUBJECT PROPERTY IS 107,759 SQUARE FEET +/- OR 2.474 ACRES MORE OR LESS.
 6. (A/B) ZONING REQUIREMENTS: PER THE CITY SANTA CLARA ZONING MAP, THE PROPERTY IS ZONED "R1-6L", DEFINED AS "SINGLE FAMILY ZONING DISTRICT"
- REFERENCE IS MADE HERE TO THE CITY OF SANTA CLARA PLANNING CODE, CHAPTER 18.12 REGARDING PROPERTY DEVELOPMENT STANDARDS, MINIMUM YARDS, BUILDING HEIGHT LIMITATION, BUILDING SETBACK REQUIREMENTS ARE AS FOLLOWS:
- SETBACKS:
MINIMUM FRONT: 20 FEET
MINIMUM SIDE YARD: 5 FEET
MINIMUM REAR: 20 FEET
- MAXIMUM HEIGHT: 2 STORIES BUT NOT EXCEEDING 25 FEET
- PARKING REQUIREMENTS: TWO GARAGE OR CARPORT PARKING SPACES
7. (A/B1/C) THERE ARE NO BUILDINGS LOCATED ON THE SUBJECT PROPERTY.
 8. SUBSTANTIAL, VISIBLE IMPROVEMENTS ARE SHOWN ON SHEET 2.
 9. THERE ARE NO PARKING SPACES ON THE SUBJECT PROPERTY.
 10. (A) THERE ARE NO DIVISIONS OR PARTY WALLS WITH RESPECT TO ADJOINING PROPERTIES.
 11. LOCATION OF UTILITIES EXISTING ON OR SERVING THE SURVEYED PROPERTY AS DETERMINED BY OBSERVED EVIDENCE AND MAPS FROM UTILITY COMPANIES ARE SHOWN ON SHEET 2 OF THE SURVEY.
 13. NAMES OF ADJOINING OWNERS OF PLATTED LANDS ARE SHOWN ON SHEET 2 OF THE SURVEY.
 14. DISTANCE TO THE NEAREST INTERSECTING STREET IS SHOWN ON SHEET 2 OF THE SURVEY.
 16. THERE IS NO OBSERVABLE EVIDENCE OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WITHIN RECENT MONTHS.
 17. THERE ARE NO PROPOSED CHANGES IN STREET RIGHT OF WAY LINES. THERE ARE NO OBSERVABLE EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS.
 18. THERE ARE NO WETLAND AREAS ON THE SUBJECT PROPERTY.
 19. THERE ARE NO OFFSITE EASEMENTS.
 20. PROFESSIONAL LIABILITY INSURANCE IN THE AMOUNT OF \$2,000,000 IS HELD BY THE SURVEYOR.

BASIS OF BEARINGS

BEARINGS BETWEEN FOUND MONUMENTS ON SERATION DRIVE, TAKEN AS NORTH 84°47'30" EAST, AS SHOWN ON THE MAP OF TRACT NO. 2992, RECORDED IN BOOK 134 OF MAPS, PAGES 26-27, SANTA CLARA COUNTY RECORDS, WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

RECORD REFERENCES

- (R1) GRANT DEED, DOCUMENT NO. 21216119, SANTA CLARA COUNTY RECORDS.
- (R2) MAP OF TRACT NO. 2886, BOOK 132 OF MAPS, PAGES 38-39, SANTA CLARA COUNTY RECORDS.
- (R3) MAP OF TRACT NO. 2992, BOOK 134 OF MAPS, PAGES 26-27, SANTA CLARA COUNTY RECORDS.

BENCHMARK

BENCHMARK C-13, LOCATED AT THE INTERSECTION OF BOWERS AVENUE AND CABRILLO AVENUE, SOUTHEAST CORNER, TOP OF LETTER "C" IN WORD "CLARA" ON TOP OF CATCH BASIN HOOD (SET 1999). ELEVATION = 61.13 FEET, NORTH AMERICAN VERTICAL DATUM 1988 (NAVD88).

SURVEYOR'S CERTIFICATE

TO THE HOUSING AUTHORITY OF THE CITY OF SANTA CLARA, A PUBLIC BODY CORPORATE AND POLITICAL, AND OLD REPUBLIC TITLE COMPANY:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 6(A), 6(B), 7(A), 7(B), 7(C), 8, 9, 10(A), 11, 13, 14, 16, 17, 18, 19, AND 20 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON JANUARY 3 AND 4, 2019.

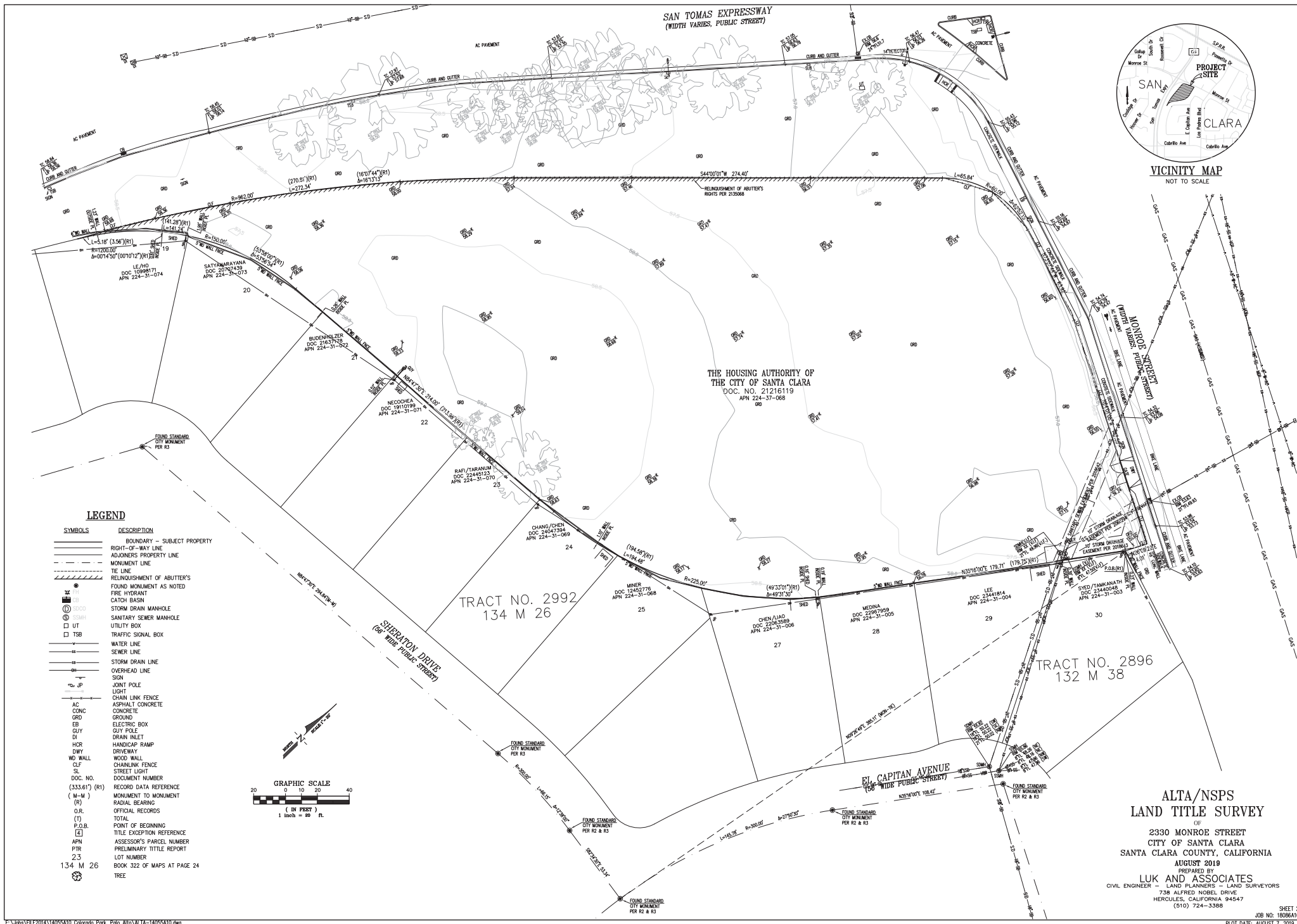
J. LUK
JACQUELINE LUK, P.L.S., RPS
FOR LUK & ASSOCIATES, INC.

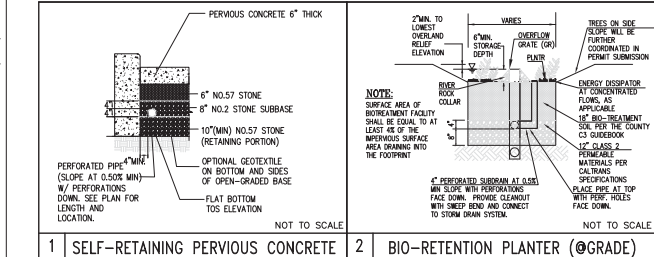
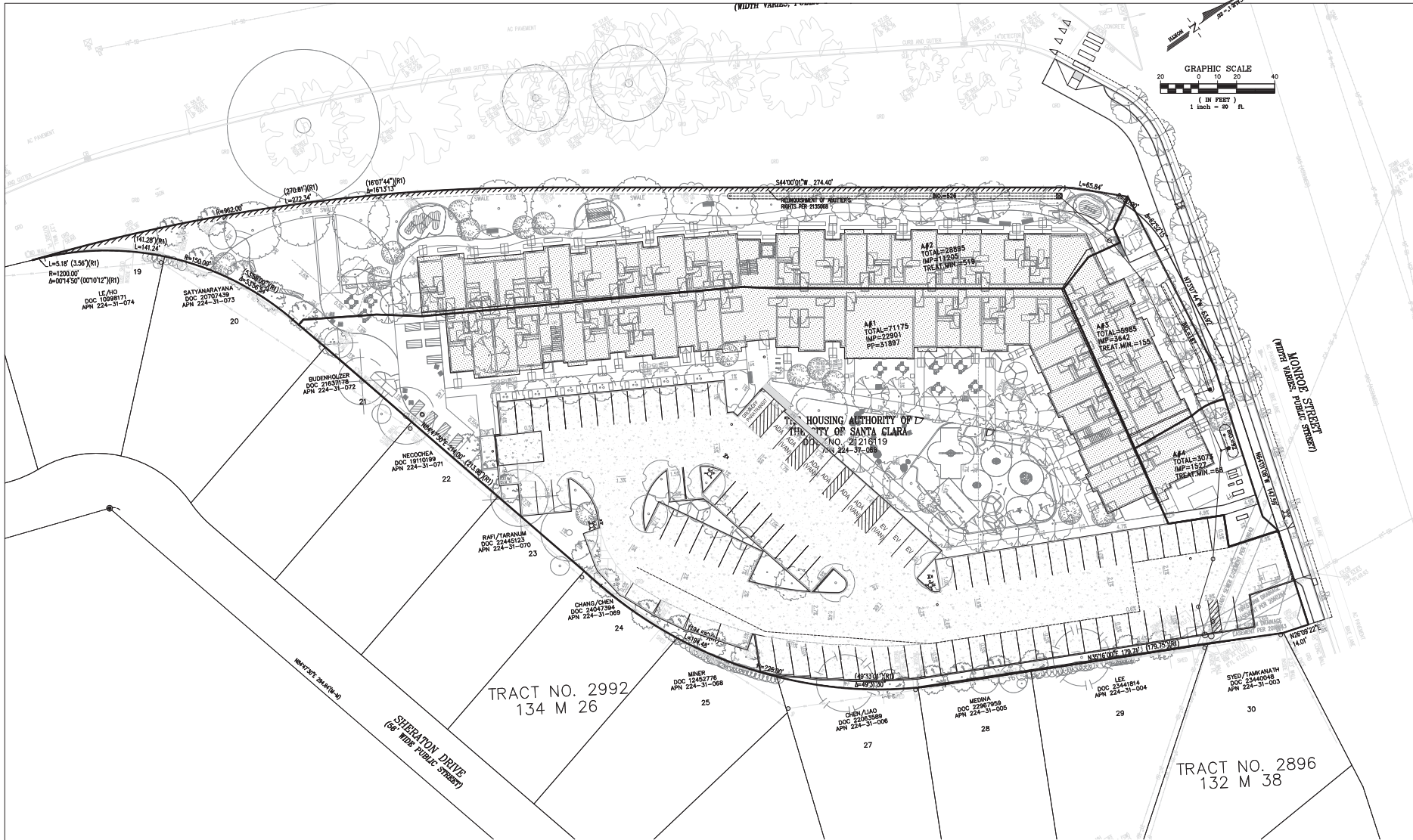
DATE: JANUARY 25, 2019



ALTA/NSPS LAND TITLE SURVEY

OF
2330 MONROE STREET
CITY OF SANTA CLARA
SANTA CLARA COUNTY, CALIFORNIA
AUGUST 2019
PREPARED BY
LUK AND ASSOCIATES
LAND PLANNERS - LAND SURVEYORS
CIVIL ENGINEER -
738 ALFRED NOBEL DRIVE
HERCULES, CALIFORNIA 94547
(916) 724-3388





STORM TREATMENT NOTES:

SOILS CLASS-D (CLAY) ASSUMED

PER SANTA CLARA COUNTYWIDE WATER POLLUTION PREVENTION PROGRAM PUBLICATION "C.3. STORMWATER TECHNICAL GUIDANCE" WITH LATEST UPDATES IN JUNE 2016.

1) THE TOTAL PROPOSED IMPERVIOUS AREA IS 1.58 ACRES. HYDROMODIFICATION MANAGEMENT DOES NOT APPLY DUE TO EXISTING HARDENED CHANNELS.

2) THE PROJECT SITE IS DEDICATED INTO THE DRAINAGE MANAGEMENT AREAS SHOWN ON THE DESIGN CHART ON THIS SHEET.

3) THE TREATMENT METHOD IS CHOSEN TO BE BIORETENTION FACILITY.

CRITERIA APPLY TO BIORETENTION FACILITY (FOR TREATMENT AND FLOW CONTROL):

- SIZING FACTOR (SF) (BIORETENTION FACILITY) = 0.04 * (IMPERVIOUS AREA + 10% OF PERVIOUS AREA)
- SURFACE RESERVOIR DEPTH = 6 INCHES
- SOIL DEPTH = 18 INCHES TYPICAL (5 IN/HR MINIMUM -10 IN/HR MAXIMUM)
- UNDERDRAIN = 4 INCH DIA. (MIN) PVC PERFORATED PIPE (SDR 35 OR EQUIVALENT)

4) FOR LANDSCAPE SELF-RETAINING AREAS, THE RATIO OF IMPERVIOUS TO PERVIOUS AREA SHALL BE LESS THAN OR EQUAL TO 2:1. SELF-RETAINING AREAS SHALL OPTIMIZE AND FLOW CONTROL A.T PRECIPITATION DEPTH PER COUNTY DESIGN STANDARDS. PERVIOUS PAVEMENT DESIGNED TO BE SELF-RETAINING AREAS SHALL BE SIZED FOR VOLUME BASED TREATMENT MEASURES BASED ON THE ADAPTED CWSA STORMWATER BMP HANDBOOK APPROACH.

5) FOR SELF-TREATING AREAS, THE DRAINAGE AREA MAY INCLUDE CONCERNED NATURAL OPEN AREAS, LANDSCAPING, GREEN ROOFS AND PERVIOUS PAVEMENT PER COUNTY DESIGN STANDARDS. HARDCAPE WITHIN THE SELF-TREATING AREA CAN NOT EXCEED 3% OF THE TOTAL AREA.

6) FOR PERVIOUS CONCRETE AREAS, THE DEPTH OF THE SECTION WILL BE CALCULATED BASED ON A VOLUME CALCULATION USING 18\"/>

LEGEND

- IMPERVIOUS SURFACE
- BIO-RETENTION AREA
- PERVIOUS CONCRETE PAVEMENT AREA
- DRAINAGE MANAGEMENT AREA LIMIT
- DRAINAGE MANAGEMENT AREA
- TOTAL= TOTAL DRAINAGE AREA
- IMP= IMPERVIOUS AREA
- TREAT MIN= MINIMUM TREATMENT AREA REQUIRED
- BIO= TREATMENT AREA PROVIDED
- PP= PERVIOUS PAVEMENT AREA

STORM TREATMENT DESIGN (PER SANTA CLARA COUNTY)

D.M.A. NAME	TYPE	A. VOLUME	B. SURFACE SIZING FACTOR	C. RUNOFF SURFACE AREA (S.F.)	D. IMPERVIOUS SURFACE AREA (S.F.)	E. TREATMENT PROPOSED SIZE (S.F.)	F. TREATMENT PROVIDED SIZE (S.F.)
A1	SELF-RETAINING	N/A	N/A	IMPERVIOUS	2200	2500	2,700 CULF.
A2	BIORETENTION PLANTER	0.04	1.0	IMPERVIOUS	11200	519	526
A3	BIORETENTION PLANTER	0.04	1.0	IMPERVIOUS	3642	155	187
A4	BIORETENTION PLANTER	0.04	1.0	IMPERVIOUS	2343	68	89

* A1 - VOLUME SIZING PARAMETERS

30% - IMPERVIOUS

1.04 - MAP CORRECTION FACTOR

0.4 - UNIT BASIN STORAGE VOLUME FOR ROOF CAPTURE

10% - VOLS FOR NO.87 DRAIN ROCK

9.5\"/>



Luk and Associates
Civil Engineering
Land Planning
Land Surveying
738 Alfred Nobel Drive
Berkeley, CA 94707
Phone (510) 724-3388
Fax (510) 724-3383
email: jockie@lukassociates.com
Sed:

2330 MONROE

2330 MONROE ST.
SANTA CLARA, CA

JOB NO. 18086A10
DRAWN: D.A.D.
CHECKED: M.D./J.L.
DESIGN: R.K.
ISSUE: 08/06/2019

Δ	DATE	DESCRIPTION
1	01/29/19	PLANNING SUBMITTAL
2	02/15/19	PCC COMMENTS
3	06/12/19	PCC RESUBMITTAL
4	06/28/19	SCHEMATIC DESIGN
5	08/06/19	PCC RESUBMITTAL
6	09/06/19	PCC RESUBMITTAL

DRAWING TITLE:

**PRELIMINARY
STORMWATER
TREATMENT PLAN**

SCALE: 1"=20'

C-6
CONSULTING ENGINEER
DATE: 8/09/2019

file no.: MASTER18086A10



**Santa Clara Valley
Urban Runoff
Pollution Prevention Program**



PROVISION C.3 DATA FORM

Which Projects Must Comply with Stormwater Requirements?

All projects that create and/or replace 10,000 sq. ft. or more of impervious surface on the project site must fill out this worksheet and submit it with the development project application.

All restaurants, auto service facilities, retail gasoline outlets, and uncovered parking lot projects (stand-alone or part of another development project, including the top uncovered portion of parking structures) that create and/or replace 5,000 sq. ft. or more of impervious surface on the project site must also fill out this worksheet.

Inactive remodeling projects, routine maintenance or repair projects such as re-roofing and re-paving, and single family homes that are not part of a larger plan of development are NOT required to complete this worksheet.

What is an Impervious Surface?

An impervious surface is a surface covering or pavement that prevents the land's natural ability to absorb and infiltrate rainfall stormwater. Impervious surfaces include, but are not limited to rooftops, walkways, paved patios, driveways, parking lots, storage areas, impervious concrete and asphalt, and any other continuous watertight pavement or covering. Pervious pavement, underlain with pervious soil or pervious storage material (e.g., drain rock), that infiltrates rainfall at a rate equal to or greater than surrounding impervious areas OR that stores and infiltrates the water quality design volume specified in Provision C.3.d of the Municipal Regional Stormwater Permit (MRSP), is not considered an impervious surface.

For More Information

For more information regarding selection of Best Management Practices for stormwater pollution prevention or stormwater treatment consult the Planning Department at 408-415-2450 and request the Stormwater Pollution Prevention Information Packet.

1. Project Information

Project Name: 2330 Monroe APN #: 224-37-008

Project Address: 2330 Monroe St

Cross Streets: San Tomas Expressway

Applicant/Developer Name: Freebird Development Company

Project Phase(s): ☒ Engineer, Luk and Associates

Project Type (Check all that apply): ☒ New Development ☐ Redevelopment

☒ Residential ☐ Commercial ☐ Industrial ☐ Mixed Use ☐ Public ☐ Institutional

☐ Restaurant ☐ Uncovered Parking ☐ Retail Gas Outlet ☐ Auto Service (SIC code)

☐ Other (2013-2014, 2014, 1933-2034, 1036-1039)

Project Description: New construction of 61 dwelling units.

Project Watershed/Receiving Water (creek, river or bay):

☐ Calabazas Creek ☒ Saratoga Creek ☐ San Tomas Aquino Creek ☐ Guadalupe River

SCVURPP/CRC C.3. Data Form

Page 1 of 4

rev May 2013

2. Project Size

a. Total Site Area: A.T.	b. Total Site Area Disturbed: 247 acres		c. Total Site Area (acres)	
	Existing Area (ft²)	Proposed Area (ft²)	Replaced	New
Impervious Area				
Roof	0	0	27,215	27,215
Paving	0	0		
Streets and Streets	0	0	11,427	
e. Total Impervious Area	0	0		
f. Total new and replaced impervious area			38,642	
Pervious Area				
Landscaping	107,880	37,295	0	37,295
Pervious Paving	0	0	31,091	31,091
Other (e.g. Green Roof)	0	0	0	0
g. Total Pervious Area				68,386
f. Percent Replacement of Impervious Area in Redevelopment Projects (Replaced Total Impervious Area ÷ Existing Total Impervious Area) x 100% = 56%				

3. State Construction General Permit Applicability:

a. Is #2.b. equal to 1 acre or more?

☒ Yes, applicant must obtain coverage under the State Construction General Permit (i.e., file a Notice of Intent and prepare a Stormwater Pollution Prevention Plan) (see www.scrwp.ca.gov/state_construction_general_permit for details).

☐ No, applicant does not need coverage under the State Construction General Permit.

4. MRSP Provision C.3 Applicability:

a. Is #2.d. equal to 10,000 sq. ft. or more, or 5,000 sq. ft. or more for restaurants, auto service facilities, retail gas outlets, and uncovered parking?

☒ Yes, C.3. source control, site design and treatment requirements apply.

☐ No, C.3. source control and site design requirements only apply – check with local agency

b. Is #2.f. equal to 50% or more?

☒ Yes, C.3. requirements (site design and source control, as appropriate, and stormwater treatment) apply to entire site

☐ No, C.3. requirements only apply to impervious area created and/or replaced

5. Hydromodification Management (HM) Applicability:

a. Does project create and/or replace one acre or more of impervious surface AND is the total post-project impervious area greater than the pre-project (existing) impervious area?

☒ Yes (continue) ☐ No – exempt from HM, go to page 2

b. Is the project located in an area of HM applicability (green area) on the HM Applicability Map? (www.scrwp.ca.gov/24.com/hmp.aspx.htm)

☐ Yes, project must implement HM requirements

☒ No, project is exempt from HM requirements

SCVURPP/CRC C.3. Data Form

Page 2 of 4

rev May 2013

6. Selection of Specific Stormwater Control Measures:

Site Design Measures

☐ Minimize land disturbed

☐ Minimize impervious surfaces

☐ Minimum-impact street or parking lot design

☒ Cluster structures/pavement

☐ Disconnect downspouts

☒ Pervious pavement

☐ Green roof

☐ Microdetention in landscape

☐ Other self-treating area

☒ Self-retaining area

☐ Rainwater harvesting and use (e.g., air hand, downspout connected to roof drain)

☐ Preserved open space: _____ ac. or sq. ft. (state use)

☐ Protected riparian and wetland area/buffers (Setback from top of bank: _____ ft.)

☐ Other _____

Source Control Measures

☐ Alternative building materials

☒ Walk areas/trails, drain to sanitary sewer¹

☒ Covered dumpster area, drain to sanitary sewer²

☐ Sanitary sewer connection or accessible element for anticipated pool/spa fountain³

☐ Beneficial landscaping (minimize irrigation, specific pesticides and fertilizers; promote treatment)

☐ Outdoor material storage protection

☐ Covers, drains for loading docks, maintenance bays, fueling areas

☒ Maintenance (pavement sweeping, sealcoating, cleaning, good housekeeping)

☒ Storm drain labeling

☐ Other _____

Treatment Systems

☐ None (all impervious surface drains to self-retaining area)

LID Treatment

☐ Rainwater harvest and use (e.g., cistern or rain barrel used for C.3.d treatment)

☐ Infiltration basin

☐ Infiltration trench

☐ Exfiltration trench

☐ Underground detention and infiltration system (e.g., pervious pavement drain rock, large detention cistern)

☐ Bioretention³

☒ Bioretention area

☐ Flow-through planter

☐ Tree box with bioretention soils

☐ Other _____

Other Treatment Methods

☐ Proprietary tree box filter⁴

☐ Media filter (sand, compost, or proprietary media)⁵

☐ Vegetated filter strip⁶

☐ Dry detention basin⁷

☐ Other _____

Flow Duration Controls for Hydromodification Management (HM)

☐ Detention basin

☐ Underground tank or vault

☐ Bioretention with outlet control

☐ Other _____

¹Optional site design measure; does not have to be added to comply with Provision C.3.d treatment requirements.

²Subject to sanitary sewer authority requirements.

³Bioretention measures are allowed only with completed feasibility analysis showing that infiltration and rainwater harvest are not an option.

⁴These treatment measures are only allowed if the project qualifies as a "Special Project".

⁵These treatment measures are only allowed as part of a multi-step treatment process.

SCVURPP/CRC C.3. Data Form

Page 3 of 4

rev May 2013

7. Treatment System Sizing for Projects with Treatment Requirements

Indicate the hydraulic sizing criteria used and provide the calculated design flow or volume:

Treatment System Component	Hydraulic Sizing Criteria Used ¹	Design Flow or Volume (cfs or cu.ft.)
Bioretention Planters	2c	4% rule
Permeable Paving	1b	2,500 CU.FT.

¹Key: 1a: Volume – WEF Method

1b: Volume – CASQA BMP Handbook Method

2a: Flow – Factored Flood Flow Method

2b: Flow – CASQA BMP Handbook Method

2c: Flow – Uniform Intensity Method

3: Combination Flow and Volume Design Basis

8. Alternative Certification: Was the treatment system sizing and design reviewed by a qualified third-party professional that is not a member of the project team or agency staff?

☒ Yes ☐ No Name of Reviewer: Alan Le-Hahn Engineer

9. Operation & Maintenance Information

A. Property Owner's Name: Alan Zoller - President/Development

B. Responsible Party for Stormwater Treatment/Hydromodification Control O&M:

a. Name: To Be Provided

b. Address: To Be Provided

c. Phone/E-mail: To Be Provided

This section to be completed by Municipal staff

O&M Responsibility Mechanism

Indicate how responsibility for O&M is assured. Check all that apply:

☐ O&M Agreement

☐ Other mechanism that assigns responsibility (describe below): _____

SCVURPP/CRC C.3. Data Form

Page 4 of 4

rev May 2013



Luk and Associates

Civil Engineering

Land Planning

Land Surveying

738 Alfred Nobel Drive

Hercules, CA 94547

Phone (510) 724-3388

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email: jodie@lukassociates.com

Web: _____

2330 MONROE

2330 MONROE ST.

SANTA CLARA, CA

JOB NO. 18086A10

DRAWN: D.A.D.

CHECKED: M.D. / J.L.

DESIGN: R.K.

ISSUE: 08/06/2019

1 01/29/19 PLANNING

2 02/15/19 PCC COMMENTS

3 06/12/19 PCC RESUBMITTAL

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7 10/06/19 PCC RESUBMITTAL

8 11/06/19 PCC RESUBMITTAL

9 12/06/19 PCC RESUBMITTAL

10 01/06/20 PCC RESUBMITTAL

11 02/06/20 PCC RESUBMITTAL

12 03/06/20 PCC RESUBMITTAL

13 04/06/20 PCC RESUBMITTAL

14 05/06/20 PCC RESUBMITTAL

15 06/06/20 PCC RESUBMITTAL

16 07/06/20 PCC RESUBMITTAL

17 08/06/20 PCC RESUBMITTAL

18 09/06/20 PCC RESUBMITTAL

19 10/06/20 PCC RESUBMITTAL

20 11/06/20 PCC RESUBMITTAL

21 12/06/20 PCC RESUBMITTAL

22 01/06/21 PCC RESUBMITTAL

23 02/06/21 PCC RESUBMITTAL

24 03/06/21 PCC RESUBMITTAL

25 04/06/21 PCC RESUBMITTAL

26 05/06/21 PCC RESUBMITTAL

27 06/06/21 PCC RESUBMITTAL

28 07/06/21 PCC RESUBMITTAL

29 08/06/21 PCC RESUBMITTAL

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33 12/06/21 PCC RESUBMITTAL

34 01/06/22 PCC RESUBMITTAL

35 02/06/22 PCC RESUBMITTAL

36 03/06/22 PCC RESUBMITTAL

37 04/06/22 PCC RESUBMITTAL

38 05/06/22 PCC RESUBMITTAL

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43 10/06/22 PCC RESUBMITTAL

44 11/06/22 PCC RESUBMITTAL

45 12/06/22 PCC RESUBMITTAL

46 01/06/23 PCC RESUBMITTAL

47 02/06/23 PCC RESUBMITTAL

48 03/06/23 PCC RESUBMITTAL

DRAWING TITLE:

SANTA CLARA

PROVISION

C.3 DATA FORM

SCALE: 1"=20'

C-7

COMPILED BY: JODIE LUK

DATE: 9/06/2019

file no.: MASTER18086A10



2330 MONROE ST.
SANTA CLARA, CA

[illegible]

SCALE 3/16" = 1'-0"

L1.02



Elements of Play	Ages 2-5	Level of Play	Proposed Capacity	Ages 6-12	Level of Play	* Proposed Capacity	Total Capacity
Balancing Boogie board & spring riders	2	B B A	2	1	A A A	5	7
Sliding	0	NA NA A	NA	0	NA NA A	NA	0
Brachiating Core fit extreme	0	NA NA A	NA	1	A A A	3	3
Spinning Curva spinner	0	NA NA A	NA	1	A A A	4	4
Climbing Cozy dome & Core fit	1	B B A	10	1	A A A	3	13
Swinging Coodie's swing & Boogie board	0	NA NA A	NA	2	I I A	9	9
Running/free Play	1	NA	15	1	NA	15	30
SENSORY PLAY: 2 play panels	2	A	6	0	0	0	6
Total:	5	NA	33	7	NA	39	72
Inclusive Play Elements	5			7			

tree pallette

ACCENT TREES



LAGERSTROEMIA (CREPE MYRTLE)

LARGE SHADE TREE



CELTIS SINENSIS (JAPANESE HACKBERRY)

MEDIUM SIZED TREE



CERCIS CANADENSIS 'FOREST PANSY' (EASTERN REDBUD)



CERCIS OCCIDENTALIS (WESTERN REDBUD)



QUERCUS AGRIFOLIA (COAST LIVE OAK)



PISTACIA CHINENSIS (CHINESE PISTACHE)



TRISTANIA LAURENIA (WATER GUM)

PROPOSED TREE LIST						
QUANTITY	BOTANICAL NAME	COMMON NAME	CONTAINER SIZE	SPACING	WATER USE	DROUGHT TOLERANCE
42	CELTIS SENSIBIS	PRAIRIE SENTINEL HACKBERRY	24" BOX	18'-0"	LOW	Yes
19	CERCIS CANADENSIS FOREST PANSY	FOREST PANSY REDBUD MULTI-STEM	24" BOX	12'-0"	MODERATE	No
8	GINKGO BILوبا PRINCETON SENTINEL	PRINCETON SENTINEL MAIDENHAIR TREE	24" BOX	15'-0"	MODERATE	No
11	LAGERSTROEM A INDICA MULTI-STEM	CRABE MYRTLE MULTI-STEM	24" BOX	20'-0"		
22	LAURUS X SARATOGA	SARATOGA BAY LAUREL	48" BOX	15'-0"	LOW	Yes
2	OLEA EUROPAEA 'SWAN HILL'	SWAN HILL OLIVE	48" BOX	30'-0"	VERY LOW	No
7	PISTACIA CHINENSIS	CHINESE PISTACHE MALE ONLY	24" BOX	40'-0"		
9	QUERCUS AGRIFOLIA	COAST LIVE OAK	24" BOX	30'-0"	VERY LOW	Yes
3	TRISTANODIA LAURINA ELEGANT	WATER GUM	24" BOX	20'-0"	MODERATE	No
3	ULMUS PARVIFOLIA	CHINESE ELM DRUM	24" BOX	30'-0"	LOW	Yes

IRRIGATION DESIGN INTENT & MWELO CONFORMANCE

1. IRRIGATION SYSTEM IS DESIGNED TO PROVIDE THE MINIMUM AMOUNT OF WATER NECESSARY TO SUSTAIN GOOD PLANT HEALTH. THE SELECTED IRRIGATION METHOD AND MATERIALS ARE GRADE-SELECTED FOR DURABILITY, FUNDAL RESISTANCE AND MINIMUM MAINTENANCE REQUIREMENT.
 2. THE SYSTEM IS A COMBINATION OF OVERHEAD SPRINKLER AND SURFACE IRRIGATION CAPABLE OF ADJUSTING TO PLANT TYPE, EXPOSURE AND SLOPE CONDITIONS.
 3. CONTROL OF THE SYSTEM SHALL BE BY A WEATHER-ENABLED CONTROLLER CAPABLE OF DAILY RATE ADJUSTMENT BASED ON REAL-TIME WEATHER CONDITIONS AS MEASURED BY AN ON-SITE WEATHER SENSOR.
 4. THE SYSTEM INCLUDES MASTER CONTROL VALVE AND FLOW SENSING CAPABILITY WHICH WILL SHUT DOWN ALL OR PART OF THE SYSTEM IF ANY LEAKS ARE DETECTED.
 5. THE LAYOUT IS OVER 60 FEET ABOVE THE TOP OF NEW LANDSCAPING AND WILL MEET THE REQUIREMENTS OF THE WATER EFFICIENCY LANDSCAPE ORDINANCE (WELO).
- ATTACHED CATERGORY CODES: WATERSURFEFFICIENT/DOCS/MVELO/09-10-09 PDF

MWELO CONFORMANCE

I HAVE COMPLIED WITH THE CRITERIA OF ARTICLE 19 OF THE ZONING CODE, INCLUDING ALL DESIGN STANDARDS OF SECTION 4-1908, AND APPLIED THEM FOR THE EFFICIENT USE OF WATER IN THE LANDSCAPE DESIGN PLAN.

AS ATTESTED BY PROJECT LANDSCAPE ARCHITECT

SHRUB & GROUNDCOVER LIST						
BOTANICAL NAME	COMMON NAME	CONTAINER SIZE	SPACING	WATER USE	DROUGHT TOLERANT	
SHRUB						
ARCTOSTAPHYLOS DENSIFLORA HOWARD MCINNIN	HOWARD MCINNIN MANZANITA	5 GAL	6'-0"	LOW	Yes	
CARPENTERIA CALIFORNICA ELIZABETH	BUSH ANEMONE	1 GAL	4'-0"	MODERATE	No	
CEANOTHUS GLORIOSUS ANCHOR BAY	POINT REYES CEANOTHUS	5 GAL	4'-0"	LOW	Yes	
CHONDROPLETALUM TETRIDIUM	CAPE RUSH	1 GAL	4'-0"	LOW	Yes	
CISTIS 'SUNSET'	ROCKROSE	1 GAL	6'-0"	LOW	Yes	
PHORMIUM 'CREAM DELIGHT'	NEW ZEALAND FLAX	5 GAL	2'-0"	LOW	Yes	
PHORMIUM 'JACK SPRATT'	NEW ZEALAND FLAX	5 GAL	1'-0"	LOW	Yes	
PITTOSPORUM TENUIFOLIUM SILVER SHED	SILVER SHEEN KOHUIHU	5 GAL	6'-0"	MODERATE	No	
RIHANIUS CALIFORNICA MOUND SAN BRUNO	COFFEEBERRY	5 GAL	6'-0"	LOW	Yes	
ROSMARINUS OFFICINALIS BENEDEN BLUE	BENEDEN BLUE ROSEMARY	1 GAL	3'-0"	LOW	Yes	
WESTRINGIA FRUTICOSA WYNNABIE GEM	COAST ROSEMARY	1 GAL	5'-0"	LOW	Yes	
GROUNDCOVER						
ANGICANTHOS 'AMBER VELVET'	AMBER VELVET KANGAROO PAW	1 GAL	2'-0"	LOW	Yes	
BOETULOGIA GRACILIS BLONDE AMBITUS	MOSQUITO GRASS	1 GAL	1'-6"	LOW	Yes	
ECHVEYRIA ELEGANS	MEXICAN SNOWBALL	1 GAL	1'-0"	LOW	Yes	
FESTUCA CALIFORNICA	CALIFORNIA FESCUE	1 GAL	2'-6"	LOW	Yes	
HELLEBORUS ARGUTIFOLIUS	CORSICAN HELLEBORE	1 GAL	2'-0"	LOW	Yes	
LEONOTIS LEURUS	LOONS	1 GAL	1'-0"	LOW	Yes	
LEONARDIA LONGIFOLIA 'NYLLA'	NYLLA MAT RUSH	1 GAL	3'-6"	LOW	Yes	
MULHLENBERGIA RIGENS	DEERGRASS	1 GAL	3'-0"	LOW	Yes	
POLYSTICHUM MUNIUM	WESTERN SWORD FERN	1 GAL	3'-0"	MODERATE	No	

2330 MONROE

2330 MONROE ST.
SANTA CLARA, CA

JOB NO. Monroe-HKIT

DRAWN XA

CHECKED KK

JOB CAPTAIN Approver

ISSUE		
Δ	DATE	DESCRIPTION

[illegible]

DRAWING TITLE
PLANT LIST & TREE
SELECTIONS

SCALE 1" = 10'-0"

L2.01

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PGAdesign
LANDSCAPE ARCHITECTS
tel 510.465.1284 url PGAdesign.com
444 17th Street Oakland CA 94612

1. EXISTING TREE INFORMATION PROVIDED BY ARBORIST REPORT PREPARED BY TREE MANAGEMENT EXPERTS, DATED JANUARY 23, 2019.
2. TREE NO.2,4,5,8-85 ARE OFF-SITE TREES.

I. GENERAL

- [illegible]

II. BORING

WHERE THERE IS INSUFFICIENT SPACE TO BYPASS THE DRIP LINE BY TRENCHING ADJACENT TO ALL EXISTING TREES IN EXCESS OF 5" D.B.H., THE INSTALLATION MUST BE MADE BY BORING. THE BEGINNING AND ENDING DISTANCE OF THE BORE FROM THE FACE OF THE TREE IN ANY DIRECTION IS DETERMINED BY THE DIAMETER OF THE TREE AS SPECIFIED BY THE ACCOMPANYING TABLE:

III. TREE PROTECTION

- [illegible]

7 INCHES	\$ 2,400
8 INCHES	\$ 3,400
9 INCHES	\$ 4,400
10 INCHES	\$ 5,200
11 INCHES	\$ 6,200
12 INCHES	\$ 7,200
13 INCHES	\$ 8,200
14 INCHES	\$ 9,200
15 INCHES	\$ 10,000
16 INCHES	\$ 11,000
17 INCHES	\$ 12,000
18 INCHES AND OVER: ADD FOR EACH CALIPER INCH	\$ 1,200

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DRAWN	Author
CHECKED	Checker
JOB CAPTAIN	Approver

[illegible]

DRAWING TITLE
TREE PRESERVATION &
PLANTING

SCALE 1" = 10'-0"

L2.02

A photograph showing three square metal frames, likely for bicycle racks, arranged in a row on a concrete floor. The frames are positioned against a light-colored, textured wall. In the background, a large window with multiple panes is visible, reflecting some greenery. The floor has two circular drains.

A wooden bench with a metal frame, shown from a side profile. The bench has a wooden seat and backrest, with metal armrests and legs. The backrest consists of three horizontal wooden slats. The seat is a single wooden plank. The metal frame is made of silver-colored metal. The bench is shown against a white background.

A modern armchair with a wooden slatted back and seat, and a silver metal frame. The chair is positioned in the center of the frame, facing slightly to the right. The background is a plain, light gray wall and floor.

A wooden privacy fence with a black metal top rail and bottom rail, set against a backdrop of trees and a house. The fence is made of vertical wooden planks and is surrounded by green grass and shrubs.

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CHECKED	KK
JOB CAPTAIN	Approver

L3.01

play area components

6 KEY ELEMENTS: SWINGING, CLIMBING, BALANCING, SPINNNING & BRACHIATING- PROVIDE 6

SWINGING



MODEL: OODLE SWING HDG #228069, AGES 6 TO 12,
MANUFACTURER: LANDSCAPE STRUCTURES, www.playlsi.com,
TELEPHONE: 888-438-6574

BRACHIATING



MODEL: FITCORE EXTREME JUMP HANG #244193, AGES 6 TO 12, MANUFACTURER: LANDSCAPE STRUCTURES, www.playlsi.com, TELEPHONE: 888-438-6574

CLIMBING



MODEL: COZY DOME #168099, AGES 2 TO 5,
MANUFACTURER: LANDSCAPE STRUCTURES,
www.playlsi.com, TELEPHONE: 888-438-6574

BALANCING



MODEL: BOOGIE BOARD #193176
AGES 6 TO 12, MANUFACTURER:
LANDSCAPE STRUCTURES,
www.playlsi.com, TELEPHONE:
888-438-6574

SPINNING



MODEL: CURVA SPINNER #249553, AGES 6 TO 12, MANUFACTURER: LANDSCAPE STRUCTURES, www.playlsi.com, TELEPHONE: 888-438-6574

ROCKING



MODEL: SPRINGER #NRO115 & NRO118, AGES 2 TO 5, MANUFACTURER: KOMPAN INC,
www.kompan.us, TELEPHONE: 800-426-9788

+ 1 KEY ELEMENTS
running/ free play/imagination elements at
lawn area adjacent to formal play areas



PRECAST EGG SHAPED BENCHES WILL PROVIDE A UNIQUE ELEMENT TO THE PLAY AREA AS WELL AS FOSTERING IMAGINATIVE PLAY. MANUFACTURED BY QCR CONCRETE.



RECLAIMED URBAN STREET TREES WILL BE USED TO
CREATE WOODEN BENCHES IN THE PLAY AREA
FOSTERING SENSORY & IMAGINATIVE PLAY.



LAWN, NO MOW TURF AND NATIVE PLANTINGS WILL SURROUND THE PLAY AREA FOSTERING IMAGINATIVE AND SENSORY PLAY.

SENSORY/ IMAGINATIVE PLAY



MODEL: BONGO AND XYLOFUN PANEL #168666, AGES 2 TO 5,
MANUFACTURER: LANDSCAPE STRUCTURES, www.playlsi.com,
TELEPHONE: 888-438-6574

MODEL: IMAGINATION TABLE #168105, AGES 2 TO 5, MANUFACTURER: LANDSCAPE STRUCTURES, www.playlsi.com, TELEPHONE: 888-438-6574

A group of five people, three men and two women, are standing on a rooftop terrace. They are dressed in casual attire, including hoodies, jeans, and sneakers. The terrace features a low concrete wall and some potted plants. In the background, there are modern multi-story buildings with large windows and balconies. A string of small lights hangs across the scene. The overall atmosphere is bright and modern.

A yellow and black outdoor exercise machine. It features a vertical frame with a ladder-like structure on the left side and a platform on the right side. The machine is designed for outdoor use and is part of a fitness trail.

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ON-SITE PRIVATE RECREATION AMENITIES TABLE

THE FOLLOWING ARE THE FOUR OF EIGHT MINIMUM ON-SITE PRIVATE PARK ELEMENTS THIS PROJECT IS PURSUING

PRIVATE PARK-LIKE ELEMENTS	DESCRIPTION	AREA
1. CHILDREN'S PLAY APPARATUS AREA	CONFORMS TO CURRENT FEDERAL CONSUMER PRODUCT SAFETY COMMISSION GUIDELINES. SEPARATE PLAY AREAS FOR AGES 2-5 & 5-12 WITH THE INCLUSION OF FIVE OF THE 6 + 1 KEY ELEMENTS. SEE PLAY AREA PLAN ENLARGEMENT FOR FURTHER DESCRIPTION AND ITEMIZATION OF ELEMENTS.	6,331 SF
2. LANDSCAPED & FURNISHED PARK-LIKE QUIET AREA AT BOCCIE COURT NOTE THIS IS NOT AN OPEN NATURAL TURF AREA WHICH REQUIRES HALF ACRE MINIMUM	LAWN AREAS ADJACENT TO BOCCIE COURT IS PROVIDED AND INCLUDES LOG BENCHES, BENCHES, TABLE & CHAIRS, AND NATIVE PLANTINGS.	3,862 SF
3. RECREATIONAL COMMUNITY GARDENS	PLANS CALL FOR 9 RAISED BEDS SURROUNDED BY DECOMPOSED GRANITE PAVING. IN ADDITION DINING TABLES, BENCHES AND LOG SEATS ARE PROVIDED AT THIS AREA.	2,370 SF
4. FAMILY PICNIC AREA	PLANS CALL FOR 2 PICNIC AREAS OUTSIDE OF THE COMMUNITY ROOM. THESE AREAS INCLUDE TWO BBQ AND 7 DINING TABLES.	3,289 SF
5. GAME, FITNESS OR SPORT COURT AREA (PETANQUE COURT)	CONFORMS TO CURRENT FEDERAL CONSUMER PRODUCT SAFETY COMMISSION GUIDELINES. SEPARATE PLAY AREAS FOR AGES 2-5 & 5-12 WITH THE INCLUSION OF FIVE OF THE 6 + 1 KEY ELEMENTS. SEE PLAY AREA PLAN ENLARGEMENT FOR FURTHER DESCRIPTION AND ITEMIZATION OF ELEMENTS.	730 SF
6. GAME, FITNESS OR SPORT COURT AREA (FITNESS PATHWAY)	PLANS CALL FOR A 5' WIDE PERIMETER PATH AROUND THE DEVELOPMENT WHICH ALSO FUNCTIONS AS FIRE EGRESS PATH. ALONG THE SAN TOMAS EXPRESSWAY THERE WILL BE 3 BENCHES AND 3 FITNESS STATIONS. ALONG MONROE STREET THERE IS A BENCH AT THE ENTRYWAY. BUT THE REMAINDER OF THE 8' WIDE PATH REMAINS WITHOUT BENCHES DUE TO THE WIDTH NOT ACCOMMODATING BENCHES AND FITNESS STATIONS ALONG WITH BIOFILTRATION AND FIRE LADDER PADS.	12,354 SF
7. INTERIOR COMMUNITY ROOM	COMMUNITY ROOM WILL PROVIDE A SITTING AREA, DINING AREA, KITCHENETTE, ENTERTAINMENT CENTER WITH TV, MUSIC EQUIPMENT, ETC.	1,103 SF
8. INTERIOR FITNESS ROOM	FITNESS ROOM WILL INCLUDE (4) THREADMILLS, (2) TRX PRO 4 SUSPENSION TRAINING SYSTEM, (4) SPINN BIKE, WEIGHT TRAINING EQUIPMENT.	655 SF
9. INTERIOR GAME ROOM	GAME ROOM WILL INCLUDE SHARED BOARD GAMES, SEATING AND TV SCREEN	655 SF
10. PUTTING GREEN	ARTIFICIAL TURF 6.5' RADIUS PUTTING GREEN	787 SF

32,670 SF MINIMUM ACTIVE RECREATIONAL USES MUST BE PROVIDED

THIS PLAN PROVIDES TOTAL ACTIVE RECREATIONAL USES: 31,836 SF

EXTERIOR ACTIVE RECREATIONAL SPACES EXCLUDES:
4' SET BACK FROM BUILDING FACADE, SHRUB ONLY AREAS AT PARKING LOT,
UTILITY AREAS, AND BIOFILTRATION AREAS.

PLAY AREA: 3,500 SF MINIMUM

2330 MONROE

2330 MONROE ST.
SANTA CLARA, CA

JOB NO.	Monroe-HKIT
DRAWN	XA, KK
CHECKED	KK
JOB CAPTAIN	KK

[illegible]

DRAWING TITLE
ON-SITE RECREATION
AMENITIES

SCALE	As indicated
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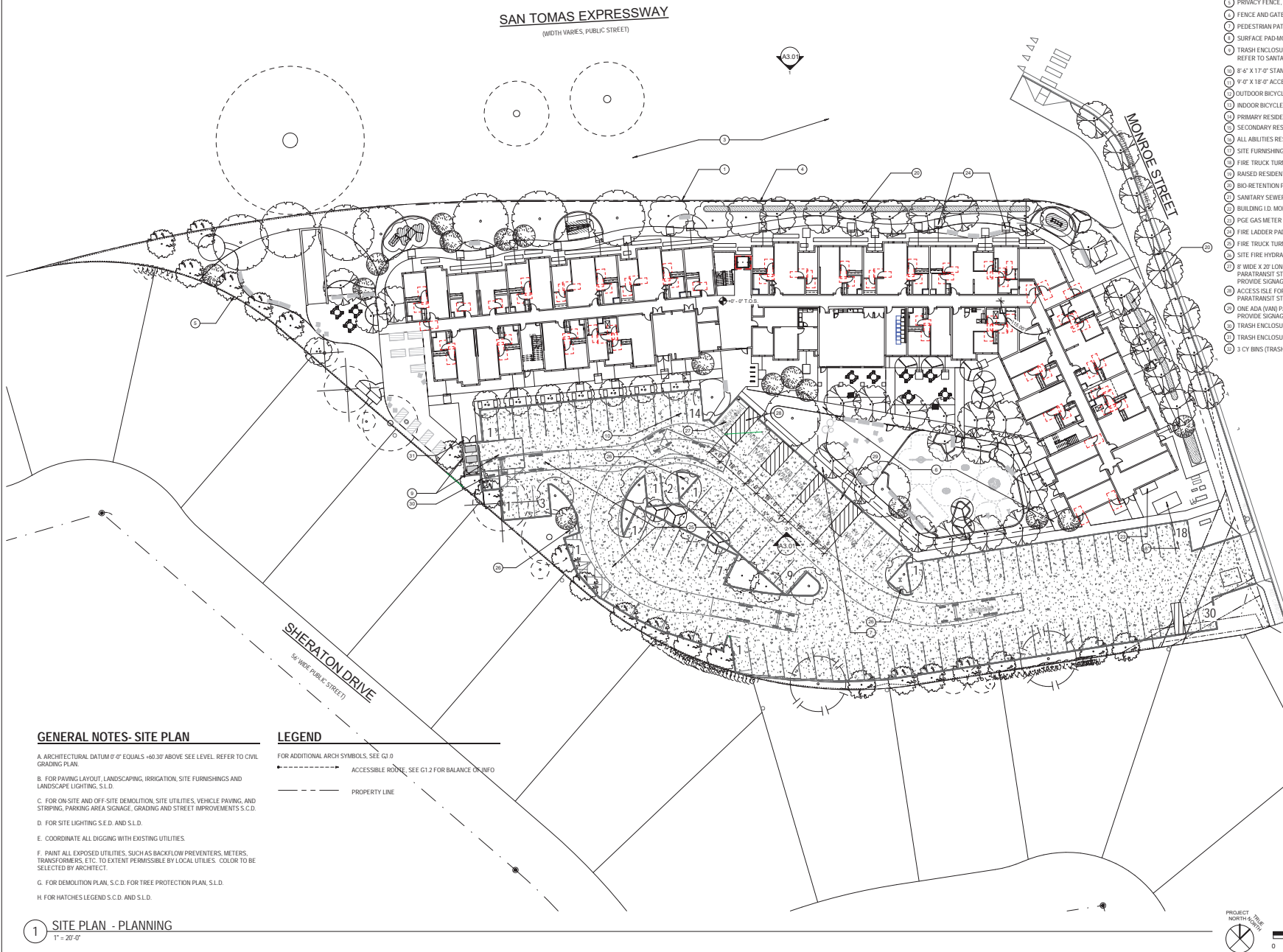
L4.01

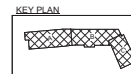
- 1 PROPERTY LINE
- 2 SE BACK LINE
- 3 ADJACENT COUNTY OWNED PARCEL (BLU C.)
- 4 EXISTING LOCAL ROADWAY TO REMAIN
- 5 WOOD WALL FENCE (SAN TOMAS), S.I.D.
- 6 PRINCE V FENCE, S.I.D.
- 7 FENCE AND GATE AT COMMUNITY/PLAY AREA
- 8 PEDESTRIAN PATH, S.I.D.
- 9 SURFACE PAID-MOUNTED TRUMPUP AREA
- 10 TRASH ENCLOSURE AND PICK-UP STAGING AREA. REFER TO SANTA CLARA SOLID WASTE GUIDELINES
- 11 8' X 17' STD STANDARD PARKING STALL
- 12 9' X 10' 0" ACCESSIBLE PARKING STALL
- 13 OUTDOOR BICYCLE PARKING CLASS 2
- 14 INDOOR BICYCLE PARKING CLASS 1
- 15 PRIMARY RESIDENT ENTRY
- 16 SECONDARY RESIDENT ENTRY
- 17 ALL UTILITIES RESIDENT PLAY AREA, S.I.D.
- 18 SITE FURNISHINGS, S.I.D.
- 19 FIRE TRUCK TURN-AROUND PATH, S.C.D.
- 20 RAISED RESIDENT GARDEN BEDS, S.I.D.
- 21 BIO-RETENTION PLANTING, S.C.D., S.I.D.
- 22 SANITARY SEWER EASEMENT, S.C.D.
- 23 BUILDING ID# MONUMENT SIGN
- 24 PGE GAS METER
- 25 FIRE LADDER PADS, S.I.D.
- 26 FIRE TRUCK TURNAROUND, S.C.D.
- 27 SITE FIRE HYDRANT, S.C.D.
- 28 8' WIDE X 20' LONG LOADING, DROP-OFF, PARATRANSIT STALL. NO PARKING, NO STORAGE
- 29 ACCESS ISLE FOR LOADING, DROP-OFF, PARATRANSIT STALL
- 30 ADA (VAN) PARKING STALL FOR GUESTS, PARKING SPACE RESERVED FOR GUESTS
- 31 TRASH ENCLOSURE SLIDING GATE
- 32 TRASH ENCLOSURE GATE/MANAGEMENT
- 33 3 CY BINS (TRANS/RECYCLE/COMPOST)

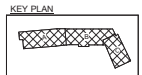
H. FOR HATCHES LEGEND S.C.D. AND S.L.D.

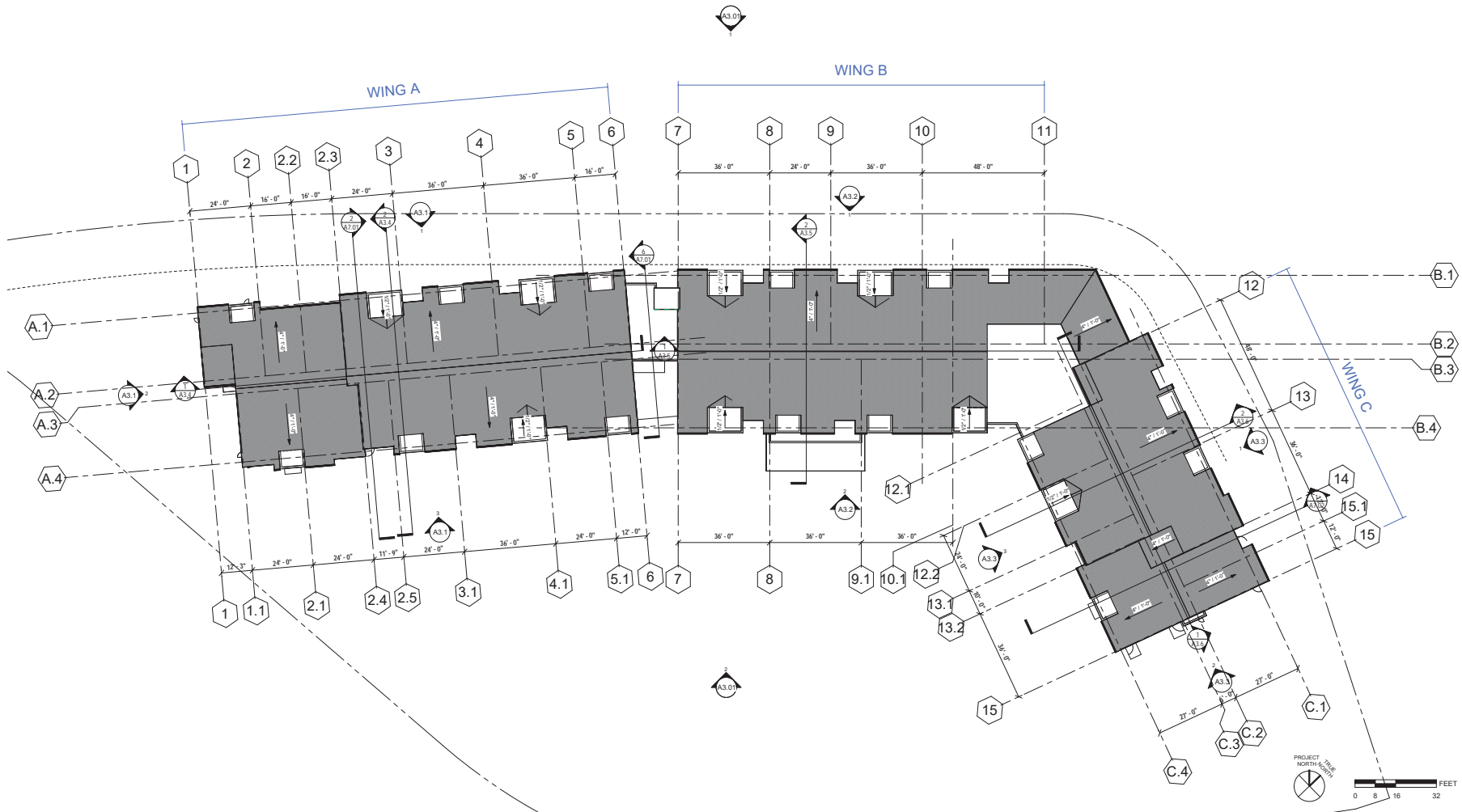
— — — — — PROPERTY LINE

1" = 20'-0"









1 ROOF OVERALL PLAN - PLANNING 1/16" = 1'-0"

GENERAL NOTES - OVERALL FLOOR PLAN

- A. SEE ENLARGED FLOOR PLANS FOR ADDITIONAL INFORMATION, DIMENSIONS, COMMON AREA WALL TAGS, WINDOW TAGS, COMMON AREA DOOR TAGS.
- B. SEE A4 - SERIES ARCHITECTURAL ENLARGED UNIT PLANS UNIT FOR UNIT WALL TAGS AND UNIT DOOR TAGS.
- C. SEE DOOR, WINDOW, AND FINISH SCHEDULES FOR ADDITIONAL INFORMATION.
- D. SEE SLAB PLANS FOR ADDITIONAL INFORMATION INCLUDING LOCATIONS OF CONCRETE CURBS AT WALLS, PITS, DRAINS, PENETRATIONS AND SLAB DEPRESSIONS.
- E. SAFETY GLAZING MUST BE PROVIDED AT HAZARDOUS LOCATIONS PER CBC 2406.4, INCLUDING BUT NOT LIMITED TO, GLAZING WITHIN 18 INCHES OF A WALKING SURFACE, GLAZING IN DOORS AND WINDOWS ADJACENT TO DOORS.

LEGEND - FLOOR PLAN

FOR ADDITIONAL ARCH. SYMBOLS, SEE C0.01

1 HOUR RATED ASSEMBLY

2 HOUR RATED ASSEMBLY

HORIZONTAL 2 HR FIRE WALL

PROPERTY LINE

60" DIA. ACCESSIBLE WHEELCHAIR TURNING RADIUS

30' X 48' ACCESSIBLE WHEELCHAIR CLEARANCE

F.E.C. RECESSED CABINET W/FIRE EXTINGUISHER RATED 2A, SEE

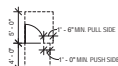
F.E. SURFACE MOUNTED FIRE EXTINGUISHER CABINET RATED 2A

UNIT

SIGN TYPE - SEE

A10.40 FOR SIGNAGE

SCHEDULE & DETAILS



DOORS ON ACCESSIBLE ROUTE - REQUIRED CLEARANCE

UNIT IDENTIFICATION LEGEND

THE FOLLOWING ARE LOCATED WITHIN EACH UNIT TO IDENTIFY:

UNIT TYPE XX

UNIT #

UNIT TYPE

UNIT NUMBER

MOBILITY UNIT - PER CBC 11B-809.2 - 11B-809.4

COMMUNICATION UNIT (HVI) - PER CBC 11B-809.5

KEY PLAN



2330 MONROE

2330 MONROE ST.
SANTA CLARA, CA

JOB NO. 80340

DRAWN -

CHECKED -

JOB CAPTAIN -

ISSUE

DATE	DESCRIPTION
5/08/08/19	PCC RESUBMITTAL
6/09/06/19	PCC RESUBMITTAL

5/08/08/19 PCC RESUBMITTAL

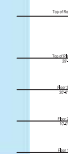
6/09/06/19 PCC RESUBMITTAL

DRAWING TITLE
ROOF OVERALL PLAN

SCALE As indicated

A2.5.1

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0 8' 16' 32'

SCALE: 1/16" = 1'-0"



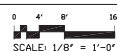
0 8' 16' 32'

SCALE: 1/16" = 1'-0"

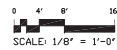


NOTES

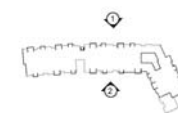
- ① FIBER CEMENT PANELS
- ② FIBER CEMENT HORIZONTAL SIDING
- ③ FIBER CEMENT BOARD AND BATTEN
- ④ METAL CANOPY
- ⑤ VINYL WINDOWS
- ⑥ ASPHALT COMPOSITION ROOF SHINGLE
- ⑦ FENCE, S.I.D.
- ⑧ DECORATIVE WALL SCOECE
- ⑨ PERFORATED ALUMINUM SUNSHADE
- ⑩ GUTTER

$$1/8'' = 1'-0''$$
 $10^8 = 10^0$

1/8" - 1"

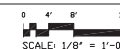


A3.1.1



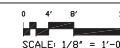
NOTES

- ① FIBER CEMENT PANELS
- ② FIBER CEMENT HORIZONTAL SIDING
- ③ FIBER CEMENT BOARD AND BATTEN
- ④ METAL CANOPY
- ⑤ VINYL WINDOWS
- ⑥ ASPHALT COMPOSITION ROOF SHINGLE
- ⑦ FENCE, S.L.D.
- ⑧ DECORATIVE WALL SCIENCE
- ⑨ PERFORATED ALUMINUM SUNSHADE
- ⑩ GUTTER

$$1/9^\circ = 11.0^\circ$$
$$1/9^\circ = 11.0^\circ$$


WING

WING





2330 MONROE ST.
SANTA CLARA, CA

[illegible]

- ① FIBER CEMENT PANELS
- ② FIBER CEMENT HORIZONTAL SIDING
- ③ FIBER CEMENT BOARD AND BATTEN
- ④ METAL CANOPY
- ⑤ VINYL WINDOWS
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- ⑧ DECORATIVE WALL SCIENCE
- ⑨ PERFORATED ALUMINUM SUNSHADE
- ⑩ GUTTER



A3.1.3
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A3.1.3

LEGEND / ABBREVIATIONS

- | SYMBOL | ABBREVIATION | DESCRIPTION |
|---------|---|-------------|
| A | AMPERE | |
| AMP | AMPERE INTERRUPTING CAPACITY | |
| BT | BOTH FUSED FUSES | |
| AW | AUTOMATIC WIRING CONNECTION | |
| AWG | AMERICAN WIRE GAUGE | |
| C | CONDUIT | |
| CU | COPPER | |
| D | ONE WAY DISTANCE OF FEEDER OR BRANCH CIRCUIT | |
| GC | GENERAL CONTRACTOR | |
| GFI | GROUND FAULT INTERRUPTER | |
| G. GND | GROUND | |
| HP | HOTSPOT/HAZARD | |
| ISC | SHORT CIRCUIT CURRENT | |
| MB | MAIN CIRCUIT BREAKER | |
| MLO | MARK LOG ONLY | |
| CEC | CALIFORNIA ELECTRICAL CODE | |
| PN/USE | FURNISH, INSTALL, CONNECT | |
| ASC | RIGID METAL CONDUIT | |
| ENW | UNLESS OTHERWISE NOTED | |
| V | VOLTS | |
| VA | VOLT AMPERE | |
| VFD | VOLTAGE DROP | |
| VF | VARIABLE FREQUENCY DRIVE | |
| WP | WATERPROOF | |
| -G- | SUBCIRCUIT LOCATED NEXT TO THE DEVICE BEING KRAFT TO CENTER OF DEVICE | |
| -SVP- | SILICON VALLEY POWER | |
| ---P--- | PRIMARY POWER UNDERGROUND CONDUIT | |
| ---E--- | SECONDARY POWER UNDERGROUND CONDUIT | |
| ---T--- | TELEPHONE CABLE UNDERGROUND CONDUIT | |
| ---C--- | TV CABLE UNDERGROUND CONDUIT | |

DWG NO.	DRAWING TITLE
ES0.0	ELECTRICAL GENERAL INFORMATION
ES1.0	ELECTRICAL UTILITY SITE PLAN
ES1.1	ENLARGED ELECTRICAL UTILITY PLAN
ES2.0	TRENCH DETAILS
ES2.1	SVP STANDARD DETAILS

ADDITIONAL SVP NOTES

1. THE DEVELOPER SHALL PROVIDE AND INSTALL ELECTRICAL FACILITIES PER SANTA CLARA CITY CHAPTER 17.50.20.
2. INSTALLATION OF UNDERGROUND FACILITIES SHALL BE IN ACCORDANCE WITH CITY OF SANTA CLARA ELECTRICITY STANDARD 10-000, LATEST VERSION, AND SANTA CLARA CITY CODE CHAPTER 17.50.60.
3. UNDERGROUND SERVICE ENTRANCES AND CONDUITS SHALL BE "PRIVATELY OWNED, MAINTAINED AND INSTALLED PER CITY BUILDING INSPECTION DIVISION CODES. ELECTRIC METERS AND MAIN DISCONNECTS SHALL BE INSTALLED PER BULKLEY POWER COMPANY PER REV. 2.
4. THE DEVELOPER SHALL GRANT TO THE CITY, WITHOUT COST, ALL EASEMENTS AND/OR RIGHT OF WAY NECESSARY FOR SERVING THE PROPERTY OF THE DEVELOPER AND FOR THE INSTALLATION OF UTILITIES (SANTA CLARA CITY CODE CHAPTER 17.50.10).
5. ANY RELOCATION OF EXISTING UTILITIES SHALL BE AT DEVELOPERS EXPENSE.
6. THE DEVELOPER SHALL PROVIDE THE FOLLOWING IN ACCORDANCE WITH CURRENT CITY STANDARDS AND SPECIFICATIONS, ALL TRENCHING, BACKFILL, REBURIALING, LANDSCAPING, CULVERT, ANCHOR BOLTS, SHAFTS, STREET LIGHT FOUNDATIONS, SIGN FOUNDATIONS, AND SUBSURFACE HOLDINGS REQUIRED FOR POWER DISTRIBUTION, STREET LIGHTING, AND SIGNAL COMMUNICATION SYSTEMS AS REQUIRED BY THE CITY IN THE DEVELOPMENT OF FRONTAGE AND ONSTREET PROPERTY. UPON COMPLETION OF IMPROVEMENTS THE DEVELOPER SHALL PROVIDE A RECORD DRAWING SET TO THE CITY SHOWING THE LOCATION OF ALL NEW OR EXISTING UTILITIES, INCLUDING BUT NOT LIMITED TO, GAS, WATER, SEWER, CABLE, TELEPHONE, FIBER OPTIC, AND OTHER UTILITIES. THE DEVELOPER SHALL CONSULT WITH THE CITY ENGINEERING DEPARTMENT TO DETERMINE THE ELECTRICAL SUPPLY SYSTEM OF THE PROJECT AREA. THE DEVELOPER SHALL FLUSH AND TEST ALL NEWLY INSTALLED ELECTRICAL CABLES, CABLES, TRANSFORMERS, METERES, AND OTHER EQUIPMENT THAT IT DEEMS NECESSARY FOR THE BETTERMENT OF THE SYSTEM (SANTA CLARA CITY CODE CHAPTER 17.50.20.9).
7. ELECTRICAL IMPROVEMENTS INCLUDING UNDERGROUND ELECTRICAL CONDUITS ALONG FRONTALITE OF PROPERTIES MAY BE REQUIRED IF ANY SINGLE NON-RESIDENTIAL, PRIVATE IMPROVEMENT VALUED AT \$200,000 OR MORE OR ANY SERIES OF NON-RESIDENTIAL, PRIVATE IMPROVEMENTS MADE WITHIN A THREE-YEAR PERIOD VALUED AT \$200,000 OR MORE (SANTA CLARA CITY CODE TITLE 17 APPENDIX A (A) UNDERGROUND EASMENT).
8. ALL SIP-WOODED EQUIPMENT IS TO BE COVERED BY A NON-ELECTRICAL EASMENT (SEE G.E.I.) THIS IS DIFFERENT THAN A P.E. ONLY PUBLICALLY OWNED DRY UTILITIES ARE COVERED. OTHER FACILITIES SUCH AS TRANSFORMERS, PRIVATE IMPROVEMENTS MADE WITHIN A THREE-YEAR PERIOD VALUED AT \$200,000 OR MORE (SANTA CLARA CITY CODE TITLE 17 APPENDIX A (A) UNDERGROUND EASMENT).

IMMEDIATELY WITH SVP FACILITIES, SEE US 100.FOOT DETAIL.

IN ADDITION TO SVP FACILITIES, ONSTREET OR OFFSTREET, ARE TO REMAIN UNLESS SPECIFICALLY ADDRESSED BY DEVELOPER'S DRAWINGS. BY SEPARATE DOCUMENT IT IS THE DEVELOPER'S RESPONSIBILITY TO MAINTAIN ALL CITY REQUIREMENTS WITH REGARD TO CONTINUED CLOSURE OF HIGHWAYS AND TRAVEL FACILITIES. THESE CLEARANCE REQUIREMENTS BY DEVELOPER SHOULD NOT ASSURE THAT SVP WILL BE REMOVING ANY EXISTING FACILITIES WITHOUT DETAILED DESIGN DRAWINGS FROM SVP INDICATING POTENTIAL REMOVAL. SINCE A VARIOUS TYPES OF SVP FACILITIES ARE TO BE REMOVED OR RELOCATED, ON CONCEPTUAL PLANS DOES NOT MEAN THAT THIS ACTION HAS BEEN APPROVED BY SVP.

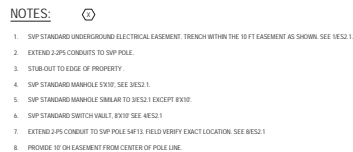
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SCALE As indicated

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1. **IN** (B) PAD-MOUNTED UTILITY TRANSFORMER W/ 8" X72" PAD:
PROVIDE TRANSFORMER GROUNDING PER UTILITY COMPANY REQUIREMENT.
10. **PROVIDE** 10 FT CLEAR WORKING SPACE IN FRONT OF THE TRANSFORMER, PER SVP REQUIREMENTS
(10 FT IN FRONT OF TRANSFORMER) AND 5 FT FROM BOTH SIDES AND BACK.
(SEE SVP STANDARD WORKSHEET)
18. **PROVIDE** 20' (30") PAD BOX, PER SVP REQUIREMENTS.
SEE UTILITY DRAWINGS FOR SPECIFICATION AND EXACT LOCATION & REQUIREMENTS.
2. **SERVICE** MAIN SWITCHBOARD: 2000A MCC, 3PH, 208/276V.
PROVIDE 3 FT CLEAR WORKING SPACE IN FRONT OF MAIN SWITCH BOARD, PER SVP REQUIREMENTS.
3. **MINIMUM** 18" DEEP ACCESS PATH SHALL BE PROVIDED AND MAINTAINED ON SIDE OF EQUIPMENT PAD TO ALLOW AN ELECTRIC DEPARTMENT LINE TRUCK TO DRIVE UP NEXT TO THE PAD FOR INSTALLATION AND MAINTENANCE OF EQUIPMENT.

2

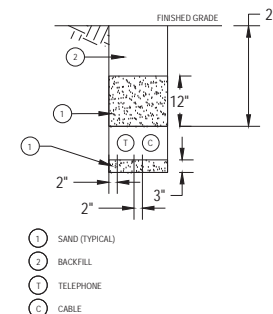
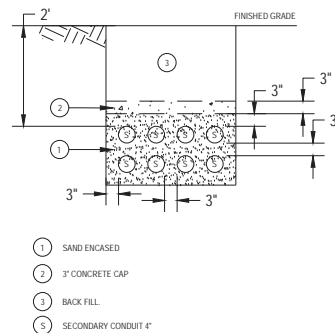


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ELECTRICAL UTILITY
PLAN

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COPYRIGHT © 2019 HEST ARCHITECTS

1. ALL CLEARANCE DIMENSIONS INDICATED ARE MINIMUM.
2. BACKFILL SHALL BE COMPACTED IN ACCORDANCE WITH GOVERNING AGENCY SPECIFICATIONS.

GENERAL NOTES

SCALE	5
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5

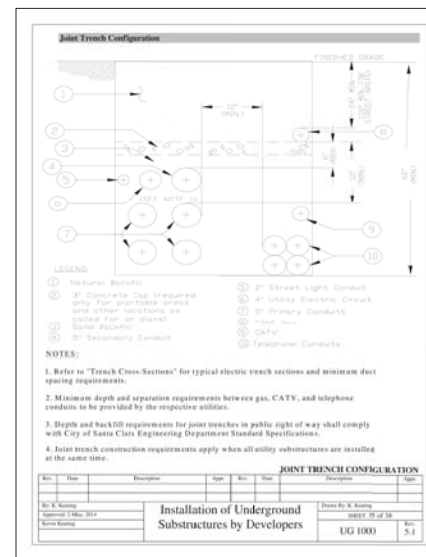
SECONDARY TRENCH DETAIL

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TELEPHONE & CABLE TRENCH DETAIL

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JOINT TRENCH DETAIL

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2330 MONROE ST.
SANTA CLARA, CA

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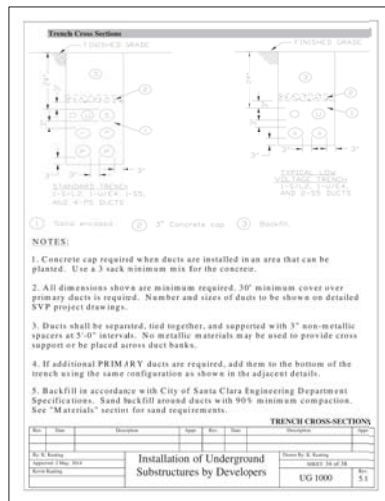
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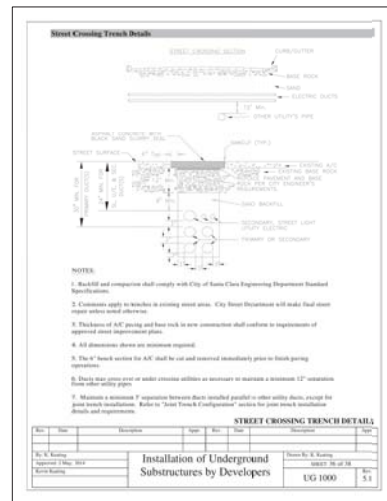
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TRENCH DETAILS

SCALE	As indicated
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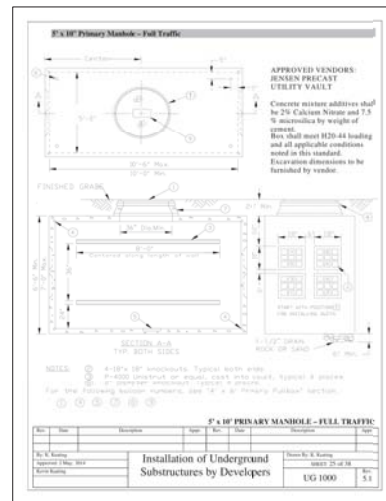
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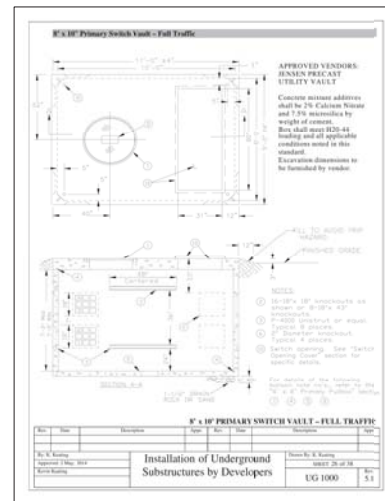
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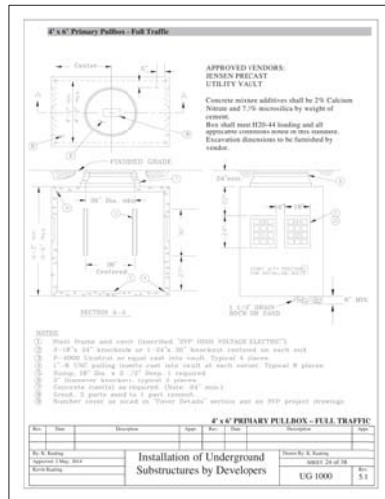
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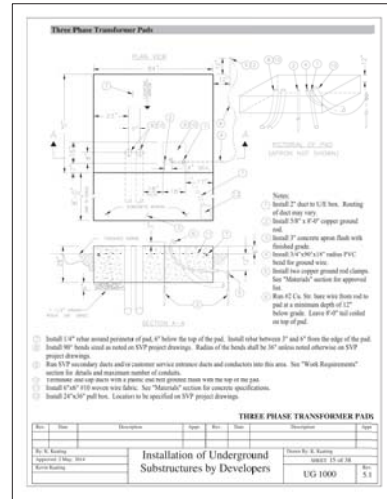
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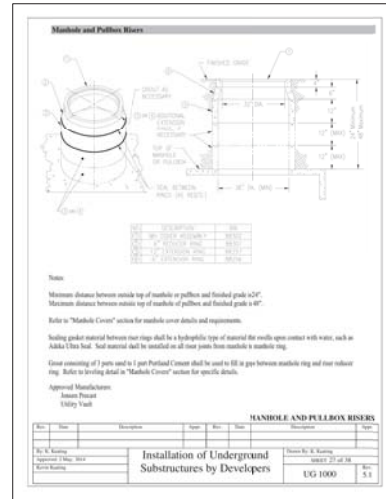
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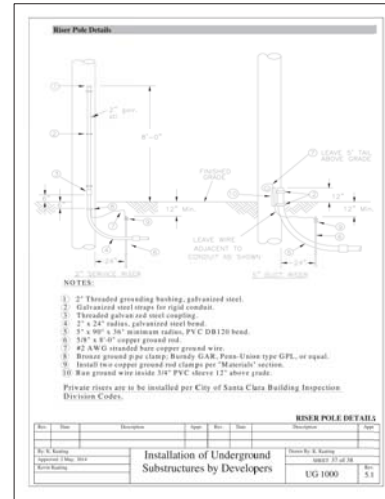
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6/ES2.1	SCALE	6
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7/ES2.1	SCALE	7
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8/ES2.1	SCALE	8
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DETAILS SHOWN ARE FOR REFERENCE USE.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SANTA CLARA AND MONROE STREET
HOUSING PARTNERS, L.P., FOR THE PROJECT LOCATED AT
2330 MONROE STREET, SANTA CLARA**

PLN2019-13763 (General Plan Amendment)
PLN2019-13723 (Application of Rezoning)
CEQ2019-01067 (Mitigated Negative Declaration)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on February 1, 2019, HKIT Architects and Freebird Development Company, LLC (“Applicant”) filed an application for the development of a 2.47-acre site at 2330 Monroe Street, a vacant city-owned property at the southeast corner of Monroe Street and San Tomas Expressway (“Project Site”);

WHEREAS, the Applicant applied to rezone the Project Site from Single Family Residential (R1-6L) to Planned Development to allow construction of a multi-family affordable housing development consisting of 65 units, onsite amenities, approximately 32,000 square foot of open space and surface parking (“Project”);

WHEREAS, the Project approvals will include: Certification of the Environmental Impact Report (EIR), Rezone of the Project Site Single Family Residential (R1-6L) to Planned Development, with Conditions of Approval; and the Disposition and Development Agreement attached hereto and incorporated herein by this reference;

WHEREAS, the Disposition and Development Agreement contemplates that implementation of the Project will require myriad permits, approvals, entitlements, agreements, permits to enter, utility services, subdivision maps, building permits, and other authorizations in order to implement the Project, including but not limited to a ground lease (the “Ground Lease”), Loan Agreement, and Regulatory Agreement for a portion of the Project Site (together, the “Project Documents”);

WHEREAS, the Project Documents, including the Disposition and Development Agreement and the Ground Lease, will help address the City's housing needs at a broad range of income levels by providing the City with 65 housing units, of which 100% of the units will be affordable to households with Area Median Income (AMI) levels ranging from 30% to 120%;

WHEREAS, notice of the public hearing on the proposed Project was published in the *Santa Clara Weekly*, a newspaper of general circulation for the City on January 16, 2020;

WHEREAS, on January 16, 2020, the notice of public hearing for the January 28, 2020 City Council meeting for this item was posted in three conspicuous locations within 300 feet of the project site and was mailed to property owners within a 1,000-foot radius of the Project Site; and

WHEREAS, the City Council has reviewed the Disposition and Development Agreement;

WHEREAS, before considering the Disposition and Development Agreement, the City Council reviewed and considered the information contained in the EIR, the CEQA Findings and the Statement of Overriding Considerations for significant unavoidable impacts in the areas of greenhouse gas emissions and traffic that cannot be avoided or substantially lessened by the adoption of feasible mitigation measures; and,

WHEREAS, on January 28, 2020, the City Council conducted a duly noticed public hearing, at which time all interested persons were invited to provide testimony and evidence, both in support of and in opposition to the proposed Disposition and Development Agreement.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby approves the Disposition and Development Agreement, substantially in the form attached hereto as Exhibit "Disposition and Development Agreement," subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

3. That this Resolution, including the Disposition and Development Agreement approval described in Section 2 above, is based on the findings set forth above, the EIR, the EIR Resolution, the CEQA Findings Related to the Certification of the EIR, and the Rezoning.

4. That the City Manager and/or designee is hereby authorized and directed to perform all acts to be performed by the City in the administration of the Disposition and Development Agreement pursuant to the terms of the Disposition and Development Agreement. The City Manager is further authorized and directed to perform all other acts, negotiate and enter into all other agreements (including a ground lease, loan agreements, deeds of trust, promissory notes, and affordable housing agreement) and execute all other documents and modifications to the Disposition and Development Agreement necessary or convenient to carry out the purposes of this Resolution and the Disposition and Development Agreement.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Disposition and Development Agreement

**DISPOSITION AND DEVELOPMENT AGREEMENT
(Freebird - 2330 Monroe Street, Santa Clara, CA 95050)**

between the

THE CITY OF SANTA CLARA

and

FREEBIRD DEVELOPMENT COMPANY, LLC

ATTACHMENTS

ATTACHMENT A	LEGAL DESCRIPTION OF CITY PROPERTY
ATTACHMENT B	SCHEDULE OF PERFORMANCE
ATTACHMENT C	[RESERVED]
ATTACHMENT D	INSURANCE REQUIREMENTS
ATTACHMENT E	FINANCING SUMMARY
ATTACHMENT F	PERMITTED EXCEPTIONS
ATTACHMENT G	GROUND LEASE
ATTACHMENT H	MEMORANDUM OF GROUND LEASE
ATTACHMENT I	CITY LOAN AGREEMENT
ATTACHMENT J	CITY PROMISSORY NOTE
ATTACHMENT K	CITY DEED OF TRUST
ATTACHMENT L	CITY ASSIGNMENT OF RENTS AND LEASES
ATTACHMENT M	CITY ASSIGNMENT OF AGREEMENTS
ATTACHMENT N	PROVISIONS FOR DISBURSEMENT AGREEMENT
ATTACHMENT O	[RESERVED]
ATTACHMENT P	CITY REGULATORY AGREEMENT
ATTACHMENT Q	GRANT DEED
ATTACHMENT R	[RESERVED]
ATTACHMENT S	CITY ENVIRONMENTAL INDEMNITY

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (Freebird - 2330 Monroe Street, Santa Clara, CA 95050), dated for identification purposes only as of _____, 2020, is entered into by and between the **CITY OF SANTA CLARA**, a California municipal corporation (the “**City**”), and **FREEBIRD DEVELOPMENT COMPANY, LLC**, a California limited liability company (“**Developer**”), with reference to the following:

R E C I T A L S

The following recitals are a substantive part of this Agreement:

A. The City is a California municipal corporation existing under the laws of the State of California.

B. The City has adopted a Housing Element to its General Plan pursuant to Government Code § 65580 *et seq.*, which sets forth City’s policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of housing affordable to low and moderate income households.

C. The City owns that certain vacant lot of approximately 2.5 acres located at 2330 Monroe Street, Santa Clara, California (the “**City Property**”) as described and depicted in Attachment A. The City issued a Request for Proposals for 2330 Monroe Street / San Tomas And Monroe dated March 30, 2018 with respect to the development of the City Property (“**RFP**”). Developer’s proposal in response to the RFP was selected.

D. Developer desires to acquire a leasehold interest in the City Property. The leasehold interest in the City Property shall be conveyed to Developer from the City, together with a fee interest in all buildings, structures, fixtures, landscaping and other improvements erected or located thereon, and all easements, rights of way, privileges, licenses, appurtenances and other rights and benefits belonging to or in any way related to the City Property including minerals, oil and gas rights, air, water and development rights, roads, alleys, easements, streets and ways adjacent to the City Property (collectively, the “**Property**”).

E. Developer shall develop the Property in accordance with the applicable conditions of approval issued by the City of Santa Clara.

F. Developer intends to develop upon the Property 65 units of housing. As of the date of this Agreement, the Parties anticipate that units will be leased as follows: (a) 16 units to be leased to 30% AMI Households who qualify as persons with developmental disabilities; (b) 10 units to be leased to 50% AMI Households; (c) 13 units to be leased to 60% AMI Households; (d) 16 units to be leased to 80% AMI Households; (e) 9 units to be leased to 120% AMI Households; and (f) 1 unit as a manager’s unit (the “**Management Unit**”). The foregoing units to be developed on the Property, excluding the Management Unit, are referred to herein as the “**Affordable Units**”. Developer also intends to 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. Developer’s leasehold interest in the City

Property, and fee interest in the Improvements located thereon, together with the development thereof in accordance with this Agreement, are referred to herein as the “**Project**”).

G. Developer requires assistance from City in order to develop and construct the Project. City has agreed to assist Developer with a loan of up to \$5,000,000 (the “**City Loan**”), provided that the Affordable Units are held for rent and rented to Qualified Tenants in accordance herewith. The total development cost of the Project is estimated to be approximately \$38,000,000. Developer intends to form a limited partnership (the “**Tax Credit Partnership**”) to own and finance the Project and who will be the successor in interest under this Agreement as to Developer’s rights and obligations regarding the Project. The Tax Credit Partnership would secure other construction and permanent financing sources to cover the total cost of developing the Project. The anticipated funding sources for the Project include the sources shown in the Financing Summary attached as Attachment E to this Agreement.

H. Developer and City agree that the City Loan will facilitate the development of affordable rental housing and provide an opportunity for a more comprehensive and coordinated project consistent with and in furtherance of the goals and objectives of the City’s Housing Element of its General Plan.

I. The development of the Project as contemplated by this Agreement is consistent with the City’s Housing Element, is in the vital and best interest of the City, is necessary for the protection of the health, safety and welfare of the City’s residents, and is in accord with the public purposes and provisions of applicable state and local laws and requirements. This Agreement further implements the City’s policies for the production of housing for all economic segments of the population.

NOW, THEREFORE, the City and Developer hereby agree as follows:

1. DEFINITIONS

1.1. Defined Terms

As used in this Agreement, the following capitalized terms shall have the following meanings:

“**30% AMI Household(s)**” means a household whose aggregate gross income equals 30% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“**50% AMI Household(s)**” means a household whose aggregate gross income equals 50% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“**60% AMI Household(s)**” means a household whose aggregate gross income equals 60% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“**80% AMI Household(s)**” means a household whose aggregate gross income equals 80% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“120% AMI Household(s)” means a household whose aggregate gross income equals 120% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“Affiliate” means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer which, if the party is a partnership or limited liability company, shall include each of the constituent members or general partners, respectively, thereof, or an entity in which Developer has an equity interest and is the managing member, managing partner or controlling shareholder. The term “control” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

“Affordability Period” means the period commencing upon Conversion (as defined in the City Loan Agreement) and terminating on the fifty-fifth (55th) anniversary thereof.

“Affordable Rent” means an amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum rent to be charged by Developer and paid by the Qualified Tenant occupying the Affordable Units as determined pursuant to the TCAC Regulations. The tenant utility allowance shall be determined by the Housing & Community Services Division of the City. The calculation of Affordable Rent shall be performed annually.

“Affordable Units” is defined in Recital F.

“Agreement” means this Disposition and Development Agreement by and between the City and Developer, including (i) the Recitals set forth herein, and (ii) all attachments hereto, which are incorporated herein by this reference.

“AMI” means the median family income figures and standards (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 50% AMI Households, 60% AMI Households, and 80% AMI Households; and (II) utilized by HCD pursuant to California Health and Safety Code Section 50093 as to 120% AMI Households.

“Business Day(s)” means Monday through Friday, except for federal and state holidays.

“City” means the City of Santa Clara, a California municipal corporation.

“City Advance” is defined in Section 3.13.

“City Assignment of Agreements” shall mean the Assignment of Agreements substantially in the form attached to this Agreement as Attachment M, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Assignment of Rents and Leases” shall mean the Assignment of Rents and Leases substantially in the form attached to this Agreement as Attachment L, subject to such

changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Deed of Trust” means the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) securing the City Loan, in substantially the form attached to this Agreement as Attachment K, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Environmental Indemnity” means the Environmental Indemnity, in substantially the form attached to this Agreement as Attachment S, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Indemnitees” means City and its departments, divisions, agencies, elected officials, boards, officers, employees, representatives and agents.

“City Lender Policy” is defined in Section 3.5.2

“City Loan” is defined in Recital G.

“City Loan Agreement” means the affordable housing loan agreement in substantially the form attached to this Agreement as Attachment I, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Loan Documents” means the City Loan Agreement, the City Promissory Note, the City Deed of Trust, the City Assignment of Rents and Leases, the City Assignment of Agreements, the City Environmental Indemnity, the City Regulatory Agreement and any amendments and modifications thereto.

“City Promissory Note” means the Promissory Note evidencing the City Loan in substantially the form attached to this Agreement as Attachment J, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Property” is defined in Recital C.

“City Regulatory Agreement” means the affordable housing regulatory agreement entered into in connection with the City Loan substantially in the form attached to this Agreement as Attachment P, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“City Representative” means the City Manager of the City or his or her designated representative.

“City’s Conditions Precedent to Closing” is defined in Section 3.7.1.

“Closing” means the date following Developer’s delivery of the Closing Notice to City upon which the conditions precedent set forth in Section 3.7.1 and 3.7.2 are satisfied or

waived in writing and the Conveyance Documents are recorded in the Official Records conveying the Property to Developer and the City has made the City Loan to Developer.

“Closing Notice” is defined in Section 3.3.

“Construction Budget” means the schedule of construction expenses actually and expected to be incurred by Developer in connection with the Project and reasonably approved by the City prior to the Closing, and as may be amended or modified pursuant to the City Loan Documents.

“Construction Contract” is defined in Section 5.3.

“Construction Lender” means a lender providing construction financing for the Project selected by Developer in its sole and absolute discretion.

“Construction Loan” means the loan for construction of the Project from Construction Lender.

“Construction Loan Documents” means any agreements and documents evidencing or securing the Construction Loan and includes all attachments, modifications and amendments thereto.

“Conveyance Documents” means, collectively, the Grant Deed, if requested by Developer, and the Ground Lease Memorandum.

“County” means Santa Clara County.

“County Loan” means that certain proposed loan from County to Developer in the amount of up to \$3,200,000.

“Developer” means Freebird Development Company, LLC, a California limited liability company, and its successors and assigns as permitted pursuant to this Agreement.

“Developer’s Conditions Precedent to Closing” is defined in Section 3.7.2.

“Development Costs” shall mean the total cost of developing and constructing the Project, as set forth in the Construction Budget.

“Disbursement Agreement” means a disbursement agreement, if requested by the Construction Lender, among the City, the Construction Lender, and Developer, which shall substantially include the terms and conditions in the list attached hereto as Attachment N, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Economic Event” is defined in Section 8.7.

“Effective Date” means the date upon which this Agreement shall have been signed by Developer and the City and the City Advance has been paid to the City.

“Eligible Project Costs” means all costs and expenses permitted and approved pursuant to this Agreement as set forth in the Construction Budget which are customarily incurred and shall have been actually incurred by Developer for the development and

construction of the Project and shall include, without limitation, the following: construction costs; a developer fee in an amount not to exceed that permitted by the TCAC Regulations; property taxes and assessments; security services; utilities fees; insurance; and such other costs, fees and expenses, as agreed to in writing by the City; provided, however, that payment to parties related to Developer for Eligible Project Costs must not exceed reasonable and customary market rates.

“Entitlements” means and includes any and all general plan amendments, zoning approvals or changes, required approvals and certifications under the California Environmental Quality Act, tentative and final tract maps, variances, conditional use permits, demolition permits, excavation/foundation permits, grading permits, building permits, inspection reports and approvals, certificates of occupancy, and other approvals, permits, certificates, authorizations, consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever required from any applicable governmental authorities in order to commence and complete the construction of the Project or any of the proposed development on the Project.

“Environmental Laws” means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Materials or Hazardous Materials Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the Health & Safety Code and the Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

“Escrow” is defined in Section 3.3.

“Escrow Agent” means Old Republic Title Company or such other escrow agent reasonably approved by the City and Developer.

“Escrow Costs” is defined in Section 3.3.

“Event of Default” is defined in Section 7.1.

“Event(s) of Force Majeure” is defined in Section 8.7.

“Evidence of Financing” is defined in Section 5.1.

“Financing Summary” means the Financing Summary attached as Attachment E and incorporated hereby, which shows the estimated sources and uses for the development and construction of the Project, as may be updated in accordance herewith; upon approval of a Project Pro Forma by the City, the approved Project Pro Forma shall constitute the Financing Summary.

“General Contractor” shall mean CORE General Contractor Inc., or such other general contractor as may be approved by City.

“Governmental Regulations” means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including,

without limitation, those relating to land use, subdivision, zoning, Environmental Laws, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including the National Environmental Policy Act (NEPA) and all Environmental Laws) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Project.

“Grant Deed” shall mean the Grant Deed substantially in the form attached to this Agreement as Attachment Q, pursuant to which the City will convey a fee interest in the Improvements to Developer.

“Ground Lease” means the Ground Lease between the City, as landlord, and Developer, as tenant, providing Developer with a leasehold interest in the City Property substantially in the form attached to this Agreement as Attachment G, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Ground Lease Memorandum” means the Memorandum of Ground Lease between the City, as landlord, and Developer, as tenant, evidencing the Ground Lease, to be recorded against the City Property in the Official Records upon the Closing, in substantially the form attached to this Agreement as Attachment H, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City.

“Hazardous Materials” means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Materials Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Materials), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, *et seq.* (42 U.S.C. Section 6903) or (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601, *et seq.*, but shall not include, customary building maintenance and cleaning products, construction products, and landscape maintenance products as are used, stored, handled, transported, treated and disposed of in compliance with Environmental Laws by owners and operators of properties similar to the Project.

“Household” means one or more persons occupying an Affordable Unit.

“Improvements” means and includes any buildings, structures, fixtures, foundations, excavation, parking, landscaping, or underground installations located on the City Property.

“Insurance Requirements” means the City’s insurance requirements attached as Attachment D and incorporated hereby.

“Investor Limited Partner” means, collectively, one or more investor limited partners selected by Developer in its sole and absolute discretion to be the limited partner(s) in the Tax Credit Partnership.

“Loan Proceeds” means funds disbursed from the City Loan.

“Losses and Liabilities” means and includes all claims, suits, causes of action, arbitration proceedings, administrative proceedings, regulatory proceedings, expenses, liabilities, losses, damages (including, without limitation, penalties, fines and monetary sanctions), injuries, charges, penalties or costs of whatsoever character, nature and kind, including reasonable attorney’s fees and costs, expert witness fees, court costs, interest and defense costs, consultant fees, investigation and laboratory fees, and remedial and response costs incurred by the indemnified party with respect to counsel of its choice, whether to property or to person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent, actual alleged or threatened.

“Management Unit” is defined in Recital F.

“Notice” means a notice in the form prescribed by Section 8.1 hereof.

“Official Records” means the official records of the Santa Clara County Recorder’s Office.

“Outside Closing Date” is the date indicated in the Schedule of Performance.

“Parties” means the City and Developer, and any permitted successors and assigns thereof.

“Permanent Loan” shall mean any permanent loan, in an amount not to exceed the Construction Loan except as reasonably approved by the City, for the Project to be made to Borrower by the Construction Lender or other lender in accordance with the Project Pro Forma following Conversion, secured by a deed of trust against the Project.

“Permitted Transfer” is defined in Section 2.3.2.

“Project” is defined in Recital F.

“Project Pro Forma” means the financial information to be prepared by Developer, and any updates and amendments thereto, including without limitation, the Project construction budget, estimated sources and uses of financing, and the Project’s operating budget and reasonably approved by the City as of the date of Closing.

“Property” is defined in Recital D.

“Qualified Tenant(s)” means a Household who qualifies as a 30%, 50%, 60%, 80%, and/or 120% AMI Household, as applicable.

“Schedule of Performance” means the Schedule of Performance attached hereto as Attachment B and incorporated hereby as may be amended from time to time, which establishes the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished, subject to Events of Force Majeure. The Schedule of Performance may be subject to revision from time to time as mutually agreed on in writing between Developer and the City.

“Senior Lender” means any lender of a Senior Loan.

“Senior Loan” means the Construction Loan and the Permanent Loan (but sequentially and not concurrently), and any other loan in the Project Pro Forma with a principal amount in excess of the City Loan.

“Senior Loan Documents” means any agreements and documents evidencing or securing a Senior Loan and includes all attachments, modifications and amendments thereto.

“Social Services” means the social services to be provided to residents of the Project, which shall include, at a minimum, services for households with intellectual and/or developmental disabilities.

“State” means the State of California.

“Subordination Agreement” means an agreement between a Senior Lender and the City in such form as is reasonably approved by the City that subordinates the City Loan and City Loan Documents to the applicable Senior Loan and Senior Loan Documents and contains such other terms as may be required by the applicable Senior Lender that are reasonably approved by the City; provided, however, that the City Regulatory Agreement shall not be subordinated.

“Tax Credit Partnership” is defined in Recital G.

“Tax Credit Regulatory Agreement” means the regulatory agreement that will be recorded against the Project with respect to the Tax Credits.

“Tax Credits” means Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code.

“TCAC” means the California Tax Credit Allocation Committee.

“TCAC Regulations” means the California Tax Credit Regulations Implementing the Federal and State Low Income Housing Tax Credit Laws, California Code of Regulations, Title 4, Division 17, Chapter 1.

“Title Company” means Old Republic Title Company.

“Unit(s)” means any or all of the apartment units in the Project, including the Affordable Units and/or the Management Unit.

1.2. Singular and Plural Terms

Any defined term used in the plural herein shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3. Accounting Principles

Any accounting term used and not specifically defined herein shall be construed in conformity with, and all financial data required to be submitted herein shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City Representative.

1.4. References and Other Terms

Any reference to any document shall include such document both as originally executed and as it may from time to time be modified. References herein to Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include), without limitation.”

1.5. Attachments Incorporated; Attachments Additional Consideration

All Attachments, as now existing and as the same may from time to time be modified, are incorporated herein by this reference. Each Attachment or agreement delivered by Developer or another party substantially in the form of an Attachment hereto in connection with this Agreement is required as and constitutes consideration for the City to make the City Loan.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1. Representations by City.

City represents and warrants to Developer, as of the Effective Date and as of the Closing, as follows:

2.1.1. Authority.

City is a California municipal corporation possessed of full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement by City has been fully authorized by all requisite actions on the part of the City Council.

2.1.2. No Conflict.

City’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which City is bound.

2.1.3. No Litigation or Other Proceeding.

To City's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement, or that would adversely affect the City Property, or Developer's use and development of the Property.

2.1.4. Eminent Domain.

To City's actual current knowledge there are no condemnation or eminent domain proceedings which are pending or have been threatened that affect the City Property.

2.1.5. Condition of City Property.

City has no notice of any pending or threatened action or proceeding arising out of the condition of the City Property or any alleged violation of any Environmental Law or Governmental Regulations. To City's actual current knowledge, the City Property is in compliance with all Environmental Laws and Governmental Regulations.

Each of the foregoing representations in this Section 2.1 shall be deemed to be an ongoing representation and warranty, and until the expiration or earlier termination of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, promptly give written notice of such fact or condition to Developer. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties of City shall survive the Closing of this Agreement for a period of twelve (12) months. After Closing, the City's liability for any breach of this Section 2.1 shall be limited to the portion of the City Advance actually retained by City.

2.2. Representations by Developer.

Developer represents and warrants to the City, as of the Effective Date and as of the Closing, as follows:

2.2.1. Organization

Developer is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own property and carry on its business as now being conducted and as contemplated hereby. The copies of the documents evidencing the organization of Developer delivered to the City are true and correct copies of the originals as of the Effective Date.

2.2.2. Authority

Developer has the legal power, right and authority to execute, deliver and enter into this Agreement, and to perform and observe the terms and provisions of this Agreement. Developer has been fully authorized to execute this Agreement and all other documents or instruments to be executed and delivered, pursuant to this Agreement, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other

documents or instruments executed and delivered, or to be executed and delivered pursuant hereto, have been duly taken.

2.2.3. Valid and Binding Agreements

This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will constitute when so executed and delivered, legal, valid and binding obligations of Developer enforceable against it in accordance with the terms of each respective document or instrument.

2.2.4. Litigation

No action, suit or proceedings are pending or, to Developer's current actual knowledge, threatened before any governmental department, commission, board, bureau, agency or instrumentality to which Developer is or may be made a party or to which any of its property is or may become subject, which has not been fully disclosed to the City and which could adversely affect the ability of Developer to carry out its obligations hereunder.

2.2.5. No Conflict

Developer's execution and delivery of this Agreement and any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, and the performance of any provision, condition, covenant or other term hereof or thereof, do not or will not conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

2.2.6. No Developer Bankruptcy

No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings are pending or, to Developer's current actual knowledge, threatened against Developer or any other parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

2.2.7. Financing Summary; Project Pro Forma

For purposes hereof, the Financing Summary attached hereto shall constitute the Financing Summary as of the Effective Date. The Financing Summary and any written updates thereto provided to the City constitute Developer's reasonable estimates as of the anticipated financing for the development of the Project. To Developer's actual knowledge after due inquiry, there are no material omissions from the Financing Summary, and Developer agrees and acknowledges that the City is relying on the information set forth therein in making the City Loan.

Developer shall submit to the City for approval a Project Pro Forma within 60 days of the Effective Date. The Project Pro Forma and any written updates thereto provided to the City constitute Developer's reasonable estimates as of the date of the Project Pro Forma with respect to the information set forth therein, and shall include the Financing Summary and any updates thereto. Developer shall submit to the City any changes or updates to the Project Pro Forma (or a notice that there has been no such change) within two (2) weeks of each March 31, June 30, September 30 and December 31 after the date hereof, and in any event at the Project Pro Forma to be included in the application for Tax Credits and/or tax-exempt financing, if applicable, at least 20 days prior to the submission of any such application. To the actual knowledge of Developer after due inquiry, there are no material omissions from the Financing Summary or any updates thereto, and Developer agrees and acknowledges that the City is relying on the information set forth therein in making the City Loan.

Each of the foregoing representations in this Section 2.2 shall be deemed to be an ongoing representation and warranty, and until the expiration or earlier termination of this Agreement, Developer shall upon learning of any fact or condition which would cause any of the representations and warranties in this Section 2.2 not to be true, promptly give written notice of such fact or condition to City. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties of Developer shall survive the Closing of this Agreement for a period of twelve (12) months.

2.3. Limitation Upon Change in Ownership, Management and Control of Developer

The identity and qualifications of Developer and its respective members, officers and/or partners as experienced and successful developers and operator/managers of affordable housing are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

2.3.1. Prohibition

Except for Permitted Transfers, Developer shall not transfer or assign all or any part of this Agreement, or any interest herein, permit any change in the management or control of Developer, or permit a transfer of more than 25% of the equity interests Developer, without the prior written approval of the City, which may be withheld in its sole and absolute discretion. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments satisfactory to the City, and be subject to the approval by the City of evidence of the proposed assignee's qualifications to meet the obligations of Developer under this Agreement.

2.3.2. Permitted Transfers by Developer

Notwithstanding any other provision of this Agreement, the City approval of an assignment of this Agreement or any interest herein shall not be required in connection with any of the following (each a "**Permitted Transfer**"): nominating the Tax Credit Partnership to take title to the Project at the Closing, or any assignment or transfer of this Agreement to the Tax Credit Partnership, provided that in either event, the City has reasonably approved all general partners thereof.

2.3.3. City Consideration of Requested Transfer

Except for Permitted Transfers, Developer shall provide the City with thirty (30) calendar days' prior written notice of its intent to assign or transfer all or any part of this Agreement or effect a change in the management or control of Developer and shall request any approval sought for such assignment or transfer, which approval may be withheld by the City in its sole and absolute discretion. The notice shall be accompanied by evidence regarding the proposed transferee's development, operation and management qualifications and experience and its financial commitments and resources sufficient to enable the City to evaluate whether the proposed assignee or purchaser is qualified and capable to perform Developer's obligations pursuant to this Agreement.

Within thirty (30) calendar days, or, if City Council approval is required, forty-five (45) calendar days, after the receipt of Developer's written request for the City approval of an assignment or transfer pursuant to this Section 2.3.3, the City shall respond in writing either approving or disapproving the proposed assignee or transferee or requesting further information required by the City in order to determine whether or not to grant the requested approval. Upon receipt of such a request for further information, Developer shall promptly furnish to the City such requested information.

If the City fails to approve or disapprove the requested transfer or assignment within the thirty (30) calendar days after receipt of Developer's written request (or receipt of any further information reasonably requested by City), Developer may send a second and final notice, together with a clear statement indicating that if City does not act upon such request within fifteen (15) days following receipt of this second notice, the request shall be deemed approved. Failure of the City to act within this fifteen (15) day period shall be deemed an approval of the request, provided Developer has included a statement to that effect in its second and final notice and has provided in a timely manner all other information required in connection with City's review of such request. The City shall not unreasonably withhold, condition or delay its approval of an assignment or transfer to a proposed assignee or transferee who, in the reasonable opinion of the City, is financially capable and has the development and operational qualifications and experience to perform the duties and obligations of Developer hereunder. Developer shall promptly pay the City's costs of evaluating and consummating any request for assignment or transfer, including any reasonable attorneys' fees or costs.

3. DISPOSITION OF SITE; ENVIRONMENTAL MATTERS

3.1. Transfer of the Property

The City is the owner in fee of the City Property. In consideration of payment of the covenants and consideration as set forth in this Agreement, upon satisfaction or waiver of the City's Conditions Precedent to Closing, the City shall enter into the Ground Lease and Ground Lease Memorandum. Developer agrees to enter into the Ground Lease and Ground Lease Memorandum upon satisfaction or waiver of Developer's Conditions Precedent to Closing. The Closing shall occur no later than the Outside Closing Date, subject to Events of Force Majeure.

3.2. Access; Condition of the Property; Environmental

3.2.1. Access to Property Prior to the Closing, City shall cooperate to enable representatives of Developer to obtain the right of access to all portions of the City Property for the purpose of obtaining data and making surveys and tests which Developer determines are reasonably necessary or desirable, including the investigation of the soils and environmental condition of the City Property. Developer agrees to provide written notice to City at least twenty-four (24) hours prior to undertaking any studies or work upon the City Property. Developer shall keep the City Property free and clear of any liens and indemnify, defend, protect and hold City harmless from any claims arising out of the acts, omissions, negligence or willful misconduct of Developer or its employees, agents, contractors or representatives in connection with such studies and investigations, except for claims arising from or related to any pre-existing condition on or of the City Property or claims to the extent caused by the negligence or willful misconduct of City or its employees, agents, contractors or representatives. If any inspection or test conducted by or expressly on Developer's behalf disturbs the Property, Developer will restore the Property to substantially the same condition as existed prior to any such inspection or test. Prior to any entry or access to the City Property, Developer will provide the City with evidence that Developer has in place a policy of commercial general liability insurance in an amount not less than \$2,000,000.00 per occurrence covering any accident arising in connection with Developer or its employees and authorized agents, representatives, contractors and consultants entry upon the City Property, naming the City as additional insured. The obligations of Developer under this Section 3.2.1 shall survive the termination of the Agreement.

3.2.2. Disclosure

The City hereby represents and warrants to Developer that, to the best of the City's knowledge, the City has not received any prior written notice or communication from any government agencies having jurisdiction over the City Property, or from any other third party, notifying the City or any third party of the presence of surface or subsurface zone Hazardous Materials in, on, adjacent to, or under the City Property, or any portion thereof.

3.2.3. Developer's Investigation of the Property

Developer has had full access to Property and the opportunity to obtain additional information and documentation as Developer deems necessary to evaluate the Property, to investigate and study the condition of the Property, and to make submissions and applications to all applicable governmental authorities with respect to the Entitlements. Developer acknowledges that except for the representations, warranties and covenants of the City contained in this Agreement, Developer has relied and shall rely solely upon (i) its own expertise and that of Developer's consultants in purchasing the Property, and (ii) Developer's own knowledge of the Property based on its investigations and inspections of the Property. Developer has conducted such inspections and investigations of the Property as Developer deemed or shall deem necessary, including, but not limited to, the physical and environmental conditions of the Property. Except for the City's representations, warranties and covenants and as may be expressly provided herein, upon Closing, Developer acknowledges and, as between the City and Developer, shall assume the risk, that there may be adverse matters, including, but not limited to, adverse physical and environmental conditions, that are not known to the City and that may not have been revealed by Developer's inspections and investigations.

Developer acknowledges and agrees that except for the representations and warranties of the City herein, upon Closing, the City shall convey to Developer and Developer shall accept the Property “AS IS, WHERE IS,” with all faults and defects (latent and apparent). Except for the representations and warranties of the City contained herein and in any documents executed and delivered by the City at Closing pursuant to this Agreement, Developer further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by the City or any agent, employee or contractor of the City or any third party. The City is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property furnished by the City, or any real estate broker, contractor, agent, employee, servant or other person, unless the same are specifically set forth in this Agreement or any other documents executed and delivered by the City at Closing pursuant to this Agreement. Developer acknowledges that the consideration that Developer is delivering to the City reflects the “as is” nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof.

3.3. Escrow

Not later than sixty (60) days prior to Closing, the Parties shall open escrow (the “**Escrow**”) with Escrow Company for the conveyance of the Property and the closing of the City Loan. The Closing shall occur no later than the “Outside Closing Date” stated in the Schedule of Performance, subject to Events of Force Majeure. The Closing shall occur on a date selected by Developer in a written notice to City received at least 30 days in advance of the selected Closing date (the “**Closing Notice**”). If the City does not receive a Closing Notice at least 30 days prior to the Outside Closing Date, the Closing shall occur on the Outside Closing Date.

Developer shall pay and be solely responsible for any documentary transfer taxes in connection with the conveyance of the Property to Developer, and any and all title, recording, escrow and closing costs in connection herewith (the “**Escrow Costs**”), except for the costs and expense of the City’s own consultants, and Developer shall prepare and enter into such escrow instructions as are reasonably acceptable to Developer, the City and Escrow Agent.

3.4. [Intentionally deleted.]

3.5. Title Insurance

3.5.1 Concurrently with the Closing, Title Company shall issue to Developer (or its permitted nominees or assignees), at Developer’s cost, an owner’s policy of title insurance, in such amounts and with such endorsements as agreed to between Developer and the Title Company, which at Developer’s option may be an ALTA extended coverage owner’s policy provided that Developer satisfies all requirements therefor (the “**Developer Title Policy**”) (provided, however, that it shall not be a Developer Condition Precedent to Closing that any Developer Title Policy be in any particular amount or include any specific endorsements), insuring that Developer has a valid leasehold interest in the Project, subject only to (A) the lien of non-delinquent real property taxes and assessments, (B) the exceptions to title identified on Attachment F hereto (the “**Permitted Exceptions**”), and (C) agreements expressly required by this Agreement to be recorded at the Closing. The City shall, at no cost or expense to the City,

cooperate with and assist Developer in obtaining such policy, including providing any required indemnities or affidavits that are customary and commercially reasonable.

3.5.2 Concurrently with the Closing, Title Company shall issue to the City, at Developer's cost, a lender's policy of title insurance in the amount of the City Loan, which at City's option may be a 2006 ALTA extended coverage lender's policy, together with such endorsements as are reasonably requested by the City (the "**City Lender Policy**"), insuring the lien of the City Deed of Trust to be a first priority lien on the Project after the lien of the Senior Loans, and containing such endorsements as the City may reasonably require, which may include zoning, survey, access, parcel contiguity, environmental, tax parcel, and subdivision endorsements, subject only to the (A) the lien of non-delinquent real property taxes and assessments, (B) the Permitted Exceptions, (C) agreements expressly required by this Agreement to be recorded at the Closing, (D) the lien of the Senior Lenders, and (E) any exception to title which may be approved by the City.

3.6. Submittals into Escrow for the Closing

The Parties shall submit documents and funds into Escrow for the Closing as set forth in this Section.

3.6.1 Submittals by Developer

At least five (5) Business Day prior to Closing (unless otherwise indicated below), Developer shall submit into Escrow the following:

(A) The Conveyance Documents to the extent signed by Developer, duly executed by Developer and acknowledged.

(B) The Ground Lease, duly executed by Developer.

(C) The City Loan Documents, duly executed by Developer and acknowledged where appropriate.

(D) The Disbursement Agreement (if applicable), duly executed by City, Developer, and the Construction Lender (which may be deposited with Escrow one (1) Business Day prior to the Closing date).

(E) Any other documents or other deliverables reasonably requested by the City or the Escrow Agent (which may be deposited with Escrow one (1) Business Day prior to the Closing date).

(F) Sufficient funds to pay costs of escrow and title to effect the conveyance of the Property to Developer (which amounts may be deposited with Escrow on the Closing date).

3.6.2 Submittals by the City

At least one (1) Business Day prior to Closing, the City shall submit into Escrow the following:

(A) The Conveyance Documents, duly executed by the City and acknowledged.

(B) The Ground Lease, duly executed by the City.

(C) The City Loan Documents, duly executed by the City and acknowledged where appropriate.

(D) The Disbursement Agreement, if applicable.

(E) A non-foreign transferor certification in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and a California Form 593 certificate, each in a form acceptable to Developer and Escrow Agent and executed by City.

(F) Any other documents or other deliverables reasonably requested by Developer or the Escrow Agent.

(G) The proceeds of the City Loan, in accordance with the City Loan Documents.

3.7. Conditions Precedent to Closing

The Closing is conditioned upon satisfaction of the terms and conditions set forth in this Section.

3.7.1 The City's Conditions.

The City's obligation to close Escrow and convey the Property to Developer is conditioned upon the satisfaction or written waiver of each and every one of the conditions precedent described below ("**City's Conditions Precedent to Closing**"), which are solely for the benefit of the City, and which shall be satisfied or waived by the time periods provided for herein. The City at its option may terminate this Agreement if any of the conditions precedent set forth below are not satisfied by Developer or waived in writing by the City by the Outside Closing Date, subject to Events of Force Majeure.

(A) Execution of Documents. Developer and any third party shall have executed and delivered into Escrow the documents listed in Section 3.6.1.

(B) Deposit of Funds. Developer shall have deposited or caused to be deposited all funds necessary for the Closing or otherwise required pursuant to this Agreement.

(C) Certificates of Good Standing; Authority. Developer shall have delivered to the City certificates of good standing, dated within thirty (30) days of the Closing, and resolutions or consent of Developer authorizing the acquisition of the Property.

(D) Evidence of Financing. Developer shall have submitted and the City Representative shall have approved Developer's Evidence of Financing in accordance with this Agreement.

(E) City Loan. Developer shall have satisfied all conditions precedent to the closing of the City Loan set forth in Attachment No. 6 of the City Loan Agreement.

(F) City Lender Policy. The City shall have received from Title Company an irrevocable commitment to issue the City Lender Policy upon the recordation of the City Deed of Trust.

(G) Entitlements. The City shall have received evidence reasonably acceptable to it that Developer has obtained all Entitlements necessary for the construction of the Project, provided that ready-to-issue letters with respect to building permits shall be acceptable.

(H) Labor Compliance. The City shall have received evidence reasonably acceptable to it that the construction of the Project and the payment of all wages in connection therewith shall be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (the “**Prevailing Wage Law**”), to the extent applicable to the Project.

(I) Insurance. Developer, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements, and Developer shall have provided the City with evidence of insurance.

(J) No Litigation. No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein or challenge or overturn the Entitlements.

(K) No Default. There shall exist no condition, event or act which would constitute an Event of Default under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(L) Representations and Warranties. All representations and warranties of Developer herein contained and contained in this Agreement shall be true and correct in all material respects as if made on and as of the date of Closing.

3.7.2 Developer’s Conditions

Developer’s obligation to close Escrow on the Property is conditioned upon the satisfaction or written waiver by Developer of each and every one of the conditions precedent described below (the “**Developer’s Conditions Precedent to Closing**”), which are solely for the benefit of Developer, and which shall be satisfied or waived by the time periods provided for herein. Developer at its option may terminate this Agreement if any of the conditions precedent set forth below are not satisfied or waived in writing by Developer by the Outside Closing Date, subject to Events of Force Majeure:

(A) Execution of Documents. The City shall have executed and delivered into Escrow the documents listed in Section 3.6.2.

(B) No Litigation. No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein.

(C) No Default. There shall exist no condition, event or act which would constitute an Event of Default by the City under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(D) Representations and Warranties. All representations and warranties of the City herein contained and contained in this Agreement shall be true and correct as if made on and as of the date of Closing.

(E) Developer Title Policy. The Title Company shall be irrevocably committed to issue the Developer Title Policy upon recordation of the Conveyance Documents.

(F) No Material Adverse Change. There shall not have occurred between the Effective Date and the Closing any material adverse change to the physical or environmental condition of the Property, except to the extent caused by Developer.

(G) No Leases or Parties in Possession. City shall have terminated any and all leases, licenses, and any other occupancy agreements affecting the Property effective no later than the Closing, and City shall have demonstrated the ability to deliver valid leasehold title to the City Property to Developer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession.

(H) Subordination Agreement. The City shall have executed and delivered to Escrow for recordation in the Official Records the Subordination Agreement(s) as provided in the City Loan Agreement.

3.7.3 Close of Escrow.

Provided that both Developer's Conditions Precedent to Closing and the City's Conditions Precedent to Closing have been satisfied or waived in writing, the conveyance of the Property to Developer shall close on the date selected by Developer in the Closing Notice. The Closing shall occur on or before the Outside Closing Date, subject to Events of Force Majeure.

3.7.4 Failure of Conditions to Close of Escrow.

In the event any of the City's Conditions Precedent to Closing or the Developer's Conditions Precedent to Closing are not satisfied prior to the Outside Closing Date, then the respective rights of the parties shall be determined under Section 7.2.

3.8. Funding of the City Loan

The City shall not be obligated to disburse any proceeds of the City Loan until the Closing has occurred.

3.9. Indemnification

Following the conveyance of the Property to Developer, Developer agrees to save, protect, defend, indemnify and hold harmless the City Indemnitees from and against any and all Losses and Liabilities (including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, and remedial and response costs), but excluding the extent to which such Losses and Liabilities arises from the gross negligence or intentional misconduct of the City, the City Indemnitees, and/or their agents, representatives, invitees, licensees, consultants, and contractors, which may now or in the future be incurred or suffered by the City Indemnitees, by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership (or possession) of all or

any part of the Property for purposes of any Governmental Regulations regulating Hazardous Materials with respect to any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released onto the Property and/or occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (ii) any act or omission on the part of Developer, or its representatives, contractors, volunteers, or invitees with respect to the Property; (iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the negligence, intentional acts or omissions of Developer, its officers, agents, volunteers, contractors or employees, in the performance of its obligations under this Agreement, (iv) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials first released and/or occurring on the Property following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees, (v) any environmental or other condition of the Property relating to any Hazardous Materials not existing before the Closing and first released and/or occurring following the Closing and not caused by the gross negligence or willful misconduct City or City Indemnitees. Developer's obligations under this Section shall survive the termination of this Agreement.

3.10. Occupants of the Property

The Property shall be conveyed to Developer free of any possession or right of possession by party except that of Developer.

3.11. Zoning of the Property

It is the responsibility of Developer, without cost to the City, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Project and the use, operation and maintenance of the Improvements in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This Agreement is not a development agreement as provided in Government Code Section 65864 et seq.

3.12. Release

On and after the Closing, Developer hereby waives, releases and discharges the City Indemnitees, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees), including any special or consequential damages, arising out of or in any way connected with the City's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials contamination in any state on the Property, however the Hazardous Materials came to be placed there, except for those arising out of (i) the gross negligence, intentional misconduct, or fraud of the City or its employees, officers or agents, or (ii) any breach by City of this Agreement (including but not limited to breaches of

representations and warranties of City expressly set forth herein) or the other agreements that City enters into pursuant to this Agreement, including but not limited to the Ground Lease and the City Loan Documents, or (iii) any third party breach of contract claim or third party tort claims brought against Buyer for personal injury, wrongful death or personal property damage, in each case arising out of events occurring during City's ownership of the Property. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

3.13. City Advance. Within five (5) business days of execution of this Agreement by Developer and City, Developer shall deliver to City the amount of \$40,000 (the “**City Advance**”); provided that Developer shall receive a credit against the City Advance in the amount of \$25,000, reflecting a previous payment from Developer to the City pursuant to the Exclusive Negotiating Rights Agreement entered into as of December 19, 2018 between Developer and City.

The City Advance shall be used by the City for reasonable costs and expenses in connection with this Agreement, ancillary documents and the City Loan Documents and the transactions described therein (collectively, “**Consultant Costs**”). If, as of the earlier of the date of Closing or the Outside Closing Date, any portion of the City Advance has not been utilized for Consultant Costs, the remaining balance of the City Advance shall be returned to Developer.

If at any time the City reasonably expects to expend more than the City Advance for Consultant Costs prior to the earlier of the date of Closing or the Outside Closing Date, then the City shall provide written notice of such expenditure, which notice shall include a schedule of the Consultant Costs that City has incurred, an estimate of the additional Consultant Costs and the additional amount that City is requesting to pay for Consultant Costs. Developer shall either deposit such additional amount with the City, which amount shall be added to the City Advance, or shall provide any written objections within 5 business days of receipt of the request. If Developer provides a written objection, City and Developer shall meet within 5 business days of receipt of the written objection to discuss the requested amount and reach an agreement on the additional amount, and Developer shall deposit the agreed upon amount with the City within 2 business days of such agreement, which amount shall be added to the City Advance.

Notwithstanding anything to the contrary in this Agreement: (a) the City Advance shall be returned to Developer in connection with a termination of this Agreement arising from an Event of Default by the City; and (b) the City Advance shall be retained by City in connection with a termination of this Agreement arising from an Event of Default by Developer.

3.14. Parks and Dwelling Unit Tax Requirements

Developer acknowledges its obligation to comply with Santa Clara City Code Chapter 17.35 (or any successor statute).

Developer acknowledges its obligation to pay a dwelling unit tax per Santa Clara City Code Chapter 3.15 (or any successor statute). Said fees shall be due and payable upon application to the City for a building permit for the construction of any such dwelling unit.

4. **FINANCING OF THE AFFORDABLE PROJECT**

4.1. Sources of Construction Financing

Developer anticipates that the Development Costs will be financed in accordance with the Financing Summary. Developer shall be permitted to submit a revised Project Pro Forma and financing different from that described herein prior to Closing, which shall be subject to the review and approval of the City in accordance herewith.

4.2. The City Loan

4.2.1 Closing

As of the Effective Date, the City hereby commits to providing the City Loan to Developer, subject to the terms and conditions set forth herein. Upon Closing, the City shall loan to Developer and Developer hereby agrees to borrow from the City, the City Loan in accordance with the City Loan Documents.

4.2.2 Subordination of City Loan Documents

Concurrently with Closing, the City shall enter into a Subordination Agreement with each Senior Lender.

5. **EVIDENCE OF FINANCING; CONSTRUCTION CONTRACT**

5.1. Evidence of Financing

Developer covenants and agrees to submit timely applications for the financing sources set forth in the Financing Summary, and to apply for the Tax Credits by the date set forth in the Schedule of Performance subject to Events of Force Majeure. Developer shall also demonstrate that the sources set forth in the Financing Summary, or such other financing as may be obtained by Developer and approved by the City, will constitute sufficient financing such that the City Representative is reasonably satisfied that the Project can be constructed and operated as proposed by Developer and will be financially feasible.

As a condition precedent to the Closing, Developer shall provide the City with copies of written, enforceable documentation reasonably acceptable to the City that Developer has or will have the right and access to the financing indicated in the Project Pro Forma (collectively, the “**Evidence of Financing**”), which Evidence of Financing shall include, without limitation, executed loan documents for all loans, executed contracts for any rental subsidies, a reservation of Tax Credits from TCAC, and executed syndication documents evidencing the Investor Limited Partner’s capital obligations. Upon the Closing, the City shall be deemed to have approved all Evidence of Financing required hereunder.

5.2. Construction Budget; Construction Loan

Prior to the Closing, Developer shall submit to and obtain the City’s approval of the Construction Budget, showing the projected predevelopment and construction costs of the Improvements and a sources-and-uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred.

The Construction Loan shall be secured by Developer’s interest in the Project and the Improvements located thereon. In no event shall the Construction Loan be cross-defaulted with any loan secured by property other than the Project or assets attached to property other than the Project.

5.3. Construction Contract

If the City has not previously approved the Contractor, then at least 45 days prior to the Closing, Developer shall deliver to the City the name, resume and financial statement of

the proposed Contractor for approval by the City, which shall not be unreasonably withheld, delayed or conditioned. At least 30 days prior to the Closing, Developer covenants and agrees to deliver to the City a fixed price or guaranteed maximum cost construction contract(s) (the “**Construction Contract**”) for all of the Improvements for approval by the City, which shall not be unreasonably withheld, delayed or conditioned, which Construction Contract shall obligate the General Contractor to commence and complete the construction of those Improvements in accordance with the City Loan Agreement and at the price stated in the Construction Contract.

6. COVENANTS AND RESTRICTIONS

6.1. Use Covenants

As set forth in the City Loan Agreement, Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Project or any part thereof, that the Project shall be used, maintained and operated in compliance with the City Regulatory Agreement. Developer further covenants and agrees for itself and its successors and assigns that the Affordable Units shall be continuously occupied or held vacant and made available to Qualified Tenants at an Affordable Rent during the Affordability Period. All uses conducted on the Project, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to all applicable provisions of the Santa Clara City Code.

6.2. Nondiscrimination Covenants

As set forth in the City Loan Agreement, Developer covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Project nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of the Project.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

All deeds, rental agreements, leases, or contracts made or entered into by Developer as to the Units or the Project or any portion thereof, shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the

Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

The covenants established herein shall, without regard to technical classification and designation, be binding on Developer and any successors in interest to the Project, or any part thereof, for the benefit and in favor of the City and its successors and assigns. The covenants against discrimination shall run with the land and remain in effect in perpetuity.

6.3. Social Services

As set forth in the City Loan Agreement, Developer covenants and agrees to provide a Social Services Plan for the Project to the City prior to Closing. Developer covenants and agrees to provide Social Services to the residents of the Project in accordance with the Social Services Plan.

6.4. Leases and Service Contracts.

From the Effective Date hereof until the Closing, City shall not enter into any lease, contract, license or other delegation of right with respect the City Property that would either survive Closing or would reasonably be expected to have an material effect on the condition of the City Property after Closing. City shall also not cause nor voluntarily permit, any new lien, encumbrance or any matter to cause the condition of title to be changed in any way.

6.5. Interim Operation of City Property.

From the Effective Date hereof until the Closing, City shall operate and maintain the City Property, and shall continue to maintain insurance for the City Property, in a manner generally consistent with the manner in which City has operated and maintained the City Property prior to the date hereof.

6.6. Cooperation.

The City shall reasonably cooperate with Developer and support and assist Developer in the processing and permitting of all project related Entitlements from the City and any and all other regulatory agencies with jurisdiction over the Freebird project. The City shall execute any and all applications, forms, and/or certificates as are reasonably required to process all entitlements, maps, and other approvals as reasonably requested by Developer. In the event that an appeal, requesting for rehearing, legal challenge, initiative and/or referendum is brought against any of the Entitlements, the City, at Developer's sole cost and expense, will cooperate with Developer in prosecuting an appropriate defense. Notwithstanding anything to the contrary herein, in no event shall the City be responsible for the cost of any legal fees necessary to defend the Freebird project. The City's compliance with this Section 6.6 shall not be deemed an approval of, or agreement with respect to, any such matters. The City's obligation to cooperate

under this Section 6.6 shall be subject to the condition precedent that Developer provide all required information or documentation relating to such cooperation.

7. DEFAULTS, REMEDIES AND TERMINATION

7.1. Defaults - General

Subject to Events of Force Majeure and any other extensions of time approved in writing by the parties, failure or delay by either party to timely perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement, at the time indicated in this Agreement, shall constitute a default under this Agreement. In addition to the foregoing, the following shall constitute a default hereunder: (a) Developer fails to perform an act by the time set forth therefore in the Schedule of Performance subject to Events of Force Majeure; or (b) a petition is filed in bankruptcy, or other bankruptcy or similar proceeding is commenced by or against Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect which is not released within ninety (90) days.

As provided hereinbelow, the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an Event of Default (as such term is hereinafter defined) has occurred. For purposes of this Agreement, an “**Event of Default**” for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall mean that a default as described above has occurred, and such default has continued uncured for thirty (30) calendar days after notice thereof is received (as described in Section 8.1), or, if the default cannot reasonably be cured in thirty (30) calendar days, without the defaulting party commencing to diligently cure within thirty (30) calendar days after notice thereof in writing is received (as described in Section 8.1) by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement, the specific provision shall control; and provided further, that if such failure is not reasonably capable of being cured within such thirty (30) day or different period, despite the defaulting party’s good faith and timely efforts, such time as is reasonably necessary to complete such cure, but in no event shall such time exceed ninety (90) calendar days after notice thereof is mailed to the defaulting party. Notwithstanding anything to the contrary herein, a cure period shall not extend the timing requirements set forth in the Schedule of Performance or the Outside Closing Date.

7.2. Remedies and Termination

7.2.1. City’s Remedies for Developer Event of Default; Liquidated Damages

If an Event of Default by Developer occurs (including any Event of Default in connection with the failure by Developer to achieve Closing), City, as its sole and exclusive remedy hereunder, shall have the right to terminate this Agreement by delivering

written notice thereof to Developer, in which case (a) the City Advance shall be retained by the City as liquidated damages, and (b) Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREUNDER, DEVELOPER AND THE CITY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH THE CITY'S DAMAGE BY REASON OF DEVELOPER'S DEFAULT UNDER OR ELECTION TO TERMINATE THIS AGREEMENT. ACCORDINGLY, DEVELOPER AND THE CITY AGREE THAT IN THE EVENT OF A DEFAULT OR TERMINATION BY DEVELOPER UNDER THIS AGREEMENT, IT WOULD BE REASONABLE AT SUCH TIME TO AWARD THE CITY, AS THE CITY'S SOLE AND EXCLUSIVE REMEDY, "LIQUIDATED DAMAGES" EQUAL TO THE AMOUNT REPRESENTED BY THE CITY ADVANCE. SUCH LIQUIDATED DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY FOR DEVELOPER'S EVENT OF DEFAULT OR ELECTION TO TERMINATE AND DEVELOPER SHALL HAVE NO OTHER OR FURTHER OBLIGATION OR LIABILITY TO THE CITY ON ACCOUNT OF SUCH DEFAULT OR BREACH (EXCEPT FOR INDEMNITY OBLIGATIONS WHICH SURVIVE TERMINATION OF THIS AGREEMENT AND PAYMENT OF ESCROW TERMINATION CHARGES). THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

INITIALS: CITY _____ DEVELOPER _____

7.2.2. Developer Remedies for City Event of Default

If an Event of Default by City occurs, Developer shall have the right to (a) terminate this Agreement by delivering written notice thereof to the City, in which case the City Advance shall be returned to Developer, and City shall pay all escrow termination charges, in which event this Agreement shall be terminated, or (b) seek specific performance of this Agreement.

7.2.3. Developer's Right to Terminate Prior to the Closing

At any time prior to the Closing, Developer shall have the right to terminate this Agreement by delivering written notice thereof to the City, in which case (a) the City Advance shall be retained by the City as liquidated damages, and (b) Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated.

7.2.4. Automatic Termination upon Outside Closing Date

Subject to Events of Force Majeure, this Agreement shall automatically terminate upon the Outside Closing Date in the event the Closing has not occurred by the

Outside Closing Date, in which case (a) the City Advance shall be retained by the City as liquidated damages unless Closing has not occurred due to an Event of Default by the City, and (b) Developer shall pay all escrow termination charges, in which event this Agreement shall be terminated.

7.3. Survival of Terms After Termination; Several Obligations After Closing

Following any termination, neither the City nor Developer shall have any further rights against or liability to the other under this Agreement. Developer's indemnification obligations under this Agreement shall remain in force following such termination with respect to any events occurring or claims accruing prior to the date of such termination.

7.4. Limitation on Liability

Neither Developer nor the City shall in any event be entitled to, and each hereby waives, any right to seek loss of profits, or any special, incidental or consequential damages of any kind or nature, however caused, from the other Party arising out of or in connection with this Agreement, even if the other Party has been advised of the possibility of the damages, and in connection with such waiver each Party is familiar with and hereby waives the provision of §1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

7.5. Legal Actions

7.5.1. Institution of Legal Actions

Any legal actions hereunder may be instituted in the Superior Court of the County of Santa Clara, State of California, or in the Federal District Court in the Northern District of California.

7.5.2. Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7.5.3. Acceptance of Service of Process

In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the City Representative, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer (or upon a general partner, managing member or officer of Developer), or in such other manner as may be provided by law.

7.6. Rights and Remedies are Cumulative

To the extent permitted by law and except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other party.

7.7. Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.8. Termination of this Agreement

Except for indemnification obligations of Developer hereunder, this Agreement shall terminate as of the Closing.

7.9. Attorneys' Fees

In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house or other counsel employed by the City or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney and fees and costs for expert witnesses. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

8. GENERAL PROVISIONS

8.1. Notices, Demands and Communications Between the Parties

All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Agreement shall be in writing ("**Notice**") and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows, or at any other address as that party may later designate by Notice:

To the City: City Manager's Office
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: City Manager

Copy to: City Attorney's Office
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: City Attorney

Copy to: Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 95401
Attention: Henry Loh II

To Developer: Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

Copy to: Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attention: Evan A. Gross

Any Notice shall be deemed received immediately if delivered by hand, shall be deemed received on the third day from the date it is postmarked if delivered by certified mail, and shall be deemed received on the date of delivery if sent via overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

8.2. Conflicts of Interest

No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

8.3. Warranty Against Payment of Consideration for Agreement

Developer warrants that it has not paid or given and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as project managers, architects, engineers, attorneys, and public relations consultants.

8.4. Nonliability of the City Officials and Employees

No member, official, employee, representative or agent of the City shall be personally liable to Developer, or any successor in interest thereof, in the event of any default or breach by the City under the terms of this Agreement.

8.5. Non-liability of Officers and Employees of Developer.

No non-managing member, limited partner, shareholder, officer, director, or employee of Developer shall be personally liable to City, or any successor in interest thereof, in the event of any default or breach by Developer under the terms of this Agreement.

8.6. Approvals by the City and Developer

Approvals required of the parties shall be given within the time set forth in this Agreement, the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the City or Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld, conditioned or delayed, unless expressly provided to the contrary.

8.7. Force Majeure

In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays or defaults due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or any other deity; acts or threats of the public enemy or terrorists; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation, arbitration, administrative proceedings, initiatives and/or referenda, including challenges to the validity of this transaction or the Entitlements, or any element thereof, or any portion thereof; unusually severe weather; inability to secure necessary materials or tools; acts or failure to act of the City or any other public or governmental agency or entity (other than that acts or failure to act of the City shall not excuse performance by the City); an Economic Event, as defined and subject to the provisions stated below; or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform or relief from default (each of the foregoing an “**Event of Force Majeure**” and collectively “**Events of Force Majeure**”).

An “**Economic Event**” shall mean (a) a year-over-year decrease of 10% or more of average asking rent in Santa Clara County; (b) a year-over-year increase of 20% or more on construction costs in Santa Clara County; or (c) the difference of (I) the quotient of net operating income and total projects costs, minus (II) capitalization rates, is less than 0.5% with respect to the Project. Notwithstanding the first paragraph of this Section 8.7, (A) upon the occurrence of any Economic Event, the extension shall be for 12 months and (B) only one Economic Event shall cause an extension as an Event of Force Majeure, and any later Economic Events shall not cause any extension hereunder.

The lack of funding to complete the development of the Project shall not constitute an Event of Force Majeure pursuant to this Section 8.7. Except for one Economic Event as provided in this Section 8.7, Developer expressly assumes the risk of real estate market conditions, construction costs, interest rates, and other similar general economic circumstances that may make funding and/or construction of the Project difficult, more expensive, or infeasible, whether or not such events or causes are foreseeable as of the date of this Agreement. Developer acknowledges and agrees that the provisions of this Section 8.7 shall not operate to excuse Developer from prompt payment when due under the City Loan Documents.

An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) calendar days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by mutual agreement between the City and Developer.

8.8. Interpretation

This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

8.9. Administration

This Agreement shall be administered by the City Representative following execution of this Agreement by the City. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Representative or his or her designee are authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. The City Representative or his or her designee shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement and to negotiate and finalize all agreements and documents referred to herein on behalf of the City, so long as such actions do not substantially change the uses or development permitted on the Project, or add to the costs of the City as specified herein or as agreed to by the City Council or other authorized body. Notwithstanding the foregoing, the City Representative or his or her designee may in their sole and absolute discretion refer any matter to the City Council of the City and/or other authorized body for action, direction or approval.

8.10. Mutual Cooperation

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement.

8.11. Independent Contractor

The parties agree that Developer, in the performance of this Agreement, is not and shall not act in the capacity of an agent, employee or partner of the City.

8.12. Time

Time is of the essence in the performance of this Agreement.

8.13. Third-Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereunder.

9. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement constitutes the entire understanding and agreement of the Parties. Two (2) duplicate originals of this Agreement shall be executed, each of which shall be deemed to be an original. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Except as otherwise provided herein, this Agreement contains all of the understandings of the parties relating to the transactions contemplated by this Agreement, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer. Notwithstanding the previous sentence, the parties agree that the City Representative, on behalf of the City, shall be entitled to extend the dates in the Schedule of Performance without the need for amending the Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date and year first above written.

“CITY”

CITY OF SANTA CLARA,
a California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

Brian Doyle, City Attorney

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 1 OF 2]

“DEVELOPER”

**FREEBIRD DEVELOPMENT COMPANY,
LLC**, a California limited liability company

By: _____
Robin Zimbler, Manager

[SIGNATURE PAGE TO DISPOSITION AND DEVELOPMENT AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT A

LEGAL DESCRIPTION OF CITY PROPERTY

Real property in the City of Santa Clara, County of Santa Clara, State of California, being a portion of Parcel 3 described in the Deed to the County of Santa Clara, recorded February 2, 1962, in Book 5453 of Official Records, Page 669, Santa Clara County Records, described as follows:

Beginning at the most Northerly corner of Lot 30 as shown on that certain Map of Tract 2896 filed for record on May 11, 1961 in Book 132 of Maps, Pages 38 and 39, Santa Clara County Records.

Thence along the Northeasterly line of said Parcel 3, North $26^{\circ} 09' 22''$ East, 14.01 feet; thence North $64^{\circ} 01' 08''$ West, 147.59 feet; thence North $73^{\circ} 07' 44''$ West, 63.92 feet; thence along a tangent curve to the left, having a radius of 60.00 feet; through a central angle of $62^{\circ} 52' 15''$ for an arc length of 65.84 feet; thence South $44^{\circ} 00' 01''$ West, 274.40 feet;

Thence along a tangent curve to the left, having a radius of 962.00 feet, through a central angle of $16^{\circ} 07' 44''$ for an arc length of 270.81 feet, to the Northwesterly line of Lot 19 as shown on that certain Map of Tract 2992 filed for record on June 21, 1961, in Book 134 of Maps, Pages 26 and 27, Santa Clara County Records;

Thence along the Northwesterly and Northerly lines of Lots 19 through 25 of said Map of Tract 2992 and along the Northwesterly line of Lots 27 through 30 of said Map of Tract 2896, the following five courses:

1. Thence along a non-tangent curve to the right, having a radius of 1200.00 feet, whose center bears South $59^{\circ} 19' 45''$ East through a central angle of $0^{\circ} 10' 12''$ for an arc length of 3.56 feet;
2. Thence along a compound curve to the right, having a radius of 150.00 feet, through a central angle of $53^{\circ} 58' 00''$ for an arc length of 141.28 feet;
3. Thence North $84^{\circ} 48' 27''$ East, 213.98 feet;
4. Thence along a tangent curve to the left, having a radius of 225.00 feet, through central angle of $49^{\circ} 33' 01''$ for an arc length of 194.58 feet;
5. Thence North $35^{\circ} 15' 26''$ East, 197.75 feet, to a point of beginning.

APN: 224-37-068

ATTACHMENT B
SCHEDULE OF PERFORMANCE

Permit Application July 31, 2021

Submit 4% CDLAC & TCAC applications August 31, 2021

Outside Closing Date April 30, 2022

Construction Start [TBD]

Construction Completion [TBD]

PIS [TBD]

100% Occupied [TBD]

8609 Certification [TBD]

ATTACHMENT C
[RESERVED]

ATTACHMENT D
INSURANCE REQUIREMENTS
[attached]

ATTACHMENT E
FINANCING SUMMARY

ATTACHMENT F

PERMITTED EXCEPTIONS

1. Taxes and assessments, general and special, are currently not assessed because of a statutory exemption. Should the statutory exemption change, taxes may be levied against the land.
2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.
3. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Granted To : City of Santa Clara, a municipal corporation

For : sanitary sewer purposes

Recorded : June 26, 1961 in Book 5210 of Official Records, Page 674 under Recorder's Serial Number 2018642

Affects : as described therein

4. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following Granted To : City of Santa Clara, a municipal corporation

For : storm drainage purposes

Recorded : June 26, 1961 in Book 5210 of Official Records, Page 677 under Recorder's Serial Number 2018643

Affects : as described therein

5. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Granted To : City of Santa Clara, a municipal corporation

For : storm drain purposes

Recorded : September 14, 1961 in Book 5296 of Official Records, Page 608 under Recorder's Serial Number 2060294

Affects : as described therein

6. Release and relinquishment of abutter's or access rights to and from San Tomas Expressway, upon which premises abuts, as follows:

Instrument : Grant Deed Individual

To : County of Santa Clara

Recorded : February 2, 1962 in Book 5453 of Official Records, Page 669 under Recorder's Serial Number 2135068

7. Terms and provisions as contained in an instrument,

Entitled : Assignment and Assumption Agreement (Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Low and Moderate Income Housing Projects)

Executed By : City of Santa Clara, City of Santa Clara Housing Authority and Redevelopment Agency of the City of Santa Clara

Recorded : June 23, 2011 in Official Records under Recorder's Serial Number 21216118

8. Terms and provisions as contained in an instrument,

Entitled : Grant Deed

Executed By : Redevelopment Agency of the City of Santa Clara and City of Santa Clara Housing Authority

Recorded : June 23, 2011 in Official Records under Recorder's Serial Number 21216119

ATTACHMENT G
GROUND LEASE
[attached]

ATTACHMENT H
MEMORANDUM OF GROUND LEASE
[Attached to Ground Lease]

ATTACHMENT I
CITY LOAN AGREEMENT
[attached]

ATTACHMENT J
CITY PROMISSORY NOTE
[attached]

ATTACHMENT K
CITY DEED OF TRUST

[attached]

ATTACHMENT L
CITY ASSIGNMENT OF RENTS AND LEASES
[attached]

ATTACHMENT M
CITY ASSIGNMENT OF AGREEMENTS
[attached]

ATTACHMENT N

PROVISIONS FOR DISBURSEMENT AGREEMENT

1. Compliance With Previous Conditions. The conditions precedent set forth in Section 3.7.1 of this Agreement shall have been met on the date of the closing of the City Loan and shall continue to be met as of the disbursement date.
2. Evidence of Expenditure. Developer has submitted to the City a draw request including invoices, receipts, cancelled checks or other written documentation satisfactory to the City Representative evidencing Developer's incurrence of Eligible Project Costs, and such draw request has been approved in accordance with the Disbursement Agreement.
3. Approvals under City Loan Documents. Developer has obtained from the City all approvals for the development of the Project that are required to be obtained at the time of the disbursement request under the City Loan Documents.
4. No Default. There shall be no condition, event or act which would constitute an Event of Default by Developer under the City Loan Documents, the County Loan, the Construction Loan, or any other financing or contract applicable to the Project or which upon the giving of notice or the passage of time, or both, would constitute an Event of Default.
5. Representations and Warranties. All representations and warranties of Developer set forth in Section 2.2 of this Agreement shall be true and correct in all material respects as if made on and as of the date of the disbursement.
6. No Stop Notice. No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Developer, Construction Lender or the City in connection with the construction of the Project or otherwise in connection with the City Loan, unless Developer shall have (or shall be with the proceeds of the requested disbursement) (a) paid and discharged the same, or (b) effected the release thereof by delivering to the Construction Lender a surety bond complying with the requirements of applicable Governmental Regulations for such release.
7. No Liens. No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Project or any portion thereof, unless Developer shall have (or shall with the proceeds of the requested disbursement) (a) paid and discharged the same, (b) effected the release thereof by delivering to the Construction Lender a surety bond complying with the requirements of applicable Governmental Regulations for such release, or by insurance over the same, or (c) caused the Title Company to commit in writing to issue a policy of title insurance showing such lien not to be an exception to title.
8. Satisfactory Progress. The Construction Lender shall be reasonably satisfied, based on its own inspections and/or other reliable information, that the Project is progressing satisfactorily and in conformance with this Agreement, all applicable

Governmental Regulations and all other requirements, including, without limitation, applicable wage requirements.

9. Governmental Regulations; Wages. There shall be no condition, event or act existing in connection with the Project which constitutes, or would, with the passage of time, constitute a material violation of any applicable Governmental Regulation, including, without limitation, applicable wage requirements.

ATTACHMENT O
[RESERVED]

ATTACHMENT P
CITY REGULATORY AGREEMENT
[attached]

ATTACHMENT Q

GRANT DEED

[attached]

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO
AND MAIL TAX STATEMENTS TO:
[Tax Credit Partnership]
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

Space above this line for Recorder's use

**GRANT DEED
(Improvements)**

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX \$_____; CITY TRANSFER TAX \$_____;
___ computed on full value of the property conveyed, or
___ computed on full value less value of liens or encumbrances remaining at time of sale, or
___ transfer is exempt from tax for the following reason: _____
in the City of Santa Clara, California.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Santa Clara, a California municipal corporation (the “**Grantor**”) hereby grants and conveys to [Tax Credit Partnership], a California limited partnership (the “**Grantee**”), the real property (the “**Property**”) located in the City of Santa Clara, County of Santa Clara, State of California more particularly described in Exhibit A attached to this Grant Deed.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of

_____.

CITY OF SANTA CLARA,
a California municipal corporation

By:

Deanna J. Santana, City Manager

APPROVED AS TO FORM:

Brian Doyle, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

Exhibit A to Grant Deed

LEGAL DESCRIPTION OF PROPERTY

[Improvements legal description]

ATTACHMENT R

[RESERVED]

ATTACHMENT S
CITY ENVIRONMENTAL INDEMNITY
[attached]

**GROUND LEASE
(Freebird)**

by and between

**THE CITY OF SANTA CLARA,
Landlord,**

and

**MONROE STREET HOUSING PARTNERS, L.P.,
Lessee**

LEASE AGREEMENT

This LEASE AGREEMENT (this “**Lease**”) is dated as of [] 1, 2020 (the “**Commencement Date**”), between the CITY OF SANTA CLARA, a California municipal corporation (“**Landlord**”) and MONROE STREET HOUSING PARTNERS, L.P., a California limited partnership (“**Lessee**”), who agree as follows:

RECITALS

A. The Landlord is the owner of that certain real property located in the City of Santa Clara (“**City**”) and described in the Legal Description attached hereto as Exhibit A and incorporated herein by this reference (the “**Property**”).

B. The Landlord desires to lease the Property to Lessee and have Lessee construct, own, manage and operate the Improvements comprising 65 units of housing, of which (1) 16 units shall be leased to households at or below 30% of area median income, (2) 10 units shall be leased to households at or below 50% area median income, (3) 13 units shall be leased to households at or below 60% area median income, (4) 16 units shall be leased to households at or below 80% of area median income, (5) 9 units shall be leased to households at or below 120% of area median income, and (6) 1 two-bedroom unit to be used as a non-revenue manager’s units, using the income limits used for the Santa Clara MSA, as published approximately annually by TCAC for the 30%, 50%, 60% and 80% area median incomes, and by the California Department of Housing and Community Development (“**HCD**”) for the 120% area median income.

NOW, THEREFORE, in consideration of the foregoing, the Landlord and Lessee agree as follows:

ARTICLE 1 FUNDAMENTAL INFORMATION

1.1 Landlord: The City of Santa Clara, a California municipal corporation.

1.2 Lessee: Monroe Street Housing Partners, L.P., a California limited partnership. All references in this Lease to the “**Lessee**” shall mean and refer to Lessee or any successor or assign, as the context may require.

1.3 Commencement Date: The Commencement Date shall be the date set forth in the introductory paragraph, above.

1.4 The Premises: The property leased hereunder (the “**Property**”) is described in Recital A, above.

1.5 Term: The Term of this Lease is set forth in Section 2.3, below.

1.6 Landlord's address for notices:

City Manager’s Office
The City of Santa Clara
1500 Warburton Avenue

Santa Clara, California 95050
Attention: City Manager

1.7 Lessee's address for notices:

Monroe Street Housing Partners, L.P.
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

With a copy to:

Monroe Street Housing Partners, L.P.
c/o Housing Choices Coalition For Persons With Developmental Disabilities, Inc.
6203 San Ignacio Ave, Suite 108
San Jose CA 95119
Attention: President

With a copy to:

Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan A. Gross

With a copy to:

[LP]

1.8 Lessee's Rent: Lessee shall pay, as rent for the Property, an annual amount as provided in Section 2.4, below.

ARTICLE 2 TERMS AND PROVISIONS

2.1 AGREEMENT TO LEASE

2.1.1 Landlord hereby leases the Property to Lessee, and Lessee hereby leases the Property from Landlord, subject to the provisions and conditions herein set forth.

2.2 ACCEPTANCE OF PROPERTY

2.2.1 Landlord makes no representations, expressed or implied, with respect to the legality, fitness, or desirability of the Property for Lessee's intended use. If Lessee desires to do so, Lessee shall have the right to conduct its own investigation, to its satisfaction, with respect to any matters affecting Lessee's ability to use the Property for Lessee's intended use.

2.3 TERM

2.3.1 Term. The Lease term (the “**Term**”) shall commence on the Commencement Date and shall continue for sixty-five (65) years after the issuance of the temporary certificate of occupancy for the Improvements, unless earlier terminated in accordance with this Lease. *[Term may be increased as determined by final underwriting and approval by City Housing Division]*

2.3.2 Termination. Subject to the notice and cure provisions of Sections 2.20 and 2.23 below, Landlord may terminate this Lease by giving written notice of termination to Lessee in the event of any default under this Lease that is not cured within the applicable cure period. In such event, Landlord shall retain any and all Rent paid by Lessee to Landlord as a measure of damages; provided, however, nothing herein shall limit any other remedies, including damages, available to Landlord in accordance with the terms and provisions of this Lease.

2.3.3 Surrender. Subject to the damage and reconstruction provisions of Section 2.19, Lessee shall upon the expiration or sooner termination of this Lease immediately surrender the Property and the Improvements to Landlord in good and clean condition, ordinary wear and tear excepted, including any buildings, structures, improvements or additions located on the Property. All personal property not removed by Lessee, shall, without compensation to Lessee, then become Landlord's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

2.4 RENT

2.4.1 Rent. The Rent payable for each Lease Year (the “**Rent**”) shall be as set forth in Section 2.4.2 hereto. Rent shall be paid in arrears for each calendar year (or portion of a calendar year for the first and last months of the Term) no later than June 1 of the following calendar year during the Term. The Rent shall be prorated on a per diem basis for the first and last partial years of the Term (assuming the Commencement Date is not January 1). The last payment of Rent shall be due within twenty (20) days following the termination of this Lease.

2.4.2 Rent Amounts. Rent shall be in the amount of \$*[10% of value of land per TCAC appraisal]*, and shall be due and payable only to the extent of 50% of Residual Receipts (as defined below), provided, however, that no Rent payments shall be due unless and until the City Loan, County Loan, and any other Project loan requiring residual receipts payments and previously approved by Landlord (including but not limited to any loan from the California Department of Housing and Community Development) have been repaid in full. Rent shall not accrue to the extent not paid in full or in part due to lack of Residual Receipts. The term “Residual Receipts” shall have the meaning given to it in the Promissory Note (the “**City Note**”) of even date herewith in the amount of \$5,000,000 made by Lessee in favor of Landlord, as lender, including any amendments to such definition agreed to in writing by Landlord in its capacity as lender, and which definition shall survive repayment in full or termination of the City Note and is incorporated hereby.

2.4.3 Payment of Rent. At Lease expiration or sooner termination all Rent accrued but not paid shall be due and payable.

2.4.4 Miscellaneous. All payments of Rent shall be made to Landlord as they become due in lawful money of the United States of America in cash or by corporate check drawn on sufficient available funds, at such place as is designated herein by Landlord for the receipt of notices or such other place as shall be designated to Lessee by Landlord in writing from time to time.

2.4.5 Records and Audit. At all times during the Term, Lessee shall keep and maintain complete, accurate and customary records and books of account relating to the Property and shall retain such materials for the two (2) most recent completed years under this Lease. At all reasonable times during normal business hours, either on the Property or such other office of Lessee at which said records and books of account may be kept, Landlord and its duly authorized agents, attorneys and accountants shall have the right to inspect, audit and make copies of any and all of such records and books of account, including copies of any information returns required by or furnished to any governmental authority, together with any and all other records and documents relating to the Property. If Lessee does not maintain such books and records at an office within fifty (50) miles of the Property, then Lessee shall prepare and deliver to Landlord certified duplicates of such books and records upon Landlord's request, provided that Landlord shall not make such requests more than once every twelve (12) months.

2.4.6 Rent Generally. All Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the installments of all Rent throughout the Term. This Lease is and shall be a "Pure Net" or "Triple Net" lease, as such terms are commonly used in the real estate industry, it being intended that Lessee shall pay all costs, expenses and charges arising out of the use, occupancy and operation of the Property.

2.5 USE

2.5.1 For the Term of this Lease, Lessee shall use the Property for any lawful purpose.

2.5.2 Lessee shall construct the Improvements on the Property in accordance with the terms and conditions of the Loan Agreement dated [] 1, 2020, between Lessee and Landlord (the "**Loan Agreement**"). Capitalized terms not defined herein shall have the meanings given to them in the Loan Agreement.

2.5.3 Lessee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Lessee, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

2.5.4 All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

2.5.5 Lessee shall not cause, maintain, or permit any nuisance or waste in, on, or about the Property.

2.5.6 Lessee shall comply with all regulatory agreements and restrictive covenants recorded against the Property, including, without limitation, the City Regulatory Agreement.

2.6 COMPLIANCE WITH LAW

2.6.1 Lessee shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any applicable law, statute, ordinance, or governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

2.6.2 The judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessee, whether Landlord be a party thereto or not, that Lessee has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Lessee.

2.7 ALTERATIONS AND ADDITIONS

2.7.1 Except as set forth in Section 2.5.2, above, after the completion of the initial Improvements, Lessee shall not make any alterations, additions, or improvements to or on the Property or any building or structure thereon or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the following shall not constitute alteration, additions or improvements under this section 2.7.1: (i) repairs and maintenance performed under Section 2.8 below; or (ii) cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) performed in the normal course of operation of the Project

2.8 REPAIRS

2.8.1 Lessee shall, without cost or expense to the Landlord, (a) keep and maintain any buildings on the Property in good condition and repair, ordinary wear and tear excepted, and keep and maintain the remaining Property in at least the same condition it was in after completion of the Improvements, ordinary wear and tear excepted; and (b) undertake such maintenance of the Property from time to time as may be reasonable and customary under the circumstances or as may be required in an emergency to protect the safety and well-being of the Project's residents, provided that Lessee shall promptly provide Landlord of written notice of such emergency.

2.9 TAXES

2.9.1 To the extent applicable, Lessee shall promptly pay, or cause to be paid prior to delinquency, all real estate and real property taxes, or possessory interest tax, assessed against the Property and the Improvements thereon. In addition, to the extent applicable, Lessee shall, during the term of this Lease, pay any levy for the installation, maintenance or operations of local improvements affecting the Property and the Improvements as may be assessed by any governmental boards or bureaus having jurisdiction thereof.

2.9.2 Lessee shall have the right, by appropriate proceedings, to protest or contest in good faith any assessment or re-assessment of taxes, any special assessment, or the validity of any taxes or of any change in assessment or tax rate; provided, however, prior to any such challenge Lessee must either (a) pay the taxes alleged to be due in their entirety and seek a refund

from the appropriate authority, or (b) post bond in an amount sufficient to insure full payment of the taxes.

2.9.3 To the extent applicable, Lessee shall pay any and all personal property taxes assessed against equipment, trade fixtures, inventory, or other personal property located in, on, or about the Property and the Improvements. Lessee shall indemnify, defend, and hold Landlord and the Property harmless from and against any such personal property taxes.

2.10 CHANGE IN CONTROL OF LESSEE, ASSIGNMENT AND SUBLETTING

2.10.1 The qualifications and identities of Lessee and its general partners are of particular concern to the Landlord. It is because of those qualifications and identity that the Landlord has entered into this Lease with Lessee. Except as otherwise provided in this Lease, there shall be no change in management or control of the Lessee without the prior approval of Landlord. Except as otherwise permitted by this Lease, including, without limitation, Section 2.23, below, neither Lessee nor its general partners shall assign all or any part of their rights pursuant to this Lease to any other entity without the prior written approval of the Landlord.

2.10.2 Lessee shall have the right from time to time to enter into subleases or rental agreements with tenants for occupancy of the Property.

2.10.3 Except as provided in this Section 2.10, in Section 2.23 below, or in the Loan Agreement, the Lessee shall have no right to transfer, assign, sublease, convey or encumber its interests in the Property without the express prior written consent of Landlord. A consent by Landlord to one such transfer, assignment, sublease, conveyance or encumbrance shall not be deemed to be consent to any subsequent transfer, assignment, sublease, conveyance or encumbrance. Any transfer, assignment, sublease, conveyance or encumbrance not approved by Landlord or not deemed approved pursuant to the terms of this Lease shall be void and shall constitute a breach of this Lease.

2.10.4 Lessee shall have the right to transfer its interests in this Lease and the Property to an entity that assumes the rights and obligations of Lessee as the result of a reorganization or similar event, subject to Landlord approval of the documentation effectuating such reorganization or similar event, which approval shall not be unreasonably withheld.

2.10.5 Notwithstanding anything to the contrary contained in this Lease, the Landlord will permit the limited partners of the Lessee to remove the general partner of the Lessee in accordance with the Lessee's Amended and Restated Agreement of Limited Partnership dated on or about the date hereof and any such removal shall neither constitute a default nor require Landlord's consent under this Lease; provided, however, that any substitute general partner shall be acceptable to the Landlord in its reasonable discretion. The limited partner of Lessee or an Affiliate thereof is an acceptable successor general partner of Lessee.

2.10.6 Notwithstanding anything to the contrary contained in this Lease, the following transfers are hereby permitted under this Lease without the prior written approval of the Landlord:

(a) An assignment of this Lease and all of Lessee's interests in the Property to an Affiliate (as defined below);

(b) A conveyance of a security interest in the Property or any portion thereof or interest therein or interest in the Lessee in connection with a loan not prohibited hereunder and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;

(c) The inclusion of equity participation in the Lessee by addition of limited partners to Lessee's partnership or similar mechanism, and any transfers of limited partnership interests in Lessee's partnership;

(d) The lease for occupancy of all or any part of the Improvements on the Property;

(e) The granting of easements or permits to facilitate the development of the Property in accordance with the Loan Agreement;

(f) The withdrawal, removal and/or replacement of a general partner of Lessee pursuant to the terms of the Lessee's partnership agreement, provided that any required substitute general partner is reasonably acceptable to Landlord and is selected with reasonable promptness. The limited partner of Lessee or an Affiliate thereof is an acceptable successor general partner of Lessee;

(g) The assignment or replacement of the original managing general partner in the Lessee with a nonprofit public benefit corporation or Affiliate thereof, provided that any new general partner is reasonably acceptable to City; and

(h) The sale, transfer or pledge of any limited partnership interest in Lessee or of any partnership interest in the limited partner of Lessee.

"Affiliate" shall mean (1) any Person (as defined below) directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, any general partner shall be considered an "Affiliate" of Lessee.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

2.11 HOLD HARMLESS

2.11.1 Lessee shall indemnify, defend, and hold Landlord and the Property harmless from and against any and all costs, claims, demands, actions, causes of action, liability, loss, or damage, including attorney's fees and costs (collectively, "**Claims**") whether for injury to or death of persons or damage to real or personal property or otherwise, arising out of or in connection with the Property, Lessee's use or occupancy of the Property, or arising from any reason or cause whatsoever in connection with the use or occupancy of the Property by any party during the term of this Lease. The preceding sentence shall not apply to any negligent or intentional acts or omissions of Landlord. Lessee shall further indemnify, defend, and hold Landlord harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease or arising from any act or negligence of Lessee or any officer, agent, employee, guest, or invitee of Lessee. In any action, or proceeding brought against Landlord or involving Landlord by reason of any such Claim, Lessee upon notice from Landlord shall defend the same at Lessee's expense by counsel reasonably satisfactory to Landlord. Lessee's obligation to indemnify under this paragraph shall include attorney's fees, investigation costs, and other reasonable costs, expenses, and liabilities incurred by Landlord.

2.11.2 Landlord or its agents shall not be liable for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from earthquake, fire, explosion, falling plaster, steam, gas, electricity, water, or rain which may leak from any part of the Property or from the pipes, appliances, or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligent or intentional acts or omissions of Landlord. Lessee shall give prompt notice to Landlord in case of fire or accidents in the Property or of defects therein or in the fixtures or equipment.

2.12 OWNERSHIP OF PROPERTY DURING TERM AND UPON EXPIRATION OR TERMINATION OF LEASE

2.12.1 During the Term of this Lease, the Improvements, including all buildings, structures, fixtures, additions and improvements located on the Property (other than personal property owned by Landlord or others) shall be owned in fee by Lessee. The parties hereto agree that Lessee shall bear all risk of loss with respect to the Improvements and that the benefits and burdens of ownership of the Improvements are vested in Lessee. It is the intention of the parties that the Lessee be treated as owner of the Improvements for federal income tax purposes and shall have all the rights incidental thereto including, without limitation, the right to claim tax credits and depreciation deductions with respect to the Improvements.

2.12.2 Upon termination of this Lease, whether by expiration of the Term or otherwise, the Improvements and all personal property not removed by Lessee, shall then become the property of Landlord, subject to then existing liens thereon.

2.13 SUBROGATION

Neither Landlord nor Lessee shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits (even though such loss or damage might have been occasioned by the negligence of such party, its agents, or employees), if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage. Landlord and Lessee hereby mutually release each other from liability and waive all right to recover against each other or against officers, employees, agents or representatives of each other for any loss or damage to any person or property caused by or resulting from risks insured against under any insurance policies carried by the parties; provided, however, this paragraph shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Landlord or Lessee. The parties shall, to the extent available, cause each insurance policy obtained hereunder to provide a waiver of subrogation.

2.14 LIENS

Except as otherwise provided herein, including, without limitation, Section 2.23 below, Lessee shall not create or permit any lien or encumbrance to be attached to or affect the Property by reason of any act or omission of Lessee. Lessee shall indemnify and hold harmless Landlord and the Property against any such lien, encumbrance, or claim of lien or encumbrance, and against any costs in connection therewith, including attorneys' fees.

2.15 INDEMNIFICATION AND INSURANCE

2.15.1 During the Term of this Lease, and for any required thereafter as set forth below, the Lessee shall purchase and maintain in full force and effect, at no cost to the Landlord, the following insurance policies:

- (1) Commercial general liability policy (bodily injury and property damage);
- (2) Comprehensive automobile liability policy (to the extent the Lessee uses any vehicles); and
- (3) Workers' compensation and employer's liability policy (to the extent Lessee has any employees).

2.15.2 Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Lease with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C entitled "Insurance Requirements" attached hereto and incorporated herein by this reference.

2.16 UTILITIES

Lessee shall make all arrangements for and pay for all services and utilities to the Property.

2.17 HOLDING OVER

In the event Lessee fails to vacate the Property and fulfill all of its obligations hereunder at the end of the Term, Lessee shall be liable for all damages incurred by Landlord by reason of the inability to deliver possession of the Property or any portion thereof to any other person.

2.18 ENTRY BY LANDLORD

Notwithstanding any provision to the contrary contained herein, Landlord reserves for itself, and its contractors, agents, employees, representatives or licensees, and shall at any and all times have the right, but not the obligation, to enter the Property, for the following purposes: (a) to respond to any emergency situation; (b) to inspect the Property, provided such inspections shall take place during normal business hours and upon not less than 5 calendar days' notice; (c) to post notices of non-responsibility; and (d) to alter, improve, or repair the Property as Landlord may deem necessary or desirable in the event Lessee fails to comply with an obligation under this Lease to alter, improve or repair the Property, subject to notice to Lessee and a reasonable opportunity for the Lessee to cure. Lessee shall allow access and occupancy of the Property by Landlord and its contractors, agents, employees, representatives or licensees as necessary for the purposes of this Section.

2.19 DAMAGE, RECONSTRUCTION

2.19.1 In the event the Property is damaged by fire or other perils covered by extended coverage insurance, Lessee shall have the right to use all available insurance proceeds to repair or rebuild the Improvements. If the estimated cost of repairs is not in excess of available insurance proceeds, then Lessee shall forthwith repair the same (using the insurance proceeds to pay the cost of such repair) and this Lease shall remain in full force and effect.

2.19.2 (a) In the event the Property is damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, or the estimated cost of repairs is in excess of available insurance proceeds, then Lessee shall notify Landlord in writing of the amount by which the estimated cost of repairs exceeds such proceeds (the "**Shortfall**"), and Lessee shall have the right, within ninety (90) days after receipt of such notice, to elect to provide the Shortfall and proceed with such repairs (using the insurance proceeds and such other funds as Lessee may provide to pay the Shortfall), in which case this Lease shall continue in full force and effect.

If Lessee fails to notify Landlord within such ninety (90) day period that it will provide the Shortfall and conduct the repairs, then Landlord shall have the option, within thirty (30) days from the end of the thirty day period described in clause (a), either to (1) provide the Shortfall at Landlord's sole expense and direct Lessee to repair or restore such damage (using the insurance proceeds and such additional funds as Landlord may provide to pay the Shortfall), with this Lease continuing in full force and effect, or (2) subject to Section 2.23 below and after having provided notice and an opportunity to cure to any Permitted Leasehold Mortgagee and the Lessee's limited partners, give notice to Lessee terminating this Lease as of the date specified in such notice, which date shall be no less than ninety (90) and no more than one hundred twenty (120) days after the giving of such notice of termination. In the event of giving such notice of termination, this Lease shall expire and all interest of the Lessee in the Property shall terminate on the date so specified in such notice.

2.19.3 Lessee shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Property, Lessee's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. Lessee waives the provisions of California Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Property.

2.19.4 Notwithstanding anything contained in this Section 2.19 to the contrary, any rights of Landlord under this Section 2.19, including, without limitation, any right to terminate this Lease, shall be expressly subject to the rights of any Permitted Leasehold Mortgagee and to the terms and conditions of any Permitted Leasehold Mortgage.

2.20 DEFAULT

2.20.1 Subject to Force Majeure delay, the failure by either the Landlord or Lessee to observe or perform any covenants, conditions, or provisions of (a) this Lease or (b) after the reconveyance and/or release of the City Deed of Trust, the City Regulatory Agreement, to be observed or performed by such party shall constitute a default and breach of this Lease. The party in default must immediately commence to cure, correct or remedy such breach and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default, so long as it endeavors to complete such cure, correction or remedy with reasonable diligence, and provided such cure, correction or remedy is completed within the applicable time period set forth herein after receipt of written notice.

2.20.2 If a monetary event of default occurs, prior to exercising any remedies hereunder, the complaining party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the complaining party.

2.20.3 If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the complaining party shall give party in default written notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the complaining party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the complaining party.

2.20.4 If Lessee fails to take corrective action or cure the default within a reasonable time, Landlord shall give Lessee and, as provided in Section 2.20.5, below, the limited partner of Lessee notice thereof, whereupon, subject to the terms of Lessee's partnership agreement, the limited partner of Lessee may remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. Landlord agrees to accept cures tendered by the limited partner of Lessee within the cure periods provided in this Agreement or within the time periods provided in Civil Code Section 2924c, whichever is longer. Additionally, in the event the limited partner of Lessee is precluded from curing a non-monetary default due to an inability to remove the general

partner as a result of a bankruptcy, injunction, or similar proceeding by or against Lessee or its general partner, Landlord agrees to forbear from terminating this Lease during the period during which the limited partner of Lessee is so precluded from acting, not to exceed 180 days, provided such limited partner is otherwise in compliance with the foregoing provisions. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

2.20.5 After Lessee gives written notice to Landlord that the limited partner has been admitted to the Lessee as a general partner, Landlord shall send to the limited partner a copy of all notices of default and all other notices that Landlord sends to Lessee, at the address for the limited partner as provided in Section 1.7. In addition, Landlord shall send to any Permitted Leasehold Mortgagee, as defined in Section 2.23.1(c), a copy of all notices of default and all other notices that Landlord sends to Lessee as provided in Section 2.23.5(b) below.

2.20.6 If any default or breach is not cured by the party in default within the respective period of time provided in this Section 2.20, then the complaining party shall be entitled to exercise any and all rights or remedies which may be available at law or in equity, including terminating this Lease. Any and all rights or remedies available to the parties shall be cumulative, and not alternative.

2.20.7 Mediation. Any controversies between Landlord and Lessee regarding the construction or application of this Lease, and claims arising out of this Lease or its breach, shall be submitted to mediation within thirty (30) days of the written request by one party after the written notice of that request on the other party.

(a) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed one (1) day of eight (8) hours. The parties may agree to extend the time allowed for mediation under this Lease.

(b) The costs of mediation shall be borne by the parties equally.

(c) Mediation under this Section is a condition precedent to filing an action in any court.

2.21 EMINENT DOMAIN

2.21.1 If the Property or any portion thereof is taken under the power of eminent domain by any public agency other than the City of Santa Clara or any agency thereof, the Redevelopment Agency of the City of Santa Clara or the Landlord, or sold by Landlord under the threat of the exercise of such power, this Lease shall terminate as of the date that the condemning Landlord takes possession of the Property. Awards shall be shared among Lessee and Landlord pro rata based on their respective interests in the Property.

2.21.2 Notwithstanding anything contained in this Section 2.21 to the contrary, any rights of the Landlord under this Section 2.21, including, without limitation, any right to terminate this Lease, shall be expressly subject to the rights of any Permitted Leasehold Mortgagee, and the terms and conditions of any Permitted Leasehold Mortgage.

2.22 HAZARDOUS MATERIALS

2.22.1 Lessee shall not:

(a) Make, or permit to be made, any use of the Property, or any portion thereof, which emits, or permits the emission of dust, sweepings, dirt, cinders, fumes, or odors into the atmosphere, the ground, or any body of water, whether natural or artificial, in violation of applicable law; or

(b) Discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any liquid, solid, or gaseous matter, or any combination thereof, into the atmosphere, the ground, or any body of water, in violation of applicable law.

2.22.2 Lessee shall not use, store or dispose of on the Property any solid, liquid, or gaseous matter, or any combination thereof, which is, or may become, hazardous, toxic, or radioactive including, but not limited to, those materials listed in Sections 66680 through 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30 (as may be amended from time to time), in violation of applicable law (all of the foregoing collectively referred to herein as “**Hazardous Materials**”).

2.22.3 Lessee shall not keep any trash, garbage, waste, or other refuse on the Property except in sanitary containers and shall regularly and frequently remove the same from the Property. Lessee shall keep all incinerators, containers, and other equipment used for the storage or disposal of such matter in a clean and sanitary condition. Lessee shall surrender the Property at the expiration or termination of this Lease free of any Hazardous Materials or contamination caused by Lessee's activities, and free and clear of all environmental judgments, liens, or encumbrances and shall, at its own cost and expense, repair all damage and clean up or perform any remedial action necessary relating to any Hazardous Materials or contamination caused by Lessee's activities.

2.22.4 Lessee shall indemnify, defend, and hold Landlord harmless from and against (a) any and all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including but not limited to claims arising out of loss of life, injury to persons, property, or business, or damage to natural resources, in connection with or arising out of any spills or discharges of Hazardous Materials in violation of applicable law, to the extent due to, contributed to, or caused by the activities of Lessee or parties in contractual relationship with Lessee (other than Landlord), or any of them, that occur during the term of this Lease, and (b) from all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including but not limited to claims arising out of Lessee's failure to provide all information, make all submissions, and take all steps required by any Landlord under any Hazardous Materials laws or any other environmental law.

2.23 RIGHTS OF LEASEHOLD MORTGAGEES

2.23.1 DEFINITIONS

(a) For purposes of this Lease, the term “mortgage” shall include whatever security instruments are used in the locale of the Property, such as, without limitation, deeds of trust, security deeds, and conditional deeds. The term “mortgage” shall also include any instruments required in connection with a sale-leaseback transaction. The term “mortgagee” shall include the holder of the secured position under each of the foregoing types of instruments, including but not limited to the beneficiary under a deed of trust, the secured party under a security agreement and the lessor in a sale-leaseback transaction.

(b) For purposes of this Lease, the term “**Leasehold Mortgage**” means a conveyance of a security interest in this Lease and all of Lessee's interests in the Property (collectively referred to as “**Lessee's Leasehold Interests**”) to a lender (a “**Leasehold Mortgagee**”) or the conveyance of Lessee's Leasehold Interests to the Leasehold Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such loan.

(c) For purposes of this Lease, the terms “**Permitted Leasehold Mortgage**” and “**Permitted Leasehold Mortgagee**” shall mean, respectively, a Leasehold Mortgage and a Leasehold Mortgagee satisfying all of the conditions set forth in Section 2.23.2.

(d) “**Development Costs**” means costs incurred by Lessee for the development of the Property and construction of the Improvements to the extent set forth as “**Total Development Costs**” in the approved Project Budget, which shall be subject to adjustment following Completion (the “**Adjusted Project Budget**”) to reflect the final Development Costs set forth in the Cost Certification prepared and submitted to Landlord pursuant to the City Regulatory Agreement.

(e) “**Developer Equity**” means all sources of funds used by Lessee to pay Development Costs except any loan secured by a Permitted Leasehold Mortgage (each, a “**Permitted Leasehold Mortgage Loan**”) or any other loan of funds secured by a deed of trust or other security interest in the Property.

2.23.2 RIGHT TO ENCUMBER. At any time and from time to time during the Term, notwithstanding anything contained in this Lease to the contrary, including, without limitation, Section 2.14 above, Lessee shall have the right to enter into a Leasehold Mortgage upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord (which consent Landlord shall grant so long as the proposed Leasehold Mortgage satisfies all of the following conditions, which conditions shall apply to the Permitted Leasehold Mortgage securing the Construction Loan, the Permitted Leasehold Mortgage securing the initial Permanent Loan:

(a) The Leasehold Mortgage shall cover all of Lessee's interest in the Lease, the Property and the Improvements and shall cover no interest in any other real property other than Lessee's.

(b) The Leasehold Mortgage shall be without subordination of the fee simple title of the Property.

(c) No such Leasehold Mortgage shall be binding upon Landlord in the enforcement of its rights and remedies herein, unless and until Lessee (or a Leasehold

Mortgagee) delivers or causes to be delivered to Landlord a certified copy of the fully executed original Leasehold Mortgage bearing the date and recording information and a certified copy of the original note secured by the Leasehold Mortgage, together with written notice of the address of the Leasehold Mortgagee to which notices may be sent. In the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Landlord unless and until a certified copy thereof, bearing the date and recording information together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Landlord.

(d) No Leasehold Mortgage permitted by this Lease shall cover more than one indebtedness; that is, there shall be no cross-collateralization permitted.

(e) A Leasehold Mortgage is to be originated only by a Qualified Lender. For the purposes hereof, the term "Qualified Lender" shall consist of:

(i) the mortgagee of any purchase money financing of a Permitted Transfer or other Transfer approved by Landlord; or

(ii) any one or a combination of the following lending institutions authorized under applicable California or federal law to make mortgage loans and not under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; or

(iii) any company engaged in the ordinary course of business as a lender with a net worth or assets of not less than \$50,000,000, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative authority restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust; an educational institution; a pension, retirement or welfare fund; a charity; or an endowment fund or foundation authorized to make loans in the State of California; or

(iv) any partner of Lessee's partnership

Landlord acknowledges that the identity and nature of lending institutions change over time, and agrees that Landlord's approval of any proposed mortgage lender that is not a "Qualified Lender" as defined in this paragraph 2.23.2 shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained in this Lease to the contrary, Landlord expressly acknowledges that the holders of the Construction Loan and the Initial Permanent Loan are Qualified Lenders and Permitted Leasehold Mortgagees for all purposes of this Lease.

(f) All rights acquired by the Leasehold Mortgagee under the Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. Except as otherwise set forth in this Lease, Landlord shall not be deemed to waive any covenants, conditions and restrictions contained in this Lease by reason of Lessee's grant of a Leasehold Mortgage. Notwithstanding any foreclosure of any Leasehold Mortgage, Lessee shall remain liable for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

(g) No extension, nor modification, change or amendment to a material financing term of a Leasehold Mortgage shall be effective, or binding upon Landlord, unless and until approved by Landlord, which approval shall be granted so long as such extension or material modification, change or amendment satisfies the applicable requirements of paragraphs (a) through (f), above.

2.23.3 REFINANCING LOAN.

(a) For purposes of this Section 2.23.3, the term “**Refinancing**” means the repayment of all or part of the Initial Permanent Loan, or any subsequent Permanent Loan and/or Developer Equity, using the proceeds of a Permitted Leasehold Mortgage Loan which shall be referred to as a “**Refinancing Loan**.”

(b) In addition to the requirements set forth in Section 2.23.2, the following shall apply to any Permitted Leasehold Mortgage that secures a Refinancing Loan: At any time and from time to time during the Term, notwithstanding anything contained in this Lease to the contrary, including, without limitation, Section 2.14 above, Lessee shall have the right to enter into a Leasehold Mortgage for the purpose of securing a Refinancing Loan, upon and subject to each and all of the following terms and conditions, subject to the reasonable consent of Landlord, which consent Landlord shall grant so long as the proposed Refinancing Loan satisfies all of the following conditions:

(i) the term of the proposed Refinancing Loan shall extend no longer than the Term of this Lease;

(ii) any subordination agreement to be entered into by and among the Landlord, Lessee and the maker of the Refinancing Loan shall contain such cure rights and other similar provisions as the Landlord may reasonably require;

(iii) no event of default shall be continuing under any of the City Loan Documents (as defined in the Loan Agreement) or any other loan secured by the Project; and

(iv) the proposed Refinancing Loan shall be made pursuant to an arm's length transaction with a maker unrelated to the Lessee on commercially available terms.

2.23.4 LANDLORD'S RIGHT TO CURE DEFAULTS. In the event of a default or breach by Lessee of any Permitted Leasehold Mortgage, Landlord shall have the right to cure the default pursuant to the terms of the subordination agreement between the Landlord and the Permitted Leasehold Mortgagee. In such event, Landlord shall be entitled to reimbursement by Lessee of all costs and expenses incurred by Landlord in curing the default, with interest at the highest rate permitted by law, as additional rent (collectively, “Landlord's Cure Payments”), provided in the event of a subsequent foreclosure of a Permitted Leasehold Mortgage, the party acquiring the Lessee's Leasehold Interests shall not be obligated to pay Landlord any of Landlord's Cure Payments. Notwithstanding any provision of this Lease to the contrary, this Section 2.23.4 shall be subject to and superseded by the provisions of any subordination agreement executed by Landlord and any Permitted Leasehold Mortgagee.

2.23.5 RIGHTS OF PERMITTED LEASEHOLD MORTGAGEE: If Lessee and/or Lessee's successors and assigns (including, but not limited to, any sublessee of Lessee) shall mortgage its interest in this Lease and the Lessee's Leasehold Interests, or any part or parts thereof as permitted by this Section 2.23, the following provisions shall apply:

(a) No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Lease either by unilateral action of Landlord or Lessee, or by joint action of Landlord and Lessee without the prior consent in writing of any Permitted Leasehold Mortgagee.

(b) Right to Notice of Default. Landlord shall, upon serving Lessee with any notice of default, simultaneously serve a copy of the notice of default upon any Permitted Leasehold Mortgagee.

(c) Right to Cure. Any Permitted Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Permitted Leasehold Mortgagee and its agents and contractors shall have full access to the Property for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Lessee.

(d) Additional Cure Period. Anything contained in this Lease notwithstanding, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease as to any Permitted Leasehold Mortgagee, nor to disturb the right of possession of any subtenant of Lessee, and the notice shall be rendered void as to such parties, if the Permitted Leasehold Mortgagee, within sixty (60) days after expiration of the period within which Lessee was permitted to cure the default (but in no event later than ninety (90) days after receipt by the Leasehold Mortgagee of the notice of default referred to in paragraph 2.23.5(b), above), shall both:

(i) either (1) cure the default if the same can be cured by the expenditure of money, or (2) if the default or breach is not so curable, commence, or cause any trustee under the relevant Permitted Leasehold Mortgage to commence, and thereafter to diligently pursue to completion, a cure of such default, including, without limitation, a foreclosure of the relevant Permitted Leasehold Mortgage; and

(ii) perform or cause the performance of all of the covenants and conditions of this Lease requiring the expenditure of money by Lessee until such time as the leasehold shall be sold upon foreclosure pursuant to the relevant Permitted Leasehold Mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

(e) Condition of Termination. Any right of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon: (1) Landlord having first given to each Permitted Leasehold Mortgagee written notice of the default as required under Section 2.23.5(b) above; (2) each Permitted Leasehold Mortgagee having failed to remedy such default or acquire Lessee's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 2.23.5.(d), above; and (3) the terms of Section 2.23.7 below.

(f) Suspension of Cure Period. If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified in paragraph (d) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as the Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

(g) Loss Payable Endorsement. Landlord and Lessee agree that the name of the Permitted Leasehold Mortgage shall, at its request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease, and any insurance proceeds are to be applied in the manner specified in the relevant Permitted Leasehold Mortgage.

(h) No Consent Required to Foreclosure. Notwithstanding anything contained in this Lease to the contrary, foreclosure of any Permitted Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or any conveyance of the Lessee's Leasehold Interests hereunder from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the Lessee hereunder. Further, following such foreclosure or conveyance, any assignment or subleasing by the purchaser or other transferee shall not require the consent of Landlord, despite any other provisions of this Lease to the contrary.

(i) Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Lessee shall be paid to and held by the Permitted Leasehold Mortgagee of highest priority and distributed pursuant to the provisions of the relevant Permitted Leasehold Mortgage, and the Permitted Leasehold Mortgagee may reserve the right to apply to the mortgagee debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property and the Improvements.

(j) Notice of Proceedings. The parties hereto shall give to any Permitted Leasehold Mortgagee notice of any arbitration proceedings or condemnation proceedings involving Lessee's Leasehold Interests, or of any pending adjustment of insurance claims, and any Permitted Leasehold Mortgagee shall have the right to intervene therein and shall

be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Permitted Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Permitted Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(k) Further Protections. Landlord and Lessee shall cooperate in including in this Lease, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 2.23 and allowing such Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease. Landlord and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any way affect the Term or rent or Option under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(l) Additional Agreement. Landlord shall, upon request, execute, acknowledge and deliver to a Permitted Leasehold Mortgagee, an agreement prepared by such Permitted Leasehold Mortgagee and reviewed by Landlord at the sole cost and expense of Lessee, in form satisfactory to such Permitted Leasehold Mortgagee, among Landlord, Lessee and the Permitted Leasehold Mortgagee, agreeing to all of the provisions of this Lease.

2.23.6 NOTICE. If Lessee and/or Lessee's successors and assigns shall mortgage its interest in this Lease or the Lessee's Leasehold Interests, or any part or parts thereof, Lessee shall send or cause to be sent to Landlord a true copy thereof, together with written notice specifying the name and address of the Leasehold Mortgagee(s) and the pertinent recording data with respect to such Leasehold Mortgage(s).

2.23.7 NEW LEASE. Landlord agrees that in the event of termination of this Lease by reason of any default by Lessee, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Lessee or Lessee's property or any other reason whatsoever, Landlord if requested by any Permitted Leasehold Mortgagee will enter into a new lease of the Property, with the Permitted Leasehold Mortgagee requesting a new lease or its designee, for the remainder of the Term, effective as of the date of such termination, subject to the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(a) The Permitted Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the Permitted Leasehold Mortgagee receives notice of the termination;

(b) The Permitted Leasehold Mortgagee shall perform and observe all covenants contained in the terminated Lease on Lessee's part to be performed after the date of the new Lease;

(c) The lessee under the new lease shall have the same right, title and interest in and to the buildings and improvements on the Property as Lessee had under the terminated Lease immediately prior to its termination; and

(d) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 2.23.7 shall enjoy the same priority in time as this Lease over any mortgage, deed of trust, or other lien, charge, or encumbrance on the Property.

(e) Any new lease made pursuant to this Section 2.23.7 shall be accompanied by a conveyance from Landlord to the new lessee of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease.

(f) Nothing herein contained shall obligate or require any Permitted Leasehold Mortgagee to enter into a new lease pursuant to this Section 2.23.7, nor to cure any default of Lessee referred to above.

(g) If a Permitted Leasehold Mortgagee shall elect to demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of the Permitted Leasehold Mortgagee, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to evict, oust or remove the Lessee from the Property, but not any subtenant of Lessee actually occupying the Property, or any part thereof.

(h) Unless and until Landlord has received notice from any Permitted Leasehold Mortgagee that the Permitted Leasehold Mortgagee elects not to demand a new lease as provided in this Section 2.23.7, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases, nor enter into any new subleases hereunder without the prior written consent of the Permitted Leasehold Mortgagee.

2.23.8 LENDER'S LIABILITY. In the event any Permitted Leasehold Mortgagee becomes the Lessee under this Lease or becomes a lessee under any new lease obtained pursuant to Section 2.23.7(a) above, the Permitted Leasehold Mortgagee shall only be liable for the obligations of Lessee under this Lease or a new lease first accruing or arising after the time that the Permitted Leasehold Mortgagee first becomes lessee under this Lease or such new lease.

2.23.9 APPROVAL OF MODIFICATIONS. Landlord (through its Executive Director or designee) shall approve reasonable modifications to the terms of this Lease which are reasonably requested by a proposed Leasehold Mortgagee as a condition of financing contemplated by the Loan Agreement and this Lease, and which the Executive Director or designee determines, in his sole discretion, will not adversely affect Landlord's rights.

2.23.10 CITY REGULATORY AGREEMENT. Notwithstanding anything to the contrary herein, Lessee (including, without limitation, any Permitted Leasehold Mortgagee under a new lease) shall at all times be bound by and comply with the City Regulatory Agreement.

2.24 RESTRICTION ON ENCUMBRANCE BY LANDLORD

2.24.1 Landlord shall not mortgage or otherwise encumber its interest in the Property (referred to as a “**Fee Mortgage**”) without the prior written consent of Lessee, which Lessee shall not unreasonably withhold, condition or delay. Any Fee Mortgage, including amendments thereto, shall be subordinated to this Lease and shall, in the event of a foreclosure of the Fee Mortgage, be obligated to recognize the rights of Lessee under this Lease, and the holder of any Fee Mortgage shall be obligated to execute, acknowledge and deliver to Lessee a statement confirming such subordination from time-to-time.

2.24.2 Prior to obtaining any loan secured by a Fee Mortgage, Landlord shall notify Lessee in writing (“**Landlord's Notice**”) and provide Lessee an opportunity to make the loan to Landlord, as provided in this Section 2.24.2. Landlord's Notice shall contain the following: (i) a statement that Landlord has obtained from a lender a bona fide statement of interest in making a Fee Mortgage loan to Landlord (or a comparable contingent commitment from a lender, underwriter or other entity relating to any proposed financing to be secured by a Fee Mortgage, as may be appropriate to the particular form of the proposed financing) ; (ii) the terms of the proposed Fee Mortgage loan (“**Proposed Terms**”); and (iii) a reasonable time period, not less than thirty (30) days after Landlord's Notice (the “**Offer Period**”), for Lessee to offer, in writing, to make the loan to Landlord. If, prior to the end of the Offer Period, Lessee submits to Landlord a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall not obtain the Fee Mortgage loan described in Landlord's Notice. In that event, subject to all requisite approvals by Landlord's governing body, Landlord shall have the right, but not the obligation, to accept Lessee's offer. If, prior to the end of the Offer Period, Lessee fails to submit a written offer to make a loan on terms that are essentially the same as, or better than, the Proposed Terms, Landlord shall have the right to obtain the proposed Fee Mortgage loan.

2.24.3 THE PROVISIONS OF THIS LEASE DO NOT GIVE TO LESSEE OR ANY PERSON WHATSOEVER OTHER THAN LANDLORD THE RIGHT TO MORTGAGE, HYPOTHECATE OR OTHERWISE TO ENCUMBER OR TO CAUSE ANY LIENS TO BE PLACED AGAINST THE FREEHOLD ESTATE OF LANDLORD, NOR SHALL SAID PROVISIONS BE CONSTRUED AS RESULTING IN A SUBORDINATION IN WHOLE OR IN PART OF THE FREEHOLD ESTATE OF LANDLORD OR LANDLORD'S RIGHT TO RECEIVE RENT TO ANY INDEBTEDNESS OF LESSEE.

2.25 QUIET ENJOYMENT

Absent an uncured default by Lessee, Landlord agrees not to disturb the possession, interest or quiet enjoyment of Lessee in the Property for any reason, or in a manner which would materially adversely affect any Permitted Leasehold Mortgage.

2.26 GENERAL PROVISIONS

2.26.1 The waiver by either party of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

2.26.2 All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands shall be

sent by United States Mail, postage prepaid, to the address for each party set forth in Article 1 of this agreement. All notices shall be deemed to be served upon personal delivery or two (2) days after mailing in the manner required by this Section.

2.26.3 Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

2.26.4 The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

2.26.5 In addition to specific provisions of this Lease, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, floods, earthquakes, fires, casualties, Acts of God, epidemics, quarantine restrictions, governmental restrictions or priority, unusually severe weather, inability to secure necessary labor, materials or tools, acts of the other party, acts or failure to act of the City or any other public or governmental Landlord or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Times of performance under this Lease may also be extended in writing by mutual agreement of the parties.

2.26.6 If any action or proceeding is brought by either party against the other under this Lease, the prevailing party shall be entitled to recover all costs and expenses, including the fees of its attorney in such action or proceeding. This provision shall also apply to any post-judgment action by either party, including without limitation efforts to enforce a judgment.

2.26.7 Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

2.26.8 No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

2.26.9 This Lease shall be governed by the laws of the State of California. Proper venue for any action shall be in Santa Clara County, California.

2.26.10 Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto, or cause Landlord to be responsible in any way for the debts or obligations of Lessee, or any other party.

2.26.11 This Lease, including any document or instrument incorporated herein by reference, contains a complete and final expression of the agreement between Landlord and Lessee, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Lease. Any and all previous discussions or agreements between Landlord and Lessee with respect to the premises, whether oral or written, are superseded by this Lease.

2.26.12 No amendment, change, or addition to, or waiver of termination of, this Lease or any part hereof shall be valid unless in writing and signed by both Landlord and Lessee.

2.26.13 The provisions of this Lease shall be interpreted in a reasonable manner to effect the purpose and intent of the parties to this Lease.

2.26.14 Concurrently with the execution of this Lease, the Parties shall execute and record a Memorandum of Lease, substantially in the form attached to this Lease as Exhibit B.

2.26.15 As and when required by the California Tax Credit Allocation Committee, the Landlord and Lessee shall execute the then current form of the California Tax Credit Allocation Committee Lease Rider Agreement.

Executed in Santa Clara, California, as of the date first set forth above.

[Signatures appear on next page.]

IN WITNESS WHEREOF, Landlord and Lessee have signed this Lease as of the date and year first above written.

LANDLORD:

CITY OF SANTA CLARA,
a California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

By: _____
Brian Doyle, City Attorney

[Signatures continue on next page.]

LESSEE:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimbler, Manager

Exhibit A

LEGAL DESCRIPTION

Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

[to be inserted]

Exhibit B

MEMORANDUM OF LEASE

[ATTACHED]

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

MEMORANDUM OF LEASE

This Memorandum of Lease (this “**Memorandum**”) is made as of [] 1, 2020, by and between the CITY OF SANTA CLARA (“**Landlord**”) and MONROE STREET HOUSING PARTNERS, L.P., a California limited partnership (“**Lessee**”), who agree as follows:

1. Landlord hereby leases the real property described on Exhibit A attached hereto (“**Property**”) to Lessee and Lessee hereby accepts tenancy of the Property from Landlord for a term (the “**Term**”) commencing on the date that this Memorandum is recorded in the Official Records of the County of Santa Clara and shall continue for 65 years *[Term may be increased as determined by final underwriting and approval by City Housing Division]* after the issuance of the temporary certificate of occupancy for the Improvements (as defined therein), unless earlier terminated as provided in the Lease. Concurrently herewith, Landlord and Lessee have entered into that certain Lease Agreement (the “**Lease**”) with respect to the Property.
2. The provisions of the Lease to be performed by Lessee, whether affirmative or negative in nature, are intended to and shall bind Lessee and its successors and assigns at any time, and shall inure to the benefit of Landlord and its successors and assigns.
3. The provisions of the Lease to be performed by Landlord, whether affirmative or negative in nature, are intended to and shall bind Landlord and its successors and assigns at any time, and shall inure to the benefit of Lessee and its successors and assigns.
4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.
5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the office of the Landlord, at its offices located at 1500 Warburton Avenue, Santa Clara, California 95050.

LESSEE:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimbler, Manager

[Signatures must be notarized.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2020, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2020, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Exhibit A

LEGAL DESCRIPTION

That certain Real Property in the City of Santa Clara, County of Santa Clara, State of California,
described as follows:

Exhibit C

INSURANCE REQUIREMENTS

[Behind this Page.]

LOAN AGREEMENT

(Freebird)

by and between

THE CITY OF SANTA CLARA

and

MONROE STREET HOUSING PARTNERS, L.P.

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into by and between THE CITY OF SANTA CLARA (“**City**”) and Monroe Street Housing Partners, L.P., a California limited partnership (“**Borrower**”), as of [] 1, 2020. City and Borrower agree as follows:

PART 1. SUBJECT OF AGREEMENT

Section 1.1 Purpose of Agreement

a. Concurrently with the execution of this Agreement, City and Borrower have entered into that certain Ground Lease (the “**Lease**”) pursuant to which City is leasing to Borrower an approximately 2.5 acre parcel (the “**Property**”) described on Attachment No. 1 hereto for the construction and operation of 165 units of housing to be leased as follows: (a) 16 units to be leased to up to 30% AMI Households who qualify as persons with developmental disabilities; (b) 10 units to be leased to 50% AMI Households; (c) 13 units to be leased to 60% AMI Households; (d) 16 units to be leased to 80% AMI Households; (e) 9 units to be leased to 120% AMI Households; and (f) 1 unit as a manager’s unit (the “**Management Unit**”). The foregoing units to be developed on the Property, excluding the Management Unit, are referred to herein as the “**Affordable Units**”. Borrower’s leasehold interest in the Property pursuant to the Lease and fee interest in the improvements to be constructed on the Property (including the Affordable Units and the Management Unit), together with the development thereof in accordance with this Agreement, is referred to herein as the “**Project**”.

b. City is concurrently herewith making a loan to Borrower in the original principal amount of Five Million Dollars (\$5,000,000) (the “**City Loan**”) to provide financial assistance for the development of the Project. The City Loan is evidenced by that certain Promissory Note of even date herewith made by Borrower in favor of City (the “**City Note**”) and secured by that certain Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor, Old Republic Title Company is the Trustee, and City is the Beneficiary, dated as of the date hereof (the “**City Deed of Trust**”) and encumbering the Project.

c. City and Borrower have agreed to enter into this Agreement to memorialize their understanding regarding their respective rights and obligations in respect of the City Loan and the construction and operation of the Project.

Section 1.2 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

“**30% AMI Household(s)**” means a household whose aggregate gross income equals 30% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“50% AMI Household(s)” means a household whose aggregate gross income equals 50% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“60% AMI Household(s)” means a household whose aggregate gross income equals 60% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“80% AMI Household(s)” means a household whose aggregate gross income equals 80% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“120% AMI Household(s)” means a household whose aggregate gross income equals 120% or less of AMI, as adjusted for family size. For purposes of this definition, “adjusted for family size” means the actual number of persons in the applicable household.

“Affiliate” shall mean (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term “control” as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes of this definition, any general partner shall be considered an “Affiliate” of Borrower.

“Affordable Rent” means an amount of monthly rent, including a reasonable utility allowance, that does not exceed the maximum rent to be charged by Borrower and paid by the Qualified Tenant occupying the Affordable Units as determined pursuant to the TCAC Regulations. The tenant utility allowance, if any, shall be determined by the Santa Clara County Housing Authority. The calculation of Affordable Rent shall be performed annually.

“AMI” means the median family income figures and standards (adjusted for actual Household size) utilized by TCAC.

“Business Day(s)” means Monday through Friday, except for federal and state holidays.

“Certificate of Occupancy” shall mean a temporary certificate of occupancy issued by the City for the Project.

“Change Order” means any individual change order which results in a change made to, or any amendments of, the Construction Contract or the Plans and Specifications.

“City” shall mean the City of Santa Clara, California

“City Assignment of Agreements” shall mean the Assignment of Agreements between Borrower and City dated as of the date hereof.

“City Assignment of Rents and Leases” shall mean the Assignment of Rents and Leases between Borrower and City dated as of the date hereof.

“City Deed of Trust” shall mean the Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor, Old Republic Title Company is The Trustee, and City is the Beneficiary, which secures the City Loan, dated as of the date hereof.

“City Environmental Indemnity” shall the Environmental Indemnity executed by Borrower for the benefit of the City, dated as of the date hereof.

“City Indemnitees” means City and its departments, divisions, agencies, elected officials, boards, officers, employees, representatives and agents.

“City Loan” shall mean the loan of from the City to Borrower, in the amount and pursuant to the terms and conditions described in this Agreement, secured by the City Deed of Trust and having a lien on the Property that is junior in priority to the lien of the Senior Loan Deed of Trust.

“City Loan Documents” shall mean this Agreement, the City Promissory Note, the City Deed of Trust, the City Assignment of Rents and Leases, the City Assignment of Agreements, the City Environmental Indemnity, the City Regulatory Agreement, any other agreement or document evidencing or securing the City Loan, and any amendments and modifications thereto.

“City Note” shall mean the Promissory Note, evidencing the City Loan, made by Borrower and payable to City, dated as of the date hereof.

“City Regulatory Agreement” means the Agreement Containing Covenants between City and Borrower made as of the date hereof and recorded against the Project.

“Closing Requirements” shall mean the requirements attached to this Agreement as Attachment No. 6 which are incorporated herein by this reference.

“Completion” shall mean the point in time when all of the following shall have occurred: (1) issuance of a Certificate of Occupancy by the City of Santa Clara; (2) recordation of a Notice of Completion by Borrower or its contractor; (3) certification by the project architect that construction of the Improvements as provided in the (with the exception of minor “punchlist” items) has been completed in a good and workmanlike manner and substantially in accordance with the Scope of Development; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop notices that have been delivered; and (5) the City shall have been issued a CLTA 101 endorsement (or an alternative endorsement reasonably acceptable to the City) to its policy of title insurance.

“Construction Budget” means the schedule of construction expenses actually and expected to be incurred by the Borrower in connection with the Project and reasonably approved by the City, as may be amended or modified pursuant to the City Loan Documents.

“Construction Loan” means the loan for the construction of the Project made to Borrower from [] (**“Construction Lender”**), secured by the Construction Loan Deed of Trust.

“Construction Loan Deed of Trust” shall mean the leasehold deed of trust securing the Construction Loan that is first in priority.

“Construction Loan Documents” means any agreements and documents evidencing or securing the Construction Loan and includes all attachments, modifications and amendments thereto.

“Construction Period” shall mean the period of time commencing upon the date hereof and ending upon the Conversion.

“Conversion” shall mean the point in time that both (a) either (i) all of the conditions precedent to the funding of the Permanent Loan have been satisfied and the Construction Loan has been repaid in full, as evidenced by the recording against the leasehold of the Property of a reconveyance of the Construction Loan Deed of Trust or (ii) the Construction Loan is converted to the Permanent Loan pursuant to the terms of the Construction Loan Documents and the Permanent Loan Documents, and (b) the Conversion Requirements set forth on Attachment No. 7 are satisfied.

“Conversion Requirements” shall mean the requirements attached to this Agreement as Attachment No. 7 which are incorporated herein by this reference.

“County” means Santa Clara County.

“County Loan” means that certain loan from County to Borrower in the amount of \$3,200,000.

“County Loan Deed of Trust” shall mean the leasehold deed of trust securing the County Loan that is second in priority.

“County Loan Documents” means any agreements and documents evidencing or securing the County Loan and includes all attachments, modifications and amendments thereto.

“Developer Fee” means the developer fee to [], as “Developer”, in an amount not to exceed \$[], with the maximum cash portion of the Developer Fee equal to or less than \$[] to be paid as follows: (a) \$[] at [], (b) \$[] at [], (c) \$[] at [], and (d) \$[] at []. Any portion in excess of the \$[] cash portion shall constitute **“Deferred Developer Fee”** under the Partnership Agreement and shall be payable from the Borrower’s remaining share of Residual Receipts (as defined in the City Note).

“Development Costs” shall mean the total cost of developing and constructing the Improvements on the Property, as set forth in the Project Budget.

“Draw Request” means a request for disbursement of Construction Loan funds.

“Eligible Project Costs” means all costs and expenses permitted and approved pursuant to this Agreement as set forth in the Construction Budget which are customarily incurred and shall have been actually incurred by Borrower for the development and construction of the Project and shall include, without limitation, the following: construction costs; a Developer Fee in an amount not to exceed that permitted by the TCAC Regulations; property taxes and assessments; security services; utilities fees; insurance; and such other costs, fees and expenses, as agreed to in writing by the City; provided, however, that payment to parties related to Borrower for Eligible Project Costs must not exceed reasonable and customary market rates.

“Environmental Laws” shall have the meaning set forth in the Environmental Indemnity.

“Force Majeure” or **“Force Majeure Event”** shall mean the following events, provided that they actually delay and interfere with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such interference: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation, arbitration, administrative proceedings, initiatives and/or referenda, including challenges to the validity of this transaction or the approvals for the Project, or any element thereof, or any portion thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the City shall not excuse performance by the City); the imposition of any applicable moratorium by a Governmental Authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

“Force Majeure Delay” shall mean any delay in taking any action required by this Agreement, proximately caused by the occurrence of any Force Majeure Event.

“Governmental Approvals” shall mean and include any and all general plan amendments, zoning approvals or changes, required approvals and certifications under the California Environmental Quality Act, tentative and final tract maps, variances, conditional use permits, demolition permits, excavation/foundation permits, grading permits, building permits, inspection reports and approvals, certificates of occupancy, and other approvals, permits, certificates, authorizations, consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever required from any Governmental Authority in order to commence and complete the construction of the Project.

“Governmental Authority” means the United States, the State of California, the County of Santa Clara, the City of Santa Clara or any other political subdivision in which the Property is located, and any court or political subdivision, City or instrumentality having jurisdiction over the Property.

“Governmental Regulations” means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, Environmental Laws, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including the National Environmental Policy Act (NEPA) and all Environmental Laws) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Affordable Project.

“Hazardous Substances” shall have the meaning set forth in the Environmental Indemnity.

“Household” means one or more persons occupying an Affordable Unit.

“Improvements” means and includes any buildings, structures, fixtures, foundations, excavation, parking, landscaping, or underground installations to be constructed on, under, or over the Property pursuant to the Scope of Development and in accordance herewith, including, without limitation, the Affordable Units and the Management Unit.

“Investor Limited Partner” shall mean [], or any other Person who will be an investor limited partner in Borrower’s limited partnership and who will purchase the Low Income Housing Tax Credits and own a 99.99% interest in the Borrower.

“Lease” shall mean the Ground Lease for the Property between the City, as lessor, and Borrower, as lessee, dated as of the date hereof.

“Legal Description” shall mean the legal description of the Property attached to this Agreement as Attachment No. 1, which is incorporated herein by this reference.

“Limited Partnership” shall mean the single purpose entity referred to herein as “Borrower”, formed for the ownership, development and operation of the Project.

“Limited Partnership Agreement” shall mean the agreement governing the Limited Partnership and shall include the Limited Partnership Agreement as amended and restated on the admission of the Investor Limited Partner.

“Low Income Housing Tax Credits” shall mean tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

“Management Agreement” means a written agreement between the Borrower and the Property Manager as described in Section 5.3.

“Management Plan” means the plan for the management and operation of the Project.

“Management Unit(s)” is defined in Section 1.1(a).

“Memorandum of Lease” shall mean the memorandum evidencing the Lease, between the City, as lessor, and Borrower, as lessee, dated as of the date hereof, and to be recorded in the Official Records.

“Operating Budget” means the operating budget for the Project prepared in accordance with the City Regulatory Agreement.

“Permanent Loan” shall mean any permanent loan, in an aggregate amount not to exceed the Construction Loan except as reasonably approved by the City, for the Project to be made to Borrower by the Construction Lender or other lender in accordance with the terms and conditions of the Lease (**“Permanent Lender”**) and the Project Pro Forma following Conversion, secured by the Permanent Loan Deed of Trust.

“Permanent Loan Deed of Trust” shall mean the leasehold deed of trust securing the Permanent Loan that is first in priority.

“Permanent Period” shall mean the period of time from and after Conversion.

“Permanent Pro Forma” means a revised Project Pro Forma as of the date of the Conversion.

“Permitted Transfer” means any of the following:

- a. An assignment of this Agreement and all of Borrower’s interests in the Property to an Affiliate;
- b. A conveyance of a security interest in the Property or any portion thereof or interest therein or interest in the Borrower in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;
- c. The inclusion of equity participation in the Borrower by addition of limited partners to Borrower’s partnership or similar mechanism, and any transfers of limited partnership interests in Borrower’s partnership;
- d. The lease for occupancy of all or any part of the Improvements on the Property;
- e. The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement;
- f. The withdrawal, removal and/or replacement of a general partner of Borrower pursuant to the terms of the Borrower’s partnership agreement, provided that any required substitute general partner is reasonably acceptable to City and is selected with reasonable promptness. The Investor Limited Partner or an Affiliate thereof is an acceptable successor general partner of Borrower;

g. the assignment or replacement of the original managing general partner in the Borrower with a nonprofit public benefit corporation or Affiliate thereof, provided that any new general partner is reasonably acceptable to City;

h. The sale, transfer or pledge of any limited partnership interest in Borrower or of any partnership interest in the Investor Limited Partner; and

i. A Refinancing Loan in accordance with Section 2.23.3 of the Lease.

“Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

“Plans and Specifications” means any and all plans, drawings, studies, reports and related documents concerning the construction of the Project submitted by Borrower to City, and approved by City, including, without limitation, all architectural and engineering plans, and all approved amendments, modifications, supplements, general conditions and addenda thereto.

“Project Budget” shall mean the schedule of sources and uses attached to this Agreement as Attachment No. 5.

“Project Pro Forma” means the financial information to be prepared by Borrower, and any updates and amendments thereto, including without limitation, the Construction Budget, estimated sources and uses of financing, and the Project’s operating budget and reasonably approved by the City.

“Property” means the real property described in Section 1.1(a) hereof.

“Property Manager” means The John Stewart Company, or another property manager engaged by Borrower to manage the Project and reasonably approved by the City.

“Qualified Tenant(s)” means a Household who qualifies as a 30%, 50%, 60%, 80% and 120% AMI Household, as applicable.

“Release of Construction Covenants” shall mean the certificate to be issued by the City in accordance with Section 3.25 of this Agreement.

“Rent Schedule” means the schedule calculating the Affordable Rent for the Project.

“Restricted Period” shall mean the period beginning on the date of the Conversion and continuing until the date that is fifty-five (55) years after the Conversion.

“Schedule of Performance” shall mean the document attached to this Agreement as Attachment No. 2 which is incorporated herein by this reference.

“Scope of Development” shall mean the document attached to this Agreement as Attachment No. 3 which is incorporated herein by this reference.

“Senior Lender” shall mean the maker of any Senior Loan, any construction lender, credit enhancer or construction period guaranty facility, including but not limited to the Construction Lender and the Permanent Lender.

“Senior Loan” shall mean, during the Construction Period, the Construction Loan, and during the Permanent Period, the Permanent Loan and any loan in the Project Pro Forma with an actual principal amount in excess of the City Loan.

“Senior Loan Documents” shall mean, as applicable, the Construction Loan Deed of Trust, the Permanent Loan Deed of Trust, loan agreements, promissory notes, financing statements, guaranties, security agreements, assignments, and similar documents and instruments to be executed by Borrower in connection with the Senior Loans.

“Social Services” means the social services to be provided to residents of the Project, which shall include, at a minimum, adult education and either a health and wellness program or a skill building program.

“Subordination Agreement” means an agreement between each Senior Lender and the City in such form as is reasonably approved by the Senior Lender and the City that subordinates the City Loan and City Loan Documents (except for the City Regulatory Agreement) to the Senior Loan and Senior Loan Documents.

“TCAC” means the California Tax Credit Allocation Committee.

“TCAC Regulations” means the California Tax Credit Regulations Implementing the Federal and State Low Income Housing Tax Credit Laws, California Code of Regulations, Title 4, Division 17, Chapter 1.

“Title Company” means Old Republic Title Company.

Section 1.3 The Property

The Property is owned by County and leased to Borrower pursuant to the Lease, as described in the “Legal Description of the Property” (attached hereto as Attachment No. 1).

Section 1.4 City

City is a California municipal corporation existing under the laws of the State of California. The address of the City for purposes of receiving notices pursuant to this Agreement shall be:

To the City: Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Division Manager

Copy to: City Attorney's Office
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: City Attorney

Copy to: Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 95401
Attention: Henry Loh II

“City” as used in this Agreement includes the any assignee or successor to the rights, powers and responsibilities of City hereunder.

Section 1.5 Borrower

Borrower is Monroe Street Housing Partners, L.P., a California limited partnership, whose administrative general partner is Freebird Development Company, LLC, a California limited liability company, and whose managing general partner is Housing Choices Coalition For Persons With Developmental Disabilities, Inc., a California nonprofit public benefit corporation. The address of Borrower for purposes of receiving notices pursuant to this Agreement is as follows:

Monroe Street Housing Partners, L.P.
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

With a copy to:

Monroe Street Housing Partners, L.P.
c/o Housing Choices Coalition For Persons With Developmental Disabilities, Inc.
6203 San Ignacio Ave, Suite 108
San Jose CA 95119
Attention: President

With a copy to:

Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan A. Gross

With a copy to:

[LP]

Whenever the term “Borrower” is used herein, such term shall mean and include: (1) the Borrower as of the date hereof; and (2) any assignee of or successor to its rights, powers and responsibilities approved by the City or permitted by this Agreement.

Section 1.6 Assignments and Transfers

The qualifications and identity of the Borrower are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Except for Permitted Transfers, the Borrower shall not assign all or any part of this Agreement without the prior written approval of the City. The City agrees to reasonably give such approval if in the reasonable determination of the City, the proposed assignee is comparable in all material respects (including experience, character and financial capability) to the Borrower. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments satisfactory to the City, and be subject to the approval by the City of evidence of the proposed assignee’s qualifications to meet the obligations of the Borrower under this Agreement.

For the reasons cited above, the Borrower represents and agrees for itself and any successor in interest that, except for Permitted Transfers, without the prior written approval of the City, which shall not be unreasonably withheld, there shall be no cumulative change in ownership interest of any general partner of greater than 49%, or with respect to the identity of the parties in control of the Borrower or the degree thereof, by any method or means.

The Borrower shall promptly notify the City of any and all changes whatsoever in the identity of the parties in control of the Borrower or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

The Borrower shall not, except for Permitted Transfers, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, or any interest in Borrower (referred to hereinafter as a “**Transfer**”), without prior written approval of the City, except as expressly permitted by this Agreement and the other City Loan Documents. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill the obligations undertaken in this Agreement by the Borrower. Any such proposed transferee, by instrument in writing satisfactory to the City and in a form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City shall expressly assume all of the obligations of the Borrower under this Agreement and agree to be subject to all conditions and restrictions applicable to the Borrower in this Agreement. There shall be submitted to the City for review all instruments and other legal documents proposed to affect any such transfer; and if approved by the City its approval shall be indicated to the Borrower in writing.

In the absence of specific written agreement by the City, no unauthorized Transfer, or approval thereof by the City, shall be deemed to relieve the Borrower or any other party from any obligations under this Agreement.

Notwithstanding this Section 1.6, Borrower shall have the right to make Permitted Transfers and execute deeds of trust and other instruments granting a security interest in the Property for the purposes of financing the Development Costs.

PART 2. CITY LOAN

Section 2.1 City Loan

City agrees to lend to the Borrower, and Borrower agrees to borrow from City, the City Loan. Concurrently with the execution of this Agreement, City and Borrower have executed and delivered the City Loan Documents.

Section 2.2 Disbursement

Upon satisfaction of the Closing Requirements, the City Loan shall be disbursed to Borrower in accordance with this Agreement.

City shall have no obligation to disburse the City Loan proceeds after Conversion. If any the City Loan proceeds remain undisbursed at Conversion, the amount of the City Loan will be reduced.

Section 2.3 Retention

Upon satisfaction of City's conditions precedent to funding, City will disburse ninety percent (90%) of hard costs for balances expended, less prior disbursements and one hundred percent (100%) of soft costs for balances expended, less prior disbursements. The remaining amount shall be retained ("retention") and such retention will be disbursed upon Completion.

Section 2.4 Subordination

City agrees that the City Loan and City Loan Documents (except the City Regulatory Agreement) shall be subordinate to the lien of each Senior Loan. City agrees to make such modifications to this Agreement, and to execute such estoppel certificates, as may reasonably be requested by a Senior Lender and the Investor Limited Partner, provided that such modifications or certificates are consistent with the purpose of this Agreement and do not materially adversely affect the receipt of any material benefit by City hereunder. The City shall execute such Subordination Agreements as may reasonably be requested by any Senior Lender.

Section 2.5 Construction Loan

The Construction Loan is secured by Borrower's interest in the Project and the Improvements located thereon. In no event may the Construction Loan be cross-defaulted with any loan secured by property other than the Project or assets attached to property other than the Project.

Section 2.6 Change Orders

Borrower covenants and agrees that concurrently with its submission of any Change Order to the Construction Lender, Borrower shall submit a copy of such Change Order to the City. Borrower shall not permit any Change Order without City's prior written consent if any such change (a) constitutes a material change in architectural or structural design, or the value or quality of the Improvements, or (b) would result in an increase or decrease in the cost of construction of the Improvements in excess of \$[50,000] individually and in excess of \$[150,000] in aggregate of change orders; provided, however, that if the City does not reasonably disapprove in writing within ten (10) Business Days of the written request for a Change Order and the County approves such Change Order, such Change Order shall be deemed approved by the City.

Section 2.7 Draw Requests

Concurrently with submission to any lender(s) of any draw request for funding of any construction costs relating to the Project (including all Draw Request submissions to the Construction Lender), Borrower shall submit such draw request and all supporting documentation customarily required with respect to such request to the City. The City shall be invited to attend all Draw Request meetings with respect to the Construction Loan.

The City's approval shall be required for any draw request with respect to the City Loan, and Borrower shall not proceed with any such draw request for City Loan proceeds until City's approval has been obtained; provided that, if the City fails to respond to such request for approval within ten (10) Business Days after the City's receipt of such request, provided that all required supporting documentation has been provided to the City, then such draw request shall be deemed to have been approved by the City. The City shall be permitted to withhold approval on future draw requests as a result of an uncured default in connection with a previously approved or disapproved draw request or any portion thereof.

If, commencing upon the date which is forty five (45) days after receipt of written notice of a default hereunder, unless (a) the City has agreed, in writing signed by the City Representative, on the amount of a holdback from such draw request necessary to address such default, or (b) Borrower has cured or commenced to cure such default to the reasonable satisfaction of the City Representative, Borrower agrees that it shall not submit further construction draw requests to any lender. The City agrees that, prior to the completion of construction, it shall provide Construction Lender with written notice of default hereunder concurrently with such notice being provided to City.

The foregoing provisions in this Section 2.7 relating to Draw Requests shall be suspended to the extent that the City, in its sole and absolute discretion, elects to rely on the County for approval of Draw Requests.

Section 2.8 No Prepayment of Junior Debt

Borrower covenants and agrees that, unless and until all principal and interest outstanding under the City Loan are paid in full, Borrower shall not make any prepayment of amounts due on any debt secured by a lien junior in position to the City Deed of Trust. The foregoing shall not

prohibit Borrower from making regularly scheduled payments of principal and interest on the any junior loan.

Section 2.9 No Pledging of City's Credit

Under no circumstances shall the Borrower have the authority or power to pledge the credit of the City or incur any obligation in the name of the City. Borrower shall save and hold harmless the City, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of the City's credit by the Borrower under this Agreement. Under no circumstances shall the City have the authority or power to pledge the credit of the Borrower or incur any obligation in the name of the Borrower. City shall save and hold harmless the Borrower, its partners and members for expenses arising out of any unauthorized pledges of the Borrower's credit by the City under this Agreement.

Section 2.10 Acknowledgement of City Contributions; Use of City Name or Logo

Borrower agrees, at its own cost and expense, to acknowledge the contributions of the City in information released to the public or interested parties regarding the Project, including but not limited to brochures and press releases. However, the Borrower shall not use the City's name or insignia in such information, or in any other publicity pertaining to the services rendered under this Agreement, in any magazine, trade paper, newspaper or other medium without first obtaining the express written consent of the City.

Section 2.11 Ground Breaking and Grand Openings

To insure proper protocol and recognition of the City staff and/or the City Council, Borrower shall cooperate with the City staff in the organization of any Project-related ground breaking, grand openings or any other such inaugural events/ceremonies sponsored by Borrower and celebrating the development which is the subject of this Agreement by providing the City staff with at least sixty (60) calendar days prior written notice of any such event.

PART 3. DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Approvals; Land Use Restrictions

It is the responsibility of the Borrower, without cost to City, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Property and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Borrower to any City of Santa Clara permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Borrower, (b) supersede, nullify or amend any condition which may be imposed by the City of Santa Clara in connection with approval of the development described herein, (c) guarantee to Borrower or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to City, City shall provide appropriate technical assistance to Borrower in connection with

Borrower's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

Borrower shall construct the Project consistent with applicable Governmental Regulations, all applicable covenants, conditions and restrictions applicable to the Project, and all zoning, planning and design review requirements of the City and all permits and entitlements relating thereto.

Section 3.2 Permits and Entitlements

Prior to commencement of any work of improvement upon the Project, Borrower shall, at its own expense, secure or cause to be secured any and all permits, entitlements or approvals which may be required by the City in accordance with the Santa Clara City Code and land use entitlement process and by any other governmental entity with jurisdiction over the Project in accordance with applicable Governmental Regulations. The execution of this Agreement does not constitute the granting of or a commitment to obtain or grant any required land use entitlements or approvals required by the City.

Section 3.3 Condition of the Property

City makes no representation or warranty, express or implied regarding any conditions of the Property. It shall be the sole responsibility of the Borrower, at the City's expense, to investigate and determine all conditions of the Property and its suitability for the uses to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of the Borrower, without cost to City, to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

Borrower agrees to perform and be solely responsible for the clean-up of any Hazardous Substances on, in, under or within the Property, at the sole cost, risk and expense of Borrower, except to the extent that City had previous knowledge about such Hazardous Substances and failed to disclose such information to Borrower prior to the closing of the City Loan. Borrower shall defend, indemnify and hold harmless the City and its officers, agents, employees, contractors and attorneys from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required clean up of Hazardous Substances, and the cost of attorneys' fees) which may be sustained as the result of the presence or clean up of Hazardous Substances on, in, or under the Property, except to the extent City had previous knowledge about such Hazardous Substances and failed to disclose such information to Borrower prior to the closing of the City Loan.

Section 3.4 Scope of Development; Modification of Closing Requirements

The Property shall be developed in accordance with and within the limitations established in the Scope of Development attached to this Agreement as Attachment No. 3 and the permits issued by the City for the Project. The Scope of Development shall not be materially modified or amended except with the prior written consent of the City. Borrower shall not materially modify

and shall construct, operate and maintain the Project in accordance with the Closing Requirements, or any matter approved by the City under the Closing Requirements, without the prior written approval of the City (or deemed approval pursuant to Section 2.6 hereof).

Section 3.5 Design; Architectural Quality

Borrower acknowledges and understands that the materials, workmanship, finish, design, components and general architectural quality of the Improvements to be constructed by Borrower under this Agreement will have a significant and continuing impact on the Project and the surrounding community and that the City's agreement to participate in assisting this Project is based upon Borrower's representation that the Project will be of high quality in design, construction and finish. Accordingly, Borrower understands and agrees that it will be required to develop the Project (i) by means of materials, workmanship and an overall design that will result in a residential development that is of high quality and of benefit to the Project and the community, and (ii) in accordance with applicable design guidelines. Borrower assumes all responsibility for the design and construction of, and shall let contracts for (or cause contracts to be let for), the construction of the Project. The City shall not be responsible to Borrower or to third parties in any way for any defects in the design of the Project, nor for any structural or other defects in any work done according to the approved design of the Project, nor for any delays reasonably caused by the review and approval processes established by this Section.

Section 3.6 Cost of Construction

The cost of planning, designing, developing and constructing the Project shall be borne solely by Borrower. Borrower will begin and complete all construction, development and other tasks specified therein within the times specified in the Schedule of Performance, subject to Force Majeure Delay. The Schedule of Performance may be subject to revision from time to time as mutually agreed on in writing between Borrower and the City.

Borrower has proposed, and City has approved, the Project Budget appended to this Agreement. Borrower acknowledges that City is relying on Borrower's experience and expertise in establishing the costs for the Project, and Borrower represents that the Project Budget is based on the best, good faith estimate of Borrower of the costs that are likely to be incurred for the Project.

Section 3.7 Schedule of Performance; Construction of Improvements

Borrower shall begin and complete all construction and development within the times specified in the Schedule of Performance, with such reasonable extensions of said times as may be granted by the City and subject to Force Majeure Delay. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing by Borrower and City. In the event that the sum of the proceeds of the City Loan available for disbursement together with any other sources to complete the construction of the Improvements are, or at any time become, in the reasonable judgment of the City, insufficient to pay all costs to achieve Completion in accordance with this Agreement, then Borrower will pay such costs.

Borrower shall prosecute to completion the construction of the Improvements as provided in Plans and Specifications and this Agreement. During periods of construction, Borrower shall submit to the City a written report of the progress of the construction when and as requested by the City. The report shall be in such form and detail as may be reasonably required by the City and shall include a reasonable number of construction photographs (if requested) taken since the last report by Borrower.

Section 3.8 Construction Contract

The City shall have the right, but not the obligation, to cure defaults under the Construction Contract and to assume Borrower's obligations and rights under the Construction Contract; provided that, such right to cure and assume the Construction Contract shall be subject to the rights, if any, of any Senior Lender with respect to such Construction Contract. Further, the Construction Contract shall set forth a reasonably detailed schedule for completion of each stage of construction.

The City approval of the Construction Contract shall not constitute a waiver by the City of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract.

Section 3.9 Subcontracts

All contracts with subcontractors shall be entered into with duly licensed and insured subcontractors. City shall have the right to request copies of the contracts with subcontractors.

Section 3.10 Role of Architect

Borrower shall use commercially reasonable efforts to cause, and its written agreements with the architect for the Project shall require, that the architect supervise the construction of the Project, attend all draw meetings, and sign off on all Change Orders and construction draws with respect to the Project. Borrower shall provide the City with copies of all written agreements with the architect.

Section 3.11 [Intentionally deleted.]

Section 3.12 Prevailing Wages and Davis Bacon Act; Indemnity Regarding Labor Standards and Construction of Project

Borrower shall cause the construction of the Project and the payment of all wages in connection therewith to be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (collectively, the "**Prevailing Wage Law**"), to the extent applicable to the Project.

To the fullest extent permitted by law, Borrower shall indemnify, defend and hold harmless the City Indemnitees from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs), where the same arise out of, are a consequence of, are in connection with, or are in any way attributable to, in whole or in part, to: (i) Borrower's or the contractor's failure to comply with all applicable laws, including all applicable federal and state labor standards, including, without limitation, the requirements of the Prevailing Wage Law and

the Davis Bacon Act, if applicable, (ii) defects in the design or construction of the Project, including (without limitation) the violation of any laws, and for defects in any work done according to the City approved plans, or (iii) any breach or failure to perform or act pursuant to this Agreement by Borrower, or by any individual or entity that Borrower shall engage in connection with the Project, including but not limited to officers, agents, employees or contractors of Borrower. Notwithstanding the foregoing, Borrower shall not be required to indemnify and hold harmless the City Indemnitees for liability attributable to the gross negligence or intentional misconduct of the City Indemnitees.

Section 3.13 Compliance with Law

Borrower shall comply with all Governmental Regulations in the construction, use and operation of the Project, including all applicable federal, state and local statutes, ordinances, regulations and laws, including without limitation, all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Santa Clara City Code, and all applicable disabled and handicapped access requirements, including without limitation (as currently exists or may be amended from time to time) the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq., Government Code § 4450, et seq., and Government Code § 11135, et seq.

Section 3.14 Nondiscrimination During Construction

Borrower certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all contractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, et seq., 42 U.S.C. § 1981, the California Fair Employment and Housing Act, Government Code § 12900, et seq., the California Equal Pay Law, Labor Code § 1197.5, Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (applicable to those with fifteen (15) or more employees), Executive Order 11246-Equal Employment Opportunity, as amended, its implementing regulations at 41 CFR Part 60, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Nondiscrimination notices shall be included in all job postings and posted in a visible place in the offices of all applicable parties.

Section 3.15 General Indemnity

To the maximum extent permitted by law, Borrower agrees to and shall defend, indemnify and hold the City and the City Indemnitees harmless from and against all claims, liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from, in connection with or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the alleged negligent or intentional acts or omissions of Borrower, its officers, agents or employees in the performance of this Agreement or construction of the Project. This indemnification provision

supplements and in no way limits the scope of the indemnification set out elsewhere in this Agreement. The indemnity obligation of Borrower under this section shall survive the expiration or termination, for any reason, of this Agreement.

Without affecting the rights of the City Indemnitees under any provisions of this Agreement, Borrower shall not be required to indemnify and hold harmless the City Indemnitees for liability attributable to the gross negligence or intentional misconduct of the City Indemnitees, provided such gross negligence or intentional misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where the City Indemnitees are shown to have been grossly negligent or to have acted with intentional misconduct and where the City Indemnitees' gross negligence or intentional misconduct accounts for only a percentage of the liability involved, the obligation of Borrower will be for that entire portion or percentage of liability not attributable to the gross negligence or intentional misconduct of the City Indemnitees.

Section 3.16 Insurance Requirements

During the term of this Agreement or the City Regulatory Agreement, and for any time required thereafter as set forth below, the Borrower shall purchase and maintain in full force and effect, at no cost to the City, the following insurance policies:

- (1) Commercial general liability policy (bodily injury and property damage);
- (2) Comprehensive automobile liability policy; and
- (3) Workers' compensation and employer's liability policy.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Attachment No. 4 entitled "Insurance Requirements" attached hereto.

Section 3.17 Disclaimer of Responsibility by the City

Except as provided in this Agreement, the City neither undertakes nor assumes nor will have any responsibility, right or duty to Borrower or to any third party to review, inspect, supervise, pass judgment upon or inform Borrower or any third party of any matter in connection with the Property, whether with respect to the condition of the Property or its quality, adequacy or suitability to the Project, or with respect to any person furnishing services with regard to the Property, or otherwise. Borrower and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Borrower or to any third party by the City or the City in connection with such matter is for the public purpose of providing affordable housing, and neither Borrower (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon.

Section 3.18 Rights of Access

At any time prior to Completion, City and its representatives shall have the reasonable right of access to the Property, upon two (2) Business Days' written notice to Borrower (except in the case of an emergency, in which case City shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of City shall be those who are so identified in writing by City.

Section 3.19 Taxes and Assessments

Borrower shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Project during Borrower's ownership thereof, subject to Borrower's right to contest in good faith any such taxes through the appropriate processes. Borrower shall remove or have removed any levy or attachment made on the Project or any part thereof, or assure the satisfaction thereof within a reasonable time. Nothing herein contained shall be deemed to prohibit the Borrower from (a) obtaining an abatement of real estate taxes under Revenue and Taxation Code Section 214(g) or (b) contesting the validity or amount of any tax assessment, encumbrance or lien, or to limit the remedies available to the Borrower in respect thereto.

Section 3.20 Liens and Stop Notices

Except for the liens on the Project granted in connection with the City Loan, County Loan, the Senior Loans, and any other approved loans that are included in the approved Project Pro Forma, Borrower shall not allow to be placed on the Project or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Project, Borrower shall within thirty (30) calendar days of such recording or service or within ten (10) Business Days of the City's demand, whichever last occurs: (a) pay and discharge the same (or cause the general contractor to do so); (b) effect the release thereof by recording and delivering to the City a surety bond in sufficient form and amount; (c) demonstrate to the City's reasonable satisfaction that One Hundred Twenty Five Percent (125%) of the stop notice amount is set aside in the unfunded portion of the Construction Budget to account for such claim; or (d) provide such other assurances which the City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the City from the effect of such lien or bonded stop notice.

Section 3.21 Rights to Architectural Agreements and Plans and Specifications

Subject to the rights of the Senior Lenders, Borrower has assigned to City as security for Borrower's obligations hereunder (a) all environmental, architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto, and (b) all reports, studies, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto, heretofore or hereafter prepared by any architect, engineer or other person or entity (collectively the "**Architect**"), for or on behalf of Borrower in connection with the construction of the Project pursuant to that certain Assignment of Agreements by Borrower for the benefit of City dated as of the date hereof.

Section 3.22 Security Financing; Right of Holders

(a) City Approval of Financing Liens All mortgages and deeds of trust to be recorded against the Project prior to Conversion shall be approved by City.

(b) Holder Not Obligated to Construct Project Improvements The holder of any mortgage or deed of trust or other security interest recorded against the Project will in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee construction or completion.

(c) Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure Whenever the City will deliver any notice or demand to Borrower with respect to any breach or default by Borrower in completion of construction of the Improvements, the City will at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest recorded against the Project, provided that failure to provide such notice shall not affect the City's remedies hereunder. Each holder will (insofar as the rights of the City are concerned) have the right at its option within thirty (30) calendar days after the receipt of the notice, to cure or remedy or commence to cure or remedy any default and to add the cost to the security interest debt and the lien on its security interest. Nothing contained in this Agreement will be deemed to permit or authorize the holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed Borrower's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the Improvements will be entitled, upon written request made to the City, to a Release of Construction Covenants from the City.

Section 3.23 Liens on Personal Property

Other than in connection with the provision of vending, laundry, cable, satellite TV, or telecommunications services at the Project, Borrower shall not install in, or use in connection with, the Project, any personal property which any party other than the City or Senior Lenders have the right to remove or repossess under any circumstances, or on which any party other than the City or Senior Lenders has a lien (other than liens permitted in accordance with the terms of this Agreement).

Section 3.24 Removal of Personal Property

Borrower shall not cause or permit the removal from the Project of any items of personal property owned by Borrower (other than tools and equipment used in the development of the Project) unless (i) there is no uncured event of default by Borrower under this Agreement, and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which items shall be free of liens (other than liens permitted in accordance with the terms of this Agreement) and shall be subject to the lien of the City Deed of Trust, and Borrower executes and delivers to the City all documents reasonably required by the

City in connection with the attachment of such liens to such items. Borrower shall keep detailed records of each such removal and shall make such records available to the City upon written request from time to time.

Section 3.25 Release of Construction Covenants

Promptly after Completion of the Improvements, as generally and specifically required by this Agreement and in particular the Scope of Development, the City shall furnish Borrower with a Release of Construction Covenants upon written request therefor by Borrower. The City shall not unreasonably withhold such Release of Construction Covenants and such Release of Construction Covenants shall be issued so long as Borrower has constructed and developed the Property in accordance with this Agreement and substantially in accordance with the construction drawings approved by the City for the Project. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of all of the construction obligations required by this Agreement. The Release of Construction Covenants shall be in a form mutually, reasonably, and in good faith agreed upon by City and Borrower and shall be a conclusive determination of satisfactory completion of the Project and all construction obligations required by this Agreement. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Project shall not (because of such ownership, purchase, lease or acquisition) incur any construction obligation or liability under this Agreement.

The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Recorder's Office of Santa Clara County. Certificates of Completion of construction for less than the completed Improvements and development of the entire Property shall not be recorded.

If the City refuses or fails to furnish a Release of Construction Covenants for the Property after written request from Borrower, the City shall, within thirty (30) days of the written request, provide Borrower with a written statement of the reasons the City refused or failed to furnish a Release of Construction Covenants. The statement shall also contain the City's opinion of the action Borrower must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, and/or minor items, the City will issue its Release of Construction Covenants upon the posting of a bond by Borrower with the City in an amount representing a fair value of the work not yet completed.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Borrower to the beneficiary of the Construction Loan Deed of Trust or any other Person. Such Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

Section 3.26 Developer Fee

Borrower shall not receive payments of the Developer Fee in excess of the amounts or ahead of a written schedule contained in the Project Pro Forma approved by the City.

Borrower covenants and agrees that it shall not receive payments of Developer Fee beyond the first payment agreed to in the schedule described above unless and until it has demonstrated to

the City's reasonable satisfaction that, to the extent applicable, all prevailing wage obligations with respect to the construction of the Project have been met in accordance with the terms and conditions of the City Loan Documents. Borrower further agrees that in the event any prevailing wage obligations, draw holdbacks or related fees that may become payable to the City hereunder cannot be funded from any other source, that such amounts shall be payable to the City from Developer Fee.

In the event that actual construction costs exceed the Construction Budget, Borrower shall defer the amount of the Developer Fee necessary to cover the actual construction costs to the extent unfunded by sources other than the City Loan and such portion of the Developer Fee shall be considered deferred Developer Fee for purposes of this Agreement.

PART 4. SALES AND USE TAX.

Borrower shall use- commercially reasonable efforts to. adopt sales and use tax reporting procedures allowable under applicable law that will provide City (in its capacity as a Governmental Authority) the greatest allocation of California sales and use tax revenues feasible, and shall cause their general construction contractors, vendors and occupants of the Improvements to use commercially reasonable, efforts to adopt these procedures, including by designating the Property as the place of sale and place of use of materials, goods, and services to be used in connection with the construction and operation of the Project. Borrower shall propose to City for its reasonable approval a process that will designate the Property as the place of sale of fixtures furnished and installed by Borrower for the Project, and to do the same with respect to construction materials used in connection with the Improvements. Notwithstanding the foregoing, the failure of such general construction contractors, vendors and Improvement occupants to allocate sales and use tax revenues to the City shall not constitute a breach by Borrower under this Agreement. Borrower shall bear all costs associated with their obligations under this Part 4.

PART 5. USE OF THE PROPERTY

Section 5.1 Use Covenants

Borrower covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Project or any part thereof, that the Project shall be used, maintained and operated in compliance with the City Regulatory Agreement. Borrower further covenants and agrees for itself and its successors and assigns that the Affordable Units shall be continuously occupied or held vacant and made available to Qualified Tenants at an Affordable Rent during the Restricted Period. All uses conducted on the Project, including, without limitation, all activities undertaken by Borrower pursuant to this Agreement, shall conform to all applicable provisions of the Santa Clara City Code.

Section 5.2 Affordable Housing Requirements

(a) Affordable Units

Borrower covenants and agrees to make available, restrict occupancy to, and rent the Affordable Units solely to Qualified Tenants at an Affordable Rent during the Restricted Period.

(b) Duration of Affordability Requirements

The Affordable Units shall be subject to the requirements of this Section throughout the Restricted Period.

(c) Selection of Qualified Tenants

Prior to selecting any tenants for the Affordable Units, Borrower shall have obtained the approval of the City for the Management Plan (the terms of which shall comply with the City Regulatory Agreement), which shall include proposed tenant selection policies and criteria for the Affordable Units. The City shall review the Management Plan and approve or disapprove it within thirty (30) Business Days, provided that such approval shall not be unreasonably conditioned or withheld. City's failure to respond within the timeframe set forth in the preceding sentence shall be deemed approval. If the Management Plan is not approved by the City, the City shall set forth in writing and notify Borrower of the City's reasons for withholding such approval. Borrower shall thereafter submit a revised Management Plan for City approval within fifteen (15) Business Days, which approval shall be granted or denied within fifteen (15) Business Days in accordance with the procedures set forth above.

In addition, the tenant selection policies and criteria shall:

- (1) Be consistent with the purpose of providing housing for Qualified Tenants;
- (2) Be reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
- (3) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
- (4) Give prompt written notification to any rejected applicant of the grounds for any rejection.

Borrower shall manage and operate the Property in accordance with the approved Management Plan, including such amendments as may be approved in writing from time to time by the Borrower and the City, for the entire Restricted Period.

In connection with its Qualified Tenant selection process, Borrower agrees to obtain criminal background checks on all tenant applicants in accordance with all applicable Governmental Regulations. Borrower shall determine, in accordance with all applicable Governmental Regulations, whether or not the tenant applicant's arrest and/or conviction record, if any, warrants denial of such tenant's application. Borrower shall maintain or destroy the results of such criminal background checks in accordance with all applicable Governmental Regulations.

(d) Income Requirements

In order to assure compliance with the rent and occupancy restrictions set forth in the City Regulatory Agreement, Borrower shall, prior to the initial leasing of an Affordable Unit, verify the income of the proposed Household. Thereafter, on an annual basis throughout the Restricted Period, Borrower shall obtain and cause to be submitted to the City, at Borrower's

expense, a verification of all household sources of income as required by the City Regulatory Agreement.

(e) Lease Requirements

Prior to rental of any of the Affordable Units, Borrower shall submit a standard lease form to the City for the City's approval, which approval shall not unreasonably be withheld, conditioned or delayed. The standard lease agreement shall not be amended in any material respects (except as required by applicable laws) without prior written the City approval. Borrower shall enter into a lease in the form approved by the City, and containing those provisions required by the City Regulatory Agreement, with each Qualified Tenant of an Affordable Unit.

Section 5.3 Long Term Management of the Project

Borrower and the Property Manager shall enter into a written agreement regarding the services of the Property Manager (the "**Management Agreement**"). Property management fees paid to the Property Manager shall not exceed six percent (6%) of gross rents on an annual basis. The Management Agreement shall contain, inter alia, an express provision (a) obligating the Property Manager to cooperate fully with the City with respect to the on-site inspections to be made by the City pursuant to the City Regulatory Agreement, and (b) indicating that the term thereof shall not exceed twelve (12) months including a provision for termination by Borrower with or without cause at any time upon notice not to exceed thirty (30) days. Borrower shall obtain the City's written approval, not to be unreasonably withheld, conditioned or delayed, of the Property Manager prior to entering into any Management Agreement; provided that the City hereby approves the John Stewart Company as the initial Property Manager.

Section 5.4 Annual Budget and Quarterly Reporting

Borrower shall submit on or before the first day of each fiscal year after Completion of construction for the entire Restricted Period an estimated annual budget for management of the Property (the "**Annual Project Budget**") in accordance with the Management Plan. The Annual Project Budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amount required for insurance and all other expenses incident to the operation of the Project; and shall show the expected revenues to pay such expenses, including annual debt service requirements and reserve fund deposits and balances. Upon receipt by the City of a complete the Annual Project Budget, including any amendments proposed by the Borrower, shall be subject to the approval of the City, the City shall promptly review the same and approve or disapprove it within fifteen (15) Business Days, provided that such approval shall not be unreasonably conditioned or withheld. If the Annual Project Budget is not approved by the City, the City shall set forth in writing and notify Borrower of the City's reasons for withholding such approval. Borrower shall thereafter submit a revised Annual Project Budget for County approval within ten (10) Business Days, which approval shall be granted or denied within ten (10) Business Days in accordance with the procedures set forth above.

Beginning on the date of first occupancy, for each fiscal year of the Restricted Period, Borrower shall also submit on a quarterly basis a quarterly report for the management of the Property (the "**Quarterly Report**") in a form that is reasonably acceptable to the City. The

Quarterly Report shall include a profit and loss statement, budget to date figures, and occupancy report. The City, in its sole discretion may waive the requirement of the Quarterly Report for one or more quarterly reporting periods. However, such waiver shall not operate to waive any subsequent requirement of the Quarterly Report for the Restricted Period upon written notice to Borrower by the City.

Section 5.5 Maintenance of the Property

Prior to the issuance of the Certificate of Occupancy, the Borrower shall prepare and submit to the City for review and approval a program (the “**Maintenance Program**”) for the exterior and interior maintenance of the Property and the Improvements. The Maintenance Program may be included within its Management Plan.

The Maintenance Program shall describe in reasonable detail the standards to be followed in maintaining the interior and exterior of the Improvements, including a schedule indicating the proposed frequency of each element of maintenance, and shall include, at a minimum, the following: periodic cleaning of the interior and exterior of the Improvements, including windows; removing graffiti; removing debris and waste materials and otherwise maintaining indoor and outdoor areas of the Property; maintaining any lawns, plants, shrubs and trees or other landscaping planted on the Property; performing inspections of all exterior features to determine whether repairs are required; conducting periodic protective treatments such as rust removal and caulking; conducting repairs to facades, roof, doors, windows and other exterior features; maintaining fencing and other security devices and systems; periodic repainting of the exterior; periodic repainting of the interior units and common areas; periodic replacing of the interior unit carpets; checking building systems, including, but not limited to the heating and cooling systems, smoke alarms and water heaters; checking interior unit appliances; and monitoring interior unit bathrooms for mold/mildew. The Maintenance Program, including any amendments proposed by the Borrower, shall be subject to the reasonable approval of the City.

At all times after Completion of construction during the Restricted Period, the Borrower shall maintain the Property and the Improvements in accordance with the approved Maintenance Program. To implement this requirement, Borrower agrees to budget sufficient funds to pay for all reasonably anticipated costs (as indicated in the Annual Maintenance Budget). In the event the Borrower fails to maintain the Property and the Improvements in accordance with the approved Maintenance Program, and does not cure such failure within thirty (30) days following notice from the City, the City shall have the right, but not the obligation, to enter the Property, correct any violation, and hold the Borrower responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property. Prior to undertaking any work to correct any such maintenance deficiency, the City shall provide written notice that the Borrower correct the deficiency within a reasonable time. The Borrower shall have a reasonable time in which to comply following such notice from the City.

Section 5.6 Nondiscrimination Covenants

Borrower covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision

(m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Unit or the Project nor shall Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the location, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of the Project.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

All deeds, rental agreements, leases, or contracts made or entered into by Borrower as to the Units or the Project or any portion thereof, shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location,

number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

The covenants established herein shall, without regard to technical classification and designation, be binding on Borrower and any successors in interest to the Project, or any part thereof, for the benefit and in favor of the City and its successors and assigns. The covenants against discrimination shall run with the land and remain in effect in perpetuity.

Section 5.7 Conflict with the City Regulatory Agreement

In the event of a conflict between this Part 5 and the City Regulatory Agreement, the provisions of the City Regulatory Agreement shall control.

Section 5.8 Reserves [Note: Reserves to be discussed by the Parties.]

(a) Transition Reserve. If requested by any Senior Lender, Borrower covenants and agrees to fund a transition reserve in such amount as is required by the Senior Lender (“**Transition Reserve**”) upon completion of construction. Such amounts shall be held in a separate interest-bearing trust account. Funds in the Transition Reserve shall be used solely to cover cash flow deficiencies of the Project arising from the termination, reduction or expiration of any project-based vouchers, to the extent the Project has project-based vouchers. All withdrawals from the Transition Reserve are subject to the prior written consent of the City, which such consent shall

not be unreasonably withheld or delayed. Any funds in the Transition Reserve upon such termination shall be deposited into a social services reserve (the “**Social Services Reserve**”) to be held in a separate interest-bearing trust account. Borrower shall obtain the City’s approval prior to any withdrawal from the Social Services Reserve, which approval may be accomplished by the City approval of Borrower’s annual operating budget, including disbursements from the Social Services Reserve, or by a separate approval, which such approval shall not be unreasonably withheld or delayed.

(c) Operating Reserve. If requested by any Senior Lender or Investor Limited Partner, Borrower covenants and agrees to fund an operating reserve in the amount required by the Senior Lender or Investor Limited Partner (“**Operating Reserve**”) upon completion of construction. Such amounts shall be held in a separate interest-bearing trust account. Funds in the Operating Reserve shall be used solely to cover cash flow deficiencies of the Project. All withdrawals from the Operating Reserve are subject to the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed.

(d) Replacement Reserves. If requested by any Senior Lender or Investor Limited Partner, Borrower covenants and agrees to fund a replacement reserve in a capitalized amount as of the Conversion from operating income on monthly basis in amount required by the Senior Lender or Investor Limited Partner (“**Replacement Reserve**”). Such amounts shall be held in a separate interest-bearing trust account. Funds in the Replacement Reserve shall be used solely to cover capital replacements for the Project. All withdrawals from the Replacement Reserve are subject to the prior written consent of the City, which such consent shall not be unreasonably withheld or delayed.

Section 5.9 Social Services

The Management Plan shall include a “Social Services Plan” and the Annual Project Budget shall implement the Social Services Plan. Borrower covenants and agrees to provide a Social Services Plan for the Project to the City. Borrower covenants and agrees to provide Social Services to the residents of the Project in accordance with the Social Services Plan. Borrower may request amendments to the Social Services Plan for written approval by the City, which approval of which shall not be unreasonably, withheld or delayed.

Section 5.10 Hazardous Substances

Concurrently with the execution of this Agreement, City and Borrower have entered into the City Environmental Indemnity.

Section 5.11 Monitoring Fee

On or before July 1 of each year, commencing on the July 1 following Conversion until the expiration of the Restricted Period, Borrower covenants and agrees to pay to the City the Monitoring Fee (as defined in the City Regulatory Agreement) for the immediately preceding calendar year or portion thereof, prorated for the number of months in the partial year; provided that the Monitoring Fee shall be reduced (but not below \$0) to the extent that Borrower pays an affordable housing monitoring fee to the County.

Section 5.12 Effect of Violation of the Terms and Provisions of this Agreement

The City is deemed a beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if the covenants contained in this Agreement are breached and such breach is not cured within the time periods set forth in Section 6.1, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants are entitled.

PART 6. DEFAULTS, REMEDIES, AND TERMINATION

Section 6.1 Defaults — General

Subject to the Force Majeure Delay and any extensions of time approved in writing by the parties, failure or delay by either party to perform any term or provision of this Agreement at the time indicated in this Agreement constitutes a default under this Agreement. As provided, hereinbelow, the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of thirty (30) days after such notice is given within which to cure the default prior to exercise of remedies by the injured party.

If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party.

If Borrower fails to take corrective action or cure the default within a reasonable time, the City shall give the Senior Lender and the Investor Limited Partner notice thereof. Subject to the terms of the Borrower's partnership agreement, the Investor Limited Partner may take such action, including removing and replacing the general partner or managing member of the Borrower with

a substitute general partner or member, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The City agrees to accept cures tendered by any Senior Lender or Investor Limited Partner within the cure periods provided in the Note. Additionally, in the event the Senior Lender or Investor Limited Partner is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Borrower or the general partner of Borrower, the City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or Investor Limited Partner is so precluded from acting, not to exceed 90 days, provided such Investor Limited Partner and Senior Lender are otherwise in compliance with the foregoing provisions. In no event shall the City be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

In the event of a default by Borrower of any of its obligations under the City Loan Documents and expiration of any applicable grace, notice and/or cure periods, Borrower shall pay to City interest on the outstanding principal of the City Loan, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, from the date of the default until the date that the default is cured or the City Loan is repaid in full.

City shall send to the Investor Limited Partner a copy of all notices of default and all other notices that City sends to Borrower, at the address for the Investor Limited Partner as provided by written notice to City by Borrower.

Section 6.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 6.1, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court of that county.

Section 6.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this agreement.

Section 6.4 Acceptance of Service of Process

In the event that any legal action is commenced by the Borrower against the City, service of process on the City shall be made by personal service upon the City Manager of the City, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Borrower, service of process on the Borrower shall be made by personal service upon the Borrower (or upon a general partner, managing member or officer of the Borrower) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 6.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 6.6 Damages

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.1 and the non-recourse provisions of Section 6.10, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default. Notwithstanding the foregoing, neither Borrower nor City shall have the right to recover any punitive, consequential, or special damages.

Section 6.7 Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 6.1, the non-defaulting party, at its option, may, after such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 6.8 Termination by Either Party

Either party shall have the right to terminate this Agreement in the event the other party is in default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 6.1.

Section 6.9 Automatic Termination

This Agreement shall automatically terminate upon repayment of the City Loan in full.

Section 6.10 Limited Recourse Obligations After Conversion

The City Loan is a recourse obligation of the Borrower prior to Conversion.

Subject to the provisions and limitations of this Section 6.10, the obligation to repay the City Loan is a nonrecourse obligation of the Borrower from and after Conversion. From and after Conversion, (a) neither Borrower nor any general partner or limited partner of Borrower shall have any personal liability for repayment of the City Loan, except as provided in this Section 6.10, and (b) the sole recourse of City shall be the exercise of its rights against the Property and any related security for the City Loan.

Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by the City Note or the City Deed of Trust; (b) limit the right of the City to name

Borrower as a party defendant in any action or suit for judicial foreclosure and sale under the City Note or the City Deed of Trust or any action or proceeding thereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair the City Note or the City Deed of Trust; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the City Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the City Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to City; or (g) affect in any way the validity of any guarantee or indemnity from any person other than the Borrower of all or any of the obligations evidenced and secured by the City Note or the City Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Borrower shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Borrower, its principals, shareholders, partners received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party:

(A) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Borrower or any partner, shareholder, officer, director or employee of Borrower, or of any member or general partner of Borrower, or of any general or limited partner of such member or general partner;

(B) any damages, costs and expenses incurred by City as a result of any misappropriation of funds provided for the construction of the Improvements, rents and revenues from the operation of the Improvements or proceeds of insurance policies or condemnation proceeds by Borrower or any of its partners; and

(C) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

Section 6.11 Borrower Representations and Warranties

Borrower represents and warrants as of the effective date of this Agreement (1) that it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of this Agreement; (2) that it and its general partners are duly organized, validly existing and in good standing under the laws of the State of California; (3) that it has the full power and City to undertake the Project and to execute this Agreement; (4) that the persons

executing and delivering this Agreement are authorized to execute and deliver such documents on behalf of Borrower; (5) except as disclosed to the City in writing, there are no actions or proceedings pending or, to the best of the Borrower's knowledge, threatened against the Borrower or Borrower's general partners before any court or administrative agency in any way connected with the Property or the Project which could adversely affect the Borrower's ability to perform the activities contemplated hereunder; (6) neither this Agreement nor anything provided to be done hereunder violates or shall violate any contract, agreement or instrument to which the Borrower or a general partner of Borrower is a party or which affects the Project or any part thereof; (7) the Borrower is not in default in respect of any of its obligations or liabilities pertaining to this Agreement, nor is there any state of facts or circumstances or conditions or events which, after notice, lapse of time, or both, would constitute or result in any such default under this Agreement; and (8) neither the Borrower nor its general partners has entered into any agreements which will adversely affect the Borrower's right to develop and use the Project as provided in this Agreement, and neither the Borrower nor its general partners will enter into any such agreements after the date hereof.

PART 7. GENERAL PROVISIONS

Section 7.1 Notices

Formal notices, demands and communications between the City and the Borrower and Investor Limited Partner shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Borrower and Investor Limited Partner, as designated in Sections 1.4 and 1.5 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 7.1. Any notice that is transmitted by electronic facsimile or electronic mail transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by the recipient; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 7.2 Conflicts of Interest

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

The Borrower warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

Section 7.3 Nonliability of City Officials and Employees

No member, official, employee or consultant of the City shall be personally liable to the Borrower, 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 Borrower or to its successor, or on any obligations under the terms of this Agreement.

Section 7.4 Force Majeure

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to Force Majeure Events.

Section 7.5 Inspection of Books and Records

The Borrower shall maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

Section 7.6 Approvals

Except as otherwise expressly provided in this Agreement, approvals required of City or Borrower in this Agreement, including the attachments hereto, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Except as otherwise expressly provided in this Agreement, failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval. Any approval or deemed approval by the City shall not waive any obligation of Borrower under the City Loan Documents.

Section 7.7 Administration

This Agreement shall be administered by the City Manager of the City or his or her designated representative (collectively, the “**City Representative**”) following execution of this Agreement by the City. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Representative or his or her designee are authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. The City Representative or his or her designee shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement and to negotiate and finalize all agreements and documents referred to herein on behalf of the City, so long as such actions do not substantially change the uses or development permitted on the Project, or add to the costs of the City as specified herein or as agreed to by the City Council or other authorized body. Notwithstanding the foregoing, the City Representative or his or her designee may in their sole and absolute discretion refer any matter to the board of the City and/or other authorized body for action, direction or approval.

Section 7.8 No Third Party Beneficiaries

This Agreement is made solely and specifically between the City and Borrower and their respective successors and assigns; and, except as expressly provided otherwise in this Agreement, no other person will have any rights, interest or claims under this Agreement or be

entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 7.9 Reimbursement of Expenses

Borrower shall reimburse the City for all reasonable costs and expenses (including the allocated cost of the City staff and resources) incurred by the City in connection with the provision and administration of the City Loan and the City Loan Documents.

Section 7.10 Borrower Authority

Borrower hereby represents that the person executing this Agreement on behalf of Borrower has full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

Section 7.11 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause City to be responsible in any way for the debts or obligations of Borrower or any other Person.

Section 7.12 Compliance with Law

Borrower agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and the Improvements, as well as operations conducted thereon.

Section 7.13 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 7.14 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 7.15 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

Section 7.16 Mutual Cooperation

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement.

Section 7.17 Construction and Interpretation of Agreement

The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

PART 8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement shall constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Property.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Borrower, and all amendment hereto must be in writing

and signed by the appropriate authorities of the City and the Borrower. This Agreement and any provisions hereof may be amended by mutual written agreement by the Borrower and the City.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the City and Borrower have signed this Agreement as of the date and year first above written.

CITY:

CITY OF SANTA CLARA,
a chartered California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

By: _____
Brian Doyle, City Attorney

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 1 OF 2]

BORROWER:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimbler, Manager

[SIGNATURE PAGE TO LOAN AGREEMENT]

[PAGE 2 OF 2]

ATTACHMENT NO. 1

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

[to be inserted]

Assessor's Parcel Number: 224-37-068

ATTACHMENT NO. 2

SCHEDULE OF PERFORMANCE

Construction Start []

Construction Completion []

PIS []

100% Occupied []

8609 Certification []

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

[Borrower to provide]

ATTACHMENT NO. 4

INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$5,000,000 Each occurrence
 - \$5,000,000 General Aggregate
 - \$5,000,000 Products/Completed Operations Aggregate
 - \$5,000,000 Personal Injury
 - \$5,000,000 Project Aggregate
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of five million dollars (\$5,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. POLLUTION LIABILITY

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors shall provide a Contractor's Pollution Liability Insurance policy with coverage limits not less than five million dollars (\$5,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any deductible must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Contractor will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

1. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
2. Products/completed operations coverage shall extend a minimum of 3 years after project completion.
3. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors.

4. If the insured is using subcontractors the Policy must include work performed “by or on behalf” of the insured.
5. Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor’s work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor’s insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor’s work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer’s equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Document 00820.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
2. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.
3. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
4. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.
5. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
6. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and

review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

7. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
8. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
9. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
10. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
11. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
12. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
13. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City shall determine the minimum coverage and policy limits required, after consultation with Contractor.
14. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after

approval from the City Attorney's Office upon satisfactory evidence of financial capacity.

15. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [*insert City department name here]

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 Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

ATTACHMENT NO. 5

PROJECT BUDGET

(To Be Attached)

ATTACHMENT NO. 6

CLOSING REQUIREMENTS

The following are the Closing Requirements:

1. Construction Budget and Construction Loan. Borrower shall have submitted and obtained the City's approval of the Construction Budget and Construction Loan, showing the projected predevelopment and construction costs of the Improvements and a sources-and-uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred. The City approval of the Construction Loan shall not constitute a waiver by the City of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Loan.
2. Governmental Approvals. The City shall have received evidence reasonably acceptable to it that Developer has obtained all Governmental Approvals necessary for the construction and completion of the Project, provided that ready-to-issue letters with respect to building permits shall be acceptable.
3. Project Pro Forma. Borrower shall have submitted and the City shall have approved the Project Pro Forma.
4. Construction Bonds. To the extent that the Construction Lender and/or the Investor Limited Partner requires payment and performance bonds in connection with the construction of the Project, Borrower shall have obtained and delivered to the City copies of the bonds meeting the Construction Lender's and/or the Investor Limited Partner's requirements for such bonds and naming City as co-obligee.
5. Construction Package. Borrower shall have submitted and the City have approved all material aspects of the construction process, including, without limitation, lists of subcontractors, and other construction related documentation which may be reasonably requested by the City.
6. Plans and Specifications. Borrower shall have submitted and the City shall have approved the Plans and Specifications for the Project.
7. Insurance Requirements. Borrower, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements, and shall have provided City with evidence of such insurance.
8. Architectural Contract. Borrower shall have delivered, and the City shall have approved, a contract with the architect of the Project.
9. Corporate Authority; Good Standing. Borrower shall have delivered to the City satisfactory evidence of Borrower's authority to enter into the City Loan Documents, and good standing certificates for the Borrower and its partners dated within thirty (30) days of Closing.

10. Miscellaneous. Borrower shall have delivered to the City any other item reasonably deemed necessary by the City and shall have fulfilled any other condition reasonably required by the City.

ATTACHMENT NO. 7

CONVERSION REQUIREMENTS

The City shall have no obligation to convert the City Loan to a term loan for permanent financing of the Project except upon satisfaction of the conditions precedent set forth in this Attachment No. 7, or waiver thereof by the City in its sole discretion.

1. No Default. Subject to applicable notice and cure periods, there shall be no condition, event or act which would constitute an event of default by Borrower under the City Loan Documents, the Construction Contract, the Construction Loan, the County Loan, the Limited Partnership Agreement, or any other agreement secured by an interest in the Project or providing financing for the Project, or which upon the giving of notice or the passage of time, or both, would constitute such an event of default.
2. Representations and Warranties. All representations and warranties of Borrower herein contained in this Agreement shall be true and correct in all material respects as and when made and as of the proposed date of conversion to a permanent loan.
3. No Stop Notice. No stop notice (whether bonded or not) shall have been served upon or otherwise delivered to Borrower, the City or Construction Lender in connection with the development of the Project or otherwise in connection with the City Loan, unless Borrower shall have (or shall be with the proceeds of a requested disbursement) (a) paid and discharged the same, or (b) effected the release thereof by delivering to the City a surety bond complying with the requirements of applicable Governmental Regulations for such release.
4. No Liens. No claim of lien, notice and claim of mechanic's lien or other similar document or instrument shall have been recorded against the Project or any portion thereof, unless Borrower shall have (or shall with the proceeds of the requested disbursement) (a) paid and discharged the same, (b) effected the release thereof by delivering to the City a surety bond complying with the requirements of applicable Governmental Regulations for such release, or by insurance over the same, or (c) caused the Title Company to commit in writing to issue a policy of title insurance showing such lien not to be an exception to title. City shall have received (i) a copy of the recorded notice of completion, and (ii) either (A) evidence that the statutory lien period has expired, or (B) lien waivers from the Contractor and any subcontractors that previously filed a preliminary notice that they are performing work on the Project that may be subject to mechanic's liens
5. Governmental Regulations. There shall be no condition, event or act existing in connection with the Project which constitutes, or would, with the passage of time, constitute a material violation of any applicable Governmental Regulation.
6. Annual Reporting Forms. Borrower shall have submitted all annual reporting forms required to be submitted to City pursuant to the City Regulatory Agreement as of the date of Conversion.

7. Evidence of Equity Contribution. Borrower shall have provided evidence that Borrower has received capital contributions from the Investor Limited Partner in an amount not less than the amount required by the Limited Partnership Agreement. Borrower shall have demonstrated to the City's reasonable satisfaction that such monies have been spent in substantial accordance with the Project Pro Forma or will be spent in accordance with the Project Pro Forma.
8. Rent Schedule; Permanent Pro Forma; Operating Budget. Borrower shall have submitted, the following for the Project, all prepared as of the completion of construction: (a) the Rent Schedule; (b) a Permanent Pro Forma; and (c) an Operating Budget.
9. Management Plan. Borrower shall have submitted, and City shall have approved, the Management Plan.
10. Social Services Plan. Borrower shall have submitted a social services plan for the Project, including a budget therefor incorporated into the Operating Budget.
11. Insurance. Borrower, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the Insurance Requirements and in the amounts specified therein.
12. Construction Loan. The Construction Loan shall be paid in full with all available funds, or paid down, as applicable, and converted to a permanent loan. Any documents required to be recorded in connection therewith shall be executed and recorded in the Official Records.
13. Reserves. Borrower shall have deposited or will be concurrently depositing any reserves required by this Agreement and the Project Pro Forma into one or more separate interest-bearing accounts to be used solely for the Project.
14. Draft Cost Certificate. Borrower shall have provided City with a copy of the draft cost certificate. [Note: final required if any other financing party requires it.]

PROMISSORY NOTE
(this “Note”)

\$5,000,000

Santa Clara, California
[] 1, 202[]

FOR VALUE RECEIVED, **MONROE STREET HOUSING PARTNERS, L.P.**, , a California limited partnership (“**Borrower**”), hereby promises to pay to the CITY OF SANTA CLARA (“**City**”), a public body, corporate and politic, or order, a principal amount of \$5,000,000 (the “**City Loan**”). This Note is given pursuant to that certain Loan Agreement of even date herewith, between Borrower and the City (the “**City Loan Agreement**”) and evidences the City Loan to Borrower, which provides part of the financing for the development of that certain real property located at 22330 Monroe in the City of Santa Clara, California and legally described in the City Deed of Trust (the “**Property**”). The obligation of Borrower to City hereunder is subject to the terms of the City Loan Agreement, this Note and the other City Loan Documents. Said documents are public records on file in the offices of City. The Borrower shall pay interest at the rate, in the amount and at the time hereinafter provided.

Definitions. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the City Loan Agreement. In addition, the following terms shall have the following meanings:

“**Annual Financial Statement**” shall mean the annual audited financial statement of Revenue and Operating Expenses and balance sheet for the Improvements, prepared at the Borrower’s expense, by an independent certified public accountant reasonably acceptable to the City, which shall form the basis for determining the Residual Receipts.

“**City’s Proportionate Share**” shall mean the City’s pro-rata share of the total original outstanding principal amount due under the following approved loans, which is []%, so long as such loans are outstanding at the time of determination of City’s Proportionate Share: (a) City Loan: \$5,000,000; (b) County Loan: \$3,200,000 and (c) [HCD loan, etc.].

“**Operating Expenses**” shall mean all reasonable and actual costs and expenses of operating, managing and maintaining the Project including without limitation: *[Fee amount will tie to permitted fees under other soft loans/HCD; final terms to be determined and approved by City Housing Division]*

1. debt service, reserves and other payments currently due or payable on a non-optional basis on any Senior Loan, the Monitoring Fee and any administrative fee payable pursuant to the County.
2. payments for supportive services to Project residents, including without limitation the salary of on-site service coordinators and supervision of such service staff and any other costs related to any services required by any regulatory agreement or similar document or as approved by the City;

3. payments for property management staffing, including without limitation the salary of on-site property managers and supervision of such managers and any other costs related to any property management function required by any regulatory agreement or similar document or as approved by the City;
4. Property management, service management, and accounting and administration fees, and reimbursements in amounts in accordance with industry standards for similar developments, which shall not include tax credit shortfall payments or similar payments or indemnities in favor of the limited partner(s) of Borrower;
5. deposits to operating, replacement reserve, or any other reserve accounts which are either (i) commercially reasonable, or (ii) required by any Senior Lender or as required under the Limited Partnership Agreement;
6. costs of restoring the Project after damage, destruction or condemnation;
7. Project organizational costs (e.g., annual franchise tax payments) and direct costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business;
8. any extraordinary costs or expenses approved by City;
9. maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting, and decorating, cleaning, common systems repairs, general repairs, janitorial supplies, and others, and costs of restoring the Project after damage, destruction or condemnation;
10. Project real estate taxes (if property tax welfare exemption become ineligible) and other taxes, assessments and impositions that are not exempt under the welfare exemption;
11. Payment of any previously unpaid portion of the Developer Fee for the Project;
12. general administrative expenses including but not limited to advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other;
13. current and accrued partnership management fee with annual earnings in the amount of \$[] increasing by []% annually, and current and accrued limited partner investor services fee with annual earnings in the amount of \$[] increasing by []% annually, beginning the first calendar year the Project receives rental income; repayment of any limited partner loans and general partner operating deficit loans pursuant to the Limited Partnership Agreement, any advances by partners required under the Limited Partnership Agreement, if applicable, of Borrower and any fees to partners

required under the Partnership Agreement; tax credit adjustor payments, taxes owed on taxable income allocated to the limited partner, replenishing of the Operating Reserve as required pursuant to the Limited Partnership Agreement;

14. Tenant resident services in the annual amount of \$[_] and increasing by no more than [_]% each calendar year, or as otherwise amended in writing;
15. utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas and electricity; and
16. Premiums for property damage and liability insurance.

“Residual Receipts” shall mean (a) the Revenue minus (b) the Operating Expenses. All calculations of Residual Receipts shall be subject to verification and reasonable approval by the City.

“Revenue” shall mean all income derived from the Project (excluding loan proceeds, insurance proceeds (except those for loss of business), capital contributions, tenant security deposits, and any interest earned on said deposit, and includes, without limitation:

1. All rents (including rent on commercial or common space within the Project) and rent subsidies, if any;
2. interest on reserves, unless such interest remains in the applicable reserve account;
3. receipts from laundry, parking, or other services for which a fee is charged; and
4. insurance proceeds or condemnation awards actually received by Borrower after casualty to or condemnation of the Project; provided, however, Borrower shall not be deemed to have “received” (nor shall Operating Revenues include) all or any portion of insurance proceeds or condemnation award that is applied by a senior lender of Sources of Funding towards payment of costs and expenses or in payment of outstanding principal, interest, and/or charges under the senior lender’s loan or deed of trust securing the loan.

“Soft Lenders’ Share of Residual Receipts” is defined as fifty percent (50%) of Residual Receipts.

“Term” of this Note shall mean fifty-five (55) years from Conversion.

1. This Note evidences the obligation of the Borrower to the City for the repayment of the City Loan. None of the funds provided pursuant to the City Loan were funded directly or indirectly with any obligation the interest on which is exempt from tax under Section 103 of the

Internal Revenue Code of 1986, as amended, or pursuant to any United States government federal source.

2. This Note is payable at the principal office of the City, 1500 Warburton Avenue, Santa Clara, California 95050, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

3. This Note shall be secured by the City Deed of Trust.

4. This Note shall bear simple interest at the rate of [0 to 3% per annum, percent to be determined by financial feasibility and approved by City Housing Division], which shall begin to accrue upon disbursement. Upon and during the occurrence of an event of default (after the expiration of all applicable notice, cure and grace periods) under the City Loan Documents, the monetary obligations under the City Loan Documents shall bear interest at the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

5. Except as described in Sections 6 and 7 hereof, no payments shall be due and payable under this Note.

6. The entire unpaid principal balance of this Note and any accrued but unpaid interest shall be due and payable upon the expiration of the Term hereof, or immediately upon the occurrence of either of the following:

(a) if the Property or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the City, except as otherwise permitted in this Note or the City Loan Agreement; or

(b) if there is an event of default by the Borrower under the terms of this Note or any of the City Loan Documents, the Lease, or any deed of trust or other instrument securing the Senior Loan or other obligations secured by a deed of trust on the Property, which is not cured within the respective time period provided herein and therein.

7. Prior to the expiration of the Term hereof, Borrower shall be obligated to repay the City Loan as follows:

(a) Beginning on the date of Conversion, principal and/or interest will only be payable to the extent of available Residual Receipts. For any year that it is determined that there are available Residual Receipts, the City will be paid an amount equal to the City's Proportionate Share of Soft Lender's Share of Residual Receipts for such fiscal year. No later than December 1st of each year, Borrower will provide to the City a projected budget for the following calendar year, which shall include an estimate of Residual Receipts. No later than April 1st of each year, Borrower will provide to the City Borrower's calculation of Residual Receipts for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation an independent audit prepared for the Project by a certified public accountant. Notwithstanding the preceding sentence, the Borrower shall have an additional 30 days, until May 1st, to provide the City all required materials for the Residual Receipts calculation for the first such required submittal. Commencing on June 1st of the first year for which there are available Residual Receipts, and each anniversary thereafter until the Due Date, Borrower will

make annual payments to City in an amount equal to City's Proportionate Share of Soft Lenders' Share of Residual Receipts of the Project for the calendar year most recently ended. While these dates are absolute, City staff in their sole discretion may adjust these dates annually on a case by case basis provided the Borrower has submitted a written request prior to the April 1st deadline and City staff has provided a one-time waiver in writing prior to June 1st.

(b) All payments to City shall be applied first to the payment of all expenses, charges, costs and fees incurred by or payable to City by Borrower pursuant to the terms of the City Loan Documents (in such order and manner as City, in its sole discretion, may elect), then to the payment of all interest accrued to the date of such payment, and then to reduce the principal amount owed. All prepayment of principal on this Note shall be applied to the most remote principal installment or installments until paid. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of a default under the City Deed of Trust (after expiration of all applicable notice and cure periods), all amounts received by City from any party shall be applied in such order as City, in its sole discretion, may elect.

8. All payments to the City shall be applied first to interest, then to reduce the principal amount owed.

9. Prior to the repayment in full of the City Loan, the Borrower shall not assign or attempt to assign the City Loan Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, except as permitted in the City Loan Agreement.

10. Subject to the provisions and limitations of this Section 10, the obligation to repay the City Loan is a nonrecourse obligation of the Borrower. Neither Borrower nor any general partner of Borrower shall have any personal liability for repayment of the City Loan, except as provided in this Section 10. The sole recourse of City against Borrower or any general partner shall be the exercise of its rights against the Property and any related security for the City Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by this Note or any of the City Loan Documents; (b) limit the right of the City to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the City Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (c) release or impair this Note or any of the City Loan Documents; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing this Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to City; or (g) affect in any way the validity of any guarantee or indemnity from any person other than the Borrower of all or any of the obligations evidenced and secured by this Note or any of the City Loan Documents. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of an event of default after expiration of all applicable cure period, Borrower shall have personal liability hereunder for any deficiency judgment, but only if and to

the extent Borrower, its principals, shareholders, partners received rentals, other revenues, or other payments or proceeds in respect of the Property after the occurrence of such event of default after expiration of all applicable cure periods, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Borrower in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Borrower or from any other party:

(A) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Borrower or any general partner, shareholder, officer, director or employee of Borrower, or of any member or general partner of Borrower, or of any general or limited partner of such member or general partner;

(B) any damages, costs and expenses incurred by City as a result of any misappropriation of rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds by Borrower or any of its partners;

(C) any and all amounts owing by Developer pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity; and

(D) all court costs and reasonable attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

11. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, any of the City Loan Documents, or any term or provision of either thereof.

12. Upon any event of default under the terms of this Note or any of the City Loan Documents, or any deed of trust securing a Senior Loan or other obligations secured by a deed of trust on the Property and after expiration of the applicable cure period, the holder may exercise its rights or remedies hereunder or thereunder.

13. (a) Subject to the extensions of time set forth in Section 14, and subject to the further provisions of this Section 14, failure or delay by Borrower to perform any material term or provision of this Note or any of the City Loan Documents, constitutes a default under this Note.

(b) City shall give written notice of default to Borrower, specifying the default complained of by the City. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by City in asserting any of its rights and remedies shall not deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If a monetary event of default occurs under the terms of this Note or any of the City Loan Documents, prior to exercising any remedies hereunder or thereunder City shall give Borrower and each of the general and limited partners of Borrower's partnership, as identified in Borrower's partnership agreement, simultaneous written notice of such default. Borrower shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by City under this Note and/or the City Loan Documents. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of any of the City Loan Documents, prior to exercising any remedies hereunder or thereunder, City shall give Borrower and each of the general and limited partners of Borrower's partnership, as identified in Borrower's partnership agreement, simultaneous notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Borrower shall have such period to effect a cure prior to exercise of remedies by the City under the City Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Borrower (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City.

(f) If Borrower fails to take corrective action or to cure the default within a reasonable time, City shall give Borrower and each of the general and limited partners of Borrower's partnership written notice thereof, whereupon the limited partner, subject to the terms of the Borrower's partnership agreement, may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The City agrees to accept cures tendered by any Senior Lender or the limited partner within the time period provided herein. Additionally, in the event the Senior Lender or limited partner is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against the Borrower or its general partner, City agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or limited partner is so precluded from acting, not to exceed ninety (90) days, provided such Senior Lender and limited partner are otherwise in compliance with the foregoing provisions. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice

of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Borrower to the address set forth in the Loan Agreement; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof Notices to the limited partner shall be sent to the following address:

[Investor Limited Partner]

14. Notwithstanding specific provisions of this Note, Borrower shall not be deemed to be in default for failure to perform any non-monetary performance hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the City or any other public or governmental authority or entity, or any causes beyond the control or without the fault of the Borrower. An extension of time for any such cause (a “**Force Majeure Delay**”) shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by Borrower is sent to the City within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Borrower delivers to the City written notice describing the event, its cause, when and how Borrower obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Borrower shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Note may also be extended in writing by the City and Borrower.

15. If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid.

16. The City Deed of Trust securing this Note and all other City Loan Documents have been made subordinate and junior to the Senior Loans as provided in the City Loan Agreement.

17. City agrees that the lien of the City Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “**Extended Use Agreement**”) recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under the City Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Borrower acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an event

of default under this Note and the City Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by City as a result of an event of default by Borrower, and any amounts paid by City to cure any default under the Extended Use Agreement shall be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the City Deed of Trust.

18. In any approval, consent or other determination by City required under this Note or any of the other City Loan Documents, City shall act reasonably and in good faith.

19. Borrower shall have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty or premium.

20. Notices hereunder shall be given as provided in the City Loan Agreement.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year set forth above.

BORROWER:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimble, Manager

Recording Requested by and
When Recorded Mail to:

CITY OF SANTA CLARA
Office of the City Clerk
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

**SUBORDINATED LEASEHOLD DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)**

This Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of [] 1, 202[] by Monroe Street Housing Partners, L.P., a California limited partnership ("**Trustor**"), whose address is 1111 Broadway, Suite 300, Oakland, CA 94607, to Old Republic Title Company ("**Trustee**"), for the benefit of the CITY OF SANTA CLARA, a public body, corporate and politic ("**Beneficiary**"), whose address is 1500 Warburton Avenue, Santa Clara, California 95050.

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust for the benefit of Beneficiary, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION, all of Trustor's title and interest in the following property (the "**Trust Estate**");

(a) That certain real property in the City of Santa Clara, County of Santa Clara, State of California more particularly described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "**Subject Property**");

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the "**Improvements**");

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the "**Appurtenances**"). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the "**Real Property**");

(d) subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or

otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “**Rents**”);

(e) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “**UCC**”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the “**Goods**,” and together with the Real Property, the “**Property**”); and

(f) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the “**Intangibles**”).

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the “**Personal Property**”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the

rights and remedies of a “secured party” under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) a promissory note in the original principal amount of \$5,000,000, executed by Trustor (“**Borrower**” therein) of even date herewith (the “**City Note**”);
 - (b) the Loan Agreement of even date herewith (the “**City Loan Agreement**”), between Trustor (“**Borrower**” therein) and Beneficiary (“**Lender**” therein);
 - (c) the City Loan Documents, as defined in the City Loan Agreement; and
- (2) payment of indebtedness of the Trustor to the Beneficiary in the principal sum of \$5,000,000 (“**City Loan**”) or so much thereof as shall be advanced, evidenced by the City Note secured hereby, with interest, according to the terms of the City Note secured hereby.

The City Loan Documents, as described in the City Loan Agreement (collectively referred to as the “**Secured Obligations**”) and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Any capitalized term that is not otherwise defined in this Deed of Trust shall have the meaning ascribed to such term in the City Loan Agreement.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall pay the City Note secured hereby at the time and in the manner provided therein, and perform the obligations of the Trustor as set forth in the Secured Obligations at the time and in the manner respectively provided therein;
2. That Trustor shall not permit or suffer the use of any of the Trust Estate for any purpose other than the uses permitted by the Covenants;
3. Upon an event of default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;
4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of

notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the City Loan Agreement;

5. That upon an event of default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustor will keep the Improvements insured against loss by fire and such other hazards, casualties, and contingencies as described in the City Loan Agreement;

7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7;

8. To keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon without the consent of Beneficiary; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements upon said property without the consent of the Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers,

may pay necessary expenses, employ counsel, and pay his reasonable fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, the Beneficiary may also require Trustor to maintain and submit additional records. Beneficiary shall specify in writing the particular records that must be maintained and the information or reports that must be submitted;

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary shall be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the City Note secured hereby;

13. That the funds to be advanced hereunder are to be used in accordance with the Secured Obligations and upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said agreements, the principal sum and all arrears of interest, and other charges provided for in the City Note secured hereby shall at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary, and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of Santa Clara County, a surety bond in an amount one-and-one-half (1 1/2) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of each Senior Lender, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of the Senior Lenders, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, shall be applied to the amount due under the City Note secured hereby. No amount applied to the reduction of the principal shall relieve the Trustor from making payments as required by the City Note secured hereby.

18. Upon an event of default by Trustor in making any payments provided for in the City Note secured hereby or in this Deed of Trust, or in performing any obligation set forth in any of the Secured Obligations, and if such default is not cured within the respective time provided therefor in Section 34 of this Deed of Trust, below, or the other Secured Obligations, whichever is longer, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the Authority Note and all documents evidencing expenditures secured hereby. Any cure made or tendered by the Investor Limited Partner shall be deemed a cure by the Trustor and shall be accepted or rejected on the same basis as if made by Trustor.

19. (a) Prior to the repayment in full of the City Loan, except as provided in the City Loan Agreement, the Trustor shall not assign or attempt to assign the City Loan Agreement or any right therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property, the improvements thereon, or any portion thereof or interest therein (referred to hereinafter as a "**Transfer**"), without prior written approval of the Beneficiary. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary shall not unreasonably withhold or delay its consent. If consent should be given, any such transfer shall be subject to this Section 19, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein.

(b) Any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Beneficiary, to fulfill the obligations undertaken by Trustor in the City Loan Agreement and the City Loan Documents. Any such proposed transferee, by instrument in writing satisfactory to the Beneficiary and in form recordable among the land records of Santa Clara County, for itself and its successors and assigns, and for the benefit of the Beneficiary shall expressly assume all of the obligations of the Trustor under the City Loan Agreement and the City Loan Documents, and agree to be subject

to all conditions and restrictions applicable to the Trustor in this Deed of Trust. There shall be submitted to the Beneficiary for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Beneficiary its approval shall be indicated to the Trustor in writing.

(c) In the absence of specific written agreement by the Beneficiary, no unauthorized Transfer, or approval thereof by the Beneficiary, shall be deemed to relieve the Trustor or any other party from any obligations under the City Loan Agreement or any City Loan Document.

(d) Except for Permitted Transfers as described in the City Loan Agreement, in the event of a Transfer prior to the time the City Loan is paid in full without the prior written consent of the Beneficiary, the remaining principal balance of the City Loan and all accrued but unpaid interest shall be immediately due and payable.

(e) (i) As used herein, "Transfer" includes the sale, transfer or conveyance of the Property, the Improvements, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all or a portion of the Property or the Improvements; or the lease of all or substantially all of the Property or Improvements.

(ii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Trustor, or any conversion of Trustor to an entity form other than that of Trustor at the time of execution of this Deed of Trust, except for the following: (A) a cumulative change in the ownership interests of any individual limited liability company member of forty-nine percent (49%) or less shall not be deemed a "Transfer" for purposes of this Deed of Trust; and (B) a transfer of a portion or a majority of stock of any corporation to a trust formed in connection with a qualified employee ownership plan shall not, by itself, be deemed to constitute a change in ownership for purposes of this Deed of Trust.

(iii) "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of any general partner interest in Trustor if Trustor is a partnership

(iv) Notwithstanding anything to the contrary herein, a "Transfer" shall not include any "Permitted Transfer" as defined in the City Loan Agreement.

(f) The Beneficiary shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain the Beneficiary's reasons for disapproval.

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may

postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the City Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto.

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the City Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

24. The trust created hereby is irrevocable by Trustor.

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the City Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

27. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the following addresses:

Monroe Street Housing Partners, L.P.
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

With a copy to:

Monroe Street Housing Partners, L.P.
c/o Housing Choices Coalition For Persons With Developmental Disabilities, Inc.
6203 San Ignacio Ave, Suite 108
San Jose CA 95119
Attention: President

With a copy to:

Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan A. Gross

With a copy to:

[LP]

28. Trustor agrees that, except as otherwise provided in the City Note secured hereby, upon sale or refinancing of the property, the entire principal balance of the debt secured by this Deed of Trust, plus any accrued but unpaid interest thereon, shall at the option of Beneficiary be immediately due and payable.

29. Subject to the provisions and limitations of this Section 29, the obligation to repay the City Loan is a nonrecourse obligation of the Trustor. Neither Trustor nor any partner of Trustor shall have personal liability for repayment of the City Loan, except as provided in this Section 29. The sole recourse of Beneficiary shall be the exercise of its rights against the Property and any related security for the City Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by the City Note or this Deed of Trust; (b) limit the right of the Beneficiary to name Trustor as a party defendant in any action or suit for judicial foreclosure and sale under this Deed of Trust and the City Note or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Trustor; (c) release or impair the City Note or this Deed of Trust; (d) prevent or in any way hinder Beneficiary from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged Property or any other instrument securing the City Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder Authority from exercising, or constitute a defense, an

affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the City Note; (f) relieve Borrower of any of its obligations under any indemnity delivered by Borrower to Authority; or (g) affect in any way the validity of any guarantee or indemnity from any person of all or any of the obligations evidenced and secured by the City Note and this Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of an event of default, Trustor shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Trustor, its principals, shareholders, partners or received rentals, other revenues, or other payments or proceeds in respect of the mortgaged Property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the Property, ordinary and reasonable capital improvements to the Property, debt service, real estate taxes in respect of the Property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Trustor in connection with the operation of the Property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Beneficiary may recover directly from Trustor or from any other party:

(A) any damages, costs and expenses incurred by Beneficiary as a result of fraud or any criminal act or acts of Trustor or any general partner, shareholder, officer, director or employee of Trustor, or of any general or limited partner of such member or general partner;

(B) any damages, costs and expenses incurred by Beneficiary as a result of any misappropriation of funds provided for construction of the Improvements, rents and revenues from operation of the Improvements or proceeds of insurance policies or condemnation proceeds;

(C) any and all amounts owing by Trustor pursuant to the indemnification regarding Hazardous Substances pursuant to the Environmental Indemnity; and

(D) all court costs and reasonable attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Beneficiary shall pay Trustor's reasonable court costs and attorneys' fees if Trustor is the prevailing party in any such enforcement or collection action).

30. Notwithstanding specific provisions of this Deed of Trust, Trustor shall not be deemed to be in default for failure to perform any non-monetary performance hereunder where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the Beneficiary or any other public or governmental agency or entity, or any causes beyond the control or without the fault of the Trustor. An extension of time for any such cause (a "**Force Majeure Delay**") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by Trustor is sent to the Beneficiary within ten (10) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Trustor delivers to the Beneficiary written notice describing the event, its cause, when and how Trustor obtained knowledge, the date and the event commenced, and the

estimated delay resulting therefrom. Trustor shall deliver such written notice within ten (10) days after it obtains actual knowledge of the event. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor.

31. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

32. (a) Subject to the extensions of time set forth in Section 30, and subject to the further provisions of this Section 32, failure or delay by Trustor to perform any material term or provision of this Deed of Trust or any of the other City Loan Documents constitutes a default under this Deed of Trust.

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If a monetary event of default occurs under the terms of the City Loan Documents, or any deed of trust securing the Senior Loan or Permanent Loan prior to exercising any remedies hereunder or thereunder Beneficiary shall give Trustor written notice of such default. Trustor shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the Authority Note and/or this Deed of Trust. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of the City Loan Documents, prior to exercising any remedies hereunder or thereunder, Beneficiary shall give Trustor notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary under the City Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within sixty (60) days after the notice of default is first given.

(f) If Trustor fails to take corrective action or to cure the default within a reasonable time, Beneficiary shall give Trustor and each of the general and limited partners of Trustor's partnership written notice thereof, whereupon the limited partner, subject to the terms of the Trustor's partnership agreement, may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Beneficiary agrees to accept cures tendered by any Senior Lender or the limited partner within the time period provided herein. Additionally, in the event the Senior Lender or limited partner is precluded from curing a non-monetary default due to an inability to remove the general partner as a result of a bankruptcy, injunction, or similar proceeding by or against the Trustor or its general partner, Beneficiary agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or limited partner is so precluded from acting, not to exceed ninety (90) days, provided such Senior Lender and limited partner are otherwise in compliance with the foregoing provisions. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received.

(g) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Trustor; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

33. This Deed of Trust securing the City Note and all other City Loan Documents have been made subordinate and junior to the claims, liens or charges of the Construction Loan deed of trust and all other instruments securing the Construction Loan by that certain Subordination Agreement by and among Beneficiary, Trustor and Construction Lender which is being recorded concurrently with the execution and delivery of this Deed of Trust and will also be subordinate and junior to the claims, liens or charges of the Permanent Loan deed of trust and all other instruments securing the Permanent Loan.

34. This Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Project; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Project by instrument in lieu of foreclosure or comparable conversion of the loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall also apply: for a period of three (3) years from the date of foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code. Trustor acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an event of default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by

Beneficiary as a result of an event of default by Trustor, and any amounts paid by Beneficiary to cure any default under the Extended Use Agreement shall be an obligation of Trustor and become a part of the debt evidenced by the City Note and secured by this Deed of Trust.

35. Provisions Regarding Ground Lease. Trustor's interest in the Land is a leasehold interest under that certain Ground Lease between Trustor and the City of Santa Clara ("**Fee Owner**") (the "**Ground Lease**"). This Section 35 is subject to the rights of Senior Lenders.

(a) Representations and Warranties Regarding Ground Lease. Trustor hereby warrants and represents as follows: (i) The lessor's interest in the Ground Lease is now held by Fee Owner. (ii) The Ground Lease is in full force and effect, unmodified by any writing or otherwise (except as recited in the definitions section of this Deed of Trust). (iii) All rent, additional rent and other amounts to be paid by Trustor under the Ground Lease have been paid to the extent they are payable to the date of this Deed of Trust. (iv) Trustor enjoys the quiet and peaceful possession of the property demised under the Ground Lease. (v) Trustor is not in default under the Ground Lease and there is no event or condition which with notice and the expiration of any applicable cure period would be a default under the Ground Lease. (vi) Trustor has not received any notice from Fee Owner of any default that has not been timely cured. (vii) To the best of Trustor's knowledge, Fee Owner is not in default under the Ground Lease.

(b) Covenants Regarding Ground Lease. Trustor covenants and agrees as follows: (i) Trustor shall promptly and faithfully observe, perform and comply with all of the terms, covenants and provisions of the Ground Lease and to do all things necessary to preserve unimpaired its rights thereunder. (ii) Trustor shall not do, permit, suffer or refrain from doing anything, as a result of which, could give rise to any default under the Ground Lease. (iii) Trustor shall not exercise any right or option to cancel or otherwise terminate the Ground Lease. (iv) Trustor shall not cancel, surrender, modify, amend or in any way alter or permit the alteration of the Ground Lease and shall not release Fee Owner from any obligations imposed upon it under the Ground Lease. (v) Trustor shall give Beneficiary immediate written notice of any default by anyone under the Ground Lease and to immediately deliver to Beneficiary copies of each notice of default and copies of all other notices, communications, plans, specifications and other similar instruments received or delivered by Trustor in connection with such default notice. (vi) Trustor shall furnish to Beneficiary such information and evidence as Beneficiary may reasonably require concerning Trustor's due observance, performance and compliance with the terms, covenants and provisions of the Ground Lease.

(c) Default under Ground Lease. Any default by Trustor under the Ground Lease (taking into account any applicable notice and cure periods set forth therein) is an event of default under the City Loan Documents without the requirement of any notice under this Deed of Trust.

(d) Beneficiary's Rights to Cure Ground Lease Default. In the event of any default by Trustor under the Ground Lease, including, without limitation, any default in the payment of rent or any other monetary obligation due from Trustor under the Ground Lease, and in addition to other rights and remedies of Beneficiary under this Deed of Trust and the other City Loan Documents, Beneficiary may, in each and every case and at its sole option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of

Trustor thereunder in the name of and on behalf of the Trustor but no such action by Beneficiary shall release Trustor from any event of default under this Deed of Trust or the other City Loan Documents. Trustor shall, on demand, reimburse Beneficiary for all advances made and expenses incurred by Beneficiary in curing any such default (including, without limitation, attorneys' fees and disbursements), together with interest thereon at the default interest rate set forth in the City Note, from the date that an advance is made or expense is incurred, to and including the date Beneficiary is reimbursed such amount(s). All such amounts so expended by Beneficiary, with interest thereon, are secured by this Deed of Trust.

(e) New Lease. If the Ground Lease is canceled or terminated, and if Beneficiary or its nominee shall acquire an interest in any new lease of the property demised thereby, Trustor shall have no right, title or interest in or to any new lease with respect to the property demised thereby or the leasehold estate created by such new lease.

(f) Estoppel. Trustor shall use its diligent efforts to obtain and deliver to Beneficiary from time to time within twenty (20) days after written demand by Beneficiary, an estoppel certificate from Fee Owner, as requested by Beneficiary, setting forth (i) the name of Fee Owner under the Ground Lease, (ii) that the Ground Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the basic rent and additional rent payable under the Ground Lease, (iv) the date to which all rental charges have been paid by Trustor under the Ground Lease, and (v) whether there are any alleged defaults of Trustor under the Ground Lease or if there are any events which have occurred which with notice, such passage of time or both, would constitute a default under the Ground Lease, and, if there are, setting forth the nature thereof in reasonable detail.

(g) No Liability of Beneficiary. Beneficiary shall have no liability or obligation under the Ground Lease by reason of its making of the City Loan or acceptance of the City Loan Documents. No release or forbearance of any of Trustor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Trustor from any of its obligations under the City Loan Documents.

(h) Rights and Obligations under Ground Lease. Trustor shall enforce the obligations of Fee Owner under the Ground Lease to the end that Trustor may enjoy all of the rights granted to it under the Ground Lease and will immediately notify Beneficiary of any default by Fee Owner, or by Trustor as lessee, in the performance or observance of any of the terms, covenants and conditions on the part of such Fee Owner or Trustor, as the case may be, to be performed or observed under the Ground Lease. If Beneficiary receives a copy of any notice of default given by Fee Owner to Trustor, such notice shall constitute full authority and protection to Beneficiary for any action taken or omitted to be taken by Beneficiary hereunder, in good faith and in reliance thereon.

(i) Rejection in Bankruptcy. If the Ground Lease is rejected in any case, proceeding or other action commenced by or against Fee Owner under the Ground Lease (or any person or party constituting or having an interest in the Ground Lease) under the Bankruptcy Code or any comparable federal or state statute or law, (i) Trustor, immediately after obtaining notice thereof, shall give notice thereof to Beneficiary, (ii) Trustor, without the prior written consent of Beneficiary, shall not elect to treat the Ground Lease as terminated pursuant to Section

365(h)(1)(A)(i) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Trustor made without such consent shall be void and (iii) this Deed of Trust and all the liens, terms, covenants and conditions hereof shall extend to and cover Trustor's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to Fee Owner's rejection of the Ground Lease. In addition, Trustor hereby assigns to Beneficiary all of Trustor's rights to remain in possession of the property demised under the Ground Lease and to offset rents under the Ground Lease under Section 365(h)(1)(A)(ii) of the Bankruptcy Code in the event any case, proceeding or other action is commenced by or against Fee Owner under the Ground Lease under the Bankruptcy Code or any comparable federal or state statute or law.

(j) Assignment of Rights in Bankruptcy. Trustor hereby assigns to Beneficiary the Trustor's right to seek an extension of the one hundred twenty (120) day period within which Trustor must accept or reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Trustor under the Bankruptcy Code or comparable federal or state statute or law. Furthermore, if Trustor intends to reject the Ground Lease under the Bankruptcy Code or any comparable federal or state statute or law, then it shall so notify Beneficiary and, at Beneficiary's request, Trustor shall assign its interest in the Ground Lease to Beneficiary in lieu of rejecting the Ground Lease.

[Signatures appear on next page.]

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

TRUSTOR:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimble, Manager

[SIGNATURES MUST BE NOTARIZED]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2019, before me, _____, Notary Public,
personally appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2019, before me, _____, Notary Public,
personally appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

EXHIBIT A

LEGAL DESCRIPTION

The land situated in the County of Santa Clara, City of Santa Clara, State of California, described as follows:

[Insert]

APN: 224-37-068

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF SANTA CLARA
Office of the City Clerk
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 27383

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "**Assignment**") is made as of [] 1, 202[] by Monroe Street Housing Partners, L.P., a California limited partnership ("**Borrower**"), in favor of the CITY OF SANTA CLARA, its successors, and assigns (collectively, the "**City**").

RECITALS

A. Borrower is the owner of a leasehold interest in real property described in Exhibit A attached hereto, and the owner of all of the personalty, fixtures, and improvements now or hereafter located thereon or attached thereto now existing or to be constructed thereon. Said real property, personalty, fixtures, and the improvements are herein referred to collectively as the "**Premises**".

B. City has agreed to make a loan (the "**City Loan**") to Borrower, in the original principal amount of \$5,000,000, pursuant to the terms of that Loan Agreement by and between Borrower and City of even date herewith (the "**City Loan Agreement**"), as evidenced by promissory note of even date herewith (the "**City Note**"). The City Loan is secured by a Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing, of even date herewith, executed by Borrower, as Trustor, for the benefit of City, as Beneficiary (the "**City Deed of Trust**").

C. In order to induce City to make the City Loan to Borrower, Borrower has agreed to execute this Assignment.

NOW, THEREFORE, with reference to the foregoing and in reliance thereon and for good and valuable consideration, the receipt of which is hereby acknowledged, Borrower agrees as follows:

AGREEMENT

1. All initially capitalized terms used herein, unless otherwise defined or required by context, shall have the meaning ascribed to them in the City Loan Agreement. "Obligations" shall mean all obligations and duties of Borrower under the City Loan Documents. "**Indebtedness**" shall mean all monetary Obligations

2. Borrower hereby absolutely grants, sells, assigns, transfers, and sets over to City, by this Assignment, all of Borrower's interests, whether now existing or hereafter acquired, in all leases and other occupancy agreements of any nature, now or hereafter covering all or any part of the Premises, together with all extensions, renewals, modifications, or replacements of said leases and occupancy agreements, and together with any and all guarantees of the obligations of the lessees and occupants (the "**Lessees**") thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. (Said leases and occupancy agreements, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter referred to collectively as the "**Leases**" and individually as a "**Lease**".) The term "Leases" shall exclude the Ground Lease.

3. Borrower's purpose in making this Assignment is to relinquish to City its right to collect and enjoy the rents, royalties, issues, profits, income, and other benefits at any time accruing by virtue of the Leases (hereinafter called "**Rents and Profits**").

4. The parties intend that this Assignment shall be a present, absolute and unconditional assignment, subordinate to the rights of the Senior Lender, and shall, immediately upon execution, give the City the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on the Indebtedness and other Obligations under the City Loan Documents, subject to the rights of the Senior Lender. However, the City hereby grants to Borrower a license to collect and use, subject to the provisions set forth below, the Rents and Profits as they respectively become due and to enforce the Leases, so long as there is no default by Borrower in performance of the terms, covenants, or provisions of the City Loan Documents, after the expiration of any applicable notice and cure periods. Nothing contained herein, nor any collection of Rents and Profits by City or by a receiver, shall be construed to make City a "mortgagee in possession" of the Premises so long as City has not entered into actual possession of the Premises.

5. Upon the occurrence of any default, after the expiration of any applicable notice and cure periods, under the terms and conditions of this Assignment and, this Assignment shall constitute a direction and full authority to each Lessee under any Lease and each guarantor of any Lease to pay all Rents and Profits to City without proof of the default relied upon. Borrower hereby irrevocably authorizes each Lessee and guarantor to rely upon and comply with any notice or demand by City for the payment to City of any Rents and Profits due or to become due.

6. Borrower represents and warrants as to each Lease now or hereafter covering all or any portion of the Premises, unless City has been otherwise advised in writing by Borrower:

- a. That each Lease is in full force and effect;

b. That no material default exists on the part of the Borrower or to Borrower's actual knowledge, Lessee;

c. That no rent in excess of one month's rent has been collected in advance;

d. That, except for assignments to the Senior Lender, no Lease or any interest therein has been previously assigned or pledged;

e. That, to Borrower's actual knowledge, no Lessee under any Lease has any defense, setoff or counterclaim against Borrower; and

f. That, except as disclosed on a rent roll delivered to the City under the City Loan Agreement, all rent due to date under each Lease has been collected and no concession has been granted to any Lessee in the form of a waiver, release, reduction, discount, or other alteration of rent due or to become due except as previously disclosed to Borrower in writing.

7. Borrower agrees with respect to each Lease:

a. If any Lease provides for a security deposit paid by the Lessee to Borrower, this Assignment transfers to City all of Borrower's right, title, and interest in and to each such security deposit; provided, however, that Borrower shall have the right to retain said security deposit so long as Borrower is not in default, after the expiration of any applicable notice and cure periods, under this Assignment or any other City Loan Document; and provided further that City shall have no obligation to the Lessee with respect to such security deposit unless and until City comes into actual possession and control of said security deposit.

b. If any Lease provides for the abatement of rent during repair of the leased premises by reason of fire or other casualty, Borrower shall furnish evidence of rental insurance to City, the policies to be with companies and in form, content, policy limits, and terms as are customary in the case of entities owning similar property or assets similarly situated.

c. Except as otherwise provided in the City Loan Agreement, Borrower shall not terminate any Lease (except pursuant to the terms of the Lease upon a default by any Lessee thereunder), or materially modify or amend any Lease or any of the terms thereof which have not been previously approved in writing by the City, which approval shall not be unreasonably withheld or delayed.

d. Except as otherwise provided in the City Loan Agreement, Borrower shall not hereafter execute any Lease, the terms and conditions of which have not been previously approved in writing by City, which approval shall not be unreasonably withheld or delayed.

e. Borrower shall not collect any Rents and Profits more than thirty (30) days in advance of the date on which they become due under the terms of any Lease, provided that Borrower may collect customary security deposits more than 30 days in advance.

f. Intentionally omitted.

g. Borrower shall not consent to any assignment of any Lease, or any subletting thereunder, whether or not in accordance with its terms, on any terms less favorable than those that would reflect an aim's length transaction in light of prevailing market conditions (subject to the rent restrictions applicable to the Premises), without the prior written consent of City, except as otherwise provided in the City Loan Agreement.

h. Except as otherwise provided in the City Loan Agreement, Borrower shall not execute any further assignment of any of the Rents and Profits or any interest therein or suffer or permit any such assignment to occur by operation of law.

i. Borrower shall not request, consent to, agree to, or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Premises or any part thereof, or suffer or permit conversion of any Lease to a sublease, without City's prior written consent.

j. Borrower shall faithfully perform and discharge all obligations of the lessor under each Lease, and shall give prompt written notice to City of any notice of Borrower's default received from any Lessee or any other person and furnish City with a complete copy of said notice. Borrower shall appear in and defend, at no cost to City, any action or proceeding arising under or in any manner connected with any Lease. If requested by City, Borrower shall enforce each Lease and all remedies available to Borrower against the Lessee in the case of default under the Lease by the Lessee.

k. All Leases entered into by Borrower shall be deemed included in this Assignment as though originally listed herein.

l. Nothing herein shall be construed to impose any liability or obligation on City under or with respect to any Lease. Borrower shall indemnify, defend, and hold City, its officers, directors, agents, employees, and representatives (the Indemnitees) harmless from and against any and all liabilities, losses, and damages that any Indemnatee may incur under any Lease or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against any Indemnatee by reason of any alleged obligations to be performed or discharged by City under any Lease or this Agreement, unless any of the foregoing arises from or results from the gross negligence or willful misconduct of any Indemnatee. Should any Indemnatee incur any liability, loss, or damage under any Lease or by reason of this Assignment and such liability, loss, or damage falls within the foregoing indemnification, Borrower shall immediately upon demand reimburse such Indemnatee for the amount thereof together with all costs and expenses and reasonable attorneys' fees (based on itemized invoices for time and charges) and court costs incurred by such Indemnatee. All of the foregoing sums shall bear interest at the maximum rate permitted by law from demand by Indemnatee until paid. Any Rents and Profits collected by City may be applied by City, in its discretion, in satisfaction of any such liability, loss, damage, claim, demand, cost, expense, or fees.

8. Subject to the rights of the Senior Lender, Borrower hereby grants to City the following rights:

a. Upon an Event of Default as defined in the City Loan Agreement, City shall be deemed to be the creditor of each Lessee in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership, or other debtor relief proceedings affecting such Lessee, without obligation on the part of City, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein.

b. City shall have the right to assign Borrower's right, title, and interest in the Leases to any subsequent holder of the City Deed of Trust or any participating interest therein or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise. Any subsequent City shall have all the rights and powers herein provided to City.

c. City shall have the right (but not the obligation), upon any Event of Default under the City Deed of Trust or the City Loan Agreement, to take any action as City may deem necessary or appropriate to protect its security, including but not limited to appearing in any action or proceeding and performing any obligations of the lessor under any Lease; and Borrower agrees to pay, on demand, all costs and expenses, including without limitation reasonable attorneys' fees and court costs incurred by City in connection therewith, together with interest thereon at the rate of ten percent (10%) per annum.

d. Upon any Event of Default under this Assignment, the City Deed of Trust, the City Note, the City Loan Agreement, or any other City Loan Document (subject to any notice and cure provisions), and without notice to or consent of Borrower, City shall have the following rights (none of which shall be construed to be obligations of City):

i. City shall have the right under this Assignment to use and possess, without rental or charge, the Fixtures, Equipment, and Personal Property of the Borrower located in or on the Premises and used in the operation or occupancy thereof. City shall have the right to apply any of the Rents and Profits to pay installments due for Personal Property rented or purchased on credit, insurance premiums on Personal Property, or other charges relating to Personal Property in or on the Premises. However, this Assignment shall not make City responsible for the control, care, management, or repair of the Premises or any Personal Property or for the carrying out of any of the terms or provisions of any Lease.

ii. City shall have the right to apply the Rents and Profits and any sums recovered by City hereunder to the outstanding Indebtedness, as well as to charges for taxes, insurance, improvements, maintenance, and other items relating to the operation of the Premises.

iii. City shall have the right to take possession of the Premises, manage and operate the Premises and Borrower's business thereon, and to take possession of and use all books of account and financial records of Borrower and its property managers or representatives relating to the Premises.

iv. City shall have the right to execute new Leases of any part of the Premises, including Leases that extend beyond the term of the City Deed of Trust.

v. City shall have the right to cancel or alter any existing Leases.

vi. City shall have the irrevocable authority, as Borrower's attorney-in-fact, such authority being coupled with an interest, to sign the name of Borrower and to bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Premises.

e. All of the foregoing rights and remedies of City are cumulative, and City shall also have upon the occurrence of any such default all other rights and remedies provided under the City Loan Documents, or otherwise available at law or in equity or by statute subject to the nonrecourse clause set forth in the City Note.

9. Failure of City to avail itself of any terms, covenants, or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

10. Notwithstanding any future modification of the terms of the City Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of City in accordance with the terms of this Assignment.

11. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto (including without limitation in the case of City, any third parties now or hereafter acquiring any interest in the Indebtedness or other obligations of Borrower under the City Loan Documents or a part thereof, whether by virtue of assignment, participation, or otherwise). The words Borrower, City, and Lessee, wherever used herein, shall include the persons and entities named herein or in any Lease and designated as such and their respective heirs, legal representatives, successors and assigns, provided that any action taken by the named City or any successor, designated as such by an instrument recorded in the Official Records of Santa Clara County, California, referring to this Assignment, shall be sufficient for all purposes notwithstanding that City may have theretofore assigned or participated any interest in the obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

12. Any change, amendment, modification, abridgment, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of City.

13. Upon payment and performance of all Obligations, as evidenced by a recorded satisfaction or release of the applicable City Deed of Trust, this Assignment shall be void and of no further effect.

14. All notices, demands, approvals, and other communications provided for in the City Loan Documents shall be in writing and be delivered to the addresses and in the manner set forth in the City Deed of Trust.

15. This Assignment may be recorded in the Official Records of Santa Clara County, California, and Borrower shall pay all fees, charges, costs, and expenses of such recording.

16. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

17. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

18. If City should bring any action to enforce its rights hereunder at law or at equity, Borrower shall reimburse City for all reasonable attorneys' fees and costs expended in connection therewith.

[Signatures begin on following page.]

IN WITNESS WHEREOF, the undersigned Borrower has executed this Assignment as of the date first above written.

BORROWER

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimble, Manager

[Signatures must be notarized.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2019, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2019, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

EXHIBIT A
TO ASSIGNMENT OF RENTS AND LEASES

LEGAL DESCRIPTION

A leasehold estate in that certain Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

[To be inserted.]

ASSIGNMENT OF AGREEMENTS

Dated [], 2020

FOR VALUE RECEIVED and subject to the rights of Senior Lenders, the undersigned, Monroe Street Housing Partners, L.P., a California limited partnership (the “**Borrower**”), assigns to the CITY OF SANTA CLARA (the “**City**”), all of its right, title and interest in and to:

1. All environmental, architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “**Architectural Agreements**”); and
2. All reports, studies, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “**Plans and Specifications**”)

heretofore or hereafter into or prepared by any architect, engineer or other person or entity (collectively the “**Architect**”), for or on behalf of Borrower in connection with the construction of the Project on certain real property legally described in Exhibit A attached hereto and incorporated herein by this reference (collectively, “**Property**”). The Plans and Specifications, as of the date hereof, are those which Borrower has heretofore, or will hereafter deliver to City. The Architectural Agreements include, but are not limited to, the architectural contract between Borrower and HKIT Architects.

Subject to the rights of Senior Lenders, this ASSIGNMENT OF AGREEMENTS (“**Assignment**”) constitutes a present and absolute assignment to City effective as of the date that the City Loan closes (the “**Effective Date**”); provided, however, City confers upon Borrower the right to enforce the terms of the Architectural Agreements and Borrower’s rights to the Plans and Specifications so long as no event of default has occurred and is continuing after expiration of all applicable notice and cure periods under the Loan Agreement of even date herewith, between City and Borrower (the “**City Loan Agreement**”), as well as any future amendments and implementation agreements between Borrower and City which refer to this Assignment. Capitalized terms not otherwise defined herein shall have the meaning set forth in the City Loan Agreement. Upon the occurrence of an event of default and expiration of all applicable cure periods under the City Loan Agreement, City may, in its sole discretion, give notice to Architect of its intent to enforce the rights of Borrower under the Architect Agreements and of its rights to the Plans and Specifications and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Borrower acknowledges that by accepting this Assignment, City does not assume any of Borrower’s obligations under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower represents and warrants to City, as of the Effective Date, that: (a) all Architectural Agreements entered into by Borrower are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to City are complete and correct; and (c) except for assignments to the Senior Lender

Borrower has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower agrees: (a) to pay and perform all obligations of Borrower under the Architectural Agreements; (b) to enforce the payment and performance of all obligations of any other person or entity under the Architectural Agreements; (c) not to materially modify the existing Architectural Agreements nor to enter into any future Architectural Agreements without City's prior written consent; and (d) except for assignments to the Senior Lender, not to further assign, for security or any other purposes, its rights under the Architectural Agreements or with respect to the Plans and Specifications without City's prior written consent.

This Assignment secures performance by Borrower of all obligations of Borrower under the City Loan Documents.

This Assignment shall be governed by the internal laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and Borrower consents to the jurisdiction of the Superior Court of the County of Santa Clara, State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorney's fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Borrower and City; provided, however, this shall not be construed and is not intended to waive any restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by Borrower contained in the City Loan Agreement.

The attached Architect's Consent, Schedule 1, and Exhibit A are incorporated by reference.

The Effective Date of this Assignment shall be the date it is executed by the Borrower.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, Borrower has executed this Agreement as of the date and year first above written.

BORROWER:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimble, Manager

ARCHITECT'S CONSENT

The undersigned architect ("Architect") hereby consents to the foregoing Assignment to which this Architect's Consent ("Consent") is part, and acknowledges that there presently exists no unpaid claims due to the Architect except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to Borrower and/or the performance of the Architect's obligations under the Assignment.

Architect agrees that if, at any time, City shall become the owner of said Property, or, pursuant to its rights under the City Loan Agreement, elects to undertake or cause the completion of construction of the Project on any portion of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then, so long as Architect has received, receives or continues to receive the compensation called for under the Architectural Agreements, City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of City in the same manner as if performed for the benefit or account of Borrower in the absence of the Assignment.

Architect further agrees that, in the event of a breach by Borrower of the Architectural Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as Borrower's interest in the Architectural Agreements and Plans and Specifications is assigned to City, Architect will give written notice to City of such breach at the address shown below. City shall have thirty (30) days from the receipt of such written notice of default to remedy or cure said default. Nothing herein shall require City to cure said default or to undertake completion of construction of the Project.

[Remainder of this page left intentionally blank.]

Except for an assignment to the Senior Lender, Architect warrants and represents that it has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Architectural Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

“ARCHITECT”

HKIT Architects, a California corporation

By: _____
Name: _____
Title: _____

City's Address:

CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, California 95050

SCHEDULE 1

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to the Assignment of Agreements between Monroe Street Housing Partners, L.P., as the Borrower, and the CITY OF SANTA CLARA, as City.

UNLESS LIST OF UNPAID CLAIMS IS OTHERWISE ATTACHED BEHIND THIS PAGE,
NO UNPAID CLAIMS EXIST AS OF [], 2020.

EXHIBIT A

LEGAL DESCRIPTION

Exhibit A to the Assignment of Agreements between Monroe Street Housing Partners, L.P., as the Borrower, and the CITY OF SANTA CLARA, as City.

A leasehold estate in that certain Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

[To be inserted.]

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103

Recording Requested By and
When Recorded Mail To:

CITY OF SANTA CLARA
Office of the City Clerk
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS
(Affordable Housing Restrictions for Rental Units)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS (Affordable Housing Restrictions for Rental Units) (this “Agreement”), dated for reference purposes as of [] 1, 2020, is made by and between MONROE STREET HOUSING PARTNERS, L.P., a California limited partnership (“Developer”), and THE CITY OF SANTA CLARA, a California municipal corporation (“City”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties”. The City and the Developer agree as follows with reference to the following facts:

RECITALS

A. Developer holds the leasehold interest in the land legally described on Exhibit A attached hereto (“Property”), and fee interest in the structures and improvements located thereon or to be located thereon, including, without limitation, 65-units of rental housing to be constructed on the Property (together with equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities, the “Project”).

B. The City is providing a loan to Developer in the amount of \$5,000,000 (the “City Loan”) pursuant to that certain Loan Agreement between the City and the Developer of even date herewith (the “Loan Agreement”) and the City Loan Documents (such term and other capitalized terms not defined herein shall have the meanings given to them in the Loan Agreement).

C. Developer accepts responsibility for meeting the provision of sixty-four (64) affordable rental housing units plus one manager’s unit within the Project. The sixty- four (64) affordable rental housing units shall be provided in the Project according to the terms herein stated. The housing units shall be allocated as follows: (a) 16 units to be leased to 30% AMI Households who qualify as persons with developmental disabilities; (b) 10 units to be leased to 50% AMI

Households; (c) 13 units to be leased to 60% AMI Households; (d) 16 units to be leased to 80% AMI Households; (e) 9 units to be leased to 120% AMI Households; and (f) 1 unit as a manager's unit (the "Management Unit"). All Affordable Housing Units shall be made available at Below Market Rate Rents (as defined below).

D. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the condition of approval of the Project.

NOW, THEREFORE, in consideration of valuable land use and economic benefits and approvals by City allowing development of the Project and to satisfy its obligations to provide affordable housing to households at the income levels pursuant to the Unit Allocation at Below Market Rate Monthly Rent, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and their respective successors and assigns.

1. Definitions

In addition to terms that are otherwise defined herein, the following terms shall have the following respective meanings:

"Affordable Housing Cost" shall mean a monthly rent paid by the household legally occupying a unit plus a reasonable Utility Allowance, if applicable, that does not exceed the following:

- (a) For a 30% AMI Household, the product of thirty percent (30%) times thirty percent (30%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (b) For a 50% AMI Household, the product of thirty percent (30%) times fifty percent (50%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (c) For a 60% AMI Household, the product of thirty percent (30%) times sixty percent (60%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (d) For an 80% AMI Household, the product of thirty percent (30%) times eighty percent (80%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).
- (e) For a 120% AMI Household, the product of thirty percent (30%) times one hundred percent (100%) of the AMI adjusted for family size appropriate for the Unit divided by twelve (12).

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This

period shall be for the greater of (a) fifty-five (55) years from Conversion and (b) the full term of the Lease, as may be extended, restated or , as such term is defined in the Loan Agreement.

“Affordable Housing Unit(s)” shall mean each and all of the 64 dwelling units in the Project, allocated as provided in Exhibit B attached hereto and incorporated hereby, to be occupied or made available for occupancy exclusively to Income-Qualified Households; one unrestricted 2 bedroom unit may be used as a Manager Unit and is not an Affordable Housing Unit.

“AMI” shall mean the median family income figures and standards (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 50% AMI Households, 60% AMI Households, and 80% AMI Households; and (II) utilized by HCD pursuant to California Health and Safety Code Section 50093 as to 120% AMI Households.

“Annual Income” shall mean the annual income limits (adjusted for actual Household size) (I) utilized by TCAC as to 30% AMI Households, 50% AMI Households, 60% AMI Households, and 80% AMI Households; and (II) utilized by HCD as to 120% AMI Households.

“Below Market Rate” shall mean the provision of a dwelling unit at rent levels less than market rates.

“Below Market Rate Monthly Rent” shall mean, for purposes of this Agreement, the applicable Affordable Housing Cost less the Utility Allowance, if applicable.

“City” shall mean the City of Santa Clara, California.

“HCD” shall mean the California Department of Housing and Community Development.

“Household” shall mean one or more persons occupying a housing unit.

“Income-Qualified Household(s)” shall mean a household with an income that does not exceed the following:

- (a) 30% AMI Household of the Area Median Income adjusted for family size.
- (b) 50% AMI Household of the Area Median Income adjusted for family size.
- (c) 60% AMI Household of the Area Median Income adjusted for family size.
- (d) 80% AMI Household of the Area Median Income adjusted for family size.
- (e) 120% AMI Household of the Area Median Income adjusted for family size.

“Monitoring Fee” means a fee of One Hundred Dollars (\$100) per Unit (which shall be increased by three percent (3%) per annum on each June 30, commencing with the June 30 following the calendar year in which Conversion occurs) to be paid annually by Developer to the City in accordance herewith.

“TCAC” shall mean the California Tax Credit Allocation Committee.

“Unit(s)” shall mean all dwelling units in the Project.

“Unit Allocation” shall mean the allocation of the Units in the Project as provided in Exhibit B attached hereto and incorporated hereby.

“Utility Allowance” shall be based upon schedules issued from time to time by the Santa Clara County Housing Authority. The Utility Allowance applies to all tenant-paid costs that are listed on that schedule.

2. Uses

- a. General. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation, including the provision of services, pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 65 Units, of which 64 shall be Affordable Housing Units and 1 shall be an unrestricted two bedroom Manager’s Unit.
- b. Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, during the Affordability Period, that all rental Units in the Project shall be rented or leased to or held available for rental or occupancy to households at the income levels as provided in the Unit Allocation.
- c. Notwithstanding anything to the contrary contained elsewhere in this Agreement, in the event of a loss or reduction of Section 8 rental subsidies, the maximum household income of all Affordable Housing Units shall be increased up to 60% of AMI, adjusted for household size appropriate to the unit, but only to the extent necessary for the Project to operate at a minimum debt service coverage ratio of 1.15, as reasonably determined by the City, and the maximum rent shall be the Affordable Rent for households at 60% of Area Median Income

(1) Units Generally.

- (a) The Units shall be occupied, rented and leased in accordance with the Unit Allocation.
- (b) If Developer implements periodic programs of replacement and upgrade which apply to all Units, all Affordable Housing Units in the Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.
- (c) [16 of the Affordable Housing Units will be set aside for persons with developmental disabilities, as provided in Exhibit B.]

(2) Affordable Housing Unit Rents

- (a) Developer agrees it shall not charge to or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Below Market Rate Monthly Rent applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to Below Market Rate Monthly Rent.
- (b) The Below Market Rate Monthly Rent for the Affordable Housing Units shall be based upon schedules issued from time to time by HUD and modified and published by TCAC and HCD, as applicable. Upon written request, City shall notify the Developer of the applicable AMI and Annual Income based on number of bedrooms.
- (c) Rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in AMI plus Five Percent (5%). In no case may Below Market Rate Monthly Rents for the Affordable Housing Units exceed the amount derived by the Below Market Rate Monthly Rent formula set forth in this Agreement. The City shall receive a copy of all rent increase notices for the designated Affordable Housing Units at least 30 days prior to the new rents taking effect. Rent increases may only be implemented in compliance with applicable law.

(3) Income Qualification of Affordable Housing Unit Tenants

- (a) Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith effort to verify that the income provided by an applicant in an income certification is accurate.
- (b) The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the applicable Annual Income. The Developer may certify initial income qualification using one of the following two source documentation methods:
 - (i) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or
 - (ii) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; income verification form from the Social Security Administration and/or the California Department of Social Services if the

applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.

- (c) Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the Household's income and family size along with a signed certification by the tenant that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.
- (d) Income limits, adjusted for household size, will be based off of the AMI for Santa Clara County, which is published periodically by TCAC and HCD, as applicable. Upon request, City shall notify the Developer of the applicable area median income limits. If at any time TCAC does not publish the appropriate levels for AMI and/or Annual Income, Developer shall utilize the equivalent standards published by HCD.

(4) Over-Income Tenants in Affordable Housing Units

- (a) If a Household of an Affordable Housing Unit no longer qualifies as an Income-Qualified Household at the AMI level which such Household initially qualified (the "Initial AMI Level") for occupancy due to an increase in income but qualifies as an Income-Qualified Household at a higher AMI level, the Household may continue to occupy the Affordable Housing Unit and shall be treated as an Income-Qualified Household under such higher AMI level; provided, however, Developer shall rent the next available comparable unit within the Project (i.e., same number of bedrooms and bathrooms) as an Affordable Housing Unit to an Income-Qualified Household that qualifies as an Income-Qualified Household at the Initial AMI Level. If an occupant of an Affordable Housing Unit no longer qualifies as an Income-Qualified Household due to an increase in income, the occupant may continue to occupy the former Affordable Housing Unit; provided, however, Developer may increase the rental rate for such former Affordable Housing Unit to 30% of the occupants' Annual Income and such occupant shall for compliance purposes hereunder be treated as an Income-Qualified Household under the highest AMI level provided in the Unit Allocation for that Unit type and the next available Unit of such Unit type shall be leased to an Income-Qualified Household at the Initial AMI Level to the extent necessary to comply with the Unit Allocation. Developer shall send written notice to the City with the address and bedroom/bathroom mix of any occupant that pays rent greater than the equivalent Affordable Rent for an Income-Qualified Household under this Agreement.

(5) Waiting List for Affordable Housing Units; Preferences

- (a) Developer shall maintain a written Waiting List of households that have contacted Developer and expressed an interest in an Affordable Housing Unit. That list shall

include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.

- (b) Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units based on a lottery, then chronologically (oldest listing first). Developer shall provide evidence of attempts to contact households on the Waiting List.
- (c) Upon the adoption by the City Council of the City of Santa Clara of a City-preference policy for affordable housing rental units and upon written notice thereof from the City to Developer (the "Policy"), Developer's selection of tenants in the Project shall give preference to Income-Qualified Households, to the extent provided in the Policy, that either: (1) include at least one adult member who works in the City of Santa Clara, or (2) Income-Qualified Households that currently reside in the City of Santa Clara, to the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project. The foregoing provisions of this Section 2.c.(5)(c) shall not apply to any tenants subject to Project-base Section 8 vouchers, or to the extent prohibited under any financing for the Project previously approved by the City.
- (d) Notwithstanding the foregoing provisions of this Section 2.c.(5), with respect to any Affordable Housing Units which are subject to housing rental vouchers (including, but not limited to a project-based, sponsor-based or tenant-based U.S. Department of Housing and Urban Development Section 8 or Veterans Affairs Supportive Housing Vouchers) (as applicable, "Rental Vouchers"), Developer may use any waiting list or other tenant selection process or priority required under such Rental Vouchers.

(e) [To be updated for any County tenant selection requirements.]

(6) Lease Provisions

- (a) A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.
- (b) The lease may not contain any terms prohibited by applicable law.
- (c) Each lease or rental agreement shall provide that the Developer will not discriminate on the basis of race, creed, color, sex, national origin, ancestry, religion, marital status, disability or receipt of public assistance or housing assistance in connection with the rental of a Unit in Project, or in connection with the employment or application for employment of persons for operation and management of Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.

- (d) The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.
- (e) The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or re-certification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.
- (f) The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and approval by the City, the approval of which shall not be unreasonably withheld or delayed.

(7) Initial Leasing, Marketing and Tenant Selection Procedures.

- (a) Not later than sixty (60) days prior to the commencement of marketing, Developer shall prepare and submit to the City for reasonable approval a marketing and outreach program for the Affordable Housing Units which shall contain, among other things: (i) how a potential Income-Qualified Household would apply to rent an Affordable Housing Unit in the Project, including where to apply, applicable income limits and rent levels; (ii) a description of procedures and media Developer will use to publicize vacancies in Project, including notice in newspapers of general circulation, at least one of which shall be a foreign language newspaper; (iii) provide monthly leasing reports until all Units have been leased up and occupied, and (iv) mailing notices of vacancies to or contacting by telephone potential tenants on the Waiting List maintained by Developer.
- (b) A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations
- (c) Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.
- (d) Operating Covenant Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to Project or any part thereof that Developer, shall operate Project in conformity with all applicable laws, rules,

regulations and ordinances, including without limitation, all applicable federal and state labor standards.

- (e) Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project or any part thereof, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of Project.
- (f) Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of Project on the basis of race, color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:
 - (1) In deeds: “The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land”.
 - (2) In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased.”
 - (3) In contracts: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or

any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land.”

- (g) Notwithstanding anything to the contrary contained elsewhere in this Agreement, in the event of a foreclosure or deed in lieu of foreclosure under the [Construction Loan or Permanent Loan], or in the event of a loss or reduction of Section 8 Rental Subsidies, the maximum household income of all Affordable Housing Units restricted at 30% AMI and 50% AMI shall be increased up to 60% of Area Median Income, but only to the extent necessary for the Project to operate at a minimum debt service coverage ratio of 1.15, as reasonably determined by the City, and the maximum rent shall be the Affordable Housing Cost for 60% AMI Households (collectively, the “Affordability Adjustments”). With respect to loss or reductions in Section 8 Rental Subsidies only, the Affordability Adjustments shall continue only until Borrower has secured a substantially similar rental subsidy from the County of Santa Clara or other sources.

(h) [Consider float up to 60% AMI for units restricted below 60% if necessary for residual analysis/tax issues as determined by final underwriting and approval by City Housing Division.]

3. Monitoring/Annual Report

- (a) Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.
- (b) Once leasing at the Project has commenced, the Developer for itself, its successors, its assigns and every successor in interest to Project or any part thereof, covenants and agrees to submit to the City an annual report (the “Annual Report”). The first Annual Report shall be due 1 year after leasing at the Project has commenced. The Annual Report format shall be approved by the Housing & Community Services Division Manager and shall include a signed and certified statement of its accuracy upon annual submission to the City.
- (c) The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report and a certified statement by Developer that to the knowledge of the Developer, no default has occurred under the provisions of this Agreement.
- (d) The City has a standard reporting form which consists of two parts: Part I, information on tenants in residence on June 30 of the reporting year; Part II, information on tenants who moved in and out during the reporting year. The City has a standard form for income/rent reporting. A reasonable facsimile, pre-approved by the City may be substituted as long as it contains all the required information. For each Affordable Housing Unit, the following information is required (based on tenants in residence as of June 30):

- (1) Apartment Number or other unit designation.

- (2) Number of bedrooms.
 - (3) Household Size.
 - (4) Tenant Income (certified annually).
 - (5) Tenant-Paid Rent.
- (e) Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.
 - (f) Commencing with Conversion, Developer shall pay City on an annual basis, due on the same date as the Annual Report, the Monitoring Fee, provided that the Monitoring Fee shall be reduced (but not below \$0) to the extent that Developer has actually paid a monitoring fee to the County of Santa Clara.
 - (g) Developer shall obtain the prior written consent of the City with respect to the execution or selection of or changes to the Property Manager, the Management Agreement, and the Management Plan (as such terms are defined in the Loan Agreement) as provided in the Loan Agreement and otherwise within the reasonable discretion of the City.

4. Enforcement

The City of Santa Clara is deemed to be the beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if any covenants set forth in this Agreement are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

Developer agrees that, if a breach is not cured within thirty (30) days after written notice by City is provided to Developer, or if such breach cannot be reasonably cured within the thirty

(30) day period and Developer has not commenced the curing of such Default, then City shall have all rights and remedies at law or in equity to enforce the curing of such Default.

Additionally, if Developer collects rents from Income-Qualified Households occupying the Affordable Housing Units that require such Income-Qualified Household tenants to pay rent in excess of what is permitted pursuant to this Agreement, and to the extent such excess rents are not required to be reimbursed to the tenants of such Affordable Housing Units, Developer agrees and covenants to pay to the City the full amount of such excess to the City within ten (10) business days of City's written demand. Developer and City agree that the payment of such excess rent shall be in addition to City's rights and remedies at law or equity, and shall not constitute a repayment of or payment on the City Loan.

If the City provides Developer with a written notice of violation of this Agreement and Developer has not cured or responded to such notice of violation within ninety (90) days, then in addition to City's rights and remedies set forth herein, City shall thereafter have the right to impose a fine of \$150 per month per Unit until Developer has cured or responded to the notice of violation. Developer shall pay such fine within thirty (30) days of City's written demand.

5. Defaults

Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement constitutes a default.

- (a) The City shall give written notice of default to the Developer, specifying the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- (b) Any failures or delays by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- (c) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, City shall give Developer notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Developer shall have such period to effect a cure prior to exercise of remedies by the City. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (1) initiates corrective action within said period, and (2) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its remedies become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is first given.
- (d) Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid.

These events include but are not limited to war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City caused delays, delays caused by third parties, technical problems with transportation or other events outside the Developer's control.

6. Indemnification

The Developer shall indemnify, hold harmless and defend the City, and its officers, officials, appointees, employees and agents from and against (a) any Default by Developer under this Agreement; (b) any and all loss, costs, damages, actions and liabilities of whatever nature directly or indirectly resulting from or arising out of the design, construction, occupancy or ownership of Project or any written statement or representation provided to the City, or to prospective or actual tenants or purchasers of Project with respect to the Developer's performance hereunder. The foregoing obligations of Developer shall exclude claims, loss, costs, damages, actions and liabilities to the extent arising from City's gross negligence, willful misconduct or breach of this Agreement by the City. If any such claim is asserted, or any such impositions or charges are sought to be imposed, the City shall give prompt notice to Developer and Developer shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise and settle the same in its sole discretion, provided that the City shall have the right to review and reasonably approve or disapprove any such settlement or compromise if (1) such settlement or compromise would require the City to pay any money in connection with such settlement; or (2) the City would remain a litigant after such settlement or compromise is entered into. In addition, Developer shall pay upon demand all of the reasonable expenses paid or incurred by City in enforcing the provisions hereof.

7. General Provisions

(a) City as Beneficiaries

- (1) All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.
- (2) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the City shall be deemed beneficiary of the covenants provided for in this Agreement, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants set forth herein without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any material breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or

suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition. There are no intended third party beneficiaries of this Agreement.

- (3) Upon the sale, conveyance or other transfer of the Property permitted under the Loan Agreement, and the assumption of the obligations hereunder by the transferee, Developer's liability for performance shall be terminated and Developer shall be released from liability from any obligation to be performed hereunder after the date of such sale, conveyance, or transfer.

(b) Irrevocability; Term of Agreement

This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The covenants against discrimination set forth above shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.

(c) Amendment of Agreement

Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Agreement, or to subject the Property or any Affordable Housing Unit to additional covenants or conditions, without the consent of any renter, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in Project (or portion thereof) or any Affordable Housing Unit.

(d) Severability

The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

(e) Interpretation

The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

(f) Applicable Law

This Agreement and the lien created hereby shall be governed by and construed according to the laws of the State of California.

(g) Number, Gender and Headings

As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

(h) Notices

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a “hard” copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

If to the City:

City of Santa Clara
Housing & Community Services Division
1500 Warburton Avenue
Santa Clara, California 95050
Attn: Division Manager

With a copy to:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Attention: City Attorney

If to the Developer:

Monroe Street Housing Partners, L.P.
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

With a copy to:

Monroe Street Housing Partners, L.P.
c/o Housing Choices Coalition For Persons With Developmental Disabilities, Inc.
6203 San Ignacio Ave, Suite 108
San Jose CA 95119
Attention: President

With a copy to:

Gubb and Barshay LLP

505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan A. Gross

With a copy to:

[LP]

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

(i) Rights and Remedies Are Cumulative

The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default hereunder.

(j) Dispute Resolution

- (1) Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.
- (2) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.
- (3) The costs of mediation shall be borne by the parties equally.
- (4) Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

(k) Counterparts

This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

- (l) Mortgagee Protection. No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against the Project. No lender taking title to the

Project through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of the Project by such lender. Any lender who has recorded a deed of trust or mortgage against the Project shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice. No lender who takes title to the Project through foreclosure or deed in-lieu of foreclosure shall be obligated to construct or continue with construction of the Project.

[Remainder of page left intentionally blank.]

DEVELOPER:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimbler, Manager

[SIGNATURES MUST BE NOTARIZED]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2020, before me, _____, Notary Public,
personally appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2020, before me, _____, Notary Public,
personally appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

EXHIBIT A

LEGAL DESCRIPTION

The land situated in the County of Santa Clara, City of Santa Clara, State of California, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

[to be inserted]

Assessor's Parcel Number: 224-37-068

EXHIBIT B

UNIT ALLOCATION

	Affordable Housing Units					Manager's Unit
	Up to 30% AMI with developme ntal disabilities	50% AMI	60% AMI	80% AMI	120% AMI	
Studio	[]	[]	[]	[]	[]	0
1 bedroom	[]	[]	[]	[]	[]	0
2 bedrooms	[]	[]	[]	[]	[]	1
3 bedrooms	[]	[]	[]	[]	[]	0
Total	16	10	13	19	9	1

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this “**Indemnity**”), dated as of [] 1, 202[], is made by Monroe Street Housing Partners, L.P., a California limited partnership (the “**Borrower**”), in favor of THE CITY OF SANTA CLARA, a California municipal corporation (the “**City**”).

WITNESSETH

WHEREAS, Concurrently with the execution of this Indemnity, City and Borrower have entered into that certain Ground Lease pursuant to which City is leasing to Borrower an approximately 2.5 acre parcel (the “**Property**”) described on Exhibit A hereto for the construction and operation of 65 unit senior affordable housing project (the “**Project**”).

WHEREAS, Concurrently with the execution of this Indemnity, City and Borrower have entered into that certain Loan Agreement (the “**Loan Agreement**”), pursuant to which the City agreed to make a loan (the “**City Loan**”) to Borrower for the purposes of providing financial assistance for the construction of the Project. The City Loan is evidenced by that certain Promissory Note in the original principal amount of Five Million Dollars (\$5,000,000) dated as of even date herewith made by Borrower in favor of City (the “**City Note**”) and secured by that certain Subordinated Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor, Chicago Title Company is the Trustee, and City is the Beneficiary, dated as of the date hereof (the “**City Deed of Trust**”) and encumbering the Project. The Loan Agreement, the City Note, the City Deed of Trust and the other documents and instruments defined in the Loan Agreement as the “City Loan Documents” are referred to herein collectively as the “**City Loan Documents**”; and

WHEREAS, Borrower has agreed to execute and deliver to the City this Indemnity to induce the City to make the City Loan.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the City as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, “**Hazardous Materials**” or “**Hazardous Substances**” shall include, but not be limited to, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code, as “infectious waste” in Section 25117.5 of the California Health and Safety Code, or as “hazardous substances” in Section 25316 of the California Health and Safety Code or “hazardous materials” as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws. Other capitalized terms

used in this Indemnity and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants, and indemnities are hereby given and made by Borrower:

2.1 Covenants.

(a) Borrower covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials (“**Environmental Laws**”), to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Borrower covenants that the Property will not, while Borrower is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for *de minimis* quantities used at the Property in compliance with all applicable Environmental Laws in connection with the construction of and/or the routine operation and maintenance of the Project and the Property or in the ordinary course of the tenants’ residencies.

(c) Borrower further agrees that Borrower shall not release or dispose of any Hazardous Materials at the Property except for *de minimis* quantities used at the Property in compliance with all applicable Environmental Laws in connection with the construction of and/or routine operation and maintenance of the Project and Property or in the ordinary course of the tenants’ residencies without the express written approval of the City and that any such release or disposal shall be effected in strict compliance with all applicable Environmental Laws.

(d) The City shall have the right, at any time, to conduct an environmental audit of the Property at the City’s expense, unless Hazardous Materials are found in violation of Environmental Laws, then at Borrower’s sole cost and expense, and Borrower shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the City reasonably believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior written notice has been given to Borrower and only in the presence of a representative of Borrower. Borrower shall give the City and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials in violation of Environmental Laws.

(e) Borrower shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material (collectively, “**Asbestos**”).

(f) Borrower shall immediately advise the City in writing of any of the following: (i) any pending or threatened environmental claim against Borrower or the Property, (ii) any condition or occurrence on the Property that (A) results in noncompliance by Borrower with any applicable Environmental Law, (B) could reasonably be anticipated to cause the Property

to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any Environmental Law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Borrower.

2.2 Indemnity.

Borrower shall indemnify, protect, and hold the City harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the "**Obligations**") which may at any time be imposed upon, incurred by or asserted or awarded against the City and arising from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas;
- (b) The breach of any covenant made by Borrower in Section 2.1 hereof; or
- (c) The enforcement by the City of any of the provisions of this Section 2.2 or the assertion by Borrower of any defense to its obligations hereunder.

Subject to the qualifications set forth in Section 2.3, below, Borrower shall be liable for payment and performance of the Obligations to the full extent (but only to the extent) of the property and assets (including the Property) which constitute security for such Obligations. If default occurs in the timely and proper payment and performance of any such Obligations, any judicial proceedings brought by the City against Borrower shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing such Obligations and enforcement and collection of such Obligations for which Borrower remains directly liable as provided in this Section. If there is a foreclosure of any such liens, mortgages, assignments, rights and security interests by power of sale or otherwise, no personal judgment for any deficiency thereon shall be sought or obtained by the City against Borrower, or its officers, directors, agents, attorneys, servants or employees.

2.3 Exceptions to Non-Recourse Liability.

Notwithstanding the foregoing provisions of Section 2.2 or any other agreements,

- (a) The City may proceed against any other person or entity whatsoever with respect to the enforcement of any guarantees, surety bonds, letters of credit, reimbursement agreements or similar rights to payment or performance; and
- (b) The City may recover personally from any person or entity:
 - (1) any damages, costs and expenses incurred by the City as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials (other than Preexisting Hazardous Materials) by such person or entity or by others; provided, however, that neither Borrower nor any officer, director, agent, attorney, servant or employee of Borrower shall have

any personal liability if the act or omission complained of was performed in good faith and was not reckless, wanton, intentional or grossly negligent;

(2) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Borrower or any general partner, shareholder, officer, director or employee of Borrower, or of any member or general partner of Borrower, or of any general or limited partner of such member or general partner;

(3) any damages, costs and expenses incurred by City as a result of any misappropriation of City Loan proceeds for the construction of the Project, as described in the Loan Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds; and

(4) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City shall pay Borrower's reasonable court costs and attorneys' fees if Borrower is the prevailing party in any such enforcement or collection action).

Section 3. BORROWER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations.

Borrower hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the City Loan Documents or affecting any of the rights of the City with respect thereto. The obligations of Borrower hereunder shall be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the City Loan Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the City Loan Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Borrower contained in any of the City Loan Documents;

(c) Any extension of the maturity of the City Loan or any waiver of, or consent to any departure from, any provision contained in any of the City Loan Documents;

(d) Any exculpatory provision in any of the City Loan Documents limiting the City's recourse to property encumbered by the Deed of Trust securing the City Loan, or to any other security, or limiting the City's rights to a deficiency judgment against Borrower;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral for the City Loan, or any release, amendment, waiver of, or consent to any departure from any provision of any guarantee given in respect of the City Loan;

(f) The insolvency or bankruptcy of Borrower, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the City Loan; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower, or any other indemnitor or guarantor with respect to the City Loan or any or all of the Obligations.

3.2 Continuation.

This Indemnity (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the payment in full of the City Loan or the release or other extinguishment of the City Deed of Trust, or any other security for the City Loan); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the City upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all as though such payment had not been made.

3.3 Termination.

Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Borrower's obligations under the City Loan Documents, this Indemnity shall not terminate if any of the following shall have occurred:

(a) The City has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Environmental Laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Borrower hereby waives the following:

(a) Promptness and diligence;

(b) Notice of acceptance and notice of the incurrence of any obligation by Borrower;

(c) Notice of any action taken by the City, Borrower, or any other interested party under any City Loan Document or under any other agreement or instrument relating thereto;

(d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which,

but for the provisions of this Section 4, might constitute grounds for relieving Borrower of its Obligations hereunder;

(e) To the extent permitted by law, the right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(f) Any requirement that the City protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(g) Any requirement that the City exhaust any right or take any action against Borrower or any other person or collateral; and

(h) Any defense that may arise by reason of:

(1) The incapacity, lack of City, death or disability of, or revocation hereof by, any person or persons;

(2) The failure of the City to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Borrower or any other right of Borrower to proceed against Borrower.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight delivery service to the address set forth in the first paragraph of this Indemnity, above, or given by facsimile to the facsimile numbers stated below, with confirmations mailed by certified mail, return receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the parties hereto, shall designate in writing):

In the case of the City: Housing & Community Services Division
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Division Manager

In the case of Borrower: Monroe Street Housing Partners, L.P.
c/o Freebird Development Company, LLC
1111 Broadway, Suite 300
Oakland, CA 94607
Attention: Robin Zimble

With a copy to:

Monroe Street Housing Partners, L.P.
c/o Housing Choices Coalition For Persons With
Developmental Disabilities, Inc.
6203 San Ignacio Ave, Suite 108
San Jose CA 95119
Attention: President

With a copy to:

Gubb and Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan A. Gross

With a copy to:

[LP]

Any notice that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Borrower shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the City at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Borrower and the City, and no waiver of any provision of this Indemnity, and no consent to any departure by Borrower from any provision of this Indemnity, shall be effective unless it is in writing and signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the City to exercise, and no delay in exercising, any right hereunder or under any other City Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the City provided herein and in the other City Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the City under any City Loan Document against any party thereto are not conditional or contingent on any attempt by the City to exercise any of its rights under any other City Loan Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Borrower, and Borrower's successors and assigns; and (b) inure, together with all rights and remedies of the City hereunder, to the benefit of the City, its respective directors, officers, employees, and agents, any successors to the City's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the City's rights and remedies under the City Loan Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the City may, subject to, and in accordance with, the provisions of the City Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other City Loan Document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to the City herein or otherwise. None of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the City.

6.6 Borrower hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in Santa Clara County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Borrower irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Borrower agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

[Signatures begin on following page.]

IN WITNESS WHEREOF, Borrower has duly executed this Indemnity as of the date first set forth above.

BORROWER:

Monroe Street Housing Partners, L.P.,
a California limited partnership

By: Housing Choices Coalition For Persons With Developmental Disabilities, Inc.,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Name: _____
Title: _____

By: Freebird Development Company, LLC,
a California limited liability company,
its administrative general partner

By: _____
Robin Zimble, Manager

EXHIBIT A

LEGAL DESCRIPTION

A leasehold estate in that certain Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

[To be inserted.]



Agenda Report

20-88

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Public Hearing: Action on Resolution Amending the Municipal Fee Schedule Regarding New and Increased Alarm System and False Alarm Fees; Action on Adoption of Ordinance No. 2012 Amending Chapter 8.40 of the City Code ("False Alarm Regulation") [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

BACKGROUND

The Santa Clara City Code ("SCCC") contains provisions governing the City's regulations of various commercial enterprises; one such regulated enterprise is business and residential alarm systems. The City is permitted to recover the reasonable cost it incurs in administering this regulatory program via its Municipal Fee Schedule. On January 14th, the City Council approved an Agreement with Superion LLC for a new software system to assist with regulation and enforcement of the thousands of alarm systems and false alarm calls that the City receives each year. In conjunction with the new Agreement, the Police Department is requesting an Amendment of the Municipal Fee Schedule to increase, and create some new, regulatory fees related to alarm systems and false alarm responses.

SCCC Chapter 8.40, False Alarm Regulation, exists to ensure accurate, up-to-date information for Fire or Police personnel responding to the alarmed location. It also enables emergency personnel to contact responsible parties and/or alarm repair company representatives should the alarm need to be reset, has a recurring problem, or the site needs to be secured. The proposed amendments seek to modernize the chapter.

DISCUSSION

Amendment to Municipal Fee Schedule

Currently, the City of Santa Clara has 9,144 active permits; 4,702 commercial and 4,442 residential. In 2019, Public Safety Dispatchers received 3,567 alarm dispatch requests; 830 of these calls were cancelled while a police officer was en route, 2,708 were determined to be false alarms upon officer arrival and investigation on scene (e.g. user error, mechanical issue, etc.), and 29 were valid over the designated timeframe. In light of the drain on resources caused by the large number of false alarm calls, the Police Department seeks to modernize the applicable Code sections (described below), upgrade its computer system (approved by Council on January 14th), and modify the associated regulatory fee structure.

The fees associated with regulation of alarm systems and false alarm response fall within exception 3 of Proposition 26 ("A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections and audits ... and the administrative enforcement and adjudication thereof"). A regulatory fee must not exceed the

reasonable cost of administering the regulatory program. Such program administration activities may include licensing, permitting, investigation, inspection, administration, and maintenance of a system of supervision and enforcement. The cost to the City of administering the false alarm regulatory program in terms of response to a false alarm notification includes 2 CSOs, 2 Police Officers, a Dispatcher II and a Senior Dispatcher, as set forth in the table below. The program currently runs at a significant deficit.

Fee Name	Current Fee / Deposit	Total Cost Per Unit	Surplus / (Deficit) per Unit
Alarm Permit Application	\$37	\$94	(\$57)
False Alarm Calls			
Third false alarm	\$111	\$321	(\$210)
Fourth false alarm	\$136	\$321	(\$185)
Fifth & subsequent false alarms	\$161	\$321	(\$160)
Dispatch for a Holdup Alarm	\$121	\$111	\$10

The proposed amendments to the Municipal Fee Schedule are as follows:

Type	FY 19/20 Fee	Proposed Fee
Alarm Permit (unchanged)	\$37	\$37
Non-registration Fee (new)	\$0	\$50
Annual Renewal Fee (new)	\$0	\$15
Late Fee (new)	\$0	\$25
Reinstatement Fee (new)	\$0	\$15
First False Alarm (unchanged)	\$0	\$0
Second False Alarm (new)	\$0	\$50
Third false alarm (unchanged)	\$111	\$111
Fourth false alarm (unchanged)	\$136	\$136
Fifth and subsequent false alarm(s) (unchanged)	\$161	\$161
Dispatch for a Hold-up Alarm - false alarm (unchanged)	\$121 (plus False Alarm Fee)	\$121 (plus False Alarm Fee)

Based upon community feedback regarding the proposed changes to the regulatory fees, the Police Department coordinated two public meetings about the Alarm Permit program, held on January 7th and 8th. Both meetings resulted in robust discussions of various resident concerns. Concerns regarding the \$15 annual renewal fee generated the most discussion, with residents proposing interesting ideas for future data gathering and analysis, as well as future reconsideration of the fee structure based upon such an analysis. As discussed with Council at the January 14th meeting, staff has confirmed that the new Cry Wolf software system has the capability to extract data regarding the breakdown of revenue between the various fees such that staff can analyze whether the fee structure described above is appropriate, or should be modified to, for example, reduce ongoing administrative fees (such as the annual renewal fee or initial alarm permit fee) and increase false alarm related

fees. Staff will plan to bring this information back to Council in the third year of the Superior LLC contract.

Notice of public hearing regarding amendment of the Municipal Fee Schedule was published on January 15, 2020.

Adoption of Ordinance Amending SCCC Chapter 8.40

The proposed amendments to SCCC Chapter 8.40 were passed for the purpose of publication on January 14, 2020. Pursuant to City Charter Sections 808 and 812, a summary of proposed Ordinance No. 2012 was published by The Weekly on January 22, 2020, and copies were posted in three public places.

The proposed amendments seek to modernize the chapter in accordance with upgrading the software and response system. Highlights of the proposed amended ordinance include:

- Requirement for additional contact information for alarm permit holders
- Contractor institutes Enhanced Call Confirmation, which includes a second verification call to a back-up phone number to reduce number of officer call outs for false alarms
- Appeals shall be heard pursuant to the new streamlined SCCC 2.115 process
- Chief of Police may deny/revoke an alarm permit, and/or temporarily suspend police response to that particular alarm site, if the site has produced more than 8 false alarms in a 12-month period

In accordance with Charter Section 808 a small clerical typographical error in the table of contents was discovered and fixed; the title to Section 8.40.180 was changed from “False Alarm Fees and Fines” to “Fees and Fines” to be consistent with the body of the Ordinance.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

The modifications to the Municipal Fee Schedule will be effectuated through the City’s revenue-sharing agreement with contractor Superior LLC. There are no upfront costs or annual maintenance fees as part of the agreement with Superior LLC. Instead, Superior (24%) and the City of Santa Clara (76%) will split the estimated fee-based revenue. The first-year revenue and expenditure estimates were included in the FY 2019/20 Adopted Operating Budget, and are estimated annually at \$246,000 (of which \$186,960 is estimated to be remitted to the City of Santa Clara).

COORDINATION

This report has been coordinated with the Finance Department, City Attorney’s Office, and Police Department.

PUBLIC CONTACT

A summary of proposed Ordinance No. 2012 was published to the Santa Clara Weekly on January 22, 2020, and copies were posted in three public places and made available for public inspection at the City Clerk's Office.

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

RECOMMENDATION

1. Adopt a Resolution amending the 2019-20 Municipal Fee Schedule to add new regulatory fees and amend existing regulatory fees relating to alarm systems and false alarm responses; and
2. Adopt Ordinance No. 2012 amending Chapter 8.40 of the City Code ("False Alarm Regulation").

Reviewed by: Brian Doyle, City Attorney

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance No. 2012 - Intro
2. Resolution Amending Municipal Fee Schedule

ORDINANCE NO. 2012

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 8.40 ("FALSE ALARM REGULATION") 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 Police Department Permits Unit processes permits for commercial and residential alarm systems;

WHEREAS, the City's false alarm regulations exist to ensure accurate, up-to-date information for Fire and/or Police personnel responding to an alarmed location, and enable emergency personnel to contact responsible parties and/or alarm repair company representatives should the alarm need to be reset, has a recurring problem, or the site needs to be secured;

WHEREAS, the Police Department's current alarm permit software is outdated and does not integrate with the Department's new Computer Aided Dispatch system, which has led to enormous inefficiencies;

WHEREAS, over the time period January through October 2018, the Police Department received over two thousand alarm dispatch requests that were determined to be false alarm notifications (user error, mechanical issue with the alarm system, etc.), which is a significant drain on departmental resources, and is addressed by fees assessed via the Municipal Fee Schedule;

WHEREAS, the City has entered into an agreement with Superior LLC to provide a new software solution for alarm permit management and fee collection, which will greatly increase internal efficiencies, provide enhanced customer service to the community, and is compatible with the department's new Computer Aided Dispatch system; and,

WHEREAS, in order to effectuate the new software solution through its agreement with Superior LLC, and in the best interests of the City of Santa Clara, the City must amend its existing false alarm ordinance to modify definitions, monitoring procedures, appeals, and suspension of emergency alarm response.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Chapter 8.40 (entitled “False Alarm Regulation”) of Title 8 (entitled “Health and Safety”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

**“Chapter 8.40
FALSE ALARM REGULATION**

- | | |
|-----------------|---|
| 8.40.010 | Purpose and scope. |
| 8.40.020 | Definitions. |
| 8.40.030 | Alarm permit required. |
| 8.40.040 | Permit application. |
| 8.40.050 | Permit fees. |
| 8.40.060 | Reserved. |
| 8.40.070 | Application review and permit issuance. |
| 8.40.080 | Transferability. |
| 8.40.090 | Confidentiality. |
| 8.40.100 | Alarm systems in apartment complexes – Contracted for by individual tenant. |
| 8.40.110 | Alarm systems in apartment complexes – Furnished by the apartment complex as an amenity. |
| 8.40.120 | Proper alarm systems operation and maintenance. |
| 8.40.130 | Monitoring procedures. |
| 8.40.140 | Duties of alarm company. |
| 8.40.150 | Reserved. |
| 8.40.160 | Alarm dispatch request records. |
| 8.40.170 | System performance reviews. |
| 8.40.180 | Fees and fines. |
| 8.40.190 | Appeals. |
| 8.40.200 | Denial, suspension, revocation, nonrenewal, or denial of reinstatement, of alarm permit and/or emergency alarm response. |
| 8.40.210 | Reserved. |
| 8.40.220 | Reinstatement of alarm permit and response. |
| 8.40.230 | Reserved. |

8.40.240 Emergency no response.

8.40.010 Purpose and scope.

(a) The purpose of this chapter is to encourage alarm users and alarm companies to maintain the operational reliability and proper use of alarm systems and to reduce or eliminate false alarm dispatch requests.

(b) This chapter governs systems intended to summon police response, requires alarm permits, establishes fees, provides for penalties for violations, establishes a system of administration, and sets conditions for suspension, denial or revocation of alarm permits.

(c) Alarm registration is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of response, in accordance with California law.

(d) Motor vehicles and recreational vehicles are not subject to this false alarm chapter.

8.40.020 Definitions.

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(a) "A" definitions:

(1) "Alarm administrator" means a person or persons designated by the Chief of Police to administer, control and review alarm applications, alarm permits and alarm dispatch requests.

(2) "Alarm company" means the business, by an individual, partnership, corporation or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing or monitoring an alarm system in an alarm site.

(3) "Alarm dispatch request" means a notification to the police by the alarm company that an alarm, either manual or automatic, has been activated at a particular

alarm site.

(4) "Alarm site" means a single premises or location served by an alarm system or systems. Each tenancy, if served by a separate alarm system in a multi-tenant building or complex, shall be considered a separate alarm site.

(5) "Alarm system" means a device or series of devices, including, but not limited to, systems interconnected with radio frequency signals, which are designed to discourage crime, by emitting or transmitting a remote or local, audible, visual or electronic signal indicating an alarm condition. Alarm system does not include:

(A) An alarm installed on a vehicle unless the vehicle is permanently located at a site; or

(B) An alarm designed to alert only the inhabitants of a premises that does not have a sounding device which can be heard on the exterior of the alarm site and is not connected to or monitored by an alarm company.

(6) "Alarm user" means any person, firm partnership, corporation or other entity that uses an alarm system at its alarm site.

(7) "Alarm User Awareness Class" means a class conducted for the purpose of educating alarm users about the responsible use, operation, and maintenance of alarm systems and the problems created by false alarms.

(b) Reserved for future use.

(c) "C" definitions:

(1) "Cancellation" means termination of response by the Police Department when the alarm company notifies the Police Department that there is not an existing situation at the alarm site requiring emergency services response after an alarm dispatch request. If cancellation occurs prior to police arriving at the scene, no penalty will be

assessed.

(2) "Chief of Police" means the elected Chief of Police of the City or an authorized representative of the Chief of Police.

(3) "City" means the City of Santa Clara, California.

(4) "Conversion" means the transaction or process by which one alarm company begins monitoring an alarm system previously monitored by another alarm business.

(5) "Corrective action" means an appropriate act or acts taken by the alarm user or alarm company that substantially reduces the likelihood of false alarms.

(d) "D" definitions:

(1) "Duress alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a crisis situation requiring police response.

(e) "E" definitions:

(1) "Enhanced Call Confirmation" (ECC) means an attempt by the alarm system monitoring company to contact the alarm site and/or alarm user by telephone and/or other means, whether or not actual contact with a person is made, to determine whether an alarm signal is valid before requesting law enforcement response. A second call shall be made to an alternate number provided by the alarm user if the first attempt fails EXCEPT in case of a fire, panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified as defined in ANSI/CSAA CS-V-01-2016 (or current version).

(f) "F" definitions:

(1) "False alarm dispatch" means an alarm dispatch request to the Police Department, when the responding officer finds no evidence of a criminal offense or

attempted criminal offense after having completed an investigation of the alarm site. An alarm dispatch request which is canceled by the alarm company or the alarm user prior to the time the responding officer reaches the alarm site shall not be considered a false alarm dispatch.

(g) Reserved for future use.

(h) "H" definitions:

(1) "Hearing officer" means the City Manager or designee, as set forth in Chapter 2.115 SCCC.

(2) "Holdup alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

(i) Reserved for future use.

(j) Reserved for future use.

(k) "K" definitions:

(1) "Keypad" means a device that allows control of an alarm system by the manual entering of a coded sequence of numbers or letters.

(l) Reserved for future use.

(m) "M" definitions:

(1) "Monitoring" means the process by which an alarm company receives signals from alarm systems and relays an alarm dispatch request to the City for the purpose of summoning police response to the alarm site.

(n) "N" definitions:

(1) "No response" means an affirmative action taken by the Chief of Police to suspend response to any further alarms at the alarm site until proof of appropriate corrective action has been taken to substantially reduce the likelihood of additional false

alarms dispatches.

(o) "O" definitions:

(1) "One plus duress alarm" means the manual activation of a silent alarm signal by entering on a keypad a code that adds a one-number digit increase to the last digit of the normal arm/disarm code (example: normal code = 1234; one plus duress code = 1235).

(p) "P" definitions:

(1) "Permit" means a permit issued to an alarm user by the City allowing the operation of an alarm system within the City.

(2) "Person" means an individual, corporation, partnership, association, organization or similar entity.

(q) Reserved for future use.

(r) Reserved for future use.

(s) Reserved for future use.

(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.

8.40.030 Alarm permit required.

(a) No alarm user shall operate, or cause to be operated, an alarm system at its alarm site without a valid alarm permit issued by the alarm administrator. A separate alarm

permit is required for each alarm site.

An annual permit and renewal fee are required for the initial registration and annual renewals. Each alarm permit shall be assigned a unique permit number, and the user shall provide the permit number to the alarm company to facilitate law enforcement dispatch. An alarm permit shall expire one (1) year from the date of issuance and must be renewed annually by submitting an updated application prior to the alarm permit expiration date. The alarm user shall be notified of the requirement to renew the permit, and the process therefor, prior to the expiration date of the permit. Failure to renew will be classified as a use of non-permitted alarm system and citations and penalties may be assessed.

(b) If an alarm user has one or more alarm systems protecting two or more separate structures having different addresses and/or tenants, a separate permit shall be required for each structure and/or tenant.

8.40.040 Permit application.

Each application for an alarm permit shall include, but not be limited to, the following information:

(a) The name, address, telephone number(s) and email address(es) of the alarm site and alarm user and any other person who will be, jointly with the alarm user, the alarm permit holder and bear responsibility for the proper maintenance and operation of the alarm system and payment of fees or fines assessed, and any other action necessary for compliance with the terms of this chapter;

(b) Two alternative contacts including name, address, email address, and phone number;

(c) The classification of the alarm site as either residential or commercial;

(d) The purpose of the alarm system (i.e., burglary, holdup, duress, etc.) for each

alarm system located at the alarm site; and

(e) The classification of the alarm site as being equipped or non-equipped for duress alarm.

8.40.050 Permit fees.

The alarm permit fees for residential or a commercial alarm sites are determined by resolution of the City Council. No refund of any alarm permit fee will be made.

8.40.060 Reserved.

8.40.070 Application review and permit issuance.

(a) Within ten (10) days of receipt of the completed application, the alarm administrator shall grant or deny the application and notify the applicant.

(b) If the application is denied, the alarm administrator shall attach to the application a statement of the reasons for denial.

8.40.080 Transferability.

An alarm permit cannot be transferred to another person or alarm site. When the possession of the premises at which an alarm system is maintained is transferred, the person (user) obtaining possession of the property shall file an application for an alarm permit within ten (10) days of obtaining possession of the property.

8.40.090 Confidentiality.

Confidential information contained in alarm permit application shall be held in confidence by all employees or representatives of the City with access to such information, unless subject to disclosure pursuant to applicable law.

8.40.100 Alarm systems in apartment complexes – Contracted for by individual tenant.

(a) If an alarm system installed by an individual tenant in an apartment complex unit

is monitored, the tenant must provide the name of a representative of the apartment owner or property manager who can grant access to the apartment to the alarm company which is providing the monitoring service.

(b) A tenant of an apartment complex shall also obtain an alarm permit from the alarm administrator before operating or causing the operation of an alarm system in the tenant's residential unit. The fee for this alarm permit or the renewal of this alarm permit shall be the same as the fee for a residential alarm site.

(c) For purposes of enforcing this chapter against an individual residential unit, the tenant is responsible for false alarm dispatches emitted from the alarm system in the tenant's residential unit.

8.40.110 Alarm systems in apartment complexes – Furnished by the apartment complex as an amenity.

(a) If the owner or property manager of an apartment complex provides alarm systems in each residential unit as an amenity, then the owner or property manager of the apartment complex shall either obtain or renew an alarm permit from the alarm administrator on behalf of each resident in each such unit, or direct the resident in writing to obtain an alarm permit in accordance with the terms of this Chapter. The individual or entity in whose name the alarm permit is issued and held is responsible for compliance with the terms of this Chapter, under 8.40.040.

(b) The owner or property manager of an apartment complex shall obtain a separate alarm permit for any alarm system operated in a nonresidential area of the apartment complex, including, but not limited to, common tenant areas and office, storage and equipment areas, and pay the associated fee.

8.40.120 Proper alarm systems operation and maintenance.

(a) An alarm user shall:

(1) Maintain the premises and the alarm system in a manner that will minimize or eliminate false alarm dispatches;

(2) Maintain a list of two alternate contact persons and current telephone numbers with the alarm company;

(3) Make every reasonable effort to respond or cause a representative(s) to respond to the alarm system's location within one (1) hour when notified by the City to deactivate a malfunctioning alarm system, to provide access to the premises, or to provide security for the premises; and

(4) Not manually activate an alarm for any reason other than an occurrence of an event that the alarm system was intended to report.

(b) An alarm user shall adjust the alarm system or cause the mechanisms of the alarm system to be adjusted so that an alarm signal audible on the exterior of an alarm site will sound for no longer than ten minutes after being activated or fifteen (15) minutes for systems operating under Underwriters Laboratories, Inc. standards 365 or 609.

8.40.130 Monitoring procedures.

(a) An alarm company performing monitoring services shall:

(1) Attempt to confirm validity of the alarm signal, by calling the alarm site and/or alarm user by telephone, before requesting dispatch. Telephone confirmation shall require, as a minimum, that a second call also known as Enhanced Call Confirmation (ECC), be made to a different number, if the first attempt fails to reach an alarm user who can properly identify themselves to attempt to determine whether an alarm signal is valid, except in case of a fire, panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified as defined in ANSI/CSAA CS-V-01-2016(or current version);

(2) Report alarm signals to City of Santa Clara communications by using telephone numbers designated by the alarm administrator;

(3) Communicate alarm dispatch requests to the City in a manner and form determined by the alarm administrator;

(4) Communicate verified cancellations of alarm dispatch requests to the City in a manner and form determined by the alarm administrator; and

(5) Ensure that all alarm users of alarm systems equipped with duress alarm are given adequate training as to the proper use of the duress alarm.

(b) The alarm administrator shall:

(1) Designate a manner, form and telephone numbers for the communication of alarm dispatch requests; and

(2) Develop a procedure to accept verified cancellation of alarm dispatch requests.

8.40.140 Duties of alarm company.

(a) After January 1, 2000, alarm companies shall not program alarm systems so that they are capable of sending one plus duress alarms. Alarm companies may continue to report one plus duress alarms received from alarm systems programmed with this feature prior to 1999.

(b) After January 1, 2001, when performing a takeover or conversion, an alarm company must remove the one plus duress alarm capability from the alarm system being taken over or converted.

(c) After January 1, 2000, alarm companies shall not install a device(s) for activating a hold-up alarm which is a single action non-recessed button. (Ord. 1735 § 3, 6-1-99).

(d) Any person engaged in the alarm business in the City shall comply with the

following:

(1) Obtain and maintain the required state, county and/or city license(s) including a business tax certificate set forth in SCCC 3.40.060.

(2) Provide name, address, and telephone numbers of the business tax certificate holder or a designee who can be called in an emergency, 24 hours a day; and be able to respond to an alarm call, when notified, within 30 minutes.

(3) Be able to provide the most current contact information for the alarm user; and to contact a key holder for a response, if requested.

(4) Provide new and cancelled alarm sites in the format required by the City every thirty (30) days or upon request by the City.

(5) An alarm installation company and/or monitoring company that purchases alarm system accounts from another person or entity shall notify the City of such purchase and provide details as may be requested by the City.

(e) Prior to activation of the alarm system, the alarm company must provide an alarm user awareness class with instructions explaining the proper operation of the alarm system to the alarm user, and ensure that all alarm users of alarm systems equipped with a duress, holdup or panic alarm are given adequate training as to the proper use of the duress, holdup or panic alarm.

(f) After completion of the installation of an alarm system, the alarm company employee shall review with the alarm user the customer false alarm prevention checklist or an equivalent checklist approved by the City. The alarm company employee shall complete, sign and date the alarm prevention checklist and maintain a copy for a period of two (2) years.

(g) The alarm company shall instruct the alarm user to submit an alarm permit application to the alarm administrator for any alarm system installed after the adoption of the ordinance codified in this chapter.

(h) Maintain for a period of at least one (1) year from the date of the alarm dispatch request, records relating to the alarm dispatch. Records must include name, address and telephone number of the alarm user, the alarm system zones activated, the time of alarm dispatch request and evidence of an attempt to verify the alarm. The alarm administrator may request copies of such records for individually name alarm users. If the request is made, the alarm monitoring company shall provide requested information within (10) business days of receiving the request.

8.40.150 Reserved.

8.40.160 Alarm dispatch request records.

(a) When responding to an alarm dispatch request, the officer and/or communications should record such information as reasonably necessary to permit the alarm administrator to maintain records, including, but not limited to, the following information:

- (1) Identification of the alarm permit number for the alarm site;
- (2) Address of the alarm site;
- (3) Unit, area and/or sub-area of premises involved;
- (4) Dispatch received time;
- (5) Date and time of arrival at the alarm site;
- (6) Weather conditions effecting the alarm system activation;
- (7) Whether the alarm activation was due to a mechanical failure;
- (8) Name of alarm user's representative on premises, if any;

(9) Identification of the responsible representative of the alarm company, and/or;

(10) Unable to locate the address.

(b) The responding police officer shall indicate on the dispatch record whether the dispatch was caused by a criminal offense, an attempted criminal offense, or was a false alarm dispatch.

(c) In the case of an assumed false alarm dispatch, the responding police officer shall leave notice at the alarm site that the Police Department has responded to a false alarm dispatch. The notice shall include the following information:

(1) The date and time of police response to the false alarm dispatch;

(2) The identification number of the responding police officer; and

(3) A statement urging the alarm user to ensure that the alarm system is properly operated, inspected, and serviced in order to avoid fees or fines.

(d) Alarm companies which perform monitoring services must maintain records in accordance with SCCC 8.40.140(h).

8.40.170 System performance reviews.

If there is reason to believe that an alarm system is not being used or maintained in a manner that ensures proper operation and suppression of false alarm dispatch(s), the alarm administrator may require an alarm system inspection by a properly licensed alarm company to insure the alarm meets industry standards. In addition, the alarm administrator may require a conference with an alarm user and the alarm company responsible for the repair of the alarm system to review the circumstances of each false alarm dispatch.

8.40.180 Fees and fines.

All fees and fines are set by resolution of the City Council and must be paid before a

permit may be issued or renewed. An alarm user shall be subject to fines, depending on the number of false alarms within any twelve-month period. Any person operating a non-permitted alarm system will be subject to a fine for each false alarm in addition to any other fines and fees.

8.40.190 Appeals.

The Chief of Police shall determine whether a fine shall be assessed, and whether a permit shall be denied issuance, renewal, reinstatement, or shall be revoked or suspended. Such a decision by the Chief of Police may be appealed under the procedures set forth in Chapter 2.115 SCCC.

8.40.200 Denial, suspension, revocation, nonrenewal, or denial of reinstatement, of alarm permit and/or emergency alarm response.

The Chief of Police, or designee, is authorized to deny (pursuant to SCCC 8.40.070), suspend (for a period up to the term remaining on the permit), revoke, deny renewal of, or deny reinstatement of, a permit issued under this Chapter, or response by emergency services to an alarm, on the grounds set forth herein. In the event such authority is exercised, the applicant or permittee shall be notified in writing of the decision, which shall include a statement of the reasons therefor.

A suspension, revocation, or nonrenewal of alarm permit shall be effective upon expiration of the appeal period as set forth in SCCC Chapter 2.115. A permit denial or denial of reinstatement (see SCCC 8.40.220) shall be effective immediately for the purposes of appeal timelines under SCCC 2.115. Suspension of emergency alarm response shall be effective on the date stated in the written notice of same, which shall not be less than seven (7) calendar days after the date of mailing of the notice.

(a) A suspension of emergency alarm response may be implemented by the Chief of

Police after written notice, to the alarm user and alarm company of the repeated instances of false alarms at the alarm site. A notice of permit suspension issued concurrently with the suspension of emergency alarm response may also include the amount of the fine for each false alarm, if applicable. Emergency alarm response may be suspended if an alarm system has generated in excess of eight (8) false alarms during any twelve (12) month period. A suspension of emergency response shall not restrict, or in any manner limit, the alarm user from requesting police response to a 911 emergency incident.

(b) The alarm administrator may deny issuance of, suspend or revoke, deny reinstatement or deny renewal of, an alarm permit if it is determined that any of the following have occurred:

(1) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for an alarm permit;

(2) The permit holder has failed to make payment of any service fee, permit fee, late fee or suspension fee assessed under this article within ninety (90) days of the assessment.

(3) An alarm system has generated in excess of eight (8) false alarms during any twelve (12) month period.

(4) An alarm permit for the alarm site was suspended or revoked, and the violation causing the suspension or revocation has not been corrected; or

(5) Failure to comply with any provision of this chapter.

(c) A person commits a violation of this chapter if he/she operates an alarm system during the period in which their alarm permit is suspended or revoked.

(d) If the alarm permit is reinstated pursuant to SCCC 8.40.220, the alarm administrator then may suspend or revoke the alarm permit if it is determined that three (3)

or more false alarm dispatches have occurred in the remainder of the (12) twelve month year.

8.40.210 Reserved.

8.40.220 Reinstatement of alarm permit and response.

(a) A person whose alarm permit has been suspended, revoked and/or placed on suspension of emergency alarm response, may be reinstated and/or resume City emergency services alarm response upon the alarm holder submitting satisfactory proof of compliance with the following, as applicable:

(1) Submits an updated application and pays a permit fee as established by resolution of the City Council.

(2) Pays, or otherwise resolves, all fees and fines; including a reinstatement fee.

(3) Submits a certification from an alarm company that complies with the requirements of this chapter, stating that the alarm system has been inspected and repaired (if necessary) by the alarm company.

(4) Proof the alarm user has been re-trained on the use of the alarm system and procedures for contacting the alarm company in the case of false activation.

(5) The alarm user successfully completes and passes an on-line alarm awareness class.

(b) The Police Department shall reinstate its response to an alarm site as soon as is practicable after receiving notice of reinstatement from the alarm administrator. The user and monitoring company shall take notice that the alarm site has been officially reinstated only after receiving notice from the alarm administrator of that fact. It shall be the responsibility of the alarm user to verify that permit status and future police response have

been properly restored.

8.40.230 Reserved.

8.40.240 Emergency no response.

(a) The Chief of Police may issue an order suspending police response to an alarm or impose an emergency no response to the alarm site for a temporary time period not to exceed forty-eight (48) hours, if the Chief of Police determines that either:

(1) There have been an unreasonable number of false alarm dispatches at the alarm site for a twenty-four (24) hour period and there is no responsible party available;
or

(2) There are continuous (more than four (4) hours) false alarm dispatches occurring at the alarm site with no available means to disengage the alarm system.

(b) The Chief of Police shall ensure that a reasonable effort has been made to notify the responsible alarm company of an emergency no response action.

(c) An emergency no response action shall not restrict, or in any manner limit, the alarm user from requesting police response to a 911 emergency incident."

SECTION 2: Ordinances Repealed. 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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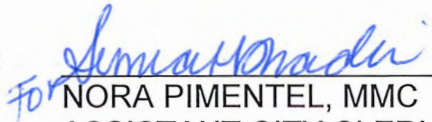
SECTION 3: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending 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 4: 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 14TH day of JANUARY, 2020, 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

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
AMENDING THE “CITY OF SANTA CLARA 2019-20 MUNICIPAL
FEE SCHEDULE” REGARDING NEW AND INCREASED ALARM
SYSTEM AND FALSE ALARM FEES.**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, under the provisions of the City of Santa Clara Charter, Municipal Code, Constitution of the State of California, and California Government Code, fees and charges assessed by the City of Santa Clara may be amended or modified upon the adoption of a Resolution by the City Council; and

WHEREAS, the City Council of the City of Santa Clara considered the addition of new fees relating to alarm systems and response to false alarms, and considered amending existing fees in conjunction with agenda item numbered 20-88 dated January 28, 2020; and

WHEREAS, relevant reports supporting the increased fees, as well as notice of public hearing were properly and timely provided and published, and a public hearing has been held accordingly; and

WHEREAS, the City Council finds that the new and amended fees are reasonable in that they do not exceed the estimated reasonable costs of providing the public services proposed to be rendered, that adoption of such fees is a valid exercise of powers under applicable law, and that it is in the best interest of the City to adopt same; and

WHEREAS, the City Council of the City of Santa Clara makes the following findings:

1. Municipal Code Chapter 8.40, False Alarm regulation, exists to ensure accurate, up-to-date information for Fire or Police personnel responding to the alarmed location. It also enables emergency personnel responding to contact responsible parties and/or alarm repair company representatives should the alarm need to be reset, has a recurring problem, or the site needs to be secured. Having this information readily available allows city personnel to return to providing services to the community in a timely manner.

2. The Police Department has been seeking a resource to streamline the administrative tasks associated with the permitting process and introduce procedures that are more customer service friendly. Superion, LLC has developed a commercial, off-the-shelf, Cloud-based software, called CryWolf, as a solution to alarm and collection management.
3. To achieve revenue targets and operational goals, the Municipal Fee Schedule will need to be amended as follows:

Type	Current FY 19/20 Fee	Amended Fee
Alarm Permit (unchanged)	\$37	\$37
Non-registration Fee (new)	\$0	\$50
Annual Renewal Fee (new)	\$0	\$15
Late Fee (new)	\$0	\$25
Reinstatement Fee (new)	\$0	\$15
First False Alarm (unchanged)	\$0	\$0
Second False Alarm (new)	\$0	\$50
Third false alarm (unchanged)	\$111	\$111
Fourth false alarm (unchanged)	\$136	\$136
Fifth and subsequent false alarm(s) (unchanged)	\$161	\$161
Dispatch for a Hold-up Alarm – false alarm (unchanged)	\$121 (plus False Alarm Fee)	\$121 (plus False Alarm Fee)

WHEREAS, the impact to the General Fund for these legislative changes is anticipated to be as set forth in agenda item 20-88.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the 2019-20 Municipal Fee Schedule last adopted July 16, 2019, is hereby amended to add new alarm fees and amend existing alarm fees, as set forth above.
2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING

THEREOF HELD ON THE 28th DAY OF JANUARY, 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None



Agenda Report

20-135

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Introduction of Ordinance No. 2011 Amending Chapter 18.76, ("Architectural Review") of Title 18 ("Zoning") and Making Other Clarifying Changes
[Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

BACKGROUND

At the December 10, 2019 Council meeting, the City Council voted to approve the introduction of Ordinance No. 2011, which would revise the City's architectural review process. Under the ordinance, most architectural review would be conducted by City staff, rather than an Architectural Committee. Certain projects would still undergo a public hearing, but the hearing would be conducted by the Director of Community Development instead of the Architectural Committee.

At the January 14, 2020 meeting, the Council considered the ordinance for adoption, but voted to continue the Ordinance to add two types of projects to the list of development that would have to undergo a public hearing before approval. That revised ordinance is before the Council tonight.

Because this was a substantive change to the ordinance, it is necessary to re-introduce the ordinance tonight. If the introduction is approved by Council tonight, the ordinance will return to the Council again on February 11, 2020 for adoption.

DISCUSSION

Under proposed Ordinance No. 2011, most architectural review would occur at staff level, with a subset of approvals requiring a public hearing before the Director of Community Development, including multifamily developments, large-scale non-residential development, and properties on the Historic Resources Inventory (HRI). As originally proposed, the following type of single-family homes would also require a public hearing:

- Five or more bedrooms;
- Five or more bathrooms; or
- Two or more bedrooms with direct exterior access

At the January 14, 2020 Council meeting, resident Bob O'Keefe requested that the Council expand this list to include two other types of single-family development projects that currently undergo public hearings:

- second-story additions; or
- projects involving demolitions

After receiving this testimony, the Council continued the item so that the ordinance could be revised to include these two additional types of projects.

Staff researched the issue and determined that the City Council established the policy for second-story additions on April 7, 1998. The minutes from that meeting provide:

“MOTION was made by Mahan, seconded and unanimously carried (Gillmor absent), that, per the Director of Planning and Inspection (4/3/98), the Council approve the concept of giving public notification to homes within 100 feet of proposed second story additions to single family homes and direction to the Architectural Committee to include this concept in the Architectural Committee’s procedural revisions”

Regarding demolitions, on May 2, 2000, the City Council established the following policy:

“MOTION was made by Matthews, seconded and carried with Diridon abstaining (owns property within 300 feet of a home that might be demolished) (Gillmor absent), that the Council direct that demolition permits not currently reviewed by another body be referred to the Architectural Review Committee with appeals to the Council”

In order to incorporate these policies, the revised ordinance would require a public hearing if a single-family development project will construct a new second story or expand an existing second story, or will demolish an existing structure (other than a non-habitable accessory structure).

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 administrative staff time and expense.

COORDINATION

This report has been coordinated with the Community Development 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>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Introduce Ordinance No. 2011 Amending Chapter 18.76, (“Architectural Review”) of Title 18 (“Zoning”) of “The Code of the City of Santa Clara, California” and Making Other Clarifying Changes.

Reviewed by: Brian Doyle, City Attorney

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance No. 2011 - Introduction
2. Excerpt of Council Minutes of April 7, 1998
3. Excerpt of Council Minutes of May 2, 2000

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA AMENDING CHAPTER 18.76,
("ARCHITECTURAL REVIEW") OF TITLE 18 ("ZONING")
OF "THE CODE OF THE CITY OF SANTA CLARA,
CALIFORNIA" AND MAKING OTHER CLARIFYING
CHANGES**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Chapter 18.76 ("Architectural Review") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") establishes the procedure for Architectural Review for new construction within the City of Santa Clara;

WHEREAS, SCCC Chapter 18.76 establishes an Architectural Committee, which includes two Planning Commissioners and one appointee by the City Council, who are responsible for the initial decision for Architectural Review approvals;

WHEREAS, the current procedure includes multiple levels of appeals, with an initial appeal to the Planning Commission and ultimately to the City Council; and,

WHEREAS, the City Council now intends to vest the authority for initial architectural review decisions in the Director of Community Development, and to provide for the Planning Commission as the appeal body for the architectural review of single-family residences and the City Council as the appeal body for the architectural review of all other projects.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Chapter 18.76 (entitled "Architectural Review") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

ARCHITECTURAL REVIEW

Sections:

18.76.010 Intent.

18.76.020 Architectural review process.

18.76.010 Intent.

The City Council of the City of Santa Clara finds, determines and declares that in order to encourage the orderly and harmonious appearance of structures and property; maintain the public health, safety and welfare; maintain the property and improvement values throughout the City and to encourage the physical development of the City as intended by the general plan; there is hereby established the architectural review process.

18.76.020 Architectural review process.

(a) Architectural review shall be the responsibility of the Director of Community Development or designee (“Director”).

(b) Before action is taken on an application for the issuance of a permit for any sign, building, structure, or alteration of the exterior of a structure in any zone district, plans and drawings of such sign, building or alteration shall be submitted, in such form and detail as the Director may prescribe. The Director shall approve or deny the architectural design without a hearing unless the type of project is listed in subsection (c).

(c) The Director shall conduct a public hearing, titled the “Development Review Hearing,” after providing notice pursuant to Section 18.112.060, for the following types of projects:

- (1) New or expanded single-family homes resulting in:
 - (A) Five or more bedrooms;
 - (B) Five or more bathrooms;
 - (C) Two or more bedrooms with direct exterior access; or

(D) A new second story or the expansion of an existing second story.

(2) Residential parcel or subdivision maps and any associated development plans.

(3) New multi-family developments of any size.

(4) New freestanding non-residential development greater than 5,000 square feet in size.

(5) Modifications or additions to existing non-residential development, where the modification or addition is greater than 20,000 square feet in size.

(6) Demolition or alterations to properties on the City's Historic Resources Inventory (HRI).

(7) Demolition of an existing structure, other than a non-habitable accessory structure.

(8) Any other project not listed above that the Director determines should be considered at a public hearing.

(d) In order to grant architectural approval, the findings and determinations shall be that the proposed development, as set forth in such plans and drawings to be approved, is based on the following standards of architectural design:

(1) That any off-street parking areas, screening strips and other facilities and improvements necessary to secure the purpose and intent of this title and the general plan of the City are a part of the proposed development.

(2) That the design and location of the proposed development and its relation to neighboring developments and traffic is such that it will not impair the desirability of investment or occupation in the neighborhood, will not unreasonably interfere with the use and enjoyment of neighboring developments, and will not create traffic congestion or hazard.

(3) That the design and location of the proposed development is such that it is in keeping with the character of the neighborhood and is such as not to be detrimental to the harmonious development contemplated by this title and the general plan of the City.

(4) That the granting of such approval will not, under the circumstances of the particular case, materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

(5) That the proposed development, as set forth in the plans and drawings, are consistent with the set of more detailed policies and criteria for architectural review as approved and updated from time to time by the City Council, which set shall be maintained in the planning division office. The policies and criteria so approved shall be fully effective and operative to the same extent as if written into and made a part of this title.

(e) The Director may require the applicant or owner of any such proposed development, as a condition to the approval of any such proposal, to modify buildings, parking areas, landscaping, signs, and other facilities and improvements deemed necessary to secure the purposes of this title and general plan of the City, and may require guarantees and evidence that such conditions will be complied with by the applicant.

(f) If the Director is unable to make the findings and determinations prerequisite to the granting of architectural approval pursuant to subsection (e) of this section, the application shall be denied.

(g) The Director shall render a decision on any application for architectural approval within forty (40) days following a determination by the planning division office that the application is complete, except where the applicant consents to an extension of time. Failure to render a decision within said period of forty (40) days and said period of extension consented to by applicant shall be deemed to be a decision of denial.

(h) The granting of any architectural approval, when conforming to the provisions of this section, shall be final and conclusive, except in the event of an appeal and referral as hereinafter provided.

(i) In the event the applicant or any interested party are not satisfied with the decision of the Director or designee for a single-family residential project, they may within seven (7) days after such decision, appeal in writing to the Planning Commission.

(j) For a project other than a single-family residential project, in the event the applicant or any interested party are not satisfied with the decision of the Director they may within seven (7) days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). In the event the applicant or any interested party are not satisfied with the decision of the Planning Commission for a single-family residential project, they may within seven (7) days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). Said appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk. All appeals of Architectural Review approvals will be heard de novo. The Director of Community Development may refer any application for architectural consideration to the City Council for its decision with the same effect as if an appeal had been taken.

(k) No permit shall be issued, and no structure, building, or sign shall be constructed or used in any case hereinabove mentioned until such plans and drawings have been approved by the Director, or on referral to the Planning Commission or City Council by the Director, and no appeal or review is pending and the time to appeal has expired. In the event of an appeal by the applicant or others affected, or action to review is taken by the Planning Commission or City Council, no such permit shall be granted until the matter has been finally acted upon and final approval has been received. All signs, buildings, structures, and grounds shall be in accordance with the plans and drawings as finally approved.

(l) Said approvals shall be on file with the City planning division office.

(m) Any architectural review approval granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within two years of original grant or within the period of any authorized extensions thereof.”

SECTION 2: That Section 18.06.005 (entitled “Certain words and tenses”) of Chapter 18.76 (entitled “Architectural Review”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.06.005 Certain words and tenses.

All words used in the present tense shall include the future tense; all words in the plural number shall include the singular number and all words in the singular number shall include the plural number, unless the natural construction of the wording indicates otherwise. The word “lot” indicates the word “plot,” the word “building” includes the word “structures,” and the word “shall” is mandatory and not directory. The word “City” as used herein shall mean the City of Santa Clara, State of California; the words “City Council” shall mean the City Council of the City of Santa Clara, State of California; the words “Planning Commission” shall mean the City Planning Commission of the City of Santa Clara, State of California.”

SECTION 3: That Paragraph (3) (entitled “Masonry”) of Subsection (m) (entitled “M” definitions’) of Section 18.06.010 (entitled “Definitions”) of Chapter 18.06 (entitled “Definitions”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(3) “Masonry” means a hard, durable building material such as brick, stone, or concrete (both block and precast), or an equivalent approved by the Director of Community Development.”

SECTION 4: That Paragraph (6) of Subsection (a) of Section 18.34.030 (entitled “Permitted Uses”) of Chapter 18.76 (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:

“(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 Director of Community Development approval is obtained and such outdoor use is operated in conformance with any conditions of approval.”

SECTION 5: That Subsection (c) of Section 18.42.120 (entitled “Open landscaped area”) of Chapter 18.76 (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:

“(c) An alternative proposal, equal to or exceeding the open landscaped area provisions provided herein, may be used subject to approval by the Director of Community Development in accordance with the provisions of Chapter 18.76 SCCC.”

SECTION 6: That Subsection (c) of Section 18.46.120 (entitled “Open landscaped area”) of Chapter 18.46 (entitled “Regulations for MP – Planned Industrial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(c) An alternative proposal, equal to or exceeding the open landscaped area provisions provided herein, may be used subject to approval by the Director of Community Development in accordance with the provisions of Chapter 18.76 SCCC.”

SECTION 7: That Subsection (c) of Section 18.48.120 (entitled “Open landscaped area”) of Chapter 18.48 (entitled “Regulations for ML - Light Industrial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(c) An alternative proposal, equal to or exceeding the open landscaped area provisions provided herein, may be used subject to approval by the Director of Community Development in accordance with the provisions of Chapter 18.76 SCCC.”

SECTION 8: That Subsection (f) (entitled “Outdoor Storage and Exposed Mechanical Equipment”) of Section 18.48.140 (entitled “Additional development standards”) of Chapter 18.48 (entitled “Regulations for ML – Light Industrial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(f) Outdoor Storage and Exposed Mechanical Equipment. Subject to the requirements above listed, outdoor storage and exposed mechanical equipment shall not exceed six feet in height within the first six feet immediately adjacent to the front or street side yard setback line or any interior side or rear lot line. Beyond this point, storage may extend to a maximum height of ten feet. Height of mechanical equipment and any accompanying screening shall be subject to Director of Community Development approval.”

SECTION 9: That Subsection (c) of Section 18.50.120 (entitled “Open landscaped area”) of Chapter 18.50 (entitled “Regulations for MH – Heavy Industrial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(c) An alternative proposal, equal to or exceeding the open landscaped area provisions provided herein, may be used subject to approval by the Director of Community Development in accordance with the provisions of Chapter 18.76 SCCC.”

SECTION 10: That Subsection (f) (entitled “Outdoor storage and exposed mechanical equipment”) of Section 18.50.140 (entitled “Additional development standards”) of Chapter 18.50 (entitled “Regulations for MH – Heavy Industrial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(f) Outdoor Storage and Exposed Mechanical Equipment. Subject to the above listed requirements, outdoor storage and exposed mechanical equipment shall not exceed six feet in height within the first six feet immediately adjacent to the front or street side yard setback line, or any interior side or rear lot line.

Beyond the above described storage and equipment setback line, storage may extend an additional one foot in height for each one foot of setback but shall not exceed the maximum building height established in SCCC 18.50.070.

Height of mechanical equipment and any accompanying screening shall be subject to Director of Community Development approval.”

SECTION 11: That Section 18.56.110 (entitled “Architectural committee review not required”) 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 retitled “Director of Community Development review not required” and amended to read as follows:

“18.56.110 Director of Community Development review not required.

Notwithstanding SCCC 18.76.020, Architectural review process, no review by the Director of Community Development shall be required for any approvals or permits granted for development within a PD-MC district. The review of the development area plans by the Planning Commission and City Council shall constitute an equivalent of the review envisioned by Chapter 18.76 SCCC, Architectural Review.

After the initial approval and construction of the development area plan, remodels and additions to the buildings and sites in the master community plan shall be handled through the usual architectural review requirements of Chapter 18.76 SCCC, Architectural Review, in accordance with the design guidelines and development standards.”

SECTION 12: That Section 18.58.060 (entitled “Architectural control”) of Chapter 18.58 (entitled “Regulations for HT – Historic Combining Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.58.060 Architectural control.

No exterior or interior changes may be made that would compromise the historic integrity of the building, property or significant landscaping features within a historic combining zone district. Minor improvements, excluding changes such as painting or other activities associated with routine maintenance that need no approval, may be approved by the Zoning Administrator, Planning Commission and/or the City Council upon referral by the Zoning Administrator. Any request for approval may be denied by the Zoning Administrator if he/she, or any other reviewing body upon referral by the

Zoning Administrator, finds that such request would jeopardize the building's architectural or historical integrity or value."

SECTION 13: That Subsection (b) of Section 18.64.040 (entitled "Eight-foot fences") of Chapter 18.64 (entitled "Special Height Regulations") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(b) Rear yard fencing abutting on any major thoroughfare of four or more motor vehicular traffic lanes may be erected and maintained up to, but not more than, eight feet in height. Such fencing shall be subject to review by the Director of Community Development in accordance with the procedures set forth in Chapter 18.76 SCCC and shall be subject to the prior approval as therein prescribed."

SECTION 14: That Section 18.68.020 (entitled "Minimum site development and maintenance standards") of Chapter 18.68 (entitled "Service Station Standards") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"18.68.020 Minimum site development and maintenance standards. In addition to the design standards set forth by the zone district in which the service station is located, the following shall apply:

(a) The following minimum landscaped improvements shall be installed and permanently maintained:

(1) A fifteen (15)-foot-wide planter area adjacent to any property line along a public street, with the exception of driveway entrances approved by the Director

of Community Development. Minimum planter width shall be measured from the street right-of-way or official plan line.

(2) A five-foot-wide planter area adjacent to all other property lines.

(3) Each planter area shall be landscaped with ground cover, screening shrubs, and trees. Trees shall be spaced at either a minimum distance of thirty-six (36) feet on center or in an alternative design to accomplish an equivalent density of screening and degree of shading, as approved by the Director of Community Development in accordance with the provisions of Chapter 18.76 SCCC.

(4) Each planter area shall be surrounded with a six-inch raised concrete curbing or planning division-approved equivalent. An automatic irrigation system shall be installed and permanently maintained in working order in each separate planter area.

(b) Service station roofs shall be well designed with generous overhangs; the roofing shall be incombustible materials such as simulated shake or shingle, clay tile, cement tile, slate or other similar materials.

(c) Exterior walls of service stations shall be well designed and compatible with adjoining properties.

(d) The entire service area of the service station shall be paved with a permanent surface of concrete or asphalt. Any unpaved area of the site shall be landscaped and separated from the paved areas by a six-inch concrete curb or other equivalent planning division-approved barrier.

(e) Gasoline pump islands, canopies, compressed air connections, restrooms and similar facilities shall be set back a minimum of twenty-five (25) feet from any street right-of-way or official plan line.

(f) Points of cash or other payment shall be designed so as to provide a safe and adequate customer queuing area. Outdoor walk-up service facilities shall be located and designed so as to prevent adverse impacts on adjacent properties zoned residential or designated as residential in the general plan.

(g) Hydraulic hoists, pits and all lubrication, greasing, automobile washing and other service equipment shall be entirely enclosed within a building.

(h) Except as otherwise provided in this title, a solid masonry fence or wall a minimum of six feet in height and similar in color, module, and texture to those materials utilized in the building shall be erected and permanently maintained along all common property lines with residentially zoned property or with property designated as residential in the general plan, or as approved by the Director of Community Development.

(i) Exterior lighting shall be designed so that it is deflected away from adjacent properties and screened from direct view from the street right-of-way.

(j) Signs on the service station premises shall be so located as to not obstruct visibility for drivers or pedestrians. A minimum sight-distance triangle shall be maintained, as determined by the Engineering Department. All signs, except window signs not exceeding twenty-five percent (25%) of individual window area, shall be constructed and maintained within a permanent sign structure, as permitted by Chapter 18.80 SCCC, Sign Regulations.

(k) Auto service buildings shall be set back from the street right-of-way lines a minimum distance of forty (40) feet to provide an adequate area for maneuvering vehicles in the service area and to provide adequate visibility, particularly at intersections.

(l) Driveway locations and accesses shall be provided in accordance with adopted City standards.

(m) An adequate and accessible trash disposal area shall be provided. Said disposal area shall be screened from public view by a masonry enclosure, with solid wood gates, at least six feet in height.

(n) A minimum of eight marked parking spaces shall be provided for customers and employees. For self-service stations with no accessory uses, such as tune-ups or accessory sales, only two such marked spaces need be provided. All such spaces shall be located at least fifteen (15) feet from any street right-of-way or official plan line.

(o) Water and compressed air services shall be available and functioning for public use during station operating hours.

(p) A fully stocked or equipped restroom shall be consistently maintained so as to be available to the public during operating hours. Restroom facilities shall be designed to accommodate the disabled.”

SECTION 15: That Subsection (e) (entitled Screening and landscaping”) of Section 18.74.040 (entitled “Development standards”) of Chapter 18.74 (entitled “Parking Regulations”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(e) Screening and Landscaping. All open automobile parking areas which abut upon a public street right-of-way shall provide landscaping to a depth of at least ten feet of said street right-of-way and of any plan line, with openings for walkway or drive purposes in accordance with City standards.

An additional five percent of the gross lot area shall be devoted to landscaping. Major canopy trees shall be provided throughout the parking area and adjacent to buildings. Trees shall be spaced at either a minimum distance of thirty-six (36) feet on center or in an alternative design to accomplish an equivalent density of screening and degree of shading, as approved by the Director of Community Development.”

SECTION 16: That Section 18.106.010 (entitled “Definitions”) of Chapter 18.106 (entitled “Historic Preservation”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.106.010 Definitions. For purposes of this chapter, the following words and phrases have the meanings ascribed to them in this section, unless the context or the provision clearly requires otherwise:

(a) “Alteration” means any change or expansion to an HRI property that involves (1) changes to the exterior of a structure, such as its surface materials or its architectural features, or (2) substantial reconfiguration of the interior space.

(b) “Architectural feature” means the architectural elements embodying the historical significance or architectural style, design, general arrangement, and components of all the exterior surfaces of a building or structure, including, but not limited to, the type of building materials, and type and style of windows, doors, design, arrangement, massing, texture, painted and unpainted surfaces and materials.

(c) Building. Refer to SCCC 18.06.010(b)(5).

(d) “California Register of Historical Resources” means the authoritative guide in California to be used by State and local agencies, private groups, and citizens to identify the State’s historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change. (Public Resources Code Section 5024.1(a))

(e) “Character-defining feature” means the architectural features of a building, structure, or object that help convey the significance of the HRI property and which were present during the period of significance.

(f) “Demolition” means the destruction, in whole or in part, of the original physical elements or building materials of an HRI property including features that contribute to its historic character, architecture and integrity. Notwithstanding the foregoing, alteration work that qualifies as a small project as defined in this chapter shall not constitute demolition.

(g) “Demolition by neglect” means negligence resulting in the deterioration and irreversible harm to the original features and materials of an HRI property leading to substantial deterioration and/or structural failure constituting a threat to public health, safety and visual impact to a street, neighborhood or defined geographic area.

(h) “Evaluation” means the process by which the significance and integrity of a building, structure, object or site is judged according to the National Park Service Standards set forth in 36 CFR Part 61 and using the designation criteria outlined in SCCC 18.106.040(a) (Designation Criteria).

(i) “Historic fabric” means those architectural form and character-defining features, such as siding, brick, stone, roofing or other materials visible on the structure, that are characteristic of the period of significance and therefore assist in portraying the style and historic significance of the HRI property from its most important time period.

(j) “Historic Resource Inventory” means the City of Santa Clara Historic Resource Inventory, which is incorporated into the 2010-2035 General Plan as Appendix 8.9 (“Historic Resource Inventory” or “HRI”), as may be amended from time to time.

(k) “HRI property” means a building, structure, object, or site currently included in the Historic Resource Inventory (HRI), which was designated as architecturally or historically significant by the City of Santa Clara pursuant to this chapter, or which the City added to the HRI prior to the effective date of this chapter.

(l) “Historic resources survey” means the process of systematically identifying, researching, photographing and documenting HRI properties within a defined geographic area and placed on a State of California DPR 523 series form. All surveys shall be conducted in accordance with the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation: Standards and Guidelines for Identification and Evaluation, as may be amended.

(m) “Historical and Landmarks Commission” or “HLC” means the Historical and Landmarks Commission (HLC) established pursuant to SCCC 2.120.100

(n) “Integrity” means the authenticity of an HRI property’s historic identity, evidenced by the survival of an HRI property’s visual and physical characteristics that existed during the HRI property’s period of significance. Within the concept of integrity,

the National Register criteria recognize seven aspects or qualities that, in various combinations, define integrity. These seven aspects are location, design, setting, materials, workmanship, feeling and association.

(o) “Major alteration” means any significant change that is subject to Director of Community Development review and approval in accordance with Chapter 18.76 SCCC or pursuant to City policy or procedure.

(p) “National Register of Historic Places” means the National Historic Landmarks Register established pursuant to 54 U.S.C. Section 302101 et seq.

(q) “Period of significance” means the span of time during which relevant events and activities occurred at an HRI property.

(r) “Preventative maintenance” means any work to prevent deterioration or damage to the structural integrity or any exterior feature of an HRI property that does not involve a change in design, material or exterior appearance. Such work includes, but is not limited to, painting, wood trim or siding repair, roof repair, patching, caulking, foundation or chimney repairs, or landscape maintenance.

(s) “Secretary of the Interior’s Treatment Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, published by the National Park Service, as may be amended.

(t) “Site” (as applied in the context of this chapter) means the location of a significant historical event, a prehistoric or historic occupation or activity, building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing buildings,

structures or objects. Examples of a site are a battlefield, designed landscape, trail, or industrial site.

(u) “Small projects” means alterations to any historic resource as defined herein, involving negligible visible changes. Alterations shall not qualify as small projects if they involve the removal or destruction of any exterior character-defining feature or historic fabric, including, but not limited to, original windows, or similarly protected interior features, unless an acceptable replacement is made with like materials and finishes, as determined by the Community Development Director.

(v) Structure. Refer to SCCC 18.06.010(s)(9).”

SECTION 17: That Section 18.106.050 (entitled “Property alteration”) of Chapter 18.106 (entitled “Historic Preservation”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.106.050 Property alteration.

(a) Permit(s) Required for Alterations. No person shall make alterations to any HRI property without first obtaining the required permits or approvals from the Director of Community Development, or a hearing body as prescribed in this chapter.

(1) A Significant Properties Alteration (SPA) permit shall be required for alterations to an HRI property.

(2) The addition of an accessory dwelling unit to an HRI property requires an SPA permit.

(3) For purposes of compliance with the California Environmental Quality Act (CEQA), an SPA permit for a major alteration shall be considered a discretionary project under Section 15357 of the CEQA Guidelines.

(b) Application for Significant Property Alteration Permit. The owner or authorized representative proposing alterations to an HRI property shall file a planning application with the Community Development Department, with the required supporting information, and any applicable filing fee. As soon thereafter as practicable after the application is deemed complete, the application for the SPA permit shall be forwarded to the Community Development Director or HLC, as appropriate, for its review and recommendation.

(c) Review Required for Alterations.

(1) The Community Development Director shall approve or deny applications for SPA permits for small projects as defined in this chapter. The Director has the discretion to determine that any such application for a small project should instead be construed as a major alteration requiring review by the HLC and approval by the Planning Commission.

(2) The HLC shall review applications for SPA permits proposed for major alterations and render a recommendation to the Planning Commission.

(3) Following review and recommendation by the HLC, applications for SPA permits for major alterations shall be forwarded to the Planning Commission, which shall approve or deny the application.

(4) The Community Development Director, HLC or Planning Commission may require supplemental information or reports as may be necessary for a complete review.

(5) The Community Development Director or Planning Commission may impose such reasonable conditions or restrictions as they deem necessary or appropriate on a case-by-case basis to promote or achieve the purposes of this Code.

(6) Preventative maintenance, as defined in this chapter, shall be excluded from the review process specified in this section.

(7) The addition of an accessory dwelling unit to an HRI property shall be considered a major alteration if (A) the accessory unit would be attached to the main house and involve alterations to the exterior of the main house; (B) the HRI property is subject to a Mills Act contract; (C) the accessory dwelling unit would convert a garage that may be of a similar age and design to the main dwelling and contribute to the integrity of the HRI property; or (D) the Community Development Director makes a determination that the addition would be a major alteration. All other additions of accessory dwelling units shall be processed as small projects.

(d) Findings Necessary to Approve SPA Permits. A decision to approve, approve with changes and/or conditions, or deny the application for the SPA permit shall be based upon the following factors:

(1) The alterations shall be designed to the essential character, features, and defining elements that make the HRI property significant;

(2) The project proposals shall not have a significant adverse effect on the integrity of the HRI property;

(3) The alterations must be compatible with the existing structure or district; and

(4) The alterations must be consistent with the Secretary of the Interior's Treatment Standards.

(e) Appeal Procedures. In the event the applicant or other interested party is not satisfied with the permit or approval action permitted by this section, the decision may be appealed. Such appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk within seven calendar days after rendition of the decision, along with the payment of an appeal fee as set forth by resolution of the City Council. Appeals of the Community Development Director's decisions shall be evaluated in the same manner as major alterations and shall be referred to the HLC for recommendation and the City Council for decision. Appeals of the Planning Commission's decisions shall be conducted in accordance with SCCC 18.108.060.

(f) Approval Expiration. Any approval granted under this section shall remain valid for a period of two years following the date the action was taken by the Community Development Director or the decision-making body. The Director or decision-making body may at any time authorize extensions of time on any approval, without the need for any public hearing, for a total period of twenty-four (24) months following the original date of expiration.

(g) Preventative Maintenance. The owner, lessee or other person(s) in actual charge of an HRI property ("responsible party") shall maintain and keep such property in a manner that ensures its continued eligibility for listing on the City's Historic Resource Inventory. Care of the HRI property shall be undertaken so as not to constitute "demolition by neglect" and prevent deterioration, dilapidation and decay of the historic fabric of any portion of the property. The responsible party shall ensure that all HRI

properties shall remain free from structural defects through prompt corrections of any of the following defects:

(1) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports.

(2) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration.

(3) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken window glass or doors.

(4) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering.

(5) Any fault or defect in the building which renders it structurally unsafe or not properly watertight.

(6) Minor mechanical systems in need of repair, not involving substantial removal of original interior or exterior building materials or features.”

SECTION 18: That Section 18.106.060 (entitled “Demolition permits”) of Chapter 18.106 (entitled “Historic Preservation”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.106.060 Demolition permits.

(a) Properties Not Listed on the HRI.

(1) Upon receiving an application for a demolition permit for a property not listed on the HRI, the Community Development Department shall search the City permit system database to ascertain if the property is noted as “potentially historic” next

to the assessor's parcel number. If the property contains this notation, the Community Development Department shall make a determination as to whether an application should be referred to the HLC and City Council for a determination as to whether the property is eligible for listing on the HRI. If no referral is made, the demolition permit may be approved or denied along with replacement plans by the Director of Community Development.

(2) For any such referral, the HLC and City Council shall make an eligibility determination using the same criteria and process as a designation determination pursuant to SCCC 18.106.040, except that properties found to be eligible will not automatically be added to the HRI, unless the property owner requests that the property be listed. The owner shall be responsible for submitting the required documentation needed, including but not limited to a completed DPR 523A form so the City may make a determination on the referral of the property to the HLC or City Council.

(3) For properties the Council determines to be ineligible for listing on the HRI, the Council may approve or deny the demolition permit at the time of the eligibility determination. For properties the Council determines to be eligible for listing on the HRI, the demolition permit application shall follow the process in subsection (b) of this section.

(b) HRI Properties and Eligible Properties.

(1) An environmental impact report shall be required for any application to demolish an HRI property or a property determined to be eligible for listing pursuant to subsection (a) of this section.

(2) The demolition permit application and environmental impact report shall be referred to the HLC for a recommendation on whether to grant, modify or disapprove the demolition permit application. The HLC recommendation shall be forwarded to the City Council, which shall make a final decision on the application.

(3) The HLC shall recommend approval of a demolition permit, and the City Council shall approve a demolition permit, only if there are no viable alternatives for saving the property, and such alternatives have been fully addressed in an environmental impact report.”

SECTION 19: That Subsection (a) of Section 18.118.040 (entitled “Review and determination”) of Chapter 18.118 (entitled “Reasonable Accommodation”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(a) The Zoning Administrator or his or her designee shall review and provide a determination on an application for reasonable accommodation pursuant to this chapter. The Zoning Administrator shall have the ability to request any information necessary to assess an application for reasonable accommodation and provide a determination to an applicant within thirty (30) days of the date of submittal of a completed application. In the event that a request for additional information is made, the thirty (30)-day period to issue a decision is stayed until the applicant responds to the request. Within thirty (30) days of the date of the submittal of a completed application, and as provided for in this section, the Zoning Administrator shall take one of the following actions regarding a request for reasonable accommodation:

(1) Grant the reasonable accommodation request, based upon the findings set forth in subsection (f) of this section;

(2) Grant the reasonable accommodation request, subject to specified conditions;

(3) Deny the reasonable accommodation request; or

(4) Refer the determination of the reasonable accommodation request to the Planning Commission, who shall render a determination on the application.”

SECTION 20: That Section 18.118.050 (entitled “Appeals”) of Chapter 18.118 (entitled “Reasonable Accommodation”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.118.050 Appeals.

(a) A final written determination made by the Zoning Administrator on a reasonable accommodation request may be appealed to the Planning Commission, as provided below:

(1) Within seven days of the date of the notice of determination, an appeal may be filed in writing or on a form provided by the City, pursuant to this section. An appeal shall contain a detailed statement of the grounds for the appeal.

(2) An appeal may be filed by those directly aggrieved by the decision and determination of the Zoning Administrator. For the purposes of this section, “directly aggrieved” shall mean the applicant, representative of an individual with a disability, or owner of the property that is the subject of the reasonable

accommodation request, and those property owners that directly abut the property that is the subject of the reasonable accommodation.

(3) A notice of public hearing before the Planning Commission shall be mailed to the person filing the appeal at least ten days prior to the date of the public hearing. The notice of public hearing shall include a description of the property that is the subject of the reasonable accommodation, the reason for which the appeal is filed, the date of the public hearing, and the location of the public hearing.

(3) The written decision of the Planning Commission shall become final unless an applicant appeals it to the City Council.

(7) The filing fee for an appeal shall be equal to half of the application filing fee for the reasonable accommodation request, as provided for in the City's adopted fee schedule.

(8) An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted."

SECTION 21: 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 22: 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 28th day of January, 2020, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Under Consent Items Pulled for Discussion, the City Manager responded to questions raised by a citizen regarding the Deputy Director's Informational Memo (4/3/98) entitled "Sale of TECHMART." MOTION was made by Arno, seconded and unanimously carried (Gillmor absent), that the Council **note and file** the memo which informs the Council that a Public Hearing will be set for May 5, 1998, to consider the proposed lease of the property located at 5201 Great America Parkway and the sale of the TECHMART Building located on the property to CarrAmerica Reality Corporation. **[File: TECHMART Ownership and Operation]**

Under Consent Items Pulled for Discussion, Debra Bress addressed the Council regarding the City Attorney's Informational Memo (4/3/98) entitled "Deborah Bress v. Judy Boccignone, et al. Application for Peremptory Writ of Mandate to Amend City Attorney's Impartial Analysis" which informed the Council of the order by the Honorable Judge Cliff to amend the City Attorney's analysis of Ballot Measure D. MOTION was made by Diridon, seconded and unanimously carried (Gillmor absent), that the Council **note and file** the memo. **[File: Elections Special Municipal June 2, 1998 Ballot Measure D]**

MOTION was made by Mahan, seconded and unanimously carried (Gillmor absent), that, per the City Clerk/City Auditor (4/1/98), the Council **set** Thursday, May 7, 1998, at 5:00 p.m. for the deadline for the receipt of applications and Tuesday, May 12, 1998, at 6:30 p.m. for interviews to fill the vacancy on the International Exchange Commission for term ending June 30, 2002. **[File: International Exchange Commission Miscellaneous]**

MOTION was made by Arno, seconded and unanimously carried (Gillmor absent), that, per the Director of Finance (4/2/98), the Council **direct** the Mayor and City Manager to transmit a letter to the State Budget Committee requesting the return of property taxes to local government as a top priority in the 1998-99 budget and **authorize** the City Manager to follow-up throughout the legislative session to support this Council policy position. **[File: Finance Department Miscellaneous]**

MOTION was made by Mahan, seconded and unanimously carried (Gillmor absent), that, per the Director of Planning and Inspection (4/3/98), the Council **approve** the concept of giving public notification to homes within 100 feet of proposed second story additions to single family homes and direction to the Architectural Committee to include this concept in the Architectural Committee's procedural revisions and for the City Manager to implement notification procedures with no fee charged to applicants. **[File: Planning and Inspection Department Miscellaneous]**



Agenda Report

20-144

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Action on Written Petition received from Santa Clara Valley Transportation Authority (VTA) regarding VTA's BART Phase 2 Transit Oriented Communities (TOCs) Strategy Study and the Santa Clara Station Area Playbook [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

The City received a Written Petition from Jill Gibson requesting to be placed on a future agenda regarding VTA's BART Phase 2 Transit Oriented Communities (TOCs) Strategy Study and the Santa Clara Station Area Playbook. The Written Petition is attached for Council's consideration.

DISCUSSION

Council Policy and Procedure 30 - *Adding an Item on the Agenda* sets forth the procedure for written petitions. Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the Council. Per the policy, the written request will be submitted on the agenda, in the form substantially provided by the requestor, without any staff analysis, including fiscal review, legal review and policy review. If a simple majority of the City Council supports further study of the request, then a full staff analysis shall be prepared within thirty (30) days, unless otherwise directed by the City Council.

Per discussions with VTA, when presenting the TOC Strategy Study VTA will request that the Council:

- Endorse the holistic approach to creating TOCs in Santa Clara County and accept the recommendations of the Strategy Study as the appropriate starting point for this;
- Direct staff to prioritize implementation of land use, infrastructure, and funding programs; and
- Review implementation progress on a regular basis, in collaboration with VTA and other stakeholders.

Staff met with VTA multiple times to review the Study and is very appreciative of VTA's time and effort coordinating with the City. Staff submitted feedback on a number of items in the Study, and this communication was shared with Council throughout the process. If Council elects to place this item in a future Agenda, staff will need to develop a Council report, provide analysis on areas of concern, and develop a presentation if necessary

The Tentative Meeting Agenda Calendar is included as part of the City Council agenda packet for scheduling consideration.

FISCAL IMPACT

There is no fiscal impact associated with considering the request to be placed on a future agenda except staff time and expense.

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 commitment to a specific project which may result in potential significant impact on the environment.

PUBLIC CONTACT

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

RECOMMENDATION

There is no staff recommendation for this issue.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Written Petition
2. Policy and Procedure 030 - Adding an Item on the Agenda
3. Tentative Meeting Agenda Calendar

Simrat Dhadli

To: Nadine Nader
Subject: RE: TOC Strategy Study- Feb City Council

From: Jill Gibson <jgibson@vtabsv.com>

Sent: Friday, January 17, 2020 11:15 AM

To: Manuel Pineda <MPineda@SantaClaraCA.gov>; Deanna Santana <DSantana@SantaClaraCA.gov>

Cc: Ron Golem <ron.golem@vta.org>; Alaniz, Bernice <Bernice.Alaniz@vta.org>

Subject: Re: TOC Strategy Study- Feb City Council

Hi Manuel and Deanna,

Happy New Year! We wanted to follow up taking the TOC Study to City Council. We would like to get to Council soon so then we can finalize the playbooks. Could you please let us know when we would be able to get on the agenda?

Please let me know if you'd like any information or have questions.

Thank you!

Jill Gibson

Phase II Planning and Programming Manager

VTa's BART Silicon Valley Program

Santa Clara Valley Transportation Authority
2099 Gateway Place 7th Floor
San José, CA 95110

Direct: (408) 882-3690

From: Jill Gibson

Sent: Friday, December 20, 2019 9:19 AM

To: mpineda@santaclaraca.gov <mpineda@santaclaraca.gov>; dsantana@santaclaraca.gov <dsantana@santaclaraca.gov>

Cc: Ron Golem <ron.golem@vta.org>; Alaniz, Bernice <Bernice.Alaniz@vta.org>

Subject: TOC Strategy Study- Feb City Council

Hi Deanna and Manuel,

Thank you for taking time to meet with us a few weeks back as we briefed your council members on VTA's BART Phase 2 Transit Oriented Communities (TOCs) Strategy Study and the Santa Clara Station Area Playbook. I wanted to follow up as we discussed presenting the TOCs Strategy Study Playbook at a February council meeting. Is that something we can confirm?

Also, as you likely saw, the San Jose City Council unanimously accepted and approved the staff recommendation of accepting the report and endorsing the approach of the playbooks, including approval of a Councilmember memo. Details of the 12/10 San Jose council meeting, including our presentation, can be found [here](#).

We would like to gather feedback at the Santa Clara Council before we finalize the Santa Clara Station Area Playbook and wrap up the TOC Strategy Study in the first part of 2020. Please let us know if you have questions or would like to discuss the materials and timing for staff memos or presentation material.

Thank you and happy holidays!

Best,

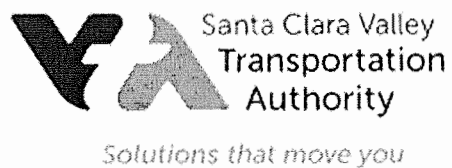
Jill Gibson

Phase II Planning and Programming Manager

VTa's BART Silicon Valley Program

Santa Clara Valley Transportation Authority
2099 Gateway Place 7th Floor
San José, CA 95110

Direct: (408) 882-3690





ADDING AN ITEM ON THE AGENDA

PURPOSE

To establish a clear, effective and easily understood process for members of the City Council and the public to have items within the jurisdiction of the City Council, placed on the City Council agenda for consideration.

POLICY

Members of the City Council:

1. The Mayor or any individual Council Member may submit a written request to the City Manager's Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet.

Referral from a Council Committee:

1. Council Committees may submit a written request to the City Manager's Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet.
2. Council Committees may bring forward a recommendation to the full City Council by way of the Committee Minutes, which are typically prepared within three weeks following the Committee meeting.

Items Referred During a Council Meeting:

By Council consensus, an item may be referred to the City Manager for inclusion on a City Council agenda. If the request requires further study of the item from staff, a full analysis shall be prepared at the direction of the City Manager with at least thirty (30) calendar days prior to the meeting, unless otherwise directed by the City Council. If the request requires more than thirty (30) calendar days to prepare, status updates will be provided to the Council every sixty (60) days as an informational memo.

ADDING AN ITEM ON THE AGENDA (cont.)

Written Petitions and Public Presentations:

1. Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the City Council to be heard under the "Written Petition" section of the City Council's regular agenda within two (2) Council meetings after received. After the initial Written Petition is placed on the agenda, a simple majority vote of the Council may add the item to a future Council meeting for action.
2. Any member of the public may address the City Council under the "Public Presentations" section of the agenda. If the presentation includes a request of the Council, the Mayor or a consensus of the City Council may refer the item to the City Manager to be properly agendized at a future meeting, in compliance with The Brown Act.

PROCEDURE FOR WRITTEN PETITIONS

All requests to address the City Council shall be submitted in writing. Written Petition forms are available for the petitioner's convenience on the City's website and in the City Manager's Office, City Clerk's Office and the Mayor and Council Offices. Alternatively, an email may be submitted to clerk@santaclaraca.gov.

Once the Written Petition is received by the City Clerk's Office, it should immediately be forwarded to the City Manager for placement on an agenda within two (2) Council meetings after receipt of the original request from the City Clerk's Office. All written material (request and support material) will be submitted on the agenda in the form substantially provided by the requester without any staff analysis, including fiscal review, legal review and policy review, until the City Council has had the opportunity to provide direction to the City Manager.

At the meeting where the item is first considered, if a simple majority of the City Council supports further study of the item, then a full staff analysis shall be prepared within thirty (30) days, unless otherwise directed by the City Council.



City of Santa Clara

Tentative Meeting Agenda Calendar

Thursday, January 30, 2020 City Council Goal and Policy Setting Session 8:30 AM at Central Park Library - 2635 Homestead Rd, Santa Clara, CA 95051

Friday, January 31, 2020 City Council Goal and Policy Setting Session 8:30 AM at Central Park Library - 2635 Homestead Rd, Santa Clara, CA 95051

Tuesday, February 11, 2020 Council and Authorities Concurrent Meeting

Regular Meeting to begin at 5:00 PM

Study Session

20-1275 Discussion and Council Direction on Assigned Responsibilities of the City Council Appointed City Auditor

Special Order of Business

20-107 Recognition of Recipients of the Grants from Proceeds of the 2019 Santa Clara Art and Wine Festival

20-34 Presentation by Santa Clara for Relay for Life

Public Hearing/General Business

Future Revenue Opportunities/Strategies:

20-41 A. Discussion of, and Possible Direction on Infrastructure Measures for the November 2020 Ballot

20-451 B. Update on Requested Information on Commercial Cannabis Activities

20-1394 C. Discussion and Direction on the Santa Clara Tourism Improvement District Assessment Formula

20-122 Update on Chief Executive Officer Search for the New Destination Marketing Organization

20-98 Action on Written Petition received from Alan Todd Bevis regarding Calming Traffic and Noise/Sideshow Activity Along Briarwood Drive

Tuesday, February 25, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

20-1212 Joint Dinner meeting with Cultural Commission

Special Order of Business

20-44 Presentation by County Assessor regarding California Schools and Local Communities Funding Act of 2020

20-1434 Welcome to Father Kevin O’Brien, S.J. as President of Santa Clara University

20-27 Recognition of Pacific Autism Center for Education’s 30th Anniversary

Public Hearing/General Business

20-1476 **Public Hearing:** Adoption of a Resolution Ordering the Abatement of a Nuisance Consisting of Growing Weeds in Association with the County Weed Abatement Program for 2019-2020

20-32 Discussion and Possible Action on Illegal Street Racing and Sideshow Activity Report

20-1369 Action on a Resolution Adopting the Santa Clara Pedestrian Master Plan

20-101 Action on a Resolution Approving and Authorizing the City Manager to execute a Loan Agreement with ZAEN Partners, LLC for a loan of up to \$6,000,000 to support the construction of 150 affordable housing units located at 2302 Calle Del Mundo

20-82 Action to Proclaim Section of El Camino Real as Korea Town

20-1154 Approve a Resolution to Approve and Adopt the 2020 Update to the Sanitary Sewer Management Plan (SSMP)

Thursday, March 5, 2020 Special Santa Clara Stadium Authority Board Meeting – 4:00 PM

Study Session

20-45 Discussion of the Proposed Santa Clara Stadium Authority Fiscal Year 2020/21 Budget and Stadium Authority Compliance and Management Policy

Tuesday, March 17, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

20-1214 Joint Dinner meeting with Historical and Landmarks Commission

Special Order of Business

20-93 Police Activities League Recognition of Hunter Storm Placeholder

Public Hearing/General Business

20-103 Action on the Governance and Ethics Committee Recommendation to Name the Public Park in the 575 Benton Street Project (Prometheus)

20-1335 Action on the Central Park Master Plan Update and Introduction of an Ordinance in accordance with City Charter section 714.1

20-496 Related Santa Clara's Development Area Plan #1

20-496 SVP Quarterly Update

Tuesday, March 24, 2020 Santa Clara Stadium Authority Board Meeting

Public Hearing/General Business

20-47 **Public Hearing:** Action on the Proposed Santa Clara Stadium Authority Fiscal Year 2020/21 Budget and Stadium Operations and Maintenance Plan

20-91 Action on the Stadium Authority Financial Status Report for the Quarter Ending June 30, 2019

Tuesday, March 31, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

20-1213 Joint Dinner meeting with Library Trustees

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, April 14, 2020 Council and Authorities Concurrent Meeting

Study Session 5:00 PM

20-496 International Swim Center Community Recreation Center Project

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, April 21, 2020 Council and Authorities Concurrent Meeting

Study Session

20-1215 Joint Dinner Meeting with Civil Service Commission

Public Hearing/General Business

20-496 Related Santa Clara Quarterly Update

Tuesday, May 5, 2020 Council and Authorities Concurrent Meeting

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, May 12, 2020 Santa Clara Stadium Authority Board Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, May 19, 2020 Council and Authorities Concurrent Meeting

Study Session

20-1311 Joint Dinner Meeting with Parks and Recreation Commission

Public Hearing/General Business

20-127 **Public Hearing:** Action on Resolutions Approving Water, Sewer and Recycled Water Rates to be Effective July 1, 2020

Tuesday, June 2, 2020 Council and Authorities Concurrent Meeting

Study Session

20-1216 Joint Dinner Meeting with Planning Commission

Public Hearing/General Business

20-496 SVP Quarterly Update

Tuesday, June 23, 2020 Council and Authorities Concurrent Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, July 7, 2020 Council and Authorities Concurrent Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, July 14, 2020 Joint Council and Authorities Concurrent and Stadium Authority Meeting

Public Hearing/General Business

20-496 Related Santa Clara Quarterly Update

AGENDA ITEMS TO BE SCHEDULED TO A FUTURE DATE



City of Santa Clara

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

Agenda Report

20-54

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Update on City Council and Stadium Authority Staff Referrals [Council Pillar: Enhance Community Engagement and Transparency]

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 current 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 in the Council agenda packet under the "City Manager/Executive Director Report" section of the Council Agenda. Reports will include both open and closed referrals.



**City of
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The Center of What's Possible

**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 1/21/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
1.	1/14/20	Council Meeting	Michael Fisher spoke during Public Comment about a small development project he undertook at his residence on Civic Center Drive. He had complaints about the process and the requirements that were placed on the project. (Assistant City Manager Manuel Pineda and Public Works Director Craig Mobeck are scheduled to meet with Mr. Fisher on 1/24/20.)	City Manager/ Public Works	1/28/20	
2.	1/14/20	Council Meeting	Architectural Review Ordinance – Continued to add new language to Ordinance for certain projects that would trigger Public Hearing	City Attorney/ Community Development	1/28/20	
3.	1/14/20	Council Meeting	Communications Consultant Agreements – Staff to add language to agreements to have agreements reviewed annually	City Manager	TBD	
4.	12/17/19	Council Meeting	Community Room Study Session – Continue item to 1/14/20 and return with responses to Suds Jain's questions regarding reservation process, rates for facilities at Oracle and houses across the street behind Triton, and provide a master list of facilities and who to contact for reservation	Parks & Rec/ City Manager	1/14/20	1/14/20
5.	12/17/19	Council Meeting	Initiate discussions with Santa Clara Unified School District regarding Healthier Kids Foundation services	Parks & Rec/ City Manager	2/5/20	
6.	12/10/19	Council Meeting	False Alarm Ordinance – Police Department to follow up with resident regarding financial assistance for fees	Police	1/14/20	1/14/20
7.	12/10/19	Council Meeting	False Alarm Ordinance – Continue item to 1/14/20 for staff to conduct broader public outreach and gather public input	Police/ City Attorney	1/14/20	1/14/20
8.	12/10/19	Council Meeting	Add labor peace provision to GreenWaste Agreement	Public Works	2/28/20	
9.	12/3/19	Council Meeting	Regarding Council Policy 030 – Adding an Item on the Agenda – return to Council with an amended policy replacing the word consensus with Council action	City Attorney/ City Manager	2/11/20	
10.	11/19/19	Council Meeting	Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street – return to Council in 120 days with a term sheet, a drinking well study and discussion on the preservation of historical railroad property	City Manager	March 2020	
11.	11/12/19	Council Meeting	Provide a comparison of the district assessment/TOT with other cities – are there other cities that also have the same type of district assessment? What are the Pros and Cons of the TID assessment change taking into consideration overall TOT? How do the TID Hotels feel about an increase in TOT (potentially 3%)	City Manager	2/11/20	
12.	11/12/19	Council Meeting	Destination Marketing Organization – Report back to Council in 90 days regarding CEO search; include detailed timeline for hiring of CEO	City Manager	February 2020	



**City of
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The Center of What's Possible

**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 1/21/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
13.	11/12/19	Council Meeting	Provide update on the International Association of Science Parks (IASP) Conference in 2021 to the Economic Development, Communications and Marketing Committee	City Manager	Fall 2020	
14.	11/5/19	Council Meeting	Schedule a Study Session regarding the pros and cons of General Obligation (GO) bonds and parcel tax	Finance	2/11/20	
15.	10/29/19	Council Meeting	Regarding GIS system, provide biannual updates via the City Manager/Executive Director Report at Council meeting	IT	April 2020	
16.	10/29/19	Council Meeting	Provide options for the \$750,000 commitment from Levy for community enrichment	City Manager	March 2020	
17.	10/22/19	Council Meeting	Staff to return with budget appropriations in the budget cycle to improve the gazebo area at Mission Branch Library	Finance	May 2020	
18.	10/8/19	Council Meeting	Staff to review the expenditure limits for November 2020 – to designate appropriately the expenditure limit for Districts vs. At-Large seats	City Clerk/ City Manager	February 2020	
19.	9/24/19	Council Meeting	Staff to review the potential for rebates for the purchase of electric bicycles	SVP	Spring 2020	
20.	9/24/19	Council Meeting	Staff to review the Ordinance and enforcement of illegal street food vendors	Police	Spring 2020	
21.	9/18/19	Economic Development, Communications and Marketing Committee	The Committee referred for Council consideration a request to the City Council to terminate the billboard agreement with All Vison, LLC (staff in process of analyzing further)	City Manager	January 2020	1/9/20
22.	8/27/19	Council Meeting	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	2/25/20	
23.	7/9/19	Council Meeting	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	March 2020	
24.	7/9/19	Council Meeting	Update on age-friendly activities per commission annual Work Plan	Parks & Rec	February 2020	
25.	7/9/19	Economic Development, Communications and Marketing Committee	Procure additional resources to support communications and marketing of local activities to enhance community's awareness of municipal services and activities	City Manager	January 2020	1/14/20
26.	6/4/19	Council Meeting	Councilmember O'Neill to provide more clarity on Innovation Zone referral (on 11/19/19 Council deferred this item to the January Council Priorities and Goal Setting Sessions)	City Manager	January 2020	
27.	6/4/19	Council Meeting	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 (on hold – pending other public entities' litigation)	Public Works	TBD	



**City of
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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 1/21/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
28.	4/30/19	Council Meeting	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
29.	4/30/19	Council Meeting	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	
30.	4/25/19	Council Meeting	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	2/10/20	
31.	4/9/19	Council Meeting	Street Racing and Sideshows: take steps to make the 2004 ordinance operative and increase enforcement within existing resources	Police	2/25/20	
32.	11/27/18	Council Meeting	TID: Reconciliation of reserve fund; disclosure of legal fees as determined by the performance auditor; and develop a subsidy policy	City Manager	March 2020	
33.	10/9/18	Council Meeting	Dedicate Jerry Marsalli Community Center at grand opening of the facility	Parks & Rec	Spring 2020	
34.	10/2/18	Council Meeting	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	Spring 2020	
35.	7/10/18	Council Meeting	Annual update on PD community engagement efforts	Police	Spring 2020	
36.	3/13/18	Council Meeting	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	August 2020	



**City of
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COMPLETED 2019
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION
Updated 1/8/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
1.	12/3/19	Council Meeting	Provide a verbal report to Council under the City Manager/Executive Director section of the agenda on the status of contracting for the addition of a noise monitoring device for airport noise	City Manager	TBD	12/18/19	Email sent to Council from City Manager on 12/18/19
2.	4/23/19	Council Meeting	Children's Health Screening Service Model: statistics on case management and procurement of services	Parks & Rec	12/17/19	12/17/19	Reported at Council Meeting
3.	8/20/19	Council Meeting	Staff to return with report on establishing an ad-hoc committee to make recommendations regarding VTA Governance	City Manager/ Public Works	12/17/19	12/17/19	Reported at Council Meeting
4.	8/27/19	Council Meeting	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	12/10/19	12/10/19	Reported at Council Meeting
5.	11/5/19	Council Meeting	Regarding the request to annex two hotel parcels (AC Hotel and Element Hotel) into the Community Facilities District, staff to report via the City Manager's Biweekly Report/Blog the estimated revenue from the special Transient Occupancy Tax	Finance	12/6/19	12/6/19	Biweekly Report
6.	7/9/19	Economic Development, Communications and Marketing Committee	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	12/2/19	EDCM Committee Meeting (RTC 19-1330)
7.	9/17/19	Council Meeting	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	11/22/19	Letter sent to KPMG by Finance
8.	9/5/19	Governance Session	Discuss framework for January 2020 Council Priority Setting Session	City Manager	11/21/19	11/21/19	Discussed at Governance and Ethics Committee Meeting
9.	5/21/19	Council Meeting	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	Finance	11/19/19	11/19/19	Reported at Council Meeting



**City of
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COMPLETED 2019
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION
Updated 1/8/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
			Fees Rates, and Unit or Plot Costs for the Cemetery				
10.	10/22/19	Council Meeting	Provide a City Manager Biweekly Report item on why food truck vendors at the Library are being fingerprinted as well as what are food truck permitting requirements (in lieu of a Biweekly Report, staff prepared a Report to Council)	Police	11/19/19	11/19/19	Reported at Council Meeting
11.	10/29/19	Council Meeting	City Manager to provide information on IASP Conference held in Nantes, France	City Manager	11/12/19	11/12/19	Reported at Council Meeting
12.	10/8/19	Council Meeting	Add for a future Council meeting a Special Order of Business for the Parade of Champions planning team	City Manager	11/12/19	11/12/19	Reported at Council Meeting
13.	9/17/19	Council Meeting	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	11/5/19	11/5/19	Reported at Council Meeting
14.	10/22/19	Council Meeting	Provide an update via the City Manager's Biweekly Report regarding what has already occurred on placemaking activities	Community Development	11/1/19	11/1/19	Biweekly Report
15.	9/18/19	Economic Development, Communications and Marketing Committee	The Committee referred the next steps on the Worker Cooperative to the City Council for review and approval, which includes directing staff to review the resolution and the process and procedures that the City of Berkeley used for their Worker Cooperative Program, and to have the Council consider allocating \$100,000 in the budget for this effort (funding request to be heard by Council on 11/5/19)	City Manager	10/29/19	10/29/19	Reported at Council Meeting
16.	8/27/19	Council Meeting	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	10/29/19	10/29/19	Reported at Council Meeting
17.	6/25/19	Council Meeting	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	10/29/19	Council Meeting Closed Session
18.	6/4/19	Council Meeting	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	10/29/19	10/29/19	Reported at Council Meeting



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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
19.	1/29/19	Council Meeting	Monitor and update to Council if the City of San Jose waives fees for developments along Steven Creek Blvd	Public Works	Ongoing	10/29/19	Updates to Council will be ongoing
20.	11/13/18	Council Meeting	Review post-agenda material distribution to reduce paper (staff will continue with implementation of the paperless agenda process)	Clerk's Office	Fall 2019	10/29/19	Ongoing process to implement paperless agenda
21.	9/17/19	Council Meeting	Complete community outreach for garbage contracts	Public Works	TBD	10/9/19	Email to Council on 10/9/19 re: community engagement efforts
22.	1/19/18	Council Meeting	Explore joint golf course use with City of Sunnyvale due to the forthcoming closure of the Santa Clara golf course	Parks & Rec	October 2019	10/8/19	Reported at Council Meeting
23.	5/7/19	Council Meeting	Silicon Valley Power (SVP) Strategic Plan: provide information on rebate and community benefits programs	SVP	September 2019	9/24/19	Reported at Council Meeting
24.	11/27/18	Council Meeting	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	9/24/19	Reported at Council Meeting
25.	9/4/19	Council Meeting	Staff was asked if the names of Public Records Act (PRA) requestors could be provided (effective 9/20/19 PRA Log posted weekly online)	City Clerk	9/20/19	9/20/19	Biweekly Report
26.	4/9/19	Civil Service Commission	Work with Civil Service Commission on a Job Fair	Human Resources	9/20/19	9/20/19	Biweekly Report
27.	7/9/19	Council Meeting	Worker Cooperative – referred to a future Economic Development, Communication and Marketing Committee Meeting for City support options (heard by EDCM on 9/18/19; Committee's recommendations to be heard by Council in December 2019)	City Manager	Winter 2019	9/18/19	EDCM Committee
28.	7/9/19	Council Meeting	Provide a status report on the City's existing billboard contract and termination status of contract (heard by EDCM on 9/18/19; Committee's recommendations went to Council on 10/29/19)	City Attorney	9/18/19	9/18/19	EDCM Committee
29.	9/4/19	Council Meeting	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	City Manager/ City Clerk	9/13/19	9/13/19	Incorporated into Grand Jury response letter



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			inquiring why has the City of Santa Clara been targeted				
30.	8/27/19	BPAC	BPAC Request for Letter regarding Freedom Bridge – Council to draft letter to Santa Clara Valley Water District in support of preserving Freedom Bridge	Public Works	9/10/19	8/30/19	Letter sent by staff on 8/30/19
31.	3/5/19	Council Meeting	Korea Town: legislative record, news article, etc. about previous effort to designate Korea Town (see 8/27/19 referral for follow-up request from Council)	City Manager	8/27/19	8/27/19	Reported at Council Meeting
32.	7/9/19	Council Meeting	Staff to add language to Development Agreement in regard to Phase II of Gateway Crossings being referred to the Architectural Committee	Community Development	8/23/19	8/23/19	Biweekly Report
33.	7/9/19	Council Meeting	Staff to evaluate wild geese at Central Park in response to community member John Haggerty's presentation	Parks & Rec	8/23/19	8/23/19	Biweekly Report
34.	5/21/19	Council Meeting	Reopen public hearing for Gateway Crossing and provide additional information on retail and lease options for PAL	Community Development	7/9/19	7/9/19	Reported at Council Meeting
35.	2/5/19	Council Meeting	Anti-Smoking Ordinance: Develop a police department policy regarding enforcement for persons under 21 (Information Report to Council)	Police	7/9/19	7/9/19	Reported at Council Meeting
36.	6/4/19	Council Meeting	Allocate \$70,000 funding in support of the Parade of Champions	Finance	6/25/19	6/25/19	Reported at Council Meeting; funding approved by Council
37.	3/5/19	Council Meeting	Parade of Champions: confirm nonprofit status; report out on fundraising efforts	Parks & Rec	6/4/19	6/4/19	Reported at Council Meeting
38.	5/21/19	Council Meeting	Provide additional public information/outreach on Hauling and Recyclable items	Public Works	June 2019	5/31/19	Biweekly Report
39.	5/7/19	Council Meeting	Saratoga Creek Trail (Homeridge Park to Central Park): provide funding sources	Public Works	5/17/19	5/31/19	Biweekly Report
40.	4/23/19	Council Meeting	Street Trees: for newly developed homes, are street trees required? Who is responsible to water newly planted trees until they are established?	Public Works	5/31/19	5/31/19	Biweekly Report
41.	2/19/19		Attend Community Day School and talk to kids about the opportunities for jobs (staff has been in communication with the school and offered to make a presentation to students about job opportunities; date for event pending school's reply)	Parks & Rec	May 2019	5/21/19	Letter sent by staff on 5/21/19; no response from school to schedule an event



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42.	5/22/18	Council Meeting	Review children at dog park signs	Public Works	June 2019	5/21/19	Reported at Council Meeting
43.	5/22/18	Council Meeting	Review use of canine turf at Reed & Grant Dog Park	Parks & Rec	5/21/19	5/21/19	Reported at Council Meeting
44.	4/23/19	Council Meeting	BART Extension: what is the estimated ridership for the future Santa Clara BART Station	Public Works	May 2019	5/3/19	Biweekly Report
45.	3/5/19	Council Meeting	Parade of Champions: SCPOC to respond to City Council Questions	Parks & Rec	5/17/19	5/3/19	Biweekly Report
46.	12/11/18	Council Meeting	Field Seats: Does the Stadium Authority receive revenue? Are the seats permanent or temporary? Are they allowable under the lease?	Stadium Manager	4/30/19	4/30/19	Reported at Stadium Authority Meeting
47.	11/27/18	Council Meeting	Taylor Swift Concerts: how many tickets were given away while we had to cover the full Public Safety costs	Stadium Manager	4/30/19	4/30/19	Reported at Stadium Authority Meeting
48.	3/26/19	Council Meeting	Monthly Financial Status Report: add prior year comparative information for Capital Expenditures	Finance	May 2019	4/23/19	Reported at Council Meeting
49.	2/5/19	Council Meeting	El Camino Real - Additional cost and scope to analyze a lane removal on El Camino and verify that whole Council cannot participate in the specific plan	Community Development	4/23/19	4/23/19	Reported at Council Meeting
50.	3/26/19	Council Meeting	Investment Policy: identify whether any investments are linked to oil exploration, production, etc.	Finance	4/19/19	4/5/19	Biweekly Report
51.	3/26/19	Council Meeting	List of Measure A funded projects	Community Development	4/19/19	4/5/19	Biweekly Report
52.	12/11/18	Council Meeting	Parking in neighborhoods around the stadium during event dates: add to FY 2019/20 Stadium Authority Work Plan	Public Works/ Police/City Attorney	Mar 2019	3/27/19	Reported at Stadium Authority Meeting
53.	10/29/18	Council Meeting	Levi's Stadium Consolidated Parking Plan (Board approved – scheduled on FY 2019/20 Work Plan.)	City Manager	Winter 2019	3/27/19	Reported at Stadium Authority Meeting
54.	3/13/18		Work with the Stadium Manager to develop Key Performance Indicators (KPIs) regarding Non-NFL Event Management. (Board approved – scheduled on FY 2019/20 Work Plan.)	City Manager	3/19/19	3/27/19	Reported at Stadium Authority Meeting



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55.	1/29/19	Council Meeting	Naming of Relay for Life City Team through outreach campaign	City Manager	3/26/19	3/26/19	Reported at Council Meeting
56.	12/4/18	Council Meeting	Quarterly SVP Strategic Plan Report	SVP	3/26/19	3/26/19	Reported at Council Meeting
57.	2/19/19	Council Meeting	Trash and RV parking along Hope Drive	Police/ Public Works	3/8/19	3/8/19	Biweekly Report
58.	2/19/19	Council Meeting	Post summary of Council's 12/13/18 session on Governance on the City's website	City Manager	3/8/19	3/8/19	Biweekly Report
59.	8/28/18		Workers' Comp Case related to injury at Stadium: does the Stadium Authority pay for these expenses?	HR/ Finance	3/8/19	3/8/19	Biweekly Report
60.	2/5/19	Council Meeting	Convention Center Transition Reports	City Manager	3/5/19	3/5/19	Council Meeting Verbal Report
61.	2/5/19	Council Meeting	Anti-Smoking Ordinance: Work with the Apartment Association to develop a condensed version of the ordinance attached to leases (Information Report)	City Attorney	Apr 2019	3/5/19	CAO completed 3/5/19; developed 2-sided 1-pager version of ordinance; shared with CA Apt. Assn.
62.	10/9/18	Council Meeting	Parade of Champions: sponsorships, budget (revenues and costs), contact cities in the County to learn from their experiences	Parks & Rec	3/5/19	3/5/19	Reported at Council Meeting
63.	7/16/18	Council Meeting	Provide information on Cannabis insurance and banking issues	City Manager	2/19/19	2/19/19	Reported at Council Meeting
64.	12/11/18	Council Meeting	Lawn Bowling Clubhouse: Analyze health and safety and maintenance issues; explore acquiring a used modular from the school district	Parks & Rec/ Public Works	2/22/19	2/8/19	Biweekly Report
65.	11/15/18	Council Meeting	Convention Center Contract Recommendation RTC: describe reasons for not recommending other proposals	Finance	2/5/19	2/5/19	Reported at Council Meeting
66.	12/11/18	Council Meeting	10-Year Financial Forecast: model a lower CalPERS investment return 6.5% vs. 6%; and deeper recession; quantify impact for trade-offs	Finance	1/31/19	1/31/19	Priority Setting Session
67.	12/11/18	Council Meeting	Provide General Fund Revenue Strategy Options	Finance	1/31/19	1/31/19	Priority Setting Session



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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
68.	1/19/18		Present employees' residence data	Human Resources	1/31/19	1/31/19	Priority Setting Session
69.	10/9/18	Council Meeting	Agrihood Project DDA: Review for potential Project Labor Agreement	City Manager	1/29/19	1/29/19	Reported at Council Meeting
70.	1/15/19	Council Meeting	Enforcement of Sidewalk Vendors vs. SB 946	Police/ City Attorney	1/25/19	1/25/19	Biweekly Report
71.	12/11/18	Council Meeting	Amend Resolution for the annual selection of Vice Mayor and Chaplain during a Council meeting in January	City Manager/ Mayor's Office	1/15/19	1/15/19	Reported at Council Meeting



City of Santa Clara

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Agenda Report

20-151

Agenda Date: 1/28/2020

REPORT TO COUNCIL

SUBJECT

Tentative Meeting Agenda Calendar (TMAC) [Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND AND DISCUSSION

The purpose of the TMAC is to provide the public advanced notifications of tentative dates of Council Study Sessions, Joint Council/Commission meetings, as well as Council Public Hearing and General Business agenda items. It is important to note that the TMAC is a Tentative Calendar planning tool and reports listed are subject to change due to Public Hearing publication requirements and agenda management.

The TMAC will be published weekly no later than Friday on the City's website.



City of Santa Clara

Tentative Meeting Agenda Calendar

Thursday, January 30, 2020 City Council Goal and Policy Setting Session 8:30 AM at Central Park Library - 2635 Homestead Rd, Santa Clara, CA 95051

Friday, January 31, 2020 City Council Goal and Policy Setting Session 8:30 AM at Central Park Library - 2635 Homestead Rd, Santa Clara, CA 95051

Tuesday, February 11, 2020 Council and Authorities Concurrent Meeting

Regular Meeting to begin at 5:00 PM

Study Session

20-1275 Discussion and Council Direction on Assigned Responsibilities of the City Council Appointed City Auditor

Special Order of Business

20-107 Recognition of Recipients of the Grants from Proceeds of the 2019 Santa Clara Art and Wine Festival

20-34 Presentation by Santa Clara for Relay for Life

Public Hearing/General Business

Future Revenue Opportunities/Strategies:

20-41 A. Discussion of, and Possible Direction on Infrastructure Measures for the November 2020 Ballot

20-451 B. Update on Requested Information on Commercial Cannabis Activities

20-1394 C. Discussion and Direction on the Santa Clara Tourism Improvement District Assessment Formula

20-122 Update on Chief Executive Officer Search for the New Destination Marketing Organization

20-98 Action on Written Petition received from Alan Todd Bevis regarding Calming Traffic and Noise/Sideshow Activity Along Briarwood Drive

Tuesday, February 25, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

20-1212 Joint Dinner meeting with Cultural Commission

Special Order of Business

20-44 Presentation by County Assessor regarding California Schools and Local Communities Funding Act of 2020

20-1434 Welcome to Father Kevin O'Brien, S.J. as President of Santa Clara University

20-27 Recognition of Pacific Autism Center for Education's 30th Anniversary

Public Hearing/General Business

20-1476 **Public Hearing:** Adoption of a Resolution Ordering the Abatement of a Nuisance Consisting of Growing Weeds in Association with the County Weed Abatement Program for 2019-2020

20-32 Discussion and Possible Action on Illegal Street Racing and Sideshow Activity Report

20-1369 Action on a Resolution Adopting the Santa Clara Pedestrian Master Plan

20-101 Action on a Resolution Approving and Authorizing the City Manager to execute a Loan Agreement with ZAEN Partners, LLC for a loan of up to \$6,000,000 to support the construction of 150 affordable housing units located at 2302 Calle Del Mundo

20-82 Action to Proclaim Section of El Camino Real as Korea Town

20-1154 Approve a Resolution to Approve and Adopt the 2020 Update to the Sanitary Sewer Management Plan (SSMP)

Thursday, March 5, 2020 Special Santa Clara Stadium Authority Board Meeting – 4:00 PM

Study Session

20-45 Discussion of the Proposed Santa Clara Stadium Authority Fiscal Year 2020/21 Budget and Stadium Authority Compliance and Management Policy

Tuesday, March 17, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

20-1214 Joint Dinner meeting with Historical and Landmarks Commission

Special Order of Business

20-93 Police Activities League Recognition of Hunter Storm Placeholder

Public Hearing/General Business

20-103 Action on the Governance and Ethics Committee Recommendation to Name the Public Park in the 575 Benton Street Project (Prometheus)

20-1335 Action on the Central Park Master Plan Update and Introduction of an Ordinance in accordance with City Charter section 714.1

20-496 Related Santa Clara's Development Area Plan #1

20-496 SVP Quarterly Update

Tuesday, March 24, 2020 Santa Clara Stadium Authority Board Meeting

Public Hearing/General Business

20-47 **Public Hearing:** Action on the Proposed Santa Clara Stadium Authority Fiscal Year 2020/21 Budget and Stadium Operations and Maintenance Plan

20-91 Action on the Stadium Authority Financial Status Report for the Quarter Ending June 30, 2019

Tuesday, March 31, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

20-1213 Joint Dinner meeting with Library Trustees

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, April 14, 2020 Council and Authorities Concurrent Meeting

Study Session 5:00 PM

20-496 International Swim Center Community Recreation Center Project

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, April 21, 2020 Council and Authorities Concurrent Meeting

Study Session

20-1215 Joint Dinner Meeting with Civil Service Commission

Public Hearing/General Business

20-496 Related Santa Clara Quarterly Update

Tuesday, May 5, 2020 Council and Authorities Concurrent Meeting

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, May 12, 2020 Santa Clara Stadium Authority Board Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, May 19, 2020 Council and Authorities Concurrent Meeting

Study Session

20-1311 Joint Dinner Meeting with Parks and Recreation Commission

Public Hearing/General Business

20-127 **Public Hearing:** Action on Resolutions Approving Water, Sewer and Recycled Water Rates to be Effective July 1, 2020

Tuesday, June 2, 2020 Council and Authorities Concurrent Meeting

Study Session

20-1216 Joint Dinner Meeting with Planning Commission

Public Hearing/General Business

20-496 SVP Quarterly Update

Tuesday, June 23, 2020 Council and Authorities Concurrent Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, July 7, 2020 Council and Authorities Concurrent Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, July 14, 2020 Joint Council and Authorities Concurrent and Stadium Authority Meeting

Public Hearing/General Business

20-496 Related Santa Clara Quarterly Update

AGENDA ITEMS TO BE SCHEDULED TO A FUTURE DATE