

# Joint Meeting Agenda Council and Authorities Concurrent Santa Clara Stadium Authority

**Tuesday, July 14, 2020** 

1:00 PM

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

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

- Via Zoom:
  - o https://santaclaraca.zoom.us/j/99706759306

Meeting ID: 997-0675-9306 or

o Phone: 1(669) 900-6833

- Via the City's eComment (now available during the meeting)
- Via email to PublicComment@santaclaraca.gov

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

For those individuals that do not have the above access, the City Cafeteria has been set up to accommodate up to 10 people at a time and public comment will be given from that location.

The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than 10 people gatherings. The Mayor will be present for the meeting with Councilmembers and department heads participating remotely. A limited number of staff will also be present.

#### 1:00 PM COUNCIL/STADIUM AUTHORITY REGULAR MEETING

**Call to Order** 

Pledge of Allegiance and Statement of Values

**Roll Call** 

**CONTINUANCES/EXCEPTIONS** 

SPECIAL ORDER OF BUSINESS

1.A	20-317	Proclamation of August 2020 as American Muslim Appreciation and Awareness Month
1.B	20-616	<u>Presentation of 2020 City of Santa Clara/Silicon Valley Power Scholarships</u>
1.C	20-673	Recognition of District 1 Resident Jennifer Whitten
1.D	20-670	Verbal Report from City Manager regarding COVID-19 Pandemic [Council Pillar: Enhance Community Engagement and Transparency]

#### **CONSENT CALENDAR**

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

2.A 20-14 <u>Action on Council and Authorities Concurrent & Stadium Authority Meeting Minutes [Council Pillar: Enhance Community Engagement and Transparency]</u>

Recommendation: Approve the March 24, 2020 Stadium Authority

Meeting, March 12 & 14, 2020 Joint Council and

Authorities Consument Meeting, and March 26, 20

Authorities Concurrent Meeting, and March 26, 2020 Council and Authorities Concurrent Meeting Minutes.

2.B 20-567 Action on Monthly Financial Status and Investment Reports for May 2020 and Approve the Related Budget Amendments

[Council Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Note and file the Monthly Financial Status and Investment Reports for May 2020 as presented and

Approve Related Budget Amendments.

**2.C** 20-492

Action on Investment Management Services Agreement with PFM Asset Management LLC and Approval of Related Budget Amendment [Council Pillar: Manage Strategically Our Workforce Capacity and Resources]

- **Recommendation:** 1. Approve and authorize the City Manager to execute an agreement with PFM Asset Management LLC for Investment Management Services for an initial three-year term starting on or about August 1, 2020 and ending on July 31, 2023 for a total maximum amount not to exceed \$840,000, subject to the appropriation of funds;
  - 2. Authorize the City Manager to execute two one-year options to extend the term of the Agreement through July 31, 2025, subject to the appropriation of funds: and
  - 3. Approve the related FY 2020/21 budget amendment in the General Fund to increase Interest Income revenue estimate by \$255,000 and increase the Finance Department appropriation by \$255,000 for year 1 of the investment management services agreement.

2.D 20-600 Action on a Resolution for the Use of City Electric Forces at Various Locations [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:** Adopt a Resolution approving the use of City Electric Forces for the installation of facilities at 3238 Scott Boulevard, 1550 Space Park Drive, Santa Clara Square area near Building 6 on Scott Boulevard and Octavius Drive, East side Stars and Stripes Drive east of Fire Station (under Tasman overpass), 2106 Klamath Avenue, 2900 Lakeside Drive, Monroe Street and Reeve Street, 3365 Cabrillo Avenue, 2375 De La Cruz Boulevard, and 2041 Mission College Boulevard.

2.E 20-604

on Award of Contract for the Photovoltaic System Action Installation at the Northside Branch Library (CE 18-19-11) Related Budget Amendment [Council Pillar: Sustainability]

- **Recommendation:** 1. Approve the establishment of the new Capital Improvement Program Project within the Library Capital Fund for the Photovoltaic System Installation at the Northside Branch Library Project;
  - 2. Approve the FY 2020/21 budget amendment in the Library Capital Fund to recognize a transfer from the Electric Operating Grant Trust Fund and establish the Photovoltaic System Installation at the Northside Branch Library Project in the amount of \$114,982; in the Electric Operating Grant Trust Fund, decrease the Public Benefits Program -Mandated Program Costs and establish a transfer to Library Capital Fund in the amount of \$114,982;
  - 3. Award the Public Works Contract for Photovoltaic System Installation at the Northside Branch Library (CE 18-19-11), including the Base Bid and Add Alternate, to the lowest responsive and responsible bidder, Staten Solar Corporation, in the amount of \$99,982 and authorize the City Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of this Project; and
  - 4. Authorize the City Manager to execute change orders up to approximately 15 percent of the original contract price, or \$15,000, for a total project budget not to exceed amount of \$114,982.

**2.F** 20-657 Public Hearing: Action on a Resolution Confirming the 2020 Abatement Program and Assessment [Council Weed Pillar: Promote Sustainability and Environmental Protection]

**Recommendation:** Adopt a Resolution confirming the 2020 Weed Abatement Program Assessment Report and Assessment.

#### 2.G 20-660

Action on an Agreement for Services with Milton Security Group, for Technology Support Including Network Cyber and Security. Advanced Metering Infrastructure (AMI) Implementation, OSISoft Plant Information (PI) system, and SharePoint [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:** Approve and authorize the City Manager to execute the Agreement for Services with Milton Security Group, Inc. in an amount not-to-exceed \$400,000, for technology support including network and cyber-security, Advanced Metering Infrastructure (AMI) implementation, OSISoft Plant Information (PI) system, and SharePoint.

#### 2.H 20-671

Action to Authorize the City Manager to Execute Agreements with SHAC Tasman CDM Apartments LLC for the Construction of Park Improvements and the Maintenance of the Park in perpetuity within the Tasman East Area [Council Pillar: Enhance Community Sports, Recreation and Art Assets]

**Recommendation:** Authorize the City Manager to execute the Park Improvement Agreement and the Park Maintenance Agreement with SHAC Tasman CDM Apartments LLC, and to make minor, non-substantive changes as necessary.

#### 2.1 20-662

Action to Delegate Authority to Mayor Gillmor and Chief Nikolai to Establish An Ad Hoc Committee in Support of the "Commit to Action" Initiative [Community Pillar: Enhance Community Engagement and Transparency)

**Recommendation:** Staff recommends Alternative 1: Delegate authority to Mayor Gillmor and Chief Nikolai to establish an ad hoc committee in support of community dialogue on a Santa Clara plan to address systemic racism and the Commit to Action Initiative during the July/August City Council recess with a status update to the Council no later than the September 29, 2020 City Council meeting.

#### STADIUM AUTHORITY CONSENT ITEMS

2.J 20-583

Action to Purchase and/or Award Purchase Orders for Public Safety Supplies Miscellaneous and Equipment and Approve Purchases Incurred After November 2019 [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

Recommendation: Alternatives 1, 2 and 3.

- 1. Authorize the Executive Director to purchase and/or execute purchase orders with specified vendors for the public safety supplies and equipment outlined in the report (Motorola APX 6000 Radio/Charger/Battery; Radio Earpieces; Battery Pack for JHAT Crew; Small Cooler and Ice Pack; Mass Decontamination Hydrant Nozzles; Stadium Vehicles (Gator & Kubota) Upfits; Storage Conex Garage for Apparatus; Heavy Lift Kit; Stadium Personal Protective Equipment; Body Worn Cameras; Motor Vehicle Barricades; Bicycles; Radio Batteries; Radios; Radio Chargers; Safety Gear for Special Event Officers & Traffic Control Personnel; and Explosive Ordinance Detection Blankets/Water Barrier), pursuant to Chapter 2.105 of the Santa Clara City Code and in an amount not-to-exceed \$817,887, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items:
- 2. Authorize the Executive Director to purchase future publications for required Stadium Authority public hearing items in the City's official newspaper, Santa Clara Weekly, and approve the final costs of the three publications that were purchased for June 17 and 24, and July 1, 2020; and
- Approve the miscellaneous expenses detailed in Attachment 2 that were incurred by the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between November 8, 2019 and June 4, 2020.

2.K 20-510

Authorization to Seek Reimbursement of City Public Safety and Traffic Control Purchases from the Forty Niners Stadium Management Company and Forty Niners SC Stadium Company [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Alternatives 1 and 2:

- Authorize the City Manager to purchase and/or award Purchase Orders for City public safety and traffic control supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo, pursuant to applicable sections under Chapter 2.105 ("Finance Department") of the Santa Clara City Code; and
- Retroactively approve the expenses incurred by the City for public safety and traffic control supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo.
- 2.L 20-603 Action on Stadium Authority Bills and Claims for the Month of March 2020 [Board Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Approve the list of Stadium Authority Bills and Claims for March 2020.

2.M 20-615 Note and File this Informational Report on FY2019/20 Net Loss on Non-NFL Events [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Note and file the Informational Report on FY2019/20

Net Loss on Non-NFL Events.

2.N 20-676

Authorization to Award a Purchase Order for Stadium Builder Licenses Digitization Services [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Alternatives 1 and 3.

- Authorize the Executive Director to award a Purchase Order pursuant to the appropriate Purchasing Sections under 2.105 of the Santa Clara City Code; and
- 3. Note and file the July 2, 2020 letter to the Stadium Manager regarding SBLs with Calculation Errors and the Stadium Authority's request for their plan to address errors.

#### **PUBLIC PRESENTATIONS**

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

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

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

3. 20-642 Authorize the Negotiation and Execution of a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street [APN: 230-08-078] [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

**Recommendation:** Alternative 1:

Authorize the City Manager to negotiate and execute a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC consistent with the terms in the staff report for the development of a City-owned parcel located at 500 Benton Street.

4. 20-689

Adopt a Resolution Ordering the Submission of a Ballot Measure to the Qualified Electors of the City; Calling for a Special Municipal Election to be Held in the City of Santa Clara on Tuesday, November 3, 2020 for the Purpose of Submitting to City Voters a Measure to Increase the Transient Occupancy Tax (TOT) Rate in an Amount Up to 4%; Requesting Consolidation with the Presidential General Election and Election Services from Santa Clara County; Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments [Council Pillar: Deliver and Enhance High Quality **Efficient** Services and Infrastructure]

#### **Recommendation:** Alternative 1:

Adopt a resolution ordering submission of a ballot measure to the qualified electors of the City; calling for a Special Municipal Election to be held in the City of Santa Clara on Tuesday, November 3, 2020 for the purpose of submitting to City voters a measure to increase the Transient Occupancy Tax Rate in an amount up to 4%; requesting consolidation with the Presidential General Election and election services from Santa Clara County; directing the City Attorney to prepare an impartial analysis; setting priorities for ballot arguments; and approval of the draft amendment to the Santa Clara City Code to incorporate the proposed changes if the measure is approved by the voters.

5. 20-695

Adoption of a Resolution Setting Rates for Overall Solid Waste Services, Annual Clean-up Campaign, and Household Hazardous Waste in the Exclusive Franchise Area; Report responding to Councilmember Chahal's Analysis: Consideration of Council Action on a Rate Assistance Program. including Budget Amendment action [Council Pillars: 1) Deliver and Enhance High Quality Efficient Services and Infrastructure: 2) Sustainability]

**Recommendation:** Alternative 1:

Adopt a Resolution setting the overall rates to be charged to rate payers for the collection and disposal of garbage, refuse, yard trimmings, recycling, annual Clean-up Campaign, and household hazardous waste in the exclusive franchise area, effective for the utility bills issued for services rendered on August 1, 2020.

#### REPORTS OF MEMBERS AND SPECIAL COMMITTEES

#### CITY MANAGER/EXECUTIVE DIRECTOR REPORT

#### **ADJOURNMENT**

The next regular scheduled meeting is on Tuesday evening, August 18, 2020 in the City Hall Council Chambers.

#### **MEETING DISCLOSURES**

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

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

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

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

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

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



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## Agenda Report

20-317 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Proclamation of August 2020 as American Muslim Appreciation and Awareness Month

#### **BACKGROUND**

In August 2016, the California State Assembly adopted House Resolution (HR) 59, designating August as American Muslim Appreciation and Awareness Month in California.

American Muslim Appreciation and Awareness Month is celebrated each August to honor generations of American Muslims for their many social, cultural, and economic contributions to California, and to recognize the lasting positive impact they have made toward the advancement of our state and country. American Muslims have long been a part of the history of the United States, and have contributed to the production of wealth and construction in our country.

Since 2016, the City of Santa Clara (City) has recognized August as American Muslim Appreciation and Awareness Month to affirm the City's continued support and to stand in solidarity with the Muslim community against anti-Muslim rhetoric and attitudes, as well as to recognize their rich history, cultural traditions, and significant contributions that have strengthened the Santa Clara community as a whole.

Santa Clara is home to numerous Muslim community, philanthropic, civil rights, and humanitarian organizations, including the Council on American-Islamic Relations (CAIR), Muslim Community Association (MCA), Helping Hand for Relief and Development, Khalil Center, Islamic Circle of North America, and Muslim American Society. The San Francisco Bay Area has one of the largest Muslim populations in the United States with nearly 250,000 Muslims and over 80 mosques and religious centers. The San Francisco Bay Area chapter (CAIR-SFBA) is the oldest CAIR chapter in the country. CAIR-SFBA was established in 1994 as a unique kind of Muslim organization that would work to uphold civil rights of American Muslims, foster a better understanding of the Islamic faith and its followers, and help find avenues for Muslims to integrate more fully into the broader society. CAIR-SFBA now serves the area's nearly 250,000 Muslims residing in the nine San Francisco Bay Area counties.

#### DISCUSSION

In honor of American Muslim Appreciation and Awareness Month, the Mayor has signed a proclamation (Attachment 1) proclaiming the month of August as 5<sup>th</sup> Annual Muslim Awareness and Appreciation Month in Santa Clara.

Sameena Usman, Government Relations Coordinator for CAIR-SFBA, will give a brief presentation on American Muslim Appreciation and Awareness Month, share COVID-19 relief efforts made by local community organizations, and accept the proclamation on behalf of CAIR-SFBA.

20-317 Agenda Date: 7/14/2020

#### **ENVIRONMENTAL REVIEW**

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

#### **FISCAL IMPACT**

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

#### **PUBLIC CONTACT**

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Reviewed by: Genevieve Yip, Staff Analyst I Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. American Muslim Appreciation and Awareness Month Proclamation

American Muslim Appreciation and Awareness Month is celebrated each August to WHEREAS, honor American Muslims for their many social, cultural, and economic contributions; and

WHEREAS, the shelter-in-place order, due to the COVID-19 pandemic, forced the temporary closure of nonprofits, community centers, mosques, schools,

the Muslim Community Association (MCA) normally provides social services and Friday congregational prayers with over 3,000 attendees, but due to the pandemic, has had to suspend its services and shifted to sharing sermons and programming online; the MCA has WHEREAS, hosted multiple drive-thru food distributions for the greater community, partnered with Al-Misbah to collect food items to donate to refugees, coordinated a "Community Cares" program to drop off essentials and donations to community members in need, and increased donations to over \$175,000 through their Zakat funds since the COVID-19 pandemic; and

Islamic Relief USA has committed to distributing \$5 million nationwide in COVID-19 assistance, and its North West office located in Santa Clara, has coordinated with local WHEREAS, charities to distribute masks, hygiene kits, hundreds of meals, and 50,000 lbs. of food to at-risk communities in the Bay Area, and packed 50,000 meals that were sent overseas; and

the San Francisco Bay Area office of the Council on American-Islamic Relations (CAIR-SFBA), has expanded its legal services in response to the pandemic by providing guidance on housing issues, tenant rights, stimulus payments, and unemployment benefits; CAIR-SFBA has increased its online programming to incorporate virtual citizenship and legal clinics, 2020 Census and social justice webinars, a virtual Muslim Day at the Capitol Advocacy Week, townhalls with elected officials, and social justice webinars; and WHEREAS,

WHEREAS,

WHEREAS,

the Bay Area chapter of the Islamic Circle of North America provides programs and opportunities that empower American Muslims, and has provided financial assistance through its Coronavirus Relief Fund to support over 100 families, hundreds of meals through its Eid food distribution to four homeless shelters, biweekly Feed the Hungry programs, and essentials through its Shade for the Homeless Program and Abraham's Day events; and

the City of Santa Clara is enriched by the unparalleled diversity of its residents, and takes great pride in recognizing August as American Muslim Appreciation and Awareness Month to affirm the City's continued support and to stand in solidarity with the Muslim community against anti-Muslim rhetoric and attitudes, and to honor their rich history, cultural traditions, and significant contributions that have strengthened the Santa Clara community as a whole;

NOW, THEREFORE, I, LISA M. GILLMOR, by virtue of the authority vested in me as Mayor, and on behalf of the entire City Council, do hereby proclaim the month of August 2020, as

#### American Muslim Appreciation and Awareness Month

in the City of Santa Clara, and do hereby recognize the rich history and significant contributions that American Muslims have had on our city and community as a whole.

Given under my hand and the Seal of the City of Santa Clara, California, this 14th day of July, 2020.

MAYOR

City of Santa Clara



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## Agenda Report

20-616 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Presentation of 2020 City of Santa Clara/Silicon Valley Power Scholarships

#### **BACKGROUND**

As part of the first Council Principles and Priorities, Council implemented a program called the "City of Santa Clara Silicon Valley Power Scholarship Program," which was designed to provide tuition and technical grants and an internship to students with a goal of entering a field related to energy services, public power, and/or the power industry. On May 16, 2006 the first of these scholarships were awarded. To qualify, a student must be a resident of or go to school in Santa Clara. Course work must be taken at an accredited two- or four-year college or university, or at a technical school that is fully licensed or accredited by an agency recognized by the U.S. Department of Education. Applicants are evaluated by members of the local academic and business community on various criteria, including academic achievements, community involvement and artistic or athletic achievements. Since its inception, 52 students have participated in the Scholarship/Technical Grant Program. Including this year's recipients, a total of \$242,000 has been awarded in scholarship or grant funds.

#### DISCUSSION

Staff will present the 2020 City of Santa Clara/Silicon Valley Power Scholarship Awards in the amount of \$5,000 to each recipient. Ryota Inagaki has recently graduated from Santa Clara High School and anticipates pursuing a degree in Engineering Mathematics and Statistics at University of CA, Berkeley. Vincent Kloes has recently graduated from Wilcox High School and plans to pursue a degree in Earth Science. Serena Kutney is currently attending University of CA, Davis with a major of Chemical Engineering. Cynthia Vu is currently attending De Anza Community College, pursing a degree in Environmental Studies.

#### FISCAL IMPACT

There is no fiscal impact to the General Fund. Silicon Valley Power sets aside funds for these scholarships in the annual department operations budget.

#### COORDINATION

This report has been coordinated with the Finance Department.

#### **PUBLIC CONTACT**

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20-616 Agenda Date: 7/14/2020

Reviewed by: Manuel Pineda, Chief Electric Utility Officer Approved by: Deanna J. Santana, City Manager



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## Agenda Report

20-673 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Recognition of District 1 Resident Jennifer Whitten

#### **BACKGROUND**

Jennifer Whitten moved to Santa Clara, California from Austin, Texas in January 2011. Within a month of moving to Santa Clara, Jennifer started volunteering regularly at Don Callejon School, by helping set up at the annual Science Fair and making herself available for anyone who needed assistance. In addition to volunteering for Santa Clara Unified School District, Jennifer gave so much of her time and energy supporting local non-profit organizations, such as Music Boosters and JW House. Through her dedicated volunteer efforts, Jennifer has demonstrated what it means to give back to the community and hopes that others will be encouraged to share their time and talents in supporting the Santa Clara community.

This summer, Jennifer Whitten and her family will move back to Austin, Texas. The City of Austin is regaining a resident who will no doubt continue the exemplary volunteer work that the city of Santa Clara has seen over the last nine years.

#### DISCUSSION

The Santa Clara City Council will recognize Jennifer Whitten at the July 14, 2020 City Council Meeting by presenting her with a Certificate of Special Mayoral Recognition (Attachment 1) in honor of her outstanding community contributions.

#### **ENVIRONMENTAL REVIEW**

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

#### FISCAL IMPACT

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

#### **PUBLIC CONTACT**

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Reviewed by: Julie Minot, Executive Assistant, Mayor and City Council

Approved by: Deanna J. Santana, City Manager

20-673 Agenda Date: 7/14/2020

ATTACHMENTS

1. Certificate of Special Mayoral Recognition



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## Agenda Report

20-670 Agenda Date: 7/14/2020

## **REPORT TO COUNCIL**

## **SUBJECT**

Verbal Report from City Manager regarding COVID-19 Pandemic [Council Pillar: Enhance Community Engagement and Transparency]



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## Agenda Report

20-14 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL/STADIUM AUTHORITY

#### **SUBJECT**

Action on Council and Authorities Concurrent & Stadium Authority Meeting Minutes [Council Pillar: Enhance Community Engagement and Transparency]

#### **RECOMMENDATION**

Approve the March 24, 2020 Stadium Authority Meeting, March 12 & 14, 2020 Joint Council and Authorities Concurrent Meeting, and March 26, 2020 Council and Authorities Concurrent Meeting Minutes.



## **Meeting Minutes**

## **Santa Clara Stadium Authority**

03/24/2020 4:30 PM City Hall Council Chambers 1500 Warburton Avenue Santa Clara, CA 95050

#### 4:30 PM REGULAR MEETING

Call to Order

Chair Gillmor called the Regular Stadium Authority meeting to order at 7:24 PM.

#### Pledge of Allegiance and Statement of Values

**Roll Call** 

**Executive Director Santana** announced the food distribution for Seniors and children due to the COVID-19 Pandemic Shelter-in-Place has been implemented.

Present: 6 - Vice Chair Karen Hardy, Member Teresa O'Neill, Member Kathy Watanabe, Member Debi Davis, Member Raj Chahal, and Chair Lisa M. Gillmor

20-444

EXECUTIVE DIRECTOR VERBAL REPORT

#### **CONTINUANCES/EXCEPTIONS**

None.

#### **CONSENT CALENDAR**

A motion was made by Boardmember Davis, seconded by Boardmember O'Neill, to approve the balance of the consent calendar (except Item 1.C) and amend staff recommendation for Item 1.B: (add) direct staff to send letter to ManCo to comply with the Stadium Authority's Procurement Policy.

Aye: 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Watanabe, Boardmember Davis, Boardmember Chahal, and Chair Gillmor

**1.A** 20-1206 Action on Bills and Claims for the months of October 2019 through January 2020 [Board Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Approve the list of Bills and Claims for October 2019 through January 2020.

A motion was made by Boardmember Davis, seconded by Boardmember O'Neill, to approve the list of Bills and Claims for October 2019 through January 2020.

1.B 20-259 Acceptance of the Stadium Authority Fiscal Year 2019/20 Contracts per Santa Clara City Code Chapter 17.30 Stadium Authority Procurement Policy [Board Pillar: Enhance Compliance with J and Manage Levi's

Stadium]

**Recommendation:** Accept the Stadium Authority's Fiscal Year 2019/20 Contracts per Santa Clara City Code Chapter 17.30 Stadium Authority Procurement Policy.

A motion was made by Boardmember Davis, seconded by Boardmember O'Neill, to accept the Stadium Authority's Fiscal Year 2019/20 Contracts per Santa Clara City Code Chapter 17.30 Stadium Authority Procurement Policy and direct staff to send letter to ManCo to comply with the Stadium Authority's Procurement Policy.

1.D 20-333 Informational Report on Dates and Purpose of Stadium Authority and Stadium Manager Meetings for the Period October 1, 2019 to December 31, 2019 [Board Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Note and file the quarterly report on Stadium Authority and Stadium Manager Meetings for the period of October 1, 2019 to December 31, 2019.

A motion was made by Boardmember Davis, seconded by Boardmember O'Neill, to note and file the quarterly report on Stadium Authority and Stadium Manager Meetings for the period of October 1, 2019 to December 31, 2019.

**1.E** 20-426 Ad-Hoc Stadium Audit Committee Minutes [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Approve the Ad-Hoc Stadium Audit Committee minutes of October 29, 2018.

A motion was made by Boardmember Davis, seconded by Boardmember O'Neill, to approve the Ad-Hoc Stadium Audit Committee minutes of October 29, 2018.

**1.F** Status of Harvey M. Rose Associates Audit Recommendations [Board

Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Note and file an update on the Status of the Harvey M. Rose Associates

Audit Recommendations.

A motion was made by Boardmember Davis, seconded by Boardmember O'Neill, to note and file an update on the Status of the

Harvey M. Rose Associates Audit Recommendations.

#### **PUBLIC PRESENTATIONS**

None.

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

**1.C** 20-271 Action on Amendment No. 2 to the Agreement as Amended with J.S. Held

LLC for Consulting Services for the Santa Clara Stadium Authority [Board

Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Approve and authorize the Executive Director to execute Amendment No. 2

to the Agreement with J.S. Held LLC for financial consulting services to extend the term of the agreement by two years ending December 31, 2022,

and increase compensation by \$225,000 for a total maximum not-to-exceed amount of \$425,000, subject to budget approval.

**Boardmember Chahal** pulled this item for further clarification.

A motion was made by Boardmember Chahal, seconded by Vice Chair Hardy, to approve and authorize the Executive Director to execute Amendment No. 2 to the agreement with J.S. Held LLC for financial consulting services to extend the term of the agreement by two years ending December 21, 2022, and increase compensation by \$225,000 for a total maximum not-to-exceed amount of \$425,000, subject to budget approval.

**Aye:** 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Watanabe, Boardmember Davis, Boardmember Chahal, and Chair Gillmor

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

2. 20-91 Action on the Santa Clara Stadium Authority Financial Status Report for Quarters Ending June 30, 2019 and September 30, 2019 and Related Budget Amendments [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium & Enhance Community Engagement and Transparency]

- Recommendation: 1. Note and file the Santa Clara Stadium Authority Financial Status Reports for the Quarter Ending June 30, 2019 and Quarter Ending September 30, 2019.
  - 2. Approve Budget Amendments to the 2019/20 Santa Clara Stadium Authority Budget.

**Stadium Authority Treasurer Lee** gave a PowerPoint Presentation.

A motion was made by Boardmember Davis, seconded by Boardmember Watanabe, to (1) note and file the Santa Clara Stadium Authority Financial Status Reports for the quarter ending June 30, 2019 and Quarter ending September 30, 2019; and (2) approve budget amendments to the 2019/20 Santa Clara Stadium **Authority Budget.** 

Aye: 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Watanabe, Boardmember Davis, Boardmember Chahal, and Chair Gillmor

3. 20-429 Presentation on Proposed Santa Clara Stadium Authority Fiscal Year 2020/21 Budget, Stadium Operation and Maintenance Plan, and 2020 Marketing Plan [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium & Enhance Community Engagement and Transparency]

Recommendation: Note and file Staff Presentation on the Proposed Santa Clara Stadium Authority Fiscal Year 2020/21 Budget, Stadium Operation and Maintenance Plan, and 2020 Marketing Plan.

**Stadium Authority Treasurer Lee** gave by PowerPoint Presentation.

A motion was made by Boardmember Davis, seconded by Boardmember Watanabe, to note and file the staff presentation on the Proposed Santa Clara Stadium Authority Fiscal Year 2021/21 Budget, Stadium Operation and Maintenance Plan, and 2020 Marketing Plan.

Aye: 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Watanabe, Boardmember Davis, Boardmember Chahal, and Chair Gillmor

4. 20-47 Action on the Proposed Santa Clara Stadium Authority Fiscal Year 2020/21 Budget, Stadium Operation and Maintenance Plan, and 2020 Marketing Plan [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium (Not to be heard prior to 6:00 PM)

**Recommendation:** Staff recommends Alternatives 1, 3, 4, and 5:

- 1. Adopt the Santa Clara Stadium Authority Fiscal Year 2020/21 Operating, Debt Service, and Capital Budget, including funding Shared Stadium Manager Expenses at \$3,045,000 and a Legal Contingency at \$9.231.000:
- 3. Direction to staff to return on March 31, 2020 with the Stadium Operations Management Plan (SOMP);
- 4. Approve the revised Stadium Authority Budget Policy; and,
- 5. Take No Action on the 2020 Marketing Plan

A motion was made by Boardmember Davis, seconded by Boardmember Watanabe, to approve Alternatives 1, 3, 4, and 5: (1) adopt the Santa Clara Stadium Authority Fiscal Year 2020/21 Operating, Debt Service, and Capital Budget, including funding shared Stadium Manager Expenses at \$3,045,000 and a Legal Contingency at \$9,231,000; (3) direct staff to return on March 31, 2020 with the Stadium Operations Management Plan (SOMP); (4) approve the revised Stadium Authority Budget Policy; and (5) take no action on the 2020 Marketing Plan.

Aye: 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Watanabe, Boardmember Davis, Boardmember Chahal, and Chair Gillmor

#### REPORTS OF MEMBERS AND SPECIAL COMMITTEES

None.

#### CITY MANAGER/EXECUTIVE DIRECTOR REPORT

Executive Director Santana announced that an Informational Report was sent to the Stadium Authority Board notifying them that staff has been seeking the completion of the following Annual Documents (2020 Public Safety Annual Updates) that are required to be completed by the Stadium Management Company which does not require the Stadium Authority Board's approval, however are significant in nature (staff has yet to receive as of March 24, 2020):

- Public Safety Plan
- Traffic Management and Operations Plan
- Stadium Rules and Regulations

20-442

CITY MANAGER REPORT EXECUTIVE DIRECTOR REPORT

#### **ADJOURNMENT**

The meeting was adjourn at 8:14 PM.

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

**Aye:** 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Watanabe, Boardmember Davis, Boardmember Chahal, and Chair Gillmor

The next regular scheduled Stadium Authority meeting is on Tuesday evening, May 12, 2020 in the City Hall Council Chambers.

#### **MEETING DISCLOSURES**

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

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

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

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

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

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



Draft

## Joint Meeting Minutes Council and Authorities Concurrent Santa Clara Stadium Authority

05/12/2020 2:00 PM

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

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

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

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

For those individuals that do not have the above access, the City Cafeteria has been set up to accommodate up to 10 people at a time and public comment will be given from that location.

The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than 10 people gatherings. The Mayor will be present for the meeting with Councilmembers and department heads participating remotely. A limited number of staff will also be present.

#### 2:00 PM COUNCIL/STADIUM AUTHORITY REGULAR MEETING

#### Call to Order

Mayor/Chair Gillmor called the meeting to order at 2:02 PM.

#### Pledge of Allegiance and Statement of Values

#### Roll Call

Present: 6 - Vice Mayor/Chair Karen Hardy, Council/Boardmember Teresa O'Neill, Council/Boardmember Debi Davis, Council/Boardmember Kathy Watanabe, Council/Boardmember Raj Chahal, and Mayor/Chair Lisa M. Gillmor

#### **Closed Session**

20-532	Conference with Legal Counsel-Existing Litigation (CC) Pursuant to Gov. Code § 54956.9(d)(1) Christopher Gaffney, et al. v. City of Santa Clara, United States District Court, Northern District of California Case No. 4:18-cv-06500-JST
<u>20-538</u>	Conference with Legal Counsel-Anticipated Litigation (CC) Pursuant to Gov. Code § 54956.9(d)(2) - Significant exposure to litigation Number of potential cases: 1 (Facts and Circumstances) City as potential defendant: Receipt of claim pursuant to the Government Claims Act from Meng Lim regarding sewer lateral damage at 1731 Roll Street
<u>20-533</u>	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)

20-540 Conference with Legal Counsel-Existing Litigation (CC, SA)

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

Nevarez v. City of Santa Clara, et al., United States District Court, Northern

District of California Case No. 5:16-CV-07013-HRL

#### **Public Comment**

None.

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

The meeting was adjourned to Closed Session 2:06 PM and reconvened to Regular Open Session at 4:20 PM.

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

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

#### **CONTINUANCES/EXCEPTIONS**

None.

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

**1.A** 20-463 Verbal Report from City Manager regarding COVID-19 Pandemic [Council Pillar: Enhance Community Engagement and Transparency]

City Manager Santana provided an update on the COVID-19 Pandemic.

**Chief Emergency Services Officer Schoenthal** provided an update on the information received from the County of Santa Clara regarding COVID-19 Pandemic.

**Public Speaker(s):** Diane Harrison (email read into the record)

**1.B** Proclamation of National Public Works Week 2020 [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Mayor Gillmor** on behalf of the **Council** presented a Proclamation in recognition of National Public Works Week.

**Mayor Gillmor** on behalf of the **Council** presented a Proclamation in recognition of Municipal Clerk's Week.

#### **STUDY SESSION**

2. 20-172 Review of the Proposed FY 2020/21 & FY 2021/22 Biennial Capital Improvement Program Budget and FY 2020/21 Operating Budget

Changes [Council Pillar: Enhance Community Engagement and

Transparency]

**Recommendation:** Review and provide input on the Proposed FY 2020/21 & FY 2021/22

Biennial Capital Improvement Program Budget and FY 2020/21 Operating

Budget Changes.

**Director of Finance Lee** gave a PowerPoint Presentation.

Public Speaker(s): Ben Cooley

**Betsy Megas** 

Suds Jain (e-Comment)

**3**. 20-229

Update on Proposed Changes to the City's Transportation Analysis Methodology from Level of Service to Vehicles Miles Traveled [Council Pillar: Promote and Enhance Economic and Housing Development]

**Assistant Director of Public Works Liw** gave a PowerPoint Presentation.

**Transportation Consultant Karen Mag** assisted with addressing Council questions.

Public Speaker(s): Betsy Megas

**Mayor Gillmor** called for a recess at 7:38 p.m. and reconvened the meeting at 7:49 p.m.

#### **CONSENT CALENDAR**

A motion was made by Council/Boardmember Davis, seconded by Vice Mayor/Chair Hardy, to approve the balance of the Consent Calendar (except Items 4.B, 4.F, 4.I, and 4.M).

Aye: 6 - Vice Mayor/Chair Hardy, Council/Boardmember O'Neill, Council/Boardmember Davis, Council/Boardmember Watanabe, Council/Boardmember Chahal, and Mayor/Chair Gillmor

**4.A** <u>20-07</u> Board, Commissions and Committee Minutes [Council Pillar: Enhance

Community Engagement and Transparency]

Recommendation: Note and file the Minutes of:

Audit Committee - September 10, 2019

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

4.C 20-400 Action on Bills and Claims Report (CC, SA) for the period March 20th,

2020 - April 9th, 2020 [Council Pillars: Enhance Community Engagement

and Transparency]

Recommendation: Approve the list of Bills and Claims for March 20, 2020 - April 9, 2020.

A motion was made by Councilmember Davis, seconded by Vice

Mayor Hardy, to approve staff recommendation.

4.D 20-401 Action on Monthly Financial Status and Investment Reports for February

2020 and Approve the Related Budget Amendments [Council Pillar:

Enhance Community Engagement and Transparency

Recommendation: Note and file the Monthly Financial Status and Investment Reports for

February 2020 as presented and Approve Related Budget Amendments.

A motion was made by Councilmember Davis, seconded by Vice

Mayor Hardy, to approve staff recommendation.

4.E 20-435 Action on Addendum No. 4 to Software License Agreement Contract No.

2005-204 with Telvent USA LLC to Allow for Continued Operability of the Currently-Installed GIS System [Council Pillar: Deliver and Enhance High

Quality Efficient Services and Infrastructure]

Recommendation: Authorize the City Manager to execute Addendum No. 4 to Software

License Agreement Contract No. 2005-204 with Telvent USA LLC in an amount of \$180,000 to allow for continued operability of the currently

installed GIS system.

A motion was made by Councilmember Davis, seconded by Vice

Mayor Hardy, to approve staff recommendation.

**4.G** 20-458 Action on an Affordable Housing Agreement with SHAC Tasman CDM

> Apartments LLC (an affiliate of SummerHill Apartment Communities), for 2343 Calle del Mundo (APN# 097-05-062; 097-05-063; and 097-05-064)

[Council Pillar: Promote and Enhance Economic and Housing

Development]

**Recommendation:** Approve and authorize the City Manager to execute and record the

Affordable Housing Agreement with SHAC Tasman CDM Apartments LLC (Attachment 1), to execute amendments thereto, and to take any other action necessary to implement the requirement for the provision of

thirty-four (34) affordable rental housing Units at for 2343 Calle del Mundo

(APN# 097-05-062; 097-05-063; and 097-05-064).

A motion was made by Councilmember Davis, seconded by Vice

Mayor Hardy, to approve staff recommendation.

#### 4.H 20-467

Action on an Annual Technical Services Support Order with Oracle America, Inc. for Software License Update and Support of Systems Used by Silicon Valley Power (SVP) [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

Recommendation: Authorize the City Manager to execute an annual Technical Services Support Order with Oracle America, Inc. for Software License Update and Support of systems used by Silicon Valley Power (SVP), and authorize this Agreement to be renewed annually, subject to the appropriation of funds.

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

20-103 **4.J** 

Action on the Governance and Ethics Committee Recommendation to Name the Public Park in the 575 Benton Street Project "Vincent Fiorillo & Family Park" [Council Pillar: Enhance Community Sports, Recreation and Art Assets]

**Recommendation:** Recommend that Council name the public mini-park located in the 575 Benton Street residential Project "Vincent Fiorillo & Family Park."

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

4.K 20-505 Action on a Resolution Adopting CARES Act Provisions Relating to the City's Section 457 Deferred Compensation Plan and Authorizing the City Manager to Execute the Necessary Documents [Council Pillar: Manage Strategically Our Workforce Capacity and Resources]

- **Recommendation:** 1. Adopt a Resolution adopting the provisions of the CARES Act relating to the City's 457 plan and authorizing the City Manager to execute the documents necessary for Nationwide Retirement Services to offer these new provisions to the City's plan participants; and
  - 2. Direct staff to revise the plan document accordingly and bring it back to the Council for approval at a later date.

A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to (1) adopt Resolution No. 20-8840 adopting the provisions of the CARES Act relating to the City's 457 plan and authorizing the City Manager to execute the documents necessary for Nationwide Retirement Services to offer these new provisions to the City's plan participants; and (2) direct staff to revise the plan document accordingly and bring it back to the Council for approval at a later date.

4.L Adoption of Ordinance No. 2018 Amending Zoning Code Chapter 18.102 -20-525

Regulation of Marijuana (Cannabis) [Council Pillar: Enhance Community

Engagement and Transparency]

Recommendation: Adopt Ordinance No. 2018 amending Chapters 18.06 ("Definitions") and

18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to prohibit all commercial cannabis activity.

A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to adopt Ordinance No. 2018 amending Chapters 18.06 ("Definitions") and 18.102 ("Regulation of Marijuana") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" to prohibit all commercial cannabis activity.

#### **STADIUM AUTHORITY CONSENT ITEMS**

4.N 20-456 Action on Bills and Claims for the month of February 2020 [Board Pillar:

Enhance Community Engagement and Transparency

**Recommendation:** Approve the list of Bills and Claims for February 2020.

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

4.0 20-133 Action on Agreement with Singer Associates, Inc. for Communications Consulting Services [Board Pillar: Enhance Community Engagement and

Transparency]

**Recommendation:** 1. Authorize the Executive Director to execute an agreement with Singer Associates, Inc. to provide communications and marketing services for an initial 21-month term ending on March 31, 2022, with maximum compensation not to exceed \$170,000; and

> 2. Authorize the Executive Director to exercise up to three, one-year options to extend the agreement with the last option year ending on March 31, 2025 provided all three option years are exercised, and subject to the appropriation of funds.

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

**4.P** 20-502 Informational Report on Dates and Purpose of Stadium Authority and

> Stadium Manager Meetings for the Period January 1, 2020 to March 31, 2020 [Board Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Note and file the quarterly report on Stadium Authority and Stadium Manager Meetings for the period of January 1, 2020 to March 31, 2020.

> A motion was made by Boardmember Davis, seconded by Vice Chair Hardy, approve staff recommendation.

#### **PUBLIC PRESENTATIONS**

None.

#### CONSENT ITEMS PULLED FOR DISCUSSION

4.B <u>20-517</u> Action on an Ordinance Amending the Compensation for the City Clerk As Set by the Salary Setting Commission [Council Pillar: Enhance Community **Engagement and Transparency**]

**Recommendation:** Approve introduction of Ordinance amending Section 2.20.015 (Compensation), of Chapter 2.20 ("City Clerk") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California" which will amend the compensation for the City Clerk.

**Councilmember Watanabe** pulled this item for further clarification.

**Director of Human Resources Azevedo** addressed Council questions.

A motion was made by Councilmember Watanabe, seconded by Vice Mayor Hardy, to introduce Ordinance No. 2019 amending Section 2.20.015 (Compensation), of Chapter 2.20 ("City Clerk") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California" which will amend the compensation for the City Clerk.

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

4.F 20-448 Adopt a resolution approving the California Statewide Communities Development Authority ("CSCDA") issuance of tax-exempt bonds relating to the financing of 165 Affordable Housing Units at 1834 Worthington Circle, Santa Clara [Council Pillars: Promote and Enhance Economic and Housing Development]

- **Recommendation:** 1. Hold a Tax Equity and Fiscal Responsibility Act public hearing for the issuance of up to \$60,000,000 in tax-exempt private-activity bonds by the California Statewide Communities Development Authority for the benefit of Core Affordable Housing, LLC; and
  - 2. Adopt the resolution approving the issuance of the Bonds by the California Statewide Communities Development Authority not to exceed \$60,000,000, for the benefit of Core Affordable Housing, LLC, to provide financing for the acquisition, construction and development of a 165-unit multifamily rental housing project generally known as Agrihood Senior Apartments.

Item Pulled by Kirk Vartan.

Public Speaker(s): Kirk Vartan (E-Mail)

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

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

A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to (1) hold a Tax Equity and Fiscal Responsibility Act public hearing for the issuance of up to \$60,000,000 in tax-exempt private-activity bonds by the California Statewide Communities **Development Authority for the benefit of Core Affordable Housing,** LLC; and (2) adopt Resolution No. 20-8841 approving the issuance of the Bonds by the California Statewide Communities Development Authority not to exceed \$60,000,000, for the benefit of Core Affordable Housing, LLC, to provide financing for the acquisition, construction and development of a 165-unit multifamily rental housing project generally known as Agrihood Senior Apartments.

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

4.1 20-480 Actions to Approve a New Classification and Modifications to an Unclassified Class Specification and Adopt a Resolution Approving and Adopting Updated Salary Plans for Unclassified Positions [Council Pillar: Manage Strategically Our Workforce Capacity and Resources

- **Recommendation:** 1. Approve the creation of the Legal Executive Assistant class specification and modification to the City Librarian class specification; and
  - 2. Adopt a Resolution to approve the revised unclassified salary plan to satisfy the requirements of California Code of Regulations Section 570.5

Item pulled by Jan Hintermeister.

Public Speaker(s): Jan Hintermeister

A motion was made by Councilmember O'Neill, seconded by Councilmember Davis, to (1) approve the creation of the Legal Executive Assistant class specification and modification to the City Librarian class specification; and(2) adopt Resolution No. 20-8842 to approve the revised unclassified salary plan to satisfy the requirements of California Code of Regulations Section 570.5.

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

4.M 20-471 Action on an Agreement for Services with Vicki Vanderburg, Inc. dba Power Systems Operations (PSO) for Software License Update and Maintenance of the Validate, Estimate, Reconcile, Allocate (VERA) Settlements Software and Provision of Cloud Hosting [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure

**Recommendation:** Authorize the City Manager to execute an Agreement for Services with Vicki Vanderburg, Inc. dba Power System Operations for the Validate, Estimate, Reconcile, Allocate (VERA) Settlements Software license update, maintenance and cloud hosting.

**Councilmember Watanabe** pulled this item for further clarification.

A motion was made by Councilmember Watanabe, seconded by Councilmember Davis, to authorize the City Manager to execute an Agreement for Services with Vicki Vanderburg, Inc. dba Power System Operations for the Validate, Estimate, Reconcile, Allocate (VERA) Settlements Software license update, maintenance and cloud hosting.

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

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

5. 20-431 Public Hearing: Opportunity for Public Comment on the Final version of the 2020-2025 Consolidated Action Plan and the final version of the 2020-2021 Annual Action Plan for U.S. Department of Housing and Urban Development Funds (CDBG & HOME) [Council Pillar: Promote and Enhance Economic and Housing Development]

- Recommendation: 1. Note and File Public Comment on the 2020-2025 Consolidated Action Plan and FY2020-2021 Annual Action Plan for U.S. Department of Housing and Urban Development Funds (CDBG & HOME); and
  - 2. Approve the 2020-2025 Consolidated Plan and FY2020-2021 Annual Action Plan, and direct staff to incorporate all public comments to be submitted to HUD by or before May 15, 2020.

Housing Division Manager Veach and Housing Development Officer Calleja gave a PowerPoint Presentation.

Public Speaker(s): Pilar Furlong (e-Comment) Ben

A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to close the Public Hearing.

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

A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to (1) note and file Public Comment on the 2020-2025 Consolidated Action Plan and FY2020-2021 Annual Action Plan for U.S. Department of Housing and Urban Development Funds (CDBG & HOME); and (2) approve the 2020-2025 Consolidated Plan and FY2020-2021 Annual Action Plan, and direct staff to incorporate all public comments to be submitted to HUD by or before May 15, 2020.

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

**6.** <u>20-514</u> Action on Councilmember Chahal's Request Related to Resident's

Request for Financial Assistance with Sanitary Sewer Overflow [Council

Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Staff makes no recommendation.

Public Speaker(s): Men Tung Lim Benjamin Cooley

**Mayor Gillmor** noted that the meeting would be continued to Thursday, May 14, 2020 at 2:00 p.m. following Item #7.

A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to note and file this report.

**Aye:** 5 - Vice Mayor Hardy, Councilmember O'Neill, Councilmember Davis, Councilmember Watanabe, and Mayor Gillmor

Nay: 1 - Councilmember Chahal

7. <u>20-497</u> Action on Resolution Establishing the Political Campaign Voluntary

Expenditure Limit and Campaign Contribution Limit for the November 3, 2020 Municipal Election [Council Pillar: Enhance Community Engagement

and Transparency]

**Recommendation:** Adopt a Resolution establishing the Political Campaign Voluntary

Expenditure Limit and Campaign Contribution Limit for the November 3,

2020 General Municipal Election with either Option 1 or Option 2.

City Clerk Haggag gave a PowerPoint Presentation.

A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to adopt Resolution No. 20-8843 establishing the Political Campaign Voluntary Expenditure Limit and Campaign Contribution Limit for the November 3, 2020 General Municipal Election with Option 2: City Council set the voluntary expenditure limit to \$46,420 based on CPI adjustments for city-wide contests. City Council sets a separate voluntary expenditure limit for district-based contests not to exceed \$25,000 (with future adjustments based on CPI). City Council sets the individual campaign contributions based on CPI adjustments as:

- \$630 for candidates who accept the voluntary expenditure limit
- $\cdot$  \$310 for candidates who do not accept the voluntary expenditure limit

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

### STADIUM AUTHORITY GENERAL BUSINESS

### 8. Financial Status Reports

A. 20-455 Action on the Santa Clara Stadium Authority Financial Status Report for

Quarter Ending December 31, 2019 [Board Pillars: Ensure Compliance with Measure J and Manage Levi's Stadium & Enhance Community

Engagement and Transparency]

**Recommendation:** Note and file the Santa Clara Stadium Authority Financial Status Report

for the Quarter Ending December 31, 2019.

The Joint Council and Authorities Concurrent/Stadium Authority Meeting is adjourned to and this item will be heard on Thursday,

May 14, 2020 at 2:00 PM.

B. 20-512 Informational Report on Levi's Stadium Activities During the COVID-19

Pandemic [Board Pillar: Ensure Compliance with Measure J and

Manage Levi's Stadium]

**Recommendation:** Note and file the Informational Report on Levi's Stadium activities

during the COVID-19 Pandemic.

The Joint Council and Authorities Concurrent/Stadium Authority Meeting is adjourned to and this item will be heard on Thursday,

May 14, 2020 at 2:00 PM.

**9.** Board Consideration and Possible Action on the Stadium Manager's

Proposal to Add Stadium Builder's Licenses (SBLs) to Field Seating in the North and South Endzones of Levi's Stadium [Board Pillar: Ensure

Compliance with Measure J and Manage Levi's Stadium]

Recommendation: Alternatives 1 and 2:

 "Take no action" and receive further information from the State of California and County of Santa Clara about how large sports gatherings will be conducted to respond to the global COVID-19 pandemic for the 2020 NFL season; and

2. Direct the Stadium Manager, after such information about the 2020 season is received, continue to develop a "similar instrument" proposal that addresses the resolves the Stadium Authority's concerns.

The Joint Council and Authorities Concurrent/Stadium Authority Meeting is adjourned to and this item will be heard on Thursday, May 14, 2020 at 2:00 PM.

### REPORTS OF MEMBERS AND SPECIAL COMMITTEES

The Joint Council and Authorities Concurrent/Stadium Authority Meeting is adjourned to and this item will be heard on Thursday, May 14, 2020 at 2:00 PM.

### CITY MANAGER/EXECUTIVE DIRECTOR REPORT

**10.** <u>20-487</u> Inside Santa Clara Redesign Update [Council Pillar: Enhance Community

**Engagement and Transparency**]

**Recommendation:** Note and file the Inside Santa Clara Redesign Update.

The Joint Council and Authorities Concurrent/Stadium Authority Meeting is adjourned to and this item will be heard on Thursday, May 14, 2020 at 2:00 PM.

<u>20-258</u> Update on City Council and Stadium Authority Staff Referrals [Council

Pillar: Enhance Community Engagement and Transparency]

The Joint Council and Authorities Concurrent/Stadium Authority Meeting is adjourned to and this item will be heard on Thursday, May 14, 2020 at 2:00 PM.

20-398 Tentative Meeting Agenda Calendar (TMAC) [Council Pillar: Enhance

Community Engagement and Transparency]

The Joint Council and Authorities Concurrent/Stadium Authority Meeting is adjourned to and this item will be heard on Thursday, May 14, 2020 at 2:00 PM.

### **ADJOURNMENT**

The meeting adjourned at 9:52 PM.

A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to adjourn the Joint Council and Authorities Concurrent/Stadium Authority Meeting to Thursday, May 14, 2020 at 2:00 PM.

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

The next regular scheduled meeting is on Tuesday evening, May 26, 2020 in the City Hall Council Chambers.

### **MEETING DISCLOSURES**

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

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

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

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

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

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



Draft

# Joint Meeting Minutes Council and Authorities Concurrent Santa Clara Stadium Authority

05/14/2020 2:00 PM

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

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

- · Via Zoom:
  - o https://zoom.us/join Meeting ID: 997-0675-9306 or
  - o Phone: 1(669) 900-6833
- Via the City's eComment (now available during the meeting)
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For those individuals that do not have the above access, the City Cafeteria has been set up to accommodate up to 10 people at a time and public comment will be given from that location.

The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than 10 people gatherings. The Mayor will be present for the meeting with Councilmembers and department heads participating remotely. A limited number of staff will also be present.

### 2:00 PM COUNCIL/STADIUM AUTHORITY REGULAR MEETING

(Meeting continued from May 12, 2020)

Call to Order

**Mayor/Chairperson Gillmor** called the meeting to order at 2:07 PM.

Pledge of Allegiance and Statement of Values

Roll Call Presen

Present: 6 - Vice Mayor/Chair Karen Hardy, Council/Boardmember Teresa O'Neill, Council/Boardmember Debi Davis, Council/Boardmember Kathy Watanabe, Council/Boardmember Raj

Chahal, and Mayor/Chair Lisa M. Gillmor

8. <u>20-555</u> Inside Santa Clara Redesign Update [Council Pillar: Enhance Community

Engagement and Transparency] Continued from May 12, 2020 (RTC

20-455)

**Recommendation:** Note and file the Inside Santa Clara Redesign Update.

Public Information Officer Wright gave a PowerPoint Presentation.

A motion was made by Councilmember O'Neill, seconded by Councilmember Chahal, to note and file the Inside Santa Clara Redesign Update.

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

Gillmor

### **PUBLIC PRESENTATIONS**

None.

### STADIUM AUTHORITY GENERAL BUSINESS

### 9. Financial Status Reports

A. 20-552 Action on the Santa Clara Stadium Authority Financial Status Report for

Quarter Ending December 31, 2019 [Board Pillars: Ensure Compliance with Measure J and Manage Levi's Stadium & Enhance Community Engagement and Transparency] Continued from May 12, 2020 (RTC

20-512)

Recommendation: Note and file the Santa Clara Stadium Authority Financial Status Report

for the Quarter Ending December 31, 2019.

**Stadium Authority Treasurer Lee** gave a PowerPoint Presentation on Item 9.A and Item 9.B.

A motion was made by Boardmember Davis, seconded by Vice Chair Hardy, to (1) note and file the Santa Clara Stadium Authority Financial Status Report for the Quarter Ending December 31, 2019 and (2) direct the Executive Director to prepare a side letter to Stadium Management Company on behalf of the board addressing all the Board's concerns and objections.

Aye: 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Davis, Boardmember Watanabe, Boardmember Chahal, and Chair Gillmor

B. 20-553 Informational Report on Levi's Stadium Activities During the COVID-19 Pandemic [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium Continued from May 12, 2020 (RTC 20-512)

**Recommendation:** Note and file the Informational Report on Levi's Stadium activities during the COVID-19 Pandemic.

> **Stadium Authority Treasurer Lee** gave a PowerPoint Presentation on Item 9.A and Item 9.B.

A motion was made by Boardmember Davis, seconded by Vice Chair Hardy, to note and file the Informational Report on Levi's Stadium activities during the COVID-19 Pandemic.

Aye: 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Davis, Boardmember Watanabe, Boardmember Chahal, and Chair Gillmor

10. 20-554 Board Consideration and Possible Action on the Stadium Manager's Proposal to Add Stadium Builder's Licenses (SBLs) to Field Seating in the North and South Endzones of Levi's Stadium [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium] Continued from May 12, 2020 (RTC 20-495)

### Recommendation: Alternatives 1 and 2:

- 1. "Take no action" and receive further information from the State of California and County of Santa Clara about how large sports gatherings will be conducted to respond to the global COVID-19 pandemic for the 2020 NFL season; and
- 2. Direct the Stadium Manager, after such information about the 2020 season is received, continue to develop a "similar instrument" proposal that addresses the resolves the Stadium Authority's concerns.

**Executive Director Santana** gave a PowerPoint Presentation.

A motion was made by Boardmember Davis, seconded by Boardmember Watanabe, to approve Alternative 1: "Take no action" and receive further information from the State of California and County of Santa Clara about how large sports gatherings will be conducted to respond to the global COVID-19 pandemic for the 2020 NFL season; and Alternative 2: direct the Stadium Manager, after such information about the 2020 season is received, continue to develop a "similar instrument" proposal that addresses the resolves the Stadium Authority's concerns.

Aye: 6 - Vice Chair Hardy, Boardmember O'Neill, Boardmember Davis, Boardmember Watanabe, Boardmember Chahal, and Chair Gillmor

### REPORTS OF MEMBERS AND SPECIAL COMMITTEES

None.

### CITY MANAGER/EXECUTIVE DIRECTOR REPORT

**Executive Director Santana** expressed gratitude for the **Stadium Authority Board** for allowing her to present the proposal and provide context on why it was declined.

20-556
Update on City Council and Stadium Authority Staff Referrals [Council Pillar: Enhance Community Engagement and Transparency] Continued from May 12, 2020 (RTC 20-258)

20-557 Tentative Meeting Agenda Calendar (TMAC) [Council Pillar: Enhance Community Engagement and Transparency] Continued from May 12, 2020 (RTC 20-398)

### **ADJOURNMENT**

The meeting was adjourned at 5:14 PM.

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

Aye: 6 - Vice Mayor/Chair Hardy, Council/Boardmember O'Neill, Council/Boardmember Davis, Council/Boardmember Watanabe, Council/Boardmember Chahal, and Mayor/Chair Gillmor

The next regular scheduled meeting is on Tuesday evening, May 26, 2020 in the City Hall Council Chambers.

### **MEETING DISCLOSURES**

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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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### **Meeting Minutes**

## **Council and Authorities Concurrent Meeting**

05/26/2020 2:00 PM

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

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· Via Zoom:

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

Meeting ID: 997-0675-9306 or

o Phone: 1(669) 900-6833

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The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than 10 people gatherings. The Mayor will be present for the meeting with Councilmembers and department heads participating remotely. A limited number of staff will also be present.

### 2:00 PM COUNCIL REGULAR MEETING

Call to Order

Mayor Gillmor called the meeting to order at 2:04 PM.

Pledge of Allegiance and Statement of Values

Roll Call

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

### **CLOSED SESSION**

<u>20-584</u> Conference with Legal Counsel-Anticipated Litigation (SA)

Pursuant to Gov. Code § 54956.9(4)(d) - Initiation of Litigation

Number of potential cases: 1

20-585 Conference with Legal Counsel-Existing Litigation (CC, SA)

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

Nevarez v. City of Santa Clara, et al., United States District Court, Northern District of California Case No. 5:16-CV-07013-HRL

### **Public Comment**

None.

Convene to Closed Session (Council Conference Room)

The Council convened to Closed Session at 2:07 PM and reconvened the

Regular Open Session at 3:01 PM.

### REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

**City Attorney/Stadium Authority Counsel Doyle** announced that the Stadium Authority Board unanimously authorized the filing of a validation action.

### **CONTINUANCES/EXCEPTIONS**

None.

### SPECIAL ORDER OF BUSINESS

1. 20-546 Verbal Report from City Manager regarding COVID-19 Pandemic [Council Pillar: Enhance Community Engagement and Transparency]

City Manager Santana and Chief Emergency Services Officer **Schoenthal** provided a verbal report on the COVID-19 pandemic.

City Manager Santana noted that Item #5 would be discussed following her update.

5. 20-566 Update on Small Business Assistance Grant Program and Approval of Related Budget Amendment [Council Pillar: Promote and Enhance Economic and Housing Development]

- **Recommendation:** 1. Note and file the Update on Small Business Assistance Grant Program.
  - 2. Approve the related FY 2019/20 Budget Amendments, decreasing the Food Distribution Program by \$300,000 in the Other City Departments Operating Grant Trust Fund and augmenting the City Manager's Office operating budget by \$300,000 for a total Small Business Assistance Grant Program cost of \$1,100,000 in the General Fund.

**Assistant City Manager Shikada** gave a PowerPoint Presentation.

A motion was made by Councilmember Chahal, seconded by Councilmember Hardy, to (1) note and file the Update on Small Business Assistance Grant Program and (2) approved the related FY 2019/20 Budget Amendments, decreasing the Food Distribution Program by \$300,000 in the other City Departments Operating Grant Trust Fund and augmenting the City Manager's Office operating budget by \$300,000 for a total Small Business Assistance Grant Program cost \$1,100,000 in the General Fund.

Ave: 6 - Vice Mayor Hardy, Councilmember O'Neill, Councilmember Davis, Councilmember Watanabe, Councilmember Chahal, and Mayor Gillmor

### **CONSENT CALENDAR**

A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to approve the balance of the Consent Calendar (Except Items 2.C, 2.N, 2.P; Mayor abstained on Items 2.N and 2.Q). Aye: 6 - Vice Mayor Hardy, Councilmember O'Neill, Councilmember Davis, Councilmember Watanabe, Councilmember Chahal, and Mayor Gillmor

2.A 20-276 Action on Council and Authorities Concurrent and Special City Council

Meeting Minutes [Council Pillar: Enhance Community Engagement and

Transparency]

**Recommendation:** Note and file the:

Special City Council Meeting Minutes on March 9, 2020

Council and Authorities Concurrent Meeting Minutes of March 17, 2020 Special Council and Authorities Concurrent Meeting Minutes March 24,

2020

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

2.B 20-08 Board, Commissions and Committee Minutes [Council Pillar: Enhance

Community Engagement and Transparency]

**Recommendation:** Note and file the Minutes of:

Civil Service Commission - February 10, 2020 Civil Service Commission - March 12, 2020

A motion was made by Councilmember Davis, seconded by Vice

Mayor Hardy, to approve staff recommendation.

2.D 20-537 Adoption of Ordinance No. 2019 Amending the Compensation for the City

Clerk As Set by the Salary Setting Commission [Council Pillar: Enhance

Community Engagement and Transparency]

**Recommendation:** Adopt Ordinance No. 2019 amending Section 2.20.015 (Compensation),

of Chapter 2.20 ("City Clerk") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California" which will amend the

compensation for the City Clerk.

A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to adopt Ordinance No. 2019 amending Section 2.20.015

(Compensation), of Chapter 2.20 ("City Clerk") of Title 2

("Administration and Personnel") of "The Code of the City of Santa Clara, California" which will amend the compensation for the City

Clerk.

2.E 20-342 Action on Award of Contract for the 2020 Annual Street Maintenance and Rehabilitation Project (CE 19-20-01) [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

- Recommendation: 1. Award the Public Works Contract for the 2020 Annual Street Maintenance and Rehabilitation Project (CE 19-20-01), including the Base Bid, Add Alternate A, and Add Alternate B, to the lowest responsive and responsible bidder, DeSilva Gates Construction LP, in the amount of \$6,332,671 and authorize the City Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of this Project;
  - 2. Authorize the City Manager to execute change orders up to approximately 10 percent of the original contract price, or \$633,267, for a total project budget not to exceed amount of \$6,965,938; and
  - 3. Approve the budget amendment in the Streets and Highways Capital Fund to recognize transfers of \$149,000 from the Water Utility Fund and \$93,887 from the Sewer Utility Fund, and increase the Annual Street Maintenance and Rehabilitation Program project by \$242,887; in the Water Utility Fund, increase the transfer to the Streets and Highways Capital Fund and reduce the unrestricted ending fund balance by \$149,000; and in the Sewer Utility Fund, increase the transfer to Streets and Highways Capital Fund and reduce the unrestricted ending fund balance by \$93,887.

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

2.F 20-347 Action on Consent to Assignment and Assumption of Reimbursement Agreement for the Patrick Henry Specific Plan Project [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development

- Recommendation: 1. Authorize the City Manager to issue consent to the Assignment and Assumption of Reimbursement Agreement between the Sobrato Organization, LLC and 4590 Patrick Henry LLC; and
  - 2. Authorize the City Manager to execute all future consent to assignment agreements for approved reimbursement agreements.

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

2.G 20-368 Action on a Resolution Authorizing the Filing of an Application for FY 2020/21 Transportation Development Act Funding [Council Pillar: Deliver and Enhance Quality Efficient Services and Infrastructure]

**Recommendation:** Adopt a Resolution Authorizing the Filing of an Application with the Metropolitan Transportation Commission for Allocation of Transportation Development Act Article 3, Pedestrian and Bicycle Project Funding for Fiscal Year 2020/21.

> A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to adopt Resolution No. 20-8844 authorizing the Filing of an Application with the Metropolitan Transportation Commission for Allocation of Transportation Development Act Article 3, Pedestrian and Bicycle Project Funding for Fiscal Year 2020/21.

2.H 20-443 Action on Agreements for Land Surveying Services for Public Works Projects [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

- **Recommendation:** 1. Approve and authorize the City Manager to execute an agreement for the Performance of Services with BKF Engineers (\$150,000), R.E.Y. Engineers, Inc. (\$150,000) and Sandis (\$150,000) to perform on-call land surveying services for a combined amount not-to-exceed \$450,000 over the three-year terms of the agreements; subject to the appropriation of funds;
  - 2. Authorize the City Manager to amend agreements not-to-exceed amounts as long as the cumulative total does not exceed \$450,000; and
  - 3. Authorize the City Manager to exercise up to two one-year extensions for each agreement with no increase in compensation in the event that the work is not completed by the Agreement end dates and make minor modifications to the agreements, if necessary, subject to the appropriation of funds.

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

2.1 20-445 Action on the Approval of State Homeland Security Grant Funding and Related Budget Amendment [Council Pillar - Deliver and Enhance High Quality Efficient Services and Infrastructure]

- **Recommendation:** 1. Accept and approve the State Homeland Security Grant funding of \$159,290 for purchase of related Fire Department equipment;
  - 2. Accept and approve the State Homeland Security Grant funding of \$154,000 for the purchase of a Regional Asset and training and exercise equipment;
  - 3. Approve the related budget amendment in the Fire Operating Grant Trust Fund to recognize grant revenue in the amount of \$159,290 and establish a State Homeland Security Grant Program 2019 appropriation in the amount of \$159,290;
  - 4. Approve the related budget amendment in the Police Operating Grant Trust Fund to recognize grant revenue in the amount of \$154,000 and establish a State Homeland Security Grant Program 2019 appropriation in the amount of \$154,000:
  - 5. Authorize the Chief of Police, City Manager and Finance Director to sign grant-related documents, if any, including but not limited to a Memorandum of Understanding with CalOES;
  - 6. Authorize the City Manager to execute a purchase order(s) for the purchase of eight (8) mobile crash barriers and five (5) portable bollards for a term starting on or about May 19, 2020 and ending on or about May 31, 2021 for a total amount not-to-exceed \$465,225; and
  - 7. Authorize the City Manager to execute additional purchase orders for future purchases of mobile crash barriers and portable bollards, subject to the appropriation of funds.

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

**2.J** 20-469 Action on Monthly Financial Status and Investment Reports for March 2020 and Approve the Related Budget Amendments [Council Pillar: Enhance Community Engagement and Transparency]

Recommendation: Note and file the Monthly Financial Status and Investment Reports for March 2020 as presented and Approve Related Budget Amendments.

> A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to note and file the Monthly Financial Status and Investment Reports for March 2020 as presented and approve Related Budget Amendments.

2.K 20-496 Action on a Funding Agreement with CoreSite Real Estate SV9, L.P., Relating to City Predesign Engineering Activities for the Stender Way Substation Project and Related Budget Amendment [Council Pillar: Deliver and Enhance Quality Efficient Services and Infrastructure]

- **Recommendation:** 1. Authorize the City Manager to execute the Funding Agreement with CoreSite Real Estate SV9, L.P. for \$700,000;
  - 2. Direct Finance Department to create a new CIP project number for the Stender Way Junction Substation project;
  - 3. Approve a budget amendment in the Electric Utility Capital Fund to recognize developer contributions and establish an appropriation in the amount of \$700,000 for the new Stender Way Junction Substation project as a part of the implementation of this Agreement to accumulate the Developer Contributions and resulting charges; and
  - 4. Delegate authority to the City Manager, or designee, to make minor modifications to the Agreement, and execute subsequent Funding Agreements and amendments with other applicants.

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

2.L 20-511 Action on Healthier Kids Foundation FY2019/20 Third Quarter (FINAL) Report [Council Pillar: Enhance Community Engagement and Transparency]

Recommendation: Note and file the Healthier Kids Foundation FY 2019/20 Third Quarter (Final) report.

> A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to note and file the Healthier Kids Foundation FY 2019/20 Third Quarter (Final) report.

2.M 20-526 Action to Authorize the City Manager to Execute Amendment No. 6 With LPA, Inc. in the Amount of \$50,000 for Construction Support Services. Delegation of Authority for Record Drawing Documentation in the Amount of \$45,000, and Related Budget Amendment in the total amount of \$95,000 for the Reed & Grant Streets Sports Park [Council Pillar: Enhance Community Sports, Recreation, and Arts Assets]

- **Recommendation:** 1. Approve the budget amendment in the Parks and Recreation Capital Fund to increase the Youth Soccer Fields & Athletic Facilities - Reed & Grant Street project by \$95,000, funded by a reduction to the Ending Fund Balance - Unallocated Mitigation Fee Act (MFA) Fees;
  - 2. Authorize the City Manager to execute Amendment No. 6 with LPA, Inc. in the amount of \$50,000 for additional construction support services related to the Reed & Grant Street Sports Park Project; and
  - 3. Delegate Authority to the City Manager to negotiate and execute an agreement in an amount not to exceed \$45,000 for record drawing documentation for the Reed & Grant Street Sports Park Project.

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

2.0 20-539 Adoption of a New Resolution of Intention With a Revised Public Hearing Date of June 9, 2020 for Maintenance District No. 183 - Santa Clara Convention Center Complex [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

Recommendation: Adopt a New Resolution of Intention With a Revised Public Hearing Date of June 9, 2020 for Maintenance District No. 183 - Santa Clara Convention Center Complex.

> A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to adopt a New Resolution of Intention No. 20-8845 with a Revised Public Hearing Date of June 9, 2020 for Maintenance **District No. 183 - Santa Clara Convention Center Complex.**

### 2.Q 20-572

Adoption of a Resolution extending the Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for Tenants with Incomes Affected by the Novel Coronavirus (COVID-19) to June 30, 2020 [Council Pillar: Promote and Enhance Economic and Housing Development]

**Recommendation:** Adopt a resolution extending the ordinance on the moratorium on residential evictions for the nonpayment of rent, as set forth in Chapter 8.65 of Title 8 of the Code of the City of Santa Clara, which shall hereby be in effect from June 1, 2020 to June 30, 2020.

> Mayor Gillmor abstained from this item due to her potential conflict of interest by owning rental properties.

A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to adopt a Resolution No. 20-8846 extending the ordinance on the moratorium on residential evictions for the nonpayment of rent, as set forth in Chapter 8.65 of Title 8 of the Code of the City of Santa Clara, which shall hereby be in effect from June 1, 2020 to June 30, 2020.

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

Abstained: 1 - Mayor Gillmor

### **PUBLIC PRESENTATIONS**

None.

### CONSENT ITEMS PULLED FOR DISCUSSION

2.C 20-102 Action on a Contract Amendment and Direction to Proceed with Issuance of a Notice of Preparation for the Freedom Circle Focus Area [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

### Recommendation: Alternative 1:

Approve the contract amendment and reimbursement agreement for the revised scope of services with MIG, Inc. and accept the report on the Freedom Circle / Greystar General Plan Amendment Notice of Preparation as presented by staff.

**Councilmember O'Neill** pulled this item for further clarification.

**Director of Community Development Crabtree** gave a PowerPoint Presentation.

A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to approve Alternative 1: approve the contract amendment and reimbursement agreement for the revised scope of services with MIG, Inc. and accept the report on the Freedom Circle / Greystar General Plan Amendment Notice of Preparation as presented by staff.

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

2.N 20-536 Adoption of a New Resolution of Intention With a Revised Public Hearing Date of June 9, 2020 for Parking Maintenance District No. 122 - Franklin Square [Council Pillar: Deliver and Enhance Quality Efficient Services and Infrastructure]

**Recommendation:** Adopt a New Resolution of Intention With a Revised Public Hearing Date of June 9, 2020 for Parking Maintenance District No. 122 - Franklin Square.

> Mayor Gillmor recused herself from this item due to her business in Franklin Square and left the dais.

**Vice Mayor Hardy** presided over the meeting.

Councilmember Chahal pulled this item for further clarification.

A motion was made by Councilmember Chahal, seconded by Councilmember Davis, to adopt a New Resolution of Intention No. 20-8847 with a Revised Public Hearing Date of June 9, 2020 for Parking Maintenance District No. 122 - Franklin Square.

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

Abstained: 1 - Mayor Gillmor

2.P 20-571 Action on Landfill Post-Closure Operation and Management Agreement for

Related Santa Clara project [Council Pillar: Promote and Enhance

Economic and Housing Development]

**Recommendation:** Approve and authorize the City Manager to execute the Landfill

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

Councilmember Chahal pulled this item for further clarification.

Assistant City Manager Shikada gave a PowerPoint Presentation.

A motion was made by Councilmember Chahal, seconded by Councilmember Davis, to approve and authorize the City Manager to execute the Landfill Post-Closure Operations and Management Agreement with Related Santa Clara, LLC for the Related Santa Clara development project and authorize the City Manager to obtain additional insurance programs to bolster the limits of liability available to City under the Project insurance programs.

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

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

3. <u>20-1</u>69 Action on the Annual Report and Resolution of Intention for Levy of Annual Assessment for the Santa Clara Tourism Improvement District [Council Pillar: Promote and Enhance Economic and Housing Development]

- **Recommendation:** 1. Approve the Annual Report for the Santa Clara Tourism Improvement District;
  - 2. Adopt a Resolution of Intention to levy and collect assessments with the Santa Clara Tourism Improvement District area for Fiscal Year 2020/21 from hotel guests at the rate of \$1.00 per occupied hotel/motel room night; and
  - 3. Set the date for the Public Hearing for June 23, 2020.

Assistant to City Manager Thome and Eron Hodges (Chair of Tourism Improvement District) gave a PowerPoint Presentation.

A motion was made by Councilmember Davis, seconded by Councilmember Hardy, to (1) approve the Annual Report for the Santa Clara Tourism Improvement District; (2) adopt Resolution of Intention No. 20-8848 to levy and collect assessments with the Santa Clara Tourism Improvement District area for Fiscal Year 2020/21 from hotel guests at the rate of \$1.00 per occupied hotel/motel room night; and (3) set the date for the Public Hearing for June 23, 2020.

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

**4.** 20-472

Adoption of Resolutions Approving Financing for the City of Santa Clara's (the "City") portion of Capital Costs at the Regional Wastewater Facility (RWF) in an Amount Not-to-Exceed \$50,000,000 [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

### **Recommendation:** That the Council:

- Adopt the Resolution authorizing the Installment Sale Financing in an amount not to exceed \$50,000,000 to provide interim financing for capital costs of the Regional Wastewater Facility, approving the final form and execution of financing documents and authorizing certain other related actions consistent with the financing; and
- 2. Authorize the City Manager, Director of Finance, City Attorney, and Assistant City Clerk to execute all required agreements necessary to consummate any of the transactions contemplated by the agreements and documents approved under the Resolution and to make any minor non-substantive or routine changes to complete the financing transaction.

### That the Financing Corporation:

- Adopt the Resolution authorizing the Installment Sale Financing in an amount not to exceed \$50,000,000 to provide interim financing for capital costs of the Regional Wastewater Facility, approving the final form and execution of financing documents and authorizing certain other related actions consistent with the financing; and
- 2. Authorize the Executive Director, Director of Finance and other officers to execute all required agreements necessary to consummate any of the transactions contemplated by the agreements and documents approved under the Resolution and to make any minor non-substantive or routine changes to complete the financing transaction.

**Director of Water & Sewer Utilities Welling** gave a PowerPoint Presentation.

A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, that the Council: (1) adopt the Resolution No. 20-8849 authorizing the Installment Sale Financing in an amount not to exceed \$50,000,000 to provide interim financing for capital costs of the Regional Wastewater Facility, approving the final form and execution of financing documents and authorizing certain other related actions consistent with the financing; and (2) Authorize the City Manager, Director of Finance, City Attorney, and Assistant City Clerk to execute all required agreements necessary to consummate any of the transactions contemplated by the agreements and documents approved under the Resolution and to make any minor non-substantive or routine changes to complete the financing transaction.

That the Financing Corporation:

(1) adopt the Resolution No. authorizing the Installment Sale Financing in an amount not to exceed \$50,000,000 to provide interim financing for capital costs of the Regional Wastewater Facility, approving the final form and execution of financing documents and authorizing certain other related actions consistent with the financing; and 2. Authorize the Executive Director, Director of Finance and other officers to execute all required agreements necessary to consummate any of the transactions contemplated by the agreements and documents approved under the Resolution and to make any minor non-substantive or routine changes to complete the financing transaction.

Aye: 6 - Vice Mayor/PFFC Vice President Hardy, Councilmember/PFFC Director O'Neill, Councilmember/PFFC Director Davis, Councilmember/PFFC Director Watanabe, Councilmember/PFFC Director Chahal, and Mayor/PFFC President Gillmor

### REPORTS OF MEMBERS AND SPECIAL COMMITTEES

None.

### CITY MANAGER/EXECUTIVE DIRECTOR REPORT

**City Manager Santana** invited residents to attend on City Infrastructure events available via Facebook Live and Zoom meetings.

<u>20-528</u> Update on City Council and Stadium Authority Staff Referrals [Council Pillar: Enhance Community Engagement and Transparency]

20-212 Tentative Meeting Agenda Calendar (TMAC) [Council Pillar: Enhance Community Engagement and Transparency]

### **ADJOURNMENT**

The meeting was adjourned at 5:55 in memory of **Bernardino R. Laroya** (Long-Time Santa Clara Resident), **Sam Gill** (Life-Long Santa Clara Resident), **Raphael Roman Jimenez** (Long-Time Santa Clara Resident), and **Sahm Joushanpoosh** (Beloved Team member and Founding member of A Slice of New York Workers Cooperative).

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

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

20-593 Adjournment of the May 26, 2020 City Council Meeting Post Meeting Material

The next regular scheduled meeting is on Tuesday evening, June 9, 2020 in the City Hall Council Chambers.

### **MEETING DISCLOSURES**

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

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

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

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

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

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



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

### Agenda Report

20-567 Agenda Date: 7/14/2020

### REPORT TO COUNCIL

### **SUBJECT**

Action on Monthly Financial Status and Investment Reports for May 2020 and Approve the Related Budget Amendments [Council Pillar: Enhance Community Engagement and Transparency]

### **BACKGROUND**

In compliance with the Charter of the City of Santa Clara and the adopted Investment Policy, the following reports for May 2020 are submitted for your information. The financial review as of May 31, 2020 provides a year-to-date financial update to the City Council for the current fiscal year. Analysis of the revenues collected and all expenditures through May 31, 2020 measures the level of adherence to the established resource allocation plan and allows the City to monitor and project revenues and expenditures throughout the year.

The Adopted Budget incorporates the estimated revenues and planned expenditures for all funds. The attached Financial Status Report provides the budget to actual revenue and expenditure summaries for the General Fund, Special Revenue Funds and Enterprise Operating Funds, as well as expenditure summary for Capital Improvement Funds and Fund Reserve Balances. Any significant variances are explained in the report.

In accordance with City Council Policy 051 - Donations to the City, included in this report is a monthly activity and annual summary of donations received by department. Although the requirement of the policy is to report quarterly, in its ongoing effort to streamline reporting, the City will include this information monthly in the financial status report.

### **DISCUSSION**

### **Monthly Financial Status Report (Attachment 1)**

The attached report summarizes the City's financial performances as of May 31, 2020. Financial analysis for the report is provided for the General Fund, select Special Revenue Funds, Enterprise Operating Funds, and Capital Improvement Funds.

With 11 months or 91.7% of the fiscal year complete, General Fund revenues are trending below budget at 84.2% due to the change in budgeting methodology, moving the City from a cash basis to a modified accrual basis, as well as the negative impacts associated with COVID-19. General Fund expenditures are at 84.5% of budget and are expected to end the year with savings. Total revenues for Enterprise Funds (Electric, Water, Sewer, Cemetery, Solid Waste, and Water Recycling) are at 88.6% while total expenses are at 98.1%.

In the month of May, the City received \$100,225 in donations, bringing the year-to-date donations total to \$264,109.

20-567 Agenda Date: 7/14/2020

The COVID-19 response and the current economic downturn are significantly impacting the City's revenue collections, particularly transient occupancy tax, sales tax, and fees for services and classes. On a national level, economic conditions have worsened in a very short period of time and many economists are now projecting one of the worst recessions in generations. In May, the U.S. unemployment rate remained high at 13.3% (due to classification issues, the Bureau of Labor Statistics has indicated that this figure is understated by approximately three percentage points). Significant impacts are also expected on the State and local level. After the largest monthly drop in State history in April 2020, the California unemployment rate of 16.3% in May 2020 was slightly below the revised April unemployment rate of 16.4%. The unadjusted unemployment rate in the San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) was 11.2% in May 2020, down from a revised 12.0% in April 2020 and significantly higher than the May 2019 level of 2.2%. The State of California as well as many local jurisdictions are addressing significant projected shortfalls as part of the budget processes for FY 2020/21.

Based on the available data, revenues are tracking to end the year \$10 million to \$15 million below the budget, which will be partially offset by expenditure savings in FY 2019/20. In FY 2020/21, a General Fund shortfall of almost \$23 million is projected as presented in the FY 2020/21 and FY 2021/22 Biennial Capital Budget. In response to this projected drop in revenues, several cost savings/budget balancing measures were implemented April 1, 2020 to generate current year savings as well as savings that will be used in FY 2020/21 and in the development of the FY 2021/22 and FY 2022/23 Biennial Operating Budget. These actions include a hiring freeze and controls around overtime, as-needed staff, marketing, travel, technology and vehicle purchases.

While actions are being taken to reduce the General Fund impact in FY 2019/20, the General Fund may end the year in a negative position and, in that case, would have to draw on the Budget Stabilization Reserve to balance the budget in 2019/20. The City currently has \$57 million in this reserve to address any negative balance after factoring in the FY 2020/21 Adopted Budget actions which drew on these reserves as an interim strategy to present a balanced budget on July 1. Final FY 2019/20 performance and the resulting impact to the reserve will be brought forward in late summer/fall 2020 upon the reconciliation of year-end activities. Further discussion is included in Attachment 1.

### **Monthly Investment Report (Attachment 2)**

All securities held by the City of Santa Clara as of May 31, 2020 were in compliance with the City's Investment Policy Statement regarding current market strategy and long-term goals and objectives. All securities held are rated "A" or higher by two nationally recognized rating agencies. There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

The City's investment strategy for May 2020 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years form the date of purchase. This strategy ensures safety of the City's funds, provides liquidity to meet the City's cash needs, and earns a reasonable portfolio return of 1.71%.

### **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

20-567 Agenda Date: 7/14/2020

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**

Approval of the FY 2020/21 Budget Amendments included in Attachment 3 is recommended in this report. From time to time, adjustments to the budget are required to reflect new information, align budgets with actual revenues and expenses, and correct for inadvertent errors. As stated below and in Attachment 3, a transfer of \$20,000 from the Convention Center Enterprise Fund to the City Manager's Office is necessary to provide additional resources for the Small Business Assistance Program. The Operating Grant Trust Fund line item refers to the funds received from the State of California under the CARES Act to be used towards homelessness, public health, public safety, and other services relating to the COVID-19 emergency. This item also includes additional donations received from the Mission City Community Fund for the City's food distribution program.

Net Budget Change – FY 2020/21 Budget Amendments							
Fund	Source of Funds	Use of Funds					
General Fund	\$20,000	\$20,000					
Convention Center Enterprise Fund	\$0	\$0					
Other City Departments Operating Grant	\$1,608,395	\$1,608,395					
Trust Fund							
Total Net Budget Change	\$1,628,395	\$1,628,395					

### 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>.

### RECOMMENDATION

Note and file the Monthly Financial Status and Investment Reports for May 2020 as presented and Approve Related Budget Amendments.

Reviewed by: Kenn Lee, Director of Finance Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

- 1. Monthly Financial Status Report May 2020
- 2. Monthly Investment Report May 2020
- 3. FY 2020/21 Budget Amendments



# **MONTHLY FINANCIAL STATUS REPORT**

May 2020

# Financial Status Report as of May 31, 2020

This report summarizes the City's financial performance for the month ended May 31, 2020. Financial analysis for the report is provided for the General Fund, select Special Revenue Funds, Enterprise Operating Funds, and Capital Improvement Funds. Financial information included in this report is unaudited.

### **General Fund**

The General Fund is the major operating fund for the City and includes multiple programs, services, and activities for the residents of the City. The adopted budget for both operating revenues and expenditures for fiscal year 2019/20 was \$263.2 million. The amended budget for both was revised to \$274.9 million to reflect carryover appropriations from fiscal year 2018/19 and various budget amendments approved by the City Council through May 2020.

At the end of fiscal year 2018/19, the City implemented an accounting change that switched from a cash basis to a modified-accrual basis, which is reflected in the tables of this report. As a result of this change, a number of revenues were tracking lower than prior year collections and appear below par through May due to the timing of payments. In addition, General Fund revenues have been significantly impacted by COVID-19 and are now expected to end the year below the budgeted estimate. While revenues are expected to fall below budget, expenditures are tracking within budgeted expectations through May and should end the year with savings.

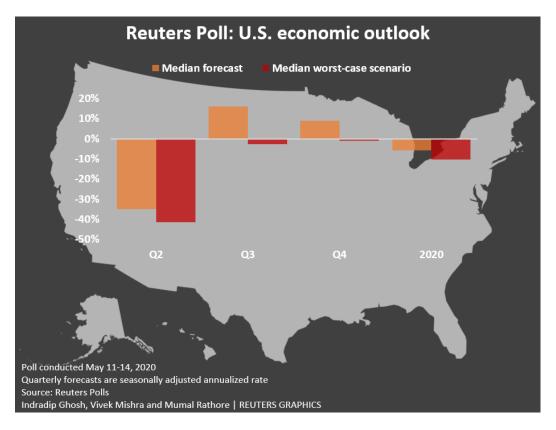
The COVID-19 virus and associated safety precautions have impacted revenue collections in areas such as transient occupancy tax, sales tax, fees for services and classes, and interest earnings as well as City costs. With the shelter-in-place and other actions residents and businesses have been taking to reduce the spread of the virus, economic activity in this region and throughout the country has experienced a significant decline.

On a national level, economic conditions have worsened in a very short period of time and many economists are now projecting one of the worst recessions in generations. In the May 2020 Reuters poll of economists, a recovery is still forecast for the second half of 2020, but the economy is not expected to come close to regaining the ground it lost this year. The economists are now projecting the 2<sup>nd</sup> quarter 2020 to shrink an unprecedented 35% after contracting 4.8% in the first quarter 2020. According to the poll, growth of 16% and 9% are projected in the last two quarters of 2020, compared with growth of 12% and 9% in the previous poll. In the worst-case scenario, however, declines of 2.5% and 1% are projected for the last two quarters of 2020.

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 $<sup>{}^{1}\,\</sup>underline{\text{https://www.reuters.com/article/uretuers-usa-economy-poll/near-term-us-economic-outlook-darkens-slow-recovery-to-follow-reuters-poll-idUSKBN22R063}$ 

# Financial Status Report as of May 31, 2020



In May, the U.S. unemployment rate remained high at 13.3%. It is important to note that in its May 2020 Employment Situation news release, the Bureau of Labor Statistics discusses a data categorization issue that continues to understate the unemployment rate. "As was the case in March and April, household survey interviewers were instructed to classify employed persons absent from work due to coronavirus-related business closures as unemployed on temporary layoff. However, it is apparent that not all such workers were so classified. BLS and he Census Bureau are investigating why this misclassification error continues to occur and are taking additional steps to address this issue. If the workers who were recorded as employed but absent from work due to "other reasons" (over and above the number absent for other reasons in a typical May), had been classified as unemployed on temporary layoff, the overall unemployment rate would have been about 3 percentage points higher than reported (on a not seasonally adjusted basis)."<sup>2</sup>

Significant impacts are also expected on the State and local level. After the largest monthly drop in State history in April 2020, the California unemployment rate of 16.3% in May 2020 was slightly below the revised April unemployment rate of 16.4%. This unemployment figure remains well above the 12.3% experienced during the height of the Great Recession.<sup>3</sup> The unadjusted unemployment rate in

<sup>&</sup>lt;sup>2</sup> https://www.bls.gov/news.release/pdf/empsit.pdf

<sup>&</sup>lt;sup>3</sup> https://www.edd.ca.gov/newsroom/unemployment-june-2020.htm

# Financial Status Report as of May 31, 2020

the San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) was 11.2% in May 2020, down from a revised 12.0% in April 2020 and significantly higher than the May 2019 level of 2.2%.

In its June 2020 projections, the Federal Reserve (Fed) expects unemployment to end 2020 at 9.3% and remain at higher levels with a projection of 5.5% unemployment in 2022. The Fed is also expecting a significant economic contraction with Gross Domestic Product (GDP) projected to decline by 6.5% in 2020. At a press conference following the Fed's two-day policy meeting, Fed Chair Jerome H. Powell commented that the extent of the downturn and pace of recovery remain "extraordinarily uncertain". According to Powell, "This is the biggest economic shock, in the U.S. and in the world, really, in living memory". "We went from the lowest level of unemployment in 50 years to the highest level in close to 90 years, and we did it in two months."

The State of California is projecting a \$54.3 billion impact as a result of COVID-19, including a \$41.2 billion drop in tax revenues and approximately \$13.1 billion in additional costs. This includes projected drops of 27.2% in sales taxes and 25.5% in personal income taxes. For context, this impact is three and a half times the State's "rainy day" emergency reserves and is almost as much as the \$57.1 billion spent on K-12 schools and community colleges spent last year. The state also projects the 2020 unemployment rate will increase to 18%, up 50% from the Great Recession.<sup>7</sup>

Many local jurisdictions are now projecting significant shortfalls. For instance, the City of San José addressed a \$71.6 million General Fund budget deficit in its FY 2020/21 Proposed Budget, reducing staffing and programs throughout the organization. In addition to the General Fund, San Jose's Airport, Convention Center, and Development Fee Program were also significantly impacted.<sup>8</sup> The City of Palo Alto will eliminate 74 full time positions and make cuts to many services and capital funding to address a projected revenue shortfall of almost \$39 million.<sup>9</sup>

Santa Clara's General Fund revenues will also be significantly impacted immediately and over the longer term based on the declining economic situation. Revenues are tracking to end the year \$10 million to \$15 million below the budget, which will be partially offset by expenditure savings in FY 2019/20. In FY 2020/21, a General Fund shortfall of almost \$23 million is projected as presented in the Proposed FY 2020/21 and FY 2021/22 Biennial Capital Budget.

Several cost savings measures were implemented April 1, 2020 to generate current year savings as well as savings that will be used in FY 2020/21 and in the development of the FY 2021/22 and FY 2022/23 Biennial Operating Budget. These actions include a hiring freeze and controls around overtime, as-needed staff, marketing, travel, technology and vehicle purchases. In the current year, the goal will be to generate \$5 million to \$10 million in General Fund savings to help offset anticipated revenue reductions resulting from COVID-19.

<sup>4</sup> https://www.labormarketinfo.edd.ca.gov/file/lfmonth/sjos\$pds.pdf

<sup>&</sup>lt;sup>5</sup> https://www.nytimes.com/2020/06/10/business/economy/federal-reserve-economy-coronavirus.html

<sup>6</sup> https://www.politico.com/news/2020/06/10/fed-economy-shrink-65-percent-2020-311212

<sup>7</sup> https://www.mercurynews.com/2020/05/07/california-budget-to-take-54-3-billion-coronavirus-hit/

<sup>8</sup> https://www.sanjoseca.gov/home/showdocument?id=58406

<sup>&</sup>lt;sup>9</sup> https://www.mercurynews.com/2020/05/27/palo-alto-will-eliminate-74-full-time-positions-at-city-hall-cut-back-popular-services/

# Financial Status Report as of May 31, 2020

While there remains uncertainty regarding how the COVID-19 will impact the local economy and the City's budget, the General Fund may end the year in a negative position and, in that case, would have to draw on the Budget Stabilization Reserve to balance the budget in 2019/20. The City currently has \$57 million in this reserve to address any negative balance after factoring in the use of \$22.7 million of this reserve as an interim strategy to balance the FY 2020/21 budget. A high-level General Fund budget balancing strategy is included in the FY 2020/21 and FY 2021/22 Biennial Capital Budget, and specific budget actions for FY 2020/21 are planned to be brought forward in September 2020.

Staff will closely monitor the City's financial performance during this uncertain time and provide updates as part of future Monthly Financial Reports.

# Financial Status Report as of May 31, 2020

### **General Fund Revenues**

As of May 31, 2020, \$231.4 million or 84.2% of the General Fund estimated revenue was received. Revenue is currently tracking below par of 91.7% and below the prior year. As mentioned above, the change in budgeting methodology to an accrual basis impacted the timing of revenue receipts when compared to FY 2018/19. Factoring out these timing differences, revenues are still expected to end the year below budget as a result of the COVID-19 impacts as discussed below.

# CITY OF SANTA CLARA GENERAL FUND REVENUE OVERVIEW AND COMPARISON BY TYPE

	FISCAL YEAR 2019/20			PY REVENUE COMPARISON			
						\$	
Function	Adopted Budget	Amended Budget	Actual Through 05/31/2020	Percentage Received	Actual Through 05/31/2019	Change From Prior Year	Percentage Change
TAXES							
Sales Tax	\$ 58,200,400	\$ 58,200,400	\$ 43,124,235	74.10%	\$ 54,460,246	\$ (11,336,011)	-20.82%
Property Tax	64,438,315	64,438,315	54,446,250	84.49%	51,628,067	2,818,183	5.46%
Transient Occupancy Tax	23,002,500	23,002,500	15,283,812	66.44%	21,505,708	(6,221,896)	-28.93%
Other Taxes	6,080,151	6,080,151	4,914,439	80.83%	5,721,182	(806,743)	-14.10%
Total Taxes	151,721,366	151,721,366	117,768,736	77.62%	133,315,203	(15,546,467)	-11.66%
LICENSES & PERMITS							
Business Licenses	959,500	959,500	785,647	81.88%	857,216	(71,569)	-8.35%
Fire Operation Permits	2,250,000	2,250,000	1,840,881	81.82%	2,319,689	(478,808)	100.00%
Building Permits	4,657,500	4,657,500	4,450,949	95.57%	7,948,666	(3,497,717)	-44.00%
Electric Permits	517,500	517,500	543,008	104.93%	733,715	(190,707)	-25.99%
Plumbing Permits	310,500	310,500	497,206	160.13%	610,088	(112,882)	-18.50%
Mechanical Permits	258,750	258,750	440,397	170.20%	570,029	(129,632)	-22.74%
Miscellaneous Permits	46,575	46,575	58,435	125.46%	85,256	(26,821)	-31.46%
<b>Total Licenses &amp; Permits</b>	9,000,325	9,000,325	8,616,523	95.74%	13,124,659	(4,508,136)	-34.35%
FINES & PENALTIES	1,689,225	1,689,225	1,124,951	66.60%	1,837,135	(712,184)	-38.77%
INTERGOVERNMENTAL	168,755	5,239,529	5,900,502	112.62%	2,793,015	3,107,487	111.26%
CHARGES FOR SERVICES	33,144,722	33,180,892	31,484,340	94.89%	35,499,378	(4,015,038)	-11.31%
CONTRIBUTION IN LIEU	24,333,275	24,333,275	22,305,502	91.67%	21,170,040	1,135,462	5.36%
USE OF MONEY & PROPERTY							
Interest	5,697,500	5,697,500	3,161,430	55.49%	4,630,102	(1,468,672)	-31.72%
Rent	8,658,991	8,658,991	7,880,072	91.00%	7,711,525	168,547	2.19%
Total Use of Money & Property	14,356,491	14,356,491	11,041,502	76.91%	12,341,627	(1,300,125)	-10.53%
MISCELLANEOUS REVENUES	100,001	100,001	2,000,782	2000.76%	502,288	1,498,494	298.33%
LAND PROCEEDS	4,050,000	4,050,000	164,606	4.06%	-	164,606	100.00%
OTHER FINANCING SOURCES							
Operating Transfer In - Storm Drain	1,398,145	1,398,145	1,398,145	100.00%	1,447,000	(48,855)	-3.38%
Operating Transfer In - Reserves	11,290,582	14,154,274	14,154,274	100.00%	4,182,281	9,971,993	238.43%
Operating Transfer In - Fund Balances <sup>(1)</sup>		5,338,670	5,338,670	100.00%	10,459,221	(5,120,551)	-48.96%
Operating Transfer In - Miscellaneous	667,885	1,736,115	1,736,115	100.00%	54,250	1,681,865	3100.21%
<b>Total Other Financing Sources</b>	13,356,612	22,627,204	22,627,204	100.00%	16,142,752	6,484,452	40.17%
STADIUM OPERATION							
Charges for Services	7,988,313	7,988,313	7,767,941	97.24%	5,660,711	2,107,230	37.23%
Rent and Licensing	3,333,185	633,185	639,410	100.98%	571,578	67,832	11.87%
Total Stadium Operation	11,321,498	8,621,498	8,407,351	97.52%	6,232,289	2,175,062	34.90%
TOTAL GENERAL FUND	\$ 263,242,270	\$ 274,919,806	\$ 231,441,999	84.19%	\$ 242,958,386	\$ (11,516,387)	-4.74%

<sup>(1)</sup> The Operating Transfer In - Fund Balances includes the carryover encumbrances of open purchase orders as of June 30, 2019 and mid-year budget amendment from reserves.

# Financial Status Report as of May 31, 2020

### **General Fund Revenues**

**Sales Tax:** The City of Santa Clara sales tax rate is 9.0%, of which the City receives 1.0%. Through May 31, 2020, sales tax collections were \$43.1 million. These collections represent the sales tax revenue generated for the months of July through March 2020. While last year saw collections of \$54.5 million through the same period, these collections were for the months of May 2018 through March 2019. Based on receipts for the first two quarters, collections were projected to slightly exceed the budgeted estimate of \$58.2 million. However, as a result of actions associated with COVID-19, sales tax revenue is now expected to fall well below the budget. In the third quarter, which was only impacted by COVID-19 in the month of March, collections fell 10.9% from the same quarter in the previous year. If receipts drop 25% - 50% in the last quarter of the fiscal year, sales tax revenue will end the year below the budgeted estimate by \$4 million - \$8 million. Data for the fourth quarter will be available in August 2020.

**Property Tax:** The majority of property tax revenue is collected in January and April each year. Based on the latest estimates from the County of Santa Clara, it is anticipated that collections in this category will reach \$65.4 million, slightly exceeding the FY 2019/20 budgeted estimate of \$64.4 million. Property tax collections totaled \$54.4 million through May, which is higher than what was collected last year through the same period. COVID-19 is expected to have minimal potential impacts on 2019/20 revenue collections.

**Transient Occupancy Tax (TOT):** TOT is calculated as a percentage of City hotel/motel room charges. The City's current TOT rate is 9.5%. Through May 31, 2020, \$15.3 million has been collected, which is \$6.2 million below the receipts collected through May 2019. This variance from last year's collections is attributable to both the budget methodology change and the significant drop in revenue associated with COVID-19. With the budget methodology change, \$4.1 million was accrued to FY 2018/19 at the end of last fiscal year which has impacted the timing of payments. The remaining drop is associated with the COVID-19 impacts.

If there is a 50% to 90% decline in receipts through the end of the fiscal year, collections would reach \$16 million - \$18 million, dropping below the budgeted estimate of \$23.0 million by \$5 million to \$7 million.

**Other Taxes**: Includes franchise tax and documentary transfer tax. The City has collected \$4.9 million, which is 81% of the budgeted estimate of \$6.1 million. This decrease in revenue compared to last year's collections through the same period is primarily attributable to the change in budgeting methodology and the timing of payments. Franchise tax collections, budgeted at \$4.4 million, are lower due to prior year accruals and the timing of the receipt of payments; these receipts are expected to end the year close to the budgeted estimate.

Documentary transfer tax revenue of \$1.2 million through May is consistent with prior year collections through the same period. However, growth of 4% over the prior year actuals is necessary to meet the budgeted estimate of \$1.7 million. Collections are currently tracking to end the year below the budgeted estimate by approximately \$200,000.

### Financial Status Report as of May 31, 2020

**Licenses & Permits:** Includes business licenses, building permits, and other building and planning permits and fees. Overall licenses and permits revenue collections are above par and totaled \$8.6 million, or 95.7% of the budget of \$9.0 million. These collections are 34.4% below the very high collection level experienced through the same period last fiscal year. Even if activity slows in the last month of the year, this category should meet the budgeted estimate. For the building development revenues, any excess revenues over expenditures will be placed in the Building Inspection Reserve. This reserve is also available to cover any difference if revenues fall below the expenditure level.

**Fines & Penalties:** Includes vehicle, parking, court fines, and miscellaneous penalty fines. The revenue collected in this category totaled \$1.1 million through May and is lower compared to prior year actual collection level by \$0.7 million as a result of lower activity levels in the collection charges and traffic fines accounts. Receipts are also lower due to accruals at the end of FY 2018/19. Given restricted activity levels as a result of COVID-19, collections in this category may continue to decline in the last month of the fiscal year and may fall below the budgeted estimate by approximately \$300,000 - \$500,000.

**Intergovernmental:** Includes motor vehicle fees, state homeowner tax relief, state mandated reimbursement and redistribution of land sale proceeds and ground leases from the Successor Agency. Through May 31, 2020, collections totaled approximately \$5.9 million, exceeding this year's budgeted estimate of \$5.2 million and exceeding last fiscal year's collections through the same period. This increase is due to a Santana West settlement payment in the amount of \$5.0 million for the Related project received from the City of San José. These funds are restricted for affordable housing and transportation improvements and have been set aside in a separate reserve.

Charges for Services: Includes various plan check and zoning-related fees, engineering fees, administrative fees, and community service revenue from various recreational activities. While collections of \$31.5 million were \$4.0 million lower than collections through the same time last year, revenues in this category are tracking above par at 95%. This is mainly attributable to higher plan check and sign fee collections through May. Collections in this category were tracking to exceed the budgeted estimate of \$33.2 million by at least \$2.0 million to \$3.0 million by year-end. However, as a result of the COVID-19 safety precautions, the revenues from various recreational activities are expected to fall well below the budget. The higher collections in other fee areas, however, are tracking to offset the loss in the Parks and Recreation fees.

**Contribution in Lieu:** In accordance with the City's charter, Silicon Valley Power pays 5.0% of gross revenues as contribution-in-lieu of taxes. These revenues provide funding for general government services such as public safety, public works, parks and recreation, library, and administration. Through May, \$22.3 million has been received, which is consistent with the budgeted estimate of \$24.3 million. However, these payments were based on the budgeted estimate and will be trued up at the end of the fiscal year. Based on prior year activity and current estimates, collections in this category may fall below the budgeted estimate by over \$1.0 million.

Use of Money & Property: Includes realized investment income and rental income. Interest income and rent revenue collections totaled \$11.0 million, which is below the budgeted estimate of \$14.4

### Financial Status Report as of May 31, 2020

million due, in part, to the timing of payments for interest earnings related to the prior year accrual. While receipts in this category had been tracking to meet the budgeted estimate by year-end, interest earnings may fall below the budgeted estimate of \$5.7 million as a result of lower interest earning rates.

**Miscellaneous Revenues:** Includes developer fees, donations, damage recovery, sale of scrap, and one-time miscellaneous revenues. As of May 31, 2020, collections totaled \$2.0 million, which exceeds the budgeted estimate of \$0.1 million. This is a result of proceeds from the sale the right-of-way related to the vacated land sale on Fremont Street and Sherman Street. The City also received \$800,000 for damage recoveries resulting from a settlement agreement related to the City's Swim Center. An amendment to recognize this revenue and set it aside in the General Fund's Capital Projects Reserve was approved by City Council during the June 23<sup>rd</sup> meeting, as part of the Monthly Financial Status Report for April 2020.

Land Proceeds: Includes revenue from the sale of City-owned land. Through May 31, 2020, proceeds totaled approximately \$0.2 million, resulting from the sale of vacated land located on Fremont Street and Sherman Street. The budgeted estimate for this category included \$4.0 million of proceeds from the sale of property to be used for affordable housing. It is anticipated that this sale will be completed at the end of this calendar year. A budget action will be brought forward as part of FY 2019/20 year-end reconciliation process to carry this budget into FY 2020/21.

Stadium Operation: The revenue for Stadium Operations totaled approximately \$8.4 million through May 31, 2020, which is higher than collections through the same period last fiscal year. Charges for services, which includes public safety cost reimbursement for NFL and Non-NFL events and parking revenue, is expected to exceed the budgeted \$8.0 million at \$8.6 million. This is mainly due to higher than expected parking revenue and public safety cost reimbursement associated with two NFL playoff games offset by lower than anticipated Non-NFL event public safety costs. Due to the significantly lower than anticipated number of Non-NFL events, the Non-NFL performance-based rent will not meet the FY 2019/20 Adopted Budget estimate. A separate downward adjustment of \$2.7 million was approved as part of the Budgetary Year-End Report to decrease these revenues, which is reflected in the Amended Budget column in the table above. The lease revenue is projected to end the fiscal year at \$639,000 which slightly exceeds the revised budgeted estimate of \$633,000.

### Financial Status Report as of May 31, 2020

### **General Fund Expenditures**

As of May 31, 2020, \$232.2 million or 84.5% of the General Fund operating budget had been expended. Overall, expenditures in the General Fund are within budgeted levels through May. Departmental expenditures totaled \$209.3 million, or 83.2% of the budget, which is below the par level of 91.7% of the budget. Expenditure savings are expected by year-end.

CITY OF SANTA CLARA
GENERAL FUND
EXPENDITURES OVERVIEW AND COMPARISON BY FUNCTION

		FISCAL YEAR	R 2019/20		PY EXPEN	DITURES COMPAR	RISON
						\$_	
Function	Adopted Budget	Amended Budget	Actual Through 05/31/2020	Percentage Used	Actual Through 05/31/2019	Change From Prior Year	Percentage Change
GENERAL GOVERNMENT							
Non-Departmental	\$ 11,909,566	\$ 13,264,495	\$ 3,468,043	26.15%	\$ 2,259,780	\$ 1,208,263	53.47%
City Council	894,953	894,953	810,841	90.60%	705,372	105,469	14.95%
City Clerk	1,389,880	1,839,750	1,046,427	56.88%	1,589,146	(542,719)	-34.15%
City Manager	6,554,276	8,124,294	5,554,219	68.37%	5,156,101	398,118	7.72%
City Attorney	2,260,512	2,376,523	1,951,204	82.10%	1,794,068	157,136	8.76%
Human Resources	4,409,195	4,622,757	3,618,315	78.27%	2,887,589	730,726	25.31%
Finance	15,719,734	16,653,861	13,098,191	78.65%	10,967,619	2,130,572	19.43%
Information Technology	-	-	-	0.00%	8,501,322	(8,501,322)	-100.00%
Total General Government	43,138,116	47,776,633	29,547,240	61.84%	33,860,997	(4,313,757)	-12.74%
PUBLIC WORKS	23,579,460	23,919,037	21,314,973	89.11%	22,397,206	(1,082,233)	-4.83%
COMMUNITY DEVELOPMENT	14,186,780	17,257,752	12,422,009	71.98%	11,545,633	876,376	7.59%
PARKS AND RECREATION	22,401,233	23,011,286	18,522,102	80.49%	17,362,311	1,159,791	6.68%
PUBLIC SAFETY	,,		,,		,,	1,122,121	
Fire	52,783,063	54,209,728	50,553,338	93.26%	48,075,497	2,477,841	5.15%
Police	73,397,279	74,069,459	67,651,948	91.34%	59,985,081	7,666,867	12.78%
Total Public Safety	126,180,342	128,279,187	118,205,286	92.15%	108,060,578	10,144,708	9.39%
LIBRARY	11,310,791	11,346,604	9,269,901	81.70%	9,247,927	21,974	0.24%
DEPARTMENTAL SUBTOTAL	240,796,722	251,590,499	209,281,511	83.18%	202,474,652	6,806,859	3.36%
OTHER FINANCING USES							
Operating Transfer Out - Miscellaneous	526.688	846.688	748,445	88.40%	885.578	(137,133)	-15.49%
Operating Transfer Out - Rental Income	· -	· -	-	0.00%	14,065	(14,065)	-100.00%
Operating Transfer Out - Debt Services	1,710,474	1,710,474	1,710,474	100.00%	2,501,494	(791,020)	-31.62%
Operating Transfer Out - Maintenance Districts	917,331	917,331	917,331	100.00%	-	917,331	N/A
Operating Transfer Out - Cemetery	703,490	703,490	703,490	100.00%	618,081	85,409	13.82%
Operating Transfer Out - SCGTC	-	-	-	0.00%	155,020	(155,020)	-100.00%
Operating Transfer Out - Special Liability	-	-	-	0.00%	2,200,000	(2,200,000)	-100.00%
Operating Transfer Out - CIP	11,643,673	11,643,673	11,643,673	100.00%	50,000	11,593,673	23187.35%
Operating Transfer Out - Reserves	344,360	879,200	879,200	100.00%	-	879,200	N/A
Total Other Financing Uses	15,846,016	16,700,856	16,602,613	99.41%	6,424,238	10,178,375	158.44%
STADIUM OPERATION	6,599,532	6,621,340	6,302,937	95.19%	5,928,281	374,656	6.32%
TOTAL GENERAL FUND	\$ 263,242,270	\$ 274,912,695	\$ 232,187,061	84.46%	\$ 214,827,171	\$ 17,359,890	8.08%

### Financial Status Report as of May 31, 2020

### **General Fund Expenditures**

Below is an explanation of certain budget to actual expenditure variances by program. Other program expenditures not described below are within expectations. Effective fiscal year 2019/20, the Information Technology budget was shifted from the General Fund to a newly established internal services fund.

Non-Departmental: Includes expenditures that are not attributable to a single department, but a function of the City in general. Through May 31, 2020, expenditures were at 26.2% of budget, primarily due to lower expenditures in the salary and benefits and materials, services and supplies categories. The Non-Departmental budget also includes a \$4.0 million loan to fund an affordable housing project that was approved by the City Council on January 29, 2019, which has not yet been expended. It is anticipated that this loan, which will be funded by a property sale, will be processed at the end of the calendar year. A budget action to carry this appropriation over will be brought forward as part of FY 2019/20 year-end reconciliation report. Because the Non-Departmental category was tracking to end the year with savings, a portion of the expected savings was reallocated to the Small Business Assistance Program (\$250,000 - 4/28/2020 Council Agenda) and the Food Distribution Program (\$550,000 - 5/12/20 Council Agenda). Additionally, as approved by City Council on June 23, 2020, the Non-Departmental budget was reduced by \$1.9 million to reflect the elimination of funding set aside for separation payouts (\$1.8 million) as well as other savings. The majority of this funding (\$1.2 million) was needed by the Fire Department to offset the separation payout costs in that department. The remaining funds were used to help cover costs related to COVID-19 in the Other City Departments Operating Grant Trust Fund.

City Manager: The actual expenditures through May 31, 2020 were at 68.4% of the budget. This is primarily due to lower than anticipated spending in the salary and benefits and contractual services categories. A portion of the year-end savings anticipated in the City Manager's Office was reallocated to the Food Distribution Program (\$70,000 - 5/12/20 Council Agenda), while additional savings were reallocated to the Other City Departments Operating Grant Trust Fund to help cover costs related to COVID-19 as part of the April 2020 Monthly Financial Report (\$300,000 - 6/23/20 Council Agenda).

Community Development: This department consists of three divisions: Planning, Building, and Housing and Community Services. Through May, departmental expenditures of \$12.4 million were at 72% of the budget, which is below par for this time of year. As part of the November Monthly Financial Report, \$1.5 million was added to the Department's contractual services budget, funded by Building Inspection Reserve. With the recent influx of large-scale development projects, these additional resources were added to address the workload and maintain service levels and turnaround times through the remainder of the year. Contractual services are expected to remain within budget with this adjustment. Overall, the department is expected to end the year with savings and a portion of those savings was reallocated to the Other City Departments Operating Grant Trust Fund to help cover costs related to COVID-19 as part of the April 2020 Monthly Financial Report (\$250,000 – 6/23/20 Council Agenda).

**Fire Department:** Through May, actual expenditures totaled \$50.6 million, or 93.3%, which is above the par level of 91.7% of the budget. Overall salary expenditures were tracking above budget,

### Financial Status Report as of May 31, 2020

particularly in the overtime category due to minimum staffing requirements and several Fire Captain vacancies. The department was also tracking high due to separation payouts costs that are not budgeted in the department. To cover these costs, \$1.65 million was added to the Fire Department's budget as part of the April 2020 Monthly Financial Report (6/23/20 Council Agenda). This included \$1.2 million for separation payouts that was offset by a reduction to the Non-Departmental budget for this expense. The remaining increase of \$450,000 covered the net overtime costs that are not offset by salary savings from the vacancies and lower than budgeted expenditures in the materials, services, and supplies category. Factoring in this budget increase, the Fire Department would have expended 90.5% of the budget through May, which is within the par level. The Fire Department is staffing specialized COVID-19 response units to respond to the Federal Medical Station at the Santa Clara Convention Center and other high-risk locations. The COVID-19 expenditures are being tracked for potential reimbursement and are reflected in the Other City Departments Operating Grant Trust Fund.

Police Department: Expenditures through May 31, 2020 are tracking at expected levels at \$67.7 million, or 91.3% of the budget. The salary expenditures were above budget primarily in the as needed and overtime categories, resulting from additional staffing needs for events including Great America's Halloween Haunt and mutual aid provided to the Gilroy Garlic Festival shooting and investigation. The City received a reimbursement related to the staffing costs for the Great America Haunt. There have also been new City events that have required Police staffing such as the Parade of Champions and Comic Con. These higher expenditures are partially offset by lower than budgeted expenses in the materials, services, and supplies category. Police Department expenditures are expected to remain within budget by year end.

**Stadium Operation:** Stadium operating expenditures are incurred first and billed on a reimbursement basis creating a timing difference in revenue recognition. Stadium expenditures totaled \$6.3 million through May 31, 2020 and are tracking slightly above budgeted levels, however, are anticipated to come in within budget at year end. The higher expenditures are a result of the purchase of a new public safety insurance policy and higher than anticipated costs for outside agency public safety. Both the insurance premium and public safety costs are reimbursed by the 49ers.

### Financial Status Report as of May 31, 2020

### **Special Revenue Funds**

The table below is a summary of revenues and expenditures of select Special Revenue Funds as of May 31, 2020. The amended budget for both reflects carryover appropriations from fiscal year 2018/19 in addition to various budget amendments approved by the City Council through May 2020. The revenues received through the end of May totaled approximately \$3.8 million, while expenditures totaled \$3.4 million.

# CITY OF SANTA CLARA SPECIAL REVENUE FUNDS REVENUE AND EXPENDITURE - OVERVIEW AND COMPARISON BY FUND

	R	EVENUE - FISCA	AL YEAR 2019/2	PRIOR YEAR REVENUE COMPARISON					
Fund Description	Adopted Budget	Amended Budget	Actual Through 5/31/2020	Percentage received	Actual Through 5/31/2019	\$ Change From Prior Year	Percent Change		
Housing Authority Fund City Affordable Housing Fund Housing Successor Fund Housing and Urban Development	\$ 260,000 696,703 12,031,000 2,626,117	\$ 274,831 1,084,543 12,084,817 5,238,691	\$ 285,554 745,981 1,129,472 1,654,823	103.90% 68.78% 9.35% 31.59%	\$ 184,831 373,490 1,597,816 1,514,248	372,491 (468,344)	54.49% 99.73% -29.31% 9.28%		
TOTAL	\$15,613,820	\$ 18,682,882	\$ 3,815,830	20.42%	\$ 3,670,385	\$ 145,445	3.96%		

	EXP	ENDITURES - FIS	SCAL YEAR 201	PRIOR YEAR EXPENDITURE COMPARISO				
Fund Description	Adopted Budget	Amended Budget	Actual through 5/31/2020	Percentage used	Actual through 5/31/2019	\$ Change From Prior Year	Percent Change	
Housing Authority Fund City Affordable Housing Fund Housing Successor Fund Housing and Urban Development	\$ 546,623 1,520,735 12,592,389 3,846,296	\$ 561,454 7,908,575 17,646,206 5,238,691	\$ 99,078 588,208 477,089 2,241,528	17.65% 7.44% 2.70% 42.79%	\$ 58,893 306,596 483,086 1,408,523	\$ 40,185 281,612 (5,997) 833,005	68.23% 91.85% -1.24% 59.14%	
TOTAL	\$18,506,043	\$ 31,354,926	\$ 3,405,903	10.86%	\$ 2,257,098	\$ 1,148,805	50.90%	

The majority of the budget in the housing funds account for two development loans, which would allow for the construction of affordable housing projects, referred to as the Corvin Supportive Housing and the Agrihood Mixed-Use Development projects. Both the revenues and expenditures are expected to increase once the proceeds from the sale of land are received and the loan agreements are executed, which is anticipated to be done next fiscal year. An action to carry over these appropriations will be brought forward for City Council approval as part of the F 2019/20 year-end reconciliation process.

### Financial Status Report as of May 31, 2020

### **Governmental Capital Improvement Funds**

The table below lists the total amended budget amounts for the Capital Improvement Funds, which consist of current year appropriations, prior year carryover balances in Governmental Capital Improvement Funds, and budget amendments approved through May 2020. As of May 31, 2020, these capital fund expenditures totaled \$32.5 million, or 24.8% of the amended budget. As part of the adoption of the FY 2020/21 budget, capital funds were carried over into next fiscal year for those projects that have not yet been completed. Any necessary adjustments to the capital carryover amounts based on actual year-end expenditures will be completed as part of the FY 2019/20 year-end reconciliation process.

The carryover of prior year budget amounts is necessary when services or projects are started but not completed at the end of the fiscal year. This is especially true for the Capital Improvement Program (CIP) that typically spans several years.

# CITY OF SANTA CLARA GOVERNMENTAL CAPITAL IMPROVEMENT FUNDS SUMMARY OF EXPENDITURES

	EXPENDITURES - FISCAL YEAR 2019/20									
Fund Description	Current Year Appropriation		Prior Year Carryforward	То	otal Amended Budget	Actual Through 5/31/2020	Percentage Used			
Parks & Recreation Streets & Highways Storm Drain Fire Library Public Buildings General Gov't - Other	\$ 6,885,661 20,512,478 4,779,305 665,049 10,633 4,097,571 1,511,494	\$	27,507,742 39,407,535 3,264,959 635,187 234,633 8,335,917 13,051,614	\$	34,393,403 59,920,013 8,044,264 1,300,236 245,266 12,433,488 14,563,108	\$ 17,153,659 11,149,702 712,804 320,904 32,821 1,444,586 1,695,987	49.87% 18.61% 8.86% 24.68% 13.38% 11.62%			
TOTAL	\$ 38,462,191	\$	92,437,587	\$	130,899,778	\$ 32,510,463	24.84%			

### Financial Status Report as of May 31, 2020

### **Enterprise Funds**

The table below is a summary of revenues and expenses for the Enterprise Operating Funds as of May 31, 2020. Overall, revenues and expenditures are tracking below budgeted levels.

Effective fiscal year 2019/20, the City switched from a cash basis budgetary reporting to an accrual basis, which is reflected in the tables of this report. At the end of May 2020, revenue and expenditures are tracking higher than through the same period last fiscal year. For fiscal year 2019/20, the City is still anticipated to maintain a positive operating position for each of its Enterprise Operating Funds.

# CITY OF SANTA CLARA ENTERPRISE OPERATING FUNDS REVENUES AND EXPENSES - OVERVIEW AND COMPARISON BY FUND

			REVENUE - FISC	AL Y	PRIOR YEAR REVENUE COMPARISON					
Fund Description		Adopted Budget	Amended Budget	_	Actual Through 5/31/2020	Percentage received	Actual Through 5/31/2019		\$ hange From Prior Year	Percent Change
Electric Utility Fund	\$	516.210.630	\$ 517.210.920	\$	516,468,246	99.86%	\$ 450.267.804	\$	66.200.442	14.70%
Water Utility Fund	•	53.411.144	56.080.779	•	43.805.934	78.11%	43,239,436	•	566.498	1.31%
Sewer Utility Fund		94,169,500	94,259,046		35,272,419	37.42%	36,624,312		(1,351,893)	-3.69%
Cemetery Fund		645,150	645,150		392,029	60.77%	523,638		(131,609)	-25.13%
Solid Waste Utility Fund		28,033,703	28,760,383		23,118,227	80.38%	23,320,453		(202,226)	-0.87%
Water Recycling Fund		6,769,200	7,779,200		5,376,396	69.11%	5,914,417		(538,021)	-9.10%
TOTAL REVENUE	\$	699,239,327	\$ 704,735,478	\$	624,433,251	88.61%	\$ 559,890,060	\$	64,543,191	11.53%

		EXPENSES - FISC	PRIOR YEAR EXPENSE COMPARISON					
Fund Description	 Adopted Budget	Amended Budget	Actual through 5/31/2020	Percentage Used	Actual through 5/31/2019		\$ hange From Prior Year	Percent Change
Electric Utility Fund	\$ 486,468,491	\$ 484,402,005	\$ 496,079,908	102.41%	\$ 405,416,420	\$	90,663,488	22.36%
Water Utility Fund	46,449,085	49,118,720	37,862,467	77.08%	37,894,204		(31,737)	-0.08%
Sewer Utility Fund	28,451,451	28,540,997	25,050,077	87.77%	24,222,896		827,181	3.41%
Cemetery Fund	1,399,333	1,399,333	1,067,940	76.32%	1,095,293		(27,353)	-2.50%
Solid Waste Utility Fund	27,470,657	28,197,337	20,915,647	74.18%	20,504,216		411,431	2.01%
Water Recycling Fund	5,349,013	6,359,013	5,464,850	85.94%	5,110,223		354,627	6.94%
TOTAL - Operating Appropriations	\$ 595,588,030	\$ 598,017,405	\$ 586,440,889	98.06%	\$ 494,243,252	\$	92,197,637	18.65%

Revenues in the electric, water, and sewer utility (which also includes the Sewer Debt Service Fund) and water recycling funds are primarily from customer service charges. The activity levels for these customer service charges also impact the resource and production costs on the expenditure side for these funds. The lower the revenue from customer service charges, the lower the expenditures in the resource and production category. In both the sewer and water recycling funds, contractual services expenditures are higher than budgeted levels; however, this is primarily offset by savings in the salary and benefits categories. In the Sewer Debt Service Fund, revenues are tracking low because the \$50.0 million in debt proceeds have not been received. A line of credit was approved by Council at the May

### Financial Status Report as of May 31, 2020

26, 2020 Council date. In the Electric Utility Fund (which includes the Electric Utility Debt Service Fund), the expenditures through May have exceeded the budget. A budget amendment was approved as part of the April 2020 Monthly Financial Report (6/23/20 Council Agenda) in the Electric Utility Debt Fund to account for the bond refunding transactions that closed on April 16, 2020, which corrects this overage. The revenue received in the Electric Utility fund dictates the contribution in-lieu expenditure.

A summary of expenses in the Enterprise Capital Improvement Funds is detailed in the table below. Actuals through May totaled \$83.6 million, or 30.6% of the amended budget. Similar to the general government capital funds, capital funds were carried over into next fiscal year as part of the FY 2020/21 budget adoption process for those projects that have not yet been completed. Any necessary adjustments to the capital carryover amounts based on actual year-end expenditures will be completed as part of the FY 2019/20 year-end reconciliation process.

# CITY OF SANTA CLARA ENTERPRISE CAPITAL IMPROVEMENT FUNDS SUMMARY OF EXPENSES

EXPENSES - FISCAL YEAR 2019/20										Prior Year	
Fund Description	_	urrent Year opropriation		Prior Year arryforward	Т	otal Amended Budget		Actual Through 5/31/2020		entage sed	Actual Through 5/31/2019
Electric Utility Fund Street Lighting (1) Water Utility Fund Sewer Utility Fund Cemetery Fund Solid Waste Utility Fund Water Recycling Fund	\$	49,057,167 86,855 13,449,374 58,953,565 - 484,367 50,000	\$	107,739,473 5,925,185 12,853,124 24,614,662 - 168,480	\$	156,796,640 6,012,040 26,302,498 83,568,227 - 652,847 50,000	\$	25,221,862 76,094 1,581,879 56,376,774 - 391,355		16.09% 1.27% 6.01% 67.46% 0.00% 59.95% 0.00%	\$ 21,144,678 69,745 3,297,596 20,072,654 - 524,097
TOTAL - CIP Appropriations	\$	122,081,328	\$	151,300,924	\$	273,382,252	\$	83,647,964		30.60%	\$ 45,108,770

<sup>(1)</sup> Street Lighting fund is part of Electric Capital Improvement Funds

### Financial Status Report as of May 31, 2020

#### **Fund Reserves**

By policy, City Council established the City's General Contingency Reserve, under which reserves for Budget Stabilization and Capital Projects were established.

- Budget Stabilization Reserve is set aside for weathering economic downturns, emergency financial crisis, or disaster situations. The reserve target is equal to the expenditures of the City's General Fund operations for three months (90-day or 25% General Fund Adopted Operating Budget).
- Capital Projects Reserve earmarks funds for the Capital Improvement Program.

Other General Reserves and Enterprise Fund Reserves included in this report are highlighted as follows:

- Building Inspection Reserve accounts for surplus funds from user fees in the Community Development Department's Building Inspection Division and is restricted to fund Building Division costs.
- Technology Fee Reserve is set aside to update and/or replace the City's aging technology and to ensure internal controls are in compliance with current business standard and legal requirements.
- Land Sale Reserve is net proceeds from the sale of City-owned land, with interest earned on these funds available to be appropriated for General Fund operating expenditures. This reserve is available for appropriation by City Council action.
- The Electric Utility Reserve assures sufficient operating cash is available to ensure debt service coverage.
- The Replacement and Improvement Reserve in the Water and Sewer Utility Funds is for future capital improvement.
- The Water Conservation Reserve is to enhance water conservation activities in response to the drought.

The table below summarizes select reserve balances.

### Financial Status Report as of May 31, 2020

DETAIL OF SELECTED FUND RESER	VE E	BALANCES:				
		GENERAL FUND	ELECTRIC	WATER	SE	WER
Budget Stabilization Reserve	\$	79,967,166				
Capital Projects Reserve		28,186,138				
Land Sale Reserve		21,531,838				
Building Inspection Reserve		14,105,480				
Technology Fee Reserve		284,129				
Rate Stabilization Fund Reserve			\$ 25,000,000			
Cost Reduction Fund Reserve			98,947,182			
DVR Power Plant Contracts Reserve			78,163			
Replacement & Improvement				\$ 303,090	\$	-
TOTALS	\$	144,074,751	\$ 124,025,345	\$ 303,090	\$	-

Note: The Budget Stabilization Reserve figure above of \$80.0 million does not factor in the use of \$22.7 million of the reserve as an interim strategy to balance the FY 2020/21 budget approved by the City Council in June 2020.

### Financial Status Report as of May 31, 2020

### **Long-Term Interfund Advances**

The funds below have made advances/loans which are not expected to be repaid within the next year. The loan from the General Fund to for Parks and Recreation Facilities reflects proceeds from the Land Sale Reserve for the purchase of property at the Reed and Grant Sports Park. This loan is anticipated to be repaid by 25% of future Mitigation Fee Act revenue until the loan is paid in full.

DETAIL OF LONG TERM INTERF	FUND ADVANCE E	BALANCES:		
Fund Receiving Advance/Loan	Fund Making Advance/Loan	Туре	_	Amount of Advance / ommitment
Cemetery Santa Clara Golf & Tennis Club Parks and Recreation Facilities	General Fund General Fund General Fund	Advance Advance Loan	\$	6,339,380 4,224,134 10,130,273
TOTALS			\$	20,693,787

### **Donations to the City of Santa Clara**

Donations received by department during the month of May 2020 and for fiscal year 2019/20 are shown in the table below.

Department	May-20	2	scal Year 2019/20 ar To Date	Donor	Designated Use
City Manager's Office	\$ 225	\$	630	Various	Help Your Neighbor
City Manager's Office	-		100	Various	Various Programs
Parks and Recreation	-		34,840	Various	Various Parks and Recreation Programs
Parks and Recreation	-		89,834	Various	Arts, Crafts and Wine Festival
Fire	-		330	Various	Emergency Supplies
Police	-		7,000	Various	Police K9 Program
Non-Departmental	100,000		131,375	Various	COVID-19 Relief
TOTALS	\$ 100,225	\$	264,109		



# MONTHLY INVESTMENT REPORT May 2020

### **Monthly Investment Report**

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### CITY OF SANTA CLARA SUMMARY OF INVESTMENT PORTFOLIO

All securities held by the City of Santa Clara as of May 31, 2020 were in compliance with the City's Investment Policy Statement regarding current market strategy and long-term goals and objectives. All securities held are rated "A" or higher by two nationally recognized rating agencies. There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

The following table provides the breakdown of the total portfolio among the City, the Sports and Open Space Authority (SOSA), and the Housing Authority (HA) as of May 31, 2020.

	<b>BOOK VALUE</b>	<b>PERCENTAGE</b>
City	\$764,616,899	99.56%
SOSA	(146,400)	-0.02%
HA	3,488,233	0.46%
Unrestricted	\$767,958,732	<u>100.00%</u>
Restricted Bond Proceeds	2,145,541	
Total Investments	<u>\$770,104,273</u>	

On May 31, 2020 the book value and market value of the City's unrestricted pooled investment portfolio were \$767,958,732 and \$792,617,936, respectively.

#### Investment Strategy and Market Update

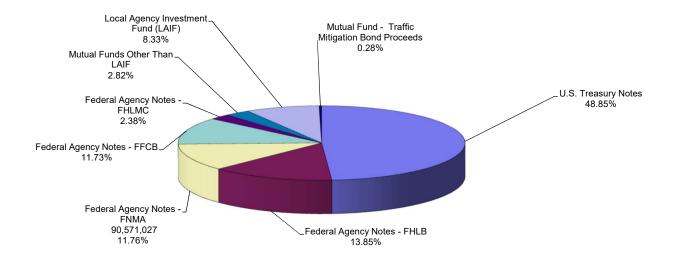
The City's investment strategy for May 2020 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from date of purchase. This strategy ensures safety of the City's funds, provides liquidity to meet the City's cash needs, and earns a reasonable portfolio return.

As of May 31, 2020, 39.72% of the City's portfolio consists of securities issued by four different Federal Agencies. In addition, City bond proceeds are invested in separate funds and are not included in the calculation of the City's portfolio yield. The average maturity of the City's portfolio was 2.51 years and the City's portfolio yield vs. the 24-month moving average yield of two-year Treasury Notes (Benchmark Yield\*) was as follows:

	CITY'S		AVERAGE
	PORTFOLIO	BENCHMARK	MATURITY
PERIOD	YIELD	YIELD	(YEARS)
May 2020	1.71%	1.85%	2.51
April 2020	1.80%	1.95%	2.37
May 2019	2.00%	2.19%	2.06

### CITY OF SANTA CLARA SUMMARY OF INVESTMENTS MAY 31, 2020

INVESTMENT TYPE	BOOK <u>VALUE</u>	% OF <u>PORTFOLIO</u>	PER INVESTMENT <u>POLICY</u>
U.S. Treasury Notes	376,179,367	48.85%	No Limit
Federal Agency Notes - FHLB	106,670,183	13.85%	40%
Federal Agency Notes - FNMA	90,571,027	11.76%	40%
Federal Agency Notes - FFCB	90,324,112	11.73%	40%
Federal Agency Notes - FHLMC	18,311,684	2.38%	40%
Mutual Funds Other Than LAIF	21,695,957	2.82%	10% Per Fund
Local Agency Investment Fund (LAIF)	64,206,402	8.33%	\$65 M
Mutual Fund - Traffic Mitigation Bond Proceeds	2,145,541	0.28%	10% Per Fund
TOTAL INVESTMENTS	\$ 770,104,273	100.00%	

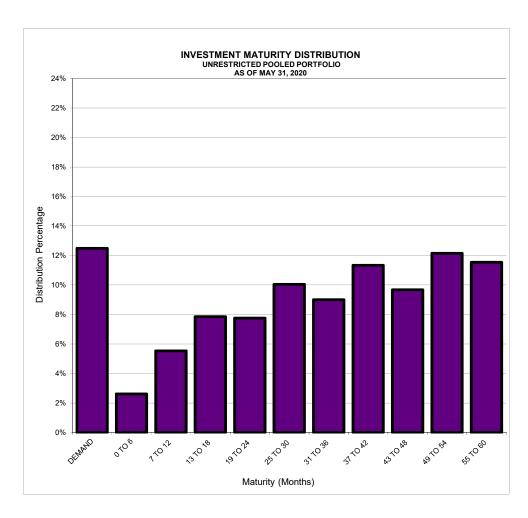


## INVESTMENT MATURITY DISTRIBUTION AS OF MAY 31, 2020 UNRESTRICTED POOLED PORTFOLIO

MATURITY (IN MONTHS)	BOOK VALUE	NUMBER OF INVESTMENTS	DISTRIBUTION
DEMAND	\$ 95,905,810	(a) <b>4</b>	12.49%
0 TO 6	20,046,076	3	2.62%
7 TO 12	42,495,479	7	5.53%
13 TO 18	60,272,015	10	7.85%
19 TO 24	59,627,687	11	7.76%
25 TO 30	77,108,739	14	10.04%
31 TO 36	69,095,736	9	9.00%
37 TO 42	87,108,120	15	11.34%
43 TO 48	74,376,272	15	9.68%
49 TO 54	93,317,104	16	12.15%
55 TO 60	88,605,694	11	11.54%
TOTAL	\$ 767,958,732	115	100.00%



(a) \$20 million is earmarked for the City's Electric Utility power-trading.



#### **CITY OF SANTA CLARA**

### List of Securities Brokers and Primary Dealers in U.S. Government Securities and Mutual Funds

Raymond James

Higgins Capital, Inc.

Wedbush Securities

Mutual Securities, Inc.

UnionBanc Investment Services, LLC.

Ladenburg Thalmann & Co. Inc.

**UBS Financial Services** 

All individuals securities purchased by the City of Santa Clara from Securities Brokers/Primary Dealers are delivered to the City's safekeeping account with Wells Fargo Bank, N.A..



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Date Basis: Settlement

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INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
Inv Typ	e: 12 TREA	SURY NOTES										
17383	912828XH8	TREASURY NOTES	01/29/2020	06/30/2020	1.625000	1.529489	10,000,000.00	10,016,852.68	10,012,100.00	100.121000	8,193.75	IDC-FIS
17356	9128282J8	TREASURY NOTES	07/09/2019	07/15/2020	1.500000	1.999197	5,000,000.00	4,987,836.02	5,008,350.00	100.167000	20,513.98	IDC-FIS
17296	912828Q37	TREASURY NOTES	02/14/2017	03/31/2021	1.250000	1.803695	5,000,000.00	4,973,516.87	5,043,550.00	100.871000	70,033.13	IDC-FIS
17322	9128284G2	TREASURY NOTES	06/19/2018	04/15/2021	2.375000	2.662058	5,000,000.00	4,986,277.73	5,094,550.00	101.891000	108,272.27	IDC-FIS
17343	912828WR7	TREASURY NOTES	02/19/2019	06/30/2021	2.125000	2.496231	5,000,000.00	4,973,154.28	5,103,300.00	102.066000	130,145.72	IDC-FIS
17369	912828WY2	TREASURY NOTES	10/24/2019	07/31/2021	2.250000	1.621904	10,000,000.00	10,092,113.73	10,238,700.00	102.387000	146,586.27	IDC-FIS
17338	9128285F3	TREASURY NOTES	01/17/2019	10/15/2021	2.875000	2.543204	5,000,000.00	5,023,776.86	5,184,750.00	103.695000	160,973.14	IDC-FIS
17321	912828U65	TREASURY NOTES	05/22/2018	11/30/2021	1.750000	2.805608	10,000,000.00	9,800,523.46	10,235,200.00	102.352000	434,676.54	IDC-FIS
17306	912828U81	TREASURY NOTES	11/09/2017	12/31/2021	2.000000	1.914991	5,000,000.00	5,008,104.24	5,143,550.00	102.871000	135,445.76	IDC-FIS
17312	912828V72	TREASURY NOTES	02/26/2018	01/31/2022	1.875000	2.530589	5,000,000.00	4,938,000.87	5,141,000.00	102.820000	202,999.13	IDC-FIS
17297	912828J43	TREASURY NOTES	03/03/2017	02/28/2022	1.750000	2.067799	5,000,000.00	4,970,008.23	5,137,300.00	102.746000	167,291.77	IDC-FIS
17334	912828J43	TREASURY NOTES	12/14/2018	02/28/2022	1.750000	2.763338	5,000,000.00	4,903,782.26	5,137,300.00	102.746000	233,517.74	IDC-FIS
17309	912828W89	TREASURY NOTES	01/25/2018	03/31/2022	1.875000	2.368364	5,000,000.00	4,953,347.70	5,155,300.00	103.106000	201,952.30	IDC-FIS
17308	912828X47	TREASURY NOTES	01/22/2018	04/30/2022	1.875000	2.361028	5,000,000.00	4,954,061.22	5,162,300.00	103.246000	208,238.78	IDC-FIS
17300	912828XD7	TREASURY NOTES	06/09/2017	05/31/2022	1.875000	1.772818	5,000,000.00	5,012,156.03	5,169,900.00	103.398000	157,743.97	IDC-FIS
17335	912828XG0	TREASURY NOTES	12/21/2018	06/30/2022	2.125000	2.638411	5,000,000.00	4,939,169.34	5,203,500.00	104.070000	264,330.66	IDC-FIS
17375	912828XG0	TREASURY NOTES	11/25/2019	06/30/2022	2.125000	1.596160	10,000,000.00	10,128,755.03	10,407,000.00	104.070000	278,244.97	IDC-FIS
17394	912828XG0	TREASURY NOTES	03/25/2020	06/30/2022	2.125000	.351460	10,000,000.00	10,449,622.25	10,407,000.00	104.070000	7,000.00	IDC-FIS
17315	9128282P4	TREASURY NOTES	03/27/2018	07/31/2022	1.875000	2.591504	5,000,000.00	4,915,912.25	5,183,200.00	103.664000	267,287.75	IDC-FIS
17303	912828L24	TREASURY NOTES	09/29/2017	08/31/2022	1.875000	1.913317	5,000,000.00	4,995,435.00	5,192,200.00	103.844000	196,765.00	IDC-FIS
17304	912828L57	TREASURY NOTES	10/06/2017	09/30/2022	1.750000	1.958257	5,000,000.00	4,975,336.54	5,183,000.00	103.660000	207,663.46	IDC-FIS
17318	9128282W9	TREASURY NOTES	04/20/2018	09/30/2022	1.875000	2.739970	5,000,000.00	4,898,982.07	5,197,250.00	103.945000	298,267.93	IDC-FIS
17305	912828M49	TREASURY NOTES	10/31/2017	10/31/2022	1.875000	2.071694	5,000,000.00	4,976,757.82	5,204,700.00	104.094000	227,942.18	IDC-FIS
17307	912828M80	TREASURY NOTES	12/18/2017	11/30/2022	2.000000	2.168858	5,000,000.00	4,976,105.55	5,226,350.00	104.527000	250,244.45	IDC-FIS
17320	912828N30	TREASURY NOTES	05/15/2018	12/31/2022	2.125000	2.835579	10,000,000.00	9,801,689.09	10,499,600.00	104.996000	697,910.91	IDC-FIS
17398	912828Z29	TREASURY NOTES	04/21/2020	01/15/2023	1.500000	.237587	10,000,000.00	10,383,722.53	10,344,900.00	103.449000	1,150.00	IDC-FIS
17311	912828P38	TREASURY NOTES	02/14/2018	01/31/2023	1.750000	2.566484	5,000,000.00	4,885,748.65	5,207,800.00	104.156000	322,051.35	IDC-FIS
17314	912828P79	TREASURY NOTES	02/28/2018	02/28/2023	1.500000	2.682776	10,000,000.00	9,670,481.93	10,360,600.00	103.606000	690,118.07	IDC-FIS
17317	912828Q29	TREASURY NOTES	04/11/2018	03/31/2023	1.500000	2.624318	10,000,000.00	9,686,139.54	10,372,300.00	103.723000	686,160.46	IDC-FIS
17319	912828R28	TREASURY NOTES	05/09/2018	04/30/2023	1.625000	2.824390	10,000,000.00	9,666,968.22	10,416,400.00	104.164000	749,431.78	IDC-FIS
17323	912828R69	TREASURY NOTES	07/17/2018	05/31/2023	1.625000	2.763323	10,000,000.00	9,629,874.58	10,426,600.00	104.266000	796,725.42	IDC-FIS
17339	912828S35	TREASURY NOTES	01/17/2019	06/30/2023	1.375000	2.549274	5,000,000.00	4,807,066.35	5,180,850.00	103.617000	373,783.65	IDC-FIS
17378	912828S35	TREASURY NOTES	12/18/2019	06/30/2023	1.375000	1.682342	5,000,000.00	4,948,031.13	5,180,850.00	103.617000	232,818.87	IDC-FIS
17395	912828S35	TREASURY NOTES	04/01/2020	06/30/2023	1.375000	.285312	10,000,000.00	10,386,705.88	10,361,700.00	103.617000	9,746.87	IDC-FIS
17326	912828Y61	TREASURY NOTES	09/18/2018	07/31/2023	2.750000	2.899455	5,000,000.00	4,975,737.29	5,401,950.00	108.039000	426,212.71	IDC-FIS
17328	912828Y61	TREASURY NOTES	09/28/2018	07/31/2023	2.750000	2.961654	5,000,000.00	4,965,698.92	5,401,950.00	108.039000	436,251.08	IDC-FIS



As Of Date: 05/29/2020 Date Basis: Settlement

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City	of Santa	a Clara							Корон	ing ourrency. E	ocai	
INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
17324	9128282D1	TREASURY NOTES	09/13/2018	08/31/2023	1.375000	2.867264	5,000,000.00	4,758,238.24	5,189,250.00	103.785000	431,011.76	IDC-FIS
17330	912828T26	TREASURY NOTES	11/14/2018	09/30/2023	1.375000	3.011415	7,500,000.00	7,103,612.30	7,790,325.00	103.871000	686,712.70	IDC-FIS
17340	912828T91	TREASURY NOTES	01/28/2019	10/31/2023	1.625000	2.579465	5,000,000.00	4,843,796.55	5,240,650.00	104.813000	396,853.45	IDC-FIS
17345	912828U57	TREASURY NOTES	02/28/2019	11/30/2023	2.125000	2.496362	5,000,000.00	4,930,353.54	5,332,050.00	106.641000	401,696.46	IDC-FIS
17397	912828U57	TREASURY NOTES	04/20/2020	11/30/2023	2.125000	.263467	5,000,000.00	5,375,597.68	5,332,050.00	106.641000	-2,325.00	IDC-FIS
17346	912828V23	TREASURY NOTES	03/14/2019	12/31/2023	2.250000	2.437027	5,000,000.00	4,964,863.80	5,361,350.00	107.227000	396,486.20	IDC-FIS
17342	912828V80	TREASURY NOTES	02/14/2019	01/31/2024	2.250000	2.524589	5,000,000.00	4,948,697.06	5,369,350.00	107.387000	420,652.94	IDC-FIS
17396	9128285Z9	TREASURY NOTES	04/15/2020	01/31/2024	2.500000	.336639	5,000,000.00	5,433,177.37	5,414,250.00	108.285000	6,828.12	IDC-FIS
17347	912828W48	TREASURY NOTES	03/20/2019	02/29/2024	2.125000	2.440257	5,000,000.00	4,940,977.86	5,352,350.00	107.047000	411,372.14	IDC-FIS
17352	912828W71	TREASURY NOTES	04/30/2019	03/31/2024	2.125000	2.319173	5,000,000.00	4,963,502.54	5,359,750.00	107.195000	396,247.46	IDC-FIS
17353	912828X70	TREASURY NOTES	05/17/2019	04/30/2024	2.000000	2.202374	5,000,000.00	4,961,874.14	5,342,200.00	106.844000	380,325.86	IDC-FIS
17359	912828WJ5	TREASURY NOTES	08/16/2019	05/15/2024	2.500000	1.428853	5,000,000.00	5,206,218.69	5,442,800.00	108.856000	236,581.31	IDC-FIS
17367	912828WJ5	TREASURY NOTES	10/11/2019	05/15/2024	2.500000	1.498657	5,000,000.00	5,192,709.89	5,442,800.00	108.856000	250,090.11	IDC-FIS
17361	912828XX3	TREASURY NOTES	08/30/2019	06/30/2024	2.000000	1.414330	5,000,000.00	5,126,755.83	5,354,500.00	107.090000	227,744.17	IDC-FIS
17376	9128286Z8	TREASURY NOTES	12/13/2019	06/30/2024	1.750000	1.739161	7,250,000.00	7,253,359.57	7,690,655.00	106.078000	437,295.43	IDC-FIS
17364	9128282N9	TREASURY NOTES	09/11/2019	07/31/2024	2.125000	1.556000	5,000,000.00	5,122,635.55	5,386,350.00	107.727000	263,714.45	IDC-FIS
17390	9128282U3	TREASURY NOTES	03/11/2020	08/31/2024	1.875000	.621947	5,000,000.00	5,278,582.31	5,339,850.00	106.797000	64,070.00	IDC-FIS
17370	9128282Y5	TREASURY NOTES	10/28/2019	09/30/2024	2.125000	1.630859	5,000,000.00	5,106,312.10	5,397,850.00	107.957000	291,537.90	IDC-FIS
17373	9128283D0	TREASURY NOTES	11/19/2019	10/31/2024	2.250000	1.636035	10,000,000.00	10,264,263.00	10,864,100.00	108.641000	599,837.00	IDC-FIS
17379	9128283J7	TREASURY NOTES	01/07/2020	11/30/2024	2.125000	1.617525	5,000,000.00	5,129,976.73	5,411,900.00	108.238000	292,954.69	IDC-FIS
17380	9128283P3	TREASURY NOTES	01/08/2020	12/31/2024	2.250000	1.618632	10,000,000.00	10,305,726.30	10,890,200.00	108.902000	589,418.75	IDC-FIS
17399	912828 <b>Z</b> 52	TREASURY NOTES	04/23/2020	01/31/2025	1.375000	.365012	5,000,000.00	5,254,348.39	5,250,400.00	105.008000	11,728.12	IDC-FIS
17389	9128283Z1	TREASURY NOTES	03/09/2020	02/28/2025	2.750000	.605325	10,000,000.00	11,056,334.92	11,151,200.00	111.512000	101,590.62	IDC-FIS
				Subtotal	1.940333	1.919916	374,750,000.00	376,179,366.50	393,033,030.00	104.878727	17,099,116.46	
Inv Typ	e: 21 FHLB	MEDIUM TERM NOTE	<u>s</u>									
17256	313370US5	FHLB MEDIUM TERM NO	07/22/2016	09/11/2020	2.875000	1.175915	5,000,000.00	5,041,386.81	5,037,150.00	100.743000	-4,236.81	IDC-FIS

17	256	313370US5	FHLB MEDIUM TERM NO	07/22/2016	09/11/2020	2.875000	1.175915	5,000,000.00	5,041,386.81	5,037,150.00	100.743000	-4,236.81	IDC-FIS
17	282	3130A1W95	FHLB MEDIUM TERM NO	11/18/2016	06/11/2021	2.250000	1.696591	5,000,000.00	5,039,728.09	5,104,400.00	102.088000	64,671.91	IDC-FIS
17	387	3130A1W95	FHLB MEDIUM TERM NO	02/26/2020	06/11/2021	2.250000	1.258135	5,000,000.00	5,086,737.50	5,104,400.00	102.088000	41,100.00	IDC-FIS
17	286	3130A8QS5	FHLB MEDIUM TERM NO	11/29/2016	07/14/2021	1.125000	1.814259	5,000,000.00	4,950,753.26	5,052,850.00	101.057000	102,096.74	IDC-FIS
17	277	313378JP7	FHLB MEDIUM TERM NO	11/01/2016	09/10/2021	2.375000	1.428993	5,000,000.00	5,068,330.10	5,134,600.00	102.692000	66,269.90	IDC-FIS
17	341	3130AFFN2	FHLB MEDIUM TERM NO	02/11/2019	12/10/2021	3.000000	2.497201	5,000,000.00	5,048,124.88	5,211,350.00	104.227000	163,225.12	IDC-FIS
17	393	313378CR0	FHLB MEDIUM TERM NO	03/16/2020	03/11/2022	2.250000	.716855	5,000,000.00	5,152,462.50	5,177,650.00	103.553000	26,750.00	IDC-FIS
17	333	313383WD9	FHLB MEDIUM TERM NO	12/13/2018	09/09/2022	3.125000	2.898026	5,000,000.00	5,026,601.32	5,318,650.00	106.373000	292,048.68	IDC-FIS
17	363	3130A3DL5	FHLB MEDIUM TERM NO	09/06/2019	09/08/2023	2.375000	1.527008	5,000,000.00	5,143,379.72	5,331,750.00	106.635000	188,370.28	IDC-FIS
17	336	3130A0F70	FHLB MEDIUM TERM NO	01/09/2019	12/08/2023	3.375000	2.727479	5,000,000.00	5,120,340.13	5,521,150.00	110.423000	400,809.87	IDC-FIS
17	392	3130A3VC5	FHLB MEDIUM TERM NO	03/13/2020	12/08/2023	2.250000	.715013	5,000,000.00	5,312,112.50	5,330,950.00	106.619000	48,525.00	IDC-FIS
17	350	3130AB3H7	FHLB MEDIUM TERM NO	04/12/2019	03/08/2024	2.375000	2.380001	5,000,000.00	4,999,018.25	5,355,350.00	107.107000	356,331.75	IDC-FIS



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INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
17374	3130A1XJ2	FHLB MEDIUM TERM NO	11/21/2019	06/14/2024	2.875000	1.641007	5,000,000.00	5,266,314.83	5,456,300.00	109.126000	189,985.17	IDC-FIS
17365	3130AGWK7	FHLB MEDIUM TERM NO	09/19/2019	08/15/2024	1.500000	1.644760	5,000,000.00	4,968,845.98	5,234,300.00	104.686000	265,454.02	IDC-FIS
17368	3130A2UW4	FHLB MEDIUM TERM NO	10/17/2019	09/13/2024	2.875000	1.656994	5,000,000.00	5,262,003.90	5,503,000.00	110.060000	240,996.10	IDC-FIS
17391	3130A3GE8	FHLB MEDIUM TERM NO	03/13/2020	12/13/2024	2.750000	.768165	5,000,000.00	5,495,675.00	5,514,800.00	110.296000	53,500.00	IDC-FIS
17400	3130A4CH3	FHLB MEDIUM TERM NO	04/28/2020	03/14/2025	2.375000	.665003	10,000,000.00	10,848,367.78	10,867,500.00	108.675000	48,160.00	IDC-FIS
				Subtotal	2.469592	1.534576	90,000,000.00	92,830,182.55	95,256,150.00	105.840167	2,544,057.73	
Inv Typ	e: 22 FHLB	COUPON NOTES										
17054	21204614140	FULD COUDON NOTES	0//20/2010	06/28/2024	2.220000	2.220000	F 000 000 00	F 000 000 00	E 001 0E0 00	101 (27000	01.050.00	IDC-FIS
17354		FHLB COUPON NOTES	06/28/2019				5,000,000.00	5,000,000.00	5,081,850.00	101.637000	81,850.00	
17360 17371	3130AGXF7 3130AHGL1	FHLB COUPON NOTES FHLB COUPON NOTES	08/26/2019	08/26/2024	1.650000	1.650000	5,000,000.00	5,000,000.00	5,071,400.00	101.428000	71,400.00	IDC-FIS
1/3/1	313UAHGL1	FHER COOPON NOTES	11/04/2019	11/04/2024 Subtotal	1.875000	1.875000	3,840,000.00	3,840,000.00	3,907,200.00	101.750000	67,200.00 220,450.00	IDC-FIS
				Subtotal	1.910333	1.910333	13,640,000.00	13,640,000.00	14,000,430.00	101.592647	220,430.00	
Inv Typ	e: 23 FNMA	COUPON NOTE										
17270	3136G4BD4	FNMA COUPON NOTE	09/29/2016	03/29/2021	1.350000	1.350000	5,540,000.00	5,540,000.00	5,587,145.40	100.851000	47,145.40	IDC-FIS
				Subtotal	1.350000	1.350000	5,540,000.00	5,540,000.00	5,587,145.40	100.851000	47,145.40	
Inv Tvr	e: 24 FNMA	MEDIUM TERM NOTE										
			=,									
17226	3135G0D75	FNMA MEDIUM TERM NO	10/23/2015	06/22/2020	1.500000	1.428035	10,000,000.00	10,003,449.88	10,008,000.00	100.080000	4,550.12	IDC-FIS
17238	3135G0F73	FNMA MEDIUM TERM NO	03/17/2016	11/30/2020	1.500000	1.601110	10,000,000.00	9,990,296.39	10,064,900.00	100.649000	74,603.61	IDC-FIS
17279	3135G0H55	FNMA MEDIUM TERM NO	11/16/2016	12/28/2020	1.875000	1.584161	5,000,000.00	5,014,012.31	5,045,500.00	100.910000	31,487.69	IDC-FIS
17248	3136G02F7	FNMA MEDIUM TERM NO	06/03/2016	05/07/2021	1.600000	1.474085	2,000,000.00	2,002,411.83	2,025,140.00	101.257000	22,728.17	IDC-FIS
17268	3135G0N82	FNMA MEDIUM TERM NO	08/25/2016	08/17/2021	1.250000	1.298063	10,000,000.00	9,993,062.38	10,130,300.00	101.303000	137,237.62	IDC-FIS
17271	3135G0Q89	FNMA MEDIUM TERM NO	10/11/2016	10/07/2021	1.375000	1.450052	5,000,000.00	4,994,596.05	5,079,450.00	101.589000	84,853.95	IDC-FIS
17329	3135G0S38	FNMA MEDIUM TERM NO	10/11/2018	01/05/2022	2.000000	3.012476	5,000,000.00	4,904,303.30	5,142,750.00	102.855000	238,446.70	IDC-FIS
17310	3135G0T78	FNMA MEDIUM TERM NO	01/29/2018	10/05/2022	2.000000	2.496939	5,000,000.00	4,941,733.33	5,208,050.00	104.161000	266,316.67	IDC-FIS
17377	3135G0V75	FNMA MEDIUM TERM NO	12/18/2019	07/02/2024	1.750000	1.732000	5,000,000.00	5,003,862.12	5,278,100.00	105.562000	274,237.88	IDC-FIS
17404	3135G0V75	FNMA MEDIUM TERM NO	05/15/2020	07/02/2024	1.750000	.377002	10,000,000.00	10,626,842.78	10,556,200.00	105.562000	-5,990.00	IDC-FIS
17382	3135G0X24	FNMA MEDIUM TERM NO	01/23/2020	01/07/2025	1.625000	1.627706	7,500,000.00	7,503,426.04	7,895,850.00	105.278000	396,825.00	IDC-FIS
17401	3135G03U5	FNMA MEDIUM TERM NO	05/08/2020	04/22/2025	.625000	.521429	10,000,000.00	10,053,030.56	10,048,800.00	100.488000	-1,800.00	IDC-FIS
				Subtotal	1.499178	1.395153	84,500,000.00	85,031,026.97	86,483,040.00	102.346793	1,523,497.41	
Inv Typ	e: 26 FFCB	MEDIUM TERM NOTE	<u>s</u>									
17234	3133EFYZ4	FFCB MEDIUM TERM NO	02/18/2016	02/10/2021	1.375000	1.490028	10,000,000.00	9,988,963.72	10,081,500.00	100.815000	92,536.28	IDC-FIS
17386	3133EGYS8	FFCB MEDIUM TERM NO	02/05/2020	04/14/2022	1.400000	1.451035	5,000,000.00	4,994,968.17	5,108,750.00	102.175000	113,781.83	IDC-FIS
17357	3133EKVE3	FFCB MEDIUM TERM NO	07/19/2019	07/19/2022	1.850000	1.889266	5,000,000.00	4,995,262.14	5,168,500.00	103.370000	173,237.86	IDC-FIS
17358	3133EKYJ9	FFCB MEDIUM TERM NO	08/14/2019	08/05/2022	1.850000	1.643841	5,000,000.00	5,024,974.98	5,176,600.00	103.532000	151,625.02	IDC-FIS

### Market Inventory

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INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
17366	3133EHM91	FFCB MEDIUM TERM NO	10/08/2019	11/01/2022	2.080000	1.440040	1,800,000.00	1,828,040.51	1,879,056.00	104.392000	51,015.49	IDC-FIS
17316	3133EJGU7	FFCB MEDIUM TERM NO	03/29/2018	12/16/2022	2.710000	2.638022	5,000,000.00	5,010,127.00	5,310,400.00	106.208000	300,273.00	IDC-FIS
17332	3133EJSD2	FFCB MEDIUM TERM NO	11/29/2018	06/19/2023	2.890000	2.983126	5,000,000.00	4,984,834.19	5,395,400.00	107.908000	410,565.81	IDC-FIS
17381	3133ELHZ0	FFCB MEDIUM TERM NO	01/17/2020	07/17/2023	1.600000	1.610620	5,000,000.00	4,998,200.00	5,202,850.00	104.057000	204,650.00	IDC-FIS
17327	3133EJWV7	FFCB MEDIUM TERM NO	09/18/2018	08/14/2023	2.900000	3.000958	5,000,000.00	4,983,649.25	5,412,750.00	108.255000	429,100.75	IDC-FIS
17331	3133EJD48	FFCB MEDIUM TERM NO	11/28/2018	10/02/2023	3.050000	3.024022	7,575,000.00	7,581,222.83	8,258,416.50	109.022000	677,193.67	IDC-FIS
17355	3133EHN25	FFCB MEDIUM TERM NO	06/27/2019	11/01/2023	2.200000	1.866116	2,965,000.00	2,998,072.60	3,152,061.85	106.309000	153,989.25	IDC-FIS
17348	3133EKBW5	FFCB MEDIUM TERM NO	03/21/2019	02/27/2024	2.610000	2.466241	5,000,000.00	5,026,828.71	5,411,350.00	108.227000	384,521.29	IDC-FIS
17362	3133EKHV1	FFCB MEDIUM TERM NO	09/05/2019	07/22/2024	2.450000	1.384069	5,000,000.00	5,230,958.08	5,409,150.00	108.183000	178,191.92	IDC-FIS
17372	3133EK4Y9	FFCB MEDIUM TERM NO	11/12/2019	11/01/2024	1.650000	1.806956	5,000,000.00	4,966,368.61	5,251,550.00	105.031000	285,181.39	IDC-FIS
17406	3133ELJM7	FFCB MEDIUM TERM NO	05/19/2020	01/23/2025	1.650000	.555648	7,320,000.00	7,728,285.20	7,701,006.00	105.205000	11,638.80	IDC-FIS
17405	3133ELZM9	FFCB MEDIUM TERM NO	05/18/2020	05/14/2025	.500000	.534983	10,000,000.00	9,983,355.56	9,982,800.00	99.828000	0.00	BOOK
				Subtotal	1.938498	1.774963	89,660,000.00	90,324,111.55	93,902,140.35	104.731363	3,617,502.36	
Inv Typ	e: 28 FHLM	C MEDIUM TERM NOT	ES									
17388	3134G9M20	FHLMC MEDIUM TERM N	02/26/2020	07/26/2021	1.875000	1.275218	5,000,000.00	5,049,762.50	5,101,400.00	102.028000	59,450.00	IDC-FIS
17402	3137EAER6	FHLMC MEDIUM TERM N	05/11/2020	05/05/2023	.375000	.277020	5,000,000.00	5,014,753.33	5,008,000.00	100.160000	-6,545.00	IDC-FIS
17407	3137EAEP0	FHLMC MEDIUM TERM N	05/21/2020	02/12/2025	1.500000	.526022	5,000,000.00	5,247,168.33	5,228,150.00	104.563000	1,190.00	IDC-FIS
				Subtotal	1.255224	.691554	15,000,000.00	15,311,684.16	15,337,550.00	102.250333	54,095.00	
inv i yp	<u>ie: 29 FHLIVI</u>	C COUPON NOTES										
17351	3134GTKG7	FHLMC COUPON NOTES	05/03/2019	05/03/2024	2.600000	2.600000	3,000,000.00	3,000,000.00	3,056,070.00	101.869000	56,070.00	IDC-FIS
				Subtotal	2.600000	2.600000	3,000,000.00	3,000,000.00	3,056,070.00	101.869000	56,070.00	
Inv Typ	e: 65 Govt I	Mutual Fund - Fidelity										
17403		FIDELITY GOVERNMENT	05/08/2020	05/30/2020	.157277	.157277	21,695,957.47	21,695,957.47	21,695,957.47	100.000000	0.00	ВООК
.,		TIBLETTI GGTERRINETT	00/00/2020	Subtotal	.157277	.157277	21,695,957.47	21,695,957.47	21,695,957.47	100.000000	0.00	book
Inv Typ	e: 99 LOCA	L AGENCY INVESTME	NT FUND									
16059		STATE OF CA DEMAND	09/30/1997	05/30/2020	1.992766	1.992766	64,206,402.35	64,206,402.35	64,206,402.35	100.000000	0.00	ВООК
				Subtotal	1.992766	1.992766	64,206,402.35	64,206,402.35	64,206,402.35	100.000000	0.00	
Inv Typ	e: 305 MUT	UAL FUNDS-FIDELITY										
17385		FIDELITY PRIME MMKT	12/13/2019	05/30/2020	.438084	.438084	0.00	0.00	0.00	100.090000	0.00	USERPR
17300		LIDELLI LUIME MINIL	12/13/2019	Subtotal	.000000	.000000	0.00	0.00	0.00	.000000	0.00	USERFR
				JUDIUIAI	.000000	.000000	0.00	0.00	0.00	.000000	0.00	



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### City of Santa Clara

INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
Inv Typ	۰ 315 MIIT	UAL FUNDS-DREYFUS	<b>.</b>									
iiiv iyp	e. 313 WOT	OAL FUNDS-DILLIFUS	<u>-</u>									
16064		DREYFUS TREASURY CA	10/31/1997	05/30/2020	.131463	.131463	2,145,541.42	2,145,541.42	2,145,541.42	100.000000	0.00	BOOK
				Subtotal	.131463	.131463	2,145,541.42	2,145,541.42	2,145,541.42	100.000000	0.00	
Grand To	otal			Count 116	1.888610	1.724054	764,337,901.24	770,104,272.97	794,763,476.99	103.980645	25,161,934.36	

AvantGard APS2 Page 5 of 5

### FY 2020/21 Budget Amendments

	Ger	neral Fund (0	01)
	Source of	Use of	,
Department	Funds	Funds	Explanation
Transfer from the Convention Center Enterprise Fund/City Manager's Office	20,000	20,000	D Establishes and appropriates a transfer from the Convention Center Enterprise Fund to the City Manager's Office to provide additional resources for the Small Business Assistance Program.
<del>-</del>	20,000	20,000	_
Other	City Departments	s Operating (	Grant Trust Fund (101)
	Source of	Use of	· ´
Department	Funds	Funds	Explanation
Revenue from Other Agencies/Non-Departmental - COVID	1,594,064	1,594,064	As part of the FY 2020/21 State budget, the State of California has set aside a portion of the State's CARES Act funding for cities with populations under 500,000 to be used towards homelessness, public health, public safety, and other services to combat the COVID-19 pandemic. The recipient jurisdictions must spend these funds consistent with federal law. For this City of Santa Clara, the allocation totals \$1.6 million.
Mission City Community Fund - Donations/COVID-19	14,331	14,33	1 The Mission City Community Fund organization is fundraising for the City of Santa Clara's food distribution program. This increases the revenue estimate for donations from this community group for the food distribution program and appropriates funding to a COVID-19 appropriation to cover food distribution program costs not reimbursed by FEMA.
-	1,608,395	1,608,395	_
	Convention Ce	nter Enterpr	ise Fund (860)
	Source of	Use of	100 1 4114 (000)
Department	Funds	Funds	Explanation
Transfer to the General Fund	- <del>11                                  </del>		Establishes a transfer from the Convention Center Enterprise Fund to the General Fund to provide additional resources for the Small Business Assistance Program.
Ending Fund Balance		(20,000	) Decreases the ending fund balance to offset the action recommended above.

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### Agenda Report

20-492 Agenda Date: 7/14/2020

### REPORT TO COUNCIL

### **SUBJECT**

Action on Investment Management Services Agreement with PFM Asset Management LLC and Approval of Related Budget Amendment [Council Pillar: Manage Strategically Our Workforce Capacity and Resources]

### **BACKGROUND**

The City of Santa Clara (City) internally manages the investment of its pooled portfolio, which as of May 31, 2020 totaled approximately \$770 million. Of this amount, approximately \$64 million is invested with the State's Local Agency Investment Fund (LAIF) to meet the City's liquidity needs. The City has six approved broker/dealers from which securities are purchased. Portfolio accounting and reporting is currently performed using SunGard software.

The Department of Finance currently manages the investment of the City's pooled portfolio in accordance with the City's Investment Policy and state law. With limited capacity and resources to effectively research, analyze, and monitor corporate and other investments, staff has conservatively invested City funds mainly in Treasury and Government Agency Notes and LAIF. Although the pooled portfolio is diversified among Treasury and Agency Notes and LAIF, the City does not have any investments in other allowable investments that could provide higher yields for the City, such as commercial paper, corporate notes, mortgage-backed securities, and municipal notes.

By engaging an outside investment management firm, the City can leverage the firm's many years of investment experience and dedicated credit and risk management personnel. The City has the potential to generate higher earnings with access to sector specialists and enhanced market insight.

#### **DISCUSSION**

On January 21, 2020, the City released a Request for Proposal (RFP) No. 19-20-36 seeking proposals from qualified financial consulting firms to provide investment advisory and portfolio management services to the City. The RFP was published on BidSync, the City's e-procurement system. A total of 57 firms viewed the RFP, and 10 proposals were received from the following firms:

- Chandler Asset Management, Inc. (San Diego, CA)
- Clearwater Advisors, LLC (Boise, ID)
- FHN Financial Main Street Advisors (Las Vegas, NV)
- Garcia Hamilton & Associates, L.P. (Houston, TX)
- Goldman Sachs Asset Management L.P. (San Francisco, CA)
- Insight North America LLC (New York, NY)
- Meeder Investment Management (Dublin, OH)
- PFM Asset Management LLC (San Francisco, CA)

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- Public Trust Advisors, LLC (Los Angeles, CA)
- Russell Investments (Seattle, WA)

The written proposals were evaluated and scored independently by a three-member evaluation team consisting of staff from the Finance Department against the criteria and weights published in the RFP. The proposals were evaluated on proposer qualifications and experience, portfolio management experience, investment management approach, familiarity with reporting, proposal quality and content, and fee schedule.

Chandler Asset Management Inc., PFM Asset Management LLC, Public Trust Advisors, LLC, and FHN Financial Main Street Advisors were invited to oral interviews to demonstrate their knowledge and understanding of the City's requirements and provide detailed information on how they would deliver comprehensive investment management services for the City's portfolio. Following oral presentations, staff issued a Best and Final Offer (BAFO) that provided PFM Asset Management a final opportunity to revise its fee schedule. PFM Asset Management improved upon its initial fee schedule providing a savings of \$148,000 over the initial three-year term of the proposed agreement.

Staff recommends award of contract to PFM Asset Management LLC (PFM) as the most advantageous and best value proposal based upon the final evaluation ranking. PFM demonstrated a high level of expertise and experience in managing funds for the public sector, with \$153 billion in assets nationwide and \$48 billion in assets in the State of California (i.e., City of Fremont, City of Hayward, and City of Redwood City). With a dedicated relationship team, PFM has the resources to customize the City's investment portfolio in accordance with the City's investment policy as well as support City staff. In addition, PFM has a robust cashflow forecasting model, education and training platform, and a client reporting website that will provide the City full access to daily portfolio holdings, daily transactions and an archive of month-end statements.

Staff conducted reference checks with four cities in similar size with the City, and each reference provided positive feedback and noted that PFM was able to increase their investment returns through portfolio optimization.

Under the proposed agreement, PFM will provide the following:

- Be a fiduciary to the City's investment portfolio and ensure that investments are in compliance with state law and the City's Investment Policy.
- Implement prudent investment strategies and ensure sufficient cash liquidity to meet the City's needs.
- Prepare cashflow analyses and forecasts.
- Assist staff with the annual review and update of the City's Investment Policy.
- Provide detailed monthly reports of investment portfolio activity, performance, holdings by investment type, maturity, broker, weighted average maturity, duration, benchmark comparison, and other such reports required by the City.

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 Work with the City's custodian for safekeeping of securities and provide services required to execute and settle investment trades.

- Provide education on economic trends and financial markets.
- Hold quarterly meetings with City Staff to discuss portfolio performance results, liquidity requirements, revenue projections, and other financial matters.

The term of the proposed agreement will be a three-year initial term with two additional one-year options to extend at the discretion of the City. PFM's compensation under the agreement is as follows:

Schedule	Fee Cap
<b>Year 1:</b> 4.2 basis points (0.042% of the portfolio value)	Not to exceed \$255,000
<b>Year 2:</b> 4.7 basis points (0.047% of the portfolio value)	Not to exceed \$280,000
<b>Year 3:</b> 5.2 basis points (0.052% of the portfolio value)	Not to exceed \$305,000
	Not to exceed \$305,000 + Cost-of-Living Adjustment based on the Consumer Price Index
	Not to exceed \$305,000 + Cost-of-Living Adjustment based on the Consumer Price Index

Staff expects that enhanced earnings resulting from further diversifying the portfolio will more than offset PFM's investment management fees. For example, if PFM increases the City's portfolio return by a modest 0.10% or 10 basis points on a \$700 million portfolio, the City will earn an additional \$700,000 annually or approximately \$420,000 annually net of fees.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of a California Environmental Quality Act ("CEQA") pursuant to the CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Furthermore, the action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

### FISCAL IMPACT

The agreement has a not-to-exceed amount of \$840,000 for the initial three-year term. Fees are expected to be paid from additional portfolio earnings. For FY 2020/21, a General Fund budget amendment is recommended to recognize additional interest earnings that will be used to cover the contract costs that are budgeted at \$255,000. The necessary revenue and expenditure adjustments will be incorporated into future budgets.

### Budget Amendment FY 2020/21

	Current	Increase/ (Decr	ease)Revised
General Fund			
Revenue			
Interest Income	\$ 5,246,000	\$ 255,000	\$ 5,501,000
Expenditure			
Finance Departme	ent \$ 16,216,074	\$ 255,000	\$ 16,471,074

#### 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>.

#### RECOMMENDATION

- 1. Approve and authorize the City Manager to execute an agreement with PFM Asset Management LLC for Investment Management Services for an initial three-year term starting on or about August 1, 2020 and ending on July 31, 2023 for a total maximum amount not to exceed \$840,000, subject to the appropriation of funds;
- 2. Authorize the City Manager to execute two one-year options to extend the term of the Agreement through July 31, 2025, subject to the appropriation of funds; and
- 3. Approve the related FY 2020/21 budget amendment in the General Fund to increase Interest Income revenue estimate by \$255,000 and increase the Finance Department appropriation by \$255,000 for year 1 of the investment management services agreement.

Reviewed by: Kenn Lee, Director of Finance Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Agreement with PFM Asset Management LLC

# AGREEMENT FOR SERVICES BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND PFM ASSET MANAGEMENT LLC

#### **PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and PFM Asset Management LLC, a Delaware limited liability company (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

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,

Agreement with PFM Asset Management Rev. 07-01-18

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 August 1, 2020 and terminate on July 31, 2023 (Initial Term). The City reserves the right, at its own sole discretion, to extend the term of this Agreement for up to two (2) additional one-year options through July 31, 2025.

### 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 performed with the degree of skill and care in accordance with industry standards, 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. CONFLICT OF INTEREST (FORM 700)

In accordance with the California Political Reform Act (Government Code section 81000 et seq.) and the City's Conflict of Interest Code, Contractor shall cause each person who will be principally responsible for providing the service and deliverables under this Agreement as having to file a Form 700 to do each of the following:

- A. Complete and file the Form 700 no later than thirty (30) calendar days after the date the person begins performing services under the Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- B. File the Form 700 with the City's Clerk Office.

#### 7. 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 Eight Hundred Forty Thousand Dollars (\$840,000) during the Initial Term, 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.

#### 8. TERMINATION

- A. <u>Termination for Convenience</u>. 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. <u>Termination for Default</u>. Either Party may terminate this Agreement upon written notice to the other Party, if the other Party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other Party's receipt of such notice.
- 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.

### 9. 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.

### 10. 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.

#### 11. 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) (except with respect to the purchase and sale of portfolio securities managed by Contractor) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

#### 12. 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 or unless required by law or judicial or regulatory process, 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.

#### 13. 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.

### 14. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall, upon reasonable advance notice, 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.

#### 15. HOLD HARMLESS/INDEMNIFICATION

- Α. 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 negligently or intentionally wrongfully 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.

#### 16. 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.

#### 17. 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.

#### 18. NOTICES

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

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

And to Contractor addressed as follows:

PFM Asset Management LLC Attention: Monique Spyke, Managing Director 50 California Street Suite 2300 San Francisco, CA 94111 and by e-mail at spykem@pfm.com

with a copy to:

PFM Asset Management LLC Attention: Controller 1735 Market Street, 43rd Floor Philadelphia, PA 19103 and by email at controller@pfm.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.

### 19. 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 (<a href="http://santaclaraca.gov/home/showdocument?id=58299">http://santaclaraca.gov/home/showdocument?id=58299</a>).

#### 20. 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.

#### 21. 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.

#### 22. 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.

#### 23. 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.

### 24. 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.

#### 25. AMENDMENTS

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

#### 26. COUNTERPARTS

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

### 27. INVESTMENT ADVISOR PROVISIONS

Α. Services of Contractor. City hereby engages Contractor to serve as investment manager under the terms of this Agreement with respect to the funds described in Exhibit A, Section 1 to this Agreement and such other funds as City may from time to time assign by written notice to Contractor (collectively the "Managed Funds"), and Contractor accepts such appointment. In connection therewith, Contractor will be a fiduciary to the City and provide investment research and management of the Managed Funds investments and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the Managed Funds assets. Contractor shall continuously monitor investment opportunities, evaluate investments of the Managed Funds, and invest Managed Funds in accordance with Federal and State law and the City's Investment Policy, as amended from time to time. Contractor shall furnish City with statistical information and reports with respect to investments of the Managed Funds. Contractor shall place all orders for the purchase, sale, loan or exchange of portfolio securities for City's account with brokers or dealers recommended by Contractor and/or City, and to that end Contractor is authorized as agent of City to give instructions to the custodian designated by City (the "Custodian") as to deliveries of securities and payments of cash for the account of City. In connection with the selection of such brokers and dealers and the placing of such orders, Contractor is directed to seek for City the most favorable execution and price., The Custodian shall have custody of cash, assets and securities of City. Contractor shall not take possession of or act as custodian for the cash, securities or other assets of City and shall have no responsibility in connection therewith. Authorized investments shall include only those investments which are currently authorized by the state investment statutes and the applicable covenants and as supplemented

by such other written instructions, including the City's Investment Policy, as may from time to time be provided by City to Contractor. Contractor shall be entitled to rely upon City's written advice with respect to anticipated drawdowns of Managed Funds. Contractor will observe the instructions of City with respect to broker/dealers who are approved to execute transactions involving the Managed Funds and in the absence of such instructions will engage broker/dealers which Contractor reasonably believes to be reputable, qualified and financially sound.

- B. Pool Compensation. Assets invested by Contractor under the terms of this Agreement may from time to time be invested in (i) a money market mutual fund managed by Contractor or (ii) a local government investment pool managed by Contractor (either, a "Pool") or in individual securities. Approval for Contractor to invest Managed Funds in accordance with this subsection must be specifically allowed in the City's Investment Policy and expressly approved in writing by the City. Average daily net assets subject to the fees described in this Agreement shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for Contractor and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.
- C. Other Compensation. If and to the extent that City shall request Contractor to render services other than those to be rendered by Contractor under this Agreement, such additional services shall be compensated separately on terms to be agreed to in writing between Contractor and City.
- D. <u>Expenses</u>. Contractor shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, courier or other delivery services, printing, subscription services, computer and technology, investment advisory facilities, executive and supervisory personnel, and all other equipment and services customarily required for managing the Managed Funds. Except as expressly provided otherwise herein, City shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of City's independent auditors and legal counsel, if any, brokerage and other expenses connected with the execution of portfolio security transactions, insurance premiums, and fees and expenses of the Custodian.
- E. Registered Advisor; Duty of Care. Contractor hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. Contractor shall immediately notify City if at any time during the term of this Agreement it is not so registered or if its registration is suspended. Contractor agrees to perform its duties and responsibilities under this Agreement with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith.

Nothing herein shall in any way constitute a waiver or limitation of any rights which City may have under any federal securities laws. City hereby authorizes Contractor to sign I.R.S. Form W-9 on behalf of City and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement.

- F. Contractor's Other Clients. City understands that Contractor performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. City agrees that Contractor, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Managed Funds. Contractor shall not have any obligation to purchase, sell or exchange any security for the Managed Funds solely by reason of the fact that Contractor, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.
- G. <u>Force Majeure</u>. Contractor shall have no liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Agreement which result from events beyond its control, including interruption of the business activities of Contractor or other financial institutions due to acts of God, pandemic, "superhuman cause," acts of governmental authority, acts of war, terrorism, civil insurrection, riots, labor difficulties, or any action or inaction of any carrier or utility, or mechanical or other malfunction.
- H. <u>Disciplinary Actions</u>. Contractor shall promptly give notice to City if Contractor shall have been found to have violated any state or federal securities law or regulation in any final and unappealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission ("SEC") or any other agency or department of the United States, any registered securities exchange, FINRA, or any regulatory authority of any State based upon the performance of services as an investment advisor.
- I. Books. Contractor shall maintain records of all transactions in the Managed Funds. Contractor shall provide City with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by Contractor and City. Other reporting requirements and electronic access to the City's account shall be provided by the Contractor as described in Exhibit A Scope of Services or as reasonably requested by the City.

J. Brochure and Brochure Supplement. Contractor warrants that it has delivered to City prior to the execution of this Agreement Contractor's current SEC Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). City acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.

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

#### **CITY OF SANTA CLARA, CALIFORNIA**

a chartered California municipal corporation

Approved as to Form:	Dated:	
BRIAN DOYLE	DEANNA	J. SANTANA
City Attorney	City Mana	ger
,	1500 War	burton Avenue
	Santa Cla	ra, CA 95050
	Telephone	e: (408) 615-2210
	-	) 2\dagged1-6771
•	```´	

#### PFM ASSET MANAGEMENT LLC

a Delaware limited liability company

By (Signature):

Name:

Monique Spyke

Title:

Managing Director

50 California Street

Principal Place of
Business Address:

San Francisco, CA 94111

Email Address:

Spykem@pfm.com

Telephone:

(415) 982-5544

Fax:

(415) 982-4513

Agreement with PFM Asset Management Rev. 07-01-18

### EXHIBIT A SCOPE OF SERVICES

#### 1. GENERAL

- 1.1. The City currently manages the investment of its pooled portfolio, which as of May 31, 2020 totaled \$770 million (Managed Funds). Of this amount, approximately \$64 million is invested with the State's Local Agency Investment Fund (LAIF) to meet the City's liquidity needs. Under this Agreement, the City designates and retains Contractor to furnish investment advisory and portfolio management services for the City's portfolio.
- 1.2. To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's RFP 19-20-36 (including subsequent updates), Contractor's proposal response dated February 18, 2020 and Contractor's oral demonstration materials dated May 5, 2020 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

#### 2. SCOPE OF SERVICES

The services that Contractor shall perform include, but are not limited to, the following:

- **2.1.** Provide full-time investment management services in accordance with the City's Investment Policy and State law.
- **2.2.** Assist with reviewing and recommending any appropriate amendments to the City's Investment Policy at the outset of the contract term and assist with the annual review and update of the Investment Policy.
- **2.3.** Assist the City with developing an appropriate cash flow model to minimize balances held in highly liquid but low interest accounts (e.g., bank accounts and LAIF).
- **2.4.** Assist the City with maturity analysis.
- **2.5.** Provide credit analysis and assess risk of portfolio investments.
- **2.6.** Work with the City's third-party custodian for safekeeping of securities and provide services required to execute and settle investment trades. Contractor will not act as a custodian of assets in the account or have possession of any such assets.
- **2.7.** Recommend and justify appropriate investment benchmarks.
- **2.8.** Provide detailed monthly reports of investment portfolio activity, performance, holdings by investment type, maturity, broker, weighted average maturity,

- duration, benchmark comparison, and other such reports normally provided to governmental clients. Provide separate annual portfolio holding, activity, and performance reports and relevant GASB reports based on the City's fiscal year (July 1 June 30). Provide custom reports as requested by the City at no additional cost.
- **2.9.** Be available to Finance Department staff in a timely manner by telephone or email and meet with and provide information to Finance Department staff upon request, and if requested, to other interested parties such as the Investment Committee, City Council and/or City Manager.
- **2.10.** Attend City Council meetings for the annual review of the investment policy.
- **2.11.** Provide assurance of portfolio compliance with all federal and State of California laws as well as ordinances, resolutions, and policies of the City relating to the investment of public funds.
- **2.12.** Annually perform due diligence reviews of the broker/dealers, custodian bank, and financial institutions utilized by the City and provide supporting documentation to the City.
- **2.13.** Act as a fiduciary agent to the City, serving as an independent advisor to represent the best interests of the City.
- **2.14.** Demonstrate independence from any financial institution or securities brokerage firm, or fully disclose any such relationships relevant to qualified investments for public sector entities.
- **2.15.** Keep City informed of changing economic conditions through flash emails, daily, weekly, and/or monthly reports including discussion of key economic indicators relevant to the regional, State, national, and global economies.

Agreement with PFM Asset Management /Exhibit A-Scope of Services Rev. 07-01-18

### EXHIBIT B SCHEDULE OF FEES

#### 1. MAXIMUM COMPENSATION

- 1.1. The maximum compensation the City will pay the Contractor for all professional fees, costs and expenses provided under this Agreement shall not exceed Eight Hundred Forty Thousand Dollars (\$840,000) during the Initial Term of the Agreement.
- 1.2. Any additional professional fees, costs and expenses requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement. No additional services will be performed unless both Parties execute an Amendment outlining the services requested and the compensation agreed for such services.

#### 2. FEES

**2.1.** For its services, Contractor shall receive an investment fee as set forth below:

Schedule	Fee Cap
Year 1: 4.2 basis points	Not to exceed \$255,000
Year 2: 4.7 basis points	Not to exceed \$280,000
Year 3: 5.2 basis points	Not to exceed \$305,000
Year 4: 5.2 basis points	Not to exceed \$305,000 + COLA (see Section 2.1.1 below)
Year 5: 5.2 basis points	Not to exceed \$305,000 + COLA (see Section 2.1.1 below)

#### 2.1.1. For Years 4 and 5:

- **2.1.1.1.** Cost-of-Living Adjustment (COLA) shall be in line with the Consumer Price Index.
- 2.1.1.2. Should invested assets exceed \$730 million, a commensurate increase will be calculated in the fee cap. Contractor shall request such adjustment to the fee cap at least sixty (60) days prior to the beginning of the renewal period.

#### 3. INVOICING

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.

### 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 during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

#### A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$2,000,000 Each Occurrence \$4,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal Injury

- 2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
- 3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on an occurrence 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
  - Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), 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 one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

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

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than forty million dollars (\$40,000,000) per claim and in aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

- Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds, with the exception of workers compensation, in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
- 2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

#### 3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation 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 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. Contractor agrees to provide the City written notice at least thirty (30) days prior to the effective date of any modification of coverage provided.
- 4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

#### F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, separately provide the same

minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

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

#### G. EVIDENCE OF COVERAGE

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

#### H. EVIDENCE OF COMPLIANCE

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

Or by mail to: EBIX Inc. City of Santa Clara – Finance Department P.O. Box 100085 – S2 Duluth, GA 30096 Telephone number: 951-766-2280

Fax number: 770-325-0409

#### 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 representative



#### City of Santa Clara

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

#### Agenda Report

20-600 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Action on a Resolution for the Use of City Electric Forces at Various Locations [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

#### **BACKGROUND**

Charter Section 1310 titled Contracts on Public Works states, in part, "that every contract involving an expenditure of more than one thousand dollars (\$1,000) for the construction or improvement (excluding maintenance and repair) of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be let to the lowest responsible bidder." The section further states that "the City Council may declare and determine that, in its opinion, the work in question may be performed better or more economically by the City with its own employees, and after the adoption of a resolution to this effect by at least four affirmative votes, it may proceed to have said work done in the manner stated, without further observance of the provisions of this section."

#### **DISCUSSION**

Staff believes that the work described below is best and most efficiently performed with City forces based upon the following factors: (1) the work is limited in size and scope; (2) City forces have knowledge and training in operating and maintaining the electric system that can be leveraged to more economically perform this work; and (3) bidding out the work and contracting with a private entity would not likely result in a lower overall cost or time savings. Therefore, staff recommends that the City Council make a finding that City forces can better perform the installation of the following electric facilities and approve the use of City forces.

Estimate Number: 36215

Location: 3238 Scott Boulevard

Type of Service: New Business

Description of Work: Install 4 pad-mounted transformers, 2,700' underground cable, 24 connectors

and 30 splices. Install metering for 358 apartments. Install 1 per each house

meter and fire service meter.

Estimated Cost: \$186,126

Appropriation: Electric Utility Fund (591) Project 2005 New Business Estimate Work

Source of Revenue: Customer/Developer Contribution

Estimate Number: 36288

Location: 1550 Space Park Drive

Type of Service: Reliability

Description of Work: Remove 1 pad-mounted transformer and connectors, and 700' 12kV

underground cable.

Estimated Cost: \$2,647

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Appropriation: Electric Utility Fund (591) Project 2006 Distribution Capital Maintenance and

**Betterments** 

Source of Revenue: Customer/Developer Contribution

Estimate Number: 36287

Location: Santa Clara Square area near Building 6 on Scott Boulevard and Octavius

Drive

Type of Service: Street Lights

Description of Work: Install approximately 4,500' 2/4 aluminum streetlight cable through conduits

and splice boxes. Install 5 new streetlights and connect 7 existing lights to new streetlight circuit. Remove old streetlight circuit approximately 2,000'

cable.

Estimated Cost: \$23,182

Appropriation: Street Lighting Fund (534) Project 2871 - Miscellaneous Street Lighting

Source of Revenue: Customer/Developer Contribution

Estimate Number: 35995 Rev 2

Location: East side Stars and Stripes Drive east of Fire Station (under Tasman

overpass)

Type of Service: New Business

Description of Work: Install 1 pad-mounted transformer, 7,000' underground cable, connect

streetlight circuits for decorative lights (by developer). Install metering 4

pedestals.

Estimated Cost: \$68,337

Appropriation: Electric Utility Fund (591) Project 2005 New Business Estimate Work

Source of Revenue: Customer/Developer Contribution

Estimate Number: 35953

Location: 2106 Klamath Avenue

Type of Service: Reliability

Description of Work: Replacement of 112kVA pad-mounted transformer to replace leaking 112kVA

pad-mounted transformer at 2106 Klamath Avenue.

Estimated Cost: \$10,625

Appropriation: Electric Utility Fund (591) Project 2006 Distribution Capital Maintenance and

**Betterments** 

Source of Revenue: Customer Service Charges

Estimate Number: 35586

Location: 2900 Lakeside Drive

Type of Service: New Business

Description of Work: Site Demo: Removal of existing 225kVA transformer and 950' of 1/0 AL Tri

Primary UG cable. Install 3 1/0 MCM splices and 3 1/0 AL 15kV Termination

Elbows.

Estimated Cost: \$3,900

Appropriation: Electric Utility Fund (591) Project 2005 New Business Estimate Work

Source of Revenue: Customer Service Charges

Estimate Number: 36303

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Location: Monroe Street and Reeve Street

Type of Service: Reliability

Description of Work: Replace 8 spans of #4 overhead wire with 8 spans of 397 KCMIL conductor

and replace pole 46F38.

Estimated Cost: \$33,391

Appropriation: Electric Utility Fund (591) Project 2006 Distribution Capital Maintenance and

**Betterments** 

Source of Revenue: Customer/Developer Contribution

Estimate Number: 35952

Location: 3365 Cabrillo Avenue

Type of Service: Reliability

Description of Work: Replacement of 37 kVA leaking pad-mounted transformer at 3365 Cabrillo

Avenue.

Estimated Cost: \$8,648

Appropriation: Electric Utility Fund (591) Project 2006 Distribution Capital Maintenance and

**Betterments** 

Source of Revenue: Customer Service Charges

Estimate Number: 36296

Location: 2375 De La Cruz Boulevard

Type of Service: Reliability

Description of Work: Install new 40' Class 1 pole to replace existing rotten pole. Replace 1x-100

kVA and 2x-50kVA overhead transformers.

Estimated Cost: \$10,664

Appropriation: Electric Utility Fund (591) Project 2006 Distribution Capital Maintenance and

**Betterments** 

Source of Revenue: Customer Service Charges

Estimate Number: 36297

Location: 2041 Mission College Boulevard

Type of Service: Reliability

Description of Work: Install new 70' Class 1 pole to replace existing rotten pole.

Estimated Cost: \$9,291

Appropriation: Electric Utility Fund (591) Project 2006 Distribution Capital Maintenance and

**Betterments** 

Source of Revenue: Customer Service Charges

#### **ENVIRONMENTAL REVIEW**

The actions being considered are exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15302(c) (Class 2 - Replacement or Reconstruction) because they involve the replacement or reconstruction of existing utility systems and/or facilities involving negligible expansion of capacity, and 15303(d) (Class 3 - New Construction or Conversion of Small Structures), because they involve the construction of new electric utility extensions.

#### FISCAL IMPACT

The funds to support the staff time and related construction materials for the work detailed in this report, totaling \$356,811 are included in the Adopted Fiscal Year 2020/21 Capital Improvement

20-600 Agenda Date: 7/14/2020

Program Budget, as indicated by each project appropriation.

#### 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 <a href="mailto:clerk@santaclaraca.gov">clerk@santaclaraca.gov</a> <a href="mailto:mailto:clerk@santaclaraca.gov">mailto:clerk@santaclaraca.gov</a>>.

#### RECOMMENDATION

Adopt a Resolution approving the use of City Electric Forces for the installation of facilities at 3238 Scott Boulevard, 1550 Space Park Drive, Santa Clara Square area near Building 6 on Scott Boulevard and Octavius Drive, East side Stars and Stripes Drive east of Fire Station (under Tasman overpass), 2106 Klamath Avenue, 2900 Lakeside Drive, Monroe Street and Reeve Street, 3365 Cabrillo Avenue, 2375 De La Cruz Boulevard, and 2041 Mission College Boulevard.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Resolution - Use of City Electric Forces

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## A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA AUTHORIZING THE USE OF CITY ELECTRIC FORCES PURSUANT TO CHARTER SECTION 1310

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

WHEREAS, the City of Santa Clara's Charter section 1310 requires all contracts involving an expenditure of over \$1,000 for a public works project to be let to the lowest responsible bidder; WHEREAS, Charter section 1310 permits the City to use its own employees if the City Council determines that the public works may be done better or more economically by the City's own employees, and, upon such determination, the City may proceed to have the public works project completed without further observance of Charter section 1310;

**WHEREAS**, the City's Electric Department desires to perform certain public works, as set forth in the Report to Council dated July 14, 2020, by its own employees; and,

**WHEREAS**, the City Council has declared and determined that the work in question may be performed better or more economically by the City with its own employees.

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

1. The City Council of the City of Santa Clara does hereby declare and determine that the public works set forth in the July 14, 2020 Report to Council, attached hereto and incorporated by this reference, may be performed better or more economically by the City with its own employees.

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2. <u>Effective date</u> .	This resolution shall be	oecome effectiv	e immediately.
I HEREBY CERTIFY	THE FOREGOING TO	BE A TRUE C	COPY OF A RESOLUTION PASSED
AND ADOPTED BY T	HE CITY OF SANTA	CLARA, CALIF	ORNIA, 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: July 14, 2020 Report to Council.



#### City of Santa Clara

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

#### Agenda Report

20-604 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Action on Award of Contract for the Photovoltaic System Installation at the Northside Branch Library (CE 18-19-11) and Related Budget Amendment [Council Pillar: Sustainability]

#### **BACKGROUND**

The Northside Branch Library was built in 2012 and was designed with future solar panel installation in mind. Due to the library building's flat roof and low roof parapet, pre-installed conduits between the roof and electrical room and available space in the electrical room, it is an ideal candidate for photovoltaic system installation. In 2018, the Northside Branch Library was nominated for the Silicon Valley Power (SVP) Neighborhood Solar Program and was selected to receive the Neighborhood Solar Program grant.

The Photovoltaic System Installation at the Northside Branch Library (Project) consists of installing photovoltaic array with 20 kilowatt photovoltaic production capacity (Base Bid) and an additional photovoltaic array with another 20 kilowatt photovoltaic production capacity (Add Alternative Bid). The library building roof has sufficient space to support a total of 80 kilowatt photovoltaic array size. Base bid plus add alternative bid would bring a total of 40 kilowatt photovoltaic production capacity to the Northside Branch Library. The scope of work for the Project includes the installation of a complete photovoltaic system, and operation and maintenance of the installed photovoltaic system for the first year.

#### **DISCUSSION**

On May 27, 2020, bids for the Project were opened via video conference. Two bids were received in the amount of \$99,982 and \$165,438. The Bid Summary is included as Attachment 1. The Project bids included a Base Bid for 20 kilowatt photovoltaic production capacity and one Add Alternative Bid for an additional 20 kilowatt photovoltaic production capacity. The additional 20 kilowatt was included as Add Alternative so that if bids received for the project were higher than the available funding, then the alternative 20 kilowatt photovoltaic production capacity could be removed from the current project.

Staten Solar Corporation submitted the lowest total bid in the amount of \$99,982, which is approximately 11 percent below the Engineer's Estimate of \$110,807. Based on the lowest bid being lower than the Engineer's Estimate and within the available funding amount, staff recommends awarding both the Base Bid and Add Alternative Bid. Staten Solar's bid was reviewed for compliance with the Bid Documents and was determined to be the lowest responsive and responsible bidder. Staff recommends awarding the contract, including the Base Bid and the Add Alternative to Staten Solar Corporation.

The contract includes prevailing wage requirements.

20-604 Agenda Date: 7/14/2020

#### **ENVIRONMENTAL REVIEW**

The project being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 21080.35 of the Public Resources Code, which exempts rooftop solar energy systems from CEQA review.

#### **FISCAL IMPACT**

Staff recommends establishing a new Capital Improvement Program Project within the Library Capital Fund for the Photovoltaic System Installation at the Northside Branch Library. The cost of the contract is \$99,982 (Base Bid plus Add Alternative) plus a contingency of approximately 15 percent, or \$15,000, for any potential change orders, for a total not-to-exceed contract amount of \$114,982. Staff recognizes the potential unknowns and challenges of working with the existing building and hence recommends a 15 percent construction contingency for the Project.

Funding for the project is available in the Electric Utility Department's Public Benefits Program budgeted in the Electric Operating Grant Trust Fund - Mandated Program Costs account, and this funding is recommended to be transferred to the Library Capital Fund.

E	Budget Amendment FY 2020/21					
	Current	Increase/ (Decrease)	Revised			
Library Capital Fund  Transfers In  Transfer from Electric Operating Grant Tr  Fund	rust\$0	\$114,982	\$114,982			
Expenditures Photovoltaic System Installation at the Northside Branch Library Project (New)	\$0	\$114,982	\$114,982			
Electric Operating Grant Trust Fund  Expenditures Public Benefits Program - Mandated Program Costs	\$14,284,924	(\$114,982)	\$14,169,942			
<u>Transfers Out</u> Transfer to Library Capital Fund	\$0	\$114,982	\$114,982			

#### COORDINATION

This report has been coordinated with Silicon Valley Power, Santa Clara City Library, 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

20-604 Agenda Date: 7/14/2020

Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov>.

#### RECOMMENDATION

- 1. Approve the establishment of the new Capital Improvement Program Project within the Library Capital Fund for the Photovoltaic System Installation at the Northside Branch Library Project;
- 2. Approve the FY 2020/21 budget amendment in the Library Capital Fund to recognize a transfer from the Electric Operating Grant Trust Fund and establish the Photovoltaic System Installation at the Northside Branch Library Project in the amount of \$114,982; in the Electric Operating Grant Trust Fund, decrease the Public Benefits Program Mandated Program Costs and establish a transfer to Library Capital Fund in the amount of \$114,982;
- 3. Award the Public Works Contract for Photovoltaic System Installation at the Northside Branch Library (CE 18-19-11), including the Base Bid and Add Alternate, to the lowest responsive and responsible bidder, Staten Solar Corporation, in the amount of \$99,982 and authorize the City Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of this Project; and
- 4. Authorize the City Manager to execute change orders up to approximately 15 percent of the original contract price, or \$15,000, for a total project budget not to exceed amount of \$114,982.

Reviewed by: Craig Mobeck, Director of Public Works Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Bid Summary

#### **CITY OF SANTA CLARA**

**BID OPENING DATE:** 

WEDNESDAY, APRIL, 1, 2020

TIME:

3:00 PM

**PROJECT NAME:** 

NORTHSIDE BRANCH LIBRARY PHOTOVOLTAICS SYSTEM

**INVITATION NUMBER:** 

**INVITATION NO. CE 18-19-11** 

**DEPARTMENT:** 

PUBLIC WORKS

PROJECT ENGINEER:

EVELYN LIANG (408) 985-7936

Spening

				010.0				
COMPANY/CITY/STATE	REC'D BY	TIME REC'D	APPARENT LOW BID ORDER	BID AMOUNT				
Staten Solar	-		1	# 99, 982. <del>00</del>				
Solar Harmonics	-	2	2	\$ 165, 438.€				
	-		4					
	_	ta de		7 2				
		1						
			·					
Fo	r Base Bi	d:	For Total	Bid (Base plus Alternative Bid):				
ENGINEER'S ESTIMATE \$ 63 312.50 \$110,807.00								



#### City of Santa Clara

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

#### Agenda Report

20-657 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Resolution Confirming the 2020 Weed Abatement Program and Assessment [Council Pillar: Promote Sustainability and Environmental Protection]

#### **BACKGROUND**

The City of Santa Clara, as outlined in Title 8, Chapter 15 of the Santa Clara City Code (SCCC), has deemed the overgrowth of weeds on properties within the City a public nuisance and mandated that property owners abate the nuisance 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. To address these non-compliant properties, the City contracts with the County of Santa Clara to conduct abatement services and assess the appropriate costs through the County Assessor's Office. The weed abatement services are conducted to limit impacts to the environment and utilize only mowing and/or manual methods using hand tools.

#### DISCUSSION

In accordance with SCCC 8.15.070, the Santa Clara County Agricultural Commissioner has prepared a 2020 Weed Abatement Program Assessment Report ("Weed Assessment Report") listing the parcels within the City of Santa Clara upon which the County conducted weed abatement services, and associated costs to be assessed against each such parcel. In accordance with SCCC 8.15.090, this Public Hearing provides the public with an opportunity to present objections to the County's report and allows the Council to confirm the County's report and assessment list. In accordance with SCCC 8.15.080, notice of this Public Hearing was published, and posted together with a copy of the County's Weed Assessment Report.

#### **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 manages the weed abatement program and all fees are collected through the County Assessor's Office. There is no cost to the City other than staff time and expense to produce and adopt the resolution.

#### 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

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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.

#### RECOMMENDATION

Adopt a Resolution confirming the 2020 Weed Abatement Program Assessment Report and Assessment.

Reviewed by: Ruben Torres, Fire Chief

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Resolution Confirming the 2020 Weed Abatement Program Assessment Report and Assessment

2. 2020 Weed Abatement Program Assessment Report

#### RESOLUTION NO.

#### A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA CONFIRMING THE 2020 WEED ABATEMENT PROGRAM ASSESSMENT REPORT AND THE ASSESSMENT

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

WHEREAS, in accordance with the provisions of Section 8.15.080 of "The Code of the City of Santa Clara, California," ("SCCC") the Fire Chief duly published and posted a Notice to Destroy Weeds on January 28, 2020 giving notice to the designated property owners to remove all weeds from their property and in alleys, if any, behind their property, and between lot lines as extended, or weeds would be destroyed or removed and the nuisance abated by City authorities; WHEREAS, the Notice to Destroy Weeds also advised that if the City is required to perform weed abatement, the cost of the destruction or removal, including an administrative fee, will be assessed upon the lots or lands from which weeds have been destroyed or removed, and such costs shall constitute a lien upon said lots until paid, or will be collected upon the next tax roll upon which general municipal taxes are collected;

WHEREAS, the City Council held a public hearing on February 25, 2020 to consider all objections to the proposed destruction or removal of such weeds, and at the hearing, the City Council did, by Resolution No. 20-8813, order the County Agricultural Commissioner to abate nuisances designated under SCCC Chapter 8.15, or cause the same to be abated by having the weeds destroyed or removed by cutting, mowing, or any other method as may be determined by the City Manager or her designee;

WHEREAS, affected property owners have been requested to destroy or remove the weeds at the property owner's expense and removal of weeds was required to have taken place prior to the inspection of the County Agricultural Commissioner or his authorized representatives; WHEREAS, following said inspection which revealed that property owners had failed to remove the weeds, the County Agricultural Commissioner caused the weeds to be removed:

Resolution/\*Confirming the Report of the Fire Chief on the Cost of Weed Abatement and Confirming the Assessment.

Rev: 06/23/20

WHEREAS, the County Agricultural Commissioner sent the 2020 Weed Abatement Program

Assessment Report to the City and filed the report with the City Clerk referring to each separate

lot or parcel of land by description sufficient to identify it, together with the costs proposed to be

assessed against it;

WHEREAS, pursuant to SCCC Section 8.15.080, the City Clerk timely posted the report and

published the Notice of Hearing on the report which includes assessment for weed abatement

and opportunity to object;

WHEREAS, the Notice of Hearing on report and assessment for weed abatement further

specified the day, hour, and place as July 14, 2020 for when the assessment list and report

would be presented to the City Council for consideration and confirmation and that any persons

interested who have an objection to the report and assessment list may appear at the

designated time and place to be heard; and,

WHEREAS, the hearing has been held, and the report has been considered by the City Council

along with any other statements by staff, and all objections or protests have been heard and duly

considered.

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

**FOLLOWS:** 

1. That all of the protests or objections of every kind and nature to the 2020 Weed

Abatement Program Assessment Report and Assessment List are hereby overruled or denied.

2. That the 2020 Weed Abatement Program Assessment Report of the County Agricultural

Commissioner attached herein as Exhibit A is hereby confirmed.

3. That the list of the properties on the 2020 Weed Abatement Program Assessment Report

shall be assessed in the amount listed with the property description on the report.

4. That pursuant to the provisions in SCCC Chapter 8.15, if the cost assessed against each

of the properties is not paid with applicable property taxes, a lien shall be placed on the property.

The lien shall continue until the assessment and any or all interest or penalties is paid, or until it

is discharged of record.

5.

directed to provide a copy of this Resolution to the County Agricultural Commissioner of the County of Santa Clara, California, who shall enter the amount on the County Assessment

The City Manager or her designee and the Chief of the Fire Department, is hereby

Records opposite the description of the particular property, and the amount shall be collected

together with all other taxes against the property.

6. <u>Effective date</u>. 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. Exhibit A – 2020 Weed Abatement Program Assessment Report

**TAX ROLL** 

## 2020 WEED ABATEMENT PROGRAM ASSESSMENT REPORT CITY OF SANTA CLARA

	Situs	i	APN		OWNER ADDRESS			AMT	<u>TRA</u>	
1	2220	Calle De Luna	097-05-057	Tasman East Parcel 5 Owner Llc	60 Columbus Cl	NEW YORK	10023	\$683.00	7007	Т
2	2200	Calle De Luna	097-05-058	Nash-holland Calle De Luna	1111 Main St Ste 700	VANCOUVER	98660	\$3,864.80	7007	Т
3	1820	Nelson	097-19-018	Tummuru, Nethaji And Talla,	1820 Nelson Dr	SANTA CLARA	95054-1646	\$101.00	7007	Т
4	4850	Old Ironsides	104-04-064	Innovation Commons Owner Llc	433 Airport Bl Ste 426	BURLINGAME	94010	\$3,347.20	7007	Т
5	LAND	Old Ironsides	104-04-065	Innovation Commons Owner Llc	433 Airport Bl Ste 426	BURLINGAME	94010	\$3,387.10	7007	Т
6	4805	Patrick Henry	104-04-111	Innovation Commons Owner Llc	433 Airport Bl Ste 426	BURLINGAME	94010	\$2,971.60	7007	Т
7	4855	Patrick Henry	104-04-112	Innovation Commons Owner Llc	433 Airport Bl Ste 426	BURLINGAME	94010	\$3,332.80	7007	Т
8	3050	Democracy	104-04-113	Innovation Commons Owner Llc	433 Airport Bl Ste 426	BURLINGAME	94010	\$2,888.50	7007	Т
9		Patrick Henry	104-04-121	San Francisco City And County Of	525 Golden Gate Av 10th Fl	SAN FRANCISCO	94102	\$683.00	7007	Т
10	3005	Democracy	104-04-143	Innovation Commons Owner Llc	433 Airport Bl Ste 426	BURLINGAME	94010	\$101.00	7007	Т
11	2945	Tasman	104-04-151	Innovation Commons Owner Llc	433 Airport Bl Ste 426	BURLINGAME	94010	\$101.00	7007	Т
12		Fillmore	104-10-077	Sitlani, Shiela K	636 Hamilton Av	MILPITAS	95035-3512	\$3,364.00	7007	Т
13		Cheeney	104-12-025	Exemption Tr Udr J&n Powers	10579 Foothill Rd	SUNOL	94586	\$683.00	7007	Т
14		Cheeney	104-12-026	Rebello, Marlene Trustee & Et Al	10579 Foothill Rd	SUNOL	94586	\$683.00	7007	Т
15	4074	Cheeney	104-12-047	Denison, Brian P Et Al	366 James Ct E	CHULA VISTA	91910	\$101.00	7007	Т
16	2110	Agnew	104-12-198	Lai, Weinong And Wang, Ying	258 Alameda De Las Pulgas	REDWOOD CITY	94062	\$683.00	7007	Т
17	3500	Thomas	104-14-125	Lba Rv-company Xii Lp	3209 17th Ave W	SEATTLE	98119	\$683.00	7007	Т
18	2121	Laurelwood	104-14-153	Amerco Real Estate Company	2727 Central Av N	PHOENIX	85004	\$101.00	7007	Т
19	2125	Quinn	216-11-017	Adl-tabatabai, Ali	2125 Quinn Av	SANTA CLARA	95051-1838	\$101.00	7007	Т

Report Date: 6/24/2020 (List Sorted by APN) Page 1

## 2020 WEED ABATEMENT PROGRAM ASSESSMENT REPORT CITY OF SANTA CLARA

					CITTOL SANTA CLA					
	Situs		APN		OWNER ADDRESS			TAX ROLL AMT	<u>TRA</u>	
20	2445	Painted Rock	216-16-004	Chen, Shudong And Yuan, Qian	0 Po Box 700521	SAN JOSE	95170	\$101.00	7007	Т
21	2595	Painted Rock	216-16-019	Remmel, Janalee J Trustee	2925 Warburton Av	SANTA CLARA	95051-2914	\$101.00	7007	Т
22	2625	Painted Rock	216-16-023	Muniz, Vanessa	2625 Painted Rock Dr	SANTA CLARA	95051-1125	\$101.00	7007	Т
23	2442	Painted Rock	216-19-046	Mokalla, Mehra Et Al	2442 Painted Rock Dr	SANTA CLARA	95051	\$101.00	7007	Т
4	2904	Corvin	216-33-034	Allied Housing Inc	433 Hegenberger Rd Ste 200	OAKLAND	94621	\$683.00	7079	Т
5	2414	Marmon	216-47-010	Dung, Jordan Sai Kum And Jamie Vu	3546 Ambra Wy	SAN JOSE	95132-2053	\$101.00	7007	Т
6	2755	Lafayette	224-04-062	Witkin Properties Lp	188 Twin Oaks Dr	LOS GATOS	95032-5649	\$3,723.10	7007	Т
7	651	Martin	224-04-071	Gahrahmat Fam Lp Iilp	3476 Edward Av	SANTA CLARA	95054-2130	\$101.00	7007	Т
8	614	Walsh	224-04-075	Haro, Estanislao T And Martha S	12395 Columbet Av	SAN MARTIN	95046	\$101.00	7007	Т
9	650	Walsh	224-04-077	Pelio 650 Walsh Llc	14573 Big Basin Wy	SARATOGA	95070-6013	\$683.00	7007	Т
0	2805	Lafayette	224-04-094	Digital Bh 800 Llc	16600 Woodruff Av Ste 200	BELLFLOWER	90706	\$101.00	7007	Т
1	1771	Richard	224-06-149	Kahn, William E Trustee	0 Po Box 345	SANTA CLARA	95052-0345	\$683.00	7007	Т
2	960	Central	224-07-099	Owens Corning Insulating	13155 Noel Rd Fl 12 Lb 71	DALLAS	75240	\$101.00	7007	Т
3	1145	Reeve	224-24-118	Cor-mar Family Investments Llc	4189 Haven Ct	SAN JOSE	95124	\$101.00	7007	Т
4	1493	El Camino Real	224-48-006	Santa Clara De Asisllc	404 Saratoga Av Ste 100	SANTA CLARA	95050	\$101.00	7007	Т
5	1150	Walsh	224-58-003	Ragingwire Data Centers Inc	0 Po Box 348060	SACRAMENTO	95834	\$101.00	7007	Т
6	2290	De La Cruz	230-03-092	Victor Leasing Co	4200 Easton Dr Ste 5	BAKERSFIELD	93309-9419	\$101.00	7007	Т
7	1205	Coleman	230-46-069	Bfv Llc	10121 Miller Av Suite 200	CUPERTINO	95014	\$101.00	7007	Т
8	1154	Madison	269-13-034	Rawls, Tamlyn V	1154 Madison St	SANTA CLARA	95050-4757	\$101.00	7007	Т

Report Date: 6/24/2020 (List Sorted by APN) Page 2

## 2020 WEED ABATEMENT PROGRAM ASSESSMENT REPORT CITY OF SANTA CLARA

					OII I OI SANTA CLANA						
	Situs		APN		OWNER ADDRESS			TAX ROLL AMT	<u>TRA</u>		
39	1945	Murguia	269-31-014	Maverick, Muriel E Trustee	1945 Murguia Av	SANTA CLARA	95050-6933	\$596.00	7007	Т	
40	1974	Murguia	269-32-028	Gupta, Abhinav And Pandey, Shalu	1974 Murguia Av	SANTA CLARA	95050-6957	\$101.00	7007	Т	
11	584	Winchester	269-33-036	Conforti, James M	584 Winchester Bl N	SANTA CLARA	95050-5720	\$683.00	7007	Т	
2	311	Maria	269-45-014	Padula, Thomas J And Cardone,	860 Pedro Av	BEN LOMOND	95005-9409	\$101.00	7007	Т	
3	444	Winchester	269-45-093	Ranch Realty Llc	2790 Newhall St Ste A	SANTA CLARA	95050	\$101.00	7007	Т	
4	3530	El Camino Real	290-01-114	Blaine Properties Llc	454 Raquel Ln	LOS ALTOS	94022-2138	\$101.00	7007	Т	
5		El Camino Real	290-02-087	Linda Allen	1700 Space Park Dr.	SANTA CLARA	95054	\$683.00	7007	S	
6	1304	Crowley	290-16-011	Mcnutt, Cordie E Et Al	1304 Crowley Av	SANTA CLARA	95051-3806	\$683.00	7007	Т	
7	2911	Orthello	290-17-078	Gee, Gail J Et Al	62772 Sand Lilly Wy Nw	BEND	97703	\$101.00	7007	Т	
8	3032	Orthello	290-18-005	Xia, Qing And Yu, Xiaohua	3750 Rigor Dr	SAN JOSE	95148-0000	\$101.00	7007	Т	
9	3012	Orthello	290-18-006	Oprica, Dan	3012 Orthello Wy	SANTA CLARA	95051-3758	\$683.00	7007	Т	
0	2932	Orthello	290-18-010	Yamaichi, Russell J Trustee	2932 Orthello Wy	SANTA CLARA	95051-3768	\$101.00	7007	Т	
1	2912	Orthello	290-18-011	Russell, Craig And Rebecca M	2912 Orthello Wy	SANTA CLARA	95051-3768	\$101.00	7007	Т	
2	3521	Homestead	290-23-053	Sbh Homestead Props Llc	3000 Sandhill Rd Bldg 1-250	MENLO PARK	94025	\$101.00	7007	Т	
3	2694	Benton	290-28-028	Jiang, Hong And Chen, Li	1548 Plateau Av	LOS GATOS	94024	\$101.00	7007	Т	
4	2551	Patricia	290-31-002	Aguilera, M C And Ralph D	2551 Patricia Dr	SANTA CLARA	95051-5326	\$683.00	7007	Т	
5	1224	Block	290-42-076	Dionisio John R Trustee	610 Shotwell St Apt 6	SAN FRANCISCO	94110	\$101.00	7014	Т	
6	634	Hickory	293-14-020	Wise, Linda D	634 Hickory Pl	SANTA CLARA	95051-6125	\$101.00	7007	Т	
7	673	Bucher	294-20-013	Bay Home Investment& Development	5380 Arezzo Dr	SAN JOSE	95138-0000	\$101.00	7007	Т	

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**TAX ROLL** 

## 2020 WEED ABATEMENT PROGRAM ASSESSMENT REPORT CITY OF SANTA CLARA

	Situs	}	APN		OWNER ADDRESS			AMT	<u>TRA</u>	Į
58	90	Kiely	296-34-014	Yu, Benquan And Zhang, Yihong	1729 Grand Teton Dr	MILPITAS	95035-6537	\$101.00	7007	T.
59	977	Wood Duck	313-19-032	Campbell, Jean T Trustee	977 Wood Duck Ct	SANTA CLARA	95051-4516	\$101.00	7007	T,
60	3800	Homestead	316-09-045	Kaiser Foundation Hospitals	1 Kaiser Plaza 15th Fl	OAKLAND	94612	\$683.00	7007	T.
							TOTAL	\$41,356.10		
l										



#### City of Santa Clara

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

#### Agenda Report

20-660 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Action on an Agreement for Services with Milton Security Group, Inc. for Technology Support Including Network and Cyber Security, Advanced Metering Infrastructure (AMI) Implementation, OSISoft Plant Information (PI) system, and SharePoint [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

#### **BACKGROUND**

The City of Santa Clara's Electric Department, Silicon Valley Power (SVP) operates a significant and diverse technology portfolio for critical infrastructure. This portfolio must be maintained 24 hours per day 7 days per week in compliance with North American Electric Reliability Corporation (NERC) Standards as well as industry best practices especially those associated with maintaining a secure and reliable network. SVP's network includes secured and encrypted radio data transmissions and fiber interconnections, designed and built into a robust cybersecurity platform protecting the operations of the utility. In addition, SVP operates proprietary and integrated technology such as AMI, PI, and SharePoint.

To support this critical infrastructure in conformance with ongoing changes to technology and the information technology security landscape, SVP has used resources from Milton Security Group, Inc. (Milton) and, in 2015, 2016, and 2017, SVP issued sole source agreements to Milton.

#### DISCUSSION

While SVP has been satisfied with services provided by Milton, these services should be routinely bid in the marketplace. In the past these services had been procured through a city council resolution for temporary agency contracts, however moving forward an RFP for services is the most appropriate process, Staff anticipates that an RFP for these services will be issued no later than July 2020 and awarded before the end of the calendar year. The services currently provided include:

- Network and Security Operations Center: The vendor provides 24/7 monitoring and reporting of network issues and security threats for SVP's three data centers including real-time alert and support for resolution of any identified issues.
- Support for AMI: This includes integration of the meter system to the customer service / billing solution as well as ongoing management and operations of the implemented solutions. AMI includes advanced meters and radio data transmission to fiber interconnections in a manner that is encrypted and secured as well as highly refined electric load information which requires a coordinated management of both hardware and software. SVP has been working over the last ten years to design and implement AMI which includes hardware, software, and infrastructure to obtain electric metering data from Service Delivery Points (SDP's), read over the air, and processed by head-end systems for usage billing.

20-660 Agenda Date: 7/14/2020

Support for OSISoft PI software: Plant Information (PI) is a real time data historian application
which allows SVP to record, analyze and monitor real-time information such as power flows and
pressure settings. SVP uses PI's historian and asset framework for collection of all Generation,
Command and Control (SCADA), and metering data used for load balance calculations and other
predictive analysis. OSISoft is also used for trading operations, back office settlements, and
North American Electric Reliability Corporation (NERC) required reporting.

 Support for SharePoint software: SVP uses SharePoint as a document repository and for utility operations collaboration specific to SVP.

The proposed term of this interim agreement is from July 1, 2020 - December 31, 2020 in an amount not to exceed \$400,000 for the six-month period. Milton has agreed to maintain their hourly rates at the rates in place since the previous agreements were executed. An RFP for future work will be released by the end of July.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378 (b)(2) in that it is a continuing administrative activity.

#### **FISCAL IMPACT**

The proposed agreement is for a total not-to-exceed amount of \$400,000. The Fiscal Year 2020/21 budget for the Electric Utility Fund includes funding for this agreement.

#### COORDINATION

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

#### **PUBLIC CONTACT**

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

#### RECOMMENDATION

Approve and authorize the City Manager to execute the Agreement for Services with Milton Security Group, Inc. in an amount not-to-exceed \$400,000, for technology support including network and cyber-security, Advanced Metering Infrastructure (AMI) implementation, OSISoft Plant Information (PI) system, and SharePoint.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Agreement for Services

# AGREEMENT FOR SERVICES BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND MILTON SECURITY GROUP, INC.

#### **PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Milton Security Group, Inc., a Delaware Corporation with its principal place of business located at 261 East Imperial Highway, Suite 550, Fullerton, CA 92835, (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

Agreement with Milton Security Group, Inc. Rev. 07-01-2020

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 July 1, 2020 and terminate on December 31, 2020.

#### 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 four hundred thousand (\$400,000), 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

Agreement with Milton Security Group, Inc. Rev. 07-01-2020

be entitled to any payment above the maximum compensation under any circumstance.

#### 7. TERMINATION

- A. <u>Termination for Convenience</u>. 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. <u>Termination for Default</u>. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

#### 8. ASSIGNMENT AND SUBCONTRACTING

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

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

#### 9. NO THIRD PARTY BENEFICIARY

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

#### 10. INDEPENDENT CONTRACTOR

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

#### 11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed

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

#### 12. OWNERSHIP OF MATERIAL

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

#### 13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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

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

#### 14. HOLD HARMLESS/INDEMNIFICATION

A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner

arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

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

#### 15. INSURANCE REQUIREMENTS

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

#### 16. WAIVER

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

#### 17. NOTICES

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

City of Santa Clara
Attention: Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at svpcontracts@santaclaraca.gov, and manager@santaclaraca.gov

And to Contractor addressed as follows:

Milton Security Group, Inc. 261 East Imperial Highway, Suite 550 Fullerton, CA 92835 and by e-mail at \*\_\_\_\_\_

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

#### 18. COMPLIANCE WITH LAWS

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

#### 19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

#### 20. FAIR EMPLOYMENT

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

#### 21. NO USE OF CITY NAME OR EMBLEM

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

#### 22. GOVERNING LAW AND VENUE

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

#### 23. SEVERABILITY CLAUSE

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

#### 24. AMENDMENTS

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

## 25. COUNTERPARTS

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

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

# **CITY OF SANTA CLARA, CALIFORNIA**

a chartered California municipal corporation

Approved as to Form:	Dated:			
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"			
MILTON SECURITY GROUP, INC.  a Delaware corporation				
Dated:				
By (Signature): Name:				
Title: Principal Place of Business Address:				
Email Address:				
Telephone:	( )			
Fax:	( ) "CONTRACTOR"			

# EXHIBIT A SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described below:

#### 1 GENERAL

- 1.1 Contractor shall furnish all labor, materials, tools, and equipment necessary to provide and support the following services for City of Santa Clara Electric Utility | Silicon Valley Power (SVP):
  - **1.1.1** Network and Security Operations Center,
  - **1.1.2** Support for Advanced Metering Infrastructure (AMI)
  - **1.1.3** Support for OSISoft Plant Information (PI)
  - **1.1.4** Support for SharePoint
- **1.2** For all services, contractor shall
  - **1.2.1** Remain current on current best practices, industry standards and related guidelines and regulations and provide consultation to SVP
  - **1.2.2** Advise SVP about any updates, support ongoing business and technical strategies
  - 1.2.3 Assist and contribute to the development and implementation of hardware and software standards for network, servers, databases, wireless technology, file & print services, card access, and related technologies such as Virtual Private Network (VPN)
  - **1.2.4** Support windows server administration, DNS administration, virtualized environment ongoing implementation of new and upgraded technologies
  - **1.2.5** Assist and contribute to the development and implementation of processes and procedures for effective delivery of services and compliance with regulatory guidance
  - **1.2.6** Assist and contribute to the development and implementation of department retention standards
  - **1.2.7** Provide support and training for end users where requested
  - **1.2.8** Provide necessary project management services including, but not limited to:
    - **1.2.8.1** Project planning including documenting project goals,
    - **1.2.8.2** Project scheduling

- **1.2.8.3** Management of schedules and budget
- **1.2.8.4** Technical oversight such as development of test plans and testing, modeling, cutover, implementation, and deployment
- **1.2.8.5** Report project outcomes
- **1.2.8.6** Documentation of new or upgraded systems.
- **1.3** The Contractor shall possess all licenses and/or certifications necessary to perform the services described in this Exhibit A.
- 1.4 Contractor shall perform the services in accordance with generally accepted industry best practices, and all applicable federal, state, or local regulations. In particular, Contractor shall comply with
  - **1.4.1** North American Electric Reliability Corporation (NERC) associated regulations and guidelines especially NERC Critical Infrastructure Protection (NERC-CIP).
  - 1.4.2 Information Technology Infrastructure Library (ITIL) and COBIT
  - **1.4.3** National Institute of Standards and Technology (NIST) 800 and 1800.
  - **1.4.4** Industry best practices specific to cybersecurity in an Electric Utility environment
  - **1.4.5** Software and other vendor guidelines, standards, and agreements
  - **1.4.6** SVP requirements
- 1.5 It is the intention that SVP systems should be operational as close to 100% of time as possible. Contractor shall be available 24 hours per day 365 days per year to support the services included in this Scope of Services.
- **1.6** Meetings: Contractor shall be available to meet with SVP / City staff as reasonably requested.
- 1.7 Any deviations from the requirements described in this Attachment A, whether due to emergencies or any other unforeseen events, must be approved in writing by the City.
  - 1.7.1 An emergency shall be defined as an unforeseen event, circumstance, or combination of circumstances that the City reasonably determines to require immediate action and/or presents an ongoing danger to public health and safety and/or imperils the SVP gas pipeline distribution system.
- **1.8** Contractor should provide drawings or drawing updates for projects and systems as requested by SVP in formats proscribed by SVP.

#### 2 NETWORK AND SECURITY OPERATIONS CENTER (NOC / SOC)

Contractor shall maintain a 24 X 7 Security Operations Center (SOC) with the following features and capabilities:

- 2.1 24/7 On Call staff to monitor and resolve cyber threats and assist with outages
- 2.2 Solutions compatible with SVP's existing networks including enterprise network, substation, Advanced Metering Infrastructure (AMI), and Supervisory Control and Data Acquisition (SCADA).
- 2.3 Monitor and record total Event Message volume granular to source on SVP network
- **2.4** Ability to monitor and report on all external IP connections
- 2.5 Intrusion detection system and intrusion protection system (IDS/IPS) hardware and software and perform tracking. Such IDS / IPS solution shall be provided by contractor and must
  - **2.5.1** Be compatible with all SVP existing enterprise, substation, AMI, and SCADA networks
  - **2.5.2** Be verified daily to assure that it is updated with most current definitions and analysis tools
- 2.6 Critical Infrastructure Cyber Monitoring
  - **2.6.1** Incident management including unique (ticketing style) tracking for each incident from start to resolution
  - **2.6.2** Security Incident tracking by severity (categorized by: High, Medium, Low, Informational)
  - **2.6.3** Monitoring of all Firewall and other network logs for live monitoring and threat hunting/alerting
  - 2.6.4 Monitoring of all command and control (C2) activity from likely malware
  - **2.6.5** Reporting as further outlined in this scope of services
  - **2.6.6** Immediate alert notifications for suspicious activity alert notifications to include all of the following:
    - **2.6.6.1** Type of activity such as excessive Kerberos pre-authentication
    - **2.6.6.2** User/Account Name of activity
    - 2.6.6.3 Severity Level
    - 2.6.6.4 Source Service
    - **2.6.6.5** Source IP
    - **2.6.6.6** Source Computer Name Fully Qualified Domain Name (FQDN) format
    - **2.6.6.7** Source Service Name
    - 2.6.6.8 Date

- **2.6.6.9** Time
- 2.6.6.10 Count occurrences of issue
- **2.6.6.11** Description of issue observed
- **2.6.7** Regular security assessments to include:
  - **2.6.7.1** Review anti-virus status of systems
  - 2.6.7.2 Review Operating System Patch level of systems
  - **2.6.7.3** Review Ports and Services of identified systems
  - **2.6.7.4** Review the encryption status of the computers
  - **2.6.7.5** Create a hardware and software inventory, identifying potentially dangerous applications
  - **2.6.7.6** Review of firewall and wireless access point rules
  - **2.6.7.7** Review the patch level of key applications
  - **2.6.7.8** Active scan and interrogation of internal IP range for exposed ports and services
  - **2.6.7.9** Active scan and interrogation of public facing IP range for exposed ports and services
  - **2.6.7.10** Active scan and interrogation of Access Points for exposed ports and services
- 2.7 Contractor shall remain current on changes made to the NERC Standards, and support any required implementation of new/updated items into SVP's Network and Security Operations.
- 2.8 Contractor shall be proficient in all Window's and Linux Platforms and demonstrate competency to work in multi-forest environment utilizing diverse static/ Dynamic Host Configuration Protocol (DHCP) topology with dynamic and promiscuous routing
- 2.9 Active Directory and Authentication Security:
  - **2.9.1** Collection of all Active Directory/Authentication logs for near real time review and analysis
  - 2.9.2 Complete Monthly review of Active Directory/Authentication security
- 2.10 Provide Subject Matter Experts (SME) for Storage Area Network (b), Virtual Machines (VM), Fiber Switch Fabric, Multi-Plexer, and Cyber Security
- **2.11** Provide assistance for blade center cut over project moving Virtual Machines from existing blade centers to new blade centers
- 2.12 Manage all Fiber Fabric switches and perform fiber switch fabric engineering for interconnecting Storage Area Networks (SAN) within the Enterprise and Advanced Metering Infrastructure (AMI) systems.

- **2.13** Provide assistance with SAN, Network Attached Storage (NAS), Bladecenter, Multiplexer, and Network operations when needed
- **2.14** Assist with converting physical servers to virtual platform
- **2.15** Manage internal Mail relay systems that are used by Power Quality (PQ) monitoring, and scanning systems, etc.
- **2.16** Maintain network health monitoring systems (MRTG, WhatsUp, Nagios, etc)
- 2.17 Support ongoing planning and deployment of solutions to meet SVP's cyber-security and networking needs to assure conformance with emerging technology.

#### 3 METERING / AMI / UTILITY BILLING

Contractor tasks may include, but are not limited to:

- 3.1 Develop and manage custom solutions for integrating NetSense/Connexo Meter Head-end systems with EnergyIP MDM system, Harris Northstar CIS system, and the MV90 meter data system with other applications needed within the AMI environment
- **3.2** Assist DBA with any requests or issues
- 3.3 Monitor and manage the EnergyIP and NetSense/Connexo servers and databases from a hardware and software level including, but not limited to:
  - **3.3.1** Verify server, service, and application status on an ongoing basis to assure operating as expected
  - **3.3.2** Check relevant logs for errors on Operating System level
  - **3.3.3** Verify and evaluate server and blade performance
  - **3.3.4** Configuring local firewall/iptables
  - **3.3.5** Manage and perform software updates, security patches and general maintenance to assure system performs as designed
  - 3.3.6 Monitor disk/cpu/memory usage
  - 3.3.7 Perform backups
  - **3.3.8** Increase resources to meet demand of the systems
  - **3.3.9** Coordinate creation of new instances of engines within EnergyIP
  - **3.3.10** Coordinate outages for maintenance, troubleshooting, or implementation of new technology components within the AMI environment
- 3.4 Energy IP (EIP) tasks

- **3.4.1** Monitoring applications and services and their logs for issues or irregularities including, but not limited to:
  - **3.4.1.1** Check Error and Exception Oracle database tables for issues and respond as needed
  - **3.4.1.2** Check all services and application are running in EIP application such as JMS/JBOSS, and Siebel servers.
  - **3.4.1.3** Verify JMS queues are functioning and do not have stale items waiting for pickup by EIP or Northstar. React to issues as needed.
  - **3.4.1.4** Verify that custom scripts and cron jobs functioning properly and respond as needed.
  - **3.4.1.5** Verify the iSync/fSync were processed without issues on a daily basis
  - 3.4.1.6 Check EIP Service Requests and reports for potential issues with Validating, Editing, and Estimation (VEE) and/or read/usage data and respond as needed
  - **3.4.1.7** Verify daily reads from MV90 were processed properly each morning
  - **3.4.1.8** Maintain Energy IP calendar such as when City holidays are announced
  - **3.4.1.9** Ensure network connectivity between systems.
  - **3.4.1.10** Open tickets with SVP's System Support Group (SSG) for any changes/fixes for network or infrastructure items, when needed
- **3.4.2** Reviewing reports and dashboards for daily status/issues
- **3.4.3** Responding to inconsistencies regarding meter data (gaps, drastic changes, etc.)
- **3.4.4** Running SQL queries to find information about meter data or processes therein
- **3.4.5** Correcting any issues with gap, meter read data framing, ODR, and Billing Requests
- **3.4.6** Create service requests for meter shop and/or networking team when issues arise
- **3.4.7** Create custom reports or scripts and extract data for colleagues and managers
- **3.4.8** Work directly with City Employees who work with the Harris Northstar CIS/Billing systems to discuss Billing Issues, problems with iSync/fSync functionality, or general questions.
  - **3.4.8.1** Reframe and/or recompute of channels as needed in order to bill customer.

- **3.4.8.2** Review reports during billing and run custom-written queries to identify and respond to any issues
- **3.4.9** Submit support tickets and work directly with the vendors when needed. Interface with Siemens/Omnetric when needed for support
- **3.4.10** Arrange and perform outages for after-hours maintenance on application and database
- **3.4.11** Attend regular meetings with both utility and city employees to discuss issues associated with AMI
- 3.5 NetSense/Connexo user tasks
  - **3.5.1** Monitoring applications and services and their logs for issues
  - **3.5.2** Reviewing reports and dashboards for daily status/issues
  - **3.5.3** Create service requests for meter shop and/or networking team when issues arise
  - **3.5.4** Monitor/develop custom solutions to ensure all systems and operations are functioning properly
  - **3.5.5** Run reports to find issues with communications to the meters and/or their Gatekeeper devices in the field
  - **3.5.6** Create custom reports and extracting data for colleagues
  - **3.5.7** Arrange and perform outages for after-hours maintenance on application and database
  - **3.5.8** Submit tickets and work directly with the vendor when needed
- **3.6** Support MV90 MDM system connection to other AMI systems including, but not limited to:
  - **3.6.1** Check daily read tasks completed. Document meters that could not be interrogated remotely to avoid create SRs and errors in EIP
  - **3.6.2** Create and manage list of meters that require manual HHF from field.
  - **3.6.3** Submit any issues to metershop for their review and support
  - **3.6.4** Process HHF format files created by Elster HHF conversion tool. Check for any gaps in data and respond, as needed.
  - 3.6.5 Send daily Meter Data Exchange (MDE) read files to EIP for processing
  - **3.6.6** Send daily PRN format read data to Enterprise Energy Management (EEM) Suite for Customer portal

- **3.6.7** Tasks to be performed during billing:
  - **3.6.7.1** Aggregate virtual meters based on when meter's route was called
  - **3.6.7.2** Generate KVA/PS report for each meter billed through MV90/EIP and place on Shared drive for Customer Reps
  - **3.6.7.3** Export data in excel/csv format for special accounts such as Net meters

#### 3.7 Elster EAMS:

- 3.7.1 Contractor shall review the following items associated with Elster EAMS to assure that systems are function properly. When review identifies exceptions, errors, or other issues, Contractor shall take notify SSG or other identified organizations and take necessary actions to resolve issue:
  - **3.7.1.1** EAMS logs
  - **3.7.1.2** Custom scripts and cron jobs
  - **3.7.1.3** Schedules
  - **3.7.1.4** Review alerts such as tamper, power outage, etc.
- 3.7.2 Contractor shall create tickets with SSG and/or Elster for any issue discovered
- **3.7.3** Contractor shall submit ORR (On Request Reads) for any meters having gaps or issues and share any relevant information with metershop to help troubleshoot issues
- **3.7.4** Contractor shall add any new meters or gatekeepers to schedules
- 3.7.5 Contractor shall create or adjust schedules and remove meter or GK from schedules
- **3.7.6** Contractor shall create new scripts/programs/tools to assist users
- 3.8 Assist customer reps and City IT with issues associated with Northstar data, Northstar server(s), custom paths, applications, or other systems associated with AMI

#### 4 OSISOFT PI SYSTEM ADMINISTRATION

Contractor shall serve as system administrator for SVP's OSISoft PI. System administration tasks may include, but are not limited to:

- **4.1** Implementation, security, design, support and maintenance for multiple OSIsoft PI ecosystems including Data Archive, Asset framework, Analytics, Vision, Connectors, and Interfaces including:
  - **4.1.1** Monitor and deploy centralized and remote OSISoft PI instances

- **4.1.2** Troubleshoot control system network issues both on and off site to determine root cause
- **4.1.3** Validates proper security is applied in PI components
- **4.1.4** Assist in the coordination of upgrades and test plans with PI system administrators
- **4.1.5** Perform, document and assist with planning of work activities associated with roll-outs, upgrade deployments (to a dev, test, and production environments), backup, and disaster recovery testing
- **4.1.6** Evaluate risks and consequences of system changes, builds, and installations in advance of implementation to ensure that all service level agreements are satisfied
- **4.1.7** Identify benchmark components in order to identify system limitations and validate and report impact of system upgrades
- **4.1.8** Monitoring applications and services and their logs for issues or irregularities
- **4.1.9** Reviewing reports and dashboards for daily status/issues
- **4.1.10** Responding to inconsistencies regarding data (gaps, drastic changes, etc.) and correcting any issues
- **4.1.11** Creating or running queries
- 4.1.12 Create service requests for other SVP staff or contractors if needed
- **4.1.13** Create custom reports and extracting data for colleagues and managers
- **4.1.14** Work directly with City Employees to respond to questions or resolve issues
- 4.1.15 Submit tickets and work directly with vendor, when needed
- **4.1.16** Arrange and perform outages for after-hours maintenance on application and database
- **4.1.17** Attend regular meetings with both utility and city employees to discuss items of interest.
- **4.2** Support Control Center personnel, field technicians, and other staff or contractors to use and enhance use of OSISoft PI
  - **4.2.1** Assure use of best practices and support relationship with OSISoft PI vendor to continually improve products and services and SVP's use
  - **4.2.2** Train business unit personnel in OSIsoft ecosystem components
  - **4.2.3** Assist teams members in displaying PI in 3rd visualization products

- **4.2.4** Create and maintain online documentation related to PI usage and capabilities
- **4.2.5** Development of new environments or use cases for OSISoft
- **4.2.6** Development, testing, and implementation of new technology to improve use of OSISoft PI
- **4.3** Maintain existing data, dashboards, and processbooks including:
  - **4.3.1** Revenue Quality Data and Client Processbook dashboard files for Trading Floor and interfaces for back office activities
  - **4.3.2** Advanced Metering Infrastructure (AMI) data and access to AMI data
  - **4.3.3** Non-revenue quality data for generation and control

#### 5 REPORTING AND DOCUMENTATION

- 5.1 Contractor shall provide regular status updates on services performed during the term of the agreement. Depending on work activity, status updates may be required daily, weekly, or monthly at the direction of the City.
- **5.2** The following reports are required for each 8 hour shift and shall include a graphical dashboard
  - **5.2.1** Total Event Message volume granular to source
  - 5.2.2 IDS/IPS tracking
  - **5.2.3** Critical Infrastructure Cyber Monitoring
  - **5.2.4** Updates on all intrusion detection systems for SCADA systems and for Enterprise
  - **5.2.5** Incident management including unique (ticketing style) tracking for each incident from start to resolution
  - **5.2.6** Security Incident tracking by severity categorized by: High, Medium, Low, Informational
  - **5.2.7** External IP connections
  - **5.2.8** Full list of connection made by foreign countries including but not limited to:
    - **5.2.8.1** Time
    - **5.2.8.2** Date
    - **5.2.8.3** Source IP
    - **5.2.8.4** Source Country
    - 5.2.8.5 Destination IP
    - **5.2.8.6** Destination Port
    - **5.2.8.7** Action (Build, Teardown, etc)

#### **5.2.8.8** Count

#### **6 STAFFING REQUIREMENTS**

- 6.1 The Contractor shall be solely responsible for selecting, hiring, employing, paying, supervising, training and discharging all personnel necessary for the efficient performance of services outlined in this statement of requirements.
- 6.2 Contractor shall be responsible for understanding and complying with any training and licensing required for the performance of the services described in this Attachment A, including but not limited to, NERC requirements
- **6.3** Contractor shall train all employees (including subcontractors) assigned to perform the required services
- **6.4** Contractor's employee training shall be at no cost to the City.

# EXHIBIT B FEE SCHEDULE AND PAYMENT PROVISIONS

Contractor shall provide services at the rates and fees set forth in this Exhibit B

#### 1 RATES

- **1.1** Contractor's rates are as follows:
  - **1.1.1** AMI Services: \$90 per hour
  - **1.1.2** Network and Cyber Security Services: \$116 per hour
  - **1.1.3** OSISoft PI Support \$116 per hour
  - **1.1.4** SharePoint Support \$116 per hour
- **1.2** Such rates apply to all hours worked regardless of time of day.
- **1.3** Contractor shall not exceed one hundred twenty hours of work in one week without written approval of the City.
- 1.4 The hourly rate shall include all overhead, management, profit, Contractor employee training, software, travel, administrative costs, and any other expenses related to nature of the Proposer's business.
- **1.5** Costs not specifically called out by the contractor as reimbursable shall be assumed to be included in the hourly rate.

#### 2 REIMBURSABLE EXPENSES

- 2.1 Expenses shall be reimbursable only to the extent that the Contractor submits sufficient documentation to the City that the expenses were directly incurred in providing the required services and that those costs were not included in the hourly rate.
- **2.2** The following expenses shall be reimbursable by the City.
  - **2.2.1** Travel-related expenses (mileage, lodging, meals, etc.).
    - 2.2.1.1 Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related Per Diem shall not exceed the rates outlined by United States General Services Administration (GSA).
      - https://www.gsa.gov/travel-resources
    - **2.2.1.2** The City shall not reimburse local travel (within Santa Clara County).
    - 2.2.1.3 In the event that travel plans must be canceled or re-scheduled due to the fault of SVP, then SVP will pay for any costs associated therewith: if the travel is canceled or re-scheduled due

- to the fault of the Contractor, then Contractor shall bear the expense.
- 2.2.1.4 Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with Section 2 (Payment Provisions).
- **2.2.2** The rental of any specialized equipment to the extent the City has preapproved, in writing, the cost of such rental.
- **2.2.3** The cost of mailing, shipping and/or delivery of any documents or materials on behalf of the City.
- **2.2.4** Any other expenses expressly identified as being reimbursable.
- 2.3 The City will reimburse these expenses at actual cost only unless a markup is specified.

#### 3 PAYMENT PROVISIONS:

- 3.1 Monthly Invoices. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any additional charges as previously authorized by SVP.
- 3.2 All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.
- 3.3 Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.
- 3.4 Within thirty (30) days of receipt of an approved itemized written invoice from Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.

#### 4 NOT TO EXCEED MAXIMUM AMOUNT:

4.1 In no event shall the amount billed to City by Contractor for services under this Agreement exceed four hundred thousand dollars (\$400,000) during the Agreement term, subject to budget appropriations.

# EXHIBIT C INSURANCE REQUIREMENTS

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

#### A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$1,000,000 Each Occurrence \$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate \$1,000,000 Personal Injury

- 2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
- 3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

## B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

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

#### C. WORKERS' COMPENSATION

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

#### D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

- 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. <u>Primary and non-contributing</u>. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other

insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

#### 3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of nonrenewal.
- 4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

#### E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

- 1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
- 2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of

Agreement with Milton Security Group, Inc./Exhibit C-Insurance Requirements Rev. 07-01-18

complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

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

#### F. EVIDENCE OF COVERAGE

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

#### G. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

City of Santa Clara Electric Department

P.O. Box 100085 – S2 or 1 Ebix Way

Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

#### H. QUALIFYING INSURERS

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

# EXHIBIT D 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.

## I. 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

Agreement with Milton Security Group, Inc./Exhibit D-Labor Compliance Rev. 07-01-18

- 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.

#### J. 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.

#### K. 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.



# City of Santa Clara

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

# Agenda Report

20-671 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Action to Authorize the City Manager to Execute Agreements with SHAC Tasman CDM Apartments LLC for the Construction of Park Improvements and the Maintenance of the Park in perpetuity within the Tasman East Area [Council Pillar: Enhance Community Sports, Recreation and Art Assets]

#### **BACKGROUND**

In July 2014, Council adopted Ordinance No.1937 adding Chapter 17.35 "Park and Recreational Land" to the Santa Clara City Code (SCCC) requiring new residential developments to provide developed park and recreational land, and/or pay a fee in-lieu pursuant to the Quimby Act and/or the Mitigation Fee Act (MFA) to address the impacts of the new residential population on the existing City parks and recreation system infrastructure.

On November 13, 2018, the City Council adopted the Tasman East Specific Plan (TESP) which provides guidelines for projects proposed within the specific plan boundaries: Tasman Drive to the south, the Guadalupe River to the east, City Place project to the north, and Lafayette Street to the west. The TESP also provides guidance on the neighborhood and mini parks to be dedicated for the area and the private recreational amenities eligible for credit against fees due in lieu of parkland dedication. All projects within the TESP are subject to review and approval by the City's Architectural Committee.

On March 6, 2019, the Architectural Committee approved SummerHill Apartment Communities' (SHAC) residential project and park dedication, located within the Hill District of the TESP. The Project application was submitted under the provisions of MFA. Based on the City's then current MFA standard of 2.53 acres of parkland per 1,000 residents and the Project's estimated 777 new residents, the Project will meet its parkland dedication requirement of 1.9665 acres (equivalent fee due in lieu of parkland is valued at \$7,999,391) through the construction and dedication of 0.3604 acres of a public mini park as well as separately through the provision of 0.6725 acres of private recreational amenities (credited at 50% value per SCCC 17.35.070), and payment of a fee of approximately \$5,443,388 in lieu of the remaining parkland dedication owed in conformance with SCCC 17.35.

#### DISCUSSION

City and the owners of the parcels on which the Project is located, SHAC Tasman CDM Apartments LLC (Developer), negotiated:

- 1. A Park Improvement Agreement (Attachment 1) to set the terms and conditions for the construction and acceptance of the park according to the Architectural Committee's approved schematic design and phasing plan; and,
- 2. A Park Maintenance Agreement (Attachment 2) to set the terms and conditions of the maintenance of the park in perpetuity. The Agreement includes standards for park

20-671 Agenda Date: 7/14/2020

maintenance, a default and remedies provision, and provides the City the right to terminate upon 30 days' notice without cause.

#### **ENVIRONMENTAL REVIEW**

The Park Improvement and Maintenance Agreements fall within the scope of the project analyzed under the Environmental Impact Report (EIR) for the Tasman East Specific Plan which included the construction of parks, which was approved on November 13, 2018 (Resolution No. 18-8623) pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.).

#### **FISCAL IMPACT**

There is no fiscal impact to the General Fund. In conformance with the TESP and the terms of the proposed Park Improvement Agreement, the Developer is required to construct and dedicate a mini park at its sole expense. There will be no cost to the City General Fund for park maintenance as the Developer will maintain the park in perpetuity. The current estimated cost to maintain public parks in the City is approximately \$30,000-\$36,000 per acre depending upon amenities and other factors.

## COORDINATION

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

#### **PUBLIC CONTACT**

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

#### RECOMMENDATION

Authorize the City Manager to execute the Park Improvement Agreement and the Park Maintenance Agreement with SHAC Tasman CDM Apartments LLC, and to make minor, non-substantive changes as necessary.

Prepared by: James Teixeira, Director of Parks & Recreation

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Park Improvement Agreement with SHAC Tasman CDM Apartments, LLC

2. Park Maintenance Agreement with SHAC Tasman CDM Apartments, LLC

# RECORD WITHOUT FEE PURSUANT TO GOV'T CODE SECTION 6103

#### Recording Requested by:

Office of the City Attorney City of Santa Clara, California

#### When Recorded, Mail to:

Office of the City Clerk City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

The undersigned declares that this document is recorded at the request of and for the benefit of the City of Santa Clara and therefore is exempt from the payment of the recording fee pursuant to Government Code §6103 and 27383 and from the payment of the Documentary Transfer Tax pursuant to Revenue and Taxation Code §11922.

# PARK IMPROVEMENT AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND SHAC TASMAN CDM APARTMENTS LLC

This PARK AGREEMENT (this "**Agreement**") is entered into by and between the CITY OF SANTA CLARA, a chartered California municipal corporation with its principal place of business located at 1500 Warburton Ave, Santa Clara, CA ("**City**"), and SHAC TASMAN CDM APARTMENTS LLC, a Delaware limited liability company with its principal place of business located at 3000 Executive Parkway, Suite 450, San Ramon, CA 94583 ("**Developer**"). City and Developer may be referred to herein individually as a "**Party**" or collectively as the "**Parties**" Or "Parties to this Agreement." It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

#### RECITALS

City and Developer enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are substantive part of this Agreement.

A. Developer is the owner of approximately 3.06 acres of real property located at the northeastern corner of Calle del Mundo and Lafayette in the City of Santa Clara, State of California, as more particularly described and depicted on **Exhibit A** attached

hereto (the "**Property**"). The Property is located within the boundaries of the Tasman East Focus Area Plan.

- B. Developer intends to develop the Property with a new very high density residential development consisting of 347 dwelling units, parking, and other associated improvements (the "**Project**"). City approved Architectural Review (PLN2018-13440) and a Lot Line Adjustment for the project in March of 2019.
- C. Santa Clara City Code ("SCCC") Chapter 17.35 requires new residential development to dedicate adequate park and recreational land and/or pay a fee in-lieu of parkland dedication, for the purpose of developing new or rehabilitating existing parks and recreational facilities (the "Parkland Requirements"). The development of the Project is subject to the Parkland Requirements.
- D. Developer proposed to submit the Project uniformly under the Mitigation Fee Act provisions of SCCC Chapter 17.35. The Project will generate an estimated 777 Residents (2.24 persons/household x 347 units). Based on the Mitigation Fee Act (MFA) Dedication Standard of 2.53 acres of parkland per 1,000 residents, the amount of public parkland required for this Project to mitigate the impact of the new resident demand is 1.9665 acres. The equivalent fee in lieu of parkland dedication is \$7,999,391.
- E. Developer intends to satisfy the Parkland Requirements for the Project in part by dedicating the "**Public Park**" defined and depicted on **Exhibit B** attached hereto to City for parkland and recreational purposes. Developer will dedicate the **Public Park** as a fee simple estate as described on **Exhibit B**.
- F. Developer intends to satisfy the remaining balance of the Parkland Requirements for the Project through payment of the in-lieu fee established pursuant to SCCC Chapter 17.35 in accordance with the Mitigation Fee Act.
- G. Developer intends to construct and improve the Public Park with certain park improvements and recreational facilities (the "**Park Improvements**") as described and depicted in the plans and specifications attached as **Exhibit C** hereto (the "**Park Improvement Plans**").
- H. Upon completion of the Park Improvements, City intends to accept the Public Park and the Park Improvements constructed thereon in accordance with this Agreement.
- I. Calculation of the SCCC Chapter 17.35 Parkland Requirements for the Project, including the acreage of the dedicated Public Park (as described in Recital J below) of the Project, the credit for eligible on-site private parkland and recreational amenities devoted to Active Recreational Uses for each Phase, and the remaining fee due in lieu of parkland dedication for each Phase, is attached hereto as **Exhibit D**.
- J. Developer intends to construct the Public Park in the following Phases: "**Phase I**", consisting of fifteen thousand seven hundred (15,700) square feet of public

park, and "**Phase II**" consisting of the remainder portion of twenty-five hundred (2,500) square feet of public park. Exhibit B depicts Phase I and Phase II of the Public Park.

K. Developer and City intend for the fees in lieu of parkland dedication to be paid and the Park Improvements to be constructed and completed as set forth herein.

## <u>AGREEMENT</u>

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals Incorporated**. The foregoing recitals are true and correct, and are part of this Agreement for all purposes.

## 2. <u>Design and Construction of Park Improvements</u>.

- (a) <u>Construction Documents</u>. City has previously approved the schematic design plans for the Park Improvements as shown in the Park Improvement Plans attached hereto as <u>Exhibit C</u>. Developer shall prepare and submit to City final plans and specifications for the Park Improvements (the "Construction Documents"), which shall substantially conform to the Park Improvement Plans. In addition to the Construction Documents, the Developer shall also submit at the same time soil and geotechnical reports for the areas of the Park Improvements.
- Approval of Construction Documents. City shall review and approve the Construction Documents, including plans and specifications, for the construction, design and improvements of the Public Parks prior to the start of construction, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner, and in no event more than thirty (30) days after receipt of the Construction Documents from Developer. In the event that City provides comments regarding any necessary corrections to the Construction Documents, Developer shall promptly, within thirty (30) days, revise and resubmit the Construction Documents to City. City shall then approve such revised Construction Documents, or provide any further comments regarding any necessary corrections thereto, within ten (10) days after receipt of the revised Construction Documents from Developer. In the event that City provides any further comments regarding any necessary corrections to the Construction Documents, Developer shall promptly, within 30 days, revise and resubmit the Construction Documents to City. City and Developer shall repeat this process for the approval of the Construction Documents specified in this Section until the City approves the Construction Documents. City's review of the Construction Documents pursuant to this Section shall be limited to conformance with Park Improvement Plans, Parks & Recreation Department Park Amenity & Design Standards, and City's applicable Standard Specifications for Public Works Construction.

- (c) <u>Construction</u>. The Park Improvements for each Public Park shall be constructed in compliance with City approved Construction Documents. Developer, through its design professionals, shall review and approve all materials of construction and provide a copy of all approved material submittals to City for use during the construction phase. Developer and Developer's construction contractor shall provide regular construction updates of construction schedule activities to allow City, at its discretion, to perform inspection of work progress and, if desired by City, testing of materials. At City's discretion, City may inspect the Park Improvements during construction to ensure conformity with plans and standards. Developer shall commence and complete the construction of the Park Improvements at such times as Developer deems desirable, subject to the phasing requirements set forth in Section 3 below. Developer to provide reasonable notice, a minimum of two weeks, prior to the start of construction on a phase of park construction.
- (d) <u>Changes to Park Improvement Plans</u>. Any material changes to the Park Improvement Plans must be in writing and shall be subject to the prior written approval of City and Developer in their respective reasonable discretion. Within 60 days of completion of the Park Improvements, Developer shall provide the City with one complete set of paper and digital format files of the as-built drawings showing all park improvements as actually constructed in the field.
- Completion of Construction; Final Inspection. When Developer completes the construction of the Park Improvements for each Phase, Developer shall provide written notice of completion to City ("Notice of Completion") and request a walkthorough inspection. Developer shall also provide soil and geotechnical reports for City review and acceptance. Within five (5) business days following the date of City's receipt of the Notice of Completion for each Phase, City shall conduct a final inspection of the applicable Park Improvements (the "Final Inspection"). If, during the Final Inspection, City determines that the Park Improvements have not been completed in accordance with the approved Construction Documents, City shall prepare a punch list of all items to be completed by Developer and shall provide such punch list to Developer five (5) business days following the Final Inspection. If City delivers such punch list to Developer, then Developer shall undertake to repair such punch list items in a diligent manner. Upon completion of the punch list work, Developer shall request another Final Inspection from City and within five (5) business days following such written notice from Developer, City shall conduct another Final Inspection. If City determines that the punch list work is complete, City shall immediately deliver a notification of final completion to Developer. If City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section until the successful completion of the punch list work.
- (f) <u>Acceptance</u>. The Public Park, including the Park Improvements, shall be granted by Developer to City by separate instrument after the Park Improvements thereon have been inspected and accepted by City pursuant to Section 2(e) of this Agreement. City shall accept dedication of fee title to the Public Park by means of a grant deed in form and substance acceptable Developer and City (the "Park Grant Deed"). The

City shall accept the Park Improvements (including Phase II, if not completed when the Phase 1 portion of the Park Improvements is complete) prior to its use by the general public. The close of escrow for the Public Park shall occur no later than sixty (60) days after the completion and acceptance of the Phase I component of the Public Park by the City. City shall open escrow and request a preliminary title report for the Park to facilitate the transfer of the easement from Developer and Owner to City. Developer shall cause to be provided to City, concurrently with the conveyance of the Park Easement to City, a C.L.T.A. owner's form policy of title insurance, issued by the title company where escrow is open, with City named as the insured, in the amount of \$1,532,961. All title and escrow fees to be paid by Developer. Transfer shall be at Developer's and Owner's sole cost.

- (g) <u>Maintenance and Repair</u>. Prior to the acceptance of the Park Improvements by City, Developer shall, at its sole cost and expense, maintain, repair, replace and insure the Park Improvements until City acceptance of the Park Grant Deed. Following City acceptance of the Park Improvements and the Park Grant Deed, Developer shall maintain the Park Improvements pursuant to, and as governed solely and exclusively by, a separate Park Maintenance Agreement entered into between Developer and City concurrently with or subsequent to their execution of this Agreement (the "Park Maintenance Agreement").
- Hold Harmless/Indemnification. Developer and its successors in interest agree to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, and employees from and against any and all claims, injury, demands, losses, damages, liabilities, costs, expenses, charges, administrative and judicial proceedings and orders, judgments, and reasonable attorneys' fees and costs (collectively, the "Losses") to the extent caused by Developer's failure to perform its construction or maintenance obligations with respect to the Public Park, except to the extent arising from the willful misconduct or grossly negligent acts or omissions of the City or its officers, employees and agents, or to the extent arising from the use of the Public Park by the public (except as set forth below). City shall defend, indemnify and hold Developer, and its officers, directors, shareholders, members, managers, agents, and employees harmless from and against any and all Losses to the extent caused by the use of the Public Park by members of the public; provided, however, the indemnity obligations of City under this paragraph shall not apply to the extent of any injury, damage or loss that results from the breach of Developer's obligations to maintain or repair the Public Park in accordance with this Agreement.
- 3. <u>Phasing of Park Improvements</u>. Developer shall have the right to construct the Project in the Phases set forth in the Recitals; provided, however, that in constructing the Project, Developer shall comply with the following Park Improvements phasing and completion requirements.
- (a) <u>Phase I Park Improvements</u>. Developer shall complete construction of the Park Improvements for Phase I in accordance with the City approved Construction Documents within twelve (12) months following the Certificate of Occupancy of the apartment building component of the Project, in accordance with the City approved Construction Documents.

#### (b) Phase II Park Improvements.

- i. If, within 5 years after the payment of park in lieu fees to the City pursuant to this Agreement, the shared driveway and storm drain easements (Recorded March 4, 1977, Book C642, Page 590, Official Records and recorded November 30, 1977, Book D309, Page 107) encumbering Phase II are quitclaimed or otherwise terminated by the owner of Lot 4 of Parcel Map recorded February 27, 1976 in Book 368 of Maps at Pages 14-15, APN: 097-05-061, such quitclaim being in form and substance satisfactory to Developer ("Quitclaim") and Developer has completed the Phase II component of the Park Improvements, then within thirty (30) days after such completion, City shall refund Developer the sum of \$210,527 ("Phase 2 Park In Lieu Fee Valuation"), which represents the land value of Phase II that was included in the Phase 1 Park In Lieu fees paid pursuant to this Agreement.
- ii. If more than 5 years elapse between payment of park in lieu fees to the City pursuant to this Agreement and completion of the Phase II component of the Park Improvements, the City shall not refund any of the Phase 2 Park In Lieu Fee Valuation, and
- 1. Developer shall prepare an Engineer's Estimate for the cost to construct the Public Park Phase 2 schematic design (as reviewed by the Parks and Recreation Commission and approved by City Council), plus the cost of demolition, less the \$18,321.90 park construction fee paid as a part of the parkland dedication fee ("Phase 2 Completion Cost").
- 2. If Developer has not constructed the Phase II portion of the Public Park prior to City's acceptance of the Phase I component of the Public Park, Developer shall pay the Public Park Phase 2 Completion Fee to the City and thereafter City (and not Developer) shall be obligated to construct the Phase II portion of the Public Park. The "Public Park Phase 2 Completion Fee" shall be an amount equal to the Phase 2 Completion Cost adjusted to the current Engineering News Record unit pricing, or as mutually agreed upon between the City and Developer before the issuance of Phase I Public Park acceptance.
- (c) <u>Completion of Park Improvements</u>. For the purposes of this Section 3, the Park Improvements shall be deemed to be "completed" when Developer has completed construction of the applicable Park Improvements in accordance with City approved Construction Documents and delivered the Notice of Completion (as defined in Section 2(f)) to City. The Parties agree that the Park Improvements shall be deemed complete for the purpose of this Section 3 prior to such Park Improvements undergoing Final Inspection by City and prior to their acceptance by City.
- 4. <u>Payment of Parkland In Lieu Fee</u>. Developer and City agree that the Parkland In Lieu Fee to be paid (or refunded) for each Phase of the Project is set forth on the schedule attached hereto as <u>Exhibit E</u> ("Parkland In Lieu Fee Payment Schedule").

The Parkland In Lieu Fee payments take into account the calculation of SCCC Chapter 17.35 Parkland Requirements for the Project, the acreage of the dedicated Public Parks, the value of the Park Improvements to the dedicated parkland, and the credit at 50% for eligible on-site private parkland and recreational amenities devoted to Active Recreational Uses.

- (a) Park Fees and Credits. The Project will generate an estimated 777 residents (2.24 persons/household x 347 units). Based on the MFA standard 2.53 acres/1,000 residents, the amount of public parkland required for this Project to mitigate the impact of the new resident demand is approximately 1.9665 acres. The equivalent fee due in lieu of parkland dedication is calculated at \$7,999,391.
  - i. <u>Public Park Dedication.</u> Developer is providing the 15,700 square foot public park in fee title to the city. The value for this portion of the park is \$1,322,390 per Exhibit D.
  - **ii.** Private Onsite Credit. Developer is providing 29,292 square feet of on-site Park and Active Recreation space per **Exhibit D**. The credit for this is provided at 50%, for a total of \$1,233,613.
  - iii. Park Fees. The total balance of fees due for Phase I of the park is \$5,443,338, as shown in Exhibit D.
  - iv. Phase II Reimbursement. The Public Park Phase II square footage, in the amount of 2,500 square feet, is the equivalent of \$210,572 and is included in the total park fee amount shown in 4.(a)iii. and shall be paid by Developer at the time Park Fees are paid. If Phase II of the Public Park is completed (defined in Section 3) and dedicated to City within 5 years of payment of Park In Lieu fees to City, the City shall refund this amount to Developer.
- (b) <u>Timing of Payments</u>. Developer shall pay the Parkland In Lieu Fee as shown on **Exhibit E** prior to issuance of the first residential building permit for the Project.
- 5. <u>Notices</u>. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Notices shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by receipted overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to City:

City of Santa Clara Attn: Director of Parks & Recreation 1500 Warburton Avenue Santa Clara, California 95050 Or by facsimile at (408) 260-9719

#### If to Developer:

SHAC Tasman CDM Apartments LLC 3000 Executive Parkway, suite 450 San Ramon, CA, 94583 ATTN: COO

Copy to:

SHAC Tasman CDM Apartments LLC 777 California Avenue, Palo Alto, California 94304

Attn: General Counsel

Either Party may change its address for purposes of this Section by giving written notice to the other Party. All notices shall be deemed given and received, if served personally, when actually received and receipt is acknowledged in writing, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by United States Postal Service. If delivery of a notice is refused between the hours of 9:00 A.M. and 5:00 P.M. on a business day, or fails because of a changed address of which no notice was given, then such notice shall be deemed given and received, if mailed or sent by courier, at the time delivery was first attempted, as shown by postal or courier receipt.

- 6. **Amendment.** The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only by the mutual agreement of the Parties in writing.
- 7. **Severability**. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable ("**Court Invalidation**"), it shall in no way affect, impair or invalidate any other provisions hereof, and the other provisions shall remain in full force and effect.
- 8. <u>Assignment.</u> Developer's rights and obligations set forth in this Agreement shall be transferable and assignable to any subsequent fee owner of the Project without the need for City's prior consent or approval; provided, however, that at the time of any such transfer or assignment of Developer's fee interest in the Project Developer shall (i) notify City in writing of the transfer/assignment and (ii) deliver to City an assignment and assumption agreement executed by Developer and its transferee/assignee pursuant to which Developer's transferee/assignee assumes all of Developer's obligations set forth herein with respect to the Project which accrue or arise from and after the date of the

assignment, including the obligations for installation of the Park Improvements, dedication of the Park in fee title, and payment of the Parkland In-Lieu Fee. After the date that such transfer/assignment occurs and a copy of the fully executed assignment and assumption agreement has been delivered to City, the transferor/assignor shall be released from all liabilities and obligations hereunder which accrue or arise from and after the date of the assignment. As used in this Agreement, the term "Developer" shall be deemed to include any such transferee/assignee after the date such transfer/assignment occurs.

- 9. <u>Construction of Agreement</u>. This Agreement and each of the provisions herein, has been reached as a result of negotiations between the Parties and their respective attorneys. This Agreement shall not be deemed to have been prepared by, or drafted by, any particular Party or Parties hereto, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party or Parties shall not be employed in the interpretation of this Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning.
- 10. <u>Attorney's Fees.</u> In the event of litigation between the Parties, or if a Party becomes involved in litigation because of the wrongful acts of the other Party, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit.
- 11. **Governing Law.** This Agreement shall be construed in accordance with and governed by the 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.
- 12. **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; and, the Parties agree that the signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.
- 13. <u>Mortgagee Protection</u>. Nothing in this Agreement shall be interpreted to render invalid any deed of trust or mortgage encumbering any portion of the Property. No beneficiary under any such deed of trust, purchaser at a foreclosure sale of such deed of trust, or grantee of a deed in lieu of foreclosure shall be obligated to cure any default of the previous owner of the Property unless such obligation is expressly assumed in writing, provided that the purchaser or grantee upon receiving title to the Property shall take title subject to this Agreement and shall assume the obligations of Developer accruing from and after the date the purchaser or grantee received title.

[Remainder of Page Intentionally Blank; Signatures Follow]

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

# CITY OF SANTA CLARA, CALIFORNIA

a chartered California municipal corporation

APPROVED /	AS TO F	ORM:	
Approved as to Form:		n: Dated:	
BRIAN DOY City Attorney		DEANNA J. SANTANA City Manager 1500 Warburton Avenue Santa Clara, CA 95050 Telephone: (408) 615-2210 Fax: (408) 241-6771	
		"CITY"	
SHAC TASM	AN CDI	APARTMENTS LLC, a Delaware limited liability company	
By: SHAC liability comp		AN CDM APARTMENTS VENTURE LLC, a Delaware limited	
Ву:	SHAC Tasman CDM Apartments Manager LLC, a Delaware limited liability company, its manager		
	Ву:	SummerHill Apartment Communities, a California corporation, its managing member	
		By: Name: Title:	
		By: Name: Title:	

"DEVELOPER"

#### **EXHIBIT A**

## PROPERTY LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

TRACT A:

PARCEL ONE:

PARCEL 3, AS SHOWN ON THAT CERTAIN PARCEL MAP, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON FEBRUARY 27, 1976, IN BOOK 368 OF MAPS PAGE(S) 14 AND 15.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR THE SOLE PURPOSE OF CONSTRUCTING AND USE OF A COMMON DRIVEWAY OVER AND ACROSS THE WESTERLY 12.5 FEET OF THAT CERTAIN REAL PROPERTY DESCRIBED AS PARCEL 4 ON THAT CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1976 IN BOOK 368 OF MAPS, AT PAGES 14 AND 15 IN THE SANTA CLARA COUNTY RECORDS.

TRACT B:

PARCEL ONE:

PARCEL 2, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1976 IN BOOK 368, OF MAPS, AT PAGES 14 AND 15, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE RIGHT OF WAY FOR VEHICLES AND PEDESTRIANS TOGETHER WITH ANY EASEMENT FOR INGRESS AND EGRESS IN CONNECTION THEREWITH, OVER, ACROSS AND UPON THE EASTERLY 11.0 FEET, FRONT AND REAR MEASUREMENTS, OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1979 IN BOOK 368, OF MAPS, AT PAGES 14 AND 15, SANTA CLARA COUNTY RECORDS AND AS GRANTED BY GARY S. 6085, ET AL., TO CASIMIR SZLENDAK, ET AL., BY DEED RECORDED OCTOBER 3, 1979 IN BOOK E841, PAGE 688, AND AS INSTRUMENT NO. 6519358 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

TRACT C:

PARCEL ONE:

PARCEL 1, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON FEBRUARY 27, 1976 IN BOOK 368 OF MAPS, AT PAGES 14 AND 15 IN THE SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE RIGHT-OF-WAY FOR VEHICLES AND PEDESTRIANS TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS IN CONNECTION THEREWITH, OVER, ACROSS AND UPON THE WESTERLY 14.0 FEET, FRONT AND REAR MEASUREMENTS, OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1976 IN BOOK 368 OF MAPS, AT PAGES 14 AND 15 IN THE SANTA CLARA COUNTY RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR DRAINAGE PURPOSES, APPURTENANT TO PARCEL 1, AS SAID

PARCEL 1 IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON FEBRUARY 27, 1979 IN BOOK 368 OF MAPS, AT PAGES 14 AND 15, ON, OVER, ACROSS THE SOUTHWESTERLY 14 FEET OF THE NORTHWESTERLY 188 FEET AND THE SOUTHWESTERLY 18 FEET OF THE SOUTHEASTERLY 17 FEET OF PARCEL 2 OF SAID AFOREMENTIONED PARCEL MAP, AS GRANTED IN THE DEED FROM SADDLEBACK ASSOCIATES, INC, A CALIFORNIA CORPORATION, TO SPARKS PROPERTIES, INC., A CALIFORNIA CORPORATION, RECORDED SEPTEMBER 04, 1981 UNDER RECORDER'S SERIES NO. 7158927, OFFICIAL RECORDS.

#### PARCEL FOUR:

AN EASEMENT FOR FIRE HYDRANT ACCESS OVER A STRIP OF LAND HAVING A UNIFORM WIDTH OF 6.00 FEET, THE CENTERLINE OF WHICH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THE RIGHT-OF-WAY AND INGRESS AND EGRESS EASEMENT RECORDED IN BOOK E 841 OF THE OFFICIAL SANTA CLARA COUNTY RECORDS AT PAGE 690, SAID POINT OF BEGINNING BEING DISTANT THEREON NORTH 22° 24′ 12" WEST 16.50 FEET FROM THE NORTHERLY RIGHT-OF-WAY OF CALLE DEL MUNDO (30 FOOT HALF STREET) AS SAID RIGHT-OF-WAY LINE IS SHOWN ON THE PARCEL MAP RECORDED IN BOOK 368 OF MAPS AT PAGES 14 AND 15, OF SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID POINT OF BEGINNING AT A RIGHT ANGLE NORTH 67° 35′ 48" EAST 13.00 FEET TO THE TERMINUS OF THIS DESCRIPTION.

AS GRANTED IN THE DEED FROM SADDLEBACK ASSOCIATES, INC., A CALIFORNIA CORPORATION, TO SPARKS PROPERTIES, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 29, 1981 UNDER RECORDER'S SERIES NO. 7201273, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

APN: 097-05-062 (Affects Tract A), 097-05-063 (Affects Tract B) and 097-05-064 (Affects Tract C)

## EXHIBIT B DESCRIPTION PARKLANDS PARCEL

REAL PROPERTY SITUATE IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 3, AS SAID PARCEL 3 IS SHOWN AND SO DESIGNATED ON THAT PARCEL MAP RECORDED FEBRUARY 27, 1976, FILED IN BOOK 368 OF MAPS, AT PAGE 14 IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY;

COMMENCING AT WESTERNMOST CORNER OF PARCEL 1, AS SAID PARCEL IS SHOWN ON SAID MAP, SAID POINT BEING ON THE NORTHEASTERN RIGHT-OF-WAY LINE OF LAFAYETTE STREET AS SHOWN ON SAID MAP;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHWEST LINE OF PARCELS 1, 2, AND 3 AS SHOWN ON SAID MAP, NORTH 67°35'48" EAST, 571.57 FEET TO THE POINT OF BEGINNING;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG THE NORTHWEST LINE OF SAID PARCEL 3, NORTH 67°35'48" EAST, 91.00 FEET TO THE NORTHERNMOST CORNER OF SAID PARCEL 3;

THENCE, ALONG THE NORTHEAST LINE OF SAID PARCEL 3, SOUTH 22°24'12" EAST, 200.00 FEET TO THE EASTERNMOST CORNER OF SAID PARCEL 3;

THENCE, ALONG THE SOUTHEAST LINE OF SAID PARCEL 3, SOUTH  $67^{\circ}35'48"$  WEST, 91.00 FEET;

THENCE, LEAVING SAID SOUTHEAST LINE, NORTH 22°24'12" WEST, 200.00 FEET TO THE POINT OF BEGINNING.

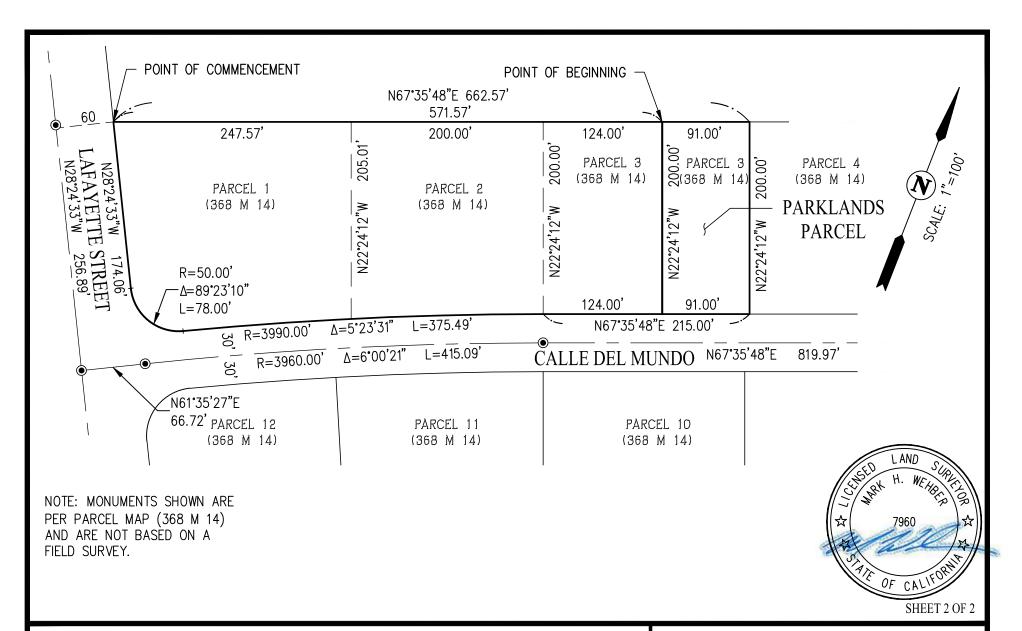
CONTAINING 0.418 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY, AND BY THIS REFERENCE MADE A PART HEREOF.

#### END DESCRIPTION

MARK H. WEHBER, P.L.S.

L.S. NO. 7960



## PLAT TO ACCOMPANY DESCRIPTION

PARKLANDS PARCEL
CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA
JULY 06, 2020



SAN RAMON (925) 866-0322 SACRAMENTO (916) 375-1877 WWW.CBANDG.COM

WWW.cbAndd.com

CIVIL ENGINEERS • SURVEYORS • PLANNERS

## TASMAN-CALLE DEL MUNDO Santa Clara, California

PARK ENLARGEMENT



- LEGEND

  (1) PARK ENTRYWAY WITH FOCAL ART ELEMENT OR

  (1) SCULPTURE AND ENHANCED PLANTING
- (4) QUIET PARK-LIKE AREA: MEANDERING PATHWAY BENCH SEATING, AND LUSH PLANTING, TYP
- DOG PARK: ENCLOSED DOG PARK AREA WITH 4 & STIFFL FERVANG. SEPARATE AREAS FOR SMALL AND LARGE DOGS. SYNTHETIC TURF; SEATING, DRIKKING FOUNTIAN AND BUFFER PLANTING

- (B) FAMILY PICNIC AREA; PICNIC TABLES, CHARCOAL GRILLS AND HOT COAL BINS, SEATING, AND SPECIMIN SHADE THEE
- EXISTING 12.5' DRIVEWAY EASEMENT.

  (1) IMPROVEMENTS WITHIN THIS EASEMENT WON'T OCCUR UNTIL ADJACENT PROPERTY REDEVELOPS

- (I) JURING PHASE 2 OF PARK CONSTRUCTION
  (I) JURING PHASE 2 OF PARK CONSTRUCTION
  (I) JURING TRENCH MANHOLE FILUSH WITH SIDEWALK

**EXHIBIT C - PARK DESIGN** 

NOTE: ALL PATHWAYS WILL BE DESIGNED TO BE ADA ACCESSIBLE.



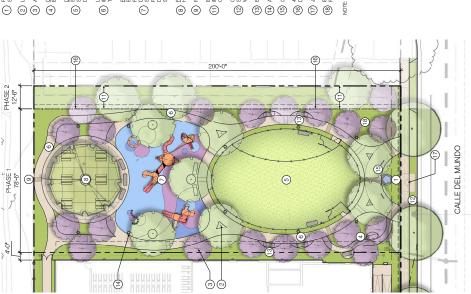
- 2 LARGE SHADE TREE, TYP
  3 ACCENT TREE, TYP
- LOOP PATHWAY WITH DECORATIVE BANDING

  (6) IDEAL FOR STROLLING AND CHILDREN'S
  TRICYCLE/SCOOTER RIDING
- POWED-IN-PLACE FLAT SURFIGURG, SEATING, AND POWED-IN-PLACE FLAT SURFIGURG, SEATING, AND POWED-IN-PLACE FLAT SURFIGURG, SEATING, AND FINE AND PAYSOLA, CAUMITA AS GENEROLED BYTHE PARKS DEPARTMENT, SECHOL STRUCTURES & IL BARKTN'S OF SECTED DURING CONSTRUCTION DOCUMENTS.
- 9 FUTURE TERRACED CONNECTION TO CITY PLACE
- (12) SIDEWALK AND 4 'WIDE CONTINUOUS FLANTING STRIP WITH STREET TREES, SEE CA'IL PLANS FOR SECTIONS
  - (3) BENCH SEATING, TYP

    (4) AREA LIGHTING, TYP

    (5) IC) CLASS II BKE FACKS PARKING FOR 4 BCYCLES)

(B) BIORETENTION AREA, SEE STORMWATER PLANT PALETTE ON SHEET L-5



andscape Architecture + Design

#### **Exhibit D**

#### **Parkland Requirements**

Developer's Project will develop 347 dwelling units generating an estimated 777 new residents (347 multi-family units at 2.24 persons). Based on the City's MFA standard of 2.53 acres of public neighborhood and community parkland per 1,000 residents, the Project is required to dedicate 1.9665 acres of public parkland and/or pay an equivalent fee due in lieu of the total parkland dedication in the amount of \$7,999,391. In lieu fees are published in the Municipal Fee Schedule.

Developer has proposed to meet the required parkland dedication of 1.9665 acres through one mini park, totaling 0.3604 acres and to pay the remainder owed as a fee in lieu of dedication in the amount of \$6,765,778.

According to City Code 17.35, projects may submit a written request for up to 50% credit against the amount of parkland dedication or the amount of the in-lieu fee thereof for eligible onsite private parkland and recreational amenities devoted to Active Recreational Uses provided the development meets the requirements contained in Santa Clara City Code 17.35.070. This Project includes 0.6725 acres of private active recreational amenities. The credit is therefore approximately 0.3362 acres, or \$1,233,613 in value. The balance of fees due in lieu of parkland dedication is \$5,443,388.

In summary, the calculations above are:

\$7.999.391 Fee due In Lieu of Parkland Dedication

-\$1,322,390 Value of Dedicated Parkland (Phase 1)

-\$1,233,613 Credit for Onsite Private Parkland and Recreational Amenities

\$5,443,388 Balance of Fee Due In Lieu of Parkland Dedication

Table 1. Computation of Parkland Dedication

Project Unit Type: Multi Fam Dwelling	Mitigation Fee Act
Persons/Dwelling Type	2.24
Multi Family Project Units	347
Residents	777
Parkland Dedication Required(acres): R/1000x3	1.9665
Fee In Lieu of Parkland Dedication	\$7,999,391

Table 2. Public Parkland Dedications Proposed, Service Level

Parkland Proposed	Square Feet	Acres	Type of Dedication
Phase I	15,700	0.3604	Fee Title
Phase II*	2,500	0.0574	Fee Title
Total to be dedicated:	18,200	0.4178	Fee Title

Total Proposed Dedicated Public	\$1,532,961	
Parkland Value for Phase 1 and Phase 2:		

<sup>\*</sup>Note: Developer will pay in lieu fee for Phase II, and will only be reimbursed/receive credit if constructed as outlined above in Section 4(a)(iv), but the land will be dedicated free of encumbrances to the City in fee title either way.

Table 3. Credit for Proposed Private Onsite Park & Recreation "Active Rec Uses"

	Square Feet	Acres
Level 3 Club Room	2076	0.0477
Level 3 Amenity Room	1047	0.0240
Level 3 Courtyard East	4268	0.0980
Level 3 Courtyard Center	8207	0.1884
Level 3 Courtyard West	7441	0.1708
Level 7 Terrace East	1391	0.0319
Level 7 Terrace West	403	0.0093
Level 7 Terrace South	566	0.0130
Dog Run	1401	0.0322
Fitness Center	2492	0.0572
Total:	29292	0.6725
Credit at 50% for Private Active Recrea	0.3362/\$1,233,613	

#### Exhibit E

## Parkland In Lieu Fee Payment Schedule

PHASE	PAYMENT		
Phase I	\$5,443,388	To be paid before issuance of first residential building	
		permit for the Project	
Phase II	(\$210,572) Refund	To be refunded by City to Developer if the Phase II portion of the Public Park is constructed and dedicated by	
	Relatio	Developer within 5 years after payment of the Parkland	
		In-Lieu Fee set forth immediately above.	

# PARK MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND SHAC TASMAN CDM APARTMENTS LLC

This Park Maintenance Agreement ("Agreement") is entered into this \_\_\_\_ day of

, 2020 ("Effective Date"), by and between the CITY OF SANTA CLARA, CALIFORNIA, a chartered California municipal corporation ("City") and SHAC TASMAN CDM APARTMENTS LLC, a Delaware limited liability company ("Project Owner"). City and Project Owner may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."
<u>RECITALS</u>
City and Project Owner enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are substantive part of this Agreement:
A. Project Owner is the fee title owner of that certain real property located in the City and more particularly described on <a href="Exhibit A">Exhibit A</a> attached hereto (the "Project Site").
B. The City and Project Owner are parties to that certain Park Improvement Agreement, executed on or about, 2020 and recorded in the Official Records of Santa Clara County, California on, 2020 as Document No (the " Park Improvement Agreement") with respect to the development of a public park within a portion of the Project Site.
C. Pursuant to applicable provisions of the Park Improvement Agreement, Project Owner is obligated to improve and thereafter dedicate to City certain lands within the Project Site for a public park referred to in the Park Improvement Agreement as the "Public Park and the Park Improvements (collectively the "Parklands") which Parklands are depicted on the site plan in <a href="Exhibit B">Exhibit B</a> attached hereto. The official names of one or more of the Parklands may be changed by City upon request by Project Owner subsequent to the date of this Agreement. As used herein, "Parklands" shall mean and refer to the

deed or grant thereof by Project Owner to City.

Parklands as depicted on Exhibit B and as more particularly described in the dedication

- D. Also pursuant to the Park Improvement Agreement, Project Owner or Project Owner's successors and assigns are obligated to maintain and repair the Parklands and to enter into a separate agreement with City, for a term of not less than forty years, providing for such maintenance. This Agreement satisfies the requirement to enter a separate Park Maintenance Agreement as required by the Park Improvement Agreement.
- NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth in this Agreement and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

#### <u>AGREEMENT</u>

- 1. **Recitals Incorporated.** The foregoing recitals are true and correct, and are part of this Agreement for all purposes.
- 2. <u>Construction and Dedication of Parklands Improvements.</u> The Parties acknowledge and agree that the design, construction and installation of all improvements and initial landscaping for the Parklands as described in and required by the Park Improvement Agreement and/or any other separate public improvement agreement between City and Project Owner and any and all plans attached thereto or referenced therein or otherwise approved by City in connection therewith (collectively, the "Parklands Improvements"), the dedication of the Parklands upon completion of the Parklands Improvements, and the payment of any fees due in lieu of parkland dedication, shall be and remain governed exclusively by the provisions of the Park Improvement Agreement and any such other public improvement agreement.

#### 3. Maintenance of Parklands.

- (a) Project Owner's Obligation. During the Maintenance Term (as hereinafter defined) and subject to the terms and conditions of this Agreement, Project Owner shall, at its sole cost and expense, provide labor, supervision, supplies, materials, equipment, and any and all other tools and manpower necessary to maintain and repair the Parklands to a level comparable to the level of maintenance and repairs performed by City within similar public parks located elsewhere within the City and otherwise in accordance with this Agreement (the "Maintenance Services"). In performing the Maintenance Services, Project Owner shall comply with the maintenance specifications set forth in Exhibit C attached hereto to the extent applicable to the Parklands. As used herein, "Maintenance Term" shall mean the period of time commencing upon the date of City's acceptance of dedication of the Parklands following completion of the Parklands Improvements (as set forth in the Park Improvement Agreement) and continuing in perpetuity, or upon any sooner termination of this Agreement as provided herein.
- (b) <u>Right of Entry</u>. At all times during the Maintenance Term, Project Owner and its employees, agents, representatives, contractors, and subcontractors shall have a non-exclusive license, coupled with an interest, and right of entry for pedestrians, vehicles, machinery and equipment into, over, across, and upon the Parklands as is

permits from City for any work done on City Property beyond the Maintenance Services provided in this Agreement.

- Parklands Operation. The Parties acknowledge and agree that, at all times during the Maintenance Term, the Parklands will be and remain public parks operated, controlled, supervised, and policed (including all emergency response services) solely by City, and open to the public during the hours then set by City. Notwithstanding any provision herein to the contrary, nothing in this Agreement shall create, or be deemed to create, any responsibility or liability on the part of Project Owner or any of its affiliates, successors or assigns, with respect to the operation, control, supervision, or policing of the Parklands. Nothing herein gives Project Owner the right to restrict or to exclude any person or entity from the Parklands during the Maintenance Term. If Project Owner believes that any area of the Parklands needs to be restricted or closed temporarily for public safety purposes to perform the Maintenance Services, Project Owner may, upon not less than two (2) days' prior written notice to City (except in emergency situations), restrict or close such areas of the Parklands for a reasonable amount of time in order to allow the Maintenance Services to be performed. Project Owner and/or its employees, agents, representatives, contractors, or subcontractors shall not store any equipment, materials, or supplies in, on, or upon the Parklands beyond such time reasonably necessary to perform any particular Maintenance Services for which they are needed, and shall take appropriate measures to secure the same and prevent any public access thereto.
- (d) <u>Alterations.</u> In performing the Maintenance Services, and except as otherwise subsequently agreed upon in writing by the Parties, Project Owner shall not make, and shall not be obligated to make, any improvements, alterations, additions, or changes to the Parklands or the Parklands Improvements.
- (e) <u>Periodic Review</u>. During the Maintenance Term, upon City's request and not more frequently than once each calendar quarter, Project Owner's maintenance contractor(s)/facilities manager or other designated representative(s) of Project Owner and City's Director of Parks & Recreation ("Parks Director") or other designated representative(s) of City shall meet at the Parklands to inspect the Parklands and review the status and adequacy of the Maintenance Services provided herein by Project Owner.
- 4. <u>Independent Contractor.</u> Project Owner, in the performance of this Agreement, is an independent contractor. Project Owner shall maintain complete control over all of its employees, agents, representatives, contractors, and subcontractors in the performance of this Agreement. Neither Project Owner nor any person retained by Project Owner may represent, act, or purport to act as the agent, employee, or

representative of City. Neither Project Owner nor City is granted any right or authority to assume or create any obligation on behalf of the other. Project Owner shall be solely responsible for, and will pay any excise taxes, fees, contributions, or charges applicable to the conduct of its business or which may be levied on its performance of the Maintenance Services hereunder.

5. <u>Compliance with Laws</u>. In the performance of the Maintenance Services, Project Owner shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments with jurisdiction, including without limitation, any and all applicable laws specified elsewhere in this Agreement (collectively "Applicable Laws"). Without limiting the generality of the foregoing provision, all persons retained by Project Owner to perform Maintenance Services required under this Agreement shall possess the requisite licenses and necessary permits to perform such Maintenance Services. The Parties acknowledge and agree that neither Project Owner nor any of its contractors or subcontractors will be receiving any payment from City for the Maintenance Services and that there is no requirement for the payment of prevailing wages in connection with the Maintenance Services.

#### 6. <u>Personnel/Identification</u>.

- (a) <u>Qualifications</u>. Any and all personnel employed or retained by Project Owner in the performance of any Maintenance Services shall be qualified to perform the duties assigned to them by Project Owner. Project Owner's personnel shall conduct themselves at all times in a courteous and businesslike manner.
- (b) <u>Restricted Offenses</u>. Project Owner agrees to include in its contracts with its contractors performing the Maintenance Services a requirement that the contractor undertake reasonable measures to verify that the personnel retained by such contractors to perform Maintenance Services do not have any criminal record for offense related to the possession or use of controlled substances, sex offenses, or any criminal offense involving violence.
- (c) <u>Identification</u>. All personnel who perform Maintenance Services will wear clothing, or a nametag or shall have some other form of reasonable identification which bears the name of Project Owner or its contractor or subcontractor. The clothing worn by Project Owner's personnel shall be appropriate for the work assigned and shall give Project Owner's staff a neat and professional appearance. Project Owner's vehicles that park on the Parklands shall have appropriate identification as reasonably approved by the Parks Director (i.e., Project Owner's vehicles will not be allowed on the Parklands without the appropriate parking permit displayed on the dashboard, if the City's practice is to issue parking permits for such temporary parking in connection with the performance of the Maintenance Services).

7. **Nondiscrimination.** In the performance of this Agreement, Project Owner shall not discriminate, in any way, against any person on the basis 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.

#### 8. <u>Hold Harmless/Indemnification</u>.

Project Owner and its successors in interest agree to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, and employees from and against any and all claims, injury, demands, losses, damages, liabilities, costs, expenses, charges, administrative and judicial proceedings and orders, judgments, and reasonable attorneys' fees and costs (collectively, the "Losses") to the extent caused by Project Owner's failure to perform its obligations under this Agreement, except to the extent arising from the willful misconduct or grossly negligent acts or omissions of the City or its officers, employees and agents, or to the extent arising from the use of the Public Park by the public.

#### 9. Insurance Requirements.

During the term of this Agreement, and for any time period set forth in <u>Exhibit D</u>, Project Owner (or its contractors or subcontractors performing the Maintenance Services) shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in <u>Exhibit D</u>, entitled "Insurance Requirements."

#### 10. Force Majeure.

- (a) <u>Defined.</u> As used herein, **"Force Majeure Event"** shall mean any matter or condition beyond the reasonable control of a Party, including war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either City or Project Owner or both, any failure by the other Party to comply with its obligations hereunder, or any governmental order or law (including any order or law of City) which causes an interruption in the performance of this Agreement or prevents timely delivery of materials or supplies.
- (b) Excuse from Performance. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section shall notify the other Party within ten (10) days of the affected Party's knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.
- (c) <u>Exclusions.</u> Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
  - 1. Performance under this Agreement shall not be suspended or excused for any matter or condition that does not constitute a Force Majeure Event as

- defined in Section 10(a).
- 2. Negligence or failure of Project Owner to perform its obligations under this Agreement shall not constitute a Force Majeure Event.
- 3. The inability of Project Owner for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract by any contractor or subcontractor or for Project Owner's default under such contract shall not constitute a Force Majeure Event.
- Assignment. Project Owner's rights and obligations set forth in this Agreement shall be transferable and assignable to any subsequent fee owner of the Project Site without the need for City's prior consent or approval; provided, however, that at the time of any such transfer or assignment of Project Owner's fee interest in the Project Site Project Owner shall (i) notify City in writing of the transfer/assignment and (ii) deliver to City an assignment and assumption agreement executed by Project Owner and its transferee/assignee pursuant to which Project Owner's transferee/assignee assumes all of Project Owner's obligations set forth herein with respect to the Project Site which accrue or arise from and after the date of the assignment, including the obligations to perform the Maintenance Services for the Maintenance Term. After the date that such transfer/assignment occurs and a copy of the fully executed assignment and assumption agreement has been delivered to City, the transferor/assignor shall be released from all liabilities and obligations hereunder which accrue or arise from and after the date of the assignment. As used in this Agreement, the term "Project Owner" shall be deemed to include any such transferee/assignee after the date such transfer/assignment occurs. Additionally, Project Owner is authorized to hire and delegate the performance of some or all of the Maintenance Services to appropriately qualified contractors and subcontractors. Any contractor and/or subcontractor retained by Project Owner to perform and satisfy any terms, conditions or obligations under this Agreement shall receive a copy of this Agreement and be contractually required to comply with this Agreement. As between the City and Project Owner only, and without limiting Project Owner's rights and remedies under its agreements with its contractors, subcontractors or any other third party, Project Owner shall be responsible for all contractors or subcontractors retained by the Project Owner, or on its behalf, in the performance of any Maintenance Services under this Agreement (excluding the intentional misconduct or gross negligence of such contractors or subcontractors, or the obligation of contractors or subcontractors with respect to Section 6(b) hereof).
- 12. <u>Termination.</u> Notwithstanding any other provision in this Agreement, City, in its sole discretion, may terminate this Agreement, without cause, upon thirty (30) days written notice of termination to the other Party. In the event of termination, (i) Project Owner shall immediately deliver to City copies of all reports, documents and other work performed by Project Owner under this Agreement; (ii) Project Owner shall be released from any further obligations under this Agreement, including without limitation, with respect to the performance of the Maintenance Services; and (iii) concurrent with such termination, Project Owner and City will execute, notarize and record a termination of any Memorandum of Agreement that has been recorded against the Project Site pursuant to Section 15(q) hereof.

- 13. Project Owner's Default and Remedies. If Project Owner fails to perform any of the material terms, conditions, or obligations required to be performed by Project Owner under this Agreement, and such failure continues uncured for a period of thirty (30) days following Project Owner's receipt of written notice from City specifying Project Owner's breach (or such longer cure period in those instances where the specified breach cannot reasonably be cured within such 30-day period, provided Project Owner commences to cure the specified breach within such 30-day period and thereafter diligently pursues such cure to completion), Project Owner shall be deemed to be in default under this Agreement (a "Project Owner's Default"). In the event of a Project Owner's Default, City, as its sole and exclusive remedy, may either (a) take all reasonable steps to cure such Project Owner's Default and recover damages from Project Owner for the direct costs and expenses incurred by City in such cure of Project Owner's Default; or (b) seek specific performance by Project Owner of the cure of such Project Owner's Default.
- 14. **Notices.** All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Notices shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by receipted overnight courier, postage prepaid, or (d) sent by email, in each case addressed to the applicable recipient as follows:

To City:

City of Santa Clara Attn: Director of Parks & Recreation 1500 Warburton Avenue Santa Clara, California 95050 Or by facsimile at (408) 260-9719

To Project Owner:

SHAC Tasman CDM Apartments LLC 3000 Executive Parkway, Suite 450 San Ramon, CA 94583 Attn: COO

With a copy to:

SHAC Tasman CDM Apartments LLC 777 California Avenue Palo Alto, CA 94304 Attn: General Counsel The business day the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 5:00 p.m. on a Friday, or on a holiday, shall be deemed to have been transmitted on the following business day. Any Party may change its address for notices by giving written notice to the other Party in the manner set forth above.

#### 15. **General Provisions.**

- (a) Entire Agreement. This Agreement, including all Exhibits attached thereto, constitutes the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. The Parties acknowledge and agree that this Agreement satisfies in full any and all obligations of Project Owner under the Park Improvement Agreement and Applicable Laws with respect to maintenance and repairs of the Parklands and the Parklands Improvements.
- (b) <u>Amendment.</u> The provisions of this Agreement may be altered, amended, or repealed, in whole or in part, only by the mutual agreement of the Parties in writing.
- (c) <u>Waiver.</u> No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.
- (d) <u>Construction.</u> Section headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (i) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (ii) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this Agreement in its entirety and not to any specific Section or paragraph; (iii) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" and (iv) "shall," "will" and "must" are mandatory and "may" is permissive. The Parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the Party who drafted a particular provision of this Agreement.
- (e) <u>Severability.</u> If any term or provision of this Agreement is ever determined to be invalid or unenforceable for any reason, such term or provision shall be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement.
- (f) Actions by City. Where this Agreement requires or permits City to act and no officer of the City is specified, the City Manager or the designated representative of the City Manager has the authority to act on City's behalf.
- (g) <u>Binding Nature</u>. Subject to the provisions of <u>Section 11</u> and this Section, this Agreement binds and inures to the benefit of the Parties and their respective successors, assigns and legal representatives. This Agreement and all provisions

thereof constitute covenants running with the land comprising the Project Site and shall be binding upon Project Owner and Project Owner's successors and assigns during the term of its ownership of the Project Site or any legal parcel, lot or interest therein (whether or not such successors or assigns have executed any assignment or assumption agreement with the prior Project Owner); provided however that, notwithstanding the foregoing or any other provision herein to the contrary, this Agreement and the provisions thereof shall not be binding upon (A) any lender or mortgagee of Project Owner (unless such lender or mortgagee elects in writing, in its sole and absolute discretion, to assume the rights and obligations of Project Owner hereunder), (B) any assigning Project Owner released from its obligations hereunder pursuant to the applicable provisions of Section 11, or (C) if applicable, any purchaser of an individual condominium offered for sale at any time within the Project Site. Upon the request of either Party, the Parties shall execute and record in the Official Records of Santa Clara County a mutually acceptable memorandum of this Agreement against the Project Site.

- (h) <u>Governing Law</u>. This Agreement shall be construed in accordance with and governed by the 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.
- (i) <u>Counterparts.</u> 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 the signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGE]

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

OVED .	AS TO	FORM:			
Approved as to Form:		Dated:			
_					DEANNA J. SANTANA City Manager 1500 Warburton Avenue Santa Clara, CA 95050 Telephone: (408) 615-2210 Fax: (408) 241-6771
				"CITY"	
TASM	AN CD	M APAR	RTMENTS LL	. <b>C,</b> a Delav	ware limited liability company
SHAC ny	TASM	AN CDM	I APARTMEN	ITS VENTU	URE LLC, a Delaware limited liability
Ву:			•	nents Man	nager LLC, a Delaware limited liability
	Ву:			ent Commu	unities, a California corporation, its
		Name:_			
		By: Name: _ Title: _			
	N DOY attorney	TASMAN CD SHAC TASMAN ny  By: SHAC	TASMAN CDM APAF SHAC TASMAN CDM ny  By: SHAC Tasmar company, its m  By: Summe managi  By: Name: Title: By: Name:	TASMAN CDM APARTMENTS LL SHAC TASMAN CDM APARTMEN  By: SHAC Tasman CDM Apartme  company, its manager  By: SummerHill Apartme  managing member  By: Name: Title:  By: Name:	TASMAN CDM APARTMENTS LLC, a Dela SHAC TASMAN CDM APARTMENTS VENT ny  By: SHAC Tasman CDM Apartments Mar company, its manager  By: SummerHill Apartment Comme managing member  By: Name: Title:  By: Name:

"PROJECT OWNER"

## Exhibit A to Park Maintenance Agreement Legal Description of Project Site

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

TRACT A:

PARCEL ONE:

PARCEL 3, AS SHOWN ON THAT CERTAIN PARCEL MAP, WHICH MAP WAS FILED FOR RECORD IN THE

OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON FEBRUARY

27, 1976, IN BOOK 368 OF MAPS PAGE(S) 14 AND 15.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR THE SOLE PURPOSE OF CONSTRUCTING AND USE OF A COMMON

DRIVEWAY OVER AND ACROSS THE WESTERLY 12.5 FEET OF THAT CERTAIN REAL PROPERTY

DESCRIBED AS PARCEL 4 ON THAT CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1976 IN BOOK 368

OF MAPS, AT PAGES 14 AND 15 IN THE SANTA CLARA COUNTY RECORDS.

TRACT B:

PARCEL ONE:

PARCEL 2, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1976 IN BOOK 368, OF

MAPS, AT PAGES 14 AND 15, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE RIGHT OF WAY FOR VEHICLES AND PEDESTRIANS TOGETHER WITH ANY EASEMENT

FOR INGRESS AND EGRESS IN CONNECTION THEREWITH, OVER, ACROSS AND UPON THE EASTERLY

11.0 FEET, FRONT AND REAR MEASUREMENTS, OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT

CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1979 IN BOOK 368, OF MAPS, AT PAGES 14 AND 15.

SANTA CLARA COUNTY RECORDS AND AS GRANTED BY GARY S. GOSS, ET AL., TO CASIMIR SZLENDAK,

ET AL., BY DEED RECORDED OCTOBER 3, 1979 IN BOOK E841, PAGE 688, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

TRACT C:

PARCEL ONE:

PARCEL 1, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE

RECORDER OF THE COUNTY OF SANTA CLARA ON FEBRUARY 27, 1976 IN BOOK 368 OF MAPS. AT

PAGES 14 AND 15 IN THE SANTA CLARA COUNTY RECORDS.

#### PARCEL TWO:

A NON-EXCLUSIVE RIGHT-OF-WAY FOR VEHICLES AND PEDESTRIANS TOGETHER WITH AN EASEMENT

FOR INGRESS AND EGRESS IN CONNECTION THEREWITH, OVER, ACROSS AND UPON THE WESTERLY

14.0 FEET, FRONT AND REAR MEASUREMENTS, OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT

CERTAIN PARCEL MAP FILED ON FEBRUARY 27, 1976 IN BOOK 368 OF MAPS, AT PAGES 14 AND 15 IN

THE SANTA CLARA COUNTY RECORDS.

PARCEL THREE: A NON-EXCLUSIVE EASEMENT FOR DRAINAGE PURPOSES, APPURTENANT TO PARCEL 1, AS SAID PARCEL 1 IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE

RECORDER OF THE COUNTY OF SANTA CLARA ON FEBRUARY 27, 1979 IN BOOK 368 OF MAPS, AT

PAGES 14 AND 15, ON, OVER, ACROSS THE SOUTHWESTERLY 14 FEET OF THE NORTHWESTERLY 188

FEET AND THE SOUTHWESTERLY 18 FEET OF THE SOUTHEASTERLY 17 FEET OF PARCEL 2 OF SAID

AFOREMENTIONED PARCEL MAP, AS GRANTED IN THE DEED FROM SADDLEBACK ASSOCIATES, INC., A

CALIFORNIA CORPORATION, TO SPARKS PROPERTIES, INC., A CALIFORNIA CORPORATION, RECORDED

SEPTEMBER 4, 1981 UNDER RECORDER'S SERIES NO. 7158927, OFFICIAL RECORDS.

#### PARCEL FOUR:

AN EASEMENT FOR FIRE HYDRANT ACCESS OVER A STRIP OF LAND HAVING A UNIFORM WIDTH OF

6.00 FEET, THE CENTERLINE OF WHICH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THE RIGHT-OF-WAY AND INGRESS AND EGRESS

EASEMENT RECORDED IN BOOK E 841 OF THE OFFICIAL SANTA CLARA COUNTY RECORDS AT PAGE

690, SAID POINT OF BEGINNING BEING DISTANT THEREON NORTH 22° 24' 12" WEST 16.50 FEET

FROM THE NORTHERLY RIGHT-OF-WAY OF CALLE DEL MUNDO (30 FOOT HALF STREET) AS SAID

RIGHT-OF-WAY LINE IS SHOWN ON THE PARCEL MAP RECORDED IN BOOK 368 OF MAPS AT PAGES 14

AND 15, OF SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID POINT OF BEGINNING AT A

RIGHT ANGLE NORTH 67° 35' 48" EAST 13.00 FEET TO THE TERMINUS OF THIS DESCRIPTION.

AS GRANTED IN THE DEED FROM SADDLEBACK ASSOCIATES, INC., A CALIFORNIA CORPORATION, TO

SPARKS PROPERTIES, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 29, 1981 UNDER

RECORDER'S SERIES NO. 7201273, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

APN: 097-05-062 (Affects Tract A), 097-05-063 (Affects Tract B) and 097-05-064 (Affects Tract C)

## EXHIBIT B DESCRIPTION PARKLANDS PARCEL

REAL PROPERTY SITUATE IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 3, AS SAID PARCEL 3 IS SHOWN AND SO DESIGNATED ON THAT PARCEL MAP RECORDED FEBRUARY 27, 1976, FILED IN BOOK 368 OF MAPS, AT PAGE 14 IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY;

COMMENCING AT WESTERNMOST CORNER OF PARCEL 1, AS SAID PARCEL IS SHOWN ON SAID MAP, SAID POINT BEING ON THE NORTHEASTERN RIGHT-OF-WAY LINE OF LAFAYETTE STREET AS SHOWN ON SAID MAP;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHWEST LINE OF PARCELS 1, 2, AND 3 AS SHOWN ON SAID MAP, NORTH 67°35'48" EAST, 571.57 FEET TO THE POINT OF BEGINNING;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG THE NORTHWEST LINE OF SAID PARCEL 3, NORTH 67°35'48" EAST, 91.00 FEET TO THE NORTHERNMOST CORNER OF SAID PARCEL 3;

THENCE, ALONG THE NORTHEAST LINE OF SAID PARCEL 3, SOUTH 22°24'12" EAST, 200.00 FEET TO THE EASTERNMOST CORNER OF SAID PARCEL 3;

THENCE, ALONG THE SOUTHEAST LINE OF SAID PARCEL 3, SOUTH 67°35'48" WEST, 91.00 FEET;

THENCE, LEAVING SAID SOUTHEAST LINE, NORTH 22°24'12" WEST, 200.00 FEET TO THE POINT OF BEGINNING.

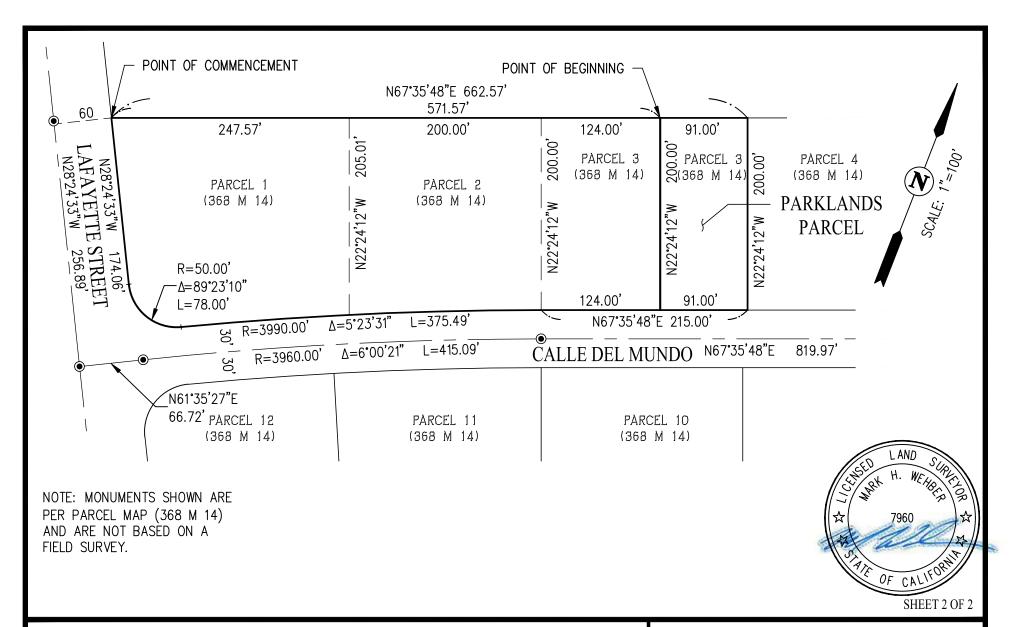
CONTAINING 0.418 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY, AND BY THIS REFERENCE MADE A PART HEREOF.

#### END DESCRIPTION

MARK H. WEHBER, P.L.S.

L.S. NO. 7960



## PLAT TO ACCOMPANY DESCRIPTION

PARKLANDS PARCEL
CITY OF SANTA CLARA, SANTA CLARA COUNTY, CALIFORNIA
JULY 06, 2020



SAN RAMON (925) 866-0322 SACRAMENTO (916) 375-1877

WWW.CBANDG.COM

CIVIL ENGINEERS • SURVEYORS • PLANNERS

#### **EXHIBIT C**

## City of Santa Clara

## **Park Maintenance Specifications**

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#### 1 GENERAL INFORMATION

- 1.1 Company shall furnish all management personnel, supervision, labor, material, equipment and any other item(s) required for the complete Maintenance Services, including replacement, of the Park Improvements located on the Park Property throughout the Maintenance Term, as further described in this Exhibit.
- 1.2 Company will work and coordinate with a Project Manager ("Project Manager") for the City of Santa Clara's Parks & Recreation Department throughout the Maintenance Term. Project Manager will be assigned by the Director at the Effective Date of this Agreement.
- 1.3 Company including its employees, contractors, subcontractors and other individuals or entities performing any of the Maintenance Services under this Agreement shall comply with every term and condition herein.
- 1.4 Company shall ensure that their contractor(s) procure all necessary permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the provision of services.
- 1.5 Company will comply with all other license and permit requirements of the City, State and Federal Governments, as well as all other requirements of law.

#### 2 SAFETY

- 2.1 Proper personal protective equipment (PPE) shall always be used and worn while conducting maintenance functions and tasks.
- 2.2 Safety Data Sheets (SDS) for all chemical products approved for use for Parks & Recreation facilities shall be available and accessible to staff members. Products applied by approved vendors must also fulfill this requirement.
- 2.3 Only standard approved cleaners and chemicals may be used for janitorial services and tasks.
- 2.4 Maintenance staff members who apply cleaning products and disinfectants must complete an annual Cleaning Chemical Training or the equivalent.
- 2.5 Equipment shall be used and operated safely according to the function they were made to fulfill and shall be maintained according to the manufacturer requirements and recommendations.
- 2.6 Repair and maintain athletic field equipment according to the manufacturer's recommendations.
- 2.7 Maintenance staff must receive at least one annual equipment-training, for the proper operation of equipment in parks and recreation grounds and facilities.

#### 3 INTEGRATED PEST CONTROL (IPM)

- 3.1 Abide by the City's IPM policy (see Appendix). Contractor shall sign and comply with the City of Santa Clara's Integrated Pest Management Policy (ICM).
- 3.2 Do not apply organophosphate pesticides.
- 3.3 Do not use or apply anticoagulant products.
- 3.4 Do not use any glyphosate-based herbicides (GBH)

#### 4 BUILDING & GENERAL AMENITIES

- 4.1 The following functions must be performed on a daily basis:
  - 4.1.1 Apply disinfectant(s) inside toilets and to all touchpoint surfaces.
  - 4.1.2 Check and fill towels, soap, air care, seat covers, and toilet paper dispensers.
  - 4.1.3 Pick up trash, sweep floors and empty trash receptacles.
  - 4.1.4 Clean counters, sinks, and dispensers.
  - 4.1.5 Clean inside toilets, and urinals, and wipe outside toilets and urinals.
  - 4.1.6 Inspect walls and spot clean.
  - 4.1.7 Clean all bright-work and mirrors.
  - 4.1.8 Clean the floor.
  - 4.1.9 Treat for any restroom odors with the recommended products.
  - 4.1.10 Inspect all areas and clean accordingly.
  - 4.1.11 Check all exit and egress hardware (including electronic devices) for functionality.
  - 4.1.12 Wipe clean all light switches, doorknobs and handles.
  - 4.1.13 Clean restroom partitions.
  - 4.1.14 Clean drinking fountains.
  - 4.1.15 Graffiti must be removed within 24 hours.
- 4.2 The following functions must be performed on a weekly basis.
  - 4.2.1 Check for and remove cobwebs.
  - 4.2.2 Dust and clean all vents.

#### 5 **RESTROOMS**

5.1	The following functions must be performed on a daily basis:					
	5.1.1	Apply disinfectant(s) inside toilets and to all touchpoint surfaces				
	5.1.2	Check and fill towels, soap, air care, seat covers, and toilet paper dispensers.				
	5.1.3	Empty, clean, polish and disinfect sanitary napkin receptacles				
	5.1.4	Fill all dispensers				
	5.1.5	Pick up trash, sweep floors and empty trash receptacles.				
	5.1.6	Clean counters, sinks, and dispensers.				
	5.1.7	Clean inside toilets, and urinals, and wipe outside toilets and urinals.				
	5.1.8	Inspect walls and spot clean.				
	5.1.9	Clean all bright-work and mirrors				
	5.1.10	Clean the floor				
	5.1.11	Treat for any restroom odors with the recommended products				
	5.1.12	Inspect all areas and clean accordingly.				
	5.1.13	Wipe clean all light switches, doorknobs and handles.				
	5.1.14	Clean restroom partitions				
	5.1.15	Sweep & mop floor with disinfectant				
	5.1.16	Clean drinking fountains				
	5.1.17	Vacuum carpeted areas.				
5.2 The follow		ving functions must be performed on a weekly basis:				
	5.2.1	Check for and remove cobwebs.				
	5.2.2	Dust and clean all vents.				
5.3	Inspect an	d clean shower areas daily.				
	5.3.1	Clean and disinfect shower walls, and floors				
	5.3.2	Clean shower-drain covers				
	5.3.3	Clean shower fixtures				
	5.3.4	Pick up and dispose trash				
	5.3.5	Spot clean walls and doors				
	5.3.6	Clean non-slip mats				
	5.3.7	Machine scrub shower room floors every other day/night.				

#### 6 **HARDSCAPE**

#### 6.1 SIDEWALKS AND PARK PATHWAYS

- 6.1.1 Check sidewalks and park pathways daily and remove all debris, garbage and tripping hazards.
- Rake and groom decomposed granite pathways weekly.
- 6.1.3 Install additional decomposed granite as needed. At minimum this should be done every three months.
- 6.1.4 Spray paint cracks in sidewalks and pathways that are uneven due to tree root growth or other causes whenever there is a <sup>3</sup>/<sub>4</sub>" difference between two edges of the sidewalk or pathway that would potentially cause someone to trip and fall. It may be necessary to spray paint cracked or lifted sidewalks that have less than a <sup>3</sup>/<sub>4</sub>" change in grade, if it is likely that someone may trip and fall.

#### 6.2 SEAT WALLS

- 6.2.1 Check for cracks, uneven edges and graffiti daily.
- 6.2.2 Remove graffiti immediately.
- 6.2.3 Inspect seat walls for damage caused by skate boarding.
- 6.2.4 Inspect skate blockers where present, and check for vandalism. Remove, replace and repair as needed.

#### 6.3 PARKING LOTS

- 6.3.1 Inspect parking lots daily and remove debris and garbage.
- 6.3.2 Repaint no-parking, handicap parking curbs and fire lane curbs as they become faded and discolored.
- 6.3.3 Restripe parking stalls and handicap stalls when they become faded.
- 6.3.4 Check annually to determine restriping schedule for parking lots.
- 6.3.5 Check wheel stops daily to make sure they are secured in place and firmly anchored.
- 6.3.6 Make sure all corresponding signs to parking and emergency access such as handicapped parking, no-parking, fire lanes, and loading-and-unloading are in present, legible and readily identifiable.
- 6.3.7 Inspect parking lots for potholes and schedule filling and repair.

#### 6.4 SEATING AREAS, TABLE SEATING, BENCHES

- 6.4.1 Inspect all seating areas daily.
- 6.4.2 Check for vandalism, graffiti, loosened hardware, damage and breakage.

City of Santa Clara Parks & Recreation Department - Park Maintenance Specifications

Updated June 2020

- 6.4.3 Schedule repair accordingly and remove graffiti immediately.
- 6.4.4 Cordon off areas or benches taken out of service and place signage to avoid injury to park patrons.
- 6.4.5 Inspect wooden benches for damage, rot, loosened or missing hardware and potential hazards. Repair, repaint, or replace when necessary.

#### 6.5 BARBEQUE GRILLS

- 6.5.1 Inspect and clean after use in non-reserved areas; and check before and after use in areas which require a permit.
- Place ashes in a fire-safe container meant to hold hot embers, coal and or ashes.
- 6.5.3 Remove ashes after use of barbeque grill, being sure to remove wet ashes immediately as they are corrosive and accelerate corrosion or deterioration of the barbeque fixture.
- 6.5.4 Replace grills whenever they exceed their useful life.

#### 6.6 FENCING

- 6.6.1 Inspect the integrity of fencing daily.
- 6.6.2 Inspect fencing for damage, vandalism, loose and missing hardware, presence of privacy slats, boards, gates, and locking mechanisms.
- Verify that all moving components are free moving, and functional.
- 6.6.4 Verify that self-closing and locking mechanisms are safe to operate.
- 6.6.5 Verify that proper signage is affixed, legible and readily identifiable.
- 6.6.6 Inspect wooden fences for rot, broken boards, protruding hardware.
- 6.6.7 Replace boards and components if missing or in disrepair.
- 6.6.8 Check painted surfaces for flaking, chipping and discoloration and repaint as needed.

#### 6.7 SIGNS

- 6.7.1 Inspect signs for damage, vandalism, loose or missing hardware, fading and discoloration daily. Clean and replace signs as needed.
- 6.7.2 Inspects signs and verify that signs are visible, legible, unobstructed and installed at proper height and setbacks.
- 6.7.3 Check to make sure signs have current approved verbiage with corresponding accurate City Code, etc.

- 6.7.4 Repaint wooden signs and concrete signs and letters on signs when faded.
- 6.7.5 Inspect signs and verify that they are stable, firmly affixed to the surface, and free of rot.
- 6.7.6 Replace signs, hardware, posts etc. when in disrepair, absent, or rotted.
- 6.7.7 Update signs when new verbiage has been approved by the City.
- 6.7.8 Inspect marquees and check for missing lights, letters, proper illumination, graffiti and vandalism.

#### 7 TREES

#### 7.1 PRUNING

- 7.1.1 Follow ANSI A300 for tree care operations.
- 7.1.2 Pruning must be done with a specific objective which may include:
  - 7.1.2.1 removal of dead branches or limbs
  - 7.1.2.2 clearance
  - 7.1.2.3 thinning
  - 7.1.2.4 crown reduction
  - 7.1.2.5 dieback removal
  - 7.1.2.6 improving tree structure
  - 7.1.2.7 correcting structural defects
  - 7.1.2.8 removal of undesirable plant parts (suckers, waterspouts)
  - 7.1.2.9 removal of diseased or infected parts
- 7.1.3 Do not prune trees to a lion tail.
- 7.1.4 Do not flush cut when pruning.
- 7.1.5 Heading cuts are not allowed except in the process of a planned tree removal in stages. In such cases prior approval and notification is mandatory.

#### 7.2 ESTABLISHMENT

- 7.2.1 Apply about three gallons irrigation per inch of trunk diameter to the root ball two or three times a week for the first growing season.
- 7.2.2 Increase volume and decrease frequency as the tree becomes established.

- 7.2.3 Weekly irrigation the second year and bimonthly as the tree becomes established.
- 7.2.4 Do not remove branches from trees during the establishment period unless it is a safety concern. Trees develop trunk caliper quicker with a larger mass of leaves.
- 7.2.5 Check for dead branches monthly during the establishment period and remove any confirmed dead branches. Be careful not to remove branches that are still alive (without leaves) but may have experienced leaf drop during the establishment period.

#### 7.3 REMOVALS

- 7.3.1 Tree removals are sometimes necessary due to decay, disease, poor structure, lightning damage, mechanical damage, etc.
- 7.3.2 Consult with a Parks & Recreation, Certified Arborist, prior to any tree removal.
- 7.3.3 When a tree is removed, a minimum of two trees shall be planted in a city park as replacements for the one tree removal. Tree replacements shall be no smaller than 24-inch boxes.
- 7.3.4 Consult with a Parks & Recreation, Certified Arborist for proper tree replacement selection. Certification is issued through the International Society of Arboriculture.

#### 7.4 FERTILIZATION

- 7.4.1 Check trees for nutrient deficiencies, vitality, vigor, etc. for the tree species and then follow up with a soil test to determine the need for fertilizer application(s). Keep in mind that compacted and/or waterlogged soil, drought, temperature extremes, excessive salts in the root zone, etc. can produce tree symptoms that resemble nutrient deficiencies.
- 7.4.2 Foliar analysis in combination with careful observation and soil tests may be used to confirm nutrient deficiencies that may be corrected by incorporating a fertilizer regimen.
- 7.4.3 Trees may be fertilized during the late establishment period (typically the year after planting) if needed.
- 7.4.4 Most soils are not deficient in phosphorus. Only add phosphorus in a fertilizer application if soil tests indicate a deficiency.

- 7.4.5 Typically, no more than three (3) pounds of nitrogen per 1000 sq. ft. is needed when fertilization is needed.
- 7.4.6 Do not exceed six (6) pounds of nitrogen per 1000 sq. ft. annual if fertilization is needed.

#### 7.5 TREE RISK ASSESSMENT

- 7.5.1 Conduct a basic tree risk assessment annually.
- 7.5.2 Any tree selected for removal based on a tree risk assessment should be scheduled for removal with Parks & Recreation Staff or City's Certified Arborist.

#### 8 ORNAMENTAL BEDS

- 8.1 Maintain ornamental beds in a predominantly weed free condition. Weeds should not be allowed to overtake shrubs and or perennials. Weeds may be removed though IPM strategies and the usage of pre-emergent herbicides when applicable.
- 8.2 Apply herbicide treatments according to and upon the written recommendation by a Department of Pesticide Regulations certified Pest Control Advisor and in accordance with the current herbicide label.
- 8.3 Maintain a three-inch layer of mulch around shrubs and perennials whenever and wherever possible to reduce irrigation usage and to limit weed proliferation.

  Typically, apply additional mulch quarterly to maintain a three (3) to four (4) inch layer.
- 8.4 Fertilize three (3) times per year if needed.
- 8.5 Do not conduct surface fertilization in areas where runoff is likely to occur.
- 8.6 Replace shrubs and perennials to maintain an aesthetically pleasing landscape.

#### 9 LAWNS

- 9.1 Lawn areas primarily consist of an array of grass types, most commonly a combination of bluegrass, ryegrass and fescue.
- 9.2 Mow Lawns and edge sidewalks and curbs once per week. The mowing schedule may be adjusted based on season and turf growth. In the winter, it may be necessary to adjust the lawn mowing schedule due to wet conditions, and the need to avoid damaging the turf by creating ruts and large tire marks in areas, which would have to be renovated afterward.

- 9.3 Remove trash and debris to prevent the mower from chopping bits of small material and dispersing the debris or trash over a large area. This would also reduce the risk of a projectile injuring anyone nearby.
- 9.4 Clean up any debris or accumulation of leaves after lawn is mowed.
- 9.5 Perform mechanical aeration two times per year.
- 9.6 Over-seed lawn weekly due to recurring pet damage or wear areas.
- 9.7 Leaves may be collected and placed in tree wells if it does not become excessive (more than 3" high). This will help to reduce the need for supplemental irrigation and weed control.
- 9.8 If lawn areas become worn or damaged and over-seeding is not practical, replace with sod.
- 9.9 Whenever a pedestrian is nearby or comes within an unsafe range of the lawn mower, the mower operator must stop mowing and wait until the person passes a safe distance away. The operator may also explain to the park patron why it is necessary to stay outside of the area being mowed. Alternatively, the mower operator may close off the area being mowed using appropriate signage and placing it in a prominent location, so it is clear to park patrons that the lawn area is closed until mowing is completed.
- 9.10 The soil in open lawn areas in city parks have a very high percentage of clay with a correspondingly high cation exchange capacity (CEC), therefore regular fertilization is not needed under normal conditions. However, if nutrient deficiencies or turf diseases (e.g. Dollar Spot) are evident, and confirmed through soil testing, tissue analysis or professional knowledge/observation, fertilizer treatment(s) may be necessary.
- 9.11 If fertilization is necessary, do not exceed six (6) pounds of nitrogen per 1000 sq. ft. annually.
- 9.12 Fill holes and divots to prevent injury to park patrons due to trip and fall hazards. If it is not possible to fill a hole or a large divot in the lawn, place a barricade with a sign over the hole to prevent anyone from being injured. Then, submit a work request for the hole to be filled.
- 9.13 Park staff may have to use a string trimmer and an edger for detail landscape work in the park. It is imperative that maintenance staff use a heightened sense of safety in operating a string trimmer from a safe distance from park patrons who may be passing, sitting or standing nearby.

#### 10 IRRIGATION

- 10.1 SMART IRRIGATION
- 10.2 CONTROLLER
  - 10.2.1 The City uses Rain Bird controllers throughout the parks system.
  - 10.2.2 Schedule controllers to irrigate during the night when parks are closed with the completion of the irrigation cycle by 6:30 AM.
  - 10.2.3 Check irrigation systems monthly to make sure distribution system is working and to identify breaks, damage or leaks.
  - Perform a thorough irrigation check in February and in September and create a work request for irrigation system repairs.

#### 10.3 ZONES AND VALVES

10.3.1 Irrigation zones are designed based on irrigating plant material (lawn, shrubs and trees) that have similar water requirements. It is imperative to maintain irrigation zones for plant material with similar water requirements when repair and expansion of irrigation zones is necessary.

#### 10.4 DRIP LINES

- 10.4.1 Check drip lines monthly to verify that inline drippers are fully functional and not clogged.
- 10.4.2 Replace sections of inline drippers if they become excessively clogged or have been damaged by rodents or other mechanical means.

#### 10.5 SPRAY HEADS AND EMITTERS

- 10.5.1 Check spray heads and emitters monthly.
- 10.5.2 Clean spray heads monthly if clogged and replace as needed.

#### 10.6 GENERAL

- 10.6.1 Always Minimize runoff and overspray.
- Hand watering is allowed and encouraged if there is an area that does not have adequate irrigation coverage, and the benefit of hand watering outweighs the benefit of establishing a new irrigation zone, or if hand watering will quickly and practically reduce the loss of plant material.

#### 11 PLAYGROUNDS

- 11.1 Thoroughly check playground equipment daily for damage, safety and accessibility.
  - 11.1.1 Check the playground fill material for hazards such as glass, nails or debris that may cause injury.
  - 11.1.2 Remove any debris or items that may cause injury.
  - 11.1.3 Identify damaged playground equipment and log a work request for repair.
  - 11.1.4 Any playground equipment that has broken parts, jagged edges, etc. that may pose imminent risk of injury shall be cordoned off, isolated or removed until the repair is completed, and the equipment reinstalled and ready for use.
  - 11.1.5 Rake and fill holes that develop from usage of playground equipment daily.
  - 11.1.6 Patch poured-in-place surfaces as they develop.
  - 11.1.7 Replenish playground fill materials (such as sand and engineered wood fiber) biannually or as needed, if excessive displacement of the fill material occurs. Proper fill levels can be identified by checking the level of fill material with the fill level markers on the playground equipment.

#### 12 SPORTS COURTS

- 12.1 Sports courts should be used for their intended purpose.
- 12.2 Remove any debris or materials that may cause injury to persons using the courts or that may damage sports courts.
- 12.3 Complete sport court resurfacing on a seven-year cycle, which may be shorter on some sports courts that are extensively used.
- 12.4 Windscreens must be replaced if they become torn or excessively worn.
- 12.5 Tennis court nets and straps must be continually checked to ensure they are at the proper level and in good condition.
- 12.6 Check sport court surfaces for unusual divots or wear spots and submit a work request if they must be repaired to prevent further damage to the courts.

#### 13 **ATHLETIC FIELDS**

#### 13.1 BALL DIAMONDS

- The ball diamonds should not have any dirt or cinder areas in the field. There must not be depressions greater than 2" deep within 3 feet of home plate or pitching rubber.
- 13.1.2 Ice chests, food and other beverages are not permitted on fields
- Gum, sunflower seeds, and peanuts are strictly prohibited to prevent vermin and other pests from infesting or creating harborages in the area
- 13.1.4 Animals are prohibited in or around ball fields
- 13.1.5 Coaches are responsible for enforcing all rules and regulations while utilizing soccer field facilities.
- 13.1.6 Molded cleats or turf/indoor shoes only. No metal or screw-on cleats permitted on fields
- 13.1.7 Do not remove any unanchored equipment such as home plate, pitching rubber, windscreens or nets.
- Base pegs shall remain in place throughout the year, unless they are being replaced.
- 13.1.9 Mow turf areas according to the current standard for the grass species or grass mix installed on the field.
  - 13.1.9.1 A bluegrass ryegrass infield is cut at 2.0" during the playing season. A bluegrass ryegrass field shall not be mowed below 1.5" to prevent scalping, proliferation of weeds and damage to the existing natural turf.
  - 13.1.9.2 A bluegrass ryegrass outfield is cut at 2.0" to 2.5" during the playing season.
  - 13.1.9.3 Mow the turf two times per week during the active growing season and once per week during the warm season depending on the response of the turf to climatic conditions.
  - 13.1.9.4 Clippings may stay if they are evenly distributed and without creating clumps or windrows of grass clippings on the field, otherwise, the clipping should be removed.

#### 13.2 SEATING AREA

13.2.1 The seating area shall be clean and without spillage or grime that hinders its use.

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#### 13.3 EQUIPMENT

- 13.3.1 Repair and maintain athletic field equipment according to the manufacturer's recommendations.
- Equipment shall be used and operated safely according to the function it made to fulfill and shall be maintained according to the manufacturer requirements and recommendations.

#### 13.4 FENCING

- 13.4.1 Fencing shall not have jagged edges exposed
- 13.4.2 Maintain windscreens on fencing and replace as they become worn or torn.
- Repair holes in fences and replace fence fabric on an as needed basis depending on the extent of damage.

#### 13.5 SOCCER FIELDS (NATURAL GRASS)

- 13.5.1 Natural turf (grass) fields are primarily for game use
- 13.5.2 Ice chests, food and other beverages are not permitted on fields
- Gum, sunflower seeds, and peanuts are strictly prohibited to prevent vermin and other pests from infesting or creating harborages in the area
- 13.5.4 Animals are prohibited in or around soccer park fields
- 13.5.5 All goals must have proper weights on back of goals unless goal is properly secured (international goals) to field.
- 13.5.6 Teams utilizing soccer field facilities are responsible for trash removal, including water bottles, tape, equipment, etc.
- 13.5.7 Coaches are responsible for enforcing all rules and regulations while utilizing soccer field facilities.
- 13.5.8 Molded cleats or turf/indoor shoes only. No metal or screw-on cleats permitted.
- Turf areas must be mowed according to the current standard for the grass specie or grass mix installed on the field. Typically,
  - 13.5.9.1 Bermudagrass is cut at 7/8" during the growing season.

    Bermudagrass fields shall not be moved below 1/2" mowing height.

- 13.5.9.2 Mowing shall be done two times per week during the active growing season and once per week or on an as needed basis when the turf is dormant.
- 13.5.9.3 Clippings may stay if they are evenly distributed and without creating clumps of grass on the field, otherwise, the clipping should be removed.

#### 13.6 SOCCER FIELDS (SYNTHETIC)

- 13.6.1 Synthetic fields are primarily for practice, but may also be used as game fields
- 13.6.2 Ice chests, food and other beverages are not permitted on fields
- 13.6.3 Gum, sunflower seeds, and peanuts are strictly prohibited to prevent vermin and other pests from infesting or creating harborages in the area
- 13.6.4 If there is chewing gum imbedded on the field, maintenance staff should first chill the gum with ice or aerosol spray to make it brittle and, then, gently break it up to remove it.
- 13.6.5 Animals are prohibited in or around soccer park fields
- 13.6.6 All goals must have proper weights on back of goals unless goal is properly secured (international goals) to field.
- 13.6.7 Teams utilizing soccer field facilities are responsible for trash removal, including water bottles, tape, equipment, etc.
- 13.6.8 Coaches are responsible for enforcing all rules and regulations while utilizing soccer field facilities.
- 13.6.9 Molded cleats or turf/indoor shoes only. No metal or screw-on cleats permitted.
- 13.6.10 Field must be groomed regularly and according to manufacturer's recommendation
- 13.6.11 Mechanical sweeping should include 5-6 passes in opposite directions, sometimes longwise, sometimes across the field and may take 2-3 hours.
- Ensure all seams, whether in the field or in logos or markings, are tight every place where two pieces of turf are joined or where one color of turf is inlaid into another is an opportunity for failure. Loose seams can be a tripping hazard and will continue to deteriorate until corrected by staff or an approved contractor.

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- 13.6.13 Check infill depth, especially in areas of wear such as corner kick areas, midfield between the hash marks. Redistribute infill or add topdressing as necessary.
- 13.6.14 Whenever possible, the cause of wear should be determined. Pay attention to high wear areas.
- 13.6.15 Check edge systems and turf anchors to make sure there are no cracks, heaving, movement or failure
- 13.6.16 Check perimeter drains, catch basins, etc. to make sure they are not clogged, and water can flow unimpeded.
- 13.6.17 Limit the use of flat soled tennis shoes, as they can cause significantly more damage to synthetic fields during a band practice than a team practicing on the same field for a similar length of time.
- 13.6.18 Water stations should be placed off the synthetic turf to minimize contamination by saliva or spit.
- 13.6.19 Remove debris immediately, which includes trash, dust and dirt and environmental debris such as leaves, pinecones, needles, pollen, and bird droppings. If left in place, organic material will quickly decay and filter into the infill, where it will impede drainage and serve as a medium for the growth of bacteria, algae and fungi.
- 13.6.20 When using a blower to remove debris, direct air horizontally across the surface without disturbing the infill.
- 13.6.21 Keep records of maintenance procedures and problems noted. The need for excessive maintenance may be an indicator of more serious problems.
- 13.6.22 Spot clean spills as soon as they occur. The infill tends to hold heat, and most liquids dry quickly. Removing spills when still wet is recommended. Removing spills with hot (not boiling water) water and a mild soap, rather than an alkaline product is recommended. Follow manufacturer's recommendations.
- 13.6.23 Check the field post game to see and clean and remove spills, trash, and debris from the field.
- Disinfection of a field may be necessary if blood, vomit, urine, sweat, or spit is deposited on the field. Pick up any solid material that can be removed and dispose immediately. To remove any remaining material and disinfect the field, apply an organic or enzymatic cleaning agent or

one of the proprietary products that have been developed specifically for this purpose. The goal is to wash the contaminant and the cleaning solution all the way through the surface.

#### 14 **POOLS**

#### 14.1 GENERAL APPROACH

14.1.1 There are a set of routine items that must be checked during an inspection of a public swimming pool or spa facility. Some items must be checked and verified twice a day, daily, weekly, and others periodically.

#### 14.2 WATER CHEMISTRY (TWICE PER DAY)

- 14.2.1 Reference Certified Pool & Spa Operators Handbook (ISBN 978-1-940345) for details.
- 14.2.2 Free-chlorine residual must be maintained between 1-10 ppm, bromine min. 2.0 ppm. If stabilizer (cyanuric acid) is used, chlorine residual must be maintained between 2-10 ppm. Spas, wading pools, and spray ground must be maintained between 3-10 ppm, bromine min. 4.0 ppm.
- 14.2.3 pH must be between 7.2 7.8.
- 14.2.4 Cyanuric acid (if used) must not exceed 100 ppm.
- 14.2.5 Water temperature must not exceed 104°F.
- 14.2.6 A test kit (DPD type) capable of measuring the disinfectant residual (free-chlorine), the pH, and, if used, cyanuric acid levels is required.

#### 14.3 WATER CLARITY AND CLEANLINESS (DAILY)

- 14.3.1 The water must be kept clean and clear.
- 14.3.2 Bottom of pool must be visible from the deck (at max. depth).
- 14.3.3 No slime and algae on sides or bottom of pool. No debris, floating scum, sputum, trash, or leaves, etc. in pool.
- 14.3.4 The pool site must be kept clean and well maintained.

#### 14.4 SAFETY EQUIPMENT (DAILY)

- 14.4.1 The following safety equipment must be provided and checked:
  - 14.4.1.1 Life ring (min. 17-inches exterior diameter) with attached min. 3/16-inch diameter rope long enough to span the maximum width of the pool.

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- 14.4.1.2 Rescue pole (12-foot min.) fixed length with permanently attached body hook. Pools that exceed 75 feet in length or 50 feet in width require a rescue pole and life ring on at least two opposing sides at central location.
- 14.4.1.3 Pools with lifeguards on duty shall have the following additional safety equipment: Red Cross 10-person industrial First Aid Kit or equal, operating telephone, a backboard and head immobilizer.
- 14.4.1.4 "POOL USER CAPACITY" of pool and spa (based on: Pool = 1 bather per 20 sq. ft.; Spa = 1 bather per 10 sq. ft.)
- 14.4.1.5 "NO DIVING" Required if pool water depth is 6 feet or less.
- 14.4.1.6 "NO LIFEGUARD ON DUTY" Required if lifeguard service is not provided. The sign shall state, "Children under the age of 14 shall not use pool without a parent or adult guardian in attendance."
- 14.4.1.7 Artificial respiration and CPR\* sign, which includes illustrations and procedures.
- 14.4.1.8 Emergency telephone number 911.
- 14.4.1.9 Number of nearest emergency services. \*
- 14.4.1.10 Name and address of pool facility. \*
- 14.4.1.11 Spa "CAUTION" sign.
- 14.4.1.12 Spa "EMERGENCTY SHUT OFF SWITCH" sign.
- 14.4.1.13 "NO USE OF POOL ALLOWED AFTER DARK" Required if the pool and deck area lack lighting.
- 14.4.1.14 "KEEP CLOSED" sign posted on the exterior side of gates and doors leading into pool enclosure. \*
- 14.4.1.15 Diarrhea sign posted at entrance area. \*
- 14.4.1.16 Equipment labeled properly. \*
- 14.4.1.17 Handicap chair lift in full operation.

#### 14.5 OPERATION RECORDS (DAILY)

Daily testing and recordings of disinfectant residual (free-chlorine) and pH levels at least once per day. (heavy use pools recommended hourly testing)

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- 14.5.2 If heated water, test daily (max. 104°F)
- 14.5.3 If cyanuric acid is used, the concentration must be tested and recorded at least once a month.

14.5.3.1 Records must be kept for two years.

#### 14.6 POOL ENCLOSURE

- 14.6.1 Pool area enclosed with approved fencing and shall be designed and constructed so that it cannot be climbed by small children. No gaps exceeding 4-inches.
- 14.6.2 Gates must be self-closing and self-latching.
- 14.6.3 Pool enclosure must have at least one keyless exit.
- 14.6.4 The gate opening hardware (handle) must be 42-44\* inches above the deck or walkway.

#### 14.7 RECIRCULATION AND WATER TREATMENT SYSTEMS (DAILY)

- 14.7.1 Pumps, filters, disinfectant and chemical feeders, gauges, recirculation systems, disinfection systems, and all parts of the water treatment system must be fully functional and operating while the pool is available for use.
- 14.7.2 An accurate and functional flow meter must be installed.
- 14.7.3 Sufficient water flow is required to ensure the minimum turnover times are met.
- 14.7.4 Filtered backwash wastewater must drain via an approved air gap to the sewer or in accordance with local regulations.

#### 14.8 POOL LIGHTS (WEEKLY)

- 14.8.1 Lighting is required if pool is open after dark.
- 14.8.2 Light fixtures must be securely fastened and in good repair.

#### 14.9 SPAS (DAILY)

- 14.9.1 Water temperature must not exceed 104°F.
- 14.9.2 Spa emergency shut off switch adjacent to the spa. This switch is to be clearly labeled.

#### 14.10 DECKING (DAILY)

- 14.10.1 Decking must be in good repair, free of tripping hazards, and slope away from the pool.
- 14.10.2 Pools must have at least 4 feet of unobstructed deck around the entire pool.

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- 14.10.3 Pool or spa covers may not be in place during hours of operation.
- 14.10.4 Pool covers must be stored in a manner that provides an unobstructed deck around the pool.

#### 14.11 POOL TOILET AND SHOWER FACILITIES (DAILY)

- 14.11.1 Lavatories and showers must have hot and cold or tempered running water (max. 110°F).
- 14.11.2 For toilet facilities, toilet tissue, handwashing soap, and paper towels or hot air blowers, shall be provided in permanently installed dispensing devices.
- 14.11.3 Showers must have a soap dispenser (except deck showers).
- 14.11.4 Waste receptacle in each toilet facility, clean and sanitary condition (min. one).
- 14.11.5 Facilities must be kept clean and be well maintained

#### 14.12 ANTI-ENTRAPMENT DEVICES AND SYSTEMS

- 14.12.1 Main drains and equalizer line (suction outlets) must have approved covers that meet ANSI/APSP-16 performance standard and be installed as per the manufacturer's specifications.
- 14.12.2 All suction drain covers must be approved, properly secured and removable only with tools.
- 14.12.3 Every pool with a single main drain, that is not an un-blockable drain, shall be equipped with a secondary device or system (i.e. safety vacuum release system, suction limiting vent system, gravity drain, auto pump shut-off, or other approved equally effective system

#### 14.13 KEYS

14.13.1 Pool and spa operators must assure ready access to public pool facilities for Environmental Health personnel to conduct routine inspections.

#### 15 OFF LEASH DOG AREAS

#### 15.1 SYNTHETIC OFF-LEASH DOG AREAS

- 15.1.1 Ice chests, food and other beverages are not permitted on synthetic grass areas
- Remove balls, playing toys etc. continually from off-leash dog areas to reduce the risk of disease spreading from one animal to another.

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- 15.1.3 Food (dog food or human food) is strictly prohibited to prevent vermin and other pests from infesting or creating harborages in the area.
  - 15.1.3.1 If there is chewing gum imbedded on the synthetic turf, maintenance staff shall first chill the gum with ice or aerosol spray to make it brittle and, then, gently break it up to remove it.
- 15.1.4 Synthetic turf must be groomed regularly and according to manufacturer's recommendation to maintain a high level of sanitation in the off-leash area.
- 15.1.5 Ensure all seams are tight every place where two pieces of turf are joined. Loose seams can be a tripping hazard and will continue and will continue to deteriorate until corrected
- 15.1.6 Check infill depth if present and redistribute infill or add topdressing as necessary.
- Whenever possible, the cause of wear should be determined. Particular attention should be paid to high wear areas.
- 15.1.8 Check edge systems and turf anchors to make sure there are no cracks, heaving, movement or failure
- 15.1.9 Check perimeter drains, catch basins, etc. to make sure they are not clogged, and water can flow unimpeded.
- 15.1.10 Remove debris as soon as possible, which includes trash, dog waste, dust and dirt and environmental debris such as leaves, pinecones, needles, pollen, and bird droppings. If left in place, organic material will quickly decay and filter into the infill, where it will impede drainage and serve as a medium for the growth of bacteria, algae and fungi.
- 15.1.11 When using a blower to remove debris, direct air horizontally across the surface without disturbing the infill.
- 15.1.12 Keep records of maintenance procedures and problems noted. The need for excessive maintenance may be an indicator of more serious problems.
- 15.1.13 Spot clean spills as soon as they occur. The infill tends to hold heat, and most liquids dry quickly. Removing spills when still wet is recommended. Removing spills with hot (not boiling water) water and

- a mild soap, rather than an alkaline product is recommended. Follow manufacturer's recommendations.
- 15.1.14 Disinfection of the synthetic turf will be necessary when dog waste (including urine) is deposited on the turf. Remove any solid material and dispose. To remove any remaining material and disinfect the turf, apply an organic or enzymatic cleaning agent or one of the proprietary products that have been developed specifically for synthetic turf offleash dog area maintenance. The goal is to wash the contaminants and the cleaning solution all the way through the surface.

#### 15.2 NATURAL GRASS OFF-LEASH DOG AREAS

- 15.2.1 Natural grass areas primarily consist of an array of grass types, most commonly a combination of bluegrass, ryegrass and fescue.
- 15.2.2 Ice chests, food and other beverages are not permitted on the grass surface.
- 15.2.3 Remove balls, playing toys etc. continually from off-leash dog areas to reduce the risk of disease spreading from one animal to another.
- Food (dog food or human food) is strictly prohibited to prevent vermin and other pests from infesting or creating harborages in the area.
- 15.2.5 Check perimeter drains, catch basins, etc. to make sure they are not clogged, and water can flow unimpeded.
- 15.2.6 Mow natural grass once per week. The mowing schedule may be adjusted based on season and turf growth. In the winter, it may be necessary to adjust the lawn mowing schedule due to wet conditions, and the need to avoid damaging the turf by creating ruts and large tire marks in areas.
- 15.2.7 Remove, trash and debris before mowing lawns to prevent the mower from chopping bits of small material and dispersing the debris or trash over a large area.

#### 15.3 WATER FOUNTAINS

- 15.3.1 Inspect and clean water fountains daily.
- 15.3.2 Cordon off the water fountain and submit a work request if there is mechanical damage that cannot be addressed and completed while maintenance staff is onsite.

#### 16 COMMUNICATION WITH CITY STAFF AND PARK CONCERNS

Parks staff shall be notified immediately in the event that an incident relating to the Park Property (i) requiring the filing of a police report, (ii) resulting in the Park Property or related Park Improvements being in an unsafe condition, (iii) otherwise materially affecting the operation of the Park Property, or (iv) non-life threatening emergency should occur on, in or around the Park Property (collectively "Park Incidents"). Company shall provide communication as follows:

Life threatening emergencies, or	Contact emergency services: 911
crimes in progress.	
Park Incidents or non-life	Contact Deputy Parks and Recreation Director:
threatening Park Property	Office: (408) 615-3770
emergencies occurring on weekdays	
between the hours of 8 a.m. and 5	
p.m.	
Park Incidents or non-life	Contact Non-Emergency Police Department Line:
	, .
threatening Park Property	Office: (408) 615-5580
emergencies occurring on weekdays	
between the hours of 5 p.m. and 8	
a.m., on weekends, or on City	
holidays.	
Public's comments, concerns	Refer Public to the MySantaClara app
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	(www.santaclaraca.gov/services/make-a-service-request)

#### **EXHIBIT D**

#### **INSURANCE REQUIREMENTS**

As used herein, the term "Contractor" shall mean and refer to the party providing the insurance, whether Property Owner or its contractors or subcontracts.

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

 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 \$1,000,000 products/completed operations aggregate \$1,000,000 personal injury

- 2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
- 3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf basis with defense costs payable in addition to policy limits, provided however, if defense costs erode policy limits, that is permissible so long as the policy limits in Section A.1 are at least \$2,000,000;
  - b. Intentionally Deleted; 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 minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

#### C. WORKERS' COMPENSATION

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

#### D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

- 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 Contractors insurance.

#### 3. <u>Cancellation.</u>

- a. Contractor shall provide City with written notice at least ten (10) days prior to the effective date of any cancellation of the coverage provided due to non-payment of premiums. 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. Contractor shall provide City with written notice at least thirty (30) days prior to the effective date of any cancellation of the coverage provided due to any cause save and except non-payment of premiums. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
- 4. <u>Other Endorsements.</u> 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 D, above.

#### E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

- 1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
- 2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### F. EVIDENCE OF COVERAGE

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

#### G. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

City of Santa Clara Parks & Recreation Department

P.O. Box 100085- S2 or 1 Ebix Way

Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

#### H. QUALIFYING INSURERS

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



## City of Santa Clara

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

### Agenda Report

20-662 Agenda Date: 7/14/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Action to Delegate Authority to Mayor Gillmor and Chief Nikolai to Establish An Ad Hoc Committee in Support of the "Commit to Action" Initiative [Community Pillar: Enhance Community Engagement and Transparency]

#### **BACKGROUND**

On June 3, 2020, former President Obama issued his "Commit to Action Initiative" ("Initiative), which called upon Mayors to make reforms to redefine public safety so that it recognizes the humanity and dignity of every person. Mayor Gillmor signed on to the Initiative on June 4, 2020. A community letter authored by the Mayor, Police Chief, City Manager, and City Attorney reiterated the City's commitment to racial equity and continuous improvement of police operations was also issued that same day (Attachment 1).

On June 23, 2020, the City Council adopted two resolutions: 1) Resolution 20-8858 that confirmed the City's support of the Initiative (Attachment 2); and 2) Resolution 20-8859 condemning racial inequity in all forms and violence against the Black community by law enforcement, committing to actively listen and learn from the Black community and to encourage the community to stand together through peaceful exchange and discourse, to enact change and move forward towards a future with more equity and inclusion in the City of Santa Clara, the State of California and the nation as a whole (Attachment 3).

#### DISCUSSION

At the June 23<sup>rd</sup> meeting, Council also approved a motion to place an item on the July 7, 2020 Council agenda to consider the establishment of an ad hoc committee to help advance the Initiative in the City of Santa Clara. With an understanding of this historic window and sense of urgency for meaningful change, the Council expressed support for engaging in a local community dialogue on a Santa Clara Plan to address systemic racism and the four components of the Initiative, which are:

- 1) A review of the Police Department's use of force policies;
- 2) Engagement of communities by including a diverse range of input, experiences, and stories in the review;
- 3) Reporting the findings of the review to the community and seek feedback; and
- 4) Reforming the community's police use of force policies as outlined in the Initiative.

As time is of the essence and to maintain local momentum, it is recommended that Mayor Gillmor and Chief Nikolai be delegated authority to establish the ad hoc committee during the impending Council recess and return with a Council status update no later than the September 29, 2020 City Council meeting.

20-662 Agenda Date: 7/14/2020

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

#### **FISCAL IMPACT**

There is no fiscal impact to this report.

#### COORDINATION

This report has been coordinated with the City Manager's 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>

#### **ALTERNATIVES**

- 1. Delegate authority to Mayor Gillmor and Chief Nikolai to establish an ad hoc committee in support of the Commit to Action Initiative during the July/August City Council recess with a status update to be provided to the Council no later than the September 29, 2020 City Council meeting.
- 2. Any other action determined by the City Council.

#### RECOMMENDATION

Staff recommends Alternative 1: Delegate authority to Mayor Gillmor and Chief Nikolai to establish an ad hoc committee in support of community dialogue on a Santa Clara plan to address systemic racism and the Commit to Action Initiative during the July/August City Council recess with a status update to the Council no later than the September 29, 2020 City Council meeting.

Reviewed by: Cynthia E. Bojorquez, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

- 1. Community Letter
- 2. Resolution in support of the Commit to Action Initiative
- 3. Resolution Affirming the City's Commitment to Stand in Solidarity with the Black Community



June 4, 2020

Dear Santa Clara Community,

We were shocked and saddened by the tragic and senseless killing of George Floyd on May 25, 2020. As many of you, City officials are also struggling with what took place and are hurt by the horrific actions by former members of the Minneapolis Police Department that led to his death. He did not deserve to be killed.

Over the last week, we have heard from many Santa Clarans who have expressed deep concern over this grave injustice to humanity. We know that this country's work is still a long way from being over to prevent more instances of racial injustice. Santa Clara is not immune from this nation's history. We too must take responsibility to embrace this conversation and honestly work through the many deeprooted issues that exist, including the systemic causes of injustice and racism.

In true Santa Clara spirit, residents have been asking how to participate in making sure that our community responds to this injustice. Additionally, and equally as important, how do we hold our police department accountable and ensure safety and justice for all residents. Santa Clara knows that community trust is sacred. We must continue to demonstrate equity, fairness, professionalism, and unbiased policing. Although we have provided training and tools for our police department to protect the community free from bias, we also recognize that we can always do more and there is always room for improvement. We invite our community to express what they have observed and provide their perspective so that we can continue to improve.

The men and women of the Santa Clara Police Department are committed to protecting and serving all, acting professionally and with integrity. Training on use of force and implicit bias are among the ways we are committed to providing excellent service. We will always work to ensure that we are doing all that we can to improve our relations with ALL members of our community. It is a privilege for us to serve and that privilege is not taken lightly.

Racial injustice is a deep-rooted systematic problem throughout the country. We can all work together to build connections and trust. Our similarities as well as our differences make Santa Clara wonderful, safe and vibrant to live, work, learn and play. We must celebrate our diversity and work toward equity. This is only the beginning of a dialogue, both a local and national one.

Yesterday, on behalf of Santa Clara, Mayor Lisa M. Gillmor signed the "Commit to Action" initiative, led by President Obama, which is a call for improved police use of force policies. This is in support of actions needed to heal our nation and effect change. There is always more that we can do to ensure continuous improvement and serve our public in the best manner possible. We all must be a part of the solution.

In Community Spirit,

Gram Gilling P. Dlar.

Lisa M. Gillmor Mayor Pat Nikolai Police Chief Deanna J. Santana City Manager Brian Doyle City Attorney

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# A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA IN SUPPORT OF THE COMMIT TO ACTION INITIATIVE

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

**WHEREAS**, the City Council of the City of Santa Clara is committed to establishing safer policing and increased trust between communities and law enforcement;

WHEREAS, on June 4, 2020, Mayor Lisa M. Gillmor signed on to former President Barack

Obama's Commit to Action Initiative, pledging to address police use of force policies in the City

of Santa Clara;

**WHEREAS**, the Commit to Action Initiative calls for commitment to action on evaluating and reforming common-sense limits on police use of force policies;

**WHEREAS**, the Commit to Action Initiative calls upon Mayors to commit to addressing police use of force policies in their respective cities; and,

**WHEREAS**, the Commit to Action Initiative calls upon mayors to commit to four actions: (1) review police use of force policies; (2) engage communities by including a diverse range of input, experiences, and stories in the review; (3) report the findings of the review to the community and seek feedback; and (4) reform the community's police use of force policies.

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

- 1. That the City Council of the City of Santa Clara support the Commit to Action Initiative and commit to the four actions outlined in the initiative.
- 2. <u>Effective date</u>. 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:

Resolution/Support of the Commit to Action Initiative Rev: 6/9/2020

NOES:	COUNCILORS:		
ABSENT:	COUNCILORS:		
ABSTAINED:	COUNCILORS:		
		ATTEST:	
			NORA PIMENTEL, MMC
			ASSISTANT CITY CLERK
			CITY OF SANTA CLARA

Resolution/Support of the Commit to Action Initiative Rev: 6/9/2020

#### RESOLUTION NO. \_\_\_\_

#### A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA AFFIRMING THE CITY'S COMMITMENT TO STAND IN SOLIDARITY WITH THE BLACK COMMUNITY

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

WHEREAS, our country is mourning the senseless killing of George Floyd that occurred in Minneapolis on May 25, 2020. The actions and inactions of the police officers involved were deplorable; and;

WHEREAS, the most basic form of injustice and inequity occurs when a group of people feels their safety is placed into jeopardy by the very people entrusted with ensuring their safety; and WHEREAS, police brutality and racism against the Black community has been persistent in both our past and our present. Systemic injustices, racism, and dehumanization are deeply rooted in our society; and

WHEREAS, it was unquestionably unfair and unacceptable when the lives of George Floyd, Ahmaud Arbery, Breonna Taylor, Freddie Gray, Walter Scott, Tamir Rice, Michael Brown, Oscar Grant, and many others were taken as a result of discrimination and inequity. While these are only a few of the lives lost, amongst many more, these lives mattered and Black lives matter; and

WHEREAS, the unrest regarding racial injustice, particularly towards the Black community, has been building for decades. Thoughtless violence by our own government only serves to incite more violence: and

WHEREAS, Santa Clara is a proud multiracial community, and we decided long ago that mutual understanding and respect develops a much healthier, safer, and caring community; and WHEREAS, it is important for the community to stand in solidarity with Black communities across the country.

Rev: 11/22/17

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

**FOLLOWS:** 

1. That the City of Santa Clara condemns racial inequity in all forms and violence against

the Black community by law enforcement in particular.

2. That the City of Santa Clara does not tolerate discrimination, racial injustice, or police

brutality.

3. That the City of Santa Clara demands that Black lives matter.

4. That the City of Santa Clara commits to actively listen and learn from the Black

community.

5. That the City of Santa Clara will oppose any attempts to undermine the safety, security,

and rights of members of our community and will work proactively to ensure the rights and

privileges of everyone in the City—regardless of race.

6. That the City of Santa Clara will promote safety, a sense of security, and equal

protection of constitutional and human rights, leading by example through equitable treatment of

all by City officials and departments.

7. That the City of Santa Clara encourages the community to stand together through

peaceful exchange and discourse to enact change and move forward towards a future with

more equity and inclusion in the city of Santa Clara, the state of California, and our country.

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



### City of Santa Clara

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

### Agenda Report

20-583 Agenda Date: 7/14/2020

#### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Action to Purchase and/or Award Purchase Orders for Public Safety Supplies and Equipment and Approve Miscellaneous Purchases Incurred After November 8, 2019 [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

#### **BACKGROUND**

On September 17, 2019, the Stadium Authority Board (Board) approved the introduction of Ordinance No. 2005, which would rescind the Executive Director's delegated purchasing authority by amending Chapter 17.30 of the City of Santa Clara City Code. This action would in turn also impact the Stadium Manager's authority to purchase on behalf of the Stadium Authority. On October 8, 2019, the Board adopted Ordinance No. 2005, which became effective on November 8, 2019. As of November 8, 2019, all Stadium Authority contracts and agreements for services, supplies, materials, and equipment require approval of the Stadium Authority Board.

The Executive Director is requesting authorization to purchase and/or award purchase orders for public safety supplies and equipment. The requested supplies and equipment were approved as part of the Capital Expense (CapEx) portion (Attachment 1) of the Adopted Stadium Authority FY 2020/21 Operating, Debt Service and Capital Budget (Budget).

Additionally, the Executive Director requests Board authorization to purchase publications for required Stadium Authority public hearing items and legal notices (e.g., Stadium Authority budget hearings and legal summons) in the City's official newspaper, Santa Clara Weekly, as well as Board approval of minor miscellaneous Stadium Authority expenses that were incurred between November 8, 2019 and June 4, 2020.

#### DISCUSSION

On March 24, 2020, the Board approved the Stadium Authority FY 2020/21 Budget, which included public safety supplies and equipment under the CapEx Budget. The City's Fire and Police Departments, with the assistance of the Finance Department, have obtained quotes for the following items pursuant to the appropriate Purchasing Sections under 2.105 of the Santa Clara City Code. Staff is following the City Code for consistency and to ensure that best practices in public sector procurement are being followed. Board approval is requested for the following items:

#### Fire Department Supplies and Equipment

Motorola APX 6000 Radio/Charger/Battery (\$4,548) - The Fire Department requires a radio charger and extra battery for the Fire Incident Commander in the Command Post to assist with monitoring multiple channels. Staff has obtained a quote from Motorola for \$4,548 for the radio equipment and recommends purchase through the vendor. The Stadium Authority FY 2020/21 CapEx Budget includes \$4,830 for this expense.

Radio Earpieces (\$1,289) - The Fire Department requires replacement of earpieces for the radios used by the crews. The original earpieces were purchased six years ago and are at end of life. Staff has obtained a quote from Motorola for \$1,289 for the radio earpieces and recommends purchase through the vendor. The Stadium Authority FY 2020/21 CapEx Budget includes \$1,050 for this expense. There are sufficient funds in the CapEx budget to cover the remaining dollars that exceed the budgeted amount.

Battery Pack for JHAT Crew (\$60) - The Fire Department requires a portable battery charging pack for the Joint Hazard Assessment Team (JHAT) that uses a lot of battery power. A portable battery charging pack is needed to recharge equipment for the long duration JHAT missions. Staff has obtained a quote from Amazon.com for \$60 for the battery pack, not including shipping and taxes, and recommends purchase through the vendor. The Stadium Authority FY 2020/21 CapEx Budget includes \$76 for this expense.

Small Cooler and Ice Pack (\$282) - The Fire Department requires a cooler to hold Anthrax Sample kits which need to be refrigerated for a minimum of 12 hours while on assignment. Staff has obtained a quote from Amazon.com for \$282, not including tax and shipping, and recommends purchase through the vendor. The Stadium Authority FY 2020/21 CapEx Budget includes \$263 for this expense. There are sufficient funds in the CapEx budget to cover the remaining dollars that exceed the budgeted amount.

Mass Decontamination Hydrant Nozzles (\$1,608) - The Fire Department requires four (4) nozzles that can be attached to fire hydrants used to decontaminate large amounts of people very quickly in the event of a HazMat event. This is new equipment for the Team. Staff has obtained a quote from L.N. Curtis & Sons Inc. for the nozzles at \$402 per unit (\$1,608 for 4), not including shipping, and recommends purchase of the four mass decontamination hydrant nozzles through L.N. Curtis & Sons Inc. The Stadium Authority FY 2020/21 CapEx Budget includes \$1,688 for this expense.

Stadium Vehicles (Gator & Kubota) Upfits (\$8,665) - The Fire Department requires a utility storage box for John Deere Gator utility vehicle to store Joint Hazard Assessment Team's (JHAT) equipment in a secure and organized area. The upfits for the Gator and Kubota utility vehicles also include adding roll-up windows to protect staff against rain, and hood racks for additional storage for the many pieces of equipment that JHAT carries. The equipment is sourced from different vendors as follows:

- Gator Window/Door cover: \$1,197 for two covers from SidebySideStuff.com, shipping and taxes included.
- Gator Hood Rack: \$656 for two racks from muttonpower.com shipping and taxes included.
- Utility Box for John Deere Gator: \$5,500 on one box from Weidmann Bros Distributing Company, shipping and taxes included.
- Kubota Hood Rack: \$359 per rack from Mission Valley Trucks.
- Kubota Window and Door Cover: \$953 for one cover from SidebySideStuff.com, shipping and taxes included.

Staff recommends purchase and/or award of Purchase Order for the various Stadium Vehicles (Gator

& Kubota) Upfits equipment through the vendors that staff obtained quotes from totaling \$8,665, not including shipping and taxes. The Stadium Authority FY 2020/21 CapEx Budget includes \$9,450 for this expense.

Storage Conex Garage for Apparatus (\$12,416) - The Fire Department requires a lockable, weatherproof Conex storage garage for storage of three stadium vehicles. Due to the purchases totaling less than \$15,000, staff has obtained a quote from Conex West for \$12,416 and anticipates spending no more than \$13,037 on one Conex storage garage. Staff recommends award of Purchase Order to Conex West. The Stadium Authority FY 2020/21 CapEx Budget includes \$13,037 for this expense.

Heavy Lift Kit (\$51,914) - The Fire Department requires a Heavy Vehicle Extrication Kit to be able to lift larger vehicles and equipment for rescue purposes in the event of an accident, stage or crane collapse. The Stadium has increased traffic of large vehicles and equipment on a regular basis, including buses for team and performer transport and semi-trucks for delivery. Paratech, which is the sole-source manufacturer of the equipment, issued a letter to the Fire Department in May 2020 that states that L.N. Curtis & Sons Inc. is the only authorized dealer in California, rendering it as a sole source purchase. Staff obtained two quotes from L.N. Curtis & Sons Inc. (\$51,914) and an out of state vendor, Protective Equipment Marketing, Inc. (\$58,366). Staff recommends award to low bidder L.N. Curtis & Sons Inc. The Stadium Authority FY 2020/21 CapEx Budget includes \$54,509 for this expense.

Stadium Personal Protective Equipment (\$39,643) - The Fire Department requires personal protective equipment for various teams at the Stadium since Active Shooter has been an emerging threat. The Santa Clara Fire Department does not currently have Active Shooter protective gear for the Stadium, and to equip the team of 12 to handle an Active Shooter threat, the following gear was approved as part of the CapEx Budget: vests, helmets, protective plates, EMS equipment and other appropriate Personal Protective Equipment (PPE). Additional PPE gear was approved for the sixmember Joint Hazard Assessment Team (JHAT) for blast and chemical release protection; and Stadium battle dress uniform (BDU) blouses and pants to protect against the weather for the stadium team of 60. The vest and helmets are new equipment for the team and BDU is a combination of replacement and new. The equipment is sourced from various vendors as follows:

- APR Adapter and Cartridge: \$1,171 for adapters and cartridges, MSA Bauer Compressors Inc., taxes included.
- Tactical Ballistic Vests: \$4,650 for six vests from Blue Line Innovations.
- Tactical Ballistic Helmets: \$2,390 for six helmets from Blue Line Innovations, LLC.
- Active Shooter Helmets: \$4,955 for 12 helmets from Gladiators Solutions, Inc., shipping and taxes included.
- Active Shooter Vests: \$2,332 for 12 vests from Gladiators Solutions, Inc., shipping and taxes included.
- Active Shooter Fanny Packs: \$3,388 for 12 packs from Life Assist, taxes included.
- Active Shooter Ballistic Plates: \$4,477 for 24 plates (front and back) from Gladiators Solutions, Inc., shipping and taxes included.
- EMS Equipment: \$1,788 for 12 pieces of EMS equipment from Boundtree, taxes included.
- Stadium Personnel Uniform Nomex Pants: \$13,015 for 60 pairs from L.N. Curtis & Sons Inc.,

taxes included.

Active Shooter Back Packs: \$1,477 for 12 backpacks from Boundtree, taxes included.

Staff recommends purchase and/or award of Purchase Order for the various Stadium Personal Protective Equipment through the vendors that staff obtained quotes from totaling \$39,643, not including shipping and taxes. The Stadium Authority FY 2020/21 CapEx Budget includes \$63,000 for this expense. The Fire Department still requires Stadium Personnel Uniform Nomex Blouses, which were not included in this request, and will be brought forth for Board approval at a future meeting.

#### **Police Department Supplies and Equipment**

Body Worn Cameras (BWCs) (\$149,525) - The Police Department requires BWCs for use by public safety personnel. Issuing BWCs to all police staff for use during Stadium events would better protect all interests and provide the transparency that the public has come to expect. The BWCs have been determined a sole source item from Axon Enterprise Inc. whose system is integrated with existing Police Department evidence systems. Staff has obtained a quote from the vendor for \$149,525, shipping not included, for 100 BWCs and recommends award of Purchase Order to Axon Enterprise Inc. The pricing for these cameras is consistent with the pricing for the City BWCs. The Stadium Authority FY 2020/21 CapEx Budget includes \$157,500 for this expense.

Motor Vehicle Barricades (\$331,887) - The Police Department requires six (6) additional motor vehicle barricades at this time. Their operational area requires rapid and versatile deployment of physical barriers. These barriers are essential for vehicular traffic routing and stopping. In the event of intentional barricade breaching, these barriers will prevent a full breach and protect pedestrians from vehicles. Current and traditional barricades require substantial planning and are labor-intensive. The new mobile barricades would reduce intense labor, but significantly raise the safety and versatility of our barrier placement. The barricades have been determined a sole source item from Delta Scientific Corporation, which has been selected through a competitive process in a county/regional effort for interoperability. This vendor, as selected by county/regional agencies, will also be used for Police/City specific items and using the same vendor for SCSA purchase ensures continuity in training use and interoperability. Staff has obtained a quote from the vendor for \$331,887 for six barricades and recommends award of Purchase Order to Delta Scientific Corporation. The Stadium Authority FY 2020/21 CapEx Budget includes \$363,225 for this expense.

Bicycles (\$22,734) - The Police Department requires ten bicycles for the bicycle unit, which is an integral part of their exterior public safety operation. The scattered locations of all parking lots and the congested nature of the roadways require bicycles as the primary mode of travel for ease of movement for public safety officers. The ten bicycles will bring the current inventory to 30 and will allow them to expand their bike unit. The bicycles have been determined a sole source item from Summit Bicycle (Santa Clara location), whose unique and specific bicycle package is currently only offered by this local vendor. Staff has obtained a quote from the vendor for \$22,734 for the ten bicycles and recommends award of Purchase Order to Summit Bicycle (Santa Clara location). The Stadium Authority FY 2020/21 CapEx Budget includes \$26,250 for this expense.

Radio Batteries (\$19,718) - The Police Department needs to replace radio batteries that are at the end of their life expectancy. This is due to their natural order of deterioration where the expected battery power retention is lost. Current radio inventory requires the battery replacement for this reason. Radios with batteries performing at full capacity are required for public safety personnel to

ensure radios will remain at a functional level during a standard shift. Life expectancy is three years. The radio batteries have been determined a sole source item from Motorola, which was selected as the Silicon Valley Regional Interoperability Authority's (SVRIA) radio vendor in 2012. SVRIA was formed to enhance interoperability in Santa Clara County and Santa Clara's participation in the SVRIA joint powers agreement was approved by Council in February 2010. Staff obtained a quote from the vendor for \$19,718 for 188 radio batteries and recommends award of Purchase Order to Motorola. The Stadium Authority FY 2020/21 CapEx Budget includes \$16,290 for this expense. There are sufficient funds in the CapEx budget to cover the remaining dollars that exceed the budgeted amount.

Radios (\$64,345) - The Police Department needs to add new radios to equip additional staff in our public safety deployment. Personnel will continue to use these specific radios for varied public safety responsibilities. These radios allow for communication to the command post and between public safety partners working our events. Without these critical radios, personnel would not be able to function in their capacity and as expected to provide public safety services including emergency response. There is also a yearly operating cost. The radio batteries have been determined a sole source item from Motorola, which is SVRIA's radio vendor. Staff has obtained a quote from the vendor for \$64,345 for 18 radios and recommends award of Purchase Order. The Stadium Authority FY 2020/21 CapEx Budget includes \$82,950 for this expense.

Radio Chargers (\$2,560) - The Police Department needs to add three radio charging stations. Their radio equipment is critical and, therefore, their serviceability must be maintained. Each new radio will require a charging port. These three charging stations each have a six-radio capacity and three are needed to maintain radios at their peak power and usability. Having these three charging stations will ensure all radios are ready for use by public safety without the risk of personnel being without this crucial equipment in a functional state. The radio chargers have been determined a sole source item from Motorola, which is SVRIA's radio vendor. Staff has obtained a quote from the vendor for \$2,560 for the three chargers and recommends award of Purchase Order. The Stadium Authority FY 2020/21 CapEx Budget includes \$3,150 for this expense

Safety Gear for Special Event Officers & Traffic Control Personnel (\$3,250) - The Police Department requires safety gear for traffic control personnel that are a critical element to their public safety deployment. Beyond this application, they also provide welcomed guidance and direction to visitors and our neighborhood residents. Upon directing traffic and pedestrians, the traffic control staff work amongst vehicles in all types of weather for extended periods of time. High visibility jackets will increase staff's visual recognition increasing their personal safety while performing their duties around vehicles. Flashlights and high visibility jackets will increase the public's ability to notice the traffic control staff leading to overall safety of all who visit their footprint and increased recognition of direction offered by this staff. The equipment is sourced from different vendors and due to each of the purchases totaling less than \$15,000, the Police Department has obtained quotes for each of the following items:

- Reflective Traffic Safety Vests: \$2,586 for 100 vests from D&M Traffic Services.
- LED Traffic Safety Flashlights: \$664 for 40 LED traffic safety flashlights from Galls.

Staff recommends purchase and/or award of Purchase Order for the various Safety Gear for Special Event Officers & Traffic Control Personnel through the vendors that staff obtained quotes from

totaling \$3,250, not including shipping and taxes. The Stadium Authority FY 2020/21 CapEx Budget includes \$7,350 for this expense.

Explosive Ordinance Detection Blankets/Water Barrier (\$13,774) - The Police Department's explosive ordinance team (EOD) is responsible for the identification and mitigation of explosive items. They currently have no ability to quickly mitigate a verified suspicious package. Water/gel barriers are easily transportable and deployable. The use of these two measures will greatly reduce the collateral damage of an explosive device. Due to the purchase totaling less than \$15,000, staff has obtained a quote from WMDTech for \$12,637 for a water/gel barrier and anticipates spending a total of \$13,774, tax included. Staff recommends award of Purchase Order to WMDTech. The Stadium Authority FY 2020/21 CapEx Budget includes \$13,269 for this expense. There are sufficient funds in the CapEx budget to cover the remaining dollars that exceed the budgeted amount.

Together these public safety supplies and equipment total \$728,218 in cost. The Stadium Authority FY 2020/21 CapEx Budget includes \$817,887 for these specific items.

Both the Fire and Police Department have remaining CapEx purchases that are pending quotes or require a formal bidding process. They will bring forth those purchases to the Board for approval at a future meeting.

#### Other Expenses

The Stadium Authority publishes legal notices in the Santa Clara Weekly for the annual Stadium Authority Budget and other legal notices. The Executive Director requests authorization to purchase such publications in the future. At the time of writing this report, the City Clerk's Office submitted a four-page validation summons regarding the Stadium Authority's adoption of its FY 2020/21 Budget to be published in the Santa Clara Weekly on June 17 and 24, and July 1, 2020. The Santa Clara Weekly does not invoice until after its publication but provided an estimate of \$8,976 for the three publications.

Additionally, there are approximately \$907 of food and travel expenses as detailed in Attachment 2. These expenses represent: 1) Stadium Authority-related travel to review security operations, command post operations, and parking operations at MetLife Stadium in East Rutherford, New Jersey (the balance of travel expenses were associated with City-related business) and 2) meals for staff who worked on the Stadium Authority FY 2020/21 Budget outside of normal working hours and during a lunchtime training. The City incurred these travel and meal expenses on behalf of the Stadium Authority and should be reimbursed by the Stadium Authority to ensure compliance with Measure J.

There are sufficient funds in the Stadium Authority FY 2020/21 Adopted Budget under the Operating Budget to cover these costs.

#### **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 are existing appropriations totaling \$817,887 in the Stadium Authority FY 2020/21 Adopted Budget under the CapEx Budget to cover the costs of the public safety supplies and equipment described above. There are also existing appropriations in the Stadium Authority FY 2020/21 Adopted Budget under the Operating Budget to cover the costs of the Santa Clara Weekly publications and the minor miscellaneous expenses incurred by the Stadium Authority and the City on behalf of the Stadium Authority between November 8, 2019 and June 4, 2020 that are detailed in Attachment 2.

#### COORDINATION

This report has been coordinated with the Treasurer, Stadium Authority Counsel, and the City's Finance, Fire and Police Departments.

#### **PUBLIC CONTACT**

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

#### **ALTERNATIVES**

- 1. Authorize the Executive Director to purchase and/or execute purchase orders with specified vendors for the public safety supplies and equipment outlined in the report (Motorola APX 6000 Radio/Charger/Battery; Radio Earpieces; Battery Pack for JHAT Crew; Small Cooler and Ice Pack; Mass Decontamination Hydrant Nozzles; Stadium Vehicles (Gator & Kubota) Upfits; Storage Conex Garage for Apparatus; Heavy Lift Kit; Stadium Personal Protective Equipment; Body Worn Cameras; Motor Vehicle Barricades; Bicycles; Radio Batteries; Radios; Radio Chargers; Safety Gear for Special Event Officers & Traffic Control Personnel; and Explosive Ordinance Detection Blankets/Water Barrier), pursuant to Chapter 2.105 of the Santa Clara City Code and in an amount not-to-exceed \$817,887, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items.
- 2. Authorize the Executive Director to purchase future publications for required Stadium Authority public hearing items in the City's official newspaper, Santa Clara Weekly, and approve the final costs of the three publications that were purchased for June 17 and 24, and July 1, 2020.
- 3. Approve the miscellaneous expenses detailed in Attachment 2 that were incurred by the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between November 8, 2019 and June 4, 2020.
- 4. Do not authorize the Executive Director to purchase and/or execute purchase orders with specified vendors for the public safety supplies and equipment outlined in the report (Motorola APX 6000 Radio/Charger/Battery; Radio Earpieces; Battery Pack for JHAT Crew; Small Cooler and Ice Pack; Mass Decontamination Hydrant Nozzles; Stadium Vehicles (Gator & Kubota) Upfits; Storage Conex Garage for Apparatus; Heavy Lift Kit; Stadium Personal Protective Equipment; Body Worn Cameras; Motor Vehicle Barricades; Bicycles; Radio Batteries; Radios; Radio Chargers; Safety Gear for Special Event Officers & Traffic Control Personnel; and Explosive Ordinance Detection Blankets/Water Barrier), pursuant to Chapter 2.105 of the Santa Clara City Code and in an amount not-to-exceed \$817,887, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items.
- 5. Do not authorize the Executive Director to purchase future publications for required Stadium

Authority public hearing items in the City's official newspaper, Santa Clara Weekly, and approve the final costs of the three publications that were purchased for June 17 and 24, and July 1, 2020.

6. Do not approve the miscellaneous expenses detailed in Attachment 2 that were incurred by the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between November 8, 2019 and June 4, 2020.

#### **RECOMMENDATION**

Alternatives 1, 2 and 3.

- 1. Authorize the Executive Director to purchase and/or execute purchase orders with specified vendors for the public safety supplies and equipment outlined in the report (Motorola APX 6000 Radio/Charger/Battery; Radio Earpieces; Battery Pack for JHAT Crew; Small Cooler and Ice Pack; Mass Decontamination Hydrant Nozzles; Stadium Vehicles (Gator & Kubota) Upfits; Storage Conex Garage for Apparatus; Heavy Lift Kit; Stadium Personal Protective Equipment; Body Worn Cameras; Motor Vehicle Barricades; Bicycles; Radio Batteries; Radios; Radio Chargers; Safety Gear for Special Event Officers & Traffic Control Personnel; and Explosive Ordinance Detection Blankets/Water Barrier), pursuant to Chapter 2.105 of the Santa Clara City Code and in an amount not-to-exceed \$817,887, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items;
- 2. Authorize the Executive Director to purchase future publications for required Stadium Authority public hearing items in the City's official newspaper, Santa Clara Weekly, and approve the final costs of the three publications that were purchased for June 17 and 24, and July 1, 2020; and
- 3. Approve the miscellaneous expenses detailed in Attachment 2 that were incurred by the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between November 8, 2019 and June 4, 2020.

Prepared by: Christine Jung, Assistant to the City Manager (Executive Director)

Approved by: Deanna J. Santana, Executive Director

#### **ATTACHMENTS**

- 1. CapEx Portion of Stadium Authority FY 2020/21 Budget
- 2. Misc. Expenses Incurred by SCSA or City on behalf of SCSA 11/08/2019 6/4/2020

### STADIUM AUTHORITY CAPITAL EXPENSE BUDGET

The Capital Expense (CapEx) Budget is used to fund the purchase or upgrade of fixed assets for the Stadium. While the funding for appropriations occur on an annual basis, the Capital Expense Plan extends for a five-year period (shown on Page 48 of this report). Changes to existing projects, as well as the addition of new projects, may occur during the five-year planning period as new needs are identified. The appropriations for capital projects do not lapse at year-end but carryover into future years until the project is complete.

The FY 2020/21 CapEx Budget totals \$13.3 million. Of this total, \$8.0 million of prior year appropriations are projected to be carried over from FY 2019/20 (\$1.5 million of the projected carryover amount is for warranty-related construction, and the other \$6.5 million is for prior year CapEx projects). New capital improvement appropriations equal \$5.3 million.

A detailed listing of adopted FY 2020/21 projects is provided starting on Page 40 of this report.



Public Safety Kawasaki Mule Used for public safety patrol and emergency response

# Santa Clara Stadium Authority Capital Expense Budget Summary

	2018/19	2018/19		2019/20	2019/20	20	20/21	2020/21	2020/21
						_			Total
	Final	Year-End		Final	Projected		jected	Adopted	Adopted
	 Budget	Actuals	_	Budget	Actuals	Car	ryover	Budget	Budget
Beginning Balances	\$ 12,358,833	\$ 12,718,700	\$	14,532,870	\$ 14,516,225	\$ 17,	837,300		\$ 17,837,300
Resources									
Transfers In from Operating	3,377,000	3,376,527		3,478,000	3,478,000		-	3,582,000	3,582,000
Transfers In from Stadium Development <sup>(1)</sup>	-	-		-	-		-	-	-
Total Resources	15,735,833	16,095,227		18,010,870	17,994,225	17,	837,300	3,582,000	21,419,300
	2018/19	2018/19		2019/20	2019/20	20	20/21	2020/21	2020/21
									Total
	Final	Projected		Final	Projected	Pro	jected	Adopted	Adopted
	 Budget	Actuals		Budget	Actuals <sup>(2)</sup>	Car	ryover	Budget	Budget
Expenses									
Construction	4,875,415	1,378,251		4,956,922	-	1,	888,911	2,836,416	4,725,327
Equipment	1,210,000	124,732		7,070,988	156,114	4,	252,034	2,208,523	6,460,557
Contingency	296,546	3,250		657,397	812		307,048	252,248	559,296
Stadium Warranty Related Construction	1,600,971	72,769		1,528,202	-	1,	528,202	-	1,528,202
Total Expenses	7,982,932	1,579,002		14,213,509	156,926	7,	,976,195	5,297,187	13,273,382
Capital Expense Reserve	\$ 7,752,901	\$ 14,516,225	\$	3,797,361	\$ 17,837,300	\$ 9.	.861.105		\$ 8,145,918

 $<sup>^{\</sup>left(1\right)}$  Carryover from the original Stadium Construction Budget for Warranty-related work

<sup>(2)</sup> Projected Actuals exclude some project payments withheld due to the ManagementCo not following State procurement and prevailing wage laws.



ALS Lifepack Monitor allows better diagnosis and treatment of cardiac arrest patients.

# Santa Clara Stadium Authority

## 2020/21 CapEx Budget

Item Type	SCSA Requested	Description	Cost	Co	ntingency (5%)	To	otal Cost
General Building	·	Updated Stadium Wayfinding Signage Install Premium/Club wayfinding, Suite wayfinding, Smoking section signs, No smoking signs for around the main and upper concourses, section numbers/floor decals, ADA blue lines, tunnel signs that indicate "no photos/no autographs", etc.	\$ 250,000	\$	12,500	\$	262,500
General		Levi's Naming Rights Signage Replacement	650,000		32,500		682,500
Building		Replace Levi's Naming Rights signage.					
Plumbing		Lift Station Replace pumps, motors and controls at sewage ejector sumps in Quadrants A, B, C & D on 100 level.	200,000		10,000		210,000
Plumbing		Plumbing Replace pressure reducing valves and other parts on domestic and recycled water systems.	100,000		5,000		105,000
Public Safety		Stadium Vehicles (Gator & Kubota) Upfits  Add a utility storage box for John Deere Gator utility vehicle to store all of Joint Hazard Assessment Team's (JHAT) equipment in a secure and	9,000		450		9,450
	x	organized area. The upfits for the Gator and Kubota utility vehicles also include adding roll-up windows to protect staff against rain, and hood racks for additional storage for the many pieces of equipment that JHAT carries.					
Public Safety	х	Storage Conex Garage for Apparatus  Add a new lockable, weatherproof storage conex for storage of three stadium vehicles (two John Deere Gators and one Kubota utility vehicle). With the temporary closing of Fire Station 10, the space is needed to house the vehicles that are currently housed at Fire Station 10. The storage container will be located at Fire Station 8 which is the closest location to the Stadium.	12,416		621		13,037
Public Safety	х	Pedestrian Safety Fencing Install raised fencing on Tasman Drive from Centennial Boulevard to Calle Del Sol. This is approximately 0.4 miles and would be adjacent to the VTA/Light Rail tracks. This fencing is required to guarantee the safety of patrons as pedestrians on Tasman Drive. Currently, pedestrians regularly jump temporary construction barriers and cross eastbound Tasman Drive and cross live/active VTA light rail tracks. In addition, during events the traffic flow is reversed and pedestrians will not expect cars coming from that direction. This poses a clear danger for pedestrians and mobile personnel are not always available to prevent this regular attempt by pedestrians. Raised fencing will guarantee this dangerous situation stops. The cost is an estimate based on the Fencing on Tasman project.	100,000		5,000		105,000
Security		Enhance Stadium Security Coverage  Evaluate and replace existing cameras with technologically advanced multilens panoramic/360/multi-directional cameras. Design locations and camera styles have created visual obstructions and gaps in coverage. Height locations with fixed lens cameras create the inability to adjust field of views. Installation of television monitors/signage near camera mounts have created field of view obstructions. Due to high volume of club space usage for large scale, and smaller events, request for video investigations become frequent. Low lighting situations are constant with event type needs, and enhanced technology from newer cameras will enable greater video quality. The areas which need to be evaluated include, but are not limited to: BNY Mellon East and West Club, Yahoo Club, United Club, FII Club, 501 Club, Citrix Owners Club, Entry Gates, and Perimeter fences.	330,000		16,500		346,500
Security		Enhance Stadium Security Access Control Install card readers on manual doors to increase access control features and security. Based on operational demands, doors have been identified via staff request and event activity in order to improve operational awareness and enhance the access control abilities by automating the doors. This also increases security to areas deemed by staff to hold sensitive or high value assets. The access control enhancements include Vertx/Mercury upgrade, EvoE400/Mercury upgrade, and various doors with access control needs.	235,000		11,750		246,750

# Santa Clara Stadium Authority 2020/21 CapEx Budget (cont.)

	SCSA			Co	ntingency	
Item Type	Requested	Description	Cost		(5%)	Total Cost
Security		CCTV Pop Up Trailers	\$ 235,000	\$	11,750	\$ 246,750
		Purchase five (5) additional units to continue to meet NFL Best Practices				
		guidelines by covering parking lots outside stadium footprint that currently				
		have no camera coverage.				
Security		Parking Lot Camera Upgrades	40,000		2,000	42,000
		Replace Great America parking lot cameras with technologically advanced				
		multi- lens panoramic/360/multi-directional cameras. New camera technology would provide better overall coverage of the main parking lot. Sun baked				
		cameras with fixed angles have created gaps in coverage. With more video				
		incident request coming from ingress/egress incidents, new technology would				
		assist in these investigations. Install cameras in Gold lot 4/5 where there is				
		very limited coverage.				
Security		Bowl Camera Upgrade/Refurbish	135,000		6,750	141,750
,		Replace bowl cameras. Several bowl cameras have become sun baked and	,		-,	,
		provide poor/obscured coverage of bowl seating. Maintenance has become				
		an issue as it takes a lot of time and money to set up scaffolding to reach				
		camera boxes. Need to re-engineer housing (suggest relocating housing				
		closer to stadium infrastructure).				
Security		Surveillance - Command Center Equipment	50,000		2,500	52,500
		Build out workstations with equipment that can handle the load of video				
		viewing during large scale events, as well as the 24/7 security operations in				
		both 100 and 800 command rooms. Equipment includes, but is not limited to,				
		monitors, keyboards, video cards, CPU processors, power supplies,				
		motherboards, and cabling.				
Security		Software Upgrade to Genetec 5.8	35,000		1,750	36,750
		Upgrade to Genetecs newest firmware version 5.8. This would improve				
		overall system performance and stability, and add new features that will help				
		in operator training and utilization of software. Customizable live dashboards assist in monitoring alarms and events in real time.				
Security		Video Analytics	35,000		1,750	36,750
occurry		Add video analytics to assist with video investigations. Video investigations	33,000		1,730	30,730
		take several hours/days to complete using traditional playback methods.				
		Adding video analytics will greatly decrease man-hours spent in video review				
		process, as well as aid in investigations using newer technology.				
Security		License Plate Reader at Vehicle Entry Gates	45,000		2,250	47,250
•		Add six (6) License Plate Reader cameras on entry/exit lanes of all vehicle	•		•	•
		gates (Post 1,2, and 3) to document and track vehicles entering and exiting				
		the stadium.				
Security		Security X-Ray Scanners	150,000		7,500	157,500
		Purchase four (4) portable X-ray units to observe postage that comes into the				
		loading dock 24/7 and screen bags/deliveries during event days.				
Site		Security Fencing - Main Lot	150,000		7,500	157,500
Oile		Remove and replace approximately 1,000 linear feet of 4-foot high security	130,000		7,000	137,300
		fencing in Main Lot per request of City.				
Site		Stationary Electric Pressure Washers	75,000		3,750	78,750
<del></del>		Install one (1) to two (2) demo stations on the 300 concourse. If these are	. 0,000		5,100	. 5,. 50
		effective, we would look to replace all gas-powered pressure washers with				
		electrically powered ones.				
			\$ 2,836,416	\$	141,821	\$ 2,978,237
		Cartom Caper Conduction Cools	¥ =,000,710	Ψ	171,021	¥ 2,010,231

# Santa Clara Stadium Authority 2020/21 CapEx Budget (cont.)

Beverage   Distribution System   \$ 50,000 \$ 2,500 \$ 2,500 \$ 2,505	Item Type	SCSA Requested	Description		Cost	Coi	ntingency (5%)	To	otal Cost
Add a beverage distribution system to stadium concession areas and bars. This includes the lines and CO2 disponing equipment.		•	·	\$		\$	` '		52,500
Information   Practice   Processing   Proc	Beverage		Add a beverage distribution system to stadium concession areas and bars.	·	,	·	•	·	,
Replace exterior Variable Frequency Drive units for Cocling Tower pumps due to life expectancy issues. This system supports the mechanical cooling functions for the HVAC system supports the mechanical cooling functions for the HVAC system supports the mechanical cooling functions for the HVAC system.  HVAC/ Mechanical  Financial Management facility.  Cooling Towers Replace Cooling Towers internal parts and systems. This includes the motors, fars, fill, controls, and plping which support the mechanical cooling functions for the HVAC system.  Information Financial Management Information System Project  Procure a new cloud-based financial management system for the Stadium Authority that would allow greater visibility in to Non-NFL Events. The management system for all transactions related to Non-NFL events as well as store supporting documentation for the transactions (flouding invoices). The costs include software license/subscription, bosting fee and a consultant for implementation and process improvement. There will be ongoing software license costs and possibility for additional staff time for implementation.  Subject to subsequent court rulings on cost allocation.  Fire Alarm System Replace/hotoluminescent tape in stainwells A1, A2, A3, A4, from level 100 to 900 per Santa Clara City Fire Markshal.  Public Safety Equipment  Add new radios to equip additional staff in our public safety deployment. Parts will be continued to the continued and public safety responsibilities. Treas enables that can be attached to fire hydrants used to decontaminate large amounts of people very quickly in the event of a HazMat event. This is new equipment for the Team.  Public Safety Equipment  Add new radios to equip additional staff in our public safety deployment. Personnel will confinue to use these specific radios for varied public safety responsibilities. Three a radios allow for communication to the command post a radios, personnel will confinue to use these specific radios for varied public safety responsibilities. Trees ra			Install remote CO2 monitoring for enhanced safety for stadium staff per		200,000		10,000		210,000
due to life expectancy issues. This system supports the mechanical cooling functions for the HVAC system.  HVAC/ Mechanical  Replace HVAC fan coils, motors, squirrel cage fans, and controls to heat pumps throughout facility.  HVAC/ Mechanical  Replace Cooling Towers Replace Cooling Towers internal parts and systems. This includes the motors, fars, fill, controls, and piping which support the mechanical cooling functions for the HVAC system.  Financial Management Information System Project  Procure a new cloud-based financial management system for the Stadium Authority that would allow greater visibility in to Non-NFL Events. The management company that handles Non-NFL events would use the financial management system for all transactions related to Non-NFL events as well as store supporting documentation for the transactions (Including invoices). The costs include software license costs and possibility for additional staff time for implementation.  **Subject to subsequent court rulings on cost allocation.**  Life  Fire Alarm System  Replace/Lodate fire alarm system field devices, including interior/exterior signaling devices, delections, and control panel pants.  Life  Photoluminescent Tape for Life Safety  Replace/Lodate fire alarm system field devices, including interior/exterior signaling devices, delections, and control panel pants.  Life  Photoluminescent Tape for Life Safety  Replace/Lodate fire alarm system field devices, including interior/exterior signaling devices, delections, and control panel pants.  Public Safety  Public Safety  Prublic Safety  Replace/Lodate fire alarm system field devices, including interior/exterior signaling devices, delections, and control panel pants.  Add new radios to equip additional staff fire in strivells A1, A2, A3, A4, from level 100 to 900 per Santa Clera City Fire Marshall.  Public Safety  Furchase a cocier to hold Anthrax Sample kits which need to be refringerated for a minimum of 12 hours while on assignment.  Add new radios to equip additional staff fire for pure a	HVAC/		Variable Frequency Drive(s)		150,000		7,500		157,500
HVAC/ Mechanical  Replace HVAC fan coils, motors, squirrel cage fans, and controls to heat pumps throughout facility.  HVAC/ Mechanical  Replace Cooling Towers Replace Cooling Towers internal parts and systems. This includes the motors, fans, fill, controls, and piping which support the mechanical cooling functions for the HVAC system.  Financial Management Information System Project  Procure a new cloud-based financial management system for the Stadium Authority that would allow greater visibility in to Norn-NFL events. The management company that handles Norn-NFL events would use the financial management system for all transactions related to Norn-NFL events as well as store supporting documentation for the transactions financial management system for all transactions related to Norn-NFL events as well as store supporting documentation for the transactions financial management system for all transactions related to Norn-NFL events as well as store supporting documentation for the transactions financial management system for all transactions flouding invoices). The costs include software licenses/subscription, hosting fee and a consultant for implementation and process improvement. There will be ongoing software license costs and possibility for additional staff lime for implementation.  *Subject to subsequent court rulings on cost allocation.  Fire Alarm System ReplaceApdate fire alarm system field devices, including interior/exterior signaling devices, detectors, and control panel parts.  Public Safety Replace photoluminescent Tape for Life Safety Replace photoluminescent tape for Life Safety Replace photoluminescent tape for Life Safety Purchase nozzles that can be attached to fire hydrants used to decontaminate large amounts of people very quickly in the event of a HazMat event. This is new equipment for the Team.  Public Safety Requipment  Add new radios to equip additional staff in our public safety deployment. Personnel will continue to use these specific radios for varied public safety responsibilities	Mechanical		Replace exterior Variable Frequency Drive units for Cooling Tower pumps due to life expectancy issues. This system supports the mechanical cooling		,		,		,
Replace HVAC fan coils, motors, squirrel cage fans, and controls to heat purpos throughout facility.	HVAC/		·		100,000		5,000		105,000
Replace Cooling Towers internal parts and systems. This includes the motors, fars, fill, controls, and piping which support the mechanical cooling functions for the HVAC system.   Project	Mechanical				,		•		,
Information Technology  Financial Management Information System Project 270,000 13,500 283,50  Procure a new cloud-based financial management system for the Stadium Authority that would allow greater visibility in to Non-NFL Events. The management company that handles Non-NFL events would use the financial management system for all transactions related to Non-NFL events are used to store supporting documentation for the transactions (including invoices). The costs include software license/subscription, hosting fee and a consultant for implementation and process improvement. There will be ongoing software license costs and possibility for additional staff time for implementation.  Subject to subsequent court rulings on cost allocation.  Fire Alarm System Replace/update fire alarm system field devices, including interior/exterior signaling devices, detectors, and control panel parts.  Life Photoluminescent Tape for Life Safety Replace/update fire alarm system field devices, including interior/exterior signaling devices, detectors, and control panel parts.  Life Safety/Fire Replace/update fire alarm system field devices, including interior/exterior signaling devices, detectors, and control panel parts.  Life Safety/Fire Replace/update fire alarm system field devices, including interior/exterior signaling devices, detectors, and control panel parts.  Life Safety/Fire Replace/update fire alarm system for the Safety Replace photoluminescent Tape for Life Safety Replace/update fire alarm system for the Safety Replace photoluminescent tape in statinvells A1, A2, A3, A4, from level 100 to 900 per Santa Clara City Fire Marshall.  Public Safety Equipment  Add new radios to equip additional staff in our public safety deployment. Personnel will Cordinue to use these specific radios for va	HVAC/				50,000		2,500		52,500
Financial Management Information System Project	Mechanical		motors, fans, fill, controls, and piping which support the mechanical cooling						
Procure a new cloud-based financial management system for the Stadium Authority that would allow greater visibility in to Non-NFL events. The management company that handles Non-NFL events would use the financial management system for all transactions related to Non-NFL events as well as store supporting documentation for the transactions (funding invoices). The costs include software license/subscription, hosting fee and a consultant for implementation and process improvement. There will be ongoing software license costs and possibility for additional staff time for implementation.  *Subject to subsequent court rulings on cost allocation.  Fire Alarm System Replace/update fire alarm system field devices, including interior/exterior signaling devices, detectors, and control panel parts.  Life Safety/Fire  Photoluminescent Tape for Life Safety Replace photoluminescent tape in stainwells A1, A2, A3, A4, from level 100 to 900 per Sarta Clara City Fire Marshall.  Public Safety  Equipment  Mass Decontamination Hydrant Nozzles  **X**  **Small Cooler and lice Pack **Equipment*  **X**  **Small Cooler and lice Pack **Equipment*  Add new radios to equip additional staff in our public safety deployment.  Personnel will continue to use these specific radios for varied public safety responsibilities. These radios allow for communication to the command post and between public safety partners working our events. Without these critical radios, personnel would not be able to function in their capacity and as expected to provide public safety services including emergency response.  There is a yearly operating cost; requesting quote.  Public Safety Equipment  **Add eight (8) motor vehicle barricades. Our operational area requires rapid and versatile deployment of physical barriers. These 8 barriers are essential for vehicular traffic routing and stopping. In the event of intentional barricade breaching, these barriers will prevent a full breach and protect pedestrians from vehicles. Current and traditional barriacades requires su	Information				270,000		13,500		283,500
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and are laborationable. And new modile datifications would reduce mights			·						
labor, but significantly raise the safety and versatility of our barrier placement.									
Of the cost, \$100,000 is a carryover from FY2018/19 and \$245,000 is									
additional funding requested.			•						

# Santa Clara Stadium Authority 2020/21 CapEx Budget (cont.)

Item Type	SCSA Requested	Description	Cost		Cor	ntingency (5%)	Total Cost
Public Safety		Explosive Ordinance Detection Blankets/Water Barrier	12,6	337		632	13,269
Equipment							
		Purchase bomb blankets and water barriers for the explosive ordinance					
		detection (EOD) team. This team is responsible for the identification and					
	X	mitigation of explosive items. They currently have no ability to quickly mitigate					
		a verified suspicious package. Bomb blankets and water barriers are easily					
		transportable and deployable. The use of these two measures will greatly					
		reduce the collateral damage of an explosive device.					
Public Safety		•	\$ 25,0	000	\$	1,250	\$ 26,250
Equipment		Purchase 10 bicycles for the bicycle unit, which is an integral part of our					
		exterior public safety operation. The scattered locations of all parking lots and					
	x	the congested nature of the roadways require bicycles as the primary mode					
		of travel for ease of movement for public safety officers. 10 bicycles (5 will be					
		used for replacements) will bring the current inventory to 30 and will allow us to expand our bike unit.					
Dublic Cafety			60.0	200		2.000	62.000
Public Safety		Stadium Personal Protective Equipment	60,0	JUU		3,000	63,000
Equipment							
		Add personal protective equipment for various teams at the Stadium. Active					
		Shooter has been an emerging threat. The Santa Clara Fire Department					
		does not currently have Active Shooter gear for the Stadium, and to equip the					
		team of 12 to handle an Active Shooter threat, the following gear is					
	x	requested: vests, helmets, protective plates, EMS equipment and other					
	^	appropriate Personal Protective Equipment (PPE) for an Active Shooter. In addition, the gear requested includes vests, helmets and respiratory					
		protection for the Joint Hazard Assessment Team (JHAT) of 6 for blast and					
		chemical release protection; and Stadium battle dress uniform (BDU)					
		blouses and pants to protect against the weather for the stadium team of 60.					
		The vest and helmets are new equipment for the team and BDU is a					
		combination of replacement and new.					
Public Safety		Heavy Lift Kit	51,9	213		2,596	54,509
Equipment		Add a Heavy Lift Kit to be able to lift larger vehicles and equipment for rescue	01,0	710		2,000	04,000
Equipment		purposes in the event of an accident, stage or crane collapse. Stadium has					
	X	increased traffic of large vehicles and equipment on a regular basis, including					
		buses for team and performer transport and semi trucks for delivery.					
Public Safety		Radiation Detector	21,5	500		1,075	22,575
Equipment		Purchase a radiation detector. The Joint Hazard Assessment Team (JHAT)					
		had historically used the Identifinder radiation detector on the HazMat					
	x	apparatus; however, the Identifinder (purchased in 2008) has been					
	^	decommissioned due to age and is no longer serviceable by manufacturer.					
		The Radiation (Gamma and Neutron) Detector will be a replacement					
2.1.1. 0.6.6.		purchase with expected life of 10 years.	04.7	-00		4 575	00.075
Public Safety		Rope Rescue Gear Including Storage Container	31,5	000		1,575	33,075
Equipment		Add high angle and vertical rescue equipment needed to address the intricate and complex areas of the stadium. This includes an artificial high					
	X	point, full rope response kit, winch, rigging, fall protection, and patient					
		extraction device. This is new gear for the Stadium Team.					
Public Safety		Mass Casualty Incident Trailer	120,0	200		6,000	126,000
Equipment		Purchase a Mass Casualty Incident (MCI) Trailer. The fire department	120,0	,00		0,000	120,000
-quipinent		currently has equipment to treat 25 patients during a large-scale emergency.					
	X	The MCI Trailer would allow the first responders to treat between 500-1000					
		people during a large-scale emergency by allowing quick access to on-board					
		equipment and supplies.					
Public Safety		Motorola APX 6000 Radio/Charger/Battery	4,6	600		230	4,830
Equipment		Add a radio charger and extra battery for the Fire Incident Commander in the	,				,
- •	X	Command Post to assist with monitoring multiple channels.					
Public Safety		Motorola Earpieces	1,0	000		50	1,050
Equipment		Replace earpieces for the radios used by the crews. The original earpieces	,				7-2-
• •	X	were purchases six years ago and are at end of life.					
Public Safety		Battery Pack for JHAT Crew		72		4	76
Equipment		Add a portable battery charging pack for the Joint Hazard Assessment Team					
• •		(JHAT) that uses a lot of battery power. A portable battery charging pack is					
	X	needed to recharge equipment for the long duration JHAT missions. This is a					

# Santa Clara Stadium Authority 2020/21 CapEx Budget (cont.)

	SCSA				Co	ntingency	
Item Type	Requested	Description	C	ost		(5%)	Total Cost
Public Safety Equipment	x	2-Way CAD/24-7 Link  Add a 2-way link between the 24/7 dispatch system and the CAD system. All stadium personnel operate on the 24/7 dispatch system. SCPD and SCFD operate on the CAD system. When public safety personnel are sent on calls, the call must be generated by hand in both systems. This causes extra work for dispatchers, however, more importantly this creates delays in reporting and responses to public safety incidents. A 2-way link would allow both systems to "talk" to each other and automatically create incidents in each other's system. Additionally, without this link, we cannot log officers on which creates an officer safety issue as well as an issue when it comes to management of personnel.	1	50,000		7,500	157,500
Public Safety		Dispatch Monitors	\$	8,000	\$	400	\$ 8,400
Equipment		•		,			
	x	Replace dispatch monitors with larger screens. Our public safety dispatchers utilize several screens at their work stations in order to facilitate their duties. The necessary upgrading of our latest public safety communications center's CAD and associated software will require larger screen area to effectively manage the new information. These 16 replacement 22" larger monitors are needed to optimize the use and intended application of the latest public safety dispatching software. The larger screens are required to view the additional windows from the CAD system and are expected to last five years. The prior monitors were purchased six years ago and are 19" monitors. The cost includes estimated installation for three workstations.					
Public Safety		Radio Batteries		15,514		776	16,290
Equipment	x	Replace radio batteries that are at the end of their life expectancy. This is due to their natural order of deterioration where the expected battery power retention is lost. Current radio inventory requires the battery replacement for this reason. Radios with batteries performing at full capacity are required for public safety personnel to ensure radios will remain at a functional level during a standard shift. Life expectancy is three years.					
		· · · · · · · · · · · · · · · · · · ·					
Public Safety Equipment	x	Safety Gear for Special Event Officers & Traffic Control Personnel Add safety gear for traffic control personnel that are a critical element to our public safety deployment. Beyond this application, they also provide welcomed guidance and direction to visitors and our neighborhood residents. Upon directing traffic and pedestrians, our traffic control staff work amongst vehicles in all types of weather for extended periods of time. Rain suits would afford this staff the ability to effectively and safely work in these conditions while remaining dry. High visibility jackets will increase our staff's visual recognition increasing their personal safety while performing their duties around vehicles. Flashlights and high visibility jackets will increase the public's ability to notice the traffic control staff leading to overall safety of all who visit our footprint and increased recognition of direction offered by this staff.		7,000		350	7,350
Public Safety		Radio Chargers		3,000		150	3,150
Equipment	x	Add three radio charging stations. Our radio equipment is critical and, therefore, their serviceability must be maintained. Each new radio will require a charging port. These three charging stations each have a 6-radio capacity and three are needed to maintain radios at their peak power and usability. Having these three charging stations will ensure all radios are ready for use by public safety without the risk of personnel being without this crucial equipment in a functional state.					
		Subtotal CapEx Equipment Costs	\$ 2,2	08,523	\$	110,427	\$ 2,318,950

# Santa Clara Stadium Authority 2020/21 CapEx Budget Carryover

	SCSA			Remaining	
Item Type	Requested	Description	Cost	Contingency	Total Cost
Electrical		Mechanical and Electrical Closet Lighting (2019/20 Carryover) Install LED lighting in all mechanical and electrical closets located in the service tunnel, 300 Level, and 700 level. These lights not only improve visibility, but also provide longer and more efficient power usage.	\$ 150,000	\$ 7,500	\$ 157,500
Electrical		Broadcast Booth Power (2019/20 Carryover) Install power components used for stadium events. These components will adhere to LEED certification, provide a clean source of power for our clients, and improve operating efficiencies.	35,000	1,750	36,750
Electrical		Concessions Cart Cabling (2019/20 Carryover) Install code rated low voltage cabling (CAT6) to portable concession carts. This will provide Internet Protocol (IP) based access to the IPTV menu boards and Point of Sale (POS) systems for credit card transactions, as well as deliver an emergency signage to be displayed at the concession stands if	50,000	2,500	52,500
General Building		Stadium Event Signage (2019/20 Carryover) Install stadium signage (including but not limited to tunnel awnings, accessible seating reference areas, lower bowl sections placards, and additional fire and building code signage per Fire Marshal).	138,000	6,900	144,900
General Building		Miscellaneous (2019/20 Carryover) Add funding for unforeseen building-related repairs.	100,000	5,000	105,000
General Building		Command Post Window Treatment (2019/20 Carryover) Install window shades and/or tint the exterior windows on the 800 level command post to reduce heat and glare. This will assist dispatchers and command post operators working in this space.	16,000	800	16,800
General Building		Stadium and Special Event Spaces (2019/20 Carryover)  Add entry mats to be placed at stadium entrances to help alleviate wet floor scenarios and provide safety to stadium patrons. Will extend the finish of the existing flooring and help prevent slip and falls during inclement weather.	75,000	3,750	78,750
General Building		Non-Slip Floor Matting (2019/20 Carryover) Install non-slip matting from the north side locker rooms to tunnels primarily for event usage (that include access to the field for athletes, performers and customers).	50,000	2,500	52,500
General Building		Women's Locker Room (2019/20 Carryover)  Convert a portion of the auxiliary locker room area to accommodate a larger private space for female athletes, performers, officials, and other female event day sporting and entertainment professionals visiting or working events at Levi's Stadium.	372,000	18,600	390,600
General Building		Automatic Logic Control Building Engineering System (2019/20 Carryo Install an automatic logic controller system upgrade to monitor the building's HVAC in all quadrants simultaneously. This updated system will enable graphic interface and help the system to operate more efficiently with time clock management and assist in potential lighting control energy savings.	35,000	1,750	36,750
General Building		Club Space Flooring (2019/20 Carryover) Strip, resurface, and/or replace hardwood flooring surfaces in the BNY East & West and Levi's 501 spaces. These spaces are among the most utilized spaces in the building and get a large amount of foot traffic. This work will help extend the useful life of these spaces as well as reducing slips and falls	85,000	4,250	89,250
General Building		Command Post Communication Equipment (2019/20 Carryover)  Purchase and install public safety screens, monitors, and projection devices used in monitoring stadium and security operations to help improve situational awareness and response.	58,000	2,900	60,900
General Building		Stadium Field Conduits (2018/19 Carryover)  Add a permanent solution for power and data on field/floor of stadium, making electrical connections safer and efficient for concert and events.	118,197	5,910	124,107

# Santa Clara Stadium Authority 2020/21 CapEx Budget Carryover (cont.)

Ham Torre	SCSA	Base Lat		0		maining	_	
Item Type	Requested	Description	_	Cost		tingency		otal Cost
Security		Stadium Camera Booth Card Readers (2019/20 Carryover)	\$	84,000	\$	4,200	\$	88,200
		Install card reader for north and south camera booths to secure the spaces						
		that enter into/from general public access areas.						
		Stadium Insulation (above 300 level and below 400/500 level) (2019/20		150,000		7,500		157,500
Site		Carryover)						
		Install new insulation in the 400/500 underside above the 300 level. Original						
		insulation is failing due to weather conditions. This also helps reduce sound						
		reverberation throughout the concourse and protects the concrete from the						
		elements.						
Site		Gold Lot 4 and 5 Lighting (2019/20 Carryover)		50,000		2,500		52,500
		Install LED lighting in Gold 4 and Gold 5 parking lots. The current light plan is						
		underpowered and is not sufficient given the work environment during						
		stadium event load in/out. This lighting improves safety conditions for stadium						
0:4-		personnel and provides energy cost savings with more efficient fixtures.		00.000		4.500		04.500
Site		Rust Prevention Mitigation (2019/20 Carryover)		90,000		4,500		94,500
		Implement rust prevention measures. The stadium railings, beams, and other						
Site		steel areas need rust prevention and coating in specific areas throughout the  Stadium Event Power Upgrades & Switchgear Electrical (2019/20		42,714		2,136		44,850
Site				42,714		2,130		44,000
		Install and enhance Stadium Event wiring service on the 12 Kilovolt (KV)						
Cita		Primary Switch Gear (PMSG) to main electrical panel.		100.000		0.500		100 500
Site		Asphalt (2018/19 Carryover)		190,000		9,500		199,500
		Slurry coat the visitor parking on Tasman, Gold 4 & 5 parking lots and South						
		Access Road.						
		Subtotal CapEx Construction Carryover Costs	\$ 1	,888,911	\$	94,446	\$ 1	,983,357
Audio/Visual		Radio Booth Cabling (2019/20 Carryover)	\$	600,000	\$	30,000	\$	630,000
		Install fiber optic cabling to increase the low voltage cabling backbone. This	Ψ	000,000	Ψ	00,000	Ψ	000,000
		installation will accommodate the expanding requests for booth usage during						
		stadium events and keep up with emerging trends.						
Audio/Visual		Crestron Control & Building Operating System Upgrades (2019/20		10,000		500		10,500
tudio, vioudi		Install a Creston Control System to monitor HVAC, lighting, electrical, and fire		10,000		000		10,000
		alarms. This comprehensive system enables all of these items to interface						
		with one another for engineers to see a real time view of the building's						
		systems.						
Euroitura Eisti	ıroo		- 1	600 000		90.000	- 1	690 000
Furniture, Fixtu	ures	Replace Furniture in Club and Special Event Spaces		,600,000		80,000	1	,680,000
& Equipment		(2019/20 Carryover)						
		Purchase replacement furniture for clubs (BNY, United, Levi's 501 and						
		Yahoo) and special event spaces to enhance areas and meet client						
		expectations. These spaces are amongst the most utilized in the entire						
		stadium.				0.400		71 100
Furniture, Fixtu	ures	Security and Life Safety Partitions/Dividers (2019/20 Carryover)		68,000		3,400		71,400
& Equipment		Install service tunnel drapery and/or partitions for security and public safety						
		personnel during stadium events that require public access to the service						
		level. This helps coordinate public movements in "back of house areas"						
		without affecting stadium operations.						
Furniture, Fixtu	ures	Tunnel Slip and Fall Protection (2019/20 Carryover)		30,000		1,500		31,500
& Equipment		Install non-slip material at the South, Northeast, and Northwest Field Tunnels.						
Furniture, Fixtu	ures	Guest Service Booths (2018/19 Carryover)		70,000		3,500		73,500
& Equipment		Add two additional guest services booths on the main concourse for better		,		,		,
		· · · · · · · · · · · · · · · · · · ·						
		ennanced customer service touchboinis.						0.15.000
	ical	enhanced customer service touchpoints.  Kitchen Exhaust Fans (2019/20 Carryover)		300 000		15,000		315 000
	ical	Kitchen Exhaust Fans (2019/20 Carryover) Install variable frequency drive (VFD) Units on kitchen exhaust fans for soft		300,000		15,000		315,000
	ical	Kitchen Exhaust Fans (2019/20 Carryover)		300,000		15,000		315,000
	ical	Kitchen Exhaust Fans (2019/20 Carryover) Install variable frequency drive (VFD) Units on kitchen exhaust fans for soft		300,000		15,000		315,000
HVAC/Mechan	ical	Kitchen Exhaust Fans (2019/20 Carryover) Install variable frequency drive (VFD) Units on kitchen exhaust fans for soft start (slow ramp up) capabilities. Kitchen exhaust fans currently operate 100		300,000		15,000		315,000

# Santa Clara Stadium Authority 2020/21 CapEx Budget Carryover (cont.)

	SCSA				Ke	maining	
Item Type	Requested	Description		Cost	Cor	ntingency	Total Cost
Life Safety/Fire		Fire Sprinkler Extension (2019/20 Carryover)	\$	55,000	\$	2,750	\$ 57,750
		Add fire sprinklers to the Gate F entrance. The Santa Clara Fire Marshal has					
		requested that fire sprinklers be installed at the Gate F entrance to mitigate					
		potential fire risk beneath the existing ribbon boards.					
Public Safety Equipment		GPS Software for Tracking Personnel (2019/20 Carryover) Add GPS software to track public safety personnel. Live tracking of law		25,000		1,250	26,250
		enforcement personnel is critical in providing an accurate picture of public					
		safety coverage. This technology and software will allow the Command Post					
	x	to know where our personnel are at all times and make necessary					
	^	assignment adjustments on the go. It is desired that the software also be					
		capable of retaining data for historical analysis. The requested funding of					
		\$25,000 is the initial purchase price for approximately 100 devices and the					
		software. There is a monthly operating cost of \$30/month each; \$36,000 total					
Public Safety		Body Worn Cameras (BWCs) (2019/20 Carryover)		150,000		7,500	157,500
Equipment		Add BWCs for use by public safety personnel. BWCs are now standard issue					
		in law enforcement and an expectation from the public, especially in contacts					
	X	that can turn negative. Issuing BWCs to all police staff for use during Stadium					
		events would better protect all interests and provide the transparency that the					
Dalle Octob		public has come to expect.		70.000		0.500	70.500
Public Safety		Fencing on Tasman (2019/20 Carryover)  Add fencing to prevent stadium event pedestrian traffic from crossing		70,000		3,500	73,500
Equipment	X	unsafely between Lafavette St. and the Tasman St. overcrossing.					
Public Safety		Street Signage (2017/18 Carryover)		1,000,000		50,000	1,050,000
•		Add street signage. This item was brought before the SCSA Board and		1,000,000		30,000	1,030,000
Equipment		approved in the 2017/18 budget. Staff has been working with the Department					
		of Public Works, the Executive Director's office and the Chief of Police's					
	v	office to identify appropriate locations on surrounding city streets (Great					
	X	America Parkway, Tasman Drive, etc.) to place signage to better protect,					
		inform and serve patrons visiting Levi's Stadium, non-event day traffic,					
		community event advisories and emergency public safety and traffic					
Public Safety		Portable License Plate Reader/PTZ Cameras (2018/19 Carryover)		160,000		8,000	168,000
•		` ,		160,000		0,000	100,000
Equipment		Purchase portable license plate readers. Placing temporary/moveable					
	x	license plate readers in remote stadium parking lots will provide better					
		information and intelligence to the Command Post in order to deter crime and					
		assist in apprehending crime suspects in the aftermath of an incident.					
Public Safety Equipment		Public Safety Command Post Dispatch System (2018/19 Carryover) Add a system that will interface between the system that is used at Levi's		94,034		4,702	98,736
	x	Stadium to track all incidents/requests that occur during an event and the					
	^	City's Hexagon CAD system. This will provide a seamless transition of data					
		including calls for service, personnel assignments, and event tracking.					
Vertical Transpo	ort	Elevator Door Replacement (2019/20 Carryover)		20,000		1,000	21,000
		Replace and install new elevator doors on one of the freight elevators in the					
		stadium.					
		Subtotal CapEx Equipment Carryover Costs	\$ 4	4,252,034	\$	212,602	\$ 4,464,636
Stadium Warrant	ty-Related	Carryover costs from the original Stadium Construction Budget for warranty-related work.	\$ 1	1,528,202			\$ 1,528,202

# STADIUM AUTHORITY CAPITAL EXPENSE BUDGET (CONT'D)

# **Santa Clara Stadium Authority**

# **Capital Expense Plan Summary - 5 Year Forecast**

		2020/21		2021/22		2022/23		2023/24		2024/25
	Budget Budget		Budget		Budget Budget			Budget		
Floridad	Φ.		Φ.		Φ.	750,000	•	4.050.000	Φ.	4 475 000
Electrical	\$		\$		\$	750,000	<b>Þ</b>	1,250,000	\$	1,475,000
General Building		900,000		1,352,000		600,000		1,050,000		3,125,000
Plumbing		300,000		150,000		-		-		460,000
Public Safety		121,416		-		-		-		-
Security		1,290,000		150,000		-		-		1,110,000
Site		225,000		400,000		-		150,000		575,000
Subtotal CapEx Construction Costs	\$	2,836,416	\$	2,052,000	\$	1,350,000	\$	2,450,000	\$	6,745,000
Audio/Visual	\$	-	\$	-	\$	600,000	\$	-	\$	650,000
FF&E		-		30,000		-		30,000		31,669
Food & Beverage		250,000		-		-		-		200,000
HVAC/Mechanical		300,000		150,000		-		75,000		1,060,000
Information Technology		270,000		-		-		-		-
Life Safety/Fire		450,000		50,000		-		-		135,000
Public Safety Equipment		938,523		115,000		517,500		140,000		100,000
Vertical Support		-		-		-		-		1,000,000
Subtotal CapEx Equipment Costs	\$	2,208,523	\$	345,000	\$	1,117,500	\$	245,000	\$	3,176,669
Contingency (5%)		252,248		119,850		123,375		134,750		496,083
Total CapEx Project Costs	\$	5,297,187	\$	2,516,850	\$	2,590,875	\$	2,829,750	\$	10,417,752

# Miscellaneous Expenses Incurred by Stadium Authority or City of Santa Clara on behalf of the Stadium Authority (to be reimbursed) between November 8, 2019 and June 4, 2020

Vendor Name	Total Amount	Description	Expense Type in SCSA G&A Budget	Date
		Stadium-related travel to review security operations, command		
EVEN Hotel NYC Times Square	\$ 185.90	post operations, and parking operations at MetLife Stadium	Other Expenses	12/1/2019
·		Stadium-related travel to review security operations, command		
Uber	47.33	post operations, and parking operations at MetLife Stadium	Other Expenses	12/1/2019
Travis Niesen	76.00	Reimbursement for Stadium-related travel	Other Expenses	12/1/2019
		Stadium-related travel to review security operations, command		
EVEN Hotel NYC Times Square	185.90	post operations, and parking operations at MetLife Stadium	Other Expenses	12/1/2019
		Stadium-related travel to review security operations, command		
Uber	65.83	post operations, and parking operations at MetLife Stadium	Other Expenses	12/1/2019
Derek Rush		Reimbursement for Stadium-related travel	Other Expenses	12/1/2019
		Stadium-related travel to review security operations, command		
EVEN Hotel NYC Times Square	231.80	post operations, and parking operations at MetLife Stadium	Other Expenses	12/1/2019
EVEN Hotel NYC Times Square	(45.90)	Credit for Stadium-related travel	Other Expenses	1/6/2020
Panera Bread	48.68	Lunch ordered during lunchtime training with financial consultant	Other Expenses	1/6/2020
Panera Bread	35.60	Dinner ordered during evening work on SCSA Budget	Other Expenses	3/6/2020
Santa Clara Weekly	600.00	SCSA Budget Public Hearing Notice	Other Expenses	4/1/2020
Ruth Shikada	76.00	Reimbursement for Stadium-related travel	Other Expenses	4/27/2020
TOTAL INCURRED BETWEEN 11/08/2019 AND 06/04/2020	\$ 1,507.14			



# City of Santa Clara

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# Agenda Report

20-510 Agenda Date: 7/14/2020

# REPORT TO STADIUM AUTHORITY BOARD

# **SUBJECT**

Authorization to Seek Reimbursement of City Public Safety and Traffic Control Purchases from the Forty Niners Stadium Management Company and Forty Niners SC Stadium Company [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

# **BACKGROUND**

Measure J was passed by the voters of the City of Santa Clara on June 8, 2010 and authorized the City to move forward with the development of a stadium suitable for professional football and other events. Measure J provides that the City and its Redevelopment Agency will not be liable for the obligations of the Stadium Authority. Additionally, prior to the passage of Measure J, the City Council approved a Stadium Term Sheet between the City, Redevelopment Agency of the City of Santa Clara, and Forty Niners Stadium, LLC that memorialized the terms that were negotiated between the parties. The Stadium Term Sheet includes an Attachment C Principal Terms of Public Safety Agreement that requires public safety and traffic control costs incurred by the City be reimbursed by the Stadium Authority. Attachment C is also included in the most current Public Safety Plan used by the City's Police and Fire Departments, Stadium Manager, and Forty Niners Stadium Management Company (StadCo). The applicable Attachment C section reads as follows:

3. Reimbursement of City Costs. The Stadium Authority will reimburse the City for the actual and reasonable costs of police, traffic control, fire, emergency services and similar services attributable to Stadium events incurred by the City in implementing the approved Public Safety Plan, including the fair share of reasonable capital expenditures required for public safety for the Stadium as described below ("Public Safety Costs"). The Public Safety Costs to be reimbursed by the Stadium Authority each year will be agreed upon by the Stadium Authority, the City and 49ers Stadium Company or will otherwise be resolved by Expedited ADR, as described in Section 8 below. Capital expenditures required for public safety for the first year of operation of the Stadium, including the cost of equipment that is reasonably necessary for dedicated use at the Stadium only, will be included in the Development Budget. During operation of the Stadium, Public Safety Costs will be allocated as follows: (i) Public Safety Costs in connection with NFL Events will be included in Reimbursable Expenses subject to Paragraph 4 below, (ii) Public Safety Costs in connection with Non-NFL Events will also be included in Reimbursable Expenses, and, for purposes of calculating Net Income from Non-NFL Events, will also be included in Non-NFL Event Expenses, and (iii) Public Safety Costs in connection with Civic Events will be included in Civic Event Expenses.

Additionally, Section 8.1 in the Lease Agreement between the City of Santa Clara and Santa Clara Stadium Authority (Lessee) states, "As shall be more particularly provided in the Public Safety Plan and in the Stadium Lease, and as additional consideration for City to enter into this Lease, Lessee shall reimburse City, or require StadCo to reimburse City, for each Lease Year, the amount by which

(a) Public Safety Costs for such Lease Year, exceed (b) fees (to the extent attributable to NFL Games) received by City for such Lease Year from the holders of Off-Site Parking Permits."

As such, all public safety costs including, but not limited to, personnel expenses, traffic control, neighborhood protection, services and supplies, and equipment costs adopted annually as part of the City of Santa Clara's operating budget and provided by the City to the Stadium Manager, StadCo, or the Stadium Authority are fully reimbursed. The purpose of this report is to seek authorization of and seek reimbursement for qualifying City incurred expenditures.

# **DISCUSSION**

The following categories of supplies, equipment, and services are procured by the City to provide public safety and traffic control services at Levi's Stadium which are then reimbursed by the Stadium Manager or StadCo for the portion related to Non-NFL events and NFL events, respectively. The purchases are made pursuant to applicable sections under Chapter 2.105 ("Finance Department") of Santa Clara City Code.

- Vehicle supplies, equipment and services such as, but not limited to, gas, mule or golf cart parts and equipment, repairs, etc.
- Office and operational supplies, equipment, and services such as, but not limited to, event day stationery and supplies, and postage.
- Safety and medical supplies and equipment such as, but not limited to, Fire, Rescue, EMS and HAZMAT equipment and supplies, annual safety technology licenses, and safety equipment storage and maintenance costs.
- Costs associated with recruiting and hiring (e.g. background investigator, psychological exam, polygraph, etc.), as well as uniforms and training to properly equip new personnel for their assignment.
- Food, water and related items as needed for personnel at events and unexpected needs due to assignment extensions.
- Traffic signage and traffic control supplies, equipment and services such as, but not limited to, signage fabrication and mounting supplies, traffic wands and replacement batteries, safety vests and stop/slow LED paddles.
- Travel and training such as, but not limited to, K9 training, active shooter training, HazMat training, and other specialized rescue training.

Attachment 1 details purchases that fall under these categories that were made by the City between November 8, 2019 and June 4, 2020. These purchases total \$25,429 and require Board authorization to seek reimbursement by either the Stadium Manager or StadCo.

For full transparency and disclosure, there are additional categories of supplies, materials, equipment, and services that are made and obtained by City departments and reimbursed by the Stadium Manager or StadCo. However, because these procurements either have existing City agreements, Purchase Orders in place or Council approval for cooperative agreements they do not require Board authorization but have been included for transparency. They are as follows:

- Agreements, memorandum of understanding, and/or mutual aid requests with various public agencies for law enforcement services.
- Informational Technology support staff assistance services through an executed agreement

- with Unisys Corporation that was approved by City Council.
- Printer equipment and services through an executed agreement with RICOH that was approved by City Council.
- Cell phones and cellular services through cooperative agreements with T-Mobile and Verizon Wireless. On December 8, 2015, City Council approved the usage of any of four named cellular providers (AT&T, Verizon Wireless, Sprint, and T-Mobile) who had cooperative agreements under NASPO/WSCA.
- Standardized IT hardware and desktop equipment through a NASPO/WSCA cooperative agreement for Dell.
- Geographic Information Systems-based software through an executed agreement with Arini Geographics, LLC that was approved by City Council.
- Radio services through a Silicon Valley Regional Interoperability Authority (SVRIA) agreement
  with Motorola Solutions that was result of a competitive Request for Proposal process for the
  Silicon Valley Regional Communications System in 2012. SVRIA was formed in 2010 to
  enhance interoperability in Santa Clara County and Santa Clara's participation in the SVRIA
  joint powers agreement was approved by Council in February 2010.

### **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

Attachment 1 summarizes the total amount spent by the City between November 8, 2019 and June 4, 2020 under the categories explained above that is reimbursable by the Stadium Manager and StadCo. These expenses are included in the adopted City of Santa Clara FY 2019/20 budget, as part of their respective departments' budgets, and directly reimbursed to the City by the Stadium Manager or StadCo.

#### COORDINATION

This report has been coordinated with the Treasurer, Stadium Authority Counsel, and the City's IT, Finance, Fire, Police and Public Works Departments.

#### PUBLIC CONTACT

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

# **ALTERNATIVES**

- Authorize the City Manager to purchase and/or award Purchase Orders for City public safety and traffic control supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo, pursuant to applicable sections under Chapter 2.105 ("Finance Department") of the Santa Clara City Code.
- 2. Retroactively approve the expenses incurred by the City for public safety and traffic control

supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo.

- 3. Do not authorize the City Manager to purchase and/or award Purchase Orders for City public safety and traffic control supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo, pursuant to applicable sections under Chapter 2.105 ("Finance Department") of the Santa Clara City Code.
- 4. Do not retroactively approve the expenses incurred by the City for public safety and traffic control supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo.

# **RECOMMENDATION**

Alternatives 1 and 2:

- Authorize the City Manager to purchase and/or award Purchase Orders for City public safety and traffic control supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo, pursuant to applicable sections under Chapter 2.105 ("Finance Department") of the Santa Clara City Code; and
- 2. Retroactively approve the expenses incurred by the City for public safety and traffic control supplies, equipment and services that are reimbursable by the Stadium Manager or StadCo.

Prepared by: Christine Jung, Assistant to the City Manager (Executive Director)

Approved by: Deanna J. Santana, Executive Director

### **ATTACHMENTS**

1. Public Safety and Traffic Control Expenses Incurred by City of Santa Clara between November 8, 2019 and June 4, 2020 to be reimbursed by Stadium Manager or StadCo

# Public Safety and Traffic Control Expenses Incurred by City of Santa Clara between November 8, 2019 and June 4, 2020 to be reimbursed by Stadium Manager or StadCo

Vendor Name	Total Amount	Description	Expense Category	Date
ZAP MFG INC	\$ 731.29		Traffic signage and traffic control supplies	11/21/2019
JP Graphics Inc	928.20		Traffic signage and traffic control supplies	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
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Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
Summit Uniforms		Uniform	Recruiting and hiring	12/5/2019
O'Neil's Lock & Key		Operational supplies	Office and operational supplies, equipment, and services	12/5/2019
Amazon.com		Operational supplies	Office and operational supplies, equipment, and services	12/5/2019
Craftmaster Hardware		Operational supplies	Office and operational supplies, equipment, and services	12/5/2019
Battery Junction	146.60	Operational supplies	Office and operational supplies, equipment, and services	12/5/2019
Home Depot		Signage supplies	Traffic signage and traffic control supplies	12/5/2019
Safetysign.com	998.63		Traffic signage and traffic control supplies	12/5/2019
Home Depot		Operational supplies	Office and operational supplies, equipment, and services	1/6/2020
Safetysign.com	509.91		Traffic signage and traffic control supplies	1/6/2020
Home Depot	57.13	Operational supplies	Office and operational supplies, equipment, and services	1/6/2020
Valley Custom Carts	618.66	Vehicle equipment	Vehicle supplies, equipment, and services	1/6/2020
Staples Advantage	131.73	Office Supplies	Office and operational supplies, equipment, and services	1/16/2020
Safeway Sign Co	3,435.68		Traffic signage and traffic control supplies	1/30/2020
Law Enforcement Psychological	4,000.00	Hiring incidental	Recruiting and hiring	2/6/2020
Summit Uniforms		Uniform	Recruiting and hiring	2/6/2020
Summit Uniforms	156.23	Uniform	Recruiting and hiring	2/6/2020
Summit Uniforms	156.23	Uniform	Recruiting and hiring	2/6/2020
Summit Uniforms	156.23	Uniform	Recruiting and hiring	2/6/2020
Law Enforcement Psychological	800.00	Hiring incidental	Recruiting and hiring	2/6/2020
Law Enforcement Psychological	2,400.00	Hiring incidental	Recruiting and hiring	2/6/2020
Law Enforcement Psychological	3,200.00	Hiring incidental	Recruiting and hiring	2/6/2020
Merry Mart Uniforms Inc	74.17	Uniform	Recruiting and hiring	2/6/2020
Peninsula Uniforms & Equipment Inc	175.49	Uniform	Recruiting and hiring	2/6/2020
USPS	110.00	Postage	Office and operational supplies, equipment, and services	3/6/2020
Amazon.com	156.86	CW detector case	Safety and medical supplies and equipment	3/6/2020
CA Dept of Justice	192.00	Hiring incidental	Recruiting and hiring	3/19/2020
Law Enforcement Psychological		Hiring incidental	Recruiting and hiring	3/27/2020
Law Enforcement Psychological		Hiring incidental	Recruiting and hiring	3/27/2020
Peninsula Uniforms & Equipment Inc		Uniform	Recruiting and hiring	3/27/2020
Summit Uniforms		Uniform	Recruiting and hiring	3/30/2020

Vendor Name	Total Amount	Description	Expense Category	Date
Summit Uniforms	156.23	Uniform	Recruiting and hiring	3/30/2020
CA Dept of Justice	32.00	Hiring incidental	Recruiting and hiring	4/13/2020
United	15.00	Travel	Travel and training	4/6/2020
USPS	64.00	Postage	Office and operational supplies, equipment, and services	4/6/2020
Peninsula Uniforms & Equipment Inc	183.17	Uniform	Recruiting and hiring	4/24/2020
Staples Advantage	60.65	Office Supplies	Office and operational supplies, equipment, and services	4/30/2020
Interstate Traffic Control	2,174.08	Traffic control supplies	Traffic signage and traffic control supplies, equipment and services	5/11/2020
Equifax Credit Information SVC	18.67	Hiring incidental	Recruiting and hiring	5/22/2020
Equifax Credit Information SVC	18.67	Hiring incidental	Recruiting and hiring	5/22/2020
United	(21.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(21.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(17.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(17.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(17.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(17.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(16.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(16.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(15.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(15.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(15.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(15.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(15.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(15.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(12.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(12.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(11.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(11.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(11.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(10.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(10.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(9.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(9.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(9.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(9.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(9.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(9.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(4.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(4.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(4.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(4.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(4.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
United	(4.00)	Credit for Canceled NFL Conference	Travel and training	5/5/2020
Staples Advantage	115.08	Office Supplies	Office and operational supplies, equipment, and services	5/29/2020
TOTAL INCURRED BETWEEN 11/08/2019 AND				
06/04/2020	\$ 25,428.84			



# City of Santa Clara

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

# Agenda Report

20-603 Agenda Date: 7/14/2020

# REPORT TO STADIUM AUTHORITY BOARD

# **SUBJECT**

Action on Stadium Authority Bills and Claims for the Month of March 2020 [Board Pillar: Enhance Community Engagement and Transparency]

# **BACKGROUND**

Disbursements made by the Stadium Authority are based on invoices submitted for payment. Prior to payment, staff reviews all disbursement documents to ensure that they are in compliance with the goods or services provided.

The Bills and Claims listing represents the cash disbursements required of normal and usual operations during the period. Budget control is set by the Stadium Authority Board through the budget adoption process.

### **DISCUSSION**

On April 30, 2019 the Stadium Authority Board directed staff to stop payment of any Stadium Authority invoices for services unless there is substantial documentation of services rendered, which must also be in compliance with State law and City Code. Since April 30, 2019, staff received direction to pay Stadium Authority invoices related to SBL sales and services, insurance, and utilities.

Significant expenses in March 2020 include:

- Payments totaling \$78,345.48 to the City of Santa Clara for the following:
  - \$78,345.48 for reimbursement of General and Administrative (G&A) City payroll costs (e.g.: City Manager's Office, City Attorney's Office, and Finance Department)
- Payments totaling \$2,008,702.42 to Forty Niners Stadium Management Co, LLC for the following:
  - \$261,000.00 for March 2020 Stadium Manager Expenses Utilities
  - o \$534,000.00 for March 2020 Stadium Manager Expenses Insurance
  - \$253,000.00 for March 2020 Stadium Manager Expenses SBL Sales
  - \$359,044.90 for CFD Advance Payment Interest for Q3 ending 12/31/2019.
  - \$601,657.52 for CFD Advance Payment Principal for Q3 ending 12/31/2019.
- Payment totaling \$15,396.90 to J.S. Held LLC for audit services

### **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 a \$2,102,679.03 fiscal impact to the Stadium Authority.

# COORDINATION

This report has been coordinated with the Stadium Authority Counsel'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 <a href="mailto:clerk@santaclaraca.gov">clerk@santaclaraca.gov</a> <a href="mailto:clerk@santaclaraca.gov">clerk@santaclaraca.gov</a>.

### RECOMMENDATION

Approve the list of Stadium Authority Bills and Claims for March 2020.

Reviewed by: Kenn Lee, Treasurer

Approved by: Deanna J. Santana, Executive Director

# **ATTACHMENTS**

1. March 2020 SCSA Bills and Claims

# **Santa Clara Stadium Authority**

# Bills and Claims Expenses Paid by Wire Transfer For the Month of March 2020

Payment Date	e Vendor	Invoice No.	Description	Fund		Amount
3/25/20	Forty Niners Stadium Management Co, LLC	SLS-021120-A	Mar 20 Std Mgr - Utilities	Operating \$	261,000.00	
3/25/20	Forty Niners Stadium Management Co, LLC	SLS-021120-A	Mar 20 Std Mgr - Insurance	Operating	534,000.00	
3/25/20	Forty Niners Stadium Management Co, LLC	SLS-021120-A	Mar 20 Std Mgr - SBL Sales	Operating	253,000.00	
3/6/20	Forty Niners Stadium Management Co, LLC	N/A	CFD Advance payment - Interest	Debt Service	359,044.90	
3/6/20	Forty Niners Stadium Management Co, LLC	N/A	CFD Advance payment - Principal	Debt Service	601,657.52	
			Forty Niners Stadium Management Co, LLC Subtotal			\$ 2,008,702.42
3/16/20	Bank of America	N/A	Feb 2020 bank fees acct 0444	Operating	198.82	
3/16/20	Bank of America	N/A	Feb 2020 bank fees acct 0425	Operating	18.18	
3/16/20	Bank of America	N/A	Feb 2020 bank fees acct 6280	Operating	17.23	
			Bank of America Subtotal			234.23
3/13/20	J.S. Held LLC	1092563	Nov 19 - Jan 2020 Audit Services	Operating		15,396.90
3/11/20	City of Santa Clara	N/A	B2003 SCSA Admin Payroll Costs	Operating \$	37,730.02	
3/17/20	City of Santa Clara	N/A	B2004 SCSA Admin Payroll Costs	Operating	40,615.46	
			City of Santa Clara Subtotal			78,345.48
						• • • • • • • • • • • • • • • • • • • •
			March 2020 Total			\$ 2,102,679.03



# City of Santa Clara

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

# Agenda Report

20-615 Agenda Date: 7/14/2020

# REPORT TO STADIUM AUTHORITY BOARD

# **SUBJECT**

Note and File this Informational Report on FY2019/20 Net Loss on Non-NFL Events [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

# **BACKGROUND**

On June 8, 2020, Stadium Authority staff received an email (Attachment 1) from the Vice President/Controller of the Stadium Manager, Esther Chi, requesting the Stadium Authority submit a Withdrawal Certificate to Bank of America and the Collateral Trustee, responsible for initiating cash disbursements, to fund the FY 2019/20 Net Non-NFL event loss of \$2,741,014 by June 12, 2020. The highly summarized Non-NFL Event profit and loss statement (Attachment 2) was included as support for the loss calculation. In addition to the request to fund the loss, Ms. Chi indicated the outstanding public safety invoices totaling \$1.1 million due to the City of Santa Clara would only be paid after the Stadium Authority funded the loss. Subsequently, Stadium Manager staff sent Invoice SLS-060820-A (Attachment 3) to the Stadium Authority for the FY 2019/20 Non-NFL Events Net Loss in the amount of \$2,741,014.

On June 10, 2020, the Stadium Authority responded with a letter (Attachment 4) to Ms. Chi requesting an explanation for the urgency of the disbursement and notifying the Stadium Manager that four days for review and approval of such a large disbursement is unreasonable. The letter also notified Ms. Chi that the accounting records related to the calculation of the net Non-NFL loss must be reviewed prior disbursement; once the records are reviewed, the Stadium Authority Board must approve the appropriation as the loss was not included in the FY 2019/20 budget. In addition, the Stadium Authority reminded Ms. Chi that Measure J does not allow City funds to cover any costs related to Stadium operations and that prompt payment of outstanding invoices is requested.

On June 15, 2020, the Stadium Authority received correspondence (Attachment 5) from Larry MacNeil outlining many claims. Of most importance, the Stadium Manager is continuing to withhold payment of City of Santa public safety invoices in direct violation of Measure J. The Stadium Authority responded to this letter on June 19, 2020, to notify Larry MacNeil that the Stadium Authority does not agree with the claims nor the characterization of the issue at hand (Attachment 6). The purpose of this report is to provide the Stadium Authority Board a status of current Non-NFL Event performance, the withholding of payments, and respond to some of the points raised by the Stadium Manager.

## **DISCUSSION**

This informational report provides an update to the Stadium Authority Board (Board) on the status of correspondence with Forty Niner's Stadium Management Company (Stadium Manager) in relation to Fiscal Year (FY) 2019/20 Net Non-NFL Loss. The Stadium Manager has currently invoiced the Stadium Authority for \$2.7 million to reflect the preliminary net Non-NFL Event loss. Section 4.7.3 of

the Amended and Restated Stadium Lease requires that the Stadium Authority receive all revenue and pay for all expenses related to Non-NFL Events, "The Stadium Authority shall be entitled to all Stadium Authority Event Revenue; and...the Stadium Authority shall pay all Stadium Authority Event Expenses." However, prior to funding the loss, Stadium Authority staff are requesting to review the accounting records that support the calculation of the loss.

The City Auditor Linh Lam, emailed Esther Chi on June 9, 2020, to request a time to review the accounting records for FY2019/20 Non-NFL events. It was made clear that staff is open to reviewing the documents remotely or in a large room that supports social distancing and workplace safety. Historically, the documents have not been made remotely available to Stadium Authority staff and the reviews have always taken place with Stadium Manager staff on site. Esther Chi responded that staff are complying with local health authorities and no visitors are allowed at the facility. Once Stadium Manager staff have returned to the office, Esther Chi will reach out to schedule the review. There was no indication of allowing Stadium Authority staff to review documents remotely. The Stadium Authority expects to bring an update on the review of these documents during the year-end financial report to the Board after the audit of the financial statements. The audit will be complete by September 30, 2020.

In addition, the outlined claims were made from Larry MacNeil in the letter dated June 15, 2020 (Attachment 5) regarding the loss and Stadium Authority's responses. Following each statement by the Stadium Manager, a response is included from the Stadium Authority.

• Stadium Manager: The net loss from NNE (meaning Non-NFL Events) for 2019 should come as no surprise to you or the Board. The Stadium Manager advised you years ago that the Mayor's PR/political strategy would result in fewer events, and those events would be less profitable. The Mayor's music ban, the bureaucratic red tape devised by the SCSA and the City to scare off event promoters, and the alarming increase in the cost of City employees being charged to stadium events will continue to adversely impact event profitability.

**Stadium Authority Response:** There is no rational basis for Mayor, City, or SCSA to devise a "PR/political strategy" to reduce the net income of Non-NFL events and, ultimately, reduce the revenue received by SCSA and the City. There is no evidence that the City's enforcement of the 10pm curfew (that the Stadium Manager agreed to as a development requirement) to address residents' concerns and included as part of the original agreement to construct the stadium has resulted in the losses by the Stadium Manager. Rather these losses appear to be due to mismanagement. The record is clear that no one from the Authority communicated anything about "red tape" to any event promoter and the City's involvement has been based strictly on rules, laws, and safety. Costs of Stadium Authority staff reflect time required to maintain a base level of support for the Stadium Authority. A large part of the costs includes outside legal counsel necessary to defend the seven lawsuits by the Forty Niners.

• Stadium Manager: The profitability of NNE for 2019 was impacted by the City's charges for prior years workers' comp claims. You will recall that the City recently invoiced stadium events more than \$1M for workers compensation claims for City employees, including more than \$250,000 for a Santa Clara police officer who was charged with felony workers' comp fraud by the Santa Clara County District Attorney in February 2020, which you failed to disclose.

**Stadium Authority Response:** The City of Santa Clara, in compliance with Measure J, invoiced a total of \$1,004,367 of worker's compensation claims after crediting the claims amount with worker's compensation benefit amounts previously invoiced. However, only \$277,346 of those costs were related to Non-NFL events. While this amount is included in the FY 2019/20 Net Non-NFL loss, it certainly does not make up the majority of the loss; without the worker's compensation claims the loss would still be almost \$2.5 million.

Additionally, the referenced fraudulent workers' compensation claim is a matter currently before the District Attorney based on an event that took place in 2018 and since no court determination as been made, the Authority has requested full reimbursement in compliance with Measure J. Workers' compensation invoicing for this individual are for 2015 injuries, which are not the subject of the District Attorney's actions.

• Stadium Manager: Your assertion that the amount of the loss increased from TBD to \$2.7M "...in a matter of a few months" is intentionally misleading, suggesting that the Stadium Manager concealed the loss, or that you were somehow unaware of the loss. But that's demonstrably false. We informed you in writing on 3.11.2020 that we were projecting a loss through 3.31.2020 in the range of \$1.7M to \$2.0M. You included that estimate in your report to your Board on 3.24.2020, and City Manager Santana's letter to the Board that same day stated "Net Non-NFL Events revenue loss of \$2.0 million for the current year..." Obviously the estimate we provided in early March was before the impacts of the COVID pandemic were apparent, and before the year-end accounting was complete.

**Stadium Authority Response:** In February 2019, the Stadium Manager verbally told the Stadium Authority that there would be a reduction in performance from Non-NFL Events. In late Mach 2019, as part of the Stadium Authority budget development for FY 2019/20, the Stadium Manager informed us that the projected revenue of \$750,000 was anticipated for the fiscal year. With no explanation or backup as to the trending of how this decrease would be achieved, and because of the lateness of this information, the Board approved a FY 2019/20 Adopted Budget that assumed \$5.8 million in Net Non-NFL Event Performance based on the Stadium Management Fee benchmark, with the goal of reevaluating actual performance during the fiscal year.

The Non-NFL event update report from Stadium Manager for Quarter ending December 31, 2019, loaded to the SCSA laptop at the Stadium on February 26, 2020 showed net income of \$400,000. While this information reflects a point in time and an incomplete accounting of all costs, it provides a general sense of projected performance. This figure was reported to the Board as part of the 3<sup>rd</sup> Quarter Financial Report.

As part of the FY 2020/21 budget submittal received on February 14, 2020, the Stadium Manager indicated "TBD" for estimated FY 2019/20 Non-NFL events performance. SCSA was only informed of the potential net loss of \$1.7 to \$2.0 million on March 11, 2020, after additional information was requested by SCSA staff on February 25, 2020. Considering there were no large ticketed events in the 4<sup>th</sup> Quarter, the change from a net operating income of \$400,000 in the 3<sup>rd</sup> Quarter to a total loss of \$2.7 million over four months is an unexpected loss. While the Stadium Manager has not indicated how the pandemic has affected FY 2019/20 net income there were no large events scheduled or cancelled in the 4<sup>th</sup> Quarter; the large events that were cancelled or

rescheduled due to the pandemic were scheduled in FY 2020/21.

• Stadium Manager: Furthermore, the SCSA has consistently ignored the guidance we have provided with respect to NNE profits. For example, the budget <u>you</u> recommended to the Board for 2019 NNE profit was \$5.8M, which was a number plucked from a 30-year projection prepared by the City seven years ago. We have previously advised you that this irresponsible budgeting was significantly overstating the expected Stadium Authority revenues.

**Stadium Authority Response:** As described earlier, because of the lateness and lack of detail in the development of the FY 2019/20 budget for the decrease in performance to \$750,000, the Stadium Authority adopted a budget based on the Stadium Management Fee benchmark in line with budgeting in past years.

In addition, it should be noted that the Stadium Manager continues to confuse the fiscal years accounted for between the Stadium Authority accrual basis and the Stadium Manager's cash basis of budgeting these events. To increase transparency of budgeted revenues and expenses, the Stadium Authority began budgeting on an accrual basis in the FY 2018/19 Adopted Budget. The accrual basis accounting is the method of recording revenues and expenses when they are incurred, regardless of when cash is exchanged. However, the Stadium Manager submits a cash basis budget. The FY 2019/20 budget submitted by the Stadium Manager did not include a budget for events occurring in FY 2019/20 on an accrual basis, but rather a projection for events occurring in FY 2018/19. The Stadium Authority had no choice but to use its best projection for FY 2019/20 Non-NFL Event Revenue.

• Stadium Manager: Any delay in reviewing the accounting records for NNE is a result of the SCSA's unilateral decision in 2018 to suspend the previous process we had followed for years with prior City staff to audit event transactions throughout the year. You decided to resume that process only recently, and Stadium Manager's accounting staff met with City staff on 2.28.2020. In that meeting City Staff reviewed revenues and expenses for the single event they requested the 2019 Rolling Stones show. In prior years, the City accountants reviewed records for each NNE shortly after the event occurred. Although we never received any explanation for the decision to suspend this procedure, it appears this was part of a strategy to bolster the false narrative that the 49ers were withholding financial records.

**Stadium Authority Response:** The Stadium Authority has recently had staff turnover; there was never a 2018 unilateral decision to terminate suspend previous processes as allege by Mr. MacNeil. The audits of Non-NFL events resumed as quickly as staff could be brought up to speed and only stopped due to the recent pandemic requiring shelter-in-place. The Stadium Authority looks to resume this activity as quickly as possible once County guidelines allow.

• **Stadium Manager:** We will of course be delighted to accommodate your City Auditor's review of NNE records for 2019. In compliance with Santa Clara County guidelines and NFL rules, we currently have limited access to the facility. As soon as we move from business continuity operations to permitting all staff into the building, we will reach out to arrange a date and time.

**Stadium Authority Response:** As described earlier, City Auditor Linh Lam, reached out to Esther Chi on June 9, 2020, to schedule the review of FY 2019/20 Non-NFL Events either in person or

remotely. Esther Chi has requested this review take place after staff are allowed back to the office based on local health authority guidelines. There was no indication of allowing Stadium Authority staff to review documents remotely. Stadium Authority staff have not previously been allowed remote access to these documents and have reviewed these documents on site with Stadium Manager staff. Stadium Authority staff are prepared for the review of the FY 2019/20 accounting records as soon as the County guidelines allow.

Stadium Manager: Your reference to the 2018/19 NNE net income transfer in February 2020 suggests that there was some delay in payment on the part of the Stadium Manager. That is false. You sent an invoice for that amount in January 2020, and we paid the invoice in February 2020.

**Stadium Authority Response:** In prior years, the payment of Net Non-NFL revenue was transferred without the need for invoicing by the Stadium Authority. The FY 2016/17 Net Non-NFL revenue of \$5.3 million was received by the Stadium Authority on June 29, 2017; FY 2017/18 Net Non-NFL revenue of \$5.2 million was received on June 29, 2018. The Stadium Authority generated an invoice for FY 2018/19 Net Non-NFL income because the transfer had not been made like years past.

• Stadium Manager: Your claim that we are holding payments to the City "hostage" is disingenuous. We have accrued the City invoices in the 2019 NNE accounting, and will make payment as soon as the SCSA funds the net loss. We explained this to you in writing more than a month ago. As we previously indicated, the SCSA has more than enough cash to pay the \$2.7M, and that funding will be deposited in your bank account Monday 6.15.2020. If the SCSA decides to hold up that transfer, it is you holding the City payments "hostage".

**Stadium Authority Response:** In the June 10, 2020 and the June 19, 2020 letters, the Stadium Authority made it clear that regardless of the amount of cash on hand, the accounting records would need to be reviewed prior to the payment of \$2.7 million. In addition, a budget amendment would need to be brought to the Board for appropriation authority. Last, refusal to pay the City for expenditures already incurred results in a Measure J violation, as it is against the local law for the General Fund to incur expenditures for Stadium Authority expenses.

# **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 Stadium Authority to prepare this report other than administrative staff time and expense.

### **COORDINATION**

This report has been coordinated with the Treasurer and the Stadium Authority Counsel.

# **PUBLIC CONTACT**

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

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

### RECOMMENDATION

Note and file the Informational Report on FY2019/20 Net Loss on Non-NFL Events.

Prepared by: Kenn Lee, Treasurer

Approved by: Deanna J. Santana, Executive Director

# **ATTACHMENTS**

- 1. June 8, 2020 Email from Esther Chi
- 2. FY2019/20 Non-NFL Events Profit and Loss Statement
- 3. Invoice for FY2019/20 Net Non-NFL Loss
- 4. June 10, 2020 Letter to Esther Chi
- 5. June 15, 2020 Letter from Larry MacNeil
- 6. June 19, 2020 Letter to Larry MacNeil

From: Chi, Esther
To: Rachel Copes

 Subject:
 Non-NFL Events P&L FY"19

 Date:
 Monday, June 8, 2020 3:10:48 PM

 Attachments:
 Non-NFL Events P&L FY"19.pdf

SS Letter to Kenn Lee on WC 2020 05 15.pdf

Hi Rachel,

Thanks for sending over the final PSC bills for the year ended 3/31/2020 on Thursday. That was the last piece we were waiting for to complete the calculation of Net Income from Non-NFL Events for last year.

That calculation is attached and the result is a net loss of \$2,741,014.

In accordance with the Amended and Restated Deposit and Disbursement Agreement, we have revised the Stadium Operations Budget provided to the Collateral Trustee to reflect this amount. The Collateral Trustee will be transferring \$2,741,014 to the Authority Ground Lease Rent and O&M Account on 6/15/2020, which will be used to fund the net loss.

As noted in Scott's letter to Mr. Lee dated 5.15.2020 (attached), after the SCSA transfers the \$2,741,014 to the Stadium Manager we will remit the outstanding PSC invoices to the City of Santa Clara, including the Non-NFL Event portion of the prior years' workers' compensation claims. The amount payable to the City is just over \$1.1 million, so we would like to get these transfers completed as quickly as possible.

Accordingly, please transfer SCSA funds to the Stadium Manager in the amount of \$2,741,014 by submitting the Authority Withdrawal Certificate to Bank of America and the Collateral Trustee by Friday, June 12, 2020.

Thanks for your assistance, and let us know if you wish to discuss.

Regards, Esther

#### **ESTHER CHI**

Vice President, Controller

San Francisco 49ers
T 408.562.4912 | M 415.218.2436
SAP Performance Facility
4949 Marie P. DeBartolo Way
Santa Clara, CA 95054

#StayHomeStayStrong

49ers.com/IGYB

# SANTA CLARA STADIUM AUTHORITY NON-NFL EVENTS FY 2019

	7	icketed Events	Catered Events	Total
Attendance		155,255	33,535	188,790
Non-NFL Event Revenue				
Ticketed Event Revenue (includes Promoter/Artist revenue)	\$	22,496,891		\$ 22,496,891
Non-Ticketed Event Revenue (includes F&B revenue)		Ç	6,816,403	6,816,403
Total Non-NFL Event Revenue		22,496,891	6,816,403	29,313,294
Non-NFL Event Expense				
Promoter/Artist Payments		18,553,717	-	18,553,717
Public Safety Costs/Security		2,625,412	156,128	2,781,540
Event Staff		1,468,066	482,525	1,950,591
F&B Cost		356,508	4,051,256	4,407,764
Parking Costs		1,040,483	12,839	1,053,322
Other Event Expenses		1,458,169	621,325	2,079,494
Total Non-NFL Event Expense		25,502,355	5,324,073	30,826,428
Subtotal		(3,005,464)	1,492,330	(1,513,134)
Other Operating Income (Expense)				
Catered Events Department Labor Costs				(512,554)
Staff Costs - Not Event Specific				(306,256)
Operating Expenses				(110,156)
City of Santa Clara Workers' Comp Claims				(277,346)
Interest Income				70,350
Depreciation Expense				(91,918)
Total Other Operating Income (Expense)				(1,227,880)
Net Income from Non-NFL Events				(2,741,014)
Non-NFL Event Ticket Surcharge Collected				735,496
Combined Net Income and Ticket Surcharge				\$ (2,005,518)

# **EXHIBIT A**



# Invoice - Net Loss from FY19 Non-NFL Events

Monday, June 8, 2020

Invoice Number: SLS-060820-A

Bank of America, N.A. 11 West 33rd St. New York, NY 10001 Attn: Norma Birts

ITEM Total

FY19 Non-NFL Events Net Loss

\$2,741,014.00

TOTAL \$2,741,014.00

Payment is due upon receipt

Wire Transfer Instructions: Bank Name: U.S. Bank, N.A.

Bank Routing Number: 121122676

Account Name: Forty Niners Stadium Management Company LLC, Authority General Account

Account Number: 1 534 9703 5714



June 10, 2020

Ms. Esther Chi, Vice President, Controller Forty Niners Stadium Management Company 4900 Marie P. DeBartolo Way Santa Clara, CA 95054

SUBJECT: FY 2019/20 Net Non-NFL Loss

Dear Ms. Chi:

This letter responds to your June 8, 2020 email requesting payment for the FY2019/20 Net Non-NFL Loss totaling \$2,741,014.

The one-page demand provided virtually no explanation of how performance reported in February 2020 of "TBD" went to a \$2.7 million loss in a matter of a few months. Consequently, we are quite skeptical of the validity of Stadium Manager's new numbers. At a minimum, you will need to explain the urgency of your need for this disbursement; allowing a total of four days to review a disbursement close to \$3 million is unreasonable.

For reference, the FY2018/19 Net Non-NFL income was not transferred to the SCSA until February 2020. In addition, SCSA must review the accounting records related to the calculation of the Net Non-NFL loss prior to any disbursement of such magnitude. No payment will be made prior to any such review. The City Auditor, Linh Lam, has reached out to you on June 9, 2020, to schedule the review.

In addition, the payment of any Net Non-NFL Event Loss is required to be approved by the Stadium Authority Board, as the appropriations to make these payments were not included in the FY 19/20 budget.

You have to date not made payment to the City of Santa Clara for outstanding Public Safety Costs, holding those payments hostage until the Stadium Authority pays you for the suddenly revealed net loss that has arisen from your own gross mismanagement. As you are aware, Measure J does not allow City funds to cover any costs related to Stadium operations and your prompt payment is requested. A list of outstanding invoices related to Non-NFL events is attached.

MS. ESTHER CHI, VICE PRESIDENT, CONTROLLER

Re: FY2019/20 Net Non-NFL Loss

June 10, 2020 Page 2 of 2

If payment is still refused while the Net Non-NFL year-end review is taking place, the Stadium Authority may consider directly transferring funds to the City's General Fund for the outstanding invoices in order to remain in compliance with Measure J. The Stadium Authority would only pay any additional amounts that have been verified after the year-end review is complete, and the Board has authorized the appropriation.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,

Kenn Lee Treasurer

Attachment: Non-NFL Events Outstanding Invoices

CC: Deanna J. Santana, Executive Director

Brian Doyle, Counsel

Mr. Jim Mercurio, Stadium Manager





# **NON-NFL EVENTS OUTSTANDING INVOICES**

Invoice Number	Amount	Date	Invoice Description
89467	277,346.28	1/15/2020	Worker's Compensation Claims: Non-NFL Events thru 11/30/19
89685	137,810.54	2/7/2020	Benfica vs Chivas and Rolling Stones Concert
89899	5,633.55	3/3/2020	Parking Fees - Redbox Bowl Dec. 30, 2019
89909	10,565.10	3/3/2020	Parking Fees - PAC-12 Championship Dec 6, 2019
89886A	296,506.66	3/6/2020	PAC-12 Championship Dec 6, 2019
89887A	26,921.18	3/6/2020	Private Events (Holiday Parties) Dec 2019
90056	196,846.97	3/13/2020	Redbox Bowl Dec. 30, 2019
88166CR	(2,241.75)	3/27/2020	2018/19 Year-End Alloc. Fuel Cost Credit: Non-NFL
90143	6,211.83	4/1/2020	Redbox Bowl Add'l Costs Dec. 30, 2019
90269	10,907.75	5/15/2020	Non-NFL: Private Events (Jan & Feb 2020)
90345	2,651.53	5/21/2020	Non-NFL: Various Events Mar-Dec 2019
90362	3,281.59	6/4/2020	Non-NFL: Add'l Costs Various Events Dec 2019-Feb 2020
90372	145,766.82	6/4/2020	Non-NFL: 2019/20 YE General PS Costs Allocation & True-up
	1,118,208.05	TOTAL	



#### FORTY NINERS STADIUM MANAGEMENT COMPANY

June 15, 2020

### VIA EMAIL- Klee@SantaClaraCA.gov

Kenn Lee Treasurer Santa Clara Stadium Authority 1500 Warburton Avenue Santa Clara, CA 95050

Mr. Lee:

This is in response to your letter dated 6.10.2020 to Ms. Chi regarding the SCSA funding of the net loss for Non-NFL Events (NNE).

Your letter follows a familiar pattern of misstating the record, failing to correctly apply the stadium contracts, and making baseless claims to deflect attention from the SCSA's own actions. Let me correct the record:

- The net loss from NNE for 2019 should come as no surprise to you or the Board. The Stadium Manager advised you years ago that the Mayor's PR/political strategy would result in fewer events, and those events would be less profitable. The Mayor's music ban, the bureaucratic red tape devised by the SCSA and the City to scare off event promoters, and the alarming increase in the cost of City employees being charged to stadium events will continue to adversely impact event profitability.
- The profitability of NNE for 2019 was also impacted by the City's charges for prior years' workers' comp claims. You will recall that the City recently invoiced stadium events more than \$1M for workers compensation claims for City employees, including more than \$250,000 for a Santa Clara police officer who was charged with felony workers' comp fraud by the Santa Clara County District Attorney in February 2020, which you failed to disclose.
- Your assertion that the amount of the loss increased from TBD to \$2.7M "... in a matter of a few months" is intentionally misleading, suggesting that the Stadium Manager concealed the loss, or that you were somehow unaware of the loss. But that's demonstrably false. We informed you in writing on 3.11.2020 that we were projecting a loss through 3.31.2020 in the range of \$1.7M to \$2.0M. You included that estimate in your report to your board on 3.24.2020, and City Manager Santana's letter to the Board that same day stated "Net Non-NFL Events revenue loss of \$2.0 million for the current year..." Obviously the estimate we provided in early March was before the impacts of the COVID pandemic were apparent, and before the year-end accounting was complete.
- Furthermore, the SCSA has consistently ignored the guidance we have provided with respect to NNE profits. For example, the budget that <u>you</u> recommended to the Board for 2019 NNE profit was \$5.8M, which was a number plucked from a 30-year projection

prepared by the City seven years ago. We have previously advised you that this irresponsible budgeting was significantly overstating the expected Stadium Authority revenues.

- Any delay in reviewing the accounting records for NNE is a result of the SCSA's unilateral decision in 2018 to suspend the previous process we had followed for years with prior City staff to audit event transactions throughout the year. You decided to resume that process only recently, and Stadium Manager's accounting staff met with City staff on 2.28.2020. In that meeting City Staff reviewed revenues and expenses for the single event they requested the 2019 Rolling Stones show. In prior years, the City accountants reviewed records for each NNE shortly after the event occurred. Although we never received any explanation for the decision to suspend this procedure, it appears this was part of a strategy to bolster the false narrative that the 49ers were withholding financial records.
- We will of course be delighted to accommodate your City Auditor's review of NNE
  records for 2019. In compliance with Santa Clara County guidelines and NFL rules, we
  currently have limited access to the facility. As soon as we move from business
  continuity operations to permitting all staff into the building, we will reach out to
  arrange a date and time.
- Your reference to the 2018/19 NNE net income transfer in February 2020 suggests that there was some delay in payment on the part of the Stadium Manager. That is false. You sent an invoice for that amount in January 2020, and we paid the invoice in February 2020.
- Your claim that we are holding payments to the City "hostage" is disingenuous. We have accrued the City invoices in the 2019 NNE accounting, and will make payment as soon as the SCSA funds the net loss. We explained this to you in writing more than a month ago. As we have previously indicated, the SCSA has more than enough cash to pay the \$2.7M, and that funding will be deposited in your bank account on Monday 6.15.20. If the SCSA decides to hold up that transfer, it is you holding the City payments "hostage."

If the SCSA decides that it is unable to fund the \$2.7M this week, even though it has ample funds to do so, we will consider our next steps.

Sincerely,

V.L. on behalf of

Larry MacNeil San Francisco 49ers



June 19, 2020

Mr. Larry MacNeil, Compliance Manager Forty Niners Stadium Management Company 4900 Marie P. DeBartolo Way Santa Clara, CA 95054

SUBJECT:

FY 2019/20 Net Non-NFL Loss

Dear Mr. MacNeil:

We are in receipt of your June 15, 2020 letter regarding the FY2019/20 Net Non-NFL Loss totaling \$2,741,014.

Overall, we disagree with your claims and the way you characterize the issue at hand. This letter will not address each of your bulleted items; instead, your claims will be addressed in an informational report to the Board.

Our position that SCSA must review the accounting records related to the FY 2019/20 Net Non-NFL loss prior to any disbursement has not changed. The fact that SCSA may have sufficient cash on hand to make such disbursement is irrelevant to the need to provide the public with transparency regarding the validity of your claimed losses and does not change the fact that the Stadium Authority Board must approve the payments, nor does it change the fact that the appropriation to make this payment was not included in the FY 2019/20 budget. SCSA will only bring any budget action to the Board once the year-end Non-NFL Event review has taken place and staff has determined that the expenditures creating the loss were validly incurred.

As a reminder, Measure J prohibits the City's General Fund from paying any costs associated with the Stadium. Your prompt payment of outstanding invoices is requested.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely

Kenn Lee

Treasurer

CC: Deanna J. Santana, Executive Director

Brian Doyle, Counsel

Mr. Jim Mercurio, Stadium Manager



# City of Santa Clara

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

# Agenda Report

20-676 Agenda Date: 7/14/2020

# REPORT TO STADIUM AUTHORITY BOARD

# **SUBJECT**

Authorization to Award a Purchase Order for Stadium Builder Licenses Digitization Services [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

# **BACKGROUND**

The Stadium Lease Agreement between the Stadium Authority and Forty Niners SC Stadium Company LLC (StadCo) provides that the Stadium Authority has the sole and exclusive right to sell, license, or transfer Stadium Builder Licenses (SBLs) and similar instruments for the seats located in Levi's Stadium, with the exception of those seats located in, or accessible through, the Suites. Specifically, the relevant Agreement provision reads:

#### STADIUM LEASE AGREEMENT 4.6.1 STADIUM BUILDER'S LICENSES.

As owner of the Stadium, the Stadium Authority possesses the sole and exclusive right to sell, license, or otherwise transfer SBLs and similar instruments and rights with respect to any and all of the manifested seats located in the Stadium (i.e., seats available and intended for sale to the general public), but excluding seats located in, or accessible through, the Suites. Prior to the Effective Date of this Lease, the Stadium Authority commenced marketing of SBLs and has entered into various SBL Agreements. The Stadium Authority specifically reserves the right to enter into SBL Agreements over the Term of this Lease with respect to any and all seats located in the Stadium, including the right to resell any SBLs that are terminated in accordance with the provisions of the SBL Agreement. Tenant agrees that, in the marketing and sale of Tickets to NFL Games and, following the Tenant Season Expansion Date, Non-NFL Events, Tenant will offer such Tickets to the SBL Holders, as and to the extent provided in the SBL Agreement...

The monitoring, marketing and sales of the SBLs are managed by the Forty Niners Stadium Management Company LLC (Stadium Manager) as required by the Management Agreement between the Stadium Authority and Stadium Manager. Specifically, the relevant Agreement section reads:

#### **STADIUM MANAGEMENT AGREEMENT 2.6.18**

On behalf of the Stadium Authority and not on behalf of StadCo, *make recommendations to the Stadium* Authority with respect to facilitation of a secondary market for SBLs, monitor and manage any agreements entered into by the Stadium Authority with respect thereto, and coordinate with Legends to transition responsibility from Legends to the Stadium Manager for managing both sold and unsold SBLs upon termination of the SBL Sales Agreement.

There are concerns that the Stadium Manager has not been properly managing the SBLs as calculation errors and duplicative SBLs have surfaced in recent months, which may potentially impact the Stadium Authority's revenue. On July 2, 2020, the Stadium Authority sent a letter to the Stadium Manager regarding SBLs with calculation errors and requested the Stadium Manager provide quality control procedures to prevent these types of reoccurring errors (Attachment 1). The Stadium Authority had already previously notified the Stadium Manager of other erroneous SBLs on February 19 and May 11, 2020. In the July 2, 2020 letter, the Stadium Authority also notified the Stadium

Manager to refrain from submitting any new SBLs for signature until their quality control procedures have been reviewed and approved. It is important to note that the Stadium Authority pays the Stadium Manager \$202,000 per month in Fiscal Year 2020/21 for SBL administration and it is reasonable to expect a higher level of performance.

As referenced, the Stadium Authority has made several requests to the Stadium Manager over the course of several months to access copies of the executed SBLs and corresponding tracking documents. In March 2020, the Stadium Manager responded to the requests by stating that there are over 24,000 individual agreements, roughly seventeen pages each, resulting in over 400,000 pages of records that require copying or digitization at the expense of the Stadium Authority. The response did not include any information about the Stadium Manager's SBL record keeping.

In June 2020, the Stadium Manager's counsel agreed to deliver the physical records. The Stadium Authority was also informed that the Stadium Manager may occasionally need to request a file from the Stadium Authority to refer to information. As such, the SBLs require digitization and archiving in a document management/repository system to allow for functional record searches.

On September 17, 2019, the Stadium Authority Board (Board) approved the introduction of Ordinance No. 2005, which would rescind the Executive Director's delegated purchasing authority by amending Chapter 17.30 of the City of Santa Clara City Code. This action would in turn also impact the Stadium Manager's authority to purchase on behalf of the Stadium Authority. On October 8, 2019, the Board adopted Ordinance No. 2005, which became effective on November 8, 2019. As of November 8, 2019, all Stadium Authority contracts and agreements for services, supplies, materials, and equipment require approval of the Stadium Authority Board.

The Executive Director is requesting authorization to award a Purchase Order for the above described digitization services for the SBLs once a Request for Quotation (RFQ) process is completed.

# **DISCUSSION**

On June 29, the Stadium Authority issued a RFQ for the purpose of obtaining budgetary estimates to digitize approximately 20,000 SBLs totaling approximately 400,000 pages. Four vendors responded to the RFQ, with price estimates ranging from \$42,900 to \$60,900. In order to provide accurate firm fixed pricing, vendors have asked to physically inspect the files to determine the record count and quality of the files. At the time of writing this report, the files had not been delivered to the Stadium Authority. The cost estimates may change after vendors' inspection of the physical SBLs.

Once the Stadium Authority receives the files enabling Stadium Authority staff to prepare a complete specification, a new RFQ will be issued pursuant to the City's purchasing rules. Staff will follow the City Code for consistency and to ensure that best practices in public sector procurement are being followed. The basis of award will be price determinative (awarded to the lowest bidder), or best value, with cost weighted at not less than 50%. Additional criteria that may be considered in addition to cost are ability to meet timelines, client references, and quality of past work for the City. It is anticipated that this process will take place from July 15 through August 13, 2020 during the Board recess.

#### **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 are existing appropriations totaling \$100,000 in the Stadium Authority FY 2020/21 Adopted Budget under the Operating Budget to cover the costs of Executive Director and Board directives.

# COORDINATION

This report has been coordinated with the Treasurer, Stadium Authority Counsel, and the City's 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 <a href="mailto:clerk@santaclaraca.gov">clerk@santaclaraca.gov</a>.

# **ALTERNATIVES**

- 1. Authorize the Executive Director to award a Purchase Order pursuant to the appropriate Purchasing Sections under 2.105 of the Santa Clara City Code.
- 2. Do not authorize the Executive Director to award a Purchase Order pursuant to the appropriate Purchasing Sections under 2.105 of the Santa Clara City Code.
- 3. Note and file the July 2, 2020 letter to the Stadium Manager regarding SBLs with Calculation Errors and the Stadium Authority's request for their plan to address errors.
- 4. Do not note and file the July 2, 2020 letter to the Stadium Manager regarding SBLs with Calculation Errors and the Stadium Authority's request for their plan to address errors.

### RECOMMENDATION

Alternatives 1 and 3.

- 1. Authorize the Executive Director to award a Purchase Order pursuant to the appropriate Purchasing Sections under 2.105 of the Santa Clara City Code; and
- 3. Note and file the July 2, 2020 letter to the Stadium Manager regarding SBLs with Calculation Errors and the Stadium Authority's request for their plan to address errors.

Prepared by: Christine Jung, Assistant to the City Manager (Executive Director)

Approved by: Deanna J. Santana, Executive Director

#### **ATTACHMENTS**

1. July 2, 2020 Letter to Stadium Manager Regarding SBLs with Calculation Errors



July 2, 2020

Mr. Jim Mercurio, Executive Vice President & General Manager Forty Niners Stadium Management Company, LLC (Stadium Manager) 4900 Marie P. DeBartolo Way Santa Clara, California 95054

# SUBJECT: Delivery of Stadium Builder Licenses (SBLs) to Stadium Authority Office and SBLs with Calculation Errors

Dear Mr. Mercurio:

The purpose of this letter is to confirm that the Stadium Manager can start transferring the SBL agreements to the Stadium Authority's Administrative Office at Levi's Stadium. Please notify us when all the SBLs have been delivered. If the Stadium Manager is in need of a copy of an SBL, staff will work to make the SBL available. However, this will require your advanced planning and noticing the Stadium Authority with sufficient time to complete the request.

I also want to raise continued concerns regarding mistakes in the Stadium Manager's administration of the SBL agreements. As I was signing SBLs this month, I discovered at least ten separate SBL agreements that contained calculation errors. The unsigned copies are attached to this letter for your reference and their errors are summarized below:

- SBL dated June 2, 2020 with pricing for these Section 125, Row 10, Seats 18-19: There is a numerical error in the SBL pricing for these Section 125 seats. The SBLs in this section are priced at \$6,000 per seat, not \$60,000. This appears to be a typographical error, resulting in 10x money owed.
   SBL dated June 2, 2020 with provides an incorrect payment schedule of three payments of \$1,348.50. This appears to be an overcharge of \$1,444.12, please clarify.
- 3. SBL dated June 10, 2020 with section 107, Row 32, Seats 5-6: SBL Holder owes \$3,783.04 but SBL provides an incorrect payment schedule of three payments of \$1,348.50. This appears to be an **overcharge of \$262.46**, please clarify.
- 4. SBL dated June 10, 2020 with section 127, Row 24, Seats 14-15: SBL Holder owes \$3,745.42 but SBL provides an incorrect payment schedule of three payments of \$1,348.50. This appears to be an **overcharge of \$300.08**, please clarify.
- 5. SBL dated June 15, 2020 with SBL provides an incorrect payment schedule of three payments of \$1,085 but SBL provides an incorrect payment schedule of three payments of \$1,348.50. This appears to be an **overcharge of \$2,960.50**, please clarify.
- 6. SBL dated June 10, 2020 with section 209, Row 18, Seats 18-19: SBL Holder owes \$3,372.70 but SBL provides an incorrect payment schedule of three payments of \$1,123.74. This appears to be an **undercharge of \$1.48**, please clarify.

To: MR. JIM MERCURIO, EXECUTIVE VICE PRESIDENT & GENERAL MANAGER
Re: Delivery of Stadium Builder Licenses (SBLs) to Stadium Authority Office and SBLs with Calculation Errors

July 2, 2020 Page 2 of 2

7.	SBL dated June 12, 2020 with Section 205, Row 12, Seats 9-11: SBL Holder
	owes \$5,688.81 but SBL provides an incorrect payment schedule of three payments of
	\$1,869.33. This appears to be an undercharge of \$80.82, please clarify.

- 8. SBL dated June 2, 2020 with section 130, Row 14, Seats 20-21: SBL Holder owes \$2,526.18 but SBL provides an incorrect payment schedule of three payments of \$1,179.94. This appears to be an **overcharge of \$1,013.64**, please clarify.
- 9. SBL dated June 4, 2020 with provides an incorrect payment schedule of three payments of \$1,179.94. This appears to be an **overcharge of \$492.90**, please clarify.
- 10. SBL dated June 9, 2020 with \_\_\_\_\_\_, Section 132, Row 30, Seats 3-4: SBL Holder owes \$2,526.18 but SBL provides an incorrect payment schedule of three payments of \$1,179.94. This appears to be an **overcharge of \$1,013.64**, please clarify.

The Stadium Authority has previously brought to your attention on several occasions the Stadium Manager's errors with SBLs, as documented by the Stadium Authority on February 19, 2020 and May 11, 2020. These repeated errors demonstrate a lack of due diligence on the part of the Stadium Manager who is responsible, per Section 2.6.18 of the Management Agreement, for managing any sold and unsold SBLs agreements entered into by the Stadium Authority. They also call into question whether other SBL Holders may have paid incorrect payment amounts, potentially impacting the Stadium Authority's revenue. In all, this demonstrates poor management by the Stadium Manager in administering SBLs with no apparent quality controls for basic math calculations.

Please correct the abovementioned SBLs and send them back via Docusign for execution. Please provide me with your quality control procedures to prevent these types of recurrent errors prior to our next meeting. Please do not submit any new SBLs for signature until we have reviewed and approved your quality control measures. As you well know, the Stadium Authority has minimum staffing levels and it is a waste of our time to check the Stadium Manager's math calculations. Additionally, the Stadium Manager is fully responsible for successfully completing these simple tasks. Thank you for your urgent response in advance and if further clarification is needed on our end then your expedited response is appreciated.

Sincerely,

Deanna J. Santana Executive Director

Deama Santoma

CC: Brian Doyle, Stadium Authority Counsel

Attachments: SBLs with Calculation Errors, February 19, 2020 Letter, and May 11, 2020 Email



#### STADIUM BUILDERS LICENSE AGREEMENT

Agr	reement Date	6/2/2020 e:		
Licensee (Company/Individual):				
Phone Nos. (Day)		(Evening):		
Contact Person:	<del></del>	Fax No.		
Address:	<b>_</b> _	E-Mail Address:		
		Account No.:		
\$	SECTION:	125	_	
		10		
	SEAT(S): _	18-19	_	

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 5/31/2017 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

#### LICENSEE:

# 

#### **STADIUM MANAGER**:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

	DocuSigned by:	
By: _		
Name:	Brosse Careb	
Title:	Chief Revenue Officer	
Date:	6/2/2020	

#### **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

By:
Name: Deanna Santana
Title: Executive Director
D-4

You will receive a countersigned copy of this License Agreement for your records.

#### EXHIBIT A

#### STADIUM DIAGRAM



## Santa Clara Stadium - Section Map









#### **EXHIBIT B**

#### **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

X	A.	Single Payment:
		(i) Total License Fee Amount: \$
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$
		(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stadium Manager, which, Stadium Manager acknowledges has been received.
	immedi	e hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the ate payment of the License Fee amount set forth above, and that Licensee has instead agreed to purchase L(s) through installment payments made over time, without the payment of finance charges.
	such pa	e promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make yment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without
	В.	Long-Term SBL Payment Schedule:
		(i) Total License Fee Amount: \$
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$
		(iii) Concurrently with Licensee's execution of this License Agreement, a principal "catch-up" payment of: \$ submitted to Stadium Manager, which Stadium Manager acknowledges has been received.
		(iv) The principal balance of \$ (the "Amount Financed") to be financed and paid as provided herein below and which shall be subject to finance charges
	Please	see below for illustrative consumer disclosures regarding the terms of your payment

obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority	LICENSEE:
1500 Warburton Ave. Santa Clara, CA 95050	Address:
Date that the Amount Financed shall commence being subject to finan	nce charges: March 1,

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$0.00)
8.5	\$	<u>\$0.</u> 00	\$0.00	\$0.00

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due		
	\$	March 1, and March 1 of each following year		
	Pro	cess		

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE AMOUNT FINANCED						
Itemized Charges:						
1. Total Cash Price		\$	0.00			
2. Cash Down Payment	(-)	\$	0.00			
3. Unpaid Balance of Cash Price (Amount Financed)	(=)	\$	0.00			
4. Finance Charge	(+)	\$	0.00			
5. Total of Payments	(=)	\$	0.00			

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

 Li	Date	
	6/2/2020	

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

#### 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

#### 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

#### 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

#### 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- (g) If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events:
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:

Ву:	
Name:	
Email Address:	

#### **EXHIBIT D**

#### AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process



6/2/2020

Date

#### STADIUM BUILDERS LICENSE AGREEMENT

	Agreement Date	6/2/2020 e:	
Licensee (Company/Individual):			
Phone Nos. (Day)		(Evening):	
Contact Person:	<u> </u>	Fax No.	
Address:		E-Mail Address:	
		Account No.:	
	SECTION:	121	
	ROW:	33	_
	SEAT(S):	1-2	

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 6/2/2016 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

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#### **STADIUM MANAGER**:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

	DocuSigned by:	
By:		
By: _ Name:	Brentoeschoeb	
Title:	Chief Revenue Officer	
Date:	6/4/2020	

#### **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

y:
ame: <u>Deanna Santana</u>
tle: Executive Director
240.

You will receive a countersigned copy of this License Agreement for your records.

#### EXHIBIT A

#### STADIUM DIAGRAM



## Santa Clara Stadium - Section Map









#### **EXHIBIT B**

#### **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

	A.	Single Payment:
		(i) Total License Fee Amount: \$
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$
		(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stadiur Manager, which, Stadium Manager acknowledges has been received.
	immedia	e hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the payment of the License Fee amount set forth above, and that Licensee has instead agreed to purchas (s) through installment payments made over time, without the payment of finance charges.
	such pay	e promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make yment at the address provided by the Applicable Payee. Licensee shall make such payment on or befor and in the amount shown in the above Payment Schedule. Licensee may make payment early, without
x	В.	Long-Term SBL Payment Schedule:
		(i) Total License Fee Amount: \$
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$
		(iii) Concurrently with Licensee's execution of this License Agreement, a principal "catch-up payment of: \$_0 submitted to Stadium Manager, which Stadium Manager acknowledge has been received.
		(iv) The principal balance of \$ (the "Amount Financed") to be financed an paid as provided herein below and which shall be subject to finance charges

Please see below for illustrative consumer disclosures regarding the terms of your payment obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021...

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$\square 10,000.00 \)
8.5	<b>\$</b> 601.38	<u>\$_2,000.</u> 00	<u>\$_2,601.</u> 38	\$ <u>12,601.</u> 38

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due
3 ———	<b>\$</b> 1348.50	March 1, 2021 and March 1 of each following year
	Pro	cess

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

Itemized Charges:
1. Total Cash Price \$ 12,000.00
2. Cash Down Payment (-) \$ 10,000.00
3. Unpaid Balance of Cash Price (Amount Financed) (=) \$2,000.00
4. Finance Charge (+) \$601.38
5. Total of Payments (=) \$2,601.38

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

	6/4/2020	
	6/4/2020	
L	Date	

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

#### 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

#### 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

#### 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

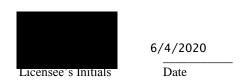
- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

#### 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



## AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

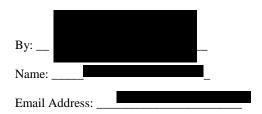
The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events;
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:



#### **EXHIBIT D**

#### AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process

\_\_\_\_\_Licensee's Initials

6/4/2020

Date

#### STADIUM BUILDERS LICENSE AGREEMENT

Agreement Dat	6/10/2020 e:
Licensee (Company/Individual):	
Phone Nos. (Day)	(Evening):
Contact Person:	Fax No
Address:	E-Mail Address:
	Account No.:
SECTION:	107
ROW: _	32
SEAT(S):	5-6

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 8/29/2012 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

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# By: \_\_\_\_\_Name: \_\_\_\_\_Title:

Date: 6/11/2020

#### **STADIUM MANAGER**:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

/	Docusigned by:	
By:		
By: Name:	Brontoeschoeb	
Title:	Chief Revenue Officer	
Date:	6/11/2020	_

#### **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

By:
Name: Deanna Santana
Title: Executive Director
D-4

You will receive a countersigned copy of this License Agreement for your records.

### EXHIBIT A

## STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









#### **EXHIBIT B**

#### **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

	(i) Total License Fee Amount: \$
	(ii) Principal paid by Licensee under Previous Seats Agreement: \$
	(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stac Manager, which, Stadium Manager acknowledges has been received.
immed	see hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for liate payment of the License Fee amount set forth above, and that Licensee has instead agreed to purch the License payments made over time, without the payment of finance charges.
the DD.	L(s) through instantient payments made over time, without the payment of finance charges.
License such pa	see promises to make the remaining payment to the order of the Applicable Payee. Licensee shall reayment at the address provided by the Applicable Payee. Licensee shall make such payment on or be te and in the amount shown in the above Payment Schedule. Licensee may make payment early, with
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Licenso such pa the dat penalty	the promises to make the remaining payment to the order of the Applicable Payee. Licensee shall may may make the address provided by the Applicable Payee. Licensee shall make such payment on or be teand in the amount shown in the above Payment Schedule. Licensee may make payment early, with your street of the Applicable Payee. Licensee shall make such payment on or be teand in the amount shown in the above Payment Schedule. Licensee may make payment early, with your street of the Applicable Payee. Licensee shall make such payment on or be teand in the amount shown in the above Payment Schedule. Licensee may make payment early, with your street of the Applicable Payee. Licensee shall make such payment on or be teand in the amount shown in the above Payment Schedule. Licensee may make payment early, with your street of the Applicable Payee. Licensee shall make such payment on or be teand in the amount shown in the above Payment Schedule. Licensee may make payment early, with your street of the Applicable Payee. Licensee shall make such payment on or be teand in the amount shown in the above Payment Schedule. Licensee may make payment early, with your street of the Applicable Payee. Licensee shall make such payment on or be teand in the amount shown in the above Payment Schedule.

obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021

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PE (TI	ANNUAL ERCENTAGE RATE he cost of your credit a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$ 8,761.38
	8.5	\$ <u>544.42</u>	<u>\$_3,238.</u> 62	<u>\$_3,783.</u> 04	\$ <u>12,544.</u> 42

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due	
3 ———	\$ 1348.50	March 1, 2021 and March 1 of each following year	
	Pro	cess	

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE AMOUNT FINANCED					
Itemized Charges:					
1. Total Cash Price		\$	12,000.00		
2. Cash Down Payment	(-)	\$	8,761.38		
3. Unpaid Balance of Cash Price (Amount Financed) (=)			3,238.62		
4. Finance Charge	(+)	\$	544.42		
5. Total of Payments	(=)	\$	3,783.04		

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

Lice	Date	
	6/11/2020	

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) **"Event/Game"** means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

#### 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

#### 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

#### 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

#### 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events:
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:



#### **EXHIBIT D**

#### AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process



#### STADIUM BUILDERS LICENSE AGREEMENT

Agreement Date:				
Licensee (Company/Individual): _				
Phone Nos. (Day)	<b>I</b>	(Evening):		
Contact Person:		Fax No.		
Address:		E-Mail Address: Account No.:		
	SECTION:	127		
	ROW:	24	_	
	SEAT(S):	14-15		

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 3/14/2013 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

# **STADIUM MANAGER**:

Name: Title: 6/14/2020 Date:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

By:		
Name: Title:	Breneosethoeb Chief Revenue Officer	
Date:	6/14/2020	

#### **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

By:
Name: <u>Deanna Santana</u>
Title: Executive Director
Date:

You will receive a countersigned copy of this License Agreement for your records.

### EXHIBIT A

## STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









#### **EXHIBIT B**

#### **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

	A.	Single P	Payment:
		(i)	Total License Fee Amount: \$
		(ii)	Principal paid by Licensee under Previous Seats Agreement: \$
		(iii) Manage	Remaining principal balance of License Fee Amount: \$ submitted to Stadium r, which, Stadium Manager acknowledges has been received.
	immedi	ate payme	acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the ent of the License Fee amount set forth above, and that Licensee has instead agreed to purchase the installment payments made over time, without the payment of finance charges.
	such pa	yment at t and in th	s to make the remaining payment to the order of the Applicable Payee. Licensee shall make the address provided by the Applicable Payee. Licensee shall make such payment on or before amount shown in the above Payment Schedule. Licensee may make payment early, without
X	В.	Long-Te	erm SBL Payment Schedule:
		(i)	Total License Fee Amount: \$
		(ii)	Principal paid by Licensee under Previous Seats Agreement: \$
			Concurrently with Licensee's execution of this License Agreement, a principal "catch-up" tof: \$_4555.96 submitted to Stadium Manager, which Stadium Manager acknowledges a received.
		(iv) paid as p	The principal balance of \$ (the "Amount Financed") to be financed and provided herein below and which shall be subject to finance charges
	Please	see below	v for illustrative consumer disclosures regarding the terms of your payment

obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021...

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$_8,555.96
8.5	§ 301.38	<b>\$</b> 3,444.04	<b>\$</b> 3,745.42	\$ 12,301.38

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due	
3 ———	<b>\$</b> 1348.50	March 1, 2021 and March 1 of each following year	
	Pro	cess	

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE A	MOUNT	FINA	ANCED
Itemized Charges:			
1. Total Cash Price		\$	12,000.00
2. Cash Down Payment	(-)	\$	8,555.96
3. Unpaid Balance of Cash Price (Amount Financed)	(=)	\$	3,444.04
4. Finance Charge	(+)	\$	301.38
5. Total of Payments	(=)	\$	3,745.42

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

	6/14/2020
Li	Date

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

#### 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

#### 9. STRIKES, DAMAGES, DESTRUCTION, ETC.

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

#### 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

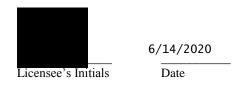
- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

#### 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- (g) If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

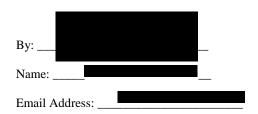
The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events;
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:



#### **EXHIBIT D**

#### AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process

Licensee's Initials

6/14/2020

Date

#### STADIUM BUILDERS LICENSE AGREEMENT

Agreemen	6/15/2020 nt Date:
Licensee (Company/Individual):	<u> </u>
Phone Nos. (Day)	(Evening):
Contact Person:	Fax No.
Address:	E-Mail Address:  Account No.:
SECTI	ION:
ROV	W:
SEAT	T(S):

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 9/13/2014 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

# STADIUM MANAGER:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

	LLC, a Delaware limited liability company
	By:
By: Name:	Name: Brosses choeb
Title:	Title: Chief Revenue Officer
Date: 6/15/2020	Date: 6/15/2020

#### **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

y:
ame: <u>Deanna Santana</u>
tle: Executive Director

You will receive a countersigned copy of this License Agreement for your records.

### EXHIBIT A

## STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









#### **EXHIBIT B**

#### **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

A.	Single Payment:
	(i) Total License Fee Amount: \$
	(ii) Principal paid by Licensee under Previous Seats Agreement: \$
	(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stadium Manager, which, Stadium Manager acknowledges has been received.
immed	ee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the iate payment of the License Fee amount set forth above, and that Licensee has instead agreed to purchase L(s) through installment payments made over time, without the payment of finance charges.
such pa	ee promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ayment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, withou
such pa the dat penalty	ee promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ayment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without.  Long-Term SBL Payment Schedule:
such pa the dat penalty	ee promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ayment at the address provided by the Applicable Payee. Licensee shall make such payment on or before e and in the amount shown in the above Payment Schedule. Licensee may make payment early, without y.
such pa the dat penalty	ee promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ayment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without the Long-Term SBL Payment Schedule:  (i) Total License Fee Amount: \$
such pa	ee promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ayment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without.  Long-Term SBL Payment Schedule:  (i) Total License Fee Amount: \$

obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021

...

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$_5,000.00_)
8.5	<u>\$85</u>	<u>\$_1,000.</u> 00	§_1,085.00	\$6,085.00

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due	
1	\$ 1348.50	March 1, 2021 and March 1 of each following year	
	Pro	cess	

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE AMOUNT FINANCED						
Itemized Charges:						
1. Total Cash Price		\$	6,000.00			
2. Cash Down Payment	(-)	\$	5,000.00			
3. Unpaid Balance of Cash Price (Amount Financed)	(=)	\$	1,000.00			
4. Finance Charge	(+)	\$	85.00			
5. Total of Payments	(=)	\$	1,085.00			

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

Li	Date	
	6/15/2020	

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

# 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

# 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

# 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

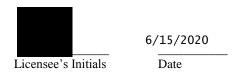
- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

# 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events;
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:



# **EXHIBIT D**

# AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process

Licensee's Initials

6/15/2020

Date

#### STADIUM BUILDERS LICENSE AGREEMENT

0/40/0000

Agreement Date	6/10/2020 e:
Licensee (Company/Individual):	
Phone Nos. (Day)	(Evening):
Contact Person:	Fax No.
Address:	E-Mail Address:
	Account No.:
SECTION:	209
ROW:	18
SEAT(S):	18-19

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Nierses Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 7/16/2012 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

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### STADIUM MANAGER:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

				<b>D</b> ,
By: _ Name:				
Title:				
Date:	6/10/2020			

	DocuSigned by:	
Ву: _		
Name:	BEE ESTE OF GLASSED	
Title:	Chief Revenue	Officer
Date:	6/10/2020	

# **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

By:	
Name: Deanna Santana	
Title: Executive Director	
Data	

You will receive a countersigned copy of this License Agreement for your records.

# EXHIBIT A

# STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









# **EXHIBIT B**

# **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

A.	Single Payment:
	(i) Total License Fee Amount: \$
	(ii) Principal paid by Licensee under Previous Seats Agreement: \$
	(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stadium Manager, which, Stadium Manager acknowledges has been received.
immedi	e hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the ate payment of the License Fee amount set forth above, and that Licensee has instead agreed to purchase L(s) through installment payments made over time, without the payment of finance charges.
such pa	e promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make yment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without
such pa	yment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without
such pa the date penalty	yment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without
such pa the date penalty	yment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without Long-Term SBL Payment Schedule:
such pa the date penalty	yment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without Long-Term SBL Payment Schedule:  (i) Total License Fee Amount: \$

obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021...

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$ 7,129.04
8.5	\$501.74	<u>\$</u> _2,870.96	§_3,372.70	\$

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due	
3 ———	<b>\$</b> 1123.74	March 1, 2021 and March 1 of each following year	
	Pro	cess	

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE AMOUNT FINANCED					
Itemized Charges:					
1. Total Cash Price		\$	10,000.00		
2. Cash Down Payment	(-)	\$	7,129.04		
3. Unpaid Balance of Cash Price (Amount Financed)	(=)	\$	2,870.96		
4. Finance Charge	(+)	\$	501.74		
5. Total of Payments	(=)	\$	3,372.70		

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

6/10/2020	
 Date	

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

# 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

# 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

# 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

# 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

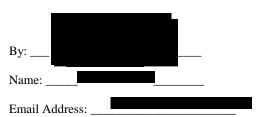
The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events;
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:



# **EXHIBIT D**

# AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.





6/10/2020

Date

#### STADIUM BUILDERS LICENSE AGREEMENT

Agreement Date:					
Licensee (Company/Individual):					
Phone Nos. (Day)		(Evening):			
Contact Person:		Fax No.			
Address:		E-Mail Address:			
		Account No.:			
	SECTION:	205			
	ROW:	12	<u> </u>		
	SEAT(S):	9-11			

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 10/17/2013 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

LICENSE	Ċ
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Date:



#### **STADIUM MANAGER**:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

	DocuSigned by:	
By: _		
By: _ Name	Brossesessonseb	
Title:	Chief Revenue	Officer
Date:	6/15/2020	

# **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

By:
Name: Deanna Santana
Title: Executive Director
D-4

You will receive a countersigned copy of this License Agreement for your records.

# EXHIBIT A

# STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









# **EXHIBIT B**

# **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

_ A.	Single 1	Payment:
	(i)	Total License Fee Amount: \$
	(ii)	Principal paid by Licensee under Previous Seats Agreement: \$
	(iii) Manage	Remaining principal balance of License Fee Amount: \$ submitted to Stadium er, which, Stadium Manager acknowledges has been received.
immed	diate paym	acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the ent of the License Fee amount set forth above, and that Licensee has instead agreed to purchase gh installment payments made over time, without the payment of finance charges.
such p	payment at te and in the	es to make the remaining payment to the order of the Applicable Payee. Licensee shall make the address provided by the Applicable Payee. Licensee shall make such payment on or before ne amount shown in the above Payment Schedule. Licensee may make payment early, without
R	Long-T	erm SRI. Payment Schedule
_ В.		erm SBL Payment Schedule:  Total License Fee Amount: \$ 15000
_ В.	<u>Long-T</u> (i) (ii)	erm SBL Payment Schedule:  Total License Fee Amount: \$
_ В.	(i) (ii) (iii) paymen	Total License Fee Amount: \$

Please see below for illustrative consumer disclosures regarding the terms of your payment obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021.

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$\square 10,156.89\)
8.5	<b>\$</b> 845.70	§ 4,843.11	§ 5,688.81	\$ 15,845.70

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due	
3 ———	\$ 1869.33	March 1, 2021 and March 1 of each following year	
	Pro	cess	

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE AMOUNT FINANCED					
Itemized Charges:					
1. Total Cash Price		\$	15,000.00		
2. Cash Down Payment	(-)	\$	10,156.89		
3. Unpaid Balance of Cash Price (Amount Financed)	(=)	\$	4,843.11		
4. Finance Charge	(+)	\$	845.70		
5. Total of Payments	(=)	\$	5,688.81		

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

	6/15/2020
Lic	 Date

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

### 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) <u>Transfers</u>. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "**Transfer**") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

## 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

### 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

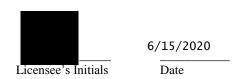
- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

### 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- (g) If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events;
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:

By:	
Name:	
Email Address:	

## **EXHIBIT D**

### AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process

Licensee's Initials

6/15/2020

Date

### STADIUM BUILDERS LICENSE AGREEMENT

Agreement De	ate:
Licensee (Company/Individual):	
Phone Nos. (Day)	(Evening):
Contact Person:	Fax No.
Address:	E-Mail Address:
	Account No.:
SECTION	[:
ROW:	14
SEAT(S):	20-21

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of <a href="9/5/2012">9/5/2012</a> ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in <u>Exhibit B</u> attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in <u>Exhibit B</u>.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

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#### STADIUM MANAGER:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

DocuSigned by:
By: Name: Brusneto:Schoeb
Title: Chief Revenue Officer
Date:6/9/2020

### **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

y:	
ame: <u>Deanna Santana</u>	
itle: Executive Director	
1-4	

You will receive a countersigned copy of this License Agreement for your records.

## EXHIBIT A

## STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









### **EXHIBIT B**

## **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

	A.	Single Payment:					
		(i) Total License Fee Amount: \$					
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$					
		(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stadium Manager, which, Stadium Manager acknowledges has been received.					
	immedi	hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the payment of the License Fee amount set forth above, and that Licensee has instead agreed to purchase (s) through installment payments made over time, without the payment of finance charges.					
	such pa	promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without the amount shown in the above Payment Schedule.					
x	В.	Long-Term SBL Payment Schedule:					
	Δ.	(i) Total License Fee Amount: \$					
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$					
		(iii) Concurrently with Licensee's execution of this License Agreement, a principal "catch-up payment of: \$_0 submitted to Stadium Manager, which Stadium Manager acknowledge has been received.					
		(iv) The principal balance of \$ (the "Amount Financed") to be financed are paid as provided herein below and which shall be subject to finance charges					

Please see below for illustrative consumer disclosures regarding the terms of your payment obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021

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ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$\frac{10,000.00}{}
8.5	\$526.18	<u>\$_2,000.</u> 00	\$_2,526.18	\$

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due	
3 ———	\$ 1179.94	March 1, 2021 and March 1 of each following year	
	Pro	cess	

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE AMOUNT FINANCED					
Itemized Charges:					
1. Total Cash Price		\$	12,000.00		
2. Cash Down Payment	(-)	\$	10,000.00		
3. Unpaid Balance of Cash Price (Amo	ount Financed) (=)	\$	2,000.00		
4. Finance Charge	(+)	<b>\$</b>	526.18		
5. Total of Payments	(=)	<b>\$</b>	2,526.18		

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

	6/9/2020
Li	 Date

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

### 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

## 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

#### 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

### 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

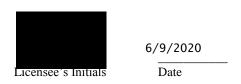
- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

### 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- (g) If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events:
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

#### Agreed to:

Ву:	_	
Name:		
Email Address:		

## **EXHIBIT D**

### AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process



Licensee's Initials

6/9/2020

Date

#### STADIUM BUILDERS LICENSE AGREEMENT

	Agreement Date	6/4/2020 e:	
Licensee (Company/Individual):		<u> </u>	
Phone Nos. (Day)		(Evening):	
Contact Person:		Fax No.	
Address:		E-Mail Address:	
		Account No.:	
	SECTION:	125	
	ROW:	29	_
	SEAT(S):	10-11	

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 6/29/2017 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

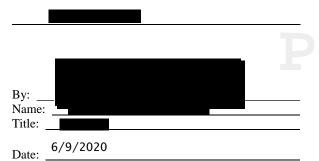
installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

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#### **STADIUM MANAGER:**

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

	DocuSigned by:
By:	
By: Name:	Brosses Choeb
Title:	Chief Revenue Officer
Date:	6/9/2020

### **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

By:
Name: Deanna Santana
Title: Executive Director
D-4

You will receive a countersigned copy of this License Agreement for your records.

## EXHIBIT A

## STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









### **EXHIBIT B**

## **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

A.	Single Payment:				
	(i) Total License Fee Amount: \$				
	(ii) Principal paid by Licensee under Previous Seats Agreement: \$				
	(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stadiu Manager, which, Stadium Manager acknowledges has been received.				
immedi	hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the payment of the License Fee amount set forth above, and that Licensee has instead agreed to purchase (s) through installment payments made over time, without the payment of finance charges.				
such pa	e promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ment at the address provided by the Applicable Payee. Licensee shall make such payment on or beforand in the amount shown in the above Payment Schedule. Licensee may make payment early, without the above Payment Schedule.				
such pa the date penalty	rment at the address provided by the Applicable Payee. Licensee shall make such payment on or befo				
such pa the date penalty	ment at the address provided by the Applicable Payee. Licensee shall make such payment on or befo and in the amount shown in the above Payment Schedule. Licensee may make payment early, witho				
such pa the date penalty	ment at the address provided by the Applicable Payee. Licensee shall make such payment on or befo and in the amount shown in the above Payment Schedule. Licensee may make payment early, witho   Long-Term SBL Payment Schedule:  (i) Total License Fee Amount: \$\frac{12000}{}{}\]				
such pa	Total License Fee Amount: \$				

obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority

1500 Warburton Ave. Santa Clara, CA 95050

Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021......

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$ 9,479.26
8.5	<b>\$</b> _526.18	<u>\$_2,520.74</u>	\$_3,046.92	\$

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due		
3 ———	\$ 1179.94	March 1, 2021 and March 1 of each following year		
	Pro	cess		

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

ITEMIZATION OF THE AMOUNT FINANCED				
Itemized Charges:				
1. Total Cash Price		\$	12,000.00	
2. Cash Down Payment	(-)	\$	9,479.26	
3. Unpaid Balance of Cash Price (Amount Financed)	(=)	\$	2,520.74	
4. Finance Charge	(+)	\$	526.18	
5. Total of Payments	(=)	\$	3,046.92	

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

	6/9/2020
Li	Date

#### **EXHIBIT C**

#### TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) **"Event/Game"** means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) **"SBL"** means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

### 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

# 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

## 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

# 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

# 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- (g) If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events;
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

### Agreed to:

Ву:	
Name:	
Email Address:	

# **EXHIBIT D**

# AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process



6/9/2020

Date

#### STADIUM BUILDERS LICENSE AGREEMENT

Agreement Da	te:
Licensee (Company/Individual):	
Phone Nos. (Day)	(Evening):
Contact Person:	Fax No.
Address:	E-Mail Address:
	Account No.:
SECTION:	132
ROW: _	30
SEAT(S):	3-4

STADIUM BUILDERS LICENSE: This Stadium Builders License Agreement (the "License Agreement") sets forth and describes the terms and conditions of one or more Stadium Builders License(s) (or "SBL(s)") which shall be granted to the Licensee named above ("Licensee") by the Santa Clara Stadium Authority (the "Stadium Authority" and "Licensor") upon (i) execution by Forty Niners Stadium Management Company LLC, the exclusive contractor for the Stadium Authority for the sale of SBLs ("Stadium Manager") and (ii) acceptance and execution of this License Agreement by the Stadium Authority, as described below. Certain capitalized terms used in this License Agreement have the meanings given to those terms in the Terms and Conditions attached hereto as <a href="Exhibit C">Exhibit C</a>. This License Agreement shall amend, restate, replace, and render void the Stadium Builders License Agreement executed by the parties hereto with an Agreement Date of 7/11/2012 ("Previous Seats Agreement"). Licensee shall receive no further rights or benefits under such Previous Seats Agreement.

**RIGHTS TO TICKETS**: Licensee shall have the rights during the term of this License Agreement (i) to purchase annually from the Team the 49ers Season Tickets for each Seat described above, (ii) to purchase from time to time from Event Organizers, one ticket per SBL for Events which take place in the Stadium and (iii) to those amenities described in Exhibit D, all subject to the Terms and Conditions. For convenience only, and subject to the Terms and Conditions, attached to this License Agreement as Exhibit A is a diagram of the Stadium with the anticipated location of the Seat(s). The actual location of the Seat(s) may vary from the section, row and seat number(s) listed above.

**LICENSE FEE**: For and in consideration of its rights hereunder, Licensee agrees to pay to the order of Stadium Manager prior to acceptance hereof by the Stadium Authority, and to the order of the Stadium Authority or the Stadium Authority's designee, as applicable, following acceptance hereof by the Stadium Authority (any such payee, as the circumstances require, the "**Applicable Payee**"), a License Fee for each SBL and all amenities attendant thereto (allocated in accordance with the Stadium Authority's reasonable discretion to the SBL in the amount indicated in **Exhibit B** attached hereto. The License Fee shall be paid in one or more installments in accordance with the terms and conditions set forth in Exhibit B.

**LICENSE AGREEMENT**: Licensee acknowledges and agrees to be bound by this License Agreement, including all Exhibits to this License Agreement. In addition, Licensee agrees to observe all rules, regulations, and policies promulgated from time to time and pertaining to use of the Seat(s) and attendance at Team Games and Events, including any modifications thereto that may be adopted from time to time.

**EFFECTIVENESS**: When signed by Licensee and Stadium Manager, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms, and Licensee will have no right to terminate or cancel this License Agreement. Stadium Manager is a party to, and has executed, this License Agreement for the limited purpose of acknowledging Licensee's payment of the License Fee (or, if the License Fee is payable in

installments, the portion of the License Fee that is due on or after the Agreement Date, but prior to acceptance by the Stadium Authority) and affirming Stadium Manager's obligations under this Paragraph. This License Agreement is subject to final approval and acceptance by the Stadium Authority, in its sole discretion. Stadium Manager shall not deliver the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority unless and until the Stadium Authority has accepted and approved this License Agreement and evidenced its acceptance and approval by execution of this License Agreement where indicated below. From and after execution of this License Agreement by both Licensee and Stadium Manager, unless and until this License Agreement is terminated, Stadium Manager shall not market or sell to any other party any SBL(s) relating to the Seat(s) referenced above. If the Stadium Authority declines to approve and accept this License Agreement, then this License Agreement shall be deemed terminated and all sums paid by Licensee shall be refunded by Stadium Manager to Licensee, without interest. Upon the final approval and acceptance hereof by the Stadium Authority and Stadium Manager's delivery of the License Fee (or such portion thereof as Licensee has paid) to the Stadium Authority or the Stadium Authority's designee, as applicable, Stadium Manager shall have no further liability or obligations to Licensee hereunder.

**EXHIBITS ATTACHED**: Exhibit A—Stadium Diagram

Exhibit B—SBL Payment Terms Exhibit C—Terms and Conditions

Exhibit D—Amenities

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## **STADIUM MANAGER**:

FORTY NINERS STADIUM MANAGEMET COMPANY LLC, a Delaware limited liability company

	DocuSigned by:
By:	
By: _ Name:	Brientoschoeb
Title:	Chief Revenue Officer
Date:	6/9/2020

# **STADIUM AUTHORITY**:

SANTA CLARA STADIUM AUTHORITY, a California Joint Powers Authority

By:
Name: Deanna Santana
Title: Executive Director
D-4

You will receive a countersigned copy of this License Agreement for your records.

# EXHIBIT A

# STADIUM DIAGRAM



# Santa Clara Stadium - Section Map









# **EXHIBIT B**

# **SBL PAYMENT TERMS**

The total consideration (the "License Fee") to be paid by Licensee (sometimes also referred to in this Exhibit B as "you" and/or "your") to the Stadium Authority (sometimes also referred to in this Exhibit B as "Licensor") or to the Stadium Authority's designee, as applicable, for the SBL(s) to be granted pursuant to this License Agreement, and the terms of payment thereof, are as follows: Please mark an "X" in the blank space of the selected option. Licensee should then sign and complete the selected option below.

	A.	Single Payment:		
		(i) Total License Fee Amount: \$		
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$		
		(iii) Remaining principal balance of License Fee Amount: \$ submitted to Stadium Manager, which, Stadium Manager acknowledges has been received.		
	immedi	hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the payment of the License Fee amount set forth above, and that Licensee has instead agreed to purchase (s) through installment payments made over time, without the payment of finance charges.		
	such pa	promises to make the remaining payment to the order of the Applicable Payee. Licensee shall make ment at the address provided by the Applicable Payee. Licensee shall make such payment on or before and in the amount shown in the above Payment Schedule. Licensee may make payment early, without the amount shown in the above Payment Schedule.		
x	В.	Long-Term SBL Payment Schedule:		
	Δ.	(i) Total License Fee Amount: \$		
		(ii) Principal paid by Licensee under Previous Seats Agreement: \$		
		(iii) Concurrently with Licensee's execution of this License Agreement, a principal "catch-up payment of: \$_0 submitted to Stadium Manager, which Stadium Manager acknowledge has been received.		
		(iv) The principal balance of \$ (the "Amount Financed") to be financed are paid as provided herein below and which shall be subject to finance charges		

Please see below for illustrative consumer disclosures regarding the terms of your payment obligations under this License Agreement.

#### LICENSE AGREEMENT PAYMENT DISCLOSURE

LICENSOR: Santa Clara Stadium Authority	LICENSEE:		
1500 Warburton Ave. Santa Clara, CA 95050	Address:		
Date that the Amount Financed shall commence being subject to finance charges: March 1, 2021			

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)	FINANCE CHARGE (The dollar amount the credit will cost you)	Amount Financed (The amount of credit provided to you or on your behalf)	Total of Payments (The amount you will have paid after you have made all payments as scheduled)	Total Sale Price (The total cost of this credit purchase, including your down payment(s) of \$_10,000.00_)
8.5	\$526.18	<u>\$_2,000.</u> 00	<u>\$_2,526.</u> 18	\$12,526.18

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due	
3 ———	\$ 1179.94	March 1, 2021 and March 1 of each following year	
	Pro	cess	

**PREPAYMENT**: Licensee has the right to make any payment early. Licensee will not pay a prepayment charge in connection with any prepayment.

**ADDITIONAL INFORMATION**: Licensee should refer to the other provisions of this License Agreement for information about nonpayment and default and down payment refund policies.

	ITEMIZATION OF THE AMOUNT FINANCED			
Itemized Charges:				
1.	Total Cash Price		\$	12,000.00
2.	Cash Down Payment	(-)	\$	10,000.00
3.	Unpaid Balance of Cash Price (Amount Financed)	(=)	<b>s</b>	2,000.00
4.	Finance Charge	(+)	\$ \$	526.18
_	0		Φ	2,526.18
5.	Total of Payments	(=)	<b>3</b>	<u> </u>

Licensee hereby acknowledges and agrees that it has been given the opportunity to purchase the SBL(s) for the immediate payment of the License Fee amount set forth above and that Licensee has instead agreed to purchase the SBL(s) through installment payments made over time and subject to a finance charge, all as provided herein. The finance charge is computed on a simple-interest basis.

Licensee promises to pay the Total of Payments to the order of the Applicable Payee. Licensee shall make installment payments at the address provided by the Applicable Payee. Licensee shall make such payments on the dates and in the amounts shown in the above Payment Schedule.

If Licensee has selected the credit card method of payment in the down payment form provided in connection with this License Agreement, Licensee hereby authorizes the Applicable Payee to charge the credit card account indicated thereon (or a replacement account, if it is necessary that one be provided by Licensee) on the above dates for the installment payments relating to Licensee's SBL(s) purchase on each date that payment is due (or, as necessary, on the next succeeding business day).

#### NOTICE TO LICENSEE:

Do not sign this License Agreement before you read it or if it contains any blank spaces to be filled in. You are entitled to a completely filled-in copy of this License Agreement. You may at any time pay the full remaining portion of the Amount Financed under this License Agreement together with finance charges accrued through the payment date. If you desire to pay off in advance the full remaining portion of the Amount Financed (with accrued finance charges, if any), such outstanding amount will be furnished to you upon your request to the Stadium Authority.

If Licensor does not enforce its rights every time or upon any particular breach or default of this License Agreement, Licensor can still enforce them later. Federal law and California law apply to this License Agreement. Licensee does not have to pay finance charges or other amounts that are more than the law allows.

Any change to this License Agreement must be in writing, and each such writing must be signed by both Licensor and Licensee. Licensor can mail any notice to Licensee at Licensee's last address in Licensor's records.

#### NOTICE:

LICENSOR HAS RESERVED THE RIGHT TO ASSIGN THIS LICENSE AGREEMENT AS DESCRIBED HEREIN. ANY ASSIGNEE/LICENSOR OF THIS LICENSE AGREEMENT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH LICENSEE COULD HAVE ASSERTED AGAINST THE LICENSOR WHICH EFFECTED THE ASSIGNMENT HEREOF. RECOVERY HEREUNDER BY THE LICENSEE AGAINST AN ASSIGNEE/LICENSOR SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE TO SUCH ASSIGNEE/LICENSOR UNDER THE TERMS OF THIS LICENSE AGREEMENT.

YOU SHOULD KEEP YOUR COPY OF THIS LICENSE AGREEMENT WITH YOUR RECORDS, AS IT SETS FORTH THE TERMS AND CONDITIONS OF THIS TRANSACTION.

Licensee agrees to pay Licensor a reasonable fee of up to \$15.00 for each returned check. Licensor can add such fee to the amount(s) Licensee owes under this License Agreement or collect such fee separately. If Licensee has chosen to make payments for the SBL(s) using a credit card, Licensee promises to provide updated credit card account information to the Applicable Payee should Licensee's credit card account cease to be valid after the Agreement Date.

Licensee acknowledges and agrees that any failure to comply with the terms of this License Agreement, including the failure to make any payment in accordance with the applicable Payment Schedule, may constitute a default under the terms of this License Agreement. Upon Licensee's default, Stadium Manager and/or the Stadium Authority shall have all rights and remedies set forth in the Terms and Conditions, including but not limited to the termination of the SBL(s). Upon termination of the SBL(s) for Licensee's default hereunder, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee.

Any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee.

The undersigned Licensee hereby acknowledges that before signing this License Agreement, Licensee has received a legible, completely filled-in copy of this License Agreement and Licensee has read it in its entirety.

-		
	6/9/2020	
L	Date	

## **EXHIBIT C**

## TERMS AND CONDITIONS

- 1. <u>DEFINED TERMS</u>. Certain capitalized terms used in this License Agreement shall have the meanings set forth below. Additional terms are defined elsewhere in this License Agreement.
  - (a) "49ers Season Ticket(s)" means season tickets for each Seat for all Team Games to be played in the Stadium in a particular annual NFL season. Tickets for Team Games that are postseason NFL playoff games may be distributed separately, subject to separate pricing and time constraints, but are considered a part of the 49ers Season Ticket(s).
  - (b) "Agreement Date" means the date on which this License Agreement has been signed by Licensee and Stadium Manager, as set forth on the first page of this License Agreement.
  - (c) "Comparable Seat(s)" shall have the meaning set forth in Section 5(c) of this Exhibit C.
  - (d) **"Event(s)"** means concerts, sporting events and similar types of stadium functions to which tickets will be made available to the general public, excluding Team Games and other NFL games. The term "Events" does not include private parties and corporate or other functions that are not available to the general public.
  - (e) "Event/Game" means any Event held or Team Game played at the Stadium.
  - (f) **"Event Organizer(s)"** means the sponsor of an Event at the Stadium that has the right to sell tickets to an Event pursuant to a contract directly or indirectly with the Stadium Authority. If the Stadium Authority itself sells tickets to an Event, the Stadium Authority will be considered the Event Organizer for that particular Event.
  - (g) "License Agreement" means this Stadium Builders License Agreement and all of the Exhibits attached hereto.
  - (h) "Licensee's Guests" means all persons permitted by Licensee (whether by Licensee's express permission, acquiescence, or otherwise) to use tickets to any Event/Game which Licensee has the right to purchase under this License Agreement.
  - (i) "Life of the Stadium" means for so long as the Stadium is used for Events/Games; provided that, if at some time following the thirtieth (30<sup>th</sup>) anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then "Life of the Stadium" shall not include the period from and after such renovation.
  - (j) "NFL" means the National Football League.
  - (k) "SBL" means the rights of the Licensee under this License Agreement.
  - (l) "Seat(s)" means the seat or seats associated with the SBL(s), as indicated on the first page of this License Agreement, subject to relocation to Comparable Seat(s) as provided herein; upon such relocation the Comparable Seat(s) shall be, in all respects, the "Seat(s)" associated with the SBL(s) under this License Agreement.
  - (m) "Stadium" means the stadium located in Santa Clara, California, and owned by the Stadium Authority.
  - (n) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.
  - (o) **"Stadium Manager"** means Forty Niners Stadium Management Company LLC, acting as exclusive contractor for the Stadium Authority for the sale of SBLs.

- (p) "Team" means, as the circumstances may require, the entity that is the owner and operator of the San Francisco 49ers professional football team and/or such professional football team.
- (q) "Team Game(s)" means any preseason or regular season NFL games or postseason NFL playoff games (excluding Super Bowl games) played by the Team in the Stadium, in which the Team is designated as the home team by the NFL. The term "Team Game(s)" does not include any games played by the Team that are designated by the NFL as a Team home game but that are scheduled to be played at a location other than the Stadium, including, by way of example, games scheduled to be played in a foreign country.
- 2. GRANT OF SBL; TERM. For and in consideration of the payment of the License Fee, Licensee will receive the number of SBL(s) set forth in this License Agreement, each of which shall entitle Licensee to purchase certain tickets to Events held in the Stadium and 49ers Season Tickets, as provided in Section 4 of this Exhibit C and otherwise in accordance with the terms and conditions set forth in this License Agreement. Each SBL shall, subject to earlier termination as provided herein, remain in effect for the Life of the Stadium. If, after the expiration of the Life of the Stadium, the Stadium Authority sells new stadium builders' licenses or seat licenses of any kind that would entitle the holder to (i) purchase season tickets to Team Games and (ii) priority to purchase tickets for other Events at the newly renovated Stadium, then the Stadium Authority shall offer you the first right to purchase such licenses for the Seats, or if a renovation results in a different configuration, then the Stadium Authority shall use reasonable efforts to offer you licenses for comparable seats. This License Agreement gives Licensee rights of personal privilege only and does not under any circumstance give or grant to Licensee any leasehold, title, interest or other rights of any kind in any specific real or personal property.
- 3. <u>SBL PAYMENTS</u>. Unless and until the Stadium Authority has accepted and approved this License Agreement, all License Fees shall be deposited and held by Stadium Manager in a segregated account containing only License Fees. Upon final approval and acceptance of this License Agreement by the Stadium Authority, the License Fees will be remitted by Stadium Manager as directed by the Stadium Authority and thereafter may be used by the Stadium Authority as it determines, but only in connection with the development, construction and operation of the Stadium.

# 4. <u>LICENSEE RIGHTS AND OBLIGATIONS</u>.

- (a) 49ers Season Tickets. Except as provided herein, Licensee will have the right to purchase from the Team annually, at a price determined each year by the Team, 49ers Season Tickets for the Seat or Seats; provided, however, that Licensee acknowledges that if Licensee fails to purchase 49ers Season Tickets in any year by the payment deadline imposed by the Team for such year, Licensee's right to purchase 49ers Season Tickets will terminate as set forth in Section 7 of this Exhibit C.
- (b) Events. Licensee will have a priority right to purchase from the Event Organizers one (1) ticket per SBL for each Event at the Stadium before such tickets are marketed and sold by the Event Organizer to the general public; provided, however, that that the Stadium Authority (x) makes no guarantee to Licensee regarding the availability of tickets to a particular Event and (y) may authorize the Event Organizer of any Event(s) (including but not limited to charitable, religious, civic or political Events) to reserve tickets for promotional or other purposes that will not be offered (or will not be offered on any priority basis) to the holders of SBLs and/or to the general public. Stadium seating is subject to reconfiguration for different Events, and an Event Organizer may offer fewer tickets to a particular Event than there are SBLs. Therefore, Licensee does not have the right to purchase tickets for the Seat(s) or any particular seats in the Stadium. Licensee will have the opportunity to purchase tickets to an Event (to the extent tickets are made available by the Event Organizer) in accordance with the Stadium Authority's policies, as in effect from time to time, which policies will take into account the SBL purchase price. An Event Organizer may, in the sole discretion of the Stadium Authority, elect to offer the holders of SBLs the right to purchase tickets on an Event by Event basis or to any series of Events.

Except as expressly provided in this paragraph or in Exhibit D to this License Agreement, the SBL(s) do not include the right to purchase tickets or season tickets to any NFL games other than Team Games, or to the games of any other established amateur or professional sports (including NFL) team which may in the future use the Stadium as its home stadium or to any Olympic events that may take place at the Stadium. The Stadium Authority (or its agent, an affiliate or a successor) may sell seat licenses for the opportunity to buy tickets (including season tickets) to such additional team's (or teams') home

games at the Stadium, and tickets (including season tickets) for such games may be sold without seat licenses. In either case, Licensee will have an opportunity to purchase those licenses and/or tickets (as applicable) after a team's existing season ticket holders and waitlist members, and the residents of the City of Santa Clara, have had an opportunity to purchase such licenses and/or tickets, but before such licenses and/or tickets are otherwise offered for sale to the general public.

- Rights Under License. The limited rights granted to Licensee under this License Agreement include a right to purchase tickets as described herein. The SBL(s) does not entitle Licensee to: (i) admission to any Team Games played at the Stadium, (ii) admission to any Events or functions held at the Stadium, (iii) a reduction or discount in the price of tickets to Team Games or Events, or (iv) an equity or ownership interest in the Stadium or any part thereof. The Stadium Authority will make reasonable efforts to incorporate, in all relevant agreements with the Team and Event Organizers, the obligation to comply with the SBL ticketing priority for Games/Events held at the Stadium during the term of this License Agreement; provided, however, the Stadium Authority will have no liability for the Team's or Event Organizer's failure to comply with such SBL ticketing requirements.
- (d) Transfers. Except for a Permitted Transfer, Licensee may not assign, sell, sublease, pledge, mortgage or otherwise transfer (a "Transfer") any SBL without the prior written consent of the Stadium Authority, which approval will not be unreasonably withheld.
  - (i) A "Permitted Transfer" is any of the following, provided, that the prospective transferee has never been barred from entering, or removed from, the Stadium or any other stadium, ballpark or arena venue:
    - (1) A Transfer required due to an occurrence of a circumstance beyond the control of Licensee, such as death or disability or similar event as determined by the Stadium Authority;
    - (2) In the case of Licensees that are natural persons, a Transfer to a grandparent, parent, stepparent, spouse (including to an ex-spouse in connection with a divorce), registered domestic partner (including to an ex-partner in connection with a termination of the domestic partnership), sibling, child, stepchild, grandchild, or great grandchild; or
    - (3) In the case of Licensees that are entities, a Transfer to (A) an entity resulting from a merger or consolidation with Licensee, (B) an entity succeeding to all or substantially all of the business or assets of Licensee, or (C) an entity controlled by, controlling, or under common control with Licensee.
  - (ii) Attempted Transfer Without Consent; Frequency of Transfers. Any attempted Transfer without the consent of the Stadium Authority, other than a Permitted Transfer, will give the Stadium Authority the right, at its sole option, to terminate this License Agreement. If the Stadium Authority terminates this License Agreement, the Stadium Authority may sell a new SBL(s) associated with the Seat(s) on terms and conditions established by the Stadium Authority in its sole discretion and without any compensation to Licensee. Licensee acknowledges and agrees that any subsequent sale by Licensor of an SBL(s) associated with the Seat(s) identified in this License Agreement following the termination hereof is not a resale of such SBL(s), but is instead the creation of one or more new SBLs for the benefit of a different licensee. If the Stadium Authority does not exercise its right to terminate the SBL(s), the Stadium Authority may elect to record the Transfer of the SBL(s) to the intended transferee upon receipt of the applicable transfer fee and acceptance of the executed transfer form required by the Stadium Authority. It shall not be unreasonable for the Stadium Authority to withhold approval of any proposed transfer if the SBL has been previously transferred in the same calendar year, unless such Transfer is a Permitted Transfer.
  - (iii) Completion of a Transfer. No Transfer of any SBL, including any Permitted Transfer, will be complete or recognized by the Stadium Authority if Licensee is in default of the terms of this License Agreement nor until (1) Licensee and Licensee's prospective transferee have applied to the Stadium Authority for the Transfer of the SBL(s) on the form required by the Stadium Authority; (2) Licensee or Licensee's prospective transferee has paid to the Stadium Authority

the applicable transfer fee established by the Stadium Authority, provided that, for the first five years of the Stadium the transfer fee shall not exceed \$100.00 per transferred SBL; (3) Licensee has performed all obligations (including, but not limited to, payment obligations) under the SBL(s) that have previously accrued, unless the Stadium Authority has permitted the assignment of all such Licensee obligations to the transferee; and (4) the Stadium Authority has recorded the Transfer of the SBL(s) on the records maintained by the Stadium Authority for those purposes. The form of application required by the Stadium Authority will contain the prospective transferee's agreement to assume and perform the obligations of Licensee under this License Agreement accruing on and after the date of the Transfer. No Transfer (including a Permitted Transfer) of the SBL(s) will release Licensee from Licensee's obligations under this License Agreement unless the Stadium Authority expressly releases Licensee in writing, which release will not be unreasonably withheld. Once Licensee completes the Transfer of its SBL(s), Licensee will no longer have any rights under this License Agreement.

- 5. <u>RIGHTS RESERVED BY LICENSOR</u>. The Stadium Authority expressly reserves the following rights:
  - (a) The right to exercise all rights at law or in equity, or as granted under this License Agreement, including those rights in connection with a default by Licensee hereunder, which rights expressly include the termination of this License Agreement.
  - (b) The right to check Licensee's creditworthiness in connection with the SBL(s) and this License Agreement; Licensee hereby authorizes the Stadium Authority and its contractors, agents, designees, successors and assigns to access Licensee's credit reports at any time during the period commencing on the Agreement Date and ending on the date that no amount of the License Fee (including applicable finance charges, if any) remains outstanding.
  - (c) The right to improve, alter, restore, expand, or enlarge the Stadium, any amenity area, any seating area or any other portion of the Stadium, as determined by the Stadium Authority in its sole discretion. If, in connection with any such action, the Stadium Authority relocates or reconfigures the Stadium seating or any amenity area(s), the Stadium Authority reserves the right to re-designate the specific locations of seats and to modify the assignment of specific seats to SBLs. If the Stadium Authority determines that any such modification is necessary, the Stadium Authority will endeavor to assign to an affected SBL a seat that is comparable to, in terms of field vantage point and access to amenities, the seat that was assigned to the SBL prior to the relocation or reconfiguration, all as determined by the Stadium Authority in its sole discretion and without regard to the original License Fee amount (each such Seat, a "Comparable Seat"). In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee. For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the "Unamortized Portion of the License Fee").
  - (d) The right to assign, pledge as collateral, encumber, transfer, sell, or lease all or any part of the Stadium Authority's right, title, or interest in and to the Stadium and its appurtenant facilities.
  - (e) The right to assign, pledge as collateral, mortgage, encumber, transfer, or sell all or any part of the rights and obligations of the Stadium Authority and of Licensee under this License Agreement to one or more third parties, who may succeed to all or any part of the rights of the Stadium Authority under this License Agreement.
- 6. <u>USE OF STADIUM AND SEAT(S)</u>. Licensee will have access to the Stadium and, if applicable, the Seat(s), only upon presentation of a ticket(s) for admission to any Event/Game. Licensee and Licensee's Guests will be bound by and must observe the terms and conditions upon which tickets for admission to the Stadium have been issued, including but not limited to any policy adopted with respect to the cancellation, re-scheduling, or postponement of Team Games or Events. In addition, Licensee and Licensee's Guests must at all times maintain proper decorum while using the Seat(s) and in and about the Stadium and must abide by the applicable governmental regulations, laws, ordinances, rules, and regulations and by the policies, rules, and regulations that

may be adopted from time to time by the Stadium Authority, the Team, Event Organizers and their respective representatives, agents, tenants, subtenants, employees, corporate affiliates and contractors (collectively, "Stadium Parties") pertaining to the Stadium. Licensee acknowledges that the Team and Event Organizers may adopt policies, rules, and regulations independently from the Stadium Authority relating to Licensee's attendance at Team Games and Events and that a violation of any of such policies, rules, and regulations may, in the discretion of the Stadium Authority, also constitute a violation of this License Agreement. Licensee will be responsible for any violations of this License Agreement by Licensee's Guests. Licensee and Licensee's Guests may be required, as a condition to entry into the Stadium, to submit to a search for prohibited items. Without limiting the foregoing, Licensee specifically agrees that neither it nor any of Licensee's Guests will:

- (a) bring into the Stadium any alcoholic or intoxicating beverage, any illegal drug, or, except as prescribed to the treated person by a physician, any controlled substance;
- (b) permit the Seat(s) or any seat or area of the Stadium to be used for any illegal, improper, immoral, or objectionable purpose, or unduly disturb, obstruct, or interfere with the rights of any other licensees or ticket holders;
- (c) film or record for transmission, or transmit from the Seat(s) or the Stadium all or any portion of any Event/Game, or any description thereof, by any means (including, but not limited to, radio, television, or internet broadcasting, whether distributed live or by means of film, tape, digital, streaming, or other technology); or
- (d) tolerate or permit the use of the Seat(s) in violation of this License Agreement, including this <u>Exhibit C</u>, or create any nuisance or take any action that either diminishes hazard insurance coverage for the Stadium or increases the premium payable for that insurance.
- 7. FAILURE TO BUY 49ERS SEASON TICKETS. If Licensee does not purchase 49ers Season Tickets for the Seats by the payment deadline specified each year by the Team, Licensee's SBL(s) will not terminate, but Licensee's right to purchase 49ers Season Tickets for the Seat(s) will terminate, and Licensee will have no rights to buy 49ers Season Tickets associated with the Seat(s) for the current NFL season and all NFL seasons that follow, and neither the Stadium Authority nor the Team will have any further obligation or liability to Licensee with regard to the sale of 49ers Season Tickets whatsoever. Thereafter, the Stadium Authority shall have the right to sell a new SBL(s) for the Seat(s) (with the right to purchase 49ers Season Tickets) to any other person or party. Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- 8. <u>DEFAULT</u>. If Licensee fails to pay when due any License Fee or portion thereof, or any finance charge thereon, under this License Agreement, or otherwise defaults in the performance of any of Licensee's duties and obligations under this License Agreement, then the Stadium Authority may, at its option, after providing written notice to Licensee and a ten (10) day opportunity to cure (if such default is curable):
  - (a) withhold distribution of tickets to Licensee, authorize the Team or other Event Organizers to withhold distribution of tickets to Licensee, or otherwise deny Licensee access to the Stadium for Events/Games until the default is cured (if such default is curable); and/or
  - (b) terminate all rights of Licensee under this License Agreement.

Notwithstanding the foregoing, Licensee acknowledges and agrees that the failure to maintain proper decorum and abide by the policies, rules, and regulations that may be adopted from time to time by the NFL, the Stadium Authority, the Team and Event Organizers are non-curable defaults, and the Stadium Authority's notice is for the sole purpose of notifying Licensee of such breach and termination.

Licensee acknowledges and agrees that upon Licensee's default under this License Agreement and the termination of the SBL(s) by the Stadium Authority, no amount(s) paid by Licensee hereunder shall be refundable or payable to Licensee. If the Stadium Authority, the Team or any Event Organizer withholds the distribution of tickets for any Event/Game due to a default of Licensee, the Stadium Authority, the Team or the Event Organizer may release, reissue, sell, give, use for its own use, or otherwise transfer the tickets for such Event/Game on terms and conditions established by the Stadium Authority, the Team or any Event Organizer (as the case may be) in its sole discretion, without any compensation to Licensee. After termination of Licensee's SBL(s), the Stadium Authority will thereafter, at any time, have the right to sell one or more new

SBL(s) for the related Seat(s) to any other person or party with no further obligation or liability to Licensee whatsoever.

The foregoing remedies are not to the exclusion of any other right or remedy of the Stadium Authority set forth in this License Agreement or otherwise available at law or in equity. Licensee is responsible for all attorneys' fees and costs incurred by the Stadium Authority in the enforcement of this License Agreement, whether or not litigation is actually commenced.

No waiver by the Stadium Authority of any default or breach by Licensee of its obligations under this License Agreement will be construed to be a waiver or release of any other subsequent default or breach by Licensee under this License Agreement, and no failure or delay by the Stadium Authority in the exercise of any remedy provided for in this License Agreement will be construed a forfeiture or waiver thereof or of any other right or remedy available to the Stadium Authority.

# 9. <u>STRIKES, DAMAGES, DESTRUCTION, ETC.</u>

- (a) In the event of any damage to or destruction of the Stadium due to an act of God, natural disaster, contamination, act of terrorism or other force majeure, Licensor shall have no obligation hereunder to repair such damage or rebuild the Stadium. If Licensor elects not to repair the damage or rebuild the Stadium, and the Stadium is no longer used for Events/Games, this License Agreement shall terminate as of the date of such damage or destruction, no portion of the License Fee will be returned to Licensee, and Licensor shall have no further liability under this License Agreement.
- (b) In the event of any damage to or destruction of the Seat(s) due to an act of God, natural disaster, contamination, act of terrorism or other force majeure that renders the Seat(s) unusable, and Licensor is unable to repair or replace the Seat(s) in a reasonable period of time, Licensor shall endeavor to provide Licensee a Comparable Seat(s) until the Seat(s) is repaired or replaced. If the Stadium Authority notifies Licensee that there is no Comparable Seat(s), or that the Seat(s) cannot be repaired or replaced, then Licensee's right to purchase 49ers Season Tickets for the Seat(s) shall terminate as of the date of such damage or destruction. So long as the Stadium is thereafter used for Events, Licensee will retain priority to purchase tickets for Events at the Stadium for the remainder of the term of the SBL(s), in accordance with the provisions of Section 4(b) of this Exhibit C.
- Licensor will not be liable for, and Licensee will not assert any deduction, set off or claim of any nature against Licensor for, any act or omission of or any breach or default by any Stadium Party or concessionaire. Licensee will be bound by the terms and conditions established from time to time by each Stadium Party for cancellation or postponement of any Event/Game. Licensor will have no responsibility or liability to Licensee on account of any cancellation or postponement or other failure or deficiency in the conduct of any Event/Game, including but not limited to any cancellation on account of any strike or other labor disturbance or any condition in or around the Stadium. Neither the Team nor the Event Sponsor will have any liability on account thereof except as otherwise expressly set forth on the tickets issued to Licensee. Notwithstanding the foregoing, the Unamortized Portion of the License Fee may be returned to Licensee in accordance with the provisions of Section 5(c) of this Exhibit C.

## 10. ASSUMPTION OF RISK; INDEMNIFICATION.

(a) Neither the Stadium Parties nor Stadium Manager nor their respective officers, owners, directors, employees, and agents (collectively, the "Indemnitees") will be liable to Licensee or responsible for, and Licensee for itself and each of Licensee's Guests assumes, all risk for any loss, damage, or injury to any person or to any property of Licensee or Licensee's Guests in or around the Stadium (including the parking lots) arising out of, during, or related to their attendance at any Event/Game at the Stadium resulting from any cause whatsoever, including, but not limited to, theft and vandalism, incidents involving other patrons, the consumption of alcoholic beverages by other patrons, injury from thrown or dropped objects, and spills of food or beverages, regardless of whether the personal injury or property damage was caused by or results from, in whole or in part, the negligence or other fault of any Indemnitee, whether sole, joint, active or passive, excepting only those damages, costs or expenses attributable (and only to the extent attributable) to the gross negligence or willful misconduct of an Indemnitee, and then only with respect to such Indemnitee. Licensee hereby agrees to assume all

responsibility and liability for the consumption of alcoholic beverages by Licensee and Licensee's Guests at the Stadium, and for the conduct and behavior of Licensee and Licensee's Guests.

- (b) LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY LIABILITY, LOSSES, CLAIMS, DEMANDS, COSTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR RELATED TO (I) ANY VIOLATION OF THIS LICENSE AGREEMENT OR OF ANY APPLICABLE LAWS, RULES, REGULATIONS OR ORDERS, (II) THE USE OF ALCOHOL IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR ANY OF LICENSEE'S GUESTS, (III) THE CONDUCT OR BEHAVIOR OF LICENSEE AND LICENSEE'S GUESTS, AND/OR THE USE OF THE SEATS OR THE STADIUM (INCLUDING THE PARKING LOTS) BY LICENSEE OR LICENSEE'S GUESTS, AND (IV) ANY PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING IN OR AROUND THE STADIUM (INCLUDING THE PARKING LOTS) IN CONNECTION WITH LICENSEE'S OR LICENSEE'S GUESTS' USE OF THE STADIUM (INCLUDING THE PARKING LOTS) OR OCCUPANCY OF THE SEAT(S), REGARDLESS OF WHETHER THE PERSONAL INJURY OR PROPERTY DAMAGE WAS CAUSED BY OR RESULTS FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, EXCEPTING FROM THIS INDEMNITY ONLY THOSE DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE (AND ONLY TO THE EXTENT ATTRIBUTABLE) TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND ONLY WITH RESPECT TO SUCH INDEMNITEE.
- (c) Licensee acknowledges that, although none of the Indemnitees (other than Stadium Manager for the limited period and purposes described herein and the Stadium Authority after acceptance) is a party to this License Agreement, each such Indemnitee is an express third-party beneficiary of this Section 10 of Exhibit C of this License Agreement and will directly or indirectly receive the benefit of, and may enforce as if a party to this License Agreement, the provisions of this Section 10 of Exhibit C.

# 11. <u>CONSTRUCTION</u>.

- (a) The Stadium Authority reserves the right, in the case of construction or design necessity, any Federal, State or local law, ordinance or regulation, NFL regulation or directive, damage or destruction (whether whole or partial), renovation, reconstruction or obsolescence, to alter or change the design or configuration of the Stadium, including any change in the location of each of the Seat(s), which changes may affect the original association of the Seat(s) with the SBL(s). Licensee acknowledges and agrees that, in the event of any change or alteration of seat locations within the Stadium, the Stadium Authority may, in its discretion, provide Licensee with a Comparable Seat(s).
- 12. <u>REPRESENTATIONS AND AGREEMENTS OF LICENSEE</u>. Licensee hereby acknowledges, agrees, represents and warrants as follows:
  - (a) Licensee has read and understands the terms of this License Agreement and all Exhibits to this License Agreement, including this Exhibit C.
  - (b) Licensee is not acquiring any SBL as an investment and has no expectation of profit as an owner of the SBL.
  - (c) Licensee is acquiring the SBL(s) solely for the right to attend Events/Games as provided in this License Agreement and to enjoy the Stadium amenities provided by the Stadium Authority.
  - (d) Licensee is acquiring the SBL(s) for its own use and not with a view to the distribution, transfer, or resale of the SBL(s) to others.
  - (e) The rights licensed under this License Agreement are rights of personal privilege and do not under any circumstances confer upon Licensee any interest or estate in real property or any leasehold or possessory interest in the Seat(s) or the Stadium.
  - (f) Licensee will not have any equity or other ownership interest in the Stadium Authority or the Stadium or any of the Stadium's facilities and will not have any rights to dividends or other distribution rights from the Stadium Authority or any other party or entity described in this License Agreement as a result of being a licensee of an SBL, and further will not have any voting rights with respect to any Stadium Authority matters as a result of being a licensee of an SBL.

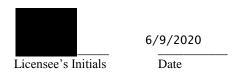
- (g) Licensee acknowledges that the transfer of an SBL is restricted and that an SBL is subject to termination under certain conditions, including those described in this License Agreement.
- (h) Licensee acknowledges that all or a portion of the License Fee(s) will be expended by the Stadium Authority during the construction period for the Stadium, together with other funds of, or available to, the Stadium Authority for such purpose, to pay for the construction, development and operation of the Stadium and will not be used for any investment purpose whatsoever (except temporary investment of proceeds during such construction period pending expenditure for such construction).
- (i) Licensee acknowledges that neither Stadium Manager nor the Stadium Authority nor any other party has made any representations, warranties, or covenants other than as set forth in this License Agreement.
- (j) Licensee acknowledges that this License Agreement may be subject to disclosure as a public record.
- (k) Licensee has full authority and capacity to enter into and sign this License Agreement and carry out its terms and conditions, and, when signed by Licensee, this License Agreement will be a binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

# 13. <u>MISCELLANEOUS</u>.

- All notices, demands and other communications between the parties required or appropriate under this License Agreement must be in writing and will be deemed given to: (i) Licensee, if mailed, postage prepaid, to the addresses set forth for Licensee in this License Agreement, or to another address as may be designated by Licensee to the Stadium Authority, from time to time, as provided in this Section 13(a), or if sent by electronic mail in the event Licensee has consented to such method of delivery, and (ii) the Stadium Authority (or, prior to final approval and acceptance by the Stadium Authority, Stadium Manager), if mailed, by certified or registered mail, postage prepaid, return receipt requested to the addresses set forth for the Stadium Authority (or, to the extent applicable, Stadium Manager) in this License Agreement, or to another address as may be designated by the Stadium Authority to Licensee, from time to time, in writing. The initial mailing address of the Stadium Authority is as follows: Santa Clara Stadium Authority, 1500 Warburton Ave. Santa Clara, CA 95050.
- (b) Licensee acknowledges and agrees that upon any assignment of this License Agreement by the Stadium Authority (other than for the benefit of a secured party solely in connection with a financing and prior to any foreclosure upon the assignee/secured party's interest herein as a result of an uncured default of the Stadium Authority thereunder), the Stadium Authority will be automatically and fully released from, and the Stadium Authority's assignee will be responsible for, all obligations and liabilities of the Stadium Authority under this License Agreement.
- (c) THIS LICENSE AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL LAWS AND THE LAWS OF THE STATE OF CALIFORNIA AND CALLS FOR PERFORMANCE IN SANTA CLARA COUNTY, CALIFORNIA, AND JURISDICTION AND VENUE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT WILL EXCLUSIVELY LIE IN THE FEDERAL AND STATE COURTS LOCATED IN SANTA CLARA COUNTY, CALIFORNIA, WITHOUT REGARD TO ANY OTHER APPLICABLE PRINCIPLES OF CONFLICT OF LAWS.
- (d) This License Agreement, and all the terms and provisions hereof, inure to the benefit of and are binding upon the parties to this License Agreement and, subject to the provisions of Section 4(d) of this Exhibit C, their respective heirs, executors, administrators, personal representatives, successors, and permitted assigns. No amendment or modification to this License Agreement will be effective unless it is in writing and signed by both the Stadium Authority and Licensee.
- (e) Licensee agrees to pay all taxes associated with entering into this License Agreement and holding the SBL(s) and the underlying tickets (including, but not limited to, any admissions taxes), whether presently imposed or imposed in the future by any taxing authority.
- (f) The Stadium Authority and Licensee agree that they may rely upon an electronic copy of this License Agreement executed by the other. In that regard, and in order to facilitate execution hereof, this License Agreement may be executed in one or more counterparts as may be convenient or required, and an

executed copy of this License Agreement delivered by facsimile or electronic mail transmittal or by other electronic communication will have the effect of an original, executed instrument. All counterparts of this License Agreement will collectively constitute a single instrument; but, in making proof of this License Agreement, it will not be necessary to produce or account for more than one counterpart hereof. Each signature page to any counterpart of this License Agreement may be detached from the counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart of this License Agreement identical thereto except having attached to it additional signature pages.

- (g) If any provision or provisions, or if any portion of any provision or provisions, in this License Agreement is or are ultimately determined by a court of law to be in violation of any local, state or federal law, or public policy, and if such court shall declare such portion, provision or provisions of this License Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Stadium Authority and Licensee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this License Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Stadium Authority and Licensee under the remainder of this License Agreement shall continue in full force and effect, unless the amount of the License Fee or other charges payable hereunder is thereby decreased, in which event the Stadium Authority may terminate this License Agreement.
- (h) This License Agreement, including these Terms and Conditions and the other Exhibits attached and incorporated thereto and hereto, contains the entire agreement of the parties with respect to the matters provided for therein and herein, and supersedes any written instrument or oral agreement previously made or entered into by the parties to this License Agreement or any SBL plan offered by the Stadium Authority and/or its agents, specifically including, but not limited to, any advertising, visual presentations, marketing materials, brochures, order forms, and surveys distributed (in any form) by the Stadium Authority and/or its agents.



# AFFIRMATIVE CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS CONCERNING YOUR STADIUM BUILDER LICENSE(S)

The Licensee executing this consent in the space below ("You") acknowledges that any of the Stadium Parties (collectively, "We" or "Us") may want to contact You regarding the SBL(s) or notify You of conditions, events and promotions relating to the Stadium. Our contact with You may involve sending You e-mails or other electronic communications. In order to ensure that We have obtained Your affirmative consent to receive these communications, You agree as follows:

- 1. You agree that We can send e-mail and other electronic communications to You at the e-mail address set forth below. You agree to promptly inform Us of any change to Your e-mail address or other addresses. You agree that We can rely upon the information concerning the electronic addresses You have provided to Us.
  - 2. We may send communications to You concerning the following subjects:
    - a. Changes in the times or other details of any Team Games or Events;
    - b. Security procedures and policies, and any security alerts;
    - c. Parking, traffic, or other transportation issues relating to the Stadium;
    - d. Special Events (such as concerts and sporting events) scheduled at the Stadium;
    - e. Information relating to the SBL(s), such as special offers, including any right to purchase tickets to Events;
    - f. Offers for affiliated products and services; and
    - g. Other special circumstances in which We may need to contact You.

We will use commercially reasonable efforts to provide accurate information to You and to ensure that the information is delivered to You. However, We cannot guarantee that all communications are error-free or that the messages will in fact be delivered.

- 3. You may revoke Your agreement to receive e-mail and other electronic communications from Us by making a request, either by using the unsubscribe function in the message You receive from Us or by advising SCSA in writing at the address provided in this License Agreement (or such updated address as the Stadium Authority shall provide from time to time). Note that if You revoke your authorization, You may not receive important information from Us concerning the SBL(s).
  - 4. This consent does not change any other agreement between You and the Stadium Parties.

### Agreed to:

Ву:	
Name:	
Email Address:	

# **EXHIBIT D**

# AMENITIES - RESERVED SEATS

• Priority right to purchase tickets, before such tickets are marketed and sold to the general public, to certain Events at the Stadium, such as season tickets to an amateur or professional sports team (other than another NFL team) which may in the future use the Stadium as its home stadium, subject to the Terms and Conditions.

Process



6/9/2020

Date



February 19, 2020

Mr. Jim Mercurio, Stadium Manager Forty Niners Stadium Management Company, LLC 4900 Marie P. De Bartolo Way Santa Clara, California 95054

SUBJECT:

**Stadium Builder License Agreements and Pricing** 

Dear Mr. Mercurio:

I am requesting access to copies of all executed Stadium Builder License (SBL) Agreements, corresponding tracking documents, and a current SBL pricing chart from the Stadium Manager. Currently, through DocuSign technology, the Stadium Authority only has access to the SBL Agreements that were executed within the last six months. Further, the Stadium Authority has a 2014 Legend's Marketing Plan Addendum and Levi's Stadium Sales Update document, which includes a map of all the sections in Levi's Stadium with corresponding SBL prices. We seek either confirmation that this information is still current or the updated information that is being used to conduct Stadium Authority business. In other words, a current SBL pricing chart.

I would also like more clarification about duplicate copies of SBL Agreements in DocuSign. I signed an October 23, 2019 SBL Agreement for Section C114, Row 6, Seats 7-8 with but later the Stadium Manager submitted for execution a duplicate agreement for the same seats. This has also occurred for an October 30, 2019 SBL Agreement for Section 146, Row 13, Seats 14-17 for Copies of the signed SBL agreements and unsigned SBL agreement are attached for your reference. Please confirm that these are isolated incidents or whether any additional due diligence is required to make sure that the Stadium Manager's documents are not in error or needlessly duplicative.

Thank you,

Deanna J. Santana Executive Director

cc: Brian Doyle, Stadium Authority Counsel

## Attachments:

- 1. Marketing Plan Addendum and Levi's Stadium Sales Update
- 2. Signed SBL Agreement with
- 3. Signed SBL Agreement with
- 4. Unsigned SBL Agreement with
- 5. Unsigned SBL Agreement with

From: <u>Christine Jung</u>

To: Mercurio, Jim; Compliance Manager
Cc: Deanna Santana; Brian Doyle; Kenn Lee
Subject: SBL Agreement with Wrong SBL Pricing
Date: Monday, May 11, 2020 4:09:00 PM

Attachments:

Hi Jim,

The attached SBL Agreement was signed on January 14, 2020 by the potential SBL Holder and did not appear in our Docusign until today after the Stadium Manager signed it.

In reviewing the SBL Agreement, there appears to be a numerical error in the SBL pricing for these Section 146 seats. Please note that we had previously brought up duplicative SBL agreements to the Stadium Manager's attention in a February 19 letter and asked the Stadium Manager to let us know whether any additional due diligence is required to ensure that the agreements are not in error or duplicative.

Please correct the SBL pricing for the SBL Agreement and send it back via Docusign for agreement execution. We are also separately requesting electronic copies of all SBL Agreements, which the Stadium Manager should have available.

## Sincerely,

Christine Jung | Senior Management Analyst 1500 Warburton Avenue | Santa Clara, CA 95050 D: 408.615.2218 | www.santaclaraca.gov/scsa



# City of Santa Clara

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

# Agenda Report

20-642 Agenda Date: 7/14/2020

# REPORT TO COUNCIL

# **SUBJECT**

Authorize the Negotiation and Execution of a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street [APN: 230-08-078] [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

# **BACKGROUND**

In February 2018, the City of Santa Clara, Santa Clara Valley Transportation Authority ("VTA"), and Republic Metropolitan LLC ("Developer") jointly entered into an Exclusive Negotiation Agreement ("ENA") for development of a student housing project at the Caltrain Santa Clara Station Park-N-Ride lot located at 500 Benton Street. The proposed development site consists of a larger parcel owned by the City (1.73 acres), and a smaller parcel owned by VTA (0.71 acres)("Property").

The Parties entered into the ENA to allow the Developer time to 1) prepare and process an application for entitlements together with corresponding CEQA environmental review documentation and 2) negotiate the terms of a Disposition and Development Agreement (the "DDA") pursuant to which a ground lease would be conveyed and the Developer would conduct specified development activities related to the Property.

The ENA provided for a negotiating period of twelve (12) months with an option for an extension of an additional six (6) months, subject to the discretion of the City Manager and the execution of an amendment. On February 8, 2019, an extension was granted for a period of six (6) months, through August 5, 2019.

On July 16, 2019, Council approved the Second Amendment to the Exclusive Negotiations Agreement with the Developer for the site located, which extended the negotiating period to August 5, 2020.

As per the Second Amendment to the ENA, the Developer was required to submit a new term sheet ("Revised Term Sheet") to VTA and the City within 90 days after the execution of the Second Amendment. A final form of Term Sheet would present all economic and transactional terms of the development any proposed to be fully documented in a Lease Option Agreement (LOA) or Disposition and Development Agreement (DDA) between the parties.

On February 14, 2020, the City received the Developer's Revised Term Sheet and all Parties have been negotiating the Revised Term Sheet in order to come to an agreement on a Final Term Sheet.

# DISCUSSION

The Developer's proposal is for a mixed-use project including market-rate student housing development consisting of 545 beds in 170 units, an affordable housing development consisting of 70

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units dedicated to low-income families (60% Average Median Income - AMI), 13,600 square feet of retail/office space, and 316 garaged parking spaces. The development would necessitate relocation of a City water well and pump station currently located near the center of the Property to another site on the property.

The Developer will not be able to complete all tasks necessary to bring forward to a public hearing an entitlement package (General Plan Amendment, Zoning Text Amendment, Rezoning, Architectural Review and Environmental Impact Report) and a DDA prior to the August 5, 2020 expiration of the ENA. In order to provide additional time to process entitlements and continue negotiations, a Third Amendment to the ENA to extend the term of the ENA for a minimum of six months should be considered. VTA has indicated it will only extend the term of the ENA if an agreement on a Non-Binding Term Sheet is reached prior to August 5, 2020. If an agreement is reached, VTA's Board will likely consider the ENA extension at its September 2020 Board meeting. The final ENA amendment may need to be modified to accommodate additional terms requested by VTA's Board. Neither the City nor VTA are obligated to extend the ENA. Under the terms of the ENA, neither party has any liability to the other for damages if an agreement cannot be reached, as long as negotiations have continued in good faith.

Upon completion, the Term Sheet is intended to provide for the economic terms and conditions that would be contained in a Disposition and Development Agreement (DDA) pursuant to which the Developer will have the right to lease the property and construct the project. It is anticipated that a Non-Binding Term Sheet will be brought forward for Council consideration in advance of the preparation of the DDA. Council cannot enter into any binding agreement until compliance with CEQA has been completed.

Key terms of the Term Sheet for future Council consideration will include:

# **Financial Terms:**

- Term of Lease
- Annual Base Rent
- Rent Escalations
- Market Rate Adjustments

# Water Well Relocation:

There is currently a City underground production water well ("well") and its appurtenances in an approximately 50 foot by 62 foot lot located on the City Parcel (APN 230-08-78) in the center of the parking lot.

- If Developer requires the City to abandon the existing well, at its sole cost, Developer
  must provide another well on site of equal or better water quality and production and
  must meet the requirements of the City and State Department of Drinking Water
  (DDW).
- City is requesting a second site to be made available for potential water well use.

# Parking for public purposes:

The Property is currently improved with surface parking which is used by Cal Train through separate agreements with both the City and VTA. In addition, a portion of the project site is currently used as public parking available for the Santa Clara Police Department building. The

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Term Sheet will specify:

• Timing and number of the Caltrain temporary parking and the permanent relocation of the parking

 Timing and number of the permanent relocation of the Santa Clara Police Department parking

# **CEQA** compliance

The City will act as the Lead Agency for the completion of the CEQA process for the project. An analysis of the potential loss of the well site and the impact on the City's potential water supply and A Cultural Resources Treatment Plan (related to the Project's proximity to Mission Santa Clara) will need to be developed to complete the CEQA process.

The Project is also located adjacent to Santa Clara Depot, a Historical Resource Inventory property, which requires that the Historical and Landmarks Commission review the project for neighborhood compatibility and consistency with the City's Design Guidelines.

# Surplus Lands Act

City will require an indemnity in relation to any potential penalties associated with the disposition of the City property under the Surplus Lands Act, CA Gov't Code section 54220 et seq..

As the ENA is a three party (City, Developer and VTA) agreement, the requested Council authorization is to extend the term to match the term authorized by the VTA Board but in no event longer than 12 months (i.e., August 5, 2021). Additional time is also needed to complete the environmental review of the Project in accordance with the California Environmental Quality Act ("CEQA").

The negotiations have been protracted. Because there is uncertainty about the parties' ability to successfully negotiate the terms of a Term Sheet and navigate the issues associated with entitlements and disposition, in addition to the authority to match the term of the ENA with VTA authority, staff recommends that the ENA Amendment also include the following:

- A final term sheet to be presented to the Council for consideration by November 2020
- Clarification that the Developer is required provide a second well site, in addition to the relocation of the existing well, so that the City's potential water resources are maintained.

# **ENVIRONMENTAL REVIEW**

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

# FISCAL IMPACT

There is no fiscal impact associated with this item other than administrative time and expense.

# COORDINATION

This report was coordinated with VTA and the City Attorney's Office

20-642 Agenda Date: 7/14/2020

# **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 <a href="mailto:clerk@santaclaraca.gov">clerk@santaclaraca.gov</a>.

# **ALTERNATIVES**

- 1. Authorize the City Manager to negotiate and execute a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC consistent with the terms in the staff report for the development of a City-owned parcel located at 500 Benton Street.
- 2. Direct the City Manager to allow the Exclusive Negotiations Agreement with Republic Metropolitan LLC to expire.
- 3. Any other action authorized by the Council.

# RECOMMENDATION

Alternative 1:

Authorize the City Manager to negotiate and execute a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC consistent with the terms in the staff report for the development of a City-owned parcel located at 500 Benton Street.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager



# City of Santa Clara

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

# Agenda Report

20-689 Agenda Date: 7/14/2020

# REPORT TO COUNCIL

# **SUBJECT**

Adopt a Resolution Ordering the Submission of a Ballot Measure to the Qualified Electors of the City; Calling for a Special Municipal Election to be Held in the City of Santa Clara on Tuesday, November 3, 2020 for the Purpose of Submitting to City Voters a Measure to Increase the Transient Occupancy Tax (TOT) Rate in an Amount Up to 4%; Requesting Consolidation with the Presidential General Election and Election Services from Santa Clara County; Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

# **BACKGROUND**

At the 2019 Council Priority Setting Session, the City's Ten-Year Financial Forecast was presented to the City Council indicating ongoing deficits beginning in Years 3 and 4. The City Council requested that staff explore potential revenue measures and schedule a study session to further evaluate options. In addition, the Council authorized the City Manager to retain consultant services to assist with voter research and community engagement to determine the viability of any potential ballot measure. In February 2020, a study session on potential revenue strategies was presented to the City Council. Included in the presentation was a comparison of the City's TOT rate which showed that Santa Clara was among the lowest in the area:

# Transient Occupancy Tax by City

City	Rate
Gilroy	9.0%
Santa Clara (w/o CFD)	9.5%
Saratoga	10.0%
Fremont	10.0%
Mountain View	10.0%
San Jose	10.0%
Morgan Hill	11.0%
Los Altos	12.0%
Campbell	12.0%
Cupertino	12.0%
Los Gatos	12.0%
Sunnyvale	12.5%
Milpitas	14.0%
Palo Alto	15.5%

The Council directed staff to conduct voter research on two strategies: a general obligation bond and an increase in the transient occupancy tax (TOT) rate. The City contracted with the Lew Edwards Group (LEG) and EMC Research (EMC) to conduct voter research which included a multi-modal

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survey of 645 likely November 2020 voters conducted in English, Spanish, Chinese and Vietnamese during the week of May 12-18, 2020.

Survey results indicate that:

- } Constituents continue to feel positively about the job the City of Santa Clara is doing;
- Many anticipate at least some personal financial impact in the coming months as a result of the COVID-19 pandemic;
- Constituents are not ready to support a bond at the level needed this year. LEG/EMC encourages the City to continue engaging its residents on these issues over the long-term; and
- Interest in a potential TOT measure to maintain/protect vital city services including disaster and emergency preparedness, street and pothole repair, and fire protection services is well above the simple majority (50% + 1 vote) needed for passage. (70% approval)

Based on the results of the survey and the Council discussion, it was agreed that staff would bring forward on July 14, 2020 additional discussion towards the placement of a measure on the November 3, 2020 General Election Ballot that would increase the TOT rate by an amount up to 4%.

# **DISCUSSION**

This report details the necessary steps required to place a TOT measure on the November 3, 2020 general election ballot.

The proposed TOT rate increase is a general tax measure that requires approval by a simple majority (50% + 1 vote). If approved by voters, the additional revenue generated would be allocated to the City's General Fund for general government purposes to maintain and protect essential City services such as 9-1-1 emergency medical/disaster preparedness, police and fire protection, bicycle and pedestrian safety, roadways and storm drains, and other vital services including but not limited to parks, recreation and library services. The following chart illustrates the additional revenue that would be generated based on percentage increases to the TOT rate. The table below reflects the projected rate of revenue based on the *pre-COVID rates of hotel occupancy*, events at the Santa Clara Convention Center and previous economic activity:

Transient Occupancy Tax Scenarios					
	4%	3%	2%	1%	
General Fund Revenue	\$7,000,000	\$5,250,000	\$3,500,000	\$1,750,000	

As noted in the FY 2020/21 budget presentation, an increase in revenue generation is a is a critical element of the City's overall budget balancing strategy to close an on-going budget deficit estimated to be least \$23 million-a TOT increase is a viable option. For this reason, it is recommended that the City Council consider placing a TOT measure on the November 3, 2020 General Election Ballot that would allow increases up to a 4% in the TOT rate. Given the impacts of COVID-19, it is important to note that any increase in the TOT rate will not restore pre-COVID revenue (or add new revenue) but will simply slow the pace of revenue loss. New revenue will be generated when the economy recovers to pre-COVID rates of occupancy.

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At the July 14, 2020 Council meeting, it is recommended that the City Council consider placing a TOT measure on the November 3, 2020 General Election Ballot that would allow increases up to a 4% in the TOT rate. In order to generate new revenue, the City would need to experience a complete restoration of the former levels that the economy once generated. That scenario is not likely to happen over the next year and, based on recent information, the economy may take longer for full recovery. The "up to 4%" strategy is designed to allow the Council flexibility to set the rate by City ordinance and adjust it through an ordinance amendment process. This allows the City to act strategically going forward and adjust for market activity.

As part of this strategy, it is also important to recognize that the hospitality industry has been one of the hardest hit industries and is a critical partner in revenue generation for this TOT strategy. Without a strong Destination Marketing Organization (DMO) or Tourist Improvement District (TID), or until the economy is back to pre-COVID levels, it is unlikely that the TOT will generate the desired revenue. The DMO and TID provide sound guidance on the market activity with respect to adjustments to the TOT rate, as both have direct market participation in the hospitality industry.

As such, should the voters approve the measure, it is strongly recommended that the initial TOT increase be set at 2% and that further increases be established based on certain economic thresholds that demonstrate any increase would have a favorable revenue outcome (keeping in mind the economy and the ability to remain competitive in the hospitality industry). The City Manager has met with the DMO and TID separately, and in a joint DMO-TID meeting to discuss the City's interest to advance a ballot measure. Staff is committed to working with the TID and DMO to ensure that future adjustments to the TOT rate are transparent and in the spirit of a strong, competitive local economy, that demonstrate our inter-dependent partnership and that strategically addresses our mutual economic needs. While ultimately the City Council has the complete taxing authority, it is important to recognize the market industry for which these tax revenues are generated.

# **Next Steps**

In order to place an item before the voters, the Council must adopt a resolution. The attached draft resolution calls for the following:

- 1. Approval of the ballot language to be presented to the voters of the City of Santa Clara;
- 2. A Special Election to be held on November 3, 2020 and requesting consolidation with the Presidential General Election and the services of the Registrar of Voters to conduct the election:
- 3. Direction to the City Attorney to prepare an impartial analysis for the measure;
- 4. Direction on ballot arguments to the City Clerk to be printed in the Sample Ballot; and
- 5. Approval of a draft amendment to the Municipal Code to incorporate the proposed changes if the measure is approved by the voters.

# **Ballot Language**

The State Elections Code Section 9051 requires that a ballot question not exceed 75 words. The proposed compliant ballot question is as follows:

"To maintain and protect the level of essential city services including 9-1-1 emergency medical/disaster preparedness, police and fire protection, bicycle and pedestrian safety, roadways and storm drains and other vital services including parks, recreation, libraries and senior services, shall a measure increasing the hotel rate up to 4%, generating up to 7 million dollars annually, paid

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only by hotel/motel guests, until ended by voters, be adopted?"

The revenue projection in the proposed ballot language is based on FY 2020/21 revenue projections from April 2020. Obviously, based on the rate set by the Council, and market recovery activity, the actual amount of revenue will differ.

# Calling of an Election

As required by the State Elections Code, the City Council must adopt a resolution calling an election, requesting consolidation with the Presidential General Election and requesting the Registrar of Voters to provide election services. The attached resolution meets those requirements.

# Impartial Analysis by the City Attorney

The State Elections Code Section 9280 authorizes the Council to direct the City Attorney to prepare an impartial analysis of the measure. This authorization is included in the attached resolution.

# **Ballot Arguments**

State Elections Code Section 9282(b) provides for the filing of ballot measure arguments by the following: City Council or any member(s) of the Council authorized by the Council, any individual voter eligible to vote on the measure, bona fide association of citizens or any combination of voters and associations.

The City Council determines whether the Council or members of the Council authorized by the Council will draft the argument supporting the ballot measure or whether it will, instead, allow a third party to do so. The City Charter and the California Elections Code authorize, but do not require, the City Council to write the argument in support of the ballot measure. If the City Council chooses to write the ballot argument, it should designate a maximum of three Council members to draft the argument. These designees would prepare and sign the argument and submit it to the City Clerk. Alternatively, the Council may designate the Mayor to sign on behalf of the entire Council. A total of five individuals and/or organizations may sign the ballot argument and the Council may designate which individuals or organization fill any available signature slots. If the City Council decides not to draft the argument itself, any registered voter or bona fide association of citizens may submit a proposed argument to the City Clerk. If the City Clerk receives multiple proposed arguments, the City Clerk shall select one of the arguments in adherence to Elections Code Section 9287.

The City's ballot measure resolution is due to the Registrar of Voters by August 7th; with arguments due by August 11th; and rebuttal arguments and impartial analysis due on August 19th. In order to meet these deadlines, the resolution is being brought forward for Council action on the **July 14, 2020** agenda to allow for the required 14-day public comment period for arguments and the 10-day public comment period for rebuttals that must be completed before submission of the required documents to the Registrar of Voters. As such, in accordance with Elections Code Section 9285(a) the City Clerk as the local Elections Official has set the following deadlines: adoption of the ballot resolution on **July 14, 2020**; arguments due by 5:00 p.m. to the City Clerk's office on **July 28, 2020**; rebuttals due by 5:00 p.m. to the City Clerk's office on **August 7, 2020**. The City Attorney shall draft an impartial analysis on the measure, which is also due on **Friday, August 7, 2020**.

<u>Draft Amendment to the Santa Clara Municipal Code Section 3.25.030</u>

The proposed increase to the TOT requires an amendment to the City of Santa Clara Municipal Code and voter approval. The rate change would not take effect unless and until approved by a vote of at least 50% plus one of the voters voting on the questions at the election.

The proposed amendment is as follows (with new language shown in underline):

# 3.25.030 Tax imposed.

- (a) For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax as imposed from time to time by City Council resolution. Said tax shall be a percentage of the rent charged by the operator to the occupant. An increase that exceeds ten percent of the rent charged by the operator shall be authorized only with an amendment to this section.
- (b) On and as of July 22,1992 and continuing thereafter until further change by City Council resolution, the amount of the tax imposed is nine and one-half percent of the rent charged by the operator.
- (c) On and as of January 1, 2021 and continuing thereafter until further change by City Council resolution, the amount of the tax imposed is eleven and one-half percent of the rent charged by the operator. As approved by voters, any future changes in the amount of tax imposed may be made by City Council resolution up to a cap of thirteen and one-half percent of the rent charged by the operator
- (d) Said tax constitutes a debt owed by the transient to the City, which is extinguished only by payment to the operator or to the City. The transient, or any person paying rent on the transient's behalf, shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Director of Finance may require that such tax shall be paid directly to the Director of Finance. (Ord. 1847 § 2, 10-20-09).

## **Election Timing**

To place a measure on the November 3, 2020 ballot, the Registrar of Voter's deadline is August 7, 2020. This item is being considered on July 14, 2020 in order to allow sufficient time for arguments, rebuttals and preparation of the impartial analysis.

# Community Outreach

Community Outreach was conducted with key stakeholder groups. The City Manager and City staff met with the TID Board on June 11<sup>th</sup>, the Silicon Valley/Santa Clara DMO, Inc. Board of Directors on June 22<sup>nd</sup>, and the TID and DMO Boards jointly on July 7<sup>th</sup>. The City Manager provided a brief presentation on the impact of the current public health and economic crisis on the City's operations, shared potential cost control measures, and discussed and gathered feedback on the potential measure. The TID Advisory Board expressed concerns that a marked increase in the TOT (of more than 2%) would reduce the TID hotel competitiveness in the market by pushing the TID hotels into the highest overall hotel rates (average room night plus fees) compared to other destination cities, and would not allow room for a future change in the TID assessment from \$1.00 per occupied room night to 1.5%. The TID Advisory Board further expressed the desire to generate funds that could fully support and sustain the new DMO to market Santa Clara throughout the tourism industry. Staff will

continue to work collaboratively with the TID and DMO Boards on efforts to expand market reach and hotel occupancy.

Should the Council submit a ballot measure for the November 3, 2020 general election, a communications plan will be created that will leverage the recent "Prioritize Santa Clara" educational efforts as well as the City's many public education channels including but not limited to:

- City website and e-notify
- Social media (Facebook, Twitter, Next Door, etc.)
- Government Access Channels
- Media Releases
- Ads in local and ethnic media outlets
- Mailers to Santa Clara likely voters
- Utility Bill Inserts
- Educational videos like those used in the Prioritize Santa Clara campaign

Likewise, engagement with the TID and DMO on future increases will continue to take place collaboratively where conditions of both the market industry and the City's overall fiscal health are considered. If the Council conceptually supports this TOT ballot measure strategy, staff could continue to meet with both the TID and DMO during the Council recess and provide updates on these discussions with a formal report in either September or December, based on future Council and/or voter action.

# Conclusion

The City anticipates a FY 2020/21 budget deficit in excess of \$23 million dollars. Statistically valid community research showed strong support for an increase of up to 4% in the TOT rate (70%). Should the Council wish to place a measure on the November 3, 2020 General Municipal Election, appropriate documentation supporting formal action by the Council must be received by the Santa Clara County Registrar of Voters no later than August 7, 2020. The purpose of this report is to seek Council direction on the placement of a ballot measure to increase the TOT rate up to 4% on the November 3, 2020 ballot.

# **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 organization or administrative activity that will not result in direct or indirect changes in the environment.

# **FISCAL IMPACT**

Based on recent (pre-Covid) projections, it is estimated that a 2-4% increase in the TOT rate would generate between \$3.5-7 million dollars annually in additional revenue. The costs associated with placing a ballot measure and requesting the services of the Registrar of Voters of Santa Clara County to conduct the election is approximately \$210,798. Additional expenditures of approximately \$70,000 would be required for printing, translation services, publishing of notices and other related costs. Funding for these expenses is available in the FY 2020/21 budget.

# 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>.

# **ALTERNATIVES**

- 1. Adopt a resolution ordering submission of a ballot measure to the qualified electors of the City; calling for a Special Municipal Election to be held in the City of Santa Clara on Tuesday, November 3, 2020 for the purpose of submitting to City voters a measure to increase the Transient Occupancy Tax Rate in an amount up to 4%; requesting consolidation with the Presidential General Election and election services from Santa Clara County; directing the City Attorney to prepare an impartial analysis; setting priorities for ballot arguments; and approval of the draft amendment to the Santa Clara City Code to incorporate the proposed changes if the measure is approved by the voters.
- 2. Other direction as approved by the City Council

# RECOMMENDATION

Alternative 1:

Adopt a resolution ordering submission of a ballot measure to the qualified electors of the City; calling for a Special Municipal Election to be held in the City of Santa Clara on Tuesday, November 3, 2020 for the purpose of submitting to City voters a measure to increase the Transient Occupancy Tax Rate in an amount up to 4%; requesting consolidation with the Presidential General Election and election services from Santa Clara County; directing the City Attorney to prepare an impartial analysis; setting priorities for ballot arguments; and approval of the draft amendment to the Santa Clara City Code to incorporate the proposed changes if the measure is approved by the voters.

Reviewed by: Cynthia Bojorquez, Assistant City Manager

Approved by: Deanna Santana, City Manager

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# ATTACHMENTS 1. Resolution

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A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA ORDERING THE SUBMISSION OF A BALLOT MEASURE TO THE QUALIFIED ELECTORS OF THE CITY AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 3, 2020, REGARDING A BALLOT MEASURE TO AMEND CITY CODE SECTION 3.25.030 TO INCREASE TRANSIENT OCCUPANCY TAXES; CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF SANTA CLARA ON TUESDAY, NOVEMBER 3, 2020, FOR A VOTE ON SAID BALLOT MEASURE; REQUESTING CONSOLIDATION WITH THE PRESIDENTIAL GENERAL ELECTION AND ELECTION SERVICES FROM SANTA CLARA COUNTY; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND SETTING PRIORITIES FOR BALLOT ARGUMENTS

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

WHEREAS, the next Presidential General Election will be held November 3, 2020;

**WHEREAS**, the California Constitution Article XIIIC, Section 2(b) requires a proposed tax to be submitted to voters at a general municipal election;

WHEREAS, the City Council intends to submit a ballot measure and ballot question, concerning an increase in the Transient Occupancy Tax rate, as described in this Resolution, to the qualified electors of the City of Santa Clara at such election;
WHEREAS, pursuant to the requirements of the City Charter there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 3, 2020, a special municipal election placing on the ballot one measure that, if passed, would amend City Code Section 3.25.030; and,
WHEREAS, in the course of conducting a special municipal election on November 3, 2020, it is desirable that such special municipal election be consolidated with the general election, pursuant to Santa Clara City Charter section 600.02, to be held on the same date as if there were only one election. It is also necessary for the City to request services of the County as set forth in this resolution.

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

- 1. SPECIAL ELECTION. That pursuant to the requirements of the City Charter, there is called and ordered to be held in the City of Santa Clara, California, on Tuesday, November 3, 2020, a special municipal election placing one measure on the ballot that, if passed, would amend City Code Section 3.25.030 to increase transient occupancy tax rates.
- 2. BALLOT QUESTION. That the ballot question shall read as follows:

CITY OF SANTA CLARA MEASURE	
To maintain and protect the level of essential city services including 9-1-1 emergency medical/disaster preparedness, police and fire protection, bicycle and pedestrian safety,	Yes
roadways and storm drains, and other vital services including parks, recreation, libraries and senior services, shall a measure increasing the hotel tax rate up to 4%, generating approximately 7 million dollars annually, paid only by hotel/motel guests, until ended by voters, be adopted?	No

- 3. MEASURE. That the measure read as set forth on Exhibit A (attached hereto and incorporated herein by reference, with additions to and deletions from the current text indicated thereon) which, if passed by the voters, shall amend the Municipal Code of the City of Santa Clara.
- 4. NOTICE OF ELECTION. That in accordance with the City Charter and applicable state law, the City Clerk is hereby authorized and directed on behalf of the City Council to cause notice of the time and place of the holding of the election to be published once in a newspaper of general circulation, printed, published, and circulated in the City of Santa Clara, and hereby designated for that purpose by the City Council of Santa Clara. Furthermore, the City Clerk hereby is authorized, instructed and directed to coordinate with the County of Santa Clara Registrar of Voters to procure and furnish any and all official ballot, notices, printer matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Resolution/Notice of Intention

Rev: 11/22/17

- 5. CONSOLIDATION REQUEST. Pursuant to the requirement of Part 3

  (Consolidation of Elections; Section 10400 et seq) of Division 10 of the Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to consolidate the special municipal election with the presidential general election on November 3, 2020, and to further provide that, upon consolidation, the consolidated election shall be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used, election officers appointed, voting precincts designated, ballot printed, pools opened and closed, ballots opened and returned, returns canvassed, and all other proceedings in connection with the election shall be regulated and done by the Registrar of Voters of the County of Santa Clara in accordance with the provisions of applicable laws regulating consolidating elections. This City Council requests and consents to such consolidation.
- 6. REQUEST FOR COUNTY SERVICES. Pursuant to Section 10002 of the California Elections Code, the City Council hereby requests the Board of Supervisors of the County of Santa Clara to permit the Registrar of Voters to render services to the City of Santa Clara relating to the conduct of Santa Clara's special municipal election to be held on Tuesday, November 3, 2020. Services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections.
- 7. ELECTION COSTS. Subject to the approval of the Board of Supervisors of the foregoing requests, the City Clerk is hereby authorized to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of the election. The City Director of Finance is authorized and directed to pay the costs of services, provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.
- 8. BALLOT AND REBUTTAL ARGUMENTS FOR MEASURE. Primary and rebuttal arguments for the measure may be filed consistent with Elections Code Section 9282, et seq.

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9. BALLOT ARGUMENT (IN FAVOR) OR (AGAINST) MEASURE. The Council hereby

selects the following course of action regarding argument (in favor) or (against) the measure:

(Council to select one of the following concurrent with the adoption of resolution):

A. Authorizes the City Council as a body to submit a written argument (in favor)

or (against) the measure and in the event an argument is filed for the measure, a rebuttal

argument.

B. Authorizes (#) of member(s) of the City Council to submit a written argument

(in favor) or (against) the measure: (one or more name(s)): at (Name(s) discretion, the

argument may also be signed by other members of the City Council, bona fide associations

or individual voters who are eligible to vote on the measure. In the event that an argument

is filed for the measure, (Name(s) is also authorized to submit a rebuttal argument on

behalf of the City Council, which, at (Name(s) discretion, may also be signed by members

of the City Council, bona fide associations, or individual voters who are eligible to vote on

the measure. Signatures on the rebuttal argument may be different from those who signed

the primary argument. OR

C. Takes no action with regard to authorizing the Council or member of the

Council to submit a written argument (in favor) or (against) the measure, in which case the

City Clerk shall select an argument against the measure in accordance with the priority

order set forth in Elections Code section 9287.

10. IMPARTIAL ANALYSIS. Pursuant to Elections Code Section 9280, the City Council

hereby directs the City Attorney to prepare an impartial analysis of the measure.

11. TRANSMITTAL OF RESOLUTION. The City Clerk is hereby directed to file a

certified copy of this resolution with the Board of Supervisors and the County Registrar of

Voters.

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12. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the

California Code of Regulations, Sections 15378(b)(4) and 15378(b)5) that this resolution is

exempt from the requirements of the California Environmental QUALITY Act (CEQA) in that

it involves fiscal and administrative activities that will not result in a potentially significant

impact on the environment.

13. That in all particulars not recited in this resolution, the special municipal election shall

be held and conducted as provided by law for holding municipal elections.

14. That this resolution provides notice of the time and place for holding the general

municipal election and the City Clerk is authorized, instructed and directed to give further or

additional notice of the general municipal election in time, form and manner as required by

law.

15. That the proposed measure shall not take effect unless and until approved by a vote

of at least 50% plus one of the voters voting on the question at the election.

16. 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 14<sup>TH</sup> DAY OF JULY, 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC ASSISTANT CITY CLERK CITY OF SANTA CLARA

Attachment:

1. Exhibit A Ordinance Amending SCCC Section 3.25.030

#### EXHIBIT A

## ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING SECTION 3.25.030 ("TAX IMPOSED") OF CHAPTER 3.25 ("TRANSIENT OCCUPANCY TAX") OF TITLE 3 ("REVENUE AND FINANCE") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO INCREASE THE TAX RATE

# BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

**WHEREAS**, the transient occupancy tax rate currently imposed by the City of Santa Clara is one of the lowest in the area:

**WHEREAS**, in order to increase unrestricted revenue for the City's general fund, the City Council has determined that an increase in the transient occupancy tax is appropriate; and

**WHEREAS**, the increase in transient occupancy tax was approved by the voters of the City of Santa Clara on November 3, 2020.

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

**SECTION 1**: That Section 3.25.030 ("Tax Imposed") of Chapter 3.25 (entitled "Transient Occupancy Tax") of Title 3 (entitled "Revenue and Finance") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

# **"3.25.030 Tax imposed.**

- (a) For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax as imposed from time to time by City Council resolution. Said tax shall be a percentage of the rent charged by the operator to the occupant. An increase that exceeds ten percent of the rent charged by the operator shall be authorized only with an amendment to this section.
- (b) On and as of July 22,1992 and continuing thereafter until further change by City Council resolution, the amount of the tax imposed is nine and one-half percent of the rent charged by the operator.
- (c) On and as of January 1, 2021 and continuing thereafter until further change by City Council

resolution, the amount of the tax imposed is eleven and one-half percent of the rent charged by the operator. As approved by voters, any future changes in the amount of tax imposed may be made by City Council resolution up to a cap of thirteen and one-half percent of the rent charged by the operator.

(d) Said tax constitutes a debt owed by the transient to the City, which is extinguished only by payment to the operator or to the City. The transient, or any person paying rent on the transient's behalf, shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Director of Finance may require that such tax shall be paid directly to the Director of Finance. (Ord. 1847 § 2, 10-20-09)."

**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.

<u>SECTION 3</u>: 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 ten (10) days after the vote is declared by the City Council, pursuant to Elections Code Section 9217.

Attachments incorporated by reference: None



# City of Santa Clara

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

# Agenda Report

20-695 Agenda Date: 7/14/2020

# REPORT TO COUNCIL

# **SUBJECT**

Adoption of a Resolution Setting Rates for Overall Solid Waste Services, Annual Clean-up Campaign, and Household Hazardous Waste in the Exclusive Franchise Area; Report responding to Councilmember Chahal's Analysis; and Consideration of Council Action on a Rate Assistance Program, including Budget Amendment action [Council Pillars: 1) Deliver and Enhance High Quality Efficient Services and Infrastructure; 2) Sustainability]

# **EXECUTIVE SUMMARY**

On June 23, after hearing the results of the legally noticed Public Hearing for the setting of overall solid waste services in compliance with Proposition 218, Councilmember Chahal made a presentation titled "Residential Rate Hike Analysis for Garbage." Upon discussion of the presentation, Council directed staff to analyze the presentation and present findings at the July 14 City Council meeting. This report responds to that directive and below are the findings of our review:

- 1. The record shows that the expected costs of the possible new programs have been a matter of public information since September 2019 and, since that time, have been circulated and discussed publicly. The rate increases were disclosed, including social media posts, City website posts, and legal notices to each household, etc. The community input provided clear evidence that residents preferred mixed waste processing (See Community Engagement & Disclosure of Rate Increases).
- 2. The presentation did not acknowledge that residents overwhelmingly supported the mixed waste processing option, along with the associated rates, both by the citywide community survey and Proposition 218 outcome. There is no valid evidence presented through the recent community meetings, citywide survey, or Proposition 218 process that shows that there is a majority number of households that reject the mixed waste processing option and related rate increases (See Proposition 218 Protest Trend Data).
- 3. The analysis did not factor in the limitations associated with the existing contracts that impact overall costs and raise serious issues, such as: Unilateral changes by the City might invite legal action for breach of contract; Inadequate notice to the public that the Council might make changes to important City services or policy, including adherence to Council Policy 030; Inadequate transparency in how the City awards major service agreements; and, Loss of reputation as a reliable procurement authority and possible discouragement of potential service providers to participate in procurement processes (See Policy and Legislative Issues Regarding Executed Contracts).
- 4. The analysis did not factor in the cost of delay, about \$175,000/month, and the overall financial health of the Solid Waste Fund (See Solid Waste Fund Analysis).
- 5. The presentation, and related analysis, departed from the commonly used bundled service rate

comparison and focused only on the garbage cart component of the bundled service rate for comparison/analysis. This is not the standard approach as contracts vary on their proprietary pricing per service and the bundled rate communicates to the consumer what their monthly fee will be (See Community Engagement & Disclosure of Rate Increases and Comments on Councilmember Chahal's Presentation).

- 6. The analysis omitted \$500,000 of required annualized cost and, when combined with the cost of delay by one month, result in omission of \$675,000 costs at minimum. Further delay should add to this analysis at least \$175,000/month (See Comments on Councilmember Chahal's Presentation).
- 7. Rate increases were always a known outcome due to the above cost impacts and there was always transparency about rate increases. The analysis created the impression that residents had the option to maintain the existing rate by comparing the old rate with the new mixed waste processing rate: that was not a proper comparison, as the old rate was never an option to maintain. When both rates are normalized to make for a valid comparison, the rates are well within the range of what was presented to Council in September and December and supported by the community. (See Comments on Councilmember Chahal's Presentation).

# **BACKGROUND**

In December 2019, Council made a policy decision to adopt mixed waste processing and authorized the execution of contracts with Mission Trail Waste Systems (MTWS) and Greenwaste Recovery (GWR). At that same meeting the proposed new agreements were presented along with estimated customer rates beginning July 1 for 2020, 2021 and 2022. In accordance with Council action, staff executed the contracts in April 2020 and began the required process (Proposition 218) to adjust the customer rates required for the contracted services. On June 23, 2020, staff presented the outcome of the Proposition 218 process, which resulted in 41 protests received out of 25,837 notices sent. At that meeting, staff recommended that Council adopt a resolution to approve the rates.

The Council's policy decision in 2019, to select mixed waste processing for the solid waste contract, and associated rates, was approved by the City Council following a multi-year process that was based on several criteria in the selection of service options:

- **1. Organics Waste Diversion Laws** -- Comply with mandated environmental laws requiring diversion performance rates/targets SB 1383;
- 2. Market, Haulers & Facility Readiness -- Successfully select haulers and a processing facility within a complex and rapidly changing (global) market, with a focus on the readiness of a processing facility to receive Santa Clara's capacity;
- **3. Rate Correction & Setting** -- Correct findings of rate analyses that showed needed corrections due to global market changes, state legislative action, modern service options, discovery that smaller carts ("super saver") were paying less than cost for service, and ensure reasonable rates for residents and actions required to account for labor and capital costs; and,
- **4. Responsive Policy** -- Determine policy and service that responds to input received from robust community engagement and survey results from the split-cart pilot program.

The proposed increased rates are attributed to the higher cost associated with meeting the requirements of SB 1383 and other cost factors (Items 2-4 above), and to resolve the financial losses associated with the former Recology contract. All of these factors were known fixed cost increases as the City engaged in modernizing services and fixing the structural pricing that was no longer

advantageous for the vendors (meaning that the contract terms did not cover the cost for service because of changed global markets and/or higher than average labor cost escalation).

Rate increases were always a known outcome due to the above cost impacts. One discretionary cost impact factor was the decision between split-cart or mixed waste processing and both the community survey and Proposition 218 process supported the higher cost mixed waste processing option.

# **DISCUSSION**

Following staff's presentation on June 23, 2020, Councilmember Chahal provided a separate presentation and posed questions about the proposed rates and the mixed waste processing policy decision, as well as the potential savings associated with the policy decision for a split-cart program. As a result, Council requested additional information to further explore these issues. The Council directed staff to review Councilmember Chahal's analysis before the Council relied on it for possible action.

This report provides information on the following items:

- Council Due Diligence;
- Community Engagement & Disclosure of Rate Increases;
- Proposition 218 Protest Trend Data;
- Policy and Legislative Issues Regarding Executed Contracts;
- Solid Waste Fund Analysis;
- Comments on Councilmember Chahal's Presentation; and,
- Financial Assistance Plan & General Fund Subsidy.

# **Council Due Diligence**

Attachment 1 provides a complete summary of context and actions taken over the course of multiple years to establish policy for the City's solid waste contracts.

# **Community Engagement & Disclosure of Rate Increases**

Citywide survey results showed that despite mixed waste processing being 14 percent more expensive for the initial three years, **63 percent of the 643 survey respondents preferred it.** 

As background, from 2017 through 2019, staff reported the input received from the community and survey results from the split-cart pilot program users (Attachment 2). At the time, results were mixed and residents who were not part of the pilot program expressed strong concerns over expanding this service citywide. However, during the pilot program, Council expressed that the split-cart was a top resident concern that generated frequent complaints. It is for that reason that when staff returned on September 17, 2019 with the proposed policy options and associated rates, Council requested more community engagement for Council consideration. Staff conducted two community meetings and a citywide survey that was widely advertised (Attachment 3).

A key question from the June 23, 2020 Council hearing was whether residents were aware that mixed waste processing was more expensive than the split-cart program. The City has been transparent about the rate increases and, particularly, public information on the services and associated costs were first discussed conceptually in 2018. Estimated rates were released in September 2019 and were utilized in the citywide survey conducted in November 2019. This

information was presented in the December 2019 Council report. Table 1 shows the rates included in the citywide survey that clearly communicate a three-year 14 percent cost differential between both options.

Table 1: 32-gallon Garbage Cart and All Associated Services and Costs

Policy Options	7/7/19 Current	7/1/20	7/1/21		Percent Change
Option 1: Organics in new split-cart (source separated)	\$36.59	\$43.00	\$49.60	\$52.60	+44%
Option 2: Organics in existing garbage cart (mixed waste processing)	\$36.59	\$43.40	\$54.30	\$57.90	+58%

The survey reflected the rates of the 32-gallon garbage cart because it is used by over 50 percent of single-family homes. Furthermore, to ensure there was no confusion about the difference between Option 1 and 2, the following note was also included: "The estimated impacts to rate changes will vary depending on the size of the garbage container, but the changes will be larger for Option 2 for all service levels."

# Rate Comparison and Common Use of Bundled Rates

As a standard market practice, bundled rates are commonly used to benchmark and/or compare cost effectiveness against other services provided: other cities and countywide comparisons are based on these bundled rates. Companies price different service items of each contract differently based on their proprietary pricing practices, but the bundled service rate communicates the total cost for service that a resident will be charged on their monthly bill. The City's bill shows a bundled rate, only separating the clean-up campaign costs and the 30 cents for the hazardous waste charges.<sup>1</sup> Comparison of bundled rates is a more accurate evaluation because the service model requires that the customer participate in all services with no option for an la carte service.

Additionally, the December 2019 estimated bundled monthly service rates for mixed waste processing (Attachment 4) are consistent with the actual rates used for the Proposition 218 approval. In fact, the December 2019 estimated rate for the 32-gallon example was \$45.10, but the final rate being considered today is lower at \$44.10 (See Table 2). As illustrated, there have been no significant changes since December 2019 to the rates used for the Proposition 218 action.

Table 2: FY 20/21 Proposed Rates vs. Estimated Rates Provided December 10, 2019

		Proposed FY 20/21 Rate	Difference
Single-family 32-gallon bundled rate (includes yard trimmings, recycling, CUC, HHW)	\$45.10	\$44.10	(\$1.00)
Townhouse 32-gallon bundled rate (includes recycling, CUC, HHW)	\$31.30	\$32.30	\$1.00
Commercial business 3-cubic yard bundled rate, includes 96-gallons/week recycling	\$322.00	\$322.03	\$0.03
Multi-family 3-cubic yard bundled rate, includes 1-cubic yard recycling bin service once a week	\$430.30	\$391.09	(\$39.21)

## **Proposition 218 Protest Trend Data**

Enacted in 1996, Proposition 218 established the method for local governments to create and increase fees, rates, or taxes. Generally, this process requires voter notification, approval, and a

protest process. On May 4, 2020 the City sent all 25,837 customers (includes both residential and commercial businesses) the proper notification for this rate increase. From May through June, customers were able to submit their protests to the Office of the City Clerk. At the June 23 Public Hearing, the Assistant City Clerk closed the protest period and reported that 41 protests were registered.

With each household and commercial business afforded the opportunity to protest, the results show a **protest rate of 0.16 percent (significantly less than 1 percent)**. This outcome is relatively consistent with the average protest rate in recent years (See Table 3). When compared to the average five-year protest rate of 32 per 25,837 households and commercial businesses (or 0.13 percent), 2020's protest rate is only 0.03 percent higher, which does not appear as a material difference.

Table 3: Proposition 218 Protest Rate from 2016 - 2020

Year	Bundled Rate Increase for 32-Gallon Customers	# of Protests
2020	20.5%	41
2019	8.4%	11
2018	6.6%	8
2017	1.7%	48
2016	4.8%	51
Average	8.4%	32

When evaluated within the context of a 63 percent favorable citywide survey result for mixed waste processing, it is reasonable to conclude that the citywide Proposition 218 protest rate is consistent with the community's preference for mixed waste processing. There is no valid evidence presented through the recent community meetings, citywide survey, or Proposition 218 process that shows that there is a majority number of households that reject the mixed waste processing option and related rate increases.

# **Policy and Legislative Issues Regarding Executed Contracts**

At the June 23, 2020 Council meeting, it was not clear whether Councilmember Chahal was suggesting that Council should consider amending the contracts that were approved and executed with the two service providers. Regardless, the result of the presentation and dialogue about it raises policy and legislative issues. Council should not consider any changes at this time based on following serious issues:

- Unilateral changes by the City might invite legal action for breach of contract as an example, the agreement with GWR grants exclusive rights to process the City's residential and commercial garbage
- Inadequate notice to the public that the Council might make changes to important City services or policy, including adherence to Council Policy 030
- Inadequate transparency in how the City awards major service agreements
- Loss of reputation as a reliable procurement authority and possible discouragement of potential service providers to participate in procurement processes.

The analysis of the Council's policy and legislative practices regarding public policy decision-making and specific contract terms must be a part of the overall analysis of Councilmember Chahal's presentation, as they raise serious concerns about overall governance and transparency about how the City conducts business and establishes policy. Attachment 5 provides a full summary of the issues that support the above bulleted items.

# **Solid Waste Fund Analysis**

As stated at the June 23, 2020 Council meeting, decisions on how to proceed should not be made without a Solid Waste Fund analysis. Given that the contracts have already been executed, the City is obligated to pay for the service from the Solid Waste Fund (through rates approved by a Proposition 218 process) or General Fund to uphold these contracts.<sup>2</sup>

The Solid Waste Fund has a budget stabilization reserve (Reserve) that is set at 10 percent of operating expenses. As of July 1, 2020, the Reserve totaled \$2.6 million and without rate increases, the Reserve will be utilized to first pay for the executed contracts. However, operating a service of this significance and drawing below a 10 percent Reserve rate is undesirable. Delays in implementing these rates within FY 20/21 result in the following monthly losses:

- July December 31, 2020 losses are \$175,000/month
- January June 2021 losses are \$350,000/month

With the June 23 rate increase being delayed, the Fund has already experienced a loss of \$175,000. In the immediate short term, the Solid Waste Fund will see an estimated \$1.04 million in shortfall to cover garbage, yard trimmings, residential recycling services, and the Clean-up Campaign expenditures over the first six months of the year. The shortfall will accelerate after January 1, 2021 because the City is contractually obligated to begin paying GWR to process garbage at its material recovery facility. At best, a delay in action would diminish the Reserve to about 5 percent of operating costs for FY 20/21 if the proposed rates are delayed until January 1, 2021. These are estimates and the General Fund would need to be used to preserve the Solid Waste program, if any unknown risk factors were to happen that resulted in further expenditures. **The presentation did not consider that in order to make up for losses, rates will need to be increased even more in the upcoming years** to pay for additional planned increases and to establish the Reserve back at the appropriate level.

Any decision to delay or create a rate escalator over time, must consider the minimum monthly losses and acceptance that the Solid Waste Fund Reserve would fall to levels never experienced. A one-year delay would result in losing \$3.2 million, resulting in a potential impact to the General Fund of \$600,000 and nothing left in reserves.

# **Comments on Councilmember Chahal's Presentation**

As part of Councilmember Chahal's presentation (Attachment 6), prepared tables were provided with analyses that sought to quantify what the potential costs of a residential split-cart cart would have been had the Council not selected the mixed waste processing option. While one could argue that the analysis served a purpose for demonstrating that the split-cart option was less expensive, that information had already been presented over the course of many months in 2019 and was transparently part of the Council's decision-making process. There was nothing new in the analysis about the split-cart option being cheaper.

However, the analysis poses a number of concerns. Particularly, it only compares the old contract's garbage cart rates (which were never an option going forward) against the new mixed waste processing rates. The real decision for the Council and community was a new mixed flow rate or a new split-cart rate.

In summary, Councilmember Chahal's analysis did not take into account that the rates in the former contracts no longer support the cost of service, nor resolve for the required criteria outlined above in the BACKGROUND section. The presented analysis did not account for:

- 1. Fixed Cost of Updating Old Contracts & Modernizing Service -
  - (a) Organics Waste Diversion Laws Shifting to a split-cart does not satisfy the Exclusivity provision in the GWR contract, putting the City's processing at significant risk since there are no other vendors readily available and, as such, we would not be able to comply with mandated environmental laws requiring diversion performance rates/targets: this is important because the pilot program revealed that there was contamination between the recyclable and solid waste spilt cart collections and without significant outreach and education, at an additional cost, it further puts at risk compliance with diversion laws;
  - (b) Market, Haulers & Facility Readiness A processing facility's readiness to receive Santa Clara's capacity was a significant factor in the decision-making process. GWR was the only local facility that was ready to provide mixed waste processing services in 2021, three other companies responded to the City's Request for Information in August 2019, including MTWS. No other service provider could meet our needs in the short-term and the presentation did not correct for this major service requirement omission;
  - (c) Rate Correction & Setting As demonstrated in this report, there were multiple elements impacting rate increases, cart type being only one example. The Council policy decision was always informed by a cost rate increase and the difference in cost between the split-cart and mixed waste processing rate there was never an option where there would be no rate increase. However, Councilmember Chahal's rate comparison uses old rates that were never guaranteed or an option (resulting in an "apples to oranges" analysis with significantly different underlying cost factors).
  - (d) Responsive Policy The most recent citywide survey and Proposition 218 process each resulted in data demonstrating a high level of support for the mixed waste processing option. There is no valid data that shows overwhelming support for the split-cart option and related rate increase; however, such data exists in two valid forms for the mixed waste option being preferred. Councilmember Chahal's analysis does not regard the many examples of community confirmation of its preference for mixed-use processing.
- 2. Spreadsheet Analysis The analysis was not done on the overall rate increase being proposed (i.e., bundled services model), but instead focused on one specific component of the overall rate increase-the garbage cart component. There were key items that were omitted from the overall cost and rate analysis, such as:
  - (a) Overall Cost Analysis \$500,000 Error in Annualized Costs and \$175,000 Cost of Delay - The analysis showed an

estimated total increase in annualized FY 20/21 residential garbage-related costs of \$2.4 million for mixed waste processing compared to the assumed split-cart option. The City's solid waste consultant (R3 Consulting Group, Inc. (R3)) found the annualized FY 20/21 cost of mixed waste processing to be \$1.9 million over the split-cart alternative. A comparison of the annualized costs of actual mixed waste processing costs to the assumed split-cart alternative is shown in Attachment 7. Below is a summary of the corrections:

- \$93,342 in additional costs for MTWS for split-cart.
- \$150,000 in estimated program costs for outreach, education, customer service and enforcement.
- \$256,250 in additional costs at Newby Landfill Disposal
- \$175,000 the analysis did not account for the cost of delay

There is also a correction required on the chart in Attachment 7 regarding the program costs. Staff originally provided Councilmember Chahal the program costs for all residential services including clean green and recycling. Based on Councilmember Chahal's presentation, staff updated the costs to include only the garbage portion, and clean green and recycling costs have been removed. More specific information regarding the details of this correction are included in Attachment 7.

# (b) Rate Analysis

A more informative analysis would have been to compare the theoretical split-cart rate option (that included all of the known rate increase factors) to a new mixed cart rate option (that included all of the known rate increases). That was the Council policy decision six months ago (with all scenarios having rate increases). There was never a policy option without increases, as used in the presentation (old split-cart rate vs. new mixed waste processing rate).

Accordingly, staff completed this analysis for the sake of analyzing Councilmember Chahal's spreadsheet and provide transparency on the monthly rate increases. Table 4 shows the findings, though it should be made clear that the Estimated Split-Cart Rate shown below is for demonstration purposes only and does not represent what the actual noticed garbage rate components for split-carts would have been had the Council selected the split-cart option. The split-cart rates are based on estimated calculations completed last year prior to December 2019 and would likely change under a final negotiation process. The split-cart cost and rates were never finalized.

Staff's preference is to continue to use the industry standard bundled approach (as presented in September and December), however this table is being provided to help the community and Council better understand the cost differential between both options in Councilmember Chahal's format.

Table 4: Analysis of Proposed Hike in Garbage Rate Component by Cart Type

Cart Type	Estimated Split Cart Rate	- Proposed Actual Mixed Procs. Rate	Cost Difference
Super Saver (20-Gallon)	\$10.80	\$12.50	\$1.70
Small (32-Gallon)	\$18.70	\$20.80	\$2.10
Medium (64-Gallon)	\$35.70	\$38.60	\$2.90
Large (96-Gallon)	\$52.70	\$56.50	\$3.80

Table 4 shows that the cost differential between the two options yields an approximately \$2.10 increase per month in residential garbage rates (using the 32-gallon cart).

# Financial Assistance Plan & General Fund Subsidy

The City has established policy options for a Rate Assistance Program for qualifying residents. For example, customers that qualify for the Rate Assistance Program that is administered by Silicon Valley Power receive a \$3.00 reduction on their monthly solid waste utility bills as part of the existing contracts that were included in these new contracts. Approximately 400 customers are currently enrolled in the program. Under the terms of the MTWS exclusive franchise agreement, the tariff paid to MTWS is reduced by \$3.00 per customer, which enables the program to be funded without General Fund subsidy. Staff has developed two additional options to expand the Rate Assistance Program to provide further financial relief to customers.

**Option 1** - Provide an additional \$8.00 per month discount (\$11.00 per month discount in total) to each customer enrolled in the Rate Assistance Program. The additional \$8.00 a month would be effective for services provided starting August 1, 2020 through June 30, 2021. The additional rate relief would coincide with the implementation of the proposed rate increases, if approved. In total, qualifying customers would see an \$11.00 per month reduction in their solid waste rates beginning August 1, 2020, which represents about a 25 percent reduction off the 32-gallon small cart service. The cost to implement this option is estimated to be \$44,000 for FY 20/21 and would benefit the customers that have already demonstrated a need for assistance. This option would need to be funded by a transfer from the General Fund to comply with Proposition 218 and the contract requirements. With this existing program in place, most qualifying customers would not see an increase to their rate in FY 20/21.

**Pros**: This does not impact the health of the Solid Waste Fund and provides an option to financially assist those residents already on record with the City that require this support. Further, the cost for the remainder of the fiscal year is \$44,000 and assumes participation of the existing 400 residents, along with the potential for 100 more.

**Cons**: There is an impact to the General Fund and it is unlikely that this action would be one-time, since the residents that have demonstrated a need for financial support would not likely all be stabilized within the year. The General Fund Budget Stabilization Reserve is already below the 25 percent minimum and it is likely that the \$23 million budget shortfall will increase.

**Option 2** - Provide a \$3.00 per month discount to all 25,837 customer accounts in the City, effective January 1, 2021 through June 30, 2021. The cost to implement this option is estimated to be about \$465,000 over six months. This option could be done using a portion of the Solid Waste Rate Stabilization Reserves and staff would recommend that it not impact the General Fund; however, this

option would also reduce the Rate Stabilization Reserve to \$1.15 million after taking into account the in FY 20/21 shortfalls due to delayed rate implementation and the \$465,000 for the \$3.00 per month discount. \$1.15 million is 3.7 percent of the Solid Waste Fund operating budget. Given the uncertainty of solid waste rate revenues and expenses in FY 20/21 due to COVID-19, any further discounts and/or delay of rate implementation could likely result in the need for General Fund payment of solid waste operating costs.

**Pros**: This option provides all residential and commercial business customers with a discount during a time of rate increases, and it is likely that the reduced rate is needed by households recently impacted by the economic impacts related to COVID-19.

**Cons**: This option puts the Solid Waste Budget Stabilization Reserve at dangerously low levels and, if not implemented on a one-time basis, may require General Fund subsidy. Additionally, this option does not address future rate increases and the need to build back up the Reserve. Any shortfalls would need to be covered by the General Fund.

# **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of California Environmental Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has not potential for resulting in either a direct change in the environment, or as a reasonably foreseeable indirect physical change in the environment.

# **FISCAL IMPACT**

See June 23 Council report (Attachment 8): minimum monthly cost of delay is \$175,000/month for the next six months. The Solid Waste Fund budget stabilization Reserve is only 10 percent of operating expenses, or \$2.6 million.

# **COORDINATION**

This report was 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 <a href="mailto:clerk@santaclaraca.gov">clerk@santaclaraca.gov</a> <a href="mailto:clerk@santaclaraca.gov">mailto:clerk@santaclaraca.gov</a>. See attached June 23, 2020 Council report 20-134 for rate outreach (Attachment 8).

# **ALTERNATIVES**

- Adopt a Resolution setting the overall rates to be charged to rate payers for the collection and disposal of garbage, refuse, yard trimmings, recycling, annual Clean-up Campaign, and household hazardous waste in the exclusive franchise area, effective for the utility bills issued for services rendered on August 1, 2020;
- 2. Adopt Option 1 provide an additional \$8.00 per month discount to each customer enrolled in the Rate Assistance Program and delegate authority to the City Manager to take the appropriate Budget Amendment action from the General Fund to put this rate discount program in place by August 1, 2020;
- 3. Adopt Option 2 provide a \$3.00 per month discount to all 25,837 customer accounts in the City;

# 4. Any other Council action by Council

# RECOMMENDATION

Alternative 1:

Adopt a Resolution setting the overall rates to be charged to rate payers for the collection and disposal of garbage, refuse, yard trimmings, recycling, annual Clean-up Campaign, and household hazardous waste in the exclusive franchise area, effective for the utility bills issued for services rendered on August 1, 2020.

Reviewed by: Craig Mobeck, Director of Public Works Approved by: Deanna J. Santana, City Manager

# **ATTACHMENTS**

- 1. Previous Outreach and Updates to Council
- 2. Summary of Split-Cart Survey Results
- 3. November 2019 Customer Survey
- Rate Tables from December 10 Council Meeting
- 5. Summary of Policy and Legislative Issues Regarding Executed Contracts
- 6. CM Chahal's Presentation
- 7. Analysis of CM Chahal's Presentation
- 8. June 23, 2020 Public Hearing RTC 20-134
- 9. Resolution with Table A

<sup>1</sup>The bundled rate estimates for residential users include garbage, yardwaste (included food scraps and food soiled paper in the yard waste container in a previous option analyzed), recycling, Clean-up Campaign (CUC), and household hazardous waste (HHW) charges. The bundled rate estimates for multi-family and commercial business customers include garbage, recycling, and additional organics container.

<sup>2</sup>A member of the public inquired about the validity of the Proposition 218 process since the contracts were already executed. These are two different matters: one pertains to the selection of service for which contracts are executed (and are subject to Council approval) and the second is for ratepayer approval for increased rates/fees (and subject to property owner approval). If the rate increase had not passed through the Proposition 218 voting process, the City would still be obligated to pay for the service contracts through other eligible funding sources.

<sup>3</sup>The City's General Fund Budget Stabilization Reserve is set at 25 percent of the General Fund: comparably, the Solid Waste Budget Stabilization Fund Reserve is already set much lower than the General Fund Council Policy level. On June 23, the Council acted to approve the General Fund Budget Stabilization to fall to 20 percent of the General Fund because of the significant drop in revenue and the required time needed to balance the budget on an ongoing basis.

# **Previous Outreach and Updates to Council**

The prior contracts date back to 2009 and did not address several changes that have taken place since the contracts were awarded. With contracts this dated, it was important to identify in advance the elements that would impact cost for service and the changed market. The City's due diligence dates back to FY 2016/17 when Council developed and initiated a split-cart pilot program for the purpose of collecting community input on program feasibility, diversion rates, and overall service and usability.

During the pilot program, Council received several updates on the community's use of the program and feedback on overall feasibility. While engaging the community on new products for collecting solid waste, the City also began other reviews to ensure that the final policy action met the community's needs. For example, the City's prior collection and disposal agreements did not enable the City to meet the statewide organics waste diversion laws. Staff made several presentations on how the City would need to achieve compliance and the need to comply was folded into the policy options considered. The current rate structure was analyzed and rate corrections were identified, although a more comprehensive rate study will be completed by the end of the year.

The data showed that some of the services, specifically the Supersaver carts, had not been paying the full cost of service and that any rate correction would also need to be included in the initial rate increase. Within this context, adding to potential rate increases was the costs associated with complying with diversion laws, common costs associated with new contracts (e.g., fleet, equipment, capital improvements, technology, etc.), vendor readiness and capacity of processing facilities, end points for recyclables, and market competition. In short, it was well reported that customer rates needed to first correct for the:

- 1. Changed global market relative to solid waste and recycling;
- 2. Increased regional labor costs for solid waste and recycling workers;
- 3. Smaller bins not paying for the full cost of service;
- 4. Cost associated with complying with new diversion laws; and,
- 5. Capital costs associated with new contracts.

In addition to the existing impacts to rate increases, the final policy needed to address customer service satisfaction and any other additional services needed to provide full service desired by residents (e.g., annual clean up, mixed/sorted waste bins, etc.).

The City was in a leveraged position with time to engage in negotiations and/or a procurement process for these services. Based on recent regional procurements for like services, the resulting rate increases were shared with the Council to determine whether direct negotiations could yield lesser rate increases than what the surrounding regions had obtained through a competitive process. If the City could not get better rates, then there was sufficient time to conduct a competitive bid process. Through negotiations, staff returned with residential recycling rates that overall were still better than the former competitive bid process completed in 2008 after adjustment for

contractually obligated cost increases and a 5 percent consideration for the National Sword Policy was taken into account. However, before a decision was made in September 2019, Council directed staff to receive more community input on the proposed program option and related rates and return in December 2019.

# Specific Council Action/Direction is reflected in **BOLD**:

- 1. **5/17/17** Council approved pilot food scraps recycling program
- 2. 9/28/17 Pilot food scraps outreach meetings
- 3. 10/30/17 Pilot food scraps outreach meetings
- 4. 1/30/18 Council update on pilot and survey results
- 5. 10/9/18 Council update on pilot and survey results
- 6. 7/12/18 Council update on SB 1383 and organics options
- 7. **11/13/18** Council directed staff to enter negotiations with MTWS and Recology on successor agreements to leverage a window of opportunity to secure reasonable pricing and services that would be compliant with new organics diversion regulations without going through a competitive procurement during a rapidly evolving uncertain solid waste market.
- 8. 1/29/19 Council approval of Amendment with Recology
- 9. **9/17/19** Staff presented Council with tentative terms on an agreement with MTWS containing options for the expansion the pilot food scraps split-cart program and provision of an organics container to all single-family and townhouse customers for collecting combined yard waste, food scraps and food soiled paper. At the meeting, a third option was introduced, in which the contents of garbage carts could be delivered to mixed waste processing facility. Council directed staff to: 1) further negotiations and develop terms with MTWS for the split-cart organics collection option; and 2) enter negotiations with GWR for the mixed waste processing option; and 3) Conduct additional community outreach and obtain feedback.
- 10.10/21/19 Public outreach meetings on organics collection program options
- 11.10/24/19 Public outreach meetings on organics collection program options
- 12.11/4/19 Public outreach survey on organics collection program options
- 13.11/22/19 Public outreach survey on organics collection program options
- 14. 12/3/19 Council authorizes City Manager to execute agreement with Recology
- 15.12/10/19 Council decided to no longer consider the split-cart program and approved and authorized the City Manager to execute agreements with GWR and MTWS to implement the mixed waste processing. In making these decisions, Council considered the estimated rate increases to the program over a three-year period as well as the majority of the resident's support for a mixed waste processing program.

# **Summary of Split-Cart Survey Results**

# Split-Cart Pilot Program Community Feedback

The Pilot program was very significant, as it included 25 percent of the City's residential customers, and represented a changed approach to solid waste collection. Staff maintained detailed records of service issues/complaints received and performed comprehensive outreach and technical assistance to customers participating in the pilot split-cart program.

# Below is a high-level summary:

- (a) Staff has conducted 188 in-person technical assistance site visits to customers to help ease the transition to the split-cart program and has provided complimentary upgrades for 122 customers to mitigate capacity issues.
- (b) Customer satisfaction surveys were conducted in December 2017 (53 percent satisfied or somewhat satisfied) and June 2018 (57 percent satisfied or somewhat satisfied).
- (c) The percentage of residents using the food scraps side of the container dropped from 86 percent in December 2017 to 82 percent in June 2018.
- (d) From October 2017 through December 11, 2019, staff received 510 contacts for complaints/service issues from the 5,000-pilot split-cart program customers. The majority of complaints consisted of:
  - a. loss of garbage capacity
  - b. broken carts
  - c. the carts are too large and difficult to maneuver, particularly for senior citizens.



# Give us your opinion on the future organics collection program!

#### Introduction

The State has passed legislation that requires cities to implement organics recycling programs to minimize methane emissions from landfills. One of the two residential organics collection program options will be implemented citywide on July 1, 2021 to comply with the State regulations. The City Council will be considering an agreement with Mission Trail Waste Systems on December 2019/January 2020 and will provide direction to staff on which organics collection program to roll-out citywide. The Department of Public Works wants to include input received from the community in the staff report to the City Council to better inform their decision.

#### Responses

- \* OpenGov will show your response on this website. Do you also want your name shown with your response?
- O Yes show my name
- O No do not show my name

Below are brief summaries of the two residential organics collection program options being considered and an estimated cost comparison:

OPTION 1 - Implementation of the existing pilot split-cart food recycling program citywide (with one compartment for organics and one compartment for garbage) to all single-family and townhouse customers. This option includes a redesign of the split-cart to increase durability serviced with a truck designed to keep garbage and food scraps separate (watch video). Food soiled paper (pizza boxes, paper plates and wrappers, napkins, etc.) would be added to the list of items accepted in the organics compartment of the container

#### Advantages:

- · Lowest cost
- · Feeding animals is a higher and better use of organic materials than composting. Learn more.
- · Yard waste without food scraps and food soiled paper yields a higher grade of compost

#### Disadvantages:

- · Carts have larger footprint, weigh more, and have experienced durability issues
- · Loss of garbage capacity and customers will need to separate their organic materials (food and food soiled paper) before placement into the split-cart

OPTION 2 - Maintain the existing garbage container for single-family and townhouse customers and deliver the contents to a mixed waste processing facility to recover food scraps and food soiled paper.

## Advantages:

- Can be implemented using existing containers (no container modifications necessary)
- · Customers not required to do any additional separation of organics to participate
- · Highest quantity of materials diverted from the landfill

#### Disadvantages:

- · Highest cost
- · Lower quality of organic material recovered

## **Estimated Impacts to Monthly Customer Rates**

Costs below are based on a 32-gallon garbage cart with Clean Green, recycling, cleanup campaign and household hazardous waste charges bundled.1

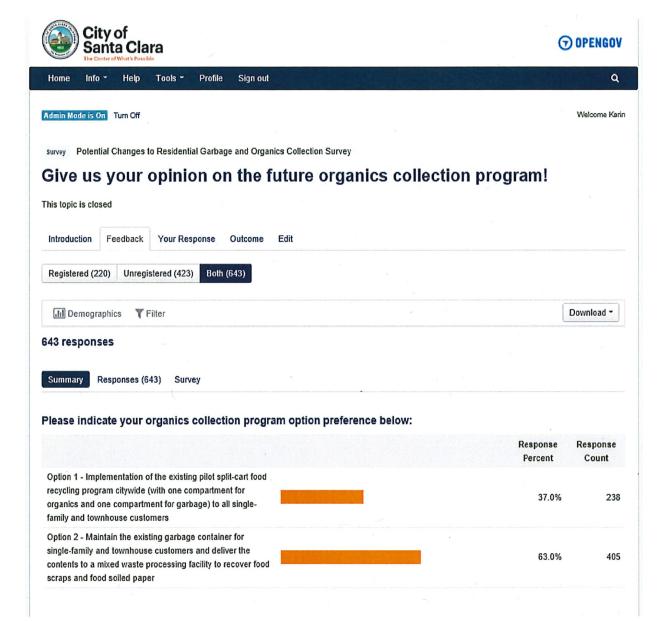
	7/1/19 (current)	7/1/20	7/1/21	7/1/22	Percentage Change (2019 – 2022)
Option 1:					
Organics in new split-cart (source separated)	\$36.59	\$43.00	\$49.60	\$52.60	+ 44%
Option 2:					
Organics in existing garbage cart (mixed waste processing)	\$36.59	\$43.40	\$54.30	\$57.90	+ 58%

<sup>1</sup> About half of the single-family homes in the City subscribe to a 32-gallon cart. The estimated impacts to rate changes will vary depending on the size of the garbage container, but the changes will be larger for Option 2 for all service levels.

- \* Please indicate your organics collection program option preference below:
- Option 1 Implementation of the existing pilot split-cart food recycling program citywide (with one compartment for organics and one compartment for garbage) to all single-family and townhouse customers
- Option 2 Maintain the existing garbage container for single-family and townhouse customers and deliver the contents to a mixed waste processing facility to recover food scraps and food soiled paper

\* required

Fields marked with \* are required



# Rate Tables form December 10, 2019 Council Meeting

# Single Family Residential Options for 32-gallon Bundled Rate Estimate

(includes estimated garbage, Clean Green, recycling, Cleanup Campaign, and household hazardous waste charges)

	7/1/19 (current)	7/1/20	7/1/21	7/1/22	Percentage Change (2019 – 2022)
Option 1: Organics in split-cart (source separated)	\$36.59	\$43.00	\$49.50	\$52.50	+ 43%
Option 2: Organics in garbage cart (mixed waste processing)	\$36.59	\$45.10	\$53.9	\$57.50	+ 57%

# Townhouse Residential Options for 32-gallon Bundled Rate Estimate

(includes garbage, Clean Green, recycling, clean-up campaign, and household hazardous waste charges)

	7/1/19 (current)	7/1/20	7/1/21	7/1/22	Percentage Change (2019 – 2022)
Option 1*: Organics in split-cart (source separated)	\$25.35	\$29.80	\$34.30	\$36.40	+ 44%
Option 2*: Organics in garbage cart (mixed waste processing)	\$25.35	\$31.30	\$37.40	\$39.90	+ 57%

# Commercial Business Options for 3-Cubic Yard Bundled Rate Estimate

(includes 3-cubic yard dumpster for garbage and a 96-gallon cart for recycling serviced once a week, with Option A containing 64-gallon food scraps cart serviced once per week beginning July 1, 2020)

	7/1/19 (current)	7/1/20	7/1/21	7/1/22	Percentage Change (2019 – 2022)
Option A: Commercial source separated organics in additional container	\$261.60	\$357.90	\$399.40	\$427.50	+ 63%
Option B: Commercial mixed waste processing of garbage (no additional container)	\$261.60	\$322.00	\$384.20	\$409.60	+ 57%

# Multi-Family Options for 3-Cubic Yard Bundled Rate Estimate

(includes 3-cubic yard dumpster for garbage and single-stream recycling for a 20-unit apartment complex serviced once a week, with Option A containing a 1-cubic yard food scraps dumpster serviced once per week beginning July 1, 2020)

	7/1/19 (current)	7/1/20	7/1/21	7/1/22	Percentage Change (2019 – 2022)
Option A: Commercial source separated organics in additional container	\$349.60	\$592.20	\$660.90	\$707.50	+ 102%
Option B: Commercial mixed waste processing of garbage (no additional container)	\$349.60	\$430.30	\$513.50	\$547.50	+ 57%

# Summary of Policy and Legislative Issues Regarding Executed Contracts

First, in December 2019, Councilmember Chahal opposed the selection of the mixed waste processing and voted against it. In order to reexamine past Council action, a Councilmember that voted in support of the mixed waste processing would have needed to make the request within the subsequent two Council meetings for it to be noticed on a Council agenda. Councilmember Chahal was not eligible to make a request. However, Councilmember Hardy did inquire publicly about the process for reconsideration on December 17, 2019 and, at that time, Councilmember Chahal did not raise support for reexamination of mixed waste processing, any of the analysis that was presented on June 23, or argue for split-carts. That would have been the appropriate time to present his analysis for possible reconsideration of a split-cart option or issues with rates; however, he did not and there was no Councilmember that pursued a reconsideration of the mixed waste processing or further discussion on this matter. After no Councilmembers raised interest to pursue such action, the City Attorney was very clear at that December 17, 2019 Council meeting that the opportunity had now passed for reconsideration and no further action could be initiated by any Councilmember. Regardless of the quality of analysis presented by Councilmember Chahal, it was legislatively untimely.

Second, Councilmember Chahal made a presentation to the City Council titled "Residential Rate Hike Analysis for Garbage: Split Bin option vs Green Waste Recovery Contract. How Green Waste Contract will cost residents millions of \$." This presentation was made as part of a legally noticed Public Hearing on the results of the Proposition 218 vote and recommending adoption of the rates based on a Council policy action taken six months ago. The Council's Policy and Procedure Manual outlines specific instructions for how a Councilmember should add an item to the agenda. Council's Policy and Procedure Manual # 030 ("Adding an Item on the Agenda") clearly states:

**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.

Discussion of policy that is within the jurisdiction of the City Council should be noticed in compliance with the Brown Act for full community transparency. Given that the item on the agenda was to close out the legal process for Proposition 218 on a policy matter already determined by the Council six months earlier, Councilmember Chahal should have complied with the Council's Policy informing the Council, community, and staff of his intent to raise previously discussed matters for which the Council had already set policy. Instead, Councilmember Chahal submitted his presentation on June 23 at 11:47 a.m. for a City Council meeting that began just one hour later, at 1:00 p.m. (with no time

for Councilmembers, community, or staff to analyze or review the materials). As evidenced with the quality of dialogue that evening, this action did not result in a clear, effective or easily understood analysis of the prior Council policy action and, more important, it completely lacked transparency and compliance with Council's Policy and Procedure Manual. Given that the community has had strong opinions on this policy decision, proper noticing of a Council discussion on this policy was warranted. Absent proper community noticing of the policy discussion, community members that felt strongly in support of the mixed waste processing were not afforded the opportunity to express their support of it, as afforded through the community survey and Proposition 218 outcome. Despite Council's commitment to comply with its own policies and procedures at the January 2020 Goal and Policy Setting meeting, the results of these actions were not compliant. Council would be wise to prevent these actions going forward by complying with its own policies, especially given the fact that there was plenty of time to comply with the Tentative Meeting Agenda Calendar (TMAC) reflecting this Public Hearing in May 2020.

Third, staff worked strategically to secure mixed waste processing capacity because GWR is the only solid waste facility within Santa Clara County with permitted capacity that was capable of processing all of the City's residential and commercial garbage in the short-term (see attached email and Info Memo). As stated earlier, a processing facility's readiness is a large factor in decision making and an overall cost structure for service. This mixed waste capacity is valuable, and the City did not want to miss the opportunity to secure it, knowing that other cities would be seeking the same capacity that the City was in process of pursuing to attain compliance with state laws relative to organics collection programs. This issue must be factored into any analysis of service.

Last, based on Council's December 2019 directions, the long-term contracts with MTWS and GWR were finalized and executed in April 2020. The negotiated terms in both agreements are based solely on the implementation of an organics diversion program that relies on mixed waste processing for recovery and do not include provisions for split-cart services. The agreement with GWR grants exclusive rights to process the City's residential and commercial garbage and includes the following provisions:

# **EXCLUSIVITY**

- 1.1 <u>Grant of Exclusive Right</u>. The City shall deliver or cause to be delivered to Contractor:
  - Mixed Waste. The City shall deliver or cause to be delivered to Contractor all Mixed Waste generated by Single Family (SFD) Customers, Multi-Family Customers, and Commercial Customers that is placed out for collection by the City or City's exclusively franchised hauler as Mixed Waste beginning January 1, 2021"

Combined with the Exclusivity clause, the agreement with GWR does not contain a clause that would enable the City to terminate for convenience. The agreement also does not allow the City the ability to securing mixed waste capacity from GWR without delivering solid waste and paying for the processing. Any attempt to breach the agreement and not deliver solid waste to GWR would likely result in litigation which would negate any savings to changing over to the split-cart program.

From: Deanna Santana < <u>DSantana@SantaClaraCA.gov</u>>

Sent: Monday, July 15, 2019 2:29 PM

**To:** Deanna Santana < <u>DSantana@SantaClaraCA.gov</u>>

Cc: Brian Doyle < BDoyle@SantaClaraCA.gov >

Subject: GreenWaste Recovery Negotiations Authorization\_.pdf

#### Good Afternoon,

For the greater part of this year, we have been working to implement the City Council's direction relative to stabilizing our various contracts for solid waste, recycling, and mixed waste. Later this year, we will be before the City Council to provide an update on where we are at with these complex negotiations.

If you will recall, in order to enter into discussion with the City of Sunnyvale, the City required a Council Resolution authorizing us to explore the possibility of partnership. This did not prevent us from exploring other options, but we did begin our work with the City of Sunnyvale after receiving the proper approval to complete this due diligence. Through discussions with the City of Sunnyvale regarding mixed waste processing, it became clearer that additional due diligence was needed to make sure that we are pursuing the best possible solution for Santa Clara. Attached please find an Information Memo that summarized our due diligence and states that we are going to explore another option more to better understand how to make an informed recommendation to the City Council. I wanted to make sure that the City Council had a chance to review this memo and understand the context under which we are exploring options with GreenWaste Recovery. If this is a better and viable option, we will return to the Council for further consideration.

Please call me if you have any questions.

Thank you,

**DEANNA J. SANTANA** | City Manager 1500 Warburton Avenue | Santa Clara, CA 95050 D: 408.615.2210 | www.santaclaraca.gov





# **Informational Memorandum**

**Date:** July 17, 2019

**To:** Deanna J. Santana

City Manager

From: Craig Mobeck

Director of Public Works

**Subject:** Negotiations with GreenWaste Recovery, Inc. for Material Recovery

**Processing Services** 

# **SUMMARY**

The purpose of this Informational Memo is to provide the City Council with an update on the Council direction, issued on January 29, 2019, to authorize the City to assess/participate in the initial planning for potential future use of the SMaRT Station in an effort to gain access to mixed waste processing capacity.

The City of Sunnyvale required a City Council Resolution that authorized City of Santa Clara staff to enter into exploratory discussion about the possibility of partnering on this topic and, accordingly, the City obtained the required Resolution and also reserved the opportunity to explore other options that are in the best interest of the City of Santa Clara.

After review of this option, staff is not confident that the SMaRT Station discussions will move quickly enough for it to be a viable option for organics recycling processing by 2022 and, consistent with the City's interest to secure mixed waste processing capacity, staff is advising of other options that it is exploring for the purpose of presenting additional actions before the City Council for policy consideration.

This Informational Memo provides background and information about the due diligence that staff has conducted to secure mixed waste processing capacity.

# **BACKGROUND**

As presented at a Study Session on July 10, 2018, Governor Brown signed Senate Bill 1383 (SB 1383) in September 2016 establishing methane emissions reduction targets in a statewide effort to reduce emissions of Short Lived Climate Pollutants (SLCP) in various sectors of California's economy. SB 1383 establishes targets to achieve a 50 percent reduction from the 2014 level of the statewide disposal of organic waste by 2020 and a 75 percent reduction by 2025. The law grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets. The City will need to implement new organic waste collection programs to comply with the SLCP regulations by 2022.

On May 9, 2017, the City Council authorized the implementation of a pilot food scraps recycling program for about 5,000 single-family households. The other source-

#### **CITY MANAGER DEANNA J. SANTANA**

**SUBJECT:** Negotiations with GreenWaste Recovery, Inc. for Material Recovery Processing Services July 8, 20199
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separated collection program that can be implemented is one in which residents place their organic materials (food scraps and food soiled paper) in their Clean Green containers. Most multi-family dwelling and commercial business customers utilize large front load bins for garbage service. Multiple people use the bins which makes outreach and accountability more challenging and most of these properties currently have two bins - one for garbage and one for recycling. A more convenient option for multi-family dwellings and commercial businesses with limited solid waste enclosure space is to process the contents of the garbage container at a mixed waste processing facility to capture the organic waste for recycling purposes.

# **DISCUSSION**

The City needs to secure mixed waste processing capacity to implement a two-bin system for organics recovery. Otherwise, the City will need to provide a third bin for commercial and multi-family organics collection. This may not be possible in some instances due to space constraints within the properties. Neither the City nor Mission Trail Waste Systems (MTWS) have agreements with a mixed waste processing facility to handle the City's organic waste. There are only three processors in Santa Clara County that have the current or potential ability to provide mixed waste processing services. The processors are:

- Sunnyvale Materials Recovery and Transfer (SMaRT) Station
- Republic Services, Inc.
- GreenWaste Recovery, Inc.

# **SMaRT Station**

On January 29, 2019, the City Council adopted a Resolution for the City of Santa Clara to participate in the initial planning for potential future use of the SMaRT Station in an effort to gain access to mixed waste processing capacity. To date, there has been only one initial planning meeting to discuss a potential expansion of the SMaRT Station that would enable the City to use the facility for mixed waste processing. Staff is not confident that the SMaRT Station discussions will move quickly enough for it to be a viable option for organics recycling processing by 2022.

#### Republic Services, Inc.

The City has a landfill disposal agreement in place through December 31, 2024 with Republic Services, Inc. to utilize Newby Island Landfill and the Recyclery for landfilling and composting services. The Recyclery is currently performing mixed waste processing services for other agencies. Staff met with Republic Services, Inc. earlier this year to discuss the potential for utilizing the Recyclery for mixed waste processing of our multi-family and commercial business customer garbage. Republic Services, Inc. informed staff that they have limited permitted capacity available and they are reserving it for customers for which they provide collection services.

# GreenWaste Recovery, Inc.

Staff also met with GreenWaste Recovery, Inc. (GWR) to discuss the potential to direct our multi-family and commercial business garbage to one of their facilities for mixed

#### CITY MANAGER DEANNA J. SANTANA

**SUBJECT:** Negotiations with GreenWaste Recovery, Inc. for Material Recovery Processing Services July 8, 20199
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waste processing. GWR has been working on a 1,200 tons/day expansion at its Charles Street facility for three years, hopes to complete the EIR for expansion later this summer, and is seeking customers to help feed the expansion. GWR is not certain that the expansion will be completed by 2022, but believes that they could potentially start mixed waste processing at least a portion of the City's garbage before the expansion is completed.

# **NEXT STEPS**

Given the above research and in review of viable opportunities for the City of Santa Clara, staff believes that GWR is the realistic/best opportunity to provide future mixed waste processing services for the City. Given that other jurisdictions will be seeking processing capacity to comply with the SLCP regulations by 2022, the need to specify an organics collection for the MTWS successor agreement negotiations, and the limited available processing options, time is of the essence.

Based on this information and our June 20 meeting on this topic, staff will be moving forward with negotiations with GWR for material recovery processing services and will introduce any necessary Council actions stemming from those negotiations at an upcoming meeting.

/s/ Craig Mobeck Director of Public Works

# Item# 10.20-134 Residential Rate Hike Analysis for Garbage

Split Bin option vs Green Waste Recovery Contract
How Green Waste Contract will cost residents millions
of \$
- By Raj Chahal

# Table 7 Analysis for Proposed hike in garbage rates

	Monthly Residential Garbage Rates		2021	% age hike current vs proposed*	Comments
A1	Super saver (20 gallon) garbage cart charge	\$7.43	\$12.50	68.24%	Too steep
A2	Small (32 gallon) garbage cart charge	\$14.98	\$20.80	38.85%	Too steep
А3	Medium (64 gallon) garbage cart charge	\$29.49	\$38.60	30.89%	Too steep
A4	Large (96 gallon) garbage cart charge	\$44.00	\$56.50	28.41%	Too steep

В	Yard trimmings per unit	\$11.24	\$11.80	4.98%
С	Annual Cleanup	\$5.67	\$5.90	4.06%
D	Recycling per unit	\$4.40	\$5.30	20.45%
E	Household Hazardous waste	\$0.30	\$0.30	0.00%
	Total of above 4 misc services(B+C+D+E)	\$21.61	\$23.30	7.82%
	Extra Grabage	\$4.50	\$5.70	26.67%

# Residential Rate Comparison -Breakdown

		With Green Waste	
		Option for 6	
	Current Option	months	%age Hike
	Year 2019-2020	Year 2020-2021	
Mission Trail Services	\$3,313,125	\$3,495,913	5.52%
Program Costs 2019-2020	\$4,364,219	\$6,253,306	43.29%
Green Waste Charges	\$0	\$1,237,500	
Landfill Disposal Costs 2019-2020	\$745,688	\$384,375	-48.45%
Residential Total Aggregate Base			
Garbage Revenues A1+A2+A3+A4 (Estimated)	\$8,423,032	\$11,371,094	35.00%
% hike from 2019-2020		35.00%	
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			
Residents will pay more		\$2,948,062	

# Residential Rate comparison - with Split Bin option

		With Green Waste	If we had Split bin				
	Current Option	Option for 6 months	Option				
	Year 2019-2020	Year 2020-2021	Year 2020-2021				
Mission Trail Services	\$3,313,125	\$3,495,913	\$3,561,874				
Program Costs 2019-2020	\$4,364,219	\$6,253,306	\$6,253,306				
Green Waste Charges	\$0	\$1,237,500	\$0				
Landfill Disposal Costs							
2019-2020	\$745,688	\$384,375	\$384,375				
Residential Total							
Aggregate Base Garbage							
Revenues A1+A2+A3+A4							
(Estimated)	\$8,423,032	\$11,371,094	\$10,199,555				
% hike from 2019-2020		35.00%	21.09%				
Residents will pay more Co	mpared to 2019-20	\$2,948,062	\$1,776,523				
	Savings compared to GWR						

## Residential Rate comparison - Split Bin vs GWR - Annualized

	Current Option	If we had Split bin Option	Annualized basis GWR Service
	Year 2019-2020	Year 2020-2021	
Mission Trail Services	\$3,313,125	\$3,561,874	\$3,495,913
Program Costs 2019-2020	\$4,364,219	\$6,253,306	\$6,253,306
Green Waste Charges	\$0	\$0	\$2,475,000
Landfill Disposal Costs 2019-2020	\$745,688	\$384,375	\$384,375
Residential Total Aggregate Base Garbage			
Revenues A1+A2+A3+A4			
(Estimated)	\$8,423,032	\$10,199,555	\$12,608,594
% hike from 2019-2020		21.09%	49.69%
Residents will pay more		\$1,776,523	\$4,185,562

Extra Payment by Residents annually

\$2,409,039

Using GWR will cost us \$2,475,000 vs \$65,961

Compared to 2019-20 in 2020-2021 will pay almost 50% more

# **Analysis of Councilmember Chahal's Spreadsheet**

Cost of Residential Mixed Waste Processing vs. Theoretical Split-Cart Alternative

	JUNE 23, 2020	INFORMATION	STAFF & R3 ANALYSIS		
	SPLIT CART (THEO.)	MIXED WASTE (EST.)	SPLIT CART (THEO.)	MIXED WASTE (EST.)	
MTWS	\$3,561,874	\$3,495,913	\$3,655,216	\$3,495,913	
PROGRAM COSTS*	\$2,474,308	\$2,474,308	\$2,432,121	\$2,282,121	
GWR	\$ -	\$2,475,000	\$ -	\$2,475,000	
NEWBY	\$384,375	\$384,375	\$640,625	\$384,375	
TOTAL	\$6,420,557	\$8,829,596	\$6,727,962	\$8,637,409	
ADDITIONAL COST FOR MIXED WASTE		\$2,409,039		\$1,909,447	

<sup>\*</sup> PROGRAM COSTS figures previously included \$3,778,998 for yard waste and recycling, which have been removed from the analysis above. Because these amounts were included in all totals, the bottom-line findings are not affected. Note that program cost figures also include Rate Stabilization Funding to smooth rate increases in future years.

- MTWS Councilmember Chahal's analysis showed a cost for the theoretical split-cart program, however staff is not clear where the estimate came from. Staff's analysis is based on the tentative split-cart deal points that were discussed, but never executed with MTWS in 2019. Based on these figures, the theoretical split-cart alternative would have been a 4.5 percent increase over FY 2019/20 compensation PLUS \$90 per ton for the collected food scraps. The staff and R3 analysis above includes these updates to the June 23 figures with both assumptions. As a result, MTWS theoretical split-cart costs were updated from \$3,561,874 to \$3,655,216.
  This results in Councilmember Chahal's analysis not accounting for \$93,342 of additional costs.
- Program Costs Program costs were updated to exclude recycling and green waste. Both costs for theoretical split-cart and mixed waste processing were reduced by \$192,187 due to adjustments in disposal tonnage. Program Costs for the theoretical split-cart program were also increased to include \$150,000 in estimated program costs for outreach, education, customer service and enforcement. These would have been necessary had the split-cart program been chosen by Council. As a result of these adjustments the Program Costs are estimated to be \$2,432,121 for the theoretical split-cart program and \$2,282,121 for mixed waste processing. This results in Councilmember Chahal's analysis not accounting for \$150,000 of additional costs.

Newby Costs – The June 23 figures assumed the same level of recovery (50 percent) for the split-cart program as for the mixed waste program, which was inaccurate. The level of recovery will be less for the theoretical split-cart program so the costs for Newby disposal were increased to \$640,625. This results in Councilmember Chahal's analysis not accounting for \$256,250 of additional costs.

#### **Responses to Councilmember Chahal's Additional Questions**

- **Program Costs** In a request for information subsequent to the June 23 Council meeting, Councilmember Chahal requested details on "program costs" for residential and commercial businesses. Program costs include street sweeping, leaf-vac, holiday tree collection, administration and internal cost allocations, management, billing, franchise fees, state compliance costs, outreach and education, capital improvements and landfill post-closure maintenance costs, and periodic funding of rate stabilization reserves. In FY 2019/20, overall program costs were \$5,059,883 (\$896,891 for residential customers/\$4,162,992 for commercial customers). In FY 2020/21, program costs are budgeted at \$7,195,824, which includes \$1,990,000 in rate stabilization funding. The FY 2020/21 residential allocation is \$2,282,121 and commercial allocation is \$4,913,703. The program costs allocated to residential customers for FY 2020/21 are greater than prior years because costs for street sweeping, leaf-vac, holiday tree collection, administration and internal cost allocations, billing, outreach, and rate stabilization reserves provide proportionately more benefit to residential customers than commercial customers. The City will conduct a cost-of-service rate study in 2020 that will analyze each rate component with the cost-of-service, including program cost allocations prior to proposing new rates in 2021.
- Budget Amendment The \$2,450,000 figure in the December 10 staff report represented the estimated budget amendment to the FY 2020/21 solid waste operating budget in the approved "FY 2019/20 and 2020/21 Biennial Operating Budget" if Council selected the mixed waste processing options for both the single-family/townhouse residential and multi-family/commercial business customers. This figure accounted for the full array of budgetary changes, including differences in collection, processing, and landfill disposal costs. It was not intended to represent the costs to be paid to GWR, but the cumulative budgetary impact of the policy decision. The projected costs to be paid to GWR are \$4,315,500 for six months of processing services in FY 2020/21 and \$8,900,000 in FY 2021/22 for a full-year. Staff has not changed these projections and has based all cost estimate modeling presented on these figures.



# City of Santa Clara

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

## Agenda Report

20-134 Agenda Date: 6/23/2020

#### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Adoption of a Resolution Setting Rates for Overall Solid Waste Services, Annual Clean-up Campaign, and Household Hazardous Waste in the Exclusive Franchise Area [Council Pillar: 1) Deliver and Enhance High Quality Efficient Services and Infrastructure; 2) Sustainability] Not to be heard prior to 6:00 PM

#### **EXECUTIVE SUMMARY**

The City has entered into new agreements for the collection and processing of garbage and recyclables. The Contractors' scope of services and compensation rates were negotiated and approved by Council on December 10, 2019. R3 Consulting, Inc. conducted a solid waste rate study and recommended that the City implement the rates specified in Table A of the Resolution to enable the Solid Waste enterprise fund to maintain cost recovery for the coming Fiscal Year (FY) 2020/21.

Notices were sent to all 25,837 solid waste rate payers on May 1, 2020 informing them of the proposed rate increases and date of the Public Hearing to approve the rates, as required by Article XIII D of the California Constitution. Following the close of the Public Hearing, staff recommends that Council adopt the subject Resolution, which establishes the solid waste rates effective for the utility bills issued for services rendered on and after July 1, 2020.

#### **BACKGROUND**

In November 1996, California voters approved Proposition 218, which amended the state Constitution to establish a new category of fees and charges referred to as "property-related fees and charges" and created new procedural requirements for their adoption. Under these requirements, water, sewer, and solid waste service fees or charges are subject to a written notice of proposed increases, public hearing on proposed fees or charges not less than 45 days after the mailing of the notice, and majority protest procedure for their approval. At the public hearing, all protests against the proposed fees or charges are tabulated and if the number of protests by a majority of rate payers totals 50 percent plus one, the fees or charges cannot be imposed. If there is not a majority of rate payers protesting the proposed fees or charges, Council can make and act on a motion to approve increases.

The FY 2020/21 Solid Waste Fund budget is \$31,455,000. Programs funded by the Solid Waste budget include garbage, yard trimmings, residential recycling, household hazardous waste collection, disposal and processing; the Cleanup Campaign; street sweeping; landfill post-closure maintenance; and compliance with several State Laws, including Senate Bill 1383 (SB 1383). SB 1383, which was passed in 2016, targets a reduction in the level of statewide disposal of organic waste from the 2014 level; specifically, a 50 percent reduction by 2020 and a 75 percent reduction by 2025. Garbage, Yard Trimmings, Residential Recycling, Clean-up Campaign (CUC), and Household Hazardous Waste (HHW) rates charged to customers fund these programs.

#### **Council Discussion**

The City's prior collection and disposal agreements did not enable the City to meet the statewide organics waste diversion requirements. The City went through a multi-year process to review and provide direction on the new agreements:

- 5/17/17 Council approval of residential pilot food scraps recycling program
- 9/28/17 & 10/30/17 Pilot food scraps recycling program public outreach meetings
- 1/30/18 & 10/9/18 Council update on pilot food scraps program and survey results
- 7/12/18 Council update on SB 1383 and organics collection program options
- 11/13/18 Council approval to enter negotiations with Mission Trail Waste Systems (MTWS) and Recology
- 1/29/19 Council approval of Amendment to Recology agreement and Resolution to participate in future Sunnyvale Materials Recovery and Transfer (SMaRT) Station expansion
- 9/17/19 Council approval to enter negotiations with GreenWaste Recovery, Inc. (GWR) and proceed with developing MTWS agreement
- 10/21/19 & 10/24/19 Public outreach meetings on organics collection program options
- 11/4/19 11/22/19 Public outreach survey on organics collection program options
- 12/3/19 Council authorizes City Manager to execute agreement with Recology
- 12/10/19 Council authorizes City Manager to execute agreements with MTWS and GWR to implement the mixed waste processing organics diversion program option

#### Collection and Disposal

On December 10, 2019, Council authorized the City Manager to execute new agreements with MTWS for the exclusive franchise for the collection and transportation of garbage, organics, and commercial recyclables; and GWR for solid waste processing, transport, recycling and disposal services. With approval of these two new agreements, which become effective July 1, 2020, and expire June 30, 2036, the City secured services that will enable it to meet the organic waste diversion requirements of SB 1383 via mixed waste processing services, which will remove organic materials from garbage without the need for further sorting by solid waste customers. At the December 10 Council meeting staff explained that solid waste rates would need to be increased to fund the services in the new agreements and indicated that a rate study would be presented to the Council with proposed rate increases.

The new mixed waste processing services will start on January 1, 2021, at which time the City's costs for handling and processing garbage and organic waste will increase per the terms of the agreements. As a result of these previous Council-approved contracts that included cost increases, customer rates will need to increase in FY 2020/21. Furthermore, customer rate increases will also be necessary in subsequent fiscal years because the negotiated increases under the MTWS and GWR agreements for mixed waste processing and other programs will not be fully implemented until FY 2022/23.

#### Recycling

On December 3, 2019, Council authorized the City Manager to execute a successor agreement with Recology Santa Clara (Recology) to provide residential curbside recycling services that becomes effective July 1, 2020, and expires June 30, 2036. The negotiated base monthly compensation to

Recology will increase because the cost of living adjustments (COLA) provided in the current agreement have not kept pace with solid waste industry costs and the steep decline in the international recyclables commodities markets.

The City also has an agreement with International Disposal Corporation/Browning Ferris Industries (IDC/BFI) to provide solid waste disposal at Newby Island Landfill and composting services at the Recyclery. The agreement has an annual COLA that is tied 80 percent to the change to the CPI from February to February, 10 percent to the Employment Cost Index, which tracks the changes in costs of labor to businesses, and 10 percent to the Gross National Product Implicit Price Deflator, which tracks the change in the measure of the level of prices of all new, nationally produced, final goods and services in an economy.

Costs associated with salaries, benefits, materials, services, supplies, and overhead will increase in FY 2020/21. Due to these anticipated increases, the proposed solid waste rate increases as specified in Table A of the Resolution (Attachment 1) are necessary to enable the Solid Waste Fund to achieve cost recovery.

#### **DISCUSSION**

At the June 23, 2020 Public Hearing on the proposed rates, Council will open the Public Hearing to receive any oral protests. The Public Hearing will be the last opportunity for solid waste customers to return written protests. At the close of the Public Hearing, the protests will be tabulated. If a majority of solid waste customers protest the proposed rates, Council will be unable to raise the solid waste rates. If there is not a majority protest of the rates, Council may increase the solid waste rates as specified in Table A of the Resolution.

#### New Agreements Impact on Customer Rates

On December 10, 2019, Council approved agreements with MTWS and GWR that incorporated maintaining the existing garbage container for residential and commercial business customers and delivering the contents to GWR's mixed waste processing facility to recover food scraps, food-soiled paper, and other organic materials. For cart-service residential customers, the mixed waste processing option was projected to be about 14 percent more expensive than implementing the source separated split-cart organics recycling program. The mixed waste processing option for commercial customers front-load bin was projected to be 6 percent less expensive than the source separated organics in an additional container option. The proposed FY 2020/21 rate increases are very close to the estimates provided in December. The table below shows a comparison between the proposed FY 2020/21 rates to the estimates provided at the December 10 Council meeting.

	Estimated FY 2020/21 Rate (12/10/19)	Proposed FY 2020/21 Rate	Difference
Single-family 32-gallon bundled rate (includes yard trimmings, recycling,CUC, HHW)	\$45.10	\$44.10	(\$1.00)
Townhouse 32-gallon bundled rate (includes recycling, CUC, HHW)	\$31.30	\$32.30	\$1.00

Commercial business 3-cubic yard bundled rate, includes 96- gallons/week recycling	\$322.00	\$322.03	\$0.03
Multi-family 3-cubic yard bundled rate, includes 1-cubic yard recycling bin service once a week	1'	\$391.09	(\$39.21)

R3 Consulting Group, Inc. (R3) conducted a rate analysis/cost of service study after Council approved new agreements with MTWS, GWR, and Recology. The proposed slate of rates presented in Table A of Attachment 1 were calculated and analyzed by R3 to ensure that the rates are an accurate reflection of the cost to provide service for the coming FY 2020/21. R3 has provided a letter (Attachment 2) that confirms that proposed rates are in line with the cost to provide service. It should be noted that costs are anticipated to continue increasing in future fiscal years, and that the FY 2020/21 rates will not meet the cost of providing service in future years.

#### Single-Family Residential Service Rates

The proposed solid waste rate increases will result in increases to single-family home customers ranging from \$6.76 per month to \$14.19 per month. Santa Clara's proposed

FY 2020/21 rates for residential solid waste services are competitive with other jurisdictions in Santa Clara County based on comparisons with FY 2019/20 rates from other County agencies. Many of the other countywide jurisdictions will be increasing solid waste rates in the near term to keep pace with COLA's due to their service providers, but there is not enough data available to compare to a FY 2020/21 countywide average. Table I (Attachment 3) provides a more detailed comparison of solid waste rates for residential collection services in Santa Clara County. It should be noted that the City's rates denoted in Attachment 3 include the proposed \$5.90 per month charge for the CUC, but no other jurisdiction in the County has an equivalent program.

The summary below shows the impacts of the bundled rate increases on each service level for single -family home customers that receive garbage, Clean Green, recycling, Clean-up Campaign, and Household Hazardous Waste services as well as a comparison to the FY 2019/20 countywide average rate.

Service Level	FY 2019/20 Rate (current)*	FY 2020/21 Rate (Proposed)*	(Proposed)	FY 2019/20 Countywide Average Rate
Supersaver (20-gallon)	\$29.04	\$35.80	\$6.76	\$26.08
Small Cart (32- gallon)	\$36.59	\$44.10	\$7.51	\$34.87
Medium Cart (64-gallon)	\$51.10	\$61.90	\$10.80	\$61.28
Large Cart (96- gallon)	\$65.61	\$79.80	\$14.19	\$87.56

<sup>\*</sup>Santa Clara rates include the monthly Clean-up Campaign charge that is currently \$5.67/month and proposed to be increased to \$5.90/month in FY 2020/21.

#### Multi-Family/Commercial Service Rates

The proposed rates for frontload garbage bins and roll-off debris boxes will increase by 23.1 percent in FY 2020/21 for all service levels. The summary below shows the impacts of the rate increases on each service level for multi-family and commercial garbage customers and a comparison to the FY 2019/20 countywide average rate. Santa Clara's rates will be lower than the countywide FY 2019/20 average rates, even with the increases to frontload garbage bin rates.

Service Level		FY 2020/21 Rate (Proposed)	(Proposed)	FY 2019/20 Countywide Average Rate
3 cubic yard bin service 1 time/week	\$261.60	\$322.03	\$60.43	\$340.95
3 cubic yard bin service 5 times/week	\$1,190.30	\$1,465.26	\$274.96	\$1,690.81

Table II (Attachment 4) provides a comparison of solid waste rates for commercial collection services in Santa Clara County. Santa Clara's weekly frontload bin garbage service rates will remain lower than the countywide average. Santa Clara multi-family and commercial business customers that subscribe to frontload bin garbage service will not be required to subscribe to an additional organics container to meet SB 1383 requirements because the contents of the garbage bins will be taken to the GWR mixed waste processing facility to recover the organics for composting. The cost savings of not subscribing to an additional container for organics is not captured in the countywide comparison, which only shows the cost to subscribe to a specific garbage service level.

The Finance Department currently provides ordering and billing services for roll-off debris boxes ordered in the exclusive franchise collection area. MTWS will take over the ordering and scheduling of roll-off debris boxes under the terms of the new agreement. Beginning July 1, 2020, the rate structure for roll-off debris box service will change. There will be a bin rental component that is based on tariff paid to MTWS, plus 10 percent for billing and franchise fees. MTWS will charge customers a disposal fee that is based on actual weight of each filled container multiplied by the disposal rate. Attachment 4 provides comparisons of countywide roll-off debris box rates; some jurisdictions include disposal in the rates presented, but some do not.

#### A. Garbage Collection Charges:

Customer garbage charges are projected to generate approximately \$22,711,000 in revenue in FY 2020/21. These revenues fund garbage collection and disposal, utility billing services, street sweeping, garbage program administration, and transfers to the Solid Waste Capital Improvement Project Fund to pay for All Purpose Landfill post-closure operations and solid waste financial management system projects.

The garbage collection charges are the largest component of the residential service bundled rate that also includes yard trimmings, residential recycling, CUC, and HHW charges. R3 Consulting's solid

waste rate study determined that the current 20-gallon Super Saver garbage cart rate does not adequately capture the full cost of garbage collection and disposal, and thus should be increased. This is because the costs of collection for any cart are virtually identical, and largely fixed; any variable differences in costs are due to differences in the cost to process and dispose of a cart's contents, which is significantly less than the fixed costs of collection.

The proposed rate for the 20-gallon Super Saver container more accurately reflects the cost of garbage collection and disposal. Rates for single-family and townhouse residential service are proposed to increase between \$5.07 to \$12.50 per month dependent upon the size of the container. The summary below compares the current residential garbage cart charges (which are a portion of the overall customer solid waste rate) with the proposed charges for FY 2020/21.

Garbage container size	Current monthly rate	Proposed monthly rate	Change in monthly rate
Super Saver (20-gallon)	\$7.43	\$12.50	\$5.07
Small (32-gallon)	\$14.98	\$20.80	\$5.82
Medium (64-gallon)	\$29.49	\$38.60	\$9.11
Large (96-gallon)	\$44.00	\$56.50	\$12.50

Rates for commercial front-load bin and drop-body debris box garbage services are proposed to increase by 23.1 percent. Rates for commercial business single-stream and food scraps recycling services, push/pull service, lock jam installations, and bin cleaning will increase by 6 percent. Despite the 23.1 percent increase, Santa Clara's commercial front-load bin rates will remain lower than the FY 2019/20 countywide average (see Attachment 4).

There are three primary factors to increasing the garbage component of the solid waste rates. The contractually obligated tariffs paid to MTWS to collect the garbage will increase by 6 percent on July 1, 2020. The rate to dispose of garbage at Newby Island Landfill is projected to increase from \$49.76 per ton to \$51.25 per ton (+3 percent) on July 1, 2020 per the COLA formula in the disposal agreement. Beginning January 1, 2021, MTWS will transport loads of garbage to the GWR materials recovery facility for processing to capture organic waste and recyclables to comply with SB 1383.

The cost to process mixed waste garbage from single-family and townhouse customers is \$165 per ton, which includes composting of the organic waste recovered, but not landfill disposal of the residual. The cost to process garbage from multi-family and commercial customers is \$171 per ton, which includes processing of the organic waste recovered, but not landfill disposal of the residual. The residual that needs to be disposed of in a landfill will be transported to Newby Island Landfill under the City's disposal agreement at an estimated cost of \$51.25 per ton. Mixed waste processing of the contents of the garbage container to comply with SB 1383 requirements is the largest factor in the rate increases.

## B. Yard Trimmings Program Charge: \$11.80/month (Increase of \$0.56/month)

The monthly yard trimmings program charge will increase from \$11.24 per month to \$11.80 per month (+5 percent). The monthly Clean Green program charge will generate an estimated \$2,747,000, which will enable cost recovery for services in FY 2020/21.

Effective July 1, 2020, MTWS will receive an increase of 6 percent to its Schedule of Tariffs in accordance with the terms of its exclusive franchise agreement with the City. The City's agreement with IDC/BFI for composting of green waste materials at the Recyclery also contains a cost of living adjustment that is projected to be 3 percent.

#### C. Residential Recycling Program Charge: \$5.30/month (Increase of \$0.90/month)

The proposed monthly residential recycling charge will increase from \$4.40 per month to \$5.30 per month (+20 percent). Staff estimates that the proposed recycling charge will generate \$2,852,000 in FY 2020/21.

There are two other funding sources for the residential recycling program that help reduce customer rates. A portion of the AB 939 implementation fee, set at \$1.50 per ton of waste disposed at a landfill, is collected at the landfills, paid to the County of Santa Clara, and then directed back to the City to fund landfill diversion programs. This fee is projected to generate approximately \$230,000 in FY 2020/21. The City also expects to receive a \$30,000 used beverage container recycling grant from CalRecycle in FY 2020/21. The proposed monthly residential recycling charge in combination with AB 939 implementation fee revenue and used beverage container funding will generate sufficient revenues to maintain cost recovery for the residential recycling program, which also includes City staff costs and overhead.

The Council previously approved a successor agreement with Recology that includes the fixed base compensation amounts over the next three years shown below.

Fiscal Year	Negotiated annual base compensation paid to Recology
FY 2020/21	\$2,837,000
FY 2021/22	\$3,194,000
FY 2022/23	\$3,635,000

Staff anticipated that the base level of compensation for residential recycling services would increase because operating costs for solid waste collection service providers outpaced the Consumer Price Index over the previous 12 years and revenue for recyclable materials has dropped substantially due to China's National Sword Policy.

The monthly cost per unit served under the successor agreement through FY 2022/23 is less than the four CPI escalated proposals that the City received to provide residential recycling services in 2008 and significantly less costly than recent proposals for similar services received by the City of San Jose and the South Bayside Waste Management Authority. The successor agreement approved by the Council will provide good value for the City over the 16-year term.

# D. Clean-up Campaign (CUC) Charge: \$5.90/month (Increase of \$0.23/month)

The CUC charge will increase from \$5.67 per month to \$5.90 per month (+4.1 percent). The City has conducted competitive procurements for trucking services, equipment rental services, and temporary staffing services. All of the agreements for services have COLAs that will increase costs annually. The CUC charges will generate approximately \$2,300,000 to cover the cost of the 2021 CUC.

#### E. Household Hazardous Waste Charge: \$0.30/month (No Change)

The monthly Household Hazardous Waste charge to residents will remain at \$0.30 per month, which generates about \$172,000 annually. The HHW component of the AB 939 implementation fee, which is set at \$2.60 per ton disposed at landfills, is projected to generate \$160,000 in FY 2020/21, after the County of Santa Clara withholds funds to cover the City's participation in the Countywide HHW Program. These combined revenues are sufficient to cover annual curbside collection costs of motor oil, filters and compact fluorescent bulbs.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of California Environmental Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has not potential for resulting in either a direct change in the environment, or as a reasonably foreseeable indirect physical change in the environment.

#### **FISCAL IMPACT**

In total, the solid waste customer charges combined with the AB 939 implementation fee and beverage container recycling grant revenues will generate approximately \$31,219,000 of revenue included in the FY 2020/21 Proposed Operating Budget.

#### 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 <a href="mailto:clerk@santaclaraca.gov">clerk@santaclaraca.gov</a> or at the public information desk at any City of Santa Clara public library.

A notice, as required by Article XIII D of the California Constitution, was mailed to all 25,837 solid waste customers (garbage, Clean Green, recycling, Clean-up Campaign, and Household Hazardous Waste) on May 1, 2020 describing proposed increases to solid waste rates. The notice was sent out more than 45 days prior to the Public Hearing to give customers the opportunity to submit written protests against the proposed rates.

#### **ALTERNATIVES**

- 1. Adopt a Resolution setting the overall rates to be charged to rate payers for the collection and disposal of garbage, refuse, yard trimmings, recycling, annual Clean-up Campaign, and household hazardous waste in the exclusive franchise area, effective for the utility bills issued for services rendered on and after July 1, 2020; or
- 2. Do not adopt a Resolution to increase the proposed rates to be charged to rate payers for collection and disposal of garbage, refuse, yard trimmings, recycling, Annual Clean-up Campaign, and household hazardous waste in the exclusive franchise area and subsidize FY 2020/21 expenditures with funds from the General Fund.

#### RECOMMENDATION

Alternative: 1

Adopt a Resolution setting the overall rates to be charged to rate payers for the collection and

disposal of garbage, refuse, yard trimmings, recycling, annual Clean-up Campaign, and household hazardous waste in the exclusive franchise area, effective for the utility bills issued for services rendered on and after July 1, 2020.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

- 1. Resolution
- 2. Letter from R3
- 3. Table I Monthly Residential Refuse Service Rates in Santa Clara County
- 4. Table II Commercial/Industrial Debris Box Refuse Service Rates in Santa Clara County

RESOLUTION NO.
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A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA SETTING RATES FOR OVERALL SOLID WASTE SERVICES, ANNUAL CLEANUP CAMPAIGN, AND HOUSEHOLD HAZARDOUS WASTE SERVICES IN THE EXCLUSIVE FRANCHISE AREA

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

**WHEREAS**, the City Council of the City of Santa Clara ("City") has provided, by contract or with its own forces, certain garbage collection and disposal services, yard trimming and recycling collection, The Annual Cleanup Campaign, and household hazardous waste services ("Solid Waste Services") within the corporate limits of the City of Santa Clara;

WHEREAS, City entered into an agreement entitled the "Agreement for Disposal of Municipal Solid Waste, dated March 7, 1989, with International Disposal Corporation of California (a wholly owned subsidiary of Browning Ferris Industries (BFI))", ("Disposal Agreement") as amended by Amendment No. 1 dated February 10, 1998, for cost of disposing of garbage and refuse collected in the City at Newby Island Landfill for a term commencing March 7, 1989, and terminating on December 31, 2024;

WHEREAS, City entered into an agreement entitled "Agreement for Services Between the City of Santa Clara, California and GreenWaste Recovery, Inc." ("Solid Waste Processing Agreement"), dated April 27, 2020, to process solid waste from the exclusive franchise area to recover recyclables and organic waste for a term commencing July 1, 2020, and terminating on June 30, 2036;

WHEREAS, City entered into an agreement entitled "Agreement for Services Between the City of Santa Clara, California and Mission Trail Waste Systems, Inc." ("Refuse Franchise Agreement"), April 27, 2020, to collect and transport solid waste from customers in the exclusive franchise area, excluding residential recyclables for a term commencing July 1, 2020, and terminating on June 30, 2036;

WHEREAS, City entered into an agreement entitled "Agreement for Services Between the City

Resolution/Solid Waste Rates

Rev: 11/22/17

of Santa Clara, California, and Recology South Bay DBA Recology Santa Clara" ("Residential

Recycling Services Agreement"), February 5, 2020, for residential single-stream recycling

collection services for a term commencing July 1, 2020, and terminating on June 30, 2036;

WHEREAS, the overall adjustments to the monthly rates charged to customers for Solid Waste

Services made by this Resolution do not in any way modify the rates of compensation which

Mission Trail Waste Systems, Inc., GreenWaste Recovery, Inc., and Recology Santa Clara are

entitled to under the Refuse Franchise and Residential Recycling Services Agreements;

WHEREAS, City entered into "Agency Agreement for Countywide Household Hazardous Waste

Collection Program with the County of Santa Clara" ("CoHHWP Agreement") to provide

household hazardous waste collection, drop-off, and disposal services on June 12, 2018 for a

term commencing on July 1, 2018, and terminating on June 30, 2021;

WHEREAS, on May 1, 2020, the City timely mailed notices of a public hearing to property

owners and rate payers of Solid Waste Services that detailed proposed rate adjustments in

accordance with Article XIIID §6 of the California Constitution (Proposition 218); and,

WHEREAS, on June 23, 2020, the City held a public hearing on the proposed adjustments to

fees for Solid Waste Services, and there was no majority protest.

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

**FOLLOWS:** 

1. In accordance with Article XIIID § 6 of the California Constitution and as set forth in the

accompanying staff report, incorporated herein by reference:

A. The revenues derived from the Solid Waste Services rates, as stated in Table A,

attached hereto and incorporated herein, do not exceed the funds required to provide solid

waste programs.

B. The revenues derived from the Solid Waste Services rates will not be used for

any purpose other than solid waste programs.

C. The Solid Waste Services rates charged will not exceed the cost of solid waste

programs per parcel.

D. The Solid Waste Services rates are only charged for solid waste programs that

are currently available.

E. The Solid Waste Services rates are not charged for general governmental

services.

2. Notice of the proposed Solid Waste Services rates was mailed on May 1, 2020, more

than 45 days prior to the public hearing on this matter, in compliance with Proposition 218.

3. A public hearing was conducted on June 23, 2020, regarding the proposed rates to be

charged and all protests and other comments were considered.

4. The number of written protests by owners of parcels within the City against the

increased rates were tabulated by City staff at the hearing and did not constitute a majority

protest.

5. That following the public hearing, the City Council approves and adopts the rates for

collection and disposal of garbage, yard trimming and recycling collection, The Annual Cleanup

Campaign, and household hazardous waste services as set forth in Table A, incorporated here

by reference.

6. That any and all amounts by which the fees set forth in Table A exceed monies paid to

contractors that provide Solid Waste Services in accordance with their respective agreements,

shall solely belong to City and shall constitute cost recovery for Solid Waste Services rendered

by City.

7. That a true and correct copy of this Resolution shall be kept on file in the Office of the

City Clerk and in the Billing Division of the City Finance Department at all times in which the

rates are operable or until replaced with any future adjusted monthly charges by the City

Council and shall be open to public inspection during the regular hours of such offices.

8. That the adjusted monthly charges for Solid Waste Services described herein are

ordered to be effective for utility bills issued for services rendered on and after August 1, 2020

and thereafter.

9. <u>Effe</u>	ective date	. This reso	olution shall b	oecome (	effectiv	e immediate	ly.		
I HEREBY	CERTIFY	THE FOR	REGOING TO	BE A T	RUE C	OPY OF A F	RESOLUTI	ON PASSE	D
and adof	PTED BY 1	THE CITY	OF SANTA	CLARA,	CALIF	ORNIA, AT A	A REGULA	R MEETIN	3
THEREOF	HELD ON	THE	DAY OF		, 2020,	BY THE FO	LLOWING	VOTE:	
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Attachments incorporated by reference:

1. Table A – City of Santa Clara Rates for Collection and Disposal of Garbage, Yard Trimming and Recycling Collection, The Annual Cleanup Campaign, and Household Hazardous Waste Services for Utility Bills Issued For Services Rendered On and After August 1, 2020

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#### TABLE A

#### CITY OF SANTA CLARA

#### RATES FOR COLLECTION AND DISPOSAL OF GARBAGE, YARD TRIMMING AND RECYCLING COLLECTION, THE ANNUAL CLEANUP CAMPAIGN, AND HOUSEHOLD HAZARDOUS WASTE SERVICES

(Effective for utility bills issued for services rendered on and after August 1, 2020)

#### I. RESIDENTIAL USERS:

A. All Occupancy Classes (separate line billing)

1. Annual Cleanup Campaign \$5.90/month<sup>1</sup>

2. Extra Bag Tag Pre-Paid Sticker Program for extra garbage bag setouts

\$5.70/bag tag

\$0.30/month

3. Household Hazardous Waste

B. Single Occupancy (includes Multi-Family Complexes of 4 or Less Units)<sup>2 & 3</sup>

- 1. Regular service, (includes Yard Trimming Collection Service, and Recycling Services) single collection weekly:
  - a. One (1) thirty-two-gallon capacity garbage can or Small Cart

\$37.90/month

b. One (1) twenty-gallon capacity super saver can or Super Saver Cart

\$29.60/month

c. Two (2) thirty-two-gallon capacity garbage cans or Medium Cart

\$55.70/month

d. Three (3) thirty-two-gallon capacity garbage cans or Large Cart

\$73.60/month

e. Additional thirty-two (32) gallon container

\$20.15/month

- C. Multi-Family Occupancies where Yard Trimming Collection Services Provided: Regular service, single collection weekly:
  - 1. First dwelling unit (includes Yard Trimming and Recycling Collection Services):
    - a. One (1) thirty-two-gallon capacity garbage can or Small Cart

\$37.90/month

<sup>&</sup>lt;sup>1</sup> Exemption with no charge to residence with limited space based on determination by Deputy Director of Public Works.

<sup>&</sup>lt;sup>2</sup> Last two weeks of each year, encompassing the Christmas holiday and the week following, single occupancy customers may set out up to four (4) extra thirty-two (32) gallon garbage bags total (two per week) at no extra charge.

<sup>&</sup>lt;sup>3</sup> Low income rate discount of \$3.00 per month for single-family and townhouse customers that qualify for Silicon Valley Power's Rate Assistance Program.

b. One (1) twenty-gallon capacity Super Saver Cart. Only for duplexes with individual billing and where carts are set out at each residence. \$29.60/month c. Two (2) thirty-two-gallon capacity garbage cans or Medium Cart \$55.70/month d. Three (3) thirty-two-gallon capacity garbage cans or Large Cart \$73.60/month 2. Each additional dwelling unit exceeding one (1) unit (includes recycling charge, but not Yard Trimming Collection Service charge) \$25.45/month 3. For each additional thirty-two-gallon capacity container \$20.15/month 4. Recycling Service: (first unit includes recycling charge automatically) All residential dwellings are required to have recycling services. The monthly charge is unbundled for additional units after the first unit. \$5.30/month/unit D. Townhouses – garbage and recycling provided (recycling not bundled into rate, but billed as a separate line item on utility bill); no Yard Trimming Collection Services: 1. Regular service, single collection weekly: a. One (1) thirty-two-gallon capacity garbage can or Small Cart \$20.80/month b. One (1) twenty-gallon capacity super saver garbage can or Super Saver Cart only where can setout and billed individually at each residence \$12.50/month c. Two (2) thirty-two-gallon capacity garbage cans or Medium Cart \$38.60/month d. Three (3) thirty-two-gallon capacity garbage cans or Large Cart \$56.50/month e. Additional thirty-two (32) gallon capacity container \$20.15/month 2. Recycling Service, single collection weekly, additional charge per participating dwelling unit \$5.30/month/unit

\$11.80/month/unit

E. Yard Trimming Collection Service

# II. COMMERCIAL AND INSTITUTIONAL ESTABLISHMENTS; AND RESIDENTIAL APARTMENT COMPLEXES (WHERE DWELLING UNITS NOT SERVED SEPARATELY)

#### A. Regular Garbage Cart Service: Variable

CONTAINER SIZE	ONE T	ONE TO SIX COLLECTIONS PER WEEK <sup>4</sup>					
(CAPACITY)	ONE	TWO	THREE	FOUR	FIVE	SIX	
	01/2	1 2 77 3				~222	
One 32-gallon capacity							
can, or Small Cart	\$20.80	\$36.31	\$54.18	\$72.06	\$89.91	\$107.79	
Two 32-gallon capacity	\$29.60	\$72.06	¢107.70	¢1.42.52	¢170.27	¢215 02	
cans, or Medium Cart	\$38.60	\$72.06	\$107.79	\$143.53	\$179.27	\$215.02	
Three 32-gallon capacity cans, or Large Cart	\$56.50	\$107.79	\$161.41	\$215.02	\$268.62	\$322.24	
Each additional 32-gallon capacity	d20.15	Φ25.75	<b>\$50.61</b>	ф <b>д</b> 1.4 <b>7</b>	Ф00.26	¢107.22	
container	\$20.15	\$35.75	\$53.61	\$71.47	\$89.36	\$107.23	

Rates shown applicable where no Recycling or Clean Green collection services provided. Notwithstanding the above, in no event will the minimum charge for service for commercial and institutional establishments be less than \$20.80.

#### B. Regular Recycling Cart Service: Variable

Contractor bills customers for commercial recycling services directly, not the City. Per Exhibit A, Section 3.C.v. of Agreement, if a commercial customer requires more than 96 gallons of recycling service per week, Contractor shall charge customer up to a maximum of the corresponding tariff level for the specific container and service level, plus ten percent (10%) for billing and franchise fees. Contractor shall retain five percent (5%) for billing and remit five percent (5%) to City on a quarterly basis, along with its non-exclusive franchise fees. Rates below include the ten percent (10%) markup.

CONTAINER SIZE	ONE TO SIX COLLECTIONS PER WEEK					
(CAPACITY)	ONE	TWO	THREE	FOUR	FIVE	SIX
First 96-gallon container	None	\$61.25	\$91.87	\$122.46	\$153.08	\$183.71
Each additional 96-gallon container	\$30.62	\$61.25	\$91.87	\$122.46	\$153.08	\$183.71

<sup>&</sup>lt;sup>4</sup> For complexes with recycling services, add \$5.30 per unit per month charge.

#### C. Source Separated Food Scrap and Organic Waste Service

CONTAINER SIZE (CAPACITY)	FOOD SCRAP RECYCLING COLLECTIONS PER WEEK					
	ONE	TWO	THREE	FOUR	FIVE	
First 64-gallon container (collection rate)	\$22.56	\$45.05	\$67.64	\$90.21	\$112.71	
Each additional 64-gallon container (collection rate)	\$22.30	\$44.55	\$66.83	\$89.12	\$111.46	
Processing cost per container	\$6.36	\$12.50	\$18.65	\$24.78	\$30.93	

Contractor bills customers for food scrap recycling services (collection and processing) directly. Collection rates above are based on the corresponding tariff for each level of service and include ten percent (10%) for billing and franchise fees. Contractor shall retain five percent (5%) for billing and remit five percent (5%) to City on a quarterly basis, along with its non-exclusive franchise fees. Contractor shall invoice City on a monthly basis for processing costs. Processing cost per container include ten percent (10%) for billing and franchise fees.

D. Front Load Bin Garbage Service: Variable, for commercial, institutional, and residential multi-family occupancy customers; monthly charge (for weekly collections) with container furnished by Contractor.

BIN SIZE (Cubic Yards)	ONE TO SIX COLLECTIONS PER WEEK <sup>4</sup>						
	ONE	TWO	THREE	FOUR	FIVE	SIX	
1	\$114.98	\$226.27	\$332.69	\$434.64	\$537.26	\$635.85	
1½	\$166.36	\$330.23	\$481.79	\$625.96	\$772.66	\$918.58	
2	\$217.67	\$426.81	\$635.89	\$827.69	\$1019.50	\$1183.08	
3	\$322.03	\$625.96	\$914.01	\$1185.12	\$1465.26	\$1740.50	
4	\$421.00	\$824.43	\$1213.04	\$1570.05	\$1938.12	\$2253.22	
6	\$593.19	\$1169.09	\$1689.22	\$2209.71	\$2729.83	\$3228.27	
8	\$757.51	\$1508.47	\$2266.27	\$2849.49	\$3541.70	\$4247.48	

E. Front Load Bin Recycling Service: Variable, for commercial, and institutional customers; monthly charge (for weekly collections) with container furnished by Contractor.

Contractor bills customers for commercial recycling services directly, not the City. Per Exhibit A, Section C. (v.) of Agreement, if a commercial customer requires more than 96 gallons of recycling service per week, Contractor may charge customer up to a maximum of the corresponding tariff level for the specific container and service level, plus 10% for billing and franchise fees. Contractor shall retain five percent (5%) for billing and remit five percent (5%) to City on a quarterly basis, along with its non-exclusive franchise fees. Rates below include the ten percent (10%) markup.

BIN SIZE (Cubic Yards)	ONE TO SIX COLLECTIONS PER WEEK						
	ONE	TWO	THREE	FOUR	FIVE	SIX	
1	\$69.06	\$135.38	\$199.08	\$260.07	\$321.07	\$379.38	
1½	\$99.54	\$197.45	\$287.77	\$373.30	\$460.53	\$543.10	
2	\$129.99	\$254.68	\$379.38	\$493.64	\$607.35	\$726.72	
3	\$192.27	\$373.30	\$544.19	\$704.74	\$870.88	\$1033.85	
4	\$251.11	\$491.24	\$722.26	\$933.22	\$1151.32	\$1336.27	
6	\$325.63	\$694.57	\$1001.75	\$1308.90	\$1616.07	\$1924.24	
8	\$449.45	\$894.72	\$1344.21	\$1684.52	\$2080.80	\$2510.17	

#### F. Front Load Bin Source Separated Food Scrap and Organic Waste Service

	FOOD SCRAP RECYCLING					
BIN	COLLECT	ONS PER V	VEEK			
SIZE (CAPACITY)	ONE	TWO	THREE	FOUR	FIVE	
One (1) cubic yard (collection rate)	\$69.06	\$135.37	\$199.08	\$260.08	\$321.07	
Processing cost per one (1) cubic yard						
container	\$19.82	\$39.21	\$58.59	\$77.97	\$97.36	
Three (3) cubic yards (collection rate)	\$192.27	\$373.30	\$544.19	\$704.74	\$870.89	
Processing cost per three (3) cubic yard						
container	\$58.81	\$116.96	\$175.11	\$233.26	\$291.41	

Contractor bills customers for food scrap recycling services directly. Collection rates above are based on the corresponding tariff for each level of service and include ten percent (10%) for billing and franchise fees. Contractor shall retain five percent (5%) for billing and remit five percent (5%) to City on a quarterly basis, along with its non-exclusive franchise fees. Contractor shall invoice City on a monthly basis for processing costs. Processing cost per container includes ten percent (10%) for billing and franchise fees.

G. Roll-Off Bin Garbage Collection and Compacted Front Loader Bin Garbage Collection: Per collection with roll-off container furnished by Contractor and front loader compactor bin furnished by customer. The rates specified below do not include recycling/disposal costs. Customer shall be billed for the actual charges incurred by the Contractor for recycling and/or disposal of collected contents plus ten percent (10%) markup for billing and franchise fees. This 10% markup is included in the rates below.

BIN SIZE/CAPACITY	OPEN (Loose) CONTAINER (per cubic yard)	COMPACTED (Closed) CONTAINER (per cubic yard)
10 cubic yards or less	\$31.17	\$41.06
11 to 15 cubic yards	\$31.17	\$35.63
16 to 20 cubic yards	\$28.45	\$32.55
21 to 29 cubic yards	\$26.06	\$32.57
30 cubic yards	\$21.96	\$32.57
31 to 39 cubic yards	\$20.78	\$32.57
40 cubic yards & over	\$20.12	\$32.57
Demurrage charge (one-week extension		
without collection)	\$55.00/week	\$55.00/week

#### III. SPECIAL CHARGES

### A. Provided by Mission Trail Waste Systems and Billed to Customer by City:

1. Manual Front-Load Bin Push/Pull Charges

RATE LEVEL	ONE-WAY DISTANCE	RATE
L-1	6 to 20 feet	\$25.06
L-2	21 to 40 feet	\$32.71
L-3	41 to 60 feet	\$48.74
L-4	61 to 80 feet	\$58.15
L-5	81 to 100 feet	\$81.14
L-6	101 to 120 feet	\$106.56
L-7	121 to 140 feet	\$131.64
L-8	141 to 160 feet	\$155.29
L-9	161 to 180 feet	\$180.37
L-10	181 to 200+ feet	\$202.31

2.	Lock Bar/ Lock Jam Front Load Services	
	One-time installation fee, including one (1)	\$73.82
	lock:	
3.	Purchase of Lock	
	Per each, includes delivery of lock:	\$34.82
4.	Front-Load Bin Steam Cleaning - Per	
	occurrence, not include once per year annual	¢00.46
	cleaning:	\$88.46

### B. Provided by Mission Trail Waste Systems and Billed to Customer by Contractor:

1.	Roll-Off Bin Steam Cleaning - Per occurrence not including once per year annual cleaning:	\$433.58*
2.	Saturday Service Roll-Off Bin - Per occurrence:	\$471.89*
3.	"Emergency" Roll-Off Load Collection on a Weekday- Per driver hour with one (1) hour minimum charge:	\$252.80*

4. Relocation of Roll-Off Bin - Per driver hour with one (1) hour minimum charge: \$252.80\*

5. Roll-Off Driver Time - Per driver hour with one (1) hour minimum charge: \$252.80\*

6. Counter-balance Front-Load Covered Bin
(Premium charge paid by Customer –
availability limited to 100 bins total)

\$10.00/unit/month

7. Special Charges for return trips, non-scheduled collections, overages, and contamination:

Monthly collection charge for cart or bin size multiplied by 12, divided by 52, and multiplied by 1.5 per occurrence

8. Illegal bin removal and storage fee: \$274.80\* plus disposal cost per occurrence

### C. Provided by Recology for Residential Recycling Customers:

1. Manual Push/Pull Charges (first 10 feet complimentary): \$1.00 per foot moved

2. Front Loading Bin Cleaning Charge: \$125.00 per cleaning

3. Driver-time Reimbursement: \$95.00 per hour

4. Lock-Jam Bin Installations: \$75.00 flat fee

5. Charge to Service Contaminated Toter: \$25.00 flat fee per container

6. Charge to Service Contaminated Front-Loading Bins \$125.00 flat fee per container

<sup>\*</sup> Roll-off bin special services charges include markup of ten percent (10%) for billing and franchise fees. Contractor shall retain five percent (5%) for billing and remit five percent (5%) to City on a quarterly basis.



# City of Santa Clara

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

## Agenda Report

20-652 Agenda Date: 7/14/2020

#### 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.





**Updated 7/9/20** 

	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
1.	6/23/20	Council Meeting	Study Session on November 2020 Ballot Measures – return to Council on 7/14/20 with ballot language for TOT	City Manager	7/14/20	
2.	6/23/20	Council Meeting	Create an Ad Hoc Committee on Human Rights/Racial Inequalities in Santa Clara	City Manager	7/14/20	
3.	6/23/20	Council Meeting	Solid Waste Rate Increase – return on 7/14/20 with a report on rates and review options for rate assistance	Public Works	7/14/20	
4.	4/7/20	Council Meeting	Pruneridge Avenue Complete Streets Plan Project – Council voted to postpone awarding the contract and requested that staff bring it back to Council when there was more certainty about public outreach efforts in relation to the COVID-19 shelter in place order	Public Works	TBD	
5.	2/11/20	Council Meeting	Written Petition Received from Alan Todd Bevis Regarding Traffic Calming on Briarwood; Council requested staff to bring this item back to Council	Public Works	7/7/20	7/7/20
6.	1/28/20	Council Meeting	Return in March with a Resolution in support of 2020 Census (due to the impact of COVID-19 the U.S. Census has been extended through 10/31/20)	City Manager	7/14/20	
7.	1/28/20	Council Meeting	Respond via City Manager's Biweekly Report when information on alternate leasing plan for department stores at Related Santa Clara Project will return to Council	City Manager	August 2020	
8.	1/28/20	Council Meeting	VTA Transit Oriented Communities referred to Council Priority Setting Session on 1/30 and 1/31 to provide information on staff impact. (At the Priority Setting Session, Council requested that staff schedule a study session.)	City Manager/ Public Works	TBD	
9.	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	TBD	
10.	10/29/19	Council Meeting	Provide options for the \$750,000 commitment from Levy for community enrichment	City Manager	Fall 2020	
11.	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	6/23/20	6/23/20
12.	9/24/19	Council Meeting	Staff to review the potential for rebates for the purchase of electric bicycles	SVP	Fall 2020	
13.	9/24/19	Council Meeting	Staff to review the Ordinance and enforcement of illegal street food vendors	Police	August 2020	
14.	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	November 2020	
15.	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	Fall 2020	
16.	7/9/19	Council Meeting	Update on age-friendly activities per commission annual Work Plan	Parks & Rec	Summer 2020	
17.	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,	Public Works	TBD	





**Updated 7/9/20** 

	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
			insurance, speed monitoring, data, fee structure and drop-off locations (Per the City Attorney's Office this item was placed on hold – pending the outcome of other public entities' litigation)			
18.	4/30/19	Council Meeting	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
19.	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	
20.	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	Fall 2020	
21.	10/9/18	Council Meeting	Dedicate Jerry Marsalli Community Center at grand opening of the facility	Parks & Rec	TBD	
22.	10/2/18	Council Meeting	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	Summer 2020	
23.	7/10/18	Council Meeting	Annual update on PD community engagement efforts	Police	6/23/20	6/23/20
24.	3/13/18	Council Meeting	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	Winter 2020	



**Updated 6/24/20** 



re: labor peace

**Referral Description Assigned** Source **Projected** Resolution Date Completed **Assigned Department** Completion 6/9/20 City Code requirements related to outdoor dining – review permit TBD 6/16/20 1. Council Meeting Community Email sent to Council from City application processes to streamline review and approval process Development Manager on 6/16/20 2. 6/9/20 **Council Meeting** Santa Clara Convention Center 3rd Quarter Report – why are audiovisual City Manager 6/9/20 6/9/20 Email response sent expenses higher than expected? Are the food expenses high due to providing to Council on 6/9/20 food for the Senior Food Distribution and/or School Lunches? (Respond via (via Council question/response email or Council Informational Memo) process); also posted on website with agenda packet 4/28/20 **Council Meeting** Invite Supervisor Susan Ellenberg to provide a COVID-19 update at the 5/12 6/9/20 3. City Manager 6/9/20 Reported at City Council Meeting **Council Meeting** Initiate discussions with Santa Clara Unified School District regarding 12/17/19 Parks & Rec/ 4. **Council Meeting** 5/26/20 5/26/20 Reported at Healthier Kids Foundation services (staff met with SCUSD on 2/5/20 to City Manager Council Meeting initiate discussions; will return to Council in June with a transition plan) Per City Manager, 4/7/20 Legislative Advocacy Positions - staff to return with information regarding 5/26/20 5. Council Meeting TBD City Manager the City's position on: Redistricting after census, public records and no questions from campaign reform (Council to provide questions in advance) Council Council Meeting Reported at 4/28/20 Nonprofits may apply for the City's Small Business Assistance Grant and City Manager 5/12/20 5/12/20 6. business license simultaneously **Council Meeting** 7. 10/8/19 **Council Meeting** Staff to review the expenditure limits for November 2020 – to designate City Clerk/City 5/12/20 Spring 2020 Reported at appropriately the expenditure limit for Districts vs. At-Large seats Manager **Council Meeting** 2/11/20 8. **Council Meeting** Update and Direction on Commercial Cannabis-Related Items – staff to City Manager/ 4/28/20 4/28/20 Reported at return with an Ordinance to ban commercial cannabis **Council Meeting** City Attorney 10/29/19 **Council Meeting** Regarding GIS system, provide biannual updates via the City 4/28/20 9. Spring 2020 Reported at ΙT Manager/Executive Director Report at Council meeting **Council Meeting** 12/10/19 Spring 2020 4/16/20 10. **Council Meeting** Add labor peace provision to GreenWaste Agreement **Public Works** Email sent to Council on 4/16/20





**Updated 6/24/20** 

	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
11.	2/11/20	Council Meeting	Discussion and Direction on the Santa Clara Tourism Improvement District (TID) Assessment Formula and Transient Occupancy Tax – staff to return with a district management plan reflecting a 1.5% TID assessment with option to increase to 2% as more information about alternate funding is received	City Manager/ Finance	May 2020	4/8/20	Reported at Council Meeting
12.	3/17/20	Council Meeting	Staff to review/return with options for temporary moratorium on evictions for renters as well as information to landlords on evictions during the COVID-19 emergency	Community Development/ City Attorney	3/24/20	4/7/20	Reported at Council Meeting
13.	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	3/31/20	4/7/20	Reported at Council Meeting
14.	3/5/20	Stadium Authority	Stadium Budget – City Attorney to return with legal opinion regarding options on approving the Stadium Budget	City Attorney	March 2020	3/24/20	Reported at Council Meeting
15.	3/17/20	Council Meeting	Review food options for at-risk children and families	City Manager	TBD	3/19/20	Email sent to Council from City Manager on 3/19/20
16.	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	2/25/20	Reported at Council Meeting
17.	1/31/20	Council Priority Setting Session	Public Works to prepare a letter for Mayor to send to Chappie Jones (a positive letter requesting San Jose to keep the City informed if they have specifics on an Innovation Zone project for Santa Clara to consider that does not impact residents)	Public Works	TBD	2/12/20	Staff prepared letter for Mayor's signature; signed letter mailed on 2/12/20
18.	12/3/19	Council Meeting	Council Policy 030 – Adding an Item on the Agenda – return to Council with amended policy replacing the word consensus with Council action	City Attorney/ City Manager	2/11/20	2/11/20	Reported at Council Meeting
19.	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	City Manager	2/11/20	2/11/20	Reported at Council Meeting





**Updated 6/24/20** 

	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
			consideration overall TOT? How do the TID Hotels feel about an increase in TOT (potentially 3%)				
20.	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	2/11/20	2/11/20	Reported at Council Meeting
21.	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	2/11/20	Reported at Council Meeting
22.	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	2/10/20	
23.	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 met with Mr. Fisher on 1/24/20; City Manager provided a verbal report at the 1/28/20 Council Meeting; Assistant City Manager Manuel Pineda will follow up with a letter to Mr. Fisher.)	City Manager/ Public Works	February 2020	2/4/20	2/4/20 a letter was sent to Mr. Fisher; he continues to correspond with staff via email
24.	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	1/30 – 1/31/20	1/31/20	Discussed at Council Priority Setting Session
25.	1/14/20	Council Meeting	Communications Consultant Agreements – Staff to add language to agreements to have agreements reviewed annually	City Manager	TBD	1/29/20	Language has been added to agreements re: annual review
26.	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	1/28/20	Reported at Council Meeting
27.	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	Reported at Council Meeting





Updated 6/24/20

	Date	Source	Referral Description	Assigned	Projected	Completed	Resolution
	Assigned			Department	Completion		
28.	12/10/19	Council Meeting	False Alarm Ordinance – Continue item to 1/14/20 for staff to conduct	Police/	1/14/20	1/14/20	Reported at
			broader public outreach and gather public input	City Attorney			Council Meeting
29.	12/10/19	Council Meeting	False Alarm Ordinance – Police Department to follow up with resident	Police	1/14/20	1/14/20	Reported at
			regarding financial assistance for fees				Council Meeting
30.	12/17/19	Council Meeting	Community Room Study Session – Continue item to 1/14/20 and return with	Parks & Rec/	1/14/20	1/14/20	Reported at
			responses to Suds Jain's questions regarding reservation process, rates for	City Manager			Council Meeting
			facilities at Oracle and houses across the street behind Triton, and provide a				
			master list of facilities and who to contact for reservation				
31.	9/18/19	Economic	The Committee referred for Council consideration a request to the City	City Manager	January 2020	1/9/20	Letter sent from City
		Development,	Council to terminate the billboard agreement with All Vison, LLC (staff in				Manager to All
		Communications	process of analyzing further)				Vision on 1/9/20;
		and Marketing					Memo to Council
		Committee					from City Attorney
							on 1/9/20