



# City of Santa Clara

## Revised Joint Meeting Agenda

### Council and Authorities Concurrent

### Santa Clara Stadium Authority

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**Tuesday, November 17, 2020**

**3:30 PM**

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

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**\*\*Revisions:**

Add Item 2.U (20-1195)

Add Item 2.V (20-1197)

Move Item 20-1057 under Stadium Authority Consent Items

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](mailto:PublicComment@santaclaraca.gov)**

As always, the public may view the meetings on [SantaClaraCA.gov](http://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.

### **3:30 PM COUNCIL/STADIUM AUTHORITY MEETING**

**Call to Order in the Council Chambers**

**Roll Call**



## **CLOSED SESSION**

### **Public Comment**

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

**20-1186** [Conference with Real Property Negotiators \(CC\)](#)  
[Pursuant to Gov. Code § 54956.8](#)  
[Property: Please see below listing for APNs and addresses](#)  
[City/Authority Negotiator: Deanna J. Santana, City](#)  
[Manager/Executive Director \(or designee\)](#)  
[Negotiating Parties: Please see below listing for names for](#)  
[negotiating party\(ies\)](#)  
[Under Negotiation: Purchase/Sale/Exchange/Lease of Real](#)  
[Property \(provisions, price and terms of payment\)](#)

	APN	Property Address	Property Owner (Name)
1	224-63-020	2380 Lafayette Street, Santa Clara	Dinapoli Family, LP
2	224-63-006	985 Memorex Drive, Santa Clara	Berto Development
3	224-67-023	2199 Ronald Street, Santa Clara	Richard Rossi, Tr.
4	224-66-005	2222 Ronald Street, Santa Clara	Portisi Investments, LLC
5	224-66-003	2122 Ronald Street, Santa Clara	JB Manufacturing, LLC
6	224-05-093	1040 Di Giulio Avenue, Santa Clara	Jon Anderson, Tr.
7	224-05-043	1034 Di Giulio Avenue, Santa Clara	Curtis Chew, Tr.
8	224-05-044	1024 Di Giulio Avenue, Santa Clara	Dante Esposito, Tr.
9	224-05-045	996 Di Giulio Avenue, Santa Clara	Dorothy Luth, Tr.
10	224-05-046	982 Di Giulio Avenue, Santa Clara	Sunding Brothers, LLC
11	224-05-047	962 Di Giulio Avenue, Santa Clara	Sunding Brothers, LLC
12	224-05-048	942 Di Giulio Avenue, Santa Clara	Aaron Smith
13	224-05-049	934 Di Giulio Avenue, Santa Clara	Timmy Chun
14	224-05-050	2200 Lafayette Street, Santa Clara	Lorene Scott
15	224-67-042	2206 Lafayette Street, Santa Clara	Felix Panis
16	224-67-048	2222 Lafayette Street, Santa Clara	Javad Zolfaghari
17	224-67-028	2234 Lafayette Street, Santa Clara	Posouvat se, LLC
18	224-03-080	2265 Lafayette Street, Santa Clara	SEW LLC

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

### **4:15 PM COUNCIL/STADIUM AUTHORITY REGULAR MEETING**

*Regular Meeting to Reconvene at 4:15 PM or shortly thereafter*

**Pledge of Allegiance and Statement of Values**

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

### **CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS**

- 20-1181** [Cancellation of Public Hearing: Consideration of a Proposed Resolution Amending the Rates for Attachments to City Owned Utility Poles by Third Party Communications Providers Continued from October 13, 2020 \(RTC 20-693\)](#)

**Recommendation:** Drop public hearing to consider matter on a future date.

### **SPECIAL ORDER OF BUSINESS**

- 1.A 20-1126** [Acknowledge the Winners of the Santa Clara Cultural Commission's 2020 Halloween Home Decoration Contest](#)
- 1.B 20-1173** [Verbal Report from City Manager regarding COVID-19 Pandemic](#)

### **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 20-902** [Action on Council and Authorities Concurrent & Special Stadium Authority Meeting, Special City Council, Special City Council, Stadium Authority, Successor Agency to the City of Santa Clara Redevelopment Agency, and Council and Authorities Concurrent Meeting Minutes](#)

**Recommendation:** Approve the meeting minutes of:

1. Council and Authorities Concurrent and Special Stadium Authority Minutes of October 13, 2020
2. Special City Council Minutes of October 15, 2020
3. Special City Council Minutes of October 21, 2020
4. Council and Authorities Concurrent Meeting of October 27, 2020
5. Special City Council, Stadium Authority, Successor Agency to the Redevelopment Agency of October 29, 2020

**2.B     20-22     [Board, Commissions and Committee Minutes](#)**

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

1. Task Force on Diversity, Equity, and Inclusion - October 8, 2020
2. Task Force on Diversity, Equity, and Inclusion - October 15, 2020
3. Task Force on Diversity, Equity, and Inclusion - October 22, 2020
4. Historical and Landmarks Commission - October 1, 2020

**2.C     20-1145     [Action on Approval of the 2019-2024 Memorandum of Understanding Between the City of Santa Clara and the Miscellaneous Unclassified Management Employees \(Unit 9\)](#)**

**Recommendation:** 1. Approve the Memorandum of Understanding between the City of Santa Clara and the Miscellaneous Unclassified Management Employees (Unit 9) with effective dates of December 15, 2019 to December 31, 2024.

**2.D     20-468     [Action on Adoption of a Resolution Approving the 2019 Bay Area Urban Areas Security Initiative Program Grant, and Related Budget Amendment.](#)**

**Recommendation:** 1. Adopt a Resolution Approving the 2019 Bay Area Urban Areas Security Initiative program grant in the amount of \$185,000 (as extended to 2021) for the purchase of backpack portable radiation detection equipment; and

2. Approve the related budget amendment in the Fire Operating Grant Trust Fund to recognize grant revenue in the amount of \$185,000 and establish a 2019 Bay Area Urban Areas Security Initiative program appropriation in the amount of \$185,000.

**2.E     20-868     [Informational Report Regarding Bi-yearly Project Status Report of the GIS Services Program](#)**

**Recommendation:** Note and file the Informational Report regarding the Bi-yearly Project Status Report of the GIS Services Program.

**2.F      20-720**      [Action on an Agreement with Mott MacDonald, Inc. for Design Professional Services for the Lafayette St. Underpass at Subway Pump Station and Related Budget Amendment](#)

**Recommendation:** 1. Approve and authorize the City Manager to execute an agreement with Mott MacDonald, Inc., for the Lafayette St. Underpass at Subway Pump Station in the amount not-to-exceed \$227,524;

2. Authorize the City Manager to make minor modifications, including time extensions, to the agreement, if needed; and

3. Approve the related FY 2020/21 budget amendment in the Storm Drain Capital Fund to increase the Lafayette St. Underpass at Subway Pump Station Project by \$38,000 and decrease the Westside Retention Basin Pump Replacement Project by \$38,000.

**2.G      20-895**      [Action on Amendment No. 1 to the Agreement with Safe Moves for the Santa Clara Non-Infrastructure Safe Routes to School Phase 2 Project](#)

**Recommendation:** Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with Safe Moves for the Santa Clara Non-Infrastructure Safe Routes to School Phase 2 Project.

**2.H 20-748** [Action on a Design Professional Services Agreement with Alta Planning + Design for the Pruneridge Avenue Complete Streets Plan Project and Related Budget Amendments](#)

- Recommendation:**
1. Approve and authorize the City Manager to execute the Agreement for Design Professional Services with Alta Planning + Design for the Pruneridge Avenue Complete Streets Plan in the amount not-to-exceed \$416,347;
  2. Approve a FY 2020/21 budget amendment in the Streets and Highways Capital Fund to establish an appropriation for the new Project - Pruneridge Avenue Complete Streets Plan project in the amount of \$416,347, increase the revenue estimate in the amount of \$326,077 to recognize the Caltrans Sustainable Communities Grant, and decrease the Pedestrian and Bicycle Enhancement Facilities Project by \$90,270; and
  3. Authorize the City Manager to make minor modifications, including time extensions, to the Agreement, if necessary.

**2.I 20-908** [Adopt a Resolution authorizing the City Manager to submit an Application for Proposition 68 Per Capita Program for Maywood Park Rehabilitation and approve a related budget amendment in the amount of \\$256,622 for the Project in the Parks and Recreation Capital Fund](#)

- Recommendation:**
1. Adopt a Resolution authorizing the City Manager to submit an Application for the Proposition 68 Per Capita Program for the Maywood Park Rehabilitation Project; and
  2. Approve a related Fiscal Year 2021/22 budget amendment in the Parks and Recreation Capital Fund to recognize grant revenue and increase the Maywood Park Rehabilitation Project appropriation in the amount of \$256,622.

**2.J      20-924      [Action on a Resolution Approving Purchase and Sale Agreements for Easements on the South Loop Reconfigure Project](#)**

**Recommendation:** 1. Adopt the Resolution approving the purchases of overhead electric easements at 840 Comstock Street [224-36-001], 955 Martin Avenue [224-60-004], 1515 Walsh Avenue [224-57-003], and 2495 Lafayette Street [224-35-019]; and  
2. Authorize the recordation thereof.

**2.K      20-963      [Action on Monthly Financial Status and Investment Reports for September 2020 Approve the Related Budget Amendments](#)**

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

**2.L      20-990      [Action on a Resolution Amending in Part Resolution No. 5195, Setting the Start Time of Regular Meetings of the Historical and Landmarks Commission and Approving the 2021 Historical and Landmarks Commission Calendar of Meetings](#)**

**Recommendation:** Adopt a Resolution amending in part Resolution No. 5195, setting the start time of regular Historical and Landmarks Commission meetings, and approving the 2021 Historical and Landmarks Commission of Meetings.

**2.M 20-999** [Action on the Approval of FY 20 Edward Byrne Memorial Justice Assistance Grant Funding and Related Budget Amendment](#)

- Recommendation:**
1. Accept and approve the FY 20 Edward Byrne Memorial Justice Assistance Grant funding of \$12,469;
  2. Approve the related FY 2020/21 budget amendment in the Police Operating Grant Trust Fund to recognize grant revenue in the amount of \$12,469 and establish an Edward Byrne Memorial Justice Assistance Grant Program 2020 appropriation in the amount of \$12,469;
  3. Authorize the City Manager to sign grant-related documents;
  4. Authorize the Mayor to sign the Certifications and Assurances by the Chief Executive of the Applicant Government form; and,
  5. Authorize the City Manager to execute purchase order(s), subject to the appropriation of funds, to purchase the equipment described above.

**2.N 20-1000** [Action to Approve a Municipal Law Enforcement Services Agreement between the Santa Clara Stadium Authority, City of Santa Clara and San Francisco County Sheriff's Office](#)

- Recommendation:** Approve a Municipal Law Enforcement Services Agreement between the Santa Clara Stadium Authority, City of Santa Clara, and San Francisco County Sheriff's Office for support services associated with special events at Levi's Stadium.

**2.O     20-1033** [Action on Amendment No. 1 to the Agreement with the California Department of Transportation Division of Rails and Mass Transportation for the Agnew Road At-Grade Crossing Project](#)

**Recommendation:** 1. Approve and authorize the City Manager to execute Amendment No. 1 to the agreement with the California Department of Transportation Division of Rails and Mass Transportation for the Agnew Road At-Grade Crossing Project;

2. Authorize the City Manager to make minor modifications, including time extensions, to the agreement, if needed; and

3. Authorize the City Manager to execute any and all documents associated with and necessary for administration of the project with the California Department of Transportation Division of Rails and Mass Transportation.

**2.P     20-1051** [Amendment to the Covenants, Conditions and Restrictions for the Marriott Center Owners Association](#)

**Recommendation:** Note and file the proposed amendment to the covenants, conditions and restrictions ("CC&Rs) for the Marriott Center Owners Association regarding the industrial development at 4701 Patrick Henry Boulevard.

**2.Q     20-1054** [Action on Agreement with HouseKeys, Inc. for Administration Services for the Below Market Price Purchase Program](#)

**Recommendation:** 1. Approve and authorize the City Manager to execute an agreement with HouseKeys, Inc. for administration services for the Below-Market Purchase Program and to approve change orders and amendments during the initial term commencing on or about November 18, 2020 and ending on or about November 30, 2023 for a total maximum amount not-to-exceed \$581,250, subject to the appropriation of funds; and

2. Authorize the City Manager to execute up to seven one-year options to extend the term of the agreement after the initial term through November 30, 2030 for ongoing administration services, subject to the appropriation of funds.



**2.R     20-1063** [Action on Affordable Housing Agreements with TOD Brokaw, Inc., for a 725 Unit Apartment Project Located at 1205 Coleman Avenue](#)

- Recommendation:**
1. Approve and authorize the City Manager to execute the Affordable Housing Agreements for Project 1 and Project 2 with TOD Brokaw, Inc., to execute amendments thereto, and to take any other action necessary to implement the requirement for the provision of seventy-three (73) affordable located at 1205 Coleman Avenue; and
  2. Authorize the recordation thereof.

**2.S     20-1068** [Action on an Agreement Containing Covenants and Restrictions with Benton and El Camino, LP, for Project located at 575 Benton Street](#)

- Recommendation:**
1. Approve and authorize the City Manager to execute the Agreement Containing Covenants and Restrictions with Benton and El Camino, LP to execute amendments thereto, and to take any other action necessary to implement the requirement for the provision of thirty-six (36) affordable units within a 355 unit rental apartment complex at 575 Benton Street; and
  2. Authorize the recordation thereof.

**2.T     20-1168** [Note and File Informational Report on a Proposed Shared Mobility Permit Program and Updates to State Law](#)

- Recommendation:** Note and file the Informational Report on a Proposed Shared Mobility Permit Program and Updates to State Law.

**2.U     20-1195** [Action on Approval of a Tentative Parcel Map for 5407 and 5409 Stevens Creek Boulevard \(Continued from November 10, 2020 Council Meeting\)](#)

- Recommendation:** Alternative 1:  
Adopt a resolution to approve the Tentative Parcel Map to subdivide the existing parcel into two lots at the property located at 5407 and 5409 Stevens Creek Boulevard.

**2.V     20-1197     [Public Hearing: Action on a Tentative Parcel Map for 2250 Lawson Lane \(Continued from November 10, 2020 Council Meeting\)](#)**

**Recommendation:** Alternative 1:  
Adopt a resolution to approve the Tentative Parcel Map to create a single lot subdivision for commercial condominium purposes at the property located at 2250 Lawson Lane.

**STADIUM AUTHORITY CONSENT ITEMS**

**2.W     20-988     [Action on Stadium Authority Bills and Claims for the Month of September 2020](#)**

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

**2.X     20-1057     [Action to Purchase and/or Award Purchase Orders for Public Safety Supplies and Equipment and Approve Miscellaneous Purchases Incurred Between June 5 and October 31, 2020](#)**

**Recommendation:** Alternatives 1, and 2.

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 (Radiation Detector; Rope Rescue Gear; Stadium Personal Protective Equipment; and 2-Way CAD/24-7 Link), pursuant to Chapters 2.105 and 17.30 of the Santa Clara City Code and in an amount not-to-exceed \$230,912, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items; and
2. Approve the miscellaneous expenses detailed in Attachment 2 that were incurred by or invoiced to the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between June 5 and October 31, 2020.

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**2.Y Report and Action on the Stadium Manager's Request to Execute an Agreement with the Silicon Valley Business Journal and the Stadium Authority's Response**

- a.      **20-1036**   [Request from the Stadium Manager for Authority to Execute an Agreement with Silicon Valley Business Journal for Non-NFL Catered Events Advertising](#)
  
- b.      **20-1043**   [Report from the Stadium Authority Regarding the Stadium Manager's Request to Execute an Agreement with Silicon Valley Business Journal for Non-NFL Catered Events Advertising](#)

**Recommendation:** Alternative 1: Approve the Stadium Manager's request for authority to execute an agreement with SVBJ in an amount not to exceed \$10,800 for two e-blasts campaigns focused on Non-NFL Events bookings.

- 2.Z      20-1056**   [Informational Report on Dates and Purpose of Stadium Authority and Stadium Manager Meetings and Corresponding Minutes for the Period July 1, 2020 to September 30, 2020](#)

**Recommendation:** Note and file the quarterly report on Stadium Authority and Stadium Manager Meetings and Corresponding Minutes for the period of July 1, 2020 to September 30, 2020.

**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*

**CONSENT ITEMS PULLED FOR DISCUSSION**

**PUBLIC HEARING/GENERAL BUSINESS**

3.      20-744      [Public Hearing: Actions on Amendments to the Tasman East Specific Plan \(TESP\) to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirement; to amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of mixed use buildings and to correct an error regarding permissible density ranges; and to override an Airport Land Use Commission \(ALUC\) determination of inconsistency with the SJC Airport Comprehensive Land Use Plan \(CLUP\)](#)

**Recommendation:** Alternatives 1, 2, 3 & 5:

1. Adopt a resolution to adopt the Addendum to the 2018 Final Environmental Impact Report Tasman East Specific Plan;
2. Adopt a resolution to override the Airport Land Use Commission's determination of inconsistency to the San Jose Mineta International Airport's Comprehensive Land Use Plan for the Tasman East Specific Plan Amendment #1;
3. Adopt a resolution to amend the Tasman East Specific Plan (Amendment #1) to replace a proposed street extension for Calle Del Sol with a multimodal paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirements; and
5. Introduce an ordinance to amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of a mixed-use building and to correct an error regarding permissible density ranges.

4.      **20-787**      [Public Hearing: Action on a Resolution Approving the Findings from the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study and Setting the Rates for the Infrastructure Impact Fee, Action on the Introduction of an Ordinance Adding Section 17.15.350 to Chapter 15 of Title 17 of the Santa Clara City Code, and Establishment of the Tasman East Infrastructure Improvement Fund and Related Budget Actions](#)

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

1. Approve the Tasman East Specific Plan Infrastructure Impact Fee; and adjust fees annually in line with the latest Construction Cost Index for San Francisco, as published by Engineering News Record or equivalent, in order to keep up with construction costs and inflation;
2. Adopt a Resolution Approving the Findings from the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study and Setting the Rates for the Infrastructure Impact Fee;
3. Approve the Introduction of an Ordinance adding subsection 17.15.350 to the Santa Clara City Code; and
4. Approve the establishment of the Tasman East Infrastructure Improvement Fund (Fund 541) to account for the impact fee revenues and project expenditures; and establish a FY 2020/21 impact fee revenue estimate in the amount of \$175,757 and appropriate those funds to support Fee Administration (\$23,757), Sanitary Sewer Engineering Studies (\$132,000), and the Nexus Study (\$20,000).

5.      **20-1096**      [Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 925 Walsh Avenue, Santa Clara, California, from PSB Northern California Industrial Portfolio LLC, a Delaware Limited Liability Company](#)

**Recommendation:** Alternative 1: Adopt a Resolution of Necessity to Acquire Certain Real Property Interests on 925 Walsh Avenue, Santa Clara, California, from PSB Northern California Industrial Portfolio LLC, a Delaware limited liability company.

6.      **20-1098**    [Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 1401 Martin Avenue, Santa Clara, California, from Diana J. Alman, Trustee et al](#)

**Recommendation:** Alternative 1: Adopt a Resolution of Necessity to acquire Certain Real Property Interests on 1401 Martin Avenue, Santa Clara, California, from Diana J. Alman, Trustee et al.

7.      **20-1101**    [Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 800 Mathew Street, Santa Clara, California, from Patel Jitendra G. and Shashi J. Trustee](#)

**Recommendation:** Alternative 1: Adopt a Resolution of Necessity to acquire Certain Real Property Interests on 800 Mathew Street, Santa Clara, California, from Patel Jitendra G. and Shashi J. Trustee.

8.      **20-1097**    [Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 2908 Lafayette Street, Santa Clara, California, from Dollinger Lafayette Associates, a California General Partnership](#)

**Recommendation:** Alternative 1: Adopt a Resolution of Necessity to acquire Certain Real Property Interests on 2908 Lafayette Street, Santa Clara, California, from Dollinger Lafayette Associates, a California general partnership.

9.      20-1189   [Approval of no cost of living and merit compensation increases for the City Manager and City Attorney and approval to apply the benefit changes for the City Manager and City Attorney, unless stated otherwise in the employment agreement, as included in the new Miscellaneous Unclassified Management Employees \(Unit 9\) Memorandum of Understanding](#)

**Recommendation:** Approve to make no Cost of Living or Merit Pay Adjustments to the City Manager and City Attorney compensation effective December 15, 2019 to December 25, 2021; no merit increase adjustments effective January 1, 2021 to December 31, 2022; extend the Unit 9 benefit changes to the City Manager and City Attorney as articulated in this staff report.

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

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

- 20-1141   [Update on City Council and Stadium Authority Staff Referrals](#)
- 20-871   [Tentative Meeting Agenda Calendar \(TMAC\)](#)

#### **ADJOURNMENT**

The next regular scheduled meeting is on Tuesday evening, December 8, 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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

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





# City of Santa Clara

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

## Agenda Report

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**20-1186**

**Agenda Date: 11/17/2020**

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### **SUBJECT**

Conference with Real Property Negotiators (CC)

Pursuant to Gov. Code § 54956.8

Property: Please see below listing for APNs and addresses

City/Authority Negotiator: Deanna J. Santana, City Manager/Executive Director (or designee)

Negotiating Parties: Please see below listing for names for negotiating party(ies)

Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

	APN	Property Address	Property Owner (Name)
1	224-63-020	2380 Lafayette Street, Santa Clara	Dinapoli Family, LP
2	224-63-006	985 Memorex Drive, Santa Clara	Berto Development
3	224-67-023	2199 Ronald Street, Santa Clara	Richard Rossi, Tr.
4	224-66-005	2222 Ronald Street, Santa Clara	Portisi Investments, LLC
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10	224-05-046	982 Di Giulio Avenue, Santa Clara	Sunding Brothers, LLC
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[@SantaClaraCity](https://twitter.com/SantaClaraCity)

## Agenda Report

20-1181

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Cancellation of Public Hearing: Consideration of a Proposed Resolution Amending the Rates for Attachments to City Owned Utility Poles by Third Party Communications Providers Continued from October 13, 2020 (RTC 20-693)

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

Item was continued from the October 13, 2020 Council meeting.

#### **DISCUSSION**

Item is being dropped to complete discussions with service providers and will be considered at a future date.

#### **ENVIRONMENTAL REVIEW**

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

#### **COORDINATION**

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

#### **PUBLIC CONTACT**

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Pursuant to AB 1027, at least fourteen (14) days before the public hearing date, City shall mail a notice of the time and place of the public hearing, including a general explanation of the matter to be considered, and a statement that the data indicating the cost is available for review to a person or entity who files a written request with City for a mailed notice of the upcoming public hearing. In addition, at least ten (10) days before the public hearing, SVP shall make the data indicating the cost available on SVP's website at [www.siliconvalleypower.com](http://www.siliconvalleypower.com) <<http://www.siliconvalleypower.com>>.

**RECOMMENDATION**

Drop public hearing to consider matter on a future date.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,  
AMENDING RATES FOR THIRD PARTY COMMUNICATIONS  
ATTACHMENTS TO UTILITY POLES OWNED BY THE CITY OF  
SANTA CLARA**

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

**WHEREAS**, pursuant to Santa Clara City Code Section 13.05.040, all electric energy and power furnished to customers of the City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), shall be charged, paid for and supplied in accordance with certain electric rate schedules, tariffs, and rules and regulations adopted and amended from time to time by the City Council; and

**WHEREAS**, Silicon Valley Power leases available space on its electric distribution poles to communications providers under long-term agreements; and

**WHEREAS**, those agreements incorporate rates for cable attachments, equipment attachments, riser attachments, anchor guy attachments, and small cell attachments (together, "pole attachments") that are revised each year under the terms of those agreements; and

**WHEREAS**, on October 8, 2011, the governor signed AB1027, which added Sections 9510-9519 to the Public Utilities Code and required that publicly owned utilities make "appropriate" space available for use by cable television corporations, video service providers, and telephone corporations; and

**WHEREAS**, AB1027, as it applies to the City of Santa Clara, requires that the rates charged by the City of Santa Clara for pole attachments be based on Silicon Valley Power's "cost of ownership," as that term is defined in AB1027, and

**WHEREAS**, AB1027 states that the pole attachment rates and service conditions determined pursuant to AB1027 shall not affect pole attachment agreements executed prior to January 1, 2012, and;

**WHEREAS**, a Silicon Valley Power staff report, which included a proposal to amend Silicon Valley Power's various pole attachment rates in accordance with the requirements of AB1027, was heard by the City Council at its regularly scheduled public meeting on November 17, 2020; and

**WHEREAS**, in accordance with AB 1027, at least ten (10) days before the public hearing date, the City of Santa Clara made the Derivation Report available on Silicon Valley Power's website at [www.siliconvalleypower.com](http://www.siliconvalleypower.com); and

**WHEREAS**, in conformance with AB1027, the date of this resolution is January 12, 2021, which is more than 30 days after the public meeting referenced above, and the effective date of the rates adopted by this resolution is March 13, 2021, which is 60 days after the date of this resolution; and

**WHEREAS**, the City Council reviewed and approved the recommendations contained in the staff report, which included the recommendation that the City Council amend Silicon Valley Power's rates for pole attachments in agreements executed after January 12, 2012.

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

1. That the amended pole attachment rates were presented by Silicon Valley Power staff to the City Council during its regularly scheduled meeting on November 17, 2020; and
2. The proposed pole attachment rate changes and annual escalator presented by Silicon Valley Power staff at that meeting and incorporated in the "Report on Derivation of Fiscal Year 2020-2021 Pole Attachment Rates," attached hereto as Exhibit A, shall be and are adopted by the City Council; and
3. That true and correct copies 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 while these pole attachment rates are effective, and, until further amended or replaced, be open to public investigation and inspection during the regular business hours of such offices; and

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED  
AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING  
THEREOF HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2021, 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 – Report on Derivation of FY 2020-2021 Pole Attachment Rates

## EXHIBIT A

### Report on Derivation of FY 2020-2021 Pole Attachment Rates

#### Summary

This study updates the 2015 study used to determine SVP pole attachment rates for cable, equipment, riser and anchor attachment rates that initially became effective in 2016 (Resolution 16-8285), and also the pole attachment rate for small cell that was initially established in 2018 (Resolution 18-8594). The purpose of this report is to document the process and assumptions used in the 2015 study and update the cost of ownership to derive the pole attachment rates for third party communications attachment to utility poles owned by City to become effective upon the effective date of the City Council resolution adopting these rates. These rates, expressed in dollars per attachment per year, are shown below.

Pole Attachment	\$ 19.92
Equipment Attachment	\$ 56.58
Riser Attachment	\$ 41.87
Anchor Attachment	\$ 3.88
Small Cell Attachment	\$103.89

The proposed pole attachment rates reflect the requirements of AB1027, which was signed by the Governor on October 8, 2011. Among other things, AB1027 requires that pole attachment rates be based on SVP's annual cost of ownership, which is the sum of capital costs and annual operation costs of the pole or support structure used for pole attachments. Annual capital costs must be based on SVP's net investment in equipment (capital costs) necessary for use by a communication service provider. Further, "the basis for the computation of annual capital costs shall be historical capital less depreciation." And, "depreciation shall be based upon the average service life of the utility pole or support structure."

AB1027 requires the annual cost of ownership to be allocated to communications service providers based on the assumption (subject to factual rebuttal) that there are 13.5 feet of usable space on an average utility pole and that a third-party attachment occupies 1 foot of that 13.5 feet. As discussed below, the pole attachment rates summarized reflect the impact of wind loading in addition to the space devoted to pole attachments.

As in that prior study, because it would be burdensome and costly to perform a cost of ownership study each year, and because it is likely that pole replacements, and operating and maintenance expenses will increase in the near term, staff is proposing that the pole attachment rates determined for FY 20-21 be updated in future fiscal years by applying a 2.5% per year escalator (as a proxy for general inflation) and that the next cost of ownership study should be conducted in FY 24-25 for the pole attachment rates to be adopted in FY 25-26.



## **Cost of Ownership**

The cost of ownership components considered in this study are the same as the components used in the 2015 study:

- SVP's net depreciated investment in poles and fixtures, expressed in dollars, divided by the number of poles in use
- SVP's cost of long-term debt
- SVP's operations and maintenance expenses that contribute to the availability and reliability of space used for communications attachments
- Expenses related to SVP's revenues from pole attachments

SVP's net investment in poles and fixtures necessary for use by a communication service provider has been determined as follows. In the 2015 study, the number and age of SVP's poles were taken from work by Osmose, a contractor whose primary task was to survey every SVP pole and to make recommendations for repair or replacement as appropriate. Because the accounting system does not contain data on the installed cost of each pole, it was necessary to estimate the installed cost of the poles identified by the Osmose work. At the time of the Osmose study, SVP's current poles were installed between 1900 and 2013. A proxy installed cost for each year was determined by using the estimated installed cost (reduced by estimated salvage) for a replacement pole in 2015, and discounting that 2015 cost each year by each year's change in the Consumer Price Index. Net investment in poles and fixtures since 2015 has been determined in a similar manner. A proxy installed cost for each year since 2015 has been determined based on the estimated installed cost (reduced by estimated salvage) for a replacement pole as of April 2020 and discounting that April 2020 cost each year back to 2016 by each year's change in the Consumer Price Index. Depreciation rates were based on a 40-year service life through 1995, 37 years for 1996 and 1997, and 25 years thereafter. The primary reason for the reduction in estimated service life is the change of wood preservative.

SVP's cost of capital is estimated at 2.5%. In the 2015 study SVP used 5% as a proxy for the opportunity cost of money, whether in the form of long-term debt or in the form of the long-term earning potential of cash reserves. However, the recent refinancing of SVP's long-term debt indicates the SVP's cost of borrowing is currently around 2.5%, and assumed, for purposes of this study, to remain at or near this level over the next five years.

Operations and maintenance (O&M) expenses related to poles and pole attachments are estimated in the same manner as in the 2015 study. SVP uses a combination of city accounts and the FERC Uniform System of Accounts for both capital and operating expenses. This means that overhead operating and maintenance expenses are available from FERC accounts 583 and 593. Amounts in these accounts were augmented by allocating a prorated portion of total distribution supervision and A&G expenses (FERC account 580 and accounts 921-927). These expenses, as augmented, were then allocated

to reflect the estimated proportion of pole-related expenses (10%) as a percentage of total distribution expenses. This allocation was based on the judgment of distribution management personnel.

In addition, certain expenses are directly allocated. As in the 2015 study, these include Osmose pole inspection and repair expenses and tree trimming expenses. Osmose work is 100% pole related. Tree trimming is critical to maintain clearance for both overhead electrical wires and the communications cables and other equipment attached to SVP's poles.

### **Allocation of Pole-Related Cost of Ownership to Cable and Other Pole Attachments**

AB1027 requires, subject to factual rebuttal, that the cost of ownership be allocated to pole attachments as the ratio of 1 foot of space occupied by a pole attachment to 13.5 feet of "usable space" on a distribution pole, or 7.4% of the cost of ownership. The assumptions made in this study remain the same as they were in the 2015 study.

Based on experience with pole attachments, SVP's distribution engineers have determined that a simple space allocation does not capture the full cost impact of a typical pole attachment. Essentially, the wind resistance related to the profile of the attached cables creates additional stress and increases the effective amount of space occupied by each attachment. On this basis, SVP has determined that the appropriate cost of ownership allocation to cable attachments should be 9.5% rather than 7.4%

In addition to cable attachments, SVP provides space on its poles for communications equipment, risers and communications-related anchor attachments. Communications equipment and riser attachments typically occupy a part of the pole that is not usable for cable attachments. Thus, communications equipment and riser attachments actually increase the amount of usable space on a pole. At the same time, these types of attachment occupy more than 1 foot of pole space. A communications equipment box typically occupies 5 feet of space and a riser contact occupies the entire length of the space considered unusable for cable attachments. Anchor attachments are needed at angle points to offset the additional lateral stress created by each cable attachment. Anchor attachments are the responsibility of the cable attacher, and are typically attached in the same 1 foot space occupied by a cable attachment.

SVP has developed an allocation for each of these non-cable attachments. Equipment attachments are allocated as the ratio of 5 feet (the typical size of this type of attachment) to 18.5 feet (13.5 feet of usable space + 5 feet of use outside the 13.5 feet of usable space), or 27.0% of the cost of ownership. Riser attachments are allocated as occupying 1/5 of the circumference of the sum of the usable space (13.5 feet) and the unusable space (18 feet nominally needed for clearance), or 1/5 of 31.5 feet, or 6.3 equivalent linear feet of 31.5 feet, or 20% of the cost of ownership. Anchor attachments are incremental to the basic pole attachment, and are deemed to occupy only the space actually used, or about 1/4 of 1 foot, or 1.9% of the 13.5 feet of usable space.

In the 2018 Council approved small cell attachment rate, it was assumed that small cell attachments were essentially a pole-top antenna with a riser running the length of the pole to a ground mounted box. Since the required clearance requirement for a small cell attachment is 4 feet of space on an electric wooden utility pole, instead of 1 foot for cable attachments, it was determined that the appropriate share of available space was 4 feet of 13.5 feet of usable space, or 29.6% for a small cell attachment. In addition, riser attachment space is also required for the power supply to the small cell attachment, and the share of available space for a riser attachment was 20%, as set forth above. Therefore, the share of ownership for a small cell attachment was 49.6%.

The share of ownership for all the different attachments stated above remains the same in this study to derive the new cost of ownership.

## Results

The attached Exhibit A incorporates the approach and calculations described about. Page 1 shows the derivation of the various rates for pole attachments summarized above. Page 2 shows the derivation of the cost of ownership allocations used on Page 1. Page 2a illustrates the space allocations reflected on Page 2. Page 3 shows the derivation of the maintenance and operating costs used in calculations on Page 1. Page 4 shows the derivation of the net investment in poles used in the cost of ownership calculation on Page 1.

2020 Silicon Valley Power Pole Attachment Cost Analysis					Page 1		
Line No.	Cost of Ownership	2020	Cable Attachment	Equipment Attachment	Riser Attachment	Anchor Attachment	Small Cell Attachment
	Estimated Historical Net Cost of Poles						
1	Cost (net of salvage value) (from investment tab)	\$ 460.00					
2	Depreciation Exp - % (Recovery of Capital)	4.0%					
3	Cost of Money	2.5%					
4	A&G + M&O Expense - % (from M&O Cost tab)	36.8%					
5	Cost of Ownership - % (Total 2 through 4)	43.34%					
6	Cost of Ownership - \$ (1.5 * 1.1)	\$ 199.36					
7	Adjust for Contribution in Lieu of Tax 5%	9.97					
8	Adjusted total (1.6 + 1.7)	209.33	209.33	209.33	209.33	209.33	209.33
9	Cost of Ownership % (from Allocations tab)	9.52%	27.0%	20.0%	1.9%	49.6%	
10	Allocated Cost of Ownership - \$/Year (1.8 * 1.9)	\$ 19.92	\$ 56.58	\$ 41.87	\$ 3.88	\$ 103.89	

Page 2								
<b>Derivation of Usable Space Allocation</b>								
		Cable-Type Attachments				Small Cell Attachments		
		Cable	Box	Riser	Anchor Guy	Safety	Riser	Total
		Attachment	Attachment	Attachment	Attachment	Space (3)	Space	Allocation
AB1027 "Available space"	feet	13.5	13.5	13.5	13.5	13.5	13.5	
Additional space occupied by box or riser	feet	0	5.0	18.0	0	0	18.0	
Total Available Space (TAP)	feet	13.5	18.5	31.5	0	13.5	31.5	
Attachment Space (1)	feet	1.0	5.0	6.3	0.25	4.0	6.3	
Attachment space as % of total available space		7.4%	27.0%	20.0%	1.9%	29.6%	20.0%	49.6%
		not used	used	used	used			used
		see below						
<b>Adjustment to AB1027 Available Space approach for wind loading</b>								
Based on typical configuration of three communication attachments per pole								
		% of weight	Allocated		Load/			
		capability (2	wind load	Total	Attachment			
Static loading								
Electric attachments		25%	7.4%	32.4%				
3 Communications attachments		22%	6.6%	28.6%	9.52%	used		
Total		47%	14.0%	61.0%				
Wind loading with three attachments								
		14%						
Wind as % of static								
		29.8%						
(1) Riser Attachment Space shown in Line 10 is based on 20% assumption in Line 12								
(2) Per Electr Engr. Dept Loading Calculation Analysis								
(3) Small Cell Attachment Space is determined by 4' of safety requirement								

Page 3				
Line No.	<b>Derivation of Pole Attachment Related Maintenance and Operating Costs</b>			
1	Pole-related Overhead O&M expense - other than contract services (from l. 1	346,749.64		
	Contract Services:			
2	Direct allocation - Tree Trimming - Acct 8787	1,440,653.04		
3	Direct allocation - Osmose pole inspection and repair cost	\$ 158,878.25	10 Yr. Average	
4	Total O&M	\$ 1,946,280.93		
5	Pole-related depreciated investment (from Investment tab)	5,283,059.85		
6	O&M as % of pole-related depreciated investment - % (1.5 / 1.6)	36.8%		
<b>Derivation of Allocated O&amp;M + A&amp;G Expenses</b>				
7	FY18-19 Recorded			
8	Overhead Operating Expense (incl Supv and A&G)	611,192.67		
9	Overhead Maintenance Expense (Incl Supv and A&G)	4,296,956.80		
10	Less: Osmose included in FERC Acct 593	-		
11	Less: Tree Trimming included in FERC Acct 593	1,440,653.04		
12	Total Overhead O&M	3,467,496.42		
13	Allocation as Pole-related - %	10%		
14	Allocation as Pole-related - \$	\$ 346,749.64		

														Page 4	
Yr. Installed	No. of Poles (Osmose Data+ SVP GIS Data)	Install Year Unknown - Allocated (Osmose Data)	Total	CPI-U index	Deflator	Imputed Escalation	Imputed installed cost/pole (net of salvage)	Imputed OC - Total	Imputed Salvage % of OC	Depreciation Life	Age	Depr Rate %/yr	Accum Depr	Original Cost Less Depreciation (OCLD)	
Inputs in Bold									0%				%	\$	\$
1900	22	1	23	9,900	-41.07%		\$ 333.55	\$ 7,672	0.00%	40	40	2.5%	100%	\$ 7,672	\$ -
1910	1	0	1	9,900	-50.50%		\$ 333.55	\$ 334	0.00%	40	40	2.5%	100%	\$ 334	\$ -
1920	2	0	2	20,000	19.05%		\$ 673.84	\$ 1,348	0.00%	40	40	2.5%	100%	\$ 1,348	\$ -
1922	1	0	1	16,800	0.60%	69.70%	\$ 566.03	\$ 566	0.00%	40	40	2.5%	100%	\$ 566	\$ -
1930	0	0	0	16,700	28.46%	-0.60%	\$ 562.66	\$ -	0.00%	40	40	2.5%	100%	\$ -	\$ -
1933	1	0	1	13,000	-9.72%	-22.16%	\$ 438.00	\$ 438	0.00%	40	40	2.5%	100%	\$ 438	\$ -
1937	1	0	1	14,400	2.86%	10.77%	\$ 485.17	\$ 485	0.00%	40	40	2.5%	100%	\$ 485	\$ -
1940	2	0	2	14,000	-22.22%	-2.78%	\$ 471.69	\$ 943	0.00%	40	40	2.5%	100%	\$ 943	\$ -
1945	4	0	4	18,000	-7.69%	28.57%	\$ 606.46	\$ 2,426	0.00%	40	40	2.5%	100%	\$ 2,426	\$ -
1946	3	0	3	19,500	-12.56%	8.33%	\$ 657.00	\$ 1,971	0.00%	40	40	2.5%	100%	\$ 1,971	\$ -
1947	13	1	14	22,300	-7.47%	14.36%	\$ 751.34	\$ 10,519	0.00%	40	40	2.5%	100%	\$ 10,519	\$ -
1948	15	1	16	24,100	1.26%	8.07%	\$ 811.98	\$ 12,992	0.00%	40	40	2.5%	100%	\$ 12,992	\$ -
1949	7	0	7	23,800	-1.24%	-1.24%	\$ 801.87	\$ 5,613	0.00%	40	40	2.5%	100%	\$ 5,613	\$ -
1950	182	8	190	24,100	-7.31%	1.26%	\$ 811.98	\$ 154,277	0.00%	40	40	2.5%	100%	\$ 154,277	\$ -
1951	175	8	183	26,000	-1.89%	7.88%	\$ 876.00	\$ 160,308	0.00%	40	40	2.5%	100%	\$ 160,308	\$ -
1952	369	16	385	26,500	-0.75%	1.92%	\$ 892.84	\$ 343,745	0.00%	40	40	2.5%	100%	\$ 343,745	\$ -
1953	122	5	127	26,700	-0.74%	0.75%	\$ 899.58	\$ 114,247	0.00%	40	40	2.5%	100%	\$ 114,247	\$ -
1954	473	21	494	26,900	0.37%	0.75%	\$ 906.32	\$ 447,722	0.00%	40	40	2.5%	100%	\$ 447,722	\$ -
1955	894	39	933	26,800	-1.47%	-0.37%	\$ 902.95	\$ 842,454	0.00%	40	40	2.5%	100%	\$ 842,454	\$ -
1956	505	22	527	27,200	-3.20%	1.49%	\$ 916.43	\$ 482,958	0.00%	40	40	2.5%	100%	\$ 482,958	\$ -
1957	375	16	391	28,100	-2.77%	3.31%	\$ 946.75	\$ 370,180	0.00%	40	40	2.5%	100%	\$ 370,180	\$ -
1958	787	34	821	28,900	-0.69%	2.85%	\$ 973.71	\$ 799,412	0.00%	40	40	2.5%	100%	\$ 799,412	\$ -
1959	491	21	512	29,100	-1.69%	0.69%	\$ 980.44	\$ 501,987	0.00%	40	40	2.5%	100%	\$ 501,987	\$ -
1960	1344	59	1403	29,600	-1.00%	1.72%	\$ 997.29	\$ 1,399,198	0.00%	40	40	2.5%	100%	\$ 1,399,198	\$ -
1961	556	24	580	29,900	-0.99%	1.01%	\$ 1,007.40	\$ 584,291	0.00%	40	40	2.5%	100%	\$ 584,291	\$ -
1962	163	7	170	30,200	-1.31%	1.00%	\$ 1,017.51	\$ 172,976	0.00%	40	40	2.5%	100%	\$ 172,976	\$ -
1963	192	8	200	30,600	-1.29%	1.32%	\$ 1,030.98	\$ 206,196	0.00%	40	40	2.5%	100%	\$ 206,196	\$ -
1964	150	7	157	31,000	-1.59%	1.31%	\$ 1,044.46	\$ 163,980	0.00%	40	40	2.5%	100%	\$ 163,980	\$ -
1965	126	6	132	31,500	-2.78%	1.61%	\$ 1,061.31	\$ 140,092	0.00%	40	40	2.5%	100%	\$ 140,092	\$ -
1966	213	9	222	32,400	-2.99%	2.86%	\$ 1,091.63	\$ 242,341	0.00%	40	40	2.5%	100%	\$ 242,341	\$ -
1967	50	2	52	33,400	-4.02%	3.09%	\$ 1,125.32	\$ 58,517	0.00%	40	40	2.5%	100%	\$ 58,517	\$ -
1968	126	6	132	34,800	-5.18%	4.19%	\$ 1,172.49	\$ 154,769	0.00%	40	40	2.5%	100%	\$ 154,769	\$ -
1969	127	6	133	36,700	-5.41%	5.46%	\$ 1,236.50	\$ 164,455	0.00%	40	40	2.5%	100%	\$ 164,455	\$ -
1970	46	2	48	38,800	-4.20%	5.72%	\$ 1,307.26	\$ 62,748	0.00%	40	40	2.5%	100%	\$ 62,748	\$ -
1971	126	6	132	40,500	-3.11%	4.38%	\$ 1,364.54	\$ 180,119	0.00%	40	40	2.5%	100%	\$ 180,119	\$ -
1972	118	5	123	41,800	-5.86%	3.21%	\$ 1,408.33	\$ 173,225	0.00%	40	40	2.5%	100%	\$ 173,225	\$ -
1973	142	6	148	44,400	-9.94%	6.22%	\$ 1,495.93	\$ 221,398	0.00%	40	40	2.5%	100%	\$ 221,398	\$ -
1974	472	21	493	49,300	-8.36%	11.04%	\$ 1,661.03	\$ 818,886	0.00%	40	40	2.5%	100%	\$ 818,886	\$ -
1975	22	1	23	53,800	-5.45%	9.13%	\$ 1,812.64	\$ 41,691	0.00%	40	40	2.5%	100%	\$ 41,691	\$ -
1976	76	3	79	56,900	-6.11%	5.76%	\$ 1,917.09	\$ 151,450	0.00%	40	40	2.5%	100%	\$ 151,450	\$ -
1977	192	8	200	60,600	-7.06%	6.50%	\$ 2,041.75	\$ 408,350	0.00%	40	40	2.5%	100%	\$ 408,350	\$ -
1978	73	3	76	65,200	-10.19%	7.59%	\$ 2,196.73	\$ 166,952	0.00%	40	40	2.5%	100%	\$ 166,952	\$ -
1979	10	0	10	72,600	-11.89%	11.35%	\$ 2,446.06	\$ 24,461	0.00%	40	40	2.5%	100%	\$ 24,461	\$ -
1980	53	2	55	82,400	-9.35%	13.50%	\$ 2,776.24	\$ 152,693	0.00%	40	39	2.5%	98%	\$ 148,876	\$ 3,817
1981	90	4	94	90,900	-5.80%	10.32%	\$ 3,062.62	\$ 287,887	0.00%	40	38	2.5%	95%	\$ 273,492	\$ 14,394
1982	21	1	22	96,500	-3.11%	6.16%	\$ 3,251.30	\$ 71,529	0.00%	40	37	2.5%	93%	\$ 66,164	\$ 5,365
1983	27	1	28	99,600	-4.14%	3.21%	\$ 3,355.75	\$ 93,961	0.00%	40	36	2.5%	90%	\$ 84,565	\$ 9,396
1984	92	4	96	103,900	-3.44%	4.32%	\$ 3,500.62	\$ 336,060	0.00%	40	35	2.5%	88%	\$ 294,052	\$ 42,007
1985	74	3	77	107,600	-1.82%	3.56%	\$ 3,625.28	\$ 279,147	0.00%	40	34	2.5%	85%	\$ 237,275	\$ 41,872
1986	98	4	102	109,600	-3.52%	1.86%	\$ 3,692.67	\$ 376,652	0.00%	40	33	2.5%	83%	\$ 310,738	\$ 65,914
1987	49	2	51	113,600	-3.97%	3.65%	\$ 3,827.44	\$ 195,199	0.00%	40	32	2.5%	80%	\$ 156,159	\$ 39,040
1988	57	2	59	118,300	-4.60%	4.14%	\$ 3,985.79	\$ 235,162	0.00%	40	31	2.5%	78%	\$ 182,250	\$ 52,911
1989	56	2	58	124,000	-5.13%	4.82%	\$ 4,177.84	\$ 242,314	0.00%	40	30	2.5%	75%	\$ 181,736	\$ 60,579
1990	35	2	37	130,700	-4.04%	5.40%	\$ 4,403.57	\$ 162,932	0.00%	40	29	2.5%	73%	\$ 118,126	\$ 44,806
1991	45	2	47	136,200	-2.92%	4.21%	\$ 4,588.88	\$ 215,677	0.00%	40	28	2.5%	70%	\$ 150,974	\$ 64,703
1992	60	3	63	140,300	-2.91%	3.01%	\$ 4,727.02	\$ 297,802	0.00%	40	27	2.5%	68%	\$ 201,016	\$ 96,786
1993	74	3	77	144,500	-2.50%	2.99%	\$ 4,868.53	\$ 374,877	0.00%	40	26	2.5%	65%	\$ 243,670	\$ 131,207
1994	13	1	14	148,200	-2.76%	2.56%	\$ 4,993.19	\$ 69,905	0.00%	40	25	2.5%	63%	\$ 43,690	\$ 26,214
1995	123	5	128	152,400	-2.87%	2.83%	\$ 5,134.70	\$ 657,241	0.00%	40	24	2.5%	60%	\$ 394,345	\$ 262,896
1996	35	2	37	156,900	-2.24%	2.95%	\$ 5,286.31	\$ 195,993	0.00%	37	23	2.7%	62%	\$ 121,585	\$ 74,008
1997	81	4	85	160,500	-1.53%	2.29%	\$ 5,407.60	\$ 459,646	0.00%	37	22	2.7%	59%	\$ 273,303	\$ 186,343
1998	201	9	210	163,000	-2.16%	1.56%	\$ 5,491.83	\$ 1,153,285	0.00%	25	21	4.0%	84%	\$ 968,759	\$ 184,526
1999	100	4	104	166,600	-3.25%	2.21%	\$ 5,613.12	\$ 583,765	0.00%	25	20	4.0%	80%	\$ 467,012	\$ 116,753
2000	99	4	103	172,200	-2.77%	3.36%	\$ 5,801.80	\$ 597,586	0.00%	25	19	4.0%	76%	\$ 454,165	\$ 143,421
2001	13	1	14	177,100	-1.55%	2.85%	\$ 5,966.89	\$ 83,537	0.00%	25	18	4.0%	72%	\$ 60,146	\$ 23,390
2002	64	3	67	179,880	-2.22%	1.57%	\$ 6,060.56	\$ 406,057	0.00%	25	17	4.0%	68%	\$ 276,119	\$ 129,938
2003	94	4	98	183,960	-2.62%	2.27%	\$ 6,198.02	\$ 607,406	0.00%	25	16	4.0%	64%	\$ 388,740	\$ 218,666
2004	16	1	17	188,900	-3.28%	2.69%	\$ 6,364.46	\$ 108,196	0.00%	25	15	4.0%	60%	\$ 64,918	\$ 43,278
2005	50	2	52	195,300	-3.12%	3.39%	\$ 6,580.09	\$ 342,165	0.00%	25	14	4.0%	56%	\$ 191,612	\$ 150,552
2006	29	1	30	201,600	-2.77%	3.23%	\$ 6,792.35	\$ 203,771	0.00%	25	13	4.0%	52%	\$ 105,961	\$ 97,810
2007	41	2	43	207,342	-3.70%	2.85%	\$ 6,985.81	\$ 300,390	0.00%	25	12	4.0%	48%	\$ 144,187	\$ 156,203
2008	81	4	85	215,303	0.36%	3.84%	\$ 7,254.04	\$ 616,593	0.00%	25	11	4.0%	44%	\$ 271,301	\$ 345,292
2009	59	3	62	214,537	-1.61%	-0.36%	\$ 7,228.23	\$ 448,150	0.00%	25	10	4.0%	40%	\$ 179,260	\$ 268,890
2010	45	2	47	218,056	-3.06%	1.64%	\$ 7,346.79	\$ 345,299	0.00%	25	9	4.0%	36%	\$ 124,308	\$ 220,991
2011	55	2	57	224,939	-2.03%	3.16%	\$ 7,578.70	\$ 431,986	0.00%	25	8	4.0%	32%	\$ 138,235	\$ 293,750
2012	26	1	27	229,594	-1.44%	2.07%	\$ 7,735.53	\$ 208,859	0.00%	25	7	4.0%	28%	\$ 58,481	\$ 150,379
2013	8	0	8	232,957	-1.60%	1.46%	\$ 7,848.84	\$ 62,791	0.00%	25	6	4.0%	24%	\$ 15,070	\$ 47,721
2014	14	1	15	236,736	-0.12%	1.62%	\$ 7,976.16	\$ 119,642	0.00%	25	5	4.0%	20%	\$ 23,928	\$ 95,714
2015	29	1	30	237,017	-1.25%	0.12%	\$ 7,985.63	\$ 239,569	0.00%	25	4	4.0%	16%	\$ 38,331	\$ 201,238
2016	50	0	50	240,008	-2.64%	14.40%	\$ 9,135.41	\$ 456,770	0.00%	25					



## Agenda Report

20-1126

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Acknowledge the Winners of the Santa Clara Cultural Commission's 2020 Halloween Home Decoration Contest

#### BACKGROUND

In 2017, the City of Santa Clara Cultural Commission sponsored a pilot Halloween Home Decoration Contest. The Halloween Home Decorating Contest was modeled after the Holiday Home Decoration Contest. In 2020, the Cultural Commission incorporated suggestions from previous contests and endeavored to host a community-wide event which featured a "Most Original" submission by Council District and in compliance with COVID19 State and County Health and Safety protocols.

Twenty-two (22) residents submitted entries on the City's website between October 5 and October 28, 2020. A subcommittee of the Cultural Commission reviewed entries and selected a winner for each Council District. On October 30, 2020, winners were announced on social media in time for neighbors to visit and see the seasonal creativity of their community. Winners receive a prized lawn sign with bragging rights and have been invited to be recognized at the November 17, 2020 Council meeting.

#### DISCUSSION

The City thanks our many residents for participating in the annual Halloween Home Decoration Contest and exhibiting their creativity in fun and entertaining displays. This participation demonstrates the best of Santa Clara's "placemaking" and community building efforts even during a pandemic.

The awardees for 2020 are:

- District 1: 1141 E River Parkway, Mitchell Family - "Witches"
- District 2: 2633 Cabrillo Ave., Vera Family - "Spooky Santa Clara"
- District 3: 2164 Nobili Ave., "Sam Saves Halloween 2020"
- District 4: 2839 Toyon Dr., "Dead End Cemetery"
- District 5: 992 Maryann Dr., Wilson Family - "Halloween Hunt"
- District 6: 3113 Atherton Dr., "Skelton Crew"

#### ENVIRONMENTAL REVIEW

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

#### FISCAL IMPACT

There is no fiscal impact except for printing of a yard sign and administrative time to promote participation, review applications, and distribute awards.

**PUBLIC CONTACT**

Public contact was made by posting the Council and Authorities Concurrent Meeting 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, e-mail [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) or at the public information desk at any City of Santa Clara public library.

Reviewed by: James Teixeira, Director of Parks & Recreation

Approved by: Deanna J. Santana, City Manager



# City of Santa Clara

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

## Agenda Report

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20-1173

Agenda Date: 11/17/2020

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### REPORT TO COUNCIL

#### SUBJECT

Verbal Report from City Manager regarding COVID-19 Pandemic

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency





# City of Santa Clara

1500 Warburton Avenue  
Santa Clara, CA 95050  
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## Agenda Report

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20-902

Agenda Date: 11/17/2020

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### REPORT TO COUNCIL

#### **SUBJECT**

Action on Council and Authorities Concurrent & Special Stadium Authority Meeting, Special City Council, Special City Council, Stadium Authority, Successor Agency to the City of Santa Clara Redevelopment Agency, and Council and Authorities Concurrent Meeting Minutes

#### **COUNCIL PILLAR**

Enhance Community Engagement and Transparency

#### **RECOMMENDATION**

Approve the meeting minutes of:

1. Council and Authorities Concurrent and Special Stadium Authority Minutes of October 13, 2020
2. Special City Council Minutes of October 15, 2020
3. Special City Council Minutes of October 21, 2020
4. Council and Authorities Concurrent Meeting of October 27, 2020
5. Special City Council, Stadium Authority, Successor Agency to the Redevelopment Agency of October 29, 2020

# City of Santa Clara

Draft



## Meeting Minutes Council and Authorities Concurrent Meeting and Call of Notice of Special Meeting Santa Clara Stadium Authority

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10/13/2020

3:30 PM

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

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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](mailto:PublicComment@santaclaraca.gov)

As always, the public may view the meetings on [SantaClaraCA.gov](http://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.

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Chair calls for a Special Meeting of the Governing Board of the Stadium Authority to commence and convene on October 13, 2020, at 3:30 PM for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

### 3:30 PM COUNCIL REGULAR/STADIUM AUTHORITY SPECIAL MEETING

## Call to Order in the Council Chambers

**Mayor/Chair Gillmor** called the meeting to order at 3:33 PM.

## Roll Call

**Present:** 6 - Vice Mayor/Vice 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

## Pledge of Allegiance and Statement of Values

**Mayor& Chair/Council/Board** recited the Pledge of Allegiance.

**Council/Boardmember Davis** recited the Statement of Values.

## CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

**2.Q**      [20-693](#)      Public Hearing: Consideration of a Proposed Resolution Amending the Rates for Attachments to City Owned Utility Poles by Third Party Communications Providers [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:** Consider the proposed Resolution amending the rates for attachments to City owned utility poles by third party communications providers and set November 17, 2020 for the adoption of the Resolution.

**City Manager Santana** requested to continue this item to November 17, 2020 to allow staff to review email received from Comcast.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to continue this item to November 17, 2020.**

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

## SPECIAL ORDER OF BUSINESS

**1.A**      [20-894](#)      Recognition of Outgoing Commissioners on the Civil Service Commission, Parks & Recreation Commission, and Planning Commission

**Mayor Gillmor** on behalf of the **Council** recognized the following outgoing Commissioners for their years of service to the City and provided them with a plaque and certificate: **Mario Bouza**, Civil Service Commission, **Roseann LaCoursiere** and **Kevan Walke**, Parks and Recreation Commission and **Steve Kelly**, Planning Commission.

**1.B**      [20-913](#)      Proclaim October 2020 as Breast Cancer Awareness Month

**Mayor Gillmor** proclaimed October 2020 as Breast Cancer Awareness Month and presented the Proclamation to **Becki Adams** and **Stacey Souza** with the American Cancer Society.

**Public Speaker(s):** Stacey Souza  
Becki Adams

1.C [20-914](#)

Proclaim October 2020 as Domestic Violence Awareness Month

**Mayor Gillmor** proclaimed October 2020 as Domestic Violence Awareness month and presented the Proclamation to **Esther Peralez**, Next Door Solutions to Domestic Violence.

1.D [20-962](#)

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

**Mayor Gillmor** noted the next meeting (October 27, 2020) to recognize the Parade of Champions Organizers.

**City Manager Santana** provided an update on the following and gave a PowerPoint Presentation:

- US Department of Agriculture announced extending flexibility to allow free meals to all children through the school year;
- Cooling Center opened on October 1 & 2, 2020;
- Parks & Recreation Department started installing hand sanitizer stations in City Parks;
- The City has worked with Santa Clara Swim Club to open pools at Mary Gomez Park;

**Chief Emergency Services Officer Schoenthal** provided an update on the confirmed COVID-19 cases and noted that the County of Santa Clara has now reached the Orange Tier on the Blueprint for Safer Economy.

**Public Speaker(s):** Kirk Vartan

## **CONSENT CALENDAR**

**A motion was made by Council/Boardmember Davis, seconded by Council/Boardmember O'Neill, to approve the balance of the Consent Calendar (except items 2.E, 2.G, 2.L & 2.N).**

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

2.A [20-870](#)

Action on Council and Authorities Concurrent and Special Stadium Authority Meeting Minutes [Council Pillar: Enhance Community

Engagement and Transparency]

**Recommendation:** Approve the meeting minutes of:  
Special Stadium Authority Minutes of March 5, 2020  
Council and Authorities Concurrent Minutes of July 14, 2020  
Special City Council Minutes of August 17, 2020

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

**2.B**      [20-19](#)      Board, Commissions and Committee Minutes [Enhance Community Engagement and Transparency]

**Recommendation:** Note and file the Minutes of:  
Planning Commission - April 22, 2020  
Audit Committee - March 4, 2020  
Senior Advisory Commission - February 24, 2020  
Historical and Landmarks Commission - September 3, 2020  
Cultural Commission - March 2, 2020

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

**2.C**      [20-831](#)      Action on Bills and Claims Report (CC, SA, HA) for the period September 5th, 2020 - September 18th, 2020 [Council Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Approve the list of Bills and Claims for September 5, 2020 - September 18, 2020.

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

**2.D**      [20-681](#)      Action on Early Consideration of a General Plan Amendment from Low Intensity Office to High Intensity Office for the 10.14-acre site located at 2901 Tasman Drive and General Plan Text Amendment to add a policy to allow a Floor Area Ratio up to 2.5 for High Intensity Office sites within half a mile of a light rail station [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

**Recommendation:** City Council direct staff to continue processing the subject General Plan Amendment from Low Intensity Office to High Intensity Office for the 10.14-acre site located at 2901 Tasman Drive and General Plan Text Amendment to add a policy to allow a Floor Area Ratio up to 2.5 for High Intensity Office sites within half a mile of a light rail station.

**Public Speaker(s):** Susan Hinton (eComment)

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

**2.F**      [20-737](#)      Action on a Resolution of the City Council of the City of Santa Clara Regarding Unclaimed Special Assessment District Funds and Related

Budget Amendment [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

- Recommendation:**
1. Adopt a resolution regarding unclaimed special assessment district funds as detailed in Exhibit A to the resolution and approve the transfer of these funds to the General Fund for unrestricted use; and
  2. Approve the FY 2020/21 budget amendments in the General Fund to recognize Other Revenue of \$149,696, to increase the Budget Stabilization Reserve by \$141,196, and to increase the Finance Department appropriation by \$8,500.

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to adopt Resolution No. 20-8890 regarding unclaimed special assessment district funds and related budget amendment.**

**2.H**      [20-762](#)

Action on an Agreement for Services with Aspen Environmental Group to Provide As-needed Electric Rate and Fee Analysis Consultant Services [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

- Recommendation:**
1. Authorize the City Manager to execute an Agreement for Services with Aspen Environmental Group for as-needed electric rate and fee analysis consultant services, for a term starting on or about November 1, 2020 and ending on or about October 31, 2025 for a total maximum amount not-to-exceed of \$450,000, subject to the annual appropriation of funds; and
  2. Authorize the City Manager to execute up to five one-year options to extend the term of the Agreement after the initial term, ending October 31, 2030, assuming all options are exercised, and subject to the annual appropriation of funds.

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

**2.I**      [20-832](#)

Action on Monthly Financial Status and Investment Reports for July 2020 and August 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 July 2020 and August 2020 as presented and Approve Related Budget Amendments.

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to note and file the Monthly Financial Status and Investment Reports for July 2020 and August 2020 as presented and Approve Related Budget Amendments.**

**2.J**      [20-844](#)

Action on Amendment No. 1 to the Agreement with Mott MacDonald

Group, Inc. for Annual Sanitary Sewer Condition Assessment Repair Projects (Year 2021/2022 Projects) [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:** Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with Mott MacDonald Group, Inc. for Annual Sanitary Sewer Condition Assessment Repair Projects.

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

**2.K**      [20-854](#)

Action on Master Agreements for Silicon Valley Power on System Capacity Expansion Planning including Delegation of Authority for Capital Project Implementation and General Engineering Support [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:**

1. Authorize the City Manager to execute the System Expansion Plan Agreement with Electrical Consultants, Inc. in an amount not to exceed \$850,000;
2. Delegate Authority to the City Manager to negotiate and execute Master Service Agreements with Advisian Worley Group, TRC Solutions, Inc., Leidos Engineering, LLC, Flynn Resource Consultants, Inc. and EN Engineering LLC for General Consulting Services in an amount not to exceed \$2,000,000 per agreement over the five year terms of the agreements, subject to the appropriations of funds;
3. Delegate Authority to the City Manager to negotiate and execute Master Service Agreements with 1898 & Co., TRC Solutions, Inc., Electrical Consultants, Inc., AECOM Technical Services, Inc., and Stantec Consulting Services Inc. for Plan Implementation Services in an amount not to exceed \$3,000,000 per agreement over the five-year terms of the agreements, subject to the appropriation of funds; and
4. Authorize the City Manager or their designee, to add or delete services consistent with the scope of the agreements, and allow future rate adjustments subject to request and justification by contractor, approval by the City, and the appropriation of funds.

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

**2.M**      [20-920](#)

Accept the 2019 Assistance to Firefighters Grant in the amount of \$40,168 to provide the California State Fire Marshal Fire Control 4 Course to Department Personnel and Approve the Related Budget Amendment [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:**

1. Accept the 2019 Assistance to Firefighters Grant in the amount of \$40,168 for Conducting Fire Control 4 Training for Department Personnel; and
2. Approve the Related FY 2020/21 Budget Amendment in the Fire



Operating Grant Trust Fund to recognize the AFG grant revenue and establish the Assistance to Firefighters Grant FY 2019/20 in the amount \$40,168, and recognize a transfer from the General Fund and establish an Assistance to Firefighters Grant FY 2019/20 - City Match in the amount of \$4,017; in the General Fund, establish a transfer to the Fire Operating Grant Trust Fund to provide the 10% city match and reduce the Budget Stabilization Reserve by \$4,017.

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

**2.O**      [20-883](#)

Action on Resolution Approving the Purchase and Sale Agreements for Electric Utility Easements on the South Loop Reconfigure Project [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:**

1. Adopt the Resolution approving the purchases of overhead electric easements at 2325 Lafayette Street [APN 224-40-009], 1015 Martin Avenue [APN 224-60-006], and 2301 Lafayette Street [APN 224-40-007]; and
2. Authorize the recordation thereof.

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to adopt Resolution No. 20-8891, approving the purchase and sale agreements for Electric Utility Easements on the South Loop Reconfigure Project.**

**2.P**      [20-887](#)

Approval to Negotiate Expansion of Recycled Water and Potable Reuse through a Proposed Purified Water Project at the Regional Wastewater Facility (RWF) [Council Pillar: Promote Sustainability and Environmental Protection]

**Recommendation:** Authorize the City Manager, or her designee, to negotiate with the City of San José and Valley Water regarding expansion of recycled water and potable reuse through a proposed Purified Water Project at the RWF.

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

**PUBLIC PRESENTATIONS**

**Kirk Vartan** expressed gratitude for the City's participation in the Ro Khanna's Congressional Event on Worker Cooperative and requested to simplify the agenda report title by redesigning the listing of Council Pillars.

**CONSENT ITEMS PULLED FOR DISCUSSION**

**2.E**      [20-708](#)

Action on Resolution for an Exception to the 180 Day Waiting Period To Appoint A Retired Annuitant To Serve as Temporary Extra Help



(Government Code Sections 7522.56 and 21224) [Council Pillar: Manage Strategically Our Workforce Capacity and Resources]

**Recommendation:** Alternative 1: Adopt the attached Resolution for an Exception to the 180 Day Waiting Period To Appoint A Retired Annuitant To Serve as Temporary Extra Help (Government Code Sections 7522.56 and 21224).

**Councilmember Chahal** pulled this item as the staff report indicated it should not be acted on through the Consent Calendar.

**A motion was made by Councilmember Chahal, seconded by Vice Mayor Hardy, to approve Alternative 1: adopt Resolution No. 20-8892 for an Exception to the 180 Day Waiting Period To Appoint a Retired Annuitant To Serve as Temporary Extra Help (Government Code Sections 7522.56 and 21224).**

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

**2.G**      [20-755](#)      Action on Stadium Authority Bills and Claims for the Months of May through August 2020 [Board Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Approve the list of Stadium Authority Bills and Claims for May 2020 through August 2020.

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

**Executive Director Santana** and **Stadium Authority Treasurer Lee** addressed Board questions.

**A motion was made by Boardmember Chahal, seconded by Vice Chair Hardy, to approve the list of Stadium Authority Bills and Claims for May 2020 through August 2020.**

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

**2.L**      [20-873](#)      Action on Amendment No. 3 to the Agreement for the Performance of Services with Wilson, Ihrig & Associates for Noise Monitoring Services at Levi's Stadium [Council Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Authorize the City Manager to execute Amendment No. 3 to the Agreement with Wilson, Ihrig & Associates to reflect a revised termination date of September 30, 2021, subject to annual appropriations, to continue conducting noise monitoring of Levi's Stadium and the 49ers practice

facility for total cost not to exceed \$249,840 over the life of the agreement.

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

**Director of Community Development Crabtree** and **City Manager Santana** addressed Council questions.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to (1) authorize the City Manager to execute Amendment No. 3 to the Agreement with Wilson, Ihrig & Associates to reflect a revised termination date of September 30, 2021, subject to annual appropriations, to continue conducting noise monitoring of Levi's Stadium and the Forty Niners practice facility for total cost not to exceed \$249,840 over the life of the agreement, (2) direct staff to return to Council if information if there is a cost to expand the scope of services to include a monthly report showing unacceptable noise levels at Levi's Stadium, and (3) return to Council when complaints and/or excessive noise levels are reached.**

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

**2.N**      [20-940](#)

Action on Amendment to the Software Maintenance Agreement with ABB Enterprise Software Inc. [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

- Recommendation:**
1. Authorize the City Manager to execute an Amendment to the Software Maintenance Agreement with ABB Enterprise Software Inc. for maintenance of the SCADA System and to execute future amendments or agreements, as needed associated with the change in ownership of ABB's Power Grids Business; and
  2. Authorize the City Manager to add or delete services consistent with the scope of the agreements, and allow future rate adjustments subject to request and justification by contractor or consultant and approval by the City, subject to the appropriation of funds.

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

**Chief Electric Utility Officer Pineda** addressed **Council** questions.

**A motion was made by Councilmember Chahal, seconded by Vice Mayor Hardy, to (1) authorize the City Manager to execute an Amendment to the Software Maintenance Agreement with ABB Enterprise Software Inc. for maintenance of the SCADA System and**

to execute future amendments or agreements, as needed associated with the change in ownership of ABB's Power Grids Business; and (2) authorize the City Manager to add or delete services consistent with the scope of the agreements, and allow future rate adjustments subject to request and justification by contractor or consultant and approval by the City, subject to the appropriation of funds.

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

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

3. [20-984](#) Council Input on Enhanced Community Outreach and Community Benefits Policy and Action to Rescind the City's Early Consideration Policy for General Plan Amendment Applications [Council Pillar: Promote Economic, Housing and Transportation Development]

**Recommendation:** Alternatives 1 and 2:

1. Provide Input on an Enhanced Community Outreach and Community Benefits Policy; and
2. Adopt a Resolution to Repeal Resolution No. 17-8435 and Rescind the Early Consideration Policy for General Plan Amendment Applications, effective January 1, 2021.

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

**Public Speaker(s):** Alex Shoor  
Kirk Vartan

**A motion was made by Councilmember Watanabe, seconded by Councilmember O'Neill, to approve Alternative 2: adopt Resolution No. 20-8893 to Repeal Resolution No. 17-8435 and Rescind the Early Consideration Policy for General Plan Amendment Applications. effective January 1, 2021; and direct staff to explore a community engagement policy and engage community groups like Catalyze SV and other groups to discuss new policies on outreach and community benefits and return with various models for a community benefits program for Council consideration.**

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

4. [20-927](#) Discussion and Direction on Mayor Gillmor's Request Regarding Worker

Retention and Recall Protections During COVID-19 Pandemic [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

**Recommendation:** Staff has no recommendation and is seeking Council direction and feedback on possible amendments to the Worker Retention Ordinance.

**Assistant City Manager Shikada** gave a PowerPoint Presentation and addressed **Council** questions.

<b>Public Speaker(s):</b> Marlene S. Bueler	Louise Auerhahn
Leah Williamson	Sarah Julian
Sandra Munoz	Rosa Muniz
Alejandra Mirales	Sarah McDermot
Forest	Unite Here Local 19
Graciela Vera	Enrique L. Fernandez
Ruth Silver Taube	Jose Barba
Adriana	Susie
Sheila	Roberto Ramirez

**A motion was made Councilmember Watanabe, seconded by Councilmember Davis, to (1) direct the City Attorney to prepare an Emergency Ordinance for Worker Recall; (2) amend the current Worker Retention Ordinance to include hotel workers, change controlled provisions; (3) enact Emergency Ordinance now; and (4) begin process for public outreach on the Worker Retention Ordinance concurrently.**

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

**Mayor Gillmor** called for a recess at 6:51 PM and reconvened meeting at 7:23 PM.

#### **STADIUM AUTHORITY GENERAL BUSINESS ITEMS**

5. [20-724](#) Report on the Audited Santa Clara Stadium Authority Fiscal Year 2019/20 Annual Financial Statements [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Note and file the Santa Clara Stadium Authority Fiscal Year 2019/20 Annual Financial Statements.

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

**A motion was made by Vice Chair Hardy, seconded by Boardmember O'Neill, to note and file the Santa Clara Stadium Authority Fiscal Year 2019/20 Annual Financial Statements.**

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

6. [20-725](#) Action on the Stadium Authority Financial Status Report for the Quarter and Fiscal Year Ending March 31, 2020 [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:** Note and file the Santa Clara Stadium Authority Financial Status Report for the Quarter and Fiscal Year Ending March 31, 2020.

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

**Stadium Authority Treasurer Lee** and **Executive Director Santana** addressed **Board** questions.

**A motion was made by Boardmember Davis, seconded by Boardmember O'Neill, to note and file the Santa Clara Stadium Authority Financial Status Report for the Quarter and Fiscal Year Ending March 31, 2020.**

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

7. [20-466](#) Action on Agreements to Implement a Financial Management System for the Stadium Authority [Council Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Recommendation:**

1. Authorize the Executive Director to negotiate and execute an agreement with Armanino, LLP to provide professional services for the implementation of a financial management system for an initial three-year term with maximum compensation amount not-to-exceed \$198,460, and execute up to two one-year options to extend the term of the agreement for ongoing support and related professional services, subject to annual appropriation of funds;
2. Authorize the Executive Director to execute Purchase Orders with Armanino Solutions, LLC for software subscription services for an initial twelve-month period with maximum compensation amount not-to-exceed \$5,000, and execute one-year renewals as required, subject to annual appropriation of funds;
3. Authorize the Executive Director to negotiate and execute an agreement with SaaSplaza, Inc. for Microsoft Dynamics Great Plains software subscription and web hosting services for an initial twelve-month period with maximum compensation amount not-to-exceed \$43,090, and

- execute one-year renewals as required, subject to annual appropriation of funds;
4. Authorize the Executive Director to execute Purchase Orders with Concur Technologies, Inc. for SAP Concur software subscription services for an initial twelve-month period with maximum compensation amount not-to-exceed \$15,514, and execute one-year renewals as required, subject to annual appropriation of funds; and
  5. Negotiate and execute amendments and/or change orders to the above referenced agreements/Purchase Orders related to system implementation and requirements including additional software licenses and transaction fees, subject to the annual appropriation of funds.

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

**Stadium Authority Treasurer Lee** and **Executive Director Santana** addressed **Board** questions.

**A motion was made by Boardmember Watanabe, seconded by Boardmember Davis, to (1) authorize the Executive Director to negotiate and execute an agreement with Armanino, LLP to provide professional services for the implementation of a financial management system for an initial three-year term with maximum compensation amount not-to-exceed \$198,460, and execute up to two one-year options to extend the term of the agreement for ongoing support and related professional services, subject to annual appropriation of funds; (2) authorize the Executive Director to execute Purchase Orders with Armanino Solutions, LLC for software subscription services for an initial twelve-month period with maximum compensation amount not-to-exceed \$5,000, and execute one-year renewals as required, subject to annual appropriation of funds; (3) authorize the Executive Director to negotiate and execute an agreement with SaaSplaza, Inc. for Microsoft Dynamics Great Plains software subscription and web hosting services for an initial twelve-month period with maximum compensation amount not-to-exceed \$43,090, and execute one-year renewals as required, subject to annual appropriation of funds; (4) authorize the Executive Director to execute Purchase Orders with Concur Technologies, Inc. for SAP Concur software subscription services for an initial twelve-month period with maximum compensation amount not-to-exceed \$15,514, and execute one-year renewals as required, subject to annual appropriation of funds; and (5) Negotiate and execute amendments and/or change orders to the above referenced agreements/Purchase Orders related to system implementation and requirements including additional software**

licenses and transaction fees, subject to the annual appropriation of funds.

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

**8. Review and Possible Action on Request from the Stadium Manager for Authority to Execute Agreement with LCPtracker, Inc. for Compliance Software for Certified Payroll Reporting and Stadium Authority's Concerns with Stadium Manager's Request**

- A. [20-966](#) Request from the Stadium Manager for Authority to Execute Agreement with LCPtracker, Inc. for Compliance Software for Certified Payroll Reporting for Prevailing Wage [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

**Chair Gillmor** called for presentation from the Stadium Management Company. No representatives from the Stadium Management Company were present.

- B. [20-1001](#) Report from the Stadium Authority on its Concerns Regarding the Stadium Manager's Request to Execute an Agreement with LCPtracker, Inc. [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

- Recommendation:**
1. Accept the Stadium Authority's report on its concerns regarding the Stadium Manager's request to execute an Agreement with LCPtracker; and
  3. Deny Stadium Manager's request to execute the LCPtracker agreement because of its failure to correct the following errors:
    - (a) Request for \$25,000 contract for services priced at \$13,180 (authorization for expenditure of 90% above contract value);
    - (b) Mathematical/typographical errors in the agenda report or agreement;
    - (c) Undocumented scope of work;
    - (d) Undefined extension of agreement;
    - (e) Inappropriate removal of provisions requiring compliance with Brown Act, Public Records Act, and other applicable federal or state laws;
    - (f) Undocumented source of funding/failure to request budget from Board; and
    - (g) Misunderstanding of public sector "piggybacking" procurement practice.

**Executive Director Santana** gave a PowerPoint Presentation and addressed **Board** questions.

A motion was made by Vice Chair Hardy, seconded by Boardmember O'Neill, to (1) accept the Stadium Authority's report on its concerns regarding the Stadium Manager's request to execute an Agreement with LCPtracker; and (3) deny Stadium Manager's request to execute the LCPtracker agreement because of its failure to correct the following errors: (a) Request for \$25,000 contract for services priced at \$13,180 (authorization for expenditure of 90% above contract value); (b) Mathematical/typographical errors in the agenda report or agreement; (c) Undocumented scope of work (d) Undefined extension of agreement; (e) Inappropriate removal of provisions requiring compliance with Brown Act, Public Records Act, and other applicable federal or state laws; (f) Undocumented source of funding/failure to request budget from Board; and (g) Misunderstanding of public sector "piggybacking" procurement practice.

**Aye:** 5 - Vice Mayor/Chair Hardy, Council/Boardmember O'Neill, Council/Boardmember Davis, Council/Boardmember Chahal, and Mayor/Chair Gillmor

**Nay:** 1 - Councilmember Watanabe

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

None.

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

None.

[20-926](#) Update on City Council and Stadium Authority Staff Referrals [Council Pillar: Enhance Community Engagement and Transparency]

[20-925](#) Tentative Meeting Agenda Calendar (TMAC) [Council Pillar: Enhance Community Engagement and Transparency]

#### **ADJOURNMENT**

The meeting was adjourned at 9:24 PM in memory of **Catherine Marie Pedone** (90-year Santa Clara Resident, former Santa Clara Unified school district employee, and volunteer at Kaiser Permanente Hospital, Santa Clara)

**Joan W. Kurtz** (Former science teacher at Patrick Henry and Buscher Junior High Schools).

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



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

[20-1031](#) Adjournment of the October 13, 2020 City Council Meeting Post Meeting  
Material

The next regular scheduled meeting is on Tuesday evening, October 27, 2020 in the City Hall Council Chambers.

## MEETING DISCLOSURES

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

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

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

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

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

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



# City of Santa Clara

## Special Meeting Minutes

### City Council

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10/15/2020

3:30 PM

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

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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](mailto:PublicComment@santaclaraca.gov)

As always, the public may view the meetings on [SantaClaraCA.gov](http://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.

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Mayor calls for a Special Meeting of the City Council of the City of Santa Clara to commence and convene on October 15, 2020, at 3:30 PM for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

#### **3:30 PM SPECIAL COUNCIL MEETING**

**Call to Order in the Council Chambers**

**Mayor Gillmor** called the Special Meeting to order at 3:35 PM.

**Pledge of Allegiance and Statement of Values**

**Mayor/Council** recited the Pledge of Allegiance.

**Councilmember Davis** recited the 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

**PUBLIC PRESENTATIONS**

**None.**

**CLOSED SESSION****Public Comment**

**None.**

1.     [20-965](#)     Conference with Legal Counsel-Existing Litigation (CC)  
Pursuant to Gov. Code § 54956.9(d)(1)  
County Sanitation District 2-3, West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, and The City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50, Inclusive, Santa Clara Superior Court Case No. 18CV325480
2.     [20-1027](#)   Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: Pond A18, APN: 015-32-042, 015-32-043  
City/Authority Negotiator: Deanna J. Santana, City Manager/Executive Director (or designee)  
Negotiating Parties: City of San Jose, City of Santa Clara, and Santa Clara Valley Water District  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)
3.     [20-1012](#)   Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: Please see below listing for APNs and addresses  
City/Authority Negotiator: Deanna J. Santana, City Manager/Executive Director (or designee)  
Negotiating Parties: Please see below listing for names for negotiating

party(ies)

Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property  
(provisions, price and terms of payment)

4. [20-1025](#)

Conference with Real Property Negotiators (CC)

Pursuant to Gov. Code § 54956.8

Property: APN 104-03-038, APN 104-03-039, APN 104-03-036, APN  
104-03-037, APN 104-01-102, APN 097-01-039, APN 097-01-073

City/Authority Negotiator: Deanna J. Santana, City Manager (or designee)

Negotiating Parties: Stephen F. Eimer, Related Santa Clara

Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property  
(provisions, price and terms of payment)

5. [20-1026](#)

Conference with Real Property Negotiators (CC)

Pursuant to Gov. Code § 54956.8

Property: 500 Benton Street, APN 230-08-078

City/Authority Negotiator: Deanna J. Santana, City Manager (or designee)

Negotiating Parties: Robert Mendelsohn, Republic Metropolitan

Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property  
(provisions, price and terms of payment)

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

**Mayor/Council** convened to Closed Session.

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

**City Attorney Doyle** noted that there was no Reportable Action from  
Closed Session.

**ADJOURNMENT**

**Mayor Gillmor** adjourned the meeting at 5:41 PM.

The next regular scheduled meeting is on Tuesday evening, October 27, 2020 in the City Hall Council Chambers.

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## MEETING DISCLOSURES

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

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

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

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

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



# **City of Santa Clara**

## **Special Meeting Minutes**

### **City Council**

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10/21/2020

3:30 PM

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

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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:

<https://santaclaraca.zoom.us/j/99629085482>

Meeting ID: 997-0675-9306 or

Phone: 1 669 900 6833

Via the City's eComment (now available during the meeting)  
Via email to [PublicComment@santaclaraca.gov](mailto:PublicComment@santaclaraca.gov)

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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 inline 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.

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the undersigned calls for a Special Meeting of the City Council of the City of Santa Clara, to commence and convene on October 21, 2020 at 3:30 pm for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

**3:30 PM SPECIAL COUNCIL MEETING****Call to Order in the Council Chambers**

**Mayor Gillmor** called the Special Meeting to order at 3:36 PM.

**Pledge of Allegiance and Statement of Values**

**Mayor & Council** recited the Pledge of Allegiance.

**Mayor Gillmor** recited the Statement of Values.

**Roll Call**

**Present:** 5 - Vice Mayor Karen Hardy, Councilmember Teresa O'Neill, Councilmember Kathy Watanabe, Councilmember Raj Chahal, and Mayor Lisa M. Gillmor

**Absent:** 1 - Councilmember Debi Davis

**A motion was made by Councilmember Watanabe, seconded by Councilmember O'Neill, to excuse Councilmember Davis from the meeting.**

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

**Absent:** 1 - Councilmember Davis

**PUBLIC PRESENTATIONS**

**None.**

**CLOSED SESSION****Public Comment**

**None.**

1. [20-1046](#) Conference with Labor Negotiators (CC)  
Pursuant to Gov. Code § 54957.6  
City representative: Deanna J. Santana, City Manager (or designee)  
Employee Organization(s):  
Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171  
Unit #2-Santa Clara Police Officer's Association  
Unit #3-IBEW Local 1245 (International Brotherhood of Electrical Workers)  
Unit #4-City of Santa Clara Professional Engineers  
Units #5, 7 & 8-City of Santa Clara Employees Association

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

Unit #9-Miscellaneous Unclassified Management Employees

Unit #9A-Unclassified Police Management Employees

Unit #9B-Unclassified Fire Management Employees

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

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

**Council** convened to Closed Session at 3:41 PM and reconvened the meeting at 4:15 PM.

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

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

### **ADJOURNMENT**

The meeting was adjourned at 4:16 PM.

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

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

**Excused:** 1 - Councilmember Davis

The next regular scheduled meeting is on Tuesday evening, October 27, 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)

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



# City of Santa Clara

## Meeting Minutes

### Council and Authorities Concurrent Meeting

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10/27/2020

3:30 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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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.

#### **3:30 PM COUNCIL MEETING**

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

**Mayor Gillmor** called the meeting to order at 3:32 PM.

#### **Roll Call**

**Present:** 5 - Vice Mayor Karen Hardy, Councilmember Teresa O'Neill, Councilmember Debi Davis, Councilmember Kathy Watanabe, and Mayor Lisa M. Gillmor

**Absent:** 1 - Councilmember Raj Chahal

## **CLOSED SESSION**

### **Public Comment**

**None.**

[20-1059](#)

Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: Please see below listing for APNs and addresses  
City/Authority Negotiator: Deanna J. Santana, City Manager/Executive Director (or designee)  
Negotiating Parties: Please see below listing for names for negotiating party(ies)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

[20-1080](#)

Conference with Legal Counsel-Existing Litigation (CC)  
Pursuant to Gov. Code § 54956.9(d)(1)  
Omar Gomez v. City of Santa Clara, et al., United States District Court, Northern District of California Case No. 5:19-cv-05266-LHK

[20-1065](#)

Conference with Legal Counsel-Existing Litigation (CC, SA)  
Pursuant to Gov. Code § 54956.9(d)(1)  
Maranon v. Santa Clara Stadium Authority, et al., United States District Court, Northern District of California Case No. 5:15-cv-04709-BLF

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

**Council** convened to Closed Session at 3:33 PM.

**Councilmember Chahal** joined the meeting at 3:35 PM.

## **5:30 PM REGULAR MEETING**

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

**Mayor & Council** recited the Pledge of the Allegiance.

**Councilmember Davis** recited the Statement of Values.

**Assistant City Clerk Pimentel** read the AB23 Announcement.

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

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

**CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS**

None.

**SPECIAL ORDER OF BUSINESS**

- 1.A     [20-1041](#)     Recognize River of Life Foundation for Outstanding Service to the Community
- Mayor Gillmor** expressed gratitude and provided Mayoral Recognitions to **Pastor Tong Liu** (River of Life Foundation), **Sam Loh** (President of River of Life Foundation), and the River of Life Foundation volunteers for distributing food boxes and hot meals to the community during the COVID-19 Pandemic.
- 1.B     [20-1035](#)     Recognition of the 2020 Santa Clara Parade of Champions
- Mayor Gillmor/Council** expressed gratitude and provided Mayoral Recognitions to the Parade of Champions organizers for the execution of the 2020 virtual parade.
- Parade of Champions President Ana Vargas-Smith** gave a PowerPoint Presentation.

1.C [20-1066](#)

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

**City Manager Santana** provided a verbal report on the following:

- The City launched the Help Your Neighbor Program to allow residents to donate to help residents needing assistance paying their Utility Bills;
- The City continues to promote and encourage low-income residents to apply for the Emergency Rental Assistance Program;
- The City is extending the Electric Rate Assistance Program for six months;
- The Northside and Central Park Library will open as voting centers from October 31, 2020 - November 3, 2020 and Curbside will temporarily be suspended to allow for higher voter turnout;
- The Libraries are transitioning from curbside book pick-up to in-person pick-up; and
- The City has provided on the website safe options for Halloween.

**Chief Emergency Services Officer Schoenthal** reported the latest confirmed COVID-19 cases in the City of Santa Clara and County of Santa Clara. County of Santa Clara is in its third week of the Orange Tier of the Governor's BluePrint for Safer Economy.

**City Manager Santana** noted that City Playgrounds will be opening on October 28, 2020. The City installed sanitization stations and Social Distancing Guidelines signs at City Parks. **City Manager Santana** introduced the Play It Safe Santa Clara video which highlights new Parks and Rehabilitated Parks.

**Public Speaker(s):** Juan Hernandez

**CONSENT CALENDAR**

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to approve the balance of the Consent Calendar (except Item 2.K).**

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

- 2.A**     [20-826](#)     Action on Council and Authorities Concurrent and Special Stadium Authority Meeting Minutes

**Recommendation:** Approve the meeting minutes of:  
Council and Authorities Concurrent Meeting Minutes of August 18, 2020  
Special City Council Meeting Minutes of August 24, 2020  
Council and Authorities Concurrent & Special Stadium Authority Meeting Minutes of August 25, 2020  
Council and Authorities Concurrent Minutes of September 1, 2020  
Special City Council Minutes of September 8, 2020

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

- 2.B**     [20-20](#)     Board, Commissions and Committee Minutes

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

Youth Commission - September 8, 2020  
Planning Commission - May 27, 2020  
Parks & Recreation Commission - September 15, 2020

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

- 2.C**     [20-884](#)     Action on Bills and Claims Report (CC, SA) for the period September 19th, 2020 - October 2nd, 2020

**Recommendation:** Approve the list of Bills and Claims for September 19, 2020 - October 2, 2020.

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

- 2.D [20-436](#) Action on Amendment No. 1 to the Agreement for Distributed Control System Upgrade/Replacement Project between Emerson Process Management Power and Water Solutions and City of Santa Clara and Related Budget Amendment

**Recommendation:**

1. Authorize the City Manager to execute Amendment No. 1 to the Agreement for Distributed Control System Upgrade/Replacement Project between City of Santa Clara and Emerson Process Management Power and Water Solutions;
2. Authorize the City Manager to add or delete services consistent with the scope of the agreements, and allow future rate adjustments subject to request and justification by contractor or consultant and approval by the City, subject to the appropriation of funds.; and
3. Approve the related FY 2020/21 budget amendment in the Electric Utility Capital Fund to increase the Replace Balance of Plant Control System Project by \$1,000,000 and decrease the Unrestricted Ending Fund Balance by \$1,000,000.

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

- 2.E [20-849](#) Action on a Resolution Approving the 2021 Planning Commission Calendar of Meetings

**Recommendation:** Adopt a Resolution approving the 2021 Planning Commission Calendar of Meetings.

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to adopt Resolution No. 20-8894, approving the 2021 Planning Commission Calendar of Meetings.**

- 2.F [20-878](#) Action on Amendment No. 1 to the Agreement with YEI Engineers, Inc. for Citywide Emergency Generator Replacement - Phase 1 Project

**Recommendation:** Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with YEI Engineers, Inc. for Citywide Emergency Generator Replacement - Phase 1 Project.

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

- 2.G**      [20-891](#)      Action on an Agreement with Revel Environmental Manufacturing, Inc. for Maintenance, Data Collection and Reporting for Installed Full Trash Capture Devices

**Recommendation:** 1. Approve and authorize the City Manager to finalize and execute an agreement with Revel Environmental Manufacturing, Inc. to perform maintenance, data collection and reporting for full trash capture devices for an amount not-to-exceed \$596,068 over the five year term of the agreement, subject to the appropriation of funds; and  
2. Authorize the City Manager to make minor modifications to the agreement, including time extensions, as necessary.

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

- 2.H**      [20-904](#)      Action on Amending Council Policy 030 - Adding an Item on the Agenda and Approving Council Item Request Form

**Recommendation:** Adopt a resolution to repeal Resolution No. 20-8809, amend Council Policy 030 - Adding an Item on the Agenda, and approve the Council Item Request Form.

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to adopt Resolution No. 20-8895 repealing Resolution No. 20-8809, amend Council Policy 030 - Adding an Item on the Agenda, and approve the Council Item Request Form.**

- 2.I**      [20-905](#)      Action on Amending Council Policy 042 - Reconsideration of Council Action

**Recommendation:** Adopt a resolution to amend Council Policy 042 - Reconsideration of Council Action.

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to adopt Resolution No. 20-8896 amending Council Policy 042 - Reconsideration of Council Action.**

- 2.J**      [20-1003](#)      Action on Agreement with Silicon Valley/Santa Clara DMO, Inc. for Destination Marketing Services

**Recommendation:** 1. Approve and authorize the City Manager to execute an agreement with Silicon Valley/Santa Clara DMO, Inc. for destination marketing services;  
2. Authorize the City Manager to exercise the option to extend the Agreement for up to two five-year options to renew; and  
3. Authorize the City Manager to make minor and administrative modifications to the Agreement if necessary.

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

**PUBLIC PRESENTATIONS**

**None.**



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**CONSENT ITEMS PULLED FOR DISCUSSION**

- 2.K     [20-1020](#)     Action on the Help Your Neighbor Program for City Matches and Approve Related Budget Amendments

**Recommendation:** 1. Approve the expansion of the Help Your Neighbor Program to provide City Matches;  
2. Authorize the City Manager to Distribute Funds for the Help Your Neighbor Program; and  
3. Approve the FY 2020/21 Budget Amendments in the Public Donations Fund to recognize transfers of \$25,000 from the Sewer Utility Fund and \$25,000 from the Water Utility Fund and appropriate the \$50,000 to the Help Your Neighbor Program; in the Sewer Utility Fund, transfer \$25,000 to the Public Donations Fund and reduce the Unrestricted Ending Fund Balance by \$25,000; and in the Water Utility Fund, transfer \$25,000 to the Public Donations Fund and reduce the Unrestricted Ending Fund Balance by \$25,000.

**Councilmember Watanabe** pulled this item to highlight it for residents and to encourage residents to donate to the program.

**A motion was made by Councilmember Watanabe, seconded by Councilmember Davis, to (1) approve the expansion of the Help Your Neighbor Program to provide City Matches; (2) Authorize the City Manager to Distribute Funds for the Help Your Neighbor Program; and (3) Approve the FY 2020/21 Budget Amendments in the Public Donations Fund to recognize transfers of \$25,000 from the Sewer Utility Fund and \$25,000 from the Water Utility Fund and appropriate the \$50,000 to the Help Your Neighbor Program; in the Sewer Utility Fund, transfer \$25,000 to the Public Donations Fund and reduce the Unrestricted Ending Fund Balance by \$25,000; and in the Water Utility Fund, transfer \$25,000 to the Public Donations Fund and reduce the Unrestricted Ending Fund Balance by \$25,000.**

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

**PUBLIC HEARING/GENERAL BUSINESS**

3. [20-960](#) Action on a Resolution Authorizing the City Manager to Execute an Amended and Restated Affordable Housing Agreement with ZAEN Partners, LLC for construction of 150 affordable housing units located at 2302 Calle Del Mundo and Approving the Related Budget Amendment

**Recommendation:** Alternative 1 and 2:

1. Adopt a resolution approving and authorizing the City Manager to execute an Amended and Restated Affordable Housing Agreement with ZAEN Partners, LLC for construction of 150 affordable housing units located at 2302 Calle Del Mundo; to make modifications to the Loan Agreement and attachments as reviewed by the City Attorney for form and consistency; to execute all documents necessary (including Deeds of Trust, Promissory Notes, and Affordable Housing Agreements) to implement the Loan Agreement and close escrow;
2. Rescind Resolutions 19-8766 & 20-8811; and
3. Approve the related FY 2020/21 Budget Amendment in the Housing Successor Agency Fund to recognize developer contributions in the amount of \$6,000,000 to fund the City's loan amount towards the project and increase the ending fund balance by \$6,000,000.

**Housing Division Manager Veach** gave a PowerPoint Presentation and addressed **Council** questions.

**A motion was made by Councilmember Watanabe, seconded by Vice Mayor Hardy, Alternative 1, 2, 3: (1) adopt Resolution No. 20-8897 approving and authorizing the City Manager to execute an Amended and Restated Affordable Housing Agreement with ZAEN Partners, LLC for construction of 150 affordable housing units located at 2302 Calle Del Mundo; to make modifications to the Loan Agreement and attachments as reviewed by the City Attorney for form and consistency; to execute all documents necessary (including Deeds of Trust, Promissory Notes, and Affordable Housing Agreements) to implement the Loan Agreement and close escrow; (2) Rescind Resolutions 19-8766 & 20-8811; and (3) Approve the related FY 2020/21 Budget Amendment in the Housing Successor Agency Fund to recognize developer contributions in the amount of \$6,000,000 to fund the City's loan amount towards the project and increase the ending fund balance by \$6,000,000.**

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

4. [20-1050](#) Action on (1) Emergency Ordinance to Add Chapter 9.70 to enact COVID-19 Worker Recall Protections for Building Service, Food Service and Hotel Service Workers; and (2) Introduction of an Ordinance to Add Chapter 9.65 to provide Hotel Service Workers Retention Rights

**Recommendation:** Alternatives 1 and 4:

1. Approve the adoption of the Emergency Ordinance to add Worker Recall Protections; and
4. Approve the proposed Ordinance to add hotel workers as covered employees under the Worker Retention Ordinance and direct staff to complete a community engagement process prior to setting a date for the second reading of the proposed Ordinance.

**Public Speaker(s):**

Public Speaker (1)	#9306
#1368	Emma
Sandra Munoz	Manuela
Ana Rodriguez	Vicenta Mayoral
Sarah McDermot	#9707
Luzita Aguilar	Raquel L19
Felipe	#5221

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to continue Alternative 1: approve the adoption of the Emergency Ordinance to add Worker Recall Protections to November 10, 2020 Council Meeting.**

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

**Assistant City Manager Shikada** gave a PowerPoint Presentation on the Worker Retention Ordinance.

**Public Speaker(s):** Unite Here Local 19  
Louise Auerhahn  
Sarah Julian  
Sarah McDermot  
Jeff

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to approve Alternative 4: approve the proposed Ordinance to add hotel workers as covered employees under the Worker Retention Ordinance, direct staff to complete a community engagement process for 30 days prior to setting a date for the second reading of the proposed Ordinance.**

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

**Mayor Gillmor** called for a recess at 7:51 PM and reconvened the meeting at 8:02 PM.

5. [20-1062](#) Presentation of Santa Clara Valley Transportation Authority (VTA) Update on the BART Silicon Valley Phase II Extension Project and Consideration of Delegation of Authority to the City Manager to Negotiate and Execute a Master Agreement between the City and VTA

**Recommendation:** Alternative 1  
Authorize the City Manager to negotiate and execute a Master Agreement with the Santa Clara Valley Transportation Authority Relating to VTA's BART Silicon Valley Phase II Extension Project and make minor changes, including time extensions, as necessary.

**Takis Salpeas (Chief BART Delivery Officer Santa Clara Valley Transportation Authority - VTA), Bernice Alaniz (Deputy Director, Marketing & Public Affairs, Santa Clara Valley Transportation Authority - VTA), and Director of Public Works Mobeck** gave a PowerPoint Presentation.

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to approve Alternative 1:  
authorize the City Manager to negotiate and execute a Master Agreement with the Santa Clara Valley Transportation Authority relating to VTA's BART Silicon Valley Phase II Extension Project and make minor changes, including time extensions, as necessary.**

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

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

**None.**

**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

**City Manager Santana** noted that there will be a Special City Council meeting on Thursday, October 29, 2020. topic. **City Manager Santana** also noted that her 3rd Year Work Anniversary was this month and provided the Community a letter defining the accomplishments in the last year.

[20-1024](#) Update on City Council and Stadium Authority Staff Referrals

[20-848](#) Tentative Meeting Agenda Calendar (TMAC)

**ADJOURNMENT**

The meeting was adjourned at 8:50 PM.

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

**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, November 10, 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)

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

# City of Santa Clara



## Special Meeting Minutes

Draft

### City Council

### Santa Clara Stadium Authority

### Successor Agency to the City of Santa Clara

### Redevelopment Agency

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10/29/2020

3:30 PM

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

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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](mailto:PublicComment@santaclaraca.gov)

As always, the public may view the meetings on [SantaClaraCA.gov](http://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.

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Mayor/Chair calls for a Special Meeting of the City Council of the City of Santa Clara, the Governing Board of the Stadium Authority and the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency to commence and convene on October 29, 2020, at 3:30 pm for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

### **3:30 PM SPECIAL MEETING**

#### **Call to Order**

**Mayor/Chair Gillmor** called the meeting to order at 3:32 PM.

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

**Council/Board** recited the Pledge of Allegiance.

**Council/Boardmember Davis** recited the 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

**Assistant City Clerk Pimentel** read the AB23 Announcement.

### **PUBLIC PRESENTATIONS**

**None.**

### **GENERAL BUSINESS**



1. [20-1064](#) Various Actions Related to Interim Parking Rights Agreements with Forty Niners SC Stadium Company and Santa Clara Stadium Authority and the Release of Certain Rights by Successor Agency on City-owned Land for the Related Santa Clara Project

**Recommendation:**

1. The Council adopt the EIR Addendum to CityPlace Santa Clara (Related Santa Clara) EIR for the golf course interim parking facility;
2. The Council approve and authorize the City Manager to execute an Interim Parking Rights Agreement for the relocation of 789 parking spaces onto a portion of the former Santa Clara Golf & Tennis Club golf course with a) Forty Niners SC Stadium Company and b) Santa Clara Stadium Authority;
3. The Stadium Authority Board approve and authorize the Executive Director to execute an Interim Parking Rights Agreement for the relocation of 789 parking spaces onto a portion of the former Santa Clara Golf & Tennis Club golf course;
4. The City Council as the Successor Agency to former Redevelopment Agency of the City of Santa Clara adopt the Resolution authorizing the execution and recordation of the quitclaim deeds for parking and easements rights; and
5. That City Council adopt a Resolution accepting the parking and easement rights.

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

**Assistant City Manager Shikada** and **City Attorney/Counsel Doyle** addressed **Council/Board** questions.

**A motion was made by Council/Boardmember Davis, seconded by Council/Boardmember Watanabe, to (1) the Council adopt the EIR Addendum to CityPlace Santa Clara (Related Santa Clara) EIR for the golf course interim parking facility; (2) the Council approve and authorize the City Manager to execute an Interim Parking Rights Agreement for the relocation of 789 parking spaces onto a portion of the former Santa Clara Golf & Tennis Club golf course with a) Forty Niners SC Stadium Company and b) Santa Clara Stadium Authority; (3) the Stadium Authority Board approve and authorize the Executive Director to execute an Interim Parking Rights Agreement for the relocation of 789 parking spaces onto a portion of the former Santa Clara Golf & Tennis Club golf course; (4) the City Council as the Successor Agency to former Redevelopment Agency of the City of Santa Clara adopt Resolution No. 20-1 (SARDA) authorizing the execution and recordation of the quitclaim deeds for parking and easements rights; and (5) that City Council adopt Resolution No. 20-8898 accepting the parking and easement rights.**

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

**REPORTS OF MEMBERS AND SPECIAL COMMITTEES**

None.

**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

None.

**ADJOURNMENT**

The meeting was adjourned at 3:59 PM.

**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

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**MEETING DISCLOSURES**

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# City of Santa Clara

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

## Agenda Report

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20-22

Agenda Date: 11/17/2020

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### REPORT TO COUNCIL

#### SUBJECT

Board, Commissions and Committee Minutes

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### RECOMMENDATION

Note and file the Minutes of:

Task Force on Diversity, Equity, and Inclusion - October 8, 2020  
Task Force on Diversity, Equity, and Inclusion - October 15, 2020  
Task Force on Diversity, Equity, and Inclusion - October 22, 2020  
Historical and Landmarks Commission - October 1, 2020



# City of Santa Clara

## Meeting Minutes

### Task Force on Diversity, Equity, and Inclusion

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10/08/2020

1:00 PM

Virtual Meeting

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#### CALL TO ORDER AND ROLL CALL

The meeting was called to order at 1:03 p.m. Mayor Lisa Gillmor opened the meeting by clarifying that she will facilitate the meeting until a Chair has been appointed, at which time she will turn the meeting over to the Chair. Mayor Gillmor provided a summary on the work effort on the Mayor and Police Chief's Ad Hoc Committee in support of former President Obama's "Commit to Action" Initiative, which led to the formation of the community-based Task Force Diversity, Equity, and Inclusion (Task Force). Police Chief Nikolai expressed his enthusiasm and willingness to help the Task Force in any way he can.

**Present** 4 - Member Brown, Member Datar, Member Knaack, and Member Zamora-Marroquin

#### PUBLIC PRESENTATIONS

None.

#### GENERAL BUSINESS

##### **1. Discussion and Potential Action on Initial Organization and Possible Action on the Appointment of a Chair and Vice-Chair Pro Tempore**

A motion was made by Member Knaack, seconded by Member Zamora-Marroquin, and unanimously carried, that the Task Force appoint Member Brown as Chair and Member Datar as Vice Chair Pro Tempore and set the appointment term for one year.

**Aye:** 4 - Member Brown, Member Datar, Member Knaack, and Member Zamora-Marroquin

##### **2. Overview of the Brown Act**

City Attorney Brian Doyle provided a presentation of the Brown Act and answered general inquiries from the Task Force. This item was an informational report only, and no action was taken by the Task Force.

### **3. Discussion and Potential Action on Task Force Procedures for Meetings**

Chair Brown recommended respectful communication as there will be controversial topics for discussion moving forward and that the discussions should always align with agenda items. Clarification was provided that City staff will be responsible for taking minutes.

Member Zamora-Marroquin inquired about time limits for public speakers. City Attorney Doyle recommended that the time limits could be established while developing the Task Force's bylaws, which can be voted on at a future meeting. He further recommended that a basic rule can be established but that the Task Force can modify time limits at the beginning of a meeting based on number of speakers, such as shortening the allotted time per speaker or establish an overall time limit for all speakers (e.g., one hour). Task Force members agreed that the same rule is applied to all speakers at a meeting and should not change in the middle of the meeting.

Chair Brown opened the floor to discuss individual member responsibilities. Member Knaack suggested that sub-committees be appointed to take on larger tasks such as outreach for listening sessions, but that smaller tasks could be done on a voluntary basis. The Task Force agreed to table this discussion until the full Task Force was appointed.

### **4. Discussion and Potential Action on Meeting Days/Times**

The Committee discussed holding meetings later in the afternoon to better accommodate participation from the community. The Task Force decided that the frequency and meeting times would be discussed and modified after the full Task force was appointed.

A motion was made by Chair Dater, seconded by Member Knaack, and unanimously carried, that the Task Force hold weekly meetings for the next three weeks on Thursdays at 1:00 p.m. to address housekeeping items.

**Aye:** 4 - Member Brown, Member Datar, Member Knaack, and Member Zamora-Marroquin

## **5. Discussion and Potential Action on Method of Soliciting and Appointing Remaining Task Force Members**

Chair Brown thanked City staff for establishing the Task Force email address. It will be determined at a future date how email messages will be communicated with the Task Force, either by forwarding or by a standing agenda report of communications received. Other options included the appointment of a Task Force member as Secretary to receive email.

The discussion moved to the application process. City staff will forward the City's standard Boards and Commissions application to the Task Force as a starting point. The Task Force will be interviewing potential appointees and will make recommendations to the City Council for formal appointment.

Member Zamora-Marroquin suggested that the Task Force membership include one high school student and one college student. The student members may or may not be voting members, to be decided by the Task Force. Chair Brown referred this discussion to the next meeting.

## **6. Discussion and Potential Action on Potential Dates and Locations of Community Listening Sessions**

Chair Brown brought up the format of the listening sessions, whether they should be virtual, in-person (as possible due to County orders) or a hybrid. It was suggested that in-person sessions be held at City Hall Council Chambers so they can be broadcast to the community

Member Knaack suggested to hold off on this discussion until after all Task Force members have been appointed. No formal action was taken by the Task Force.

## **7. Discussion of Community Partner Relationships**

The Task Force discussed two agencies to explore for potential partnerships. It was further discussed that expectations should be defined in a Memorandum of Understanding (MOU) and a communications sub-committee should be established. Vice Chair Datar and Member Zamora-Marroquin volunteered to lead the Community Communicators sub-committee, which will focus on Community Partner communications and will work on the draft MOU for community partners.

**8. Information on Commit to Action Letter sent by Santa Clara City Council to Community**

**Mayor Gillmor reported on the Santa Clara City Council's letter to the community regarding the establishment of the Task Force, which featured the four initial members appointed.**

**ADJOURNMENT**

**The meeting was adjourned at 2:42 p.m.**





# City of Santa Clara

## Meeting Minutes

### Task Force on Diversity, Equity, and Inclusion

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10/15/2020

1:00 PM

Virtual Meeting

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

**Present** 4 - Chair Darius Brown, Vice Chair Neil Datar, Member Andrew Knaack, and Member Dianna Zamora-Marroquin

#### **CONSENT CALENDAR**

1. [20-1017](#) Task Force on Diversity, Equity, and Inclusion Meeting Minutes of October 8, 2020

**Recommendation:** Approve the Task Force on Diversity, Equity, and Inclusion meeting minutes of October 8, 2020.

**A motion was made by Vice Chair Datar, seconded by Member Zamora-Marroquin, and unanimously carried, that the Task Force approve the meeting minutes of October 8, 2020.**

**Aye:** 4 - Chair Brown, Vice Chair Datar, Member Knaack, and Member Zamora-Marroquin

#### **PUBLIC PRESENTATIONS**

None.

#### **GENERAL BUSINESS**

##### **2. Review Outline of Task Force Procedures for Conduct of Meetings**

**The Task Force reviewed the draft bylaws and provided their input. A motion was made by Chair Brown, seconded by Vice Chair Datar, and unanimously carried, that the Task Force approve the skeleton of the draft Task Force bylaws.**

**Aye:** 4 - Chair Brown, Vice Chair Datar, Member Knaack, and Member Zamora-Marroquin

### **3. Discussion and Possible Action on Task Force Application**

The Task Force reviewed the City application for board and commissions and the draft supplemental questions provided by Chair Brown. The Task Force provided their input and inquired about the application process and timing. A motion was made by Chair Brown, seconded by Vice Chair Datar, and unanimously carried, that the Task Force refer the supplemental questions to staff for inclusion with the application and bring back to the October 22, 2020 meeting.

**Aye:** 4 - Chair Brown, Vice Chair Datar, Member Knaack, and Member Zamora-Marroquin

### **4. Report from Community Communicators on Draft Language for Community Partners**

Vice Chair Datar provided the history of the Community Communicators subcommittee and explained the intent of the draft Memorandum of Understanding (MOU) for use with community partners. Vice Chair Datar and Member Zamora-Marroquin provided an overview on the draft MOU and asked that the Task Force provide their input. Markkula Center for Applied Ethics Director of Social Sector Ethics Joan Harrington reported on the MOU work effort and commented that the MOU should clarify the ten (10) community partners referenced would only be an initial starting point. The Task Force discussed the need for consistent communication to the community partners and that the Task Force secretary would be charged with this responsibility. Member Zamora-Marroquin commented that the duties of the secretary should be outlined in the Task Force's member duties. City Attorney Brian Doyle commented that the Task Force could appoint someone to sign MOUs on behalf of the Task Force and that any large changes could be brought back before the Task Force. A motion was made by Member Knaack, seconded by Member Zamora-Marroquin, and unanimously carried, that the Task Force authorize Vice Chair Datar to sign MOUs, substantially in the form of the MOU presented today, with community organizations on behalf of the Task Force.

**Aye:** 4 - Chair Brown, Vice Chair Datar, Member Knaack, and Member Zamora-Marroquin

## **5. Review Email Communications Received from Community Members**

Chair Brown reported that the Mayor had received several inquiries about the City's recognition of Columbus Day on the City calendar. Mayor Lisa M. Gillmor commented that she wanted to refer this matter to the Task Force as a first project as it falls within the work that the Task Force has been charged with and that she will continue to forward any other similar matters that have been brought to her by community members. The Task Force provided their input on potentially changing Columbus Day to Indigenous Peoples' Day. City Attorney Doyle commented that Columbus Day is a City-designated holiday. Assistant City Manager Nadine Nader commented that staff is currently working on the 2021 calendar and that a recommendation from the Task Force to the City Council would need to go in November to ensure sufficient staff time for processing and printing. A motion was made by Member Datar, seconded by Member Zamora-Marroquin, and unanimously carried, that the Task Force accept the referral and bring a recommendation to the City Council. Chair Brown asked if staff could please forward the 2020 calendar to the Task Force following the meeting.

Chair Brown discussed the emails received from the community and noted that, while many were positive, there were a few that were negative. Chair Brown commented that it is important for the Task Force to hear from all sides as they undergo their work. The Task Force provided their input on the emails received. Chair Brown inquired if it was possible for the Task Force to be set up with individual City emails to respond to inquiries from the community. City Attorney Doyle commented that it would be advisable for one member to monitor the Task Force's general email account for consistency. A motion was made by Member Datar, seconded by Member Knaack, and unanimously carried, that the Task Force appoint Member Zamora-Marroquin to temporarily respond to communications received in the Task Force's general email account.

**Aye:** 4 - Chair Brown, Vice Chair Datar, Member Knaack, and Member Zamora-Marroquin

## **ADJOURNMENT**

The meeting was adjourned at 2:40 p.m.



# City of Santa Clara

## Meeting Minutes

### Task Force on Diversity, Equity, and Inclusion

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10/22/2020

1:00 PM

Virtual Meeting

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#### CALL TO ORDER AND ROLL CALL

**Present** 3 - Member Andrew Knaack, Chair Darius Brown , and Member Dianna Zamora-Marroquin

**Absent** 1 - Vice Chair Neil Datar

#### PUBLIC PRESENTATIONS

None.

#### GENERAL BUSINESS

1. [20-1039](#) Action on Approving Task Force Bylaws

Chair Brown presented the Task Force bylaws. City Attorney Doyle commented that the Chair's duties in the bylaws should be updated to include calling regular and special meetings, instead of only regular meetings. A motion was made by Member Knaack, seconded by Member Zamora-Marroquin, and unanimously carried, that the Task Force approve the bylaws with the City Attorney's amendment incorporated.

**Aye:** 3 - Member Knaack, Chair Brown, and Member Zamora-Marroquin

**Absent:** 1 - Vice Chair Datar

2. [20-1040](#) Action on Approving Task Force Application and Supplemental Questions

The Task Force reviewed the application and supplemental questions, and discussed the timeline for the application process and the application process itself. Assistant City Clerk Nora Pimentel and Deputy City Clerk Simrat Dhadli provided a brief overview on the application and recruitment process and suggested a potential timeline. A motion was made by Member Knaack, seconded by Member Zamora-Marroquin, and unanimously carried, that the Task Force approve the application and supplemental questions so that it can be released on October 26, 2020.

**Aye:** 3 - Member Knaack, Chair Brown, and Member Zamora-Marroquin

**Absent:** 1 - Vice Chair Datar

3. Update from Community Communicators Subcommittee on Community Partner Organizations

**Member Zamora-Marroquin presented the Community Partner Criteria and Qualities that was drafted by the Community Communicators Subcommittee with Markkula Center for Applied Ethics Director of Social Sector Ethics Joan Harrington's assistance. Member Zamora-Marroquin clarified that the Community Partner Criteria and Qualities is to be used as a roadmap and that community organizations that didn't meet all of the criteria outlined could still be eligible to be a community partner. Member Zamora-Marroquin inquired if the City could assist with any translation services. City Manager Deanna J. Santana commented that the City could assist with translation services and would ask that advance notice be provided to ensure sufficient time for processing. Chair Brown asked the Task Force to review the Community Partner Criteria and Qualities and report back any other suggested edits at the next meeting.**

4. Discussion of the Naming of Columbus Day

**Chair Brown opened the item. Staff Analyst Genevieve Yip gave a verbal report on localities in California that celebrate Indigenous Peoples' Day instead of Columbus Day. Member Knaack inquired if how other cities have changed Columbus Day could be applicable to the City. City Attorney Doyle commented that staff will need to determine how Columbus Day was designated as a City holiday before making a recommendation to the City Council. Chair Brown asked that the research conducted on localities be forwarded to the Task Force and inquired how the City could conduct community outreach. Chair Brown referred the discussion to the next meeting.**

5. Review Email Communications Received from Community Members

**The Task Force reviewed communications received from community members. Chair Brown commented that emails received should be responded to within 3 business days and inquired where non-Task Force related inquires could be forwarded. City Manager Santana commented that these inquires can be referred to the City Manager general email. Chair Brown thanked staff for setting up the Task Force with their individual City email accounts. No action was taken by the Task Force.**

**ADJOURNMENT**

The meeting was adjourned at 1:53 p.m.



# City of Santa Clara

## Meeting Minutes

### Historical & Landmarks Commission

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10/01/2020

6:00 PM City Manager's Staff Conf. Room - Adjacent to City Hall  
Council Chambers  
1500 Warburton Avenue  
Santa Clara, CA 95050

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Revision: Agenda previously stated that the meeting would be a virtual meeting with all Commissioners and Staff Liaison participating remotely. Revised to include that meeting will be held in the City Manager's Office Staff Conference Room with all Commissioners participating remotely and staff present at City Hall.

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 the following method for the public to participate remotely:

- Via Zoom:  
o <https://santaclaraca.zoom.us/j/97233262035> or o Phone: 1 (669) 900-6833  
Webinar ID: 972 3326 2035

Public Comments prior to meeting may be submitted via email to [HistoricalLandmarksCommission@santaclaraca.gov](mailto:HistoricalLandmarksCommission@santaclaraca.gov) no later than noon on the day of the meeting.

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. Historical and Landmarks Commissioners will be participating remotely. A limited number of staff will also be present.

We highly encourage interested members of the public to stay at home and provide public comment remotely. Any members of the public wishing to come in person should first check-in at the City Manager's Staff Conference Room. City staff may direct you to wait in the City Hall cafeteria or outside the Council Chambers until your item of interest is discussed in order to maintain sufficient social distancing guidelines.

**PUBLIC PARTICIPATION IN ZOOM WEBINAR:**

Please follow the guidelines below when participating in a Zoom Webinar:

- The meeting will be recorded so you must choose 'continue' to accept and stay in the meeting.
- If there is an option to change the phone number to your name when you enter the meeting, please do so as your name will be visible online and will be used to notify you that it is your turn to speak.
- Mute all other audio before speaking. Using multiple devices can cause an audio feedback.
- Use the raise your hand feature in Zoom when you would like to speak on an item and lower when finished speaking. Press \*9 to raise your hand if you are calling in by phone only.
- Identify yourself by name before speaking on an item.
- Unmute when called on to speak and mute when done speaking. If there is background noise coming from a participant, they will be muted by the host. Press \*6 if you are participating by phone to unmute.
- If you no longer wish to stay in the meeting once your item has been heard, you may leave the meeting.

**CALL TO ORDER AND ROLL CALL**

**Chair Leung** called the meeting to order at 6:05 p.m.

**Present** 7 - Chair Patricia Leung, Vice Chair Stephen Estes, Commissioner J.L. "Spike" Standifer, Commissioner Ana Vargas-Smith, Commissioner Michael Celso, Commissioner Megan Swartzwelder, and Commissioner Kathleen Romano

**CONSENT CALENDAR**

**1.A**     [20-957](#)     Retroactive Vote Regarding Commissioner Standifer Absence at September 3, 2020 HLC Meeting

**Recommendation:** There is no Staff Recommendation

**Item 1.A was pulled from the Consent Calendar for discussion. A motion was made by Commissioner Estes, seconded by Commissioner Vargas-Smith to excuse Commissioner Standifer's absence at the September 3, 2020 Historical and Landmarks Commission Meeting.**

**Aye:** 6 - Chair Leung, Vice Chair Estes, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

**Abstained:** 1 - Commissioner Standifer



**1.B**     [20-910](#)     Historical and Landmarks Commission Minutes of September 3, 2020

**Recommendation:** Approve the Historical and Landmarks Commission Minutes of September 3, 2020.

**A motion was made by Commissioner Celso, seconded by Commissioner Estes to approve the Historical and Landmarks Commission Minutes of September 3, 2020 with a minor modification.**

**Aye:** 6 - Chair Leung, Vice Chair Estes, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

**Abstained:** 1 - Commissioner Standifer

**1.C**     [20-911](#)     Historical and Landmarks Commission 2021 Calendar of Meetings

**Recommendation:** Approve the Historical and Landmarks Commission 2021 Calendar of Meetings.

**A motion was made by Commissioner Estes, seconded by Commissioner Romano to approve the Historical and Landmarks Commission 2021 Calendar of Meetings.**

**Aye:** 6 - Chair Leung, Vice Chair Estes, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

**Abstained:** 1 - Commissioner Standifer

**PUBLIC PRESENTATIONS**

None

**GENERAL BUSINESS**

2. [20-880](#) Public Hearing: Consideration of Historic Resource Inventory Property Designation and Historical Preservation Agreement (Mills Act Contract) for 1176 Lincoln Avenue

**Recommendation:** Staff recommends that the Historical and Landmarks Commission find that the Mills Act Application and associated 10-Year Restoration and Maintenance Plan accomplish the intent of preserving and maintaining the historical significance of the Historic Property and, therefore, recommend Council approval of adding the property to the HRI, the approval of a Mills Act Contract and the adoption of a 10-Year Restoration and Maintenance Plan associated with the Historical Preservation Agreement.

**A motion was made by Commissioner Celso, seconded by Commissioner Estes to approve the staff recommendation with modifications to the 10-Year Restoration and Maintenance Plan and to grant a bronze plaque "c.1923" for 1176 Lincoln Street.**

**Aye:** 7 - Chair Leung, Vice Chair Estes, Commissioner Standifer, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

3. [20-881](#) Public Hearing: Consideration of Historical Preservation Agreement (Mills Act Contract) for the property 590 Monroe Street

**Recommendation:** Staff recommends that the Historical and Landmarks Commission find that the Mills Act Application and associated 10-Year Restoration and Maintenance Plan accomplish the intent of preserving and maintaining the historical significance of the Historic Property and, therefore, recommend Council approval of the Mills Act Contract and the adoption of a 10-Year Restoration and Maintenance Plan associated with the Historical Preservation Agreement.

**Commissioner Standifer** left the meeting around 7:00 pm due to technical difficulties.

**A motion was made by Commissioner Celso, seconded by Commissioner Swartzwelder to approve the staff recommendation and grant a bronze plaque "c.1905" to 590 Monroe Street.**

**Aye:** 6 - Chair Leung, Vice Chair Estes, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

**Absent:** 1 - Commissioner Standifer

4. [20-899](#) Public Hearing: Consideration of the Nomination of Pomeroy Green to the National Register of Historic Places

**Recommendation:** Staff has no recommendation on the Nomination of Pomeroy Green to the National Register of Historic Places.

**A motion was made by Commissioner Estes, seconded by Commissioner Vargas-Smith to nominate Pomeroy Green to the National Register of Historic Places.**

**Aye:** 6 - Chair Leung, Vice Chair Estes, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

**Absent:** 1 - Commissioner Standifer

#### **STAFF REPORT**

#### **COMMISSIONERS REPORT**

Subcommittee Reporting - 20 minutes

**No subcommittee meetings have been held.**

Board and Committee Assignments - 15 minutes

**Commissioners present reported on assignments.**

Announcements and Other Items - 10 minutes

**Commissioners discussed the upcoming Parade of Champions event.**

Commissioner Travel and Training Requests - 10 minutes

**None.**

#### **ADJOURNMENT**

**A motion was made by Commissioner Swartzwelder, seconded by Commissioner Romano to adjourn the meeting.**

**The meeting adjourned at 8:23 p.m.**

**The next meeting is on Thursday, November 5 at 6 p.m.**

**Aye:** 6 - Chair Leung, Vice Chair Estes, Commissioner Vargas-Smith, Commissioner Celso, Commissioner Swartzwelder, and Commissioner Romano

**Absent:** 1 - Commissioner Standifer



## Agenda Report

20-1145

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on Approval of the 2019-2024 Memorandum of Understanding Between the City of Santa Clara and the Miscellaneous Unclassified Management Employees (Unit 9)

#### COUNCIL PILLAR: Enhance Community Engagement and Transparency

#### BACKGROUND

On or about March 2020, the City of Santa Clara and Miscellaneous Unclassified Management Employees (Unit 9) agreed to terms on a first Tentative Agreement for a successor Memorandum of Understanding (MOU); Unit 9's MOU had expired on December 14, 2019. The tentative agreement, among other things, had included wage increases over the next several years as well as enhancements to healthcare. However, prior to the Tentative Agreement being both ratified by Unit 9 membership and approved by City Council, the unprecedented COVID-19 pandemic situation arose leading to sizeable challenges to the City and community, including adversely impacting the City's fiscal situation.

Given the ongoing challenges related to the pandemic, the City and Unit 9 engaged in further discussions on a successor MOU in an effort to reduce the City's estimated General Fund deficits. When the FY 2020/21 budget was adopted in June 2020, the ongoing budget deficit was estimated at approximately \$34 million over the next four years. This figure included \$22.7 million in FY 2020/21 that was solved on a one-time basis with the use of the Budget Stabilization Reserve. Since the adoption of the budget in June, General Fund revenues have continued to decline as a result of COVID-19 impacts and are not expected to meet the budgeted estimate.

As previously noted, the City of Santa Clara's collective bargaining agreement with the Unit 9 expired on December 14, 2019. The City and Unit 9 has since negotiated a five (5) year MOU effective December 15, 2019 through December 31, 2024. This bargaining group currently represents approximately 136 full-time equivalent positions in all departments across the City.

On or about November 3, 2020, the City and Unit 9 reached an overall Tentative Agreement on the terms to be contained in the successor Memorandum of Understanding (MOU) between the City and Unit 9. Unit 9 notified the City on Friday, November 6, 2020, that the membership ratified the Tentative Agreement.

#### DISCUSSION

The recommended action is approval of the Tentative Agreement which will result in a successor MOU with a term of December 15, 2019 through and including December 31, 2024.

The following is a summary of the notable provisions of the Tentative Agreement; a complete copy of the Tentative Agreement is attached:

### **Term**

December 15, 2019, through December 31, 2024

### **Wages**

- Effective December 15, 2019, all salary ranges in classifications assigned to Unit 9 shall remain status quo.
- Effective the first pay period of calendar year 2021, all salary ranges in classifications assigned to Unit 9 shall remain status quo.
- 2022: 4.5% general wage increase effective calendar year 2022. Effective the first pay period of calendar year 2022, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 4.5%.
- 2023: 3.25% general wage increase effective calendar year 2023. Effective the first pay period of calendar year 2023, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.
- 2024: 3.25% general wage increase effective calendar year 2024. Effective the first pay period of calendar year 2024, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.

It should be noted that the wage increases scheduled to be effective in 2022 through 2024 were part of the first Tentative Agreement that was reached before the City's fiscal situation was adversely impacted by the COVID-19 pandemic.

### **Reopeners**

- During the term of this Agreement, the parties agree that the MOU will reopen on the issue of wages if either of the following occurs:
  - The total annual calendar year General Fund Transient Occupancy Tax (or "TOT") revenues remitted to the City and allocated to any of the calendar years covered by this Agreement Equal or surpass the City's actual total TOT revenues from March 1, 2018 to February 28, 2019. After calendar year 2022, the TOT revenues remitted to the City shall be adjusted to normalize for any potential change in the TOT rate if passed by voters on the ballot for purposes of this section; OR
  - Forecasted General Fund deficits remain above \$20 million ongoing, as reflected in updated or revised Ten-Year General Fund Forecasts released after July 1, 2021.

The City agrees to provide an update on the City's TOT revenues to the Association upon the Association's request. In the event either of the foregoing occur, either party may request to meet to discuss the subject of wages. Any changes will be by mutual agreement. The parties understand and agree that this will not be a meet and confer within the meaning of section 3505 of the MMBA and that neither party will have access to any impasse resolution procedure except as mutually agreed.

- The parties agree to meet and confer over wages in the event the City reaches agreement on a new general wage increase to be effective during Calendar Year 2021 or 2022 with any other miscellaneous bargaining unit as part of an agreement on a successor Memorandum of Understanding (MOU). For purposes of this section, "general wage increase" means a wage increase applicable to all members of the bargaining unit (not a subset), but only if that agreement does not also include an agreement for an alternative cost saving measure (including but not limited to unpaid furlough days). Additionally, the parties agree that this section shall not apply to any general wage increases applicable to sworn public safety bargaining units or to miscellaneous bargaining units that are exclusively funded through sources other than the General Fund.

### **Merit Pay/Salary Adjustments**

Merit increases will be frozen for the two years effective January 1, 2021. Specifically, effective January 1, 2021, employees holding positions in classifications assigned to Unit 9 shall be ineligible for a merit increase for the next two (2) consecutive rating periods. This means that an employee in Unit 9 shall not be eligible for a merit increase until the third rating period after January 1, 2021, and after the employee has skipped two (2) consecutive rating periods where they did not receive a merit increase. Employees with a rating period that ends before January 1, 2021, will be eligible for a merit increase for that rating period pursuant to the Personnel and Salary Resolution, even if such merit increase (if any) is not approved until after January 1, 2021.

### **Holidays**

Effective December 2020-2024, the City shall provide 32 hours for four additional non-permanent paid holidays between December 25th and January 1st of the following calendar year. If there are more than four working days between December 25th and January 1st of the following calendar year, the City shall designate which four working days shall be paid holidays. Employees whose jobs require them to work on these days would receive banked hours off instead (up to 8 hours per holiday), which hours may be used during the applicable MOU year with the approval of the applicable supervisor/manager.

It should be noted that the wage increases scheduled to be effective in 2022 through 2024 were part of the first Tentative Agreement that was reached before the City's fiscal situation was adversely impacted by the COVID-19 pandemic.

### **Vacation**

Effective December 27, 2020 (the first pay period of calendar year 2021), the Maximum Vacation Accrual Limit shall be temporarily suspended for two (2) years until the end of the last pay period of calendar year 2022. Employees may continue to accrue vacation above the Maximum Vacation

Accrual Limit until December 24, 2022 (the end of the last pay period of calendar year 2022).

Effective December 25, 2022 (the first pay period of calendar year 2023), employees holding positions in classifications assigned to Unit 9 shall be eligible for the Temporary Supplemental Vacation Accrual. Effective December 25, 2022, all unused accrued vacation hours above 400 hours as of December 24, 2022 (the last pay period of calendar year 2022) shall be placed in the Temporary Supplemental Vacation Accrual balance. Employees will be required to exhaust this leave balance prior to using their own vacation accruals. If an employee leaves or retires from City service, any unused Temporary Supplemental Vacation Accrual hours will be cashed out upon the employee's retirement or other separation from City service. If permitted by the City's deferred compensation plan and applicable law, the separating employee may elect to contribute all or a portion of their accrued but unused Temporary Supplemental Vacation Accrual hours to their deferred compensation account by submitting a written request no later than 30 days prior to their separation from City service.

### **Management Leave**

For calendar year 2021 - 2024, an employee may have up to a balance of 240 hours of management leave. Effective the first pay period of calendar year 2025, an employee may have no more than a balance of 180 hours of management leave.

### **Health Insurance**

- Effective January 1, 2023, employees who enroll in a City healthcare plan for Employee Plus One or Employee Plus Family coverage will receive an Additional Health Flex Contribution to be put towards the premium amount not to exceed 100% of the Kaiser Employee Plus One rate for the applicable year.
- Employees hired or rehired on or after January 1, 2023, who do not enroll in a City healthcare plan are not eligible for the Regular Flex Contribution and would be eligible for a Cash-in-Lieu amount of \$250/month.

It should be noted that the changes to healthcare were part of the first Tentative Agreement that was reached before the City's fiscal situation was adversely impacted by the COVID-19 pandemic.

### **Compensatory Time Off (CTO) - Side Letter**

A side letter was reached where, among other issues, employees represented by Unit 9 will no longer be eligible to use or code CTO. Employees represented by Unit 9, who are exclusively exempt employees, will instead be subject to the "4-Hour Rule," which would remain subject to supervisory approval.

### **ENVIRONMENTAL REVIEW**

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



**FISCAL IMPACT**

The City regularly budgets the total compensation cost for its current employees and integrates known and projected cost increases from MOUs in the City's annual budget. The ten-year forecast also incorporates the projected labor costs. The costs of this MOU are within budget authority approved by the City Council through the negotiation process, and the negotiated agreement generates savings when compared to assumptions included in the FY 2020/21 budget and ten-year forecast.

Table 1 reflects the ongoing changes in costs in the General Fund as well as all funds over the term of the MOU.

**Table 1: Estimated Costs**

Item	Description	Estimated GF Cost/Savings	Estimated All Funds Cost/Savings
Wages Year 1 (Dec 2019) Year 2 (Dec 2020) <b>Estimated Savings</b> Year 3 (Dec 2021) Year 4 (Dec 2022) Year 5 (Dec 2023) <b>Estimated Cost</b>	0% 0% 4.5% 3.25% 3.25%	(\$0.9M) (\$0.7M) <b>(\$1.6M)</b> \$0.9 M \$0.7 M <u>\$0.7 M</u> <b>\$2.3 M</b>	(\$1.7M) (\$1.4M) <b>(\$3.1M)</b> \$1.7 M \$1.3 M <u>\$1.3 M</u> <b>\$4.3M</b>
Merit Increase Freeze (2 Years beg. Jan 2021)	0%	(\$0.9 M)	(\$1.7 M)
Healthcare - Year 4 (January 2023)	City Pays EE+1 (Kaiser)	\$145K	\$274K

As shown in the table above, when compared to the FY 2020/21 budget and the forecast, the elimination of wage increases will generate savings of \$1.7 million in Year 1 (\$0.9 million in the General Fund) and \$1.4 million in Year 2 (\$0.7 million in the General Fund), for total savings of \$3.1 million (\$1.6 million in the General Fund). The cost of the wages portion of the MOU for Year 3, 4 and 5 is approximately \$4.3 million, of which \$2.3 million is in General Fund and \$2.0 million is in other funds.

In addition, the estimated savings from freezing merit increases for two years effectively January 2021 is approximately \$1.7 million, of which \$0.9 million is General Fund and \$0.8 million is in other funds. The estimated cost for Healthcare beginning January 2023 is \$274,000, of which \$145,000 is in General Fund and \$129,000 is in other funds.

This agreement will generate savings in FY 2020/21 that will be reflected in the various departments. These savings will help offset the impacts of COVID-19. The estimated costs and savings elements of this MOU will be included in future budget processes and future updates to the Ten-Year General Fund Financial Forecast.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Approve the Memorandum of Understanding between the City of Santa Clara and the Miscellaneous Unclassified Management Employees (Unit 9) with effective dates of December 15, 2019 to December 31, 2024.

Reviewed by: Aracely Azevedo, Director of Human Resources

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. MOU Miscellaneous Unclassified Management Employees (Unit 9) 2019-2024 - redline version
2. MOU Miscellaneous Unclassified Management Employees (Unit 9) 2019-2024 - final
3. Tentative Agreement between the City and Unit 9

# MEMORANDUM OF UNDERSTANDING

between

**CITY OF SANTA CLARA**

and

**MISCELLANEOUS UNCLASSIFIED  
MANAGEMENT EMPLOYEES  
UNIT 9**



**DECEMBER 1715, ~~2017-2019~~ - DECEMBER 1431,  
20192024**

# MEMORANDUM OF UNDERSTANDING

between

CITY OF SANTA CLARA

and

MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES, UNIT #9

DECEMBER ~~17~~15, ~~2017-2019~~ - DECEMBER ~~14~~31, ~~2019~~2024

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**MEMORANDUM OF UNDERSTANDING**  
**between**  
**CITY OF SANTA CLARA**  
**and**  
**MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES, UNIT #9**  
**DECEMBER ~~17~~15, ~~2017~~ 2019 - DECEMBER ~~14~~31, ~~2019~~2024**

In accordance with the provisions of Section 18 of the City of Santa Clara Resolution #2979, entitled "Employer-Employee Relations", this Memorandum of Understanding constitutes the results of discussions between designated representatives of the City Management Staff (City) and the Miscellaneous Unclassified Management Employees of the City of Santa Clara (Unit 9) on all matters within the scope of representation. The term of this Agreement shall be from December ~~17~~15, ~~2017~~ 2019 through December ~~14~~31, ~~2019~~2024.

1. WAGE ADJUSTMENTS

~~Effective the first full pay period following City Council approval of this MOU (and retroactive to December 17, 2017 for persons employed with the City on the date the City Council approves this MOU), employees shall receive a 4.0% wage increase. Effective the first full pay period of the 12/18—12/19 MOU year, employee shall receive a further 4.0% wage increase.~~

~~A. Effective December 15, 2019, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall remain status quo.~~

~~B. Effective the first pay period of calendar year 2021, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall remain status quo.~~

~~C. Effective the first pay period of calendar year 2022, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 4.5%.~~

~~D. Effective the first pay period of calendar year 2023, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.~~

~~E. Effective the first pay period of calendar year 2024, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.~~

~~F. During the term of this Agreement, the parties agree that the MOU will reopen on the issue of wages if either of the following occurs:~~

~~1) The total annual calendar year General Fund Transient Occupancy Tax (or "TOT") revenues remitted to the City and allocated to any of the calendar years covered by this Agreement Equal or surpass the City's actual total TOT revenues from March 1, 2018 to February 28, 2019. After calendar year 2022, the TOT revenues remitted to the City shall be adjusted to normalize for any potential change in the TOT rate if passed by voters on the ballot for purposes of this section; OR~~

2) Forecasted General Fund deficits remain above \$20 million ongoing, as reflected in updated or revised Ten-Year General Fund Forecasts released after July 1, 2021.

The City agrees to provide an update on the City's TOT revenues to the Association upon the Association's request. In the event either of the foregoing occur, either party may request to meet to discuss the subject of wages. Any changes will be by mutual agreement. The parties understand and agree that this will not be a meet and confer within the meaning of section 3505 of the MMBA and that neither party will have access to any impasse resolution procedure except as mutually agreed.

G. The parties agree to meet and confer over wages in the event the City reaches agreement on a new general wage increase to be effective during Calendar Year 2021 or 2022 with any other miscellaneous bargaining unit as part of an agreement on a successor Memorandum of Understanding (MOU). For purposes of this section, "general wage increase" means a wage increase applicable to all members of the bargaining unit (not a subset), but only if that agreement does not also include an agreement for an alternative cost saving measure (including but not limited to unpaid furlough days). Additionally, the parties agree that this section shall not apply to any general wage increases applicable to sworn public safety bargaining units or to miscellaneous bargaining units that are exclusively funded through sources other than the General Fund.

## 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

The City has contracted with CalPERS to provide employees with the 2.7% at age 55 formula with "highest single year" effective December 17, 2006 for "Classic" or "Legacy" employees as defined by CalPERS and the Public Employees' Pension Reform Act of 2013 (PEPRA) and the 2.0% at 62 with "highest three year average" for "New Members" as defined by CalPERS and PEPRA. Classic/Legacy employees shall continue to pay the employee contribution rate and New Members shall contribute 50% of the "normal cost" of their pension formula as required and defined by CalPERS and PEPRA. The employee's CalPERS retirement contribution will continue to be treated as tax deferred.

## 3. APPLICATION OF MOU TO REIMBURSED SERVICES

The terms of this Memorandum of Understanding shall not apply to Unclassified Management Employees when such employees are providing their services to another agency that is reimbursing the City of Santa Clara for salary and fringe benefits of such employees. Such arrangements shall be mutually agreed upon between the employee and the City.

## 4. HOLIDAYS

A. Employees shall be provided 13 annual paid holidays (computed on the eight hour per day pay rate). Any additional permanent holidays designated by the City Council will be afforded represented employees of Unit 9. Additional permanent holidays under this section shall be defined as a holiday on which City offices are closed.

B. Additionally, effective December 2020, the City will observe shall provide 32 hours for four additional non-permanent paid holidays between December 25<sup>th</sup> and January 1<sup>st</sup> of the following calendar year. If there are more than four working days between December 25<sup>th</sup> and January 1<sup>st</sup> of the following calendar year, the City shall designate which four working days shall be paid holidays under this paragraph. on 12/26/17, 12/27/17, 12/28/17 and 12/29/17 and on 12/26/18, 12/27/18, 12/28/18 and 12/31/18. These non-permanent paid holidays would be only for these MOU years, and this provision will sunset and expire on the last day of the 12/18 — 12/19 MOU year. Employees whose jobs require them to work on these days would receive banked paid ~~days~~ hours off instead (up to 8 hours per holiday), which hours may and must be used during the applicable MOU year with the approval of the applicable supervisor/manager. Since this MOU was approved by the City Council after the 12/26/17 to 12/29/17 time period, employees who used leaves for the days/hours on and between 12/26/17 and 12/29/17 will receive banked days/hours off which may and must be used as set forth previously; but also shall have the option, if requested, to instead have their leave balances retroactively adjusted.

5. JOB SECURITY

Represented members will be compensated at the rate of forty (40) hours salary per year of service to a maximum of six hundred and forty (640) hours should they be terminated from employment for reasons other than cause as defined under Section 6.4 of the Civil Service Rules and Regulations.

6. VACATION ACCRUAL AND USAGE

Represented employees will be entitled to use vacation as it is earned under the following conditions:

- A. Vacation may not be taken during the first 6 months of regular employment.
- B. Vacation will be earned on a bi-weekly basis (1/26 of the yearly accrual) provided that the employee is in a paid status for at least 2/3 of the hours (53.4 hours) of that pay period.
- C. Accrued vacation time will be paid off regardless of term of employment.
- D. Annual and maximum vacation accrual rates, calculated to four decimal points for accuracy, are as follows:

COMPLETED YEARS OF SERVICE	ANNUAL ACCRUAL	MAXIMUM <u>VACATION</u> ACCRUAL LIMIT
1 through 4	80 hours	<del>400</del> <u>480</u> hours
5 through 9	120 hours	<del>400</del> <u>480</u> hours
10 through 15 <del>years</del>	168 hours	<del>400</del> <u>480</u> hours
16 through 20	176 hours	<del>400</del> <u>480</u> hours



21 years +	192 hours	400 hours
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E. Maximum Vacation Accrual Limit – Employees are limited to the maximum accrual of vacation as defined. ~~Employees may temporarily exceed the allowed maximum vacation accrual, subject to the vacation balance as of the end of the pay period which includes December 31st of each year being reduced to the maximum allowable accrual.~~ The current vacation balance, the annual accrual and the current pay period usage are all shown on the employees' pay check stub and are the responsibility of the employee to track for compliance with this provision.

- 1) Effective December 27, 2020 (the first pay period of calendar year 2021), the Maximum Vacation Accrual Limit as described in Section 6.D above shall be temporarily suspended for two (2) years until the end of the last pay period of calendar year 2022. Employees may continue to accrue vacation above the Maximum Vacation Accrual Limit until December 24, 2022 (the end of the last pay period of calendar year 2022).
- 2) Effective December 25, 2022 (the first pay period of calendar year 2023), employees shall not be allowed to accrue vacation above the Maximum Vacation Accrual Limit.
- 3) Temporary Supplemental Vacation Accrual – Effective December 25, 2022 (the first pay period of calendar year 2023), employees holding positions in classifications assigned to Unit 9 shall be eligible for the Temporary Supplemental Vacation Accrual. The Temporary Supplemental Vacation Accrual is a separate vacation balance subject to the following:
  - (a) Effective December 25, 2022, all unused accrued vacation hours above 400 hours as of December 24, 2022 (the last pay period of calendar year 2022) shall be placed in the Temporary Supplemental Vacation Accrual balance.
    - (i) The following is only an example of the Temporary Supplemental Vacation Accrual described above, and any figures are for illustration purposes only and assumes the employee does not use vacation.

<u>Issue</u>	<u>Hours</u>
<u>Vacation Balance as of December 24, 2022 (the last pay period of calendar year 2022)</u>	<u>500</u>
<u>Hours to be placed in Temporary Supplemental Vacation Accrual</u>	<u>100</u>
<u>Vacation Balance as of December 25, 2022 (the first pay period of calendar year 2023)</u>	<u>400</u>
<u>Hours that can be accrued in calendar year 2023</u>	<u>80</u>
<u>Hours that can be accrued above the Maximum Vacation Accrual Limit of 480 hours</u>	<u>0</u>

- ~~(b) The Temporary Supplemental Vacation Accrual balance may not be increased.~~
  - ~~(c) Subject to supervisory approval, any Temporary Supplemental Vacation Accrual shall be available for use to the employee until the Temporary Supplemental Vacation Accrual balance has been exhausted.~~
  - ~~(d) If an employee leaves or retires from City service, any unused Temporary Supplemental Vacation Accrual hours shall not be subject to the terms of Section 6.I below. Any accrued but unused Temporary Supplemental Vacation Accrual hours will be cashed out upon the employee's retirement or other separation from City service. If permitted by the City's deferred compensation plan and applicable law, the separating employee may elect to contribute all or a portion of their accrued but unused Temporary Supplemental Vacation Accrual hours to their deferred compensation account by submitting a written request no later than 30 days prior to their separation from City service.~~
  - ~~(e) An employee must first use their Temporary Supplemental Vacation Accrual for any vacation leave taken until the Temporary Supplemental Vacation Accrual balance has been exhausted, subject to supervisory approval.~~
  - ~~(f) An employee must use their Temporary Supplemental Vacation Accrual for any leave of absence until the Temporary Supplemental Vacation Accrual balance has been exhausted subject to any requirement that sick leave be utilized first.~~
  - ~~(g) An employee may not be on unpaid status until the Temporary Supplemental Vacation Accrual balance has been exhausted and must use their Temporary Supplemental Vacation Accrual until the Temporary Supplemental Vacation Accrual balance has been exhausted, with the exception of any formal disciplinary action pursuant to the City's Civil Service Rules.~~
- ~~E. Vacation that is temporarily allowed to exceed the maximum allowable accrual and is removed from the vacation balance as of the end of the pay period, which included December 31st of each year, may be donated to the Emergency Paid Leave Fund at the direction of the employee.~~
- F. Vacation may be used in one-tenth (1/10th) hour increments.
- G. Employees who begin work prior to July 1st or continue to be employed after the first calendar year of employment are required to use at least one-half of the vacation accrued during the prior calendar year during the current calendar year.
- H. Subject to having a sufficient balance of accrued vacation available, an employee may, on a twice per year basis, request to be paid at his/her current hourly pay rate for a total combined maximum of 80 hours of accrued vacation.

- I. In lieu of receiving a vacation-leave cash payout at retirement, the Miscellaneous Unclassified Management Employees may vote to roll accrued vacation leave hours (except for any hours in the Temporary Supplemental Vacation Accrual balance) into the employee's VEBA account, subject to Association compliance with Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

## 7. HEALTH INSURANCE

- A. For employees who enroll in a City offered health plan and whose benefits exceed the total of the City's Health Flex Contribution, Additional Health Flex Contribution, and/or Regular Flex Contribution applicable to the employee and as described below, the balance of the benefits shall be paid by a salary deduction from the pay of the individual employee.

### B. Health Flex Contribution

- 1) Effective January 1, 2018, the City will offer full-time employees a Health Flex Contribution of \$133.00/month to put toward the payment of a City offered health plan. The \$133.00/month applies for 2018, and this amount shall be modified City shall modify the Health Flex Contribution each calendar year using the Rate of Pay Safe Harbor (based on the lowest base pay of any full-time employee position covered by this MOU) to ensure the City's offered coverage is "affordable." The City contributes the statutorily required minimum contribution under the Public Employees Medical and Hospital Care Act (PEMHCA) as determined by CalPERS in each calendar year. It is understood and agreed that the Health Flex Contribution described in this paragraph shall be equal to or exceed the City's statutorily required minimum PEMHCA contribution.<sup>1</sup>
- 2) Employees may not receive all or any portion of the Health Flex Contribution as cash or any other taxable benefit, and must apply the Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the Health Flex Contributions.

### C. Additional Health Flex Contribution

- 1) Full-time employees who enroll in a City health plan for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution in the amounts described in this section.
- 2) Employees may not receive all or any portion of the Additional Health Flex Contribution as cash or any other taxable benefit, and must apply the Additional Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the Additional Health Flex Contributions.

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<sup>1</sup> As an example, for 2020, the PEMHCA minimum is approximately \$139/month and the Health Flex Contribution is \$139.00/month, which includes the PEMHCA minimum of \$139/month.

3) ~~Employees Effective January 1, 2020, full-time employees~~ who enroll in a City health plan for which the ~~employee-only~~ premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution. The Additional Health Flex Contribution, when added to the Health Flex Contribution described in the prior ~~paragraph section~~ and the Regular Flex Contribution described herein, shall not exceed \$200 per month over the Kaiser employee only premium amount for the applicable year.<sup>2</sup> ~~(For 2018, this is an additional \$35.57/month to these individuals, since \$200 over the Kaiser employee-only amount in 2018 is \$982.43/month.)~~

4) ~~Effective January 1, 2023, full-time employees:~~

(a) ~~Who enroll in a City health plan for Employee Only coverage for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution to be put towards the premium amount. The City will provide an Additional Health Flex Contribution amount that, when added to the Health Flex Contribution described above and the Regular Flex Contribution described herein, shall not exceed \$200 per month over the Kaiser employee only premium amount for the applicable year.~~

(b) ~~Who enroll in a City health plan for Employee Plus One coverage or Employee Plus Family coverage for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution to be put towards the premium amount. The Additional Health Flex Contribution, when added to the Health Flex Contribution described above and the Regular Flex Contribution described herein, shall not exceed an amount equal to 100% of the Kaiser Employee Plus One rate for the applicable year.~~

~~Employees may not receive all or any portion of the Health Flex Contribution or Additional Health Flex Contribution as cash or any other taxable benefit, and must apply the Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the Health Flex Contributions.~~

~~It is understood and agreed that a portion of the Health Flex Contribution described in this subsection is the City's contribution of the statutorily required minimum contribution under the Public Employees Medical and Hospital Care Act (PEMHCA) (e.g. \$133/month in 2018), which is the City's designated PEMHCA amount.~~

#### BD. Regular Flex Contribution

1) ~~Effective January 1, 2018, the~~The City will provide full-time employees a Regular Flex Contribution equal to \$946.86 less the Health Flex Contribution ~~(thus, for 2018, the Regular Flex Contribution will be \$813.86/month).~~<sup>3</sup> Employees may use the Regular Flex Contribution

<sup>2</sup> As an example, for 2020, the Additional Health Flex Contribution is approximately \$23.70/month to these individuals since \$200 over the Kaiser employee only premium amount in 2020 is approximately \$970.56/month.

<sup>3</sup> As an example, for 2020, the Regular Flex Contribution for employees who are regularly

to pay for health benefits offered under the City's Section 125 plan or may opt to receive any or all of the Regular Flex Contribution as taxable cash. An employee will receive a Regular Flex Contribution whether or not he/she enrolls in City-offered health benefits and notwithstanding the provisions of Section 7.~~GE~~. below.

- ~~2) For employees who enroll in City health and whose benefits exceed the total of the City's Health Flex and Regular Flex Contributions to them, the balance of the health premium shall be paid by a salary deduction from the pay of the individual employee. Employees hired or rehired on or after January 1, 2023, who choose not to enroll in a City health plan are not eligible for a Regular Flex Contribution.~~

~~GE~~. Cash In Lieu

- ~~1) Effective January 1, 2018, Full-time employees hired before January 1, 2023, who choose not to enroll in a City health plan for a plan year, and meet the requirements set forth below shall receive a Cash in Lieu amount per month for that plan year equal to \$946.86 minus the Regular Flex Contribution as calculated each calendar year.<sup>4</sup> (for 2018, the Cash in Lieu amount is \$133.00). A full-time employee hired before January 1, 2023, who enrolls in coverage for a plan year, shall be treated in accordance with Sections 7.A-D and will not receive Cash in Lieu for that plan year.~~
- ~~2) Full-time employees hired or rehired on or after January 1, 2023, who choose not to enroll in a City health plan for a plan year, and meet the requirements set forth below, shall receive a Cash in Lieu amount for that plan year equal to \$250/month. A full-time employee hired on or after January 1, 2023, who enrolls in coverage for a plan year, shall be treated in accordance with Sections 7.A-D and will not receive Cash in Lieu for that plan year.~~
- ~~3) In order to receive Cash in Lieu of health coverage, an employee must sign a form attesting that the employee and the employee's Tax Family have the Alternative Required Coverage for the Opt Out Period.~~
- ~~(a) Tax Family means all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or years that begin or end in or with the City's plan year to which the opt out applies.~~
- ~~(b) Alternative Required Coverage required means minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California).~~
- ~~(c) Opt Out Period means the plan year to which the opt out arrangement applies.~~

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~~scheduled to work 40 hours per week is approximately \$807.86/month.~~

~~<sup>4</sup> As an example, for 2020, the Cash in Lieu amount is approximately \$139.00/month for employees who are regularly scheduled to work 40 hours per week.~~

(d) An employee must provide the attestation every plan year at open enrollment or within 30 days after the start of the plan year for each plan year the employee would like to receive ~~cash~~ Cash in lieu Lieu.

(e) The Cash in Lieu payment cannot be made and the City will not in fact make payment if the City knows or has reason to know that the employee or a Tax Family member does not have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.

(f) An employee who opts out of City-offered health benefits, but cannot provide the attestation, will not receive the Cash in Lieu contribution described in this subsection.

#### ~~DE~~. Flexible Spending Account (IRS Section 125 Plan)

The City has established a Flexible Spending Account benefit (IRS Section 125 Plan) for employees, which provides accounts in which employees may contribute pre-tax dollars for dependent care and un-reimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Service. Detailed information will be available in the Summary Plan Document.

This Plan is voluntary and participating employees will make pre-tax salary reduction elections to fund the plan.

#### ~~EG~~. ~~Re-Opener~~ Proration of Benefits:

~~During 2018, the City and Miscellaneous Unclassified Management agree to re-open Section 7 regarding the City's contributions to health premiums. The parties agree that there shall not be any decrease in City contributions to health premiums or to those that receive cash in lieu of participating in City health, as a result of this re-opener. For employees who may be eligible for benefits but work less than 40 hours per week, benefits shall be prorated based on the employee's full-time equivalent (FTE) level.~~

#### 8. DENTAL INSURANCE

The City will pay toward dental insurance premiums an amount equal to the lowest cost employee only premium amount among the dental plans offered by the City. All employees are required to enroll in a dental plan.

#### 9. VISION INSURANCE

For persons enrolled in the City's VSP vision plan, the City will pay toward vision insurance premiums an amount equal to the lowest cost employee only vision premium. Participation is voluntary. Employees that do not choose to enroll in a vision plan are not entitled to the benefit of City contributions to vision premiums described in this paragraph.

#### 10. LONG TERM DISABILITY

The City will continue to pay the cost of a long term disability insurance program. The LTD plan will have a maximum 60 day waiting period and the

maximum monthly benefit will include those offsets required by law such as, but not limited to, SDI, retirement, reduced work schedule, worker's compensation, social security, and Railroad retirement.

11. LIFE INSURANCE

The City will pay the required premium for life insurance for represented employees in the amount of \$50,000.

12. AUTOMOBILE ALLOWANCE

As an alternative to IRS mileage reimbursement or use of a City vehicle, an automobile allowance program will be available to represented employees as follows:

A. Department Heads including Assistant City Manager, Deputy City Manager and Deputy Director Redevelopment Agency/Sports & Open Space Authority (Executive Management) shall be entitled to a base monthly automobile allowance of \$320 for use of their personal vehicles to conduct City business. Executive Management employees may be eligible to receive an additional amount up to a maximum of \$200 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.

B. Assistant Department Heads and Division Managers shall be entitled to a base monthly automobile allowance of \$200 for use of their personal vehicles to conduct City business. Assistant Department Heads and Division Managers may be eligible to receive an additional amount up to a maximum of \$300 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.

C. Effective December 27, 2020 (the first pay period of calendar year 2021), the base monthly automobile allowance shall be paid on the first 2 pay periods of every month.

G.D. Upon request of the employee, prior to the beginning of each fiscal year, the City Manager or his/her designee will determine whether or not it is appropriate for a manager to receive an amount above the base monthly allowance. The determination will be made based on the requirements for use of the personal vehicles for City business and may require detailed driving information in order to grant an amount above the base monthly amount. This rate adjustment will become effective at the beginning of each fiscal year and will remain in effect for the full year unless there are unique circumstances requiring a modification.

D.E. Prior to the granting of this allowance, all insurance, driver's license, and vehicle registration as required under the State of California Vehicle Code, will be provided by the represented employee, and must be valid and in force at all times employees are operating their personal vehicles on City business.

E.F. Employees receiving the automobile allowance are responsible for all gasoline and maintenance costs. Employees shall also maintain their personal vehicles in a clean and presentable condition while conducting City business.



~~F.G.~~ A represented employee, who is currently assigned a City vehicle, may choose to continue using that assigned City vehicle in lieu of the automobile allowance.

~~G.H.~~ The City reserves the right to substitute an assigned City vehicle in lieu of this automobile allowance for a represented employee if it is deemed to be in the City's best interest to provide a City vehicle to conduct City business.

~~H.I.~~ A represented employee who is currently reimbursed for use of a personal vehicle in accordance with the IRS mileage reimbursement rate, may continue to utilize direct mileage reimbursement, in lieu of participation in this automobile allowance program.

13. MOBILE COMMUNICATION DEVICE ALLOWANCE

Mobile communication device allowance of \$80.00 per month for eligible classifications ~~beginning in the pay period which includes April 1, 2009.~~

14. MERIT PAY/SALARY ADJUSTMENT SYSTEM

Merit pay adjustments ~~or merit increases~~, as provided for in the Personnel and Salary Resolution are, and will continue to be available during the term of this MOU when and if approved by the applicable Department Head and the City Manager, ~~subject to Section 14.G below~~. The Merit Pay Adjustment system shall include the following elements:

- A. Each Unit 9 employee shall receive an annual evaluation.
- B. Annual consideration of merit pay adjustments ~~subject to Section 14.G below~~, with an affirmative decision by the applicable Department Head shall be required each year following the annual evaluation.
- C. Merit pay adjustments shall range from 0 to 5%. However, in 2016 and 2017 only, employee is guaranteed at least 2% and, with Department Head approval, up to 5% ~~subject to Section 14.G below~~.
- D. In 2016, employees are eligible for a merit pay adjustment based on an evaluation prepared by February 2, 2016, which date will be their merit pay anniversary each year going forward.
  - 1) Notwithstanding D. above, for employees that have been employed a full year as of February 2, 2016, they will be eligible on their actual anniversary date, which shall also be their merit pay anniversary date thereafter.
  - 2) Notwithstanding D. above, for employees that receive a merit increase between January 1, 2015 and February 2, 2016, the date of their last merit increase shall be their new merit pay anniversary date.
  - 3) If a Department Head has not completed an evaluation in time for a merit adjustment by an employee's anniversary date (February 2, 2016 for most employees), the applicable merit pay adjustment once determined shall be made retroactive to the first full pay period following the anniversary date (and to February 2, 2016 in 2016 for those persons



whose anniversary date is February 2, 2016).

- E. ~~The subject to Section 14.G below , the~~ City shall not suspend or freeze consideration of merit pay adjustments for Unit 9 employees unless step increases are suspended or frozen for all bargaining units that utilize a step system.
- F. The City and Unit 9 may, by mutually agreement, meet to discuss potential changes to the merit pay system and/or movement toward a step pay system more like other bargaining units.
- G. Effective January 1, 2021, employees holding positions in classifications assigned to Unit 9 shall be ineligible for a merit increase for the next two (2) consecutive rating periods. This means that an employee in Unit 9 shall not be eligible for a merit increase until the third rating period after January 1, 2021, and after the employee has skipped two (2) consecutive rating periods where they did not receive a merit increase. Employees with a rating period that ends before January 1, 2021, will be eligible for a merit increase for that rating period pursuant to the Personnel and Salary Resolution, even if such merit increase (if any) is not approved until after January 1, 2021.
  - 1) Employees hired or rehired or promoted or reclassified on or after January 1, 2021, and until on or before December 31, 2022, into positions in classifications assigned to Unit 9 shall be ineligible for a merit increase for the first two (2) consecutive rating periods. This means that an employee hired or rehired or promoted between January 1, 2021, and December 31, 2022, will not be eligible for a merit increase until the employee's third rating period with the City after the employee was hired or rehired or promoted or reclassified into positions in classifications assigned to Unit 9.
    - (a) A current active City employee promoted or reclassified from another bargaining unit into a position in a classification assigned to Unit 9 between January 1, 2021, and December 31, 2022, shall be ineligible for a merit increase until the employee's third rating period from the effective date of the promotion or reclassification.
    - (b) A current active City employee holding a position in a classification assigned to Unit 9 as of the effective date of this agreement who is promoted or reclassified into or accepts another position in Unit 9 between January 1, 2021, and December 31, 2022, shall be ineligible for a merit increase unless the employee has skipped two (2) consecutive rating periods where they did not receive a merit increase since January 1, 2021.
    - (c) Nothing in this Section is intended to prohibit a pay increase that may result from a current active City employee being promoted or reclassified into a position in a classification assigned to Unit 9.

F.

## 15. EMERGENCY PAID LEAVE PROGRAM

### A. Administration

Administration of this program shall be provided by a three (3) member Emergency Paid Leave Board (Board), consisting of two (2) members of the Unit 9 Board and the City Director of Human Resources (or designee). Determination of eligibility to use the vacation established in this Emergency Paid Leave pool will be by majority vote of this board. An adverse decision of this board may be appealed to the Unit 9 Board of Directors and their determination shall be final.

B. Method of Donation

- 1) Contribution of vacation will be computed at the employee's base hourly rate of pay (excluding premium or specialty pay).
- 2) Contribution may be made from earned vacation, ~~CTO~~ or cash only. Conversion of Sick Leave to Vacation for purposes of donation to this pool will be immediately credited to the pool.
- 3) In a case where it has become known that an employee has been seriously injured or has a life-threatening illness and is in need of assistance from the Emergency Paid Leave Pool, contributions from accrued Sick Leave, computed at the contributing employee's base hourly rate of pay (excluding premium or specialty pay) may be made for the benefit of that specific employee who has the need.
- 4) Employee may authorize the City to automatically convert vacation that should be accrued to the employee to the pool when the employee's vacation accrual has reached the maximum allowed.
- 5) Funds contributed to the Emergency Paid Leave Pool will be placed in an interest bearing Trust Fund. The Trust Fund will be accumulated in total dollars. No record of number of hours contributed to the Pool will be maintained. An employee making a donation to the Pool will not have a vested right to the amount donated.
- 6) Employees, appointed Council officers, and the elected City Clerk may contribute earned vacation, ~~CTO~~ or cash to the Emergency Paid Leave Pools of other City bargaining groups.

C. Use of Pool

- 1) Employee must have a verified emergency need for time off to request Emergency Paid Leave from the pool. An employee's initial request to use leave from the Emergency Paid Leave Pool shall be made to the City's Director of Human Resources (or designee). The Director of Human Resources (or designee) shall make an initial determination regarding whether the employee's request to use Emergency Paid Leave is for a verified medical emergency. The Director of Human Resources (or designee) shall notify the rest of the Board of the name of the individual making the request, the date of the request and whether or not the individual's request qualified as a verified medical emergency need under this section. Medical emergencies for the employee or dependent shall be verified by a doctor's certification and shall include the anticipated duration of the medical emergency. Non-medical emergencies shall be verified by certification acceptable to the Board

and shall include the anticipated duration of the emergency.

- 2) Employee must have exhausted appropriate paid leave (sick leave including eligible conversion to vacation or vacation) prior to becoming eligible to request emergency paid leave benefits from the pool.
- 3) The maximum time available from the pool (subject to the assets of the pool) will be 320 hours (four [4] pay periods) for Emergency Paid Leave benefits due to the illness or injury of the employee or the maximum allowable accrual of vacation for emergency needs of the family of the employee.
- 4) Emergency Paid Leave will be deducted from the pool based upon the employee's base hourly rate of pay (excluding premium or specialty pay).
- 5) Emergency Paid Leave hours will be made available for use in the pay period following approval by the Miscellaneous Unclassified Management Employees' Emergency Paid Leave Board.
- 6) Use of Emergency Paid Leave from the pool will be treated in the same manner as use of regular vacation. The employee will continue to accrue sick leave, vacation, insurance coverage and other benefits in the same manner as he/she would if using regularly credited vacation.
- 7) Emergency Paid Leave, which has been credited to the employee and has not been used when the emergency has terminated will be reinstated to the pool. Vacation, sick leave and other benefits, which have accrued to the employee, will remain in the employee's account.

16. SICK LEAVE/FAMILY SICK LEAVE/PERSONAL LEAVE

A. Sick Leave

- 1) Employees shall accrue ninety-six (96) hours of sick leave per year of regular City employment. Sick leave shall accrue in equal amounts each pay period. Employees shall not accrue sick leave while they are on unpaid status.
- 2) Use of sick leave will be under the same terms and conditions as are now in place. Vacation, ~~Unclassified CTO~~, and Management Leave may be used to supplement sick leave with Department Head approval, as permitted and set forth in CMD 30.

B. Family Sick Leave

- 1) Not more than forty-eight (48) hours of sick leave within one calendar year shall be granted to any employee for the care or attendance upon members of his/her immediate family, unless the use of additional leave is approved by the City Manager or designee. "Immediate family" is defined as spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, parent by marriage, step-parent, step-child, grandparent by marriage, son-in-law, daughter-in-law, sibling by marriage, foster parent, domestic partner, anyone residing with employee, or anyone dependent on the employee for care.

### C. Personal Leave

- 1) Each calendar year, an employee is entitled to use thirty-two (32) hours of accrued sick leave as Personal Leave, provided he/she has sufficient sick leave balance available.
- 2) Personal leave is intended to provide the employee with paid time off to attend to legitimate personal business that may arise from time to time during the year. Personal Leave may be used to supplement sick leave as required.
- 3) The employee has an obligation to provide as much notice as possible so as to allow for proper scheduling by the department.
- 4) Providing that the minimal requirements of proper notification have been met, the use of Personal Leave should not be denied.
- 5) The adoption of this program does not modify the existing ability of the employee to exchange up to 96 hours of accrued sick leave for up to 48 hours of vacation, based upon two (2) hours of sick leave for one (1) hour of vacation as provided and defined in the Personnel and Salary Resolution.

### 17. BEREAVEMENT LEAVE

- A. The City will provide employees with a paid bereavement leave benefit to attend to the customary obligations arising from the death of a member of an employee's immediate family, as defined in this Section. Employees are eligible to receive up to forty (40) hours of bereavement leave in the event of the death of a parent, child, or sibling of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law), spouse or domestic partner; up to three (3) work days (regardless of shift assigned) of bereavement leave in the event of the death of a grandparent, grandchild, aunt or uncle of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law); and up to one (1) work day (regardless of shift assigned) of bereavement leave in the event of the death of a great-grandparent, great-grandchild, great-aunt, great uncle, niece, nephew, or first cousin of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law).
- B. The bereavement leave benefit is based on each death occurrence and is not charged to the Salary Adjustment Form.
- C. Up to five (5) work days of additional bereavement leave may be charged to an employee's sick leave balance with City Manager approval.
- D. At the request of the City, the employee will provide verification.

### 18. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

- A. The City established a Voluntary Employee Beneficiary Association (VEBA) trust under Internal Revenue Code Section 501(c)(9) for the purpose of providing a defined contribution post-retirement medical benefit for employees. ~~The City previously stopped making contributions to employee~~

~~VEBA accounts effective December 21, 2003 through December 26, 2009 and employee VEBA accounts remained open for other potential contributions. Effective December 27, 2009, the~~ The City ~~began contributing~~ contributes \$50 per month per represented employee. Per the City's contract with VEBA, VEBA's consulting fee will be deducted from plan participant's accounts. These contributions shall be ~~made "below the line," on the Salary Adjustment Form (i.e. excluded from calculation of salary adjustments based on total compensation adjustments) but shall be~~ included on Bay Area ERS total compensation surveys. Specific information regarding the Plan is referenced in the Plan Document.

- B. VEBA is a tax-exempt trust account formed under Internal Revenue Code Section 501(c)(9) designed to accumulate assets to fund the future payment of qualified unreimbursed medical expenses (including specified insurance premiums). At retirement, participants may withdraw the accumulated plan benefits to pay for unreimbursed health insurance premiums, qualified long-term care insurance premiums, and other qualified unreimbursed medical expenses and will not be taxed under current state and federal law. Withdrawals cannot be made for nonmedical purposes.

#### 19. RETIREE MEDICAL REIMBURSEMENT BENEFIT

- A. The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the ~~first~~second full month after retirement from City service and ending with the last full month before the retiree's sixty-fifth (65th) birthday. Starting in the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental health insurance premium. For premiums paid in calendar year 2017 that will be reimbursed in 2018, the City will reimburse an amount up to \$343 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$205 per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium. The amount of the City reimbursement will be adjusted thereafter once each year by the percentage change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.
- B. Beginning in 2004, the City will pre-fund this benefit with an amount to be determined by an actuary.
- C. Each retiree will be required to submit proof of health insurance coverage to the City each year. The City will pay the reimbursement in a lump sum payment each year.

#### 20. EMPLOYEE ASSISTANCE PROGRAM

The City will provide a confidential Employee Assistance Program for represented employees ~~to be funded outside of the Salary Adjustment Form.~~

#### 21. CHANGES TO JOB DESCRIPTIONS

Should the City propose a change of the job description, or should the City

propose a new job classification and job description, of any job classification represented herein, the City Manager or designee will provide a copy of that proposed job description to Unit 9 for its review and comment back at least ten (10) work days before it is scheduled to be presented to the City Council for adoption. If the proposed compensation control point of a new classification has been established, the City Manager will also provide that proposed compensation control point to Unit 9 for its comment. For a revision of an existing job description, Unit 9 may include a request that the City Manager review the existing compensation control point for the job classification if there has been a significant change in the duties, responsibilities, or safety hazards of the job classification. The City Manager will give consideration to Unit 9 comments, but the final decision on the job description and compensation control point that is submitted to the City Council for adoption will be made by the City Manager.

## 22. LIMITED/ALTERNATIVE DUTY

### A. Alternate Work Schedule (Nine-Eighty Schedule)

A Miscellaneous Unclassified Management employee shall be eligible to work a 9/80 alternate work schedule according to the conditions, criteria, and requirements set forth in City Manager's Directive 71. Requests to work a 9/80 schedule shall be made through or by the Department Head to the City Manager. The City Manager must approve the schedule and the City Manager or Department Head (for employees other than Department Heads) may terminate the schedule at any time.

### B. Job Related Illness or Injury

Employees with a job related illness or injury, covered by Workers' Compensation, which prohibits performance of their regular duties, will be reassigned to limited or alternative duty under the following conditions:

- 1) Supervisors shall be advised of any industrial injury/illness as soon as practical.
- 2) Upon receipt of a Doctor's report providing work limitations, the City may identify a regular or modified assignment for which the employee has the required experience and training. Such assignment may be on a 40 hour per week or less basis, if mutually agreed between the City and the employee.
- 3) If the City is unable to identify a limited or alternative duty assignment for which the employee has the required experience and training, the employee will be reassigned to a Monday through Friday work schedule to accommodate required medical or other workers' compensation commitments.

### C. Non Job Related Illness, Injury or Condition

Employees who have a non-job related illness, injury or condition which prohibits performance of the employee's regular duties, may request assignment to limited or alternative duty. Nothing in these provisions is intended to imply that an employee has a right to a limited/alternative duty

assignment, unless expressly provided by law. Such request will be accommodated, unless no appropriate limited or alternative duty assignment is available, under the following conditions:

- 1) Identification by the City of a regular or modified assignment for which the employee has the essential experience and training. Such assignment may be on a 40 hour per week or less basis, if mutually agreed between the City and the employee.
- 2) Submission of a written release from employee's doctor, subject to review by the City doctor, which allows the employee to perform all of the duties of the contemplated assignment.
- 3) Employee may account for regular work schedule through a combination of limited or alternative duty hours and sick leave or other paid leave sufficient to maintain eligibility for regular accrual of benefits.

#### D. Work Week

Under both limited or alternative duty assignments employees will be required to work their regularly scheduled number of hours (normally forty (40) hours) per week, unless such assignment is modified by mutual agreement between the City and the employee. It is recognized that performance of limited or alternative duty assignments will not be permitted to interfere with any medically related treatment designed to assist the employee to return to full, unrestricted duty in the earliest possible time frame.

#### E. Temporary Assignment

All such assignments, and their duration, are temporary assignments and are subject to periodic sixty (60) day review of the employee's continued need for limited or alternative duty, the employee's continued ability to perform the limited or alternative duty and the department's ability to continue the employee in the assignment. All temporary assignments shall be at the employee's regular rate of pay.

#### F. Law to Prevail

In the event the Americans With Disabilities Act requires modification of the provisions of this section, it is agreed that the law will prevail.

### 23. REDUCED WORK WEEK VOLUNTARY TIME OFF (VTO) PROGRAM

#### A. Employee Participation

Employee participation in this plan is with the City's understanding and agreement that employee participation is temporary and participation is not to be construed as a representation of employee commitment to a permanent program or an admission of any kind that the employee would not be harmed by such a plan becoming mandatory.

#### B. Reduced Work Week/Reduced Pay

Employees may request a reduced work week schedule (32 hours per week

instead of 40 hours per week, for example) at the same hourly rate of pay, subject to the following conditions:

- 1) With the approval of the Department Head and the City Manager, a binding work schedule as requested by the employee will be developed that may be modified only with the approval of both the City and the employee.
- 2) More than a 20% reduction of the work week in a pay period will result in proportionate reduction of accrual of sick leave and vacation.

24. INDUSTRIAL INJURY/CONTINUATION OF INSURANCE BENEFITS WHILE ON WORKERS' COMPENSATION

Workers authorized by the City's Workers' Compensation Administrator to undergo therapy or treatment due to an industrial injury, who are required to leave work, shall receive leave with pay, including reasonable travel time, providing the treatment falls within the normal working hours, is pre-scheduled and cannot be scheduled during non-work hours.

The City will continue payment toward health, dental and life insurance coverage for the employee and dependents up to the maximum amount allocated under total compensation for an employee who is disabled from work because of a work related injury if the employee is no longer in a paid status sufficient to continue the coverage afforded under the terms of the program, subject to the following conditions:

- A. The employee may not increase the existing coverage after the date of injury except to add children born within nine months of the injury.
- B. Continuation toward payment of employee and dependent health/dental/life insurance coverage up to the maximum allocated under Total Compensation is limited to one (1) year from the date of injury. Continuation toward payment of employee health/dental/life insurance coverage up to the maximum allocated under Total Compensation may be extended if the employee continues to be on temporary disability status for a Workers' Compensation injury.
- C. The employee has supplemented his/her workers' compensation benefit with sick leave, vacation, ~~unclassified CTO~~, management leave or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City.

25. MANAGEMENT LEAVE PROGRAM

The Management Leave Program is as follows:

- A. Effective January 1 of each year, represented employees will be credited with 120 hours of Management Leave per calendar year.
- B. New hires or employees promoted into Unit 9 between January 1 and June 30 will be credited with 120 hours of Management Leave. New hires or employees promoted into Unit 9 between July 1 and December 31 will be credited with 60 hours of Management Leave.



- C. Use of Management Leave is subject to approval by the applicable Department Head, or the City Manager or his/her designee in the case of a Department Head request, taking into account the relevant circumstances including work/Department needs, staffing limitations, conflicts, timing of request, etc.
- D. Management Leave may not be converted to cash or other paid time off.
- E. Unused Management Leave may be carried over from one calendar year to the next; however, an employee may never have more than a balance of 180 hours of ~~"banked"~~ management leave, subject to Section 25.E.1-4 below. (Thus, and for example, an employee that already has 180 hours of management leave on January 1 would not receive any further management leave. An employee that already has 100 hours of management leave on January 1 would "only" receive an additional 80 hours. An employee with 60 or fewer hours of banked management leave on January 1 would receive 120 hours.)
- 1) For calendar year 2021, an employee may have up to a balance of 240 hours of management leave.
  - 2) For calendar year 2022, an employee may have up to a balance of 240 hours of management leave.
  - 3) For calendar year 2023, an employee may have up to a balance of 240 hours of management leave.
  - 4) For calendar year 2024, an employee may have up to a balance of 240 hours of management leave.
  - 5) Effective the first pay period of calendar year 2025, the terms of Section 25.E above shall apply, and an employee may have no more than a balance of 180 hours of management leave.

26. FLEXIBLE SPENDING PLAN (INTERNAL REVENUE CODE SECTION 125)

The City will make available a Flexible Spending Plan under the Internal Revenue Code Section 125 for employees. Employees may contribute pretax (federal, state, FICA, Medicare) dollars for dependent care and qualified unreimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Code. Detailed information will be available in the Summary Plan Document.

The City will pay the administrative expenses for the plan. This Plan is voluntary and participating employees will pay the monthly participation cost. The monthly participation cost will be considered pre-tax, as defined above, under Internal Revenue Code Section 106. Participating employees will be provided with an Employee Plan Summary and regular statements regarding the status of their flexible spending accounts.

27. DOMESTIC PARTNERS

The City shall make all benefit programs available to employees, dependents and domestic partners, subject to the requirements of each benefit provider.

## 28. PAY PERIODS

Allowances/payments or accrual rates that are an agreed upon amount per month or year but are paid for administrative purposes in incremental amounts each pay period, shall be the same total amount per year in years in which there are 27 pay periods instead of 26 pay periods. This clarification is not intended to and would not modify anyone's salary/rate of pay.

## ~~29.~~ DISCUSSION SUBJECTS

~~Commencing no later than sixty (60) days following Council approval of this MOU, and with the goal of completing the process by the end of 2018, the City agrees to meet with Miscellaneous Unclassified Management and discuss the items listed below and answer factual and legal questions regarding these Miscellaneous Unclassified Management interests so that the parties would be prepared to discuss these subjects should Miscellaneous Unclassified Management choose to make proposals on these subjects in the next round of MOU negotiations.~~

~~A. The legality and tax and pension implications of City payment of \_\_\_\_\_  
\_\_\_\_\_employee contributions to Social Security~~

~~B. City matching and/or contributions to deferred compensation~~

~~C. The concept of a potential housing allowance or other housing \_\_\_\_\_  
\_\_\_\_\_assistance~~

~~D. Compaction and related pay differential issues~~

~~E. Cash out of management leave accruals~~

## ~~30.~~ 29. DECLARATION

The parties hereto have reached an understanding concerning the proposed salaries and fringe benefits described in the above paragraphs. All other matters dealing with wages, hours, fringe benefits including health and dental insurance contributions, and working conditions included in ordinances, resolutions, rules or regulations, or previous memorandums of understanding, shall remain unchanged for the term of this memorandum in the absence of agreement to the contrary.

## ~~31.~~ 30. NEXT MEMORANDUM OF UNDERSTANDING

Unit 9 will submit its proposals for a Memorandum of Understanding for the term commencing at the expiration of this Memorandum of Understanding no later than ~~October 25, 2019~~ January 31, 2024.

FOR THE CITY OF SANTA CLARA

FOR THE CITY OF SANTA CLARA  
MISCELLANEOUS UNCLASSIFIED  
EMPLOYEES

~~Elizabeth C. Brown~~ Aracely Azevedo  
Director of Human Resources

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

Chris Jackson

President

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

~~Edward L. Kreisberg~~ Marco Mercado  
~~Kohtz~~ Craig Johnson  
Assistant Director of Human Resources

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

~~Ken~~

Vice President

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

~~Tran~~ Ashley Lancaster  
Carolyn McDowell  
Human Resources Division Manager

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

~~Thai~~

Treasurer

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

Lee Hagan  
Secretary  
Date: \_\_\_\_\_

APPROVED:

Deanna J. Santana

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

City Manager

APPROVED BY THE CITY COUNCIL ON: \_\_\_\_\_

ATTEST: \_\_\_\_\_

~~JENNIFER YAMAGUMA~~ City Clerk

Date

~~Acting City Clerk~~

## APPENDIX A: MOBILE COMMUNICATION DEVICE PROGRAM

## Cell Phone Stipend Program for Unit 9 – Miscellaneous Unclassified Management Employees

April 11, 2014

Page 2

situations. If a Unit 9 employee participating in the stipend program experiences a lost, stolen or damaged cell phone, it is expected that the employee will actively seek to have the device replaced or repaired in a reasonable period of time in order to remain eligible for the monthly stipend (refer to CMD 116 for additional requirements if a phone is lost or stolen). The stipend program is focused only to the Unit 9 employee's personal cell phone or smartphone, and not to other cell phones that might be included under a shared or family plan that the employee may have with a service provider.

If the Unit 9 employee changes their cell phone number for any reason, the Human Resources Department must be notified in the next work week of the new cell phone number. If an employee receiving a cell phone stipend chooses to no longer use a personal cell phone for any reason, the Human Resources Department should be notified immediately, and the stipend will be discontinued in the next applicable pay period.

The stipend is paid at a rate of \$40 per pay period (with no payment on two of twenty-six pay periods annually). A Unit 9 employee starting employment or terminating employment in the middle of any month will receive one-half of the monthly stipend (\$40). The stipend will commence in the first applicable pay period after the Unit 9 employee's request has been received, reviewed and approved by the Human Resources Department. The essential review criteria are that the employee is a member of Unit 9 Miscellaneous Management Employees' Association, and that the employee has submitted a valid cell phone number as requested. The stipend is considered income to the employee, and is subject to payroll withholding.

### **CMD 116: Use of City Resources/Non-Confidential Nature of Information on City Equipment:**

This CMD addresses key issues related to the ownership and usage of cell phone devices, and should always be read and understood in conjunction with this stipend policy. While it is generally the case that call records for a personally owned phone are not subject to public records requests, the law in this area can and does change. CMD 116 advises that employees adhere to City policies related to public records and email retention. The City Attorney's Office should be consulted for advice and/or resolution of public records concerns.

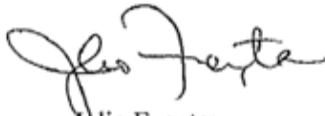
**City-Issued Cell Phone Program:** A Unit 9 employee can choose to have a City-owned cell phone issued to them in lieu of a monthly stipend. Under this program, the Information Technology Department has responsibility for the selection of cell phone devices and cell phone service providers. The City then maintains a record of an employee's cell phone number and usage information. Activity on City-owned cell phones is accessible as a public record. A Unit 9 employee cannot have a City-issued phone and a stipend. One or the other must be selected. If you currently have a City-issued cell phone and wish to participate in the stipend program, you will need to acquire a personal cell phone and service plan and then turn in your City-issued cell phone. Part of the rationale for this program is to decrease the number of City supplied/City supported cell phones through the use of a stipend program.

information technology systems. If you do not desire to connect to the City's email system, then any cell phone or service provider could be selected.

To be eligible for the monthly stipend, the Unit 9 employee must provide the Human Resources Department with an active cell phone number. It is expected that the employee will respond to work-related calls and most critical, actively monitor their phone during City emergency

**Opt Out:** A Unit 9 Miscellaneous Management employee can choose not to participate in either the cell phone stipend program or the City-issued cell phone program. If certain work assignments require the use of a cell phone that can be accomplished through the temporary provision of a City-issued cell phone through the duration of the assignment.

**Cell Phone/Smartphone Stipend Program Enrollment:** A current Unit 9 employee can initially enroll in this stipend program by emailing the Human Resources Department and requesting participation in the stipend program. You must include your 10-digit cell phone number in the email; therefore you must have a personal cell phone device and a service plan activated prior to receiving a stipend. At that time the Human Resources Department will send you a Cell Phone Stipend packet and form, which you will need to fill out and return to them. Thereafter, the Human Resources Department will present the cell phone stipend enrollment opportunity to new Unit 9 employees through employee orientation.

A handwritten signature in black ink, appearing to read 'Julio Fuentes', with a stylized, flowing script.

Julio Fuentes  
City Manager



## SmartPhone Android Phone Setup

### Setup Process

The purpose of this Quick Reference is to assist you in setting up your Android phone to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. If you have contact or calendar items on your Android phone, **you may lose them if you choose to sync with Outlook's contacts and/or Calendar.** Back up your Android phone so you can restore them if necessary.
3. Add your City email account to your Android phone.

### Add Email Account

1. Go to **Settings**, and choose **Accounts**.
2. Choose **Add Account**, then **Corporate Sync**.
3. Complete the fields as follows (They may not appear in this exact order.)

**Domain\Username:** *City or Electric for SVP Employees\username.*

**Password:** Your current network password

Check **Use secure connection** box.

**Email Address:**

Your city email address.

**Server:** *mail.santaclaraca.gov.*

### Change Passcode Options

Once you set up your City email account, you will be required to enter a 4 digit passcode. You will be required to enter this passcode to unlock your screen if your phone is unused for 5 minutes. This time can be increased up to 15 minutes.

To change the passcode,

1. Go to **Settings** then choose **Location & Security**.
3. Choose **Change screen lock**, then **PIN**.
4. Enter a new PIN.

Warning: You cannot turn off the Erase Data feature. If you have 8 failed passcode attempts, the data will be erased from your phone.

### Increase Screen Lock Timeout

To increase the screen lock timeout,

1. Go to **Settings** then choose **Location & Security**.
2. Choose **Security Lock Timer**.
3. Increase the time.





## SmartPhone iPhone Setup

### Setup Process

The purpose of this Quick Reference is to assist you in setting up your iPhone to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. If you have contact or calendar items on your iPhone, you may lose them if you choose to sync with Outlook's contacts and/or Calendar. Back up your iPhone using iTunes so you can restore them if necessary.
3. Add your City email account to your iPhone.

### Add Email Account

1. Choose **Settings** from the iPhone menu.
2. Choose **Mail, Contacts, Calendar**.
3. Choose **Add Account**, then **Microsoft Exchange**.



4. Complete the fields as follows:

**Email:** your email address.

**Domain:** *City or Electric for SVP Employees*

**Username:** Your network login id.

**Password:** Your current network password

**Description:** a name that identifies this mail account. You can also set up a personal mail account such as gmail.

5. Click **Next**.

*The screen to the right appears with **Server** field added. It should be: **mail.santaclaraca.gov**.*

6. Choose to turn on **Mail, Contacts, and/or Calendars**.

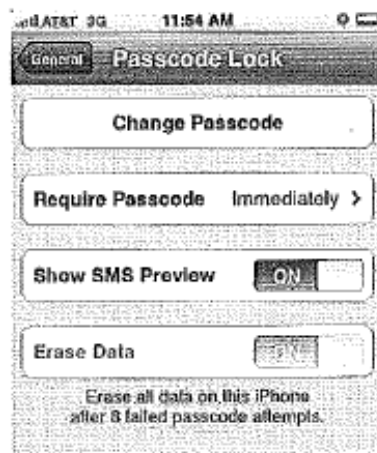


### Change Passcode Options

1. Choose **Settings** from the iPhone menu.
2. Choose **General**, then **Passcode Lock**.
3. From here you can change your passcode, change how quickly the passcode is required, and whether or not you want SMS Preview (text messaging preview) to be on.



**Warning:** You cannot turn off the Erase Data feature. If you have 8 failed passcode attempts, the data will be erased from your phone.



### Add Email Account (continued)

7. Choose **Done**.
8. After you choose **ON** for **Contacts** or **Calendars**, you will be prompted to delete or add your local (iPhone) contacts to Outlook.
9. You will be required to enter a 4 digit Passcode. You will be prompted to enter your passcode if you leave your iPhone idle for 5 minutes.







## SmartPhone Windows Mobile Setup

### Setup Process

The purpose of this Quick Reference is to assist you in setting up your Windows Mobile device to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. Set up your phone to sync with the City's Exchange Server using ActiveSync.

### Setup Exchange Server

1. From the **Programs** menu, choose **ActiveSync**.
2. If it is the first time you have used your Windows Mobile phone, you will be shown the following prompt:

*To sync with a desktop computer, install ActiveSync on your computer and then connect this device.*

*If your company supports syncing directly with its Exchange Server you can **set up your device to sync with it**.*

Click the **set up your device to sync with it** link.

*This will start the process for connecting your device to the City's exchange server.*

**Note: The City supports syncing directly with its Exchange Server. The City does NOT support syncing with a desktop computer.**

If you have already synced your device to another source, choose **Menu, Add Server Source**.

3. In the Server address field, type **imail.santaclaraca.gov**.
4. Check the box for **This server requires an encrypted (SSL) connection**.
5. Click **Next**.



### Setup Exchange Server (continued)

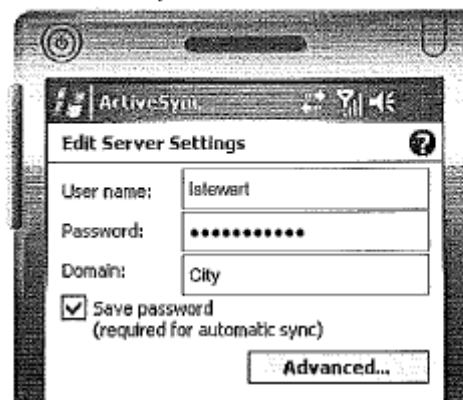
6. Complete the fields as follows:

**Username:** Your network login id.

**Password:** Your network password.

**Domain:** City or Electric for SVP employees.

7. Click the **Save password** check box.



8. Choose **Next**.
9. Check the boxes next to the data you would like to synchronize with your City's Outlook account.
10. Click **Finish**.



ADMINISTRATIVE CODE

CMD NUMBER 116

CITY MANAGER'S DIRECTIVE-PROCEDURE

DATE: March 9, 2009

CANCELS: November 22, 2008



**SUBJECT :** USE OF CITY RESOURCES, AND NON-CONFIDENTIAL NATURE OF INFORMATION ON CITY EQUIPMENT

**PURPOSE:**

1. The primary purpose of this CMD is to inform all employees that City equipment and systems, and City work locations, as defined herein, are the sole property of the City, and with a few minor noted exceptions, are to be used for City business only. This policy applies to City-owned and issued devices and the use of City network or systems using City -owned and private devices, including but not limited to Smartphones.
2. Another purpose of this CMD is to inform all City employees that private or personal documents, written messages, electronic messages (including text messages, emails, etc.), materials, information, or files placed in or on City equipment are not private or confidential and may be reviewed to ascertain whether such communications constitute City business. As such, employees should not have any expectation of privacy or confidentiality in any of these circumstances. This CMD does not apply to the confidentiality of personnel records maintained by the Human Resources Department or the Finance Department, or the confidentiality of business and related items within the department where the employee works.

**POLICY AS TO CITY-OWNED OR ISSUED DEVICES:**

City equipment and systems, and City work locations, are the sole property of the City and, with minor exceptions (as noted below in Item No. 4 under Supervisor and Department Head Responsibility and Action), are to be used for City business only.

City employees are hereby informed that private or personal documents, written messages, electronic messages (including text messages, emails, etc.), materials, information or files, placed in or on City equipment are not private or confidential. Employees should not have any expectation of privacy or confidentiality in any of these circumstances.

In order to conduct City business, including responding to the needs of citizens and staff, City management and City employees, when directed, may need to access City work locations and equipment of any employee who is absent or unavailable. Access to the work locations and equipment may also be necessary

for purposes of monitoring employee work performance and conduct. Under existing provisions of the law, the City reserves the right to monitor the use of City equipment for any reason, including the right to review, audit and disclose all matters sent over or stored in City locations or equipment systems to ensure that uses are in compliance with all laws including copyright laws and City policies, including the City Code of Ethics & Values.

**POLICY AS TO PRIVATE  
DEVICES:**

Only City approved and authorized Smartphone devices are permitted to access any City network or systems. The approved list of devices is maintained by Information Technology (IT) and listed on the Smartphone Access Authorization Form (form available from IT HelpDesk).

A user who connects to City networks via an authorized Smartphone device or service must ensure that all components of his/her wireless connection remain as secure as his/her network access. All Smartphones and connections to any City network or systems shall be used to conduct City business and utilized appropriately, responsibly and ethically. All authorized Smartphone device and service users shall, without exception, use secure remote access procedures. Enforcement of this provision will be by device passwords in accordance with the City's password policy.

Prior to initial use or connection to City networks or systems, authorized Smartphone devices, software and related services must be registered with IT. City employees, contractors, or "as needed" staff in possession of an authorized Smartphone device shall not make modifications of any kind to the device, its software, and/or service that may potentially compromise the integrity of City networks or systems, without the express written approval of IT. This includes, but is not limited to, split tunneling, dual homing, non-standard hardware or security configurations, etc.

Users are advised that applicable law related to public records may require the production of certain records on private devices. Users are advised to adhere to City CMD's related to public records and email retention to avoid the potential disclosure of information from their private devices, particularly those users that receive a stipend for private devices.

With respect to Public Safety Officers, it is intended that this CMD be read together with the Public Safety Officers Procedural Bill of Rights.

**DEFINITIONS:**

"City equipment and systems, and City work locations" is defined herein to include, but not be limited to, the following items whether they be owned, bought, used, paid for, leased, borrowed, or given to areas and the City: Work spaces, desks, lockers, City vehicles and equipment, computer and video equipment, printers, copiers, supplies, telephones, mobile data terminals, fax machines, radios, email, text messages, other mail and electronic messaging services, voice mail, and Internet services (as assigned, including chats, newsgroups, and Internet email), or any files

"City business" includes, but is not limited to, conducting the business of the City of Santa Clara and monitoring employee work performance and conduct.

"Off-Duty time" includes employee time before and after work shift, lunch (or meal period breaks), and approved vacation/other leave time.

"Smartphone" means a mobile handheld device with advanced features like e-mail and Internet capabilities.

**RESPONSIBILITY :**

Department Heads &  
Supervisors

**ACTION**

1. Authorize issuance and discourage misuse of City equipment, work locations, and Smartphone devices. Approve replacement of lost, stolen or damaged City-owned devices. Replacement costs will be charged to the user's department, which is then responsible for handling reimbursement of City funds with said user. Replacement and Maintenance costs for any personal-owned devices are the sole responsibility of the employee.
2. Understand that the City's security software for the Internet may record for management use the Internet address or site visited by the employee and keep record of any network activity in which the employee transmits or receives any kind of file; the deletion of a message or file from some electronic systems may not fully eliminate the message from the system.
3. Understand that "any writing containing information related to the conduct of the public's business, prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics" (Government Code Section 6252) and under some circumstances, communications sent by email, may be subject to disclosure under the Public Records Act or litigation
4. Notwithstanding statements in the CMD to the contrary, occasional use of City equipment by an employee during off-duty time, i.e., typing of a personal letter during the lunch period, or use of a telephone for urgent reasons (see CMD 78), may be granted from time to time at the discretion of and upon the

approval of the Department Head.

5. In addition, uses by City employees, during off-duty time, of specific City equipment may also be allowed where certain fees for use of this equipment have been established (i.e., minimal copying, or use of a fax machine, etc.).
6. Managers and supervisors who are authorized to serve as officers of a professional society and/or association in accordance with CMD 49, and who have authorized use of City resources in accordance with the provisions of that CMD, should not have expectations of privacy or confidentiality of information or files placed on City equipment.

All Employees/Users

7. Become informed and comply with the policies of this CMD.
8. Do not use City equipment, work locations, or authorized access to City networks or systems improperly. Improper use includes any personal use for convenience or profit, playing of games, or use to convey derogatory, defamatory, obscene, or otherwise inappropriate actions or messages or any information unrelated to City business. Personal mail, packages, or catalogs should not be received or sent using a municipal address.
9. Employees shall take reasonable measures to safeguard City property and systems to prevent loss or damage. In the event any City-owned or issued device or privately-owned Smartphone is lost or stolen, or the occurrence of any incident or suspected incident of unauthorized access and/or disclosure of City resources, the user shall *immediately* report such to his/her supervisor and the IT Help Desk. Service will be immediately terminated. Users should immediately report to his/her supervisor and the IT Help Desk if the device is recovered. IT will work with the user to restore service as quickly as possible.
10. The provisions of this CMD also apply to employee use of non-City issued equipment and systems brought into work locations and used for City business. Employees utilizing non City-issued equipment assume responsibility for the repair or replacement of such equipment, including Smartphones.
11. Nothing in this CMD is intended to or shall be construed as affecting the duty and obligation of City employees to maintain the confidentiality of City documents and information which the employee has access to through his or her employment with the City. It is also not intended to nor shall it be construed as granting access to non-City employees to otherwise confidential City documents and information.



12. Employees should understand that the City's security software for the Internet may record for management use the Internet address or site visited by the employee and keep a record of any network activity in which the employee transmits or receives any kind of files. Any records transmitted or received are recorded and stored in an archive file; deletion of a message or file from some electronic systems may not fully eliminate the message from the system.
13. Understand that "any writing containing information related to the conduct of the public's business, prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics" (Government Code Section 6252) and under some circumstances, communications sent by email, may be subject to disclosure under the Public Records Act or litigation.
14. Employees should understand that the City's network allows Management to access employee passwords. Upon request, employees shall provide their systems passwords to their Department Head to allow access to all files and systems in the employee's absence or as required. Lockers, desks, files or other secured City equipment, systems, or work locations, may also be accessed by the City.
15. Employees shall not knowingly use City equipment or systems, or City work locations, to download or distribute pirated software or data, or to violate Penal Code Section 502, applicable Federal laws, City policies, rules and regulations, including the City's Code of Ethics & Values. Employees shall not use the City's equipment, systems or work locations to disrupt or destroy the City's program systems, nor shall they attempt to disable any security system.
16. Violation of this policy, through direct action on the part of the employee, or through carelessness or negligence, may result in formal disciplinary action, up to and including termination.
17. Unit 9 employees should understand that Smartphone devices they obtain through the assistance of an allowance program are considered personal devices and are under the ownership of the employee. All service, maintenance, and replacement costs are the responsibility of the employee.
18. IT reserves the right to terminate without notice any authorized Smartphone device, service and access to City network or system that may result in a potential security risk to City network systems, data, users, residents and/or other City assets and resources.
19. IT reserves the right to perform a remote wipe of a user's Smartphone,

IT Department:

**CMD NUMBER 116**

erasing all data and contents, if there is a reasonable belief that the device has been compromised and/or poses a potential security risk to City network systems, data, users, residents and/or other City assets and resources.

20. IT will provide minimal support for privately-owned approved and authorized Smartphone devices. This support is limited to basic documentation to enable the user to connect the device to City networks and systems, and basic troubleshooting to determine if any connection problems are on the City side or outside of the City's control. All additional technical and function questions/issues shall be the responsibility of the user.

Questions regarding this CMD may be addressed to the City's Director of Human Resources.

*Cross Reference:*

- CMD 3 - Overnight Use of City Vehicles
- CMD 31 - Transaction of Personal Business During Working Hours
- CMD 49 - Membership in Professional Societies and Associations
- CMD 78 - Personal Use of City Telephones
- City Code of Ethics & Values (Attachment to CMD 67, Gifts & Favors to Individuals)

## **SIDE LETTER AGREEMENT**

BETWEEN

THE CITY OF SANTA CLARA

AND

THE MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES  
(UNIT 9)

### **USE OF COMPENSATORY TIME OFF (CTO)**

The City and Unit 9 acknowledge the following that employees represented by Unit 9 have historically used Compensatory Time Off, or CTO, to take partial leave during their workday, even though CTO is leave earned in lieu of pay for overtime worked and that employees represented by Unit 9 are exempt employees. While this has been a historical practice, it appears that CTO was used on a limited basis by employees represented by Unit 9.

The City and Unit 9 also acknowledge that employees who work an alternative work schedule were required to code every hour over eight (8) hours using either CTO or their own accrued leave for any holiday that fell on a regularly scheduled work day that consisted of more than eight (8) hours. In addition, employees were allowed, when possible, to take an alternative day off to make up for the holiday.

In resolution of any disputes surrounding the use of CTO by employees represented by Unit 9, the parties hereby agree as follows:

1. Effective the first full pay period after approval by City Council:

- a. Employees represented by Unit 9 will not be eligible to use or code Compensatory Time Off (or "CTO").
  - i. The City will not make any retroactive pay adjustments for employees to use or code CTO.
  - ii. For those employees whose offer letters specifically provide for the use of CTO, the City will coordinate directly with the impacted employees as needed.
- b. Employees represented by Unit 9 will be eligible for the "4-Hour Rule," subject to supervisory approval.
  - i. This means that employees, subject to supervisory approval, are not generally required to report any management, vacation and/or sick leave of four (4) or less hours.
  - ii. This is intended to be used on a very limited basis and is not intended to be used regularly. Accordingly, employees may still be required to report



management, vacation and/or sick leave for absences of four (4) or less hours at the discretion of the Department.

- c. Employees represented by Unit 9 who work an alternative work schedule will ~~not~~ be required to use their own accrued leave for every hour over eight (8) hours for any holiday that fell on a regularly scheduled workday that consisted of more than eight (8) hours. ~~Employees will code (UNIT 9 SPECIFIC HOLIDAY CODE TO BE SET UP BY PAYROLL) for all regularly scheduled hours for a holiday that falls on a regularly scheduled workday.~~
  - i. If a holiday falls on an employee's regular day off, the employee ~~will not~~ may be eligible ~~for any additional pay or leave, or~~ to take an alternative day off to make up for the holiday to the extent it is possible and subject to supervisor approval. Such alternative day off must be taken during the same pay period as the holiday. ~~If an employee wants to take an alternative day off to make up for the holiday, the employee is required to use their accrued management or vacation leave, subject to supervisory approval.~~
- 2. Upon the effective date of this Side Letter Agreement, the terms of this Side Letter Agreement shall supersede any term of the Unit 9 Memorandum of Understanding ("MOU") related to the use of CTO.
  - a. The terms of this Side Letter Agreement will be incorporated into the Unit 9 MOU, and the relevant sections of the MOU shall be updated accordingly, including but not limited to:
    - i. Section 19(B)(6) under the "Emergency Paid Leave Program" shall be amended as follows:

"Employees, appointed Council officers, and the elected City Clerk may contribute earned vacation, CTO or cash to the Emergency Paid Leave Pools of other City bargaining groups."
    - ii. Section 16(A)(2) under "Sick Leave/Family Leave/Personal Leave" shall be amended as follows:

"Use of sick leave will be under the same terms and conditions as are now in place. Vacation, Unclassified CTO, and Management Leave may be used to supplement sick leave with Department Head approval, as permitted and set forth in CMD 30."
    - iii. Section 24(C) under "Industrial Injury/Continuation of Insurance Benefits While On Workers' Compensation" shall be amended as follows:

"The employee has supplemented his/her workers' compensation benefit with sick leave, vacation, unclassified CTO, management leave or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City."

**Unit 9 Side Letter Agreement – Use of Compensatory Time Off (CTO)**

**DATE**, 2020

Page 3 of 3

3. This Side Letter Agreement shall not establish precedent for future agreements and shall not be construed or implied to obligate the City or Unit 9 to enter into any similar agreements in the future.
4. This Side Letter Agreement shall become effective when signed by all parties below and upon approval by City Council.

**FOR THE CITY:**

***draft***  
\_\_\_\_\_  
Aracely Rodriguez                      Date  
Director of Human Resources

**FOR UNIT 9:**

***draft***  
\_\_\_\_\_  
Christopher Jackson                      Date  
President, Unit 9

# **MEMORANDUM OF UNDERSTANDING**

between

**CITY OF SANTA CLARA**

and

**MISCELLANEOUS UNCLASSIFIED  
MANAGEMENT EMPLOYEES  
UNIT 9**



**DECEMBER 15, 2019 - DECEMBER 31, 2024**

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**CITY OF SANTA CLARA**  
**and**  
**MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES, UNIT #9**  
**DECEMBER 15, 2019 - DECEMBER 31, 2024**

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**MEMORANDUM OF UNDERSTANDING**  
**between**  
**CITY OF SANTA CLARA**  
**and**  
**MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES, UNIT #9**  
**DECEMBER 15, 2019 - DECEMBER 31, 2024**

In accordance with the provisions of Section 18 of the City of Santa Clara Resolution #2979, entitled "Employer-Employee Relations", this Memorandum of Understanding constitutes the results of discussions between designated representatives of the City Management Staff (City) and the Miscellaneous Unclassified Management Employees of the City of Santa Clara (Unit 9) on all matters within the scope of representation. The term of this Agreement shall be from December 15, 2019 through December 31, 2024.

1. WAGE ADJUSTMENTS

- A. Effective December 15, 2019, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall remain status quo.
- B. Effective the first pay period of calendar year 2021, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall remain status quo.
- C. Effective the first pay period of calendar year 2022, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 4.5%.
- D. Effective the first pay period of calendar year 2023, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.
- E. Effective the first pay period of calendar year 2024, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.
- F. During the term of this Agreement, the parties agree that the MOU will reopen on the issue of wages if either of the following occurs:
  - 1) The total annual calendar year General Fund Transient Occupancy Tax (or "TOT") revenues remitted to the City and allocated to any of the calendar years covered by this Agreement Equal or surpass the City's actual total TOT revenues from March 1, 2018 to February 28, 2019. After calendar year 2022, the TOT revenues remitted to the City shall be adjusted to normalize for any potential change in the TOT rate if passed by voters on the ballot for purposes of this section; OR
  - 2) Forecasted General Fund deficits remain above \$20 million ongoing, as reflected in updated or revised Ten-Year General Fund Forecasts released after July 1, 2021.

The City agrees to provide an update on the City's TOT revenues to the Association upon the Association's request. In the event either of the foregoing occur, either party may request to meet to discuss the subject of wages. Any changes will be by mutual agreement. The parties understand and agree that this will not be a meet and confer within the meaning of section 3505 of the MMBA and that neither party will have access to any impasse resolution procedure except as mutually agreed.

- G. The parties agree to meet and confer over wages in the event the City reaches agreement on a new general wage increase to be effective during Calendar Year 2021 or 2022 with any other miscellaneous bargaining unit as part of an agreement on a successor Memorandum of Understanding (MOU). For purposes of this section, "general wage increase" means a wage increase applicable to all members of the bargaining unit (not a subset), but only if that agreement does not also include an agreement for an alternative cost saving measure (including but not limited to unpaid furlough days). Additionally, the parties agree that this section shall not apply to any general wage increases applicable to sworn public safety bargaining units or to miscellaneous bargaining units that are exclusively funded through sources other than the General Fund.

## 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

The City has contracted with CalPERS to provide employees with the 2.7% at age 55 formula with "highest single year" effective December 17, 2006 for "Classic" or "Legacy" employees as defined by CalPERS and the Public Employees' Pension Reform Act of 2013 (PEPRA) and the 2.0% at 62 with "highest three year average" for "New Members" as defined by CalPERS and PEPRA. Classic/Legacy employees shall continue to pay the employee contribution rate and New Members shall contribute 50% of the "normal cost" of their pension formula as required and defined by CalPERS and PEPRA. The employee's CalPERS retirement contribution will continue to be treated as tax deferred.

## 3. APPLICATION OF MOU TO REIMBURSED SERVICES

The terms of this Memorandum of Understanding shall not apply to Unclassified Management Employees when such employees are providing their services to another agency that is reimbursing the City of Santa Clara for salary and fringe benefits of such employees. Such arrangements shall be mutually agreed upon between the employee and the City.

## 4. HOLIDAYS

- A. Employees shall be provided 13 annual paid holidays (computed on the eight hour per day pay rate). Any additional permanent holidays designated by the City Council will be afforded represented employees of Unit 9. Additional permanent holidays under this section shall be defined as a holiday on which City offices are closed.
- B. Additionally, effective December 2020, the City shall provide 32 hours for four additional paid holidays between December 25<sup>th</sup> and January 1<sup>st</sup> of the following calendar year. If there are more than four working days between December 25<sup>th</sup> and January 1<sup>st</sup> of the following calendar year,

the City shall designate which four working days shall be paid holidays under this paragraph. Employees whose jobs require them to work on these days would receive banked paid hours off instead (up to 8 hours per holiday), which hours may and must be used during the applicable MOU year with the approval of the applicable supervisor/manager.

5. JOB SECURITY

Represented members will be compensated at the rate of forty (40) hours salary per year of service to a maximum of six hundred and forty (640) hours should they be terminated from employment for reasons other than cause as defined under Section 6.4 of the Civil Service Rules and Regulations.

6. VACATION ACCRUAL AND USAGE

Represented employees will be entitled to use vacation as it is earned under the following conditions:

- A. Vacation may not be taken during the first 6 months of regular employment.
- B. Vacation will be earned on a bi-weekly basis (1/26 of the yearly accrual) provided that the employee is in a paid status for at least 2/3 of the hours (53.4 hours) of that pay period.
- C. Accrued vacation time will be paid off regardless of term of employment.
- D. Annual and maximum vacation accrual rates, calculated to four decimal points for accuracy, are as follows:

COMPLETED YEARS OF SERVICE	ANNUAL ACCRUAL	MAXIMUM VACATION ACCRUAL LIMIT
1 through 4	80 hours	480 hours
5 through 9	120 hours	480 hours
10 through 15	168 hours	480 hours
16 through 20	176 hours	480 hours
21 years +	192 hours	400 hours

- E. Maximum Vacation Accrual Limit – Employees are limited to the maximum accrual of vacation as defined. The current vacation balance, the annual accrual and the current pay period usage are all shown on the employees' pay check stub and are the responsibility of the employee to track for compliance with this provision.
  - 1) Effective December 27, 2020 (the first pay period of calendar year 2021), the Maximum Vacation Accrual Limit as described in Section 6.D above shall be temporarily suspended for two (2) years until the end of the last pay period of calendar year 2022. Employees may continue to accrue vacation above the Maximum Vacation Accrual



Limit until December 24, 2022 (the end of the last pay period of calendar year 2022).

- 2) Effective December 25, 2022 (the first pay period of calendar year 2023), employees shall not be allowed to accrue vacation above the Maximum Vacation Accrual Limit.
- 3) Temporary Supplemental Vacation Accrual – Effective December 25, 2022 (the first pay period of calendar year 2023), employees holding positions in classifications assigned to Unit 9 shall be eligible for the Temporary Supplemental Vacation Accrual. The Temporary Supplemental Vacation Accrual is a separate vacation balance subject to the following:
  - (a) Effective December 25, 2022, all unused accrued vacation hours above 400 hours as of December 24, 2022 (the last pay period of calendar year 2022) shall be placed in the Temporary Supplemental Vacation Accrual balance.
    - (i) The following is only an example of the Temporary Supplemental Vacation Accrual described above, and any figures are for illustration purposes only and assumes the employee does not use vacation.

Issue	Hours
Vacation Balance as of December 24, 2022 (the last pay period of calendar year 2022)	500
Hours to be placed in Temporary Supplemental Vacation Accrual	100
Vacation Balance as of December 25, 2022 (the first pay period of calendar year 2023)	400
Hours that can be accrued in calendar year 2023	80
Hours that can be accrued above the Maximum Vacation Accrual Limit of 480 hours	0

- (b) The Temporary Supplemental Vacation Accrual balance may not be increased.
- (c) Subject to supervisory approval, any Temporary Supplemental Vacation Accrual shall be available for use to the employee until the Temporary Supplemental Vacation Accrual balance has been exhausted.
- (d) If an employee leaves or retires from City service, any unused Temporary Supplemental Vacation Accrual hours shall not be subject to the terms of Section 6.I below. Any accrued but unused Temporary Supplemental Vacation Accrual hours will be cashed out upon the employee's retirement or other separation from City service. If permitted by the City's deferred compensation plan and applicable law, the separating employee may elect to contribute all or a portion of their accrued but unused Temporary Supplemental Vacation Accrual hours to their deferred compensation account by

submitting a written request no later than 30 days prior to their separation from City service.

- (e) An employee must first use their Temporary Supplemental Vacation Accrual for any vacation leave taken until the Temporary Supplemental Vacation Accrual balance has been exhausted, subject to supervisory approval.
  - (f) An employee must use their Temporary Supplemental Vacation Accrual for any leave of absence until the Temporary Supplemental Vacation Accrual balance has been exhausted subject to any requirement that sick leave be utilized first.
  - (g) An employee may not be on unpaid status until the Temporary Supplemental Vacation Accrual balance has been exhausted and must use their Temporary Supplemental Vacation Accrual until the Temporary Supplemental Vacation Accrual balance has been exhausted, with the exception of any formal disciplinary action pursuant to the City's Civil Service Rules.
- F. Vacation may be used in one-tenth (1/10th) hour increments.
- G. Employees who begin work prior to July 1st or continue to be employed after the first calendar year of employment are required to use at least one-half of the vacation accrued during the prior calendar year during the current calendar year.
- H. Subject to having a sufficient balance of accrued vacation available, an employee may, on a twice per year basis, request to be paid at his/her current hourly pay rate for a total combined maximum of 80 hours of accrued vacation.
- I. In lieu of receiving a vacation-leave cash payout at retirement, the Miscellaneous Unclassified Management Employees may vote to roll accrued vacation leave hours (except for any hours in the Temporary Supplemental Vacation Accrual balance) into the employee's VEBA account, subject to Association compliance with Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

## 7. HEALTH INSURANCE

- A. For employees who enroll in a City offered health plan and whose benefits exceed the total of the City's Health Flex Contribution, Additional Health Flex Contribution, and/or Regular Flex Contribution applicable to the employee and as described below, the balance of the benefits shall be paid by a salary deduction from the pay of the individual employee.
- B. Health Flex Contribution
- 1) The City offers full-time employees a Health Flex Contribution to put toward the payment of a City offered health plan. The City shall modify the Health Flex Contribution each calendar year using the Rate of Pay Safe Harbor (based on the lowest base pay of any full-time position covered by this MOU) to ensure the City's offered

coverage is “affordable.” The City contributes the statutorily required minimum contribution under the Public Employees Medical and Hospital Care Act (PEMHCA) as determined by CalPERS in each calendar year. It is understood and agreed that the Health Flex Contribution described in this paragraph shall be equal to or exceed the City’s statutorily required minimum PEMHCA contribution.<sup>1</sup>

- 2) Employees may not receive all or any portion of the Health Flex Contribution as cash or any other taxable benefit, and must apply the Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the Health Flex Contributions.

#### C. Additional Health Flex Contribution

- 1) Full-time employees who enroll in a City health plan for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution in the amounts described in this section.
- 2) Employees may not receive all or any portion of the Additional Health Flex Contribution as cash or any other taxable benefit, and must apply the Additional Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the Additional Health Flex Contributions.
- 3) Effective January 1, 2020, full-time employees who enroll in a City health plan for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution. The Additional Health Flex Contribution, when added to the Health Flex Contribution described in the prior section and the Regular Flex Contribution described herein, shall not exceed \$200 per month over the Kaiser employee only premium amount for the applicable year.<sup>2</sup>
- 4) Effective January 1, 2023, full-time employees:
  - (a) Who enroll in a City health plan for Employee Only coverage for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution to be put towards the premium amount. The City will provide an Additional Health Flex Contribution amount that, when added to the Health Flex Contribution described above and the Regular Flex Contribution described herein, shall not exceed \$200 per month over the Kaiser employee only premium amount for the applicable year.
  - (b) Who enroll in a City health plan for Employee Plus One coverage or Employee Plus Family coverage for which the premium amount

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<sup>1</sup> As an example, for 2020, the PEMHCA minimum is approximately \$139/month and the Health Flex Contribution is \$139.00/month, which includes the PEMHCA minimum of \$139/month.

<sup>2</sup> As an example, for 2020, the Additional Health Flex Contribution is approximately \$23.70/month to these individuals since \$200 over the Kaiser employee only premium amount in 2020 is approximately \$970.56/month.

is more than \$946.86/month shall receive an Additional Health Flex Contribution to be put towards the premium amount. The Additional Health Flex Contribution, when added to the Health Flex Contribution described above and the Regular Flex Contribution described herein, shall not exceed an amount equal to 100% of the Kaiser Employee Plus One rate for the applicable year.

#### D. Regular Flex Contribution

- 1) The City will provide full-time employees a Regular Flex Contribution equal to \$946.86 less the Health Flex Contribution.<sup>3</sup> Employees may use the Regular Flex Contribution to pay for health benefits offered under the City's Section 125 plan or may opt to receive any or all of the Regular Flex Contribution as taxable cash. An employee will receive a Regular Flex Contribution whether or not he/she enrolls in City-offered health benefits and notwithstanding the provisions of Section 7.E. below.
- 2) Employees hired or rehired on or after January 1, 2023, who choose not to enroll in a City health plan are not eligible for a Regular Flex Contribution.

#### E. Cash In Lieu

- 1) Full-time employees hired before January 1, 2023, who choose not to enroll in a City health plan for a plan year, and meet the requirements set forth below shall receive a Cash in Lieu amount per month for that plan year equal to \$946.86 minus the Regular Flex Contribution as calculated each calendar year.<sup>4</sup> A full-time employee hired before January 1, 2023, who enrolls in coverage for a plan year, shall be treated in accordance with Sections 7.A-D and will not receive Cash in Lieu for that plan year.
- 2) Full-time employees hired or rehired on or after January 1, 2023, who choose not to enroll in a City health plan for a plan year, and meet the requirements set forth below, shall receive a Cash in Lieu amount for that plan year equal to \$250/month. A full-time employee hired on or after January 1, 2023, who enrolls in coverage for a plan year, shall be treated in accordance with Sections 7.A-D and will not receive Cash in Lieu for that plan year.
- 3) In order to receive Cash in Lieu of health coverage, an employee must sign a form attesting that the employee and the employee's Tax Family have the Alternative Required Coverage for the Opt Out Period.
  - (a) Tax Family means all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or

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<sup>3</sup> As an example, for 2020, the Regular Flex Contribution for employees who are regularly scheduled to work 40 hours per week is approximately \$807.86/month.

<sup>4</sup> As an example, for 2020, the Cash in Lieu amount is approximately \$139.00/month for employees who are regularly scheduled to work 40 hours per week.

years that begin or end in or with the City's plan year to which the opt out applies.

- (b) Alternative Required Coverage required means minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California).
- (c) Opt Out Period means the plan year to which the opt out arrangement applies.
- (d) An employee must provide the attestation every plan year at open enrollment or within 30 days after the start of the plan year for each plan year the employee would like to receive Cash in Lieu.
- (e) The Cash in Lieu payment cannot be made and the City will not in fact make payment if the City knows or has reason to know that the employee or a Tax Family member does not have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.
- (f) An employee who opts out of City-offered health benefits, but cannot provide the attestation, will not receive the Cash in Lieu contribution described in this subsection.

#### F. Flexible Spending Account (IRS Section 125 Plan)

The City has established a Flexible Spending Account benefit (IRS Section 125 Plan) for employees, which provides accounts in which employees may contribute pre-tax dollars for dependent care and un-reimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Service. Detailed information will be available in the Summary Plan Document.

This Plan is voluntary and participating employees will make pre-tax salary reduction elections to fund the plan.

#### G. Proration of Benefits:

For employees who may be eligible for benefits but work less than 40 hours per week, benefits shall be prorated based on the employee's full-time equivalent (FTE) level.

### 8. DENTAL INSURANCE

The City will pay toward dental insurance premiums an amount equal to the lowest cost employee only premium amount among the dental plans offered by the City. All employees are required to enroll in a dental plan.

### 9. VISION INSURANCE

For persons enrolled in the City's VSP vision plan, the City will pay toward vision insurance premiums an amount equal to the lowest cost employee only vision premium. Participation is voluntary. Employees that do not choose to enroll in a vision plan are not entitled to the benefit of City contributions to vision premiums

described in this paragraph.

10. LONG TERM DISABILITY

The City will continue to pay the cost of a long term disability insurance program. The LTD plan will have a maximum 60 day waiting period and the maximum monthly benefit will include those offsets required by law such as, but not limited to, SDI, retirement, reduced work schedule, worker's compensation, social security, and Railroad retirement.

11. LIFE INSURANCE

The City will pay the required premium for life insurance for represented employees in the amount of \$50,000.

12. AUTOMOBILE ALLOWANCE

As an alternative to IRS mileage reimbursement or use of a City vehicle, an automobile allowance program will be available to represented employees as follows:

- A. Department Heads including Assistant City Manager, Deputy City Manager and Deputy Director Redevelopment Agency/Sports & Open Space Authority (Executive Management) shall be entitled to a base monthly automobile allowance of \$320 for use of their personal vehicles to conduct City business. Executive Management employees may be eligible to receive an additional amount up to a maximum of \$200 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.
- B. Assistant Department Heads and Division Managers shall be entitled to a base monthly automobile allowance of \$200 for use of their personal vehicles to conduct City business. Assistant Department Heads and Division Managers may be eligible to receive an additional amount up to a maximum of \$300 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.
- C. Effective December 27, 2020 (the first pay period of calendar year 2021), the base monthly automobile allowance shall be paid on the first 2 pay periods of every month.
- D. Upon request of the employee, prior to the beginning of each fiscal year, the City Manager or his/her designee will determine whether or not it is appropriate for a manager to receive an amount above the base monthly allowance. The determination will be made based on the requirements for use of the personal vehicles for City business and may require detailed driving information in order to grant an amount above the base monthly amount. This rate adjustment will become effective at the beginning of each fiscal year and will remain in effect for the full year unless there are unique circumstances requiring a modification.
- E. Prior to the granting of this allowance, all insurance, driver's license, and vehicle registration as required under the State of California Vehicle Code, will be provided by the represented employee, and must be valid and in force at all times employees are operating their personal vehicles on City

business.

- F. Employees receiving the automobile allowance are responsible for all gasoline and maintenance costs. Employees shall also maintain their personal vehicles in a clean and presentable condition while conducting City business.
- G. A represented employee, who is currently assigned a City vehicle, may choose to continue using that assigned City vehicle in lieu of the automobile allowance.
- H. The City reserves the right to substitute an assigned City vehicle in lieu of this automobile allowance for a represented employee if it is deemed to be in the City's best interest to provide a City vehicle to conduct City business.
- I. A represented employee who is currently reimbursed for use of a personal vehicle in accordance with the IRS mileage reimbursement rate, may continue to utilize direct mileage reimbursement, in lieu of participation in this automobile allowance program.

13. MOBILE COMMUNICATION DEVICE ALLOWANCE

Mobile communication device allowance of \$80.00 per month for eligible classifications.

14. MERIT PAY/SALARY ADJUSTMENT SYSTEM

Merit pay adjustments, or merit increases, as provided for in the Personnel and Salary Resolution are, and will continue to be available during the term of this MOU when and if approved by the applicable Department Head and the City Manager, subject to Section 14.G below. The Merit Pay Adjustment system shall include the following elements:

- A. Each Unit 9 employee shall receive an annual evaluation.
- B. Annual consideration of merit pay adjustments, subject to Section 14.G below, with an affirmative decision by the applicable Department Head shall be required each year following the annual evaluation.
- C. Merit pay adjustments shall range from 0 to 5%. However, in 2016 and 2017 only, employee is guaranteed at least 2% and, with Department Head approval, up to 5%, subject to Section 14.G below.
- D. In 2016, employees are eligible for a merit pay adjustment based on an evaluation prepared by February 2, 2016, which date will be their merit pay anniversary each year going forward.
  - 1) Notwithstanding D. above, for employees that have been employed a full year as of February 2, 2016, they will be eligible on their actual anniversary date, which shall also be their merit pay anniversary date thereafter.
  - 2) Notwithstanding D. above, for employees that receive a merit increase between January 1, 2015 and February 2, 2016, the date of their last merit increase shall be their new merit pay anniversary date.

- 3) If a Department Head has not completed an evaluation in time for a merit adjustment by an employee's anniversary date (February 2, 2016 for most employees), the applicable merit pay adjustment once determined shall be made retroactive to the first full pay period following the anniversary date (and to February 2, 2016 in 2016 for those persons whose anniversary date is February 2, 2016).
- E. subject to Section 14.G below , the City shall not suspend or freeze consideration of merit pay adjustments for Unit 9 employees unless step increases are suspended or frozen for all bargaining units that utilize a step system.
  - F. The City and Unit 9 may, by mutually agreement, meet to discuss potential changes to the merit pay system and/or movement toward a step pay system more like other bargaining units.
  - G. Effective January 1, 2021, employees holding positions in classifications assigned to Unit 9 shall be ineligible for a merit increase for the next two (2) consecutive rating periods. This means that an employee in Unit 9 shall not be eligible for a merit increase until the third rating period after January 1, 2021, and after the employee has skipped two (2) consecutive rating periods where they did not receive a merit increase. Employees with a rating period that ends before January 1, 2021, will be eligible for a merit increase for that rating period pursuant to the Personnel and Salary Resolution, even if such merit increase (if any) is not approved until after January 1, 2021.
- 1) Employees hired or rehired or promoted or reclassified on or after January 1, 2021, and until on or before December 31, 2022, into positions in classifications assigned to Unit 9 shall be ineligible for a merit increase for the first two (2) consecutive rating periods. This means that an employee hired or rehired or promoted between January 1, 2021, and December 31, 2022, will not be eligible for a merit increase until the employee's third rating period with the City after the employee was hired or rehired or promoted or reclassified into positions in classifications assigned to Unit 9.
    - (a) A current active City employee promoted or reclassified from another bargaining unit into a position in a classification assigned to Unit 9 between January 1, 2021, and December 31, 2022, shall be ineligible for a merit increase until the employee's third rating period from the effective date of the promotion or reclassification.
    - (b) A current active City employee holding a position in a classification assigned to Unit 9 as of the effective date of this agreement who is promoted or reclassified into or accepts another position in Unit 9 between January 1, 2021, and December 31, 2022, shall be ineligible for a merit increase unless the employee has skipped two (2) consecutive rating periods where they did not receive a merit increase since January 1, 2021.
    - (c) Nothing in this Section is intended to prohibit a pay increase that may result from a current active City employee being promoted or reclassified into a position in a classification assigned to Unit 9.



15. EMERGENCY PAID LEAVE PROGRAM

A. Administration

Administration of this program shall be provided by a three (3) member Emergency Paid Leave Board (Board), consisting of two (2) members of the Unit 9 Board and the City Director of Human Resources (or designee). Determination of eligibility to use the vacation established in this Emergency Paid Leave pool will be by majority vote of this board. An adverse decision of this board may be appealed to the Unit 9 Board of Directors and their determination shall be final.

B. Method of Donation

- 1) Contribution of vacation will be computed at the employee's base hourly rate of pay (excluding premium or specialty pay).
- 2) Contribution may be made from earned vacation, or cash only. Conversion of Sick Leave to Vacation for purposes of donation to this pool will be immediately credited to the pool.
- 3) In a case where it has become known that an employee has been seriously injured or has a life-threatening illness and is in need of assistance from the Emergency Paid Leave Pool, contributions from accrued Sick Leave, computed at the contributing employee's base hourly rate of pay (excluding premium or specialty pay) may be made for the benefit of that specific employee who has the need.
- 4) Employee may authorize the City to automatically convert vacation that should be accrued to the employee to the pool when the employee's vacation accrual has reached the maximum allowed.
- 5) Funds contributed to the Emergency Paid Leave Pool will be placed in an interest bearing Trust Fund. The Trust Fund will be accumulated in total dollars. No record of number of hours contributed to the Pool will be maintained. An employee making a donation to the Pool will not have a vested right to the amount donated.
- 6) Employees, appointed Council officers, and the elected City Clerk may contribute earned vacation, or cash to the Emergency Paid Leave Pools of other City bargaining groups.

C. Use of Pool

- 1) Employee must have a verified emergency need for time off to request Emergency Paid Leave from the pool. An employee's initial request to use leave from the Emergency Paid Leave Pool shall be made to the City's Director of Human Resources (or designee). The Director of Human Resources (or designee) shall make an initial determination regarding whether the employee's request to use Emergency Paid Leave is for a verified medical emergency. The Director of Human Resources (or designee) shall notify the rest of the Board of the name of the

individual making the request, the date of the request and whether or not the individual's request qualified as a verified medical emergency need under this section. Medical emergencies for the employee or dependent shall be verified by a doctor's certification and shall include the anticipated duration of the medical emergency. Non-medical emergencies shall be verified by certification acceptable to the Board and shall include the anticipated duration of the emergency.

- 2) Employee must have exhausted appropriate paid leave (sick leave including eligible conversion to vacation or vacation) prior to becoming eligible to request emergency paid leave benefits from the pool.
- 3) The maximum time available from the pool (subject to the assets of the pool) will be 320 hours (four [4] pay periods) for Emergency Paid Leave benefits due to the illness or injury of the employee or the maximum allowable accrual of vacation for emergency needs of the family of the employee.
- 4) Emergency Paid Leave will be deducted from the pool based upon the employee's base hourly rate of pay (excluding premium or specialty pay).
- 5) Emergency Paid Leave hours will be made available for use in the pay period following approval by the Miscellaneous Unclassified Management Employees' Emergency Paid Leave Board.
- 6) Use of Emergency Paid Leave from the pool will be treated in the same manner as use of regular vacation. The employee will continue to accrue sick leave, vacation, insurance coverage and other benefits in the same manner as he/she would if using regularly credited vacation.
- 7) Emergency Paid Leave, which has been credited to the employee and has not been used when the emergency has terminated will be reinstated to the pool. Vacation, sick leave and other benefits, which have accrued to the employee, will remain in the employee's account.

16. SICK LEAVE/FAMILY SICK LEAVE/PERSONAL LEAVE

A. Sick Leave

- 1) Employees shall accrue ninety-six (96) hours of sick leave per year of regular City employment. Sick leave shall accrue in equal amounts each pay period. Employees shall not accrue sick leave while they are on unpaid status.
- 2) Use of sick leave will be under the same terms and conditions as are now in place. Vacation, and Management Leave may be used to supplement sick leave with Department Head approval, as permitted and set forth in CMD 30.

B. Family Sick Leave

- 1) Not more than forty-eight (48) hours of sick leave within one calendar year shall be granted to any employee for the care or attendance upon members of his/her immediate family, unless the use of additional leave is

approved by the City Manager or designee. "Immediate family" is defined as spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, parent by marriage, step-parent, step-child, grandparent by marriage, son-in-law, daughter-in-law, sibling by marriage, foster parent, domestic partner, anyone residing with employee, or anyone dependent on the employee for care.

#### C. Personal Leave

- 1) Each calendar year, an employee is entitled to use thirty-two (32) hours of accrued sick leave as Personal Leave, provided he/she has sufficient sick leave balance available.
- 2) Personal leave is intended to provide the employee with paid time off to attend to legitimate personal business that may arise from time to time during the year. Personal Leave may be used to supplement sick leave as required.
- 3) The employee has an obligation to provide as much notice as possible so as to allow for proper scheduling by the department.
- 4) Providing that the minimal requirements of proper notification have been met, the use of Personal Leave should not be denied.
- 5) The adoption of this program does not modify the existing ability of the employee to exchange up to 96 hours of accrued sick leave for up to 48 hours of vacation, based upon two (2) hours of sick leave for one (1) hour of vacation as provided and defined in the Personnel and Salary Resolution.

#### 17. BEREAVEMENT LEAVE

- A. The City will provide employees with a paid bereavement leave benefit to attend to the customary obligations arising from the death of a member of an employee's immediate family, as defined in this Section. Employees are eligible to receive up to forty (40) hours of bereavement leave in the event of the death of a parent, child, or sibling of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law), spouse or domestic partner; up to three (3) work days (regardless of shift assigned) of bereavement leave in the event of the death of a grandparent, grandchild, aunt or uncle of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law); and up to one (1) work day (regardless of shift assigned) of bereavement leave in the event of the death of a great-grandparent, great-grandchild, great-aunt, great uncle, niece, nephew, or first cousin of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law).
- B. The bereavement leave benefit is based on each death occurrence and is not charged to the Salary Adjustment Form.
- C. Up to five (5) work days of additional bereavement leave may be charged to an employee's sick leave balance with City Manager approval.

D. At the request of the City, the employee will provide verification.

18. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

- A. The City established a Voluntary Employee Beneficiary Association (VEBA) trust under Internal Revenue Code Section 501(c)(9) for the purpose of providing a defined contribution post-retirement medical benefit for employees. The City contributes \$50 per month per represented employee. Per the City's contract with VEBA, VEBA's consulting fee will be deducted from plan participant's accounts. These contributions shall be included on total compensation surveys. Specific information regarding the Plan is referenced in the Plan Document.
- B. VEBA is a tax-exempt trust account formed under Internal Revenue Code Section 501(c)(9) designed to accumulate assets to fund the future payment of qualified unreimbursed medical expenses (including specified insurance premiums). At retirement, participants may withdraw the accumulated plan benefits to pay for unreimbursed health insurance premiums, qualified long-term care insurance premiums, and other qualified unreimbursed medical expenses and will not be taxed under current state and federal law. Withdrawals cannot be made for nonmedical purposes.

19. RETIREE MEDICAL REIMBURSEMENT BENEFIT

- A. The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the second full month after retirement from City service and ending with the last full month before the retiree's sixty-fifth (65th) birthday. Starting in the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental health insurance premium. For premiums paid in calendar year 2017 that will be reimbursed in 2018, the City will reimburse an amount up to \$343 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$205 per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium. The amount of the City reimbursement will be adjusted thereafter once each year by the percentage change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.
- B. Beginning in 2004, the City will pre-fund this benefit with an amount to be determined by an actuary.
- C. Each retiree will be required to submit proof of health insurance coverage to the City each year. The City will pay the reimbursement in a lump sum payment each year.

20. EMPLOYEE ASSISTANCE PROGRAM

The City will provide a confidential Employee Assistance Program for represented employees.

## 21. CHANGES TO JOB DESCRIPTIONS

Should the City propose a change of the job description, or should the City propose a new job classification and job description, of any job classification represented herein, the City Manager or designee will provide a copy of that proposed job description to Unit 9 for its review and comment back at least ten (10) work days before it is scheduled to be presented to the City Council for adoption. If the proposed compensation control point of a new classification has been established, the City Manager will also provide that proposed compensation control point to Unit 9 for its comment. For a revision of an existing job description, Unit 9 may include a request that the City Manager review the existing compensation control point for the job classification if there has been a significant change in the duties, responsibilities, or safety hazards of the job classification. The City Manager will give consideration to Unit 9 comments, but the final decision on the job description and compensation control point that is submitted to the City Council for adoption will be made by the City Manager.

## 22. LIMITED/ALTERNATIVE DUTY

### A. Alternate Work Schedule (Nine-Eighty Schedule)

A Miscellaneous Unclassified Management employee shall be eligible to work a 9/80 alternate work schedule according to the conditions, criteria, and requirements set forth in City Manager's Directive 71. Requests to work a 9/80 schedule shall be made through or by the Department Head to the City Manager. The City Manager must approve the schedule and the City Manager or Department Head (for employees other than Department Heads) may terminate the schedule at any time.

### B. Job Related Illness or Injury

Employees with a job related illness or injury, covered by Workers' Compensation, which prohibits performance of their regular duties, will be reassigned to limited or alternative duty under the following conditions:

- 1) Supervisors shall be advised of any industrial injury/illness as soon as practical.
- 2) Upon receipt of a Doctor's report providing work limitations, the City may identify a regular or modified assignment for which the employee has the required experience and training. Such assignment may be on a 40 hour per week or less basis, if mutually agreed between the City and the employee.
- 3) If the City is unable to identify a limited or alternative duty assignment for which the employee has the required experience and training, the employee will be reassigned to a Monday through Friday work schedule to accommodate required medical or other workers' compensation commitments.

### C. Non Job Related Illness, Injury or Condition

Employees who have a non-job related illness, injury or condition which

prohibits performance of the employee's regular duties, may request assignment to limited or alternative duty. Nothing in these provisions is intended to imply that an employee has a right to a limited/alternative duty assignment, unless expressly provided by law. Such request will be accommodated, unless no appropriate limited or alternative duty assignment is available, under the following conditions:

- 1) Identification by the City of a regular or modified assignment for which the employee has the essential experience and training. Such assignment may be on a 40 hour per week or less basis, if mutually agreed between the City and the employee.
- 2) Submission of a written release from employee's doctor, subject to review by the City doctor, which allows the employee to perform all of the duties of the contemplated assignment.
- 3) Employee may account for regular work schedule through a combination of limited or alternative duty hours and sick leave or other paid leave sufficient to maintain eligibility for regular accrual of benefits.

#### D. Work Week

Under both limited or alternative duty assignments employees will be required to work their regularly scheduled number of hours (normally forty (40) hours) per week, unless such assignment is modified by mutual agreement between the City and the employee. It is recognized that performance of limited or alternative duty assignments will not be permitted to interfere with any medically related treatment designed to assist the employee to return to full, unrestricted duty in the earliest possible time frame.

#### E. Temporary Assignment

All such assignments, and their duration, are temporary assignments and are subject to periodic sixty (60) day review of the employee's continued need for limited or alternative duty, the employee's continued ability to perform the limited or alternative duty and the department's ability to continue the employee in the assignment. All temporary assignments shall be at the employee's regular rate of pay.

#### F. Law to Prevail

In the event the Americans With Disabilities Act requires modification of the provisions of this section, it is agreed that the law will prevail.

### 23. REDUCED WORK WEEK VOLUNTARY TIME OFF (VTO) PROGRAM

#### A. Employee Participation

Employee participation in this plan is with the City's understanding and agreement that employee participation is temporary and participation is not to be construed as a representation of employee commitment to a permanent program or an admission of any kind that the employee would not be harmed by such a plan becoming mandatory.

## B. Reduced Work Week/Reduced Pay

Employees may request a reduced work week schedule (32 hours per week instead of 40 hours per week, for example) at the same hourly rate of pay, subject to the following conditions:

- 1) With the approval of the Department Head and the City Manager, a binding work schedule as requested by the employee will be developed that may be modified only with the approval of both the City and the employee.
- 2) More than a 20% reduction of the work week in a pay period will result in proportionate reduction of accrual of sick leave and vacation.

## 24. INDUSTRIAL INJURY/CONTINUATION OF INSURANCE BENEFITS WHILE ON WORKERS' COMPENSATION

Workers authorized by the City's Workers' Compensation Administrator to undergo therapy or treatment due to an industrial injury, who are required to leave work, shall receive leave with pay, including reasonable travel time, providing the treatment falls within the normal working hours, is pre-scheduled and cannot be scheduled during non-work hours.

The City will continue payment toward health, dental and life insurance coverage for the employee and dependents up to the maximum amount allocated under total compensation for an employee who is disabled from work because of a work related injury if the employee is no longer in a paid status sufficient to continue the coverage afforded under the terms of the program, subject to the following conditions:

- A. The employee may not increase the existing coverage after the date of injury except to add children born within nine months of the injury.
- B. Continuation toward payment of employee and dependent health/dental/life insurance coverage up to the maximum allocated under Total Compensation is limited to one (1) year from the date of injury. Continuation toward payment of employee health/dental/life insurance coverage up to the maximum allocated under Total Compensation may be extended if the employee continues to be on temporary disability status for a Workers' Compensation injury.
- C. The employee has supplemented his/her workers' compensation benefit with sick leave, vacation, management leave or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City.

## 25. MANAGEMENT LEAVE PROGRAM

The Management Leave Program is as follows:

- A. Effective January 1 of each year, represented employees will be credited with 120 hours of Management Leave per calendar year.
- B. New hires or employees promoted into Unit 9 between January 1 and June 30 will be credited with 120 hours of Management Leave. New hires or

employees promoted into Unit 9 between July 1 and December 31 will be credited with 60 hours of Management Leave.

- C. Use of Management Leave is subject to approval by the applicable Department Head, or the City Manager or his/her designee in the case of a Department Head request, taking into account the relevant circumstances including work/Department needs, staffing limitations, conflicts, timing of request, etc.
- D. Management Leave may not be converted to cash or other paid time off.
- E. Unused Management Leave may be carried over from one calendar year to the next; however, an employee may never have more than a balance of 180 hours of management leave, subject to Section 25.E.1-4 below. (Thus, and for example, an employee that already has 180 hours of management leave on January 1 would not receive any further management leave. An employee that already has 100 hours of management leave on January 1 would "only" receive an additional 80 hours. An employee with 60 or fewer hours of banked management leave on January 1 would receive 120 hours.)
  - 1) For calendar year 2021, an employee may have up to a balance of 240 hours of management leave.
  - 2) For calendar year 2022, an employee may have up to a balance of 240 hours of management leave.
  - 3) For calendar year 2023, an employee may have up to a balance of 240 hours of management leave.
  - 4) For calendar year 2024, an employee may have up to a balance of 240 hours of management leave.
  - 5) Effective the first pay period of calendar year 2025, the terms of Section 25.E above shall apply, and an employee may have no more than a balance of 180 hours of management leave.

26. FLEXIBLE SPENDING PLAN (INTERNAL REVENUE CODE SECTION 125)

The City will make available a Flexible Spending Plan under the Internal Revenue Code Section 125 for employees. Employees may contribute pretax (federal, state, FICA, Medicare) dollars for dependent care and qualified unreimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Code. Detailed information will be available in the Summary Plan Document.

The City will pay the administrative expenses for the plan. This Plan is voluntary and participating employees will pay the monthly participation cost. The monthly participation cost will be considered pre-tax, as defined above, under Internal Revenue Code Section 106. Participating employees will be provided with an Employee Plan Summary and regular statements regarding the status of their flexible spending accounts.

27. DOMESTIC PARTNERS

The City shall make all benefit programs available to employees, dependents



and domestic partners, subject to the requirements of each benefit provider.

28. PAY PERIODS

Allowances/payments or accrual rates that are an agreed upon amount per month or year but are paid for administrative purposes in incremental amounts each pay period, shall be the same total amount per year in years in which there are 27 pay periods instead of 26 pay periods. This clarification is not intended to and would not modify anyone's salary/rate of pay.

29. DECLARATION

The parties hereto have reached an understanding concerning the proposed salaries and fringe benefits described in the above paragraphs. All other matters dealing with wages, hours, fringe benefits including health and dental insurance contributions, and working conditions included in ordinances, resolutions, rules or regulations, or previous memorandums of understanding, shall remain unchanged for the term of this memorandum in the absence of agreement to the contrary.

30. NEXT MEMORANDUM OF UNDERSTANDING

Unit 9 will submit its proposals for a Memorandum of Understanding for the term commencing at the expiration of this Memorandum of Understanding no later than January 31, 2024.

FOR THE CITY OF SANTA CLARA

FOR THE CITY OF SANTA CLARA  
MISCELLANEOUS UNCLASSIFIED  
EMPLOYEES

\_\_\_\_\_  
Aracely Azevedo  
Director of Human Resources  
Date: \_\_\_\_\_

\_\_\_\_\_  
Chris Jackson  
President  
Date: \_\_\_\_\_

\_\_\_\_\_  
Marco Mercado  
Assistant Director of Human Resources  
Date: \_\_\_\_\_

\_\_\_\_\_  
Craig Johnson  
Vice President  
Date: \_\_\_\_\_

\_\_\_\_\_  
Ashley Lancaster  
Human Resources Division Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
Carolyn McDowell  
Treasurer  
Date: \_\_\_\_\_

\_\_\_\_\_  
Lee Hagan  
Secretary  
Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Deanna J. Santana  
City Manager

\_\_\_\_\_  
Date

APPROVED BY THE CITY COUNCIL ON: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

## APPENDIX A: MOBILE COMMUNICATION DEVICE PROGRAM

### APPENDIX A: PDA/SMART PHONE STIPEND INFORMATION

City Manager's Office



## Interoffice Memorandum

**Date:** April 15, 2014

**To:** Unit 9 – Unclassified Miscellaneous Management Employees

**From:** Julio Fuentes, City Manager

**Subject:** **Cell Phone/Smartphone Stipend Program for Unit 9 – Unclassified Miscellaneous Management Employees**

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**Scope:** This cell phone/smartphone stipend program applies to members of Unit 9– Unclassified Miscellaneous Management Employees. The stipend program is \$80 per month and was effective April 1, 2009.

**Purpose:** To establish policies regarding the provision and usage of City-owned cellular telephones or smartphones (devices that have voice, data and internet/web access capabilities). The City has determined that it is beneficial to have Unit 9 members accessible by phone/data communications at all times. A Unit 9 employee can choose to have a City-issued cell phone, where the City pays for the Unit 9 employee's cell phone device and service plan through City-managed contracts with cell providers, or they can choose to receive a stipend in the amount of \$80 per month, whereby the Unit 9 employee will purchase and own their own cell phone/smartphone device and pay all service provider charges, or the Unit 9 employee can choose not to participate in either of the above programs.

**Summary:** This policy outlines and establishes eligibility criteria for Unit 9 employees wishing to receive a monthly cell phone stipend and should be read and understood in conjunction with CMD 116-Use of City Resources and Confidential Nature of Information on City Equipment.

**Cellular Telephone/Smartphone Stipend Program:** Unit 9 employees may choose to receive an \$80 a month stipend to purchase, maintain, replace or repair their personal cell phone, and pay for any level of cell phone service plan from any provider the employee may select. The \$80 per month allowance is not intended to cover the full cost of any particular cell phone device and/or cell phone service plan. If a Unit 9 employee wishes to purchase a cell phone/smartphone and connect to the City's email system, they must confirm with the City's Information Technology Department that the device they wish to purchase can be connected to the City's Outlook email system. Not all cell phone devices or service programs may be compatible with the City's information technology systems. If you do not desire to connect to the City's email system, then any cell phone or service provider could be selected.

To be eligible for the monthly stipend, the Unit 9 employee must provide the Human Resources Department with an active cell phone number. It is expected that the employee will respond to work-related calls and most critical, actively monitor their phone during City emergency

## Cell Phone Stipend Program for Unit 9 – Miscellaneous Unclassified Management Employees

April 11, 2014

Page 2

situations. If a Unit 9 employee participating in the stipend program experiences a lost, stolen or damaged cell phone, it is expected that the employee will actively seek to have the device replaced or repaired in a reasonable period of time in order to remain eligible for the monthly stipend (refer to CMD 116 for additional requirements if a phone is lost or stolen). The stipend program is focused only to the Unit 9 employee's personal cell phone or smartphone, and not to other cell phones that might be included under a shared or family plan that the employee may have with a service provider.

If the Unit 9 employee changes their cell phone number for any reason, the Human Resources Department must be notified in the next work week of the new cell phone number. If an employee receiving a cell phone stipend chooses to no longer use a personal cell phone for any reason, the Human Resources Department should be notified immediately, and the stipend will be discontinued in the next applicable pay period.

The stipend is paid at a rate of \$40 per pay period (with no payment on two of twenty-six pay periods annually). A Unit 9 employee starting employment or terminating employment in the middle of any month will receive one-half of the monthly stipend (\$40). The stipend will commence in the first applicable pay period after the Unit 9 employee's request has been received, reviewed and approved by the Human Resources Department. The essential review criteria are that the employee is a member of Unit 9 Miscellaneous Management Employees' Association, and that the employee has submitted a valid cell phone number as requested. The stipend is considered income to the employee, and is subject to payroll withholding.

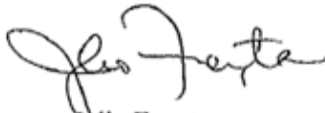
### **CMD 116: Use of City Resources/Non-Confidential Nature of Information on City Equipment:**

This CMD addresses key issues related to the ownership and usage of cell phone devices, and should always be read and understood in conjunction with this stipend policy. While it is generally the case that call records for a personally owned phone are not subject to public records requests, the law in this area can and does change. CMD 116 advises that employees adhere to City policies related to public records and email retention. The City Attorney's Office should be consulted for advice and/or resolution of public records concerns.

**City-Issued Cell Phone Program:** A Unit 9 employee can choose to have a City-owned cell phone issued to them in lieu of a monthly stipend. Under this program, the Information Technology Department has responsibility for the selection of cell phone devices and cell phone service providers. The City then maintains a record of an employee's cell phone number and usage information. Activity on City-owned cell phones is accessible as a public record. A Unit 9 employee cannot have a City-issued phone and a stipend. One or the other must be selected. If you currently have a City-issued cell phone and wish to participate in the stipend program, you will need to acquire a personal cell phone and service plan and then turn in your City-issued cell phone. Part of the rationale for this program is to decrease the number of City supplied/City supported cell phones through the use of a stipend program.

**Opt Out:** A Unit 9 Miscellaneous Management employee can choose not to participate in either the cell phone stipend program or the City-issued cell phone program. If certain work assignments require the use of a cell phone that can be accomplished through the temporary provision of a City-issued cell phone through the duration of the assignment.

**Cell Phone/Smartphone Stipend Program Enrollment:** A current Unit 9 employee can initially enroll in this stipend program by emailing the Human Resources Department and requesting participation in the stipend program. You must include your 10-digit cell phone number in the email; therefore you must have a personal cell phone device and a service plan activated prior to receiving a stipend. At that time the Human Resources Department will send you a Cell Phone Stipend packet and form, which you will need to fill out and return to them. Thereafter, the Human Resources Department will present the cell phone stipend enrollment opportunity to new Unit 9 employees through employee orientation.



Julio Fuentes  
City Manager



## SmartPhone Android Phone Setup

### Setup Process

The purpose of this Quick Reference is to assist you in setting up your Android phone to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. If you have contact or calendar items on your Android phone, **you may lose them if you choose to sync with Outlook's contacts and/or Calendar.** Back up your Android phone so you can restore them if necessary.
3. Add your City email account to your Android phone.

### Add Email Account

1. Go to **Settings**, and choose **Accounts**.
2. Choose **Add Account**, then **Corporate Sync**.
3. Complete the fields as follows (They may not appear in this exact order.)

**Domain\Username:** *City or Electric for SVP Employees\username.*

**Password:** Your current network password

Check **Use secure connection** box.

**Email Address:**

Your city email address.

**Server:** *mail.santaclaraca.gov.*

### Change Passcode Options

Once you set up your City email account, you will be required to enter a 4 digit passcode. You will be required to enter this passcode to unlock your screen if your phone is unused for 5 minutes. This time can be increased up to 15 minutes.

To change the passcode,

1. Go to **Settings** then choose **Location & Security**.
3. Choose **Change screen lock**, then **PIN**.
4. Enter a new PIN.

Warning: You cannot turn off the Erase Data feature. If you have 8 failed passcode attempts, the data will be erased from your phone.

### Increase Screen Lock Timeout

To increase the screen lock timeout,

1. Go to **Settings** then choose **Location & Security**.
2. Choose **Security Lock Timer**.
3. Increase the time.





## SmartPhone iPhone Setup

### Setup Process

The purpose of this Quick Reference is to assist you in setting up your iPhone to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. If you have contact or calendar items on your iPhone, you may lose them if you choose to sync with Outlook's contacts and/or Calendar. Back up your iPhone using iTunes so you can restore them if necessary.
3. Add your City email account to your iPhone.

### Add Email Account

1. Choose **Settings** from the iPhone menu.
2. Choose **Mail, Contacts, Calendar**.
3. Choose **Add Account**, then **Microsoft Exchange**.

4. Complete the fields as follows:

**Email:** your email address.

**Domain:** *City or Electric for SVP Employees*

**Username:** Your network login id.

**Password:** Your current network password

**Description:** a name that identifies this mail account. You can also set up a personal mail account such as gmail.

5. Click **Next**.

*The screen to the right appears with **Server** field added. It should be: **mail.santaclaraca.gov**.*

6. Choose to turn on **Mail, Contacts, and/or Calendars**.

Exchange account verification failed

Cancel Exchange Next

Email: l.stewart@santaclaraca.gov

Server: mail.santaclaraca.gov

Domain: City

Username: l.stewart

Password: ••••••••

Description: CSC email

Select info to sync (checked: Mail, Contacts, Calendars)

Mail: ON

Contacts: OFF

Calendars: OFF

### Change Passcode Options

1. Choose **Settings** from the iPhone menu.
2. Choose **General**, then **Passcode Lock**.
3. From here you can change your passcode, change how quickly the passcode is required, and whether or not you want SMS Preview (text messaging preview) to be on.

**Warning:** You cannot turn off the Erase Data feature. If you have 8 failed passcode attempts, the data will be erased from your phone.

General Passcode Lock

Change Passcode

Require Passcode Immediately >

Show SMS Preview ON

Erase Data

Erase all data on this iPhone after 8 failed passcode attempts.

### Add Email Account (continued)

7. Choose **Done**.
8. After you choose **ON** for **Contacts** or **Calendars**, you will be prompted to delete or add your local (iPhone) contacts to Outlook.
9. You will be required to enter a 4 digit Passcode. You will be prompted to enter your passcode if you leave your iPhone idle for 5 minutes.

Sync

Mail: ON

Contacts: OFF

Calendars: ON

Syncing with local data on this iPhone will delete all existing contacts on this iPhone.

Sync

Cancel



## SmartPhone Windows Mobile Setup

### Setup Process

The purpose of this Quick Reference is to assist you in setting up your Windows Mobile device to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. Set up your phone to sync with the City's Exchange Server using ActiveSync.

### Setup Exchange Server

1. From the **Programs** menu, choose **ActiveSync**.
2. If it is the first time you have used your Windows Mobile phone, you will be shown the following prompt:

*To sync with a desktop computer, install ActiveSync on your computer and then connect this device.*

*If your company supports syncing directly with its Exchange Server you can **set up your device to sync with it**.*

Click the **set up your device to sync with it** link.

*This will start the process for connecting your device to the City's exchange server.*

**Note: The City supports syncing directly with its Exchange Server. The City does NOT support syncing with a desktop computer.**

If you have already synced your device to another source, choose **Menu, Add Server Source**.

3. In the **Server address** field, type **imail.santaclaraca.gov**.
4. Check the box for **This server requires an encrypted (SSL) connection**.
5. Click **Next**.



### Setup Exchange Server (continued)

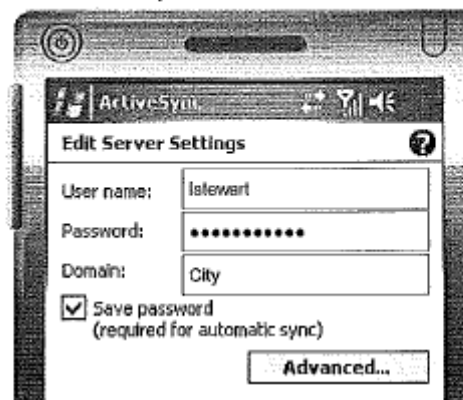
6. Complete the fields as follows:

**Username:** Your network login id.

**Password:** Your network password.

**Domain:** City or Electric for SVP employees.

7. Click the **Save password** check box.



8. Choose **Next**.
9. Check the boxes next to the data you would like to synchronize with your City's Outlook account.
10. Click **Finish**.





ADMINISTRATIVE CODE

CMD NUMBER 116

CITY MANAGER'S DIRECTIVE-PROCEDURE

DATE: March 9, 2009

CANCELS: November 22, 2008



**SUBJECT :** USE OF CITY RESOURCES, AND NON-CONFIDENTIAL NATURE OF INFORMATION ON CITY EQUIPMENT

- PURPOSE:**
1. The primary purpose of this CMD is to inform all employees that City equipment and systems, and City work locations, as defined herein, are the sole property of the City, and with a few minor noted exceptions, are to be used for City business only. This policy applies to City-owned and issued devices and the use of City network or systems using City -owned and private devices, including but not limited to Smartphones.
  2. Another purpose of this CMD is to inform all City employees that private or personal documents, written messages, electronic messages (including text messages, emails, etc.), materials, information, or files placed in or on City equipment are not private or confidential and may be reviewed to ascertain whether such communications constitute City business. As such, employees should not have any expectation of privacy or confidentiality in any of these circumstances. This CMD does not apply to the confidentiality of personnel records maintained by the Human Resources Department or the Finance Department, or the confidentiality of business and related items within the department where the employee works.

**POLICY AS TO CITY-OWNED OR ISSUED DEVICES:**

City equipment and systems, and City work locations, are the sole property of the City and, with minor exceptions (as noted below in Item No. 4 under Supervisor and Department Head Responsibility and Action), are to be used for City business only.

City employees are hereby informed that private or personal documents, written messages, electronic messages (including text messages, emails, etc.), materials, information or files, placed in or on City equipment are not private or confidential. Employees should not have any expectation of privacy or confidentiality in any of these circumstances.

In order to conduct City business, including responding to the needs of citizens and staff, City management and City employees, when directed, may need to access City work locations and equipment of any employee who is absent or unavailable. Access to the work locations and equipment may also be necessary

for purposes of monitoring employee work performance and conduct. Under existing provisions of the law, the City reserves the right to monitor the use of City equipment for any reason, including the right to review, audit and disclose all matters sent over or stored in City locations or equipment systems to ensure that uses are in compliance with all laws including copyright laws and City policies, including the City Code of Ethics & Values.

**POLICY AS TO PRIVATE  
DEVICES:**

Only City approved and authorized Smartphone devices are permitted to access any City network or systems. The approved list of devices is maintained by Information Technology (IT) and listed on the Smartphone Access Authorization Form (form available from IT HelpDesk).

A user who connects to City networks via an authorized Smartphone device or service must ensure that all components of his/her wireless connection remain as secure as his/her network access. All Smartphones and connections to any City network or systems shall be used to conduct City business and utilized appropriately, responsibly and ethically. All authorized Smartphone device and service users shall, without exception, use secure remote access procedures. Enforcement of this provision will be by device passwords in accordance with the City's password policy.

Prior to initial use or connection to City networks or systems, authorized Smartphone devices, software and related services must be registered with IT. City employees, contractors, or "as needed" staff in possession of an authorized Smartphone device shall not make modifications of any kind to the device, its software, and/or service that may potentially compromise the integrity of City networks or systems, without the express written approval of IT. This includes, but is not limited to, split tunneling, dual homing, non-standard hardware or security configurations, etc.

Users are advised that applicable law related to public records may require the production of certain records on private devices. Users are advised to adhere to City CMD's related to public records and email retention to avoid the potential disclosure of information from their private devices, particularly those users that receive a stipend for private devices.

With respect to Public Safety Officers, it is intended that this CMD be read together with the Public Safety Officers Procedural Bill of Rights.

**DEFINITIONS:**

"City equipment and systems, and City work locations" is defined herein to include, but not be limited to, the following items whether they be owned, bought, used, paid for, leased, borrowed, or given to areas and the City: Work spaces, desks, lockers, City vehicles and equipment, computer and video equipment, printers, copiers, supplies, telephones, mobile data terminals, fax machines, radios, email, text messages, other mail and electronic messaging services, voice mail, and Internet services (as assigned, including chats, newsgroups, and Internet email), or any files

"City business" includes, but is not limited to, conducting the business of the City of Santa Clara and monitoring employee work performance and conduct.

"Off-Duty time" includes employee time before and after work shift, lunch (or meal period breaks), and approved vacation/other leave time.

"Smartphone" means a mobile handheld device with advanced features like e-mail and Internet capabilities.

**RESPONSIBILITY :**

Department Heads &  
Supervisors

**ACTION**

1. Authorize issuance and discourage misuse of City equipment, work locations, and Smartphone devices. Approve replacement of lost, stolen or damaged City-owned devices. Replacement costs will be charged to the user's department, which is then responsible for handling reimbursement of City funds with said user. Replacement and Maintenance costs for any personal-owned devices are the sole responsibility of the employee.
2. Understand that the City's security software for the Internet may record for management use the Internet address or site visited by the employee and keep record of any network activity in which the employee transmits or receives any kind of file; the deletion of a message or file from some electronic systems may not fully eliminate the message from the system.
3. Understand that "any writing containing information related to the conduct of the public's business, prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics" (Government Code Section 6252) and under some circumstances, communications sent by email, may be subject to disclosure under the Public Records Act or litigation
4. Notwithstanding statements in the CMD to the contrary, occasional use of City equipment by an employee during off-duty time, i.e., typing of a personal letter during the lunch period, or use of a telephone for urgent reasons (see CMD 78), may be granted from time to time at the discretion of and upon the

approval of the Department Head.

5. In addition, uses by City employees, during off-duty time, of specific City equipment may also be allowed where certain fees for use of this equipment have been established (i.e., minimal copying, or use of a fax machine, etc.).
6. Managers and supervisors who are authorized to serve as officers of a professional society and/or association in accordance with CMD 49, and who have authorized use of City resources in accordance with the provisions of that CMD, should not have expectations of privacy or confidentiality of information or files placed on City equipment.

All Employees/Users

7. Become informed and comply with the policies of this CMD.
8. Do not use City equipment, work locations, or authorized access to City networks or systems improperly. Improper use includes any personal use for convenience or profit, playing of games, or use to convey derogatory, defamatory, obscene, or otherwise inappropriate actions or messages or any information unrelated to City business. Personal mail, packages, or catalogs should not be received or sent using a municipal address.
9. Employees shall take reasonable measures to safeguard City property and systems to prevent loss or damage. In the event any City-owned or issued device or privately-owned Smartphone is lost or stolen, or the occurrence of any incident or suspected incident of unauthorized access and/or disclosure of City resources, the user shall *immediately* report such to his/her supervisor and the IT Help Desk. Service will be immediately terminated. Users should immediately report to his/her supervisor and the IT Help Desk if the device is recovered. IT will work with the user to restore service as quickly as possible.
10. The provisions of this CMD also apply to employee use of non-City issued equipment and systems brought into work locations and used for City business. Employees utilizing non City-issued equipment assume responsibility for the repair or replacement of such equipment, including Smartphones.
11. Nothing in this CMD is intended to or shall be construed as affecting the duty and obligation of City employees to maintain the confidentiality of City documents and information which the employee has access to through his or her employment with the City. It is also not intended to nor shall it be construed as granting access to non-City employees to otherwise confidential City documents and information.

12. Employees should understand that the City's security software for the Internet may record for management use the Internet address or site visited by the employee and keep a record of any network activity in which the employee transmits or receives any kind of files. Any records transmitted or received are recorded and stored in an archive file; deletion of a message or file from some electronic systems may not fully eliminate the message from the system.
13. Understand that "any writing containing information related to the conduct of the public's business, prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics" (Government Code Section 6252) and under some circumstances, communications sent by email, may be subject to disclosure under the Public Records Act or litigation.
14. Employees should understand that the City's network allows Management to access employee passwords. Upon request, employees shall provide their systems passwords to their Department Head to allow access to all files and systems in the employee's absence or as required. Lockers, desks, files or other secured City equipment, systems, or work locations, may also be accessed by the City.
15. Employees shall not knowingly use City equipment or systems, or City work locations, to download or distribute pirated software or data, or to violate Penal Code Section 502, applicable Federal laws, City policies, rules and regulations, including the City's Code of Ethics & Values. Employees shall not use the City's equipment, systems or work locations to disrupt or destroy the City's program systems, nor shall they attempt to disable any security system.
16. Violation of this policy, through direct action on the part of the employee, or through carelessness or negligence, may result in formal disciplinary action, up to and including termination.
17. Unit 9 employees should understand that Smartphone devices they obtain through the assistance of an allowance program are considered personal devices and are under the ownership of the employee. All service, maintenance, and replacement costs are the responsibility of the employee.
18. IT reserves the right to terminate without notice any authorized Smartphone device, service and access to City network or system that may result in a potential security risk to City network systems, data, users, residents and/or other City assets and resources.
19. IT reserves the right to perform a remote wipe of a user's Smartphone,

IT Department:



**CMD NUMBER 116**

erasing all data and contents, if there is a reasonable belief that the device has been compromised and/or poses a potential security risk to City network systems, data, users, residents and/or other City assets and resources.

20. IT will provide minimal support for privately-owned approved and authorized Smartphone devices. This support is limited to basic documentation to enable the user to connect the device to City networks and systems, and basic troubleshooting to determine if any connection problems are on the City side or outside of the City's control. All additional technical and function questions/issues shall be the responsibility of the user.

Questions regarding this CMD may be addressed to the City's Director of Human Resources.

*Cross Reference:*

- CMD 3 - Overnight Use of City Vehicles
- CMD 31 - Transaction of Personal Business During Working Hours
- CMD 49 - Membership in Professional Societies and Associations
- CMD 78 - Personal Use of City Telephones
- City Code of Ethics & Values (Attachment to CMD 67, Gifts & Favors to Individuals)

## **SIDE LETTER AGREEMENT**

BETWEEN

THE CITY OF SANTA CLARA

AND

THE MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES  
(UNIT 9)

### **USE OF COMPENSATORY TIME OFF (CTO)**

The City and Unit 9 acknowledge the following that employees represented by Unit 9 have historically used Compensatory Time Off, or CTO, to take partial leave during their workday, even though CTO is leave earned in lieu of pay for overtime worked and that employees represented by Unit 9 are exempt employees. While this has been a historical practice, it appears that CTO was used on a limited basis by employees represented by Unit 9.

The City and Unit 9 also acknowledge that employees who work an alternative work schedule were required to code every hour over eight (8) hours using either CTO or their own accrued leave for any holiday that fell on a regularly scheduled work day that consisted of more than eight (8) hours. In addition, employees were allowed, when possible, to take an alternative day off to make up for the holiday.

In resolution of any disputes surrounding the use of CTO by employees represented by Unit 9, the parties hereby agree as follows:

1. Effective the first full pay period after approval by City Council:

- a. Employees represented by Unit 9 will not be eligible to use or code Compensatory Time Off (or "CTO").
  - i. The City will not make any retroactive pay adjustments for employees to use or code CTO.
  - ii. For those employees whose offer letters specifically provide for the use of CTO, the City will coordinate directly with the impacted employees as needed.
- b. Employees represented by Unit 9 will be eligible for the "4-Hour Rule," subject to supervisory approval.

**Unit 9 Side Letter Agreement – Use of Compensatory Time Off (CTO)**

November 4, 2020

Page 2 of 3

- i. This means that employees, subject to supervisory approval, are not generally required to report any management, vacation and/or sick leave of four (4) or less hours.
    - ii. This is intended to be used on a very limited basis and is not intended to be used regularly. Accordingly, employees may still be required to report management, vacation and/or sick leave for absences of four (4) or less hours at the discretion of the Department.
  - c. Employees represented by Unit 9 who work an alternative work schedule will be required to use their own accrued leave for every hour over eight (8) hours for any holiday that fell on a regularly scheduled workday that consisted of more than eight (8) hours.
    - i. If a holiday falls on an employee's regular day off, the employee may be eligible to take an alternative day off to make up for the holiday to the extent it is possible and subject to supervisor approval. Such alternative day off must be taken during the same pay period as the holiday.
2. Upon the effective date of this Side Letter Agreement, the terms of this Side Letter Agreement shall supersede any term of the Unit 9 Memorandum of Understanding ("MOU") related to the use of CTO.
- a. The terms of this Side Letter Agreement will be incorporated into the Unit 9 MOU, and the relevant sections of the MOU shall be updated accordingly, including but not limited to:
    - i. Section 19(B)(6) under the "Emergency Paid Leave Program" shall be amended as follows:

"Employees, appointed Council officers, and the elected City Clerk may contribute earned vacation, CTO or cash to the Emergency Paid Leave Pools of other City bargaining groups."
    - ii. Section 16(A)(2) under "Sick Leave/Family Leave/Personal Leave" shall be amended as follows:

"Use of sick leave will be under the same terms and conditions as are now in place. Vacation, Unclassified CTO, and Management Leave may be used to supplement sick leave with Department Head approval, as permitted and set forth in CMD 30."
    - iii. Section 24(C) under "Industrial Injury/Continuation of Insurance Benefits While On Workers' Compensation" shall be amended as follows:



**Unit 9 Side Letter Agreement – Use of Compensatory Time Off (CTO)**

November 4, 2020

Page 3 of 3

“The employee has supplemented his/her workers’ compensation benefit with sick leave, vacation, ~~unclassified CTO~~, management leave or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City.”

3. This Side Letter Agreement shall not establish precedent for future agreements and shall not be construed or implied to obligate the City or Unit 9 to enter into any similar agreements in the future.
4. This Side Letter Agreement shall become effective when signed by all parties below and upon approval by City Council.

**FOR THE CITY:**

**FOR UNIT 9:**

\_\_\_\_\_  
Aracely Rodriguez                      Date  
Director of Human Resources

\_\_\_\_\_  
Christopher Jackson                      Date  
President, Unit 9

**CITY OF SANTA CLARA – UNCLASSIFIED MISCELLANEOUS MANAGEMENT (UNIT 9)  
2020 NEGOTIATIONS  
TENTATIVE AGREEMENT\*\***

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**TERM**

- December 15, 2019 – December 31, 2024

**WAGES**

- Effective December 15, 2019, all salary ranges in classifications assigned to Unit 9 shall remain status quo.
- Effective the first pay period of calendar year 2021, all salary ranges in classifications assigned to Unit 9 shall remain status quo.
- 2022: 4.5% general wage increase effective calendar year 2022. Effective the first pay period of calendar year 2022, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 4.5%.
- 2023: 3.25% general wage increase effective calendar year 2023. Effective the first pay period of calendar year 2023, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.
- 2024: 3.25% general wage increase effective calendar year 2024. Effective the first pay period of calendar year 2024, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.

**REOPENERS**

- During the term of this Agreement, the parties agree that the MOU will reopen on the issue of wages if either of the following occurs:
  - The total annual calendar year General Fund Transient Occupancy Tax (or “TOT”) revenues remitted to the City, ~~adjusted to normalize for any potential change in the TOT rate if passed by voters on the ballot,~~ and allocated to any of the calendar years covered by this Agreement Equal or surpass the City’s actual total TOT revenues from March 1, 2018 to February 28, 2019. After calendar year 2022, the TOT revenues remitted to the City shall be adjusted to normalize for any potential change in the TOT rate if passed by voters on the ballot for purposes of this section; OR
  - Forecasted General Fund deficits remain above \$20 million ongoing, as reflected in updated or revised Ten-Year General Fund Forecasts released after July 1, 2021.

The City agrees to provide an update on the City’s TOT revenues to the Association upon the Association’s request. In the event either of the foregoing occur, either party may request to meet to discuss the subject of wages. Any changes will be by mutual agreement. The parties understand and agree that this will not be a meet and confer within the meaning of section 3505 of the MMBA and that neither party will have access to any impasse resolution procedure except as mutually agreed.

- ~~During calendar year 2021 only, the~~The parties agree to meet and confer over wages in the event the City reaches agreement on a new general wage increase to be effective during

**CITY OF SANTA CLARA – UNCLASSIFIED MISCELLANEOUS MANAGEMENT (UNIT 9)  
2020 NEGOTIATIONS  
TENTATIVE AGREEMENT\*\***

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Calendar Year 2021 or 2022 with any other miscellaneous bargaining unit as part of an agreement on a successor Memorandum of Understanding (MOU). For purposes of this section, “general wage increase” means a wage increase applicable to all members of the bargaining unit (not a subset), but only if that agreement does not also include an agreement for an alternative cost saving measure (including but not limited to unpaid furlough days). Additionally, the parties agree that this section shall not apply to any general wage increases applicable to sworn public safety bargaining units or to miscellaneous bargaining units that are exclusively funded through sources other than the General Fund.

**MERIT PAY**

- See attached

**HOLIDAYS**

- See attached

**VACATION**

- See attached

**MANAGEMENT LEAVE**

- See attached

**HEALTH INSURANCE**

- See attached

**~~DUES DEDUCTIONS~~**

- ~~▪ See attached~~

**NEXT MEMORANDUM OF UNDERSTANDING**

- See attached

**AUTOMOBILE ALLOWANCE**

- See attached

**CTO/4-HOUR RULE**

- Side Letter (see attached)

**HOUSEKEEPING**

- Mobile Communication Device Allowance (see attached)
- Voluntary Employee Beneficiary Association (VEBA) (see attached)
- Retiree Medical Reimbursement (see attached)

City of Santa Clara  
October 26, 2020  
Page 3 of 3

**CITY and Unit 9 Negotiations – Wages**

Proposed Language:

1. WAGE ADJUSTMENTS

~~Effective the first full pay period following City Council approval of this MOU (and retroactive to December 17, 2017 for persons employed with the City on the date the City Council approves this MOU), employees shall receive a 4.0% wage increase. Effective the first full pay period of the 12/18 – 12/19 MOU year, employee shall receive a further 4.0% wage increase.~~

~~(a) Effective December 15, 2019, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall remain status quo.~~

~~(b) Effective the first pay period of calendar year 2021, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall remain status quo.~~

~~(c) Effective the first pay period of calendar year 2022, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 4.5%.~~

~~(c) Effective the first pay period of calendar year 2023, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.~~

~~(d) Effective the first pay period of calendar year 2024, all salary ranges for employees holding positions in classifications assigned to Unit 9 shall be increased by approximately 3.25%.~~

**CITY and Unit 9 Negotiations – Merit Pay**

Proposed Language:

14. MERIT PAY/SALARY ADJUSTMENT SYSTEM

Merit pay adjustments, or merit increases, as provided for in the Personnel and Salary Resolution are, and will continue to be, available during the term of this MOU when and if approved by the applicable Department Head and the City Manager subject to Section 14.G below. The Merit Pay Adjustment system shall include the following elements:

- A. Each Unit 9 employee shall receive an annual evaluation.
- B. Annual consideration of merit pay adjustments, subject to Section 14.G below, with an affirmative decision by the applicable Department Head shall be required each year following the annual evaluation.
- C. Merit pay adjustments shall range from 0 to 5%. However, in 2016 and 2017 only, employee is guaranteed at least 2% and, with Department Head approval, up to 5%, subject to Section 14.G below.
- D. In 2016, employees are eligible for a merit pay adjustment based on an evaluation prepared by February 2, 2016, which date will be their merit pay anniversary each year going forward.
  - 1) Notwithstanding D. above, for employees that have been employed a full year as of February 2, 2016, they will be eligible on their actual anniversary date, which shall also be their merit pay anniversary date thereafter.
  - 2) Notwithstanding D. above, for employees that receive a merit increase between January 1, 2015 and February 2, 2016, the date of their last merit increase shall be their new merit pay anniversary date.
  - 3) If a Department Head has not completed an evaluation in time for a merit adjustment by an employee's anniversary date (February 2, 2016 for most employees), the applicable merit pay adjustment once determined shall be made retroactive to the first full pay period following the anniversary date (and to February 2, 2016 in 2016 for those persons whose anniversary date is February 2, 2016).
- E. The Subject to Section 14.G, the City shall not suspend or freeze consideration of merit pay adjustments for Unit 9 employees unless step increases are suspended or frozen for all bargaining units that utilize a step system.
- F. The City and Unit 9 may, by mutually agreement, meet to discuss potential changes to the merit pay system and/or movement toward a step pay system more like other bargaining units.
- G. Effective January 1, 2021, employees holding positions in classifications assigned to Unit 9 shall be ineligible for a merit increase for the next two (2) consecutive

rating periods. This means that an employee in Unit 9 shall not be eligible for a merit increase until the third rating period after January 1, 2021, and after the employee has skipped two (2) consecutive rating periods where they did not receive a merit increase. Employees with a rating period that ends before January 1, 2021, will be eligible for a merit increase for that rating period pursuant to the Personnel and Salary Resolution, even if such merit increase (if any) is not approved until after January 1, 2021.

1) Employees hired or rehired or promoted or reclassified on or after January 1, 2021, and until on or before December 31, 2022, into positions in classifications assigned to Unit 9 shall be ineligible for a merit increase for the first two (2) consecutive rating periods. This means that an employee hired or rehired or promoted between January 1, 2021, and December 31, 2022, will not be eligible for a merit increase until the employee's third rating period with the City after the employee was hired or rehired or promoted or reclassified into positions in classifications assigned to Unit 9.

(a) A current active City employee promoted or reclassified from another bargaining unit into a position in a classification assigned to Unit 9 between January 1, 2021, and December 31, 2022, shall be ineligible for a merit increase until the employee's third rating period from the effective date of the promotion or reclassification.

(b) A current active City employee holding a position in a classification assigned to Unit 9 as of the effective date of this agreement who is promoted or reclassified into or accepts another position in Unit 9 between January 1, 2021, and December 31, 2022, shall be ineligible for a merit increase unless the employee has skipped two (2) consecutive rating periods where they did not receive a merit increase since January 1, 2021.

(c) Nothing in this Section is intended to prohibit a pay increase that may result from a current active City employee being promoted or reclassified into a position in a classification assigned to Unit 9.

**CITY and Unit 9 Negotiations – Holidays**

Proposed Language:

4. HOLIDAYS

A. Employees shall be provided 13 annual paid holidays (computed on the eight hour per day pay rate). Any additional permanent holidays designated by the City Council will be afforded represented employees of Unit 9. Additional permanent holidays under this section shall be defined as a holiday on which City offices are closed.

B. Additionally, effective December 2020, the City ~~will observe~~ shall provide 32 hours for four additional non-permanent paid holidays between December 25<sup>th</sup> and January 1<sup>st</sup> of the following calendar year. If there are more than four working days between December 25<sup>th</sup> and January 1<sup>st</sup> of the following calendar year, the City shall designate which four working days shall be paid holidays under this paragraph. on 12/26/17, 12/27/17, 12/28/17 and 12/29/17 and on 12/26/18, 12/27/18, 12/28/18 and 12/31/18. These non-permanent paid holidays would be only for these MOU years, and this provision will sunset and expire on the last day of the 12/18 – 12/19 MOU year. Employees whose jobs require them to work on these days would receive banked paid ~~days~~ hours off instead (up to 8 hours per holiday), which hours may and must be used during the applicable MOU year with the approval of the applicable supervisor/manager. ~~Since this MOU was approved by the City Council after the 12/26/17 to 12/29/17 time period, employees who used leaves for the days/hours on and between 12/26/17 and 12/29/17 will receive banked days/hours off which may and must be used as set forth previously; but also shall have the option, if requested, to instead have their leave balances retroactively adjusted.~~



**CITY and Unit 9 Negotiations – Vacation Accrual and Usage**

Proposed Language:

6. VACATION ACCRUAL AND USAGE

Represented employees will be entitled to use vacation as it is earned under the following conditions:

- A. Vacation may not be taken during the first 6 months of regular employment.
- B. Vacation will be earned on a bi-weekly basis (1/26 of the yearly accrual) provided that the employee is in a paid status for at least 2/3 of the hours (53.4 hours) of that pay period.
- C. Accrued vacation time will be paid off regardless of term of employment.
- D. Annual and maximum vacation accrual rates, calculated to four decimal points for accuracy, are as follows:

COMPLETED YEARS OF SERVICE	ANNUAL ACCRUAL	MAXIMUM <u>VACATION</u> ACCRUAL <u>LIMIT</u>
1 through 4	80 hours	<del>400-480</del> hours
5 through 9	120 hours	<del>400-480</del> hours
10 through 15 <del>years</del>	168 hours	<del>400-480</del> hours
16 through 20	176 hours	<del>400-480</del> hours
21 years +	192 hours	<del>400-480</del> hours

- E. Maximum Vacation Accrual Limit – Employees are limited to the maximum accrual of vacation as defined. ~~Employees may temporarily exceed the allowed maximum vacation accrual, subject to the vacation balance as of the end of the pay period which includes December 31st of each year being reduced to the maximum allowable accrual.~~ The current vacation balance, the annual accrual and the current pay period usage are all shown on the employees' pay check stub and are the responsibility of the employee to track for compliance with this provision.

- 1) Effective December 27, 2020 (the first pay period of calendar year 2021), the Maximum Vacation Accrual Limit as described in Section 6.D above shall be temporarily suspended for two (2) years until the end of the last pay period of calendar year 2022. Employees may continue to accrue vacation above the Maximum Vacation Accrual Limit until December 24, 2022 (the end of the last pay period of calendar year 2022).
- 2) Effective December 25, 2022 (the first pay period of calendar year 2023), employees shall not be allowed to accrue vacation above the Maximum Vacation Accrual Limit.

3) Temporary Supplemental Vacation Accrual – Effective December 25, 2022 (the first pay period of calendar year 2023), employees holding positions in classifications assigned to Unit 9 shall be eligible for the Temporary Supplemental Vacation Accrual. The Temporary Supplemental Vacation Accrual is a separate vacation balance subject to the following:

(a) Effective December 25, 2022, all unused accrued vacation hours above 400 hours as of December 24, 2022 (the last pay period of calendar year 2022) shall be placed in the Temporary Supplemental Vacation Accrual balance.

(i) The following is only an example of the Temporary Supplemental Vacation Accrual described above, and any figures are for illustration purposes only and assumes the employee does not use vacation.

<u>Issue</u>	<u>Hours</u>
<u>Vacation Balance as of December 24, 2022 (the last pay period of calendar year 2022)</u>	<u>500</u>
<u>Hours to be placed in Temporary Supplemental Vacation Accrual</u>	<u>100</u>
<u>Vacation Balance as of December 25, 2022 (the first pay period of calendar year 2023)</u>	<u>400</u>
<u>Hours that can be accrued in calendar year 2023</u>	<u>80</u>
<u>Hours that can be accrued above the Maximum Vacation Accrual Limit of 480 hours</u>	<u>0</u>

(b) The Temporary Supplemental Vacation Accrual balance may not be increased.

(c) Subject to supervisory approval, any Temporary Supplemental Vacation Accrual shall be available for use to the employee until the Temporary Supplemental Vacation Accrual balance has been exhausted.

(d) If an employee leaves or retires from City service, any unused Temporary Supplemental Vacation Accrual hours shall not be subject to the terms of Section 6.I below. Any accrued but unused Temporary Supplemental Vacation Accrual hours will be cashed out upon the employee's retirement or other separation from City service. If permitted by the City's deferred compensation plan and applicable law, the separating employee may elect to contribute all or a portion of their accrued but unused Temporary Supplemental Vacation Accrual hours to their deferred compensation account by submitting a written request no later than 30 days prior to their separation from City service.

- ~~(e)~~ An employee must first use their Temporary Supplemental Vacation Accrual for any vacation leave taken until the Temporary Supplemental Vacation Accrual balance has been exhausted, subject to supervisory approval.
- ~~(f)~~ An employee must use their Temporary Supplemental Vacation Accrual for any leave of absence until the Temporary Supplemental Vacation Accrual balance has been exhausted subject to any requirement that sick leave be utilized first.
- ~~(g)~~ An employee may not be on unpaid status until the Temporary Supplemental Vacation Accrual balance has been exhausted and must use their Temporary Supplemental Vacation Accrual until the Temporary Supplemental Vacation Accrual balance has been exhausted, with the exception of any formal disciplinary action pursuant to the City's Civil Service Rules.
- ~~F.~~ Vacation that is temporarily allowed to exceed the maximum allowable accrual and is removed from the vacation balance as of the end of the pay period, which included December 31st of each year, may be donated to the Emergency Paid Leave Fund at the direction of the employee.
- ~~GE.~~ Vacation may be used in one-tenth (1/10th) hour increments.
- ~~HG.~~ Employees who begin work prior to July 1st or continue to be employed after the first calendar year of employment are required to use at least one-half of the vacation accrued during the prior calendar year during the current calendar year.
- ~~H.~~ Subject to having a sufficient balance of accrued vacation available, an employee may, on a twice per year basis, request to be paid at his/her current hourly pay rate for a total combined maximum of 80 hours of accrued vacation.
- ~~J.~~ In lieu of receiving a vacation-leave cash payout at retirement, the Miscellaneous Unclassified Management Employees may vote to roll accrued vacation leave hours (except for any hours in the Temporary Supplemental Vacation Accrual balance) into the employee's VEBA account, subject to Association compliance with Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

**CITY and Unit 9 Negotiations – Management Leave**

Proposed Language:

25. MANAGEMENT LEAVE PROGRAM

The Management Leave Program is as follows:

- A. Effective January 1 of each year, represented employees will be credited with 120 hours of Management Leave per calendar year.
- B. New hires or employees promoted into Unit 9 between January 1 and June 30 will be credited with 120 hours of Management Leave. New hires or employees promoted into Unit 9 between July 1 and December 31 will be credited with 60 hours of Management Leave.
- C. Use of Management Leave is subject to approval by the applicable Department Head, or the City Manager or his/her designee in the case of a Department Head request, taking into account the relevant circumstances including work/Department needs, staffing limitations, conflicts, timing of request, etc.
- D. Management Leave may not be converted to cash or other paid time off.
- E. Unused Management Leave may be carried over from one calendar year to the next; however, an employee may never have more than a balance of 180 hours of "banked" management leave, subject to Section 25.E.1-4 below. (Thus, and for example, an employee that already has 180 hours of management leave on January 1 would not receive any further management leave. An employee that already has 100 hours of management leave on January 1 would "only" receive an additional 80 hours. An employee with 60 or fewer hours of banked management leave on January 1 would receive 120 hours.)
  - 1) For calendar year 2021, an employee may have up to a balance of 240 hours of management leave.
  - 2) For calendar year 2022, an employee may have up to a balance of 240 hours of management leave.
  - 3) For calendar year 2023, an employee may have up to a balance of 240 hours of management leave.
  - 4) For calendar year 2024, an employee may have up to a balance of 240 hours of management leave.
  - 5) Effective the first pay period of calendar year 2025, the terms of Section 25.E above shall apply, and an employee may have no more than a balance of 180 hours of management leave.

**CITY and Unit 9 Negotiations – Health Insurance**

Proposed Language:

**7. HEALTH INSURANCE**

- A. For employees who enroll in a City offered health plan and whose benefits exceed the total of the City's Health Flex Contribution, Additional Health Flex Contribution, and/or Regular Flex Contribution applicable to the employee and as described below, the balance of the benefits shall be paid by a salary deduction from the pay of the individual employee.

**B. Health Flex Contribution**

- 1) Effective January 1, 2018, the City will offer full-time employees a Health Flex Contribution of \$133.00/month to put toward the payment of a City offered health plan. The \$133.00/month applies for 2018, and this amount shall be modified City shall modify the Health Flex Contribution each calendar year using the Rate of Pay Safe Harbor (based on the lowest base pay of any full-time employee position covered by this MOU) to ensure the City's offered coverage is "affordable." The City contributes the statutorily required minimum contribution under the Public Employees Medical and Hospital Care Act (PEMHCA) as determined by CalPERS in each calendar year. It is understood and agreed that the Health Flex Contribution described in this paragraph shall be equal to or exceed the City's statutorily required minimum PEMHCA contribution.<sup>1</sup>
- 2) Employees may not receive all or any portion of the Health Flex Contribution as cash or any other taxable benefit, and must apply the Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the Health Flex Contributions.

**C. Additional Health Flex Contribution**

- 1) Full-time employees who enroll in a City health plan for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution in the amounts described in this section.
- 2) Employees may not receive all or any portion of the Additional Health Flex Contribution as cash or any other taxable benefit, and must apply the Additional Health Flex Contribution to City-offered health benefits. Employees who do not enroll in City-offered health benefits will not receive any of the Additional Health Flex Contributions.
- 3) Employees-Effective January 1, 2020, full-time employees who enroll in a City health plan for which the employee-only premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution. The Additional Health Flex Contribution, when added to the Health Flex Contribution described in the prior paragraph-section and the Regular Flex Contribution described herein, shall not exceed \$200 per month over the Kaiser employee only premium amount for the

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<sup>1</sup> As an example, for 2020, the PEMHCA minimum is approximately \$139/month and the Health Flex Contribution is \$139.00/month, which includes the PEMHCA minimum of \$139/month.

applicable year.<sup>2</sup> ~~(For 2018, this is an additional \$35.57/month to these individuals, since \$200 over the Kaiser employee only amount in 2018 is \$982.43/month.)~~

4) Effective January 1, 2023, full-time employees:

(a) Who enroll in a City health plan for Employee Only coverage for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution to be put towards the premium amount. The City will provide an Additional Health Flex Contribution amount that, when added to the Health Flex Contribution described above and the Regular Flex Contribution described herein, shall not exceed \$200 per month over the Kaiser employee only premium amount for the applicable year.

(b) Who enroll in a City health plan for Employee Plus One coverage or Employee Plus Family coverage for which the premium amount is more than \$946.86/month shall receive an Additional Health Flex Contribution to be put towards the premium amount. The Additional Health Flex Contribution, when added to the Health Flex Contribution described above and the Regular Flex Contribution described herein, shall not exceed an amount equal to 100% of the Kaiser Employee Plus One rate for the applicable year.

~~Employees may not receive all or any portion of the Health Flex Contribution or Additional Health Flex Contribution as cash or any other taxable benefit, and must apply the Health Flex Contribution to City offered health benefits. Employees who do not enroll in City offered health benefits will not receive any of the Health Flex Contributions.~~

~~It is understood and agreed that a portion of the Health Flex Contribution described in this subsection is the City's contribution of the statutorily required minimum contribution under the Public Employees Medical and Hospital Care Act (PEMHCA) (e.g. \$133/month in 2018), which is the City's designated PEMHCA amount.~~

DB. Regular Flex Contribution

~~1) Effective January 1, 2018, the~~ The City will provide ~~full-time employees~~ a Regular Flex Contribution equal to \$946.86 less the Health Flex Contribution ~~(thus, for 2018, the Regular Flex Contribution will be \$813.86/month).~~<sup>3</sup> Employees may use the Regular Flex Contribution to pay for health benefits offered under the City's Section 125 plan or may opt to receive any or all of the Regular Flex Contribution as taxable cash. An employee will receive a Regular Flex Contribution whether or not he/she enrolls in City-offered health benefits and notwithstanding the provisions of Section 7.C. below.

~~2) For employees who enroll in City health and whose benefits exceed the total of the City's Health Flex and Regular Flex Contributions to them, the balance of the health premium shall be paid by a salary deduction from the pay of the individual~~

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<sup>2</sup> As an example, for 2020, the Additional Health Flex Contribution is approximately \$23.70/month to these individuals since \$200 over the Kaiser employee only premium amount in 2020 is approximately \$970.56/month.

<sup>3</sup> As an example, for 2020, the Regular Flex Contribution for employees who are regularly scheduled to work 40 hours per week is approximately \$807.86/month.

~~employee~~Employees hired or rehired on or after January 1, 2023, who choose not to enroll in a City health plan are not eligible for a Regular Flex Contribution.

EC. Cash In Lieu

- 1) ~~Effective January 1, 2018, Full-time~~ employees hired before January 1, 2023, who choose not to enroll in a City health plan for a plan year, and meet the requirements set forth below, shall receive a Cash in Lieu amount per month for that plan year equal to \$946.86 minus the Regular Flex Contribution as calculated each calendar year.<sup>4</sup> (for 2018, the Cash in Lieu amount is \$133.00). A full-time employee hired before January 1, 2023, who enrolls in coverage for a plan year, shall be treated in accordance with Sections 7.A-D and will not receive Cash in Lieu for that plan year.
- 2) Full-time employees hired or rehired on or after January 1, 2023, who choose not to enroll in a City health plan for a plan year, and meet the requirements set forth below, shall receive a Cash in Lieu amount for that plan year equal to \$250/month. A full-time employee hired on or after January 1, 2023, who enrolls in coverage for a plan year, shall be treated in accordance with Sections 7.A-D and will not receive Cash in Lieu for that plan year.
- 3) In order to receive Cash in Lieu of health coverage, an employee must sign a form attesting that the employee and the employee's Tax Family have the Alternative Required Coverage for the Opt Out Period.
  - (a) Tax Family means all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or years that begin or end in or with the City's plan year to which the opt out applies.
  - (b) Alternative Required Coverage required means minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California).
  - (c) Opt Out Period means the plan year to which the opt out arrangement applies.
  - (d) An employee must provide the attestation every plan year at open enrollment or within 30 days after the start of the plan year for each plan year the employee would like to receive ~~cash~~ Cash in ~~lieu~~ Lieu.
  - (e) The Cash in Lieu payment cannot be made and the City will not in fact make payment if the City knows or has reason to know that the employee or a Tax Family member does not have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.
  - (f) An employee who opts out of City-offered health benefits, but cannot provide the attestation, will not receive the Cash in Lieu contribution described in this subsection.

ED. Flexible Spending Account (IRS Section 125 Plan)

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<sup>4</sup> As an example, for 2020, the Cash in Lieu amount is approximately \$139.00/month for employees who are regularly scheduled to work 40 hours per week.



- 1) The City has established a Flexible Spending Account benefit (IRS Section 125 Plan) for employees, which provides accounts in which employees may contribute pre-tax dollars for dependent care and un-reimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Service. Detailed information will be available in the Summary Plan Document.
- 2) This Plan is voluntary and participating employees will make pre-tax salary reduction elections to fund the plan.

GE.      ~~Re-Opener:~~Proration of Benefits

- 1) During 2018, the City and Miscellaneous Unclassified Management agree to re-open Section 7 regarding the City's contributions to health premiums. The parties agree that there shall not be any decrease in City contributions to health premiums or to those that receive cash in lieu of participating in City health, as a result of this re-opener. For employees who may be eligible for benefits but work less than 40 hours per week, benefits shall be prorated based on the employee's full-time equivalent (FTE) level.



**CITY and Unit 9 Negotiations – Next Memorandum of Understanding**

Proposed Language:

31. NEXT MEMORANDUM OF UNDERSTANDING

Unit 9 will submit its proposals for a Memorandum of Understanding for the term commencing at the expiration of this Memorandum of Understanding no later than ~~October 25, 2019~~January 31, 2024.

**CITY and Unit 9 Negotiations – Automobile Allowance**

Proposed Language:

12. AUTOMOBILE ALLOWANCE

As an alternative to IRS mileage reimbursement or use of a City vehicle, an automobile allowance program will be available to represented employees as follows:

- A. Department Heads including Assistant City Manager, Deputy City Manager and Deputy Director Redevelopment Agency/Sports & Open Space Authority (Executive Management) shall be entitled to a base monthly automobile allowance of \$320 for use of their personal vehicles to conduct City business. Executive Management employees may be eligible to receive an additional amount up to a maximum of \$200 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.
- B. Assistant Department Heads and Division Managers shall be entitled to a base monthly automobile allowance of \$200 for use of their personal vehicles to conduct City business. Assistant Department Heads and Division Managers may be eligible to receive an additional amount up to a maximum of \$300 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.
- C. Effective December 27, 2020 (the first pay period of calendar year 2021), the base monthly automobile allowance shall be paid on the first 2 pay periods of every month.
- DC. Upon request of the employee, prior to the beginning of each fiscal year, the City Manager or his/her designee will determine whether or not it is appropriate for a manager to receive an amount above the base monthly allowance. The determination will be made based on the requirements for use of the personal vehicles for City business and may require detailed driving information in order to grant an amount above the base monthly amount. This rate adjustment will become effective at the beginning of each fiscal year and will remain in effect for the full year unless there are unique circumstances requiring a modification.
- ED. Prior to the granting of this allowance, all insurance, driver's license, and vehicle registration as required under the State of California Vehicle Code, will be provided by the represented employee, and must be valid and in force at all times employees are operating their personal vehicles on City business.
- EE. Employees receiving the automobile allowance are responsible for all gasoline and maintenance costs. Employees shall also maintain their personal vehicles in a clean and presentable condition while conducting City business.
- GF. A represented employee, who is currently assigned a City vehicle, may choose to continue using that assigned City vehicle in lieu of the automobile allowance.

**2020 CITY OF SANTA CLARA – UNCLASSIFIED MISCELLANEOUS MANAGEMENT (UNIT 9)  
NEGOTIATIONS**

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| HG. The City reserves the right to substitute an assigned City vehicle in lieu of this automobile allowance for a represented employee if it is deemed to be in the City's best interest to provide a City vehicle to conduct City business.

| IH. A represented employee who is currently reimbursed for use of a personal vehicle in accordance with the IRS mileage reimbursement rate, may continue to utilize direct mileage reimbursement, in lieu of participation in this automobile allowance program.

## **SIDE LETTER AGREEMENT**

BETWEEN

THE CITY OF SANTA CLARA

AND

THE MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES  
(UNIT 9)

### **USE OF COMPENSATORY TIME OFF (CTO)**

The City and Unit 9 acknowledge the following that employees represented by Unit 9 have historically used Compensatory Time Off, or CTO, to take partial leave during their workday, even though CTO is leave earned in lieu of pay for overtime worked and that employees represented by Unit 9 are exempt employees. While this has been a historical practice, it appears that CTO was used on a limited basis by employees represented by Unit 9.

The City and Unit 9 also acknowledge that employees who work an alternative work schedule were required to code every hour over eight (8) hours using either CTO or their own accrued leave for any holiday that fell on a regularly scheduled work day that consisted of more than eight (8) hours. In addition, employees were allowed, when possible, to take an alternative day off to make up for the holiday.

In resolution of any disputes surrounding the use of CTO by employees represented by Unit 9, the parties hereby agree as follows:

1. Effective the first full pay period after approval by City Council:

- a. Employees represented by Unit 9 will not be eligible to use or code Compensatory Time Off (or "CTO").
  - i. The City will not make any retroactive pay adjustments for employees to use or code CTO.
  - ii. For those employees whose offer letters specifically provide for the use of CTO, the City will coordinate directly with the impacted employees as needed.
- b. Employees represented by Unit 9 will be eligible for the "4-Hour Rule," subject to supervisory approval.
  - i. This means that employees, subject to supervisory approval, are not generally required to report any management, vacation and/or sick leave of four (4) or less hours.
  - ii. This is intended to be used on a very limited basis and is not intended to be used regularly. Accordingly, employees may still be required to report

management, vacation and/or sick leave for absences of four (4) or less hours at the discretion of the Department.

- c. Employees represented by Unit 9 who work an alternative work schedule will not be required to use their own accrued leave for every hour over eight (8) hours for any holiday that fell on a regularly scheduled workday that consisted of more than eight (8) hours. Employees will code (UNIT 9 SPECIFIC HOLIDAY CODE TO BE SET UP BY PAYROLL) for all regularly scheduled hours for a holiday that falls on a regularly scheduled workday.
  - i. If a holiday falls on an employee's regular day off, the employee will not be eligible for any additional pay or leave, or to take an alternative day off to make up for the holiday. If an employee wants to take an alternative day off to make up for the holiday, the employee is required to use their accrued management or vacation leave, subject to supervisory approval.
- 2. Upon the effective date of this Side Letter Agreement, the terms of this Side Letter Agreement shall supersede any term of the Unit 9 Memorandum of Understanding ("MOU") related to the use of CTO.
  - a. The terms of this Side Letter Agreement will be incorporated into the Unit 9 MOU, and the relevant sections of the MOU shall be updated accordingly, including but not limited to:
    - i. Section 19(B)(6) under the "Emergency Paid Leave Program" shall be amended as follows:

"Employees, appointed Council officers, and the elected City Clerk may contribute earned vacation, CTO or cash to the Emergency Paid Leave Pools of other City bargaining groups."
    - ii. Section 16(A)(2) under "Sick Leave/Family Leave/Personal Leave" shall be amended as follows:

"Use of sick leave will be under the same terms and conditions as are now in place. Vacation, Unclassified CTO, and Management Leave may be used to supplement sick leave with Department Head approval, as permitted and set forth in CMD 30."
    - iii. Section 24(C) under "Industrial Injury/Continuation of Insurance Benefits While On Workers' Compensation" shall be amended as follows:

"The employee has supplemented his/her workers' compensation benefit with sick leave, vacation, unclassified CTO, management leave or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City."
- 3. This Side Letter Agreement shall not establish precedent for future agreements and shall not be construed or implied to obligate the City or Unit 9 to enter into any similar agreements in the future.

4. This Side Letter Agreement shall become effective when signed by all parties below and upon approval by City Council.

**FOR THE CITY:**

**FOR UNIT 9:**

*draft*  
Aracely Rodriguez                      Date  
Director of Human Resources

*draft*  
Christopher Jackson                      Date  
President, Unit 9

**CITY and Unit 9 Negotiations – Housekeeping**

Proposed Language:

13. MOBILE COMMUNICATION DEVICE ALLOWANCE

Mobile communication device allowance of \$80.00 per month for eligible classifications ~~beginning in the pay period which includes April 1, 2009.~~

18. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

- A. The City established a Voluntary Employee Beneficiary Association (VEBA) trust under Internal Revenue Code Section 501(c)(9) for the purpose of providing a defined contribution post-retirement medical benefit for employees. ~~The City previously stopped making contributions to employee VEBA accounts effective December 21, 2003 through December 26, 2009 and employee VEBA accounts remained open for other potential contributions. Effective December 27, 2009, the~~The City began ~~contributing~~contributes \$50 per month per represented employee. Per the City's contract with VEBA, VEBA's consulting fee will be deducted from plan participant's accounts. These contributions shall be ~~made "below the line," on the Salary Adjustment Form (i.e. excluded from calculation of salary adjustments based on total compensation adjustments) but shall be~~ included on ~~Bay Area ERS~~ total compensation surveys. Specific information regarding the Plan is referenced i n the Plan Document.
- B. VEBA is a tax-exempt trust account formed under Internal Revenue Code Section 501(c)(9) designed to accumulate assets to fund the future payment of qualified unreimbursed medical expenses (including specified insurance premiums). At retirement, participants may withdraw the accumulated plan benefits to pay for unreimbursed health insurance premiums, qualified long-term care insurance premiums, and other qualified unreimbursed medical expenses and will not be taxed under current state and federal law. Withdrawals cannot be made for nonmedical purposes.

19. RETIREE MEDICAL REIMBURSEMENT BENEFIT

- A. The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the ~~first~~ second full month after retirement from City service and ending with the last full month before the retiree's sixty-fifth (65th) birthday. Starting in the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental health insurance premium. For premiums paid in calendar year 2017 that will be reimbursed in 2018, fi he City will reimburse an amount up to \$343 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$205 per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium. The amount of the City reimbursement will be adjusted thereafter once each year by the

**2020 CITY OF SANTA CLARA – UNCLASSIFIED MISCELLANEOUS MANAGEMENT (UNIT 9)  
NEGOTIATIONS**

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percentage change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.

- B. Beginning in 2004, the City will pre-fund this benefit with an amount to be determined by an actuary.
- C. Each retiree will be required to submit proof of health insurance coverage to the City each year. The City will pay the reimbursement in a lump sum payment each year.

20. EMPLOYEE ASSISTANCE PROGRAM

The City will provide a confidential Employee Assistance Program for represented employees ~~to be funded outside of the Salary Adjustment Form.~~

~~29. DISCUSSION SUBJECTS~~

~~Commencing no later than sixty (60) days following Council approval of this MOU, and with the goal of completing the process by the end of 2018, the City agrees to meet with Miscellaneous Unclassified Management and discuss the items listed below and answer factual and legal questions regarding these Miscellaneous Unclassified Management interests so that the parties would be prepared to discuss these subjects should Miscellaneous Unclassified Management choose to make proposals on these subjects in the next round of MOU negotiations.~~

- ~~A. The legality and tax and pension implications of City payment of employee contributions to Social Security~~
- ~~B. City matching and/or contributions to deferred compensation~~
- ~~C. The concept of a potential housing allowance or other housing assistance~~
- ~~D. Compaction and related pay differential issues~~
- ~~E. Cash out of management leave accruals~~





## Agenda Report

20-468

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Action on Adoption of a Resolution Approving the 2019 Bay Area Urban Areas Security Initiative Program Grant, and Related Budget Amendment.

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

Santa Clara Fire Department (SCFD) has been awarded a combined grant of \$272,393, split between the Urban Area Security Initiative (UASI) equipment grant and the State Homeland Security Grant Program (SHSGP) to purchase backpack portable radiation detection equipment. Council approved the SHSGP grant portion of this award on May 26, 2020; while the approval and ratification of the Bay Area UASI (BAUASI) grant portion is recommended in this memorandum with an extension to the grant timeline to June 30, 2021. SCFD is a participating public safety agency in both the 11-county San Francisco BAUASI region, as well as a mutual aid partner in the California statewide response plan. This equipment will be used both at special events and during everyday missions to screen for the presence of radiological/nuclear materials that could cause harm.

#### **DISCUSSION**

Due to the number of high-profile potential targets in the City of Santa Clara (City), the SCFD has spent several years developing its ability to both prevent and respond to the threat of weapons of mass destruction (WMD). The SCFD HazMat Team has become the regional leader in Preventative Radiological and Nuclear Detection (PRND) and this grant award is recognition of the department's commitment to that mission. This equipment will support City's hazardous materials team, as well as response teams at the Levi Stadium and all City special events. Not only will this equipment be available to support SCFD's internal missions, but it will be a regional response asset for the South Bay.

Due to the timelines involved with the grant, the Fire Department executed the grant documents (Attachment 1) under the authority granted by Council to the City Manager on May 24, 2005, relating to execution of grants from Homeland Security funds. The grant documents, however, require action of the Council to approve (and in this case, ratify) the grant, as reflected in the attached Resolution (Attachment 3).

#### **ENVIRONMENTAL REVIEW**

The adoption of an ordinance of general policy or procedure/purchase of supplies 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 policy making or administrative activity that will not result in direct or indirect changes in the environment.

**FISCAL IMPACT**

Staff is proposing a budget amendment to recognize the BAUASI Grant revenue in the Fire Department Operating Grant Trust Fund in the amount of \$185,000 and appropriate the funding to the 2019 Bay Area Urban Areas Security Initiative program to purchase backpack portable radiation detection equipment. BAUASI is a reimbursement grant, and upon expending the appropriated funds, SCFD will request reimbursement from the awarding agency.

**Budget Amendment****FY 2020/21**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>Fire Department Operating Grant Trust Fund</b>			
<u>Revenue</u>			
Grant Funding	\$0	\$185,000	\$185,000
<u>Expenditure</u>			
2019 Bay Area Urban Areas Security Initiative program	\$0	\$185,000	\$185,000

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Adopt a Resolution Approving the 2019 Bay Area Urban Areas Security Initiative program grant in the amount of \$185,000 (as extended to 2021) for the purchase of backpack portable radiation detection equipment; and
2. Approve the related budget amendment in the Fire Operating Grant Trust Fund to recognize grant revenue in the amount of \$185,000 and establish a 2019 Bay Area Urban Areas Security Initiative program appropriation in the amount of \$185,000.

Reviewed by: Ruben Torres, Fire Chief

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. 2019 UASI MOU City of Santa Clara
2. 2019 BAUASI Grant Extension
3. Resolution

**AGREEMENT BETWEEN THE CITY AND COUNTY OF  
SAN FRANCISCO AND THE CITY OF SANTA CLARA  
FOR THE DISTRIBUTION OF FY 2019 UASI GRANT FUNDS**

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THIS AGREEMENT is made this **NOVEMBER 1, 2019** in the City and County of San Francisco, State of California, by and between the **CITY OF SANTA CLARA** ("SCFD") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("San Francisco" or "City"), in its capacity as fiscal agent for the Approval Authority, as defined below, acting by and through the San Francisco Department of Emergency Management ("DEM").

***RECITALS***

WHEREAS, The United States Department of Homeland Security ("DHS") consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined Bay Area Urban Area ("UASI Region") for the purpose of application for and allocation and distribution of federal Urban Areas Security Initiative ("UASI") program grant funds; and

WHEREAS, The Bay Area Urban Area Approval Authority ("Approval Authority") was established as the Urban Area Working Group ("UAWG") for the UASI Region, to provide overall governance of the homeland security grant program across the UASI Region, to coordinate development and implementation of all UASI program initiatives, and to ensure compliance with all UASI program requirements; and

WHEREAS, The UASI General Manager is responsible for implementing and managing the policy and program decisions of the Approval Authority, directing the work of the UASI Management Team personnel, and performing other duties as determined and directed by the Approval Authority, and

WHEREAS, San Francisco has been designated as the grantee for UASI funds granted by the DHS through the California Office of Emergency Services ("Cal OES") to the UASI Region, with responsibility to establish procedures and execute subgrant agreements for the distribution of UASI program grant funds to jurisdictions selected by the Approval Authority to receive grant funding; and

WHEREAS, San Francisco has been designated to serve as the fiscal agent for the Approval Authority, and to establish procedures and provide all financial services for distribution of UASI program grant funds within the UASI Region; and

WHEREAS, Pursuant to grant allocation decisions by the Approval Authority, the UASI Management Team has asked San Francisco to distribute a portion of the regional UASI grant funds to SANTA CLARA on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

1.1 **Specific Terms.** Unless the context requires otherwise, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) **“ADA”** shall mean the Americans with Disabilities Act (including all rules and regulations there under) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

(b) **“Authorized Expenditures”** shall mean expenditures for those purposes identified and budgeted in Appendix A, attached hereto and incorporated by reference as though fully set forth herein.

(c) **“Event of Default”** shall have the meaning set forth in Section 7.1.

(d) **“Fiscal Quarter”** shall mean each period of three calendar months commencing on July 1, October 1, January 1, and April 1, respectively.

(e) **“Grant Funds”** shall mean any and all funds allocated or disbursed to SCFD (DUNS#: 003887002) under this Agreement. This Agreement shall specifically cover funds allocated or disbursed from Cal OES Grant No. 2019-0035, Cal OES ID No. 075-95017, CFDA No. 97.067, per Cal OES award notice dated September 26, 2019.

(f) **“Grant Plan”** shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter, and the budget and requirements, described in Appendix A and the WebGrants system. If SCFD requests any modification to the Grant Plan, SCFD shall submit a written request to the UASI General Manager with the following information: Scope of change requested, reason for change, proposed plan for change, summary of approved and requested modifications to the Grant Plan, and any necessary approvals in support of change (e.g., EHP).

(g) **“Indemnified Parties”** shall mean: (i) San Francisco, including all commissions, departments including DEM, agencies, and other subdivisions of San Francisco; (ii) San Francisco’s elected officials, directors, officers, employees, agents, successors, and assigns; and (iii) all persons or entities acting on behalf of the foregoing.

(h) **“Losses”** shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(i) **“Reimbursement Request”** shall have the meaning set forth in Section 3.10(a).

1.2 **Additional Terms.** The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of City. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of City. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable or satisfactory to, City. The terms “include,” “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation.” The use of the term “subcontractor,” “subgrantee,” “successor” or “assign” herein refers only to a subcontractor, subgrantee, successor or assign expressly permitted under Article 8.

1.3 **References to this Agreement.** References to this Agreement include: (a) any and all appendices, exhibits, schedules, and attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 10.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as “hereunder,” “herein” or “hereto” refer to this Agreement as a whole.

1.4 **Reference to laws.** Any reference in this Agreement to a federal or state statute, regulation, executive order, requirement, policy, guide, guideline, information bulletin, or instruction shall mean that statute, regulation, executive order, requirement, policy, guide, guideline, information bulletin, or instruction as is currently in effect and as may be amended, modified or supplemented from time to time.

## ARTICLE 2 ALLOCATION AND CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON SAN FRANCISCO'S OBLIGATIONS

2.1 **Risk of Non-Allocation of Grant Funds.** This Agreement is subject to all federal and state grant requirements and guidelines, including DHS and Cal OES requirements, guidelines, information bulletins, and instructions, the decision-making of the Cal OES and the Approval Authority, the terms and conditions of the grant award; the approved application, and to the extent applicable the budget and fiscal provisions of the San Francisco Charter. The Approval Authority shall have no obligation to allocate or direct disbursement of funds for this Agreement in lieu of allocations for new or other agreements. SCFD acknowledges and agrees that grant decisions are subject to the discretion of the Cal OES and Approval Authority. Further, SCFD acknowledges and agrees that the City shall have no obligation to disburse grant funds to SCFD until City and SCFD have fully and finally executed this Agreement. SCFD acknowledges and agrees that if it takes any action, informal or formal, to appropriate, encumber or expend Grant Funds before final allocation decisions by Cal OES and the Approval Authority, and before this Agreement is fully and finally executed, it assumes all risk of possible non-allocation or non-reimbursement of funds, and such acknowledgement and agreement is part of the consideration of this Agreement.

2.2 **Certification of Controller; Guaranteed Maximum Costs.** No funds shall be available under this Agreement without prior written authorization certified by the San Francisco Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code:

(a) San Francisco's obligations hereunder shall not at any time exceed the amount approved in the grant award and/or by the Approval Authority, and certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by San Francisco ordinances governing emergency conditions, San Francisco and its employees and officers, and the UASI Management Team and its personnel, are not authorized to request SCFD to perform services or to provide materials, equipment and supplies that would result in SCFD performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement, unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. San Francisco is not required to pay SCFD for services, materials, equipment or supplies that are provided by SCFD that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by San Francisco.

(c) San Francisco and its employees and officers, and the UASI Management Team and its personnel, are not authorized to offer or promise to SCFD additional funding for this Agreement that would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. San Francisco is not required to honor any offered or promised additional funding that exceeds the maximum provided in this Agreement that requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

(d) The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

2.3 **SUPERSEDURE OF CONFLICTING PROVISIONS.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

### **ARTICLE 3 PERFORMANCE OF THE AGREEMENT**

3.1 **Duration of Term.** The term of this Agreement shall commence on **NOVEMBER 1, 2019** and shall end at 11:59 p.m. San Francisco time on **DECEMBER 31, 2020.**

3.2 **Maximum Amount of Funds.** In no event shall the amount of Grant Funds disbursed hereunder exceed **ONE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$185,000)**. The City will not automatically transfer Grant Funds to SCFD upon execution of this Agreement. SCFD must submit a Reimbursement Request under Section 3.10 of this Agreement, approved by the UASI Management Team and City, before the City will disburse Grant Funds to SCFD.

3.3 **Use of Funds.**

(a) **General Requirements.** SCFD shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in the Grant Plan. SCFD shall not use or expend Grant Funds for any other purpose, including but not limited to, for matching funds for other federal grants/cooperative agreements, lobbying or intervention in federal regulatory or adjudicatory proceedings, or to sue the federal government or any other government entity. SCFD shall not permit any federal employee to receive Grant Funds.

(b) **Modification of Grant Plan.** Under Sections 1.1(f) and 10.2 of this Agreement, SCFD may submit a written request to modify the Grant Plan. SCFD shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to such a request for modification until (1) the General Manager or designee has provided written approval for the request and (2) the parties have finally executed a modification of this Agreement under Section 10.2, to reflect the modified Grant Plan. In addition, if the modification request requires approval from the Approval Authority and/or Cal OES, as determined by the General Manager, SCFD shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to the modification request without approval from the Approval Authority and/or Cal OES.

(c) **No Supplanting.** SCFD shall use Grant Funds to supplement existing funds, and not replace (supplant) funds that have been appropriated for the same purpose.

(d) Obligations. SCFD must expend Grant Funds in a timely manner consistent with the grant milestones, guidance and assurances; and make satisfactory progress toward the goals, objectives, milestones and deliverables in this Agreement.

### 3.4 **Grant Assurances; Other Requirements; Cooperation with Monitoring.**

(a) SCFD shall comply with all Grant Assurances included in Appendix B, attached hereto and incorporated by reference as though fully set forth herein. SCFD shall require all subgrantees, contractors and other entities receiving Grant Funds through or from SCFD to execute a copy of the Grant Assurances, and shall ensure that they comply with those Grant Assurances.

(b) In addition to complying with all Grant Assurances, SCFD shall comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority. SCFD shall require and ensure that all subgrantees, contractors and other entities receiving Grant Funds through or from SCFD comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority.

(c) SCFD shall promptly comply with all standards, specifications and formats of San Francisco and the UASI Management Team, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and compliance with this Agreement. SCFD shall cooperate in good faith with San Francisco and the UASI Management Team in any evaluation, inspection, planning or monitoring activities conducted or authorized by DHS, Cal OES, San Francisco or the UASI Management Team. For ensuring compliance with non-supplanting requirements, upon request by City or the UASI Management Team, SCFD shall supply documentation certifying that a reduction of non-federal resources occurred for reasons other than the receipt or expected receipt of Grant Funds.

3.5 **Administrative, Programmatic and Financial Management Requirements.** SCFD shall establish and maintain administrative, programmatic and financial management systems and records in accordance with federal and State of California requirements. This provision requires, at a minimum, that SCFD comply with the following non-exclusive list of regulations commonly applicable to DHS grants, as applicable to this Agreement and the Grant Plan:

- (a) Administrative Requirements:
  - 1. 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).
- (b) Cost Principles:
  - 1. 2 CFR Part 200, Subpart E - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133);
  - 2. Federal Acquisition Regulations (FAR), Part 31.2 *Contract Principles and Procedures, Contracts with Commercial Organizations*.
- (c) Audit Requirements:

1. 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).

### 3.6 **Technology Requirements.**

(a) National Information Exchange Model ("NIEM"). SCFD shall use the latest NIEM specifications and guidelines regarding the use of Extensible Markup Language ("XML") for all awards of Grant Funds.

(b) Geospatial Guidance. SCFD is encouraged to use Geospatial technologies, which can capture, store, analyze, transmit and/or display location-based information (i.e., information linked to a latitude and longitude), and to align any geospatial activities with the guidance available on the Federal Emergency Management Agency ("FEMA") website.

(c) Criminal Intelligence Systems Operating Policies. Any information technology system funded or supported by Grant Funds shall comply with 28 CFR Part 23, *Criminal Intelligence Systems Operating Policies*, if applicable.

(d) SCFD is encouraged to use the DHS guidance in *Best Practices for Government Use of CCTV: Implementing the Fair Information Practice Principles*, if Grant Funds are used to purchase or install closed circuit television (CCTV) systems or to support operational CCTV systems.

### 3.7 **Procurement Requirements.**

(a) General Requirements. SCFD shall follow its own procurement requirements as long as those requirements comply with all applicable federal and State of California statutes, regulations, requirements, policies, guides, guidelines and instructions.

(b) Specific Purchases. If SCFD is using Grant Funds to purchase interoperable communication equipment, SCFD shall consult DHS's SAFECOM's coordinated grant guidance, which outlines standards and equipment information to enhance interoperable communication. If SCFD is using Grant Funds to acquire critical emergency supplies, prior to expending any Grant Funds, SCFD shall submit to the UASI Management Team for approval by Cal OES a viable inventory management plan, an effective distribution strategy, sustainment costs for such an effort, and logistics expertise to avoid situations where funds are wasted because supplies are rendered ineffective due to lack of planning.

(c) Bond requirement. SCFD shall obtain a performance bond for any equipment items over \$250,000 or any vehicle, aircraft or watercraft financed with Grant Funds.

### 3.8 **Subgrantee and Contractor Requirements.**

(a) SCFD shall ensure and independently verify that any subgrantee, contractor or other entity receiving Grant Funds through or from SCFD is not debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs, under Executive Orders 12549 and 12689, as implemented at 2 CFR Part 3000. SCFD shall obtain documentation of eligibility before disbursing Grant Funds to any subgrantee, contractor or other entity. SCFD shall maintain documentary proof of this verification in its files. SCFD shall establish procedures for the effective use of the "Excluded Parties List System," to assure that it does not provide Grant Funds to excluded parties. SCFD shall also establish procedures to provide for effective use and/or dissemination of the list to assure that its grantees and subgrantees, including contractors, at any tier do not make awards in violation of the non-procurement debarment and suspension common rule.



(b) SCFD shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from SCFD complies with the requirements of 44 CFR Part 18, *New Restrictions on Lobbying*; and

(c) SCFD shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from SCFD complies with the requirements of 2 CFR Part 3001, *Requirements for Drug-Free Workplace (Financial Assistance)*.

### 3.9 **Monitoring Grant Performance.**

(a) City and the UASI Management Team are both authorized to perform periodic monitoring reviews of SCFD's performance under this Agreement, to ensure that the Grant Plan goals, objectives, performance requirements, timelines, milestone completion, budgets and other criteria are being met. Programmatic monitoring may include the Regional Federal Preparedness Coordinators, or other federal or state personnel, when appropriate. Monitoring may involve a combination of desk-based reviews and on-site monitoring visits, inspection of records, and verifications of grant activities. These reviews will involve a review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The reviews may include, but are not limited to:

1. Evaluating eligibility of expenditures;
2. Comparing actual grant activities to those approved by the Approval Authority and specified in the Grant Plan;
3. Ensuring that any advances have been deposited in an interest bearing account and disbursed in accordance with applicable guidelines; and
4. Confirming compliance with: Grant Assurances; information provided on performance reports and payment requests; and needs and threat assessments and strategies.

(b) SCFD is responsible for monitoring and auditing the grant activities of any subgrantee, contractor or other entity receiving Grant Funds through or from SCFD. This requirement includes but is not limited to mandatory on-site verification visits.

(c) If after any monitoring review, the DHS or Cal OES makes findings that require a Corrective Action Plan by SCFD, the City shall place a hold on all Reimbursement Requests from SCFD until the findings are resolved.

### 3.10 **Disbursement Procedures.** San Francisco shall disburse Grant Funds to SCFD as follows:

(a) SCFD shall submit to the UASI Management Team, in the manner specified for notices pursuant to Article 9, a document ("Reimbursement Request") substantially in the form attached as Appendix C, attached hereto and incorporated by reference as though fully set forth herein. The UASI Management Team shall serve as the primary contact for SCFD regarding any Reimbursement Request.

(b) The UASI Management Team will review all Reimbursement Requests for compliance with this Agreement and all applicable guidelines and requirements. The UASI Management Team will return to SCFD any Reimbursement Request that is submitted and not approved by the UASI Management Team, with a brief statement of the reason for the rejection of the Reimbursement Request.

(c) The UASI Management Team will submit any Reimbursement Request that is approved by the UASI Management Team to DEM. City through DEM shall review the Reimbursement Request

for compliance with this Agreement and all applicable guidelines and requirements. City shall return to the UASI Management Team any Reimbursement Request that is not approved by City, with a brief explanation of the reason for the rejection of the Reimbursement Request.

(d) If a rejection relates only to a portion of the expenditures itemized in any Reimbursement Request, City shall have no obligation to disburse any Grant Funds for any other expenditures itemized in such Reimbursement Request unless and until SCFD submits a Reimbursement Request that is in all respects acceptable to the UASI Management Team and to City.

(e) If SCFD is not in compliance with any provision of this Agreement, City may withhold disbursement of Grant Funds until SCFD has taken corrective action and currently complies with all terms and conditions of the Agreement.

3.11 **Disallowance.** SCFD agrees that if it claims or receives reimbursement from City for an expenditure that is later disallowed by the State of California or the federal government, SCFD shall promptly refund the disallowed amount to City upon City's written request. At its option, City may offset all or any portion of the disallowed amount against any other payment due to SCFD hereunder or under any other Agreement with SCFD. Any such offset with respect to a portion of the disallowed amount shall not release SCFD from SCFD's obligation hereunder to refund the remainder of the disallowed amount.

3.12 **Sustainability.** Grant Funded programs that contain continuing personnel and operating expenses, over and above planning and implementation costs, must be sustained once the Grant Funding ends. If Equipment is purchased with grant funds the equipment must be sustained through the useful life of equipment. By executing this Agreement, SCFD acknowledges its responsibility and agrees to sustain continuing programs beyond the Grant Funding period. SCFD acknowledges and agrees that this sustainability requirement is a material term of the Agreement.

### 3.13 **EHP Requirements.**

(a) Grant Funded projects must comply with the federal Environmental and Historic Preservation ("EHP") program. SCFD shall not initiate any project with the potential to impact environmental or historic properties or resources until Cal OES and FEMA have completed EHP reviews and approved the project. Examples of projects that may impact EHP resources include: communications towers, physical security enhancements, new construction, and modifications to buildings, structures and objects that are 50 years old or greater. SCFD shall notify the UASI Management Team of any project that may require an EHP review. SCFD agrees to provide detailed project information to FEMA, Cal OES and/or the UASI Management Team, to cooperate fully in the review, and to prepare any documents requested for the review. SCFD shall comply with all conditions placed on the project as the result of the EHP review, and implement any treatment or mitigation measures deemed necessary to address potential adverse impacts. With prior approval of the UASI Management Team, SCFD may use Grant Funds toward the costs of preparing documents and/or implementing treatment or mitigation measures. Any change to the approved project scope of work will require re-evaluation for compliance with EHP requirements. If ground disturbing activities occur during project implementation, SCFD shall notify the UASI Management Team and ensure monitoring of ground disturbance. If any potential archeological resources are discovered, SCFD shall immediately cease construction in that area and notify the UASI Management Team, which will notify the appropriate State Historic Preservation Office. If SCFD is using Grant Funds for a communication tower project, SCFD shall complete its Federal Communication Commission ("FCC") EHP process before preparing its Cal OES/FEMA EHP materials, and shall include the FCC EHP materials in the Cal OES/FEMA submission.

(b) Any construction or other project that SCFD initiates without the necessary EHP review and approval will not be eligible for reimbursement. Failure of SCFD to meet federal, State, and local EHP requirements, obtain applicable permits, or comply with any conditions that may be placed on the project as the result of FEMA's and/or Cal OES's EHP review will result in the denial of Reimbursement Requests.

3.14 **National Energy Conservation Policy and Energy Policy Acts.** SCFD shall comply with the following requirements:

(a) Grant Funds may not be used in contravention of the Federal buildings performance and reporting requirements of Executive Order 13123, part 3 of Title V of the National Energy Conservation Policy Act (42 USC §8251 et seq.), or Subtitle A of Title I of the Energy Policy Act of 2005; and

(b) Grant Funds may not be used in contravention of Section 303 of the Energy Policy Act of 1992 (42 USC §13212).

3.15 **Royalty-Free License.** SCFD understands and agrees that FEMA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for federal government purposes: (a) the copyright in any work developed using Grant Funds; and (b) any rights of copyright that SCFD purchases or acquires using Grant Funds. SCFD shall consult with the UASI Management Team and FEMA regarding the allocation of any patent rights that arise from, or are purchased with, Grant Funds.

3.16 **Publication Statements.** SCFD shall ensure that all publications created or developed under this Agreement prominently contain the following statement: "This document was prepared under a grant from the Federal Emergency Management Agencies Grant Programs Directorate (FEMA/GPD) within the US Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA/GPD or the US Department of Homeland Security."

#### **ARTICLE 4 REPORTING REQUIREMENTS; AUDITS**

4.1 **Regular Reports.** SCFD shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the UASI Management Team or by City, in form and substance satisfactory to the UASI Management Team or City. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

4.2 **Notification of Defaults or Changes in Circumstances.** SCFD shall notify the UASI Management Team and City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; (b) any change of circumstances that would cause any of the representations or warranties contained in Article 5 to be false or misleading at any time during the term of this Agreement; and (c) any change of circumstances or events that would cause SCFD to be out of compliance with the Grant Assurances in Appendix B.

4.3 **Books and Records.** SCFD shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds. Without limiting the scope of the foregoing, SCFD shall establish and maintain accurate financial books and accounting records relating to Authorized Expenditures and to Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. SCFD shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be

maintained under this Section in a readily accessible location and condition for a period of not less than three (3) years after expiration of this Agreement or until any final audit by Cal OES has been fully completed, whichever is later.

4.4 **Inspection and Audit.** SCFD shall make available to the UASI Management Team and to City, and to UASI Management Team and City employees and authorized representatives, during regular business hours, all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by SCFD under Section 4.3, and allow access and the right to examine those items. SCFD shall permit the UASI Management Team and City, and UASI Management Team and City employees and authorized representatives, to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of the UASI Management Team and City pursuant to this Section shall remain in effect so long as SCFD has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4. The DHS, the Comptroller General of the United States or designee, and Cal OES shall have the same inspection and audit rights as the City and UASI Management Team. SCFD shall cooperate with any federal or state audit.

4.5 **Audit Report.** If the amount specified in Section 3.2 of this agreement is \$750,000 or more, SCFD shall submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with GAO's *Government Auditing Standards*, and 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. SCFD shall submit its audit report to the UASI Management Team no later than six months after the end of SCFD's fiscal year.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

SCFD represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

5.1 **No Misstatements.** No document furnished or to be furnished by SCFD to the UASI Management Team or to City in connection with this Agreement, any Reimbursement Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

5.2 **Eligibility to Receive Federal Funds.** By executing this Agreement, SCFD certifies that it is eligible to receive federal funds, and specifically certifies as follows:

(a) SCFD is not suspended, debarred or otherwise excluded from participation in federal assistance programs, as required by Executive Order 12549 and 12689, "Debarment and Suspension" and implemented at 2 CFR Part 3000.

(b) SCFD complies with 31 U.S.C. §1352, *Limitation on use of appropriated funds to influence federal contracting and financial transactions*, as implemented at 44 CFR Part 18 and 6 CFR Part 9.

(c) SCFD complies with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §701 et seq., as implemented in 2 CFR Part 3001, and will continue to provide a drug-free workplace as required under that Act and implementing regulations.

(d) SCFD is not delinquent in the repayment of any federal debt. See OMB Circular A-129.

SCFD acknowledges that these certifications of eligibility to receive federal funds are material terms of the Agreement.

5.3 **NIMS Compliance.** To be eligible to receive Grant Funds, SCFD must meet National Incident Management System ("NIMS") compliance requirements, and report full NIMS compliance via the National Incident Management System Capability Assessment Support Tool ("NIMSCAST"). By executing this Agreement, SCFD certifies that it is in full NIMS compliance, and that it has reported that compliance via the NIMSCAST. SCFD shall provide documentation of its NIMS compliance to the UASI Management Team. SCFD acknowledges that this certification is a material term of the Agreement.

## **ARTICLE 6 INDEMNIFICATION AND GENERAL LIABILITY**

6.1 **Indemnification.** SCFD shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by SCFD's performance of this Agreement, including, but not limited to, the following: (a) a material breach of this Agreement SCFD; (b) a material breach of any representation or warranty of SCFD contained in this Agreement; (c) any personal injury or death caused, directly or indirectly, by any act or omission of SCFD or its employees, subgrantees or agents; (d) any loss of or damage to property caused, directly or indirectly, by any act or omission of SCFD or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by SCFD, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to SCFD by an Indemnified Party; (f) any tax, fee, assessment or other charge for which SCFD is responsible under Section 10.4; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished by SCFD or its employees, subgrantees or agents to such Indemnified Party in connection with this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and San Francisco's costs of investigating any claims against San Francisco.

6.2 **Duty to Defend; Notice of Loss.** SCFD acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 6.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 6.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to SCFD by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give SCFD prompt notice of any Loss under Section 6.1 and SCFD shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of SCFD if representation of such Indemnified Party by the counsel retained by SCFD would be inappropriate due to conflicts of interest between such Indemnified Party and SCFD. An Indemnified Party's failure to notify SCFD promptly of any Loss shall not relieve SCFD of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs SCFD's ability to defend such Loss. SCFD shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if SCFD contends that such Indemnified Party shares in liability with respect thereto.

6.3 **Incidental and Consequential Damages.** Losses covered under this Article 6 shall include any and all incidental and consequential damages resulting in whole or in part from SCFD's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

6.4 **LIMITATION ON LIABILITY OF SAN FRANCISCO.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **ARTICLE 7**

### **EVENTS OF DEFAULT AND REMEDIES; TERMINATION FOR CONVENIENCE**

7.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement.** Any statement, representation, certification or warranty contained in this Agreement, in any Reimbursement Request, or in any other document submitted to the UASI Management Team or to City under this Agreement is found by the UASI Management Team or by City to be false or misleading.

(b) **Failure to Perform Other Covenants.** SCFD fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by SCFD as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(c) **Failure to Comply with Applicable Laws.** SCFD fails to perform or breaches any of the terms or provisions of Article 12.

(d) **Voluntary Insolvency.** SCFD (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of SCFD or of any substantial part of SCFD's property or (v) takes action for the purpose of any of the foregoing.

(e) **Involuntary Insolvency.** Without consent by SCFD, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to SCFD or with respect to any substantial part of SCFD's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of SCFD.

7.2 **Remedies upon Event of Default.** Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** City may terminate this Agreement by giving a written termination notice to SCFD and, on the date specified in such notice, this Agreement shall terminate, and all rights of SCFD hereunder shall be extinguished. In the event of such termination, City will pay SCFD for Authorized

Expenditures in any Reimbursement Request that was submitted and approved by the UASI Management Team and by City prior to the date of termination specified in such notice.

(b) **Withholding of Grant Funds.** City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether SCFD has previously submitted a Reimbursement Request or whether the UASI Management Team and/or City has approved the disbursement of the Grant Funds requested in any Reimbursement Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to SCFD after cure of applicable Events of Default shall be disbursed without interest.

(c) **Return of Grant Funds.** City may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by SCFD in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

### 7.3 **Termination for Convenience.**

(a) City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving SCFD written notice of termination. The notice shall specify the date on which termination shall become effective.

(b) Upon receipt of the notice, SCFD shall commence and perform, with diligence, all actions necessary on the part of SCFD to effect the termination of this Agreement on the date specified by City and to minimize the liability of SCFD and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the UASI Management Team.

(c) Within 30 days after the specified termination date, SCFD shall submit to the UASI Management Team an invoice for all Authorized Expenses incurred through the termination date. For Authorized Expenses incurred after receipt of the notice of termination, City will only reimburse SCFD if the Authorized Expenses received prior approval from the UASI Management Team as specified in subparagraph (b).

(d) In no event shall City be liable for costs incurred by SCFD or any of its contractors or subgrantees after the termination date specified by City.

(e) City's payment obligation under this Section shall survive termination of this Agreement.

7.4 **Remedies Nonexclusive.** Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

## **ARTICLE 8 ASSIGNMENTS**

8.1 **No Assignment by SCFD.** SCFD shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of SCFD hereunder without the prior written consent of the UASI Management Team; provided, however, that any contractor or subgrantee specifically referenced in Appendix A shall not require the consent of Management Team. This Agreement shall not, nor shall any interest herein, be

assignable as to the interest of SCFD involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of SCFD or a sale or transfer of substantially all of the assets of SCFD shall be deemed an assignment for purposes of this Agreement.

8.2 **Agreement Made in Violation of this Article.** Any agreement made in violation of Section 8.1 shall confer no rights on any person or entity and shall automatically be null and void.

8.3 **SCFD Retains Responsibility.** SCFD shall in all events remain liable for the performance by any subgrantee contractor, or assignee of all of the covenants, terms and conditions in this Agreement.

## **ARTICLE 9 NOTICES AND OTHER COMMUNICATIONS**

9.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via e-mail:

**If to San Francisco:**

San Francisco Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Attn: Mary Ellen Carroll, Executive Director  
[Maryellen.carroll@sfgov.org](mailto:Maryellen.carroll@sfgov.org)

**If to the UASI Management Team:**

UASI Management Team  
711 Van Ness Avenue, Suite #420  
San Francisco, CA 94102  
Attn: Craig Dziedzic, General Manager  
[craig.dziedzic@sfgov.org](mailto:craig.dziedzic@sfgov.org)

**If to SCFD:**

City of Santa Clara Fire Department  
777 Benton Street  
Santa Clara, CA 95050  
Attn: Jeremy ray  
[jray@santaclaraca.gov](mailto:jray@santaclaraca.gov)

9.2 **Effective Date.** All communications sent in accordance with Section 9.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such



confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

9.3 **Change of Address.** From time to time any party hereto may designate a new address or recipient for notice for purposes of this Article 9 by written notice to the other party and the UASI Management Team.

## **ARTICLE 10 MISCELLANEOUS**

10.1 **No Waiver.** No waiver by San Francisco of any default or breach of this Agreement shall be implied from any failure by the UASI Management Team or San Francisco to take action on account of such default if such default persists or is repeated. No express waiver by San Francisco shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by San Francisco of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the UASI Management Team or San Francisco of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

10.2 **Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement; provided, however, that the General Manager or designee may establish alternate procedures for modification of the Appendix A and the Grant Plan.

10.3 **Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

10.4 **SCFD to Pay All Taxes.** SCFD shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Grant Plan, the Grant Funds or any of the activities contemplated by this Agreement.

10.5 **Headings.** All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

10.6 **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. The following Appendices are attached to and a part of this Agreement:

- Appendix A, Authorized Expenditures and Timelines
- Appendix B, Grant Assurances
- Appendix C, Form of Reimbursement Request

10.7 **Certified Resolution of Signatory Authority.** Upon request of San Francisco, SCFD shall deliver to San Francisco a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of SCFD.

10.8 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.9 **Successors; No Third-Party Beneficiaries.** Subject to the terms of Article 8, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 6, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

10.10 **Survival of Terms.** The obligations of SCFD and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 4.3 and 4.4, Article 6, this Article 10, and the Grant Assurances of Appendix B.

10.11 **Further Assurances.** From and after the date of this Agreement, SCFD agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

10.12 **Disclosure of Subawards and Executive Compensation.** Pursuant to the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282) as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (P.L. 110-252), full disclosure to the public of entities or organizations receiving federal funds is now required. As defined by the Office of Management and Budget (OMB), all new Federal awards of \$25,000 or more as of October 1, 2010, are subject to FFATA reporting requirements. The Transparency Act definition of "Federal awards" includes not only prime awards for grantees, cooperators, and contractors, but also awards to sub-recipients. If applicable, SCFD must provide the following information on SCFD letterhead within 30 days of receipt of this Agreement.

1. Subawards greater than \$25,000:
  - a) Name of entity receiving award;
  - b) Amount of award;
  - c) Funding agency;
  - d) The Catalog of Federal Domestic Assistance program number;
  - e) Award title (descriptive of the purpose of the funding action);
  - f) Location of the entity and primary location of performance including city, state, and Congressional district;
  - g) Dun & Bradstreet (D&B) DUNS Number of the entity, and its parent if applicable; and,
  - h) Total compensation and names of top five executives (same thresholds as for prime recipients).
2. The Total compensation and names of the top five executives if:
  - a) 80% or more of annual gross revenues are from Federal awards (contracts, sub-contracts and Federal financial assistance), and \$25,000,000 or more in annual gross revenues from Federal awards; and,
  - b) Compensation information is not already available through reporting to the Securities and Exchange Commission.

10.13 **Cooperation with UASI Programs and Activities.**

(a) Subject to reasonable terms and conditions, SCFD agrees to participate in UASI-sponsored exercises, and to make available equipment acquired with Grant Funds for use as part of such exercises.

(b) To the extent permitted by law, SCFD agrees to share with the Approval Authority informational work products (such as plans, reports, data, etc.) created or acquired using Grant Funds.

(c) SCFD agrees to provide input towards the development of the regional Threat and Hazard Identification and Risk Assessment (THIRA) and Stakeholder Preparedness Review (SPR) as requested by UASI.

**ARTICLE 11  
INSURANCE**

11.1 **Types and Amounts of Coverage.** Without limiting SCFD's liability pursuant to Article 6 of this Agreement, SCFD shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

11.2 **Additional Requirements for General and Automobile Coverage.** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

11.3 **Additional Requirements Regarding Workers' Compensation.** Regarding Workers' Compensation, SCFD hereby agrees to waive subrogation which any insurer of SCFD may acquire from SCFD by virtue of the payment of any loss. SCFD agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the SCFD, its employees, agents and subcontractors.

11.4 **Additional Requirements for All Policies.** All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in Article 9, Notices and Other Communications.

11.5 **Required Post-Expiration Coverage.** Should any of the required insurance be provided under a claims-made form, SCFD shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

11.6 **General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

11.7 **Lapse in Insurance.** Should any required insurance lapse during the term of this Agreement, requests for reimbursement originating after such lapse may not be processed, in the City's sole discretion, until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

11.8 **Evidence of Insurance.** Before commencing any operations or expending any Grant Funds under this Agreement, SCFD shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

11.9 **Effect of Approval.** Approval of the insurance by City shall not relieve or decrease the liability of SCFD hereunder.

11.10 **Insurance for Subcontractors and Evidence of this Insurance.** If a subcontractor or subgrantee will be used to complete any portion of this Agreement, SCFD shall ensure that the subcontractor or subgrantee shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the SCFD as additional insureds.

11.11 **Authority to Self-Insure.** Nothing in this Agreement shall preclude SCFD from self-insuring all or part of the insurance requirement in this Article. However, SCFD shall provide proof of self-insurance, in a form acceptable to San Francisco, in the amounts of each line of self-insurance.

## **ARTICLE 12 COMPLIANCE**

12.1 **Nondiscrimination.** In the performance of this Agreement, SCFD agrees not to discriminate against any employee, San Francisco employee working with SCFD or any subgrantee of SCFD, applicant for employment with SCFD or subgrantee of SCFD, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

12.2 **Conflict of Interest.** Through its execution of this Agreement, SCFD acknowledges that it is familiar with the provisions of Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement. SCFD agrees that it will promptly notify City in writing of all violations of State or Federal criminal law involving fraud, bribery, or gratuities affecting or involving the use of Grant Funds.

12.3 **Compliance with ADA.** SCFD acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. SCFD shall not discriminate against any person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

12.4 **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12G, SCFD may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. SCFD agrees to comply with San Francisco Administrative Code Chapter 12G and any implementing rules and regulations promulgated by San Francisco's Controller. The terms and provisions of Chapter 12G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, San Francisco may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit SCFD from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider SCFD's use of profit as a violation of this section.

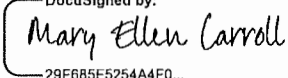
12.5 **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

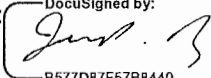
CITY AND COUNTY OF SAN FRANCISCO:

CITY OF SANTA CLARA:

SAN FRANCISCO DEPARTMENT OF  
EMERGENCY MANAGEMENT

By:   
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MARY ELLEN CARROLL  
EXECUTIVE DIRECTOR

By:   
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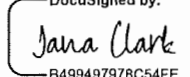
JEREMY RAY  
DEPUTY FIRE CHIEF

Federal Tax ID #: 94-6000426

**Approved as to Form:**

Dennis J. Herrera

City Attorney

By:   
B499497978C54FE...

Jana Clark  
Deputy City Attorney

## Appendix A — Authorized Expenditures and Timelines

ENTITY: **SCFD**

Total allocation to be spent on the following solution areas:

<b><u>IJ Number and Title</u></b>	<b><u>Program Description</u></b>	<b><u>Due Dates</u></b>	<b><u>Solution Areas</u></b>	<b><u>Amount</u></b>
<b><i>Project Title: Backpack-Portable Radiation Detection</i></b>				
<b>IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, &amp; Recovery Capabilities</b>	Funds to purchase four (4) backpack-portable radiation detection devices, including associated accessories and user interfaces.	Project Completion date: 12/31/2020	<b><u>Equipment</u></b>  AEL#: 07RD-04-SGND	PROJECT NOT TO EXCEED \$185,000
		<b>TOTAL ALLOCATION</b>		<b>TOTAL NOT TO EXCEED: <u>\$185,000</u></b>

### **EQUIPMENT**

*Reimbursement for Equipment Requires:*

- An approved EHP memo, if applicable.
- A performance bond is required for any equipment item that exceeds \$250,000, or for any vehicle, aircraft, or watercraft, regardless of the cost. Failure to obtain and submit a performance bond to the UASI may result in disallowance of cost.
- As allowable under Federal guidelines, procurement of equipment must follow local policies and procedures for competitive purchasing (provided they are not in conflict with Federal regulations which supersede them). If sole source approval is needed, SCFD must transmit the request to the UASI for request to the State.

- Prior to reimbursement, SCFD must submit all invoices, AEL numbers, and a list of all equipment ID numbers and the deployed locations.
- SCFD must inventory, type, organize and track all equipment purchased in order to facilitate the dispatch, deployment, and recovery of resources before, during, and after an incident.

- 
- **All requests for reimbursements must be submitted within 30 days of project completion unless an earlier deadline is set in this Appendix. SCFD should submit reimbursement requests on a quarterly basis, as applicable.**
  - **Authorized expenditures must fall into one of the following categories: Planning, Organization, Equipment, Training, or Exercises. Descriptions of authorized expenditures are in the following documents:**
    - *FY 2019 Homeland Security Grant Program Notice of Funding Opportunity:* [https://www.fema.gov/media-library-data/1555008381091-144e7470ec5e1958d6ad5e103c0825ad/FY\\_2019\\_HSGP\\_NOFO\\_FINAL\\_508.pdf](https://www.fema.gov/media-library-data/1555008381091-144e7470ec5e1958d6ad5e103c0825ad/FY_2019_HSGP_NOFO_FINAL_508.pdf)
    - *California Supplement to the Federal Funding Opportunity Announcement*, dated September 2018, available at <https://www.caloes.ca.gov/GrantsManagementSite/Documents/FY%202018%20HSGP%20State%20Guidance.pdf> as “FY 2018 Homeland Security Grant Program California Supplement to the Federal Notice of Funding Opportunity.”
    - *Authorized Equipment List:* <http://www.fema.gov/authorized-equipment-list>
    - *Cal OES Rules and Regulations, including the Recipient Handbook:* <https://www.caloes.ca.gov/GrantsManagementSite/Documents/2019%20Subrecipient%20Handbook.pdf>
  - **Any equipment purchased under this Agreement must match the UASI 2019 Grant Application Workbook. Any modification to the inventory list in that Workbook must receive prior written approval from by the Bay Area UASI Program Manager.**
  - **No Management and Administration expenses are allowed, unless expressly identified and authorized in this Appendix.**
  - **Sustainability requirements may apply to some or all of the grant funded projects or programs authorized in this Appendix. See Agreement, ¶3.12.**
  - **All EHP documentation must be submitted and approved prior to any expenditure of funds requiring EHP submission.**



## Appendix B-- Grant Assurances

Name of Jurisdiction: City of Santa Clara Fire Department  
Name of Authorized Agent: Jeremy Ray, Deputy Fire Chief  
Address: 777 Benton Street  
City: Santa Clara State: CA Zip Code: 95050  
Telephone Number: (408) 615-4900  
Fax Number: (408) 246-8652  
E-Mail Address: jrey@santaclaraca.gov

As the duly **authorized representative of SCFD**, I hereby certify that SCFD has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

**I further acknowledge that SCFD is responsible for reviewing and adhering to all requirements within the:**

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) Federal Preparedness Grants Manual;
- (d) California Supplement to the NOFO; and
- (e) Federal and State Grant Program Guidelines.

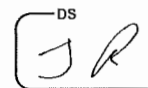
### Federal Regulations

Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>.

**Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. SCFD hereby agrees to comply with the following:**

#### 1. Proof of Authority

SCFD will obtain written authorization from the city council, governing board, or authorized body in support of this project. This written authorization must specify that SCFD and the city council, governing board, or authorized body agree:

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- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of SCFD and the city council, governing board, or authorized body;
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body; and
- (d) The official executing this agreement is, in fact authorized to do so.

This Proof of Authority must be maintained on file and readily available upon request.

**2. Period of Performance**

SCFD will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

**3. Lobbying and Political Activities**

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, SCFD certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

SCFD will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501- 1508 and §§ 7324- 7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, SCFD agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

#### **4. Debarment and Suspension**

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.213 and codified in 2 C.F.R. Part 180, Debarment and Suspension, SCFD will provide protection against waste, fraud, and abuse by debaring or suspending those persons deemed irresponsible in their dealings with the federal government. SCFD certifies that it and its principals, recipients, or subrecipients:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where SCFD is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

#### **5. Non-Discrimination and Equal Employment Opportunity**

SCFD will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits

- discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs (42 U.S.C. §§ 12101- 12213);
  - (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
  - (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
  - (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
  - (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
  - (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
  - (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
  - (k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
  - (l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
  - (m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (m), SCFD will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California

Government Code §§12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

**6. Drug-Free Workplace**

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), SCFD certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

**7. Environmental Standards**

SCFD will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
- (e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- (g) Executive Order 11514 which sets forth national environmental standards;
- (h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- (i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (j) The Endangered Species Act of 1973, (P.L. 93-205);
- (k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- (l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);

(m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

SCFD shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

**8. Audits**

For subrecipients expending \$750,000 or more in federal grant funds annually, SCFD will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

**9. Access to Records**

In accordance with 2 C.F.R. § 200.336, SCFD will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. SCFD will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

**10. Conflict of Interest**

SCFD will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

**11. Financial Management**

False Claims for Payment - SCFD will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subrecipient, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

**12. Reporting - Accountability**

SCFD agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

**13. Whistleblower Protections**

SCFD also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

**14. Human Trafficking**

SCFD will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

**15. Labor Standards**

SCFD will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

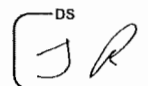
**16. Worker's Compensation**

SCFD must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

**17. Property-Related**

If applicable to the type of project funded by this federal award, SCFD will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- (c) Assist the awarding agency in assuring compliance with Section 106 of the
- (d) National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive

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- Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.); and
- (e) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

**18. Certifications Applicable Only to Federally-Funded Construction Projects**

For all construction projects, SCFD will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

**19. Use of Cellular Device While Driving is Prohibited**

SCFDs are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

**20. California Public Records Act and Freedom of Information Act**

SCFD acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. SCFD should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

**HOMELAND SECURITY GRANT PROGRAM (HSGP) –  
PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS**

**21. Reporting Accusations and Findings of Discrimination**

If during the past three years the recipient has been accused of discrimination on any basis



the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office for Civil Rights and Civil Liberties (CRCL) by e-mail at CRCL@hq.dhs.gov or by mail at U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190, Washington, D.C. 20528.

In the courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or the recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

**22. Acknowledgment of Federal Funding from DHS**

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

**23. Activities Conducted Abroad**

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

**24. Best Practices for Collection and Use of Personally Identifiable Information (PII)**

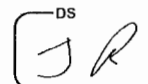
DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

**25. Copyright**

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

**26. Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these

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prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

**27. Energy Policy and Conservation Act**

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**28. Federal Debt Status**

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

**29. Fly America Act of 1974**

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

**30. Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all SCFDs must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

**31. Non-supplanting Requirement**

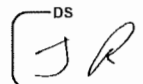
All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

**32. Patents and Intellectual Property Rights**

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

**33. SAFECOM**

All recipients who receive federal financial assistance awards made under programs that

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provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

**34. Terrorist Financing**

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

**35. Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

**36. USA Patriot Act of 2001**

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

**37. Use of DHS Seal, Logo, and Flags**

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**IMPORTANT**

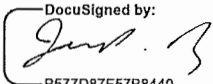
The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. SCFD recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on SCFD, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by SCFD and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2018, Version 8.1, hereby incorporated by reference, which can be found at:

<https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

The undersigned represents that he/she is authorized by SCFD to enter into this agreement for and on behalf of the said Applicant.

Signature of Authorized Agent:  B577D87F57B8440

Printed Name of Authorized Agent: Jeremy Ray

Title: Deputy Fire Chief Date: October 23, 2019 | 11:06 AM PDT

## Appendix C -- Form of Reimbursement Request

### REIMBURSEMENT REQUEST

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

UASI Management Team  
711 Van Ness Avenue, Suite 420  
San Francisco, CA 94102

Re: FY 19 UASI Grant Reimbursement Request

Pursuant to Section 3.10 of the "Agreement between the City and County of San Francisco and the CITY OF SANTA CLARA for the Distribution of FY 2019 UASI Grant Funds" (the "Agreement"), dated NOVEMBER 1, 2019, between the CITY OF SANTA CLARA ("SCFD") and the City and County of San Francisco, SCFD hereby requests reimbursement as follows:

Total Amount of  
Reimbursement  
Requested in this  
Request: \$ \_\_\_\_\_

Maximum Amount of  
Funds Specified in  
Section 3.2 of the  
Agreement: \$ \_\_\_\_\_

Total of All Funds  
Disbursed Prior to this  
Request: \$ \_\_\_\_\_

SCFD certifies that:

- (a) The total amount of funds requested pursuant to this Reimbursement Request will be used to reimburse SCFD for Authorized Expenditures, which expenditures are set forth on the attached Schedule 1, to which are attached true and correct copies of all required documentation of such expenditures.
- (b) After giving effect to the disbursement requested pursuant to this Reimbursement Request, the Funds disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 3.2 of the Agreement, or the not to exceed amounts specified in Appendix A for specific projects and programs.

- (c) The representations, warranties and certifications made in the Agreement are true and correct in all material respects as if made on the date hereof, and SCFD is in compliance with all Grant Assurances in Appendix B of the Agreement. Furthermore, by signing this report, SCFD certifies to the best of their knowledge and belief that the report is true, complete and accurate and expenditures, disbursements, and cash receipts are for the purpose and objectives set forth in the terms and conditions of the federal award. SCFD is aware that any false, fictitious or fraudulent information or the omission of any material fact, may subject SCFD to criminal civil or administrative penalties for fraud, false statements, false claims or otherwise.
- (d) No Event of Default has occurred and is continuing.
- (e) The undersigned is an officer of SCFD authorized to execute this Reimbursement Request on behalf of SCFD.

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

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

**SCHEDULE 1 TO REQUEST FOR REIMBURSEMENT**

The following is an itemized list of Authorized Expenditures for which reimbursement is requested:

Project	Payee	Amount	Description	If final claim for project, check box
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

The following are attached as part of this Schedule 1 (Please check items that are applicable):

**Planning:**

- ☐ Invoice/Payroll Charges
- ☐ Payroll Register
- ☐ Cleared Check Payment
- ☐ Job Description
- ☐ Functional Timesheets
- ☐ Deliverables/Progress Reports

**Organization:**

- ☐ Invoice/Payroll Charges
- ☐ Payroll Register
- ☐ Cleared Check Payment
- ☐ Job Description
- ☐ Functional Timesheets
- ☐ Deliverables/Progress Reports

**Equipment:**

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ Purchase Order
- ☐ Packing Slip
- ☐ EHP Approval
- ☐ Watercraft or Aviation
- ☐ Sole Source
- ☐ Performance Bond
- ☐ Equipment Ledger (Please submit electronic copy to Grants Specialist)

**Training:**

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ Training Feedback Number
- ☐ EHP Approval
- ☐ Certificates/Proof of Participation
- ☐ Sign In Sheet
- ☐ Agenda

**Exercise:**

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ After Action Report
- ☐ EHP Approval
- ☐ Overtime Authorization

For inquiries/questions, please contact:

\_\_\_\_\_ Phone #: \_\_\_\_\_ Email: \_\_\_\_\_  
 Print Name



## Bay Area UASI Grant Management System

### Grant Details

#### Grant: 08548 - Backpack-Portable Radiation Detection - 2019

**Status:** Underway  
**Program Area:** UASI Grant Program  
**Grantee Organization:** City of Santa Clara Fire Department  
**Program Officer:** Ethan Baker

#### Grant: 08548 - Backpack-Portable Radiation Detection - 2019

**Status:** Underway  
**Program Area:** UASI Grant Program  
**Grantee Organization:** City of Santa Clara Fire Department  
**Program Officer:** Ethan Baker

### Contract Amendments

ID	Title	Status
08548 - 01	Project Timeline Extension Request	Approved



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
APPROVING THE FY 2019 BAY AREA URBAN AREAS SECURITY  
INITIATIVE (BAUASI) GRANT**

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

**WHEREAS**, Santa Clara Fire Department (SCFD) is a participating public safety agency in both the 11-county San Francisco BAUASI region, as well as a mutual aid partner in the California statewide response plan;

**WHEREAS**, SCFD has been awarded a reimbursement grant to purchase backpack portable radiation detection equipment;

**WHEREAS**, this equipment will be used both at special events and during everyday missions to screen for the presence of radiological/nuclear materials that could cause harm; and

**WHEREAS**, the BAUASI grant documents require the City Council to provide written authorization and agreement to the grant terms, as set forth below.

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

1. That the City Council, as the governing body of the City of Santa Clara agrees:
  - A. To provide all matching funds required for the grant project and that any cash match will be appropriated as required.
  - B. Any liability arising out of the performance of this agreement shall be the responsibility of the City of Santa Clara.
  - C. Grant funds shall not be used to supplant expenditures controlled by the City Council.
  - D. The City Manager, or designee, is authorized to execute all grant related documents which are hereby approved and, to the extent any such documents have been previously executed, such execution is hereby ratified by City Council.
2. Effective date. This resolution shall become effective immediately.

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference: None



## Agenda Report

20-868

Agenda Date: 11/17/2020

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### INFORMATIONAL REPORT TO COUNCIL

#### **SUBJECT**

Informational Report Regarding Bi-yearly Project Status Report of the GIS Services Program

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

Council has requested a bi-yearly project status report of GIS services. The first report was submitted on March 9, 2020. This is the second report. On October 29, 2019, Arini Geographics was awarded a contract for Enterprise GIS Consulting Services. The contract was awarded as a three-year professional services agreement for the initial term of the contract, with the option of one additional two-year renewal term. Despite challenges encountered by shelter-in-place regulations, there is significant progress for the current reporting period.

#### **DISCUSSION**

The City's Enterprise GIS Program is focused on both steady state operations and projects. Critical data updates and quality assurance is constantly being performed on some of the most critical systems such as:

- City Enterprise GIS Basemap, a specialized mapping system keeping track of the City's map layers (addresses, streets, parcels, ownership, underground electric utility easements, general plan and zoning designations, flooding and noise delineations, multiyear aerial imagery) and key-related attributes. From November 1, 2019 thru September 20, 2020, over 15,000 address updates have been captured in the Enterprise GIS Database, ensuring that residents, businesses, developers, and government officials have the most current data.
- infoMap, a web-based mapping application, provides easy access to the City's Enterprise GIS where assets are digitized, modeled and mapped, currently upwards of 2.5 million data points and 6,000 specific attributes. On a daily basis, City departments leverage over 150 unique maps and services to improve operational efficiency, increase quality of service, make better decisions, respond to emergencies, improve citizen access to information, maintain environmental compliance, and engage the community. In addition, workflow-driven map queries are run to obtain structured reports and data. For example, using the radius tool, legally required maps and mailing lists for community development are produced on demand. Similarly, through the "City Council Tool" and the "Planning Commission Tool" parcels owned by the Council/Commission members are identified. Furthermore, some of the services that infoMap uses serve department-specific information systems such as 911 dispatch and routing, citywide permitting and document management. On a yearly basis GIS has facilitated and provided location context to over 50,000 permit queries and nearly 40,000 address

searches.

The application is being upgraded to v.3.0 due to technology obsolescence and to be accessible on both desktop computers and mobile devices for increased field access. The upgrade will also deliver improvements such as the ability for maps to be saved and shared online with improved level of access control. With the upgrade to v.3.0, it is anticipated usage will significantly increase.

- MapSantaClara, a web-based application which provides tailored access and reporting functionality to the public at large: <https://map.santaclaraca.gov>. During the 101,535 visits made to MapSantaClara between November 1, 2019 and September 20, 2020, over 18,000 reports were created, 8,000 address searches completed, and 5,000 maps printed.
- Open Data Geospatial Portal, a web-based repository that provides the business community, other agencies, City contractors and the public at large with up-to-date common GIS data layers such as streets, addresses, parcels, voting districts, census blocks, etc. without the need to request such information, saving City staff time and enabling applications to direct-read and process GIS information: <https://map.santaclaraca.gov/data>
- Story Maps, six publicly-available, web-based applications that facilitate information dissemination and increase the level of service to the public, including Development Projects and Live Traffic Cameras: <http://santaclaraca.gov/devprojects> and <http://santaclaraca.gov/trafficcam>

More stats and information related to the steady-state Enterprise GIS activities can be found in the attached infographic (Attachment 1), indicating the number of updates done to the City Basemap in the past six months and the dynamic number of records in the Enterprise Geospatial Repository (EGR) by department. Enterprise GIS Web-based Applications, infoMap and MapSantaClara, usage statistics are also shown both by functionality and geography.

Public safety remains one of the City's top priorities and has many GIS interconnections. Dedicated datasets, maps, map services, applications and integrations, for both Fire and Police Departments, are being maintained and map updates to the Computer-Aided Dispatch (CAD) system are being done at scheduled intervals. The Common Operational Picture (COP), which provides real-time situational awareness for public safety, remains available as needed.

A key focus area is Enterprise Asset Management (EAM) enabling more effective management of City's assets to improve their utilization and performance, reduce capital costs, reduce asset-related operating costs, extend asset life and subsequently, increase return on assets and quality of service. EAM also helps improve environmental compliance as well as meet occupational safety regulations. Additionally, EAM serves as a decision-making platform for data-driven urban investment, design and development. City's EAM consists of a tight integration between the Enterprise GIS, the repository of asset inventories, and the Work Order Management System that keeps track of the maintenance work that is being done on those assets. Currently, the IT and GIS staff, in collaboration with each respective City Department, are working on streamlining the processes through which existing asset classes (water, wastewater, recycled water, storm drain, parks and recreation, city facilities) are being kept up to date, as well as new assets that are being mapped and tracked.

**Highlighted achievements during this reporting timeframe:**

- Completed location validation of 2015-2019 citywide water usage data for the Department of Public Works, used to calibrate the sewer hydraulic model based on changes in usage (habits, fixtures, etc.) over time.
- Traffic sign inventory completed for over 50% of City streets.
- Completed the Enterprise GIS integration with the Enterprise Document Management and continuing with operationalization of location components. This organizes City documents by location and facilitates quick access to those documents anywhere.

**Planned activities over the next six months:**

- Upgrade of the City Enterprise GIS Viewer, infoMap 2.0 to infoMap 3.0, to support usage across multiple web browsers and devices.
- Complete citywide streets signs inventory, which will provide the first ever dataset of this kind for the City.
- Begin inventory of trees lining the City streets, providing the first ever comprehensive dataset of trees maintained by DPW.
- Initiate Enterprise GIS integration and location validation for new records management system (RMS) for the Police Department.
- Deploy Multi-Source map for Mobile Data Computers on-board first responders' vehicles, synchronized with the Computer Aided Dispatch system.

Currently the Enterprise GIS Program at the City of Santa Clara is an organization-wide framework (people, process, technology) ensuring that the geospatial and asset data owned by each department is integrated into a single enterprise system, with high quality assurance standards, which then provides location intelligence and asset inventory across all departments, and serves as a data-driven decision-making support citywide.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

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

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and

in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) [<mailto:clerk@santaclaraca.gov>](mailto:clerk@santaclaraca.gov).

**RECOMMENDATION**

Note and file the Informational Report regarding the Bi-yearly Project Status Report of the GIS Services Program.

Reviewed by: Gaurav Garg, Director of Information Technology/CIO

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Infographic - Enterprise Geospatial Program Activity

# Enterprise Geospatial Program Activity

November 1, 2019 - September 20, 2020

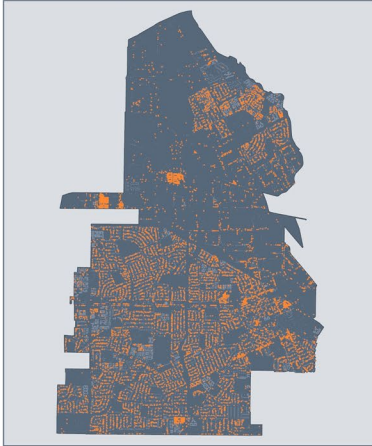
## Enterprise Geospatial Repository

**InfoMap** (<http://infomap.santaclaraca.gov/>) provides City Staff easy access to up-to-date and accurate GIS data, and printable maps and reports. These services and their supporting data facilitate operations in land records, public works, fire services, emergency management, law enforcement, planning and development, elections, health and human services, and many others.

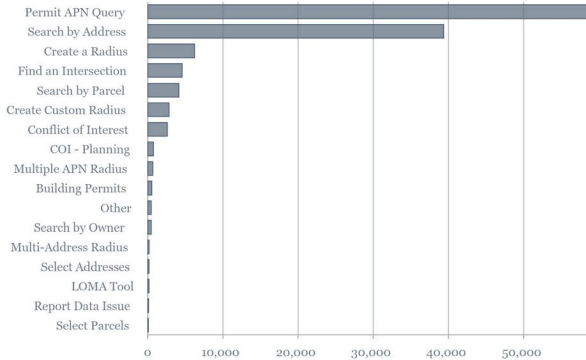
**MapSantaClara** (<https://map.santaclaraca.gov/>), an interactive city map, provides the City's residents, businesses, and developers with quick access to information about Santa Clara.

## Basemap Updates

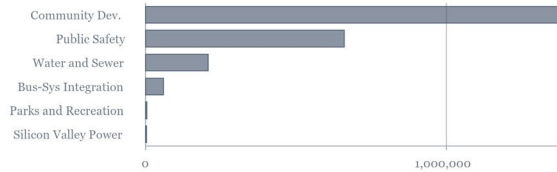
15,930 address updates



## InfoMap 2.0 Usage by Functionality



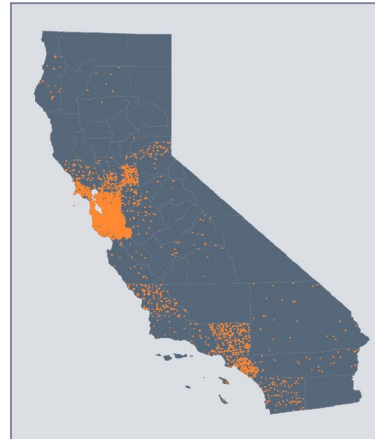
## EGR Record Count by Department



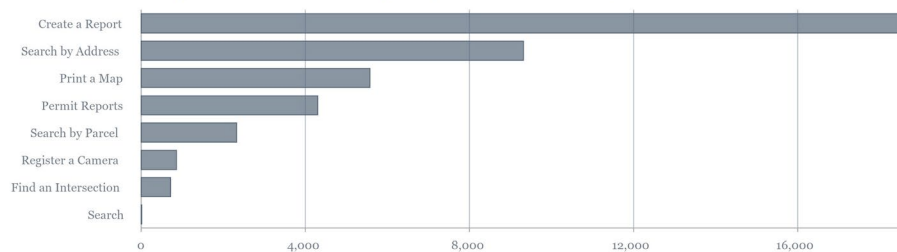
## MapSantaClara Usage by County

101,535 visits/requests

Santa Clara	62661	Solano	852	Santa Barbara	102
Alameda	7634	Placer	526	Merced	88
San Francisco	5465	San Joaquin	499	San Benito	78
San Mateo	4643	Sonoma	469	Yolo	72
Contra Costa	4042	Riverside	291	Shasta	66
Los Angeles	3125	San Bernardino	251	El Dorado	56
Sacramento	1955	Fresno	227	Calaveras	32
Santa Cruz	1909	Humboldt	200	Tuolumne	29
Marin	1810	Stanislaus	191	Tulare	29
Orange	1568	Ventura	161	Tehama	12
San Luis Obispo	1341	Napa	130	Yuba	10
San Diego	890	Monterey	121		



## MapSantaClara Usage by Functionality





## Agenda Report

20-720

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on an Agreement with Mott MacDonald, Inc. for Design Professional Services for the Lafayette St. Underpass at Subway Pump Station and Related Budget Amendment

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

The Lafayette St. underpass at the railroad tracks south of Reed Street was constructed in 1936 to provide continuous pedestrian, vehicular, and Caltrain mobility on and above Lafayette Street (Attachment 1). The Lafayette Subway Storm Drain Pump Station (SWPS) was also constructed along with the underpass to collect and pump stormwater runoff from the railway underpass, nearby residential homes and small businesses. Over the last 10 years, the City has experienced constant ponding of water on the roadway surface at the Lafayette Street underpass. Staff has investigated this issue and determined that there is no simple maintenance solution, so it is necessary to hire a design professional to further investigate the problem and provide options for a solution.

The goal of the Lafayette St. Underpass at Subway Pump Station (Project) is to assess, evaluate and recommend improvements for the constant ponding of groundwater through investigating the existing roadway, drainage systems, and the SWPS. The consultant will conduct the necessary field investigations and analysis in order to prepare reports that assess this infrastructure. This includes recommending improvements to address the constant ponding of water on the roadway and improvements to the SWPS. The reports will be used as the basis for the next phases of the project which include design and construction. The design and construction phases of the project are currently not included in the budget.

#### DISCUSSION

A formal selection process was utilized to solicit proposals from consultants to provide the required design professional services. In July 2020, a Request for Proposals (RFP) was issued to solicit qualifications from consultants for the Project. Three proposals were received and evaluated based on responsiveness to the RFP, qualifications of firm, qualifications of key staff and their availability, project approach, and the proposed schedule to complete the assessment. A proposal review panel consisting of engineering and maintenance staff from the Department of Public Works ranked Mott MacDonald, Inc. as the top ranked firm.

Mott MacDonald demonstrated a strong project understanding and provided an excellent project approach to investigate and resolve the issues presented in the RFP. Mott MacDonald also presented a holistic approach of looking at the entire area and approaching it from different



perspectives, which included reviewing existing pipe conveyance, hydrostatic pressure below the underpass roadway, pumping capacity, and various other assessment criteria that are critical to meeting the Project goals. In addition, Mott MacDonald has successfully completed similar projects for other municipalities in California. Staff recommends entering into an Agreement with Mott MacDonald to provide professional services for the Project. The scope of work for the proposed Agreement includes field review, topographic survey, geotechnical boring and testing, structural assessment, potholing, and preparing reports. The Agreement includes a section covering Prevailing Wages. Although the Agreement does not include design and construction support services, the City may, at its sole discretion, elect to negotiate and enter into a separate Agreement with Mott MacDonald for these additional services if desired.

It is anticipated that the initial phases of the Project will be completed by Fall of 2021.

### **ENVIRONMENTAL REVIEW**

This action is for design professional services and the action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") Guidelines section 15378.

### **FISCAL IMPACT**

The proposed Agreement is for a total not-to-exceed amount of \$227,524. This amount includes \$206,387 for basic services, \$498 for any authorized reimbursable expenses, and \$20,639 for additional services. Additional funding of \$10,476 for other miscellaneous expenses, such as permits, for the Project is needed, bringing the total project cost to \$238,000. Funding in the amount of \$200,000 is available in the Storm Drain Capital Fund's Lafayette St. Underpass at Subway Pump Station Project. To address the remaining funding need of \$38,000, staff recommends transferring \$38,000 from the Westside Retention Basin Pump Replacement Project that has available project savings to cover this cost as reflected in the budget amendment below.

### **BUDGET AMENDMENT FY 2020/21**

<b>Storm Drain Capital Fund</b>	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b><u>Expenditures</u></b>			
Westside Retention Basin Pump Replacement Project	\$131,421	(\$38,000)	\$93,421
Lafayette St. Underpass at Subway Pump Station Project	\$200,000	\$38,000	\$238,000

### **COORDINATION**

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

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's

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

**RECOMMENDATION**

1. Approve and authorize the City Manager to execute an agreement with Mott MacDonald, Inc., for the Lafayette St. Underpass at Subway Pump Station in the amount not-to-exceed \$227,524;
2. Authorize the City Manager to make minor modifications, including time extensions, to the agreement, if needed; and
3. Approve the related FY 2020/21 budget amendment in the Storm Drain Capital Fund to increase the Lafayette St. Underpass at Subway Pump Station Project by \$38,000 and decrease the Westside Retention Basin Pump Replacement Project by \$38,000.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Project Location Map
2. Agreement



# Attachment No. 1

## RTC 20-720: Lafayette St. Underpass and Subway Storm Drain Pump Station Assessment.

### Location Map





**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
MOTT MACDONALD GROUP, INC.  
FOR  
LAFAYETTE ST. UNDERPASS AT SUBWAY PUMP STATION**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and MOTT MACDONALD GROUP, INC., a Delaware Corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. City desires to secure the design professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; (hereinafter "Services")
- B. "Design professional" includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, experience, 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,
- D. The Parties have specified herein the terms and conditions under which such Services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

Exhibit E – Milestone Schedule

Exhibit F - Project Management Document Software

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

## **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the December 7, 2020 and terminate on at the completion of work described in Exhibit A – Scope of Services.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Subject to the Standard of Care, Consultant shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of material condition.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Consultant shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

## **4. WARRANTY**

Consultant agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or Services, City may make corrections or replace materials or Services and charge Consultant for the cost incurred by City.

## **5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE**

Consultant represents and maintains that it has the experience in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies

upon Consultant's representations regarding its skills and knowledge. Consultant shall perform its Services and duties in conformance to and consistent with the professional standards of a design professional in the same discipline in the State of California ("Standard of Care")

All documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

## **6. COMPENSATION AND PAYMENT**

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is two hundred twenty-seven thousand five hundred twenty-four (\$227,524) subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

## **7. TERMINATION**

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

## **8. ASSIGNMENT AND SUBCONTRACTING**

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

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

**9. NO THIRD PARTY BENEFICIARY**

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

**10. INDEPENDENT CONSULTANT**

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

**11. CONFIDENTIALITY OF MATERIAL**

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

**12. OWNERSHIP OF MATERIAL**

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

**13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or Services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this

Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

#### **14. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Consultant, its employees, subconsultants, or agents in the performance, or non-performance, of Services under this Agreement.

#### **15. INSURANCE REQUIREMENTS**

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

#### **16. WAIVER**

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



## **17. NOTICES**

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

City of Santa Clara  
Attention: Department of Public Works – Design Division  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [engineering@santaclaraca.gov](mailto:engineering@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Consultant addressed as follows:

MOTT MACDONALD GROUP, INC.  
2077 Gateway Place, Suite 550  
San Jose, CA 95110  
and by e-mail at [Chris.metzger@mottmac.com](mailto:Chris.metzger@mottmac.com)

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

## **18. COMPLIANCE WITH LAWS**

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

**19. CONFLICTS OF INTEREST**

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

**20. FAIR EMPLOYMENT**

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

**21. NO USE OF CITY NAME OR EMBLEM**

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

**22. GOVERNING LAW AND VENUE**

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

**23. SEVERABILITY CLAUSE**

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

**24. AMENDMENTS**

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

## 25. COUNTERPARTS

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

## 26. STATEMENT OF ECONOMIC INTERESTS

Due to the nature of the Services to be performed, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the Agreement in accordance with California Government Code section 87200, et seq.

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"

**MOTT MACDONALD GROUP, INC.**  
a Delaware Corporation

Dated: October 29, 2020  
By (Signature): Chris Metzger  
Name: CHRIS METZGER  
Title: SR. VICE PRESIDENT  
Principal Place of Business Address: 2077 Gateway Place, Suite 550  
San Jose, CA 95110  
Email Address: Chris.metzger@mottmac.com  
Telephone: (408) 572-8800  
Fax: (408) 572-8799

"CONSULTANT"

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
MOTT MACDONALD GROUP, INC.  
FOR  
LAFAYETTE ST. UNDERPASS AT SUBWAY PUMP STATION**

**EXHIBIT A  
SCOPE OF SERVICES**

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

**I. GENERAL**

This Scope of Services is anticipated as necessary to meet City's objectives as described under Section II, BACKGROUND AND PROJECT and Section III, DESCRIPTION OF SERVICES of this document. Consultant and City agree that this Scope of Services incorporates Consultant's professional qualifications and experience and will meet the City's objectives.

Consultant will be expected to provide complete, professional, high-quality Services and products; to consult City personnel, and others who are involved with the project; and to provide the expertise, guidance, advice, and assistance in accomplishing the work.

**II. BACKGROUND AND PROJECT**

The Lafayette St. underpass at the railroad tracks south of Reed Street was constructed in 1936 to provide continuous pedestrian, vehicular, and Caltrain mobility on and above Lafayette Street. The Lafayette Subway Storm Drain Pump Station (SWPS) was also constructed along with the underpass to collect and pump stormwater runoff from the railway underpass, nearby residential homes and small businesses. Over the last 10 years, the City has experienced constant ponding of water on the roadway surface at the Lafayette Street underpass. The City has investigated this issue and determined that there is no simple maintenance solution, so it is necessary to hire a design professional to further investigate the problem and provide options for a solution.

The goal of the Lafayette St. Underpass at Subway Pump Station (Project) is to assess, evaluate and recommend improvements for the constant ponding of groundwater through investigating the existing roadway, drainage systems, and the SWPS. The consultant will conduct the necessary field investigations and analysis in order to prepare reports that assess this infrastructure. This includes recommending improvements to address the constant ponding of water on the

roadway and improvements to the SWPS. The reports will be used as the basis for the next phases of the project which include design and construction.

For the SWPS, the consultant shall provide additional recommendations beyond the replacement in kind to enhance routine maintenance and operation of the pump station. Additional recommendations may include, but are not limited to the following:

- Improve access to the pump station
- Advanced pump station controls
- Structural modifications to wetwell
- Pump alternatives that provide best availability for maintenance and replacement
- Electrical modifications
- Redundancy in case of power failure

For the ponding of water at the Lafayette St. underpass at the SWPS and the UPRR overcrossing, the consultant's assessments may include, but are not limited to the following:

- Geotechnical boring and testing
- Structural analysis and assessment
- Reviewing CCTV videos of existing storm drain pipes (provided by the City to the consultant)
- Coordination with the Water District to gather information about the subsurface aquifer.
- Pothole of existing utilities to confirm existing conditions or conflict.

### **III. DESCRIPTION OF SERVICES**

The assessment shall consider the Department of Transportation Standard Specifications and Details, City Standard Plans and Specifications, ADA Design Guidelines, latest building codes, and other applicable codes and standards recommended by the Consultant. It is the responsibility of the consultant to independently provide improvement recommendations to meet the goals for this PROJECT.

Consultant shall provide the Services described herein through a project team, comprised of Consultant and sub-consultants identified as follows:

1. Consultant: MOTT MACDONALD GROUP, INC.
2. Sub-consultants to MOTT MACDONALD GROUP, INC.:
  - A. J Calton Engineering .....(Electrical and Instrumental Design)
  - B. Redtail Consulting .....(Environmental and CEQA)
  - C. Alexander & Associates .....(Surveying)

- D. Exaro .....(Potholing)
- E. Inspection Services, Inc. ....(Material Testing)
- F. Pitcher Services, LLC .....(Exploratory Borehole Drilling)

Any changes to the project team through the course of the Services shall be approved in writing by City.

#### **IV. RESPONSIBILITIES OF CITY**

CITY will provide the following information and support regarding the project as-available and applicable:

- Record drawings (as-available)
- CITY's Standard Details, Specifications, Benchmark, and Design Criteria.
- Storm Drain (SD), Sanitary Sewer (SS), Electric, Fiber, Water and Recycled Water Block Book Maps (as-available).
- Geographic Information System (GIS) data including land parcels, street centerlines, City sanitary sewers, City storm drains, and aerial photographic tiles
- Payment of permit application fees with other internal departments, if required.
- Filing exemption under the California Environmental Quality Act, if applicable.

Besides the above, the City will work closely with the consultant to provide any other data or records, as available and necessary for the work involved.

#### **V. BASIC SCOPE OF SERVICES**

##### **1. TASK 1: PROJECT MANAGEMENT**

CONSULTANT shall:

- 1.1 Manage its team and overall project activities consistent with the direction from CITY in order to meet the project schedule and budget. Manage sub-consultants, maintain schedule and budget, anticipate and mitigate potential design issues and delays and coordinate and update the City on the overall progress of the Project.
- 1.2 Organize and attend project meetings with the City to discuss project progress, decisions, and direction and to coordinate activities. Meetings shall be held at key project milestones and shall include, but are not limited to:
  - 1.2.1 Kick-off Meeting
  - 1.2.2 Basis of Design Report Meeting

- 1.3** Coordinate with CITY, design team members, consultants, utility companies, other government agencies, and other affected parties as required throughout the duration of the project as well as the Quality Assurance/Quality Control (QA/QC) activities for project deliverables.
- 1.4** Prepare, monitor, and update progress schedule in MS Project format beginning at the kickoff meeting and ending at contract award for the last submittal package. Schedule shall show significant milestones for the project. CONSULTANT shall notify CITY if there are delays or potential delays in any phase of the project. In such cases, CONSULTANT shall make up the schedule in subsequent phases of the project or provide information to CITY substantiating a request for time extension (which may not be approved). The schedule shall be maintained at all times and shall be updated each time progress and milestones are achieved and/or changed.
- 1.5** Meetings: Meetings shall be budgeted for and invoiced under each respective Task or activity requiring a meeting and not as project management. Preparation for meetings shall be considered as included in the Task or activity for which the meeting is involved. A kick-off meeting shall be conducted with designated CITY staff prior to beginning work to review anticipated Tasks and schedule, review available information and needs, and address any outstanding questions regarding the project moving forward raised by CITY or CONSULTANT. During the course of Services while there is active work on the PROJECT, CONSULTANT shall schedule and attend brief bi-weekly (every other week) conference calls with CITY. The purpose of the bi-weekly conference calls will be to keep CITY apprised on the PROJECT's progress and address any issues that may arise during the course of Services.
- 1.6** Provide monthly progress reports.
- 1.7** Stakeholder Coordination: CONSULTANT shall coordinate with project stakeholders as needed to inform each stakeholder of the project work and incorporate any necessary accommodations into the final submittal documents.
- 1.8** Conduct QC reviews in accordance with its QA Program guidelines. CONSULTANT shall provide a copy of its QA Program guidelines and shall provide a QC report at the end of each Task. Time spent for QA-QC reviews for specific deliverables shall be budgeted and billed under each respective task requiring QA-QC review and not as Project Management.
- 1.9** Invoicing and Contract Administration: CONSULTANT administrative staff time spent preparing invoices for Services complete shall be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed. Additionally, addressing administrative issues regarding the professional Services agreement, such as preparing additional Services requests or budget modifications, shall also be considered as included in the overhead of the

CONSULTANT's basic hourly rates and shall not be billed.

- 1.10** Only the designated Project Manager or approved delegates performing project management duties shall charge time to Task 1 Project Management. CONSULTANT's technical staff working on other tasks for the project shall not charge to the project management task. Additionally, if the Project Manager is performing technical work related to other tasks, time spent on those tasks shall be charged to the task and not to project management.

**Deliverables:**

1. Progress schedules in MS Project format (submitted electronically as an 11" x 17" pdf file and in native MS Project format).
2. QA Program guidelines and QC reports for each Task (in pdf file).
3. Meeting agendas, preparation materials, and meeting minutes for each project meeting (in pdf file).
4. Monthly progress reports and invoices (in pdf file).

**2. TASK 2: BASIS OF DESIGN REPORT**

**2.1 65% Basis of Design Report**

**2.1.1** CONSULTANT shall collect and review relevant reports, records, data, maps and other documents relevant to defining the limits and scope of design for the project. Consultant should identify the anticipated tests and/or inspections and evaluations that will be needed in order to complete the design and should include such work as Services to be provided under the consultant's scope of work. Consultant shall also take the lead on confirming the location and alignment of existing underground utilities with the appropriate utility companies and provide an allowance within their proposal for coordinating any relocation of utilities should it become necessary.

**2.1.2** Detailed field review of the Pump Station, through coordination with the City, and assess and provide rehabilitation and improvement recommendations for all pumps and motors, electrical equipment, inlet pipes, sump structure, junction structure, slide gate structure, trash racks and miscellaneous metals, building and roof structures, and any other structures to operate the pump station. Consultant's representatives shall be certified and equipped with appropriate harnesses and protections for confined space entry prior to entering manholes, structures, wet wells, and any other confined areas.

**2.1.2.1** Pumping Operation Measurements (Set Point Verification and Timed Drawdown Test)

**2.1.2.2** Piping and Valving Visual Observations

**2.1.2.3** Site Access and Security Observations

**2.1.2.4** Structural Observations (Wet Well and Superstructure)

**2.1.2.5** Electrical and Instrumentation/Control Observations

**2.1.3** Detailed field review of the Lafayette St. underpass, which may include but are not limited to the following:

**2.1.3.1** Topographic survey



- 2.1.3.2** Site walk and field measurement
- 2.1.3.3** Monitoring equipment for wet well pump cycle monitoring
- 2.1.3.4** Geotechnical boring and testing with installation of groundwater monitoring equipment
- 2.1.3.5** Structural assessment
- 2.1.3.6** Reviewing CCTV videos of existing storm drain pipes (provided by the City to the consultant)
- 2.1.3.7** Coordination with the Valley Water to gather information about the aquifer.
- 2.1.3.8** Pothole of existing utilities to confirm existing conditions or conflict (if necessary and appropriate).

**2.1.4** CITY maintains a list of known utility operators in CITY. CONSULTANT shall prepare a Notice of Intent to Construct (NOI) on CITY's standard NOI form and submit it to the known utility operators in order to gather records for existing utilities. Location map exhibits will be required to be submitted as part of the NOI. CONSULTANT shall provide CITY a draft copy the NOI prior to sending it to the utility, maintain log of all NOI sent and received, and provide CITY all information received from the NOI. The purpose of the collection of utility information is to identify ownership of surface features that will be impacted by the work, and also to identify if there are any high-risk utilities within the project limits that may be impacted by the work.

**2.1.5** Utility locating scope includes up to three (3) potholes, up to six feet deep each. All backfill shall comply with City Standard Specifications and Plans.

**2.1.6** Any work that affects the public right-of-way, which include geotechnical boring, potholing, excavation, and other that are similar in nature requires submittal of a complete encroachment permit applications. Requirements of the encroachment permit applications are online on our website and typically include traffic control plan, work plan, insurances, re-establishment plan, and other necessary documents. The City will pay for all related encroachment application fees; however, the consultant shall provide in consultant fee costs related with submitting the encroachment permit applications.

**2.1.7** Consultant shall prepare Basis of Design Reports to address the ponding at Lafayette St. undercrossing and the SWPS deficiencies. The reports shall, at the minimum, include the following:

#### **Lafayette St. Underpass**

- A.** History and background
- B.** Existing condition and issue
- C.** Assessment done for this issue
- D.** Results of findings
- E.** Recommendations with alternatives. Include schematic plans with layout and preliminary details.
- F.** Estimated cost for each recommendation
- G.** Environmental and CEQA concerns
- H.** Estimated schedule to rectify the issue

## Lafayette St. Subway Storm Drain Pump Station

- A. History and background
- B. Existing station overview and understanding of key issues.
- C. Current issues at the station
- D. Station hydraulics analysis
- E. Condition assessment of station infrastructures to remain.
- F. Geotechnical, structural, electrical, and corrosion issues.
- G. Proposed improvements
- H. Estimated Project costs
- I. Proposed Project Schedule
- J. Preliminary drawings

**2.1.8** The Engineer's Cost Estimate shall be an itemized list of bid items and shall be accurate and prepared based upon current construction pricing and escalated to time of bid using engineering judgement. Consultant shall review recent bids, and contact vendors, suppliers, and Consultants as necessary to develop an accurate cost estimate. The Consultant shall provide the assumptions and supporting documents used to prepare the Engineer's Estimate. The Engineer's Estimate shall consider the following factors:

- A. Recent similar projects bid in the Bay Area, especially in the South Bay.
- B. Current economic trend.
- C. When the project will be bid.
- D. When construction will occur.
- E. What other projects will be competing with this project during advertisement and bid opening.
- F. What are the risks that Consultants need to consider for the project.

The aforementioned factors are not a complete list, but rather to provide a starting point for the consultant to prepare the Engineer's Estimate. If there are other factors and assumptions that are deemed critical to prepare an accurate Engineer's Estimate, Consultant shall include them in the Project.

**2.1.9** The 65% Basis of Design will be routed to the various stakeholders and city departments and divisions for review and comments.

### Deliverables:

1. 65% Basis of Design Reports for Lafayette St. Undercrossing and the Lafayette St. Subway Storm Drain Pump Station.

## **2.2 95% Basis of Design Report**

**2.2.1** CONSULTANT shall develop a 95% level of completion BOD Reports based on comments from the previous BOD Reports.

**2.2.2** Conduct a quality control (QC) review of BOD Reports in accordance with

Consultant's QC program approved by City.

**2.2.3** CITY will circulate the submittal package to internal CITY departments for review and comments. CONSULTANT shall be responsible for submitting the package to external stakeholders if required. CONSULTANT shall prepare written responses to all written comments received. All redlined drawings shall be returned with CONSULTANT's response on the redlined drawings.

**2.2.4** CONSULTANT shall be responsible for resolving comments from each commenter and shall identify to CITY any comments that cannot be resolved. CONSULTANT shall conduct a 95% comments review meeting with CITY to discuss comments on the submittal package, to identify any significant issues, and gain concurrence as to how the submittal shall be revised as appropriate to incorporate CITY's comments. The review meeting will be held at CITY.

Deliverables:

1. 95% Basis of Design Reports for Lafayette St. Undercrossing and the Lafayette St. Subway Storm Drain Pump Station.

**2.3 Final Basis of Design Report**

**2.3.1** CONSULTANT shall finalize the BOD Reports based on comments from the previous BOD Reports. The final BOD Report shall be signed, stamped and dated by CONSULTANT in responsible charge for their preparation.

**2.3.2** Conduct a quality control (QC) review of BOD Reports in accordance with Consultant's QC program approved by City.

Deliverables:

1. Stamped, signed, and dated Basis of Design Reports for Lafayette St. Undercrossing and the Lafayette St. Subway Storm Drain Pump Station.
2. All data and documents gathered to prepare the Basis of Design Reports.

**ASSUMPTIONS**

1. City DPW to provide tripod, harness, air quality meter, and ventilation fan to facilitate Consultant confined space entry into the Subway Storm Drain Pump Station.
2. City DPW to lift grates to allow visual inspection of catch basins located at low point of underpass and immediately adjacent to the Subway Storm Drain Pump Station.
3. City DPW to provide fire hose(s) and City water to fill wet well at least twice to conduct timed drawdown tests.
4. City DPW to pull one of the two existing submersible pumps to allow recording of pump nameplate data for Subway Storm Drain Pump Station.
5. City to complete CCTV inspection of as much of the existing underdrain system as possible and provide tapes to Consultant for review.
6. Structural observations and evaluation do not include seismic and stability analyses.
7. One geotechnical borehole will be drilled on the south side of the southerly Lafayette Street Undercrossing structural wall. Groundwater monitoring instrumentation will be installed and monitoring frequency shall be sufficient to capture pump cycles, if the cycles manifest in the groundwater formation.

8. Cuttings resulting from the drilling will be drummed and stored on-site for approximately two weeks pending environmental/hazardous materials characterization. Drummed cuttings are assumed to be non-hazardous for the purposes of disposal.

9. Drilling will be completed during normal working hours Monday-Friday excluding holidays between 7am and 7pm.

10. Access to Caltrain ROW may be necessary. Consultant will coordinate access with Caltrain, with support from City if necessary (e.g. signatures on permits or access agreement). If access cannot be granted to the Caltrain access lane, the borehole may be drilled in the Dog Park area as far north as possible, with permission and access agreement from the City.

11. No boreholes will be drilled through the concrete in the undercrossing as this may result in exacerbating groundwater seepage.

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
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AND  
MOTT MACDONALD GROUP, INC.  
FOR  
LAFAYETTE ST. UNDERPASS AT SUBWAY PUMP STATION**

**EXHIBIT B  
SCHEDULE OF FEES**

**I. GENERAL PAYMENT**

The total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$206,387, plus any authorized Reimbursable Expenses, which shall not exceed \$498. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$20,639. In no event shall the amount billed to City by Consultant for Services under this Agreement exceed \$227,524, subject to budget appropriations.

Consultant will bill City on a monthly basis for Services provided by Consultant during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. Billing shall be proportionate to the Services performed for each task completed. The invoice shall describe the Task completed, and percentage completed by Task, and total during the invoice period. The invoice shall also show the total to be paid for the invoice period. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

**II. BASIC SERVICES**

The total payment to Consultant for all work necessary for performing all Tasks, as stated in **Exhibit A**, shall be in proportion to Services rendered and on a Time-and-Material not-to-exceed basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant Services required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed. The total amount of all the Tasks is a not-to-exceed amount.

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The amount for each Task and the total amount of all the Tasks are as listed below:

<b>Description of work and task</b>	<b>Fee</b>
Task No. 1 – Project Management	\$6,192
Task No. 2.1 – 65% Basis of Design Report	\$159,448
Task No. 2.2 – 95% Basis of Design Report	\$31,670
Task No. 2.3 – Final Basis of Design Report	9,077
<b>Total not-to-exceed amount:</b>	<b>\$206,387</b>

In no event shall the amount billed to City by Consultant for BASIC SERVICES under this Agreement exceed two hundred twenty-seven thousand five hundred twenty-four dollars (\$206,387).

### **III. REIMBURSABLE EXPENSES**

Reimbursable Expenses shall not exceed \$498 and require prior written approval by the City. The amount allocated for Reimbursable Expenses shall be the Consultant's full compensation for all Reimbursable Expenses required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services. All tasks related to preparing, printing, and mailing out notices and ballots as part of the core services shall not be considered reimbursable expenses. The following is a sample of items that are included as part of the Basic Services and are not considered Reimbursable Expenses:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Travel Expenses (local and long distance)
- Faxes
- Local and Long Distance Telephone Expenses (land lines and cellular phones)
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

Reimbursable Cost may include:

- Outside Duplicating Cost for Plans and Reports as specified in Section III, Scope of Services, of Exhibit A
- Presentation Materials

- Overnight Delivery Services when requested by City
- Courier Services when requested by City

All reimbursable costs, other than those listed above, shall be approved in advance by City.

#### **IV. ADDITIONAL SERVICES**

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated lump sum price. Monthly billing for Additional Services shall be consistent with the term set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed \$20,639.

#### **V. RATE SCHEDULE**

##### **Personnel Charges**

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

The pay rates for the project by classification are listed below:

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**Primary Consultant – MOTT MACDONALD GROUP, INC.:**

<b>Role</b>	<b>Hourly Rate</b>
Project Director	\$300
Principal Project Manager	\$285
Senior Project Manager	\$230
Geotechnical Engineer	\$235
Structural Engineer	\$190
Senior Project Engineer	\$150
Engineer III	\$130
Engineer II/CAD	\$115
Admin Assistant	\$95

**Subconsultant Billing Rates:**

**J Calton Engineering:**

<b>Role</b>	<b>Hourly Rate</b>
Principal Engineer	\$185
CAD Technician	\$81

**Pitcher Services, LLC Labor and Equipment Rates:**

<b>Mud Rotary Truck Drill- 2 person crew</b>		
Drilling time - Mud Rotary	\$	3,800.00
Drilling time- Mud Rotary w/mud conditioning system	\$	4,200.00
Standby Time & Development Time	\$	3,800.00
Mob/Demob	\$	400.00/hr
Overtime (2 man crew)	\$	580.00/hr
Transportation (when rig can be left on-site)	\$	440.00

Decon Station	\$400/day
Mud system (mud rotary as needed)	\$500/day
Support truck (pick-up)	\$250/day
Support truck (stake bed)	\$450/day
Support truck (Lift Gate)	\$450/day
Support Truck (Morooka)	\$500/day
Support truck (water-truck)	\$450/day



<b>Mud Rotary Track Drill- 2 person crew</b>		
Drilling time - Mud Rotary	\$	4,200.00
Standby Time & Development Time	\$	4,200.00
Mob/Demob	\$	475.00/hr
Overtime any hrs over 9 (2man crew)	\$	620.00/hr
Transportation (when rig can be left on-site)	\$	440.00

<b>Overtime Surcharge Rates (2 person crew)</b>		
Night Shift (Premium Time Surcharge)	\$	140.00/hr
Saturday Shift	\$	140.00/hr
Sunday Shift	\$	280.00/hr

<b>Air Vacuum Rig-2 person crew</b>		
Rig Time	\$	350.00
Standby Time	\$	350.00
Mob/Demob	\$	350.00

<b>Footage Rates</b>		
Drilling Additives (Normal Conditions 5" boring)	\$	3.00/ft
Portland Cement Grout (5" boring)	\$	3.50/ft
HQ3 Coring Surcharge	\$	12.00/ft
101 GeoBarrel Surcharge	\$	12.00/ft
PQ Coring Surcharge	\$	28.00/ft

#### Other Labor Costs

Additional Technician (extra helper) - ADD:	\$100/hr.
Premium time for after 8 hours per day, week-end work, night work & holidays - ADD:	\$70/man hr
Level C Protection (per day or portion) - ADD:	\$150/man day
Per Diem Caltrans Rate	TBA
Prevailing Wage or Certified Payroll Surcharge	\$200/man day
Transportation per additional tech	\$200/man day

#### REPAIR COSTS

WASTE BARREL REPAIR	\$100/each
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#### Materials

Quik-Gel drilling mud 50lb	\$30/bag
Soda Ash 50lb	\$25/bag
Easy Mud 5-gal	\$250/bucket
Easy Mud Gold 10lb	\$250/bucket
N-Seal 30lb	\$150/bag
Filter Sand	\$13/bag
Coated Bentonite Pellets	\$120/bucket
Bentonite Chips	\$22/bag
Bentonite Powder	\$30/bag
Ready Mix Concrete 60lb	\$15/bag
Portland Cement Type II 47lb	\$15/bag
Asphalt Patch	\$30/bag
Quickset Concrete	\$18/bag
Wood Plug	\$25/each
7" Traffic Rated Monitoring Well Boxes	\$100/each
8" Traffic Rated Monitoring Well Boxes	\$160/each
12" Traffic Rated Monitoring Well Boxes	\$200/each
Anodized Standpipe	\$250/each
Plastic Liners in 2.5' sections	\$15/ft
Cardboard core Boxes	\$25/box
Wooden Core Boxes	\$55.00/box
PVC core trays	\$5/tray
DOT 17-H 55 Gal. Drums	\$65/each
5-gallon bucket	\$15/each
Brass Sleeves & Caps (6" long)	\$8/each
Stainless Steel Sleeves & Caps (6" long)	\$8/each
Acetate Liners for Macro Core	\$15/each
Visqueen (large roll)	\$150/roll
Disposable Tips	\$25/each
1/4" or 1/2" Tubing	\$0.50/ft
3" soil seals	\$22.00ea
3" Pitcher or Shelby Tube 36" long	\$50/each
Teflon Squares (pack of 100)	\$100/pack

#### PVC Schedule 40

2" PVC Screen 0.010" or 0.020"	\$8.00/ft
2" PVC Blank casing	\$6.00/ft
2" PVC threaded end cap	\$12.00/each
2" PVC slip cap or coupling	\$6/each
2" Locking Cap	\$35.00/each
4" PVC Screen 0.010" or 0.020"	\$16.00/ft
4" PVC Blank casing	\$12.00/ft
4" PVC threaded end cap	\$20.00/each
4" PVC slip cap or coupling	\$12/each
4" Locking Cap	\$50.00/each
3/4" PVC Screen 0.010" or 0.020"	\$5.00/ft
3/4" PVC Blank casing	\$4.00/ft
3/4" PVC fittings	\$3.00/each

## ISI Inspection Services, Inc.:

### Index Tests:

4101	Moisture Content ASTM D2216.....	40.00 /ea
4102	Moisture and Density (Tube Sample).....	50.00 /ea
4103	Liquid and Plastic Limits ASTM D4318.....	200.00 /ea
4104	% passing #200 sieve ASTM D1140.....	100.00 /ea
4105	Sieve (from 1/2" to #200) ASTM D422.....	135.00 /ea
4106	Hydrometer test, includes 1/2" to #200 sieve ASTM D422.....	235.00 /ea
4107	Specific Gravity ASTM D854.....	185.00 /ea
4108	Organic Content ASTM D2974.....	105.00 /ea
4109	Visual Classification.....	35.00 /ea
4110	pH Determination Soil/Lime ASTM D6276.....	180.00 /ea
4111	Torvane/Pocket Penetrometer .....	30.00 /ea
Additional Costs:		
4112	Large Sample Size (Bucket / Shelby Tube) .....	70.00 /ea
4113	Shelby Tube Logging .....	65.00 /ea
4114	Extrusion Only without Testing .....	40.00 /ea
4115	Tube Cutting .....	20.00 /ea
4116	Sample Photos .....	15.00 /ea

### Compaction Tests:

4201	Laboratory Compaction, 4" Mold ASTM D1557 or D698.....	268.00 /ea
4202	Laboratory Compaction, 6" Mold ASTM D1557 or D698.....	324.00 /ea
4203	California Impact Test CTM 216 .....	380.00 /ea

### Additional Costs:

4204	Rock Correction ASTM D4718.....	75.00 /ea
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### Soil Mechanics:

4301	R-Value of Compacted Soils ASTM D2844/CTM 301 .....	495.00 /ea
4302	R-Value of Compacted Soils w/ Lab Additives ASTM D2844/CTM 301 .....	610.00 /ea
4303	R-Value of Compacted Soils w/ Field Additives ASTM D2844/CTM 301 .....	530.00 /ea
4304	California Bearing Ratio (CBR) ASTM D1883 includes compaction .....	790.00 /ea
4305	California Bearing Ratio (CBR) ASTM D1883 without compaction .....	495.00 /ea

### Consolidation Properties:

4401	Consolidation Test w/rebound ASTM D2435 .....	415.00 /ea
4402	Swell or Collapse Test ASTM D4546 .....	350.00 /ea
4403	Collapse Potential Test ASTM D5333 .....	235.00 /ea
Additional Costs:		
4404	Unload-Reload (per point) .....	40.00 /ea
4405	Remold Test Specimen.....	115.00 /ea
4406	Specimen Trim (from 3" sample) .....	40.00 /ea
4407	Sample Photos .....	15.00 /ea

### Hydraulic Conductivity - Triaxial Permeability:

4501	Flexible Wall ASTM D5084.....	390.00 /ea
Additional Costs:		
4502	Additional Confining Pressure.....	235.00 /ea
4503	Remold Test Specimen.....	180.00 /ea
4504	Sample Photos .....	20.00 /ea

### Strength Tests:

4601	Direct Shear Test ASTM D3080 .....	180.00 /pt
Additional Costs:		
4602	Residual (per cycle) .....	80.00 /ea
4603	Remold Test Specimen.....	115.00 /ea
4604	Specimen Trim (from 3" sample).....	40.00 /ea
4605	Silty Soil .....	25.00 /ea
4606	Clayey Soil .....	40.00 /ea
4607	Sample Photos .....	20.00 /ea

4610	Unconfined Compression ASTM D2166.....	115.00 /ea
4646	UC-Soft Rock (without end prep).....	150.00 /ea

### Additional Costs:

4611	Specimen Capping .....	40.00 /ea
4612	Remold Test Specimen.....	180.00 /ea
4613	Sample Photos .....	35.00 /ea

4620	TXUU, Triaxial Unconsolidated Undrained ASTM D2850 .....	150.00 /ea
4647	TXUU-Soft Rock (without end prep).....	300.00 /ea

### Additional Costs:

4621	Confining Pressure over 50 psi .....	35.00 /ea
4622	Remold Test Specimen.....	180.00 /ea
4623	Sample Photos .....	35.00 /ea

4630	TXCU, Triaxial Consolidated Undrained ASTM D4767.....	545.00 /pt
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Note: TXCU includes pore pressure measurement

### Additional Costs:

4631	Confining Pressure over 50 psi .....	45.00 /ea
4632	Remold Test Specimen.....	180.00 /ea
4633	Staged Test (Additional Confining Pressure) .....	350.00 /ea
4634	With Permeability .....	235.00 /ea
4635	Sample Photos .....	40.00 /ea

4640	TXCD, Triaxial Consolidated Drained .....	815.00 /pt
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### Additional Costs:

4641	Confining Pressure over 50 psi .....	45.00 /ea
4642	Remold Test Specimen.....	180.00 /ea
4643	Staged Test (Additional Confining Pressure) .....	350.00 /ea
4644	With Permeability .....	235.00 /ea
4645	Sample Photos .....	40.00 /ea

4648	End Preparation.....	128.00 /hr
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**Alexander & Associates, Inc.**

<b>Role</b>	<b>Hourly Rate</b>
Principal	\$200
Land Surveyor	\$175
Civil Engineer	\$175
Land Planner	\$175
CAD Operator	\$125
Technician III	\$105
Technician II	\$95
Clerical	\$75

**Field Survey Services**

Man Robotic Survey Party	\$200 per hour
Man Survey Party (including EDM Equipment)	\$250 per hour
Prevailing Wage Rate (including apprentice)	\$285 per hour
2 Man Survey Party (including GPS Equipment)	\$250 per hour
1 Man Survey Party (including GPS Equipment)	\$200 per hour

**Materials and Services:**

Consultants, Special Equipment, Reproductions, Postage, Materials and Other Outside  
Chargers – Actual Cost Plus 10%.

**EXARO Technologies Corporation:**

<b>Role</b>	<b>Hourly Rate</b>
Foreman	\$209.94
Technician	\$201.73
Project Manager	\$242.68
Project Engineer Support	\$102.09

**Other Charges**

Arrow Board	\$155 per day
Bobcat Loader	\$400 per day
Core Drill	\$360 per day
Electronic Detection Equipment	\$110 per day
Ground Penetrating Radar (GPR) Equipment	\$275 per day
Mini Excavator	\$385 per day
Tamper Jumping Jack	\$100 per day
Dump Truck	\$320 per day
Full Size Truck	\$258 per day
Pickup Truck	\$210 per day
Vacuum Excavation Truck	\$900 per day
Super Sucker Hydro Vacuum Truck	\$1,350 per day
Mobilization	Project Based
Subsistence	\$150 per night per person
Direct Project Expenses	Cost plus 15%

**NOTES (Field Services)**

Overtime rates at 1.5 times the regular rates will be charged for work performed outside normal construction hours and all day on Saturdays. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day or on Sundays and holidays. Lead time for any requested service is 48 hours. Potholing rates are based on a 4-hour minimum for the first 4 hours and an 8-hour minimum for hours exceeding 4 hours. Field personnel are charged portal to portal.

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**EXHIBIT C  
INSURANCE REQUIREMENTS**

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect 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 coverage 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 Consultant's insurance with respect to the acts of the named insured. 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:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

- c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

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

**C. WORKERS' COMPENSATION**

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

**D. PROFESSIONAL LIABILITY**

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

**E. COMPLIANCE WITH REQUIREMENTS**

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for

City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance with respect to the acts of the named insured as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or reduction of the coverage limits required under this agreement due to non-payment of premiums shall be effective until written notice has been given to City at least ten (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 ten (30) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

#### F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant 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 Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and

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

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

#### G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every 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. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

#### H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, 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 Public Works 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](mailto:ctsantaclara@ebix.com)



I. QUALIFYING INSURERS

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

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**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. If applicable to the Services, Consultant or its subconsultant(s), as applicable, shall comply with the following requirements.

**J. Prevailing Wage Requirements**

1. Consultant shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the City Clerk's office, which shall be available to any interested party upon request. Consultant is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, consultants 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. Consultants and subconsultants 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](http://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, Consultant agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subconsultants) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
6. In addition to submitting the certified payrolls and related documentation to City, Consultant and all subconsultants 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 consultant or subconsultant 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 consultant or subconsultant 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. Consultants **MUST** be a registered "public works consultant" 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 consultants/subconsultants 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 consultant". Those who fail to register and maintain their status as a public works consultant shall not be permitted to perform work on the project.
10. Should any consultant or subconsultants not be a registered public works consultant and perform work on the project, Consultant 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.

#### K. 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 Consultant's address indicated for receipt of notices in this Agreement.

#### L. 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 Consultant until Consultant has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Consultant until all required documentation is submitted. Any payment by the City despite Consultant'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 consultants and subconsultants 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.

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
MOTT MACDONALD GROUP, INC.  
FOR  
LAFAYETTE ST. UNDERPASS AT SUBWAY PUMP STATION**

**EXHIBIT E  
MILESTONE SCHEDULE**

<b><u>Preliminary Engineering and Evaluation</u></b>	<b><u>Duration</u></b>	<b><u>Cumulative Duration</u></b>
Notice to Proceed to Kickoff Meeting and Site Inspections	4 weeks	NTP + 4 wks
Completion of draft 65% Basis of Design Reports	9 weeks	NTP + 13 wks
City Review of draft 65% Basis of Design Reports	3 weeks	NTP + 16 wks
Comment Resolution Meeting and Finalization of 65% Basis of Design Reports	1 weeks	NTP + 17 wks
Completion of draft 95% Basis of Design Reports	4 weeks	NTP + 21 wks
City Review of draft 95% Basis of Design Reports	3 weeks	NTP + 24 wks
Comment Resolution Meeting and Finalization of 95% Basis of Design Reports	2 weeks	NTP + 26 wks

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
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**EXHIBIT F  
PROJECT MANAGEMENT DOCUMENTATION SOFTWARE**

**1.0 GENERAL**

This section is intended to describe the use of e-Builder Enterprise™ (e-Builder) a web-base project management software, as the median for project documentation and reporting. All costs associated with the use of the software is inclusive of the project bid under Document 00400 – BID.

**2.0 e-BUILDER PROJECT MANAGEMENT SOFTWARE PROGRAM**

The City of Santa Clara is currently using e-Builder Project Management for all related project management tasks. Consultant is required to comply with all requirements specified in this Document 00495 – PROJECT MANAGEMENT DOCUMENTATION SOFTWARE.

**3.0 REQUIREMENTS**

**A. General Requirements:**

1. Consultant and Subconsultants shall provide at a minimum, the following to its staff:
  - a) Computer: Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher;
  - b) Computer Operation System: Windows XP, Windows Vista, or Windows 7;
  - c) Web Browser: Microsoft Internet Explorer 9;
  - d) Work and Spreadsheet Processors: Microsoft Office Word, Excel and Outlook;
  - e) Scheduling Software: Microsoft Project or Primavera;
  - f) Internet Service Provider: A reliable ISP in the area of the Project;
  - g) Connection Speed/Minimum Bandwidth: DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream.

2. Consultant and Subconsultants shall provide its management personnel assigned to this Project with access to personal computers and the Internet on a daily basis

**B. Project Web Requirements:**

1. This project utilizes a web-based project management tool, e-Builder. This web-based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information.
2. Consultant and Subconsultants shall conduct Project controls, outlined by the City, utilizing e-Builder. This designated web-based application will be provided by the City at no costs to the Consultant and the Subconsultants. No additional software will be required. Furthermore, the City Project Manager will assist Consultant in providing training of Subconsultant's personnel.
3. Consultant and Subconsultants shall have the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully apprised of Project developments, for correspondence, assigned tasks and other matters that transpire on the site. These may include, but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Construction Change Directives, Potential Change Orders, Change Order Requests, Change Orders, etc. All supporting data including, but not limited to, shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests, Submittals, etc. and the like will be submitted in digital format via e-Builder.

**C. Electronic File Requirements:**

1. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Consultant and Subconsultants shall also submit all closeout documents including all "As-Built Drawings", catalog cuts, and Owner's Operation and Maintenance manuals in digital format. All documents (including as-built drawings) shall be converted or scanned into the Portable Document Format (PDF) file and uploaded to e-Builder.

**4.0 IMPLEMENTATION REQUIREMENTS**

- A. e-Builder is a comprehensive Project and Program Management system that will be implemented for managing documents, communications, and costs between the Consultant, Subconsultants, Consultant, and Owner. e-Builder includes extensive

reporting capabilities to facilitate detailed.

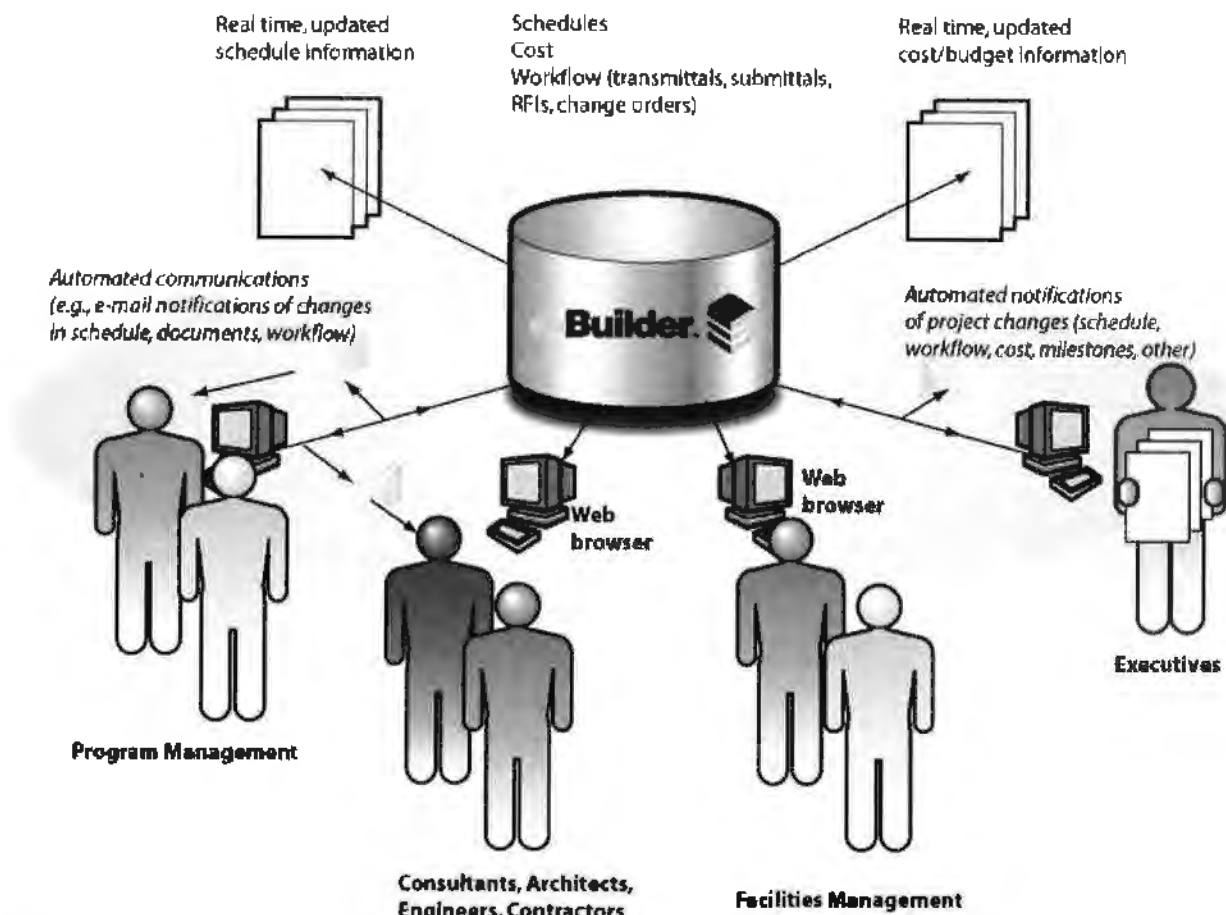
B. Project reporting in a web-based environment that is accessible to all parties and easy to use.

C. Central Document Vault: e-Builder system includes a central database that maintains all project information and manages project communications amongst team members.

D. Communication/Correspondence: e-Builder provides electronic routable communication forms that provide historical tracking, documentation, and increased accountability of project members.

E. Project Calendars: Meetings will be scheduled and maintained centrally on e-Builder by the City.

F. Reporting: All of the project and program data including documents, communications, and costs are accessible through integrated online reports. These reporting tools are completely configurable by each user. All reports can be exported to Excel for added flexibility.





## **5.0 LICENSING REQUIREMENT**

A. User Licenses: Each user license is for access to the site consisting of unlimited data storage. Users can be direct employees of the Consultant as well as its Subconsultants and/or Suppliers.

B. Each user license includes full access to e-Builder, including all of the documents and reports mentioned above. Furthermore, each user license provides the e-Builder software as a service (SaS) including:

a) All hosting, operation, maintenance, and data backup of the e-Builder software and documents which are maintained in state-of-the-art data centers located throughout the United States.

b) Quarterly e-Builder software enhancements.

c) Unlimited phone, email, and web-based support 24-hours.

C. e-Builder user licenses shall be obtained by the City, Owner Manager, Design Consultants, and QA/QC Agencies for which the Consultant is not responsible.



## Agenda Report

20-895

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on Amendment No. 1 to the Agreement with Safe Moves for the Santa Clara Non-Infrastructure Safe Routes to School Phase 2 Project

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

On March 21, 2017, Council approved an agreement (Attachment 1) with Safe Moves to provide consultant services for the Santa Clara Non-Infrastructure Safe Routes to School Phase 2 Project (Project). The purpose of this Project is to provide an educational and encouragement training program for 13 Santa Clara schools to increase the number of students walking or biking to school. The program includes topics such as bicycle safety and situational awareness for students who walk to school, encouragement activities and events to raise awareness of the benefits of walking or biking to school, and incentives and recognition for students participating in the program. The Project will also conduct surveys at the end of the program to measure the program's effectiveness.

The project uses Federal Congestion Mitigation and Air Quality (CMAQ) funds through the Vehicle Emissions Reductions Based at Schools (VERBS) program to offset the majority of the cost.

#### DISCUSSION

The consultant, Safe Moves, was scheduled to complete the three-year program by the end of the 2020/21 school year. However, program classroom activities were suspended in March 2020 due to the impacts of COVID-19. The current agreement expires on December 31, 2020, which does not provide adequate time to complete the Project and therefore an amendment is needed to utilize virtual training tools to complete the remaining tasks:

1. Complete curriculum development, handbook, and toolkit
2. Complete school encouragement events
3. Complete stakeholder meetings
4. Advertise all remaining events and update website with all materials

By extending the contract into next year, the City also hopes to reduce any possible gap between the program facilitated by Safe Moves and the next phase of the City's Safe Routes to Schools program planned to begin at the beginning of the 2021/2022 school year.

The proposed Amendment No. 1 (Attachment 2) extends the contract term to the completion of work described in the original agreement. Staff recommends approval of Amendment No. 1 to the Agreement with Safe Moves so the remaining tasks in the Agreement can be completed.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

There is no fiscal impact as the proposed amendment does not change the total compensation. The fees for the remaining tasks are already encumbered for the original Agreement and funding is available in the Safe Routes to School project in the Streets and Highways Fund of the FY2020/21 and FY2021/22 Capital Improvement Program Budget.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with Safe Moves for the Santa Clara Non-Infrastructure Safe Routes to School Phase 2 Project.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Original Agreement
2. Amendment No. 1

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SAFE MOVES  
FOR  
SANTA CLARA NON-INFRASTRUCTURE SR2S PHASE 2 PROJECT  
PREAMBLE**

This agreement for the performance of services ("Agreement") is by and between Safe Moves, Inc., a 501c.3 non-profit California Corporation, with its principal place of business located at 15500 Erwin Street, Suite 2451, Van Nuys, California 91411 ("Consultant"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("Local Agency"). Local Agency and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. Local Agency desires to secure design professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and,
- B. "Design professional" includes licensed architects, licensed landscape architects, registered professional engineers, and licensed professional land surveyors; and,
- C. Consultant represents that it, and its sub-consultants, 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 Local Agency; and,
- D. 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 PROVISIONS**

**1. SERVICES TO BE PROVIDED.**

Except as specified in this Agreement, Consultant shall furnish all technical and design professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by Local Agency at his/her own risk and expense. Services to be provided to Local Agency are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference. Consultant acknowledges that the execution of this Agreement by Local



Agency is predicated upon representations made by Consultant in that certain document entitled "Proposal for the Santa Clara Non-Infrastructure SR2S Phase 2 Project" dated December 23, 2016 ("Proposal") parts of which have been approved by the Local Agency and set forth in Exhibit A, which constitutes the basis for this Agreement.

Consultant shall incorporate the Local Agency's latest Standard Specifications, Details, Design Criteria, and any Caltrans' approved environmental documents into the Plans, Specifications, and Estimates (PS&E) of the proposed scope of work. Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner (SEP) signs the Categorical Exclusion (CE), a Caltrans Deputy District Director signs the Finding of No Significant Impact (FONSI), or the Caltrans District Director signs the Record of Decision (ROD).

**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 the Effective Date of this Agreement and terminate on **December 31, 2020**.

The Consultant is advised that any recommendation for contract award is not binding on the Local Agency until the contract is fully executed and approved by the Local Agency.

**3. CONSULTANT'S SERVICES TO BE APPROVED BY A LICENSED DESIGN PROFESSIONAL.**

- A. All PS&E, reports, engineering data, and other documentation which may be submitted or furnished by Consultant shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

**4. QUALIFICATIONS OF CONSULTANT - STANDARD OF WORKMANSHIP.**

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

The PS&E, designs, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to Local Agency. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by Local Agency for similar projects.

**5. ASSIGNMENT OF DUTIES.**

The Consultant's Project Manager for this Agreement is Pat Hines and Local Agency's Project Manager (or Administrator) is Marshall Johnson.

No other person(s) will be assigned from Consultant other than the approved Project Manager listed in this Section and the approved staff identified on Exhibit B, SCHEDULE OF FEES. It is agreed by and between the Parties that should it be desirable for any other person to work under this Agreement, such person may only be added with the express written consent of Local Agency.

**6. MONITORING OF SERVICES.**

Local Agency, the State, and Federal Highway Administration (FHWA) (collectively the "Monitoring Parties") may monitor the Services performed under this Agreement, including the daily review and inspection, to determine whether Consultant's operation conforms to Local Agency policy and to the terms of this Agreement. Monitoring Parties may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable Local Agency, County, State, and FHWA requirements. If any action of Consultant constitutes a breach, Local Agency may terminate this Agreement pursuant to the provisions described herein.

**7. WARRANTY.**

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

**8. PERFORMANCE OF SERVICES.**

Consultant shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by Local Agency. Consultant shall be as fully responsible to Local Agency for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Consultant is for the acts and omissions of persons directly employed by it. Consultant will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

**9. BUSINESS TAX LICENSE REQUIRED.**

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax



Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

**10. RESPONSIBILITY OF CONSULTANT.**

Consultant shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither Local Agency's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed 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 and Consultant shall be and remain liable to Local Agency in accordance with applicable law for all damages to Local Agency caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

Any acceptance by Local Agency of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Consultant shall not in any respect absolve Consultant from the responsibility Consultant has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

**11. FUNDING REQUIREMENTS.**

- A. It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both Parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the Local Agency for the purpose of this contract. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature or Local Agency governing board that may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds. The Local Agency has the option to terminate the contract under the 30-day cancellation clause, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

**12. COMPENSATION AND PAYMENT.**

In consideration for Consultant's complete performance of Services, Local Agency shall pay Consultant for all materials provided and services rendered by Consultant at the rate per hour for labor and cost per unit for materials, including travel and per diem, unless otherwise expressly so provided, as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Consultant will bill Local Agency on a monthly basis for Services provided by Consultant during the preceding month, subject to verification by Local Agency. Invoices

submitted shall include, but not limited to, description of work/task performed, percentage of completion for each task, amount for current invoice, previous invoiced amount, invoiced-to-date amount, contract amount, and remaining contract amount (or in format acceptable by the Local Agency), and all supporting documentation for amount requested for payments. Local Agency will pay Consultant within thirty (30) days of Local Agency's receipt of invoice and all supporting documentations.

**13. CONTINGENT FEE.**

Consultant warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the Local Agency has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**14. PROGRESS SCHEDULE.**

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

**15. TERMINATION OF AGREEMENT.**

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. In the event of such termination, the Local Agency may proceed with the work in any manner deemed proper by the Local Agency. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Consultant shall discontinue further services as of the effective date of termination, and Local Agency shall pay Consultant for all Services satisfactorily performed up to such date, unless the cost of completion to the Local Agency exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due the Consultant under this agreement and the balance, if any, shall be paid the Consultant upon demand.

**16. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.**

Local Agency and Consultant bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of Local Agency. Consultant shall not hire or substitute sub-consultants without express written permission from Local Agency.

The Consultant shall perform the Services with resources available within its own organization; and no portion of the Services pertinent to this Agreement shall be subcontracted without written authorization by the Local Agency, except that which is expressly identified in the Local Agency's approved Cost Proposal. Any subcontract in



excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to sub-consultants.

**17. 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.

**18. INDEPENDENT CONSULTANT.**

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of Local Agency. Consultant has full rights, however, to manage its employees in their performance of Services under this Agreement. Consultant is not authorized to bind Local Agency to any contracts or other obligations.

**19. NO PLEDGING OF LOCAL AGENCY'S CREDIT.**

Under no circumstances shall Consultant have the authority or power to pledge the credit of Local Agency or incur any obligation in the name of Local Agency. Consultant shall save and hold harmless the Local Agency, its Local Agency Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of Local Agency's credit by Consultant under this Agreement.

**20. CONFIDENTIALITY OF MATERIAL.**

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

**21. USE OF LOCAL AGENCY NAME OR EMBLEM.**

Consultant shall not use Local Agency'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 Local Agency.

**22. OWNERSHIP OF MATERIAL.**

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this

Agreement shall be the property of Local Agency but Consultant may retain and use copies thereof. Local Agency shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

**23. RIGHT TO INSPECT RECORDS OF CONSULTANT.**

Local Agency, through its authorized employees, representatives or agents; the State; and FHWA shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to Local Agency. Any expenses not so recorded shall be disallowed by Local Agency.

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

**24. CORRECTION OF SERVICES.**

Consultant agrees to correct any incomplete, inaccurate or defective Services at no further costs to Local Agency, when such defects are due to the negligence, errors or omissions of Consultant.

**25. FAIR EMPLOYMENT.**

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

**26. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION.**

Consultants are strongly encouraged to use services offered by financial institutions owned and controlled by Disadvantaged Business Enterprise (DBE) firms. Consultant will be required to submit "Local Agency Proposer DBE Information (Consultant Contracts)" or written statement explaining why DBE firms were not utilized in its proposal.

The term "Disadvantaged Business Enterprise" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).

The term "Small Business" (SB) is as defined in 49 CFR 26.65.



**27. HOLD HARMLESS/INDEMNIFICATION.**

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify Local Agency, 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 reasonable attorney's fees in providing a defense to any claim arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, sub-consultants, or agents in the performance, or non-performance, of services under this Agreement.

**28. INSURANCE REQUIREMENTS.**

During the term of this Agreement, and for any time period set forth in Exhibit C, Consultant shall provide and maintain in full force and effect, at no cost to Local Agency insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

**29. AMENDMENTS.**

This Agreement may be amended only with the written consent of both Parties. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the Local Agency.

**30. INTEGRATED DOCUMENT.**

This Agreement represents the entire agreement between Local Agency and Consultant. No other understanding, agreements, conversations, or otherwise, with any representative of Local Agency prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon Local Agency.

**31. 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.

**32. WAIVER.**

Consultant agrees that waiver by Local Agency 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.

**33. NOTICES.**

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

City of Santa Clara  
Attention: Craig Temple  
1500 Warburton Avenue  
Santa Clara, California 95050  
or by facsimile at (408) 985-7936

And to Consultant addressed as follows:

Pat Hines, Safe Moves  
15500 Erwin Street, Suite 2451  
Van Nuys, California 91411  
or by facsimile at (818) 786-4631

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**34. CAPTIONS.**

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

**35. LAW GOVERNING CONTRACT 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.

**36. RETENTION OF RECORDS/AUDIT.**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; the Consultant, sub-consultants, and the Local Agency shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The state, the State Auditor, Local Agency, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant that are pertinent to the Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.



**37. AUDIT REVIEW PROCEDURES.**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by the Local Agency's Director of Finance.
- B. Not later than 30 days after issuance of the final audit report, the Consultant may request a review by the Local Agency's Director of Finance of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the Local Agency will excuse the Consultant from full and timely performance, in accordance with the terms of this Agreement.

**38. CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR.**

- A. If claims are filed by the Local Agency's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from the Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with the Local Agency's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Consultant's personnel that the Local Agency considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the Local Agency. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the Consultant's personnel services under this Agreement.
- C. Services of the Consultant's personnel in connection with the Local Agency's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

**39. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.**

In accordance with Public Contract Code Section 10296, the Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Consultant within the immediately preceding two-year period, because of the Consultant's failure to comply with an order of a federal court that orders the Consultant to comply with an order of the National Labor Relations Board.

**40. DISPUTE RESOLUTION.**

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and Local Agency regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

**41. COMPLIANCE WITH ETHICAL STANDARDS.**

Consultant shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN AGREEMENT WITH THE LOCAL AGENCY (CITY OF SANTA CLARA), CALIFORNIA"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

**42. CONFLICT OF INTERESTS.**

- A. This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Consultant certifies that to the best of its knowledge, no Local Agency officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise Local Agency if a conflict arises.
- B. Consultant shall disclose any financial, business, or other relationship with Local Agency that may have an impact upon the outcome of this Agreement, or any ensuing Local Agency construction project. Consultant shall also list current



clients who may have a financial interest in the outcome of this contract, or any ensuing Local Agency construction project, which will follow.

- C. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.
- D. The Consultant hereby certifies that neither Consultant, nor any firm affiliated with the Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for sub-consultants whose services are limited to providing surveying or materials testing information, no sub-consultants who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

#### **43. AFFORDABLE CARE ACT OBLIGATIONS**

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.

#### **44. DEBARMENT AND SUSPENSION CERTIFICATION.**

The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the Local Agency. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

#### **45. REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION.**

Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any Local Agency employee. For breach or violation of this warranty, Local Agency shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of

the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**46. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING.**

A. Consultant certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; **Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying"** in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. Consultant also agrees by signing this Agreement that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

**47. STATEMENT OF COMPLIANCE**

The Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

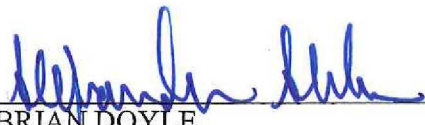


This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.


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.

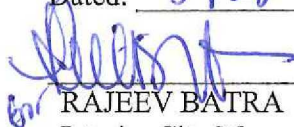
**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

APPROVED AS TO FORM:

  
for **BRIAN DOYLE**  
Interim City Attorney

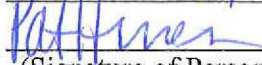
ATTEST:

  
**ROD DIRIDON, JR.**  
City Clerk

Dated: 3/23/2017  
  
for **RAJEEV BATRA**  
Interim City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**SAFE MOVES**  
a 501c.3 Non-Profit California Corporation

Dated: March 10, 2017  
By:   
(Signature of Person executing the Agreement on behalf of  
Consultant)  
Name: Pat Hines  
Title: Founder/Executive Director  
Local Address: 15500 Erwin Street, Suite 2451  
Van Nuys, California 91411  
Email Address: phinesafety@aol.com  
Telephone: (818) 786-4614  
Fax: (818) 786-4631

"CONSULTANT"

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**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SAFE MOVES  
FOR  
SANTA CLARA NON-INFRASTRUCTURE SR2S PHASE 2 PROJECT**

**EXHIBIT A**

**SCOPE OF SERVICES**

THE FOLLOWING SCOPE OF SERVICES IS TO BE PROVIDED TO LOCAL AGENCY BY CONSULTANT UNDER THIS AGREEMENT:

**I. GENERAL**

The Local Agency desires to engage a professional Consultant for the services described in the below BASIC SCOPE OF SERVICES.

Consultant shall be expected to provide complete, professional, high-quality services and products; to provide consultation and work with the City staff and others who are involved with the Project; and to provide the expertise, guidance, advice, assistance in accomplishing the work.

**II. BACKGROUND AND PROJECT**

**A. BACKGROUND:**

Previously, the City of Santa Clara administrated a "Safe Routes to School" program where 7 Santa Clara schools participated resulting in an increase in the number of students walking or riding their bike to and from school along with an increased awareness of the benefits of doing so. These 7 schools from Santa Clara Unified School District included Bowers, Briarwood, Haman, Montague, Scott Lane, and Sutter elementary schools and Cabrillo middle school. The City would like to continue this effort with the original schools and extend its reach to 5 additional schools which are Bracher, Hughes, Washington, and Westwood elementary schools and Don Callejon (K-8) middle school. We are moving forward with the full support of the City Council and the Santa Clara Unified School District with the goal of reaching more students.

**B. PROJECT:**

A self-sustaining safe route to school program to encourage students to walk or bicycle to school (Project). The focus in establishing this program will be on 10 elementary schools and two middle schools in the City of Santa Clara and emphasize the Education, Encouragement, and Evaluation aspects of the Safe Routes to School Program to help reduce vehicle trips related to schools. This phase of the program will be over a two-year period starting in the spring of 2017 and ending in June of 2019.

The 10 participating elementary schools are Bowers, Bracher, Briarwood, Haman, Hughes, Montague, Scott Lane, Sutter, Washington, and Westwood and the two participating middle schools are Cabrillo and Don Callejon.

Major components of this Project will feature developing Safe Routes to School Maps; Educational and Encouragement elements; Outreach to schools, Parents, Parent Teacher Associations (PTAs), neighbors, and students; and before and after Surveys. Safe Routes to School Maps will only need to be developed for the five schools not previously involved.

### **III. BASIC SCOPE OF SERVICES**

The basic services shall include all tasks necessary to develop and implement the Program. The basic services shall include the following:

#### **1. Task 1.0: Project Management**

- 1.1 Administration
- 1.2 Program Evaluation

Deliverables:

- 1. Create, distribute, analyze, and tabulate "Classroom" and "Parent" before and after surveys on a yearly basis for each participating school.
- 2. First Year and Final Evaluation Reports.

#### **2. Task 2.0: Education**

- 2.1 Develop "Safe Routes to School" maps

Deliverables:

Provide maps for Bracher, Hughes, Washington, and Westwood elementary schools and Don Callejon (K-8) middle school in "PDF" format.

- 2.2 Curriculum Development (up to 3 language translations)

Deliverables:

- 1. Workshop or classroom training curriculum
- 2. Parent/Coordinator/Teacher training handbook
- 3. Safe Routes To School Toolkit
- 4. Training of Parents/Coordinator/Teacher representative for each school

- 2.3 Skills Training for students

Deliverables:

Bicycle and Pedestrian Rodeos



### **3. Task 3.0: Encouragement**

#### **3.1 Promotional Activities**

##### **Deliverables:**

1. Anticipate 1-2 large yearly events for each school
2. Multiple smaller challenge events
3. Walking School buses

### **4. Task 4.0: Engineering**

#### **4.1 Infrastructure Needs**

##### **Deliverables:**

1. Identify needed infrastructure improvements (Traffic Signals, Hawks, crosswalks, missing sidewalks, etc.)
2. Letters of support for future infrastructure improvements

### **5. Task 5.0: Outreach**

##### **Deliverable aspects to promote and sustain program:**

- 5.1 Meeting with parents, teachers, PTAs, law enforcement, and community leaders
- 5.2 Website material
- 5.3 Advertisement of events
- 5.4 Exploring alternative funding sources to sustain program beyond life of grant

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SAFE MOVES  
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SANTA CLARA NON-INFRASTRUCTURE SR2S PHASE 2 PROJECT**

**EXHIBIT B**

**SCHEDULE OF FEES**

Consultant shall provide a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as:

**I. ORIGINAL PAYMENT AMOUNT**

The total payment to the Consultant for all work necessary for performing all tasks, as stated in **Exhibit A**, shall not exceed \$491,420.55, plus authorized Reimbursable Expenses, which shall not exceed the sum of \$8,579.45. Billing shall be on a monthly basis proportionate to the services performed for each task completed. In no event shall the amount billed to Local Agency by Consultant for services under this Agreement exceed \$500,000.00, subject to budget appropriations.

**II. REIMBURSABLE EXPENSES**

Reimbursable Expenses are in addition to compensation for Basic and Additional Services. Reimbursable Expenses shall be billed at cost plus ten percent (10%). The following items are included as part of the Basic Services and are not considered Reimbursable Expenses:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Local Travel Expenses
- Faxes
- Telephone Expenses
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

Reimbursable Expenses may include but are not limited to:

- Outside Duplication Cost for PS&E as specified in Section III, BASIC SCOPE OF SERVICES, of Exhibit A
- Presentation Materials, Art works, News letters
- Overnight Delivery Services when requested by the Local Agency
- Courier Services when requested by the Local Agency

All Reimbursable Expenses, other than those listed above, shall be approved in advance by the Local Agency.

Reimbursable Expenses shall not exceed \$8,579.45 without approval by the Local Agency. The Consultant shall notify the Local Agency when approximately 75% of the Reimbursable Expenses budget has been billed to the Local Agency and shall provide a revised estimate of Reimbursable Expenses through Project completion. Local Agency may review estimate and may approve all or part of additional cost. The Local Agency shall be under no obligation to provide any Reimbursable Expenses in excess of the approved maximum reimbursable budget

### **III. PAY RATE SCHEDULE**

#### **Basic Services:**

- Compensation shall be in proportion to services rendered and shall be billed monthly as percentages of completion for each phase listed below. Fees shall be lump sum and not-to-exceed (LS, nte) per task as identified in Section III, BASIC SCOPE OF SERVICES, of Exhibit A and listed below on the following page:



**CHAPTER 8: PROPOSAL COSTS SHEET & RATES**

TASKS / DELIVERABLES	Hourly Rate	Safe Moves Program Manager Pat Hines	Safe Moves Program Coordinator/ Scheduler Barbara Sheppard	Safe Moves Instructor Bill Howard	Safe Moves Instructor Wendy Mata	Safe Moves Instructor Josh Calvin	Fehr & Peers Project Manager Ryan McClain	Fehr & Peers Project Designer Carrie Modi	Fehr & Peers Junior Engineer	Fehr & Peers Graphics/Admin	TOTAL HOURS	FEE ESTIMATE
<b>Task 1 Project Management</b>												
1.1. Administration	150	100	0	0	0	0	0	0	0	0	250	\$ 22,000.00
1.2. Program Evaluation & Data Management	125	250	50	50	50	0	0	0	0	0	525	\$ 38,250.00
<b>SUBTOTAL:</b>	<b>275</b>	<b>350</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>775</b>	<b>\$ 60,250.00</b>
<b>Task 2 Education</b>												
2.1. Develop "Safe Routes to School" maps	0	0	0	0	0	5	10	29	10	10	54	\$ 7,455.00
2.2.a. Curriculum Development	150	120	0	0	0	0	0	0	0	0	270	\$ 23,400.00
2.2.b. Parent/Coordinator/Teacher Training Handbook	110	95	0	0	0	0	0	0	0	0	205	\$ 17,650.00
2.2.c. SRTS Toolkit	110	150	0	0	0	0	0	0	0	0	260	\$ 21,500.00
2.2.d. Parent/Coordinator/Teacher Representative Training	95	75	0	0	0	0	0	0	0	0	170	\$ 14,750.00
2.3.a. Bicycle and Pedestrian Rodeos	95	250	250	250	250	0	0	0	0	0	1095	\$ 68,250.00
<b>SUBTOTAL:</b>	<b>560</b>	<b>690</b>	<b>250</b>	<b>250</b>	<b>250</b>	<b>5</b>	<b>10</b>	<b>29</b>	<b>10</b>	<b>10</b>	<b>2054</b>	<b>\$ 153,005.00</b>
<b>Task 3 Encouragement</b>												
3.1. Promotional Activities	0	0	0	0	0	0	0	0	0	0	0	\$ -
3.1.a. Large School Events	150	150	100	100	100	0	0	0	0	0	600	\$ 42,000
3.1.b. Smaller School Events	150	150	100	100	100	0	0	0	0	0	600	\$ 42,000
3.1.c. Walking School Buses/Bicycle Trains	150	150	100	100	100	0	0	0	0	0	600	\$ 42,000
<b>SUBTOTAL:</b>	<b>450</b>	<b>450</b>	<b>300</b>	<b>300</b>	<b>300</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1800</b>	<b>\$ 126,000.00</b>
<b>Task 4 Engineering</b>												
4.1. Infrastructure Needs Assessment	0	0	0	0	0	40	88	165	81	81	374	\$ 53,040.00
<b>SUBTOTAL:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>88</b>	<b>165</b>	<b>81</b>	<b>81</b>	<b>374</b>	<b>\$ 53,040.00</b>
<b>Task 5 Outreach</b>												
5.1. Stakeholders Meeting	150	100	0	0	0	36	24	29	16	16	355	\$ 39,460.00
5.2. Website Material	75	115	0	0	0	0	0	0	0	0	190	\$ 15,550.00
5.3. Event Advertisements	125	150	0	0	0	0	0	0	0	0	275	\$ 23,000.00
5.4. Funding Sources	110	75	0	0	0	0	0	0	0	0	185	\$ 16,250.00
<b>SUBTOTAL:</b>	<b>460</b>	<b>440</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>36</b>	<b>24</b>	<b>29</b>	<b>16</b>	<b>16</b>	<b>1005</b>	<b>\$ 94,260.00</b>
<b>TOTAL HOURS</b>	<b>1745</b>	<b>1930</b>	<b>600</b>	<b>600</b>	<b>600</b>	<b>81</b>	<b>122</b>	<b>223</b>	<b>107</b>	<b>107</b>	<b>6008</b>	
<b>TOTAL FEE AMOUNT</b>	<b>\$ 174,500.00</b>	<b>\$ 135,100.00</b>	<b>\$ 33,000.00</b>	<b>\$ 33,000.00</b>	<b>\$ 33,000.00</b>	<b>\$ 18,225.00</b>	<b>\$ 20,130.00</b>	<b>\$ 26,760.00</b>	<b>\$ 12,840.00</b>	<b>\$ 12,840.00</b>		<b>\$ 486,555.00</b>
Printing												\$ 4,865.55
<b>GRAND TOTAL</b>												<b>\$ 491,420.55</b>

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**EXHIBIT C**

**INSURANCE REQUIREMENTS**

Without limiting the Consultant's indemnification of the Local Agency, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Local Agency, 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 Local Agency so that any other coverage held by the Local Agency shall not contribute to any loss under Consultant'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 (ISO) form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;



- b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
- c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, ISO 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, Consultant 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 ISO endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

**C. WORKERS' COMPENSATION**

- 1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
- 2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for 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 Local Agency, its City Council, commissions, officers, employees, volunteers and agents.

**D. PROFESSIONAL LIABILITY**

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence or two million

dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. Local Agency, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for Local Agency, using ISO Endorsement CG 20 10 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to Local Agency 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 Local Agency at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and Local Agency agree as follows:



1. Consultant 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 Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by Local Agency, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to Local Agency for review.
2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Local Agency or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Local Agency. It is not the intent of Local Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Local Agency for payment of premiums or other amounts with respect thereto.
3. The Local Agency reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every 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 Local Agency and as described in this Agreement. Consultant shall file with the Local Agency all certificates and endorsements for the required insurance policies for Local Agency's approval as to adequacy of the insurance protection.

#### H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of 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 Local Agency, or its representative as set forth below, at or prior to execution of this Agreement. Upon Local Agency's request, Consultant shall submit to Local Agency 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 Local Agency pursuant to this Agreement shall be mailed to:

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

## I. QUALIFYING INSURERS

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

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SAFE MOVES  
FOR  
SANTA CLARA NON-INFRASTRUCTURE SR2S PHASE 2 PROJECT**

**EXHIBIT D**

**ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO  
AN AGREEMENT WITH THE LOCAL AGENCY (CITY OF SANTA CLARA),  
CALIFORNIA**

**Termination of Agreement for Certain Acts.**

- A. The Local Agency may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Consultant<sup>1</sup> does any of the following:
    - a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted<sup>2</sup> of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
    - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Local Agency consultant or sub-consultant; and/or,

---

<sup>1</sup> For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.



- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
  - 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Consultant can be imputed to the Consultant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Consultant, with the Consultant's knowledge, approval or acquiescence, the Consultant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The Local Agency may also terminate this Agreement in the event any one or more of the following occurs:
- 1. The Local Agency determines that Consultant no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or,
  - 2. If Local Agency determines that the Consultant fails to submit information, or submits false information, which is required to perform or be awarded a contract with Local Agency, including, but not limited to, Consultant's failure to maintain a required State issued license, failure to obtain a Local Agency business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> Consultant becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Consultant.

<sup>5</sup> Loss of personnel deemed essential by the Local Agency for the successful performance of the obligations of the Contractor to the Local Agency.

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SAFE MOVES  
FOR  
SANTA CLARA NON-INFRASTRUCTURE SR2S PHASE 2 PROJECT**

**EXHIBIT E**

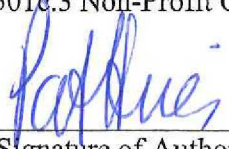
**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

I am Founder/Executive Director of Safe Moves and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Consultant" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Consultant" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

**SAFE MOVES,**  
a 501c.3 Non-Profit California Corporation

By:   
Signature of Authorized Person or Representative

Name: 

Title:  President

**NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

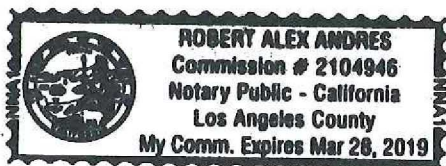
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On 03/10/17 before me, Robert A. Andres, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Patricia Ann Hines  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_



**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SAFE MOVES  
FOR  
SANTA CLARA NON-INFRASTRUCTURE SR2S PHASE 2 PROJECT**

**EXHIBIT F**

**MILESTONE SCHEDULE**

**Chapter 5: Project Schedule**

Tasks	17-Apr	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19
<b>Task 1 Project Management</b>																											
1.1. Administration																											
1.2. Program Evaluation & Data Management																											
<b>Task 2 Education</b>																											
2.1. Develop "Safe Routes to School" Maps																											
2.2.a Curriculum Development																											
2.2.b. Parent/Coordinator/Teacher Training Handbook																											
2.2.c. SRTS Toolkit																											
2.2.d. Parent/Coordinator/Teacher Representative Training																											
2.3.a. Bicycle and Pedestrian Rodeos																											
<b>Task 3 Encouragement</b>																											
3.1. Promotional Activities																											
3.1.a. Large School Events																											
3.1.b. Smaller School Events																											
3.1.c. Walking School Buses/Bicycle Trains																											
<b>Task 4 Engineering</b>																											
4.1. Infrastructure Needs Assessment																											
<b>Task 5 Outreach</b>																											
5.1. Stakeholders Meeting																											
5.2. Website Material																											
5.3. Event Advertisements																											
5.4. Funding Sources																											

**COUNCIL AND AUTHORITIES  
AGENDA MATERIAL ROUTE SHEET**

Council Date: March 21, 2017

**SUBJECT:** Agreement for Design Professional Services with Safe Moves (Consultant) for the  
Santa Clara Non-Infrastructure SR2S Phase 2 Project

**PUBLICATION REQUIRED:**

The attached Notice/Resolution/Ordinance is to be published \_\_\_\_\_ time(s) at least \_\_\_\_\_ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for \_\_\_\_\_.

**AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:**

**Federal Codes:**

Title \_\_\_\_\_ U.S.C. § \_\_\_\_\_  
(Titles run 1 through 50)

**California Codes:**

Code \_\_\_\_\_ § \_\_\_\_\_  
(i.e., Government, Street and Highway, Public Resources)

**Federal Regulations:**

Title \_\_\_\_\_ C.F.R. § \_\_\_\_\_  
(Titles run 1 through 50)

**California Regulations:**

Title \_\_\_\_\_ California Code of Regulations § \_\_\_\_\_  
(Titles run 1 through 28)

**City Regulations:**

City Charter § \_\_\_\_\_  
(i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)


City Code § \_\_\_\_\_

**Reviewed and approved:**

1. As to City Functions, by

  
\_\_\_\_\_  
Department Head

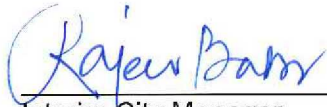
2. As to Legality, by

  
\_\_\_\_\_  
City Attorney's Office/CAO Assign. No 17.0342

3. As to Environmental Impact Requirements, by

\_\_\_\_\_  
Director of Community Development

4. As to Substance, by

  
\_\_\_\_\_  
Interim City Manager

\* Agenda Material Route Sheet required for all agreements, contracts, resolutions, ordinances, notices requiring publication, master plan reports and grant applications



**AMENDMENT NO. 1  
TO THE AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
SAFE MOVES**

**PREAMBLE**

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Safe Moves, a 501c.3 Non-Profit California Corporation, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. The Parties previously entered into an agreement entitled "Agreement for Design Professional Services By and Between the City of Santa Clara, California and Safe Moves", dated \*March 28, 2017 (Agreement); and
- B. The Parties entered into the Agreement for the purpose of having Contractor provide professional design consulting services for Santa Clara Non-Infrastructure SR2S Phase 2 Project, and the Parties now wish to amend the Agreement to extend the termination date of agreement from December 31, 2020 to December 31, 2021.

NOW, THEREFORE, the Parties agree as follows:

**AMENDMENT TERMS AND CONDITIONS**

- 1. Section 2 of the Agreement, entitled "Terms of Agreement" is amended to read as follows:  
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 the Effective Date of this Agreement and terminate on December 31, 2021.
- 2. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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

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

Approved as to Form:

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

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

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

"CITY"

**SAFE MOVES**  
a 501c.3 Non-Profit California Corporation

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

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

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

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

Principal Place of Business Address: 15500 Erwin Street, Suite 2451  
Van Nuys, California 91411

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

Telephone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

"CONTRACTOR"





## Agenda Report

20-748

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on a Design Professional Services Agreement with Alta Planning + Design for the Pruneridge Avenue Complete Streets Plan Project and Related Budget Amendments

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

Pruneridge Avenue is an east/west street near the southern boundary of Santa Clara, tying into Cupertino at the western city limit and San Jose on the eastern city limit (Attachment 1, Location Map). The majority of Pruneridge Avenue in Santa Clara is fronted by single family homes. The General Plan lists Pruneridge Avenue as a minor arterial street to include future bicycle lanes along the entire roadway within the City. Additionally, the Santa Clara Bicycle Plan Update 2018 lists the entirety of Pruneridge Avenue within Santa Clara as a roadway that should include buffered bicycle lanes.

Prior to 2012, Pruneridge Avenue operated as a four-lane roadway with two lanes in each direction. In 2012, the City re-configured Pruneridge Avenue between the western city limit and Pomeroy Avenue (0.85 miles) to become a three-lane facility with one lane in each direction, a center turn lane, and bicycle lanes. In 2017, the City of San Jose re-configured the street east of Winchester Boulevard to become a three-lane facility with bicycle lanes, similar in design to the 2012 project. Completion of this improvement generated interest from the bicycling community to re-configure Pruneridge Avenue to install bicycle lanes between Pomeroy Avenue and Winchester Boulevard (2.2 miles).

On October 9, 2018, staff provided the City Council with an update on the Pruneridge Avenue corridor and relayed that staff was applying for a grant to study the re-configuration from Pomeroy Avenue to Winchester Boulevard. In November 2018, the City applied for grant funding from the California Department of Transportation (Caltrans) Sustainable Communities Transportation Planning Grant Program for the proposed Pruneridge Avenue Complete Streets Plan project (Project).

In May 2019, the City was notified by Caltrans that the Project was selected for award of grant funding. On July 9, 2019 the City Council adopted Resolution No. 19-8736 to authorize the City Manager to execute the grant funding agreement with Caltrans. On November 15, 2019, the grant funding agreement for \$351,077 from the Sustainable Communities Grant (State-SB1) and a local match from the City of \$45,486 was approved by Caltrans.

In December 2019, a Request for Proposals (RFP) for professional services was posted on BidSync and was also emailed to qualified firms to solicit proposals from consultants. The scope of services

included project management, extensive public outreach, review of existing conditions, roadway corridor analysis, development of conceptual design options and associated cost estimates, multi-modal simulation modeling, and developing the complete streets plan along Pruneridge Avenue from Pomeroy Avenue to Winchester Boulevard. The complete streets plan would identify bicycle and pedestrian improvements necessary to expand the existing network, complete network gaps, provide greater connectivity to public transportation, increase mobility, and encourage the public to choose more sustainable modes of transportation.

On January 10, 2020, two proposals were received from Alta Planning + Design (Alta) and TJKM. Staff thoroughly reviewed and evaluated both proposals and recommended that Alta provide the services for the Project. Alta was selected based on their technical skills, references, extensive experience preparing complete streets plans (especially within the Bay Area), and a clear understanding of the importance of conducting extensive public outreach for the project.

On April 7, 2020, staff provided a Report to Council and recommendation to approve a service agreement with Alta to assist the City with public outreach, traffic analysis, and creation of the Plan. At the Council meeting, Council had concerns regarding how the COVID-19 pandemic would impact public outreach efforts and traffic counts. Staff and Council discussed these items as well the project schedule since delays in awarding the contract would impact the ability to complete the project within the grant timelines. Ultimately, Council recommended deferring the approval and asked staff to return when there was more certainty regarding the COVID-19 impacts to outreach and traffic counts.

## **DISCUSSION**

Since April 2020, it has become more apparent that the COVID-19 impacts are going to continue for a longer period of time than originally anticipated. Staff has coordinated with Alta regarding outreach, traffic counts, and schedules. The following information is being provided to answer some of Council's concerns about conducting this effort during the COVID-19 pandemic so Council can consider approving the agreement and the project can move forward. It should be noted that this effort is only a study and does not include design, environmental review, or construction of any alternative. At the completion of the work effort, if Council decides to move forward a specific alternative, then additional funds and staff time would be required to design, bid and construct the alternative.

### **Public Outreach**

The project's public outreach efforts were revised to maximize public input and meet COVID-19 social distancing requirements. The project will complete four stakeholder group interviews, five City meetings, six community workshops, and other marketing efforts. Group interviews and community workshops will use an internet video teleconferencing platform (such as Zoom) and may be live streamed via Facebook and YouTube. The project team will also obtain input from Council and other boards, commissions, and committees. In addition, the project will mail postcards to all addresses within one half mile of Pruneridge Avenue and install 10 sidewalk decals along the street. The postcards and decals will notify the public of a phone number and a website created for the public to submit comments. Community feedback will also be obtained using an online survey and a City website. Finally, staff will advertise meetings and outreach opportunities through the City's website, social media, and Channel 15.

### **Traffic Counts**

The project's traffic analysis methodology was also revised to address the effects that COVID-19 has

had on traffic patterns and corresponding data collection efforts needed for the Project. Since current traffic volumes have significantly decreased since March 2020, the project will use pre-2020 traffic data, collect 2021 traffic data, and use engineering adjustment factors when needed. Of the 22 intersections specified within the scope of the traffic study, the City has recent and reliable historical data for 10 intersections and these historical counts will be used at these intersections. For the remaining 12 intersections, the traffic consultant will collect current traffic counts and adjust those current counts to better represent pre-COVID conditions. An adjustment factor will be developed using new traffic counts that will be collected at intersections where the City already has pre-COVID traffic counts. This data will then be used to determine the difference in traffic counts pre- and post-COVID and to ultimately develop an adjustment factor that will be used for study locations where we do not have historical traffic count data (i.e., pre-COVID conditions).

In addition to public outreach and traffic data collection, the project will develop three alternatives, conduct a parking study, evaluate collision records, complete traffic analyses and microsimulations, and draft the Plan. The project team will coordinate with the City's Bicycle and Pedestrian Advisory Committee (BPAC) during the entire schedule to obtain input, refine alternatives, and prepare recommendations.

### **Schedule**

After Council deferred the approval of the contract in April 2020, staff contacted Caltrans to request an extension to the grant deadline of February 28, 2022, since it was no longer possible to achieve the original completion date. Caltrans confirmed the grant may only be extended one month to March 28, 2022. This one-month extension is not adequate to complete the project and any work that is completed after the deadline is not reimbursable through the grant.

If this agreement is approved by Council, staff estimates that the final Pruneridge Complete Streets Plan will be presented to Council for approval in August 2022, which is five months beyond the grant deadline. Based on the delay in awarding the contract in April 2020 there is a potential risk that approximately \$25,000 may not be reimbursed to the City. This is just an estimate at this point, however any additional delays to the project would further increase the amount of money that is not reimbursable. Staff will continue to work with Caltrans as the timeline progresses to see if there are any opportunities to receive additional grant extensions.

### **ENVIRONMENTAL REVIEW**

The action being considered is subject to a statutory exemption from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15262 ("Feasibility and Planning Studies") as it involves a feasibility or planning study for possible future actions that the City has not yet approved, adopted, or funded.

### **FISCAL IMPACT**

The proposed agreement is for a total not-to-exceed amount of \$416,347. This amount includes \$362,041 for basic services plus 15 percent for any potential additional services in the amount not-to-exceed \$54,306. The potential additional services may include additional outreach efforts or unexpected consultant tasks/analysis resulting from community input. Basic services will be funded mainly by the grant award; however, the proposed agreement exceeds the grant award of \$351,077 by \$65,270.



The grant award of \$351,077 will reimburse all expenditures up to March 2022. Since project approval was postponed by Council in April of this year, the completion date is now forecasted to be August 2022. Staff estimates a potential revenue loss of up to \$25,000 since expenditures may occur five months past the grant deadline. Therefore, the resulting grant revenue estimate will be \$326,077. The additional funding of \$90,270 (\$25,000 and \$65,270) is needed and available in the Pedestrian and Bicycle Enhancement Facilities project.

At the time the grant was awarded, a local match of \$45,486 was expected to be met with staff support for this project. The funding for the staff time is available in the Department of Public Work's Traffic - Capital Projects Program budget in the Public Works Capital Project Management Fund.

Staff requests an appropriation in the amount of \$416,347 for the new Project in the Streets and Highways Capital Fund to be funded by the Caltrans Sustainable Communities Grant (State-SB1) and the reallocation of \$90,270 from the existing Pedestrian and Bicycle Enhancement Facilities project in the same fund. The Pedestrian and Bicycle Enhancement Facilities project supplements funding for the local match related to grant funds for pedestrian and bicycle projects. The source for this supplemental funding includes traffic impact fees.

<b>Budget Amendment FY 2020/21</b>			
	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>Streets and Highways Capital Fund</b>			
<u>Revenues</u>			
Road Maintenance and Rehabilitation Account (RMRA) SB1	\$0	\$326,077	\$326,077
<u>Expenditures</u>			
Pruneridge Avenue Complete Streets Plan (New Project)	\$0	\$416,347	\$416,347
Pedestrian and Bicycle Enhancement Facilities Project	\$1,539,603	(\$90,270)	\$1,449,333

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

1. Approve and authorize the City Manager to execute the Agreement for Design Professional Services with Alta Planning + Design for the Pruneridge Avenue Complete Streets Plan in the

- amount not-to-exceed \$416,347;
2. Approve a FY 2020/21 budget amendment in the Streets and Highways Capital Fund to establish an appropriation for the new Project - Pruneridge Avenue Complete Streets Plan project in the amount of \$416,347, increase the revenue estimate in the amount of \$326,077 to recognize the Caltrans Sustainable Communities Grant, and decrease the Pedestrian and Bicycle Enhancement Facilities Project by \$90,270; and
  3. Authorize the City Manager to make minor modifications, including time extensions, to the Agreement, if necessary.

Reviewed by: Craig Mobeck, Director of Public Works

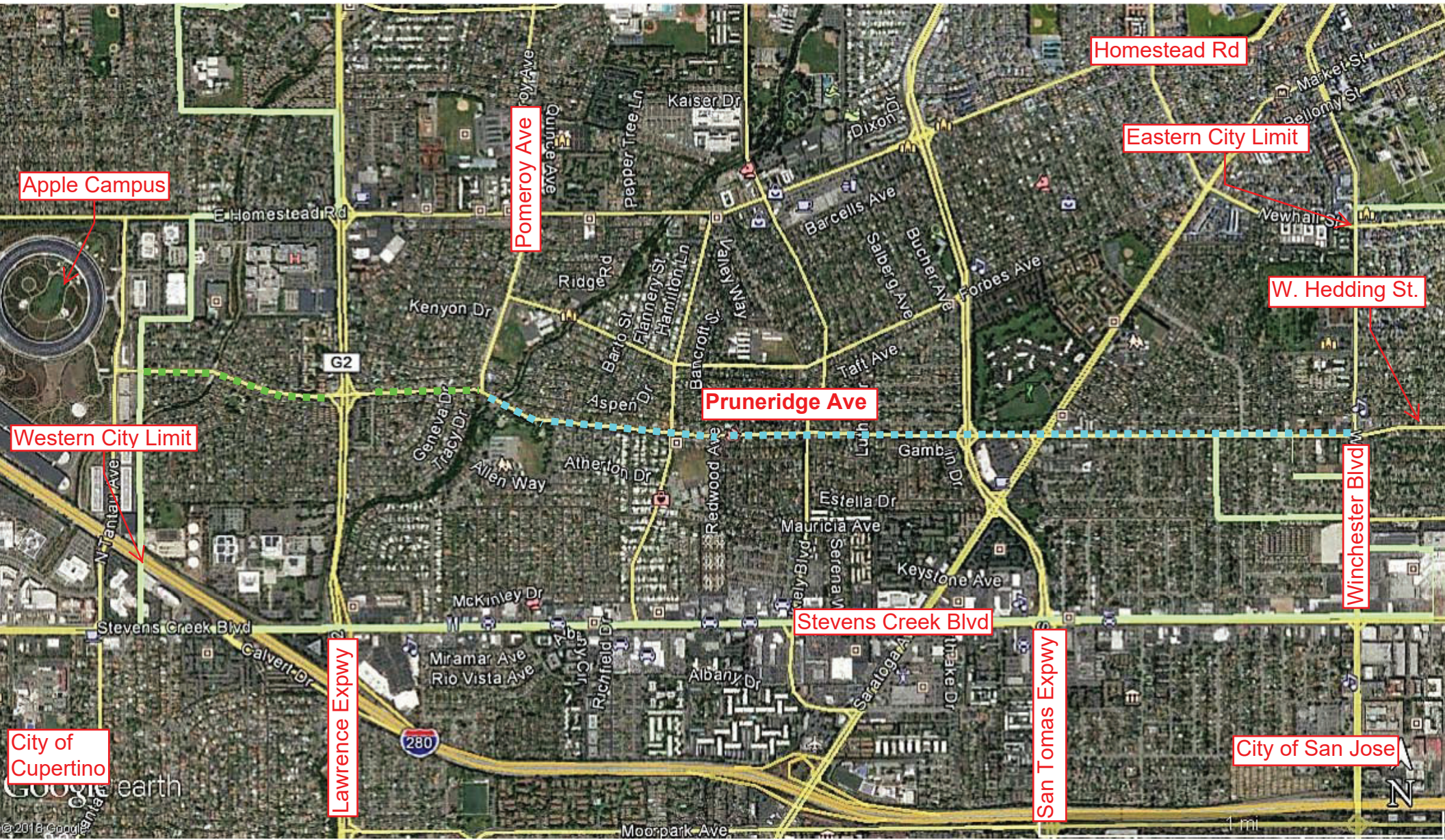
Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Location Map
2. Agreement



## Location Map



■■■■■ 2012 Roadway Reallocation Project

■■■■■ Pruneridge Avenue Complete Streets Plan Area



**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
ALTA PLANNING + DESIGN, INC.**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Alta Planning + Design, Inc., a Corporation, (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. City desires to secure the design professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. 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,
- D. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

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

## **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on November 17, 2020 and terminate on November 17, 2023.

## **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.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Contractor shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

## **4. WARRANTY**

Contractor shall use the standard of care in its profession to perform the services under this Agreement. 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, 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 during the same period of time.

## **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 and Sixteen Thousand, Three Hundred and Forty-Seven Dollars (\$416,347), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## **7. TERMINATION**

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.

Contractor may terminate this Agreement after ten (10) days' prior written notice to City if City breaches this Agreement or fails to pay Contractor pursuant to the terms of this Agreement.

Should termination occur, Contractor shall be compensated for the satisfactory work completed to the date of termination and City shall not retain ownership of work product until payment is rendered to Alta.

Any unauthorized transfer, reproduction or re-use of projects delivered by Contractor in connection with Services performed under this Agreement which were not complete upon termination of this Agreement but which City may possess shall be at City's sole risk.

- 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 upon full payment to Contractor, 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**

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 reasonable attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Contractor, its employees, subcontractors, or agents in the performance, or non-performance, of Services under this Agreement.

### **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: Department of Public Works  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at CShariat@santaclaraca.gov, and  
manager@santaclaraca.gov

And to Contractor addressed as follows:

Alta Planning + Design, Inc.  
304 12<sup>th</sup> Street, Suite 2A  
Oakland, CA 94607  
and by e-mail at emilyduchon@altaplanning.com

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

## **18. COMPLIANCE WITH LAWS**

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

## **19. CONFLICTS OF INTEREST**

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

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

**21. NO USE OF CITY NAME OR EMBLEM**

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

**22. GOVERNING LAW AND VENUE**

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

**23. SEVERABILITY CLAUSE**

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

**24. AMENDMENTS**

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

**25. COUNTERPARTS**

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

**CONTINUED ON PAGE 8**

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"

**ALTA PLANNING + DESIGN, INC.**  
A California 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 set forth below. The limits of the project are along Pruneridge Avenue from Pomeroy Avenue to Winchester Boulevard.

### **1. TASK 1: PROJECT INITIATION**

#### **1.1. Project Kick-off Meeting with Consultant**

Upon receipt of a written "Authorization to Proceed" from the City, the City will hold a kick-off meeting with the selected CONSULTANT team to review project scope, data requests, deliverables, and timeline. Caltrans staff will be invited to attend. Eligible expenditures for this sub-task will include travel expenses.

**Responsible Party:** The City/Consultant

#### **1.2. Staff Coordination with Consultant**

Biweekly face-to-face or conference call project team meetings with CONSULTANT will be held to ensure good communication on upcoming tasks and to make sure the project remains on time and within budget. Caltrans staff will be invited to the project team meetings.

**Responsible Party:** The City/Consultant

<b>Task</b>	<b>Deliverable</b>
1.1	<i>Meeting agenda and minutes</i>
1.2	<i>Biweekly meeting minutes including action items</i>

### **2. TASK 2: OUTREACH STRATEGY AND IMPLEMENTATION**

*Note: All meetings will be publicly noticed to ensure maximum attendance. All public notices will be in English, Chinese, and Spanish – the three primary languages spoken at home in Santa Clara. Translators and sign language interpreters will be present at all workshops if requested.*

#### **2.1. Project Promotion/Website**

Develop a project website for the City of Santa Clara Pruneridge Avenue Complete Streets Plan process to promote outreach and education materials, document workshops, public events, and allow members of the public to provide feedback on items and deliverables presented at the public meetings and workshops such as the Public Draft Plan and Final Plan.

**Responsible Party:** Consultant

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## **2.2. Community Survey**

An online community survey will be developed to solicit public input to identify current barriers and recommendations for suggested multimodal improvements along the corridor from citizens unable to attend community workshops or outreach events.

**Responsible Party:** Consultant

## **2.3. Stakeholder Interviews**

Up to four (4) individual interviews or group listening sessions will be conducted with diverse key stakeholders such as school representatives, public health advocates, local elected officials, and business community leaders, and Communities of Concern/Disadvantage Community representatives to understand their mobility needs along the corridor. Consultant will host the listening session over Zoom and create topic specific breakout rooms to facilitate small group discussion. Consultant staff will facilitate the meeting and take notes. Eligible expenditures for this sub-task will include travel expenses and meeting supplies.

**Responsible Party:** Consultant

## **2.4. Community Workshop #1 and #2**

These two workshops will introduce the study and project to the public, define the scope of the study, inform the community of project opportunities and constraints, introduce the project website, and solicit feedback from the community about the corridor and to shape Plan recommendations. Recruitment and advertisement for all workshops will occur through all of the City of Santa Clara social media channels such as Facebook, Twitter, and Next Door. In addition, the consultant will work with direct service providers and community-based organizations to recruit Communities of Concern/Disadvantaged Community members.

Depending on County health orders and in consultation with City staff, the workshops may be held virtually. The workshops will be hosted on Zoom online software and live streamed via Facebook and Youtube. The workshops will solicit ideas from the public by creating online break-out groups and ask the community for ideas for improved infrastructure along the study corridor based on their observations, conversations, and user experience. Eligible expenditures for this sub-task may include travel expenses, meeting supplies, and caption services as needed and budget permits.

**Responsible Party:** Consultant

## **2.5. Outreach Events**

Outreach will be conducted at up to four (4) events in order to inform the community of the Plan, gather feedback from the community regarding their multi-modal mobility concerns along the corridor, and/or solicit feedback from the community about the conceptual design alternatives. Outreach for the project will be conducted in the following ways:

- **Project Phone Number:** Consultant will create a project phone number where residents can call and leave a voicemail message to share input. This will be useful for residents who do not have access to the internet or do not feel comfortable taking an online survey.
- **Postcard Notifications:** Consultant will develop and distribute a mailed postcard to every address within ½ mile of the study corridor. Postcards will be mailed two (2) times in the plan development process to encourage participation via the online survey, attending an online community workshop, or to review draft materials and provide feedback.
- **Sidewalk Decals:** Consultant will develop ten (10) temporary sidewalk decals twenty inches by twenty inches and include the project website URL and phone number to encourage resident participation in the online survey and sign-up for email updates. Consultant will manage decal production and installation.

In addition, the Consultant will attend up to five (5) stakeholder meetings to present to City commissions, boards, or other outside organizations to solicit feedback related to conceptual design alternatives and public draft deliverables as discussed in Tasks 3.4 – 3.6. Alta will attend these meetings by video teleconference. Eligible expenditures for this sub-task will include travel expenses and meeting supplies.

**Responsible Party:** Consultant

## **2.6. Community Workshop #3 and #4**

These two workshops will present and obtain input on proposed draft concepts of the plan to the community. Public comments will be used to help finalize the concept plans.

Depending on County health orders and in consultation with City staff, the workshops may be held virtually. The workshops will be hosted on Zoom online software and live streamed via Facebook and Youtube. The workshops will solicit ideas from the public by creating online break-out groups that will provide feedback with any additional ideas to improve the draft concepts. Eligible expenditures for this sub-task may include travel expenses, meeting supplies, and caption services as needed and budget permits.

**Responsible Party:** Consultant

## **2.7. Community Workshop #5 and #6**

This round of workshops will present and obtain input on the proposed Draft Plan to the community and solicit feedback from the public about the corridor plan findings. Public comments will be used to help finalize the conclusions and recommendations of the plan. At least one workshop will be held within a community of concern.

Depending on County health orders and in consultation with City staff, the workshops may be held virtually. The workshops will be hosted on Zoom online software and live streamed via Facebook and Youtube. At the workshops, the public will be asked to select their preferred alternative based on the findings of the analysis. Eligible expenditures for this sub-task may include travel



expenses, meeting supplies, and caption services as needed and budget permits.

**Responsible Party:** Consultant

## **2.8. BPAC Meetings**

The consultant will meet with BPAC to gather input and feedback three (3) times during the Plan development process. This does not include Tasks 4.3 and 4.5 BPAC meetings. Eligible expenditures for this sub-task will include travel expenses and meeting supplies.

**Responsible Party:** Consultant/The City

<b>Task</b>	<b>Deliverable</b>
2.1	<i>Project website, promotion materials</i>
2.2	<i>Online survey results and analysis</i>
2.3	<i>Stakeholder interview questions and Stakeholder interview summary memo</i>
2.4	<i>Powerpoint presentation, workshop summary, photos. Summaries will be converted into Plan appendix in Task 4.1.</i>
2.5	<i>Outreach materials and photos</i>
2.6	<i>Powerpoint presentation, workshop summary, polling summary, photos. Summaries will be converted into Plan appendix in Task 4.1.</i>
2.7	<i>Powerpoint presentation, workshop summary, polling summary, photos (two meetings). Summaries will be converted into Plan appendix in Task 4.1.</i>
2.8	<i>Powerpoint presentation and BPAC meetings and notes</i>

## **3. TASK 3: CORRIDOR TRAVEL ANALYSIS**

### **3.1. Information Gathering and Identify Existing Conditions**

- Collect and review previous studies, plans, policies, and data completed along this corridor.
- Conduct a site visit of the corridor to analyze existing traffic operations, including queuing issues, and identify opportunities and constraints along the corridor during the site visit. Consideration will be given to the existing and future land use, traffic volumes, topography, public right-of-way availability, and physical barriers; bicycle, pedestrian, and vehicular functional and spatial requirements for lane striping, sidewalk improvements, ADA accessibility, landscaping and other constraints and opportunities for access or enhancement. Site visit can include Consultant, City staff, City elected officials, BPAC, and selected stakeholders. Eligible expenditures for this sub-task will include travel

expenses.

- Gather background data such as the following:
- AM (7-9) and PM (4-6) peak period counts at 25 study intersections, including bicycle and pedestrian counts, along either Pruneridge Avenue, Forbes Avenue, Homestead Road, and Mauricia Avenue,
  - The consultant has recent (pre-COVID) historical counts from the past two years for 10 of the 22 count locations, including four locations on Pruneridge Avenue. The consultant will apply a growth factor to estimate 2021 normal conditions. The City of San Jose is using a growth factor of 1% per year which is a typical growth factor. For areas of low growth, a lower factor, or even no growth, can be assumed. Growth factors of higher than 1% per year would represent a very high rate of growth but may be appropriate in some areas.

The historical counts, adjusted for annual growth, will provide a baseline for normal conditions in 2021. The consultant will collect counts at these 10 locations in 2021 to compare how different they are from estimated normal conditions based on historical data. This factor will be used for locations where there is no historical data to make adjustments. For example, if the historical data, adjusted for annual growth, is 14 percent higher than the data we collect at the same location in 2021, we will know to adjust all count locations +14% to estimate normal Pre-COVID conditions.

The consultant will adjust the 2021 counts for the remaining 12 locations without historical data based on the factor describe above. The following table explains how data will be collected at the study intersections.

Count Location	Strategy
Pruneridge & Pomeroy	Estimated
Pruneridge & Cronin	Estimated
Pruneridge & Woodhams	Estimated
Pruneridge & Kiely	2019 Historical Counts + Growth Factor
Pruneridge & Tanoak	Estimated
Pruneridge & San Tomas Expwy	2018 Historical Counts + Growth Factor
Pruneridge & Saratoga	2018 Historical Counts + Growth Factor
Pruneridge & Cypress	Estimated
Pruneridge & Los Padres	Estimated
Pruneridge & Winchester	2019 Historical Counts + Growth Factor
Homestead & Pomeroy	2018 Historical Counts + Growth Factor
Homestead & Woodhams	Estimated
Homestead & Kiely	2018 Historical Counts + Growth Factor
Homestead & San Tomas Expwy	2018 Historical Counts + Growth Factor
Homestead & Los Padres	2019 Historical Counts + Growth Factor
Forbes & Pomeroy	Estimated
Forbes & Woodhams	Estimated

Count Location	Strategy
Forbes & Kiely	2018 Historical Counts + Growth Factor
Forbes & San Tomas Expwy	2018 Historical Counts + Growth Factor
Mauricia & Cronin	Estimated
Mauricia & Woodhams	Estimated
Mauricia & Kiely	Estimated

- Seven-day directional vehicle classification counts at three locations along the corridor, and
- Five travel time runs will be conducted in each direction in the AM (7-9) and PM (4-6) peak periods using a GPS device and the floating car travel time methodology.
- Develop aerial base maps for design and analysis work and for use at meetings and public events.
- Summarize task findings in Working Paper #1: Existing Conditions. City staff and Caltrans will provide a consolidated set of comments on the draft working paper to Consultant and Consultant will then respond to comments and prepare the final working paper.

**Responsible Party: Consultant**

### **3.2. Identify Near-Term and Future Conditions**

- Near-Term and Future forecasts for a given year to be selected in coordination with the City will be developed for the Plan.
- Near-Term peak hour intersection traffic volumes will be developed either by using an annual growth rate, the addition of project traffic from approved projects from both the City and adjoining jurisdictions, or through the use of a travel demand model.
- Future forecast, i.e., horizon year, peak hour intersection traffic volumes will be developed either by using an annual growth rate, the addition of project traffic from approved and pending projects from both the City and adjoining jurisdictions or through the use of a travel demand model.

**Responsible Party: Consultant**

### **3.3. Collision Analysis**

- Conduct a collision analysis using Crossroads data and data from the Statewide Integrated Traffic Records System (SWITRS) for a minimum of four years provided by City staff. Crossroads is software used by Santa Clara to track collisions that can be accessed by all City departments. A summary of the collision data will be included in Task 4.1 and a public facing map showing high injury locations along the corridor will be created and used at outreach events. In addition, this collision data summary will be used to identify locations for improvements at intersections or segments along the corridor.

**Responsible Party: Consultant**

### **3.4. Parking Utilization Study**

- Parking demand and supply will be collected for three continuous days (Tuesday through Thursday) during the 7-9 AM, 11 AM- 2 PM, and 2-4 AM time periods and on a Saturday from 11 AM – 2 PM and 5-8 PM time periods along each block and one block up of each side street every half hour along the corridor. In addition, the parking demand and supply of the private driveways along the corridor will also be collected during a weekday (Tuesday, Wednesday, or Thursday) from 2-4 AM. The parking utilization study findings will be utilized in the development of the alternatives with parking impacts quantified and discussed.
- Summary of parking utilization study will be presented in Working Paper#2: Parking Study Results. City staff, key stakeholders, and Caltrans will provide a consolidated set of comments on the draft working paper to Consultant and Consultant will then respond to comments and prepare the final working paper.

**Responsible Party: Consultant**

### **3.5. Develop Conceptual Designs and Cost Estimates**

- Develop up to three conceptual design alternatives and cost estimates for the corridor to be studied in Task 3.6 based on the existing conditions report and input from stakeholder interviews, community workshops, and outreach events. The Consultant will review the conceptual design alternatives with the City, key stakeholders, and Caltrans and the feedback received will guide the development of the “final” conceptual designs.

**Responsible Party: Consultant**

### **3.6. Corridor Analysis**

- Conduct up to 25 intersection control delay analyses at key intersections during the AM (7-9) and PM (4-6) peak periods existing no project, near-term no project, future no project, existing plus project, near-term plus project, and future plus project conditions for all three plan alternatives. The software used to evaluate the 25 study intersections will be selected in consultation with the City. This delay analysis will be used for planning and operational safety purposes and can inform the public with regard to the level of delay that will be experienced and ultimately balances the needs of all users of the roadway.
- Conduct a queuing analysis (95th percentile) at 25 study intersections.
- Calculate corridor travel times without and with each of the three alternatives under existing, near-term, and cumulative conditions.
- Conduct multimodal level of service analysis for pedestrians and bicyclists along the corridor to be able to identify safety issues for these vulnerable groups using the roadway and provide this information to the community.

- Calculate Vehicle Miles Travelled (VMT) without and with the project for each plan alternative under existing, near-term, and future conditions.
- Summary of findings of corridor analysis will be presented in Working Paper#3: Corridor Analysis Results. City staff, key stakeholders, and Caltrans will provide a consolidated set of comments on the draft working paper to Consultant and Consultant will then respond to comments and prepare the final working paper.

**Responsible Party: Consultant**

### **3.7. Multimodal Simulation Modeling**

- Multimodal Simulation modeling will be prepared for existing, near-term, and future year baseline conditions along with the three conceptual design alternatives for the AM and PM peak periods. Bicycle and pedestrian movements and friction generated by fronting residential driveways will be incorporated into the model. The existing conditions model will be calibrated against field observations of intersection queuing and travel time outputs.
- Output from the model such as vehicle hours of delay, greenhouse gas emissions, and roadway segment travel times for existing, near-term, and future baseline along with the three conceptual design alternatives during the AM and PM peak periods will be incorporated into Task 4.1 Administrative Draft Plan.
- Simulation videos for existing conditions and future year conditions with the three conceptual design alternatives will be created to be used during Task 2.7 Community Workshop #5 and #6.

**Responsible Party: Consultant**

<b>Task</b>	<b>Deliverable</b>
3.1	<i>Draft Working Paper #1 : Existing Conditions Final Working Paper #1: Existing Conditions Aerial and plan view digital and Printed Large (3' x 4') Base Maps (estimated 6 total) Attendance of Site Visit, field notes, and photos.</i>
3.2	<i>Near-Term and Future Intersection Volume Forecasts</i>
3.3	<i>Map of Collision Data</i>
3.4	<i>Draft Working Paper #2: Parking Study Results Final Working Paper #2: Parking Study Results</i>
3.5	<i>Draft Conceptual Design Final Conceptual Design and Cost Estimates</i>
3.6	<i>Draft Working Paper #3: Corridor Analysis Results Final Working Paper #3: Corridor Analysis Results</i>
3.7	<i>Simulation models and video of three conceptual design alternatives</i>

## **4. PRUNERIDGE AVENUE COMPLETE STREETS PLAN**

### **4.1. Administrative Draft Plan**

Based on comments received on previous deliverables, public workshops, presentations, and outreach efforts prepare an Administrative Draft Pruneridge Avenue Complete Streets Plan for City Staff and Caltrans review. Chapters/Components that will be considered for inclusion in the Pruneridge Avenue Complete Streets Plan include the following:

- Introduction and Background,
- Study Methodology,
- Existing Conditions,
- Outreach Process,
- Corridor Alternatives,
- Multimodal Analysis of Alternatives,
- Recommendations and Conclusion, and
- Implementation – Next Steps and Funding.

**Responsible Party: Consultant**

### **4.2. Draft Plan**

Based on City Staff and Caltrans comments on the Administrative Draft Plan, the Plan will be revised into a Public Draft Plan presented to the public in Community Workshops #5 and #6 (Task 2.7).

**Responsible Party: Consultant**

### **4.3. BPAC Meeting**

Coordinate a meeting with the City of Santa Clara BPAC to review the Draft Plan. Solicit feedback, respond to any questions, and resolve critical issues. Eligible expenditures for this sub-task will include travel expenses and meeting supplies.

**Responsible Party: Consultant/The City**

### **4.4. Final Plan**

Complete the Final Plan that addresses comments from the BPAC Meeting (Task 4.3), and Community Workshops #5 and #6 (Task 2.7). An electronic copy (PDF and Word) of the final report will be submitted to Caltrans and City. In addition, ten bound hard copies will be submitted to City. Credit of the financial contribution of the grant program will be given on the cover or title page of the report.

**Responsible Party: Consultant**

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#### **4.5. BPAC Meeting**

Coordinate a final meeting with the City of Santa Clara BPAC to present the Final Plan. Any final questions will be answered and BPAC will take action to recommend the approval of the Final Plan to City Council. Eligible expenditures for this sub-task will include travel expenses and meeting supplies.

**Responsible Party: Consultant/The City**

#### **4.6. Council Adoption**

Present the Final Pruneridge Avenue Complete Streets Plan at the City Council meeting. Resolve any critical issues. Adopt Final Pruneridge Avenue Complete Streets Plan. Eligible expenditures for this sub-task will include travel expenses.

**Responsible Party: Consultant/The City**

<b>Task</b>	<b>Deliverable</b>
4.1	<i>Administrative Draft Plan</i>
4.2	<i>Draft Plan</i>
4.3	<i>Powerpoint presentation, BPAC Meeting notes</i>
4.4	<i>Final Plan</i>
4.5	<i>BPAC Meeting notes</i>
4.6	<i>Digital Presentation, City Council staff report</i>

### **5. ADDITIONAL TASKS OUTSIDE GRANT SCOPE OF WORK**

#### **5.1 Bicycle and Pedestrian Advisory Committee Meeting**

The consultant will meet with BPAC to gather input and feedback one (1) additional time during the Plan development process. This is on top of the five (5) meetings discussed in Tasks 1-4 above.

**Responsible Party: Consultant/The City**

#### **5.2 Data Collection and Analysis**

The consultant will collect three-day (Tuesday-Thursday) average daily traffic along with bicycle counts on Pruneridge Avenue between Pomeroy Avenue and the western City limits. An existing AM (7-9) and PM (4-6) peak hour traffic count will be collected at the intersection of Pruneridge Avenue and Pomeroy Avenue and a level of service and queuing analysis will be completed for the intersection. The results of the analysis will be incorporated into the Pruneridge Avenue Complete Streets Plan discussed in Task 4.1 above.

**Responsible Party: Consultant**

#### **5.3 Existing Conditions Summary Report (Pomeroy Avenue to western City limits)**

The results of the analysis in Task 5.2 will be incorporated into the Pruneridge Avenue Complete Streets Plan discussed in Task 4.1 above.

**Responsible Party: Consultant**



<b>Task</b>	<b>Deliverable</b>
5.1	<i>Powerpoint presentation, BPAC Meeting notes</i>
5.2	<i>Memo of Traffic Analysis Results for Pruneridge Avenue from Pomeroy to western City limit</i>
5.3	<i>Traffic Analysis Results from Task 5.2 from Pomeroy to western City limits to be incorporated into Administrative Draft Plan</i>

## **EXHIBIT B**

### **SCHEDULE OF FEES**

#### **I. ORIGINAL PAYMENT AMOUNT**

The total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$362,041. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$54,306. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$416,347 subject to budget appropriations.

Billing shall be on a monthly basis based on the services performed for each task. Consultant shall, during the term of this Agreement, invoice the City for hours and dollars of work completed under this Agreement. The invoice shall describe the Task invoiced, percent complete of the Task, time and materials expended by Task, and total amount during the invoice period. The invoice shall also show the total to be paid for the invoice period. All invoices shall provide a written description of work performed during the invoice period, deliverables completed, and progress to date on Tasks being invoiced in order to support the amount invoiced.

#### **II. BASIC SERVICES**

The total payment to Consultant for all work necessary for performing all Tasks, as stated in Exhibit A, shall be in proportion to services rendered and on a time and materials not-to-exceed basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant services required by this Agreement, as directed by the City, and no additional compensation shall be allowed. The Consultant shall bill time and materials spent on a Task under the appropriate Task. The Consultant shall provide a summary of dates and hours charged per date by individual, and individual timesheets, if requested by City. The hours and amounts charged to each Task shall be proportionate to the services rendered.

Tasks denoted as Optional Tasks, as stated in Exhibit A, require pre-approval in writing by CITY prior to performing any services under the task. Payment for any Optional Task is allowed only if written authorization is given by the City in advance of the work to be performed. Fees for Optional Tasks shall be considered as Basic Services.

The total amount of all the Tasks is a not-to-exceed amount. Figures in the following table include all subconsultant costs, reimbursable expenses, and administrative markups. The following table is a summary of the Tasks based upon the Proposal submitted by ALTA PLANNING + DESIGN, INC. on January 10, 2020 and agreed by CITY and CONSULTANT, attached to this Exhibit B and incorporated herein by reference.

CONSULTANT shall invoice time and expenses according to the subtasks identified in the Proposal.

<b>Description</b>		<b>Amount</b>
Task 1.1	Project Kick-off Meeting with Consultant	\$ 4,378
Task 1.2	Staff Coordination with Consultant	\$ 8,064
Task 2.1	Project Promotion/Website	\$ 1,983
Task 2.2	Community Survey	\$ 4,768
Task 2.3	Stakeholder Interviews	\$ 8,824
Task 2.4	Community Workshop #1 and #2	\$ 16,968
Task 2.5	Outreach Events	\$ 17,574
Task 2.6	Community Workshop #3 and #4	\$ 18,994
Task 2.7	Community Workshop #5 and #6	\$ 17,890
Task 2.8	BPAC Meetings	\$ 5,386
Task 3.1	Information Gathering & Identify Existing Conditions	\$ 25,735
Task 3.2	Identify Near-Term and Future Conditions	\$ 34,468
Task 3.3	Collision Analysis	\$ 5,124
Task 3.4	Parking Utilization Study	\$ 6,722
Task 3.5	Develop Conceptual Designs and Cost Estimates	\$ 36,660
Task 3.6	Corridor Analysis	\$ 48,770
Task 3.7	Multimodal Simulation Modeling	\$ 31,364
Task 4.1	Administrative Draft Plan	\$ 20,368
Task 4.2	Draft Plan	\$ 12,972
Task 4.3	BPAC Meeting	\$ 3,775
Task 4.4	Final Plan	\$ 10,767
Task 4.5	BPAC Meeting	\$ 3,850
Task 4.6	City Council Adoption	\$ 5,673
Task 5.1	BPAC Meeting	\$ 2,425
Task 5.2	Data Collection and Analysis	\$ 5,350
Task 5.3	Existing Conditions Summary Report (Pomeroy to western City limit)	\$ 3,189
<b>Total</b>		<b>\$ 362,041</b>

In no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed Three Hundred and Sixty-Two Thousand, and Forty-One dollars (\$362,041), subject to budget appropriations.

### III. ADDITIONAL SERVICES

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated price. Monthly billing for Additional Services shall be consistent with the terms set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed \$54,306 without approval by the City.

### IV. RATE SCHEDULE

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Rates by classification are listed below. No adjustment to the rates will be allowed during the term of this Agreement unless otherwise agreed in writing by City. Any classifications added, or staff members changing classifications, shall be approved in writing by City.

Consultant ALTA PLANNING + DESIGN, INC.:

Classification	Hourly Rate
Senior Principal	\$ 325
Principal	\$ 225-\$275
Principal, Senior Associate	\$185-\$218
Senior Associate	\$165-\$178
Associate, Senior	\$138-\$158
Senior, Level I	\$116-\$126
Level 1, Level 2	\$94-\$106
Administration	\$80
Intern	\$73

Sub-consultant Hexagon Transportation, Inc.:

Classification	Hourly Rate
President	\$ 285
Principal	\$ 245
Senior Associate II	\$ 230
Senior Associate I	\$ 215
Associate II	\$ 195
Associate I	\$ 175
Planner/Engineer II	\$ 155
Planner/Engineer I	\$ 125

<b>Classification</b>	<b>Hourly Rate</b>
Admin/Graphics	\$ 110
Senior CAD Tech	\$ 95
Technician	\$ 75

Sub-consultant Apex Strategies:

<b>Classification</b>	<b>Hourly Rate</b>
President	\$ 284

Allowable sub-consultant markup: 10%

## **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:  
  
\$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
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

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

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (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 one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

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



1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of 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 indemnitied 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 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 cancellation; except for Workers' Compensation for which notice shall be given prior to expiration and according to policy provisions. 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 of the coverage provided for any cause 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 except for Workers' Compensation for which notice shall be given prior to expiration and according to policy provisions. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal except for Workers' Compensation for which notice shall be given prior to expiration and according to policy provisions.
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, 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 mailed to:

EBIX Inc.

City of Santa Clara Department of Public Works

P.O. Box 100085 – S2                      or                      1 Ebix Way  
Duluth, GA 30096    John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

#### I. QUALIFYING INSURERS

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

EXHIBIT C-06 Professional Service Contract.doc



## Agenda Report

20-908

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Adopt a Resolution authorizing the City Manager to submit an Application for Proposition 68 Per Capita Program for Maywood Park Rehabilitation and approve a related budget amendment in the amount of \$256,622 for the Project in the Parks and Recreation Capital Fund

#### COUNCIL PILLAR

Enhance Community Sports, Recreational and Arts Assets

#### BACKGROUND

On June 5, 2018, State of California voters approved Proposition 68 (the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018). In July 2020, the State of California Department of Parks and Recreation, Office of Grants and Local Services (OGALS) announced the Proposition 68 “Per Capita Program” grant funding amounts to local governments for rehabilitation (not maintenance) of existing parks infrastructure and to address deficiencies in neighborhoods lacking access to outdoor parks and recreation spaces. The City of Santa Clara is eligible for \$177,952 from the General Per Capita Program and an additional \$78,670 from the Urban County Per Capita Program, for total funds in the amount of \$256,622.

In order to receive Per Capita grant funds, the City must approve and submit an authorizing resolution to the State, followed by a Project application and agreement. The Per Capita grant funds may not supplant existing funds, and a 20% local match is required. The Project grant application is due by January 31, 2021, and Project completion due by December 2023.

One of the City Council Pillars is to “enhance community sports, recreation and arts assets.” In addition, the City’s parks and recreation Facility Condition Assessment (Kitchell, 2018) provided an inventory of existing park buildings and assets in need of rehabilitation/renewal to meet current accessibility, building and safety codes. Over the past several years, Santa Clara has prioritized the rehabilitation of parks and recreation facilities to make them code compliant and accessible while meeting the diverse needs of the increasing resident population by making them more inclusionary, environmentally sustainable, age-friendly, and providing measurably increased play value as well as new desired amenities.

The Parks & Recreation Commission, as part of their Work Plan goals FY2018/19-2019/20, reviewed existing park infrastructure conditions, informed the community about parks and recreation rehabilitation needs, and discussed potential funding opportunities and sources. On August 20, 2019 the Commission (RTC #19-518) recommended a “top ten” list of park playground and/or rehabilitation projects including Maywood Park for potential inclusion in the City’s Capital Improvement Program (CIP) given the parks ages, asset conditions and funding limitations. In 2020, Council approved the FY2020/21 and FY2021/22 Biennial CIP Budget which included the Maywood Park playground

rehabilitation project.

The Parks & Recreation Commission makes recommendations to City Council regarding park improvements. Maywood Park dates from 1961; its playground and park site amenities are in poor to critical condition (Kitchell, 2018). The timeline of the Maywood Project works well with the Per Capita Grant timeline since Maywood Park Rehabilitation is one of the next projects to begin community engagement. Given that the Grant funds are insufficient alone to fund a major playground rehabilitation project, using the Grant funds for additional amenities to be identified by the community in the public outreach process would allow them to be included in the final Project scope.

On September 15, 2020, following Commission discussion of the Grant program and Maywood Park needs, the Parks & Recreation Commission recommended that Council adopt a Resolution to apply for Proposition 68 “Per Capita” Grant Funds for the City’s Maywood Park Rehabilitation Project.

### **DISCUSSION**

The Maywood Park Rehabilitation Project is a good match for the Per Capita Grant. It has an estimated cost of \$2,493,700, of which \$2 million is funded from Quimby Act Fees In Lieu of parkland dedication collected from new residential development. These funds can serve as the local 20% match for the Per Capita Grant. The current funds available will provide an age-appropriate, expanded playground and new park amenities, and meet criteria and guidelines for other grant opportunities. However, the Project is estimated to need additional funding of \$493,700 (19.8% of Project total) to be fully funded with an ample Project contingency for unknown site conditions. The Per Capita Grant funding in the amount of \$256,622, is a welcome opportunity to reduce the estimated remaining Maywood Project unfunded amount to \$237,078 (or 9.5% of Project total), which is anticipated to be funded from other grant sources such as a PlayCore playground matching grant, and potential community contributions. Once other grant opportunities are exhausted and the Schematic Design and cost estimate have been finalized, the Project scope or the Project contingency will be adjusted to reflect the final amount of funds available for the Project.

The Per Capita Grant program requires City adoption of a Resolution (Attachment 1) in order to submit a project application. Grant funds are to be used to rehabilitate City park facilities. The Resolution confirms that the City has the funding to complete, operate and maintain the Project, and, if approved, will authorize the City Manager to administer the Grant.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

The Proposition 68 Per Capita Program Grant allocates funding in the amount of \$256,622 to the approved FY2020/21 and FY2021/22 Biennial CIP Budget for the Maywood Park Rehabilitation Project in the Parks and Recreation Capital Fund as shown in the budget amendment below. The grant requires a 20% match or approximately \$51,332, which will be more than met by the current CIP Project appropriation of \$2 million.

**Budget Amendment  
FY 2021/22**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>Parks and Recreation Capital Fund</b>			
<u>Revenue</u>			
Grant Funding	\$0	\$256,622	\$256,622
Quimby Act Fees	\$2,000,000	\$0	\$2,000,000
<u>Expenditures</u>			
Maywood Park Playground Rehabilitation Project	\$2,000,000	\$256,622	\$2,256,622

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Adopt a Resolution authorizing the City Manager to submit an Application for the Proposition 68 Per Capita Program for the Maywood Park Rehabilitation Project; and
2. Approve a related Fiscal Year 2021/22 budget amendment in the Parks and Recreation Capital Fund to recognize grant revenue and increase the Maywood Park Rehabilitation Project appropriation in the amount of \$256,622.

Reviewed by: James Teixeira, Director of Parks & Recreation

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Resolution
2. Proposition 68 Procedural Guide

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
APPROVING AN APPLICATION FOR STATE OF CALIFORNIA PER  
CAPITA GRANT FUNDS**

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

**WHEREAS**, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and,

**WHEREAS**, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and,

**WHEREAS**, the grantee will enter into a contract(s) with the State of California to complete project(s);

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

That the City of Santa Clara

1. Approves the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the City of Santa Clara general or recreation plan (PRC §80063(a)), and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and

Other Public Lands and Waters,” dated January 12, 2017, the City of Santa Clara consider a range of actions that include, but are not limited to, the following:

- A. Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
  - B. Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
  - C. Creating new partnerships with state, local, tribal, private, and non-profit organizations to expand access for diverse populations.
  - D. Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.
  - E. Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
  - F. Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.
  - G. Identifying possible staff liaisons to diverse populations.
8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).
9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient’s annual expenditures. (PRC §80062(d)).
10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and
11. Delegates the authority to the City Manager, or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and



12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: \_\_\_\_\_

NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Per Capita Program Procedural Guide  
S:\Attorney\RESOLUTIONS\Form Resolution-City.doc

**Procedural Guide  
for the**

**California Drought, Water, Parks, Climate, Coastal Protection,  
and Outdoor Access for All Act of 2018**

**PER CAPITA PROGRAM**

March 2019 Draft



**State of California  
The Natural Resources Agency  
Department of Parks and Recreation  
Office of Grants and Local Services (OGALS)**

*"Creating Community through People, Parks, and Programs"*

**Send Application and correspondence to:**

**Street Address for Overnight Mail:**

**Calif. Dept. of Parks and Recreation  
Office of Grants and Local Services  
1416 Ninth Street, Room 918  
Sacramento, CA 95814**

**Mailing Address:**

**Calif. Dept. of Parks and Recreation  
Office of Grants and Local Services  
P.O. Box 942896  
Sacramento, CA 94296-0001**

**Phone: (916) 653-7423**

**Website: [www.parks.ca.gov/grants](http://www.parks.ca.gov/grants)**

**2018-2019 California State Budget, Chapter 29**

Budget Item 3790-101-6088 (b) - \$185,000,000 shall be available for the Local Park Rehabilitation, Creation in Urban Areas Program, consistent with subdivision (a) of Section 80061 of the Public Resources Code.

**STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION**



**Department Mission**

The mission of the California Department of Parks and Recreation is to provide for the health, inspiration, and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation.

**Community Engagement Division Mission**

The mission of the Community Engagement Division is to encourage healthy communities by connecting people to parks, supporting innovative recreational opportunities, embracing diversity, fostering inclusivity, and delivering superior customer service, with integrity for the enrichment of all.

**The Office of Grants and Local Services Mission**

The mission of the Office of Grants and Local Services is to address California's diverse recreational, cultural and historical resource needs by developing grant programs, administering funds, offering technical assistance, building partnerships and providing leadership through quality customer service.

**OGALS VISION GOALS**

**To Be:**

- A leader among park and recreation professionals.
- Proactive in anticipating public park and recreation needs and how new legislation and grant programs could best meet these needs.
- Honest, knowledgeable and experienced grant administration facilitators.
- Sensitive to local concerns while mindful of prevailing laws, rules and regulations.
- Perceptive to opportunities for partnerships, growth and renewal where few existed before.
- Committed to providing quality customer service in every interaction and transaction.
- Responsive to the needs of applicants, grantees, nonprofit organizations, local governments, legislative members, and department employees.

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## Per Capita Program Description

### Background

This program originates from Proposition 68, placed on the ballot via Senate Bill 5 (DeLeon, Chapter 852, statutes of 2017), and approved by voters on June 5, 2018. Funds for the program were appropriated via State Budget item 3790-101-6088(b). Legislative program information is found in the Public Resources Code (PRC) beginning at §80000 (see page 50).

### General Per Capita Program: \$185,000,000

Funds are available for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis. Grant recipients are encouraged to utilize awards to rehabilitate existing infrastructure and to address deficiencies in neighborhoods lacking access to the outdoors (PRC §80061(a)).

### Urban County Per Capita: \$13,875,000

Additional funds are available for Per Capita grants to cities and districts in urbanized counties (*a county with a population of 500,000 or more*) providing park and recreation services within jurisdictions of 200,000 or less in population. An entity eligible to receive funds under this subdivision shall also be eligible to receive funds available under the General Per Capita Program (PRC §80061(b)).

### Eligible Recipients (PRC §80062)

Sixty percent (60%) of the General Per Capita funds are allocated to the following entities based on population. The minimum allocation is \$200,000.

- Cities
- Eligible Districts, other than a regional park district, regional park and open-space districts, and regional open-space districts<sup>1</sup>

Forty percent (40%) of the General Per Capita funds are allocated to the following entities based on population. The minimum allocation is \$400,000.

- Counties
- Regional park districts, regional park and open space districts, and regional open space districts

### Allocations

Specific entities eligible for funding and their allocations can be found beginning on page 53.

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<sup>1</sup> For purposes of this chapter, “district” means any regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with §5500) of Chapter 3 of Division 5, any recreation and park district formed pursuant to Chapter 4 (commencing with §5780) of Division 5, or any authority formed pursuant to Division 26 (commencing with §35100). With respect to any community or unincorporated region that is not included within a district, and in which no city or county provides parks or recreational areas or facilities, “district” also means any other entity, including, but not limited to, a district operating multiple-use parklands pursuant to Division 20 (commencing with §71000) of the Water Code.

## Eligible Projects

- PROJECTS must be for recreational purposes, either acquisition or DEVELOPMENT. Do not submit combined acquisition and development projects.
- Up to 5% of the allocation may be used for a COMMUNITY ACCESS PROJECT (PRC §80008(c)(1)).
- Multiple PROJECTS may be completed under one contract; each PROJECT requires a separate APPLICATION PACKET.
- A PROJECT can only have one location. One PROJECT that serves several parks is not permitted.
- GRANTEES are encouraged to partner with other GRANTEES on PROJECTS (PRC §80063(b)). See page 53 for information on allocation transfers.

## Match

PROJECTS not serving a “severely disadvantaged community” (median household income less than 60% of the statewide average) require a 20% match (see page 12) (PRC §80061(c)).

## No Supplanting

GRANTEES must use Per Capita grant funds to supplement existing expenditures, rather than replace them (PRC §80062(d)). For example, a GRANTEE has a budget for recreational capital expenditures of \$500,000 per year, and is receiving a \$200,000 allocation under the Per Capita program. The budget cannot be reduced to \$300,000, with the Per Capita funds making up the difference.

Similarly, if a PROJECT has been approved by the governing body, and a funding source has been identified, Per Capita funds cannot be swapped in as a new funding source unless the prior funding source is applied to another recreational capital project.

GRANTEES should keep all documents indicating intent to use Per Capita grant funds for PROJECTS.

## Grant Process

GRANT PERFORMANCE PERIOD: July 1, 2018 – June 30, 2022

1. **Resolution** (submit no later than November 1, 2019): GRANTEE passes one resolution approving the filing of *all* applications associated with the contract, and forwards a copy to OGALS.
2. **APPLICATION PACKET(s)** (submit no later than January 31, 2020): The GRANTEE defines the PROJECT SCOPE(s) and amount of grant funds needed for each PROJECT. As PROJECTS are identified, the GRANTEE submits individual APPLICATION PACKET(s) to OGALS. OGALS reviews each APPLICATION PACKET and sends a letter of approval to the GRANTEE or requests additional information.
3. **Contract** (sign and submit no later than March 31, 2020): OGALS will forward a contract to the GRANTEE once a PROJECT APPLICATION PACKET has been approved. OGALS will encumber the total amount of approved applications. As GRANTEE submits additional APPLICATION PACKETS, OGALS will amend the contract to reflect the total PROJECT amount for all approved APPLICATION PACKETS, up to the allocation amount.

- a. The contract section, beginning on page 41, includes a sample contract.
  - b. The GRANTEE must return the contract signed by the AUTHORIZED REPRESENTATIVE to OGALS no later than March 31, 2020.
  - c. OGALS returns a copy of the fully executed contract to the GRANTEE.
4. **Payments and end of GRANT PERFORMANCE PERIOD:** GRANTEE requests payments for ELIGIBLE COSTS. The grant payments section, beginning on page 33, provides payment request instructions and forms.
- a. The GRANTEE may request payments after each PROJECT is approved by OGALS.
  - b. The GRANTEE completes PROJECT SCOPE(s) no later than December 31, 2021.
  - c. The GRANTEE sends PROJECT COMPLETION PACKET(s) to OGALS no later than March 31, 2022.
  - d. OGALS processes the final payment request after each PROJECT is complete as documented by the GRANTEE in the PROJECT COMPLETION PACKET, and as verified by OGALS by conducting a site inspection.
5. **Accounting and Audit:** DPR's Audits Office may conduct an audit. The GRANTEE is required to retain all PROJECT records for five years following issuance of the final GRANT payment or PROJECT termination, whichever is later. The Accounting and Audit Section, beginning on page 48, provides directions and an Audit Checklist for DPR audit and accounting requirements.

### **Authorizing Resolution**

GRANTEE passes *one* resolution approving the filing of *all* applications associated with the contract, and forwards a copy to OGALS.

The Authorizing Resolution on the following page may be reformatted; however, the *language provided in the resolution must remain unchanged*.

The Authorizing Resolution serves two purposes:

1. It is the means by which the GRANTEE'S Governing Body agrees to the terms of the contract; it provides confirmation that the GRANTEE has the funding to complete, operate and maintain PROJECTS associated with the contract.
2. Designates a position title to represent the Governing Body on all matters regarding PROJECTS associated with the contract. The incumbent in this position is referred to as the AUTHORIZED REPRESENTATIVE.

Resolution items 4, 5, 7, 8 and 9 are all required by Proposition 68.

Complete the highlighted areas of the Authorizing Resolution. The AUTHORIZED REPRESENTATIVE can delegate signatory authority to other individuals (by position title) either in entirety or for particular documents. This may be included in item 11 of the resolution, or the AUTHORIZED REPRESENTATIVE may submit a letter (on letterhead) or email to OGALS delegating authority.

## Resolution Form

Resolution No: \_\_\_\_\_

### RESOLUTION OF THE (Title of Governing Body/City Council, Board of Supervisors) OF (City, County, or District) APPROVING APPLICATION(S) FOR PER CAPITA GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and

WHEREAS, the grantee will enter into a contract with the State of California to complete project(s);

NOW, THEREFORE, BE IT RESOLVED that the (grantee's governing body) hereby:

1. Approves the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the [city/county/district's] general or recreation plan (PRC §80063(a)), and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January 12, 2017, the [city/county/district] will consider a range of actions that include, but are not limited to, the following:
  - (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
  - (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.



(C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.

(D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.

(E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.

(F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.

(G) Identifying possible staff liaisons to diverse populations.

8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).
9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)).
10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and
11. Delegates the authority to the (designated position, not name of person occupying position), or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and
12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

Approved and adopted the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

I, the undersigned, hereby certify that the foregoing Resolution Number \_\_\_\_ was duly adopted by the (grantee's governing body) following a roll call vote:

Ayes: \_\_\_\_\_  
Noes: \_\_\_\_\_  
Absent: \_\_\_\_\_

---

(Clerk)

## **Application Section**

- GRANTEE may submit multiple APPLICATION PACKETS.
- Separate APPLICATION PACKETS are required for each PROJECT site.
- Provide all APPLICATION PACKET items in the order shown in the following checklist.
- Submitted documents need not contain “wet” signatures; but the GRANTEE must keep all original signed documents.
- If submitting hard copies, number all pages of the APPLICATION PACKET.
- GRANTEES are encouraged to submit documents digitally, as .pdf files. E-mail each APPLICATION PACKET item to the PROJECT OFFICER as a separate digital file, labeled as the application item.

OGALS will send a contract to the GRANTEE once a PROJECT APPLICATION PACKET has been approved. OGALS will encumber the total amount of approved applications. As GRANTEE submits additional applications, OGALS will amend the contract to reflect the total PROJECT amount for all approved applications, up to the allocation amount.

Any costs incurred prior to finalizing the contract are at the GRANTEE’S own risk.



State of California – The Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## Application Packet Checklist

GRANTEES must complete the checklist below and submit it with the APPLICATION PACKET.  
An APPLICATION PACKET is not complete unless all items on the checklist are submitted.  
Each PROJECT requires its own APPLICATION PACKET.

Check if included	Check if not applicable	Application Item	Procedural Guide Page #	Check when signed by AUTHORIZED REPRESENTATIVE	Application Packet Page #
<input type="checkbox"/>		Application Packet Checklist	Pg. 10		Pg._____
<input type="checkbox"/>		Application	Pg. 11	<input type="checkbox"/>	Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	Development Project Scope/Cost Estimate, <i>or</i>	Pg. 19	<input type="checkbox"/>	Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	Community Access Project Scope/Cost Estimate, <i>or</i>	Pg. 20	<input type="checkbox"/>	Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	Acquisition Requirements	Pg. 13	<input type="checkbox"/>	Pg._____
<input type="checkbox"/>		Funding Sources Form	Pg. 21	<input type="checkbox"/>	Pg._____
<input type="checkbox"/>		Per Capita Match Calculator	Pg. 12	<input type="checkbox"/>	Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	CEQA Compliance Certification	Pg. 22	<input type="checkbox"/>	Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	Land Tenure documentation	Pg. 23		Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	Sub-Leases or Agreements	Pg. 25		Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	Site Plan	Pg. 25		Pg._____
<input type="checkbox"/>	<input type="checkbox"/>	GHG Emissions Reduction Worksheet	Pg. 25		Pg._____



State of California – The Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

Per Capita Project Application Form

PROJECT NAME	REQUESTED GRANT AMOUNT \$
	MATCH AMOUNT (if project is not serving a severely disadvantaged community) \$
PROJECT SITE NAME and PHYSICAL ADDRESS where PROJECT is located (including zip code)	LAND TENURE ( <input checked="" type="checkbox"/> all that apply) <b>(not required for COMMUNITY ACCESS PROJECTS)</b> <input type="checkbox"/> Owned in fee simple by GRANTEE <input type="checkbox"/> Available (or will be available) under a _____ year lease or easement
NEAREST CROSS STREET	
(Check one) Project is for Acquisition <input type="checkbox"/> Development <input type="checkbox"/> <b>Community Access</b> <input type="checkbox"/>	
COUNTY OF PROJECT LOCATION	
GRANTEE NAME AND MAILING ADDRESS	
AUTHORIZED REPRESENTATIVE AS SHOWN IN RESOLUTION	
Name <i>(typed or printed)</i> and Title _____ Email address _____ Phone _____	
GRANT CONTACT - For administration of grant <i>(if different from AUTHORIZED REPRESENTATIVE)</i>	
Name <i>(typed or printed)</i> and Title _____ Email address _____ Phone _____	
GRANT SCOPE: I represent and warrant that this APPLICATION PACKET describes the intended use of the requested GRANT to complete the items listed in the attached Grant Scope/Cost Estimate Form or acquisition documentation. I declare under penalty of perjury, under the laws of the State of California, that the information contained in this APPLICATION PACKET, including required attachments, is accurate.	
Signature of AUTHORIZED REPRESENTATIVE as shown in Resolution _____ Date _____	
Print Name _____	
Title _____	

**Per Capita Match**

PROJECTS that do not serve severely disadvantaged communities (median household income less than 60% of the statewide average) must include 20% match from the GRANTEE (PRC §80061(c)).

Costs incurred to provide match must be eligible costs.

Visit the website [parksforcalifornia.org/percapita](http://parksforcalifornia.org/percapita) and follow the instructions; submit the report with the APPLICATION PACKET.

**Eligible match sources**

- Federal funds
- Local funds
- Private funds
- IN-HOUSE EMPLOYEE SERVICES
- Volunteer labor

**Ineligible match source**

- State funds

## Acquisition Projects

### Acquisition Requirements

1. Purchase price cannot exceed the appraised value, even if the GRANTEE is willing to pay the difference.
2. Land cannot be acquired through eminent domain.
3. Associated acquisition costs, such as appraisals, escrow fees, title insurance, etc., combined must be less than 25% of the PROJECT costs.
4. A deed restriction must be recorded on the property after the acquisition is complete.
5. Land must be open to the public for recreational purposes within three years from the date the final payment is issued by the State Controller's Office (SCO).<sup>2</sup>
6. GRANTEE must provide Title Insurance.
7. PROJECTS must be consistent with the park and recreation element of the [city/county/district's] general or recreation plan (PRC §80063(b)).
8. Per Capita funds must be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)).

### Acquisition Grant Scope/Cost Estimate

Provide the following information on a document signed by the AUTHORIZED REPRESENTATIVE:

- A brief description, for example, "Acquisition of approximately (enter total acreage to be acquired) for the development of \_\_\_\_ park by (enter date no later than three years from the date final payment is issued by the SCO)."
- Estimated total costs for land and relocation
- Estimated total costs other than the purchase price and relocation costs, such as appraisals, escrow fees, title insurance fees, deed restriction recordation costs

### Acquisition Documentation

For each parcel to be acquired, submit the following documents:

1. An appraisal conducted within the last twelve months
2. A separate letter from an independent third party, AG rated appraiser certified by the California Office of Real Estate Appraisers stating the appraisal was reviewed, and was completed using acceptable methods
3. County Assessor's parcel map, showing parcel number and parcel to be acquired
4. Estimated value of each parcel to be acquired with a description of how that value was determined (such as the listed price on MLS, in-house estimation, website evaluation, assessed value)
5. Acreage of each parcel to be acquired
6. A description of any encumbrances that will remain on the property, such as grazing, timber, mineral rights or easements
7. A brief description of the intended recreational use of the land with the estimated date by which the site will be open to the public for recreational purposes

---

<sup>2</sup> Grantees will see this date on their project complete letter – "A final payment was issued by the SCO on xx/xx/20xx"

8. A letter from the seller indicating a willingness to enter into negotiations to sell the property, and indicating the seller's understanding that the State cannot participate in acquisitions for more than the appraised value

*For easement acquisitions, in addition to the requirements above, provide:*

9. A copy of the proposed easement guaranteeing the authority to use the property for the purposes specified in the application.

*For relocation costs, in addition to the requirements above, provide:*

10. A letter signed by the AUTHORIZED REPRESENTATIVE, listing the relocation costs for each displaced tenant, certifying that the relocation amount does not exceed the maximum allowed pursuant to Government Code §§7260-7277.

### **Eligible Acquisition Costs**

- IN-HOUSE EMPLOYEE SERVICES – see accounting rules for more information (page 48)
- GRANT administration and accounting
- Public meetings/focus groups/design workshop
- Appraisals, escrow fees, surveying, other costs associated with acquisition
- Cost of land

### **Ineligible Acquisition Costs – Cannot be charged to the grant**

- Acquisitions to fulfill any mitigation requirements imposed by law (PRC §80020)
- Land acquired outside state
- Costs incurred outside the grant performance period
- Development costs
- Acquisitions for less than fee title

## **Development Projects**

### **Development Project Requirements**

1. PROJECTS must be consistent with the park and recreation element of the GRANTEE'S general or recreation plan (PRC §80063(b)).
2. Per Capita funds must be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)).
3. Contracted work must comply with the provisions of §1771.5 of the State Labor Code.
4. GRANTEE must have adequate liability insurance, performance bond, or other security necessary to protect the State and GRANTEE'S interest against poor workmanship, fraud, or other potential loss associated with the completion of the PROJECT.
5. PRE-CONSTRUCTION COSTS may not exceed 25% of the PROJECT amount.
6. The primary purpose of any building constructed or improved must be public recreation. Renovating a gymnasium that includes office space for staff is eligible; renovating GRANTEE'S office building is not.
7. PROJECTS must be accessible, including an accessible path of travel to the PROJECT.

### **Eligible Development Costs**

All costs must be incurred within the GRANT PERFORMANCE PERIOD. Costs listed below are examples of eligible costs, and not inclusive. Contact OGALS if you have any questions regarding a PROJECT cost.

### **Eligible Pre-construction Costs – up to 25% of PROJECT costs; incurred prior to groundbreaking as determined by the GRANTEE**

- Public meetings, focus groups, design workshops
- Plans, specifications, construction documents, and cost estimates
- Permits
- CEQA
- Bid preparation and packages
- IN-HOUSE EMPLOYEE SERVICES prior to groundbreaking
- Grant administration and accounting prior to groundbreaking

### **Eligible Construction Costs – up to 100% of the PROJECT costs; incurred after groundbreaking.**

- Construction – necessary labor and construction activities to complete the PROJECT, including site preparation (demolition, clearing and grubbing, excavation, grading), onsite implementation and construction supervision
- Equipment – Equipment use charges (rental and in-house) must be made in accordance with GRANTEE'S normal accounting practices.
- Bond and other signs
- Premiums on hazard and liability insurance to cover personnel or property
- Site preparation
- Purchase and installation of equipment: security cameras, lighting, signs, display boards, sound systems, video equipment, etc.



- Construction management: including site inspections and PROJECT administration
- Miscellaneous: other costs incurred during the construction phase, such as transporting materials, equipment, or personnel, and communications
- Employee services after groundbreaking
- GRANT administration and accounting after groundbreaking

### **Ineligible Development Costs – Cannot be charged to the grant**

- PRE-CONSTRUCTION COSTS that exceed 25% of the PROJECT costs
- Development to fulfill any mitigation requirements imposed by law (PRC §80020)
- All non-capital costs, including interpretive and recreational programming, software and software development
- Construction or improvements to facilities that are not primarily designated for recreational purposes, such as park district offices
- Furniture or equipment not site specific *and* not necessary for the core function of a new facility (non-capital outlay)
- Costs incurred before or after the GRANT PERFORMANCE PERIOD
- Indirect costs – overhead business expenses of the GRANTEE’S fixed or ordinary operating costs (rent, mortgage payments, property taxes, utilities, etc.)
- Food and beverages
- Out-of-state travel
- Repairs – activities performed to a section of a structure that are intended to allow the continued use.
- Maintenance – activities intended to be performed on a regular basis to maintain the expected useful life of a structure.
- Fundraising

### ***Distinguishing capital outlay from maintenance and repair:***

- Capital outlay – building something new, or in regards to existing structures, activities intended to boost the condition beyond its original or current state.
- Repairs – activities performed to a section of a structure that are intended to allow the continued use.
- Maintenance – activities intended to be performed on a regular basis to maintain the expected useful life of a structure.

### ***Examples:***

Roof – replacing broken shingles is maintenance; fixing a hole is repair; replacing the roof is capital outlay.

Playground – adding additional fall material is maintenance; fixing the chains on a swing set is repair; replacing the play structures is capital outlay.

Windows – repairing the glazing is maintenance; replacing broken panes is repair; replacing the windows is capital outlay.

## **Community Access Projects**

### **Community Access Project Requirements**

1. PROJECTS must be consistent with the park and recreation element of the GRANTEE'S general or recreation plan (PRC §80063(b)).
2. Per Capita funds must be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)).
3. Contracted work must comply with the provisions of §1771.5 of the State Labor Code.
4. GRANTEE must have adequate liability insurance, performance bond, or other security necessary to protect the State and GRANTEE'S interest against poor workmanship, fraud, or other potential loss associated with the completion of the PROJECT.

### **Eligible Community Access Project Costs**

All costs must be incurred within the GRANT PERFORMANCE PERIOD. Costs listed below are examples of eligible costs, and not inclusive. Contact OGALS if you have any questions regarding a PROJECT cost.

- Meetings: public meetings/focus groups, GRANTEE planning sessions
- PROJECT management (excluding grant writing) and accounting
- Non-capital costs, including interpretive and recreational programming, software and software development
- IN-HOUSE EMPLOYEE SERVICES related to PROJECT activities.
- Equipment (the cost of equipment or vehicle(s) currently owned by the grantee): such equipment or vehicle(s) may be charged to the grant for each use. The GRANTEE shall maintain a log that describes the activities conducted and the time that the equipment or vehicle is used, as related to the grant scope, as well as a license number or vehicle identification number.
  - GRANTEE may also rent or purchase the equipment or vehicle(s), whichever is the most economical use of grant funds.
  - Purchased equipment or vehicle(s): residual market value shall be credited to the project costs upon completion.
- Supplies and materials: activity supplies, educational materials, communication materials, etc. Supplies and materials may be drawn from central stock if claimed costs are no higher than those the grantee would pay if purchased elsewhere.
- Miscellaneous costs: other costs incurred, such as transporting materials or personnel.

### **Ineligible Community Access Project Costs**

- Costs incurred before or after the grant performance period
- Indirect costs – overhead business expenses of the grantee's fixed or ordinary operating costs (rent, mortgage payments, property taxes, utilities, etc.)
- Food and beverages
- Out-of-state travel
- Capital outlay expenditures
- Costs associated with master plans

- Repairs and maintenance by IN-HOUSE EMPLOYEE SERVICES
- Fundraising

### **Accounting Rules for In-House Employee Services**

GRANTEES must follow these accounting practices for services performed by its employees to be eligible for reimbursement:

- Maintain time and attendance records as charges are incurred, identifying the employee through a name or other tracking system, and that employee's actual time spent on the PROJECT.
- Time estimates, including percentages, for work performed on the PROJECT are not acceptable.
- Time sheets that do not identify the specific employee's time spent on the PROJECT are not acceptable.
- Costs of the salaries and wages must be calculated according to the GRANTEE'S wage and salary scales, and may include benefit costs such as vacation, health insurance, pension contributions and workers' compensation.
- Overtime costs may be allowed under the GRANTEE'S established policy, provided that the regular work time was devoted to the same PROJECT.
- May not include overhead or cost allocation. These are the costs generally associated with supporting an employee, such as rent, personnel support, IT, utilities, etc.



State of California – The Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## Development Project Scope/Cost Estimate Form

GRANTEE: \_\_\_\_\_ Project Name: \_\_\_\_\_

<b>Development project scope (Describe the PROJECT in 30 words or less):</b>			
<b>Project Scope Items - <input checked="" type="checkbox"/> all that apply:</b>			
Install new	Renovate existing	Replace existing	Recreation Element
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pool, aquatic center, splash pad
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trails or walking paths
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Landscaping or irrigation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Group picnic, outdoor classrooms, other gathering spaces
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Play equipment, outdoor fitness equipment
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sports fields, sports courts, court lighting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Community center, gym, other indoor facilities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Restroom, concession stand
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Minor elements which support one or more of the recreation elements checked above: benches, lighting, parking, signage, etc.
Total estimated cost for construction:			\$
PRE-CONSTRUCTION (costs incurred prior to ground-breaking, such as design, permits, bid packages, CEQA); up to 25% of total project cost.			\$
Total PROJECT cost:			\$
Subtract GRANTEE match if not in severely disadvantaged community (20% of total PROJECT Cost)			\$ -
Total PROJECT amount requested:			\$
The GRANTEE understands that all elements listed on this form must be complete and open to the public before the final grant payment will be made.			
AUTHORIZED REPRESENTATIVE Signature			Date
Print Name and Title			



State of California – The Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## Community Access Project Scope/Cost Estimate Form

GRANTEE: \_\_\_\_\_ Project Name: \_\_\_\_\_

<b>Project site:</b>	
<b>Project Scope Items - <input checked="" type="checkbox"/> all that apply and provide a brief description:</b>	
<input type="checkbox"/>	Transportation (for recreation programs)
<input type="checkbox"/>	Physical activity programming (sport leagues, dance, exercise, etc.)
<input type="checkbox"/>	Resource interpretation
<input type="checkbox"/>	Multilingual translation
<input type="checkbox"/>	Natural science
<input type="checkbox"/>	Workforce development and career pathways
<input type="checkbox"/>	Education
<input type="checkbox"/>	Communication related to water, parks, climate, coastal protection, and other outdoor pursuits
Total PROJECT cost: \$	
Subtract GRANTEE match if not in severely disadvantaged community (20% of total PROJECT Cost) \$ -	
Total PROJECT amount requested: \$	
The GRANTEE understands that all elements listed on this form must be complete and available to the public before the final grant payment will be made.	
AUTHORIZED REPRESENTATIVE Signature	Date
Print Name and Title	



State of California – The Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## Funding Sources Form

GRANTEE: \_\_\_\_\_ Project Name: \_\_\_\_\_

PROJECTS funded by the program are not complete until the grant SCOPE is complete.

If Per Capita grant funds will be used as part of the funding for a larger project, GRANTEES can do one of the following:

1. Identify a smaller subset of the larger project that can be completed. That smaller project will be the grant SCOPE.
2. Incorporate the funds from the Per Capita grant into the larger project. The larger project will be the grant SCOPE.

Per Capita funds will / will not (circle one) be used as part of the funding for a larger project.

If Per Capita grant funds will be used as part of the funding for a larger project, briefly describe the scope of that larger project:

The total cost of the larger project that these grant funds will contribute to is: \$ \_\_\_\_\_

Anticipated completion date: \_\_\_\_\_

List all funds that will be used. Submit revised Funding Sources form should funding sources be added or modified.

Funding Source	Date Committed	Amount
Per Capita/State of California	July 1, 2018	\$

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title



State of California – The Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## CEQA Compliance Certification

Not required for COMMUNITY ACCESS PROJECTS

GRANTEE: \_\_\_\_\_

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

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

Is CEQA complete? ☐ Yes ☐ No Is completing CEQA a project scope item? ☐ Yes ☐ No

### What document was filed, or is expected to be filed for this project's CEQA analysis:

Date complete/expected to be completed

- ☐ Notice of Exemption (attach recorded copy if filed) \_\_\_\_\_  
☐ Notice of Determination (attach recorded copy if filed) \_\_\_\_\_  
☐ Other: \_\_\_\_\_

If CEQA is complete, and a Notice of Exemption or Notice of Determination was not filed, attach a letter from the Lead Agency explaining why, certifying the project has complied with CEQA and noting the date that the project was approved by the Lead Agency.

### Lead Agency Contact Information:

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

Contact Person: \_\_\_\_\_

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

Phone: (     ) \_\_\_\_\_ Email: \_\_\_\_\_

### Certification:

I hereby certify that the above referenced Lead Agency has complied or will comply with the California Environmental Quality Act (CEQA) and that the project is described in adequate and sufficient detail to allow the project's construction or acquisition.

I further certify that the CEQA analysis for this project encompasses all aspects of the work to be completed with grant funds.

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
(Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
(Printed Name and Title)

FOR OGALS USE ONLY		
CEQA Document	Date Received	PO Initials
<input type="checkbox"/> NOE <input type="checkbox"/> NOD		

## Land Tenure

The purpose of the land tenure requirement is to verify that the GRANTEE has sufficient legal rights to the property to fulfill the terms of the contract.

- PROJECT amounts up to \$100,000 require at least 20 years of land tenure at the site to be acquired or developed.
- PROJECT amounts greater than \$100,000 require at least 30 years of land tenure at the site to be acquired or developed.
- The 20 or 30 year land tenure requirement begins on July 1, 2018.
- The GRANTEE remains responsible for fulfillment of the terms of the contract, even if the GRANTEE'S land tenure agreement changes within the contract PERFORMANCE PERIOD.
- **Not applicable to COMMUNITY ACCESS PROJECTS.**

## Land Tenure Ownership Documentation

*If the GRANTEE owns PROJECT site in fee simple, provide one of the following:*

- Deed or deed recordation number, or
- Title report, or
- Tract map or assessor's map with owner's name

## Land Tenure Non-Ownership Documentation

*If the GRANTEE does not own the PROJECT site in fee simple, provide:*

- Land Tenure Agreement Checklist (page 24)
- Signed land tenure agreement

*If the grantee does not own the project site in fee simple, and the existing land tenure agreement does not meet the requirements shown in the Land Tenure Checklist, provide*

- Land Tenure Agreement Checklist (page 24)
- Signed land tenure agreement
- An explanation as to how the existing land tenure agreement adequately protects the State's interest. OGALS will review and determine if the land tenure is sufficient.



## Land Tenure Agreement Checklist

If the GRANTEE does not own the land in fee simple, complete this checklist. Attach a copy of the signed land tenure agreement. Identify the page numbers where the required items can be found in the land tenure agreement and highlight the provisions in the agreement where the information is located. *All items are required.*

GRANTEE: \_\_\_\_\_ Project Name: \_\_\_\_\_

<input checked="" type="checkbox"/>	Page	Required Item								
<input type="checkbox"/>		<b>Type of agreement:</b> For example: lease, joint powers agreement, easement, memorandum of understanding, etc. _____								
<input type="checkbox"/>		<b>Parties to the agreement</b> (land owner must be public agency or utility) <b>and date signed:</b> <table border="0"> <tr> <td>Party</td> <td>Date Signed</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> </tr> </table>	Party	Date Signed	_____	_____	_____	_____	_____	_____
Party	Date Signed									
_____	_____									
_____	_____									
_____	_____									
<input type="checkbox"/>		<b>Term of the agreement:</b> ____ years								
<input type="checkbox"/>		<b>Agreement end date:</b> _____ <ul style="list-style-type: none"> <li>• Grant amounts up to \$100,000 require at least 20 years of land tenure.</li> <li>• Grant amounts above \$100,000 require at least 30 years of land tenure.</li> <li>• The land tenure requirement begins on July 1, 2018.</li> </ul>								
<input type="checkbox"/>		<b>Renewal option:</b> Must include an option, which can be non-binding, for the GRANTEE to renew the agreement beyond the original 20 or 30 year term.								
<input type="checkbox"/>		<b>Termination clause:</b> Any of the following is acceptable: <ul style="list-style-type: none"> <li>• No termination clause – the agreement is non-revocable.</li> <li>• Termination clause specifies the agreement is revocable only for cause.</li> <li>• The termination clause cannot allow the land owner to revoke the agreement without cause, i.e., at will.</li> </ul>								
<input type="checkbox"/>		<b>Site Control, Roles and Responsibilities</b> should the GRANT be awarded, the agreement: <ul style="list-style-type: none"> <li>• Authorizes the GRANTEE to <i>proceed with the construction</i> PROJECT. The GRANTEE may delegate construction to other entities.</li> <li>• Establishes <i>when the general public can use</i> the PROJECT and gives GRANTEE <i>permission to operate</i> the PROJECT site (such as scheduling recreational programs). The GRANTEE may delegate operational roles to other entities but is bound through the contract provisions to ensure full public access for the duration of the land tenure period.</li> <li>• Identifies which entity will <i>maintain</i> the PROJECT site. The GRANTEE may delegate maintenance to other entities but is bound through the contract provisions to ensure maintenance of the PROJECT site for the duration of the land tenure period.</li> </ul>								

## Site Plan

Provide a drawing showing where all the items listed in the PROJECT SCOPE/Cost Estimate Form will be located. To ensure that any building use meets the requirements of the program, include the function and approximate square footage of each room within buildings that are part of the SCOPE, and the approximate total square footage of the buildings. It does not need to be a detailed engineering rendering. **Not required for COMMUNITY ACCESS PROJECT applications.**

## Sub-leases or Agreements

Provide a list of all *other* leases, agreements, memoranda of understanding, etc., affecting PROJECT property or its operation and maintenance.

## Greenhouse Gas Emissions Reduction and Carbon Sequestration.<sup>3</sup>

If your PROJECT involves tree planting, follow the instructions below. If your PROJECT does not involve tree planting, check the N/A box for this item on the Application Checklist.

Before getting started, gather the following information about your PROJECT:

- Tree species
- Size of trees at planting
- Information on the distance and direction to the nearest building (if applicable)
- Information on the age and climate control of any nearby buildings (if applicable)
- Information about the tree's growing conditions

Getting started:

1. Navigate to the i-Tree site at <https://planting.itreetools.org> and select the tab for a new project.
2. On the Location map, select your state, county and city, and then click Next.
3. Configure the project parameters<sup>4</sup>:
  - "Electricity emissions factor" enter 285 and select kilograms
  - "Fuel emissions factor" enter 53.1 and select kilograms
  - "Years for the project" is the age of the trees 40 years from when they are planted. So, if the trees will be four years old at the time of planting, enter 44.
  - "Tree mortality" enter 0
4. Tree Planting Configurations
  - Enter the tree groups for the project; create a new group for each new species or for each new location.
  - Species – select the species; add multiple species by creating new groups.
  - DBH – tree diameter four feet above the ground at time of planting.
  - Distance to nearest tree – select from drop down menu

---

<sup>3</sup> PRC §80001(b)(7)

<sup>4</sup> Project parameters are from the California Air Resources Board's "Quantification Methodology for the California Natural Resources Agency Urban Greening Grant Program."

- Tree is (north, south, east or west) of Building – select the direction the tree is located to the nearest climate controlled building.
- Climate controls – select the type of climate controls the nearby building has installed. If a tree is more than 60 feet away from a climate controlled building, select “none.”
- Condition – select the overall health of the trees at the time of planting.
- Exposure to sunlight – select the amount of sun that reaches the tree, based on its surroundings.
- Number of trees – enter the number of trees that are the same species and the same characteristics (e.g. distance to building, location in respect to building, exposure to sunlight, etc.) If some of these characteristics change, multiple lines of the same species should be input into the tool.

Once all the groups are entered, hit next

5. Print the report in landscape mode, and submit it with your application.

## **Special Requirements**

- Status Reports (page 26)
- Bond Act Sign (page 28)
- Deed Restriction (page 29)

### **Status Report**

OGALS will send a Status Report every six months until receipt of a PROJECT COMPLETION PACKET. Payment requests will not be processed if Status Reports are overdue.

**Sample Status Report – Due xx/xx/20xx (30 days from mail date)**

Grantee:

Project Number:

Project Name:

Project Scope:

Project Phase: ☐ Pre-Construction/Pre-Acquisition ☐ Acquisition and/or Construction  
☐ **Community Access**

When will you submit your next payment request?

For how much?

Estimated date of project completion:

Potential obstacles affecting completion:

Is the PROJECT: On Time? yes/no Within Budget? yes/no Within Scope? yes/no If no, explain:

Describe grant-funded work completed since last status report submitted on (DATE):

Provide photos showing work completed since (DATE)

Describe grant-funded work expected to be completed by (MailDate + 6 mos)

If there have been any changes to the proposed funding for this project, attach a revised Funding Sources Form.

Provide information on payments to be submitted over the next three years:

Between 7/1/18 and 6/30/19	Between 7/1/19 and 12/31/19	Between 1/1/20 and 6/30/20	Between 7/1/20 and 12/30/20	Between 1/1/21 and 6/30/21	Between 7/1/21 and 12/30/21	After 1/1/22
\$	\$	\$	\$	\$	\$	\$

The purpose of this data is to help the State estimate borrowing needs; you will not be held to these estimates.

I represent and warrant that I have full authority to execute this Grant Progress Status Report on behalf of the Grantee. I declare under penalty of perjury, under the laws of the State of California, that this status report, and any accompanying documents, for the above-mentioned Grant is true and correct to the best of my knowledge.

\_\_\_\_\_  
Authorized Representative\*

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(\*Certification to above information requires a signature by a person authorized in the resolution)

## Bond Act Sign

A sign acknowledging the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 as the funding source for the PROJECT must be installed during construction and at completion (PRC §80001(b)(3)). **A sign is not required for COMMUNITY ACCESS PROJECTS.**

## Types of Signs

- 1) Construction – An acknowledgment sign is required during construction.
- 2) Post Completion - All grantees are required to post a sign at the PROJECT site upon completion of the project. The sign must be available for the final inspection of the PROJECT and remain in place for a minimum of four (4) years from date of PROJECT completion. There is no minimum or maximum size other than the minimum size for the logo, as long as the sign contains the required wording.

If appropriate, the same sign can be used during construction and completion.

## Sign Language

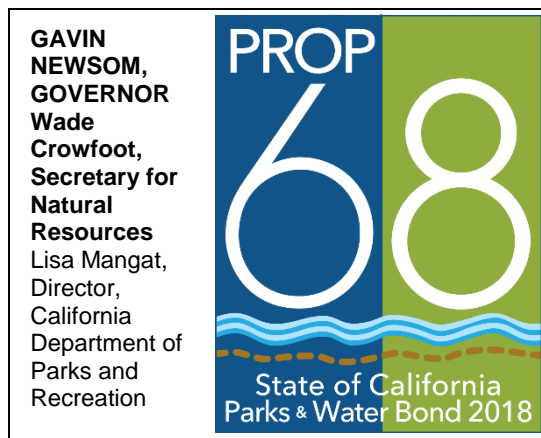
All signs must contain the language shown to the right of this paragraph. Use the names of the current officials. The name of the director of the local agency or other governing body may be added. The sign may also include names (and/or logos) of other partners, organizations, individuals and elected representatives.

## Logo

All signs must display the Parks and Water Bond Act logo. The logo is available at

<http://resources.ca.gov/grants/logo-art/>. Display the logo to maximize visibility and durability. Each

edge of the logo must be a minimum of 24" x 24". Exceptions may be approved, when appropriate, at OGALS' discretion.



## Sign Construction

All materials used shall be durable and resistant to the elements and graffiti. The California Department of Transportation and DPR standards may be used as a guide for gauge of metal, quality of paints used, mounting specifications, etc.

## Sign Cost

The cost of the sign(s) is an eligible PROJECT cost. Permanent signage is encouraged.

## Appropriateness of Signs

For projects where the required sign may be out of place or affected by local sign ordinances, OGALS may authorize a sign that is more appropriate to the project.

## State Approval

GRANTEE shall submit the proposed number, locations, size, and language of signs for preliminary review. Final payments will not be processed until post completion signage has been approved and installed.

## Deed Restriction

The Deed Restriction restricts the title to the property, safeguarding the property for purposes consistent with the GRANT for the duration of the contract PERFORMANCE PERIOD. **A Deed Restriction is not required for COMMUNITY ACCESS PROJECTS.**

If the GRANTEE owns the PROJECT land, a Deed Restriction must be recorded on the title to the property before OGALS will approve any grant payments except an advance into escrow.

A Deed Restriction *is not required* if the GRANTEE does not own the PROJECT land, such as where the GRANTEE is improving property it has access to under a lease agreement.

## Deed Restriction Instructions

1. Before filing the Deed Restriction, the GRANTEE must own the PROJECT land, and have an encumbered contract for the GRANT amount.
2. The PROJECT OFFICER will send the Deed Restriction to the GRANTEE. *Do not alter the Deed Restriction.* The GRANTEE takes the following steps:
  1. Add ownership information to **Paragraph I of the Deed Restriction:** [formal name of GRANTEE] *Insert ownership information as it appears on the deed.*
  2. *Create 3 copies (GRANTEE copy, OGALS copy and recorder's copy) of the Deed restriction and the required attachments:*
    - (1) Exhibit A: Label this attachment "Exhibit A (Legal Description of Property)" and include a formal legal description of every parcel of property to which grant funds will be used for the development and/or acquisition thereof. This information can be obtained from the grant deed or title policy. (The assessor's parcel number or a street address is NOT a valid legal description.) and,
    - (2) Exhibit B: Label this attachment "Exhibit B (Grant Contract)" and include a complete copy of the Grant Contract and provisions signed by the AUTHORIZED REPRESENTATIVE and the State of California.
3. *Notarize it:* Take the following documents to a notary. OGALS recommends submitting these documents to the OGALS PROJECT OFFICER for review prior to notarizing.
  - Unsigned and undated Deed Restriction
  - Exhibit A (Legal Description of Property)
  - Exhibit B (Grant Contract)

The AUTHORIZED REPRESENTATIVE dates and signs the Deed Restriction signature page in the presence of a notary. The notary will complete a Notary Acknowledgement (Civil Code §1189).
4. *Record it:* Take the notarized documents bulleted above to the County Recorder's Office of the county in which the property is located. Ask the County Clerk to record the Deed Restriction with Notary Acknowledgement, Exhibit A, and Exhibit B, on the title to the property.
5. *Send it:* Send a copy of the notarized and recorded documents bulleted above to the OGALS PROJECT OFFICER.

RECORDING REQUESTED BY:  
California Department of Parks and Recreation  
Office of Grants and Local Services

WHEN RECORDED MAIL TO:  
Office of Grants and Local Services  
PO Box 942896  
Sacramento, CA 94296-0001  
Attn: [Project Officer]

### DEED RESTRICTION

I. WHEREAS, insert ownership information as it appears on the deed (hereinafter referred to as “Owner(s)” is/are recorded owner(s) of the real property described in Exhibit A, attached and incorporated herein by reference (hereinafter referred to as the “Property”); and

II. WHEREAS, the California Department of Parks and Recreation (hereinafter referred to as “DPR”) is a public agency created and existing under the authority of section 5001 of the California Public Resources Code (hereinafter referred to as the “PRC”). And

III. WHEREAS, Owner(s) (or Grantee) received an allocation of grant funds pursuant to the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 Per Capita Program for improvements on the Property; and

IV. WHEREAS, on (enter date), DPR’s Office of Grants and Local Services conditionally approved Grant [project number], (hereinafter referred to as “Grant”) for improvements on the Property, subject to, among other conditions, recordation of this Deed Restriction on the Property; and

V. WHEREAS, but for the imposition of the Deed Restriction condition of the Grant, the Grant would not be consistent with the public purposes of the Per Capita Program and the funds that are the subject of the Grant could therefore not have been allocated; and

VI. WHEREAS, Owner(s) has/have elected to comply with the Deed Restriction of the Grant, so as to enable Owner(s), to receive the Grant funds and perform the work described in the Grant;

NOW, THEREFORE, in consideration of the issuance of the Grant funds by DPR, the undersigned Owner(s) for himself/herself/themselves and for his/her/their heirs, assigns, and successors-in-interest, hereby irrevocably covenant(s) with DPR that the condition of the grant (set forth at paragraph(s) 1 through 5 and in Exhibit B hereto) shall at all times on and after the date on which this Deed Restriction is recorded constitute for all purposes covenants, conditions and restrictions on the use and enjoyment of the Property that are hereby attached to the deed to the Property as fully effective components thereof.

1. DURATION. This Deed Restriction shall remain in full force and effect and shall bind Owner(s) and all his/her/their assigns or successors-in-interest for the period running from July 1, 20xx to June 30, 20xx (20 years) or June 30, 20xx (30 years).

2. TAXES AND ASSESMENTS. It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the California Constitution; and b) section 402.I of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.

3. RIGHT OF ENTRY. DPR or its agent or employees may enter onto the Property at times reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being observed.

4. REMEDIES. Any act, conveyance, contract, or authorization by Owner(s) whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of this Deed Restriction will be deemed a violation and a breach hereof. DPR may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction up to and including a lien sale of the property. In the event of a breach, any forbearance on the part of DPR to



enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding such breach, or any subsequent breach.

5. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any reason becomes unenforceable, no other provision shall be affected or impaired.

Dated: \_\_\_\_\_, 20 \_\_\_\_

Business Name (if property is owned by a business):  
\_\_\_\_\_

Signed: \_\_\_\_\_  
Authorized Representative

Signed: \_\_\_\_\_  
Additional signature, as required

\_\_\_\_\_  
Print/Type Name & Title of Above

\_\_\_\_\_  
Print/Type Name & Title of Above

## Grant Payment Section

Payments may be requested after a PROJECT is approved and the contract is encumbered. Payment requests are processed through the State Controller's Office and mailed to the GRANTEE approximately six to eight weeks from the date OGALS approves the request.

### Payment Requirements

1. Payment requests prior to groundbreaking are limited to 25% of the PROJECT amount.
2. Payments before the final payment may not exceed 80% of the PROJECT amount. 20% of the PROJECT amount is retained for the final reimbursement.
3. A deed restriction is required prior to processing any reimbursements **except COMMUNITY ACCESS PROJECTS** and an acquisition ADVANCE.
4. Group costs together to avoid frequent payment requests. Reimbursement requests greater than \$10,000 are encouraged.
5. For PROJECTS where match is required, GRANTEES must show eligible costs equal to 125% of the requested reimbursement amount.
6. CEQA must be complete prior to requesting any construction reimbursement.
7. **Provide a sample timesheet with the first IN-HOUSE EMPLOYEE SERVICES reimbursement.**
8. **A summary list of bidders, recommendation by reviewer of bidders, awarding by governing body and contract agreement must be provided to the PROJECT OFFICER prior to requesting a reimbursement related to that contract.**
9. Provide construction progress photos, including a photo with the construction sign visible on the PROJECT site (see page 28), with all construction payment requests.
10. Payment may be withheld by OGALS if the GRANTEE has outstanding issues, for example: breach of any other contract with OGALS, an unresolved audit exception, outstanding conversion, or having other park sites closed or inadequately maintained.

### Payment Request Form Instructions



- All payment request types (reimbursement, final, ADVANCE) require this form.
- Payment requests may be submitted by e-mail to the PROJECT OFFICER.
- Round all amounts to the nearest whole dollar.
- Complete the Payment Request Form as follows:
  1. PROJECT Number - Number assigned by OGALS when this PROJECT was approved.
  2. Contract Number - As shown in Certification of Funding section of the contract
  3. APPLICANT - GRANTEE name as shown on the contract
  4. PROJECT Title - Name of the PROJECT as shown in the Application
  5. Type of Payment – check appropriate box on form
  6. Payment Information – always round down to the nearest dollar.
  7. Send Warrant To - AGENCY name, address and contact person
  8. Signature of AUTHORIZED REPRESENTATIVE according to the Resolution

# Payment Request Form

State of California - Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## PAYMENT REQUEST State Grant Programs

**See Instructions on Page 2.**

1. PROJECT NUMBER		2. CONTRACT NUMBER	
3. APPLICANT			
4. PROJECT NAME			
5. TYPE OF PAYMENT <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement <input type="checkbox"/> Final			
<b>6. PAYMENT INFORMATION</b> <i>(Round all figures to the nearest dollar)</i>			
a. Grant Project Amount		\$	
b. Funds Received To Date		\$	
c. Available (a. minus b.)		\$	
d. Amount Of This Request		\$	<input type="text"/>
e. Remaining Funds After This Payment (c. minus d.)		\$	
<b>7. SEND WARRANT TO:</b>			
AGENCY NAME			
STREET ADDRESS			
CITY/STATE/ZIP CODE			
<b>8. CERTIFICATION AND SIGNATURE OF PERSON AUTHORIZED IN RESOLUTION</b> <i>I represent and warrant that I have full authority to execute this payment request on behalf of the Grantee. I declare under penalty of perjury, under the laws of the State of California, that this report, and any accompanying documents, for the above-mentioned Grant is true and correct to the best of my knowledge.</i>			
SIGNATURE OF PERSON AUTHORIZED IN RESOLUTION		TITLE	DATE
			
<b>FOR CALIFORNIA DEPARTMENT OF PARKS AND RECREATION USE ONLY</b>			
PAYMENT APPROVAL SIGNATURE		DATE	
			

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## Grant Expenditure Form

All payment requests require a summary of costs incurred. An electronic version of this form is available at [www.parks.ca.gov/grants](http://www.parks.ca.gov/grants). Grantees may use their own spreadsheet if it contains the required information shown below. Keep copies of invoices or warrants with the PROJECT records, available to OGALS upon request.

Only provide the following information to OGALS:

PROJECT Number \_\_\_\_\_

Warrant/Check #(1)	Date(2)	Recipient(3)	Purpose(4)	Pre-Construction Amount(5)	Construction Amount(6)
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PRE-CONSTRUCTION Subtotal (5) \$ \_\_\_\_\_

Construction Subtotal (6) \$ \_\_\_\_\_

Grand Total (5) + (6) \$ \_\_\_\_\_

List only ELIGIBLE COSTS charged to the GRANT.

**Column (1)** Electronic payment numbers/electronic funds transfer numbers in the "Warrant/Check Number" column are acceptable. Include an "EP" next to the electronic payment numbers/electronic funds transfer numbers.

If IN-HOUSE EMPLOYEE SERVICES or GRANTEE'S own equipment was used, a work order or other tracking number can be used instead of a check/warrant number.

**Column (2)** Date payment was made to recipient. If IN-HOUSE EMPLOYEE SERVICES were used, provide the date range with a summary of actual hours worked.

**Column (3)** Name of Contractor, IN-HOUSE EMPLOYEE SERVICES, or other entity providing services and/or materials.

**Column (4)** SCOPE item related to the expenditure and a brief description, such as "playground design," "community center permits," "walkway materials," "sports field construction."

**Column (5)** PRE-CONSTRUCTION costs eligible for up to 25% of the GRANT amount.

**Column (6)** DEVELOPMENT **OR COMMUNITY ACCESS PROJECT** costs eligible for up to 100% of GRANT amount.

## **Project Completion Packet**

PROJECT COMPLETION PACKETS must be submitted by March 31, 2022.

The final payment (not less than 20% of the PROJECT amount) will be processed after PROJECT COMPLETION and the following occurs:

1. Approval of the PROJECT COMPLETION PACKET (page 36).
2. Site inspection by the PROJECT OFFICER to verify PROJECT COMPLETION.

To request the final payment and complete the PROJECT, the GRANTEE must submit the following documents:

### **For COMMUNITY ACCESS PROJECTS:**

1. Payment Request Form (page 34)
2. Grant Expenditure Form (page 35)
3. Final Funding Sources Form (page 21)
4. PROJECT COMPLETION Certification Form (page 37)

For development PROJECTS, the GRANTEE must submit these additional documents:

5. Photo of the bond act sign and location (page 28)
6. Recorded Deed Restriction if not already provided (page 29)
7. Completed CEQA if not already provided (page 22)
8. Notice of Completion (optional)<sup>5</sup>

For acquisition PROJECTS, the GRANTEE must submit these additional documents:

1. A copy of the recorded deed to the property
2. A map sufficient to verify the description of the property including parcel numbers and acreage
3. Copy of title insurance policy
4. Copy of title report

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<sup>5</sup> OGALS recommends that the GRANTEE file a Notice of Completion with the County Recorder pursuant to State of California Civil Code §3093. Filing the Notice of Completion is not a PROJECT COMPLETION requirement.

## Project Completion Certification Form

**Grantee:** \_\_\_\_\_ **Project Number:** \_\_\_\_\_

### Grantee contact for audit purposes

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

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

Phone: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

### Project completion – list the grant scope items:

### Provide revised Funding Sources Form

**Interest earned on advanced funds:** \$ \_\_\_\_\_

**Interest spent on eligible costs:** \$ \_\_\_\_\_

**Was a Notice of Completion filed with the County Recorder?** Yes \_\_\_ No \_\_\_

### Certification:

I hereby certify that all Grant funds were expended on the above named Project and that the Project is complete and we have made final payment for all work done.

I have read California Penal Code §118 and understand that every person who testifies, declares, deposes, or certifies under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury, which is a felony punishable by imprisonment in state prison for two, three, or four years.

Furthermore, I have read California Penal Code §72 and understand that every person who, with the intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, city, or District board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony-misdemeanor punishable either by imprisonment in county jail for a period of not more than one year, by a fine not exceeding one thousand dollars, or both, or by imprisonment in state prison, by a fine not exceeding ten thousand dollars, or both.

I represent and warrant that I have full authority to execute this Project Completion Certification on behalf of the Grantee. I declare under penalty of perjury that the foregoing certification of Project Completion for the above-mentioned Grant is true and correct.

\_\_\_\_\_  
GRANTEE'S AUTHORIZED REPRESENTATIVE  
(Printed or Typed name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
GRANTEE'S AUTHORIZED REPRESENTATIVE (Signature)

\_\_\_\_\_  
Date

## Advance Payments

- ADVANCE payments are made at the discretion of OGALS. OGALS reserves the right to disapprove ADVANCE payment requests.
  - Past performance, GRANTEE capacity, and the GRANTEE'S financial resources will all be considered before issuing an ADVANCE.
  - GRANTEE'S that are unable to finance a considerable portion of their PROJECTS are encouraged to seek an allocation transfer (page 53).
- ADVANCE payments may be requested for costs the GRANTEE will incur within the next six months.
- ADVANCE funds, and any interest earned on those funds, *must* be spent within six months of receipt, or returned to OGALS.
- The sum of DEVELOPMENT and COMMUNITY ACCESS PROJECT ADVANCES cannot exceed 50% of the PROJECT amount.

## Pre-Construction Advance

Payment Type	Maximum Request	When to Request	Documents to Send to PROJECT OFFICER
ADVANCE(s) costs to be incurred in next six months	Preconstruction estimate shown on Development Project SCOPE/Cost Estimate Form	After the contract has been encumbered	<ul style="list-style-type: none"><li>• Payment Request Form</li><li>• ADVANCE justification (see below)</li></ul>

## Construction Advance and Community Access Project Advance

Payment Type	Maximum Request	When to Request	Documents to Send to PROJECT OFFICER
ADVANCE(s) costs to be incurred in next six months	No more than 50% of the grant amount.	After the contract has been encumbered, and construction will commence during the next six months	<ul style="list-style-type: none"><li>• Payment Request Form</li><li>• ADVANCE justification (see below)</li><li>• Copy of signed contract and a notice to proceed or IN-HOUSE EMPLOYEE SERVICES schedule</li><li>• Filed NOD or NOE (page 22)</li></ul>

## Advance Justification

Provide the following information:

- Explanation as to why an ADVANCE is needed instead of a reimbursement. Describe any hardships the GRANTEE will experience if a reimbursement were issued instead of an ADVANCE.
- A payment schedule, with a month-by-month estimate, for up to six months, showing the anticipated amount needed, and to whom the funds will be paid (IN-HOUSE EMPLOYEE SERVICES or name of contractor). The six month period should begin six to eight weeks after payment request is submitted.

- A funding plan, indicating how the GRANTEE intends to provide cash flow to the percentage of the PROJECT exceeding the 50% ADVANCE limit.
- A statement indicating the GRANTEE will put the advanced funds into a separate, interest bearing account, and spend any interest earned on the PROJECT.
- An acknowledgement that all invoices and contracts pursuant to which payments are made shall be made available to OGALS on demand.

### **Clearing the Advance**

ADVANCES must be cleared with six months of receipt, or earlier. ADVANCES should be cleared incrementally, that is, as costs are incurred.

An ADVANCE is cleared as follows:

- Submit a grant expenditure form (see page 35) documenting expenditures of eligible costs equal to the ADVANCE amount *plus any earned interest* (or 125% of the ADVANCE amount if match is required).
- Submit photos of construction completed and the construction sign (see page 28) with the ADVANCE funds (for construction ADVANCES).
- Return the balance of unspent GRANT funds to OGALS no later than thirty days after the end of the six month ADVANCE period. OGALS will then return the GRANT funds to the contract balance. OGALS cannot return interest to the contract balance.

### **Subsequent Payments**

ADVANCE payments must be cleared before *any* payments will be approved.

This requirement may be waived in cases where a PROJECT requires timely payments to contractors, and the remaining balance of unspent ADVANCED funds cannot cover the next PROJECT payment. The following are required to request a waiver:

1. A letter to the PROJECT OFFICER, signed by the AUTHORIZED REPRESENTATIVE, explaining why the waiver is needed.
2. A statement in the letter that the majority of ADVANCED funds has been cleared.
3. A payment schedule with month by month estimates detailing the anticipated amount needed including the unspent balance of previously ADVANCED funds, along with the additional requested reimbursement or ADVANCE.

### **Acquisition Advance**

<b>Payment Type</b>	<b>When to Request</b>	<b>Documents to Send</b>
ADVANCES up to 100% of the GRANT and MATCH amounts	After the contract is encumbered and escrow is open	See following instructions 1. Escrow letter 2. Title report cover page 3. Payment request form



The following items are required to request an ADVANCE payment into escrow:

1. A letter on the GRANTEE's letterhead, addressing all of the following elements, and signed by the GRANTEE's AUTHORIZED REPRESENTATIVE:
  - a) Name, address and telephone number of the title company or escrow holder, and the escrow account number to which the GRANT funds will be disbursed.
  - b) Copy of the property appraisal and written concurrence (page 13).
  - c) GRANT contract number and amount of GRANT funds requested.
  - d) A statement by the GRANTEE that "the preliminary title report shows that there are no liens, easements, or any other restrictions that would prevent completion of the PROJECT SCOPE and fulfillment of the contract provisions."
  - e) A statement by the GRANTEE that "all funds (exclusive of the GRANT funds to be provided under this agreement) needed for the completion of the acquisition of the property or properties have been secured and have been or will be deposited to escrow on or about the same date as the requested GRANT funds." In making this statement, the GRANTEE is entitled to reasonably rely on the representations of the seller.
2. Cover page of the preliminary title report.
3. Payment Request Form. The "Send Warrant To" item 7 on the Payment Request Form must be completed using the title company's or escrow holder's name, mailing address, and contact person (see page 34).

After approval by OGALS, the payment will be mailed by the State Controller's Office to the designated escrow company within approximately 30 working days.

### **Returning Unexpended Advanced Funds for Acquisition**

If all or a portion of GRANT funds ADVANCED to the title or escrow company are not expended, the unused portion of the ADVANCED funds must be returned to OGALS within 60 days after completion of the acquisition(s), within 60 days of the acquisition withdrawal, or within 60 days after the end of the GRANT PERFORMANCE PERIOD, *whichever is earliest*.

# Per Capita Contract



State of California – The Natural Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## Sample Grant Contract Per Capita Program

Grantee: Grantee

Grant Performance Period is from July 1, 20xx through June 30, 20xx

CONTRACT PERFORMANCE PERIOD is from July 1, 20xx through June 30, 20xx

The GRANTEE agrees to the terms and conditions of this Contract, and the State of California, acting through its Director of the Department of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below.

The GRANTEE agrees to complete the GRANT SCOPE(s) as defined in the GRANT SCOPE/Cost Estimate Form or acquisition documentation for the application(s) filed with the State of California.

Total State grant amount not to exceed \$ Grant amount

The General and Special Provisions attached are made a part of and incorporated into the Contract.

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

By \_\_\_\_\_

GRANTEE

Date \_\_\_\_\_

By

(Typed or printed name of Authorized Representative)

(Signature of AUTHORIZED REPRESENTATIVE)

Title

Date

### CERTIFICATION OF FUNDING (FOR STATE USE ONLY)

AMOUNT OF ESTIMATE \$		CONTRACT NUMBER	FUND		
ADJ. INCREASING ENCUMBRANCE \$		APPROPRIATION			
ADJ. DECREASING ENCUMBRANCE \$		ITEM VENDOR NUMBER			
UNENCUMBERED BALANCE \$		LINE ITEM ALLOTMENT	CHAPTER	STATUTE	FISCAL YEAR
T.B.A. NO.	B.R. NO.	INDEX	Funding Source		OBJ. EXPEND
I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance.					
SIGNATURE OF ACCOUNTING OFFICER			DATE		

## **I. RECITALS**

This CONTRACT is entered into between the California Department of Parks and Recreation (hereinafter referred to as “GRANTOR,” “DEPARTMENT” or “STATE”) and [grantee name] (hereinafter referred to as “GRANTEE”).

The DEPARTMENT hereby grants to GRANTEE a sum (also referred to as “GRANT MONIES”) not to exceed \$grant amount, subject to the terms and conditions of this CONTRACT and the 20xx/xx California State Budget, Chapter xx, statutes of 20xx, Item number – 3790-xxx-xxxx (appropriation chapter and budget item number hereinafter referred to as “PER CAPITA GRANT”). These funds shall be used for completion of the GRANT SCOPE(S).

The Grant Performance Period is from July 1, 20xx to June 30, 20xx.

## **II. GENERAL PROVISIONS**

### **A. Definitions**

As used in this CONTRACT, the following words shall have the following meanings:

1. The term “ACT” means the California Drought, Water, Parks Climate, Coastal Protection, and Outdoor Access for All Act of 2018, as referred to in section I of this CONTRACT.
2. The term “APPLICATION” means the individual project APPLICATION packet for a project pursuant to the enabling legislation and/or grant program process guide requirements.
3. The term “DEPARTMENT” or “STATE” means the California Department of Parks and Recreation.
4. The term “DEVELOPMENT” means capital improvements to real property by means of, but not limited to, construction, expansion, and/or renovation, of permanent or fixed features of the property.
5. The term “GRANTEE” means the party described as the GRANTEE in Section I of this CONTRACT.
6. The term “GRANT SCOPE” means the items listed in the GRANT SCOPE/Cost Estimate Form or acquisition documentation found in each of the APPLICATIONS submitted pursuant to this grant.
7. The term “PROCEDURAL GUIDE” means the document identified as the “Procedural Guide for California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 Per Capita Program.” The PROCEDURAL GUIDE provides the procedures and policies controlling the administration of the grant.

### **B. Project Execution**

1. Subject to the availability of GRANT MONIES in the act, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this CONTRACT, in consideration of, and on condition that, the sum be expended in carrying out the purposes as set

forth in the scope described in the enabling legislation and referenced in the APPLICATION, Section I of this CONTRACT, and under the terms and conditions set forth in this CONTRACT.

The GRANTEE shall assume any obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE(S).

The GRANTEE agrees to submit any change or alteration from the original GRANT SCOPE(S) in writing to the STATE for prior approval. This applies to any and all changes that occur after STATE has approved the APPLICATION. Changes in the GRANT SCOPE(S) must be approved in writing by the STATE.

2. The GRANTEE shall complete the GRANT SCOPE(S) in accordance with the time of the Performance Period set forth in Section I of this CONTRACT, and under the terms and conditions of this contract.
3. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, §21000, et seq., Title 14, California Code of Regulations, §15000 et seq.).
4. The GRANTEE shall comply with all applicable current laws and regulations affecting DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and the California Unruh Act (California Civil Code §51 et seq.)

#### **C. Procedural Guide**

1. GRANTEE agrees to abide by the PROCEDURAL GUIDE.
2. GRANTEE acknowledges that STATE may make reasonable changes to its procedures as set forth in the PROCEDURAL GUIDE. If STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.

#### **D. Project Administration**

1. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If grant monies are advanced and not expended, the unused portion of the grant and any interest earned shall be returned to the STATE within 60 days after project completion or end of the grant performance period, whichever is earlier.
2. The GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made such a request. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the grant performance period, whichever is earlier. The grant performance period is identified in Section I of this CONTRACT.
3. The GRANTEE shall make property or facilities acquired and/or developed pursuant to this contract available for inspection upon request by the STATE.

## **E. Project Termination**

1. Project Termination refers to the non-completion of a GRANT SCOPE. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.
2. The GRANTEE may unilaterally rescind this CONTRACT at any time prior to the commencement of the project. The commencement of the project means the date of the letter notifying GRANTEE of the award or when the funds are appropriated, whichever is later. After project commencement, this CONTRACT may be rescinded, modified or amended only by mutual agreement in writing between the GRANTEE and the STATE, unless the provisions of this contract provide that mutual agreement is not required.
3. Failure by the GRANTEE to comply with the terms of the (a) PROCEDURAL GUIDE, (b) any legislation applicable to the ACT, (c) this CONTRACT as well as any other grant contracts, specified or general, that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this CONTRACT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.
4. Any breach of any term, provision, obligation or requirement of this CONTRACT by the GRANTEE shall be a default of this CONTRACT. In the case of any default by GRANTEE, STATE shall be entitled to all remedies available under law and equity, including but not limited to: a) Specific Performance; b) Return of all GRANT MONIES; c) Payment to the STATE of the fair market value of the project property or the actual sales price, whichever is higher; and d) Payment to the STATE of the costs of enforcement of this CONTRACT, including but not limited to court and arbitration costs, fees, expenses of litigation, and reasonable attorney fees.
5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete and the GRANT PROJECT is open to the public.

## **F. Budget Contingency Clause**

If funding for any fiscal year is reduced or deleted by the budget act for purposes of this program, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a CONTRACT amendment to GRANTEE to reflect the reduced grant amount. This Paragraph shall not require the mutual agreement as addressed in Paragraph E, provision 2, of this CONTRACT.

## **G. Hold Harmless**

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this CONTRACT except claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.
2. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of

the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.

3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the GRANTEE agrees to pay the STATE's litigation costs, expenses, and reasonable attorney fees.
4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

#### **H. Financial Records**

1. The GRANTEE shall maintain satisfactory financial accounts, documents, including loan documents, and all other records for the project and to make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project termination or issuance of final payment, whichever is later.
2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of STATE funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.
3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this contract or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this contract. Such accounts, documents, and records shall be retained by the GRANTEE for at least five years following project termination or issuance of final payment, whichever is later.
4. The GRANTEE shall use a generally accepted accounting system.

#### **I. Use of Facilities**

1. The GRANTEE agrees that the GRANTEE shall operate and maintain the property acquired or developed with the GRANT MONIES, for the duration of the Contract Performance Period.
2. The GRANTEE agrees that, during the Contract Performance Period, the GRANTEE shall use the property acquired or developed with GRANT MONIES under this contract only for the

purposes of this grant and no other use, sale, or other disposition or change of the use of the property to one not consistent with its purpose shall be permitted except as authorized by the STATE and the property shall be replaced with property of equivalent value and usefulness as determined by the STATE.

3. The property acquired or developed may be transferred to another entity if the successor entity assumes the obligations imposed under this CONTRACT and with the approval of STATE.
4. Any real Property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE'S rights to enforce performance under the Grant CONTRACT.
5. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of GRANT MONIES received from STATE or the pro-rated full market value of the real property, including improvements, at the time of sale, whichever is higher.
6. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

#### **J. Nondiscrimination**

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or facility developed pursuant to this contract.
2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project contract or under provisions of the enabling legislation and/or grant program.

#### **K. Severability**

If any provision of this CONTRACT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the CONTRACT which can be given effect without the invalid provision or application, and to this end the provisions of this CONTRACT are severable.

#### **L. Liability**

1. STATE assumes no responsibility for assuring the safety or standards of construction, site improvements or programs related to the GRANT SCOPE. The STATE'S rights under this CONTRACT to review, inspect and approve the GRANT SCOPE and any final plans of

implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

2. GRANTEE will secure adequate liability insurance, performance bond, and/or other security necessary to protect the GRANTEE's and STATE'S interest against poor workmanship, fraud, or other potential loss associated with completion of the grant project.

#### **M. Assignability**

Without the written consent of the STATE, the GRANTEE'S interest in and responsibilities under this CONTRACT shall not be assignable by the GRANTEE either in whole or in part.

#### **N. Use of Grant Monies**

GRANTEE shall not use any grant funds (including any portion thereof) for the purpose of making any leverage loan, pledge, promissory note or similar financial device or transaction, without: 1) the prior written approval of the STATE; and 2) any financial or legal interests created by any such leverage loan, pledge, promissory note or similar financial device or transaction in the project property shall be completely subordinated to this CONTRACT through a Subordination Agreement provided and approved by the STATE, signed by all parties involved in the transaction, and recorded in the County Records against the fee title of the project property.

#### **N. Section Headings**

The headings and captions of the various sections of this CONTRACT have been inserted only for the purpose of convenience and are not a part of this CONTRACT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this CONTRACT.

#### **O. Waiver**

Any failure by a party to enforce its rights under this CONTRACT, in the event of a breach, shall *not* be construed as a waiver of said rights; and the waiver of any breach under this CONTRACT shall *not* be construed as a waiver of any subsequent breach.

\_\_\_\_\_  
GRANTEE

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

Signature of Authorized Representative

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

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

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

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

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



## **Accounting and Audits**

### **Accounting Requirements**

GRANTEES must use accounting practices that:

- Provide accounting data that clearly records costs incurred on the PROJECT and accurately reflects fiscal transactions, with the necessary controls and safeguards.
- Provide good audit trails, especially the source documents (purchase orders, receipts, progress payments, invoices, time cards, cancelled warrants, warrant numbers, etc.) specific to the PROJECT.

### **Accounting Rules for Employee Services (IN-HOUSE EMPLOYEE SERVICES)**

GRANTEES must follow these accounting practices for employee services:

- Maintain time and attendance records as charges are incurred, identifying the employee through a name or other tracking system, and that employee's actual time spent on the PROJECT.
- Time estimates, including percentages, for work performed on the PROJECT are not acceptable.
- Time sheets that do not identify the specific employee's time spent on the PROJECT are not acceptable.
- Costs of the salaries and wages must be calculated according to the GRANTEE's wage and salary scales, and may include benefit costs such as vacation, health insurance, pension contributions and workers' compensation.
- Overtime costs may be allowed under the GRANTEE's established policy, provided that the regular work time was devoted to the same PROJECT.
- May not include overhead or cost allocation. These are costs generally associated with supporting an employee, such as rent, personnel support, IT, utilities, etc.

### **State Audit**

Grants are subject to audit by DPR. (See page 49, Audit Checklist). All PROJECT records must be retained for five years after final payment was issued, or PROJECT terminated, whichever is later.

The GRANTEE must provide the following when an audit date and time has been confirmed by DPR:

- All PROJECT records, including the source documents and cancelled warrants, books, papers, accounts, time sheets, or other records listed in the Audit Checklist or requested by DPR.
- An employee having knowledge of the PROJECT and its records to assist the DPR auditor.

### **Record Keeping Recommendation**

GRANTEES are encouraged to keep records of all eligible costs, including those not submitted to OGALS for payment. This provides a potential source of additional eligible costs, should any submitted expenses be deemed ineligible.

Contact the DPR Audits Office at (916) 657-0370 for questions about these requirements.

## Audit Checklist

An audit of the PROJECT may be performed before or following PROJECT completion. The GRANTEE must retain and make available all PROJECT related records for five years following PROJECT termination or final payment of grant funds. Listed below are some of the items the auditor will examine during the review of your records as applicable. It is the responsibility of the GRANTEE to have these records available in a central location ready for review once an audit date and time has been confirmed. If you have any questions regarding these documents, you may contact the State Department of Parks and Recreation Audits Office at (916) 657-0370.

### **CONTRACTS**

- \_\_\_\_\_ Summary list of bidders (including individual bid packages)
- \_\_\_\_\_ Recommendation by reviewer of bids
- \_\_\_\_\_ Awarding by governing body (minutes of the meeting/resolution)
- \_\_\_\_\_ Construction contract agreement
- \_\_\_\_\_ Contract bonds (bid, performance, payment)
- \_\_\_\_\_ Contract change orders
- \_\_\_\_\_ Contractor's progress billings
- \_\_\_\_\_ Payments to contractor (cancelled checks/warrants, bank statements and EFT receipts\*\*)
- \_\_\_\_\_ Stop Notices (filed by sub-contractors and release if applicable)
- \_\_\_\_\_ Liquidated damages (claimed against the contractor)
- \_\_\_\_\_ Notice of completion (recorded)

### **IN-HOUSE EMPLOYEE SERVICES\***

- \_\_\_\_\_ Authorization/work order identifying project
- \_\_\_\_\_ Daily time sheets signed by employee and supervisor
- \_\_\_\_\_ Hourly rate (salary schedules/payroll register)
- \_\_\_\_\_ Fringe benefits (provide breakdown)

### **IN-HOUSE EQUIPMENT\***

- \_\_\_\_\_ Authorization/work order
- \_\_\_\_\_ Daily time records identifying the project site
- \_\_\_\_\_ Hourly rate related backup documents

### **MINOR CONTRACTS/MATERIALS/SERVICES/ EQUIPMENT RENTALS**

- \_\_\_\_\_ Purchase orders/Contracts/Service Agreements
- \_\_\_\_\_ Invoices
- \_\_\_\_\_ Payments (actual cancelled checks/warrants, bank statements and EFT receipts \*\*)

### **ACQUISITION**

- \_\_\_\_\_ Appraisal Report
  - \_\_\_\_\_ Did the owner accompany the appraiser?
  - \_\_\_\_\_ 10 year history
- \_\_\_\_\_ Statement of just compensation (signed by seller)
- \_\_\_\_\_ Statement of difference (if purchased above appraisal)
- \_\_\_\_\_ Waiver of just compensation (if purchased below appraisal: signed by seller)
- \_\_\_\_\_ Final Escrow Closing Statement
- \_\_\_\_\_ Cancelled checks/warrants, bank statements and EFT receipts, [payment(s) to seller(s)]
- \_\_\_\_\_ GRANT deed (vested to the participant) or final order of condemnation
- \_\_\_\_\_ Title insurance policy (issued to participant)
- \_\_\_\_\_ Relocation documents
- \_\_\_\_\_ Income (rental, grazing, sale of improvements, etc.)

### **INTEREST**

- \_\_\_\_\_ Schedule of interest earned on State funds advanced  
Note: Interest on grant advances is accountable, even if commingled in a pooled fund account and/or interest was never allocated back to the grant fund.

### **AGREEMENT/CONTRACTS**

- \_\_\_\_\_ Leases, agreements, etc., pertaining to developed/acquired property
- \_\_\_\_\_ Proof of insurance pertaining to developed/acquired property

\* Estimated time expended on the projects is not acceptable. Actual time records and all supporting documentation must be maintained as charges are incurred and made available for verification at the time of audit.

\*\* Front and back if copied.

## References

### Public Resources Code relating to the Per Capita program

#### **80000.**

This division shall be known, and may be cited, as the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018.

#### **80001.**

(b) It is the intent of the people of California that all of the following shall occur in the implementation of this division:

- (3) To the extent practicable, a project that receives moneys pursuant to this division will include signage informing the public that the project received funds from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018.
- (5) To the extent practicable, a project that receives moneys pursuant to this division will provide workforce education and training, contractor, and job opportunities for disadvantaged communities.
- (7) To the extent practicable, administering entities should measure or require measurement of greenhouse gas emissions reductions and carbon sequestrations associated with projects that receive moneys pursuant to this division.
- (8) To the extent practicable, as identified in the “Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters,” dated January 12, 2017, the public agencies that receive funds pursuant to this division will consider a range of actions that include, but are not limited to, the following:
  - (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
  - (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
  - (C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.
  - (D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.
  - (E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
  - (F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.
  - (G) Identifying possible staff liaisons to diverse populations.

#### **80002.**

(d) “Department” means the Department of Parks and Recreation.

(n) “Severely disadvantaged community” means a community with a median household income less than 60 percent of the statewide average.

#### **80008.**

(c) (1) Up to 5 percent of funds available pursuant to each chapter of this division shall, to the extent permissible under the State General Obligation Bond Law (Chapter 4 (commencing

with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) and with the concurrence of the Director of Finance, be allocated for community access projects that include, but are not limited to, the following:

- (A) Transportation.
- (B) Physical activity programming.
- (C) Resource interpretation.
- (D) Multilingual translation.
- (E) Natural science.
- (F) Workforce development and career pathways.
- (G) Education.
- (H) Communication related to water, parks, climate, coastal protection, and other outdoor pursuits.

**80020.**

Moneys allocated pursuant to this division shall not be used to fulfill any mitigation requirements imposed by law.

**CHAPTER 3. Investments in Protecting, Enhancing, and Accessing California's Local and Regional Outdoor Spaces**

**80060.**

For purposes of this chapter, "district" means any regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with §5500) of Chapter 3 of Division 5, any recreation and park district formed pursuant to Chapter 4 (commencing with §5780) of Division 5, or any authority formed pursuant to Division 26 (commencing with §35100). With respect to any community or unincorporated region that is not included within a district, and in which no city or county provides parks or recreational areas or facilities, "district" also means any other entity, including, but not limited to, a district operating multiple-use parklands pursuant to Division 20 (commencing with §71000) of the Water Code.

**80061.**

- (a) The sum of two hundred million dollars (\$200,000,000) shall be available to the department, upon appropriation by the Legislature, for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis. Grant recipients shall be encouraged to utilize awards to rehabilitate existing infrastructure and to address deficiencies in neighborhoods lacking access to the outdoors.
- (b) The sum of fifteen million dollars (\$15,000,000) shall be available to the department, upon appropriation by the Legislature, for grants to cities and districts in urbanized counties providing park and recreation services within jurisdictions of 200,000 or less in population. For purposes of this subdivision, "urbanized county" means a county with a population of 500,000 or more. An entity eligible to receive funds under this subdivision shall also be eligible to receive funds available under subdivision (a).
- (c) Unless the project has been identified as serving a severely disadvantaged community, an entity that receives an award pursuant to this section shall be required to provide a match of 20 percent as a local share.

**80062.**

- (a)(1) The department shall allocate 60 percent of the funds available pursuant to subdivision (a) of Section 80061 to cities and districts, other than a regional park district, regional park and open-space district, open-space authority, or regional open-space district. Each city's and district's allocation shall be in the same ratio as the city's or district's population is to the

combined total of the state's population that is included in incorporated and unincorporated areas within the county, except that each city or district shall be entitled to a minimum allocation of two hundred thousand dollars (\$200,000). If the boundary of a city overlaps the boundary of a district, the population in the overlapping area shall be attributed to each jurisdiction in proportion to the extent to which each operates and manages parks and recreational areas and facilities for that population. If the boundary of a city overlaps the boundary of a district, and in the area of overlap the city does not operate and manage parks and recreational areas and facilities, all grant funds for that area shall be allocated to the district.

- (2) On or before April 1, 2020, a city and a district that are subject to paragraph (1), and whose boundaries overlap, shall collaboratively develop and submit to the department a specific plan for allocating the grant funds in accordance with the formula specified in paragraph (1). If, by that date, the plan has not been developed and submitted to the department, the director shall determine the allocation of the grant funds between the affected jurisdictions.
- (b)(1) The department shall allocate 40 percent of the funds available pursuant to subdivision (a) of §80061 to counties and regional park districts, regional park and open-space districts, open-space authorities formed pursuant to Division 26 (commencing with §35100), and regional open-space districts formed pursuant to Article 3 (commencing with §5500) of Chapter 3 of Division 5.
- (2) Each county's allocation under paragraph (1) shall be in the same ratio that the county's population is to the total state population, except that each county shall be entitled to a minimum allocation of four hundred thousand dollars (\$400,000).
- (3) In any county that embraces all or part of the territory of a regional park district, regional park and open-space district, open-space authority, or regional open-space district, and whose board of directors is not the county board of supervisors, the amount allocated to the county shall be apportioned between that district and the county in proportion to the population of the county that is included within the territory of the district and the population of the county that is outside the territory of the district.
- (c) For the purpose of making the calculations required by this section, population shall be determined by the department, in cooperation with the Department of Finance, on the basis of the most recent verifiable census data and other verifiable population data that the department may require to be furnished by the applicant city, county, or district.
- (d) The Legislature intends all recipients of funds pursuant to subdivision (a) of §80061 to use those funds to supplement local revenues in existence on the effective date of the act adding this division. To receive an allocation pursuant to subdivision (a) of §80061, the recipient shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. For purposes of this subdivision, the Controller may request fiscal data from recipients for the preceding three fiscal years. Each recipient shall furnish the data to the Controller no later than 120 days after receiving the request from the Controller.

#### **80063.**

- (a) The director of the department shall prepare and adopt criteria and procedures for evaluating applications for grants allocated pursuant to subdivision (a) of §80061. The application shall be accompanied by certification that the project is consistent with the park and recreation element of the applicable city or county general plan or the district park recreation plan, as the case may be.

- (b) To utilize available grant funds as effectively as possible, overlapping and adjoining jurisdictions and applicants with similar objectives are encouraged to combine projects and submit a joint application. A recipient may allocate all or a portion of its per capita share for a regional or state project.

## Allocation Tables

Following are the allocations for Per Capita GRANTEES.

**Allocation Transfer<sup>6</sup>** – Entities that receive an allocation under the Per Capita program may transfer all or part of that allocation to another eligible entity, provided that the following requirements are met:

1. *All required documentation must be submitted no later than six months from the end of the encumbrance period.*
2. The transferring agency must submit a resolution authorizing the transfer of the allocation. The resolution must name the recipient entity and the transferred amount.
3. The recipient must be eligible to receive Per Capita funds.
4. The recipient must have submitted the authorizing resolution shown on page 6.
5. The recipient must submit a resolution authorizing the receipt of funds; the resolution must state the donor and the transferred amount.

## Definitions

Capitalized words and terms used in this guide are defined below.

**ADVANCE** – payment made to the GRANTEE for work that will occur in the future or work that has already occurred during the GRANT PERFORMANCE PERIOD and has not been paid for by the GRANTEE.

**APPLICATION PACKET** – the Application form and its required attachments described in the Application Checklist and Directions beginning on page 9.

**AUTHORIZED REPRESENTATIVE** – the GRANTEE’S designated position authorized in the Resolution to sign all required GRANT documents.

**CEQA** – the California Environmental Quality Act established policies and procedures requiring GRANTEES to identify, disclose to decision makers and the public, and attempt to lessen, significant impacts to environmental and historical resources that may occur as a result of the GRANTEE’S proposed PROJECT. (Public Resources Code §21000 et seq.; Title 14 California Code of Regulations §15000 et seq.)

**COMMUNITY ACCESS PROJECT** – a) transportation, b) physical activity programming, c) resource interpretation, d) multilingual translation, e) natural science, f) workforce development and career pathways, g) education, h) communication related to water, parks, climate, coastal protection, and other outdoor pursuits pursuant to Public Resources Code §80008(c)(1)

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<sup>6</sup> Please contact OGALS for sample transfer and recipient resolutions.

**CONSTRUCTION COSTS** – costs incurred starting with the date when ground-breaking construction activities such as site preparation, grading, or gutting begins, and continuing to the end of the GRANT PERFORMANCE PERIOD.

**CONTRACT PERFORMANCE PERIOD** – the amount of time stated on the contract agreement, specifying the performance of the contractual grant obligations between the GRANTEE and DPR.

**DEVELOPMENT** – construction, expansion, or renovation.

**DPR** – the California Department of Parks and Recreation.

**GRANT** – funds made available to a GRANTEE for completion of the PROJECT SCOPE(s) during the GRANT PERFORMANCE PERIOD.

**GRANTEE** – an entity having a fully executed contract with DPR.

**GRANT PERFORMANCE PERIOD** – period of time that ELIGIBLE COSTS may be incurred by the GRANTEE and paid for by DPR, as specified in the fully executed contract.

**IN-HOUSE EMPLOYEE SERVICES** – use of the GRANTEE’S employees working on the PROJECT SCOPE.

**OGALS** – DPR’s Office of Grants and Local Services.

**PRE-CONSTRUCTION COSTS** – costs incurred within the GRANT PERFORMANCE PERIOD for the planning, design, and permit phase of the PROJECT before construction can begin.

**PROJECT** – the SCOPE as described in the APPLICATION PACKET to be completed with GRANT funds.

**PROJECT COMPLETION** – when the PROJECT is complete and the facilities are open and useable by the public.

**PROJECT COMPLETION PACKET** – The documents listed on page 36 that are required in order to request final payment following PROJECT COMPLETION.

**PROJECT OFFICER** – an OGALS employee, who acts as a liaison with GRANTEES and administers GRANT funds, facilitates compliance with the Procedural Guide, and the GRANT contract.

**SCOPE** – the acquisition, recreation features and major support amenities, **or COMMUNITY ACCESS PROJECT** described in the APPLICATION PACKET that must be completed prior to final GRANT payment.

**TOTAL PROJECT COST** – the combined dollar amount of all funding sources used to complete the acquisition, or recreation features and major support amenities described in the APPLICATION PACKET.



## Agenda Report

20-924

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Action on a Resolution Approving Purchase and Sale Agreements for Easements on the South Loop Reconfigure Project

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), is proposing to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City. SVP's primary objective of the South Loop Reconfigure Project (Project) is to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

The City Council has previously taken a number of actions on the project:

- June 16, 2015 - Adopted the FY 2015/16 Capital Improvement Program (CIP) Budget which included the initial funding for the engineering for this 60kV conductoring and upgrading project.
- July 12, 2016 - Approved a professional services agreement with Electrical Consultants, Inc. to provide transmission line engineering design services which included reconfiguring the south transmission loop.
- January 14, 2020 - Amended a service agreement with Valbridge Property Advisors to perform appraisal services as part of the easement acquisition for the Project.
- July 7, 2020 - Adopted the Negative Declaration and Mitigation, Monitoring and Reporting Program for the Project and increased the capital funding of the Transmission System Reinforcements Capital Improvement Program Project (No. 2124) by \$6,300,000.
- October 13, 2020 - Approved three Purchase and Sale Agreements for Electric Utility Easements
- November 10, 2020 - Approved two Purchase and Sale Agreements for Electric Utility Easements

The majority of the new 60 kV transmission line would be constructed along the following city streets in areas where existing power lines do not currently exist: Lafayette Street, Mathew Street, Martin Avenue and De La Cruz Boulevard. The Project requires the acquisition of thirty-seven (37) parcel easements to facilitate construction of multiple new monopole steel structures and results in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements electrical facilities.



**DISCUSSION**

The City has negotiated the proposed purchase of the easements from the following four property owners of certain parcels necessary for the Project, upon the terms set forth below.

Address	Grantors	APN	Purchase Price
840 Comstock St.	Jakov Laptalo, as Trustee of The Laptalo Family Living Trust dated June 22, 1995	224-36-001	\$24,000
955 Martin Avenue	Robinson Oil Corporation, a California corporation	224-60-004	\$66,000
1515 Walsh Avenue	Miladin Malisic, Trustee of the Malisic Survivor's Trust, et al	224-57-003	\$26,000
2495 Lafayette St.	Jun Foo Wong Bypass Trust, et al	224-35-019	\$85,750

**ENVIRONMENTAL REVIEW**

The potential impacts to the Project were addressed in the Mitigated Negative Declaration (MND) [SCH#2020-05-9009] prepared by the environmental consultant firm, Aspen Environmental Group and was adopted by Council on July 7, 2020 by Resolution No. 20-8869.

**FISCAL IMPACT**

The total cost of the easement purchases is \$201,750. Funds are available in the Adopted Biennial FY 2020/21 and FY 2021/22 Capital Improvement Program Transmission System Reinforcement Project's 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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

1. Adopt the Resolution approving the purchases of overhead electric easements at 840 Comstock Street [224-36-001], 955 Martin Avenue [224-60-004], 1515 Walsh Avenue [224-57-003], and 2495 Lafayette Street [224-35-019]; and
2. Authorize the recordation thereof.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Resolution
2. Agreement for Purchase and Sale - 840 Comstock Street [224-36-001]

3. Agreement for Purchase and Sale - 955 Martin Avenue [224-60-004]
4. Agreement for Purchase and Sale - 1515 Walsh Avenue [224-57-003]
5. Agreement for Purchase and Sale - 2495 Lafayette Street [224-35-019]

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA, APPROVING PURCHASES OF OVERHEAD  
ELECTRIC EASEMENTS**

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

**WHEREAS**, the City of Santa Clara, a chartered city and municipal corporation acting by and through its municipally owned utility, Silicon Valley Power (“City” or “SVP”) is engaged in a continuing effort to upgrade and enhance its overhead and underground distribution and transmission systems to meet new customer demand and to maintain the reliability of SVP’s systems. The South Loop Reconfigure Project (“Project”) is a keystone project for this effort; and

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

**WHEREAS**, the Project was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration (MND) [SCH# 2020-05-9009] was prepared for the project by the environmental consultant firm Aspen Environmental Group, and adopted by Council on July 7, 2020 by Resolution No. 20-8869; and

**WHEREAS**, City Council provided authority to negotiate Easements with owners of certain parcels required to construct the Project and the City has reached agreements with the nine (9) property owners to purchase easements necessary for the Project, upon the terms set forth below.

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

1. That the purchase of the easements from the following four (4) property owners for the negotiated purchase prices are approved.

Address	Grantors	APN	Purchase Price
840 Comstock St	Jakov Laptalo, as Trustee of The Laptal Family Living Trust dated June 22, 1995	224-36-001	\$ 24,000
955 Martin Ave	Robinson Oil Corporation, a California corporation	224-60-004	\$ 66,000
1515 Walsh Ave	Miladin Malisic, Trustee of the Malisic Survivor's Trust, et al	224-57-003	\$ 26,000
2495 Lafayette St	Jun Foo Wong Bypass Trust, et al	224-35-019	\$ 85,750

2. That the City Manager, or duly authorized designee, is hereby authorized and directed to execute the Purchase and Sale Agreements (Utility Easement) with each of the forgoing Grantors, which are attached to the Report to Council accompanying this Resolution and presented to the City Council on November 17, 2020, as incorporated by this reference.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. RTC 20-924
2. Agreement for Purchase and Sale – 840 Comstock Street [APN 224-36-001]
3. Agreement for Purchase and Sale – 955 Martin Avenue [APN 224-60-004]
4. Agreement for Purchase and Sale – 1515 Walsh Avenue [APN 224-57-003]
5. Agreement for Purchase and Sale – 2495 Lafayette Street [APN 224-35-019]

**AGREEMENT FOR PURCHASE AND SALE  
(UTILITY EASEMENT)**

THIS AGREEMENT FOR PURCHASE AND SALE ("**Agreement**") is made and entered into as of \_\_\_\_\_, 2020 (the "**Effective Date**") by and between CITY OF SANTA CLARA ("Grantee" or "City") and Jakov Laptalo, as Trustee of The Laptalo Family Living Trust dated June 22, 1995 ("Grantor") with regard to the purchase and sale of certain property interests, upon the terms and conditions set forth herein.

**RECITALS**

**WHEREAS**, The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), plans to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project ("Project") is accommodated to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

**WHEREAS**, Grantee wishes to acquire from Grantor, and Grantor wishes to sell to Grantee certain property rights, as more particularly described in **Exhibit A** (the "Easement") for the Project upon the terms and conditions set forth herein.

**WHEREAS**, Grantor and Grantee recognize that the sale of the Easement is subject to approval of the Santa Clara City Council and that this Agreement shall have no force or effect unless and until said City Council approval has been obtained, which approval shall be obtained before execution of the Agreement by Grantee.

**NOW THEREFORE**, in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

**ARTICLE 1  
PURCHASE**

1.1. The Easement. Grantor is the fee owner of certain real property commonly known as 840 Comstock Street, Santa Clara, CA APN: 224-36-001 located in the City of Santa Clara, California over which the Easement will cross.

1.2. Sale and Conveyance. Grantor shall sell to Grantee and Grantee shall purchase from Grantor, all of the terms and conditions set forth in Articles 2 and 3 hereof, the Easement.

**ARTICLE 2  
PURCHASE PRICE**

2.1. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be Twenty Four Thousand dollars and no/100 Dollars (\$24,000.00).

2.2. Payment of Purchase Price. The purchase price shall be payable all in cash upon close of Escrow (as defined below) in accordance with Section 4.2.

### ARTICLE 3 CONDITIONS TO PURCHASE AND SALE

3.1. Conditions Precedent to Purchase and Sale. The obligation of Grantee to purchase and Grantor to sell the Easement is expressly conditioned upon the satisfaction, prior to closing, of each of the conditions set forth in this Section 3.1 (the "Conditions Precedent").

3.2. Title. Grantee has obtained a preliminary title report dated April 27, 2020, from First American Title Company (the "Title Report"). Grantee acknowledges and agrees that all exceptions are approved by Grantee (the "Approved Exceptions").

3.3. Execution of Overhead Electric Easement Deed. Grantor shall be ready, willing and able to convey title to the Easement by Overhead Electric Easement Deed to Grantee in the form of **Exhibit B** attached hereto (the "Easement Deed") subject only to the Approved Exceptions.

3.4. Deposit of Grant Deed. Grantor shall have deposited into Escrow (as defined below) the Overhead Electric Easement Deed as provided for in Section 4.1.1, conveying title to the Easement (subject to the Approved Exceptions) to the Grantee.

3.5. Title Insurance. The Title Company shall be prepared to issue an ALTA Standard Owner Policy of Title Insurance in the amount of the purchase price insuring title to the Easement vested in Grantee subject only to the Approved Exceptions (the "Title Policy").

3.6. Certificate of Acceptance. Grantee has obtained a resolution of the City Council of the City of Santa Clara authorizing recordation of the Overhead Electric Easement Deed and has deposited a properly executed Certificate of Acceptance into Escrow.

3.7. No Breach. There shall be no material breach of any of Grantor's representations, warranties, or covenants set forth in Article 5.

3.8. Documentary Deposit. Grantor and Grantee shall have each deposited into Escrow all materials required to be deposited under Article 4.

3.9. Grantee's Remedies.

3.9.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantee are not satisfied, Grantee shall have the right either to waive the condition in question and proceed with the purchase of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any money deposited into Escrow by Grantee shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.9.2 Default. If Grantor fails to perform any of its obligations or is otherwise in default under this Agreement, Grantee shall have the right to give notice to Grantor specifically setting forth the nature of said failure and stating that Grantor shall have a period of ten (10) calendar days to cure such failure. If Grantor has not cured such failure within such period (or,

if such failure is not capable of being cured within ten (10) calendar days, Grantor either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Closing Date, as may be extended under the terms of this Agreement), Grantee's sole and exclusive remedy shall be one of the following:

(a) Waiver. Waive such failure and proceed to the Closing pursuant to all of the other terms of this Agreement; or

(b) Terminate. Grantee may terminate this Agreement by notice to Grantor and Escrow Agent to that effect. Nothing herein shall be deemed a waiver by Grantor of its right or ability to exercise its power of eminent domain to acquire the Easement after a termination of this Agreement.

### 3.10. Grantor's Remedies.

3.10.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantor are not satisfied, Grantor shall have the right to either waive the condition in question and proceed with the sale of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any amounts deposited into Escrow shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

## ARTICLE 4 CLOSING AND ESCROW

4.1. Deposits into Escrow. Grantee has established an escrow (the "Escrow") with First American Title, 1850 Mt. Diablo Blvd., Suite 530, Walnut Creek, CA 94596. Attn.: Roni Sloan Loftin, telephone: (925) 927-2127 (the "Escrow Agent"). A copy of this Agreement, duly executed by both parties, shall be deposited therein within five (5) business days after the Effective Date. Subject to Section 4.2.2 below, this Agreement shall serve as escrow instructions to Escrow Agent, as escrow holder, for consummation of the purchase and sale contemplated hereby. Prior to or on the Closing Date, the Parties shall deposit the following into the Escrow:

4.1.1 Grantor. Grantor shall deposit the following into Escrow:

(a) The Overhead Electric Easement Deed, fully executed and suitable for recordation;

(b) If required by the Escrow Agent, a FIRPTA Affidavit stating Grantor's U.S. taxpayer identification number and that the Grantor is a "United States person" as defined by Internal Revenue Code sections 1445(f)(3) and 7701(b); and

(c) Such other documents and instruments as may be required by other provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

4.1.2 Grantee. Grantee shall deposit the following into Escrow:

(a) Cash or immediately available funds in the amount of the Purchase Price together with such additional cash in the amount necessary to pay Grantee's share of closing costs and prorations, as hereinafter set forth;

(b) An executed Certificate of Acceptance; and

(c) Such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required by Escrow Agent or otherwise to carry out the term and intent of this Agreement.

#### 4.2. Close of Escrow.

4.2.1 Closing Date. Escrow shall close on or before the thirtieth (30<sup>th</sup>) day following execution of this Agreement by Grantee or upon such other date as is mutually agreed upon by Grantee and Grantor (the "Closing Date").

4.2.2 Closing of Escrow. When the Conditions Precedent listed in Section 3.1 have been satisfied or waived by Grantee and Grantor and Escrow Agent has received all necessary cash and documents and is in a position to issue the Title Policy, as provided in Section 3.1.4, Escrow Agent shall immediately close Escrow as provided below (the "Closing"). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement; provided however, that in the event of any conflict between the provisions of this Agreement and any such further documents or escrow instructions, the terms of this Agreement shall control.

4.2.3 Procedure. Escrow Agent shall close Escrow as follows:

4.2.3.1 Record Deed. Date and record the Overhead Electric Easement Deed in the Official Records of Santa Clara County.

4.2.3.2 Deliver Copies of Deed. Deliver one (1) certified copy of the recorded Deed to Grantee.

4.2.3.3 Pay to Grantor. Pay to Grantor the funds in Escrow equal to the Purchase Price, reduced only by the Grantor's share of closing costs and prorations, as hereinafter set forth in Section 4.2.4 below.

4.2.3.4 Deliver Title Policy. Deliver the Title Policy to Grantee.

4.2.3.5 Closing Statement. Prepare and deliver to Grantee and Grantor one signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

#### 4.2.4 Closing Costs and Prorations.

4.2.4.1 Closing Costs. Grantee and Grantor shall each pay its own attorney's fees in connection with negotiating this Agreement and closing the Escrow. Grantee shall pay recording costs, if any, Escrow fees, the title insurance premium, and any documentary transfer taxes.



## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1. Grantor's Representations and Warranties. Grantor represents and warrants to Grantee that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

5.1.1 Organization Authority. Jakov Laptalo, as Trustee of The Laptalo Family Living Trust dated June 22, 1995 is a Trust, duly organized, validly existing and in good standing under the laws of the State of California and has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Grantor. The individuals executing this Agreement and the instruments referred to herein on behalf of Grantor, have the legal power, rights and actual authority to bind Grantor to the terms and conditions hereof and thereof;

5.1.2 No Violation of Agreement; Litigation. Neither the execution, delivery or performance of this Agreement by Grantor will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Grantor or the Easement is bound. Grantor has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Easement or Grantor's interest therein;

5.1.3 Compliance with Laws. Grantor has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Easement;

5.1.4 Existing Lease. There are no contracts or agreements with respect to the occupancy of the Easement which will be binding upon Grantee after Closing; and

5.1.5 Grantor Not a Foreign Person. Grantor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

## ARTICLE 6 GENERAL PROVISIONS

6.1. Approval of City Council. Grantor and Grantee recognize that as of the execution of this Agreement by Grantor, this Agreement is subject to approval of the City Council of the City of Santa Clara and that this Agreement shall have no force or effect unless and until said City Council's approval has been obtained, but such approval shall be obtained before execution of this Agreement by Grantee.

6.2. Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.3. Entire Agreement. This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior

correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.

6.4. Brokers' Fees. Grantor and Grantee each represent and warrant to the other that, there are no brokers' fees or finders' fees arising out of this transaction and each shall indemnify, defend, and hold the other harmless from any claim, loss, cost, damage or expense including, without limitation, attorneys' and experts' fees and costs and court costs arising out of or incurred in connection with any claim by any other broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.

6.5. Attorney's Fees. In the event either party to this Agreement institutes an action to interpret or enforce the terms hereof, or to obtain money damages, the prevailing party, as determined by the court (whether at trial or upon appeal) shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding. In no event shall an attorney's fee award exceed \$5,000, whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions.

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

6.7. Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

6.8. Time. Time is of essence of every provision herein contained in this Agreement.

6.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

6.10. Survival. The terms, covenants and conditions of Articles 5, 6, and 7 shall remain true and correct as of the Closing Date, shall be deemed to be material and shall survive the execution and delivery of this Agreement, the delivery of the Grant Deed, and transfer of title.

6.11. Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Grantor:

Jakov Laptalo, Trustee  
Attention: Jakov Laptalo  
12125 Hilltop Dr.  
Los Altos, CA 94022  
Telephone: 408-410-9548

To Grantee:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Manager  
Telephone: 408-615-2210

With a copy to:

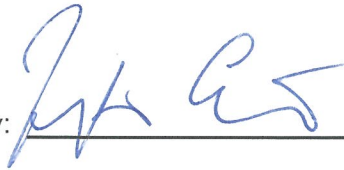
City of Santa Clara City Attorney's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Attorney  
Telephone: (408) 615-2230

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery. The foregoing addresses may be changed by notice to the other party as herein provided.

IN WITNESS WHEREOF, the parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written ("Effective Date").

**GRANTOR**

Jakov Laptalo, Trustee

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

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

Date: 10/22/20 \_\_\_\_\_

**GRANTEE**

City of Santa Clara,  
a municipal corporation

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

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

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

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

## EXHIBIT A

### (Description of Easement)

## EXHIBIT "A"

SVP REF: SC 19-182

POWERLINE EASEMENT ACROSS:  
JAKOV LAPTOLO, TRUSTEE  
LAPTALO FAMILY LIVING TRUST  
840 COMSTOCK STREET  
SANTA CLARA, CALIFORNIA 95054  
APN: 224-36-001  
EASEMENT AREA: 712 SQ. FT. ±



### DESCRIPTION:

A portion of the parcel of land conveyed in that certain Grant Deed recorded December 14, 1999 as Document No. 15090086, in the Office of the Recorder of Santa Clara County (ORSCC), being a portion of Lots 1 and 2 in Block 3 of Laurelwood Farm Subdivision as shown on the Map filed for record in Book "S" at Pages 7 and 8 of Maps, ORSCC, located in the City of Santa Clara, County of Santa Clara, and described as follows:

**COMMENCING** at a monument located at the centerline intersection of Central Expressway and Lafayette Street, thence North 58°28'01" East 113.36 feet (Basis of Bearings is North 13°44'17" East between said monument and a Right-of-Way Monument on the northerly right-of-way of Comstock Street as shown on page 2) to the northerly right-of-way of said Central Expressway and the **POINT OF BEGINNING**; thence South 74°17'14" East 11.95 feet along said northerly right-of-way; thence North 36°49'36" West 70.98 feet to the easterly right-of-way of said Lafayette Street; thence South 06°11'57" East 19.51 feet along said easterly right-of-way to the beginning of a curve concave northeasterly having a radius of 40 feet; thence southeasterly 47.53 feet along said curved right-of-way through a central angle of 68°05'17" (chord bears South 40°14'36" East 44.79 feet) to the **POINT OF BEGINNING**.

Containing 712 sq. ft., more or less.

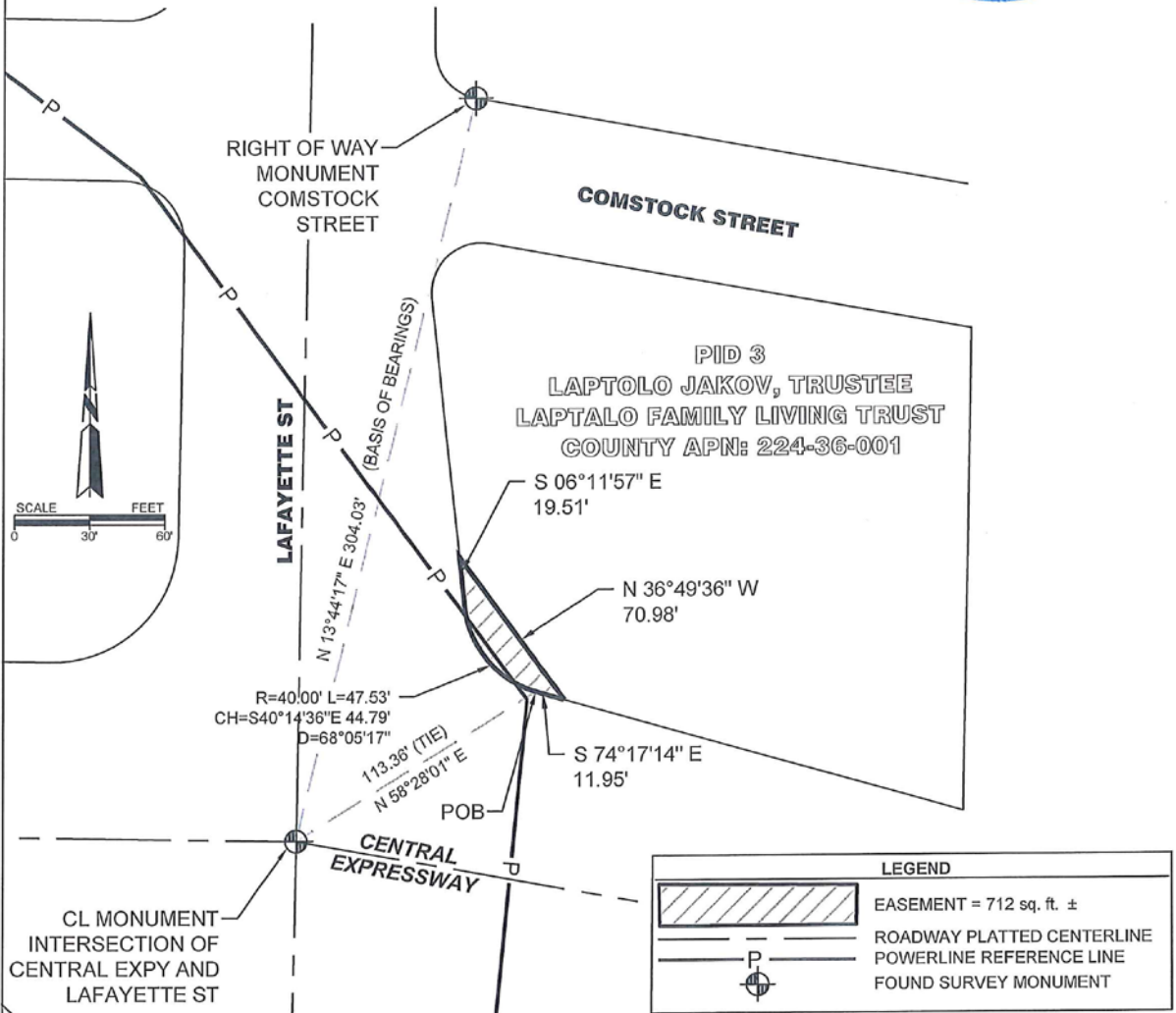


REV: 2	DATE: 8/26/20	SCALE: N/A	BY: TMA   CHK: GHJ   APP: JJC
 660 West 700 South Woods Cross, UT 84087 (801) 292-9954	JAKOV LAPTOLO, TRUSTEE LAPTALO FAMILY LIVING TRUST 840 COMSTOCK STREET SANTA CLARA, CALIFORNIA 95054 APN: 224-36-001		 SILICON VALLEY POWER. CITY OF SANTA CLARA
			SHEET: 1 OF 2

# EXHIBIT "A"

SVP REF: SC 19-182

POWERLINE EASEMENT ACROSS:  
 JAKOV LAPTOLO, TRUSTEE  
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THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 2 DATE: 8/26/20 SCALE: 1" = 60' BY: TMA CHK: GHJ APP: JJC

**NECIELECTRICAL**  
 CONSULTANTS, INC.  
 SALT LAKE CITY, UTAH  
 600 West 700 South Woods Cross, UT 84057 (801) 232-9954

JAKOV LAPTOLO, TRUSTEE  
 LAPTALO FAMILY LIVING TRUST  
 840 COMSTOCK STREET  
 SANTA CLARA, CALIFORNIA 95054  
 APN: 224-36-001



SHEET: 2 OF 2

**EXHIBIT B**

**(Overhead Electric Easement Deed)**

**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

APN: 224-36-001

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

**OVERHEAD ELECTRIC EASEMENT DEED**

**840 Comstock St.  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, **Jakov Laptalo, as Trustee of The Laptalo Family Living Trust dated June 22, 1995** (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or

adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

IN WITNESS WHEREOF, said grantor has hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**Jakov Laptalo, Trustee**

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

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

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

APPROVED FOR FORM:

\_\_\_\_\_  
Brian Doyle  
City Attorney

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.  
**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

## CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by Overhead Electric Utility Deed dated the \_\_\_\_ of \_\_\_\_\_ 2020, from **Jakov Laptalo, as Trustee of The Laptalo Family Living Trust dated June 22, 1995** (Grantor) to the City of Santa Clara, California, a chartered California municipal corporation (City), is hereby accepted by the undersigned officer on behalf of the City Council of the City pursuant to authority conferred by Resolution No. 5600 of the City Council of the City of Santa Clara adopted on the 28 day of May, 1991, and the Resolution Approving Purchase of Overhead Electric Easement, Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2020. The City, as Grantee, consents to recordation by its duly authorized officer, the City Clerk of the City of Santa Clara.

Re: APN 224-36-001

Dated: This \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
City of Santa Clara

APPROVED AS TO FORM:

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

ATTEST: \_\_\_\_\_  
NORA PIMENTEL, MMC  
Assistant City Clerk

## Exhibit A

### EXHIBIT "A"

SVP REF: SC 19-182

POWERLINE EASEMENT ACROSS:  
JAKOV LAPTOLO, TRUSTEE  
LAPTALO FAMILY LIVING TRUST  
840 COMSTOCK STREET  
SANTA CLARA, CALIFORNIA 95054  
APN: 224-36-001  
EASEMENT AREA: 712 SQ. FT. ±



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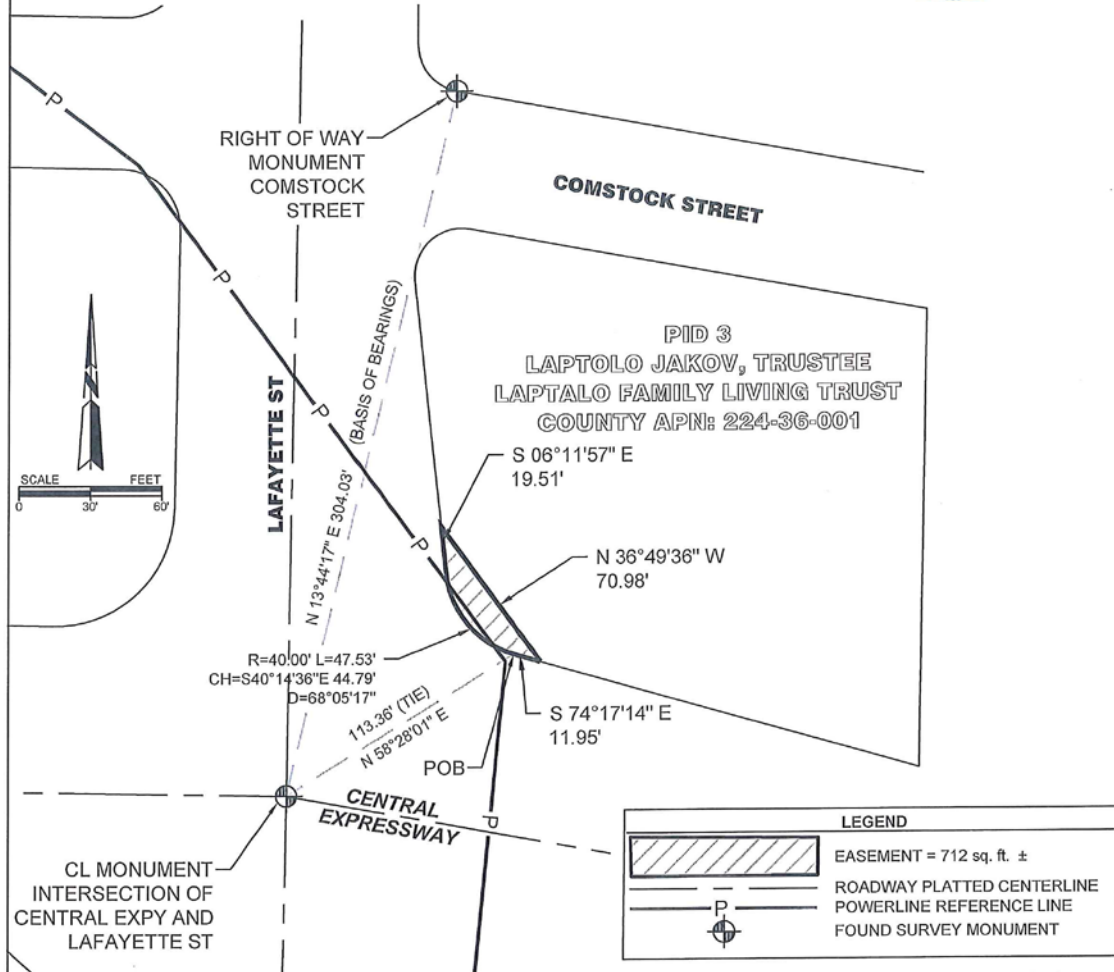


REV: 2	DATE: 8/26/20	SCALE: N/A	BY: TMA   CHK: GHI   APP: JJC
 <b>TEC</b> ELECTRICAL CONSULTANTS, INC. SALT LAKE CITY, UTAH <small>650 West 700 South Woods Cross, UT 84087 (801) 292-9954</small>	JAKOV LAPTOLO, TRUSTEE LAPTALO FAMILY LIVING TRUST 840 COMSTOCK STREET SANTA CLARA, CALIFORNIA 95054 APN: 224-36-001	 <b>SILICON VALLEY POWER.</b> CITY OF SANTA CLARA	SHEET: 1 OF 2

# EXHIBIT "A"

SVP REF: SC 19-182

POWERLINE EASEMENT ACROSS:  
 JAKOV LAPTOLO, TRUSTEE  
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REV: 2 | DATE: 8/26/20 | SCALE: 1" = 60' | BY: TMA | CHK: GHH | APP: JJC



JAKOV LAPTOLO, TRUSTEE  
 LAPTALO FAMILY LIVING TRUST  
 840 COMSTOCK STREET  
 SANTA CLARA, CALIFORNIA 95054  
 APN: 224-36-001



SHEET: 2 OF 2

**AGREEMENT FOR PURCHASE AND SALE  
(UTILITY EASEMENT)**

THIS AGREEMENT FOR PURCHASE AND SALE ("**Agreement**") is made and entered into as of \_\_\_\_\_, 2020 (the "**Effective Date**") by and between CITY OF SANTA CLARA ("Grantee" or "City") and Robinson Oil Corporation, a California corporation ("Grantor") with regard to the purchase and sale of certain property interests, upon the terms and conditions set forth herein.

**RECITALS**

**WHEREAS**, The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), plans to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project ("Project") is accommodated to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

**WHEREAS**, Grantee wishes to acquire from Grantor, and Grantor wishes to sell to Grantee certain property rights, as more particularly described in **Exhibit A** (the "Easement") for the Project upon the terms and conditions set forth herein.

**WHEREAS**, Grantor and Grantee recognize that the sale of the Easement is subject to approval of the Santa Clara City Council and that this Agreement shall have no force or effect unless and until said City Council approval has been obtained, which approval shall be obtained before execution of the Agreement by Grantee.

**NOW THEREFORE**, in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

**ARTICLE 1  
PURCHASE**

1.1. The Easement. Grantor is the fee owner of certain real property commonly known as 955 Martin Avenue APN: 224-60-004 located in the City of Santa Clara, California over which the Easement will cross.

1.2. Sale and Conveyance. Grantor shall sell to Grantee and Grantee shall purchase from Grantor, all of the terms and conditions set forth in Articles 2 and 3 hereof, the Easement.

**ARTICLE 2  
PURCHASE PRICE**

2.1. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be Sixty Six Thousand and no/100 Dollars (\$66,000.00).

2.2. Payment of Purchase Price. The purchase price shall be payable all in cash upon close of Escrow (as defined below) in accordance with Section 4.2.

### ARTICLE 3 CONDITIONS TO PURCHASE AND SALE

3.1. Conditions Precedent to Purchase and Sale. The obligation of Grantee to purchase and Grantor to sell the Easement is expressly conditioned upon the satisfaction, prior to closing, of each of the conditions set forth in this Section 3.1 (the "Conditions Precedent").

3.2. Title. Grantee has obtained a preliminary title report dated October 7, 2020, from First American Title Company (the "Title Report"). Grantee acknowledges and agrees that all exceptions are approved by Grantee (the "Approved Exceptions").

3.3. Execution of Overhead Electric Easement Deed. Grantor shall be ready, willing and able to convey title to the Easement by Overhead Electric Easement Deed to Grantee in the form of **Exhibit B** attached hereto (the "Easement Deed") subject only to the Approved Exceptions.

3.4. Deposit of Grant Deed. Grantor shall have deposited into Escrow (as defined below) the Overhead Electric Easement Deed as provided for in Section 4.1.1, conveying title to the Easement (subject to the Approved Exceptions) to the Grantee.

3.5. Title Insurance. The Title Company shall be prepared to issue an ALTA Standard Owner Policy of Title Insurance in the amount of the purchase price insuring title to the Easement vested in Grantee subject only to the Approved Exceptions (the "Title Policy").

3.6. Certificate of Acceptance. Grantee has obtained a resolution of the City Council of the City of Santa Clara authorizing recordation of the Overhead Electric Easement Deed and has deposited a properly executed Certificate of Acceptance into Escrow.

3.7. No Breach. There shall be no material breach of any of Grantor's representations, warranties, or covenants set forth in Article 5.

3.8. Documentary Deposit. Grantor and Grantee shall have each deposited into Escrow all materials required to be deposited under Article 4.

3.9. Grantee's Remedies.

3.9.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantee are not satisfied, Grantee shall have the right either to waive the condition in question and proceed with the purchase of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any money deposited into Escrow by Grantee shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.9.2 Default. If Grantor fails to perform any of its obligations or is otherwise in default under this Agreement, Grantee shall have the right to give notice to Grantor specifically setting forth the nature of said failure and stating that Grantor shall have a period of ten (10) calendar days to cure such failure. If Grantor has not cured such failure within such period (or,

if such failure is not capable of being cured within ten (10) calendar days, Grantor either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Closing Date, as may be extended under the terms of this Agreement), Grantee's sole and exclusive remedy shall be one of the following:

(a) Waiver. Waive such failure and proceed to the Closing pursuant to all of the other terms of this Agreement; or

(b) Terminate. Grantee may terminate this Agreement by notice to Grantor and Escrow Agent to that effect. Nothing herein shall be deemed a waiver by Grantor of its right or ability to exercise its power of eminent domain to acquire the Easement after a termination of this Agreement.

### 3.10. Grantor's Remedies.

3.10.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantor are not satisfied, Grantor shall have the right to either waive the condition in question and proceed with the sale of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any amounts deposited into Escrow shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

## ARTICLE 4 CLOSING AND ESCROW

4.1. Deposits into Escrow. Grantee has established an escrow (the "Escrow") with First American Title, 1850 Mt. Diablo Blvd., Suite 530, Walnut Creek, CA 94596. Attn.: Roni Sloan Loftin, telephone: (925) 927-2127 (the "Escrow Agent"). A copy of this Agreement, duly executed by both parties, shall be deposited therein within five (5) business days after the Effective Date. Subject to Section 4.2.2 below, this Agreement shall serve as escrow instructions to Escrow Agent, as escrow holder, for consummation of the purchase and sale contemplated hereby. Prior to or on the Closing Date, the Parties shall deposit the following into the Escrow:

4.1.1 Grantor. Grantor shall deposit the following into Escrow:

(a) The Overhead Electric Easement Deed, fully executed and suitable for recordation;

(b) If required by the Escrow Agent, a FIRPTA Affidavit stating Grantor's U.S. taxpayer identification number and that the Grantor is a "United States person" as defined by Internal Revenue Code sections 1445(f)(3) and 7701(b); and

(c) Such other documents and instruments as may be required by other provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

4.1.2 Grantee. Grantee shall deposit the following into Escrow:

(a) Cash or immediately available funds in the amount of the Purchase Price together with such additional cash in the amount necessary to pay Grantee's share of closing costs and prorations, as hereinafter set forth;

(b) An executed Certificate of Acceptance; and

(c) Such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required by Escrow Agent or otherwise to carry out the term and intent of this Agreement.

#### 4.2. Close of Escrow.

4.2.1 Closing Date. Escrow shall close on or before the thirtieth (30<sup>th</sup>) day following execution of this Agreement by Grantee or upon such other date as is mutually agreed upon by Grantee and Grantor (the "Closing Date").

4.2.2 Closing of Escrow. When the Conditions Precedent listed in Section 3.1 have been satisfied or waived by Grantee and Grantor and Escrow Agent has received all necessary cash and documents and is in a position to issue the Title Policy, as provided in Section 3.1.4, Escrow Agent shall immediately close Escrow as provided below (the "Closing"). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement; provided however, that in the event of any conflict between the provisions of this Agreement and any such further documents or escrow instructions, the terms of this Agreement shall control.

4.2.3 Procedure. Escrow Agent shall close Escrow as follows:

4.2.3.1 Record Deed. Date and record the Overhead Electric Easement Deed in the Official Records of Santa Clara County.

4.2.3.2 Deliver Copies of Deed. Deliver one (1) certified copy of the recorded Deed to Grantee.

4.2.3.3 Pay to Grantor. Pay to Grantor the funds in Escrow equal to the Purchase Price, reduced only by the Grantor's share of closing costs and prorations, as hereinafter set forth in Section 4.2.4 below.

4.2.3.4 Deliver Title Policy. Deliver the Title Policy to Grantee.

4.2.3.5 Closing Statement. Prepare and deliver to Grantee and Grantor one signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

#### 4.2.4 Closing Costs and Prorations.

4.2.4.1 Closing Costs. Grantee and Grantor shall each pay its own attorney's fees in connection with negotiating this Agreement and closing the Escrow. Grantee shall pay recording costs, if any, Escrow fees, the title insurance premium, and any documentary transfer taxes.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1. Grantor's Representations and Warranties. Grantor represents and warrants to Grantee that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

5.1.1 Organization Authority. Robinson Oil Corporation is a California corporation, duly organized, validly existing and in good standing under the laws of the State of California and has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Grantor. The individuals executing this Agreement and the instruments referred to herein on behalf of Grantor, have the legal power, rights and actual authority to bind Grantor to the terms and conditions hereof and thereof;

5.1.2 No Violation of Agreement; Litigation. Neither the execution, delivery or performance of this Agreement by Grantor will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Grantor or the Easement is bound. Grantor has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Easement or Grantor's interest therein;

5.1.3 Compliance with Laws. Grantor has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Easement;

5.1.4 Existing Lease. There are no contracts or agreements with respect to the occupancy of the Easement which will be binding upon Grantee after Closing; and

5.1.5 Grantor Not a Foreign Person. Grantor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

## ARTICLE 6 GENERAL PROVISIONS

6.1. Approval of City Council. Grantor and Grantee recognize that as of the execution of this Agreement by Grantor, this Agreement is subject to approval of the City Council of the City of Santa Clara and that this Agreement shall have no force or effect unless and until said City Council's approval has been obtained, but such approval shall be obtained before execution of this Agreement by Grantee.

6.2. Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.3. Entire Agreement. This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or



modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.

6.4. Brokers' Fees. Grantor and Grantee each represent and warrant to the other that, there are no brokers' fees or finders' fees arising out of this transaction and each shall indemnify, defend, and hold the other harmless from any claim, loss, cost, damage or expense including, without limitation, attorneys' and experts' fees and costs and court costs arising out of or incurred in connection with any claim by any other broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.

6.5. Attorney's Fees. In the event either party to this Agreement institutes an action to interpret or enforce the terms hereof, or to obtain money damages, the prevailing party, as determined by the court (whether at trial or upon appeal) shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding. In no event shall an attorney's fee award exceed \$5,000, whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions.

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

6.7. Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

6.8. Time. Time is of essence of every provision herein contained in this Agreement.

6.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

6.10. Survival. The terms, covenants and conditions of Articles 5, 6, and 7 shall remain true and correct as of the Closing Date, shall be deemed to be material and shall survive the execution and delivery of this Agreement, the delivery of the Grant Deed, and transfer of title.

6.11. Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Grantor:

Robinson Oil Corporation  
Attention: Stephen White  
955 Martin Avenue  
Santa Clara, CA, 95050  
Telephone: 408-327-4312

To Grantee:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Manager  
Telephone: 408-615-2210

With a copy to:

City of Santa Clara City Attorney's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Attorney  
Telephone: (408) 615-2230

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery. The foregoing addresses may be changed by notice to the other party as herein provided.

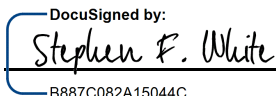
IN WITNESS WHEREOF, the parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written ("Effective Date").

**GRANTOR**

Robinson Oil Corporation,  
a California corporation

**GRANTEE**

City of Santa Clara,  
a municipal corporation

By:  \_\_\_\_\_  
B887C082A15044C...

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

Title: VP, CFO

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

Date: 10/27/2020

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

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

## EXHIBIT A

### (Description of Easement)

SVP REF: SC 19-206

## EXHIBIT "A"

POWERLINE EASEMENT ACROSS:  
ROBINSON OIL CORPORATION  
953 MARTIN AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-60-004  
EASEMENT AREA: 3,086 SQ. FT. ±



### DESCRIPTION:



A portion of that parcel of land conveyed in that certain Grant Deed recorded June 16, 2009 as Document No. 20294891 in the Office of the Recorder of the County of Santa Clara (ORCSC), being a portion of the Southeast 1/4 of Section 34, Township 6 South, Range 1 West, M.D.B. & M., and herein after known as the Grantor's Parcel, being located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

**COMMENCING** at a monument located in the centerline of Martin Avenue; thence North 89°23'07" West 170.30 feet along said centerline; thence North 00°36'53" East 42.00 feet to the southwesterly corner of said Grantor's parcel and the **POINT OF BEGINNING**; thence easterly along the northerly right-of-way line of said Martin Avenue the following four courses:

- 1) South 89°23'07" East 170.30 feet to the beginning of a curve concave southerly, having a radius of 642.00 feet;
- 2) easterly 43.71 feet along said curve through a central angle of 03°54'02" (chord bears South 87°26'06" East 43.70 feet) to the beginning of a reverse curve concave northerly, having a radius of 130.00 feet;
- 3) easterly 39.73 feet along said curve through a central angle of 17°30'30" (chord bears North 85°45'41" East 39.57 feet) to the beginning of a compound curve concave northwesterly having a radius of 35.00 feet;
- 4) easterly 11.96 feet along said curve through a central angle of 19°35'33" (chord bears North 67°12'46" East 11.91 feet);

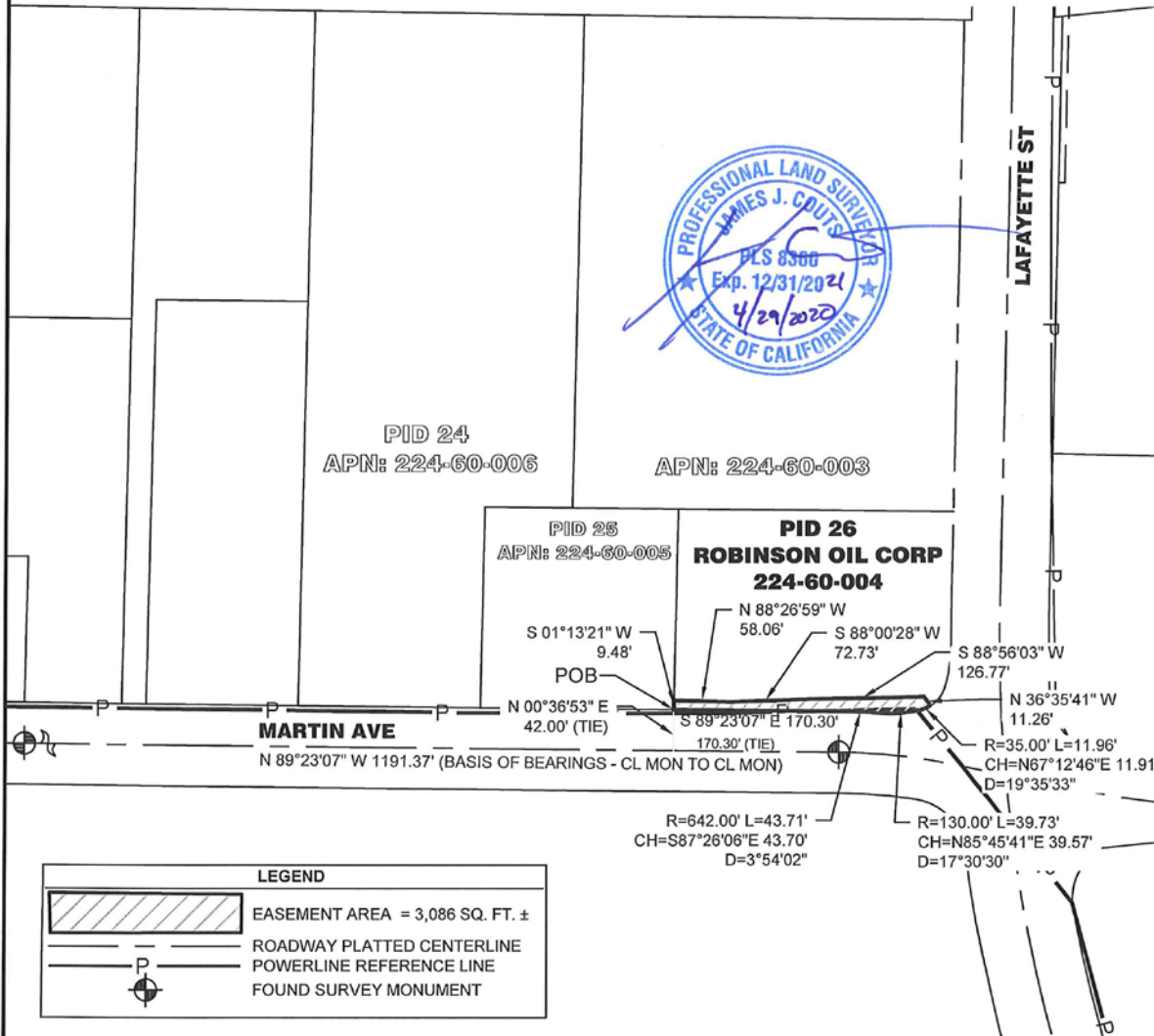
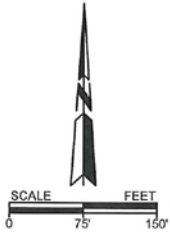
thence, departing said right-of-way, North 36°35'41" West 11.26 feet; thence South 88°56'03" West 126.77 feet; thence South 88°00'28" West 72.73 feet; thence North 88°26'59" West 58.06 feet to the westerly line of said Grantor's Parcel; thence South 01°13'21" West 9.48 feet along said westerly line to the **POINT OF BEGINNING**.

Containing 3,086 square feet, more or less.

REV: 0	DATE: 4/29/20	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
		ROBINSON OIL CORPORATION APN: 224-60-004 953 MARTIN AVENUE SANTA CLARA, CALIFORNIA 95050		 SHEET: 1 OF 2	

**EXHIBIT "A"**

POWERLINE EASEMENT ACROSS:  
 ROBINSON OIL CORPORATION  
 953 MARTIN AVENUE  
 SANTA CLARA, CALIFORNIA 95050  
 APN: 224-60-004  
 EASEMENT AREA: 3,086 SQ. FT. ±



THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 0

DATE: 4/29/20

SCALE: 1" = 150'

BY: TMA | CHK: GH | APP: JJC

**ECI ELECTRICAL**  
 CONSULTANTS, INC.  
 SALT LAKE CITY, UTAH  
 560 West 700 South Woods Cross, UT 84087 (801) 232-6954

ROBINSON OIL CORPORATION  
 APN: 224-60-004  
 953 MARTIN AVENUE  
 SANTA CLARA, CALIFORNIA 95050

**SILICON VALLEY POWER**  
 CITY OF SANTA CLARA

SHEET: 2 OF 2

**EXHIBIT B**

**(Overhead Electric Easement Deed)**

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

APN: 224-60-004

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

**OVERHEAD ELECTRIC EASEMENT DEED**

**955 Martin Avenue  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, **Robinson Oil Corporation, a California corporation** (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or

adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

IN WITNESS WHEREOF, said grantor has hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2020.

**Robinson Oil Corporation,  
a California corporation**

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

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

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

APPROVED FOR FORM:

\_\_\_\_\_  
Brian Doyle  
City Attorney

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.  
**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

## CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by Overhead Electric Utility Deed dated the \_\_\_\_ of \_\_\_\_\_ 2020, from Robinson Oil Corporation, a California corporation (Grantor) to the City of Santa Clara, California, a chartered California municipal corporation (City), is hereby accepted by the undersigned officer on behalf of the City Council of the City pursuant to authority conferred by Resolution No. 5600 of the City Council of the City of Santa Clara adopted on the 28 day of May, 1991, and the Resolution Approving Purchase of Overhead Electric Easement, Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2020. The City, as Grantee, consents to recordation by its duly authorized officer, the City Clerk of the City of Santa Clara.

Re: APN 224-60-004

Dated: This \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
City of Santa Clara

APPROVED AS TO FORM:

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

ATTEST: \_\_\_\_\_  
NORA PIMENTEL, MMC  
Assistant City Clerk



## Exhibit A

SVP REF: SC 19-206

### EXHIBIT "A"

POWERLINE EASEMENT ACROSS:  
ROBINSON OIL CORPORATION  
953 MARTIN AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-60-004  
EASEMENT AREA: 3,086 SQ. FT. ±



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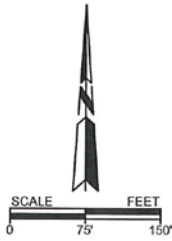
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Containing 3,086 square feet, more or less.

REV: 0	DATE: 4/29/20	SCALE: N/A	BY: TMA	CHK: GHJ	APP: JJC
		ROBINSON OIL CORPORATION APN: 224-60-004 953 MARTIN AVENUE SANTA CLARA, CALIFORNIA 95050		 SHEET: 1 OF 2	

SVP REF: SC 19-206

POWERLINE EASEMENT ACROSS:  
ROBINSON OIL CORPORATION  
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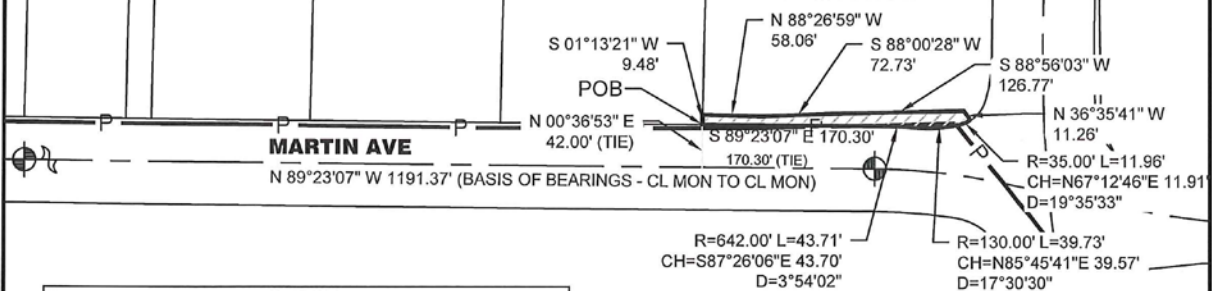


PID 24  
APN: 224-60-006





APN: 224-60-003

PID 25  
APN: 224-60-005

**PID 26**  
**ROBINSON OIL CORP**  
**224-60-004**



**LEGEND**

	EASEMENT AREA = 3,086 SQ. FT. ±
	ROADWAY PLATTED CENTERLINE
	POWERLINE REFERENCE LINE
	FOUND SURVEY MONUMENT

THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 0	DATE: 4/29/20
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DATE: 4/29/20

SCALE: 1" = 150'

BY: TMA	CHK: GHH	APP: JJC
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ROBINSON OIL CORPORATION  
APN: 224-60-004  
953 MARTIN AVENUE  
SANTA CLARA, CALIFORNIA 95050



SHEET: 2 OF 2

**AGREEMENT FOR PURCHASE AND SALE  
(UTILITY EASEMENT)**

THIS AGREEMENT FOR PURCHASE AND SALE ("**Agreement**") is made and entered into as of \_\_\_\_\_, 2020 (the "**Effective Date**") by and between CITY OF SANTA CLARA ("Grantee" or "City") and Miladin Malisic, Trustee of the Malisic Survivor's Trust u/t/a dated June 23, 1983, an undivided fifty percent (50%) interest and Milidan Malisic, Trustee of the Malisic Residual Trust u/t/a dated June 23, 1983, an undivided fifty percent (50%) interest, ("Grantor) with regard to the purchase and sale of certain property interests, upon the terms and conditions set forth herein.

**RECITALS**

**WHEREAS**, The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), plans to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project ("Project") is accommodated to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

**WHEREAS**, Grantee wishes to acquire from Grantor, and Grantor wishes to sell to Grantee certain property rights, as more particularly described in **Exhibit A** (the "Easement") for the Project upon the terms and conditions set forth herein.

**WHEREAS**, Grantor and Grantee recognize that the sale of the Easement is subject to approval of the Santa Clara City Council and that this Agreement shall have no force or effect unless and until said City Council approval has been obtained, which approval shall be obtained before execution of the Agreement by Grantee.

**NOW THEREFORE**, in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

**ARTICLE 1  
PURCHASE**

1.1. **The Easement**. Grantor is the fee owner of certain real property commonly known as 1515 Walsh Avenue, Santa Clara, CA APN: 224-57-003 located in the City of Santa Clara, California over which the Easement will cross.

1.2. **Sale and Conveyance**. Grantor shall sell to Grantee and Grantee shall purchase from Grantor, all of the terms and conditions set forth in Articles 2 and 3 hereof, the Easement.

## ARTICLE 2 PURCHASE PRICE

2.1. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be Twenty Six Thousand dollars and no/100 Dollars (\$26,000.00).

2.2. Payment of Purchase Price. The purchase price shall be payable all in cash upon close of Escrow (as defined below) in accordance with Section 4.2.

## ARTICLE 3 CONDITIONS TO PURCHASE AND SALE

3.1. Conditions Precedent to Purchase and Sale. The obligation of Grantee to purchase and Grantor to sell the Easement is expressly conditioned upon the satisfaction, prior to closing, of each of the conditions set forth in this Section 3.1 (the "Conditions Precedent").

3.2. Title. Grantee has obtained a preliminary title report dated April 24, 2020, from First American Title Company (the "Title Report"). Grantee acknowledges and agrees that all exceptions are approved by Grantee (the "Approved Exceptions").

3.3. Execution of Overhead Electric Easement Deed. Grantor shall be ready, willing and able to convey title to the Easement by Overhead Electric Easement Deed to Grantee in the form of **Exhibit B** attached hereto (the "Easement Deed") subject only to the Approved Exceptions.

3.4. Deposit of Grant Deed. Grantor shall have deposited into Escrow (as defined below) the Overhead Electric Easement Deed as provided for in Section 4.1.1, conveying title to the Easement (subject to the Approved Exceptions) to the Grantee.

3.5. Title Insurance. The Title Company shall be prepared to issue an ALTA Standard Owner Policy of Title Insurance in the amount of the purchase price insuring title to the Easement vested in Grantee subject only to the Approved Exceptions (the "Title Policy").

3.6. Certificate of Acceptance. Grantee has obtained a resolution of the City Council of the City of Santa Clara authorizing recordation of the Overhead Electric Easement Deed and has deposited a properly executed Certificate of Acceptance into Escrow.

3.7. No Breach. There shall be no material breach of any of Grantor's representations, warranties, or covenants set forth in Article 5.

3.8. Documentary Deposit. Grantor and Grantee shall have each deposited into Escrow all materials required to be deposited under Article 4.

3.9. Grantee's Remedies.

3.9.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantee are not satisfied, Grantee shall have the right either to waive the condition in question and proceed with the purchase of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any money deposited into Escrow by Grantee shall be returned to Grantee, and thereafter neither

party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.9.2 Default. If Grantor fails to perform any of its obligations or is otherwise in default under this Agreement, Grantee shall have the right to give notice to Grantor specifically setting forth the nature of said failure and stating that Grantor shall have a period of ten (10) calendar days to cure such failure. If Grantor has not cured such failure within such period (or, if such failure is not capable of being cured within ten (10) calendar days, Grantor either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Closing Date, as may be extended under the terms of this Agreement), Grantee's sole and exclusive remedy shall be one of the following:

(a) Waiver. Waive such failure and proceed to the Closing pursuant to all of the other terms of this Agreement; or

(b) Terminate. Grantee may terminate this Agreement by notice to Grantor and Escrow Agent to that effect. Nothing herein shall be deemed a waiver by Grantor of its right or ability to exercise its power of eminent domain to acquire the Easement after a termination of this Agreement.

### 3.10. Grantor's Remedies.

3.10.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantor are not satisfied, Grantor shall have the right to either waive the condition in question and proceed with the sale of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any amounts deposited into Escrow shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

## ARTICLE 4 CLOSING AND ESCROW

4.1. Deposits into Escrow. Grantee has established an escrow (the "Escrow") with First American Title, 1850 Mt. Diablo Blvd., Suite 530, Walnut Creek, CA 94596. Attn.: Roni Sloan Loftin, telephone: (925) 927-2127 (the "Escrow Agent"). A copy of this Agreement, duly executed by both parties, shall be deposited therein within five (5) business days after the Effective Date. Subject to Section 4.2.2 below, this Agreement shall serve as escrow instructions to Escrow Agent, as escrow holder, for consummation of the purchase and sale contemplated hereby. Prior to or on the Closing Date, the Parties shall deposit the following into the Escrow:

4.1.1 Grantor. Grantor shall deposit the following into Escrow:

(a) The Overhead Electric Easement Deed, fully executed and suitable for recordation;

(b) If required by the Escrow Agent, a FIRPTA Affidavit stating Grantor's U.S. taxpayer identification number and that the Grantor is a "United States person" as defined by Internal Revenue Code sections 1445(f)(3) and 7701(b); and

(c) Such other documents and instruments as may be required by other provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

4.1.2 Grantee. Grantee shall deposit the following into Escrow:

(a) Cash or immediately available funds in the amount of the Purchase Price together with such additional cash in the amount necessary to pay Grantee's share of closing costs and prorations, as hereinafter set forth;

(b) An executed Certificate of Acceptance; and

(c) Such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required by Escrow Agent or otherwise to carry out the term and intent of this Agreement.

4.2. Close of Escrow.

4.2.1 Closing Date. Escrow shall close on or before the thirtieth (30<sup>th</sup>) day following execution of this Agreement by Grantee or upon such other date as is mutually agreed upon by Grantee and Grantor (the "Closing Date").

4.2.2 Closing of Escrow. When the Conditions Precedent listed in Section 3.1 have been satisfied or waived by Grantee and Grantor and Escrow Agent has received all necessary cash and documents and is in a position to issue the Title Policy, as provided in Section 3.1.4, Escrow Agent shall immediately close Escrow as provided below (the "Closing"). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement; provided however, that in the event of any conflict between the provisions of this Agreement and any such further documents or escrow instructions, the terms of this Agreement shall control.

4.2.3 Procedure. Escrow Agent shall close Escrow as follows:

4.2.3.1 Record Deed. Date and record the Overhead Electric Easement Deed in the Official Records of Santa Clara County.

4.2.3.2 Deliver Copies of Deed. Deliver one (1) certified copy of the recorded Deed to Grantee.

4.2.3.3 Pay to Grantor. Pay to Grantor the funds in Escrow equal to the Purchase Price, reduced only by the Grantor's share of closing costs and prorations, as hereinafter set forth in Section 4.2.4 below.

4.2.3.4 Deliver Title Policy. Deliver the Title Policy to Grantee.

4.2.3.5 Closing Statement. Prepare and deliver to Grantee and Grantor one signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

4.2.4 Closing Costs and Prorations.

4.2.4.1 Closing Costs. Grantee and Grantor shall each pay its own attorney's fees in connection with negotiating this Agreement and closing the Escrow. Grantee shall pay recording costs, if any, Escrow fees, the title insurance premium, and any documentary transfer taxes.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1. Grantor's Representations and Warranties. Grantor represents and warrants to Grantee that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

5.1.1 Organization Authority. Miladin Malisic, Trustee of the Malisic Survivor's Trust u/t/a dated June 23, 1983, an undivided fifty percent (50%) interest and Milidan Malisic, Trustee of the Malisic Residual Trust u/t/a dated June 23, 1983, an undivided fifty percent (50%) interest is a Trust, duly organized, validly existing and in good standing under the laws of the State of California and has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Grantor. The individuals executing this Agreement and the instruments referred to herein on behalf of Grantor, have the legal power, rights and actual authority to bind Grantor to the terms and conditions hereof and thereof;

5.1.2 No Violation of Agreement; Litigation. Neither the execution, delivery or performance of this Agreement by Grantor will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Grantor or the Easement is bound. Grantor has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Easement or Grantor's interest therein;

5.1.3 Compliance with Laws. Grantor has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Easement;

5.1.4 Existing Lease. There are no contracts or agreements with respect to the occupancy of the Easement which will be binding upon Grantee after Closing; and

5.1.5 Grantor Not a Foreign Person. Grantor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

## ARTICLE 6 GENERAL PROVISIONS

6.1. Approval of City Council. Grantor and Grantee recognize that as of the execution of this Agreement by Grantor, this Agreement is subject to approval of the City Council of the City of Santa Clara and that this Agreement shall have no force or effect unless and until said City Council's approval has been obtained, but such approval shall be obtained before execution of this Agreement by Grantee.

6.2. Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.3. Entire Agreement. This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.

6.4. Brokers' Fees. Grantor and Grantee each represent and warrant to the other that, there are no brokers' fees or finders' fees arising out of this transaction and each shall indemnify, defend, and hold the other harmless from any claim, loss, cost, damage or expense including, without limitation, attorneys' and experts' fees and costs and court costs arising out of or incurred in connection with any claim by any other broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.

6.5. Attorney's Fees. In the event either party to this Agreement institutes an action to interpret or enforce the terms hereof, or to obtain money damages, the prevailing party, as determined by the court (whether at trial or upon appeal) shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding. In no event shall an attorney's fee award exceed \$5,000, whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions.

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

6.7. Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

6.8. Time. Time is of essence of every provision herein contained in this Agreement.

6.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

6.10. Survival. The terms, covenants and conditions of Articles 5, 6, and 7 shall remain true and correct as of the Closing Date, shall be deemed to be material and shall survive the execution and delivery of this Agreement, the delivery of the Grant Deed, and transfer of title.

6.11. Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:



To Grantor: Milidan Milisic, Trustee  
Attention: Milidan Milisic  
22360 Palm Ave.  
Cupertino, CA 95014  
Telephone: 408-217-9599

To Grantee: City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Manager  
Telephone: 408-615-2210

With a copy to: City of Santa Clara City Attorney's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Attorney  
Telephone: (408) 615-2230

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery. The foregoing addresses may be changed by notice to the other party as herein provided.

IN WITNESS WHEREOF, the parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written ("Effective Date").

**GRANTOR**

Miladin Malisic, Trustee

By: Miladin Malisic By: \_\_\_\_\_

**GRANTEE**

City of Santa Clara,  
a municipal corporation

Title: Trustee

Date: 10-16-2010

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

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

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

## EXHIBIT A

### (Description of Easement)

SVP REF: SC 19-308

## **EXHIBIT "A"**

POWERLINE EASEMENT ACROSS:  
MALISIC SURVIVOR'S LIVING TRUST  
and MALISIC RESIDUAL TRUST  
1515 WALSH AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-57-003  
NEW EASEMENT AREA: 1,536 SQ. FT. ±



### **DESCRIPTION:**

A portion of the parcels of land conveyed in that certain Quit Claim Deed recorded August 28, 2015 as Document No. 23066239, in the Office of the Recorder of the County of Santa Clara (ORCSC), herein after known as the Grantor's Parcel, being a portion of that 1.615 acre net parcel and 0.768 acre net parcel as shown on Record of Survey filed May 28, 1962 in Book 147 of Maps, page 21, ORCSC, located in the City of Santa Clara, County of Santa Clara, State of California, and described as follows:

**COMMENCING** at a monument located at the centerline intersection of Walsh Avenue and Lafayette Street; thence North 89°08'31" West 1655.05 feet along said centerline of Walsh Avenue to a Centerline Monument at a point of curvature in Walsh Avenue (as shown on Page 2); thence North 00°51'29" East 42.00 feet to the southeast corner of said Grantor's Parcel and the **POINT OF BEGINNING**; thence North 01°13'53" East 18.00 feet along the east line of said Grantor's Parcel; thence North 89°08'30" West 60.00 feet; thence South 64°14'12" West 36.41 feet; thence South 30°10'55" West 7.00 feet to the northerly right-of-way line of said Walsh Avenue and the beginning of a non-tangent curve concave southerly, having a radius of 1,042.00 feet; thence easterly 96.00 feet along said curved right-of-way through a central angle of 05°16'43" (chord bears North 88°13'08" East 95.96 feet) to the **POINT OF BEGINNING**.

Containing 1,536 square feet, more or less.

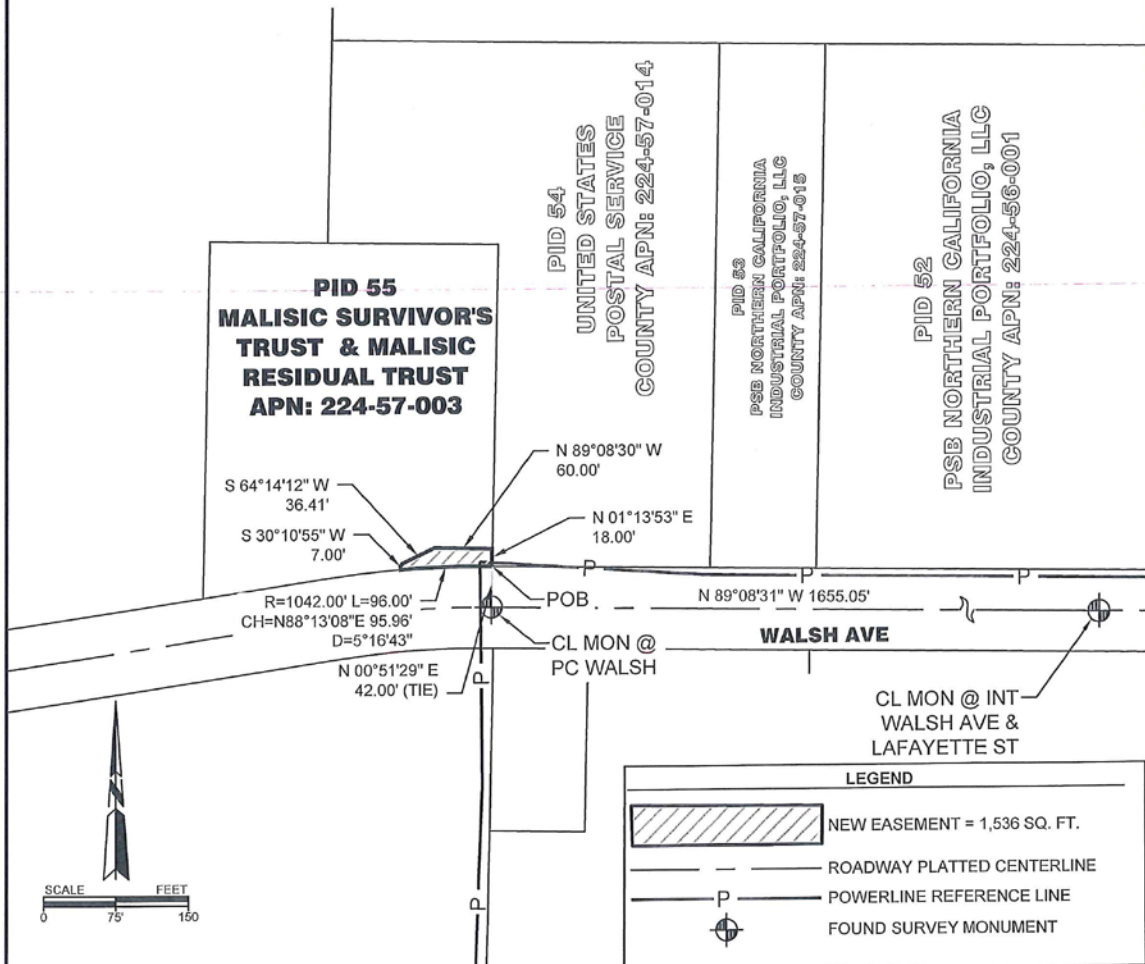


REV: 1	DATE: 5/20/2020	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
		MALISIC SURVIVOR'S TRUST and MALISIC RESIDUAL TRUST 1515 WALSH AVENUE SANTA CLARA, CALIFORNIA 95050 APN: 224-57-003		 SHEET: 1 OF 2	

# EXHIBIT "A"

SVP REF: SC 19-308

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REV: 1 DATE: 5/20/2020

SCALE: 1" = 150'

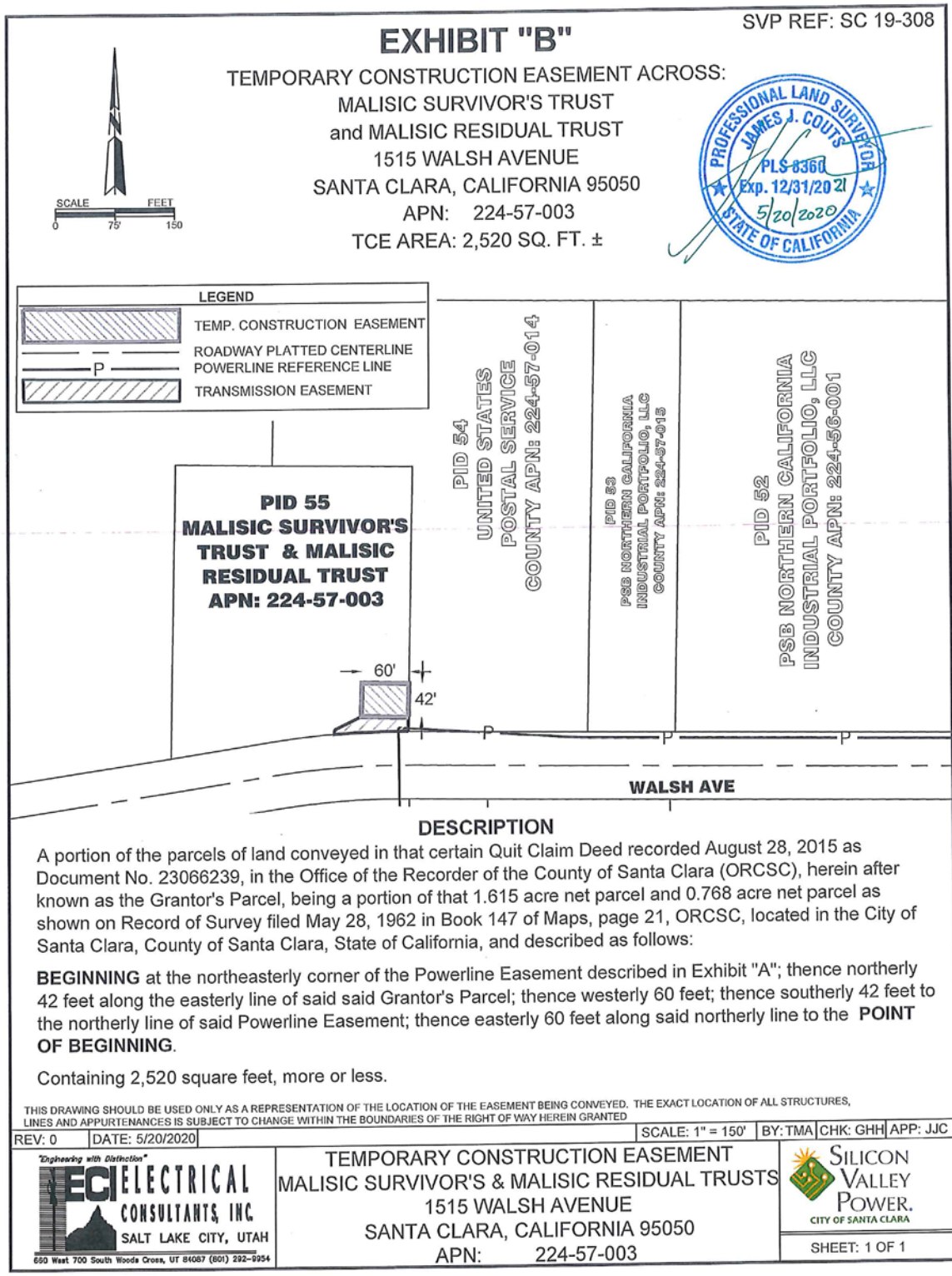
BY: TMA CHK: GHJ APP: JJC

**ECI ELECTRICAL**  
CONSULTANTS, INC.  
SALT LAKE CITY, UTAH  
650 West 700 South Woods Creek, UT 84087 (801) 292-9934

MALISIC SURVIVOR'S TRUST  
and MALISIC RESIDUAL TRUST  
1515 WALSH AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-57-003



SHEET: 2 OF 2



## EXHIBIT B

### (Overhead Electric Easement Deed)

**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

APN: 224-57-003

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

## OVERHEAD ELECTRIC EASEMENT DEED

**1515 Walsh Avenue  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, **Miladin Malisic, Trustee of The Malisic Survivor's Trust u/t/a/ dated June 23, 1983, an undivided fifty percent (50%) interest and Miladin Malisic, Trustee of The Malisic Residual Trust u/t/a/ dated June 23, 1983, an undivided fifty percent (50%) interest** (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after

Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

IN WITNESS WHEREOF, said grantor has hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**Miladin Malisic, Trustee**

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

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

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

APPROVED FOR FORM:

\_\_\_\_\_  
Brian Doyle  
City Attorney

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.  
**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

## CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by Overhead Electric Utility Deed dated the \_\_\_\_ of \_\_\_\_\_ 2020, from **Miladin Malisic, Trustee of The Malisic Survivor's Trust u/t/a/ dated June 23, 1983, an undivided fifty percent (50%) interest and Miladin Malisic, Trustee of The Malisic Residual Trust u/t/a/ dated June 23, 1983, an undivided fifty percent (50%) interest** (Grantor) to the City of Santa Clara, California, a chartered California municipal corporation (City), is hereby accepted by the undersigned officer on behalf of the City Council of the City pursuant to authority conferred by Resolution No. 5600 of the City Council of the City of Santa Clara adopted on the 28 day of May, 1991, and the Resolution Approving Purchase of Overhead Electric Easement, Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2020. The City, as Grantee, consents to recordation by its duly authorized officer, the City Clerk of the City of Santa Clara.

Re:    APN 224-57-003

Dated: This \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
City of Santa Clara

APPROVED AS TO FORM:

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

ATTEST: \_\_\_\_\_  
NORA PIMENTEL, MMC  
Assistant City Clerk



## Exhibit A

SVP REF: SC 19-308

### EXHIBIT "A"

POWERLINE EASEMENT ACROSS:  
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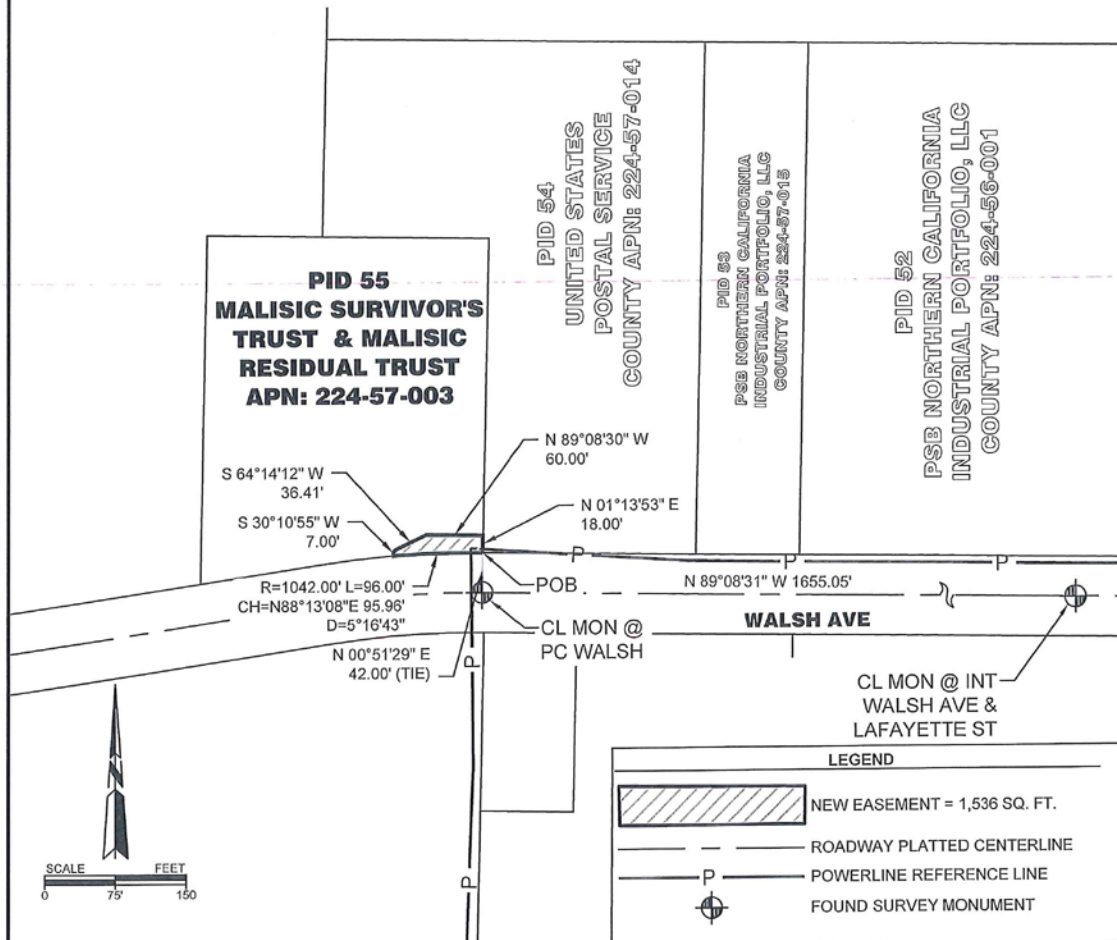


REV: 1	DATE: 5/20/2020	SCALE: N/A	BY: TMA	CHK: GHJ	APP: JJC
		MALISIC SURVIVOR'S TRUST and MALISIC RESIDUAL TRUST 1515 WALSH AVENUE SANTA CLARA, CALIFORNIA 95050 APN: 224-57-003		 SHEET: 1 OF 2	

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BY: TMA | CHK: GHJ | APP: JJC

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660 West 700 South Woods Cross, UT 84087 (801) 292-9954

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SHEET: 2 OF 2

**AGREEMENT FOR PURCHASE AND SALE  
(UTILITY EASEMENT)**

THIS AGREEMENT FOR PURCHASE AND SALE ("**Agreement**") is made and entered into as of \_\_\_\_\_, 2020 (the "**Effective Date**") by and between CITY OF SANTA CLARA ("Grantee" or "City") and JUN FOO WONG BYPASS TRUST, AS CREATED BY THE J&S WONG FAMILY LIFE ESTATE TRUST, DATED 2/4/2000 AS TO AN UNDIVIDED 43.7% INTEREST; WITH KING WAN WONG AS TRUSTEE AND ANY SUCCESSOR TRUSTEE HAVING POWER TO CONVEY TITLE; AND JUN FOO WONG QTIP TRUST, AS CREATED BY THE J&S WONG FAMILY LIFE ESTATE TRUST, DATED 2/4/2000 AS TO AN UNDIVIDED 11.3% INTEREST WITH KING WAN WONG AS TRUSTEE AND ANY SUCCESSOR TRUSTEE HAVING POWER TO CONVEY TITLE; AND KING W. WONG AND BEVERLY G. WONG, HUSBAND AND WIFE AS COMMUNITY PROPERTY AS TO AN UNDIVIDED 45% INTEREST ("Grantor) with regard to the purchase and sale of certain property interests, upon the terms and conditions set forth herein.

**RECITALS**

**WHEREAS**, The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), plans to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project ("Project") is accommodated to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

**WHEREAS**, Grantee wishes to acquire from Grantor, and Grantor wishes to sell to Grantee certain property rights, as more particularly described in **Exhibit A** (the "Easement") for the Project upon the terms and conditions set forth herein.

**WHEREAS**, Grantor and Grantee recognize that the sale of the Easement is subject to approval of the Santa Clara City Council and that this Agreement shall have no force or effect unless and until said City Council approval has been obtained, which approval shall be obtained before execution of the Agreement by Grantee.

**NOW THEREFORE**, in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

**ARTICLE 1  
PURCHASE**

1.1. The Easement. Grantor is the fee owner of certain real property commonly known as 2495 Lafayette Street, APN: 224-35-019 located in the City of Santa Clara, California over which the Easement will cross.

1.2. Sale and Conveyance. Grantor shall sell to Grantee and Grantee shall purchase from Grantor, all of the terms and conditions set forth in Articles 2 and 3 hereof, the Easement.

## ARTICLE 2 PURCHASE PRICE

2.1. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be Eighty Five Thousand Seven Hundred Fifty and no/100 Dollars (\$85,750.00).

2.2. Payment of Purchase Price. The purchase price shall be payable all in cash upon close of Escrow (as defined below) in accordance with Section 4.2.

## ARTICLE 3 CONDITIONS TO PURCHASE AND SALE

3.1. Conditions Precedent to Purchase and Sale. The obligation of Grantee to purchase and Grantor to sell the Easement is expressly conditioned upon the satisfaction, prior to closing, of each of the conditions set forth in this Section 3.1 (the "Conditions Precedent").

3.2. Title. Grantee has obtained a preliminary title report dated September 17, 2020, from First American Title Company (the "Title Report"). Grantee acknowledges and agrees that all exceptions are approved by Grantee (the "Approved Exceptions").

3.3. Execution of Overhead Electric Easement Deed. Grantor shall be ready, willing and able to convey title to the Easement by Overhead Electric Easement Deed to Grantee in the form of **Exhibit B** attached hereto (the "Easement Deed") subject only to the Approved Exceptions.

3.4. Deposit of Grant Deed. Grantor shall have deposited into Escrow (as defined below) the Overhead Electric Easement Deed as provided for in Section 4.1.1, conveying title to the Easement (subject to the Approved Exceptions) to the Grantee.

3.5. Title Insurance. The Title Company shall be prepared to issue an ALTA Standard Owner Policy of Title Insurance in the amount of the purchase price insuring title to the Easement vested in Grantee subject only to the Approved Exceptions (the "Title Policy").

3.6. Certificate of Acceptance. Grantee has obtained a resolution of the City Council of the City of Santa Clara authorizing recordation of the Overhead Electric Easement Deed and has deposited a properly executed Certificate of Acceptance into Escrow.

3.7. No Breach. There shall be no material breach of any of Grantor's representations, warranties, or covenants set forth in Article 5.

3.8. Documentary Deposit. Grantor and Grantee shall have each deposited into Escrow all materials required to be deposited under Article 4.

3.9. Grantee's Remedies.

3.9.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantee are not satisfied, Grantee shall have the right either to waive the condition in question and proceed with the purchase of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any money deposited into Escrow by Grantee shall be returned to Grantee, and thereafter neither

party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.9.2 Default. If Grantor fails to perform any of its obligations or is otherwise in default under this Agreement, Grantee shall have the right to give notice to Grantor specifically setting forth the nature of said failure and stating that Grantor shall have a period of ten (10) calendar days to cure such failure. If Grantor has not cured such failure within such period (or, if such failure is not capable of being cured within ten (10) calendar days, Grantor either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Closing Date, as may be extended under the terms of this Agreement), Grantee's sole and exclusive remedy shall be one of the following:

(a) Waiver. Waive such failure and proceed to the Closing pursuant to all of the other terms of this Agreement; or

(b) Terminate. Grantee may terminate this Agreement by notice to Grantor and Escrow Agent to that effect. Nothing herein shall be deemed a waiver by Grantor of its right or ability to exercise its power of eminent domain to acquire the Easement after a termination of this Agreement.

### 3.10. Grantor's Remedies.

3.10.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantor are not satisfied, Grantor shall have the right to either waive the condition in question and proceed with the sale of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any amounts deposited into Escrow shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

## ARTICLE 4 CLOSING AND ESCROW

4.1. Deposits into Escrow. Grantee has established an escrow (the "Escrow") with First American Title, 1850 Mt. Diablo Blvd., Suite 530, Walnut Creek, CA 94596. Attn.: Roni Sloan Loftin, telephone: (925) 927-2127 (the "Escrow Agent"). A copy of this Agreement, duly executed by both parties, shall be deposited therein within five (5) business days after the Effective Date. Subject to Section 4.2.2 below, this Agreement shall serve as escrow instructions to Escrow Agent, as escrow holder, for consummation of the purchase and sale contemplated hereby. Prior to or on the Closing Date, the Parties shall deposit the following into the Escrow:

4.1.1 Grantor. Grantor shall deposit the following into Escrow:

(a) The Overhead Electric Easement Deed, fully executed and suitable for recordation;

(b) If required by the Escrow Agent, a FIRPTA Affidavit stating Grantor's U.S. taxpayer identification number and that the Grantor is a "United States person" as defined by Internal Revenue Code sections 1445(f)(3) and 7701(b); and

(c) Such other documents and instruments as may be required by other provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

4.1.2 Grantee. Grantee shall deposit the following into Escrow:

(a) Cash or immediately available funds in the amount of the Purchase Price together with such additional cash in the amount necessary to pay Grantee's share of closing costs and prorations, as hereinafter set forth;

(b) An executed Certificate of Acceptance; and

(c) Such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required by Escrow Agent or otherwise to carry out the term and intent of this Agreement.

4.2. Close of Escrow.

4.2.1 Closing Date. Escrow shall close on or before the thirtieth (30<sup>th</sup>) day following execution of this Agreement by Grantee or upon such other date as is mutually agreed upon by Grantee and Grantor (the "Closing Date").

4.2.2 Closing of Escrow. When the Conditions Precedent listed in Section 3.1 have been satisfied or waived by Grantee and Grantor and Escrow Agent has received all necessary cash and documents and is in a position to issue the Title Policy, as provided in Section 3.1.4, Escrow Agent shall immediately close Escrow as provided below (the "Closing"). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement; provided however, that in the event of any conflict between the provisions of this Agreement and any such further documents or escrow instructions, the terms of this Agreement shall control.

4.2.3 Procedure. Escrow Agent shall close Escrow as follows:

4.2.3.1 Record Deed. Date and record the Overhead Electric Easement Deed in the Official Records of Santa Clara County.

4.2.3.2 Deliver Copies of Deed. Deliver one (1) certified copy of the recorded Deed to Grantee.

4.2.3.3 Pay to Grantor. Pay to Grantor the funds in Escrow equal to the Purchase Price, reduced only by the Grantor's share of closing costs and prorations, as hereinafter set forth in Section 4.2.4 below.

4.2.3.4 Deliver Title Policy. Deliver the Title Policy to Grantee.

4.2.3.5 Closing Statement. Prepare and deliver to Grantee and Grantor one signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

4.2.4 Closing Costs and Prorations.

4.2.4.1 Closing Costs. Grantee and Grantor shall each pay its own attorney's fees in connection with negotiating this Agreement and closing the Escrow. Grantee shall pay recording costs, if any, Escrow fees, the title insurance premium, and any documentary transfer taxes.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1. Grantor's Representations and Warranties. Grantor represents and warrants to Grantee that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

5.1.1 Organization Authority. JUN FOO WONG BYPASS TRUST, AS CREATED BY THE J&S WONG FAMILY LIFE ESTATE TRUST, DATED 2/4/2000 AS TO AN UNDIVIDED 43.7% INTEREST; WITH KING WAN WONG AS TRUSTEE AND ANY SUCCESSOR TRUSTEE HAVING POWER TO CONVEY TITLE; AND JUN FOO WONG QTIP TRUST, AS CREATED BY THE J&S WONG FAMILY LIFE ESTATE TRUST, DATED 2/4/2000 AS TO AN UNDIVIDED 11.3% INTEREST WITH KING WAN WONG AS TRUSTEE AND ANY SUCCESSOR TRUSTEE HAVING POWER TO CONVEY TITLE; AND KING W. WONG AND BEVERLY G. WONG, HUSBAND AND WIFE AS COMMUNITY PROPERTY AS TO AN UNDIVIDED 45% INTEREST is a Trust, duly organized, validly existing and in good standing under the laws of the State of California and has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Grantor. The individuals executing this Agreement and the instruments referred to herein on behalf of Grantor, have the legal power, rights and actual authority to bind Grantor to the terms and conditions hereof and thereof;

5.1.2 No Violation of Agreement; Litigation. Neither the execution, delivery or performance of this Agreement by Grantor will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Grantor or the Easement is bound. Grantor has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Easement or Grantor's interest therein;

5.1.3 Compliance with Laws. Grantor has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Easement;

5.1.4 Existing Lease. There are no contracts or agreements with respect to the occupancy of the Easement which will be binding upon Grantee after Closing; and

5.1.5 Grantor Not a Foreign Person. Grantor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

## ARTICLE 6 GENERAL PROVISIONS

6.1. Approval of City Council. Grantor and Grantee recognize that as of the execution of this Agreement by Grantor, this Agreement is subject to approval of the City Council of the City of Santa Clara and that this Agreement shall have no force or effect unless and until said City Council's approval has been obtained, but such approval shall be obtained before execution of this Agreement by Grantee.

6.2. Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.3. Entire Agreement. This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.

6.4. Brokers' Fees. Grantor and Grantee each represent and warrant to the other that, there are no brokers' fees or finders' fees arising out of this transaction and each shall indemnify, defend, and hold the other harmless from any claim, loss, cost, damage or expense including, without limitation, attorneys' and experts' fees and costs and court costs arising out of or incurred in connection with any claim by any other broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.

6.5. Attorney's Fees. In the event either party to this Agreement institutes an action to interpret or enforce the terms hereof, or to obtain money damages, the prevailing party, as determined by the court (whether at trial or upon appeal) shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding. In no event shall an attorney's fee award exceed \$5,000, whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions.

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

6.7. Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

6.8. Time. Time is of essence of every provision herein contained in this Agreement.

6.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

6.10. Survival. The terms, covenants and conditions of Articles 5, 6, and 7 shall remain true and correct as of the Closing Date, shall be deemed to be material and shall survive



the execution and delivery of this Agreement, the delivery of the Grant Deed, and transfer of title.

6.11. Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Grantor: King Wan Wong, Trustee  
Attention: King Wong  
1025 Windjammer Cir  
Foster City, CA 94404  
Telephone: 650-341-5953

To Grantee: City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Manager  
Telephone: 408-615-2210

With a copy to: City of Santa Clara City Attorney's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Attorney  
Telephone: (408) 615-2230

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery. The foregoing addresses may be changed by notice to the other party as herein provided.

IN WITNESS WHEREOF, the parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written ("Effective Date").

**GRANTOR**

King Wan Wong, Trustee

**GRANTEE**

City of Santa Clara,  
a municipal corporation

By: King Wong

Title: Trustee

Date: 10-29-2020

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

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

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

**GRANTOR**

King W. Wong

**APPROVED AS TO FORM**

By: King Wong

Date: 10-29-2020

\_\_\_\_\_  
City Attorney

**GRANTOR**

Beverly G. Wong

By: BWong

Date: 10-29-2020

## EXHIBIT A

### (Description of Easement)

SVP REF: SC 19-186

### EXHIBIT "A"

POWERLINE EASEMENT ACROSS:  
JUN FOO WONG BYPASS TRUST  
2495 LAFAYETTE STREET  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-35-019  
EASEMENT AREA: 2,956 SQ. FT. ±

#### DESCRIPTION:



A portion of Parcel 1 of that certain Parcel Map filed for Record in the Office of the Recorder of Santa Clara County, State of California on August 1, 1995 in Book 668 of Maps at Pages 11 and 12, located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

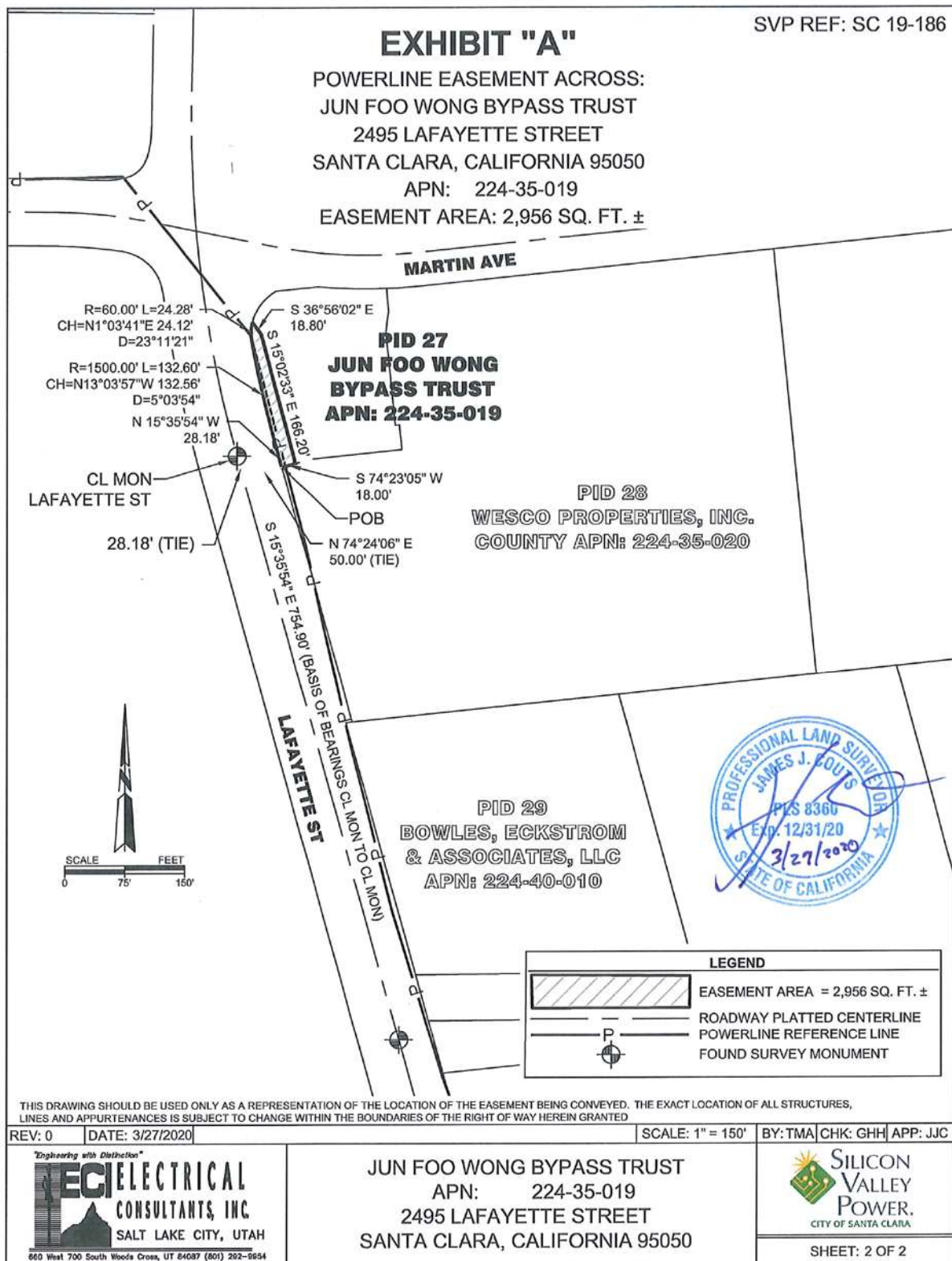
**COMMENCING** at a Centerline Monument in Lafayette Street (as shown on Page 2 of this Exhibit); thence South 15°35'54" East 28.18 feet along the centerline; thence North 74°24'06" East 50.00 feet to the southwesterly corner said Parcel 1 and the **POINT OF BEGINNING**; thence along the westerly right-of-way line of said Lafayette Street the following three (3) courses: 1) North 15°35'54" West 28.18 feet to the beginning of a curve concave easterly, having a radius of 1500 feet; 2) northerly 132.60 feet along said curved right-of-way through a central angle of 05°03'54" (chord bears North 13°03'57" West 132.56 feet) to the beginning of a compound curve concave southeasterly having a radius of 60.00 feet; 3) northerly 24.28 feet along said curved right-of-way through a central angle of 23°11'21" (chord bears North 01°03'41" East 24.12 feet); thence South 36°56'02" East 18.80 feet; thence South 15°02'33" East 166.20 feet to the southerly line of said Parcel 1; thence South 74°23'05" West 18.00 feet along said southerly line to the **POINT OF BEGINNING**.

Containing 2,956 square feet, more or less.

EXHIBIT A PAGE 2 by this reference made a part hereof.



REV: 0	DATE: 3/27/20	SCALE: N/A	BY: TMA   CHK: GHJ   APP: JJC
	JUN FOO WONG BYPASS TRUST APN: 224-35-019 2495 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95050		SHEET: 1 OF 2



**EXHIBIT B**

**(Overhead Electric Easement Deed)**

**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

APN: 224-35-019

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

**OVERHEAD ELECTRIC EASEMENT DEED**

**2495 Lafayette Street  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, **Jun Foo Wong Bypass Trust, as created by the J&S Wong Family Life Estate Trust, dated 2/24/2000 as to an undivided 43.7% interest; with King Wan Wong as Trustee and any successor Trustee having power to convey title; and Jun Foo Wong QTIP Trust, as created by the J&S Wong Family Life Estate Trust, dated 2/24/2000 as to an undivided 11.3% interest with King Wan Wong as Trustee and any successor Trustee having power to convey title; and King W. Wong and Beverly G. Wong, husband and wife as community property as to an undivided 45% interest** (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

IN WITNESS WHEREOF, said grantor has hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

King Wan Wong, Trustee

\_\_\_\_\_

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

APPROVED FOR FORM:

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

\_\_\_\_\_  
Brian Doyle  
City Attorney

King W Wong

\_\_\_\_\_

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

\_\_\_\_Beverly G. Wong

\_\_\_\_\_

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

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

## CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by Overhead Electric Utility Deed dated the \_\_\_\_ of \_\_\_\_\_ 2020, from [**Name of grantor**] (Grantor) to the City of Santa Clara, California, a chartered California municipal corporation (City), is hereby accepted by the undersigned officer on behalf of the City Council of the City pursuant to authority conferred by Resolution No. 5600 of the City Council of the City of Santa Clara adopted on the 28 day of May, 1991, and the Resolution Approving Purchase of Overhead Electric Easement, Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2020. The City, as Grantee, consents to recordation by its duly authorized officer, the City Clerk of the City of Santa Clara.

Re: APN 224-35-019

Dated: This \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
City of Santa Clara

APPROVED AS TO FORM:

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

ATTEST: \_\_\_\_\_  
NORA PIMENTEL, MMC  
Assistant City Clerk



## Exhibit A

SVP REF: SC 19-186

### **EXHIBIT "A"**

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JUN FOO WONG BYPASS TRUST  
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#### **DESCRIPTION:**



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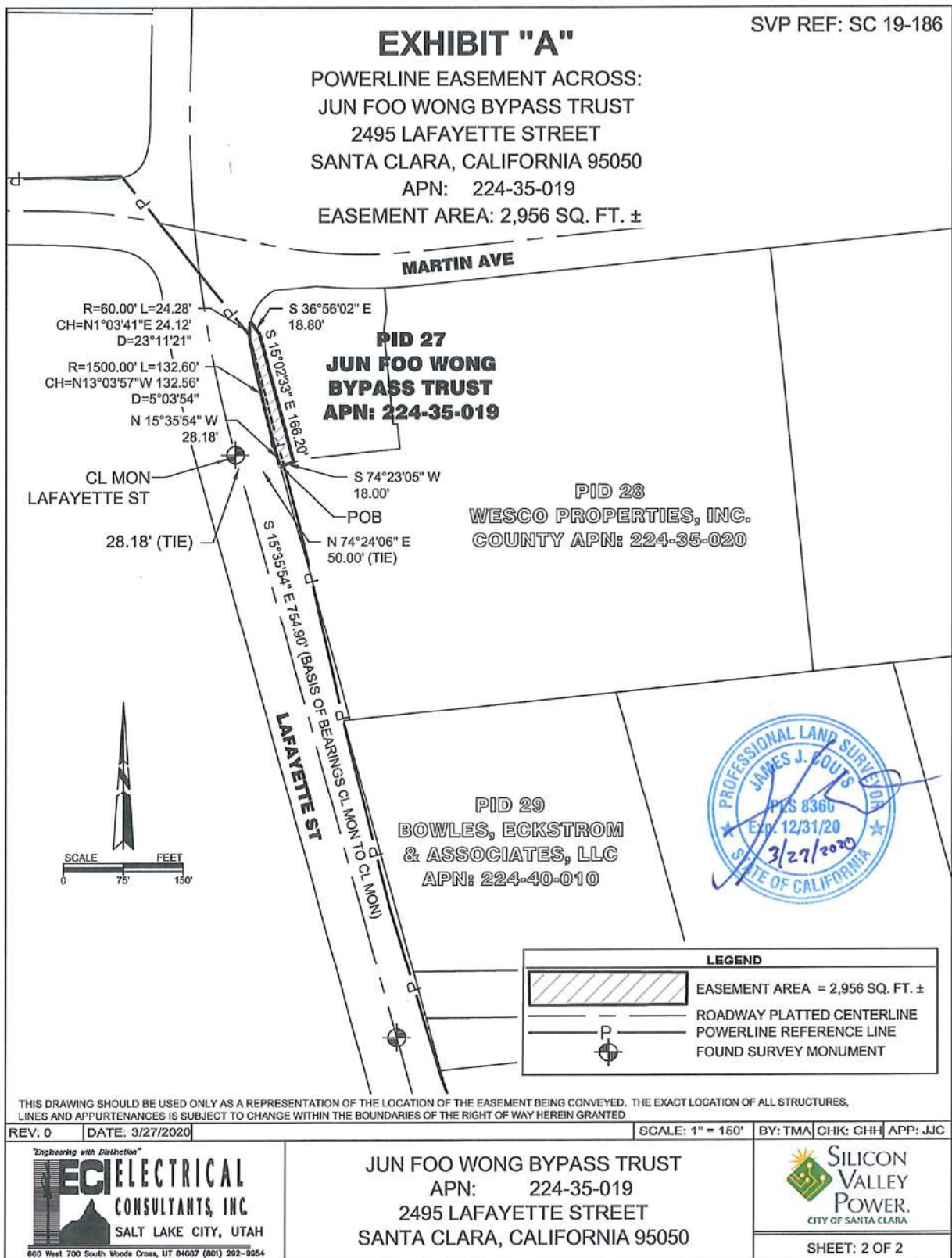
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REV: 0	DATE: 3/27/20	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
		JUN FOO WONG BYPASS TRUST APN: 224-35-019 2495 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95050		 SHEET: 1 OF 2	





## Agenda Report

20-963

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on Monthly Financial Status and Investment Reports for September 2020 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 September 2020 investment report and FY 2020/21 budget amendments are submitted for your information.

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 performance as of September 30, 2020. Financial analysis for the report is provided for the General Fund, select Special Revenue Funds, Enterprise Operating Funds, and Capital Improvement Program Funds.

Attachment 1 shows that General Fund revenues were trending below the budget at 10.6% through September 2020. Some revenue categories are lower due to the timing of payments (e.g., property tax), but many categories are tracking below as a result of COVID-19 impacts. While there is limited data available, revenue is expected to end the year below budget due to these COVID-19 impacts.

As shown in Attachment 1, General Fund departmental expenditures were at 21.9% of budget through September 30, 2020. Several cost-control measures that were implemented last fiscal year remain in place to generate expenditure savings to partially offset the drop in revenues associated with COVID-19. These measures include a hiring freeze and controls around overtime, as-needed staff, marketing, travel, technology and vehicle purchases. Expenditure savings are expected by year-end. The City offices that tracked higher expenditures include the City Attorney, Assistant City Clerk, and City Manager. These higher expenditures are related to:

- **Assistant City Clerk** - In August, a \$96,000 payment was made for Granicus. This payment happens every other year, so the variance appears as higher expenditure trend when

compared to last year.

- **City Attorney** - Salaries and Benefits were higher due to the Council approved an additional position; thus, expenditures trending higher when compared to the prior year.
- **City Manager's Office** - Council approved the use of various funding categories in this Office to support the Small Business Assistance Grants, which reflects in this expenditure report. As these expenditures did not occur last year, they cause for a higher expenditure trend rate when compared to last year's trend.

Total revenues for Enterprise Funds (Electric, Water, Sewer, Cemetery, Solid Waste, and Water Recycling) were at 17.9% of the budget. Total Enterprise Fund expenses were at 18.9% through September. Total revenue for Special Revenue Funds (Housing funds) were at 8.5% of the budget, while total expenditures were at 4.8% of budget.

In the month of September, the City received donations of \$14,465, bringing the year-to-date total to \$46,302. A summary of donations is included in Attachment 1.

With the shelter-in-place and other actions residents and businesses have been taking to reduce the spread of COVID-19, economic activity in this region and throughout the country has experienced a significant decline. This is evidenced in various economic indicators, some of which have improved in recent months. On a national level, the unemployment rate remains high at 7.9% in September 2020. This rate, however, was well below the record setting high of 14.7% in April 2020. The drop brings the unemployment rate below the peak of the last recession a decade ago, when unemployment briefly hit 10 percent. In the second quarter 2020, the Gross Domestic Product (GDP) declined by almost 32% as a result of the COVID-19 safety precautions. This is the largest contraction ever experienced, pushing the economy into a recession.

The unemployment rate in this region continues to outperform the nation. The unadjusted unemployment rate in the San José-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) was 7.1% in September 2020, down from a revised 7.3% in August 2020 but significantly higher than the September 2019 level of 2.3%.

Santa Clara's General Fund revenues have been significantly impacted by COVID-19 and this impact is expected to continue over the longer term based on the current economic situation. In FY 2020/21, a General Fund shortfall of almost \$23 million was addressed in the revised FY 2020/21 budget approved in June 2020. This budget was solved with the use of the Budget Stabilization Reserve. Further discussion of the COVID-19 impacts and the General Fund deficit is included in Attachment 1. Additional downward revenue adjustments and budget balancing actions are expected to be brought forward during FY 2020/21.

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

All securities held by the City of Santa Clara as of September 30, 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 September 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 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 1.62%.

### **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**

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 detailed in Attachment 3, net-zero actions are recommended in the General Fund to support housing-related items. Technical adjustments are recommended in the General Fund, the Expendable Trust Fund and the Related Santa Clara Developer Fund to correctly account for the consolidation of Related Santa Clara expenses into a central location. In the Engineering Operating Grant Trust Fund and Police Operating Grant Trust Fund, amendments to recognize and appropriate grant revenue are also included. In the Unemployment Insurance Fund, actions are recommended to increase the funding for unemployment insurance claims, partially offset by Coronavirus Aid, Relief, and Economic Security (CARES) Act funding, to address the higher actual unemployment insurance claims due to COVID-19 impacts. In the capital funds, amendments are recommended to increase the affordable housing impact fee revenue estimate in the City Affordable Housing Capital Fund and to recognize and appropriate funding for two new projects in the Electric Utility Capital Fund.

<b>Net Budget Change – FY 2020/21 Budget Amendments</b>		
<b>Fund</b>	<b>Source of Funds</b>	<b>Use of Funds</b>
General Fund	\$0	\$0
Expendable Trust Fund	\$0	\$0
Engineering Operating Grant Trust Fund	\$7,000	\$7,000
Police Operating Grant Trust Fund	\$1,500	\$1,500
Unemployment Insurance Fund	304,000	304,000
City Affordable Housing Capital Fund	\$131,000	\$131,000
Electric Utility Capital Fund	\$1,100,000	\$1,100,000
Related Santa Clara Developer Fund	(\$8,523)	(\$8,523)
<b>Total Net Budget Change</b>	<b>\$1,534,977</b>	<b>\$1,534,977</b>

### **COORDINATION**

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

### **PUBLIC CONTACT**

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



**RECOMMENDATION**

Note and file the Monthly Financial Status and Investment Reports for September 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 September 2020
2. Monthly Investment Report September 2020
3. FY 2020/21 Budget Amendments



# **City of Santa Clara**

The Center of What's Possible

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## **MONTHLY FINANCIAL STATUS REPORT**

**September 2020**

This report summarizes the City's financial performance for the month ended September 30, 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 and businesses of the City. The adopted budget for operating revenues and expenditures for fiscal year 2020/21 was \$286.9 million. The amended budget for revenues and expenditures was amended to \$292.8 million to reflect carryover appropriations from fiscal year 2019/20 and various budget amendments approved by the City Council through September 2020.

While it is very early in the fiscal year, General Fund revenues are currently expected to end the year below budget due to the COVID-19 impacts. When the FY 2020/21 budget was adopted, there was limited data regarding the COVID-19 impacts and significant uncertainty regarding the length and depth of the associated shutdowns. The budget did assume reductions in various categories to account for the anticipated COVID-19 impacts, with the largest reductions in the transient occupancy tax and sales tax categories. With a few months of additional data and the continued implementation of COVID-19 safety precautions, further downward adjustments are expected to be brought forward.

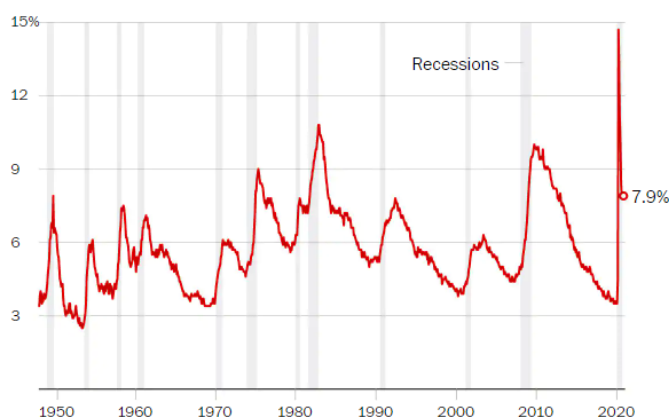
The lower collection level is expected to be partially offset by General Fund expenditure savings. Through September, departmental expenditures are tracking below budget and this trend is expected to continue as departments continue to control expenditures through various cost control measures. Some departments have also significantly changed their operations to comply with the COVID-19 safety measures.

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. This is evidenced in various economic indicators, some of which continue to improve.

On a national level, the unemployment rate remains high at 7.9% in September 2020. This rate, however, was well below the record setting high of 14.7% in April 2020 and lower than the August 2020 rate of 8.4%. In September, the number of unemployed persons fell by 1.0 million to 12.6 million.

While both measures have improved for five consecutive months, they remain more than double the pre-COVID levels experienced in February 2020 in which the unemployment rate was 3.5% and the number of unemployed totaled

Unemployment rate



Source: Bureau of Labor Statistics, via St. Louis Fed

THE WASHINGTON POST

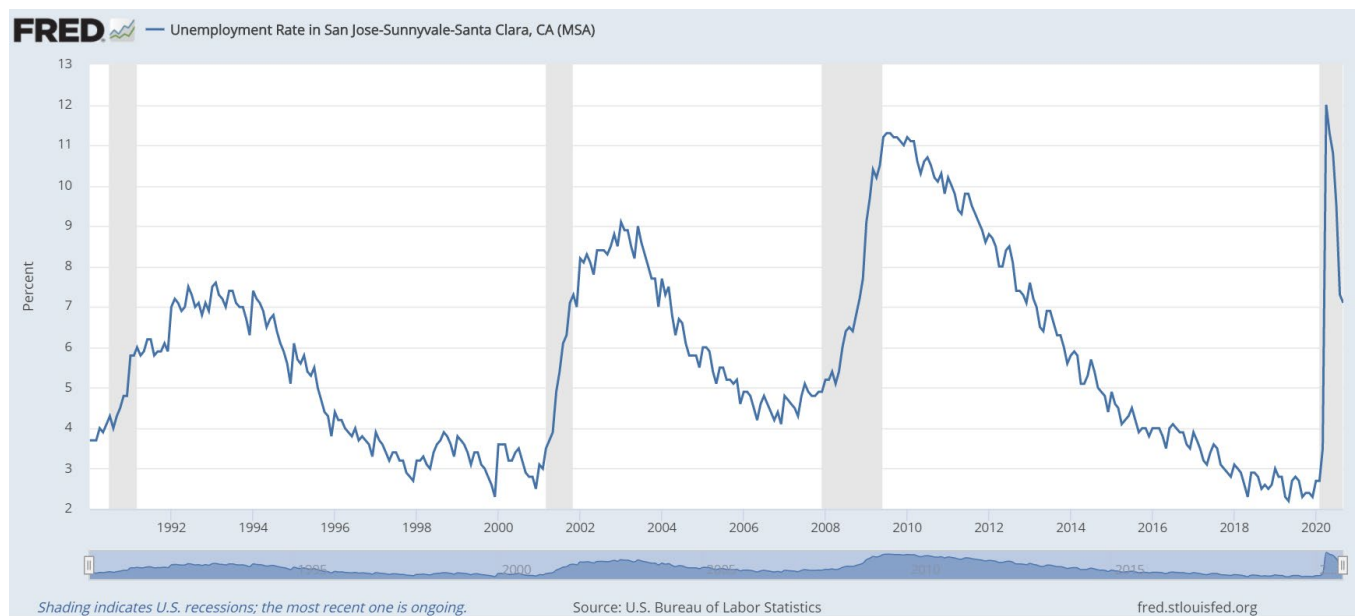


5.8 million.<sup>1</sup>

In the second quarter 2020, the Gross Domestic Product (GDP) declined by almost 32% as a result of the COVID-19 safety precautions. This is the largest contraction ever experienced, pushing the economy into a recession. The recovery will depend on the capacity of the county to control the pandemic and avoid more waves of infection.<sup>2</sup>

Significant impacts have also been experienced at the State and local level. After the State's largest increase in the unemployment rate in April 2020, the California unemployment rate has continued to improve to 11% by September 2020. This marks the first month since March 2020 that California's unemployment rate was lower than the 12.3% mark set during the height of the Great Recession.<sup>3</sup> The unadjusted unemployment rate in the San José-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) was 7.1% in September 2020, down from a revised 7.3% in August 2020 but significantly higher than the September 2019 level of 2.3%. Between September 2019 and September 2020, employment in this region dropped by 84,400 jobs, or 7.3%.<sup>4</sup>

### Unemployment Rate in San José-Sunnyvale—Santa Clara, CA MSA



Santa Clara's General Fund revenues have been significantly impacted and this impact is expected to continue over the longer term based on the current economic situation. In FY 2020/21, a General Fund shortfall of almost \$23 million was addressed in the revised FY 2020/21 budget approved in June 2020.

<sup>1</sup> <https://www.bls.gov/news.release/pdf/empsit.pdf>

<sup>2</sup> <https://tradingeconomics.com/united-states/gdp-growth>

<sup>3</sup> <https://edd.ca.gov/Newsroom/unemployment-september-2020.htm>

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

This budget was solved with the use of the Budget Stabilization Reserve. Additional downward revenue adjustments and budget balancing actions are expected to be brought forward during the year.

The City currently has \$57 million in the Budget Stabilization Reserve to address any negative balance after factoring in the use of \$22.7 million of this reserve in the FY 2020/21 budget. Staff will closely monitor the City's financial performance during this uncertain time and provide updates as part of future Monthly Financial Reports. There are other General Fund Reserves that amount to \$46 million, but these reserves are designated for specific purposes. These reserves can be used by an act of Council.

## Financial Status Report as of September 30, 2020

## General Fund Revenues

As of September 30, 2020, \$25.8 million or 10.6% of the General Fund estimated revenue (excluding transfers) was received. Transfers and use of reserves of \$47.5 million have occurred as budgeted.

**CITY OF SANTA CLARA  
GENERAL FUND  
REVENUES OVERVIEW AND COMPARISON BY TYPE**

Function	FISCAL YEAR 2020/21				PY REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 9/30/2020	Percentage Received	Actual Through 9/30/2019	\$ Change From Prior Year	Percentage Change
<b>TAXES</b>							
Sales Tax	\$ 55,600,000	\$ 55,600,000	\$ 5,034,322	9.05%	\$ 4,813,422	\$ 220,900	4.59%
Property Tax	66,982,000	66,982,000	178,531	0.27%	108,562	69,969	64.45%
Transient Occupancy Tax	17,625,000	17,625,000	81,500	0.46%	1,619,954	(1,538,454)	-94.97%
Other Taxes	5,938,000	5,938,000	476,563	8.03%	120,336	356,227	296.03%
<b>Total Taxes</b>	<b>146,145,000</b>	<b>146,145,000</b>	<b>5,770,916</b>	<b>3.95%</b>	<b>6,662,274</b>	<b>(891,358)</b>	<b>-13.38%</b>
<b>LICENSES &amp; PERMITS</b>							
Business Licenses	934,000	934,000	236,378	25.31%	219,233	17,145	7.82%
Fire Operation Permits	2,375,000	2,375,000	475,882	20.04%	562,718	(86,836)	-15.43%
Building Permits	5,700,000	5,700,000	2,543,483	44.62%	852,914	1,690,569	198.21%
Electric Permits	475,000	475,000	512,233	107.84%	87,942	424,291	482.47%
Plumbing Permits	428,000	428,000	342,754	80.08%	77,493	265,261	342.30%
Mechanical Permits	380,000	380,000	392,055	103.17%	70,597	321,458	455.34%
Miscellaneous Permits	92,000	92,000	18,619	20.24%	19,915	(1,296)	-6.51%
<b>Total Licenses &amp; Permits</b>	<b>10,384,000</b>	<b>10,384,000</b>	<b>4,521,404</b>	<b>43.54%</b>	<b>1,890,812</b>	<b>2,630,592</b>	<b>139.12%</b>
<b>FINES &amp; PENALTIES</b>	<b>1,570,000</b>	<b>1,570,000</b>	<b>126,430</b>	<b>8.05%</b>	<b>229,050</b>	<b>(102,620)</b>	<b>-44.80%</b>
<b>INTERGOVERNMENTAL</b>	<b>226,000</b>	<b>226,000</b>	<b>47,810</b>	<b>21.15%</b>	<b>5,057,781</b>	<b>(5,009,971)</b>	<b>-99.05%</b>
<b>CHARGES FOR SERVICES</b>	<b>37,174,855</b>	<b>37,174,855</b>	<b>7,249,378</b>	<b>19.50%</b>	<b>7,801,547</b>	<b>(552,169)</b>	<b>-7.08%</b>
<b>CONTRIBUTION IN LIEU</b>	<b>23,699,830</b>	<b>23,699,830</b>	<b>6,085,872</b>	<b>25.68%</b>	<b>6,083,318</b>	<b>2,554</b>	<b>0.04%</b>
<b>USE OF MONEY &amp; PROPERTY</b>							
Interest	5,246,000	5,501,000	(430,323)	-7.82%	(493,105)	62,782	-12.73%
Rent	9,407,909	9,407,909	2,172,987	23.10%	2,348,073	(175,086)	-7.46%
<b>Total Use of Money &amp; Property</b>	<b>14,653,909</b>	<b>14,908,909</b>	<b>1,742,664</b>	<b>11.69%</b>	<b>1,854,968</b>	<b>(112,304)</b>	<b>-6.05%</b>
<b>MISCELLANEOUS REVENUES</b>	<b>350,000</b>	<b>380,000</b>	<b>92,928</b>	<b>24.45%</b>	<b>113,576</b>	<b>(20,648)</b>	<b>-18.18%</b>
<b>LAND PROCEED</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>N/A</b>	<b>-</b>	<b>-</b>	<b>N/A</b>
<b>OTHER FINANCING SOURCES</b>							
Operating Transfer In - Storm Drain	1,460,000	1,460,000	1,460,000	100.00%	1,398,145	61,855	4.42%
Operating Transfer In - Reserves	38,952,083	39,248,833	39,248,833	100.00%	11,290,582	27,958,251	247.62%
Operating Transfer In - Fund Balances <sup>(1)</sup>	-	4,273,692	4,273,692	100.00%	5,338,670	(1,064,978)	-19.95%
Operating Transfer In - Miscellaneous	2,527,419	3,547,419	2,547,419	71.81%	277,350	2,270,069	818.49%
<b>Total Other Financing Sources</b>	<b>42,939,502</b>	<b>48,529,944</b>	<b>47,529,944</b>	<b>97.94%</b>	<b>18,304,747</b>	<b>29,225,197</b>	<b>159.66%</b>
<b>STADIUM OPERATION</b>							
Charges for Services	9,102,263	9,102,263	163,145	1.79%	1,376,954	(1,213,809)	-88.15%
Rent and Licensing	647,500	647,500	-	0.00%	397,073	(397,073)	-100.00%
<b>Total Stadium Operation</b>	<b>9,749,763</b>	<b>9,749,763</b>	<b>163,145</b>	<b>1.67%</b>	<b>1,774,027</b>	<b>(1,610,882)</b>	<b>-90.80%</b>
<b>TOTAL GENERAL FUND</b>	<b>\$ 286,892,859</b>	<b>\$ 292,768,301</b>	<b>\$ 73,330,491</b>	<b>25.05%</b>	<b>\$ 49,772,100</b>	<b>\$ 23,558,391</b>	<b>47.33%</b>

(1) Negative sales tax revenue resulting from accrual of revenue that has not yet been received. Revenue is anticipated in August 2020.

(2) The Operating Transfer In - Fund Balances includes the carryover encumbrances of open purchase orders as of June 30, 2020 and mid year budget amendment from reserves.

Revenues are tracking approximately 18% lower than collections through the same period last fiscal year. In some categories, the revenues received in September account for activity that occurred in FY 2019/20 and those revenues are accrued back to that year. In other cases, such as property tax, most

payments are scheduled to occur later in the fiscal year. Revenues were below the prior year due to a one-time settlement payment of \$5.0 million that was received last year, differences in the timing of payments, as well as lower activity levels this fiscal year in certain areas, such as transient occupancy tax and fines and penalties. While there is limited data available, revenues are currently expected to end the year below budget as a result of the COVID-19 impacts as discussed below.

### General Fund Revenues

**Sales Tax:** The City of Santa Clara sales tax rate is 9.0%, of which the City receives 1.0%. As of September 30, 2020, \$5.0 million has been collected. Given the timing of payments, the sales tax payments received in September accounted for activity from July 2020. According to the information on the City's Sales Tax receipts for the second quarter of 2020, collections in that quarter declined 15.4% when compared to the second quarter of 2019 and reflects the first full quarter impacted by COVID-19. This follows a decline of 10.9% in the first quarter of 2020. In the second quarter of 2020, the county pool, which accounts for internet sales, was up 7.4% from the same quarter in the prior year. However, the City's portion of the pool, totaling \$2.6 million, was down 5.9% as a result of a City of San Jose online retail agreement that resulted in a larger share of internet sales allocated to that City. In the second quarter 2020, all economic sectors in Santa Clara also experienced declines when compared to the second quarter 2019, with the largest drops in the Food Products (down 47.0%), General Retail (down 46.5%), and Transportation (down 41.5%) sectors. Smaller declines were also experienced in the Construction (down 20.6%) and Business-to-Business (down 8.2%) sectors. Based on lower actual collections and the continuation of the COVID-19 safety precautions, it is anticipated that revenues may fall below the budgeted estimate of \$55.6 million by approximately \$5.0 million. Data for the third quarter 2020 will be available in November 2020.

**Property Tax:** A small portion of property tax receipts were received in September 2020, totaling under \$0.2 million, which is above collections through the same period last year. The majority of property tax revenue is collected in January and April each year. Based on initial information from the County of Santa Clara, property tax receipts would fall approximately \$1.0 million below the budgeted estimate of \$67.0 million if the City does not receive excess Education Revenue Augmentation Fund (ERAF) revenues in FY 2020/21 that are budgeted at \$2.0 million. Beginning in 1992, agencies have been required to reallocate a portion of property tax receipts to the ERAF, which offsets the State's General Fund contributions to school districts under Proposition 98. However, once there are sufficient funds in ERAF to fulfill obligations, the remainder is to be returned to the taxing entities that contributed to it. The State of California is challenging the calculation of the excess ERAF revenue distribution to local jurisdictions. If excess ERAF funds are received, receipts would slightly exceed the budgeted estimate. The secured property tax growth is expected to reach approximately 7.5% in FY 2020/21.

**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 September 30, 2020, less than \$0.1 million has been received in this category, which is well below the \$1.6 million received through the same period last fiscal year. TOT has been impacted severely by COVID-19. To meet the budgeted estimate of \$17.6 million, collections would need to reach almost \$1.5 million per month. Actual collections have

been tracking well below this level with monthly receipts averaging \$0.2 million in the last quarter when adjusted for the timing of payments. Assuming receipts improve from this extremely low collection level, TOT revenues may fall below the budgeted estimate by approximately \$11 million.

**Other Taxes:** Includes franchise tax and documentary transfer tax. The City has collected \$0.5 million through September, which is 8% of the budgeted estimate of \$5.9 million. Overall, receipts are tracking above the prior year collection level of \$0.1 million due the higher collections in documentary transfer tax, partially offset by slightly lower franchise tax receipts. Growth of approximately 1% from the prior year is needed to meet the revenue estimate.

**Licenses & Permits:** Includes business licenses, building permits, and other building and planning permits and fees. Overall licenses and permits revenue collections are well above par and totaled \$4.5 million, or 43.5% of the budget of \$10.4 million. These collections are significantly higher than the collection level experienced through the same period last fiscal year. Activity in the building, electric, plumbing, and mechanical permit accounts have seen the highest growth compared to last year. 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 through September of \$0.1 million is lower than the prior year actual collection level of \$0.2 million as a result of lower activity levels in the collection charges and library fines accounts. Given restricted activity levels as a result of COVID-19, collections in this category are anticipated to fall below the budgeted estimate of \$1.6 million.

**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 September 30, 2020, approximately \$48,000 has been collected. This collection level is well below the prior fiscal year level of \$5.1 million due to a one-time settlement payment of \$5.0 million received last year.

**Charges for Services:** Includes various plan check and zoning-related fees, engineering fees, administrative fees, and community service revenue from various recreational activities. Through September 30, 2020, collections totaled \$7.2 million or 19.5% of the budget. This reflects a 7% decrease compared to last year's collections through the same period of \$7.8 million, particularly in the planning and zoning fees, engineering fees, fire construction permits, interdepartmental services and miscellaneous charges for services (includes parks and recreation fees). The lower collections in these areas were partially offset by higher receipts in the plan check and sign fee category. As a result of the COVID-19 safety precautions, the revenues from various recreational activities are expected to fall well below the budget.

**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

September, \$6.1 million has been received which is on par for this time of year. This collection level, however, is based on the budgeted estimate and will be trued up at the end of the fiscal year. Growth of 4% from the prior year is needed to meet the budgeted estimate of \$23.7 million.

**Use of Money & Property:** Includes realized investment income and rental income. Interest income and rent revenue collections totaled \$1.7 million, or 11.7% of the budget. The collections through September 30, 2020 are below the prior year collections of \$1.8 million, reflecting accrual differences, the timing of payments, and lower interest earnings yields.

**Miscellaneous Revenues:** Includes developer fees, donations, damage recovery, sale of scrap, and one-time miscellaneous revenues. As of September 30, 2020, collections of \$92,928 were 18% lower than collections through the same period last fiscal year.

**Stadium Operation:** The revenue for Stadium Operations totaled approximately \$0.2 million through September 30, 2020, which is much lower than collections through the same period last fiscal year. The budget for charges for services includes public safety cost reimbursement for NFL and Non-NFL events, reimbursement for general and administrative staff time, and parking revenue. Due to the COVID pandemic, events at the Stadium have either been cancelled or rescheduled causing the decline in parking permit revenue and reimbursement for public safety costs. Lease revenue, specifically Senior and Youth Fees and Tasman Lot parking revenue, is projected to fall under budget this fiscal year and is also related to the cancellation or rescheduling of Stadium Events.

## Financial Status Report as of September 30, 2020

### General Fund Expenditures

As of September 30, 2020, \$83.2 million or 28.4% of the General Fund operating budget had been expended. Overall, expenditures in the General Fund are within budgeted levels through September. Departmental expenditures totaled \$56.9 million, or 21.9% of the budget, which is below the par level of 25.0% of the budget. Several cost-control measures that were implemented last fiscal year remain in place to generate expenditure savings to partially offset the drop in revenues associated with COVID-19. These measures include a hiring freeze and controls around overtime, as-needed staff, marketing, travel, technology and vehicle purchases. With these measures and restricted activity levels due to COVID-19, expenditures are expected to end the year below budget.

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

Function	FISCAL YEAR 2020/21				PY EXPENDITURES COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 9/30/2020	Percentage Used	Actual Through 9/30/2019	Change From Prior Year	Percentage Change
<b>GENERAL GOVERNMENT</b>							
Non-Departmental	\$ 7,849,688	\$ 8,295,532	\$ 1,063,946	12.83%	\$ 1,121,976	\$ (58,030)	-5.17%
City Council	834,241	834,241	161,626	19.37%	188,377	(26,751)	-14.20%
City Clerk	2,070,555	2,091,412	420,870	20.12%	296,358	124,512	42.01%
City Manager	6,125,034	6,445,938	1,388,269	21.54%	1,174,025	214,244	18.25%
City Attorney	2,716,125	2,730,674	540,863	19.81%	465,764	75,099	16.12%
Human Resources	4,477,933	4,745,273	824,415	17.37%	921,096	(96,681)	-10.50%
Finance	17,456,419	17,951,242	3,777,564	21.04%	3,368,567	408,997	12.14%
<b>Total General Government</b>	<b>41,529,995</b>	<b>43,094,312</b>	<b>8,177,553</b>	<b>18.98%</b>	<b>7,536,163</b>	<b>641,390</b>	<b>8.51%</b>
<b>PUBLIC WORKS</b>	<b>24,287,567</b>	<b>24,893,684</b>	<b>5,794,386</b>	<b>23.28%</b>	<b>5,335,265</b>	<b>459,121</b>	<b>8.61%</b>
<b>COMMUNITY DEVELOPMENT</b>	<b>17,233,763</b>	<b>18,564,507</b>	<b>3,408,872</b>	<b>18.36%</b>	<b>3,101,869</b>	<b>307,003</b>	<b>9.90%</b>
<b>PARKS AND RECREATION</b>	<b>22,987,124</b>	<b>23,738,192</b>	<b>4,130,940</b>	<b>17.40%</b>	<b>5,083,148</b>	<b>(952,208)</b>	<b>-18.73%</b>
<b>PUBLIC SAFETY</b>							
Fire	58,731,539	59,195,497	14,847,116	25.08%	12,616,171	2,230,945	17.68%
Police	78,033,073	78,118,360	18,292,732	23.42%	17,491,375	801,357	4.58%
<b>Total Public Safety</b>	<b>136,764,612</b>	<b>137,313,857</b>	<b>33,139,848</b>	<b>24.13%</b>	<b>30,107,546</b>	<b>3,032,302</b>	<b>10.07%</b>
<b>LIBRARY</b>	<b>11,905,848</b>	<b>11,968,930</b>	<b>2,212,705</b>	<b>18.49%</b>	<b>2,311,995</b>	<b>(99,290)</b>	<b>-4.29%</b>
<b>DEPARTMENTAL TOTAL</b>	<b>254,708,909</b>	<b>259,573,482</b>	<b>56,864,304</b>	<b>21.91%</b>	<b>53,475,986</b>	<b>3,388,318</b>	<b>6.34%</b>
<b>OTHER FINANCING USES</b>							
Operating Transfer Out - Miscellaneous	10,445	1,010,445	1,010,445	100.00%	428,445	582,000	135.84%
Operating Transfer Out - Debt Services	2,500,344	2,500,344	2,500,344	100.00%	1,710,474	789,870	46.18%
Operating Transfer Out - Maintenance Dtrct	990,929	990,929	990,929	100.00%	917,331	73,598	8.02%
Operating Transfer Out - Cemetery	771,769	771,769	771,769	100.00%	703,490	68,279	9.71%
Operating Transfer Out - CIP	19,678,672	19,678,672	19,678,672	100.00%	11,643,676	8,034,996	69.01%
Operating Transfer Out - Reserves	924,654	924,654	924,654	100.00%	-	924,654	N/A
<b>Total Other Financing Uses</b>	<b>24,876,813</b>	<b>25,876,813</b>	<b>25,876,813</b>	<b>100.00%</b>	<b>15,403,416</b>	<b>10,473,397</b>	<b>67.99%</b>
<b>STADIUM OPERATION</b>	<b>7,307,137</b>	<b>7,318,006</b>	<b>440,244</b>	<b>6.02%</b>	<b>1,286,444</b>	<b>(846,200)</b>	<b>-65.78%</b>
<b>TOTAL GENERAL FUND</b>	<b>\$ 286,892,859</b>	<b>\$ 292,768,301</b>	<b>\$ 83,181,361</b>	<b>28.41%</b>	<b>\$ 70,165,846</b>	<b>\$ 13,015,515</b>	<b>18.55%</b>



### General Fund Expenditures

Below is an explanation of certain budget to actual expenditure variances by program.

**Non-Departmental:** Includes expenditures that are not attributable to a single department, but a function of the City in general. Through September 30, 2020, expenditures were \$1.1 million, or 12.8% of the budget. Lower expenditures are primarily attributable to the contractual services category.

**City Council:** Through September 30, 2020, expenditures totaled \$0.2 million, or 19.4% of budget, which is below par. Compared to the same period through last fiscal year, this reflects a spending decrease of approximately 14% due primarily to lower as needed and overtime staffing costs. As a result of the cost reduction measures implemented city-wide, these costs have been reduced.

**City Manager:** The actual expenditures through September 30, 2020 were at 21.5% of the budget, which is below par for this time of the year. When compared to the prior year, expenditures are higher by approximately 18.3% due to spending related to the Small Business Assistance Program.

**City Attorney:** Actual expenditures through September totaled \$0.5 million, which is 19.8% of the budget. Spending is above the total expenditures through the same time last fiscal year by 16%. This reflects higher costs in the salary and benefits categories due to one additional position approved by the City Council for FY 2020/21.

**City Clerk:** Through September 30, 2020, actual expenditures were \$0.4 million or approximately 20.1% of the budget. This reflects an increase of 42% over last year's spending through the same period. The higher spending level is a result of Granicus contract costs that are paid every other year.

**Community Development:** This department consists of three divisions: Planning, Building, and Housing and Community Services. Through September, departmental expenditures of \$3.4 million were at 18.4% of the budget, which is below par. This reflects slightly lower personnel costs as well as lower actual non-personnel costs.

**Finance Department:** Through September 30, 2020, the Department's expenditures totaled \$3.8 million, which is approximately 12% higher than through the same period last year. This is primarily attributable to higher spending in the salary and benefits categories, relating to two positions that were added as approved by the City Council in March 2020.

**Fire Department:** Through September, actual expenditures totaled \$14.8 million, or 25% of the budget, which is at par with the budget. These expenditures reflect a 17.7% increase from expenditures through the same period last fiscal year. All COVID-19 related expenditures have been charged centrally to the Other City Departments Operating Grant Trust Fund. The Fire Department has charged approximately \$0.4 million to this fund. Combined with the \$14.8 million charged in the General Fund, total Fire Department expenditures through September totaled \$15.2 million, or 25.8% of budget. The high level of spending is primarily attributable to high overtime expenditures; accounting for the COVID-19 related charges, approximately 61% of the overtime budget has been expended. Of this amount, approximately



\$745,000 is mutual aid, which is reimbursable. Taking the mutual aid into account, overtime spending drops to 36.5% of budgeted levels, which is still above par for this time of year.

**Police Department:** Expenditures through September 30, 2020 are tracking at expected levels at \$18.3 million, or 23.4% of the budget; this is 5% higher than prior year expenditures through the same period. Similar to the Fire Department, Police Department expenditures related to COVID-19 have also been charged to the Other City Departments Operating Grant Trust Fund. Through September, charges to this fund totaled approximately \$0.1 million. Accounting for the General Fund and Other City Departments Operating Grant Trust Fund, department expenditures totaled \$18.4 million or 23.6% of budget.

**Stadium Operation:** Stadium operating expenditures are incurred first and billed on a reimbursement basis creating a timing difference in revenue recognition. Stadium expenditures totaled \$0.4 million through September 30, 2020 and are tracking below budgeted levels. Due to COVID-19, events at the Stadium have been cancelled or postponed causing a decrease in salary costs for public safety personnel and outside agency public safety costs.

## Financial Status Report as of September 30, 2020

### Special Revenue Funds

The table below is a summary of revenues and expenditures of select Special Revenue Funds as of September 30, 2020. The amended budget for both reflects carryover appropriations from fiscal year 2019/20 in addition to various budget amendments approved by the City Council through September 2020. The revenues through the end of September totaled approximately \$1.0 million, while expenditures totaled \$1.1 million.

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

Fund Description	REVENUES - FISCAL YEAR 2020/21				PRIOR YEAR REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 9/30/2020	Percentage Received	Actual Through 9/30/2019	\$ Change From Prior Year	Percent Change
Housing Authority Fund	\$ 285,000	\$ 5,485,000	\$ 126,583	2.31%	\$ 76,269	\$ 50,314	65.97%
City Affordable Housing Fund	781,703	781,703	43,864	5.61%	33,253	10,611	31.91%
Housing Successor Fund	531,000	531,000	302,742	57.01%	254,651	48,091	18.89%
Housing and Urban Development	5,150,000	5,150,000	536,933	10.43%	277,369	259,564	93.58%
<b>TOTAL</b>	<b>\$ 6,747,703</b>	<b>\$ 11,947,703</b>	<b>\$ 1,010,122</b>	<b>8.45%</b>	<b>\$ 641,542</b>	<b>\$ 368,580</b>	<b>57.45%</b>

Fund Description	EXPENDITURES - FISCAL YEAR 2020/21				PRIOR YEAR EXPENDITURE COMPARISON		
	Adopted Budget	Amended Budget	Actual through 9/30/2020	Percentage Used	Actual through 9/30/2019	\$ Change From Prior Year	Percent Change
Housing Authority Fund	\$ 552,222	\$ 7,287,822	\$ 50,796	0.70%	\$ 32,345	\$ 18,451	57.04%
City Affordable Housing Fund	1,556,772	3,517,150	134,616	3.83%	213,562	(78,946)	-36.97%
Housing Successor Fund	5,964,944	6,162,712	222,329	3.61%	68,542	153,787	224.37%
Housing and Urban Development	5,150,000	5,897,929	699,962	11.87%	643,737	56,225	8.73%
<b>TOTAL</b>	<b>\$13,223,938</b>	<b>\$ 22,865,613</b>	<b>\$ 1,107,703</b>	<b>4.84%</b>	<b>\$ 958,186</b>	<b>\$ 149,517</b>	<b>15.60%</b>

### 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 September 2020. As of September 30, 2020, these capital fund expenditures totaled \$5.5 million, or 4.2% of the amended budget. As part of the adoption of the FY 2020/21 and FY 2021/22 budget, capital funds were carried over from the prior fiscal year for those projects that have not yet been completed. Adjustments to the capital carryover amounts based on actual year-end expenditures will be brought forward 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 2020/21						
Fund Description	Current Year Appropriation	Prior Year Carryforward	Total Amended Budget	Actual Through 9/30/2020	Percentage Used	
Parks & Recreation	\$ 5,758,558	\$ 15,741,394	\$ 21,499,952	\$ 2,512,360	11.69%	
Streets & Highways	26,260,764	39,525,658	65,786,422	2,411,509	3.67%	
Storm Drain	4,489,447	7,220,645	11,710,092	129,709	1.11%	
Fire	290,796	715,373	1,006,169	3,499	0.35%	
Library	123,681	190,107	313,788	2,175	0.69%	
Public Buildings	1,737,751	9,975,548	11,713,299	107,414	0.92%	
General Gov't - Other	4,098,669	11,203,108	15,301,777	239,896	1.57%	
Related Santa Clara Developer	2,958,063	-	2,958,063	75,687	2.56%	
<b>TOTAL</b>	<b>\$ 45,717,729</b>	<b>\$ 84,571,833</b>	<b>\$ 130,289,562</b>	<b>\$ 5,482,249</b>	<b>4.21%</b>	

## Financial Status Report as of September 30, 2020

### Enterprise Funds

The table below is a summary of revenues and expenses for the Enterprise Operating Funds as of September 30, 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 September 2020, revenue and expenditures are tracking lower than through the same period last fiscal year.

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

Fund Description	REVENUES - FISCAL YEAR 2020/21				PRIOR YEAR REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 9/30/2020	Percentage Received	Actual Through 9/30/2019	\$ Change From Prior Year	Percent Change
Electric Utility Fund	\$ 515,406,680	\$ 515,406,680	\$ 91,550,784	17.76%	\$ 98,251,546	\$ (6,700,762)	-6.82%
Water Utility Fund	57,220,287	57,220,287	11,283,196	19.72%	12,229,496	(946,300)	-7.74%
Sewer Utility Fund	45,495,100	45,495,100	8,250,491	18.13%	7,927,833	322,658	4.07%
Cemetery Fund	600,000	600,000	120,781	20.13%	94,281	26,500	28.11%
Solid Waste Utility Fund	31,219,000	31,219,000	5,390,549	17.27%	5,083,375	307,174	6.04%
Water Recycling Fund	7,064,710	7,064,710	1,261,530	17.86%	1,507,853	(246,323)	-16.34%
<b>TOTAL REVENUE</b>	<b>\$ 657,005,777</b>	<b>\$ 657,005,777</b>	<b>\$ 117,857,331</b>	<b>17.94%</b>	<b>\$ 125,094,384</b>	<b>\$ (7,237,053)</b>	<b>-5.79%</b>

Fund Description	EXPENSES - FISCAL YEAR 2020/21				PRIOR YEAR EXPENSE COMPARISON		
	Adopted Budget	Amended Budget	Actual through 9/30/2020	Percentage Used	Actual through 9/30/2019	\$ Change From Prior Year	Percent Change
Electric Utility Fund	\$ 474,259,218	\$ 475,468,120	\$ 88,327,846	18.58%	\$ 109,761,026	\$ (21,433,180)	-19.53%
Water Utility Fund	49,106,767	49,322,081	11,101,348	22.51%	10,381,484	719,864	6.93%
Sewer Utility Fund	28,338,164	28,509,889	6,570,672	23.05%	6,467,218	103,454	1.60%
Cemetery Fund	1,412,953	1,412,953	321,411	22.75%	293,877	27,534	9.37%
Solid Waste Utility Fund	32,563,421	34,013,675	4,694,938	13.80%	4,367,330	327,608	7.50%
Water Recycling Fund	5,867,938	5,871,208	1,435,060	24.44%	1,243,525	191,535	15.40%
<b>TOTAL - Operating Appropriations</b>	<b>\$ 591,548,461</b>	<b>\$ 594,597,926</b>	<b>\$ 112,451,275</b>	<b>18.91%</b>	<b>\$ 132,514,460</b>	<b>\$ (20,063,185)</b>	<b>-15.14%</b>

Revenues in the electric (which also includes the Electric Debt Service Fund), 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.

## Financial Status Report as of September 30, 2020

A summary of expenses in the Enterprise Capital Improvement Funds is detailed in the table below. Actuals through September 2020 totaled \$16.8 million, or 6.2% 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. 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

Fund Description	EXPENSES - FISCAL YEAR 2020/21					Prior Year
	Current Year Appropriation	Prior Year Carryforward	Total Amended Budget	Actual Through 9/30/2020	Percentage Used	Actual Through 9/30/2019
Electric Utility Fund	\$ 64,592,602	\$ 112,296,667	\$ 176,889,269	\$ 13,079,539	7.39%	\$ 6,720,897
Street Lighting <sup>(1)</sup>	125,000	5,867,109	5,992,109	990	0.02%	8,686
Water Utility Fund	4,610,000	15,010,726	19,620,726	-	0.00%	512,130
Sewer Utility Fund	42,114,351	24,817,115	66,931,466	3,642,228	5.44%	6,210,461
Cemetery Fund	300,000	-	300,000	-	-	-
Solid Waste Utility Fund	882,000	150,000	1,032,000	50,002	4.85%	95,866
Water Recycling Fund	550,000	-	550,000	-	-	-
<b>TOTAL - CIP Appropriations</b>	<b>\$ 113,173,952</b>	<b>\$ 158,141,618</b>	<b>\$ 271,315,570</b>	<b>\$ 16,772,759</b>	<b>6.18%</b>	<b>\$ 13,548,040</b>

(1) Street Lighting fund is part of Electric Capital Improvement Funds

### 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). In FY 2020/21, the City Council approved an exception to the policy to allow the Reserve to drop below the 25% level.
- 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 table below summarizes select reserve balances.

**CITY OF SANTA CLARA  
RESERVE BALANCES  
September 30, 2020**

**DETAIL OF SELECTED FUND RESERVE BALANCES:**

	<b>GENERAL FUND</b>	<b>ELECTRIC</b>	<b>WATER</b>	<b>SEWER</b>
Budget Stabilization Reserve	\$ 57,410,235			
Capital Projects Reserve	1,958,983			
Land Sale Reserve	24,488,392			
Building Inspection Reserve	12,284,067			
Technology Fee Reserve	485,129			
Rate Stabilization Fund Reserve		\$ 25,000,000		
DVR Power Plant Contracts Reserve		78,163		
Replacement & Improvement			\$ 303,090	
<b>TOTALS</b>	<b>\$ 96,626,806</b>	<b>\$ 25,078,163</b>	<b>\$ 303,090</b>	<b>\$ -</b>

### 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 INTERFUND ADVANCE BALANCES:

Fund Receiving Advance/Loan	Fund Making Advance/Loan	Type	Amount of Advance/Commitment
Cemetery	General Fund	Advance	\$ 7,111,149
Santa Clara Golf & Tennis Club	General Fund	Advance	4,224,134
Parks and Recreation Facilities	General Fund	Loan	9,033,044
<b>TOTALS</b>			<b>\$ 20,368,327</b>

### Donations to the City of Santa Clara

Donations received by department during the month of September 2020 and for fiscal year 2020/21 are shown in the table below.

Department	Sep-20	Fiscal Year 2020/21 Year To Date	Donor	Designated Use
City Manager's Office	\$ 225	\$ 860	Various	Help Your Neighbor
Non-Departmental	13,240	27,571	Various	COVID-19
Parks and Recreation	1,000	17,871	Various	Case Management
<b>TOTALS</b>	<b>\$ 14,465</b>	<b>\$ 46,302</b>		





# **City of Santa Clara**

The Center of What's Possible

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## **MONTHLY INVESTMENT REPORT**

**September 2020**

# **City of Santa Clara**

## **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 September 30, 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 September 30, 2020.

	<b><u>BOOK VALUE</u></b>	<b><u>PERCENTAGE</u></b>
City	\$758,101,649	99.50%
SOSA	22,233	0.00%
HA	<u>3,735,616</u>	<u>0.50%</u>
Unrestricted	\$761,859,498	<u>100.00%</u>
Restricted Bond Proceeds	<u>2,145,966</u>	
Total Investments	<u>\$764,005,464</u>	

On September 30, 2020 the book value and market value of the City's unrestricted pooled investment portfolio were \$761,859,498 and \$784,987,048, respectively.

**Investment Strategy and Market Update**

The City's investment strategy for September 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.

On July 14, 2020, City Council approved entering into a contract with PFM Asset Management LLC ("PFM") for the management of the City's investment portfolio. The City has leveraged PFM's extensive investment management experience and dedicated credit and risk management personnel to further diversify the portfolio and enhance returns. PFM began actively managing the City's investment portfolio on September 1, 2020.

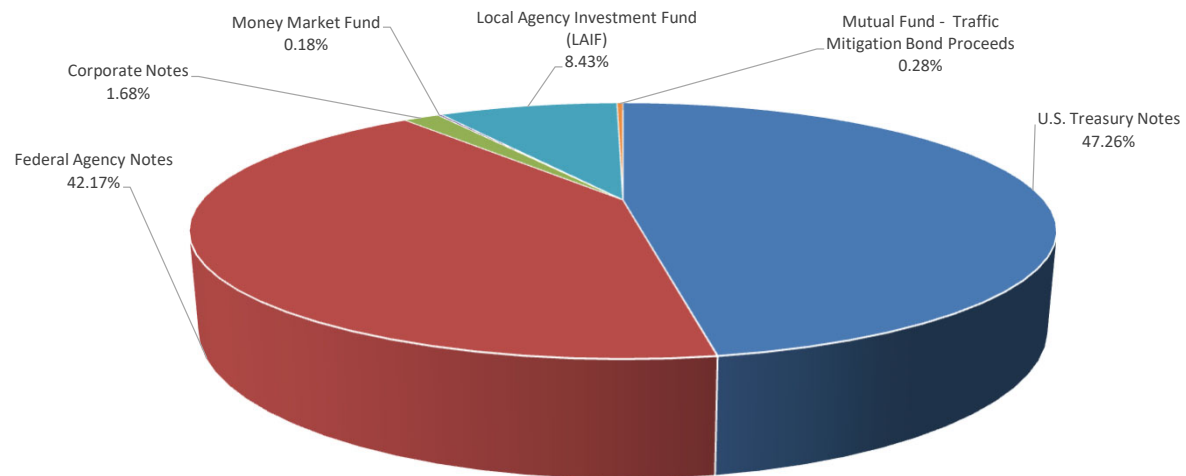
As of September 30, 2020, 47.26% of the City's portfolio consists of U.S. Treasury Notes, 42.17% consists of Federal Agencies, 8.43% consists of Local Agency Investment Fund (LAIF), and 1.68% consists of investment grade Corporate Notes. In addition, City bond proceeds are invested in separate funds and are not included in the calculation of the City's portfolio yield.

The average maturity of the City's portfolio was 2.54 years and the City's portfolio yield vs. the 24-month moving average yield of two-year Treasury Notes (Benchmark Yield") was as follows:

<b><u>PERIOD</u></b>	<b><u>CITY'S PORTFOLIO YIELD</u></b>	<b><u>BENCHMARK YIELD</u></b>	<b><u>AVERAGE MATURITY (YEARS)</u></b>
September 2020	1.62%	1.43%	2.54
August 2020	1.64%	1.55%	2.52
September 2019	1.98%	2.24%	2.04

**CITY OF SANTA CLARA  
SUMMARY OF INVESTMENTS SEPTEMBER 30, 2020**

<b><u>INVESTMENT TYPE</u></b>	<b><u>BOOK VALUE</u></b>	<b><u>% OF PORTFOLIO</u></b>	<b><u>PER INVESTMENT POLICY</u></b>
U.S. Treasury Notes	361,081,354	47.26%	No Limit
Federal Agency Notes	322,138,836	42.17%	80%
Corporate Notes	12,864,451	1.68%	15%
Money Market Fund	1,351,818	0.18%	10% Per Fund
Local Agency Investment Fund (LAIF)	64,423,039	8.43%	\$75 M
Mutual Fund - Traffic Mitigation Bond Proceeds	2,145,966	0.28%	10% Per Fund
<b>TOTAL INVESTMENTS</b>	<b><u>\$ 764,005,464</u></b>	<b><u>100.00%</u></b>	



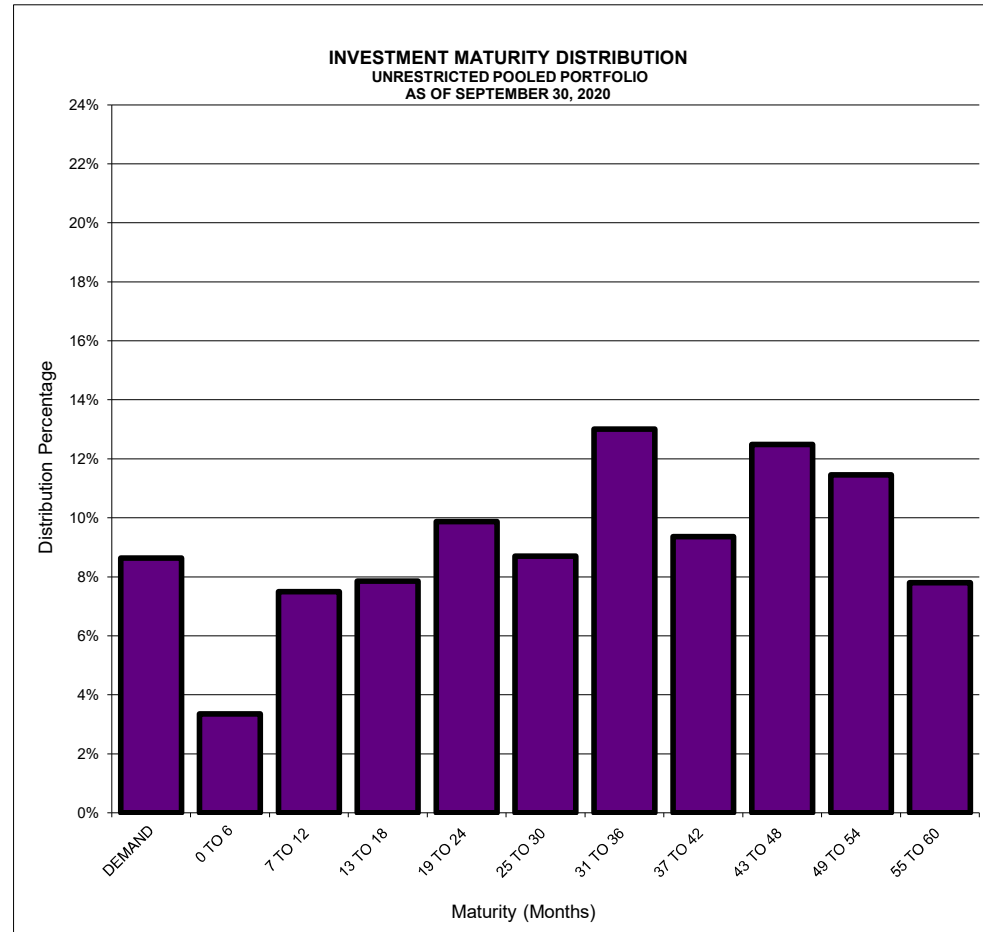
CITY OF SANTA CLARA

**INVESTMENT MATURITY DISTRIBUTION  
AS OF SEPTEMBER 30, 2020  
UNRESTRICTED POOLED PORTFOLIO**

<b>MATURITY (IN MONTHS)</b>	<b>BOOK VALUE</b>	<b>NUMBER OF INVESTMENTS</b>	<b>DISTRIBUTION</b>
DEMAND	\$ 65,774,857 (a)	2	8.63%
0 TO 6	25,528,285	4	3.35%
7 TO 12	57,145,082	10	7.50%
13 TO 18	59,776,806	11	7.85%
19 TO 24	75,231,739	13	9.87%
25 TO 30	66,253,156	10	8.70%
31 TO 36	99,151,486	18	13.01%
37 TO 42	71,294,507	14	9.36%
43 TO 48	95,045,781	18	12.48%
49 TO 54	87,206,316	12	11.45%
55 TO 60	59,451,483	7	7.80%
<b>TOTAL</b>	<b>\$ 761,859,498</b>	<b>119</b>	<b>100.00%</b>

Average Maturity of Unrestricted Pool: 2.54 Years

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





## Market Inventory

Attachment A

As Of Date: 09/30/2020

Date Basis: Settlement

Run: 10/28/2020 02:07:31 PM

Reporting Currency: Local

## 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
<b>Inv Type: 0 Wells Fargo - Sweep Account</b>												
17411	992995944	Public Institution	09/01/2020	10/01/2020	.000000	.000000	1,351,817.60	1,351,817.60	1,351,817.60	100.000000	0.00	BOOK
				Subtotal	.000000	.000000	1,351,817.60	1,351,817.60	1,351,817.60	100.000000	0.00	

**Inv Type: 12 TREASURY NOTES**

17296	912828Q37	TREASURY NOTES	02/14/2017	03/31/2021	1.250000	1.803695	5,000,000.00	4,986,831.19	5,028,700.00	100.574000	41,868.81	IDC-FIS
17322	9128284G2	TREASURY NOTES	06/19/2018	04/15/2021	2.375000	2.662058	5,000,000.00	4,986,277.73	5,061,150.00	101.223000	74,872.27	IDC-FIS
17343	912828WR7	TREASURY NOTES	02/19/2019	06/30/2021	2.125000	2.496231	5,000,000.00	4,982,102.85	5,075,000.00	101.500000	92,897.15	IDC-FIS
17369	912828WY2	TREASURY NOTES	10/24/2019	07/31/2021	2.250000	1.621904	10,000,000.00	10,061,409.16	10,177,000.00	101.770000	115,590.84	IDC-FIS
17338	9128285F3	TREASURY NOTES	01/17/2019	10/15/2021	2.875000	2.543204	5,000,000.00	5,023,776.86	5,141,800.00	102.836000	118,023.14	IDC-FIS
17321	912828U65	TREASURY NOTES	05/22/2018	11/30/2021	1.750000	2.805608	10,000,000.00	9,850,529.23	10,188,300.00	101.883000	337,770.77	IDC-FIS
17306	912828U81	TREASURY NOTES	11/09/2017	12/31/2021	2.000000	1.914991	5,000,000.00	5,006,083.73	5,116,000.00	102.320000	109,916.27	IDC-FIS
17312	912828V72	TREASURY NOTES	02/26/2018	01/31/2022	1.875000	2.530589	5,000,000.00	4,953,458.19	5,116,400.00	102.328000	162,941.81	IDC-FIS
17297	912828J43	TREASURY NOTES	03/03/2017	02/28/2022	1.750000	2.067799	5,000,000.00	4,977,578.17	5,114,450.00	102.289000	136,871.83	IDC-FIS
17334	912828J43	TREASURY NOTES	12/14/2018	02/28/2022	1.750000	2.763338	5,000,000.00	4,928,067.67	5,114,450.00	102.289000	186,382.33	IDC-FIS
17309	912828W89	TREASURY NOTES	01/25/2018	03/31/2022	1.875000	2.368364	5,000,000.00	4,965,058.77	5,130,650.00	102.613000	165,591.23	IDC-FIS
17308	912828X47	TREASURY NOTES	01/22/2018	04/30/2022	1.875000	2.361028	5,000,000.00	4,954,061.22	5,137,900.00	102.758000	183,838.78	IDC-FIS
17300	912828XD7	TREASURY NOTES	06/09/2017	05/31/2022	1.875000	1.772818	5,000,000.00	5,009,716.82	5,145,300.00	102.906000	135,583.18	IDC-FIS
17335	912828XG0	TREASURY NOTES	12/21/2018	06/30/2022	2.125000	2.638411	5,000,000.00	4,951,322.12	5,174,050.00	103.481000	222,727.88	IDC-FIS
17375	912828XG0	TREASURY NOTES	11/25/2019	06/30/2022	2.125000	1.596160	10,000,000.00	10,103,032.29	10,348,100.00	103.481000	245,067.71	IDC-FIS
17394	912828XG0	TREASURY NOTES	03/25/2020	06/30/2022	2.125000	.351460	10,000,000.00	10,352,599.76	10,348,100.00	103.481000	-4,499.76	IDC-FIS
17315	9128282P4	TREASURY NOTES	03/27/2018	07/31/2022	1.875000	2.591504	5,000,000.00	4,932,711.34	5,159,750.00	103.195000	227,038.66	IDC-FIS
17303	912828L24	TREASURY NOTES	09/29/2017	08/31/2022	1.875000	1.913317	5,000,000.00	4,996,355.00	5,166,600.00	103.332000	170,245.00	IDC-FIS
17304	912828L57	TREASURY NOTES	10/06/2017	09/30/2022	1.750000	1.958257	5,000,000.00	4,980,285.46	5,161,700.00	103.234000	181,414.54	IDC-FIS
17318	9128282W9	TREASURY NOTES	04/20/2018	09/30/2022	1.875000	2.739970	5,000,000.00	4,919,252.11	5,174,050.00	103.481000	254,797.89	IDC-FIS
17305	912828M49	TREASURY NOTES	10/31/2017	10/31/2022	1.875000	2.071694	5,000,000.00	4,976,757.82	5,180,850.00	103.617000	204,092.18	IDC-FIS
17307	912828M80	TREASURY NOTES	12/18/2017	11/30/2022	2.000000	2.168858	5,000,000.00	4,980,098.87	5,201,750.00	104.035000	221,651.13	IDC-FIS
17320	912828N30	TREASURY NOTES	05/15/2018	12/31/2022	2.125000	2.835579	10,000,000.00	9,834,650.35	10,446,900.00	104.469000	612,249.65	IDC-FIS
17398	912828Z29	TREASURY NOTES	04/21/2020	01/15/2023	1.500000	.237587	10,000,000.00	10,314,157.91	10,310,200.00	103.102000	-3,957.91	IDC-FIS
17311	912828P38	TREASURY NOTES	02/14/2018	01/31/2023	1.750000	2.566484	5,000,000.00	4,904,738.38	5,187,300.00	103.746000	282,561.62	IDC-FIS
17314	912828P79	TREASURY NOTES	02/28/2018	02/28/2023	1.500000	2.682776	10,000,000.00	9,725,903.61	10,328,500.00	103.285000	602,596.39	IDC-FIS
17317	912828Q29	TREASURY NOTES	04/11/2018	03/31/2023	1.500000	2.624318	10,000,000.00	9,738,640.88	10,338,700.00	103.387000	600,059.12	IDC-FIS
17319	912828R28	TREASURY NOTES	05/09/2018	04/30/2023	1.625000	2.824390	10,000,000.00	9,666,968.22	10,382,000.00	103.820000	715,031.78	IDC-FIS
17323	912828R69	TREASURY NOTES	07/17/2018	05/31/2023	1.625000	2.763323	10,000,000.00	9,682,915.26	10,394,500.00	103.945000	711,584.74	IDC-FIS
17339	912828S35	TREASURY NOTES	01/17/2019	06/30/2023	1.375000	2.549274	5,000,000.00	4,834,585.10	5,169,150.00	103.383000	334,564.90	IDC-FIS
17378	912828S35	TREASURY NOTES	12/18/2019	06/30/2023	1.375000	1.682342	5,000,000.00	4,955,443.62	5,169,150.00	103.383000	213,706.38	IDC-FIS
17395	912828S35	TREASURY NOTES	04/01/2020	06/30/2023	1.375000	.285312	10,000,000.00	10,324,925.51	10,338,300.00	103.383000	13,374.49	IDC-FIS



## Market Inventory

Attachment A

As Of Date: 09/30/2020

Date Basis: Settlement

Run: 10/28/2020 02:07:31 PM

Reporting Currency: Local

## 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
17326	912828Y61	TREASURY NOTES	09/18/2018	07/31/2023	2.750000	2.899455	5,000,000.00	4,979,197.96	5,367,200.00	107.344000	388,002.04	IDC-FIS
17328	912828Y61	TREASURY NOTES	09/28/2018	07/31/2023	2.750000	2.961654	5,000,000.00	4,970,591.40	5,367,200.00	107.344000	396,608.60	IDC-FIS
17324	912828D1	TREASURY NOTES	09/13/2018	08/31/2023	1.375000	2.867264	5,000,000.00	4,793,045.88	5,178,150.00	103.563000	385,104.12	IDC-FIS
17330	912828T26	TREASURY NOTES	11/14/2018	09/30/2023	1.375000	3.011415	7,500,000.00	7,160,416.48	7,773,600.00	103.648000	613,183.52	IDC-FIS
17340	912828T91	TREASURY NOTES	01/28/2019	10/31/2023	1.625000	2.579465	5,000,000.00	4,843,796.55	5,226,000.00	104.520000	382,203.45	IDC-FIS
17345	912828U57	TREASURY NOTES	02/28/2019	11/30/2023	2.125000	2.496362	5,000,000.00	4,939,083.20	5,309,200.00	106.184000	370,116.80	IDC-FIS
17397	912828U57	TREASURY NOTES	04/20/2020	11/30/2023	2.125000	.263467	5,000,000.00	5,323,727.73	5,309,200.00	106.184000	-14,527.73	IDC-FIS
17346	912828V23	TREASURY NOTES	03/14/2019	12/31/2023	2.250000	2.437027	5,000,000.00	4,969,243.80	5,337,100.00	106.742000	367,856.20	IDC-FIS
17342	912828V80	TREASURY NOTES	02/14/2019	01/31/2024	2.250000	2.524589	5,000,000.00	4,955,092.36	5,344,750.00	106.895000	389,657.64	IDC-FIS
17396	912828Z9	TREASURY NOTES	04/15/2020	01/31/2024	2.500000	.336639	5,000,000.00	5,375,674.72	5,386,150.00	107.723000	10,475.28	IDC-FIS
17347	912828W48	TREASURY NOTES	03/20/2019	02/29/2024	2.125000	2.440257	5,000,000.00	4,948,416.27	5,331,450.00	106.629000	383,033.73	IDC-FIS
17352	912828W71	TREASURY NOTES	04/30/2019	03/31/2024	2.125000	2.319173	5,000,000.00	4,968,077.22	5,338,650.00	106.773000	370,572.78	IDC-FIS
17353	912828X70	TREASURY NOTES	05/17/2019	04/30/2024	2.000000	2.202374	5,000,000.00	4,961,874.14	5,323,450.00	106.469000	361,575.86	IDC-FIS
17359	912828WJ5	TREASURY NOTES	08/16/2019	05/15/2024	2.500000	1.428853	5,000,000.00	5,206,218.69	5,416,400.00	108.328000	210,181.31	IDC-FIS
17367	912828WJ5	TREASURY NOTES	10/11/2019	05/15/2024	2.500000	1.498657	5,000,000.00	5,192,709.89	5,416,400.00	108.328000	223,690.11	IDC-FIS
17361	912828X3	TREASURY NOTES	08/30/2019	06/30/2024	2.000000	1.414330	5,000,000.00	5,112,706.16	5,337,100.00	106.742000	224,393.84	IDC-FIS
17376	9128286Z8	TREASURY NOTES	12/13/2019	06/30/2024	1.750000	1.739161	7,250,000.00	7,252,987.19	7,671,442.50	105.813000	418,455.31	IDC-FIS
17364	912828N9	TREASURY NOTES	09/11/2019	07/31/2024	2.125000	1.556000	5,000,000.00	5,109,042.57	5,367,400.00	107.348000	258,357.43	IDC-FIS
17390	912828U3	TREASURY NOTES	03/11/2020	08/31/2024	1.875000	.621947	5,000,000.00	5,246,412.97	5,325,600.00	106.512000	79,187.03	IDC-FIS
17370	912828Y5	TREASURY NOTES	10/28/2019	09/30/2024	2.125000	1.630859	5,000,000.00	5,094,470.89	5,381,650.00	107.633000	287,179.11	IDC-FIS
17373	912828D0	TREASURY NOTES	11/19/2019	10/31/2024	2.250000	1.636035	10,000,000.00	10,264,263.00	10,827,000.00	108.270000	562,737.00	IDC-FIS
17379	912828J7	TREASURY NOTES	01/07/2020	11/30/2024	2.125000	1.617525	5,000,000.00	5,109,238.20	5,393,950.00	107.879000	284,711.80	IDC-FIS
17380	912828P3	TREASURY NOTES	01/08/2020	12/31/2024	2.250000	1.618632	10,000,000.00	10,271,844.08	10,854,300.00	108.543000	582,455.92	IDC-FIS
17399	912828Z52	TREASURY NOTES	04/23/2020	01/31/2025	1.375000	.365012	5,000,000.00	5,224,986.57	5,245,900.00	104.918000	20,913.43	IDC-FIS
17389	912828Z1	TREASURY NOTES	03/09/2020	02/28/2025	2.750000	.605325	10,000,000.00	10,947,941.11	11,105,100.00	111.051000	157,158.89	IDC-FIS
Subtotal					1.954492	1.933118	359,750,000.00	361,081,354.23	376,461,092.50	104.645196	15,379,738.27	

**Inv Type: 21 FHLB MEDIUM TERM NOTES**

17282	3130A1W95	FHLB MEDIUM TERM NO	11/18/2016	06/11/2021	2.250000	1.696591	5,000,000.00	5,026,436.97	5,073,350.00	101.467000	46,913.03	IDC-FIS
17387	3130A1W95	FHLB MEDIUM TERM NO	02/26/2020	06/11/2021	2.250000	1.258135	5,000,000.00	5,048,919.75	5,073,350.00	101.467000	24,430.25	IDC-FIS
17286	3130A8QS5	FHLB MEDIUM TERM NO	11/29/2016	07/14/2021	1.125000	1.814259	5,000,000.00	4,967,168.84	5,039,500.00	100.790000	72,331.16	IDC-FIS
17277	313378JP7	FHLB MEDIUM TERM NO	11/01/2016	09/10/2021	2.375000	1.428993	5,000,000.00	5,045,387.15	5,105,400.00	102.108000	60,012.85	IDC-FIS
17341	3130AFFN2	FHLB MEDIUM TERM NO	02/11/2019	12/10/2021	3.000000	2.497201	5,000,000.00	5,036,060.70	5,170,100.00	103.402000	134,039.30	IDC-FIS
17393	313378CR0	FHLB MEDIUM TERM NO	03/16/2020	03/11/2022	2.250000	.716855	5,000,000.00	5,113,435.17	5,151,300.00	103.026000	37,864.83	IDC-FIS
17333	313383WD9	FHLB MEDIUM TERM NO	12/13/2018	09/09/2022	3.125000	2.898026	5,000,000.00	5,021,240.26	5,283,400.00	105.668000	262,159.74	IDC-FIS
17363	3130A3DL5	FHLB MEDIUM TERM NO	09/06/2019	09/08/2023	2.375000	1.527008	5,000,000.00	5,122,736.63	5,311,050.00	106.221000	188,313.37	IDC-FIS
17336	3130A0F70	FHLB MEDIUM TERM NO	01/09/2019	12/08/2023	3.375000	2.727479	5,000,000.00	5,105,256.40	5,492,000.00	109.840000	386,743.60	IDC-FIS
17392	3130A3VC5	FHLB MEDIUM TERM NO	03/13/2020	12/08/2023	2.250000	.715013	5,000,000.00	5,264,217.38	5,316,100.00	106.322000	51,882.62	IDC-FIS





## Market Inventory

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Date Basis: Settlement

Run: 10/28/2020 02:07:31 PM

Reporting Currency: Local

## 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
17350	3130AB3H7	FHLB MEDIUM TERM NO	04/12/2019	03/08/2024	2.375000	2.380001	5,000,000.00	4,999,141.98	5,352,750.00	107.055000	353,608.02	IDC-FIS
17374	3130A1XJ2	FHLB MEDIUM TERM NO	11/21/2019	06/14/2024	2.875000	1.641007	5,000,000.00	5,236,652.25	5,483,800.00	109.676000	247,147.75	IDC-FIS
17365	3130AGWK7	FHLB MEDIUM TERM NO	09/19/2019	08/15/2024	1.500000	1.644760	5,000,000.00	4,972,299.11	5,246,500.00	104.930000	274,200.89	IDC-FIS
17368	3130A2UW4	FHLB MEDIUM TERM NO	10/17/2019	09/13/2024	2.875000	1.656994	5,000,000.00	5,232,679.87	5,527,950.00	110.559000	295,270.13	IDC-FIS
17391	3130A3GE8	FHLB MEDIUM TERM NO	03/13/2020	12/13/2024	2.750000	.768165	5,000,000.00	5,436,587.50	5,503,000.00	110.060000	66,412.50	IDC-FIS
17400	3130A4CH3	FHLB MEDIUM TERM NO	04/28/2020	03/14/2025	2.375000	.665003	10,000,000.00	10,754,933.71	10,853,900.00	108.539000	98,966.29	IDC-FIS
Subtotal					2.445675	1.557213	85,000,000.00	87,383,153.67	89,983,450.00	105.862882	2,600,296.33	

**Inv Type: 22 FHLB COUPON NOTES**

17354	3130AGMK8	FHLB COUPON NOTES	06/28/2019	06/28/2024	2.220000	2.220000	5,000,000.00	5,000,000.00	5,067,000.00	101.340000	67,000.00	IDC-FIS
17360	3130AGXF7	FHLB COUPON NOTES	08/26/2019	08/26/2024	1.650000	1.650000	5,000,000.00	5,000,000.00	5,008,350.00	100.167000	8,350.00	IDC-FIS
17371	3130AHGL1	FHLB COUPON NOTES	11/04/2019	11/04/2024	1.875000	1.875000	3,840,000.00	3,840,000.00	3,855,897.60	100.414000	15,897.60	IDC-FIS
Subtotal					1.918353	1.918353	13,840,000.00	13,840,000.00	13,931,247.60	100.659303	91,247.60	

**Inv Type: 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	5,572,741.40	100.591000	32,741.40	IDC-FIS
Subtotal					1.350000	1.350000	5,540,000.00	5,540,000.00	5,572,741.40	100.591000	32,741.40	

**Inv Type: 24 FNMA MEDIUM TERM NOTE**

17279	3135G0H55	FNMA MEDIUM TERM NO	11/16/2016	12/28/2020	1.875000	1.584161	5,000,000.00	5,006,986.96	5,020,250.00	100.405000	13,263.04	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	2,017,600.00	100.880000	15,188.17	IDC-FIS
17268	3135G0N82	FNMA MEDIUM TERM NO	08/25/2016	08/17/2021	1.250000	1.298063	10,000,000.00	9,995,374.92	10,098,200.00	100.982000	102,825.08	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	5,061,850.00	101.237000	67,253.95	IDC-FIS
17329	3135G0S38	FNMA MEDIUM TERM NO	10/11/2018	01/05/2022	2.000000	3.012476	5,000,000.00	4,928,161.93	5,119,200.00	102.384000	191,038.07	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	5,185,400.00	103.708000	243,666.67	IDC-FIS
17377	3135G0V75	FNMA MEDIUM TERM NO	12/18/2019	07/02/2024	1.750000	1.732000	5,000,000.00	5,003,434.04	5,277,200.00	105.544000	273,765.96	IDC-FIS
17404	3135G0V75	FNMA MEDIUM TERM NO	05/15/2020	07/02/2024	1.750000	.377002	10,000,000.00	10,543,934.66	10,554,400.00	105.544000	10,465.34	IDC-FIS
17382	3135G0X24	FNMA MEDIUM TERM NO	01/23/2020	01/07/2025	1.625000	1.627706	7,500,000.00	7,499,114.91	7,903,275.00	105.377000	404,160.09	IDC-FIS
17401	3135G03U5	FNMA MEDIUM TERM NO	05/08/2020	04/22/2025	.625000	.521429	10,000,000.00	10,053,030.56	10,135,500.00	101.355000	84,900.00	IDC-FIS
17410	3135G04Z3	FNMA MEDIUM TERM NO	07/20/2020	06/17/2025	.500000	.463065	5,000,000.00	5,011,102.78	5,023,053.35	100.461067	14,103.35	IDC
Subtotal					1.427213	1.296024	69,500,000.00	69,979,881.97	71,395,928.35	102.727954	1,420,629.72	

**Inv Type: 26 FFCB MEDIUM TERM NOTES**

17234	3133EFY24	FFCB MEDIUM TERM NO	02/18/2016	02/10/2021	1.375000	1.490028	10,000,000.00	9,994,466.74	10,044,100.00	100.441000	49,633.26	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	5,094,750.00	101.895000	99,781.83	IDC-FIS
17357	3133EKVE3	FFCB MEDIUM TERM NO	07/19/2019	07/19/2022	1.850000	1.889266	5,000,000.00	4,996,208.67	5,151,350.00	103.027000	155,141.33	IDC-FIS
17358	3133EKYJ9	FFCB MEDIUM TERM NO	08/14/2019	08/05/2022	1.850000	1.643841	5,000,000.00	5,019,985.46	5,155,100.00	103.102000	135,114.54	IDC-FIS



## Market Inventory

Attachment A

As Of Date: 09/30/2020

Date Basis: Settlement

Run: 10/28/2020 02:07:31 PM

Reporting Currency: Local

## 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
17366	3133EHM91	FFCB MEDIUM TERM NO	10/08/2019	11/01/2022	2.080000	1.440040	1,800,000.00	1,828,040.51	1,871,208.00	103.956000	43,167.49	IDC-FIS
17316	3133EJGU7	FFCB MEDIUM TERM NO	03/29/2018	12/16/2022	2.710000	2.638022	5,000,000.00	5,008,434.54	5,278,300.00	105.566000	269,865.46	IDC-FIS
17332	3133EJSD2	FFCB MEDIUM TERM NO	11/29/2018	06/19/2023	2.890000	2.983126	5,000,000.00	4,987,007.52	5,361,550.00	107.231000	374,542.48	IDC-FIS
17381	3133ELHZ0	FFCB MEDIUM TERM NO	01/17/2020	07/17/2023	1.600000	1.610620	5,000,000.00	4,998,457.95	5,191,750.00	103.835000	193,292.05	IDC-FIS
17327	3133EJWV7	FFCB MEDIUM TERM NO	09/18/2018	08/14/2023	2.900000	3.000958	5,000,000.00	4,985,981.41	5,382,100.00	107.642000	396,118.59	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	8,213,118.00	108.424000	631,895.17	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	3,143,670.90	106.026000	145,598.30	IDC-FIS
17348	3133EKBW5	FFCB MEDIUM TERM NO	03/21/2019	02/27/2024	2.610000	2.466241	5,000,000.00	5,023,484.31	5,398,650.00	107.973000	375,165.69	IDC-FIS
17362	3133EKHV1	FFCB MEDIUM TERM NO	09/05/2019	07/22/2024	2.450000	1.384069	5,000,000.00	5,205,358.59	5,411,300.00	108.226000	205,941.41	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	5,270,600.00	105.412000	304,231.39	IDC-FIS
17406	3133ELJM7	FFCB MEDIUM TERM NO	05/19/2020	01/23/2025	1.650000	.555648	7,320,000.00	7,675,110.92	7,726,992.00	105.560000	51,881.08	IDC-FIS
17405	3133ELZM9	FFCB MEDIUM TERM NO	05/18/2020	05/14/2025	.500000	.534983	10,000,000.00	9,983,355.56	10,047,759.50	100.477595	64,959.50	IDC
17408	3133ELH23	FFCB MEDIUM TERM NO	06/17/2020	06/09/2025	.500000	.505008	10,000,000.00	9,998,651.11	10,043,445.40	100.434454	45,905.40	IDC
Subtotal					1.795021	1.649051	99,660,000.00	100,245,175.50	103,785,743.80	104.139819	3,542,234.97	

**Inv Type: 27 FFCB COUPON NOTES**

17409	3133ELR71	FFCB MEDIUM TERM NO	07/15/2020	07/02/2025	.500000	.464007	10,000,000.00	10,019,445.56	10,039,529.20	100.395292	21,889.20	IDC
Subtotal					.500000	.464007	10,000,000.00	10,019,445.56	10,039,529.20	100.395292	21,889.20	

**Inv Type: 28 FHLMC MEDIUM TERM NOTES**

17388	3134G9M20	FHLMC MEDIUM TERM N	02/26/2020	07/26/2021	1.875000	1.275218	5,000,000.00	5,029,592.64	5,071,200.00	101.424000	41,607.36	IDC-FIS
17402	3137EAER6	FHLMC MEDIUM TERM N	05/11/2020	05/05/2023	.375000	.277020	5,000,000.00	5,014,753.33	5,021,450.00	100.429000	6,905.00	IDC-FIS
17413	3137EAEW5	FHLMC MEDIUM TERM N	09/04/2020	09/08/2023	.250000	.243909	3,215,000.00	3,215,587.09	3,216,176.14	100.036583	589.05	IDC
17414	3137EAEW5	FHLMC MEDIUM TERM N	09/04/2020	09/08/2023	.250000	.261009	4,295,000.00	4,293,582.65	4,296,571.24	100.036583	2,988.59	IDC
17407	3137EAEP0	FHLMC MEDIUM TERM N	05/21/2020	02/12/2025	1.500000	.526022	5,000,000.00	5,215,927.22	5,247,900.00	104.958000	31,972.78	IDC-FIS
17418	3137EAEX3	FHLMC MEDIUM TERM N	09/25/2020	09/23/2025	.375000	.435992	9,390,000.00	9,361,736.10	9,359,038.82	99.670275	-2,697.28	IDC
Subtotal					.763210	.514557	31,900,000.00	32,131,179.03	32,212,336.20	100.979110	81,365.50	

**Inv Type: 29 FHLMC 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	3,035,520.00	101.184000	35,520.00	IDC-FIS
Subtotal					2.600000	2.600000	3,000,000.00	3,000,000.00	3,035,520.00	101.184000	35,520.00	

**Inv Type: 35 CORPORATE MEDIUM TERM NOTES**

17417	06053FAA7	BANK OF AMERICA COR	09/15/2020	07/24/2023	4.100000	.522842	4,070,000.00	4,506,134.42	4,455,876.70	109.481000	-26,617.80	IDC-FIS
17415	904764BJ5	UNILEVER CAPITAL C	09/14/2020	09/14/2023	.375000	.417979	660,000.00	659,155.20	661,201.20	100.182000	2,046.00	IDC-FIS
17416	46647PBS4	JPMORGAN CHASE & CO	09/16/2020	09/16/2024	.653000	.653000	2,675,000.00	2,675,000.00	2,676,016.50	100.038000	1,016.50	IDC
17412	478160CN2	JOHNSON & JOHNSON	09/03/2020	09/01/2025	.550000	.454509	5,000,000.00	5,024,161.11	5,001,507.70	100.030154	-22,042.30	IDC



# Market Inventory

Attachment A

As Of Date: 09/30/2020

Date Basis: Settlement

Run: 10/28/2020 02:07:31 PM

Reporting Currency: Local

## 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
				Subtotal	1.805938	.517847	12,405,000.00	12,864,450.73	12,794,602.10	103.140686	-45,597.60	

### Inv Type: 99 LOCAL AGENCY INVESTMENT FUND

16059		STATE OF CA DEMAND	09/30/1997	10/01/2020	1.335841	1.335841	64,423,039.45	64,423,039.45	64,423,039.45	100.000000	0.00	BOOK
				Subtotal	1.335841	1.335841	64,423,039.45	64,423,039.45	64,423,039.45	100.000000	0.00	

### Inv Type: 315 MUTUAL FUNDS-DREYFUS

16064		DREYFUS TREASURY CA	10/31/1997	10/01/2020	.013834	.013834	2,145,966.19	2,145,966.19	2,145,966.19	100.000000	0.00	BOOK
				Subtotal	.013834	.013834	2,145,966.19	2,145,966.19	2,145,966.19	100.000000	0.00	

Grand Total				Count 120	1.806194	1.630687	758,515,823.24	764,005,463.93	787,133,014.39	103.772788	23,160,065.39	
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## FY 2020/21 Budget Amendments

### General Fund (001)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer to the Related Santa Clara Developer Fund		(39,942)	Decreases the transfer to the Related Santa Clara Developer Fund. This action reverses a transaction approved in the July/August Monthly Financial Report to reflect the movement of encumbrances into the Related Santa Clara Developer Fund to consolidate expenditures in that fund. However, because the expenses in the Related Santa Clara Development Fund are reimbursable, the amounts will be re-encumbered in the Related Santa Clara Developer Fund and offset by developer contributions rather than reflected as a transfer from the General Fund.
City Manager's Office - Encumbrances		31,419	Increases the City Manager's Office encumbrances as a reversal to the action approved as part of the July/August Monthly Financial Report. The original action decreased the appropriation in the City Manager's Office and transferred the encumbered funds to the Related Santa Clara Developer Fund to consolidate Related project expenses. However, because the expenses in the Related Santa Clara Development Fund are reimbursable, the amounts will be re-encumbered in the Related Santa Clara Developer Fund and offset by developer contributions. The encumbered funds in the General Fund will be liquidated.
City Attorney's Office - Encumbrances		8,523	Increases the City Attorney's Office appropriation as a reversal to the action approved as part of the July/August Monthly Financial Report. The original action decreased the appropriation in the City Attorney's Office and transferred the encumbered funds to the Related Santa Clara Developer Fund. However, this encumbrance does not reflect Related services, and should remain in the City Attorney's Office appropriation.
Transfer to the Unemployment Insurance Fund		40,000	Transfers \$40,000 to the Unemployment Insurance Fund to cover higher actual unemployment insurance claims through the third quarter 2020. Additional adjustments will be necessary to cover claims through the remainder of the year and will be brought forward in future Monthly Financial Reports.

## FY 2020/21 Budget Amendments

### General Fund (001)

Department/Item	Source of Funds	Use of Funds	Explanation
Budget Stabilization Reserve		(40,000)	Reduces the Budget Stabilization Reserve to cover the Transfer to the Unemployment Insurance Fund necessary to address higher actual unemployment insurance claims.
Community Development Department - Salaries		(2,000)	As a participating agency in the Certified Local Governments (CLG) Program, the City received a one-time grant award in the amount of \$5,000 from the Office of Historic Preservation due to excess funding in the National Park Service Historic Preservation Grant. In order to receive this grant award, the City is required to provide a 40% City match in the amount of \$2,000 that can be matched with staff time. This action reduces salaries funding in the Community Development Department and reallocates it to the Engineering Operating Grant Fund to cover the 40% City Match. There is corresponding action in the Engineering Operating Grant Fund to recognize and appropriate the grant and grant match funding.
Community Development Department / Transfer to Engineering Operating Grant Trust Fund		2,000	This action establishes a transfer to the Engineering Operating Grant Fund to provide matching funds for the Certified Local Government (CLG) Grant.
Community Development Department - Contractual Services		13,500	On October 8, 2019, the City Council directed staff to collaborate with the Cities Association of Santa Clara County to address the Regional Housing Need Allocation, a state-mandated housing goal. As part of this collaborative effort, the City would share the County's cost for a consultant to support the production of each jurisdiction's Housing Element or to produce outreach materials. For that reason, this action allocates \$13,500 from the Advanced Planning Reserve to fund payments to the Cities Association of Santa Clara County for consultant costs.
Advanced Planning Reserve		(13,500)	This action decreases the Advanced Planning Reserve to provide funding for the consultant to support the production of the Housing Element or to produce outreach materials as described above.

- -

## FY 2020/21 Budget Amendments

### Expendable Trust Fund (079)

Department/Item	Source of Funds	Use of Funds	Explanation
Transfer to the Related Santa Clara Developer Fund		(253,734)	Decreases the transfer to the Related Santa Clara Developer Fund. This action reverses a transaction approved in the July/August Monthly Financial Report to reflect the movement of encumbrances into the Related Santa Clara Developer Fund to consolidate expenditures in that fund. However, because the expenses in the Related Santa Clara Development Fund are reimbursable, the amounts will be re-encumbered in the Related Santa Clara Developer Fund and offset by developer contributions rather than reflected as a transfer from the Expendable Trust Fund.
City Manager's Office - Related Santa Clara Encumbrances		253,734	Increases the City Manager's Office encumbrances as a reversal to the action approved as part of the July/August Monthly Financial Report. The original action decreased the appropriation in the City Manager's Office and transferred the encumbered funds to the Related Santa Clara Developer Fund to consolidate Related project expenses. However, because the expenses in the Related Santa Clara Development Fund are reimbursable, the amounts will be re-encumbered in the Related Santa Clara Developer Fund and offset by developer contributions. The encumbered funds in the Expendable Trust Fund will be liquidated.

## FY 2020/21 Budget Amendments

### Engineering Operating Grant Trust Fund (144)

Department/Item	Source of Funds	Use of Funds	Explanation
Community Development Department / Certified Local Government (CLG) Grant	5,000	5,000	As a participating agency in the Certified Local Governments (CLG) Program, the City received a one-time grant award in the amount of \$5,000 from the Office of Historic Preservation due to excess funding in the National Park Service Historic Preservation Grant. The grant funds will be used to support the City's historic preservation program. In order to receive this grant award, the City is required to provide a 40% City match that can be matched with staff time and overhead costs. This action recognizes and appropriates the grant funding in amount of \$5,000 related to the CLG Grant Program.
Transfer From the General Fund / Community Development Department / Certified Local Government (CLG) Grant City Match	2,000	2,000	As a participating agency in the Certified Local Governments (CLG) Program, the City received a one-time grant award in the amount of \$5,000 from the Office of Historic Preservation. In order to receive this grant award, the City is required to provide a 40% City match that can be match with staff time and overhead costs. This action recognizes a transfer of \$2,000 from the General Fund to provide the 40% City match and allocates funding towards staff time to support the CLG Grant Program.
	7,000	7,000	

### Police Department Operating Grant Trust Fund (177)

Department/Item	Source of Funds	Use of Funds	Explanation
Bulletproof Vest Grant	1,500	1,500	Recognizes Fiscal Year 2020 Patrick Leahy Bulletproof Vest Partnership grant funding awarded by the Bureau of Justice Assistance (BJA). This funding will be used to purchase uniquely fitted protective armor vests, meeting National Institute of Justice (NIJ) standards. The officers vests need to be purchased after April 1, 2020, and reimbursement requests must be submitted before August 31, 2022.
	1,500	1,500	

## FY 2020/21 Budget Amendments

### Unemployment Insurance Fund

Department/Item	Source of Funds	Use of Funds	Explanation
CARES Act Funding/ Materials/Services/Supplies	264,000	458,000	Increases the Materials/Services/Supplies allocation by \$458,000 (from \$71,000 to \$529,000) to cover higher actual unemployment claims costs through the third quarter 2020. This action also recognizes Coronavirus Aid, Relief, and Economic Security (CARES) Act funding of \$264,000 to partially offset the expenses as CARES Act funds reimburse one-half of the unemployment expenses.
Transfer from the General Fund	40,000		Transfers \$40,000 from the General Fund Budget Stabilization Reserve to cover higher actual unemployment insurance claims costs through the third quarter 2020. Additional funding will be necessary to cover unemployment claims costs through the remainder of the year and will be brought forward in future Monthly Financial Reports.
Unrestricted Ending Fund Balance		(154,000)	Allocates the remaining unrestricted ending fund balance cover higher actual claims costs.
	304,000	304,000	

### City Affordable Housing Capital Fund (565)

Department/Item	Source of Funds	Use of Funds	Explanation
Affordable Housing Impact Fee / Ending Fund Balance	131,000	131,000	As part of the City's Housing Ordinance No. 1974, the City established a housing impact fee to mitigate the impacts of new market-rate housing development and non-residential development on the need for affordable housing. The City Affordable Housing Capital Fund is established to record the revenues and related expenditures to support infrastructure needed to service new housing and other developments. This action increases the budget for Housing Impact Fees and allocates the revenues to the ending fund balance.
	131,000	131,000	



## FY 2020/21 Budget Amendments

### Electric Utility Capital Fund (591)

Project	Source of Funds	Use of Funds	Explanation
Martin Avenue Junction Project	800,000	800,000	On June 9, 2020, the City Council approved a funding agreement relating to predesign engineering activities for the Memorex Junction Substation Project and authorized the City Manager to execute subsequent funding agreements with other applicants for additional services. As such, this action establishes a new Capital Improvement Program project, Martin Avenue Junction, to recognize developer contributions and appropriate funding in the amount of \$800,000 for the Silicon Valley Power to perform the predesign of the substation, the substation's control building and off-site transmission facilities at 2600 De La Cruz.
Freedom Circle Junction Project	300,000	300,000	On June 9, 2020, the City Council approved a funding agreement relating to predesign engineering activities for the Memorex Junction Substation Project and authorized the City Manager to execute subsequent funding agreements with other applicants for additional services. As such, this action establishes a new Capital Improvement Program project, Freedom Circle Junction, to recognize developer contributions and appropriate funding in the amount of \$300,000 for the Silicon Valley Power to perform the predesign of the substation, the substation's control building and off-site transmission facilities at 2305 Mission College Boulevard.
	<b>1,100,000</b>	<b>1,100,000</b>	

## FY 2020/21 Budget Amendments

### Related Santa Clara Developer Fund (540)

Project	Source of Funds	Use of Funds	Explanation
Transfer From the General Fund / Other Development Project Services	(39,942)	(8,523)	Decreases the transfer from the General Fund to the Other Development Project Services project. This action reverses a transaction approved in the July/August Monthly Financial Report to reflect the movement of encumbrances into the Related Santa Clara Developer Fund to consolidate expenditures in that fund. However, because the expenses in the Related Santa Clara Development Fund are reimbursable, the amounts will be re-encumbered in the Related Santa Clara Developer Fund and offset by developer contributions rather than reflected as a transfer from the General Fund. This action also decreases the appropriations by \$8,523, as these encumbered funds in the City Attorney's Office do not pertain to the Related project.
Transfer From the Expendable Trust Fund / Other Development Project Services	(253,734)		Decreases the transfer from the Expendable Trust Fund to the Other Development Project Services project. This action reverses a transaction approved in the July/August Monthly Financial Report to reflect the movement of encumbrances into the Related Santa Clara Developer Fund to consolidate expenditures in that fund. However, because the expenses in the Related Santa Clara Development Fund are reimbursable, the amounts will be re-encumbered in the Related Santa Clara Developer Fund and offset by developer contributions rather than reflected as a transfer from the Expendable Trust Fund.
Developer Contributions	285,153		Increases the estimate for developer contributions. Related Santa Clara expenditures are fully reimbursable and this offsets encumbered funds for services provided by the City Manager's Office.
	<b>(8,523)</b>	<b>(8,523)</b>	



## Agenda Report

20-990

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on a Resolution Amending in Part Resolution No. 5195, Setting the Start Time of Regular Meetings of the Historical and Landmarks Commission and Approving the 2021 Historical and Landmarks Commission Calendar of Meetings

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development.

#### BACKGROUND

The City Code states that each board or commission shall hold regular meetings at the times and on the days indicated by resolution of the City Council. Resolution 5195 (Attachment 1), which was adopted by the City Council in 1987, states that the Historical and Landmarks Commission (HLC) shall hold meetings on the first Thursday of each month at 7:00 p.m. except when such day falls on a City holiday.

#### DISCUSSION

At the September 5, 2019 meeting the HLC recommended a modified start time for their meetings to begin at 6 p.m. It was subsequently determined that because the start time for HLC meetings was initially set through a Resolution of the City Council a new Resolution is required to make a modification. A draft resolution, which would amend the previously adopted Resolution 5195 in regard to the HLC scheduling of regular meetings, is attached to this report (Attachment 3).

At the October 1, 2020 meeting the HLC reviewed and recommended approval of the 2021 Calendar of Meetings. The proposed resolution for City Council approval establishes the 6 p.m. HLC start time and the 2021 Calendar of Meetings.

#### 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 government organizational or administrative activity that will not result in direct or indirect changes in the environment.

#### FISCAL IMPACT

There is no fiscal impact other than administrative time and expense to set the meetings.

#### COORDINATION

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

#### PUBLIC CONTACT

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

**RECOMMENDATION**

Adopt a Resolution amending in part Resolution No. 5195, setting the start time of regular Historical and Landmarks Commission meetings, and approving the 2021 Historical and Landmarks Commission of Meetings.

Reviewed by: Andrew Crabtree, Director, Community Development  
Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Resolution 5195
2. 2021 Historical and Landmarks Commission Calendar of Meetings
3. Resolution

RESOLUTION NO. 5195

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA INDICATING TIMES AND DAYS FOR EACH BOARD OR COMMISSION OF THE CITY TO HOLD REGULAR MEETINGS ALL AS AUTHORIZED IN SECTION 2-91.1 OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA"

SECTION 1: Each board or commission shall hold regular meetings at the times and on the days indicated below except when such day falls on a City holiday.

Board of Library Trustees	First Monday of each month at 7:30 p.m.
Civil Service Commission	Second Monday of each month at 7:30 p.m.
Cultural Advisory Commission	First Monday of each month at 7:30 p.m.
Historical and Landmarks	First Thursday of each month at 7:00 p.m.
Parks and Recreation Commission	Third Tuesday of each month at 7:30 p.m.
Planning Commission	Second and Fourth Wednesday of each month at 7:00 p.m.
Senior Citizens Advisory Commission	Fourth Monday of each month at 10:00 a.m.

SECTION 2: The meeting times and days are set by resolution pursuant to Section 2-91.1 of "The Charter of the City of Santa Clara, California", and are subject to amendment from time to time by resolution of the City Council.

SECTION 3: This resolution shall take effect upon its

adoption.

\* \* \* \*

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A  
RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF  
SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE  
12th day of May, 1987, by the following votes:

AYES: COUNCILORS: Ash, Deto, Lasher, Mahan, Nadler, Tobkin  
and Mayor Souza

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: None

ATTEST:

\_\_\_\_\_  
J. E. BOCCIGNONE  
City Clerk  
City of Santa Clara



**Schedule of Meetings  
2021**

Regular meetings are typically held on the first Thursday of each month at **6:00 p.m.** in the City Manager's Office Staff Conference Room at City Hall. If you have any questions, please contact the Planning Division at (408) 615-2450.

**Meeting Dates**

January 7, 2021	July 1, 2021*
February 4, 2021	August 5, 2021
March 4, 2021	September 2, 2021
April 1, 2021	October 7, 2021
May 6, 2021	November 4, 2021
June 3, 2021	December 2, 2021*

\* Meeting reserved for time sensitive projects only

**NOTE:** Typically a minimum of four weeks is required for the City to process the final, complete plans and application in order to schedule an application for review on the next available meeting date. Complex projects and those requiring additional environmental analysis, may require additional information and time to process. Staff reports are prepared for each of the regular items on an agenda and are available at least 72 hours before the meeting date. Please contact the Planning Division at 408-615-2450 for additional information.

Adopted by the Historical and Landmarks Commission on **October 1, 2020**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
AMENDING RESOLUTION NO. 5195, APPROVING THE 2021  
HISTORICAL AND LANDMARKS COMMISSION CALENDAR OF  
MEETINGS, AND SETTING THE START TIME OF REGULAR  
HISTORICAL AND LANDMARKS COMMISSION MEETINGS**

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

**WHEREAS**, Section 2.120.030 of the Santa Clara City Code ("SCCC") requires City boards and commissions to hold regular meetings at the times and on the days indicated by resolution of the Council;

**WHEREAS**, Resolution 5195, adopted by the City Council in 1987, states that the Historical and Landmarks Commission shall hold meetings on the first Thursday of each month at 7:00 p.m.; and

**WHEREAS**, on September 5, 2019, the Historical and Landmarks Commission recommended to the City Council its meeting schedule for 2020, which proposes a start time of 6:00 p.m.

**WHEREAS**, on October 1, 2020, the Historical and Landmarks Commission recommended to the City Council its meeting schedule for 2021.

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. The City Council hereby approves the 2021 Historical and Landmarks Commission Schedule of Meetings, attached hereto and incorporated into this Resolution by reference.
3. The City Council hereby amends City Council Resolution 5195 by deleting the following text from that Resolution:

"Historical and Landmarks                      First Thursday of each month at 7:00 p.m."

4. The City Council hereby approves setting the Historical and Landmarks Commission regular meeting start time at 6:00 p.m., which meetings may be cancelled at the discretion of the City Manager for agenda management purposes.



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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. Resolution 5195
2. 2021 Historical and Landmarks Commission Calendar of Meetings



## Agenda Report

20-999

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on the Approval of FY 20 Edward Byrne Memorial Justice Assistance Grant Funding and Related Budget Amendment

#### COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### BACKGROUND

In early 2005, the Bureau of Justice Administration (BJA) made the decision to combine the Byrne Formula Grant and the Local Law Enforcement Block Grant (LLEBG) Programs into the Edward Byrne Memorial Justice Assistance Grant (JAG) program. JAG is the primary provider of federal criminal justice funding to states and units of local government.

The JAG Program allows states and units of local government, including tribes, to support a broad range of activities to prevent and control crime based on their own state and local needs and conditions. Grant funds can be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice, including for any one or more of the following program areas:

- law enforcement programs;
- prosecution and court programs;
- prevention and education programs;
- corrections and community corrections programs;
- drug treatment and enforcement programs;
- planning, evaluation, and technology improvement programs;
- crime victim and witness programs (other than compensation); and,
- mental health programs and related law enforcement and corrections programs.

The Police Department has had the good fortune to be awarded \$97,570 in JAG funds the past six years (FY 12, \$14,855; FY 13, \$13,373; FY 14, \$15,847; FY 15, \$14,044; FY 16, \$14,806; FY 17, \$12,254; FY 19, \$12,391). The Department did not apply for a FY 18 grant.

According to the FY 20 Solicitation, the Police Department was eligible to receive up to \$12,469. If funded, the Department will have until September 30, 2022, to expend these dollars.

#### DISCUSSION

The Police Department sought JAG 20 funding for Red Dot Sights (RDS).

An RDS is a common classification for a non-magnifying reflector (or reflex) sight for firearms, and other devices that require aiming, that gives the user a point of aim in the form of an illuminated red dot. A standard design uses a red light-emitting diode (LED) at the focus of collimating optics which generates a dot style illuminated reticle that stays in alignment with the weapon the sight is attached to regardless of eye position (nearly parallax free). RDS can also be used on cameras and telescopes.

RDS provides for:

- Rapid target acquisition (single focal plane sighting system)
- Increased reaction time, including the ability to decrease the time between shots
- Improved accuracy (aligned on target)
- Improves human performance under stress
- Heightened ability to remain focused on whatever may be endangering the situation
- Enhanced officer safety

More and more law enforcement agencies are allowing their officers to train with RDS on their duty handguns and use these optics on their duty weapons. Some agencies are also making RDS mandatory with the Department issued firearm.

The Police Department plans to gradually transition to a position where RDS become standard issue for police recruits. Veteran police officers will be trained with this new resource and it will be optional for seasoned staff to transition to this new resource. The Police Department's JAG 20 award allows for the purchase of approximately 15-20 RDS (depending on vendor, model and negotiation) to begin the implementation of this program among our recruit and newly hired police officers.

Prior to the purchase and implementation, the Police Department will adjust policies, designate and train RDS instructors and implement a training program to support the transition including making sure the RDS is working properly (e.g. glass is clean, battery working, RDS properly aligned, etc.) before heading out on assignment.

### **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**

Acceptance and appropriation of this Edward Byrne Memorial Justice Assistance Grant funding will support the Department's training efforts and pending policy adjustments.

Budget Amendment FY 2020/21			
	Current	Increase/ (Decrease)	Revised
<b>Police Department Operating Grant Trust Fund</b>			
<u>Revenue</u>			
Grant Funding	\$0	\$12,469	\$12,469
<u>Expenditure</u>			
FY 20 Edward Byrne Memorial Justice Assistance Grant	\$0	\$12,469	\$12,469

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Accept and approve the FY 20 Edward Byrne Memorial Justice Assistance Grant funding of \$12,469;
2. Approve the related FY 2020/21 budget amendment in the Police Operating Grant Trust Fund to recognize grant revenue in the amount of \$12,469 and establish an Edward Byrne Memorial Justice Assistance Grant Program 2020 appropriation in the amount of \$12,469;
3. Authorize the City Manager to sign grant-related documents;
4. Authorize the Mayor to sign the Certifications and Assurances by the Chief Executive of the Applicant Government form; and,
5. Authorize the City Manager to execute purchase order(s), subject to the appropriation of funds, to purchase the equipment described above.

Reviewed by: Patrick Nikolai, Chief of Police

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. FY 20 Edward Byrne Memorial Justice Assistance Grant Funding Allocation
2. Certifications and Assurances by the Chief Executive of the Applicant Government
3. FY 20 Edward Byrne Memorial Justice Assistance Grant Award

## 2020 CALIFORNIA LOCAL JAG ALLOCATIONS

Listed below are all jurisdictions in the state that are eligible for FY 2020 JAG funding, as determined by the JAG formula. For additional details regarding the JAG formula and award calculation process, with examples, please refer to the JAG Technical report here: <https://www.bja.gov/Jag/pdfs/JAG-Technical-Report.pdf> and current JAG Frequently Asked Questions here: <https://www.bja.gov/Funding/JAGFAQ.pdf>.

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State	Jurisdiction Name	Government Type	Direct Allocation	Joint Allocation
CA	ALAMEDA COUNTY	County	\$41,507	
CA	ALAMEDA CITY	Municipal	\$12,619	
CA	BERKELEY CITY	Municipal	\$39,790	
CA	FREMONT CITY	Municipal	\$29,038	
CA	HAYWARD CITY	Municipal	\$39,983	
CA	LIVERMORE CITY	Municipal	\$11,289	
CA	OAKLAND CITY	Municipal	\$366,136	
CA	SAN LEANDRO CITY	Municipal	\$31,849	
CA	UNION CITY	Municipal	\$17,105	\$589,316
CA	BUTTE COUNTY	County	\$14,401	
CA	CHICO CITY	Municipal	\$28,265	\$42,666
CA	CONTRA COSTA COUNTY	County	\$20,710	
CA	ANTIOCH CITY	Municipal	\$42,258	
CA	RICHMOND CITY	Municipal	\$66,080	\$129,048
CA	FRESNO COUNTY	County	\$84,215	
CA	FRESNO CITY	Municipal	\$196,009	\$280,224
CA	KINGS COUNTY	County	*	
CA	HANFORD CITY	Municipal	\$17,684	\$17,684
CA	LASSEN COUNTY	County	*	
CA	SUSANVILLE CITY	Municipal	\$12,598	\$12,598
CA	LOS ANGELES COUNTY	County	\$386,996	
CA	LOS ANGELES CITY	Municipal	\$1,919,744	\$2,306,740
CA	MARIN COUNTY	County	*	
CA	SAN RAFAEL CITY	Municipal	\$15,023	\$15,023
CA	MONTEREY COUNTY	County	\$16,783	
CA	SALINAS CITY	Municipal	\$64,535	\$81,318
CA	NAPA COUNTY	County	*	
CA	NAPA CITY	Municipal	\$17,963	\$17,963
CA	ORANGE COUNTY	County	\$17,384	
CA	ANAHEIM CITY	Municipal	\$78,421	
CA	BUENA PARK CITY	Municipal	\$17,126	
CA	COSTA MESA CITY	Municipal	\$23,973	
CA	FULLERTON CITY	Municipal	\$20,732	

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State	Jurisdiction Name	Government Type	Direct Allocation	Joint Allocation
CA	GARDEN GROVE CITY	Municipal	\$35,498	
CA	HUNTINGTON BEACH CITY	Municipal	\$26,870	
CA	IRVINE CITY	Municipal	\$10,323	
CA	ORANGE CITY	Municipal	\$13,006	
CA	SANTA ANA CITY	Municipal	\$103,510	
CA	WESTMINSTER CITY	Municipal	\$18,800	\$365,643
CA	RIVERSIDE COUNTY	County	\$52,474	
CA	BEAUMONT CITY	Municipal	\$11,461	
CA	CORONA CITY	Municipal	\$14,401	
CA	DESERT HOT SPRINGS CITY	Municipal	\$17,727	
CA	HEMET CITY	Municipal	\$32,257	
CA	INDIO CITY	Municipal	\$33,716	
CA	JURUPA VALLEY CITY	Municipal	\$20,260	
CA	LAKE ELSINORE CITY	Municipal	\$10,581	
CA	MORENO VALLEY CITY	Municipal	\$52,281	
CA	PALM SPRINGS CITY	Municipal	\$18,006	
CA	PERRIS CITY	Municipal	\$13,542	
CA	RIVERSIDE CITY	Municipal	\$109,004	\$385,710
CA	SAN BERNARDINO COUNTY	County	\$60,951	
CA	ADELANTO CITY	Municipal	\$16,161	
CA	APPLE VALLEY TOWN	Municipal	\$16,568	
CA	BARSTOW CITY	Municipal	\$20,346	
CA	CHINO CITY	Municipal	\$14,873	
CA	COLTON CITY	Municipal	\$13,778	
CA	FONTANA CITY	Municipal	\$49,212	
CA	HESPERIA CITY	Municipal	\$24,037	
CA	HIGHLAND CITY	Municipal	\$13,585	
CA	MONTCLAIR CITY	Municipal	\$14,572	
CA	ONTARIO CITY	Municipal	\$41,958	
CA	RANCHO CUCAMONGA CITY	Municipal	\$18,994	
CA	REDLANDS CITY	Municipal	\$15,130	
CA	RIALTO CITY	Municipal	\$29,896	
CA	SAN BERNARDINO CITY	Municipal	\$184,334	
CA	UPLAND CITY	Municipal	\$16,418	
CA	VICTORVILLE CITY	Municipal	\$51,916	\$602,729
CA	SAN DIEGO COUNTY	County	\$95,097	
CA	SAN DIEGO CITY	Municipal	\$341,519	\$436,616
CA	SAN JOAQUIN COUNTY	County	\$49,276	
CA	STOCKTON CITY	Municipal	\$282,070	\$331,346

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State	Jurisdiction Name	Government Type	Direct Allocation	Joint Allocation
CA	SANTA BARBARA COUNTY	County	\$16,440	
CA	SANTA MARIA CITY	Municipal	\$31,742	
CA	SANTA BARBARA CITY	Municipal	\$25,518	\$73,700
CA	SANTA CLARA COUNTY	County	\$21,891	
CA	SAN JOSE CITY	Municipal	\$268,678	\$290,569
CA	SANTA CRUZ COUNTY	County	\$18,672	
CA	SANTA CRUZ CITY	Municipal	\$28,329	\$47,001
CA	SOLANO COUNTY	County	*	
CA	FAIRFIELD CITY	Municipal	\$34,532	
CA	VACAVILLE CITY	Municipal	\$13,628	
CA	VALLEJO CITY	Municipal	\$65,308	\$113,468
CA	STANISLAUS COUNTY	County	\$27,965	
CA	MODESTO CITY	Municipal	\$130,530	\$158,495
CA	SUTTER COUNTY	County	*	
CA	YUBA CITY	Municipal	\$16,976	\$16,976
CA	TEHAMA	County	*	
CA	RED BLUFF CITY	Municipal	\$10,387	\$10,387
CA	VENTURA COUNTY	County	\$10,473	
CA	OXNARD CITY	Municipal	\$57,024	
CA	SAN BUENAVENTURA CITY	Municipal	\$27,321	\$94,818
CA	YOLO COUNTY	County	*	
CA	WEST SACRAMENTO CITY	Municipal	\$14,100	
CA	WOODLAND CITY	Municipal	\$13,414	\$27,514
CA	ALHAMBRA CITY	Municipal	\$10,967	
CA	ARVIN CITY	Municipal	\$13,456	
CA	ATWATER CITY	Municipal	\$12,233	
CA	AZUSA CITY	Municipal	\$11,053	
CA	BAKERSFIELD CITY	Municipal	\$118,962	
CA	BALDWIN PARK CITY	Municipal	\$19,873	
CA	BELL CITY	Municipal	\$13,843	
CA	BELLFLOWER CITY	Municipal	\$23,393	
CA	BURBANK CITY	Municipal	\$14,851	
CA	CALAVERAS COUNTY	County	\$11,933	

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State	Jurisdiction Name	Government Type	Direct Allocation	Joint Allocation
CA	CARLSBAD CITY	Municipal	\$15,002	
CA	CARSON CITY	Municipal	\$30,368	
CA	CERES CITY	Municipal	\$13,757	
CA	CHULA VISTA CITY	Municipal	\$50,199	
CA	CITRUS HEIGHTS CITY	Municipal	\$22,942	
CA	CLOVIS CITY	Municipal	\$15,431	
CA	COMPTON CITY	Municipal	\$74,408	
CA	CONCORD CITY	Municipal	\$29,660	
CA	COVINA CITY	Municipal	\$11,246	
CA	CULVER CITY	Municipal	\$12,534	
CA	DALY CITY	Municipal	\$16,118	
CA	DELANO CITY	Municipal	\$16,096	
CA	DINUBA CITY	Municipal	\$11,954	
CA	DOWNEY CITY	Municipal	\$24,080	
CA	EL CAJON CITY	Municipal	\$28,737	
CA	EL CENTRO CITY	Municipal	\$11,074	
CA	EL CERRITO CITY	Municipal	\$10,216	
CA	EL DORADO COUNTY	County	\$15,796	
CA	EL MONTE CITY	Municipal	\$27,063	
CA	ELK GROVE CITY	Municipal	\$32,643	
CA	ESCONDIDO CITY	Municipal	\$35,755	
CA	EUREKA CITY	Municipal	\$14,937	
CA	GARDENA CITY	Municipal	\$22,685	
CA	GILROY CITY	Municipal	\$12,856	
CA	GLENDALE CITY	Municipal	\$15,088	
CA	HAWTHORNE CITY	Municipal	\$39,876	
CA	HUMBOLDT COUNTY	County	\$16,697	
CA	HUNTINGTON PARK CITY	Municipal	\$28,308	
CA	IMPERIAL COUNTY	County	\$11,568	
CA	INGLEWOOD CITY	Municipal	\$49,319	
CA	KERN COUNTY	County	\$150,511	
CA	LA MESA CITY	Municipal	\$11,096	
CA	LAKE COUNTY	County	\$12,898	
CA	LAKEWOOD CITY	Municipal	\$17,405	
CA	LANCASTER CITY	Municipal	\$75,438	
CA	LAWNDALE CITY	Municipal	\$10,752	
CA	LODI CITY	Municipal	\$20,410	
CA	LOMPOC CITY	Municipal	\$14,658	
CA	LONG BEACH CITY	Municipal	\$198,112	
CA	LYNWOOD CITY	Municipal	\$29,038	
CA	MADERA CITY	Municipal	\$27,514	
CA	MADERA COUNTY	County	\$28,716	
CA	MANTECA CITY	Municipal	\$16,225	



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CA	MENDOCINO COUNTY	County	\$17,448	
CA	MERCED CITY	Municipal	\$32,557	
CA	MERCED COUNTY	County	\$35,862	
CA	MONTEBELLO CITY	Municipal	\$13,628	
CA	NATIONAL CITY	Municipal	\$18,650	
CA	NORWALK CITY	Municipal	\$28,007	
CA	OCEANSIDE CITY	Municipal	\$42,966	
CA	PALMDALE CITY	Municipal	\$42,258	
CA	PARAMOUNT CITY	Municipal	\$20,732	
CA	PASADENA CITY	Municipal	\$34,296	
CA	PETALUMA CITY	Municipal	\$13,521	
CA	PICO RIVERA CITY	Municipal	\$14,680	
CA	PITTSBURG CITY	Municipal	\$22,342	
CA	PLACER COUNTY	County	\$16,869	
CA	POMONA CITY	Municipal	\$53,590	
CA	PORTERVILLE CITY	Municipal	\$14,401	
CA	RANCHO CORDOVA	Municipal	\$17,641	
CA	REDDING CITY	Municipal	\$42,816	
CA	REDONDO BEACH CITY	Municipal	\$10,881	
CA	REDWOOD CITY	Municipal	\$11,804	
CA	RIDGECREST CITY	Municipal	\$10,194	
CA	ROHNERT PARK CITY	Municipal	\$13,821	
CA	ROSEMEAD CITY	Municipal	\$11,461	
CA	ROSEVILLE CITY	Municipal	\$15,774	
CA	SACRAMENTO CITY	Municipal	\$220,111	
CA	SACRAMENTO COUNTY	County	\$166,542	
CA	SAN FRANCISCO CITY AND COUNTY	Municipal	\$399,938	
CA	SAN LUIS OBISPO CITY	Municipal	\$11,761	
CA	SAN LUIS OBISPO COUNTY	County	\$13,049	
CA	SAN MARCOS CITY	Municipal	\$12,748	
CA	SAN MATEO CITY	Municipal	\$17,062	
CA	SAN MATEO COUNTY	County	\$19,723	
CA	SAN PABLO CITY	Municipal	\$12,255	
CA	SANTA CLARA CITY	Municipal	\$12,469	
CA	SANTA CLARITA CITY	Municipal	\$20,925	
CA	SANTA MONICA CITY	Municipal	\$42,430	
CA	SANTA ROSA CITY	Municipal	\$47,280	
CA	SELMA CITY	Municipal	\$17,813	
CA	SHASTA COUNTY	County	\$32,686	
CA	SIMI VALLEY CITY	Municipal	\$12,276	
CA	SONOMA COUNTY	County	\$37,236	
CA	SOUTH GATE CITY	Municipal	\$42,237	
CA	SOUTH SAN FRANCISCO CITY	Municipal	\$12,104	

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State	Jurisdiction Name	Government Type	Direct Allocation	Joint Allocation
CA	SUNNYVALE CITY	Municipal	\$12,770	
CA	TORRANCE CITY	Municipal	\$16,998	
CA	TRACY CITY	Municipal	\$11,654	
CA	TULARE CITY	Municipal	\$15,646	
CA	TULARE COUNTY	County	\$23,264	
CA	TUOLUMNE COUNTY	County	\$10,752	
CA	TURLOCK CITY	Municipal	\$26,849	
CA	VISALIA CITY	Municipal	\$29,767	
CA	VISTA CITY	Municipal	\$23,007	
CA	WATSONVILLE CITY	Municipal	\$16,719	
CA	WEST COVINA CITY	Municipal	\$17,856	
CA	WEST HOLLYWOOD CITY	Municipal	\$17,813	
CA	WHITTIER CITY	Municipal	\$16,976	
CA	YUBA COUNTY	County	\$14,143	
	Local total		\$9,988,360	

**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS**

**Edward Byrne Justice Assistance Grant Program FY 2020 Local Solicitation**

**Certifications and Assurances by the Chief Executive of the Applicant Government**

On behalf of the applicant unit of local government named below, in support of that locality's application for an award under the FY 2020 Edward Byrne Justice Assistance Grant ("JAG") Program, and further to 34 U.S.C. § 10153(a), I certify to the Office of Justice Programs ("OJP"), U.S. Department of Justice ("USDOJ"), that all of the following are true and correct:

1. I am the chief executive of the applicant unit of local government named below, and I have the authority to make the following representations on my own behalf as chief executive and on behalf of the applicant unit of local government. I understand that these representations will be relied upon as material in any OJP decision to make an award, under the application described above, to the applicant unit of local government.
2. I certify that no federal funds made available by the award (if any) that OJP makes based on the application described above will be used to supplant local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.
3. I assure that the application described above (and any amendment to that application) was submitted for review to the governing body of the unit of local government (*e.g.*, city council or county commission), or to an organization designated by that governing body, not less than 30 days before the date of this certification.
4. I assure that, before the date of this certification— (a) the application described above (and any amendment to that application) was made public; and (b) an opportunity to comment on that application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure made such an opportunity available.
5. I assure that, for each fiscal year of the award (if any) that OJP makes based on the application described above, the applicant unit of local government will maintain and report such data, records, and information (programmatic and financial), as OJP may reasonably require.
6. I have carefully reviewed 34 U.S.C. § 10153(a)(5), and, with respect to the programs to be funded by the award (if any), I hereby make the certification required by section 10153(a)(5), as to each of the items specified therein.

\_\_\_\_\_  
Signature of Chief Executive of the Applicant Unit of  
Local Government

\_\_\_\_\_  
Date of Certification

\_\_\_\_\_  
Printed Name of Chief Executive

\_\_\_\_\_  
Title of Chief Executive

\_\_\_\_\_  
Name of Applicant Unit of Local Government



**Department of Justice (DOJ)**  
Office of Justice Programs

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Office of the Assistant Attorney General

*Washington, D.C. 20531*

September 19, 2020

Ms. Deanna Santana  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050-3713

Dear Ms. Santana:

On behalf of Attorney General William P. Barr, it is my pleasure to inform you that the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), has approved the application by City of Santa Clara for an award under the OJP funding opportunity entitled "JAG Local: Eligible Allocation Amounts of Less than \$25,000." The approved award amount is \$12,469. These funds are for the project entitled FY 20 Local JAG Program.

The award document, including award conditions, is enclosed. The entire document is to be reviewed carefully before any decision to accept the award. Also, the webpage entitled "Legal Notices: Special circumstances as to particular award conditions" ([ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm](http://ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm)) is to be consulted prior to an acceptance. Through that "Legal Notices" webpage, OJP sets out -- by funding opportunity -- certain special circumstances that may or will affect the applicability of one or more award requirements. Any such legal notice pertaining to award requirements that is posted through that webpage is incorporated by reference into the award.

Please note that award requirements include not only award conditions, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. Because these requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds), it is vital that all key staff know the award requirements, and receive the award conditions and the assurances and certifications, as well as the application as approved by OJP. (Information on all pertinent award requirements also must be provided to any subrecipient of the award.)

Should City of Santa Clara accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Please direct questions regarding this award as follows:

- For program questions, contact Elaine Vanlandingham, Program Manager at (202) 305-0034; and
- For financial questions, contact the Customer Service Center of OJP's Office of the Chief Financial Officer at (800) 458-0786, or at [ask.ocfo@usdoj.gov](mailto:ask.ocfo@usdoj.gov).

We look forward to working with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Sullivan", is written over a horizontal line.

Katharine T. Sullivan  
Principal Deputy Assistant Attorney General

Encl.



**Department of Justice (DOJ)**  
Office of Justice Programs  
*Office of Civil Rights*

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*Washington, DC 20531*

September 19, 2020

Ms. Deanna Santana  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050-3713

Dear Ms. Santana:

Congratulations on your recent award. The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, require recipients of federal financial assistance to give assurances that they will comply with those laws. In addition to those civil rights laws, many grant program statutes contain nondiscrimination provisions that require compliance with them as a condition of receiving federal financial assistance. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with OJP and other DOJ awards, see <https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm>

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria. These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a non-discriminatory manner to their service population or have employment practices that meet equal-opportunity standards.



If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOPs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEOP requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5). Please submit information about any adverse finding to the OCR at the above address.

We at the OCR are available to help you and your organization meet the civil rights requirements that are associated with OJP and other DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to let us know.

Sincerely,

Michael L. Alston  
Director

cc: Grant Manager  
Financial Analyst

 <b>Department of Justice (DOJ)</b> <b>Office of Justice Programs</b> <b>Bureau of Justice Assistance</b>		<b>Grant</b>		PAGE 1 OF 30	
1. RECIPIENT NAME AND ADDRESS (Including Zip Code)  City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050-3713		4. AWARD NUMBER: 2020-DJ-BX-0090			
		5. PROJECT PERIOD: FROM 10/01/2019 TO 09/30/2021 BUDGET PERIOD: FROM 10/01/2019 TO 09/30/2021			
		6. AWARD DATE 09/19/2020		7. ACTION  Initial	
		8. SUPPLEMENT NUMBER 00			
2a. GRANTEE IRS/VENDOR NO. 946000426		9. PREVIOUS AWARD AMOUNT \$ 0			
2b. GRANTEE DUNS NO. 065242948					
3. PROJECT TITLE FY 20 Local JAG Program		10. AMOUNT OF THIS AWARD \$ 12,469			
		11. TOTAL AWARD \$ 12,469			
12. SPECIAL CONDITIONS  THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).					
13. STATUTORY AUTHORITY FOR GRANT  This project is supported under FY20(BJA - JAG State and JAG Local) Title I of Pub. L. No. 90-351 (generally codified at 34 U.S.C. 10101-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151 - 10158); see also 28 U.S.C. 530C(a)					
14. CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number) 16.738 - Edward Byrne Memorial Justice Assistance Grant Program					
15. METHOD OF PAYMENT GPRS					
AGENCY APPROVAL		GRANTEE ACCEPTANCE			
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL  Katharine T. Sullivan Principal Deputy Assistant Attorney General		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL  Deanna Santana City Manager			
17. SIGNATURE OF APPROVING OFFICIAL 		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A. DATE	
AGENCY USE ONLY					
20. ACCOUNTING CLASSIFICATION CODES FISCAL FUND BUD. DIV. YEAR CODE ACT. OFC. REG. SUB. POMS AMOUNT X B DJ 80 00 00 12469		21. VDJUGT2726			

OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

OJP FORM 4000/2 (REV. 4-88)



Department of Justice (DOJ)  
Office of Justice Programs  
**Bureau of Justice Assistance**

**AWARD CONTINUATION  
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PROJECT NUMBER 2020-DJ-BX-0090

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*SPECIAL CONDITIONS*

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" ([ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm](http://ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm)), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.





Department of Justice (DOJ)  
Office of Justice Programs  
**Bureau of Justice Assistance**

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*SPECIAL CONDITIONS*

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2020 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2020 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2020 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

3. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.





Department of Justice (DOJ)  
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*SPECIAL CONDITIONS*

5. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2018, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

6. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

7. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.



Department of Justice (DOJ)  
Office of Justice Programs  
**Bureau of Justice Assistance**

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*SPECIAL CONDITIONS*

8. Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).



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*SPECIAL CONDITIONS*

9. Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify ([www.e-verify.gov](http://www.e-verify.gov)), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or



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Office of Justice Programs  
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*SPECIAL CONDITIONS*

any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov). E-Verify employer agents can email E-Verify at [E-VerifyEmployerAgent@dhs.gov](mailto:E-VerifyEmployerAgent@dhs.gov).

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

10. Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

11. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

12. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.



Department of Justice (DOJ)  
Office of Justice Programs  
**Bureau of Justice Assistance**

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*SPECIAL CONDITIONS*

13. Unreasonable restrictions on competition under the award; association with federal government

SCOPE. This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award, whether by the recipient or by any subrecipient at any tier, and regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

1. No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no recipient (or subrecipient, at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), grant recipient or -subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.



Department of Justice (DOJ)  
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PROJECT NUMBER 2020-DJ-BX-0090

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*SPECIAL CONDITIONS*

14. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

15. Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

16. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

17. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

18. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.



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19. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

20. Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

21. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

22. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

23. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.



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24. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

25. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2020) The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at <https://ojp.gov/funding/Explore/FY20AppropriationsRestrictions.htm>, and are incorporated by reference here. Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

26. Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.





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27. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.



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28. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

29. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

30. Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at [OJP.ComplianceReporting@ojp.usdoj.gov](mailto:OJP.ComplianceReporting@ojp.usdoj.gov). For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.



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31. Authority to obligate award funds contingent on noninterference (within the funded "program or activity") with federal law enforcement: information-communication restrictions; unallowable costs; notification

1. If the recipient is a "State," a local government, or a "public" institution of higher education:

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is a State, a local government, or a public institution of higher education) that is funded wholly or partly with award funds is subject to any "information-communication restriction."

B. Also, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the program or activity of the recipient (or of any subrecipient, at any tier, described in par. 1.A of this condition) that would be reimbursed wholly or partly with award funds was subject to any information-communication restriction.

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and each subrecipient (regardless of tier) described in par. 1.A of this condition, is in compliance with the award condition entitled "Noninterference (within the funded 'program or activity') with federal law enforcement: information-communication restrictions; ongoing compliance."

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded program or activity of the recipient, or of any subrecipient (at any tier) described in par. 1.A of this condition, may be subject to any information-communication restriction. Also, any subaward (at any tier) to a subrecipient described in paragraph 1.A of this condition must require prompt notification to the entity that made the subaward, should the subrecipient have such credible evidence regarding an information-communication restriction.

2. Any subaward (at any tier) to a subrecipient described in par. 1.A of this condition must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the program or activity of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any information-communication restriction.

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the "Noninterference ... information-communication restrictions; ongoing compliance" award condition.

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the "Noninterference ... information-communication restrictions; ongoing compliance" condition.

B. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference ... information-communication restrictions; ongoing compliance" condition are incorporated by reference as though set forth here in full.



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32. Authority to obligate award funds contingent on no use of funds to interfere with federal law enforcement: information-communication restrictions; unallowable costs; notification

1. If the recipient is a "State," a local government, or a "public" institution of higher education:

A. The recipient may not obligate award funds if, at the time of the obligation, the "program or activity" of the recipient (or of any subrecipient at any tier that is a State, a local government, or a public institution of higher education) that is funded in whole or in part with award funds is subject to any "information-communication restriction."

B. In addition, with respect to any project costs it incurs "at risk," the recipient may not obligate award funds to reimburse itself if -- at the time it incurs such costs -- the program or activity of the recipient (or of any subrecipient, at any tier, described in paragraph 1.A of this condition) that would be reimbursed in whole or in part with award funds was subject to any information-communication restriction.

C. Any drawdown of award funds by the recipient shall be considered, for all purposes, to be a material representation by the recipient to OJP that, as of the date the recipient requests the drawdown, the recipient and each subrecipient (regardless of tier) described in paragraph 1.A of this condition, is in compliance with the award condition entitled "No use of funds to interfere with federal law enforcement: information-communication restrictions; ongoing compliance."

D. The recipient must promptly notify OJP (in writing) if the recipient, from its requisite monitoring of compliance with award conditions or otherwise, has credible evidence that indicates that the funded program or activity of the recipient, or of any subrecipient (at any tier) described in paragraph 1.A of this condition, may be subject to any information-communication restriction. In addition, any subaward (at any tier) to a subrecipient described in paragraph 1.A of this condition must require prompt notification to the entity that made the subaward, should the subrecipient have such credible evidence regarding an information-communication restriction.

2. Any subaward (at any tier) to a subrecipient described in paragraph 1.A of this condition must provide that the subrecipient may not obligate award funds if, at the time of the obligation, the program or activity of the subrecipient (or of any further such subrecipient at any tier) that is funded in whole or in part with award funds is subject to any information-communication restriction.

3. Absent an express written determination by DOJ to the contrary, based upon a finding by DOJ of compelling circumstances (e.g., a small amount of award funds obligated by the recipient at the time of a subrecipient's minor and transitory non-compliance, which was unknown to the recipient despite diligent monitoring), any obligations of award funds that, under this condition, may not be made shall be unallowable costs for purposes of this award. In making any such determination, DOJ will give great weight to evidence submitted by the recipient that demonstrates diligent monitoring of subrecipient compliance with the requirements set out in the "No use of funds to interfere ... information-communication restrictions; ongoing compliance" award condition.

4. Rules of Construction

A. For purposes of this condition "information-communication restriction" has the meaning set out in the "No use of funds to interfere ... information-communication restrictions; ongoing compliance" condition.

B. Both the "Rules of Construction" and the "Important Note" set out in the "No use of funds to interfere ... information-communication restrictions; ongoing compliance" condition are incorporated by reference as though set forth here in full.



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33. Noninterference (within the funded "program or activity") with federal law enforcement: information-communication restrictions; ongoing compliance

1. With respect to the "program or activity" funded in whole or part under this award (including any such program or activity of any subrecipient at any tier), throughout the period of performance, no State or local government entity, -agency, or -official may prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status to/from DHS; or (2) a government entity or -agency from sending, requesting or receiving, or exchanging information regarding immigration status to/from/with DHS, or from maintaining such information. Any prohibition (or restriction) that violates this condition is an "information-communication restriction" under this award.

2. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State, a local government, or a public institution of higher education, incurs to implement this condition.

4. Rules of Construction

A. For purposes of this condition:

(1) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(2) A "public" institution of higher education is defined as one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. 2000d-4a).

(4) "Immigration status" means what it means under 8 U.S.C. 1373 and 8 U.S.C. 1644; and terms that are defined in 8 U.S.C. 1101 mean what they mean under that section 1101, except that "State" also includes American Samoa.

(5) "DHS" means the U.S. Department of Homeland Security.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.



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34. No use of funds to interfere with federal law enforcement: information-communication restrictions; ongoing compliance

1. Throughout the period of performance, no State or local government entity, -agency, or -official may use funds under this award (including under any subaward, at any tier) to prohibit or in any way restrict-- (1) any government entity or -official from sending or receiving information regarding citizenship or immigration status to/from DHS; or (2) a government entity or -agency from sending, requesting or receiving, or exchanging information regarding immigration status to/from/with DHS, or from maintaining such information. Any prohibition (or restriction) that violates this condition is an "information-communication restriction" under this award.

2. The recipient's monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition.

3. Allowable costs. Compliance with these requirements is an authorized and priority purpose of this award. To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) that the recipient, or any subrecipient at any tier that is a State, a local government, or a public institution of higher education, incurs to implement this condition.

4. Rules of Construction

A. For purposes of this condition:

(1) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(2) A "public" institution of higher education is defined as one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(3) "Program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. 2000d-4a).

(4) "Immigration status" means what it means under 8 U.S.C. 1373 and 8 U.S.C. 1644; and terms that are defined in 8 U.S.C. 1101 mean what they mean under that section 1101, except that "State" also includes American Samoa.

(5) "DHS" means the U.S. Department of Homeland Security.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.



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35. Noninterference (within the funded "program or activity") with federal law enforcement: No public disclosure of certain law-enforcement-sensitive information

SCOPE. This condition applies with respect to the "program or activity" that is funded (in whole or in part) by the award, as of the date the recipient accepts this award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward (at any tier).

1. Noninterference: No public disclosure of federal law-enforcement information in order to conceal, harbor, or shield

Consistent with the purposes and objectives of federal law enforcement statutes and federal criminal law (including 8 U.S.C. 1324 and 18 U.S.C. chs. 1, 49, 227), no public disclosure may be made of any federal law-enforcement information in a direct or indirect attempt to conceal, harbor, or shield from detection any fugitive from justice under 18 U.S.C. ch. 49, or any alien who has come to, entered, or remains in the United States in violation of 8 U.S.C. ch. 12 -- without regard to whether such disclosure would constitute (or could form a predicate for) a violation of 18 U.S.C. 1071 or 1072 or of 8 U.S.C. 1324(a).

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3));

(2) the term "federal law-enforcement information" means law-enforcement-sensitive information communicated or made available, by the federal government, to a State or local government entity, -agency, or -official, through any means, including, without limitation-- (1) through any database, (2) in connection with any law enforcement partnership or -task-force, (3) in connection with any request for law enforcement assistance or -cooperation, or (4) through any deconfliction (or courtesy) notice of planned, imminent, commencing, continuing, or impending federal law enforcement activity;

(3) the term "law-enforcement-sensitive information" means records or information compiled for any law-enforcement purpose; and

(4) the term "public disclosure" means any communication or release other than one-- (a) within the recipient, or (b) to any subrecipient (at any tier) that is a government entity.

B. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference (within the funded "program or activity") with federal law enforcement: information-communication restrictions; ongoing compliance" award condition are incorporated by reference as though set forth here in full.



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36. No use of funds to interfere with federal law enforcement: No public disclosure of certain law-enforcement-sensitive information

SCOPE. This condition applies as of the date the recipient accepts this award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward (at any tier).

1. No use of funds to interfere: No public disclosure of federal law-enforcement information in order to conceal, harbor, or shield

Consistent with the purposes and objectives of federal law enforcement statutes and federal criminal law (including 8 U.S.C. 1324 and 18 U.S.C. chs. 1, 49, 227), no funds under this award may be used to make any public disclosure of any federal law-enforcement information in a direct or indirect attempt to conceal, harbor, or shield from detection any fugitive from justice under 18 U.S.C. ch. 49, or any alien who has come to, entered, or remains in the United States in violation of 8 U.S.C. ch. 12 -- without regard to whether such disclosure would constitute (or could form a predicate for) a violation of 18 U.S.C. 1071 or 1072 or of 8 U.S.C. 1324(a).

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. For purposes of this condition--

(1) the term "alien" means what it means under section 101 of the Immigration and Nationality Act (see 8 U.S.C. 1101(a)(3));

(2) the term "federal law-enforcement information" means law-enforcement-sensitive information communicated or made available, by the federal government, to a State or local government entity, -agency, or -official, through any means, including, without limitation-- (1) through any database, (2) in connection with any law enforcement partnership or -task-force, (3) in connection with any request for law enforcement assistance or -cooperation, or (4) through any deconfliction (or courtesy) notice of planned, imminent, commencing, continuing, or impending federal law enforcement activity;

(3) the term "law-enforcement-sensitive information" means records or information compiled for any law-enforcement purpose; and

(4) the term "public disclosure" means any communication or release other than one-- (a) within the recipient, or (b) to any subrecipient (at any tier) that is a government entity.

B. Both the "Rules of Construction" and the "Important Note" set out in the "No use of funds to interfere with federal law enforcement: information-communication restrictions; ongoing compliance" award condition are incorporated by reference as though set forth here in full.





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37. Noninterference (within the funded "program or activity") with federal law enforcement: Notice of scheduled release

SCOPE. This condition applies with respect to the "program or activity" that is funded (in whole or in part) by the award, as of the date the recipient accepts the award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward at any tier.

1. Noninterference with "removal" process: Notice of scheduled release date and time

Consonant with federal law enforcement statutes -- including 8 U.S.C. 1231 (for an alien incarcerated by a State or local government, a 90-day "removal period" during which the federal government "shall" detain and then "shall" remove an alien from the U.S. "begins" no later than "the date the alien is released from ... confinement"; also, the federal government is expressly authorized to make payments to a "State or a political subdivision of the State ... with respect to the incarceration of [an] undocumented criminal alien"); 8 U.S.C. 1226 (the federal government "shall take into custody" certain criminal aliens "when the alien is released"); and 8 U.S.C. 1366 (requiring an annual report to Congress on "the number of illegal alien[ felons] in Federal and State prisons" and programs underway "to ensure the prompt removal" from the U.S. of removable "criminal aliens") -- within the funded program or activity, no State or local government entity, -agency, or -official (including a government-contracted correctional facility) may interfere with the "removal" process by failing to provide -- as early as practicable (see para. 4.C. below) -- advance notice to DHS of the scheduled release date and time for a particular alien, if a State or local government (or government-contracted) correctional facility receives from DHS a formal written request pursuant to the INA that seeks such advance notice.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, or any other entity or individual to maintain (or detain) any individual in custody beyond the date and time the individual otherwise would have been released.

- B. Applicability

(1) Current DHS practice is ordinarily to request advance notice of scheduled release "as early as practicable (at least 48 hours, if possible)." (See DHS Form I-247A (3/17)). If (e.g., in light of the date DHS made such request) the scheduled release date and time for an alien are such as not to allow for the advance notice that DHS has requested, it shall NOT be a violation of this condition to provide only as much advance notice as practicable.

(2) Current DHS practice is to use the same form for a second, distinct purpose -- to request that an individual be detained for up to 48 hours AFTER the scheduled release. This condition does NOT encompass such DHS requests for detention.

C. Both the "Rules of Construction" and the "Important Note" set out in the "Noninterference (within the funded "program or activity") with federal law enforcement: Interrogation of certain aliens" award condition are incorporated by reference as though set forth here in full.



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*SPECIAL CONDITIONS*

38. No use of funds to interfere with federal law enforcement: Notice of scheduled release

SCOPE. This condition applies as of the date the recipient accepts the award, and throughout the remainder of the period of performance. Its provisions must be among those included in any subaward at any tier.

1. No use of funds to interfere with "removal" process: Notice of scheduled release date and time

Consonant with federal law enforcement statutes -- including 8 U.S.C. 1231 (for an alien incarcerated by a State or local government, a 90-day "removal period" during which the federal government "shall" detain and then "shall" remove an alien from the U.S. "begins" no later than "the date the alien is released from ... confinement"; also, the federal government is expressly authorized to make payments to a "State or a political subdivision of the State ... with respect to the incarceration of [an] undocumented criminal alien"); 8 U.S.C. 1226 (the federal government "shall take into custody" certain criminal aliens "when the alien is released"); and 8 U.S.C. 1366 (requiring an annual report to Congress on "the number of illegal alien[ felons] in Federal and State prisons" and programs underway "to ensure the prompt removal" from the U.S. of removable "criminal aliens") -- no State or local government entity, -agency, or -official (including a government-contracted correctional facility) may use funds under this award to interfere with the "removal" process by failing to provide -- as early as practicable (see para. 4.C. below) -- advance notice to DHS of the scheduled release date and time for a particular alien, if a State or local government (or government-contracted) correctional facility receives from DHS a formal written request pursuant to the INA that seeks such advance notice.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, or any other entity or individual to maintain (or detain) any individual in custody beyond the date and time the individual otherwise would have been released.

B. Applicability

(1) Current DHS practice is ordinarily to request advance notice of scheduled release "as early as practicable (at least 48 hours, if possible)." (See DHS Form I-247A (3/17)). If (e.g., in light of the date DHS made such request) the scheduled release date and time for an alien are such as not to allow for the advance notice that DHS has requested, it shall NOT be a violation of this condition to provide only as much advance notice as practicable.

(2) Current DHS practice is to use the same form for a second, distinct purpose -- to request that an individual be detained for up to 48 hours AFTER the scheduled release. This condition does NOT encompass such DHS requests for detention.

C. Both the "Rules of Construction" and the "Important Note" set out in the "No use of funds to interfere with federal law enforcement: Interrogation of certain aliens" award condition are incorporated by reference as though set forth here in full.



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*SPECIAL CONDITIONS*

39. Noninterference (within the funded "program or activity") with federal law enforcement: Interrogation of certain aliens

SCOPE. This condition applies with respect to the "program or activity" funded (wholly or partly) by this award, as of the date the recipient accepts the award, and throughout the rest of the award period of performance. Its provisions must be among those included in any subaward (at any tier).

1. Noninterference with statutory law enforcement access to correctional facilities

Consonant with federal law enforcement statutes and regulations--including 8 USC 1357(a), under which certain federal officers and employees "have power without warrant ... to interrogate any alien or person believed to be an alien as to his right to be or to remain" in the U.S., and 8 CFR 287.5(a), under which that power may be exercised "anywhere in or outside" the U.S.--within the funded program or activity, no State or local government entity, -agency, or -official may interfere with the exercise of that power to interrogate "without warrant" (by agents of the United States acting under color of federal law) by impeding access to any State or local government (or government-contracted) correctional facility by such agents for the purpose of "interrogat[ing] any alien or person believed to be an alien as to his [or her] right to be or to remain in the United States."

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. For purposes of this condition:

- (1) The term "alien" means what it means under sec. 101 of the Immigration and Nationality Act (INA) (8 USC 1101(a)(3)), except that, with respect to a juvenile offender, it means "criminal alien."
- (2) The term "juvenile offender" means what it means under 28 CFR 31.304(f) (as in effect on Jan. 1, 2020).
- (3) The term "criminal alien" means, with respect to a juvenile offender, an alien who is deportable on the basis of:
  - (a) conviction described in 8 USC 1227(a)(2), or
  - (b) conduct described in 8 USC 1227(a)(4).
- (4) The term "conviction" means what it means under 8 USC 1101(a)(48). (Adjudication of a juvenile as having committed an offense does not constitute "conviction" for purposes of this condition.)
- (5) The term "correctional facility" means what it means under 34 USC 10251(a)(7)) as of January 1, 2020.
- (6) The term "impede" includes taking or continuing any action, or implementing or maintaining any law, policy, rule, or practice, that:
  - (a) is designed to prevent or to significantly delay or complicate, or
  - (b) has the effect of preventing or of significantly delaying or complicating.



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(7) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(8) A "public" institution of higher education is one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(9) "Program or activity" means what it means under 42 USC 2000d-4a.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.



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40. No use of funds to interfere with federal law enforcement: Interrogation of certain aliens

SCOPE. This condition applies as of the date the recipient accepts this award, and throughout the remainder of the period of performance for the award. Its provisions must be among those included in any subaward (at any tier).

1. No use of funds to interfere with statutory law enforcement access to correctional facilities

Consonant with federal law enforcement statutes and regulations -- including 8 USC 1357(a), under which certain federal officers and employees "have power without warrant ... to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States," and 8 CFR 287.5(a), under which that power may be exercised "anywhere in or outside the United States" -- no State or local government entity, -agency, or -official may use funds under this award to interfere with the exercise of that power to interrogate "without warrant" (by agents of the United States acting under color of federal law) by impeding access to any State or local government (or government-contracted) correctional facility by such agents for the purpose of "interrogat[ing] any alien or person believed to be an alien as to his [or her] right to be or to remain in the United States."

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions (e.g., training) designed to ensure compliance with this condition.

4. Rules of construction

A. For purposes of this condition:

(1) The term "alien" means what it means under section 101 of the Immigration and Nationality Act (INA) (8 USC 1101(a)(3)), except that, with respect to a juvenile offender, it means "criminal alien."

(2) The term "juvenile offender" means what it means under 28 CFR 31.304(f) (as in effect on Jan. 1, 2020).

(3) The term "criminal alien" means, with respect to a juvenile offender, an alien who is deportable on the basis of—

(a) conviction described in 8 USC 1227(a)(2), or

(b) conduct described in 8 USC 1227(a)(4).

(4) The term "conviction" means what it means under 8 USC 1101(a)(48). (Adjudication of a juvenile as having committed an offense does not constitute "conviction" for purposes of this condition.)

(5) The term "correctional facility" means what it means under the title I of the Omnibus Crime Control and Safe Streets Act of 1968 ( 34 USC 10251(a)(7)).

(6) The term "impede" includes taking or continuing any action, or implementing or maintaining any law, policy, rule, or practice, that—

(a) is designed to prevent or to significantly delay or complicate, or



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(b) has the effect of preventing or of significantly delaying or complicating.

(7) "State" and "local government" include any agency or other entity thereof (including any public institution of higher education), but not any Indian tribe.

(8) A "public" institution of higher education is defined as one that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. (Such a public institution is considered to be a "government entity," and its officials to be "government officials.")

(9) "Program or activity" means what it means under 42 USC 2000d-4a.

B. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, any State or local government, any public institution of higher education, or any other entity (or individual) to violate any federal law, including any applicable civil rights or nondiscrimination law.

IMPORTANT NOTE: Any questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

41. Requirement to collect certain information from subrecipients

Except as provided in this condition, the recipient may not make a subaward to a State, a local government, or a "public" institution of higher education, unless it first obtains from the proposed subrecipient responses to the questions identified in the program solicitation as "Information regarding Communication with the Department of Homeland Security (DHS) and/or Immigration and Customs Enforcement (ICE)." All subrecipient responses must be collected and maintained by the recipient, consistent with document retention requirements, and must be made available to DOJ upon request. Responses to these questions are not required from subrecipients that are either a tribal government/organization, a nonprofit organization, or a private institution of higher education.

42. Cooperating with OJP Monitoring

The recipient agrees to cooperate with OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The recipient agrees to provide to OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may result in actions that affect the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

43. Required monitoring of subawards

The recipient must monitor subawards under this award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.



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44. Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

45. Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership ([www.ctfli.org](http://www.ctfli.org)). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership ([www.ctfli.org](http://www.ctfli.org)).

46. Submission of eligible records relevant to the National Instant Background Check System

Consonant with federal statutes that pertain to firearms and background checks -- including 18 U.S.C. 922 and 34 U.S.C. ch. 409 -- if the recipient (or any subrecipient at any tier) uses this award to fund (in whole or in part) a specific project or program (such as a law enforcement, prosecution, or court program) that results in any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the National Instant Background Check System (NICS), or that has as one of its purposes the establishment or improvement of records systems that contain any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS, the recipient (or subrecipient, if applicable) must ensure that all such court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS are promptly made available to the NICS or to the "State" repository/database that is electronically available to (and accessed by) the NICS, and -- when appropriate -- promptly must update, correct, modify, or remove such NICS-relevant "eligible records".

In the event of minor and transitory non-compliance, the recipient may submit evidence to demonstrate diligent monitoring of compliance with this condition (including subrecipient compliance). DOJ will give great weight to any such evidence in any express written determination regarding this condition.



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47. Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA.

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

a. New construction;

b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

Application of This Condition to Recipient's Existing Programs or Activities: For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

48. Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 C.F.R. 200.305(b)(8)). The trust fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.





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49. Prohibition on use of award funds for match under BVP program

JAG funds may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

50. Certification of body armor "mandatory wear" policies

If recipient uses funds under this award to purchase body armor, the recipient must submit a signed certification that law enforcement agencies receiving body armor purchased with funds from this award have a written "mandatory wear" policy in effect. The recipient must keep signed certifications on file for any subrecipients planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

51. Body armor - compliance with NIJ standards and other requirements

Ballistic-resistant and stab-resistant body armor purchased with JAG award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and is listed on the NIJ Compliant Body Armor Model List (<https://nij.gov/topics/technology/body-armor/Pages/compliant-ballistic-armor.aspx>). In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information can be found here: <https://nij.gov/topics/technology/body-armor/pages/safety-initiative.aspx>.

52. Body armor - impact on eligibility for other program funds

The recipient understands that the use of funds under this award for purchase of body armor may impact eligibility for funding under the Bulletproof Vest Partnership (BVP) program, a separate program operated by BJA, pursuant to the BVP statute at 34 USC 10531(c)(5).

53. Reporting requirements

The recipient must submit quarterly Federal Financial Reports (SF-425) and annual performance reports through OJP's GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website ([www.bjaperformancetools.org](http://www.bjaperformancetools.org)). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

54. Required data on law enforcement agency training

Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.



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55. Expenditures prohibited without waiver

No funds under this award may be expended on the purchase of items prohibited by the JAG program statute, unless, as set forth at 34 U.S.C. 10152, the BJA Director certifies that extraordinary and exigent circumstances exist, making such expenditures essential to the maintenance of public safety and good order.

56. JAG FY 2020 - Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2019 [BJA]

Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2019

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2019), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via a Grant Adjustment Notice). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through a Grant Adjustment Notice, the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

57. Use of funds for DNA testing; upload of DNA profiles

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS.

No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA.

Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS.

58. Encouragement of submission of "success stories"

BJA strongly encourages the recipient to submit annual (or more frequent) JAG success stories. To submit a success story, sign in to a My BJA account at <https://www.bja.gov/Login.aspx> to access the Success Story Submission form. If the recipient does not yet have a My BJA account, please register at <https://www.bja.gov/profile.aspx>. Once registered, one of the available areas on the My BJA page will be "My Success Stories." Within this box, there is an option to add a Success Story. Once reviewed and approved by BJA, all success stories will appear on the BJA Success Story web page at <https://www.bja.gov/SuccessStoryList.aspx>.



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59. Initial period of performance; requests for extension

The recipient understands that the initial period of performance for this award is two years. The recipient further understands that any requests for an extension of the period of performance for this award will be approved automatically for up to a total of two additional years, pursuant to 34 U.S.C. 10152(f) and in accordance with the program solicitation associated with this award.

Any request for an extension of the period of performance beyond a four-year award period will require approval, and the approval (if any) will be at the discretion of the Director of BJA.

60. Withholding of funds: Required certification from the chief executive of the applicant government

The recipient may not obligate, expend, or draw down any award funds until the recipient submits the required "Certifications and Assurances by the Chief Executive of the Applicant Government," properly-executed (as determined by OJP), and a Grant Adjustment Notice (GAN) has been issued to remove this condition.

61. Withholding of funds: NIBRS set-aside

The recipient may not obligate, expend, or draw down any award funds until the recipient submits, and BJA reviews and accepts, a budget that clearly dedicates at least 3 percent of the total amount of the award to NIBRS compliance activities or documentation showing that the recipient has been certified as NIBRS compliant, and a Grant Adjustment Notice (GAN) has been issued to remove this condition.

62. Withholding of funds: Disclosure of pending applications

The recipient may not obligate, expend, or draw down any award funds until: (1) it has provided to the grant manager for this OJP award either an "applicant disclosure of pending applications" for federal funding or a specific affirmative statement that no such pending applications (whether direct or indirect) exist, in accordance with the detailed instructions in the program solicitation, (2) OJP has completed its review of the information provided and of any supplemental information it may request, (3) the recipient has made any adjustments to the award that OJP may require to prevent or eliminate any inappropriate duplication of funding (e.g., budget modification, project scope adjustment), (4) if appropriate adjustments to a discretionary award cannot be made, the recipient has agreed in writing to any necessary reduction of the award amount in any amount sufficient to prevent duplication (as determined by OJP), and (5) a Grant Adjustment Notice has been issued to remove this condition.



**Department of Justice (DOJ)**

Office of Justice Programs

*Bureau of Justice Assistance*

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Washington, D.C. 20531

**Memorandum To:** Official Grant File

**From:** Orbin Terry, NEPA Coordinator

**Subject:** Incorporates NEPA Compliance in Further Developmental Stages for City of Santa Clara


The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system, some of which could have environmental impacts. All recipients of JAG funding must assist BJA in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the grantee or by a subgrantee or third party. Accordingly, prior to obligating funds for any of the specified activities, the grantee must first determine if any of the specified activities will be funded by the grant.

The specified activities requiring environmental analysis are:

- a. New construction;
- b. Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

Complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. Further, for programs relating to methamphetamine laboratory operations, the preparation of a detailed Mitigation Plan will be required. For more information about Mitigation Plan requirements, please see <https://www.bja.gov/Funding/nepa.html>.

Please be sure to carefully review the grant conditions on your award document, as it may contain more specific information about environmental compliance.

 <p>Department of Justice (DOJ) Office of Justice Programs Bureau of Justice Assistance</p>	<p align="center"><b>GRANT MANAGER'S MEMORANDUM, PT. I: PROJECT SUMMARY</b></p> <p align="center"><b>Grant</b></p>	
	<p>PROJECT NUMBER 2020-DJ-BX-0090</p>	<p>PAGE 1 OF 1</p>
<p>This project is supported under FY20(BJA - JAG State and JAG Local) Title I of Pub. L. No. 90-351 (generally codified at 34 U.S.C. 10101-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151 - 10158); see also 28 U.S.C. 530C(a)</p>		
<p>1. STAFF CONTACT (Name &amp; telephone number)</p> <p>Elaine Vanlandingham (202) 305-0034</p>	<p>2. PROJECT DIRECTOR (Name, address &amp; telephone number)</p> <p>Carolyn McDowell Management Analyst 601 El Camino Real SANTA CLARA, CA 95050-4307 (408) 615-4892</p>	
<p>3a. TITLE OF THE PROGRAM</p> <p>JAG Local: Eligible Allocation Amounts of Less than \$25,000</p>		<p>3b. POMS CODE (SEE INSTRUCTIONS ON REVERSE)</p>
<p>4. TITLE OF PROJECT</p> <p>FY 20 Local JAG Program</p>		
<p>5. NAME &amp; ADDRESS OF GRANTEE</p> <p>City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050-3713</p>	<p>6. NAME &amp; ADDRESS OF SUBGRANTEE</p>	
<p>7. PROGRAM PERIOD</p> <p>FROM: 10/01/2019 TO: 09/30/2021</p>	<p>8. BUDGET PERIOD</p> <p>FROM: 10/01/2019 TO: 09/30/2021</p>	
<p>9. AMOUNT OF AWARD</p> <p>\$ 12,469</p>	<p>10. DATE OF AWARD</p> <p>09/19/2020</p>	
<p>11. SECOND YEAR'S BUDGET</p>	<p>12. SECOND YEAR'S BUDGET AMOUNT</p>	
<p>13. THIRD YEAR'S BUDGET PERIOD</p>	<p>14. THIRD YEAR'S BUDGET AMOUNT</p>	
<p>15. SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse)</p> <p>The Edward Byrne Memorial Justice Assistance Grant (JAG) Program allows states and units of local government, including tribes, to support a broad range of activities to prevent and control crime based on their own state and local needs and conditions. Grant funds can be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice, including for any one or more of the following program areas: 1) law enforcement programs; 2) prosecution and court programs; 3) prevention and education programs; 4) corrections and community corrections programs; 5) drug treatment and enforcement programs; 6) planning, evaluation, and technology improvement programs; and 7) crime victim and witness programs (other than compensation) and 8) mental health programs and related law enforcement and corrections programs.</p> <p>This JAG award will be used to support criminal justice initiatives that fall under one or more of the allowable program areas above. Funded programs or initiatives may include multijurisdictional drug and gang task forces, crime prevention and domestic violence programs, courts, corrections, treatment, justice information sharing initiatives, or other programs aimed at reducing crime and/or enhancing public/officer safety. NCA/NCF</p>		



## Agenda Report

20-1000

Agenda Date: 11/17/2020

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Action to Approve a Municipal Law Enforcement Services Agreement between the Santa Clara Stadium Authority, City of Santa Clara and San Francisco County Sheriff's Office

#### **BOARD PILLAR**

Ensure Compliance with Measure J and Manage Levi's Stadium

#### **BACKGROUND**

Prior to the opening of Levi's Stadium in 2014, the Police Department worked with the National Center for Spectator Sports Safety and Security and the Department of Homeland Security to develop comprehensive safety and traffic management plans for the venue and surrounding area.

Through the planning process, the Police Department acknowledged our organization did not have the specialized expertise (e.g. ability to close highway off-ramps and corresponding traffic management skills), resources (e.g. air operations, crowd control, SWAT, etc.), and volume of sworn and civilian personnel necessary to implement these plans. As a result, agreements were formed with local, State and Federal law enforcement partners to provide these additional services.

The Police Department relies heavily on sworn and civilian professionals to provide a safe and enjoyable experience for stadium personnel, athletes/entertainers, event attendees, surrounding businesses, and nearby residents. The staffing needs vary from event to event based on event type, day of the week, time of the day, anticipated attendance, dignitaries present, intelligence gathered from similar events, etc.

#### **DISCUSSION**

Levi's Stadium has been the host to 120 public events with attendance of 20,000+ since its' opening, plus two nationally televised events without fans in 2020.

As the lead law enforcement agency, the Police Department secures local, State and Federal resources, as necessary, to support efforts to mitigate traffic congestion for event patrons and local traffic, provide a safe venue for attendees, performers and stadium personnel, as well as prevent intrusion into neighborhoods while maintaining access to adjacent business properties.

While the State and County Public Health Department's Health Order does not currently allow for fans to be in attendance at these events, the Police Department continues to work hard behind the scenes to prepare the organization for a time when fans return. This includes expanding the number of municipal law enforcement services agreements between the Stadium Authority, the City of Santa Clara, and partner agencies.

The proposed agreement allows the San Francisco County Sheriff's Office, as called upon and

available, to provide supplemental special detail law enforcement services for events taking place at the stadium and surrounding areas. Requests for services could include personnel, helicopters, tactical vehicles, equipment, and associated supplies to provide the services rendered. The agreement also allows for San Francisco County Sheriff's Office personnel responding to requests for services to transmit and broadcast communications on the Santa Clara Police Department's dispatch frequency, licensed by the Federal Communications Commission.

Currently, the Police Department has various agreements with multiple agencies throughout California to provide Per Diem Special Event Police Officers. Locally, the following agencies can be called upon to provide services, as needed, at Levi's Stadium:

- California Highway Patrol
- City of Campbell Police Department
- City of Gilroy Police Department
- City of Milpitas Police Department
- City of Morgan Hill Police Department
- City of Mountain View Police Department
- City of Palo Alto Police Department
- City of Santa Cruz Police Department
- Los Altos Police Department
- Santa Clara County Gang Task Force
- Santa Clara County Sheriff's Office
- Sunnyvale Department of Public Safety
- Town of Los Gatos Police Department

In addition, the Police Department is in the process of preparing agreements with the Alameda County Sheriff's Office, Monterey County Sheriff's Office, San Mateo County Sheriff's Office.

The Santa Clara Stadium Taxpayer Protection and Economic Progress Act, commonly referred to as Measure J, requires all public safety costs related to stadium operations to be reimbursed to the City by the Stadium Authority. In addition, the contractual arrangement between the Stadium Authority and the team requires that the team reimburse the Stadium Authority for public safety related expenses incurred for NFL events.

### **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 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**

This agreement allows the San Francisco County Sheriff's Office to provide support services for Levi's Stadium, as requested and available.

Any expenses incurred by the City for the use of the San Francisco County Sheriff's Office would be billed by the City to the Stadium Authority, and by the Stadium Authority to the Forty Niners, in accordance with the applicable contracts and with Measure J.

**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 [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

Approve a Municipal Law Enforcement Services Agreement between the Santa Clara Stadium Authority, City of Santa Clara, and San Francisco County Sheriff's Office for support services associated with special events at Levi's Stadium.

Reviewed by: Patrick Nikolai, Chief of Police

Approved by: Deanna J. Santana, City Manager/Executive Director

**ATTACHMENTS**

1. Municipal Law Enforcement Services Agreement between the Santa Clara Stadium Authority, City of Santa Clara and San Francisco County Sheriff's Office



**MUNICIPAL LAW ENFORCEMENT SERVICES AGREEMENT**  
**by and between the**  
**SANTA CLARA STADIUM AUTHORITY, THE CITY OF SANTA CLARA,**  
**and**  
**CITY AND COUNTY OF SAN FRANCISCO SHERIFF'S OFFICE**

**PREAMBLE**

This agreement for the performance of municipal law enforcement services ("Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City and County of San Francisco Sheriff's Department, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 ("Agency"), the Santa Clara Stadium Authority, a Joint Powers Authority, with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("Authority"), and the City of Santa Clara, a chartered municipal corporation, located at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). Authority, City and Agency may be referred to individually as a "Party" or collectively as the "Parties" to this Agreement."

**RECITALS**

- A. Authority and City are desirous of contracting with Agency for the performance of the law enforcement functions described herein.
- B. Agency is agreeable to rendering such law enforcement services pursuant to the terms and conditions set forth in this Agreement.
- C. Pursuant to the authority set forth in Government Code sections 54981 and 55632, Authority and City seek additional law enforcement services, and Agency agrees to provide supplementary law enforcement services, for periodic events at the Santa Clara Stadium site.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. SERVICES TO BE PROVIDED.**

- A. Agency agrees, as available, to provide supplemental special detail law enforcement services for events taking place at the Stadium site and surrounding areas during the term of this Agreement. The classification and approximate numbers of personnel provided by Agency will be determined and mutually agreed upon, in writing, between Agency, Authority and the Santa Clara Chief of Police prior to each event. The Parties shall establish and agree to the number of hours necessary for the Agency employees to perform the requested services. City herein provides consent, pursuant to Penal Code section 830.1(a)(2), for any Agency peace officer providing services hereunder to exercise full peace officer authority within the City's jurisdiction.

- B. Except as otherwise specifically set forth, such services shall only encompass duties and functions of the type coming within the jurisdiction of, and customarily rendered by, Agency under its Charter and/or municipal codes, and the statutes of the State of California, and under the Charter and municipal codes of the City of Santa Clara.
- C. For special detail officers, the request for services shall be a written request from the Santa Clara Police Chief or his/her designee. The request shall contain specific dates of service, hours of operation, number of personnel requested, and classification of personnel requested. For the purpose of performing said services, Agency shall furnish and supply, as available, all necessary labor, supervision, personnel, helicopters, tactical vehicles, equipment, fuel, and supplies necessary to provide the services to be rendered hereunder. The Authority and/or City acknowledges that additional equipment charges for special equipment such as helicopters, tactical vehicles, equipment, fuel, and supplies may be appropriate depending upon the services requested and may be charged by Agency as above and beyond the authorized pay rate for personnel. The request shall be signed by a representative of the Authority and/or City who is duly authorized to enter into such agreements for supplemental law enforcement services. The request shall be submitted via email to Agency specified contact.
- D. The City hereby grants to Agency and its personnel responding to requests for services herein the right to transmit and broadcast communications to the Santa Clara Police Department's units via the Santa Clara Police Department's designated dispatch frequency and/or any other law enforcement frequency for which the City of Santa Clara is licensed by the FCC.
- E. Mutual aid agreements pursuant to the California Emergency Plan (Government Code §§ 8550 et seq.) and the Master Mutual Aid Agreement: If any mutual aid agreement(s) currently in place are triggered during any performance of services under this Agreement, the mutual aid agreement(s) shall govern all necessary personnel and/or tactics.

## **2. ADMINISTRATION OF PERSONNEL.**

- A. In the event of a dispute between the Parties to this Agreement as to the extent of the duties and functions to be rendered hereunder, or the minimum level or manner of performance of such service, the City shall be consulted and a mutual determination thereof shall be made by both Agency and the City in consultation with the City of Santa Clara's Chief of Police.
- B. The rendition of the services performed by Agency, the discipline of its officers, and other matters incident to the performance of such services and the control of personnel so employed shall remain with Agency.
- C. With regard to sections A. and B., if there remains a disagreement as to the minimum level of services for a particular event, the Parties agree that the Santa

Clara Chief of Police shall have final and conclusive determination of levels of service or tactics provided by Agency's officers.

- D. All Authority and/or City employees who work in conjunction with Agency pursuant to this Agreement shall remain City employees, are not Agency employees, and have no claim or right to any Agency employment benefits or policies. Similarly, all Agency employees who work in conjunction with Authority and/or City pursuant to this Agreement shall remain Agency employees, are not Authority and/or City employees, and have no claim or right to any Authority and/or City employment benefits or policies.
- E. Neither Authority nor City shall be called upon to assume any liability for the direct payment of any Agency salaries, wages, or other compensation to any Agency personnel performing services hereunder for said Authority and/or City. Except as herein otherwise specified, neither Authority nor City shall be liable for compensation or indemnity to any Agency employee or agent for injury or sickness arising out of his/her status as a contract agent of the Authority and/or City.

### **3. COMPENSATION AND PAYMENT.**

- A. The Authority shall pay Agency for the services it provides under the terms of this Agreement at the rates established by the authority, as they may be amended from time to time. The rates listed in Exhibit A may be periodically adjusted by the Authority effective July 1 of each year to a mutually-agreed upon rate. In such case, the annual rate adjustment shall be attached to this Agreement as Exhibit A to reflect the change in rates each fiscal year. The Parties specifically agree that such adjustment and change in Exhibit A each year is a valid amendment to this Agreement, and that no formal Amendment form need be used for such annual rate adjustment. The Parties will separately execute Exhibit A, each year, or whenever there is a change in Exhibit A rates.
- B. For and in consideration of Agency providing supplementary law enforcement services for the Authority and/or City under this agreement, the Authority agrees to pay Agency for said services at the hourly rates as indicated in Exhibit A.

### **4. PAYMENT PROCEDURES.**

- A. On a monthly basis, Agency shall submit a summarized invoice which covers all services performed during said month, to the Authority and the Authority shall pay Agency for all undisputed amounts within thirty (30) days after date of said invoice.
- B. For all disputed amounts, Authority shall provide Agency with written notice of the dispute including the invoice date, amount, and reasons for dispute within ten (10) days after receipt of the invoice. The Parties shall memorialize the resolution of the dispute in writing.

**5. CANCELLATION OF PERSONNEL.**

- A. The Authority shall not be charged for cancellations made more than 24 hours prior to the scheduled event/assignment.
- B. The Authority agrees that if cancellation is made within 24 hours prior to the scheduled event/assignment and the assigned Agency officer cannot be notified of such cancellation, Authority shall reimburse Agency a minimum of four (4) hours of compensation for each assigned officer pursuant to the rates identified herein.
- C. Agency agrees to make all reasonable efforts to notify its assigned officer(s) of the cancellation.

**6. TERM OF AGREEMENT.**

- A. The term of this Agreement shall commence upon execution by the Parties and shall continue, unless terminated sooner or extended in whole or in part as provided for herein.

**7. TERMINATION.**

- A. Either Party may terminate this Agreement with or without cause by giving not less than sixty (60) days advance written notice to the other Party.
- B. Notwithstanding the foregoing, Agency may terminate the Agreement on only twenty (20) days advance notice, or less in the event of exigent circumstances, if Agency concludes that there are insufficient personnel to provide the agreed upon services and still perform other Agency duties as required by law.
- C. In the event of a termination, each Party shall fully discharge all obligations owed to the other Party accruing prior to the date of such termination, and, except as otherwise provided herein, each Party shall be released from all obligations, which would otherwise accrue subsequent to the date of termination.

**8. FAIR EMPLOYMENT.**

While in the performance of services under this Agreement, Agency and its employees and agents shall not discriminate against any person because of race, sex, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of federal, state or local law.

**9. HOLD HARMLESS/INDEMNIFICATION.**

- A. For purposes of indemnification, each Party shall be responsible for the acts of its participating employee and shall incur any liabilities arising out of the service and activities of those employees.

- B. Any Agency employee who performs duties under this Agreement shall be deemed to be continuing under the general employment of his or her respective jurisdiction and shall have the same powers, duties, privileges, responsibilities, and immunities as are conferred upon such employee by law in his or her own jurisdiction. Pursuant to Insurance Code Section 11663, the general employer shall be responsible for the entire cost of any worker's compensation payable on account of injury occurring in the course of and arising out of general and special employments.
- C. Pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, employees, and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work performed or authority delegated to such party under this Agreement. No party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, employees or agents, under or in connection with any work performed or authority delegated to such other parties under this Agreement.

**10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING.**

A Party shall not assign its rights and/or subcontract, or otherwise delegate, its duties under this Agreement, either in whole or in part, without the prior written consent of the other Party, and any attempted assignment or delegation without such consent shall be null and void.

**11. INTEGRATED DOCUMENT.**

This Agreement represents the entire agreement between Authority, City and Agency. No other understanding, agreements, or conversations with any representative of either Party prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon either Party.

**12. SEVERABILITY AND WAIVER.**

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. Agency agrees that waiver by Authority and/or 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.

**13. NOTICES.**

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

Santa Clara Stadium Authority  
Attention: Executive Director  
Santa Clara, California 95050  
or by facsimile at (408) 241-6771

And to City as follows:

City of Santa Clara  
Attn: Chief of Police  
1500 Warburton Ave.  
Santa Clara, CA 95050  
or by facsimile at (408) 248-0276

And to Agency addressed as follows:

San Francisco County Sheriff's Department  
Attn: Paul Miyamoto, Sheriff  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
or by facsimile

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**14. LAW GOVERNING CONTRACT 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.

[Signatures on next page.]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the date set forth in the prefatory paragraph.

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

APPROVED AS TO FORM:

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Brian Doyle  
City Attorney

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

“CITY”

**SANTA CLARA STADIUM AUTHORITY  
a Joint Powers Authority**

APPROVED AS TO FORM:

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Brian Doyle  
Authority Counsel

---

Deanna J. Santana  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“AUTHORITY”

**CITY AND COUNTY OF SAN FRANCISCO SHERIFF'S DEPARTMENT**

APPROVED AS TO FORM:

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



SAN FRANCISCO COUNTY  
SHERIFF'S DEPARTMENT

By: Paul Miyamoto  
Title: Sheriff  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Telephone: (415) 554-7225

“AGENCY”

I:\49ers\Stadium Authority\Law Enforcement Security Agreements\Municipal Law Enforcement Services Agreement (SAN FRANCISCO COUNTY'S SHERIFF'S DEPARTMENT)



**MUNICIPAL LAW ENFORCEMENT SERVICES AGREEMENT**  
**by and between the**  
**SANTA CLARA STADIUM AUTHORITY, THE CITY OF SANTA CLARA,**  
**and**  
**CITY AND COUNTY OF SAN FRANCISCO SHERIFF'S DEPARTMENT**

**EXHIBIT A**

The hourly rates listed below are effective as of January 1, 2020:

<b>RANK</b>	<b>HOURLY RATE</b>
Deputy Sheriff	\$100
Senior Deputy Sheriff	\$115
Sheriff Sergeant	\$120
Sheriff Lieutenant	\$130
Sheriff Captain	\$150

One-hour travel time from San Francisco Sheriff's Office to Levi's Stadium

One-hour travel time from Levi's Stadium to San Francisco Sheriff's Office

Administrative fee of 10%.

CFO to send actual billing cost to be paid



## Agenda Report

20-1033

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Action on Amendment No. 1 to the Agreement with the California Department of Transportation Division of Rails and Mass Transportation for the Agnew Road At-Grade Crossing Project

#### **COUNCIL PILLAR:**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

On March 20, 2018, Council approved an agreement with the California Department of Transportation Division of Rails and Mass Transportation (Caltrans) for the Agnew Road At-Grade Crossing Project (Attachment 1). The agreement provides for reimbursement of construction costs up to \$573,750 for railroad crossing improvements located at Agnew Road and the Union Pacific Railroad (UPRR) tracks under the federally funded Section 130 Railroad-Highway Crossings Program.

The improvements at the crossing include work to be performed both by the City and by UPRR. The City's scope of work generally includes reconstruction and installation of concrete sidewalks, tactile warning strips at the sidewalks crossing the railroad tracks, pedestrian curb ramps, traffic striping and adjustment of existing utilities. The UPRR's scope of work generally includes replacement of railroad crossing warning devices (flashing light assemblies and automatic gate arms) and concrete panel surfacing at the railroad tracks. These improvements are per recommendations provided by the California Public Utilities Commission (CPUC).

The improvements are currently scheduled for construction in mid-2021 pending final completion of the construction bidding documents, execution of agreements between the City and UPRR, and approval of the project design by the CPUC. The funding agreement with Caltrans expires November 22, 2020 and an amendment to the agreement is required to extend the term and maintain the project funding.

#### **DISCUSSION**

Caltrans has indicated that it will approve an extension to the term of the funding agreement to allow the City and UPRR to continue implementation of the improvements. Amendment No. 1 attached to this report (Attachment 2) extends the term of the agreement until December 31, 2021.

The project is currently at a 95 percent level of design completion and is pending final agreements between City and UPRR related to right-of-way and utility crossings and approval of the design by the CPUC prior to bidding. The project has taken longer than originally anticipated due to complexities with existing rights-of-way and utilities and coordination with UPRR.

Staff recommends approval of Amendment No. 1 to the agreement with the California Department of Transportation Division of Rails and Mass Transportation (Caltrans) for the Agnew Road At-Grade Crossing Project. Approval of this amendment will allow the City to maintain project funding from Caltrans.

### **ENVIRONMENTAL REVIEW**

This project is federally funded and requires environmental review under both CEQA and NEPA. Caltrans is the lead agency responsible for NEPA review and the City is the lead agency responsible for CEQA review. In November 2017, Caltrans determined the project to be Categorically Excluded (CE) from formal environmental review under NEPA pursuant to 23 CFR § 771.117(c), activity (c)(8) ("Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur."). The City, as the lead agency responsible for CEQA, will complete the environmental review required by CEQA as part of the project development process.

### **FISCAL IMPACT**

Amendment No. 1 extends the expiration date of the agreement and there is no fiscal impact with this extension. The agreement provides for reimbursement of up to \$573,750 from the California Department of Transportation Division of Rails and Mass Transportation (Caltrans) for the project. The project is currently fully funded by the grant and is included in the FY 2020/21 and FY 2021/22 Adopted Capital Improvement Program Budget in the Streets and Highways Capital Fund for the Agnew Road At-Grade Crossing Project.

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

1. Approve and authorize the City Manager to execute Amendment No. 1 to the agreement with the California Department of Transportation Division of Rails and Mass Transportation for the Agnew Road At-Grade Crossing Project;
2. Authorize the City Manager to make minor modifications, including time extensions, to the agreement, if needed; and
3. Authorize the City Manager to execute any and all documents associated with and necessary for administration of the project with the California Department of Transportation Division of Rails and Mass Transportation.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Original Agreement
2. Amendment No. 1


## CITY CLERK FILE COPY

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

Contract No: 75LX332

Sheet 1 of 10

November 22, 2017

Unit	Project ID	Phase	Subjob	Object	Amount	FY	Encumbrance Doc No
3811	0018000017	S		049	\$573,750	2017/2018	75LX332
Item	Chapter	Statutes	Fiscal Year				
2660-102-0890	14	2017	2017/2018				
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated herein.				SERVICE CONTRACT NO: 75LX332 PROJECT NUMBER: STPLR-7500(265)			
Signature of Accounting Officer		Date		The numbers above are to be placed on all invoices which shall be mailed to: <b>Caltrans Division of Rail and Mass Transportation</b> P.O. Box 942874, MS 74 Sacramento, CA 94274-0001			
		4/30/18					
<b>LOCAL AGENCY:</b> ADDRESS: City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Phone: (408) 615-3048				Effective Date of Contract: <b>November 22, 2017</b>  Expiration Date of Contract: <b>November 22, 2020</b>			

The City of Santa Clara (hereinafter referred to as **Local Agency**) hereby agrees to do the work set forth herein for the State of California, Department of Transportation (hereinafter referred to as **Caltrans**) in accordance with all applicable laws including but not limited to, California Streets and Highways Code section 114(b) and California Government Code 14038 and regulations and the provisions of this form including the attached sheets and Exhibits. The **Local Agency** agrees to receive and accept as full compensation therefore the payment provided herein. **Local Agency** must provide **Caltrans** with a copy of a resolution, order, motion, or ordinance of the local governing body, which by law has authority to enter into an agreement, authorizing execution of this agreement.

The work is located in the City of Santa Clara, at the grade crossing located at the intersection of Agnew Road and Union Pacific Railroad (hereinafter referred to as **Railroad**) tracks, CPUC No. 001L-41.60, Federal DOT No. 749965G. All work to be completed by **Local Agency** under the terms of this Contract is described in Exhibit A (hereinafter referred to as **Project**).

<b>Total Cost Estimate:</b>	<b>\$425,000</b>
<b>Engineering/Administration</b>	<b>\$148,750</b>
<b>Contingency/Inflation Factor:</b>	
<b>TOTAL PROJECT COST:</b>	<b>\$573,750</b>
<b>TOTAL AMOUNT OF THIS CONTRACT:</b>	<b>\$573,750</b>

It is expressly agreed that all persons engaged on this work are employees of the **Local Agency** and/or contractors hired by the **Local Agency** pursuant to its own policies and procedures and that none are employees of **Caltrans**.

Further, **Caltrans** hereby agrees to the terms as above set forth, and hereby agrees to pay the actual allowable costs incurred up to the limit set forth herein; provided, that by mutual consent of the **Local Agency** and **Caltrans**, this contract may be modified or terminated at any time.

**IN WITNESS WHEREOF**, the parties to this contract have hereunto set their hand the year and date first above written.

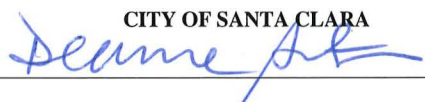
CALIFORNIA DEPARTMENT OF TRANSPORTATION

By   
Branch Chief

Approved   
Office Chief

Date 4/30/18

CITY OF SANTA CLARA

By  3/22/18  
City Manager

Title

Date

ATTEST:

  
Acting City Clerk

APPROVED AS TO FORM:  
SANTA CLARA CITY ATTORNEY'S OFFICE  





1. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that might occur if the contract were executed after appropriations are actually made.
2. This contract is valid and enforceable only if sufficient funds are made available to **Caltrans** by the United States Government or the California State Legislature for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, conditions or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this contract in any manner. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction of funds.
3. This service contract is for the elimination of hazards at Railroad-Highway intersections (crossings) with funds provided to **Caltrans** under Section 130, Title 23 USC. Said elimination of hazards is a cooperative effort between **Caltrans**, **Local Agency** the California Public Utilities Commission (hereinafter referred to as **CPUC**) and **Railroad**. The **CPUC** has evaluated the railroad highway intersection and determined what improvements are necessary; **Caltrans** acts as a conduit for the federal funds to the **Local Agency** and the **Railroad** and the **Local Agency** and **Railroad** are responsible for building and maintaining the improvements mandated by the **CPUC**.
4. The total actual allowable costs reimbursable by **Caltrans** under this Service Contract, shall not exceed **\$573,750**.
5. The **Local Agency** will not proceed with any work on the **Project**, nor be required to purchase any materials, until authorized in writing by **Caltrans**. Such authorization (hereinafter referred to as **Notice to Proceed**) shall not be issued by **Caltrans** until sufficient State or Federal funds have been obligated for the project. State and Federal maximum liability pursuant to this contract is limited to the amount set forth in this contract.
6. The **Local Agency** agrees to perform the **Project** work and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute **Project** diligently to completion. **Caltrans** and **Local Agency** agree that the **Project** work as provided herein is pursuant to Federal rules and regulations and not State law (hereinafter referred to as **FHWA-1273** attached). **Caltrans** is acting as a conduit for disbursement of Federal Surface Transportation Program funds for hazard elimination at railroad intersections on city streets, county roads and State Highways.
7. Regarding the FHWA's Buy America policies (23 CFR 635.410), the **Local Agency** shall comply with the Buy America provisions set forth in 23 CFR 635.410 with respect to the Project, as regards the use of steel, iron and manufactured goods produced in the United States, subject to the conditions therein set forth.
8. Any person, company or corporation who performs work authorized under terms of this contract must have a valid California contractor's license. All authorized work performed by



employees of **Local Agency** and any CPUC regulated public utility, City, County or Public Service District is not subject to the above contractor's license requirement.

9. **Local Agency** must coordinate **Project** work with the railroad that owns or operates the tracks where the intersection is located.

10. **Local Agency** will secure all legally required and necessary permits and approvals before commencing **Project** construction.

11. Where **Project** work is in conjunction with work done by **Railroad**, **Railroad** will construct railroad track and signal work to its own standard specifications, **Local Agency** will not perform any work on the **Railroad** tracks or within railroad right of way without securing written permission from the railroad. **Project** work done within twenty-five feet of the centerline of the **Railroad's** nearest track may require a **Railroad** employee to protect the workers of **Local Agency** or its contractors. This provision is pursuant to Federal Law and must be clearly agreed to in writing between **Local Agency** and **Railroad** before commencement of **Project** work at the railroad-highway intersection. A copy of this agreement between **Railroad** and **Local Agency** shall be provided to **Caltrans** by **Local Agency** as soon as it is executed.

12. **Caltrans** will reimburse the **Local Agency** on the basis of actual cost, not to exceed the **Project** cost herein. Any cost of the work determined by **Caltrans** to be not reimbursable, shall be borne by **Local Agency**. Indirect overhead charges will not be allowed unless **Local Agency** has an Indirect Cost Rate Proposal approved by **Caltrans'** Audits and Investigations.

13. Any warning devices medians, signs, pavement markings, structures or other improvements, which may be installed in conjunction with **Project**, shall be located as agreed upon between **Railroad** and the California Public Utilities Commission and as approved by the Federal Highway Administration (FHWA). Such locations are indicated in Exhibit A hereto.

14. Guidance, regulatory, warning and temporary traffic control signs, curb and pavement, or other markings and traffic signals installed or placed on any project constructed with federal funds shall conform to the Manual of Uniform Traffic Control Devices (MUTCD) and its California Supplement (CAMUTCD). Deviations from the Mandatory Standards for signs, markings, and traffic signals as defined and shown in the MUTCD and CAMUTCD are not permitted.

15. **Local Agency** invoice procedures shall conform to the California State Department of Transportation, Division of Rail and Mass Transportation, Railroad Crossing Safety Branch's Invoice Guidelines for Local Agencies. Correspondence and/or invoices are to be sent to: California Department of Transportation, Division of Rail and Mass Transportation, P. O. Box 942874, MS 74, Sacramento, California 94274, if by U.S. Mail. If by courier, then address invoice to: California Department of Transportation, Division of Rail and Mass Transportation, 1415 11<sup>th</sup> Street, MS 74, Sacramento, California 95814.

16. Not more frequently than once a month, but at least quarterly, **Local Agency** will prepare and submit to **Caltrans** invoices for actual allowable costs incurred consistent with the **Exhibit A** attached hereto. **Caltrans** will review the invoice for compliance with this contract. Provided contract terms are complied with, payment will be made by **Caltrans** to **Local Agency** within forty-five (45) days of





the date of receipt of an invoice by **Caltrans**. Invoices which are determined not be in compliance will be returned to **Local Agency** for correction of deficiencies, after which Local Agency will resubmit the invoice to **Caltrans** as prescribed above.

17. The **Local Agency**, upon completion of the **Project** work, will provide to **Caltrans** a written declaration/notification that the **Project** has been final billed and ready to be closed. This declaration shall be based upon actual allowable **Project** cost, **Project** Scope and **Project** cost limits set forth herein. Upon receipt of this declaration, **Caltrans** will pay all outstanding allowable invoiced **Project** costs. If upon final accounting, it is determined that **Caltrans** previously paid more than its share of said project, **Local Agency** shall refund the difference between **Caltrans'** share and the amount paid by **Caltrans**. All records of the **Local Agency**, its contractors and subcontractors are subject to audit by representatives of the **Caltrans** and Federal Highway Administration. Such records will be retained and made immediately available for inspection by **Caltrans'** Auditors for a period of three years from **Caltrans'** date of final payment of aforementioned final invoice.

18. All work to be done hereunder by **Local Agency** shall be done only by its employees on a force account basis, or by contractors, the cost thereof to be paid to **Local Agency** by **Caltrans** in the manner hereinafter set forth.

19. **Local Agency** agrees that the 48 CFR, Chapter 1 Part 31 et seq., Contract Cost Principles and Procedures, Federal Acquisition Regulations System, shall be used to determine the allowable individual items of indirect cost. **Local Agency** agrees to comply with the applicable Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments and CFR 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.

20. All applicable portions of 23 CFR Part 140, Subpart 1 are by reference incorporated herein and made a part hereof.

21. An itemized estimate of the cost of the work to be performed by **Local Agency** is attached hereto as a part of **Exhibit B** and made a part hereof.

22. **Caltrans** agrees to reimburse **Local Agency** for qualified insurance expenses as authorized by 23 CFR 646 et seq., and as set forth in cost estimates attached hereto.

23. The **Local Agency** has 180 days after the expiration date of this contract to submit the final invoice to **Caltrans** for verification and payment.

24. In cooperation with the **Railroad**, the **Local Agency** shall maintain the **Project** improvements made under this contract located in its right of way.

25. Subject to the availability of labor and material and securing the required and necessary permits and approvals, it is the intent of the parties hereto that all construction work under this service contract shall be completed within three years after the effective date of this contract, unless a time extension is requested by **Local Agency** and approved in writing by **Caltrans**. The expiration date of this contract is shown on the face sheet. Costs incurred prior to the effective





date of contract or after the expiration date of contract are unallowable and shall not be billed by the **Local Agency** to **Caltrans** except as may be provided by separate agreement.

26. **AMENDMENT:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in this Contract is binding on any of the parties.

27. **ASSIGNMENT:** This Contract is not assignable, in whole or in part, without the consent of **Caltrans** in the form of a formal written amendment.

28. **AUDIT:** **Local Agency** agrees that **Caltrans** or its designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract. **Local Agency** agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. **Local Agency** agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, **Local Agency** agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

29. **INDEMNIFICATION:** **Local Agency** agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be killed injured or damaged except to the extent that such death injury or damage results from the sole or active negligence of **Caltrans**.

30. **DISPUTES:** **Local Agency** shall continue with the responsibilities under this Contract during any dispute.

31. **TERMINATION FOR CAUSE:** **Caltrans** may terminate this Contract and be relieved of any payments should the **Local Agency** fail to perform the requirements of this Contract at the time and in the manner herein provided. In the event of such termination **Caltrans** may proceed with the work in any manner deemed proper by **Caltrans**. All costs to **Caltrans** shall be deducted from any sum due the **Local Agency** under this Contract and the balance, if any, shall be paid to the **Local Agency** upon demand.

32. **INDEPENDENT CONTRACTOR:** **Local Agency**, and the agents and employees of **Local Agency**, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of **Caltrans** or State.

33. **NON-DISCRIMINATION CLAUSE:** During the performance of this Contract, **Local Agency** and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and



subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. **Local Agency** shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

34. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

35. **ANTITRUST CLAIMS:** The **Local Agency** by signing this Contract hereby certifies that if these services or goods are obtained by means of a competitive bid, the **Local Agency** shall comply with the requirements of the Government Code Sections set out below:

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
  1. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
  2. "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or





may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

36. **CHILD SUPPORT COMPLIANCE ACT:** "For any Contract in excess of \$100,000, the **Local Agency** acknowledges in accordance with Public Contract Code 7110, that:

- a. The **Local Agency** recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The **Local Agency**, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

37. **UNENFORCEABLE PROVISION:** In the event that any provision of this Contract is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Contract have force and effect and shall not be affected thereby.

38. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

This contract will expire on **November 22, 2020**. Expiration of this Contract does not release any party hereto from any ongoing performance requirements agreed to herein.

**Exhibit A**  
*Fed Xing ID: 749965G*  
*CPUC ID: 001L-41.60*  
Scope of Work

- Install detectable warning (tactile strips) on all crossing sidewalk approaches.
- Remove railroad utility pole in northwest quadrant.
- Relocate utility box in the northeast quadrant.
- Raise overhead electrical utility line crossing south side of crossing.
- Install concrete sidewalk:
  - In the northeast quadrant for 50 feet proceeding behind the Commission Standard 9.
  - In the southwest quadrant for 50 feet proceeding behind the Commission Standard 9-A.
  - Reconstruct sidewalk in northwest and southeast quadrants.
- Install four pedestrian curb ramps at the Agnew Rd/Bassett St intersection.
- Install striping including but not limited to:
  - Two crosswalks across Bassett St at the Agnew Rd/Bassett St intersection.
  - Left turn travel pathway at Agnew/Lafayette St intersection (or “bot’s dots”).
  - Relocate intersection limit lines on Bassett St to accommodate new crosswalks.



STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

Contract No: 75LX332

Sheet 9 of 10

November 22, 2017

**Exhibit B**  
*Fed Xing ID: 749965G*  
*CPUC ID: 001L-41.60*

Cost Estimate

Work Item	Quantity	Unit	Unit Cost	Total
Curb and Gutter	250	LF	100	25000
Sidewalk	1600	SF	75	120000
Pedestrian Curb Ramp	4	EA	15000	60000
Detectable Warning Tiles	4	EA	5000	20000
Utility Modifications	1	LS	125000	125000
Striping	1	LS	25000	25000
Permit Fees	1	LS	30000	30000
Traffic Control	1	LS	20000	20000
Subtotal				\$425,000
Contingency			10%	42500
Construction Administration & Inspection			10%	42500
Construction Engineering			15%	63750
Total Cost Estimate				\$573,750

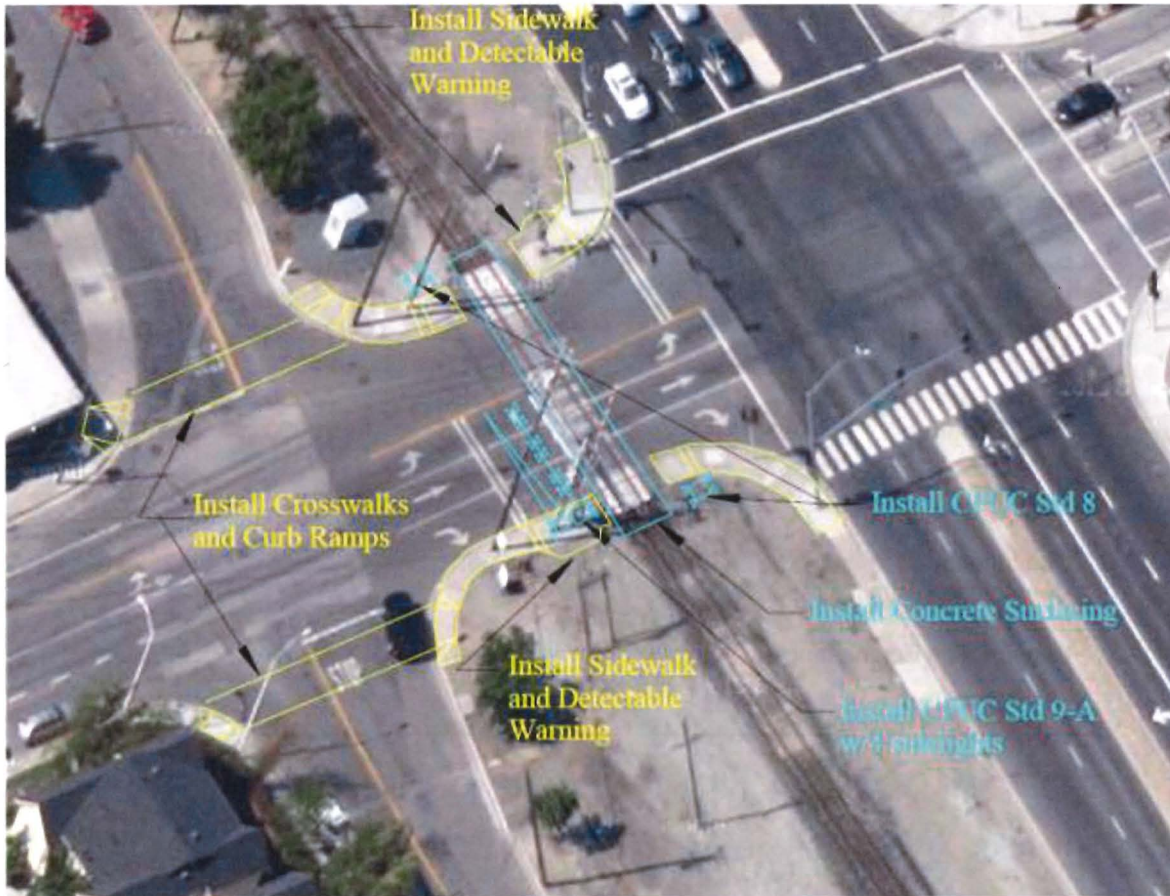


**Exhibit C**

*Fed Xing ID: 749965G*

*CPUC ID: 001L-41.60*

Drawing



## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under



this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are



applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\*\*\*\*\*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the



department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\*\*\*\*\*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\*\*\*\*\*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

Contract No: 75LX332  
Amendment Number 1  
Sheet 1 of 1  
September 9, 2020

Unit	Project ID	Phase	Subjob	Object	Amount	FY	Encumbrance Doc No
3328	0018000017	S		049	\$573,750	2017/2018	75LX332
Item	Chapter	Statutes	Fiscal Year	CONTRACT AMENDMENT			
2660-102-0890	14	2017	2017/2018				
The funds as listed above are available for the period and purpose of the expenditure stated herein.				<b>PROJECT NUMBER (FED ID) STPLR-7500(265) SERVICE CONTRACT (DRMT): 75LX332.A1</b>			
<b>Caltrans Division of Local Assistance Office of Federal Programs P.O. Box 942874, MS 1 Sacramento, CA 94274-0001</b>				The numbers above shall be included with all invoices submitted to Caltrans  Highway Railroad Grade Crossing Safety Program (Section 130)			
<b>Local Agency</b> ADDRESS:  Phone:	City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 (408) 615-3048			Effective Date of Contract: Expiration Date of Contract: Amended Expiration Date of Contract		<b>November 22, 2017 November 22, 2020 December 31, 2021</b>	

**WHEREAS**, Caltrans Service Contract (DRMT) 75LX332, dated April 30, 2018, provides up to \$573,750 to the City of Santa Clara (hereinafter referred to as **Local Agency**) for the installation of railroad /highway grade crossing safety improvements in the City of Santa Clara at the grade crossing located at the intersection of Agnew Road and UPRR's tracks, CPUC No. 001L-41.60, Federal DOT No. 749965G.

**WHEREAS**, there have been delays in the coordination of the work between the Local Agency and UPRR to be completed under the project;

**WHEREAS**, the Local Agency has not yet obtained an order from the California Public Utilities Commission approving the project; and

**WHEREAS**, a one-year time extension to complete construction and all contract requirements has been requested by UPRR and Local Agency, due to delays in completion of the final plans;

**NOW THEREFORE**: It is mutually agreed by the parties hereto, that all terms and conditions of this Service shall remain in full force and effect, except that the expiration date is hereby extended from November 22, 2020, until December 31, 2021.

***IN WITNESS WHEREOF**, the parties have duly executed this contract as of the dates shown below with the effective date shown above.*

CALIFORNIA DEPARTMENT OF TRANSPORTATION

CITY OF SANTA CLARA

By \_\_\_\_\_  
Office of Federal Programs  
Caltrans Local Assistance

By \_\_\_\_\_

Title Section 130 Program Manager

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_





## Agenda Report

20-1051

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Amendment to the Covenants, Conditions and Restrictions for the Marriott Center Owners Association

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

#### BACKGROUND

The City's subdivision ordinance, Santa Clara City Code (SCCC) Chapter 17.05, provides that the City shall review draft declarations of covenants, conditions and restrictions (CC&Rs) for proposed subdivisions. One common provision in such CC&Rs provides that if an owner's association subsequently proposes to amend its CC&Rs, the association must first file the amendment with the City Council, which then has an opportunity to veto the proposed amendment. If the Council takes no action, the amendment automatically becomes effective, 60 days after filing.

In 1982 the City Council approved a subdivision for an industrial condominium development at 4701 Patrick Henry Drive known as the Great America Technology Park. The approved condominium subdivision included CC&Rs to govern specific activities of the future condominium owners, including use restrictions, architectural regulations, and membership voting rights.

#### DISCUSSION

City's subdivision ordinance, Santa Clara City Code (SCCC) Chapter 17.05, provides that the City shall review draft declarations of covenants, conditions and restrictions (CC&Rs) for proposed subdivisions. One common provision in such CC&Rs provides that if an owner's association subsequently proposes to amend its CC&Rs, the association must first file the amendment with the City Council, which then has an opportunity to veto the proposed amendment. If the Council takes no action, the amendment automatically becomes effective, 60 days after filing.

In 1982 the City Council approved a subdivision for an industrial condominium development at 4701 Patrick Henry Drive known as the Great America Technology Park. The approved condominium subdivision included CC&Rs to govern specific activities of the future condominium owners, including use restrictions, architectural regulations, and membership voting rights.

#### FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

#### COORDINATION

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

**ENVIRONMENTAL REVIEW**

The action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Note and file the proposed amendment to the covenants, conditions and restrictions ("CC&Rs") for the Marriott Center Owners Association regarding the industrial development at 4701 Patrick Henry Boulevard.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Letter from Trainor Fairbrook
2. First Amendment to Declaration of CC&Rs for Marriott Center
3. Declaration of CC&Rs for Marriott Center



T R A I N O R F A I R B R O O K  
A T T O R N E Y S A T L A W

Candice B. Harper  
charper@trainorfairbrook.com

October 8, 2020

FEDEX

Reena Brilliot  
City Planning Manager  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050

Re: Marriott Center

Dear Ms. Brilliot:

This firm represents the Marriott Center Owners Association, a California nonprofit mutual benefit corporation. Members of the Association own certain properties located in the City of Santa Clara and the members recorded a Declaration of Covenants, Conditions and Restrictions ("CC&R's") for the Marriott Center. The CC&R's are dated July 2, 1982 and were recorded in the official records of the County of Santa Clara on August 8, 1982, as document number 7433430. Section 13.2 of the CC&R's requires any amendment of the CC&R's to be approved by the City of Santa Clara.

Our client desires to amend the CC&R's to modify the definition of "Common Expenses". A copy of the proposed First Amendment to Declaration of Covenants, Conditions and Restrictions for Marriott Center is enclosed.

Please review the enclosure and confirm whether the City of Santa Clara has any objection to the proposed First Amendment. The CC&R's require that the Amendment be approved in writing by the record holders of 75 percent of the owners. This First Amendment has been approved by more than 75 percent of the owners.

Please review the enclosure and confirm whether the City of Santa Clara approves the First Amendment in the form submitted herewith. If the City of Santa Clara requires any modifications, please let me know as soon as possible.

Reena Brilliot  
Re: Marriott Center  
October 8, 2020  
Page 2

Your courtesy and cooperation with respect to reviewing and responding to this request will be greatly appreciated.

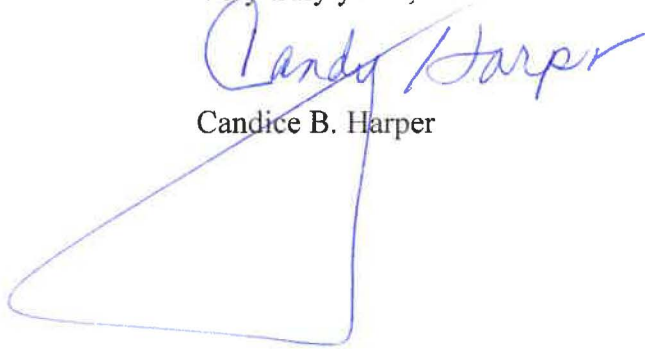
Very truly yours,



Candice B. Harper

CBH:mjj  
Enclosure

2085.337.2226326.1



**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

MARRIOTT CENTER OWNERS  
ASSOCIATION  
c/o TRAINOR FAIRBROOK  
Post Office Box 255824  
Sacramento, California 95865-5824  
Attention: Candice B. Harper, Esquire

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MARRIOTT CENTER**

**Marriott Center  
Santa Clara, Santa Clara County, California**

**(Parcels 1 through 27, Map filed April 24, 1981)**



**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MARRIOTT CENTER  
(Marriott Center)**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MARRIOTT CENTER ("**First Amendment**") is dated for reference purposes only August 7, 2020, and is made by MARRIOTT CENTER OWNERS ASSOCIATION, a California non-profit mutual benefit corporation ("**Association**").

**RECITALS**

This First Amendment is made in contemplation of and with reference to the following facts and objectives:

A. The Association has responsibility for the management and control of the real property ("**Property**") located in the City of Santa Clara ("**City**"), County of Santa Clara ("**County**"), State of California described in the attached Exhibit A, which is commonly known as "Marriott Center."

B. A Declaration of Covenants, Conditions and Restrictions for Marriott Center dated July 2, 1982 (the "**CC&Rs**") was recorded in the Official Records of the County of Santa Clara on August 8, 1982 as Document No. 7433430.

C. The Association now desires to amend the CC&Rs on the terms and conditions set forth in this First Amendment.

NOW THEREFORE, in consideration of the foregoing, by this First Amendment the CC&Rs are amended as follows:

**AGREEMENT**

1. Definitions and Recitals. Except as noted to the contrary in this First Amendment, the terms used in this First Amendment shall be defined as provided in the CC&Rs and the CC&Rs are incorporated herein by reference. The undersigned acknowledges and agrees to the truthfulness of the foregoing recitals, which are hereby incorporated into this First Amendment.

2. Effective Date. The terms of this First Amendment shall be effective immediately upon recordation in the Official Records of the County of Santa Clara (the "**Effective Date**").

3. Common Expenses. Section 1.11 of the CC&Rs is hereby amended to include the following in the definition of "Common Expense(s)": Any costs incurred by the Owners or the Association for preparing the Owners' Properties for sale, including, but not limited to, costs related to surveys, engineering and environmental evaluations of the Properties.

4. Purpose of Assessments. Section 3.2 of the CC&Rs is hereby deleted in its entirety and replaced with the following:

The Assessments levied by the Board of Directors on behalf of the Association shall be used generally to promote the health, safety and welfare of the Owners and their employees and for the operation, replacement, improvement and maintenance of the Common Areas and Exterior Surface Maintenance Areas. Notwithstanding the foregoing, as long as sufficient funds are available to pay the expenses required to operate, replace, improve and maintain the Common Areas and Exterior Surface Maintenance Areas, the Board of Directors is authorized to use up to eighty-five percent (85%) of the Common Assessments for costs incurred by the Owners or the Association for preparing the Properties for sale, including, but not limited to, costs related to surveys, engineering, environmental evaluations and other due diligence assessments of the Lots and the Common Areas. All Common Assessments must be used for the common benefit of all of the Owners for the purposes authorized by this Declaration, as it may be amended from time to time. Disbursements from the maintenance fund of the Association shall be made by the Board, as agent for the Owners, for such purposes as may be necessary for the discharge of its responsibilities or payment of the costs authorized herein and in the Articles of the Association, for the common benefit of all of the Owners. Nothing in this Declaration shall be construed in such a way as to limit the right of the Board to use any Common Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

5. Amendment of CC&Rs. Section 13.2 of the CC&Rs requires the written consent of seventy-five percent (75%) of the voting power of the Association. The parties signing this Amendment represent more than seventy-five percent (75%) of the voting power of the Association.

6. Entire Agreement. This First Amendment contains all of the agreements and understandings made between the parties with respect to the terms set forth in this First Amendment. No prior or contemporaneous oral or written understandings or representations other than as set forth in this First Amendment shall be enforceable against either party.

7. Ratification. Except as set forth above, all other terms and conditions of the CC&Rs are ratified and affirmed, and shall remain in full force and effect. In the event of any conflict between the terms of the original CC&Rs and this First Amendment, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, this First Amendment is executed by more than seventy-five percent (75%) the Owners of the Association as required by Section 13.2 of the CC&Rs for any amendment to the CC&Rs. The date of execution by each of the Owners is set forth under each Owner's signature, below.

**MARRIOTT CENTER OWNERS ASSOCIATION,**  
a California non-profit mutual benefit corporation

**GU-GUIDE LIMITED PARTNERSHIP,** a  
Nevada limited partnership  
(the owner of 20.570% of the Center)

By: Katherine Pesic

Name: Katherine Pesic

Its: General Partner

Date: Aug 31, 2020

**IYKP LP,** a Nevada limited partnership  
(the owner of 39.930% of the Center)

By: Katherine Pesic

Name: Katherine Pesic

Its: General Partner

Date: Aug 31, 2020

A notary public or other officer completing this certificate  
verifies only the identity of the individual who signed the  
document to which this certificate is attached, and not the  
truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

On 08/31/2020 before me, VAN T. MACH, Notary  
Public, personally appeared KATHERINE PESIC, who proved to me on the  
basis of satisfactory evidence to be the person whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature] (seal)



**CITYLAND REAL ESTATE USA LLC**, a  
California limited liability company  
(the owner of 3.479% of the Center)

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

Name: Anthony Ngai

Its: sole member

Date: - 2 SEP 2020

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

~~STATE OF CALIFORNIA~~ )  
~~COUNTY OF~~ Hong Kong )

On - 2 SEP 2020 before me, **TSE LIN CHUNG**, Notary Public, personally appeared KING KWOK ANTHONY NGAI, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

**TSE LIN CHUNG**  
Notary Public,  
Hong Kong SAR  
Attestation only.  
No advice sought or given.



**YIP, TSE & TANG**, Solicitors & Notaries  
Unit B, 2nd Floor, CNT House,  
No.120 Johnston Road, Wan Chai, Hong Kong  
Tel: (852) 3968 9677 Fax: (852) 2658 2133

QUANTIL, INC., a California corporation  
(the owner of 5.414% of the Center)

By: Qinyuan Dong

Name: Qinyuan Dong

Its: Qinyuan Dong

Date: 09/04/2020

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

On 09/04/2020 before me, VAN T MACH, Notary Public, personally appeared QINYUAN DONG, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature] (seal)





Sai & Veena Gundavelli

Sa ~~SOLIX TECHNOLOGIES~~

~~INCORPORATED~~, a Delaware corporation  
(the owner of 3.075% of the Center)

By: 

Name: Sai Gundavelli

Its: \_\_\_\_\_

Date: 8/28/2020

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


STATE OF CALIFORNIA )

COUNTY OF SANTA CLARA )

On 08/28/2020 before me, VAN T MACH, Notary Public, personally appeared SAI GUNDAVELLI, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 

(seal)



ARHANT, LLC, a California limited liability  
company  
(the owner of 4.504% of the Center)

By: Niti Agrawal

Name: Niti Agrawal

Its: MEMBER

Date: 8/27/2020

A notary public or other officer completing this certificate  
verifies only the identity of the individual who signed the  
document to which this certificate is attached, and not the  
truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

On 08/27/2020 before me, VAN T MACH, Notary  
Public, personally appeared NITI AGRAWAL, who proved to me on the  
basis of satisfactory evidence to be the person whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature] (seal)



## CERTIFICATE OF AMENDMENT

We the undersigned, do hereby certify the following:

1. That we are the duly elected and acting President and Secretary of the Marriott Center Owners Association ("**Association**");
2. That this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Marriott Center dated August 7, 2020 has been duly approved by no less than seventy-five percent (75%) of the voting power of the Association and is being recorded with the County of Santa Clara by the Association to amend the Declaration of Covenants, Conditions and Restrictions for Marriott Center dated July 22, 1982 and recorded in the Official Records of the County of Santa Clara on August 8, 1982, as Document Number 7433430.

Executed at Santa Clara, California on Aug 31, 2020.

**MARRIOTT CENTER OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation**

By: Katherine Pesic

Name: Katherine Pesic

Its: President

Date: Aug 31, 2020

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

Name: Niti Agrawal

Its: Secretary

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



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

On 08/31/2020 before me, VAN T MACH, Notary Public, personally appeared KATHERINE PESIC, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

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We the undersigned, do hereby certify the following:

1. That we are the duly elected and acting President and Secretary of the Marriott Center Owners Association ("**Association**");

2. That this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Marriott Center dated August 7, 2020 has been duly approved by no less than seventy-five percent (75%) of the voting power of the Association and is being recorded with the County of Santa Clara by the Association to amend the Declaration of Covenants, Conditions and Restrictions for Marriott Center dated July 22, 1982 and recorded in the Official Records of the County of Santa Clara on August 8, 1982, as Document Number 7433430.

Executed at Santa Clara, California on \_\_\_\_\_, 2020.

**MARRIOTT CENTER OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation**

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

Name: Katherine Pesic

Its: President

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

By: Niti Agrawal

Name: Niti Agrawal

Its: Secretary

Date: 8/27/2020

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA )

On 08/27/2020 before me, VAN T MACH, Notary Public, personally appeared NITI AGRAWAL, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)



9023412/RC

REC. FEE	74 ✓
MICRO	✓
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SMPP	

7433430

RECORDED AT THE REQUEST OF  
SANTA CLARA COUNTY TITLE COMPANY

AUG 8 1982 8:00 A.M.

GEORGE A. MAUN, RECORDER  
SANTA CLARA COUNTY, OFFICIAL RECORDS

Recording Requested By and  
After Recording Return To:

G947 PAGE 697

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MARRIOTT CENTER

DECLARANT: AINA NUI CORPORATION, a Hawaii corporation.

PROPERTY: All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, described as follows: Parcels 1 through 27, inclusive, as shown on a Map, filed on April 24, 1981, in Book 483, Pages 25, 26 and 27, inclusive, of Maps, County of Santa Clara, California.

1051-4-42.07, 42.03, 014 42.08.01

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FOR MARRIOTT CENTER

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MARRIOTT CENTER

This Declaration is made on \_\_\_\_\_, 1982, by  
AINA NUI CORPORATION, a Hawaii corporation (hereinafter  
"Declarant").

PREAMBLE

A. Declarant is the owner of certain real property  
("Properties") located in the City of Santa Clara, County of  
Santa Clara, State of California, described as follows:

Parcels 1 through 27, inclusive, as shown on a  
Map, filed on April 24, 1981, in Book 483, Pages  
25, 26 and 27, inclusive of Maps, County of Santa  
Clara, California.

B. Declarant and all subsequent Owners of Lots in the  
Properties shall be bound by, and everything contained  
herein shall be junior and subordinate to the following  
recorded documents affecting the Properties:

(1) Declaration of Restrictions - Marriott Business  
Park, dated March 10, 1976, recorded on March 15, 1976, in  
Book B915, Page 228, of the Official Records of Santa Clara  
County, California, which Declaration was amended by a  
Amendment dated October 20, 1977, and recorded in Book D281,  
Page 411, of the Official Records of Santa Clara County,  
California ("Master Declaration"). The Master Declaration  
contains general use restrictions, and among other things  
certain set-back and sign restrictions.

(2) Agreement for the Installation and Main-  
tenance of Landscape Improvements, dated December 14, 1976,  
and recorded December 17, 1976 in Book C484, Page 109, of  
the Official Records of Santa Clara County, California.

C. Declarant has developed the Properties and shall  
grant the Lots thereon to Owners pursuant to a general plan



for all of the Properties and subject to the covenants, conditions, restrictions and easements as hereinafter set forth.

D. Declarant has deemed it desirable, for the preservation of the value, desirability and attractiveness of the Properties, to create a corporation under the Nonprofit Mutual Benefit Corporation Law of the State of California to which shall be assigned the powers and responsibilities of maintaining and administering the Common Areas and the Exterior Surface Maintenance Areas, enforcing the covenants and restrictions herein contained, and collecting and disbursing the assessments and charges hereinafter created.

E. Declarant hereby declares that all of the Properties shall be held, occupied, sold, and conveyed subject to the following covenants, conditions, restrictions and easements, all and each of which are for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Properties, in furtherance of a general plan for the protection of the Properties, or any portion thereof. All, and each of these covenants, conditions, restrictions, and easements are hereby imposed as equitable servitudes upon the Properties. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties, shall be binding on all parties having or acquiring any right, title or interest in the Properties or in any part thereof, and their successors and assigns, shall inure to the benefit of every portion of the Properties and any interest therein, shall inure to the benefit of each Owner, and his successors and assigns, and may be enforced by any Owner, the Association and Declarant.

#### ARTICLE I

#### DEFINITIONS

The following words, when used in this Declaration and in any Certificate of Amendment, unless otherwise provided,

shall have the following meanings:

1.1 "Architectural Committee" or "Committee" shall mean the Architectural Committee formed pursuant to Section 9.1 of the Declaration.

1.2 "Articles" shall mean the Articles of Incorporation of the Association which have been or may hereafter be filed in the office of the Secretary of the State of California, as such Articles may be amended from time to time.

1.3 "Assessments" shall collectively mean Common Assessments (including supplemental Common Assessments), Special Assessments, Reconstruction Assessments and Capital Improvement Assessments.

1.4 "Association" shall mean the Marriott Center Owners Association, a California non-profit mutual benefit corporation, its successors and assigns.

1.5 "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

1.6 "By-Laws" shall mean the By-Laws of the Association, as adopted by the Board initially, as such By-Laws may be amended from time to time.

1.7 "Capital Improvement Assessment(s)" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for installation or construction or replacement of any capital Improvements on any of the Common Areas or capital Improvements constructed on property other than the Properties but directly benefiting the Properties, which the Association may from time to time authorize in accordance with Section 3.7 of this Declaration.

1.8 "Close of Escrow" shall mean the date on which a grant deed to a Lot is Recorded.

1.9 "Common Areas" shall mean that portion of the Properties consisting of Parcel 27 as shown on the Map

(including the Improvements constructed thereon), which is owned by the Association for the common use of all of the Owners. Declarant shall grant the Association fee title to the Common Areas prior to the first Close of Escrow for the sale of a Lot.

1.10 "Common Assessment(s)" shall mean the annual charge against each Owner and his Lot, which shall be paid by each Owner to the Association, to satisfy those Common Expenses for ordinary maintenance, operation, repair and management of the Common Areas and Exterior Surface Maintenance Areas and which are not otherwise payable as Capital Improvement Assessment(s), Special Assessments and Reconstruction Assessments.

1.11 "Common Expense(s)" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Areas and Exterior Surface Maintenance Areas (including unpaid Special Assessments, Capital Improvement Assessments and those other costs not paid by the Owner responsible for payment); the costs of landscape maintenance and supplies incidental thereto; the costs of maintaining lighting facilities; the costs of all general liability, property damage and other insurance carried by the Association; the costs of all commonly metered utilities, and other commonly metered charges for the Properties; the costs of refuse storage and collection; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all services benefiting the Common Areas and Exterior Surface Maintenance Areas; the costs of bonding of the members of the management body; taxes and assessments (including, but not limited to, assessments for public improvements or benefit) paid by the Association and amounts paid by the

Association for the discharge of any lien or encumbrance levied against the Common Areas; the costs of policing and security protection; and the costs of any other item or items incurred by the Association for any reason in connection with the Properties for the benefit of all of the Owners.

1.12 "Declarant" shall mean Aina Nui Corporation, its successors and any person to which it has assigned any of its rights hereunder by an express written assignment.

1.13 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Marriott Center, as it may be amended from time to time as provided herein.

1.14 "Exterior Surface Maintenance Area(s)" shall mean, as the same may from time to time exist, the exterior surfaces of all Improvements on a Lot including without limitation all buildings, fences, walls and the exterior sidewalks and entryways, and shall specifically include all glass areas and shall specifically exclude roofs.

1.15 "Improvement(s)" shall mean all structures and appurtenances thereto of every kind, located on the Properties, whether above or below the land surface, including but not limited to, buildings, utility systems, walkways, driveways, parking areas, loading areas, landscaping items, fences, walls, decks, stairs, poles, landscaping vegetation, sprinkler and irrigation systems, signs, exterior fixtures and any other structure of any kind.

1.16 "Lot" shall mean any of the numbered lots or parcels shown upon a Recorded subdivision map or Recorded parcel map of the Properties, including all Improvements thereon. The term "Lot" shall not include any portion of the Common Areas.

1.17 "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related Improvements and fixtures on the Properties in

a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation, and other garden management practices necessary to promote a healthy weed-free environment for optimum plant growth, as well as maintenance of the irrigation system and its parts.

1.18 "Map" shall mean that certain map entitled "Lands of F.E. Trotter, Inc., et al.", Filed on the 24th day of April 1981, in Book 483 of Maps, Pages 25, 26, and 27 inclusive.

1.19 "Master Declaration" shall mean the Recorded Declaration of Restrictions described in paragraph B(1) of the Preamble to this Declaration.

1.20 "Member" shall mean every person holding a membership in the Association, as provided in Section 2.4 hereof. "Membership" shall mean the status of being a Member.

1.21 "Mortgage" - "Mortgagee" - "Mortgagor". A mortgage shall mean any mortgage or deed of trust or other conveyance of an interest in a Lot or in the Common Areas, which secures the performance of an obligation and which will be void and reconveyed upon completion of such performance. Reference in this Declaration to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

1.22 "Owner" The Owner of a Lot shall mean any person, including Declarant, holding fee simple title of record to the Lot, excluding those having such interest merely as security for the performance of an obligation and including the vendee (buyer) of a Lot under a contract of sale (real property sales contract). "Ownership" shall mean the status of being an Owner.

1.23 "Properties" shall mean all the real property described in paragraph A of the Preamble to this Declaration, as the same now is and as it may, from time to time, be

developed and improved.

1.24 "Reconstruction Assessment(s)" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for repair or replacement of any portion of damaged or destroyed Improvements in the Common Areas, as provided for in this Declaration.

1.25 "Record" and "File" shall mean, with respect to any document, the recordation thereof, and with respect to any map, the filing thereof, in the Office of the Recorder of Santa Clara County, State of California.

1.26 "Special Assessment(s)" shall mean a charge against a particular Owner and his Lot directly attributable to, or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest and other charges thereon, as provided for in this Declaration.

1.27 "Street" shall mean any street, drive, way, lane, place or other thoroughfare either as shown on any Recorded subdivision map or Recorded parcel map of the Properties, however designated, or as so used as a part of the Common Areas.

## ARTICLE II

### ASSOCIATION

2.1 Formation and Membership. The Association shall be incorporated under the name of Marriott Center Building Owners Association, as a corporation not for profit under the Nonprofit Mutual Benefit Corporation Law of the State of California.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in the Articles and this Declaration, together with the general and implied powers of a nonprofit mutual benefit corporation to do any and all things that a corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California



may lawfully do which are necessary and proper for the peace, health, comfort, safety and general welfare of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, By-Laws and this Declaration. The Association shall further have the right to install or construct reasonable capital Improvements on the Common Areas, for the benefit of all of the Owners. Subject to the provisions of Section 9.2(a) below, the Association may at any time, and from time to time, reconstruct, replace, add, or refinish any Improvement or portion thereof and any destroyed trees or other vegetation and plant trees, shrubs and ground cover upon the Common Areas, without the approval of the Committee. The Association may contract for equipment, tools, supplies and other goods for the Common Areas and may contract with a public utility company, and use and pay for utility services to the Common Areas and the Improvements thereon. The Association may employ personnel necessary for the effective operation and maintenance of the Common Areas, including the employment of legal and accounting services. The Board shall not enter into any management service contract for a term in excess of one (1) year, without the vote or written assent of both classes of Membership or except as otherwise provided in the By-laws. To the extent not paid by the Owners, the Association shall have the authority to pay all real and personal property taxes and assessments (including, but not limited to, assessments for public improvements on benefit) which shall constitute a lien upon any portion of the Common Areas. Such taxes or assessments may be contested or compromised by the Association; provided, however, that any such contested taxes or assessments shall be paid or a bond insuring the payment thereof shall be posted prior to the sale or other disposition of any portion of the Common Areas.

to satisfy the payment of such taxes or assessments. Any taxes or assessments so paid by the Association shall be a Common Expense and shall be included in the Common Assessments levied against the Owners pursuant to the terms hereof; provided however all taxes and assessments paid by the Association, the payment of which is the responsibility of an Owner, shall be charged to such Owner as a Special Assessment, as herein provided.

2.3 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or the By-Laws, the terms and provisions of this Declaration shall prevail.

2.4 Membership. Every Owner shall automatically, upon acquiring his Lot, be a Member of the Association, and shall remain a Member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Ownership of a Lot shall be the sole qualification for Membership in the Association. All Memberships shall be appurtenant to a Lot, and with the exception of Declarant, a Person shall be deemed an Owner of a Lot only upon Recordation of a deed to such Lot. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members shall be as set forth in this Declaration, the Articles and By-Laws, and the rules and regulations of the Association adopted in accordance with the By-Laws.

2.5 Transfer. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale, lease or encumbrance of such Owner's entire interest in a Lot, and then only to the purchaser, lessee or mortgagee of such an interest. Any sale, transfer or conveyance of any Owner's entire interest in a Lot, including a foreclosure sale, shall operate to transfer the Membership



held by such Owner without the requirement of any express reference thereto. Upon termination of an Owner's entire interest in a Lot, Membership in the Association shall also terminate. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

2.5 Voting Rights. The Association shall have two (2) classes of voting Membership.

(a) Class A. Class A Members shall be all Owners, with the exception of Declarant for so long as there exists a Class B Membership. A Class A Member shall be entitled to one (1) vote for each one thousand (1,000) square feet of gross floor area of each floor of the building which has been constructed on such Member's Lot, as computed by taking into consideration the setback, building, zoning and other relevant laws and ordinances applicable to the Properties on the date this Declaration is Recorded, and rounded off to the nearest one thousand (1,000) feet. The initial square footage floor area for buildings which has been constructed on each Lot shall be as set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference, and such totals may only be modified with the consent of the Architectural Committee. Unless and until so modified, the floor areas attributable to each Lot shall be conclusively presumed for all purposes to be as set forth on Exhibit "A". When more than one person is the Owner of any Lot, all Owners shall be Members of the Association and the votes attributable to such Lot shall be exercised as among the Owners themselves determine, but in no event shall more votes than those authorized under this paragraph be cast with respect to any Lot. No vote shall be cast for any Lot owned by more than one Owner where the majority of co-Owners

cannot agree to such vote.

(b) Class B. The Class B Member shall be Declarant. With respect to each Lot of which Declarant is the Owner, the Class B Member shall be entitled to ten (10) times the number of votes which would be attributable to such Lot if the Owner of such Lot were a Class A Member. The Class B Membership shall cease and be converted to Class A Membership on the happening of the earlier of the following events: (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or (b) seven (7) years from the date on which this Declaration is originally Recorded.

2.7 Initial Board of Directors. The initial Board of Directors consisting of three (3) persons shall be elected by Declarant upon the incorporation of the Association and such Board shall hold office until the earlier of six (6) months after the first Close of Escrow for a Lot or forty-five (45) days after the Close of Escrow for the Lot which represents the fifty-first percentile (51%) of the Lots to have been sold.

2.8 Subsequent Boards of Directors. Upon the termination of the term of said initial Board, a special meeting of the Members of the Association shall be held for the purpose of electing a new Board consisting of three (3) directors who shall serve until the first regular annual meeting of the Association. At said annual meeting, and at each subsequent annual meeting, the Members of the Association shall elect a Board consisting of three (3) directors who shall serve until the next annual meeting. The authorized number of directors may be changed by an amendment to the By-Laws. Each such director, except for those appointed and serving as initial directors, shall be an Owner and a Member of the

Association (or an agent of Declarant until the last Lot has been conveyed to a purchaser); provided that at no time shall the Board consist of less than three (3) directors. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Owners. The Board shall not, except with the vote or written assent of a majority of the voting power of the Association, pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a member or officer to be reimbursed for his actual expenses incurred in carrying on the business of the Association, and nothing herein contained shall preclude any member of the Board or officer of the Association from serving the Association in some other capacity and receiving compensation therefor.

2.9 Regular and Special Meetings of Board. Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, the suspension or conditioning of an Owner's rights or privileges hereunder, the levying of a Special Assessment, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

(a) Regular Meetings. Regular meetings of the Board shall be held at a time and at a place within the Properties fixed by the Board from time to time, as provided by and in accordance with the By-Laws. Notice of the time and place of a regular meeting shall be posted at a prominent place or places within the Common Areas and shall be communicated to Board members not less than seventy-two (72) hours prior to the meeting, unless the time and place of meeting is fixed by the By-Laws; provided, however, that notice of a meeting need not be given to any Board member who has signed a waiver of notice or a written consent to the holding of the meeting.

(b) Special Meetings. A special meeting of the Board may be called by written notice signed by the president of the Association or by any two members of the Board other than the president. The notice of such special meeting shall specify the time and place of the meeting and the nature of any special business to be considered. As more fully set forth in the By-Laws, notice of the special meeting shall be posted in the manner prescribed for notice of regular meetings of the Board and shall be sent to all Board members not less than seventy-two (72) hours prior to the scheduled time of the meetings; provided, however, that notice of the meeting need not be given to any Board member who has signed a waiver of notice or a written consent to the holding of the meeting.

#### 2.10 Annual and Special Membership Meetings.

(a) Regular Meetings. The Association shall hold regular annual meetings of the Members at such time as provided by and in accordance with the By-Laws. The first regular annual meeting of Members shall be held within forty-five (45) days after Close of Escrow for the Lot which represents the fifty-first percentile (51%) of the Lots to

be sold, but in no event later than six (6) months after the first Close of Escrow for a Lot.

(b) Special Meetings. Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, the Articles, or the By-Laws, require the approval of all or some of the Members, or for any other reasonable purpose. A special meeting of the Members shall be promptly called by: (a) the Chairman of the Board; (b) the President of the Association; (c) the vote for such a meeting by a majority of a quorum of the Board; or (d) the receipt by the Secretary of the Association of a written notice for a special meeting signed by Members representing at least five percent (5%) of the total voting power of the Association.

(c) Place of Meetings. Meetings of Members shall be held within the Properties or at a meeting place as close thereto as possible. Unless unusual conditions exist, Members' meetings shall not be held outside Santa Clara County.

(d) Notice of Meetings. Written notice of regular and special meetings shall be given to Members by the Board by any means which is appropriate given the physical setup of the Properties, as more fully provided in the By-laws. The notice shall specify the place, date, and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken.

(e) Quorum. A quorum for the transaction of business at a meeting of Members through presence in person or by proxy shall be established by the By-Laws at a percentage of not less than twenty-five percent (25%) and not more than sixty-six and two-thirds percent (66-2/3%) of the total voting power of the Association.

ASSESSMENTS

3.1 Creation of the Lien and Personal Obligations for Assessments. Declarant, for each Lot of which Declarant is the Owner, covenants and agrees to pay, and each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in therein, is deemed to covenant and agree to pay to the Association, all Common Assessments (including supplemental Common Assessments), applicable Special Assessments, Reconstruction Assessments and Capital Improvement Assessments and shall thereby vest in the Association the right and power to bring all actions for the collection of such charges and Assessments, costs of suit and attorneys' fees, and for the enforcement of such liens. All Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a separate, distinct and personal obligation of the Owner at the time the Assessments fall due, shall be a continuing lien upon the Lot against which such Assessment is made to secure the payment of such Assessment, together with interest, costs and reasonable attorneys' fees, and shall bind his heirs, successors in interest, devisees, personal representatives and assigns. The priority of all such liens on each Lot shall be an inverse order, so that upon the foreclosure of the lien of any particular charge on any Lot, any such sale of an interest in a Lot pursuant to such foreclosure will be made subject to all liens securing the charges on such Lot for preceding periods of time. This personal obligation of each Owner cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Areas. No diminution or abatement of Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or from any action taken to comply with any



law, ordinance or order of a governmental authority.

3.2 Purpose of Assessments. The Assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the health, safety and welfare of the Owners and their employees and for the operation, replacement, improvement and maintenance of the Common Areas and Exterior Surface Maintenance Areas. All Assessments must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration, as it may be amended from time to time. Disbursements from the maintenance fund of the Association shall be made by the Board, as agent of the Owners, for such purposes as may be necessary for the discharge of its responsibilities herein and in the Articles of the Association, for the common benefit of all of the Owners. Nothing in this Declaration shall be construed in such a way as to limit the right of the Board to use any Common Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

3.3 Determination of Common Assessments. The Board of Directors shall authorize and levy the amount of the annual Common Assessment upon each Owner and such Owner's Lot, as provided herein, by majority vote of the Board. The initial Common Assessment shall commence on the first day of the calendar month following the first Close of Escrow for the sale of a Lot. Common Assessments shall be borne proportionately by the Owners in the same proportion that the total gross square footage floor area of the building which is or may be constructed on each Owner's Lot bears to the total gross square footage floor area of all structures which may be constructed on the Properties, as such proportions are set forth in Exhibit "A" attached hereto. In the event that any additional square footage floor area is constructed on

any Lot with the approval of the Architectural Committee, if required pursuant to the terms hereof, then the Common Assessments shall be adjusted by the Board to account for the increased total gross square footage floor area of the building on such Lot. Unless and until so modified, the proportions of the total Association budget for Assessment purposes shall be conclusively presumed for all purposes to be as set forth in Exhibit "A". Written notice of the annual Common Assessments shall be sent to every Member. Without first receiving the approval of the Members, the Board may increase the annual Common Assessment against each Member and such Member's Lot in any fiscal year by an amount not in excess of twenty-five percent (25%) of the annual Common Assessment levied in the preceding fiscal year. Any such increase in excess of twenty-five percent (25%) shall require the prior approval of a majority of the voting power of both classes of Membership of the Association. The omission by the Board to fix the Common Assessments provided for hereunder before the expiration of any Association fiscal year, for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the Common Assessment fixed for the preceding year shall continue until a new Common Assessment is fixed.

3.4 Payment of Assessments. Each Member shall pay to the Board of Directors his annual Common Assessment in equal monthly installments in advance, or at such frequency and in such amounts as may be hereafter established by the Board of Directors. Declarant shall pay its pro rata share of the Common Assessments on all Lots in the Properties subject to assessment of which Declarant is the Owner. At the end of



any fiscal year of the Association, the Board by majority vote may determine that all excess funds derived from Common Assessments may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. In the event of any voluntary or involuntary conveyance of an interest in a Lot, the new Owner ("Purchaser") shall be jointly and severally liable with the previous Owner ("Seller") for all unpaid installments of Common Assessments levied against such Lot up to the date of close of escrow of the conveyance, without prejudice to the right of the Purchaser to collect from the Seller therefor. However, any such Purchaser shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid Assessments against such Lot; and such Purchaser shall not be liable for, nor shall the interest conveyed be liable for any unpaid Assessments levied by the Board of Directors against the Seller in excess of the amount set forth in the statement; provided, however, that the Purchaser shall be personally liable for any and all installments of Assessments and other charges becoming due after close of escrow for the conveyance. Notwithstanding the foregoing, any Mortgagee for value who obtains an interest in a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, shall not be liable for unpaid Assessments or charges against the mortgaged Lot which accrue prior to the time such Mortgagee acquires title to such interest; provided, however, such transfer of title shall not relieve such Lot from claims for a pro rata share of Assessments or charges resulting from a reallocation of delinquent Assessments to all Lots, including the mortgaged Lot.

3.5 Supplemental Common Assessments. In the event the Board of Directors shall determine that the total Common

Assessment charges for the current Association fiscal year are, or will become, for any reason, inadequate to meet all those Common Expenses for which Common Assessments are levied, it shall immediately determine the approximate amount of such inadequacy. The Board of Directors, by a majority vote, shall have the authority to levy at any time a supplemental Common Assessment reflecting a revision of the total charges to be assessed against each Member and the Member's Lot, which charge shall not exceed: (a) twenty-five percent (25%) of the then current Common Assessment, if the current Common Assessment has been previously approved by a majority of the voting power of both classes of Membership of the Association; or (b) if the current Common Assessment has not been so approved, twenty-five percent (25%) of the previous year's Common Assessment. To the extent that any supplemental Common Assessment or the aggregate of any supplemental Common Assessments in any fiscal year of the Association exceeds the foregoing, such excess shall require the prior approval, by vote or written consent, of a majority of the voting power of the Association. Written notice of supplemental Common Assessments levied by the Association through the Board of Directors shall be given to all Members not less than thirty (30) days prior to the date such supplemental Common Assessment is payable.

3.6 Exemption from Payment of Common Assessments. Any Owner of a Lot which does not include a completed Improvement for which a Certificate of Occupancy or its equivalent has been issued on the date the initial Common Assessment shall be levied pursuant to Section 3.3 above, shall be exempt from the payment of such portion of any Common Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of such Improvement. The amount of such exemption and those portions

of the Common Assessment attributable to the existence and use of such Improvement shall be determined by the Board and it may include, without limitation, expenses related to maintenance of Exterior Surface Maintenance Areas, refuse disposal and common utilities supplied to such Improvements. Any such exemption from the payment of Common Assessments shall be in effect only until the date a notice of completion of the Improvement has been Recorded or the date which is one hundred eighty (180) days after the issuance of a building permit for the Improvement, whichever first occurs. In the event such date is other than the first day of the month, Common Assessments for such partial month shall be prorated. All portions of the Properties subject to any easement or other interests dedicated and accepted by the county or other local authority and devoted to public use and all of the Common Areas shall be exempt from the Assessments, charges and liens created herein.

3.7 Capital Improvement Assessments. Should the Board of Directors determine the need for a capital Improvement or replacement expenditure on any of the Common Areas or any other property for the direct benefit of the Properties, the cost of which (when added to any prior Capital Improvement Assessments for the then current fiscal year) is in excess of five percent (5%) of the budgeted gross expenses of the Association for its current fiscal year, then a vote of at least a majority of the voting power of each class of Members shall be required to approve and render effective a Capital Improvement Assessment levied by the Board of Directors to cover the cost of such expenditure. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate.

3.8 Special Assessments. The Board shall levy a Special Assessment against any Owner whose failure to comply with this Declaration or whose negligent act or omission or the negligent act or omission of his employees, patrons, invitees, guests or tenants results in the expenditures of moneys by the Association in performing its function under this Declaration, in an amount equal to such expenditures plus interest and other charges thereon, as provided for in this Declaration. Such Special Assessments shall be for the purpose of reimbursing the Association for such expenditures and shall be due and payable by such Owner to the Association when levied.

3.9 Reconstruction Assessments. Reconstruction Assessments shall be levied by the Board under such circumstances, and in such amounts and shall be payable pursuant to the terms of Section 11.1 hereof.

3.10 Annual Report and Budget. Not less than sixty (60) days before the beginning of each fiscal year of the Association, the Board of Directors shall prepare and distribute to all Members a pro forma operating statement (budget) for such fiscal year, which shall include, without limitation, a reasonable provision for contingencies and reserves for infrequently recurring expenditures. Any such contingency or reserve funds shall be deemed conclusively to be savings of the Owners held for their benefit. Not later than one hundred twenty (120) days after the close of the Association's fiscal year, the Board of Directors shall prepare and distribute to the Members of the Association an annual report including a balance sheet, an income statement reflecting the total income and Common Expenses of the Association during the immediately preceding fiscal year, a statement of the place where the names and addresses of the current Members of the Association may be found and any

information required to be reported under Section 8322 of the California Corporations Code. Ordinarily the annual report referred to above shall be prepared by an independent accountant, as a Common Expense, for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000). If the annual report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the statements were prepared without audit from the books and records of the Association.

#### ARTICLE IV

##### NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. Any installment of an Assessment provided for in this Declaration shall become delinquent if not paid on the due date established by the Board of Directors. With respect to each installment of an Assessment not paid within ten (10) days after its due date, the Board of Directors may, at its election, require the delinquent Owner to pay a late charge of ten percent (10%) of the amount of the delinquent installment, together with interest at the maximum rate permitted by law on such delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice ("Notice of Assessment") to the Owner and to the first Mortgagee of such Owner if such Mortgagee has filed with the Board a request for such notice, and cause a copy of such Notice of Assessment to be Recorded. The Notice of Assessment shall: (a) state the amount of such delinquent Assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording such Notice of Assessment, the expenses of collection in connection with



any delinquent installments and reasonable attorneys' fees;

(b) describe the Lot against which the same has been assessed;

(c) state the name of the Owner thereof, and the name and address of the Association; (d) state the action required to cure the delinquency; (e) specify a date, not less than thirty (30) days from the date the Notice of Assessment is mailed to the Owner, by which such delinquency must be cured; (f) specify that failure to cure the delinquency on or before the date specified in the Notice of Assessment may result in acceleration of the balance of the installments of the Assessments payable for the then current fiscal year and sale of the Owner's Lot; and (g) state that such Owner shall have the right to cure the delinquency after any such acceleration pursuant to the terms of California Civil Code Section 2924c, as the same may be amended from time to time. Such Notice of Assessment shall be signed by an authorized representative of the Association, and shall create a lien against the Lot upon its Recordation. If the delinquent Assessment installment(s) and any charges thereon are not paid in full on or before the date specified in the Notice of Assessment, the Board, at its option, may declare all of the unpaid balance of the Assessments for the then current fiscal year to be immediately due and payable without further demand, subject to the Owner's right to cure, and may enforce the collection of such delinquent Assessment and accelerated installments and all charges thereon in any manner authorized by law and this Declaration.

#### 4.2 Enforcement of Liens.

(a) Priority of Liens. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on the Lot prior and superior to all other liens, except:

(1) such taxes, bonds, assessments and other levies which, by law, would be superior thereto; and

(ii) the lien or charge of any Mortgage of record made in good faith and for value and Recorded prior to the date on which the Notice of Assessment is Recorded, subject to the provisions of Section 3.4 and Article XII of this Declaration.

(b) Duty and Authority of Board. The Board may commence any procedure for collection, upon its own decision and it must so proceed upon the written request therefor signed by any five (5) Owners, after the expiration of at least thirty (30) days from the date on which the Notice of Assessment was Recorded, provided that at least ten (10) days have expired since a copy of the Notice of Assessment was mailed to the Owner affected thereby, and subject to the provisions of Section 4.1 in the event that the Board accelerates the due date of any Assessment installments. It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by means of an action at law against the Owner personally obligated to pay the same, or foreclosure of its lien against the Lot of such Owner by appropriate action in court, or as provided in Section 4.2(c) hereof. In any action by the Board to foreclose the Association's lien against a Lot the Owner of such Lot shall be required to pay a reasonable rental for the Lot and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment against an Owner for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing the same; provided, however, such suit shall not constitute an affirmation of the adequacy of money damages. All remedies provided for herein or at law or in equity shall be cumulative and not

exclusive. Any recovery resulting from a suit in law or equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

(c) Appointment of Association as Trustee. Each Owner by acceptance of a deed to a Lot, whether or not it shall be so expressed therein, is deemed to appoint the Association as trustee to enforce and to foreclose its Assessment lien by private power of sale as provided in Division 3, Part 4, Title 14, Chapter 2, Article 1 of the Civil Code of the State of California and further grants to the Board on behalf of the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof, to satisfy said lien, and actual expenses, costs, attorneys' fees and such other fees as may be allowed by law, or as may be prevailing at the time the sale is conducted, for lawful money of the United States to the highest bidder. The Board as trustee for the remaining Owners, or any other Owner, may purchase at said sale. Such sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law.

4.3 Satisfaction of Assessment. Upon payment to the Association of the full amount claimed in the Notice of Assessment, or other satisfaction thereof, the Board of Directors shall cause to be Recorded a notice stating the satisfaction and release of such amount claimed ("Notice of Release"). The Board of Directors may demand and receive from the applicable Owner a reasonable charge for the preparation and Recordation of such Notice of Release before Recording the same. Any purchaser or encumbrancer, who has acted in good faith and extended value, may rely upon such Notice of Release, as conclusive evidence of the full satisfaction of the sums stated in the Notice of Assessment.



## ARTICLE V

EASEMENTS AND RIGHT OF ENTRY5.1 Easements.

(a) Access. Declarant expressly reserves for itself and its successors and assigns and hereby grants to each Owner and the Association reciprocal nonexclusive, appurtenant easements over all of the Common Areas and the individual Lots, for access, ingress and egress. Such easements may be used by Declarant, its successors, and assigns, the Association and all Owners, their guests, tenants and invitees, transacting business on or temporarily visiting the Properties, for walkways, vehicular access, ingress and egress, parking, drainage and such other purposes reasonably necessary for the use and enjoyment of a Lot, subject to the following: (i) the provisions of this Declaration, the Articles and the By-Laws (as the same may from time to time be adopted and amended) governing use and enjoyment thereof; (ii) the easements reserved and granted herein and as shown on and in accordance with the Map; (iii) the right of the Association to grant easements and rights-of-way over the Common Areas to any person including any public agency, authority, or utility, or any assessment, maintenance or other special district.

(b) Maintenance and Repair. Declarant expressly reserves for itself and its successors and assigns and for the benefit of the Association and all agents, officers and employees of the Association and hereby grants to the Association nonexclusive, appurtenant easements over the Common Areas and the Lots as necessary to maintain and repair the Common Areas and the Exterior Surface Maintenance Areas and to perform all other tasks in accordance with the provisions of this Declaration. Such easements shall be established and used so as not to unreasonably interfere with the use and

enjoyment by the Owners of their Lots.

(c) Utilities. Declarant expressly reserves for itself and its successors and assigns and for the benefit of the Owners and the Association, and hereby grants to the Owners and the Association, reciprocal appurtenant easements over the Lots and the Common Areas for installation, operation, replacement and maintenance of drainage facilities, utility services and laterals including without limitation utility lines, pipes, wires and conduits, sewer and drainage pipes serving the individual Lots as necessary in accordance with the location of the utilities as initially installed or in accordance with alterations as approved by the Architectural Committee. All such easements shall at all times be open and accessible to public and quasi-public utility corporations, and other persons erecting, constructing and servicing such utilities and quasi-utilities and to Declarant, its successors and assigns. Declarant expressly reserves for itself and its successors and assigns the right to grant additional easements and rights-of-way over the Properties to utility companies and public agencies, as necessary, for the proper development and disposal of the Properties.

(d) Encroachment. Declarant hereby reserves for itself, its successors and assigns, and grants to the Association and Owners of contiguous Lots, reciprocal easements appurtenant to each of the Lots over the Lots and the Common Areas for the purposes of: (a) accommodating any encroachment of any portion of the Improvements thereon due to engineering errors, errors in original construction, settlement or shifting of Improvements, or any other similar cause; and (b) maintaining the same and accommodating authorized construction, reconstruction and repair of Improvements or any portion thereof; provided, however, in no event shall a valid easement for encroachment be created in favor of an

Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

(e) Vehicular Traffic. Declarant hereby reserves for itself and its successors and assigns and grants to the Owners nonexclusive easements appurtenant for vehicular traffic over all private Streets within the Properties.

(f) General. Each of the easements provided for in this Declaration shall be deemed to be established upon the Recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Common Areas, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the Properties. Except as otherwise provided herein, any conveyance of any such easement unaccompanied by a like conveyance of a corresponding interest in a Lot shall be void. Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant or its successors or assigns for the installation, repair and maintenance of public services and utilities that are necessary for the development and operation of the Properties, including without limitation sanitary sewer, water and drainage systems.

5.2 Right of Entry. The Board of Directors, the Architectural Committee, Declarant and their authorized agents, representatives, assignees and employees shall have the right to enter upon any Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Areas or the Owners in common, and shall not be deemed guilty of or liable for trespass by reason of such entry. However, nothing herein shall be construed to impose any obligation upon the Association, the Board, the Committee or Declarant to maintain or repair any

portion of any Lot which is to be maintained or repaired by the Owner thereof. Nothing in this Section shall in any manner limit the right of any Owner to the exclusive occupancy and control over his Lot. However, each Owner shall permit access to his Lot by any person authorized by the Board of Directors, the Committee, or Declarant as reasonably necessary, such as in case of any emergency originating on or threatening such Lot, whether or not such Owner is present.

#### ARTICLE VI

##### REPAIR AND MAINTENANCE

###### 6.1 Repair and Maintenance Duties of the Association.

The Association shall maintain, repair, replace, resurface and make necessary improvements to the Common Areas and the Exterior Surface Maintenance Areas, or shall contract for such maintenance, repair and improvements, to assure the maintenance of the Common Areas and the Exterior Surface Maintenance Areas in a good, sanitary and attractive condition. Such maintenance, repairs and improvements shall include, without limitation: maintenance and replacement of shrubs, trees, vegetation, irrigation systems and other landscaping improvements located on the Common Areas; repair and maintenance of all mechanical and electrical equipment in the Common Areas; repair, reconstruction, replacement and maintenance of all Streets, parking areas, walks and other means of ingress and egress within the Properties; exterior maintenance (including painting), repair and replacement of the Exterior Surface Maintenance Areas; repair and maintenance of storm drain and sanitary sewer lines (excluding the 10 inch sanitary sewer line and manhole referred to in Section 14.11 below), domestic water lines (excluding that portion of the water lines from the boundary line of the Properties up to and including the water meters), electric power service lines (excluding that portion of such lines from the boundary

line of the Properties up to and including the secondary splice boxes) and fire protection lines in the Common Areas and on Lots; and reconstruction, replacement or refinishing of any Improvements or portion thereof located upon the Common Areas. All such maintenance, repairs and improvements to the Common Areas and the Exterior Surface Maintenance Areas shall be deemed Common Expenses. All work performed by the Association, the performance of which is the responsibility of an Owner, shall be charged to such Owner as a Special Assessment, as herein provided. The Association may contract for an annual inspection of the roof of each building on a Lot. Any repairs indicated by such inspection shall be accomplished by the Owner concerned under Section 6.2 hereof.

6.2 Repair and Maintenance Duties of Owners. Subject to the duty of the Association to provide for the maintenance and repair of the Exterior Surface Maintenance Areas, each Owner shall maintain, repair, replace, reconstruct, refinish and restore or cause to be so maintained, repaired, replaced, reconstructed, refinished and restored, at his sole cost and expense, the buildings, structures and other Improvements on his Lot, including without limitation the roof as provided in Section 6.1 above, in a clean, sanitary and attractive condition, subject to the control and approval of the Architectural Committee. It shall further be the duty of each Owner to pay when due all charges for all utility services which are separately metered to his Lot, unless the Association is paying for such services. Each Owner shall pay all costs for trash collection and removal in the event that the Association has not contracted for common trash collection and removal.

6.3 Special Powers of Association. Without in any way limiting the generality of the foregoing, if the Board determines that any portion of a Lot whose maintenance is



the responsibility of an Owner, is in need of maintenance, repair, restoration or painting, or that there is a violation of any provision of this Declaration, then the Board shall give written notice to such Owner of such condition or violation. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Board shall undertake to remedy such condition or violation, and the cost thereof shall be charged to the Owner and his Lot. Such cost shall be deemed a Special Assessment of such Owner and his Ownership Interest, and subject to levy, enforcement and collection by the Board of Directors in accordance with the Assessment lien procedure provided for in this Declaration.

#### ARTICLE VII

##### COMMON AREAS

7.1 Association Control. The Association shall have fee title to the Common Areas, and an easement over the Lots in order to perform its duties hereunder. Such title and easement shall include, without limitation, the following appurtenant rights and duties:

- (a) The right of the Association to reasonably limit the number of guests, patrons and invitees of Owners using the Common Areas.
- (b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Areas.
- (c) The right of the Association, in accordance with the Articles, By-Laws and this Declaration and with the

vote or written consent of a majority of the voting power of each class of Members, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof, and to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such Mortgagee shall be subordinated to the rights of the Owners and the Declarant.

(d) The right of the Association to suspend any Owner's voting rights for any period during which any Assessment against the Owner and his Lot remains unpaid and delinquent or for any period such Owner is in violation of this Declaration or the By-laws or for any single infraction of the published rules and regulations of the Association; provided that any suspension of such voting rights shall be made only by the Board of Directors, after notice and an opportunity for a hearing as provided in the By-Laws, and for such period of time as specified in the By-Laws.

(e) The right of the Association to dedicate, release, alienate or transfer any portion of the Common Areas to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast at least a majority of the voting power of the Association, agreeing to such dedication, release, alienation or transfer has been Recorded.

(f) The right of Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Common Areas without charge, for sales, display, access, ingress, egress and exhibit purposes.

(g) Subject to Declarant's approval rights stated in Section 9.2(a) below, the right of the Association (by

action of the Board) to construct, reconstruct, replace or refinish any Improvement or portion thereof upon the Common Areas, in accordance with the original design, finish or standard of construction of such Improvement, or of the other Improvements within the Properties, as the case may be; or in accordance with such other design, finish or standard of construction as approved by the vote or written consent of Owners holding a majority of the voting power of each class of Members of the Association.

(h) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Areas.

(i) The right of the Association to grant and convey to any Person easements, licenses for use and rights of way in, on, over or under any of the Common Areas, upon the affirmative vote or written consent of two-thirds (2/3) of each class of its voting Members.

7.2 Regulation of Parking. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the Common Areas in accordance with the Master Declaration, Section 22658 of the California Vehicle Code, or any similar statute hereafter enacted, and to enforce such parking limitations by all means lawful for such enforcement on city streets, including the removal of any violating vehicles and the imposition of a fine on the responsible Owner by those so empowered.

7.3 Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release his Lot from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas or by abandonment of his Lot.



7.4 Taxes and Assessments. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain a separate real estate assessment and tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on the Common Areas, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association upon demand for the taxes and assessments assessed by the County Assessor or other taxing authority, as the case may be, against the Common Areas and attributable to such Owner's Lot. The Association may levy a Special Assessment against such Owner and his Lot for any of such taxes and assessments paid by the Association, which Special Assessment shall be subject to enforcement and collection by the Board in accordance with the Assessment lien procedure provided for in this Declaration. As used herein the term "assessment" shall mean and include, but shall not be limited to, assessments for public improvements or benefit.

7.5 Restriction on Severability of Common Areas. The interest of each Owner in the use and benefit of the Common Areas shall be appurtenant to the Lot owned by said Owner, and shall not be sold, conveyed or otherwise transferred by said Owner separately from the Lot. Any sale, transfer or conveyance of a Lot shall operate to transfer the appurtenant right to use said Common Areas without the requirement of express reference thereto, and the transferee shall thereupon be permitted the use and benefit of said Common Areas. There shall be no judicial partition of the Common Areas or any part thereof, and each Owner, whether by deed, gift, devise, or operation of law for their own benefit and for the benefit of all other Owners specifically waives and abandons all rights, interests and causes of action for a

judicial partition of any ownership interest in the Common Areas and does further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

#### ARTICLE VIII

##### USE RESTRICTIONS

Subject to the exemption for Declarant set forth in this Declaration, all of the Properties shall be held, used and enjoyed subject to the following limitations and restrictions:

8.1 Permitted Uses. The Properties shall be used for administrative, business and professional office purposes only, except for the Common Areas, on which there may be placed landscaping, parking areas, and private Streets. All permitted uses shall be performed and carried out in such a manner so as to prevent unreasonable interference with the use and enjoyment of the Lots and Common Areas by other Owners.

8.2 Prohibited Uses. The following operations and uses are specifically prohibited:

- (a) Residential use of any type.
- (b) Trailer courts, mobile home parks and recreational vehicle campgrounds.
- (c) Hotels and motels.
- (d) Munitions-related storage activities.
- (e) Concrete batch plant.
- (f) Manufacturing activities.
- (g) Any use or operation prohibited by law.
- (h) Those uses specifically prohibited in the Master Declaration during the term thereof.
- (i) All operations and uses not specifically permitted by Section 8.1.

8.3 Other Operations and Uses. Operations and uses that are not specifically permitted by this Declaration may be permitted in a specific case if: (a) such operations or uses are consistent with applicable laws or regulations of the City of Santa Clara or such other governmental entity then having jurisdiction thereof; and (b) written operational plans and specifications for such operations or uses, containing such information as may be requested by the Architectural Committee, are submitted to and approved by the Architectural Committee, which approval shall be based upon analysis of the anticipated effect of such operations or uses upon other Lots, upon other real property in the vicinity of the Properties, and upon the occupants thereof, but shall be in the sole discretion of the Architectural Committee.

8.4 Nuisances. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or the Common Areas other than normal accumulation and storage of trash in connection with a confined and reasonably prompt trash disposal or pick-up program. No noxious or offensive activity shall be carried on or upon any Lot or the Common Areas or any part of the Properties, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to other Owners, or to Persons on adjacent real property, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or which shall in any way increase the rate of insurance for any other Lot.

8.5 Signs. No sign, poster, billboard or other advertising of any kind shall be permitted on any portion of the Properties, except signs which are approved in writing by the Architectural Committee. The size, content, location, design, color, style and illumination of all signs shall be specifically approved in writing by the Architectural Committee.

in accordance with a sign program to be adopted by the Architectural Committee.

8.6 Drainage. There shall be no interference with the established drainage pattern and slope ratios over any portion of the Properties unless adequate provision is made for proper drainage and is approved by the Architectural Committee. For the purposes hereof, established drainage or slope means the drainage or slope which exists at the time of Close of Escrow for the sale of each Lot by Declarant, or that which is shown on any plans approved by the Architectural Committee. Each Owner shall be responsible for the costs of making adequate provision for drainage in the event he changes the established drainage over his Lot.

8.7 Occupancy Leases. This Declaration is intended to be binding upon any lessee or tenant of any Owner. In order to insure the binding effect on tenants and lessees, each Owner agrees, by acceptance of a deed to his Lot, not to rent, lease or sublease all or any portion of his Lot to any person, except pursuant to a written lease or rental agreement that: (a) expressly refers to this Declaration and contains a covenant by the lessee or tenant that he accepts the leasehold estate subject to this Declaration; and (b) contains either a covenant that the lessee or tenant agrees to perform and comply with the restrictions herein, or provisions which permit the lessor to enter the leased premises and take such other actions as necessary to perform and comply with this Declaration.

#### ARTICLE IX

##### ARCHITECTURAL AND LANDSCAPING PROVISIONS

9.1 Architectural Committee. An Architectural Committee consisting of three (3) members is hereby created with the rights and powers set forth in this Declaration. The initial members of the Committee shall be representatives appointed

by Declarant. For purposes of notices hereunder, the address of each initial member is c/o Stafffield Interest, Inc., 3375 Scott Boulevard, Suite 438, Santa Clara, California 95051 which may be changed from time to time by the Committee. Committee members shall not be entitled to compensation for their services hereunder, but shall be entitled to reimbursement from the Association for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Committee function. Declarant shall have the right and power, but not the obligation, at all times to appoint or remove a majority of the members of the Committee, or to fill any vacancy of such majority until the "turnover date", which shall be the date on which all of the Lots subject to this Declaration have been sold by Declarant; provided, however, that Declarant may accelerate the turnover date by Recording a notice transferring Declarant's right of appointment to the Board of Directors. Until the turnover date, the Board of Directors may appoint and remove one member of the Committee. After the turnover date, the Board of Directors shall have the power to appoint and remove a majority of the members of the Committee. After the turnover date, Declarant shall have the right, but not the obligation, to appoint and remove one member of the Committee. Members of the Committee appointed by Declarant pursuant to this Section 9.1 need not be Members of the Association. Any member of the Committee appointed by the Board of Directors may not be a member of the Board at the time of appointment or at any time such Person is a member of the Committee. Any member of the Architectural Committee may at any time resign from the Committee upon written notice delivered to Declarant or to the Board of Directors, whichever then has the right to appoint the majority of the members. Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant



or the Board of Directors, whichever then has the right to appoint the majority of the members.

9.2 Mechanics of Operation.

(a) Required Approvals. Subject to the provisions of Article XII and Section 14.4 of this Declaration, no demolition, removal, construction, improvement, repair, excavation or other work which in any way alters the exterior appearance of any Lot from its natural or improved state existing on the date such Lot was sold by Declarant to an Owner, shall be commenced, erected or maintained upon the Properties, until the plans and specifications showing all elevations of any buildings including dimensions, materials and color schemes, the nature, kind, grading scheme, shape, height, materials and location of the same, and such additional information as the Committee and Declarant may require shall have been submitted to and approved in writing by the Architectural Committee and Declarant as to harmony of external design, color and location in relation to surrounding structures on the Properties and topography; provided, however, that Declarant's approval rights pursuant to this Section 9.2 shall apply only to substantial alterations, modifications or reconstruction of buildings in the Properties affecting the structure or foundation of such buildings and then, in regard to any one Lot, only for so long as Declarant owns the Lot. Subject to the provisions of Article XII and Section 14.4 hereof, no trees, bushes, shrubs or landscaping Improvements shall be removed, replaced, planted or placed on any Lot until a request for the removal, or the plans and specifications for the species and placement thereof have been submitted to and approved in writing by the Architectural Committee. The plans as submitted in regard to such landscaping Improvements shall show in detail the proposed elevations and locations of such trees, bushes, shrubs or landscaping

Improvements including their location and elevation in relation to all other Lots in the Properties. The Committee shall establish reasonable procedures, including at the discretion of the Committee rules and regulations, for the granting of the approvals herein required. The vote or written consent of any two (2) members of the Committee taken with or without a meeting shall constitute an act of the Committee.

(b) Preparation and Submission of Plans. All plans and specifications submitted to Declarant and/or the Architectural Committee pursuant to Section 9.2(a) above shall be prepared, as appropriate, by an architect, engineer or landscape designer or landscape architect, said person to be employed by and at the expense of the Owner making the application. Plans and resubmittals thereof shall be approved or disapproved by the later of: ten (10) days following approval thereof by declarant under the Master Declaration; or thirty (30) days after receipt by Declarant and the Committee, and Declarant and the Committee shall use due diligence in responding to the applicant upon receipt of all necessary information. All approvals given by the Committee and Declarant shall be in writing. Failure of Declarant and/or the Committee to respond to a submittal or resubmittal of plans within such period shall be deemed to be disapproval of the plans as submitted or resubmitted. Any review fee charged by declarant under the Master Declaration shall be paid by the Owner making the application.

(c) Discretionary Powers of the Committee. The Committee and/or Declarant may withhold approval of plans and specifications submitted to it pursuant to this Section 9.2 not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration or the Master Declaration, or failure to include

information and detail in such plans and specifications as may have been reasonably requested by the Committee or Declarant, but also by virtue of the reasonable dissatisfaction of the Committee or Declarant with the location of the structure on the Lot, the elevation, the color scheme, finish, design, proportions, architecture, shape, height, style, grading plan and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of the Committee's or Declarant's reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the Committee or Declarant, will render the proposed item of Improvement inharmonious or out of keeping with the general plan for Improvements of the Properties.

(d) Proceeding with Work. Upon receipt of required approval from the Architectural Committee and Declarant pursuant to this Section 9.2, the Owner making the application shall, as soon as practicable, diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, landscaping and alterations pursuant to said approval; said commencement to be, in all cases, within one (1) year from the date of such approval. If the Owner shall fail to comply with this Section 9.2(d), any approval given pursuant to this Section 9.2 shall be deemed revoked unless the Architectural Committee and Declarant, if Declarant has approval rights in regard thereto, upon written request of the Owner made prior to the expiration of said one (1) year period, extends, in writing, the time for such commencement. No such extension shall be granted except upon a finding by the Architectural Committee and Declarant that there has been no change in the circumstances upon which the original approval was granted.



(e) Failure to Complete Work. The Owner shall in any event complete the construction, reconstruction, refinishing, landscaping or alteration of any such Improvement within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section 9.2(e), such failure shall be treated as a failure to complete the Improvements in compliance with approved plans.

(f) Violations. If, after plans and specifications for Improvements have been approved; pursuant to this Section 9.2, by the Committee and Declarant, if Declarant has approval rights in regard thereto, any Improvements are altered, constructed, or maintained upon the Lot otherwise than as approved, such alteration, construction or maintenance shall be deemed to have been undertaken without approval having been obtained as required by this Declaration. In the event any work requiring approval pursuant to the terms hereof, shall have been undertaken or shall be deemed to have been undertaken without such approval, then the Committee or Declarant (if Declarant has approval rights in regard thereto) may elect to notify the Owner of such noncompliance, specifying particulars of noncompliance, and to require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days following notice from the Committee or Declarant, as the case may be, the Committee or Declarant may elect to notify the Board of Directors in writing of such failure. The Board shall then set a date, in accordance with the By-Laws, on which a hearing before the Board shall be held regarding the alleged noncompliance. At the hearing the Owner,

Declarant and/or the Committee and, in the Board's discretion, any interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner.

(g) Compliance Deemed. After the expiration of one (1) year from the date of completion of any Improvement, addition or alteration, said Improvement, addition or alteration shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to comply with all of the provisions hereof, unless a notice of noncompliance, executed by one member of the Committee or Declarant in regard to such additions or alterations concerning which Declarant has approval rights, shall have been Recorded or legal proceedings shall have been instituted to enforce compliance with these provisions. Upon approval of the Committee and Declarant (in regard to work for which Declarant has approval rights), it shall be conclusively presumed that the location and exterior configuration of any building, structure or other Improvement placed or constructed on a

Lot in accordance with plans and specifications so approved does not violate the provisions of this Declaration.

(h) Waiver. The approval of the Committee or Declarant of any plans or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the Committee or Declarant of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications submitted, nor shall its approval be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

9.3 Variance. The Committee and Declarant, if Declarant has approval rights in regard thereto, may authorize variances from compliance with any of the architectural provisions of this Declaration or any rules, regulations or guidelines promulgated in relation thereto or pursuant to the By-Laws, including without limitation restrictions upon height, size or placement of structures, or similar restrictions, as the Committee and Declarant may determine, in their sole discretion, on the basis of topography, natural obstructions, hardship, aesthetic or environmental considerations and the like; provided, however, such variances shall not materially alter or be inconsistent with the general plan and intent of this Declaration. Such variances shall be granted in a written document signed by Declarant (if Declarant has approval rights) and at least two (2) members of the Committee and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this

Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Lot, including but not limited to zoning ordinances and Lot setback lines or requirements imposed by the Master Declaration, City, County or any other governmental authority.

9.4 Liability. Neither Declarant nor the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any Lots within the Properties; provided, however, that Declarant or such member has acted in good faith on the basis of such information as may be possessed by him. Every person who submits plans or specifications to the Architectural Committee for approval agrees, by submission of such plans or specifications, and every Owner agrees, that he will not bring any action or suit against Declarant or the Architectural Committee or any member thereof to recover any such loss or damage.

#### ARTICLE X

##### INSURANCE

#### 10.1 Duty of Association to Insure.

##### (a) Comprehensive General Liability Insurance.

The Board of Directors shall have the power to and shall obtain and maintain comprehensive general liability insurance (including medical payments) with a combined single limit of not less than Three Million Dollars (\$3,000,000) covering all claims for personal injury and property damage arising

out of a single occurrence on the Common Areas or from the activities of the Association. The policy limit set forth herein may be increased by the Board of Directors when it deems it advisable and prudent for the best interests of the Association and its Members. The liability insurance referred to herein shall include as separately protected insureds, Declarant, the Association, the Board of Directors, the Architectural Committee, and their representatives, members and employees, and the Members of the Association (as a class), with respect to any liability arising out of the maintenance and use of the Common Areas or any other property under the jurisdiction of the Association.

(b) Property Insurance. The Board shall also obtain and maintain a blanket policy or policies of "all risk" property insurance containing coverage, terms and conditions comparable to those in the standard ISO Form Policy and covering the Building on the Lot excluding the Improvements referred to in paragraph 10.2(a) below, and all Improvements on the Common Areas. Such coverage shall be in an amount as near as possible to the full replacement cost of such Improvements as originally constructed, without deduction for depreciation or coinsurance. Such insurance shall name the Association as a separately protected insured with respect to all Improvements on the Common Areas and Improvements on the Lots and shall name the respective Owners of the Lots and the Mortgagees of the respective Lots or any part thereof as separately protected insureds in regard to such Improvements, and the proceeds thereof shall be payable to the Association and said Owners for the purposes set forth herein. The premiums for any such insurance shall constitute a portion of the Common Expenses. The Board shall have the right to carry such other hazard insurance as the Board may deem desirable. Insurance on the



contents of Improvements on the Lots and for any additions to or alterations thereof which increase the value thereof above the value of the Improvements as originally constructed shall not be the responsibility of the Association.

(c) Other Insurance. The Board of Directors shall purchase such other insurance, as necessary, including but not limited to, errors and omissions, medical payments, malicious mischief, earthquake, flood and vandalism insurance, fidelity bonds and worker's compensation and insurance covering such other risks as shall customarily be covered with respect to planned developments similar in construction, location and use to the Properties.

#### 10.2 Duty of Owners to Insure.

(a) Property Insurance. Each Owner shall obtain and maintain "all risk" property insurance on that portion of the Building not covered in paragraph 10.1(b), including but not limited to the Tenant Improvements and on his personal property and fixtures within all Improvements located on his Lot, and on any additions or alterations to such Improvements which increase the value thereof above the value of the Improvements as originally constructed.

(b) Comprehensive General Liability Insurance. Each Owner shall obtain and maintain comprehensive general liability insurance insuring against liabilities for damage to person or property occurring upon his Lot or within the Properties and in any manner arising out of the condition or use of such Owner's Lot or the operations of the insured. Such insurance shall be in an amount not less than Three Million Dollars (\$3,000,000) for personal injury and property damage arising out of a single occurrence, or in such other minimum amount as the Board may determine.

(c) Business Interruption Insurance. Each Owner shall obtain and maintain business interruption insurance in an amount adequate to insure payment and performance of such

Owner's obligations under this Declaration.

(d) Policy Terms. All policies of property insurance required to be obtained and maintained by an Owner pursuant to this Section 10.2 shall give the insured the right to waive and the insured agrees to waive any claim for subrogation against Declarant, the Association, the Board of Directors, the officers of the Association and all other Owners. All policies of liability insurance required to be obtained and maintained by an Owner pursuant to this Section 10.2 shall: (i) provide that the coverage is primary and that any coverage maintained by Declarant or the Association shall be in excess thereto; (ii) provide for a cross-liability or severability-of-interest endorsement or an equivalent thereof; and (iii) include Declarant and the Association as separately protected additional insureds. Each Owner shall furnish the Association with a current certificate or policy evidencing such liability insurance. All policies of insurance required to be obtained and maintained by an Owner pursuant to this Section 10.2 shall provide that each such policy cannot be cancelled or modified without thirty (30) days' prior written notice to Declarant and the Association. Each Owner shall review annually the limits of his insurance coverage and increase such limits as appropriate. If any loss insured against by policies carried by the Association shall occur, and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of the insurance carried by him to the Association to the extent of such reduction, and such proceeds shall be applied by the Board of Directors for the same purposes as the reduced proceeds are to be applied.

10.3 Notice of Expiration Requirements. All of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be cancelled, terminated or modified without thirty (30)

days' prior written notice to the Board of Directors, Declarant, the Owners and their respective first Mortgagees (provided that such Mortgagees have filed written requests with the carrier for such notice) and every other person with an interest therein who shall have requested such notice from the insurer.

10.4 Insurance Premiums. Insurance premiums for any of the insurance policies obtained by the Association or the Board of Directors pursuant to this Article X shall be a Common Expense to be included in the Common Assessments levied by the Association and collected from the Owners.

10.5 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all included insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies shall be paid to the Board of Directors as trustee. The Board of Directors shall have full power to receive and receipt for such proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or shall be otherwise disposed of as provided in Article XI of this Declaration. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two directors of the Board may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

10.6 Actions as Trustee. Except as otherwise expressly provided in this Declaration, the Board of Directors, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all



matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who have requested the same in writing.

10.7 Annual Insurance Review. The Board of Directors shall review the insurance carried by the Association at least annually, for the purpose of evaluating the limits of the insurance referred to in Section 10.1 above. The Board of Directors may, at its option, obtain a current appraisal of the full replacement cost of the structural portions of the Improvements on the Lots and/or of the Common Areas and structural Improvements thereon, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review. Such appraisal shall be a Common Expense.

10.8 Required Waiver. The policies of insurance required to be carried by each Owner and the Association shall provide, if reasonably possible, for the waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers: (a) subrogation of claims against the tenants of the Owners; (b) any defense based on co-insurance; (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance carried by the Association; (d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (e) any right of

the insurer to repair, rebuild or replace, and, in the event a damaged or destroyed building or other structure is not repaired, rebuilt or replaced following loss, any right to pay under the insurance, an amount less than the replacement cost of the Improvements insured or the fair market value thereof; (f) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; and (g) any right to require any assignment of any Mortgage to the insurer. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Committee, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

#### ARTICLE XI

##### DAMAGE TO OR LOSS OF IMPROVEMENTS

###### 11.1 Restoration of Common Areas and Improvements.

Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas or any other Improvements insured by the Association, it shall be the duty of the Association to cause the same be restored and repaired to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article X hereof shall be used for such purpose, unless otherwise provided herein. The Common Areas and all other Improvements insured by the Association shall be reconstructed or rebuilt substantially in accordance with the original construction plans or the original standard of construction thereof, with such changes as are recommended

or approved by the Architectural Committee and Declarant (if Declarant has approval rights in regard thereto pursuant to Section 9.2(a) above). If the estimated cost of such restoration and repair is in excess of the insurance proceeds payable to the Association, a Reconstruction Assessment shall be levied by the Board of Directors upon the Owners and their Lots to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose. Reconstruction Assessments shall be borne by the Owners in the same proportions as Common Assessments, unless all or a portion of the damage or destruction is to Improvements on Lots, in which event the Reconstruction Assessment (or portion thereof representing costs to repair such Improvements in excess of the available insurance proceeds) shall be borne proportionately by the Owners of such damaged or destroyed Improvements. Such Reconstruction Assessments shall be due and payable by Owners in such installments and at such time as the Board shall designate.

11.2 Restoration Obligation of Owners. In the event of damage to or destruction of any portion of the Properties which is not insured by the Association ("Destroyed Properties") it shall be the duty of the Owner of each portion of the Destroyed Properties, as soon as may be practical, to repair and replace the Destroyed Properties or such portion thereof as will render such damage or destruction indiscernible from the exterior of the Destroyed Properties. The insurance proceeds paid to the Owner of Destroyed Properties, or the Mortgagees thereof, as their interest may appear, shall be used to rebuild or repair such damage. In the event that the insurance proceeds are insufficient to complete such rebuilding or repair, the Owner shall pay in advance such additional sums as may be necessary to complete such rebuild-

ing or repair. In the event the Owner does not commence such rebuilding or repair within a reasonable time, the Board of Directors may bring suit for an injunction to compel the Owner to perform such rebuilding or repair. Any reconstruction, replacement or repair required by this section shall be in accordance with the original plans and specifications of the Properties or plans and specifications approved by the Architectural Committee, Declarant (if Declarant has approval rights in regard thereto) and the Mortgagee of the first Mortgage of record which encumbers such portion of the Destroyed Properties.

### 11.3 Condemnation.

(a) Lots. In the event of a taking or partial taking of any Lot, by condemnation proceedings or by private purchase in lieu of such proceedings, the Owner thereof, together with the Mortgagees, shall have exclusive rights to prosecute the proceedings for the respective condemnation awards.

(b) Common Areas. In the event of a taking or partial taking of all or part of the Common Areas by condemnation proceedings or by private purchase in lieu of condemnation proceedings, the Association shall have the exclusive right to prosecute the proceedings for the respective condemnation awards.

## ARTICLE XII

### PROTECTION OF MORTGAGEES AND DECLARANT

12.1 General. A breach of any of the provisions, covenants, restrictions or limitations hereof, or the Recordation of any Notice of Assessment or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien against a Lot of any Recorded Mortgage made in good faith and for value. All of the provisions herein shall be binding upon and effective against any Owner whose Lot is hereafter acquired through foreclosure or trustee sale.

12.2 Inspection of Books and Records. The Owners, their Mortgagees and Declarant may examine the books and records of the Association during all normal business hours, upon serving written notice to the Board of such examination.

12.3 Notice of Default. The Mortgagee of any Recorded Mortgage, made in good faith and for value against the Lot of such Owner, may file with the Board a written request for written notification from the Association in the event of any default by the Owner of such Lot of its obligations under this Declaration which is not cured within thirty (30) days, and the Board of Directors shall give notice thereof to each such Mortgagee and to Declarant.

12.4 Non-liability for Unpaid Assessments. Each Mortgagee of a Mortgage made in good faith and for value and encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by judicial foreclosure or by deed or assignment in lieu of foreclosure, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such holder acquired title to such Lot. In the event that Declarant obtains title to a Lot by judicial or non-judicial foreclosure, or by deed or assignment in lieu of foreclosure, then Declarant shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time Declarant acquired title to it.

#### ARTICLE XIII

##### DURATION AND AMENDMENT

13.1 Duration. This Declaration shall continue in full force until the date which is fifty-six (56) years from the date hereof, unless a Declaration of Termination is Recorded meeting the requirements of an amendment to this Declaration as set forth in Section 13.2 below. There shall be no



severance by sale, conveyance, encumbrance or hypothecation of a Lot separate from the appurtenant Membership in the Association, as long as this Declaration shall continue in full force and effect.

13.2 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. Such notice shall be given to the Santa Clara City Council. A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of seventy-five percent (75%) of the voting power of the Association, and shall be subject to the prior approval of the City of Santa Clara. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective sixty (60) days after notice of such amendment is given to the City of Santa Clara as aforesaid and when the Certificate of Amendment is Recorded. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by the record holders of seventy-five percent (75%) of the aggregate value of Mortgages made in good faith and for value and encumbering the Properties at the time of such amendment:

(a) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to encumbrancers as provided in Section 3.4, Section 4.2, Article XII hereof and this Section 13.2;

(b) Any amendment which would necessitate an encumbrancer, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid

Assessment or Assessments accruing after such foreclosure;  
or

(c) Any amendment which would or could result in an encumbrance being cancelled by forfeiture.

A certificate, signed and sworn to by two (2) officers of the Association that the Owners holding seventy-five percent (75%) of the voting power of the Association have either voted for or consented in writing to any amendment adopted as above provided and, in regard to any amendment which requires the written consent of any of the record holders of Mortgages, that seventy-five percent (75%) of the aggregate value of Mortgages made in good faith and for value and encumbering the Properties at the time of such amendment have consented in writing to such amendment ("Certificate" or "Certificate of Amendment"), when Recorded, shall be conclusive evidence of such fact.

13.3 Protection of Declarant. The prior written approval of Declarant as developer of the Properties will be required before any amendment shall become effective which would impair the protection furnished Declarant as developer or diminish the rights of Declarant to complete development of the Properties, including without limitation, Section 14.4 of this Declaration.

13.4 Amendment by Declarant. Until the first Close of Escrow for the sale of a Lot, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification.

#### ARTICLE XIV

##### GENERAL PROVISIONS

14.1 Legal Proceedings. Failure to comply with any of the terms of this Declaration, the Articles and By-Laws or regulations adopted pursuant thereto, by the Association,

the Board or by an Owner, his guests, employees, invitees or tenants shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought by Declarant, the Board of Directors, the City of Santa Clara as a third party beneficiary or, if appropriate, by an aggrieved Owner. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision, or any other provision hereof. The Association, any Owner (not at the time in default hereunder), the City of Santa Clara as a third party beneficiary, or Declarant shall be entitled to bring an action for damages against the Association, the Board or any defaulting Owner, and in addition may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant thereto shall include a sum for attorneys' fees in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, together with interest, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

14.2 Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

14.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of an administrative, business and professional office development and for the maintenance of Common Areas, and any violation



of this Declaration shall be deemed to be a nuisance. The article and section headings, titles and captions herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context otherwise requires, as used herein, the singular and the plural shall each include the other and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. All exhibits attached hereto are incorporated herein by this reference as if fully set forth herein.

14.4 Construction and Sales by Declarant. Nothing in this Declaration shall limit, and no Owner shall do anything which shall interfere with, the right of Declarant to subdivide or resubdivide any portion of the Properties not yet sold to an Owner, or the right of Declarant to complete any construction of Improvements on the Lots not yet sold to an Owner or on the Common Areas, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements on such Lots and Common Areas as Declarant deems advisable prior to the sale of the last Lot in the Properties and the completion of the Improvements thereon. Each Owner by accepting a deed to a Lot hereby acknowledges that the activities of Declarant may constitute a temporary inconvenience or nuisance to the Owners and hereby consents to such inconvenience or nuisance. Each Owner hereby grants, effective upon acceptance of a deed to a Lot, an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Section 14.4. Such rights shall include, but shall not be limited to, erecting, constructing and maintaining on the Properties such structures and displays as may be reasonably necessary for the conduct of the business of completing the development

of the Properties and disposing of the same by sale, lease or otherwise. Declarant may use any Lots not yet sold to an Owner as models or real estate sales or leasing offices. This Declaration shall not limit the right of Declarant to establish on the Lots and on the Common Areas additional easements, reservations and rights-of-way to itself, to utility companies, to governmental entities, or to other persons as may from time to time be reasonably necessary to the proper development and disposal of the Properties. Such easements may be created for the construction, installation, maintenance, removal, replacement, operation and use of utilities, including without limitation sewers, water and gas pipes and systems, drainage lines and systems, electric power and conduit lines and wiring, telephone conduits, lines and wires, and other utilities, public or private, beneath the ground surface and vaults, vents, access structures and other facilities required to be above ground surface by good engineering practice. In the performance of any work in connection with such utilities, Declarant shall make adequate provision for the safety and convenience of all persons using the surface of said area, shall not unreasonably interfere with or disrupt the use of the Lots and Common Areas, including the parking areas and the facilities located thereon, and shall replace and restore the areas and facilities as nearly as possible to the condition in which they were prior to the performance of such work. All or any portion of the rights of Declarant hereunder may be assigned to any successor or successors to all or part of Declarant's interest in the Properties, by an express written Recorded assignment. Declarant need not seek or obtain the approval of the Architectural Committee, Board of Directors or Members in connection with any Improvements constructed or altered by Declarant.

14.5 Hold Harmless and Indemnification. Each Owner shall be liable to the Association for any injury to any person or damage to the Common Areas or any equipment thereon which may be sustained by reason of the negligence of said Owner or of his guests, employees, invitees or tenants, to the extent that any such damage shall not be covered by insurance. The costs incurred by the Association as a result of such damage shall be deemed a Special Assessment of such Owner and his Lot, and shall be subject to levy, enforcement and collection by the Board of Directors in accordance with the Assessment lien procedure provided for in this Declaration. The Association further reserves the right to levy a Special Assessment equal to the increase, if any, in the insurance premium payable by the Association, directly attributable to the damage or injury caused by such Owner or by the use of his Lot. The Association shall hold each Owner safe and harmless from liability for loss or injuries occurring on the Common Areas to the extent that such loss or injuries are covered by insurance to be maintained by the Association.

14.6 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established upon any other property, as one plan.

14.7 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.8 Nonliability and Indemnification. Except as provided herein, no right, power, or responsibility conferred on the Board, or the Architectural Committee by this Declaration, the Articles or the By-Laws shall be construed as a duty, obligation or disability charged upon the Board, the Committee, any member of the Board or of the Committee, or any other officer, employee or agent of the Association. No such person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damages resulting from such person's acts or omissions within what such person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damages result from such person's willful or malicious misconduct. No such person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damages resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his Official Acts, provided that:

(a) The Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association;

(b) In the case of a criminal proceeding, the Board determines that such person had no reasonable cause to

believe his conduct was unlawful; and

(c) In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 14.8 must be approved by a majority vote of a quorum consisting of directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the person to be indemnified shall not be entitled to vote.

Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 14.8 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

14.9 Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more co-owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any



officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Lot. Such notice shall be deemed delivered forty-eight (48) hours after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors in which case the notice provisions of the By-Laws of the Association shall control. Any notice to be given to the Association may be delivered personally to any member of the Board of Directors, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

14.10 Limitation of Liability. Neither Declarant nor the Association shall be liable to any Owner, lessee, licensee or occupant of the Properties by reason of any mistake in judgment, negligence, nonfeasance, action or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner, lessee, licensee or occupant of any of the Properties, by acquiring his interest therein, agrees that he or it will not bring any action or suit against Declarant or the Association to recover any such damages or to seek equitable relief. Notwithstanding any contrary provision in this Declaration, neither Declarant nor any officer, director or shareholder of Declarant shall be personally or individually liable for any of the monetary obligations of Declarant arising pursuant to this Declaration.

14.11 City Sanitary Sewer Line. The City of Santa Clara's public 10 inch sanitary sewer line (with manhole) extending approximately 48 feet into a public utility easement

area located on the southeast corner of Properties shall be maintained by the City of Santa Clara; provided any lateral connecting to said sanitary sewer line shall be privately maintained.

#### ARTICLE XV

##### PARTY WALLS

15.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Improvements upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

15.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of the Lots connected by such party walls.

15.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the other Owner whose Lot is connected thereto shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

15.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

15.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this

Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

15.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, then such dispute shall be submitted to and determined by arbitration. Each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision shall be by a majority of all the arbitrators, in accordance with the American Arbitration Association Commercial Rules of Arbitration.

This Declaration has been executed on the date first written above.

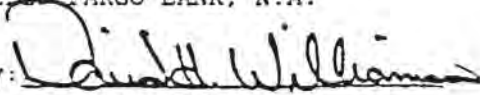
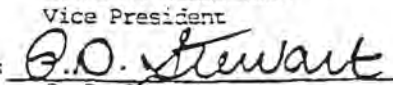
## DECLARANT

AINA NUI CORPORATION, a  
Hawaii corporation

By   
Its PRESIDENT  
By   
Its Secretary

Wells Fargo Bank, N.A., a national banking association, as beneficiary under a deed of trust dated July 13, 1981, and recorded August 6, 1981 in Book G259, page 204 of the Official Records of Santa Clara County, California, hereby approves and consents to the recording of this Declaration and subordinates the beneficial interest under said deed of trust to this Declaration.

WELLS FARGO BANK, N.A.

By:   
David H. Williamson  
Vice President  
By:   
P. D. Stewart  
Assistant Secretary

[ACKNOWLEDGEMENTS]



STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

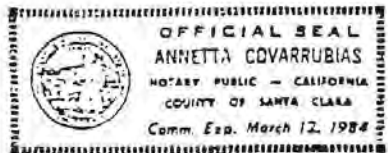
On this 22nd day of July, 1982, before me  
appeared G. S. Oliva  
and \_\_\_\_\_, to me <sup>u.p.</sup>  
personally known, who, being by me duly sworn did say that ~~he~~ <sup>he</sup> <sup>u.p.</sup>  
~~is~~ the Secretary and \_\_\_\_\_ <sup>u.p.</sup>  
~~respectively~~ of AINA NUI CORPORATION <sup>u.p.</sup>  
a Hawaii corporation, and that the seal  
affixed to the foregoing instrument is the corporate seal of said  
corporation, and that the instrument was signed and sealed in  
behalf of said corporation by authority of its Board of Direc-  
tors, and said G. S. Oliva and \_\_\_\_\_ <sup>u.p.</sup>  
~~severally~~ acknowledged the instrument to be the free <sup>u.p.</sup>  
act and deed of said corporation.

Lidia L. Hannemann  
Notary Public, State of Hawaii

My Commission expires: Feb. 11, 1984

6947-766

STATE OF CALIFORNIA  
COUNTY OF Santa Clara )



On this 23rd day of July, in the year one thousand nine  
hundred and eighty-two, before me, Annetta Covarrubias  
a Notary Public, State of California, duly commissioned and sworn, personally  
appeared Carlyle MacKerg  
known to me to be the President of the corporation described  
in and that executed the within instrument, and also known to me to be the  
person who executed the within instrument on behalf of the corporation  
therein named, and acknowledged to me that such corporation executed the  
same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official  
seal in the \_\_\_\_\_ County of Santa Clara, the day and  
year in this certificate first above written.

Annetta Covarrubias  
Notary Public, State of California



## Agenda Report

20-1054

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on Agreement with HouseKeys, Inc. for Administration Services for the Below Market Price Purchase Program

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

#### BACKGROUND

The City of Santa Clara has operated a Below-Market Price Purchase (BMP) Program since 1995 to assist low and moderate-income families with achieving the goal of homeownership and to fulfill State mandates to produce housing for all income levels within Santa Clara. The City's BMP Program is administered by the City's Housing and Community Services Division in the Community Development Department, with certain functions delegated under a service contract to an outside entity.

In February 2015, the California Department of Housing and Community Development determined that the City's Housing Element complies with state law. The Housing Element includes an affordable housing policy that requires "developers of residential developments of 10 or more units to provide at least 10 percent of their units at prices affordable to very low, low and moderate-income households." Specifically, under this policy, housing developers building for-sale units were required to designate at least 10 percent of the total units in an approved project as BMP units to be sold to qualified buyers.

Through the adoption of the City's Affordable Housing Ordinance in February 2018, the City's inclusionary requirement for homeownership projects increased from 10 to 15 percent. The new requirements expanded the production of affordable units through inclusionary requirements for both rental and for-sale residential projects and through the collection of impact fees for smaller projects and nonresidential projects. The Ordinance is intended to provide both a steady stream of inclusionary affordable housing units and revenue to fund the provision of affordable housing projects across the City.

#### DISCUSSION

In September 2020, the City's Finance Department released a Request for Proposal (RFP) for Administration Services for the Below Market Price Purchase Program, using Periscope S2G (formerly BidSync), the City's e-procurement system. Staff sent a notification email directly to five companies and a total of 35 companies viewed the RFP.

The RFP closed on October 8, 2020. The City received one proposal from HouseKeys, Inc. (Morgan Hill, CA). While there was one other company that showed an interest in submitting a proposal, they ultimately made the decision to not submit a proposal due to capacity constraints.

**Evaluation Process:** After thorough review, and evaluation of the sole proposal from HouseKeys, staff determined that the proposal satisfied all of the requirements set forth in the RFP. HouseKeys has proven experience in working in first-time home buyer assistance, performing eligibility and compliance underwriting, marketing and outreach to prospective applicants, and loan compliance.

HouseKeys was created in April of 2015 to fill the void left by the closing of several Silicon Valley nonprofit housing, lending and counseling service providers. HouseKeys currently administers similar programs for the cities of Morgan Hill, Campbell, Burlingame and Gilroy and has a proven record of successfully developing and managing affordable rental housing programs. HouseKeys staff includes a diverse team of program administration specialists, software engineers, data scientists and real estate professionals with a focus on building a program administration model driven by data, expertise, service, and technology. Over the last ten years, at various employers, HouseKeys staff has completed nearly 1,000 program for-sale transactions and managed a broad portfolio of multi-family rental units during initial new construction lease-up, annual compliance and tenant turnover. In addition to the primary entity, the HouseKeys team formed the nonprofit agency, HouseKeys Resource & Education Center Inc. which obtained federal tax-exempt status in the summer of 2017.

In addition, HouseKeys has a proven track record with the City of Santa Clara as they are under contract with the City to provide administration services for the City's Affordable Rental Program.

**Award Recommendation:** Staff recommends award of agreement to HouseKeys, Inc as the sole responsive proposal. Their proposal met the RFP specifications and requirements.

**Notice of Intended Award:** A Notice of Intended Award (NOIA) announcing the City's recommended vendor was issued on October 19, 2020. The RFP process included a ten-day protest period with the issue of the NOIA. No protests were received.

**Term of Agreement:** The initial term of the proposed agreement will be three years beginning on or about November 18, 2020 and ends on or about November 30, 2023. The City may exercise up to seven one-year options to extend the agreement at the end of the initial term, subject to the appropriation of funds.

**Summary of Agreement:** The proposed agreement with HouseKeys, Inc. includes establishing and maintaining an application waitlist of pre-approved prospective buyers, marketing and outreach for new BMP units, homebuyer education, homeowner financial assistance, eligibility and pre-qualification of potential homeowners, and BMP lottery and sale and coordination. The proposed agreement includes a detailed scope of services and compensation rates.

**Cost Summary:** Pricing for administration and transaction services for the initial term of the agreement are set forth as below.

Description	Initial Term (Year 1)	Initial Term (Year 2)	Initial Term (Year 3)
Program Setup Fee (One Time Fee)	\$15,000		
Program Administration Fees <sup>1</sup>	\$56,250	\$75,000	\$75,000
Transaction Fees <sup>2</sup>	\$120,000	\$120,000	\$120,000
<b>Annual Total</b>	<b>\$191,250</b>	<b>\$195,000</b>	<b>\$195,000</b>
<b>Total Maximum Not-to-Exceed Compensation</b>	<b>\$581,250</b>		

<sup>1</sup>Program administration fees for Year 1 are for 9 months. HouseKeys requires 3 months for program setup.

<sup>2</sup>The transaction fees are estimates based on approximately 8 sales per year.

Pricing is fixed for the initial three-year term of the agreement. The City has the discretionary option to exercise up to seven one-year options to extend the agreement after the initial term. The cost for the option years after the initial term shall be based on the initial term pricing unless HouseKeys requests a compensation increase. Any requests for compensation increases must be justified by HouseKeys and are subject to approval by the City and the annual appropriation of funds. Increases shall not exceed 3% per year.

HouseKeys has demonstrated the ability to successfully deliver services as described in the Agreement and will provide for the continuous delivery of this critical City service. With the inclusion of the seven one-year options, if HouseKeys continues to perform well over the term, City staff hopes to maintain continuity of service and minimize transitions of the BMP Program Administrator considering the resources needed for software implementation requirements and the size of the City's BMP interest list, which is over 3,000 residents.

### **ENVIRONMENTAL REVIEW**

The action being considered 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 to the environment.

### **FISCAL IMPACT**

The term of the agreement is three years beginning on or about November 18, 2020 and ending on or about November 30, 2023. Total cost for the administration services shall not exceed \$581,250 over a three-year period.

Funding for year one of this agreement is available in the Adopted Fiscal Year 2020/21 Operating Budget in the City's Affordable Housing Fund. Funding in the out years is subject to budget appropriations and will be incorporated into the budget development process for those years.

### **COORDINATION**

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

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website

and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**RECOMMENDATION**

1. Approve and authorize the City Manager to execute an agreement with HouseKeys, Inc. for administration services for the Below-Market Purchase Program and to approve change orders and amendments during the initial term commencing on or about November 18, 2020 and ending on or about November 30, 2023 for a total maximum amount not-to-exceed \$581,250, subject to the appropriation of funds; and
2. Authorize the City Manager to execute up to seven one-year options to extend the term of the agreement after the initial term through November 30, 2030 for ongoing administration services, subject to the appropriation of funds.

Reviewed by: Andrew Crabtree, Director, Community Development

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Agreement with HouseKeys, Inc.

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
HOUSEKEYS, INC.**

**PREAMBLE**

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

**RECITALS**

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

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Notice of Exercise of Option to Extend Agreement

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes

and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on November 18, 2020 and terminate on November 30, 2023.
- B. After the initial Term, the City reserves the right, at its sole discretion, to extend the term of the agreement for up to seven (7) additional one-year terms through November 30, 2030 ("Option Periods"), subject to the appropriation of funds. See Exhibit D for Notice of Exercise of Option to Extend Agreement Form.

## **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 **Five Hundred Eighty-One Thousand Two Hundred Fifty Dollars (\$581,250)**, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## 7. TERMINATION

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

## 8. ASSIGNMENT AND SUBCONTRACTING

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

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

## 9. NO THIRD PARTY BENEFICIARY

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



## **10. INDEPENDENT CONTRACTOR**

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

## **11. CONFIDENTIALITY OF MATERIAL**

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

## **12. OWNERSHIP OF MATERIAL**

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

## **13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

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

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

#### **14. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

#### **15. INSURANCE REQUIREMENTS**

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

#### **16. WAIVER**

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

shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## **17. NOTICES**

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

City of Santa Clara  
Attention: Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [JVeach@santaclaraca.gov](mailto:JVeach@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

HouseKeys Inc  
Attn: Julius Nyanda  
358 Digital Dr.  
Morgan Hill, CA 95037  
and by e-mail at [julius@housekeys.org](mailto:julius@housekeys.org)

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: \_\_\_\_\_

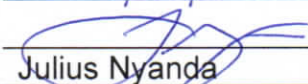
Dated: \_\_\_\_\_

\_\_\_\_\_  
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"

**HOUSEKEYS, INC.**  
a California corporation

Dated: 11/10/2020  
By (Signature):   
Name: Julius Nyanda  
Title: Founder and CEO  
Principal Place of Business Address: 358 Digital Drive  
Morgan Hill, CA 95037  
Email Address: julius@housekeys.org  
Telephone: (415) 846-8004  
Fax: (408) 850-7431  
"CONTRACTOR"

## 25. COUNTERPARTS

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**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”

**HOUSEKEYS, INC.**  
a California corporation

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

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

Name: Julius Nyanda

Title: Founder and CEO

Principal Place of 358 Digital Drive

Business Address: Morgan Hill, CA 95037

Email Address: [julius@housekeys.org](mailto:julius@housekeys.org)

Telephone: (415) 846-8004

Fax: (408) 850-7431

“CONTRACTOR”

## **Exhibit A**

### **Scope of Services**

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

#### **1. Background**

- 1.1. The City of Santa Clara (hereinafter "City") has operated a Below Market Priced Program since 1995, assisting low- and moderate-income families achieve the goal of ownership and fulfill state mandates for the production of housing for all income levels.
- 1.2. Since 1995 the BMP program has included a variety of Covenant and Resale Restriction programs. From 1995 to 2006 the program included terms that are in effect from 30 to 45 years. Effective 2007 the BMP Program has a 20-year Covenant Agreement that includes a Promissory Note and Deed of Trust equal to the difference between the restricted and market value of the home.

#### **2. General Service Requirements**

- 2.1. Contractor shall provide administrative services for the City's BMP program in support of the City's Housing and Community Services Division of the Community Development Department.
- 2.2. Contractor shall provide administrative services in accordance with all federal, state, and City regulations and shall conform to the provisions of the BMP Homeownership Guidelines Manual, as amended and adopted by the City of Santa Clara.
- 2.3. Contractor shall maintain expertise in the areas of first-time homebuyer assistance, underwriting, marketing and outreach, and loan compliance, as outlined herein.
- 2.4. Contractor shall provide the processing of pre-qualified Homebuyers from current BMP Program Administrator for the sale of BMP Program units in the development pipeline that are completed or near completion.
  - 2.4.1. Contractor shall coordinate with current BMP Program Administrator for the receipt of files for applicants who have completed the Orientation/Application Workshop and/or a Homebuyer Education class.
  - 2.4.2. Contractor shall prioritize the processing of existing pre-qualified Homebuyers to facilitate the BMP Sale Application process.

#### **3. BMP Program Set Up Service Requirements**

- 3.1. Contractor shall have 90 days from contract kickoff meeting to complete the BMP Program Setup.

3.2. Contractor shall review manual policies and procedures to ensure City's guidelines and requirements are considered in the setup of City's BMP Housing Program. The following are the minimum tasks, but not limited to, Contractor shall complete for setup:

3.2.1. Create web page on Contractor's website to announce City BMP activities, application intake forms and procedures to meet city program requirements.

3.2.2. Create internal file directory and file system for BMP program and applicants.

3.2.3. Develop and/or revise existing intake forms, pre-approval, documentation and application forms, file checklists and necessary title documents.

3.2.4. Create program for orientation workshops for applicants; attendees to obtain attendance certification.

3.2.5. Complete the marketing materials to be used for City BMP program.

3.2.6. Contractor shall provide a roster of staff within Contractor's organization who shall administer the City BMP program that shall include staff experience, training, and billing rate.

3.2.7. Contractor shall establish internal database for the City's existing BMP owners for future program monitoring purposes.

3.2.8. Contractor shall send a letter to existing BMP owners notifying them of new agency contact information for annual compliance certifications within 60 days from completion of Program Setup Service.

3.3. Contractor and City shall conduct testing to ensure the setup is complete and system is operational.

#### **4. BMP Program Administration and Transaction Service Requirements**

4.1. City shall not pay any fees for BMP Program Administration until after Program setup is complete, has been tested and is operational.

4.2. Contractor shall provide BMP Program administration and transaction services as specified in the Table A1 and Table A2:



**Table A1: BMP Program Administration Services**

<b>Category</b>	<b>Contractor Task(s)</b>
BMP Program Homeownership Guidelines Handbook	Review and update, as necessary. City will review recommended changes and approve Manual updates prior to implementation.
BMP Unit Compliance *List of BMP units to be provided by City upon contract execution. As of July 1, 2020, this list includes 143 units.	<p>Develop and implement a monitoring plan to include monthly insurance monitoring, annual occupancy certification and report, as approved by the City. Report is due on or before July 31st following the previous fiscal year ending June 30th. The annual report shall include the following:</p> <ul style="list-style-type: none"> <li>• Homeowner name and unit address</li> <li>• Current tenancy status based on homeowner re-certification</li> <li>• Recertification date</li> <li>• Status of monthly homeowner insurance renewal monitoring</li> </ul> <p>For non-compliant homeowners, Contractor shall work with homeowner and City staff to cure violations or seek other remedies to ensure continued homeownership compliance.</p>
BMP Web Page	Maintain and update web page. Post relevant BMP ownership housing and first-time homebuyer information and application opportunity links to and from City's website.
Forms	Review, revise, and create new forms to meet program requirements, as necessary. All forms must be approved by City staff prior to implementing.
Lender Referrals	<p>Refer BMP Program interested homebuyers to City preferred lenders for lender pre-approval.</p> <ul style="list-style-type: none"> <li>• Review program with existing preferred lenders with the goal of having three preferred lenders available at any time.</li> </ul>
Wait List	<p>Establish and maintain an application waitlist of pre-approved prospective buyers, including required information, for audit purposes.</p> <p>Provide an annual update of waitlist to remove prospective buyers no longer interested in the program, or prospect has moved and no longer able to contact, or prospect is no longer eligible for the program. Annually, provide summary of updated waitlist to City. Annually, send summary of BMP Program to applicants on the waitlist.</p>

Category	Contractor Task(s)
Marketing Collateral	Develop project specific marketing collateral. All collateral must be approved by the City prior to distribution. Contractor shall provide City with invoice for reimbursement for any City-approved costs in excess of budget, including but not limited to printing and postage. City approval required prior to incurring additional costs to BMP program.
Homebuyer Education	Coordinate with HUD-certified nonprofits that provide HUD-approved homebuyer education classes conducted in person or an on-line. Refer pre-qualified prospective buyers to partner agencies for attendance to obtain a certificate for the required 8-hour homebuyer education class.
Program Evaluation	Administer annual client and program evaluation survey of existing BMP homeowners and previous year applicants. Submit report to City for review.
Other Administrative Duties	<p>Contractor shall:</p> <ul style="list-style-type: none"> <li>• Schedule on-going bi-monthly meetings with City staff</li> <li>• Annually provide list of active Board Members</li> <li>• Annually provide updated list of agency organization chart, including name, position and contact information</li> <li>• Post on website and marketing collateral BMP Program contact information, including name, title and contact information</li> <li>• Provide contract administration contacts, including contract manager, program manager, and finance staff.</li> <li>• Provide quarterly reports of BMP buyers that have purchased with the vendor to include the following: AMI category, development name, qualified buyer names and contact information, household size, gross income, bedrooms and bathrooms in the home, development name and phase of development, site address, unit number, type of home (condo, townhome, single family) and dates of the following: application, class attendance, loan approval, notification of eligibility for program, and lottery ranking; date of purchase, final application review date, date of signing of BMP documents, close of escrow date. Provide BMP Note amount and purchase price.</li> </ul>

<b>Category</b>	<b>Contractor Task(s)</b>
BMP Homeowner Financial Assistance	Contractor to refer existing home owners who request financial assistance or are experiencing a financial hardship to City staff for assessment of owner's financial situation and recommend measures to assist homeowner.

**Table A2: BMP Program Transaction Services**

<b>Category</b>	<b>Contractor Task(s)</b>
Marketing and Outreach	<p>Developer or City shall notify Contractor no less than 180 days prior to estimated occupancy of new BMP units, including availability, location, number of units, unit size and sales price, amenities, and targeted income mix.</p> <p>Contractor shall:</p> <ul style="list-style-type: none"> <li>• Develop project-specific marketing collateral</li> <li>• Respond to inquiries from prospective homebuyers and deliver BMP Program summary</li> <li>• Coordinate and administer homebuyer information workshops on a regular basis throughout the year (minimum of 6 annual classes)</li> <li>• Administer preferred lender training and screening</li> <li>• Email campaign to preferred lenders</li> <li>• Email campaign to BMP waitlist</li> </ul>
Eligibility Screening and Pre-Qualification of Potential Homebuyers	<ul style="list-style-type: none"> <li>• Conduct program activities to build a potential pool of qualified homebuyers</li> <li>• Provide pre-qualification applications to interested prospects</li> <li>• Evaluate and process pre-qualification applications - collect required supporting documentation, including first lender pre-approval to ensure application completeness</li> <li>• Underwrite for program eligibility as outlined in BMP Homeownership Guideline Manual</li> <li>• Add to waitlist registry</li> <li>• Provide pre-qualified applicants with a Program Letter of Eligibility</li> <li>• Evaluate pre-qualified applicants by City's priority ranking</li> <li>• Issue a Notice of Adverse Action to ineligible applicants</li> <li>• Update documents and information as necessary.</li> </ul>

Category	Contractor Task(s)
	<ul style="list-style-type: none"> <li>Refer to City staff any exception and appeal requests from applicants for review and recommendation for further action by Contractor.</li> </ul>
BMP Sale Application Coordination	<p>After Developer and/or City notification of BMP unit availability and unit details, Contractor shall:</p> <ul style="list-style-type: none"> <li>Notify the pre-qualified waitlist based on priority ranking of open application period</li> <li>Conduct one-on-one pre-purchase counseling with selected prospective homebuyer who apply during application period</li> <li>Notify City preferred lender and developer of selected buyer</li> <li>Assist with scheduling the execution of Purchase Agreement between developer sales staff and selected buyer</li> <li>Collect and review application and required purchase documents to ensure application completeness</li> <li>Facilitate closing process with title company and City Staff to include escrow instructions and delivery of BMP documents to title company</li> <li>Prepare BMP documents for City review and execution</li> <li>Issue a Notice of Adverse Action to ineligible applicants</li> <li>Send City staff the following documents prior to close of escrow for each selected Buyer to include: <ul style="list-style-type: none"> <li>all Contractor application documents and fee payments;</li> <li>preferred lender loan application forms and applicant qualifying information; and</li> <li>correspondence between applicants, Contractor staff, lender and title company relevant to application and qualification process.</li> </ul> </li> </ul>
BMP Re-sale Coordination	<p>Facilitate the resale of a price restricted BMP unit. Contractor shall:</p> <ul style="list-style-type: none"> <li>Work with City staff to assess the program re-sale requirements, review home inspections and repairs, and seller disclosures</li> <li>Perform updated title search and current property valuation</li> </ul>

Category	Contractor Task(s)
	<ul style="list-style-type: none"> <li>• Work with City Staff on prescribed BMP property calculation to determine current restricted sales price</li> <li>• Develop unit-specific marketing collateral</li> <li>• Notify pre-qualified waitlist of unit availability, sales price, income and program eligibility requirements, and interest notice deadline</li> <li>• If no potential buyers on waitlist, Contractor shall conduct a pre-qualification and application process, as outlined above, for the specific resale home.</li> <li>• Collect required supporting qualifying documentation, including loan documents and first lender pre-approval for applicant(s)</li> <li>• Coordinate execution of a purchase agreement and mandatory disclosures between seller and selected buyer</li> <li>• Assist with opening escrow with selected title company to ensure all documents and reports are obtained and reviewed by all parties in the transaction</li> <li>• Facilitate the closing process with City staff, seller, buyer, and title company</li> <li>• Prepare the escrow instructions and BMP documents for execution by the City</li> </ul>
BMP Ranking/Lottery Coordination	<ul style="list-style-type: none"> <li>• Rank applications pursuant to the City's Priority Criteria</li> <li>• If necessary, Contractor shall administer a lottery if more than one applicant meets the program eligibility criteria</li> <li>• Select a "Designated Buyer" and two "Alternate Buyers"</li> <li>• Notify highest ranked applicant and selected preferred lender and developer of ranking</li> <li>• Provide guidance to homebuyer in the application update process</li> <li>• Applicant shall receive a reasonable "date certain" deadline to obtain required financing</li> <li>• If Designated Buyer is unable to obtain financing at an affordable cost or is unable to meet program requirements to purchase the BMP unit, the next highest ranked Alternate Buyer will be offered the unit. If the first Alternate is unable to purchase</li> </ul>

Category	Contractor Task(s)
	the unit, the second Alternate Buyer will be offered the opportunity to purchase the unit.
BMP Refinance /Subordination	<p>Existing BMP homeowners wishing to refinance their first mortgage on a BMP unit, Contractor shall:</p> <ul style="list-style-type: none"> <li>• Refer BMP homeowners to City staff for processing, loan review, and issuing a subordination agreement, if applicable</li> </ul>

**Exhibit B**  
**Schedule of Fees**

**1. Maximum Compensation**

The maximum amount payable for all products and services provided under this Agreement shall not exceed **Five Hundred Eighty-One Thousand Two Hundred Fifty Dollars (\$581,250)** during the Initial Term, subject to the appropriation of funds. Any additional services or materials requested by the City that would exceed the preceding amount will be addressed in an Amendment to the Agreement. The annual compensation is specified in Table B1 below:

**Table B1: Annual Compensation**

Description	Initial Term		
	Year 1* (11/18/20 - 11/30/21)	Year 2 (12/1/21 - 11/30/22)	Year 3 (12/1/22 - 11/30/23)
Program Setup Fee (One Time Fee)	\$15,000		
Program Administration Fees <sup>1</sup>	\$56,250	\$75,000	\$75,000
Transaction Fees <sup>2</sup>	\$120,000	\$120,000	\$120,000
<b>Annual Total</b>	<b>\$191,250</b>	<b>\$195,000</b>	<b>\$195,000</b>
<b>Total Maximum Not-to-Exceed Compensation</b>	<b>\$581,250</b>		

<sup>1</sup>Program administration fees for Year 1 are for 9 months. HouseKeys has 3 months for program setup.

<sup>2</sup>The transaction fees are estimates based on approximately 8 sales per year.

**2. Program Setup Fee**

2.1. Contractor has 90 days from contract kickoff meeting to complete the BMP program setup.

2.2. City will pay Contractor a program setup fee as specified in Table B2 below:

**Table B2: Program Setup Fee**

Description	Cost
Program Setup Fee	\$15,000

2.3. After program setup is complete, tested, and operational Contractor will invoice City in accordance for the program setup fee. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

### 3. Program Administration Fee

- 3.1. After program setup is complete, tested, and operational the City will pay Contractor a monthly program administration fee as specified in Table B3 below:

**Table B3: Program Administration Fee**

Description	Cost
Program Administration Fee	\$6,250/Month

- 3.2. Contractor will invoice City monthly for the program administration fee. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

### 4. Transaction Fees

- 4.1. All transaction fees will be reimbursed after unit sale or resale. Application and subordination fees are paid by applicant. Per sale fees not-to-exceed \$15,000 per unit.
- 4.2. Transaction fees for existing files of applicants from previous Contractor are as specified in Table B4 below:

**Table B4: Transaction Fees for Existing Interest List of Applicants**

Transaction Fee Description	Price
Processing of Pre-Qualified Clients Referred from Current BMP Administrator	<b>\$1,000/Existing File</b>
Pre-Qualification Fee	<b>\$750/Household (To Contractor)</b>
New or Resale Fee	<b>\$500</b> Collected by Contractor and Paid Directly to City by the Applicant
BMP Sale Application Processing Fee	<b>\$2,500/Household to Contractor</b>
BMP Ranking/Lottery Coordination Fee	<b>\$2,500/Offering</b>
BMP Resale Coordination Fee	<b>\$7,500/Resale</b>



4.3. Transaction fees for new applicants are as specified in Table B5 below:

**Table B5: Transaction Fees for New Applicants**

<b>Transaction Fee Description</b>	<b>Price</b>
Marketing and Outreach Fee	<b>\$7,500</b> /New BMP Unit
Pre-Qualification Fee	<b>\$750</b> /Household (To Contractor)
New or Resale Fee	<b>\$500</b> Collected by Contractor and Paid Directly to City by the Applicant
BMP Sale Application Processing Fee	<b>\$2,500</b> /Household to Contractor
BMP Ranking/Lottery Coordination Fee	<b>\$2,500</b> /Offering
BMP Resale Coordination Fee	<b>\$7,500</b> /Resale

## **5. Pricing and Option Renewals**

- 5.1. All pricing is firm fixed for the Initial Term of this Agreement.
- 5.2. After the Initial Term, the City reserves the right to extend this Agreement for an additional seven (7) one-year option terms pursuant to Section 2.B of this Agreement, subject to the appropriation of funds.
- 5.3. Contractor may request adjustments to the compensation rates prior to any one-year option to renew this Agreement after the Initial Term. Contractor will notify the City of any changes to the compensation rates for any Option Period at least sixty (60) days prior to the start of the option term. Any increase to the unit prices may not exceed 3% per Option Period over the prior year's fees, subject to City's approval.

## **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
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, 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.

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

insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

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.

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 [\*insert City department name here]

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

#### 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**  
**Notice of Exercise of Option to Extend Agreement**

<b>AGREEMENT TITLE:</b>	
<b>CONTRACTOR:</b>	
<b>DATE:</b>	

Pursuant to Section \_\_\_ of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	<b># of #</b>
-------------------	---------------

**NEW OPTION TERM**

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	
--	--

Pursuant to Section \_\_\_ of the Agreement the rates of compensation are hereby adjusted as follows:  
(use attachment if necessary)

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

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

Approved as to Form: \_\_\_\_\_

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

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



## Agenda Report

20-1063

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Action on Affordable Housing Agreements with TOD Brokaw, Inc., for a 725 Unit Apartment Project Located at 1205 Coleman Avenue

#### **COUNCIL PILLAR**

Promote and Enhance Economic, Housing and Transportation Development

#### **BACKGROUND**

Hunter Properties, Inc. (the "Developer") is developing a 725 unit rental apartment project consisting of two buildings, a 318 unit building (hereinafter referred to as "Project 1") and a 407 unit building (hereinafter referred to as the "Project 2"), both located at 1205 Coleman Avenue in the City of Santa Clara, California (the "Projects").

The project was granted land use entitlements in July 2019 consisting of City Council approval of a General Plan Amendment to modify the General Plan land use designations for the site from Regional Commercial, High Density Residential and Very High Density Residential to Very High Density Residential, a Rezone from Light Industrial (ML) to Very High Density Mixed Use (VHDMU), and a Development Agreement to allow phased construction of a mixed use development consisting in total of 1,565 residential units, 152,000 square foot hotel, 45,000 square feet of supporting retail, park and open space, surface and structured parking facilities, private streets, and site improvements.

As a term of the Development Agreement, the Developer has agreed to provide 73 affordable units within the Projects that will be designated for low and median income residents and shall meet affordability requirements for low and median income residents for a period of 55 years (hereinafter referred to as "Affordable Housing Units" or "Units"). The proportion of Units shall be 36 median income and 37 low income. Median income shall be defined as one hundred percent (100%) of the Area Median Income (AMI) and low income shall be defined as eighty percent of the Area Median Income (80%) AMI.

As a condition of the land use entitlements, the Developer was required to enter into an Affordable Housing Agreement (AHA) with the City to designate 10 percent of the total units (i.e., 72.5 dwelling units) as rent-restricted affordable units to be rented to qualified households at an affordable price based upon Area Median Income (AMI).

#### **DISCUSSION**

The proposed AHAs with the Developer use the City's standard form and will enable and guarantee the delivery of seventy-three (73) affordable units for below market rent within Santa Clara. The AHAs fulfill an obligation placed upon the Developer through the City's land use entitlement process.

The City's Affordable Rental Program Policies and Procedures Guidelines provide that in the case of a fractional obligation (e.g., 72.5 units), a developer can either elect to round up (e.g., provide seventy-three (73) affordable units) or pay a fractional in-lieu fee for the fractional units (e.g., provide seventy-two (72) affordable units and pay a fee). In this case, the Developer is proposing to provide seventy-three (73) affordable units. Thirty-six (36) of the affordable units will be rented to households whose income is at or below one hundred percent (100%) of the Area Median Income (AMI) and thirty-seven (37) of the affordable units will be rented to households whose income is at or below eighty percent of the Area Median Income (80%) AMI.

To maintain long-term affordability, the full term of the affordability covenants shall be for a total period of fifty-five (55) years (the "Affordability Period"), effective from the date the of the Issuance of Certificate of Occupancy for the Project.

Approval of the proposed AHAs will implement the City's General Plan inclusionary housing policy consistent with the previous land use entitlements granted for the subject property.

### **ENVIRONMENTAL REVIEW**

A Mitigated Negative Declaration (MND) was prepared and a Notice of Availability was circulated for a 20-day period in accordance with California Environmental Quality Act (CEQA) requirements and approved by City Council in July 2019.

### **FISCAL IMPACT**

There is no cost to the City for processing of the proposed Agreement other than administrative staff time and expense.

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

1. Approve and authorize the City Manager to execute the Affordable Housing Agreements for Project 1 and Project 2 with TOD Brokaw, Inc., to execute amendments thereto, and to take any other action necessary to implement the requirement for the provision of seventy-three (73) affordable located at 1205 Coleman Avenue; and
2. Authorize the recordation thereof.

Reviewed by: Andrew Crabtree, Director, Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Form - Affordable Housing Agreement (Project 1)



2. Form - Covenants and Restrictions (Project 1)
3. Form - Affordable Housing Agreement (Project 2)
4. Form - Covenants and Restrictions (Project 2)

**Record Without Fee  
Pursuant to Government Code § 6103**

**RECORDING REQUESTED BY  
AND**

**WHEN RECORDED MAIL TO:**

City of Santa Clara  
City Clerk's Office  
1500 Warburton Avenue  
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**AFFORDABLE HOUSING AGREEMENT**

by and between

**THE CITY OF SANTA CLARA**

and

**TOD BROKAW, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

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### ATTACHMENTS

ATTACHMENT NO. 1	LEGAL DESCRIPTION - SITE
ATTACHMENT NO. 2	SCOPE OF DEVELOPMENT
ATTACHMENT NO. 3	AGREEMENT CONTAINING COVENANTS AND RESTRICTION

AFFORDABLE HOUSING AGREEMENT  
LOT 1

This AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into by and between the CITY OF SANTA CLARA, a chartered California municipal corporation (the "City") and TOD BROKAW, LLC, a California limited liability company (the "Developer"), whose address is 10121 Miller Avenue, Suite 200, Cupertino, California. City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". The City and the Developer agree as follows:

ARTICLE 1 SUBJECT OF AGREEMENT

Section 1.1 Purpose of the Agreement

a. The purpose of this Agreement is to enter into a binding agreement with persons having legal or equitable interest in real property for the development of such property, in order to, among other things, increase, improve and preserve the supply of housing in the community for low and median income households as defined in Attachment No. 3, Agreement Containing Covenants and Restrictions, attached hereto.

b. An apartment community containing 318 units as a rental apartment complex (hereinafter referred to as the "Project") is intended to be constructed on that certain real property located at 1205 Coleman Avenue in the City of Santa Clara, California described in Attachment No. 1 incorporated herein by this reference (the "Site"). As a Condition of Approval, Developer has agreed to provide 32 units within the Project that will be designated for low and median income residents and shall meet affordability requirements for low and median income residents for a period of 55 years (hereinafter referred to as "Affordable Housing Units" or "Units"). The proportion of Units shall be 16 median income and 16 low income. Median income shall be defined as one hundred percent (100%) of the Area Median Income (AMI) and low income shall be defined as eighty percent of the Area Median Income (80%) AMI.

c. The development of the Site to include the provision of affordable housing opportunities pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements under which the Project is to be undertaken and is being assisted.

d. The full term of the affordability covenants shall be for a total period of fifty-five (55) years (the "Affordability Period"), effective from the date the of the Issuance of Certificate of Occupancy for the Project.

e. If any general provision of this Section 1.1 conflicts with a more specific provision of this Agreement, the more specific provision shall prevail.

## Section 1.2 The City

a. The City is a chartered California municipal corporation, exercising governmental functions and powers, and organized and existing under the laws of the State of California.

b. The address of City for purposes of notice hereunder is at 1500 Warburton Avenue, Santa Clara, California 95050.

c. City as used in this Agreement includes the City of Santa Clara, California and any assignee of or successor to its rights, powers and responsibilities.

## Section 1.3 The Developer

a. The Developer of the Project is TOD Brokaw, LLC, a California limited liability company.

b. The address of TOD Brokaw, LLC, a California limited liability company, for purposes of receiving notices pursuant to this Agreement is:

10121 Miller Avenue, Suite 200  
Cupertino, CA 95014

c. Wherever the term Developer is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

## Section 1.4 Assignment of this Agreement

a. Upon a sale, ground lease, or transfer of the Site, the Developer's rights and obligations under this Agreement are deemed assigned to such successors or assigns in and to the Site. The terms, covenants, and conditions of this Agreement shall run with the land to the Site and shall inure to the benefit of, apply to, and shall bind the successors and assigns of Developer. Upon an assignment, the assigning Developer will be released from the obligations of Developer under this Agreement which relate to the period from and after the date of the assignment, including, without limitation, the obligations in Section 2.1, 3.1, and 5.7 hereof.

# ARTICLE 2 DEVELOPMENT OF THE SITE

## Section 2.1 Scope of Development; Schedule of Performance

In accordance with Developer's business plan for the Site, Developer shall complete construction of the Project, including the provision of the Affordable Housing Units, in accordance with the Scope of Development (Attachment No. 2).

## Section 2.2 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. The City shall provide appropriate assistance to the Developer in connection with obtaining these permits.

## Section 2.3 Zoning and Land Use Requirements

It is the responsibility of Developer, without cost to City, to ensure that zoning of the Site and all applicable City land use requirements will be such as to permit the development of the Project and the use, operation and maintenance of such Project in accordance with the provisions of this Agreement. Developer acknowledges that this Agreement is not a Development Agreement pursuant to Government Code Section 65865 et seq. City acknowledges that the Parties entered into a Development Agreement, recorded on October 9, 2019 (24300322), in conjunction with other entitlements approved by City for a larger mixed-use development that includes the Project.

## Section 2.4 Construction Financing

Developer hereby represents that no City funds shall be used in this Project.

## Section 2.5 Relationship of City and Developer

Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by or between the City and the Developer. The City shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Site or otherwise.

# ARTICLE 3 USE OF THE SITE

## Section 3.1 Uses

a. In accordance with Developer's business plan for the Site, the Developer covenants and agrees for itself, its successors, its assignees and every successor in interest to the Site or any part thereof, that Developer, its successors and assignees shall develop the Project on the Site (including, without limitation, 32 Affordable Housing Units) and use the Site for the development and occupancy of residential dwelling units, as provided in the Approved Plans.

b. In addition, the Developer agrees to restrict the occupancy of the 32 Units on the Site as rental units at an Affordable Housing Cost, as defined in Attachment No. 3, titled Agreement Containing Covenants and Restrictions, attached

hereto, it being agreed that this Agreement shall terminate upon issuance of permanent certificate(s) of occupancy for the Project, and the Agreement Containing Covenants and Restrictions shall thereafter constitute the sole affordable housing obligations owed by Developer in favor of the City with respect to the Project. During the term of rental use, the Agreement Containing Covenants and Restrictions shall be recorded against the Project, substantially in the form attached hereto as Attachment No. 3. The Agreement Containing Covenants and Restrictions shall be binding on the Developer and any successor in interest to the Affordable Housing Units or any part thereof for the benefit and in favor of the City. The obligations set forth in the Agreement Containing Covenants and Restrictions shall remain in effect for the respective time period set forth in the Agreement Containing Covenants and Restrictions.

### Section 3.2 Maintenance of the Site

Developer, its successors in interest or assignees, shall reasonably maintain the Project on the Site and shall keep the Site in good condition and repair free from any accumulation of debris or waste materials.

## ARTICLE 4 DEFAULTS, REMEDIES AND TERMINATION

### Section 4.1 Defaults - General

a. Except as provided in Section 5.4, failure by either Party to perform any material obligation set forth in any term or provision of this Agreement constitutes a default under this Agreement. The defaulting party must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The non-defaulting party shall give written notice of default to the defaulting party, specifying the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If the default is reasonably capable of being cured within thirty (30) days of notice, as set forth in Section 4.1(b), the defaulting party shall have such period to effect a cure prior to exercise of remedies by the non-defaulting party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the defaulting party (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the defaulting party shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the non-defaulting party. In no event shall the non-defaulting party be precluded from exercising remedies if its rights become or are



about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given.

#### Section 4.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 4.1, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either Party may institute legal action to cure, correct or remedy any material default, to recover damages for any material default, or to obtain any other remedy for a material default consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California or in the United States District Court for the Northern District of California.

#### Section 4.3 Applicable Law

The laws of the State of California shall govern this Agreement.

#### Section 4.4 Acceptance of Service of Process

a. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer (or upon an officer of the Developer), or in such manner as may be provided by law.

#### Section 4.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

#### Section 4.6 Damages

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1, the Defaulting Party shall be liable to the Non-Defaulting party for any damages caused by such default, and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default.

#### Section 4.7 Specific Performance

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1, the non-defaulting party, at its option, may, after such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

#### Section 4.8 Termination by Either Party; Term of this Agreement

Either Party shall have the right to terminate this Agreement in the event the other party is in Default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 4.1.

Notwithstanding any provision herein to the contrary, this Agreement shall terminate and be of no further force or effect upon the City's issuance of permanent certificate(s) of occupancy for the Project, it being the intent of the Parties that the Agreement Containing Covenants and Restrictions shall thereafter constitute the sole affordable housing obligations owed by Developer in favor of the City with respect to the Project.

### ARTICLE 5 GENERAL PROVISIONS

#### Section 5.1 Notices, Demands and Communications between the Parties

Formal notices, demands and communications between the City or the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City or the Developer, as designated in Sections 1.3 and 1.4 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by mail as provided in this Section 5.1.

#### Section 5.2 Conflicts of Interest

The Parties certify that to the best of their knowledge, no City officer, employee or authorized representative has any financial interest in the business of Developer and that no person associated with Developer has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Developer 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. Developer will advise City if a conflict arises.

#### Section 5.3 Nonliability of City Officials and Employees

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

#### Section 5.4 Force Majeure: Extension of Time of Performance

In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, third party litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other Party, acts or failure to act of the City or any other public or governmental agency or entity (except that an act or failure to act of the City shall not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

#### Section 5.5 Approvals

Approvals required of the City or the Developer shall not be unreasonably withheld.

#### Section 5.6 Compliance with Laws

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

#### Section 5.7 Hold Harmless/Indemnification

a. To the extent permitted by law, Developer 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 actions performed by Developer pursuant to this Agreement. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the active negligence or willful misconduct of City; the obligation to defend is not similarly limited.

b. Developer'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 Developer, against City (either alone, or jointly with Developer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

## ARTICLE 6 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

### Section 6.1 Counterparts

This Agreement may be executed in duplicate originals each of which is deemed to be an original. This Agreement includes twelve (12) pages and three (3) attachments, including all exhibits appended to such attachments, which constitute the entire understanding and agreement of the Parties.

### Section 6.2 Integration

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the Site.

### Section 6.3 Waivers; Amendments

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer. This Agreement and any provisions hereof may be amended by mutual written agreement by the Developer and the City.

### Section 6.4 Execution and Effective Date

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

[signatures appear on following page]

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

APPROVED AS TO FORM:

\_\_\_\_\_  
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"

**TOD Brokaw, LLC,  
a California limited liability company**

By: H/S Brokaw, LLC,  
a California limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Derek K. Hunter, Jr.  
Title: Manager

By: \_\_\_\_\_  
Name: Edward D. Storm  
Title: Manager

Local  
Address: \_\_\_\_\_  
Email  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

"DEVELOPER"

**ATTACHMENT NO. 1**  
**AFFORDABLE HOUSING AGREEMENT**  
**LEGAL DESCRIPTION - SITE**


October 9, 2020  
Project No. A18034-17  
Page 1 of 1

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, being all of Lot One as shown on that certain 14 lot subdivision Map of Tract 10532 for "Gateway Crossings", filed for record on October 6, 2020, in Book 933 at Pages 38 through 42, Official Records of Santa Clara County.

Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

10/9/20  
Date

  
\_\_\_\_\_  
Ryan M. Amaya, L.S. 8134



Z:\0018\A18034-17\DOCS\SURVEY\LEGAL DESCRIPTIONS\LOT ONE - GATEWAY CROSSINGS\2020-10-09-A18034-17-  
Legal Description for Lot One Gateway Crossings .doc

**ATTACHMENT NO. 2  
AFFORDABLE HOUSING AGREEMENT**

**SCOPE OF DEVELOPMENT**

The project consists of 318 apartment units, amenity space, ancillary retail space, and parking contained within five floors of wood-frame construction over a two-level structured parking podium.

**ATTACHMENT NO. 3  
AFFORDABLE HOUSING AGREEMENT**

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS  
(Including Affordable Housing Restrictions for Rental Units)**

[behind this page]



**OFFICIAL BUSINESS**

Document entitled to free  
recording per Government  
Code Section 6103

Recording Requested By and  
When Recorded Mail To:

CITY OF SANTA CLARA  
Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attention: Division Manager

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS  
LOT 1  
(Including Affordable Housing Restrictions for Rental Units)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS, Including Affordable Housing Restrictions ("Agreement") is made by and between TOD BROKAW, LLC, a California limited liability company ("Developer"), and THE CITY OF SANTA CLARA ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". The City and the Developer agree as follows with reference to the following facts:

**RECITALS**

- A. Developer is the legal owner of the real property legally described on Exhibit A attached hereto ("Property"), upon which Developer will construct a 318-unit apartment project ("Project").
- B. Developer accepts responsibility for meeting the provision of 32 affordable rental housing units within the Project. The 32 affordable rental housing units shall be provided in the Project according to the terms herein stated. The proportion of units shall be 50% median income and 50% low income. Median income shall be defined as 100% of the Area Median Income (AMI) and low income shall be defined as 80% of the AMI. The distribution of these units shall be 16 median income and 16 low income units.
- C. All 32 proposed affordable rental housing units shall be made available at Below Market Rate (BMR) rents that do not exceed an Affordable Housing Cost. Each of the BMR units are designated and identified in the attached Exhibit B.
- D. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the condition of approval of the Project.

NOW, THEREFORE, in consideration of valuable land use and economic benefits and approvals by City allowing development of the Project and to satisfy its obligations to provide affordable housing for low-income (as defined in Section 1(a) below) and median-income households (as defined in Section 1(b) below) at rent below market rate, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and their respective successors and assigns.

## 1. Definitions

In addition to terms that are otherwise defined herein, the following terms shall have the following respective meanings:

"Affordable Housing Cost" shall mean a monthly rent plus a reasonable utility allowance that does not exceed the following:

- (a) For a Low-Income Household, the product of thirty percent (30%) times eighty percent (80%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).
- (b) For a Median-Income Household, the product of thirty percent (30%) times one hundred (100%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This period shall be for fifty five (55) years from the date of issuance of Certificate of Occupancy for the Project.

"Affordable Housing Unit" or sometimes "Unit" shall mean one of the 32 Below Market Rate rental units, of which all 32 shall be designated in Exhibit B by Developer to be occupied or made available for occupancy exclusively to an Income-Qualified Household, as defined in this Agreement.

"Annual Income" shall mean the annual income limits established by the California Department of Housing and Community Development.

"Below Market Rate" shall mean the provision of a dwelling unit at rent levels less than market rates.

"City" shall mean the City of Santa Clara, California.

"Developer" shall mean TOD BROKAW, LLC, a California limited liability company and its permitted transfers and assigns.

"Area Median Income" shall mean the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.

"Household" shall mean one or more persons occupying a housing unit.

"HCD" shall mean the California Department of Housing and Community Development.

"Income-Qualified Household" shall mean a household with an income that does not exceed the following:

- (a) For a Low-Income BMR Unit, eighty percent (80%) of the Area Median Income adjusted for family size.
- (b) For a Median-Income BMR Unit, one hundred twenty percent (100%) of the Area Median Income adjusted for family size.

"Permitted Transfer" means a sale, ground lease, or transfer of any parcels within the Property, whereupon the Developer's rights and obligations under this Agreement are deemed assigned to such successors or assigns in and to those parcels within the Property. The terms, covenants, and conditions of this Agreement shall run with the land to the Property, and shall inure to the benefit of, apply to, and shall bind the successors and assigns of Developer. Upon an assignment, the assigning Developer will be released from the obligations of Developer under this Agreement which relate to the period from and after the date of the assignment, including, without limitation, the obligations in Section 4, 5, and 6 hereof. Developer shall notify the Agency Executive Director of any Permitted Transfer and deliver copy of Permitted Transfer to the City, evidencing the incorporation of this Agreement. The notice shall include the address and contact information of the permitted transferee assuming the obligations of this Agreement.

"Project" shall mean the 318-unit residential apartment facility located upon the real property legally described in the Legal Description attached hereto as Exhibit A, inclusive of 32 units rented at a Below Market Rate Monthly Rent, as defined below, together with structures, improvements, equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities.

"Below Market Rate Monthly Rent" or "Monthly Rent" shall mean, for purposes of this Agreement, an amount that is no greater than the following

- (a) For a Low-Income Household, thirty percent (30%) of eighty percent (80%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.
- (b) For a Median-Income Household, thirty percent (30%) of one hundred percent (100%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.

“Utility Allowance” shall be based upon schedules issued from time to time by the Santa Clara County Housing Authority. The Utility Allowance applies to all tenant-paid costs that are listed on that schedule.

## 2. Uses

(a) General. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 318 residential dwelling units and shall include 32 Affordable Housing Units for Income-Qualified Households.

(b) Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, during the Affordability Period, that 32 Affordable Housing Units shall be rented or leased to or held available for rental or occupancy by Low Income and Median Income-Qualified Households.

### (1) Units Generally.

(a) The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 318 residential dwelling units, 32 of which shall be Affordable Housing Units for Income-Qualified Households.

(b) Prior to the initial lease-up, Developer shall have designated specific Units in the Project to be the Affordable Housing Units and given notice to the City of such designation (“Unit Allocation”). Subject to the terms of this Agreement, the Developer shall have the right, from time to time, to re-designate the Affordable Housing Units so long as: (i) the unit designation (including, but not limited to: the number of bedrooms, units with accessibility modifications) remains substantially the same throughout the Affordability Period; (ii) the Affordable Housing Units are distributed throughout the Project; and (iii) the Developer shall obtain the City Staff’s prior written approval before re-designating the Affordable Housing Units, the approval of which shall not be unreasonably withheld or delayed.

(c) If Developer implements periodic programs of replacement and upgrade which apply to all Units, all Affordable Housing Units in Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.

## (2) Affordable Housing Unit Rents

- (a) Developer agrees it shall not charge or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Affordable Housing Cost applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to the applicable Affordable Housing Cost.
- (b) Affordable Housing Cost for the Affordable Housing Units shall be based upon schedules issued from time to time by HUD and modified and published by HCD. Upon request, City shall notify the Developer of the applicable area rents based on number of bedrooms.
- (c) Rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in Area Median Income. In no case may the Affordable Housing Cost for the Affordable Housing Units exceed the amount derived by the Affordable Housing formula set forth in this Agreement. The City shall receive a copy of all rent increase notices for the designated Affordable Housing Units at least 30 days prior to the new rents taking effect. Rent increases may only be implemented in compliance with applicable law.

## (3) Income Qualification of Affordable Housing Unit Tenants

- (a) Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith effort to verify that the income provided by an applicant in an income certification is accurate.
- (b) The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the definition of Annual Income established by the California Department of Housing and Community Development. The Developer may certify initial income qualification using one of the following two source documentation methods:
  - (i) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or
  - (ii) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: Pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; Income

verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.

- (c) Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the households income and family size along with a signed certification by the tenant that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.
- (d) Income limits, adjusted for household size, will be based off of the Area Median Income for Santa Clara County, which is published periodically by HCD. Upon request, City shall notify the Developer of the applicable area median income limits.

(4) Over-Income Tenants in Affordable Housing Units

- (a) Subject to Section 4(b), any Affordable Housing Unit tenant whose income no longer qualifies for the Affordable Housing Unit at their current Monthly Rent may continue to reside in the Unit. However, subject to Section 4(b), they must pay rent at the lesser of:
  - i. Thirty percent (30%) of the household annual income, divided by twelve (12), less the Utility Allowance; or,
  - ii. The current market rent being charged in a comparable unit not subject to this Agreement.
- (b) Affordable Housing Units occupied by tenants whose income no longer qualifies as an Income-Qualified Household are considered in temporary “non-compliance” with this Agreement. Except as otherwise allowed pursuant to Section 4(a) above, to bring the Affordable Housing Unit back into compliance, the Developer must:
  - (i) Rent the next vacant unit of the same size (i.e.: 2-bedroom) to an Income Qualified Household for a BMR Unit whose Annual Income would qualify them for the “non-compliant” Affordable Housing Unit at the original level of affordability (i.e., Low-Income or Median-Income) as the “non-compliant” Affordable Housing Unit (however, using the then current Area Median Income as adjusted for family size). Such unit replaces the “non-compliant” Affordable Housing Unit; and
  - (ii) Re-designate the original Affordable Housing Unit that was in non-compliance as a market rate unit in Project. The tenants may be charged rents comparable to existing market rate units in the Project.

(c) Subject to the provisions of Section 1(b) above, Developer shall maintain a distribution of the affordable housing units in Exhibit B.

(5) Waiting List for Affordable Housing Units

- (a) Developer shall maintain a written Waiting List of households that have contacted Developer and expressed an interest in an Affordable Housing Unit. That list shall include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.
- (b) Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units in chronological order (oldest listing first). Developer shall provide evidence of attempts to contact households on the Waiting List.

(6) Lease Provisions

- (a) Tenants in the Affordable Housing Units shall be subject to the same lease document and requirements of tenants in the market rate units, with the exception of those additional stipulations described below. A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.
- (b) The lease may not contain any terms prohibited by applicable law.
- (c) Each lease or rental agreement shall provide that the Developer will not discriminate on the basis of race, creed, color, sex, national origin, ancestry, religion, marital status, disability or receipt of public assistance or housing assistance in connection with the rental of a Unit in Project, or in connection with the employment or application for employment of persons for operation and management of Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.
- (d) The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.
- (e) The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material

to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or re-certification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.

- (f) The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and approval by the City, the approval of which shall not be unreasonably withheld or delayed.

(7) Management Plan

The Developer for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, covenants and agrees to submit to the Agency Executive Director or his designee for review and approval a maintenance and management plan, including a facilities management component (the "Maintenance and Management Plan"). The Management Plan shall include (i) a written maintenance plan that will yield safe, sanitary and attractive living units and common areas; (ii) a reserve analysis identifying items that will eventually need replacement and their life expectancy, which Developer for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, covenants and agrees to update at least every three years; (iii) a five year plan for the planned use of the replacement reserve, which Developer agrees to update annually at the time of budget preparation; and (iv) an inventory list of common area property, tools and equipment, unit appliances, carpeting and drapes, information regarding when a unit was last redecorated or updated, which Developer shall update annually at time of budget operation.

(8) Initial Leasing, Marketing and Tenant Selection Procedures.

- (a) Not later than ten (10) days prior to the commencement of marketing, Developer or an Affiliate approved by City of Santa Clara shall prepare and submit to the City for reasonable approval a marketing and outreach program for the Affordable Housing Units which shall contain, among other things: (i) how a potential Income-Qualified Household would apply to rent an Affordable Housing Unit in the Project, including where to apply, applicable income limits and rent levels; (ii) a description of procedures and media Developer will use to publicize vacancies in Project, including notice in newspapers of general circulation, at least one of which shall be a foreign language newspaper; (iii) provide monthly leasing reports until all 32 Affordable Housing Units have been leased up and occupied, and (iv) mailing notices of vacancies to or contacting by telephone potential tenants on the Waiting List maintained by Developer.



- (b) A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations
- (c) Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.
- (d) Operating Covenant Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to Project or any part thereof that Developer, shall operate Project in conformity with all applicable laws, rules, regulations and ordinances, including without limitation, all applicable federal and state labor standards.
- (e) Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project , or any part thereof, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of Project.
- (f) Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of Project on the basis of race, color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:
  - (1) In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land".
  - (2) In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under

or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased."

- (3) In contracts: "There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land."

### 3. Monitoring/Annual Report

- (c) Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.
- (d) Once leasing at the Project has commenced, the Developer for itself, its successors, its assigns and every successor in interest to Project or any part thereof, covenants and agrees to submit to the City an annual report ("Annual Report"). The Annual Report format shall be approved by the Housing & Community Services Division Manager and shall include a signed and certified statement of its accuracy upon annual submission to the City.
- (e) The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report and a certified statement by Developer that to the knowledge of the Developer, no default has occurred under the provisions of this Agreement.
- (f) The City has a standard reporting form which consists of two parts: Part I, information on tenants in residence on June 30 of the reporting year; Part II, information on tenants who moved in and out during the reporting year. The City has a standard form for income/rent reporting. A reasonable facsimile, pre-approved by the City may be substituted as long as it contains all the required information. For each Affordable Housing Unit, the following information is required (based on tenants in residence as of June 30):

- (1) Apartment Number or other unit designation.
  - (2) Number of bedrooms.
  - (3) Household Size.
  - (4) Tenant Income (certified annually).
  - (5) Tenant-Paid Rent.
  - (6) Explanation of any change in the designated affordable units, and reason for change that occurred in the previous fiscal year (July 1 to June 30).
- (g) Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.
- (h) The Developer shall pay City on an annual basis, on or before September 30 of each year following the issuance date of the Certificate of Occupancy for the building, a multi-family monitoring fee per Affordable Housing Unit (the "Monitoring Fee"). The Monitoring Fee as of the date of this agreement is \$117.00 per unit. The Monitoring Fee is published in the City's Municipal Fee Schedule and updated from time to time.

#### 4. Enforcement

The City of Santa Clara is deemed to be the sole beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if any covenants set forth in this Agreement are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

If Developer has not commenced curing of the default within thirty (30) days after written notice by City is provided to Developer, then City shall have all rights and remedies at law or in equity to enforce the curing of such Default.

Additionally, if Developer collects rents from Income-Qualified Households occupying the Affordable Housing Units that require such Income-Qualified Household tenants to pay rent in excess of what is permitted pursuant to this Agreement, and to the extent such excess rents are not required to be reimbursed to the tenants of such Affordable Housing Units, Developer agrees and covenants to reimburse such tenants within ten (10) business days of City's written demand, provided if such tenants cannot be located then the Developer shall pay to the City the full amount of such excess to the City. Developer and City agree that the payment of such excess rent shall be in addition to City's rights and remedies at law or equity.

If the City provides Developer with a written notice of violation of this Agreement and Developer has not cured or responded to such notice of violation within ninety (90) days, then in addition to City's rights and remedies set forth herein, City shall thereafter have the right to impose a fine of \$150 per month per non-compliant unit until Developer has cured or responded to the notice of violation. Developer shall pay such fine within thirty (30) days of City's written demand.

## 5. Defaults

Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement, if Developer has not commenced curing the default within thirty (30) days after written notice by City to Developer, then such failure or delay constitutes a default.

- (a) The City shall give written notice of default to the Developer, specifying the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- (b) Any failures or delays by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- (c) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, City shall give Developer notice of such default. . If Developer (1) initiates corrective action within thirty (30) days after written notice by City to Developer, and (2) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its remedies become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is first given.
- (d) Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid. These events include but are not limited to

war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, epidemic, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City caused delays, delays caused by third parties, technical problems with transportation or other events outside the Developer's control.

## 6. Indemnification

The Developer, its successors, its assigns and every successor in interest to the Project or any part thereof, shall indemnify, hold harmless and defend the City, and its officers, officials, appointees, employees and agents from and against (a) any Default by Developer under this Agreement; (b) any and all loss, costs, damages, actions and liabilities of whatever nature directly or indirectly resulting from or arising out of the design, construction, occupancy or ownership of the Project or any written statement or representation provided to the City, or to prospective or actual tenants or purchasers of Project with respect to the Developer's performance hereunder. The foregoing obligations of Developer shall exclude claims, loss, costs, damages, actions and liabilities to the extent arising from City's gross negligence, willful misconduct, or breach of this Agreement by the City. If any such claim is asserted, or any such impositions or charges are sought to be imposed, the City shall give prompt notice to Developer and Developer shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise and settle the same in its sole discretion, provided that the City shall have the right to review and reasonably approve or disapprove any such settlement or compromise if (1) such settlement or compromise would require the City to pay any money in connection with such settlement; or (2) the City would remain a litigant after such settlement or compromise is entered into. In addition, Developer shall pay upon demand all of the reasonable expenses paid or incurred by City in enforcing the provisions hereof.

## 7. General Provisions

### (a) City as Beneficiaries

- (1) All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.
- (2) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the City shall be deemed beneficiary of the covenants provided for in this Agreement, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants set forth herein without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the

event of any material breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition. There are no intended third party beneficiaries of this Agreement.

(b) Irrevocability; Term of Agreement

This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The covenants against discrimination set forth above shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.

(c) Amendment of Agreement

Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Agreement, or to subject the Property or any Affordable Housing Unit to additional covenants or conditions, without the consent of any renter, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in Project (or portion thereof) or any Affordable Housing Unit.

(d) Severability

The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

(e) Interpretation

The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

(f) Applicable Law

This Agreement and the lien created hereby shall be governed by and construed according to the laws of the State of California.

(g) Number, Gender and Headings

As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

(h) Notices

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

City of Santa Clara  
Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attn: Division Manager

With a copy to:

TOD BROKAW, LLC  
c/o Edward Storm  
10121 Miller Ave., Suite 200  
Cupertino, CA 95014

With copy to:

David H. Blackwell, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
3 Embarcadero Center, 12th Floor  
San Francisco, CA 94111-4074

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

(i) Rights and Remedies Are Cumulative

The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default hereunder.

(j) Dispute Resolution

(1) Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.

(2) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.

(3) The costs of mediation shall be borne by the parties equally.

(4) Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

(k) Counterparts

This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

(l) Execution and Effective Date

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.



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

APPROVED AS TO FORM:

\_\_\_\_\_  
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"

**TOD Brokaw, LLC,  
a California limited liability company**

By: H/S Brokaw, LLC,  
a California limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Derek K. Hunter, Jr.  
Title: Manager

By: \_\_\_\_\_  
Name: Edward D. Storm  
Title: Manager

Local  
Address: \_\_\_\_\_  
Email \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                 )  
County of                                 )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
County of                                )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**  
**LEGAL DESCRIPTION**


October 9, 2020  
Project No. A18034-17  
Page 1 of 1

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, being all of Lot One as shown on that certain 14 lot subdivision Map of Tract 10532 for "Gateway Crossings", filed for record on October 6, 2020, in Book 933 at Pages 38 through 42, Official Records of Santa Clara County.

Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

10/9/20  
Date

  
\_\_\_\_\_  
Ryan M. Amaya, L.S. 8134



**EXHIBIT B**

**LOT 1**

**DESIGNATED THIRTY TWO (32) AFFORDABLE HOUSING UNITS BY INCOME  
CATEGORY AND UNIT SIZE**

<u>Income Level</u>	<u>Studios</u>	<u>1 Bedroom</u>	<u>2 Bedroom</u>	<u>3 Bedroom</u>	<u>Number of Units</u>
<b>80% AMI</b>	<b>2</b>	<b>7</b>	<b>7</b>	<b>0</b>	<b>16</b>
<b>100% AMI</b>	<b>1</b>	<b>8</b>	<b>6</b>	<b>1</b>	<b>16</b>
<b>TOTAL</b>	<b>3</b>	<b>15</b>	<b>13</b>	<b>1</b>	<b>32</b>

**Record Without Fee  
Pursuant to Government Code § 6103**

**RECORDING REQUESTED BY  
AND**

**WHEN RECORDED MAIL TO:**

City of Santa Clara  
City Clerk's Office  
1500 Warburton Avenue  
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**AFFORDABLE HOUSING AGREEMENT**

by and between

**THE CITY OF SANTA CLARA**

and

**TOD BROKAW, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

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### ATTACHMENTS

ATTACHMENT NO. 1	LEGAL DESCRIPTION - SITE
ATTACHMENT NO. 2	SCOPE OF DEVELOPMENT
ATTACHMENT NO. 3	AGREEMENT CONTAINING COVENANTS AND RESTRICTION



AFFORDABLE HOUSING AGREEMENT  
LOT 2

This AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into by and between the CITY OF SANTA CLARA, a chartered California municipal corporation (the "City") and TOD BROKAW, LLC, a California limited liability company (the "Developer"), whose address is 10121 Miller Avenue, Suite 200, Cupertino, California. City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". The City and the Developer agree as follows:

ARTICLE 1 SUBJECT OF AGREEMENT

Section 1.1 Purpose of the Agreement

a. The purpose of this Agreement is to enter into a binding agreement with persons having legal or equitable interest in real property for the development of such property, in order to, among other things, increase, improve and preserve the supply of housing in the community for low and median income households as defined in Attachment No. 3, Agreement Containing Covenants and Restrictions, attached hereto.

b. An apartment community containing 407 units as a rental apartment complex (hereinafter referred to as the "Project") is intended to be constructed on that certain real property located at 1205 Coleman Avenue in the City of Santa Clara, California described in Attachment No. 1 incorporated herein by this reference (the "Site"). As a Condition of Approval, Developer has agreed to provide 41 units within the Project that will be designated for low and median income residents and shall meet affordability requirements for low and median income residents for a period of 55 years (hereinafter referred to as "Affordable Housing Units" or "Units"). The proportion of Units shall be 20 median income and 21 low income. Median income shall be defined as one hundred percent (100%) of the Area Median Income (AMI) and low income shall be defined as eighty percent of the Area Median Income (80%) AMI.

c. The development of the Site to include the provision of affordable housing opportunities pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements under which the Project is to be undertaken and is being assisted.

d. The full term of the affordability covenants shall be for a total period of fifty-five (55) years (the "Affordability Period"), effective from the date the of the Issuance of Certificate of Occupancy for the Project.

e. If any general provision of this Section 1.1 conflicts with a more specific provision of this Agreement, the more specific provision shall prevail.

## Section 1.2 The City

a. The City is a chartered California municipal corporation, exercising governmental functions and powers, and organized and existing under the laws of the State of California.

b. The address of City for purposes of notice hereunder is at 1500 Warburton Avenue, Santa Clara, California 95050.

c. City as used in this Agreement includes the City of Santa Clara, California and any assignee of or successor to its rights, powers and responsibilities.

## Section 1.3 The Developer

a. The Developer of the Project is TOD Brokaw, LLC, a California limited liability company.

b. The address of TOD Brokaw, LLC, a California limited liability company, for purposes of receiving notices pursuant to this Agreement is:

10121 Miller Avenue, Suite 200  
Cupertino, CA 95014

c. Wherever the term Developer is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

## Section 1.4 Assignment of this Agreement

a. Upon a sale, ground lease, or transfer of the Site, the Developer's rights and obligations under this Agreement are deemed assigned to such successors or assigns in and to the Site. The terms, covenants, and conditions of this Agreement shall run with the land to the Site and shall inure to the benefit of, apply to, and shall bind the successors and assigns of Developer. Upon an assignment, the assigning Developer will be released from the obligations of Developer under this Agreement which relate to the period from and after the date of the assignment, including, without limitation, the obligations in Section 2.1, 3.1, and 5.7 hereof.

# ARTICLE 2 DEVELOPMENT OF THE SITE

## Section 2.1 Scope of Development; Schedule of Performance

In accordance with Developer's business plan for the Site, Developer shall complete construction of the Project, including the provision of the Affordable Housing Units, in accordance with the Scope of Development (Attachment No. 2).

## Section 2.2 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. The City shall provide appropriate assistance to the Developer in connection with obtaining these permits.

## Section 2.3 Zoning and Land Use Requirements

It is the responsibility of Developer, without cost to City, to ensure that zoning of the Site and all applicable City land use requirements will be such as to permit the development of the Project and the use, operation and maintenance of such Project in accordance with the provisions of this Agreement. Developer acknowledges that this Agreement is not a Development Agreement pursuant to Government Code Section 65865 et seq. City acknowledges that the Parties entered into a Development Agreement, recorded on October 9, 2019 (24300322), in conjunction with other entitlements approved by City for a larger mixed-use development that includes the Project.

## Section 2.4 Construction Financing

Developer hereby represents that no City funds shall be used in this Project.

## Section 2.5 Relationship of City and Developer

Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by or between the City and the Developer. The City shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Site or otherwise.

# ARTICLE 3 USE OF THE SITE

## Section 3.1 Uses

a. In accordance with Developer's business plan for the Site, the Developer covenants and agrees for itself, its successors, its assignees and every successor in interest to the Site or any part thereof, that Developer, its successors and assignees shall develop the Project on the Site (including, without limitation, 41 Affordable Housing Units) and use the Site for the development and occupancy of residential dwelling units, as provided in the Approved Plans.

b. In addition, the Developer agrees to restrict the occupancy of the 41 Units on the Site as rental units at an Affordable Housing Cost, as defined in Attachment No. 3, titled Agreement Containing Covenants and Restrictions, attached

hereto, it being agreed that this Agreement shall terminate upon issuance of permanent certificate(s) of occupancy for the Project, and the Agreement Containing Covenants and Restrictions shall thereafter constitute the sole affordable housing obligations owed by Developer in favor of the City with respect to the Project. During the term of rental use, the Agreement Containing Covenants and Restrictions shall be recorded against the Project, substantially in the form attached hereto as Attachment No. 3. The Agreement Containing Covenants and Restrictions shall be binding on the Developer and any successor in interest to the Affordable Housing Units or any part thereof for the benefit and in favor of the City. The obligations set forth in the Agreement Containing Covenants and Restrictions shall remain in effect for the respective time period set forth in the Agreement Containing Covenants and Restrictions.

### Section 3.2 Maintenance of the Site

Developer, its successors in interest or assignees, shall reasonably maintain the Project on the Site and shall keep the Site in good condition and repair free from any accumulation of debris or waste materials.

## ARTICLE 4 DEFAULTS, REMEDIES AND TERMINATION

### Section 4.1 Defaults - General

a. Except as provided in Section 5.4, failure by either Party to perform any material obligation set forth in any term or provision of this Agreement constitutes a default under this Agreement. The defaulting party must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The non-defaulting party shall give written notice of default to the defaulting party, specifying the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If the default is reasonably capable of being cured within thirty (30) days of notice, as set forth in Section 4.1(b), the defaulting party shall have such period to effect a cure prior to exercise of remedies by the non-defaulting party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the defaulting party (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the defaulting party shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the non-defaulting party. In no event shall the non-defaulting party be precluded from exercising remedies if its rights become or are

about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given.

#### Section 4.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 4.1, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either Party may institute legal action to cure, correct or remedy any material default, to recover damages for any material default, or to obtain any other remedy for a material default consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California or in the United States District Court for the Northern District of California.

#### Section 4.3 Applicable Law

The laws of the State of California shall govern this Agreement.

#### Section 4.4 Acceptance of Service of Process

a. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer (or upon an officer of the Developer), or in such manner as may be provided by law.

#### Section 4.5 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

#### Section 4.6 Damages

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1, the Defaulting Party shall be liable to the Non-Defaulting party for any damages caused by such default, and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default.

#### Section 4.7 Specific Performance

If either Party materially defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.1, the non-defaulting party, at its option, may, after such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

#### Section 4.8 Termination by Either Party; Term of this Agreement

Either Party shall have the right to terminate this Agreement in the event the other party is in Default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 4.1.

Notwithstanding any provision herein to the contrary, this Agreement shall terminate and be of no further force or effect upon the City's issuance of permanent certificate(s) of occupancy for the Project, it being the intent of the Parties that the Agreement Containing Covenants and Restrictions shall thereafter constitute the sole affordable housing obligations owed by Developer in favor of the City with respect to the Project.

### ARTICLE 5 GENERAL PROVISIONS

#### Section 5.1 Notices, Demands and Communications between the Parties

Formal notices, demands and communications between the City or the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City or the Developer, as designated in Sections 1.3 and 1.4 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by mail as provided in this Section 5.1.

#### Section 5.2 Conflicts of Interest

The Parties certify that to the best of their knowledge, no City officer, employee or authorized representative has any financial interest in the business of Developer and that no person associated with Developer has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Developer 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. Developer will advise City if a conflict arises.

#### Section 5.3 Nonliability of City Officials and Employees

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

#### Section 5.4 Force Majeure: Extension of Time of Performance

In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, third party litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other Party, acts or failure to act of the City or any other public or governmental agency or entity (except that an act or failure to act of the City shall not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

#### Section 5.5 Approvals

Approvals required of the City or the Developer shall not be unreasonably withheld.

#### Section 5.6 Compliance with Laws

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

#### Section 5.7 Hold Harmless/Indemnification

a. To the extent permitted by law, Developer 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 actions performed by Developer pursuant to this Agreement. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the active negligence or willful misconduct of City; the obligation to defend is not similarly limited.

b. Developer'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 Developer, against City (either alone, or jointly with Developer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

## ARTICLE 6 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

### Section 6.1 Counterparts

This Agreement may be executed in duplicate originals each of which is deemed to be an original. This Agreement includes twelve (12) pages and three (3) attachments, including all exhibits appended to such attachments, which constitute the entire understanding and agreement of the Parties.

### Section 6.2 Integration

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the Site.

### Section 6.3 Waivers; Amendments

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer. This Agreement and any provisions hereof may be amended by mutual written agreement by the Developer and the City.

### Section 6.4 Execution and Effective Date

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

[signatures appear on following page]



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

APPROVED AS TO FORM:

\_\_\_\_\_  
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"

**TOD Brokaw, LLC,  
a California limited liability company**

By: H/S Brokaw, LLC,  
a California limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Derek K. Hunter, Jr.\_  
Title: Manager

By: \_\_\_\_\_  
Name: Edward D. Storm  
Title: Manager

Local  
Address: \_\_\_\_\_  
Email  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

"DEVELOPER"

**ATTACHMENT NO. 1**  
**AFFORDABLE HOUSING AGREEMENT**  
**LEGAL DESCRIPTION - SITE**


October 9, 2020  
Project No. A18034-17  
Page 1 of 1

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, being all of Lot Two as shown on that certain 14 lot subdivision Map of Tract 10532 for "Gateway Crossings", filed for record on October 6, 2020, in Book 933 at Pages 38 through 42, Official Records of Santa Clara County.

**Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.**

10/9/20  
Date

  
\_\_\_\_\_  
Ryan M. Amaya, L.S. 8134



Z:\2018\A18034-17\DOCS\SURVEY\LEGAL DESCRIPTIONS\LOT TWO - GATEWAY CROSSINGS\2020-10-09-A18034-17-  
Legal Description for Lot Two Gateway Crossings .doc

**ATTACHMENT NO. 2  
AFFORDABLE HOUSING AGREEMENT**

**SCOPE OF DEVELOPMENT**

The project consists of 407 apartment units, amenity space, ancillary retail space, and parking contained within five floors of wood-frame construction over a two-level structured parking podium.

**ATTACHMENT NO. 3  
AFFORDABLE HOUSING AGREEMENT**

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS  
(Including Affordable Housing Restrictions for Rental Units)**

[behind this page]

**OFFICIAL BUSINESS**

Document entitled to free  
recording per Government  
Code Section 6103

Recording Requested By and  
When Recorded Mail To:

CITY OF SANTA CLARA  
Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attention: Division Manager

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS  
LOT 2  
(Including Affordable Housing Restrictions for Rental Units)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS, Including Affordable Housing Restrictions ("Agreement") is made by and between TOD BROKAW, LLC, a California limited liability company ("Developer"), and THE CITY OF SANTA CLARA ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement". The City and the Developer agree as follows with reference to the following facts:

**RECITALS**

- A. Developer is the legal owner of the real property legally described on Exhibit A attached hereto ("Property"), upon which Developer will construct a 407-unit apartment project ("Project").
- B. Developer accepts responsibility for meeting the provision of 41 affordable rental housing units within the Project. The 41 affordable rental housing units shall be provided in the Project according to the terms herein stated. The proportion of units shall be 50% median income and 50% low income. Median income shall be defined as 100% of the Area Median Income (AMI) and low income shall be defined as 80% of the AMI. The distribution of these units shall be 20 median income and 21 low income units.
- C. All 41 proposed affordable rental housing units shall be made available at Below Market Rate (BMR) rents that do not exceed an Affordable Housing Cost. Each of the BMR units are designated and identified in the attached Exhibit B.
- D. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the condition of approval of the Project.

NOW, THEREFORE, in consideration of valuable land use and economic benefits and approvals by City allowing development of the Project and to satisfy its obligations to provide affordable housing for low-income (as defined in Section 1(a) below) and median-income households (as defined in Section 1(b) below) at rent below market rate, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and their respective successors and assigns.

## 1. Definitions

In addition to terms that are otherwise defined herein, the following terms shall have the following respective meanings:

"Affordable Housing Cost" shall mean a monthly rent plus a reasonable utility allowance that does not exceed the following:

- (a) For a Low-Income Household, the product of thirty percent (30%) times eighty percent (80%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).
- (b) For a Median-Income Household, the product of thirty percent (30%) times one hundred (100%) of the Area Median Income adjusted for family size appropriate for the Unit divided by twelve (12).

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This period shall be for fifty five (55) years from the date of issuance of Certificate of Occupancy for the Project.

"Affordable Housing Unit" or sometimes "Unit" shall mean one of the 41 Below Market Rate rental units, of which all 41 shall be designated in Exhibit B by Developer to be occupied or made available for occupancy exclusively to an Income-Qualified Household, as defined in this Agreement.

"Annual Income" shall mean the annual income limits established by the California Department of Housing and Community Development.

"Below Market Rate" shall mean the provision of a dwelling unit at rent levels less than market rates.

"City" shall mean the City of Santa Clara, California.

"Developer" shall mean TOD BROKAW, LLC, a California limited liability company and its permitted transfers and assigns.

"Area Median Income" shall mean the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision.

"Household" shall mean one or more persons occupying a housing unit.

"HCD" shall mean the California Department of Housing and Community Development.

"Income-Qualified Household" shall mean a household with an income that does not exceed the following:

- (a) For a Low-Income BMR Unit, eighty percent (80%) of the Area Median Income adjusted for family size.
- (b) For a Median-Income BMR Unit, one hundred twenty percent (100%) of the Area Median Income adjusted for family size.

"Permitted Transfer" means a sale, ground lease, or transfer of any parcels within the Property, whereupon the Developer's rights and obligations under this Agreement are deemed assigned to such successors or assigns in and to those parcels within the Property. The terms, covenants, and conditions of this Agreement shall run with the land to the Property, and shall inure to the benefit of, apply to, and shall bind the successors and assigns of Developer. Upon an assignment, the assigning Developer will be released from the obligations of Developer under this Agreement which relate to the period from and after the date of the assignment, including, without limitation, the obligations in Section 4, 5, and 6 hereof. Developer shall notify the Agency Executive Director of any Permitted Transfer and deliver copy of Permitted Transfer to the City, evidencing the incorporation of this Agreement. The notice shall include the address and contact information of the permitted transferee assuming the obligations of this Agreement.

"Project" shall mean the 407-unit residential apartment facility located upon the real property legally described in the Legal Description attached hereto as Exhibit A, inclusive of 41 units rented at a Below Market Rate Monthly Rent, as defined below, together with structures, improvements, equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities.

"Below Market Rate Monthly Rent" or "Monthly Rent" shall mean, for purposes of this Agreement, an amount that is no greater than the following

- (a) For a Low-Income Household, thirty percent (30%) of eighty percent (80%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.
- (b) For a Median-Income Household, thirty percent (30%) of one hundred percent (100%) of the Area Median Income divided by twelve (12), and adjusted for household size appropriate for the Unit, less the Utility Allowance.

“Utility Allowance” shall be based upon schedules issued from time to time by the Santa Clara County Housing Authority. The Utility Allowance applies to all tenant-paid costs that are listed on that schedule.

## 2. Uses

(a) General. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 407 residential dwelling units and shall include 41 Affordable Housing Units for Income-Qualified Households.

(b) Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, during the Affordability Period, that 41 Affordable Housing Units shall be rented or leased to or held available for rental or occupancy by Low Income and Median Income-Qualified Households.

### (1) Units Generally.

(a) The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that the Developer shall use the Project only for residential operation pursuant to all of the terms and conditions of this Agreement. The Project shall consist of 407 residential dwelling units, 41 of which shall be Affordable Housing Units for Income-Qualified Households.

(b) Prior to the initial lease-up, Developer shall have designated specific Units in the Project to be the Affordable Housing Units and given notice to the City of such designation (“Unit Allocation”). Subject to the terms of this Agreement, the Developer shall have the right, from time to time, to re-designate the Affordable Housing Units so long as: (i) the unit designation (including, but not limited to: the number of bedrooms, units with accessibility modifications) remains substantially the same throughout the Affordability Period; (ii) the Affordable Housing Units are distributed throughout the Project; and (iii) the Developer shall obtain the City Staff’s prior written approval before re-designating the Affordable Housing Units, the approval of which shall not be unreasonably withheld or delayed.

(c) If Developer implements periodic programs of replacement and upgrade which apply to all Units, all Affordable Housing Units in Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.



## (2) Affordable Housing Unit Rents

- (a) Developer agrees it shall not charge or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Affordable Housing Cost applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to the applicable Affordable Housing Cost.
- (b) Affordable Housing Cost for the Affordable Housing Units shall be based upon schedules issued from time to time by HUD and modified and published by HCD. Upon request, City shall notify the Developer of the applicable area rents based on number of bedrooms.
- (c) Rent increases, which may occur not more frequently than annually, shall not exceed the annual increase, if any, in Area Median Income. In no case may the Affordable Housing Cost for the Affordable Housing Units exceed the amount derived by the Affordable Housing formula set forth in this Agreement. The City shall receive a copy of all rent increase notices for the designated Affordable Housing Units at least 30 days prior to the new rents taking effect. Rent increases may only be implemented in compliance with applicable law.

## (3) Income Qualification of Affordable Housing Unit Tenants

- (a) Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith effort to verify that the income provided by an applicant in an income certification is accurate.
- (b) The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the definition of Annual Income established by the California Department of Housing and Community Development. The Developer may certify initial income qualification using one of the following two source documentation methods:
  - (i) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or
  - (ii) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: Pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; Income verification form from the

Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.

- (c) Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the households income and family size along with a signed certification by the tenant that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.
- (d) Income limits, adjusted for household size, will be based off of the Area Median Income for Santa Clara County, which is published periodically by HCD. Upon request, City shall notify the Developer of the applicable area median income limits.

(4) Over-Income Tenants in Affordable Housing Units

- (a) Subject to Section 4(b), any Affordable Housing Unit tenant whose income no longer qualifies for the Affordable Housing Unit at their current Monthly Rent may continue to reside in the Unit. However, subject to Section 4(b), they must pay rent at the lesser of:
  - i. Thirty percent (30%) of the household annual income, divided by twelve (12), less the Utility Allowance; or,
  - ii. The current market rent being charged in a comparable unit not subject to this Agreement.
- (b) Affordable Housing Units occupied by tenants whose income no longer qualifies as an Income-Qualified Household are considered in temporary “non-compliance” with this Agreement. Except as otherwise allowed pursuant to Section 4(a) above, to bring the Affordable Housing Unit back into compliance, the Developer must:
  - (i) Rent the next vacant unit of the same size (i.e.: 2-bedroom) to an Income Qualified Household for a BMR Unit whose Annual Income would qualify them for the “non-compliant” Affordable Housing Unit at the original level of affordability (i.e., Low-Income or Median-Income) as the “non-compliant” Affordable Housing Unit (however, using the then current Area Median Income as adjusted for family size). Such unit replaces the “non-compliant” Affordable Housing Unit; and
  - (ii) Re-designate the original Affordable Housing Unit that was in non-compliance as a market rate unit in Project. The tenants may be charged rents comparable to existing market rate units in the Project.
- (c) Subject to the provisions of Section 1(b) above, Developer shall maintain a distribution of the affordable housing units in Exhibit B.

(5) Waiting List for Affordable Housing Units

- (a) Developer shall maintain a written Waiting List of households that have contacted Developer and expressed an interest in an Affordable Housing Unit. That list shall include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.
- (b) Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units in chronological order (oldest listing first). Developer shall provide evidence of attempts to contact households on the Waiting List.

(6) Lease Provisions

- (a) Tenants in the Affordable Housing Units shall be subject to the same lease document and requirements of tenants in the market rate units, with the exception of those additional stipulations described below. A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.
- (b) The lease may not contain any terms prohibited by applicable law.
- (c) Each lease or rental agreement shall provide that the Developer will not discriminate on the basis of race, creed, color, sex, national origin, ancestry, religion, marital status, disability or receipt of public assistance or housing assistance in connection with the rental of a Unit in Project, or in connection with the employment or application for employment of persons for operation and management of Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect.
- (d) The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.
- (e) The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age

and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or re-certification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.

- (f) The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and approval by the City, the approval of which shall not be unreasonably withheld or delayed.

#### (7) Management Plan

The Developer for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, covenants and agrees to submit to the Agency Executive Director or his designee for review and approval a maintenance and management plan, including a facilities management component (the "Maintenance and Management Plan"). The Management Plan shall include (i) a written maintenance plan that will yield safe, sanitary and attractive living units and common areas; (ii) a reserve analysis identifying items that will eventually need replacement and their life expectancy, which Developer for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, covenants and agrees to update at least every three years; (iii) a five year plan for the planned use of the replacement reserve, which Developer agrees to update annually at the time of budget preparation; and (iv) an inventory list of common area property, tools and equipment, unit appliances, carpeting and drapes, information regarding when a unit was last redecorated or updated, which Developer shall update annually at time of budget operation.

#### (8) Initial Leasing, Marketing and Tenant Selection Procedures.

- (a) Not later than ten (10) days prior to the commencement of marketing, Developer or an Affiliate approved by City of Santa Clara shall prepare and submit to the City for reasonable approval a marketing and outreach program for the Affordable Housing Units which shall contain, among other things: (i) how a potential Income-Qualified Household would apply to rent an Affordable Housing Unit in the Project, including where to apply, applicable income limits and rent levels; (ii) a description of procedures and media Developer will use to publicize vacancies in Project, including notice in newspapers of general circulation, at least one of which shall be a foreign language newspaper; (iii) provide monthly leasing reports until all 41 Affordable Housing Units have been leased up and occupied, and (iv) mailing notices of vacancies to or contacting by telephone potential tenants on the Waiting List maintained by Developer.
- (b) A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and

within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations

- (c) Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.
- (d) Operating Covenant Agreement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to Project or any part thereof that Developer, shall operate Project in conformity with all applicable laws, rules, regulations and ordinances, including without limitation, all applicable federal and state labor standards.
- (e) Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project , or any part thereof, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of Project.
- (f) Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of Project on the basis of race, color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:
  - (1) In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land".
  - (2) In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased."

- (3) In contracts: "There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land."

### 3. Monitoring/Annual Report

- (c) Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.
- (d) Once leasing at the Project has commenced, the Developer for itself, its successors, its assigns and every successor in interest to Project or any part thereof, covenants and agrees to submit to the City an annual report ("Annual Report"). The Annual Report format shall be approved by the Housing & Community Services Division Manager and shall include a signed and certified statement of its accuracy upon annual submission to the City.
- (e) The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report and a certified statement by Developer that to the knowledge of the Developer, no default has occurred under the provisions of this Agreement.
- (f) The City has a standard reporting form which consists of two parts: Part I, information on tenants in residence on June 30 of the reporting year; Part II, information on tenants who moved in and out during the reporting year. The City has a standard form for income/rent reporting. A reasonable facsimile, pre-approved by the City may be substituted as long as it contains all the required information. For each Affordable Housing Unit, the following information is required (based on tenants in residence as of June 30):
- (1) Apartment Number or other unit designation.
  - (2) Number of bedrooms.

- (3) Household Size.
  - (4) Tenant Income (certified annually).
  - (5) Tenant-Paid Rent.
  - (6) Explanation of any change in the designated affordable units, and reason for change that occurred in the previous fiscal year (July 1 to June 30).
- (g) Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.
- (h) The Developer shall pay City on an annual basis, on or before September 30 of each year following the issuance date of the Certificate of Occupancy for the building, a multi-family monitoring fee per Affordable Housing Unit (the "Monitoring Fee"). The Monitoring Fee as of the date of this agreement is \$117.0 per unit. The Monitoring Fee is published in the City's Municipal Fee Schedule and updated from time to time.

#### 4. Enforcement

The City of Santa Clara is deemed to be the sole beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if any covenants set forth in this Agreement are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

If Developer has not commenced curing of the default within thirty (30) days after written notice by City is provided to Developer, then City shall have all rights and remedies at law or in equity to enforce the curing of such Default.

Additionally, if Developer collects rents from Income-Qualified Households occupying the Affordable Housing Units that require such Income-Qualified Household tenants to pay rent in excess of what is permitted pursuant to this Agreement, and to the extent

such excess rents are not required to be reimbursed to the tenants of such Affordable Housing Units, Developer agrees and covenants to reimburse such tenants within ten (10) business days of City's written demand, provided if such tenants cannot be located then the Developer shall pay to the City the full amount of such excess to the City. Developer and City agree that the payment of such excess rent shall be in addition to City's rights and remedies at law or equity.

If the City provides Developer with a written notice of violation of this Agreement and Developer has not cured or responded to such notice of violation within ninety (90) days, then in addition to City's rights and remedies set forth herein, City shall thereafter have the right to impose a fine of \$150 per month per non-compliant unit until Developer has cured or responded to the notice of violation. Developer shall pay such fine within thirty (30) days of City's written demand.

## 5. Defaults

Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement, if Developer has not commenced curing the default within thirty (30) days after written notice by City to Developer, then such failure or delay constitutes a default.

- (a) The City shall give written notice of default to the Developer, specifying the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- (b) Any failures or delays by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- (c) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, City shall give Developer notice of such default. . If Developer (1) initiates corrective action within thirty (30) days after written notice by City to Developer, and (2) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City. In no event shall City be precluded from exercising remedies if its remedies become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is first given.
- (d) Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid. These events include but are not limited to war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, epidemic, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City caused delays, delays caused by third



parties, technical problems with transportation or other events outside the Developer's control.

## 6. Indemnification

The Developer, its successors, its assigns and every successor in interest to the Project or any part thereof, shall indemnify, hold harmless and defend the City, and its officers, officials, appointees, employees and agents from and against (a) any Default by Developer under this Agreement; (b) any and all loss, costs, damages, actions and liabilities of whatever nature directly or indirectly resulting from or arising out of the design, construction, occupancy or ownership of the Project or any written statement or representation provided to the City, or to prospective or actual tenants or purchasers of Project with respect to the Developer's performance hereunder. The foregoing obligations of Developer shall exclude claims, loss, costs, damages, actions and liabilities to the extent arising from City's gross negligence, willful misconduct, or breach of this Agreement by the City. If any such claim is asserted, or any such impositions or charges are sought to be imposed, the City shall give prompt notice to Developer and Developer shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise and settle the same in its sole discretion, provided that the City shall have the right to review and reasonably approve or disapprove any such settlement or compromise if (1) such settlement or compromise would require the City to pay any money in connection with such settlement; or (2) the City would remain a litigant after such settlement or compromise is entered into. In addition, Developer shall pay upon demand all of the reasonable expenses paid or incurred by City in enforcing the provisions hereof.

## 7. General Provisions

### (a) City as Beneficiaries

- (1) All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.
- (2) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the City shall be deemed beneficiary of the covenants provided for in this Agreement, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants set forth herein without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any material breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or

other proper proceedings to enforce the curing of such breach of covenant or condition. There are no intended third party beneficiaries of this Agreement.

(b) Irrevocability; Term of Agreement

This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The covenants against discrimination set forth above shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.

(c) Amendment of Agreement

Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions contained in this Agreement, or to subject the Property or any Affordable Housing Unit to additional covenants or conditions, without the consent of any renter, lessee, easement holder, licensee, or any other person or entity having an interest less than a fee in Project (or portion thereof) or any Affordable Housing Unit.

(d) Severability

The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

(e) Interpretation

The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

(f) Applicable Law

This Agreement and the lien created hereby shall be governed by and construed according to the laws of the State of California.

(g) Number, Gender and Headings

As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

(h) Notices

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

City of Santa Clara  
Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attn: Division Manager

With a copy to:

TOD BROKAW, LLC  
c/o Edward Storm  
10121 Miller Ave., Suite 200  
Cupertino, CA 95014

With copy to:

David H. Blackwell, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
3 Embarcadero Center, 12th Floor  
San Francisco, CA 94111-4074

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

(i) Rights and Remedies Are Cumulative

The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default hereunder.

(j) Dispute Resolution

(1) Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.

(2) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.

(3) The costs of mediation shall be borne by the parties equally.

(4) Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

(k) Counterparts

This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

(l) Execution and Effective Date

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
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"

TOD Brokaw, LLC,  
**a California limited liability company**

By: H/S Brokaw, LLC,  
a California limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Derek K. Hunter, Jr.  
Title: Manager

By: \_\_\_\_\_  
Name: Edward D. Storm  
Title: Manager

Local  
Address: \_\_\_\_\_  
Email \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                 )  
County of                                 )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
County of                                )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**  
**LEGAL DESCRIPTION**

October 9, 2020  
Project No. A18034-17  
Page 1 of 1

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, being all of Lot Two as shown on that certain 14 lot subdivision Map of Tract 10532 for "Gateway Crossings", filed for record on October 6, 2020, in Book 933 at Pages 38 through 42, Official Records of Santa Clara County.

**Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.**

10/9/20  
Date

\_\_\_\_\_  
Ryan M. Amaya, L.S. 8134





**EXHIBIT B**

**LOT 2**

**DESIGNATED FORTY ONE (41) AFFORDABLE HOUSING UNITS BY INCOME  
CATEGORY AND UNIT SIZE**

<b><u>Income Level</u></b>	<b><u>Studios</u></b>	<b><u>1 Bedroom</u></b>	<b><u>2 Bedroom</u></b>	<b><u>3 Bedroom</u></b>	<b><u>Number of Units</u></b>
<b>80% AMI</b>	<b>2</b>	<b>10</b>	<b>8</b>	<b>1</b>	<b>21</b>
<b>100% AMI</b>	<b>2</b>	<b>10</b>	<b>8</b>	<b>0</b>	<b>20</b>
<b>TOTAL</b>	<b>4</b>	<b>20</b>	<b>16</b>	<b>1</b>	<b>41</b>



## Agenda Report

20-1068

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Action on an Agreement Containing Covenants and Restrictions with Benton and El Camino, LP, for Project located at 575 Benton Street

#### **COUNCIL PILLAR**

Promote and Enhance Economic, Housing and Transportation Development

#### **BACKGROUND**

Prometheus Real Estate Group, Inc. (the "Developer") is proposing to construct 355 apartment rental units, 22,000 square feet of retail space including a 1,601 square foot leasing office, 600 parking spaces and approximately 6,000 square feet of amenity and leasing space on the property located at 575 Benton Street in the City of Santa Clara, California (hereinafter referred to as the "Project"). The project includes 8 live-work units. The project amenities consist a 346 square foot pet spa area, 1,528 square feet of bike amenity space, an amenity roof deck with 4,341 square feet of a club room and a fitness center, three private courtyards and a public courtyard facing The Alameda.

In July 2018, the City Council approved land use entitlements for the project including a General Plan Amendment (GPA) to change the property's General Plan land use designation from Santa Clara Station High Density Residential to Santa Clara Station Very High Density Residential, a Rezone from Light Industrial (ML), Single-Family (R1-6L), Duplex (R2-7L) and Thoroughfare Commercial (CT) to Planned Development (PD), and a Development Agreement.

Pursuant to Section 4.6 and Exhibit E of the Development Agreement, the Developer voluntarily agreed to provide a total of ten percent (10%) of the total number of residential units within the Project, which equals thirty-six (36) units, as affordable rental housing units (the "Affordable Housing Units"). Thirty percent (30%) or eleven (11) of the Affordable Housing Units shall be low income units restricted to occupancy by households with income that does not exceed eighty percent (80%) of the Area Median Income for Santa Clara County ("AMI") and seventy percent (70%) or twenty-five (25) of the Affordable Housing Units shall be moderate income units restricted to occupancy by households with income that does not exceed one hundred twenty percent (120%) of the AMI.

#### **DISCUSSION**

The proposed Agreement Containing Covenants and Restrictions with the Developer uses the City's standard form (Attachment 1) and will enable and guarantee the delivery of thirty-six (36) affordable units for below market rent within Santa Clara. The Agreement Containing Covenants and Restrictions fulfills an obligation placed upon the Developer through the City's land use entitlement process.

The City's Affordable Rental Program Policies and Procedures Guidelines provide that in the case of

a fractional obligation a developer can either elect to round up to the next whole number or pay a fractional in-lieu fee for the fractional units. In this case, the Developer's obligation is 35.5 units and the Developer is proposing to round up to provide thirty-six (36) affordable units. Thirty percent (30%) or eleven (11) of the Affordable Housing Units shall be low income units restricted to occupancy by households with income that does not exceed eighty percent (80%) of the Area Median Income for Santa Clara County ("AMI") and seventy percent (70%) or twenty-five (25) of the Affordable Housing Units shall be moderate income units restricted to occupancy by households with income that does not exceed one hundred twenty percent (120%) of the AMI.

To maintain long-term affordability, the full term of the affordability covenants shall be for a total period of thirty (30) years (the "Affordability Period"), effective from the date the of the Issuance of Certificate of Occupancy for the Project.

Approval of the proposed Agreement Containing Covenants and Restrictions will implement the City's General Plan inclusionary housing policy consistent with the previous land use entitlements granted for the subject property.

### **ENVIRONMENTAL REVIEW**

A Mitigated Negative Declaration (MND) was prepared and a Notice of Availability was circulated for a 20-day period in accordance with California Environmental Quality Act (CEQA) requirements and approved by City Council in July 2018.

### **FISCAL IMPACT**

There is no cost to the City for processing of the proposed Agreement other than administrative staff time and expense.

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

1. Approve and authorize the City Manager to execute the Agreement Containing Covenants and Restrictions with Benton and El Camino, LP to execute amendments thereto, and to take any other action necessary to implement the requirement for the provision of thirty-six (36) affordable units within a 355 unit rental apartment complex at 575 Benton Street; and
2. Authorize the recordation thereof.

Reviewed by: Andrew Crabtree, Director, Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. 575 Benton St. Covenants and Restrictions

**OFFICIAL BUSINESS**

Document entitled to free  
recording per Government  
Code Section 6103

Recording Requested By and  
When Recorded Mail To:

CITY OF SANTA CLARA  
Housing & Community Services Division  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attention: Division Manager

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS  
(Including Affordable Housing Restrictions for Rental Units)**

THIS AGREEMENT CONTAINING COVENANTS AND RESTRICTIONS, Including Affordable Housing Restrictions ("Agreement") is made by and between BENTON AND EL CAMINO, LP, a California limited partnership ("Developer"), and THE CITY OF SANTA CLARA ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties." The City and the Developer agree as follows with reference to the following facts:

**RECITALS**

- A. Developer is the legal owner of the real property legally described on Exhibit A attached hereto ("Property"). A three hundred fifty-five (355) unit apartment community has been or will be constructed on the Property (the "Project").
- B. On July 17, 2018, City adopted Ordinance No. 1985, approving a Development Agreement concerning the development of the Project on the Property (the "Development Agreement"), and the Development Agreement became effective thirty (30) days later on August 16, 2018. Pursuant to Section 4.6 and Exhibit E of the Development Agreement, Developer voluntarily agreed to provide a total of ten percent (10%) of the total number of residential units within the Project, which equals thirty-six (36) units, as affordable rental housing units (the "Affordable Housing Units"). Thirty percent (30%) or eleven (11) of the Affordable Housing Units shall be low income units restricted to occupancy by households with income that does not exceed eighty percent (80%) of the Area Median Income for Santa Clara County ("AMI") and seventy percent (70%) or twenty-five (25) of the Affordable Housing Units shall be moderate income units restricted to occupancy by households with income that does not exceed one hundred twenty percent (120%) of the AMI. The Affordable Housing Units shall be provided in the Project according to the terms herein stated.

- C. All Affordable Housing Units shall be made available at affordable rents that do not exceed an Affordable Housing Cost, as defined herein. Each of the Affordable Housing Units are designated and identified in the attached Exhibit B.
- D. It is the intention of the City and Developer to set forth and apply these covenants, conditions and restrictions to satisfy the provisions set forth in Section 4.6 and Exhibit E of the Development Agreement.

## AGREEMENT

NOW, THEREFORE, to satisfy Developer's obligations to provide certain Affordable Housing Units, the Developer and City hereby agree that the Project shall be subject to the following covenants and conditions which shall run with the land, and be binding on all parties having any right, title or interest in the Project, their respective heirs, legatees, devisees, administrators, executors, successors and assigns, and shall inure to the benefit of the City and its respective successors and assigns.

### 1. Definitions

In addition to terms that are otherwise defined herein, the following terms shall have the following respective meanings:

"Affordability Period" shall mean the length of time that this recorded agreement and tenant incomes and rents for the Affordable Housing Units are limited, as described below. This period shall be for thirty (30) years from the date of issuance of the first Certificate of Occupancy for the Project.

"Affordable Housing Cost" shall mean, for purposes of this Agreement, an amount that is no greater than the following:

- a. For a "Low-Income Unit," thirty percent (30%) of eighty percent (80%) of the Area Median Income divided by twelve (12), and adjusted for Assumed Household Size.
- b. For a "Moderate-Income Unit," thirty percent (30%) of one hundred twenty percent (120%) of the Area Median Income divided by twelve (12), and adjusted for Assumed Household Size.

"Affordable Housing Unit" or sometimes "Unit" shall mean one of the thirty-six (36) units rented at an Affordable Housing Cost, including eleven (11) Low-Income Units and twenty-five (25) Moderate-Income Units, of which all such Units shall be designated in Exhibit B by Developer to be occupied or made available for occupancy exclusively to an Income-Qualified Household, as defined in this Agreement. Low-Income Units and Moderate-Income Units shall collectively be described as Affordable Housing Units.

"Annual Income" shall mean the annual income limits established by the U.S. Department of Housing and Urban Development.

“Area Median Income” shall mean the annual median income for Santa Clara County, adjusted for household size and as established and amended from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937 or any successor statute.

“Assumed Household Size” shall mean the following assumed household sizes per Affordable Housing Unit:

<b>Unit Type</b>	<b>Assumed Household Size</b>
Studio	One (1) person household
1 Bedroom	Two (2) person household
2 Bedroom	Three (3) person household

“City” shall mean the City of Santa Clara, California.

“Developer” shall mean Benton and El Camino, LP, a California limited partnership and its transfers and assigns.

“Household” shall mean one or more persons occupying a housing unit.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Income-Qualified Household” shall mean a household with an income that does not exceed the following:

- a. For a Low-Income Unit, eighty percent (80%) of the Area Median Income adjusted for Household Size.
- b. For a Moderate-Income Unit, one hundred twenty percent (120%) of the Area Median Income adjusted for Household Size.

“Project” shall mean the three hundred fifty-five (355) unit residential apartment facility located upon the real property legally described in the Legal Description attached hereto as Exhibit A, inclusive of the thirty-six (36) Affordable Housing Units, as defined below, together with structures, improvements, equipment, fixtures, and other personal property owned by the Developer and located on or used in connection with all such improvements and all functionally related and subordinate facilities.

## **2. Uses**

- a. Affordability Covenants. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project or any part thereof, that for the Affordability Period, the Affordable Housing Units shall be rented or leased to or held available for rental or occupancy by Income-Qualified Households, as follows:

- i. Thirty percent (30%) of the Affordable Housing Units (i.e. a total of eleven (11) units) shall be restricted to occupancy as Low-Income Units.
  - ii. Seventy percent (70%) of the Affordable Housing Units (i.e. a total of twenty-five (25) units) shall be restricted to occupancy as Moderate-Income Units.
- b. Units Generally.
  - i. Prior to initial tenant occupancy of the Project, Developer shall have designated in the attached Exhibit B the specific units in the Project to be the Affordable Housing Units and given notice to the City of such designation ("Unit Allocation"). Subject to the terms of this Agreement, the Developer shall have the right, from time to time, to re-designate the Affordable Housing Units, provided that the Developer shall obtain the City's prior written approval before re-designating the Affordable Housing Units, the approval of which shall not be unreasonably withheld, delayed or conditioned.
  - ii. The Affordable Housing Units shall be of comparable quality to the market rate units in the Project. If Developer implements periodic programs of replacement and upgrade which apply to all units, all Affordable Housing Units in Project shall be included within such programs and shall be treated under such programs in a manner substantially similar to all other units.
  - iii. A minimum of one (1) Affordable Housing Unit shall be adaptable to be fully accessible to households with a physically impaired member.
- c. Affordable Housing Unit Rents.
  - i. Developer agrees it shall not charge or collect from any tenant of an Affordable Housing Unit a monthly amount in exchange for occupancy of the Affordable Housing Unit that exceeds the Affordable Housing Cost applicable to the Affordable Housing Unit. Notwithstanding the foregoing, nothing in this Agreement prohibits Developer from charging tenants of any Affordable Housing Unit any fees or charges which are for services or items that the tenant of the Unit voluntarily signs up for and which are available to all tenants at the Project, and the amount of such fees will be in addition to the applicable Affordable Housing Cost.
  - ii. Rent increases, which may occur not more frequently than annually, shall be consistent with the annual increase, if any, in Area Median Income. If HUD fails to issue revised AMI/household income statistics for Santa Clara County within fifteen (15) months of the previous revision, rents for the Affordable Housing Units may be adjusted based on the annual percentage increase in the San Jose-

Sunnyvale-Santa Clara Consumer Price Index for Urban Wage Earners and Clerical Workers.

- iii. The Affordable Housing Cost shall exclude charges for utilities in the broadest sense, including but not limited to gas, electricity, water, garbage, television, cable, telephone, and internet service; provided, however, that if any or all of such utilities are offered at no cost to market rate units, they shall also be offered at no cost to the Affordable Housing Units.
- iv. Developer shall accept Section 8 vouchers as a means of assisting Income-Qualified Households.

d. Income Qualification of Affordable Housing Unit Tenants

- i. Developer shall establish and maintain a file for each tenant residing in an Affordable Housing Unit including, at minimum, documents identified below. Developer shall make a good faith reasonable effort to verify that the income provided by an applicant in an income certification is accurate.
- ii. The income of each Affordable Housing Unit tenant must be determined and certified prior to occupancy of that unit, using the definition of Annual Income established herein. The Developer may certify initial income qualification using one of the following two source documentation methods:
  - (1) Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines each year the annual income of the household; or
  - (2) Examine the source documents evidencing annual income for the household. Developer shall use good faith efforts to obtain all applicable source documents to include in the tenant's file: Pay stub for the most recent pay period; Income tax return for the most recent tax year; Income verification form from the applicant's current employer; Income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of those agencies; and, any statement documenting unearned income received by the household.
- iii. Annually, Developer shall determine the income of all tenants residing in an Affordable Housing Unit. Developer may choose to use either of the two methods described above or may obtain from the household a written statement of the amount of the households income and family size along with a signed certification by the tenant



that the information is complete and accurate. The certification must state that the household will provide source documentation upon request.

e. Over-Income Tenants in Affordable Housing Units

- i. If, upon recertification of the income of a tenant of a Low-Income Unit, Developer determines that such income exceeds the qualifying income for a Low-Income Unit, but does not exceed the qualifying income for a Moderate-Income Unit, then, upon expiration of such tenant's lease, such tenant's unit shall be considered a Moderate-Income Unit, such tenant's rent may be increased to the rent then in effect for Moderate-Income Units upon not less than sixty (60) days' written notice, and Developer shall rent the next available Affordable Housing Unit as a Low-Income Unit or Moderate-Income Unit, as applicable, to meet the provisions of Section 1 above.
- ii. If, upon recertification of the income of a tenant of a Low-Income Unit or Moderate-Income Unit, Developer determines that such income exceeds the qualifying income for a Moderate-Income Unit, then, upon expiration of such tenant's lease, Developer shall have the option to: (a) rent such Affordable Housing Unit as a Low-Income Unit or Moderate-Income Unit, as applicable, to meet the provisions of Section 1 above; or (b) permit such tenant to continue occupying such unit and, upon not less than sixty (60) days' written notice, such tenant's rent may be increased to the fair market rent and Developer shall rent the next available residential unit as a Low-Income Unit or Moderate-Income Unit, as applicable, to meet the provisions of Section 1 above.
- iii. Upon termination of occupancy of an Affordable Housing Unit by a tenant, such Affordable Housing Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., low income or moderate income) as the income level of the vacating tenant, until such Affordable Housing Unit is reoccupied, at which time the income character of the Affordable Housing Unit (e.g., Low-Income Unit or Moderate-Income Unit) shall be re-established. In any event, Developer shall maintain the occupancy requirements set forth in Section 1 above.

f. Waiting List for Affordable Housing Units

- i. Developer shall maintain a written waiting list of households that have contacted Developer and expressed an interest in an Affordable Housing Unit ("Waiting List"). The Waiting List shall include appropriate contact information for notifying the interested households when a vacancy in an Affordable Housing Unit occurs. Names on the Waiting List will be listed in order of the date of receipt of notice of interest and contact information from the prospective

applicant. This Waiting List will be kept in Developer's offices and shall be available for City review with reasonable notice.

- ii. Subject to Developer's use and application of its customary leasing criteria that is applied to all tenants at the Project (including, without limitation, credit checks, references, etc.), Developer shall select new tenants for the Affordable Housing Units in chronological order (oldest listing first). Developer shall provide evidence of attempts to contact households on the Waiting List.

g. Lease Provisions

- i. Tenants in the Affordable Housing Units shall be subject to the same lease document and requirements of tenants in the market rate units, with the exception of those additional stipulations described below. A copy of the Project's standard lease form(s) shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes.
- ii. The lease may not contain any terms prohibited by applicable law.
- iii. The Developer shall not require rental deposits in excess of one-month's rent for any Affordable Housing Unit, but may require refundable deposits for pet damages, and keys, and similar items, consistent with applicable laws.
- iv. The Developer shall include provisions in leases or rental agreements for all Affordable Housing Units which authorize the Developer to immediately terminate the tenancy of any tenant occupying an Affordable Housing Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as an Income-Qualified Household, including, but not limited to, persons 18 years of age and older that reside in the household that are not listed on the lease. Each lease or rental agreement for an Affordable Housing Unit shall also provide that the tenants of such Affordable Housing Unit shall be subject to annual certification or re-certification of income, as required by the City, and shall be subject to rental increases in accordance with this Agreement.
- v. The provisions relating to certification and re-certification of income in the form of lease or rental agreement used by the Developer for the lease or rental of the Affordable Housing Units shall be subject to prior review and approval by the City, the approval of which shall not be unreasonably withheld or delayed.

- h. Initial Leasing, Marketing and Tenant Selection Procedures.
- i. A copy of Developer's standard tenant selection procedure, applicable to all Units in Project, shall be provided to the City prior to initial occupancy and within thirty (30) days of any changes. Any special procedures related to tenant selection for an Affordable Housing Unit shall be specified and are limited to procedures reasonably related to implementation of the requirements of this Agreement and in compliant with State Fair Housing regulations.
  - ii. Developer must give prompt, written notice to any rejected applicant for an Affordable Housing Unit, specifying the grounds for rejection.
- i. Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project, or any part thereof, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of Project.
- j. Form of Non-discrimination and Non-segregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of the Affordable Housing Units on the basis of race, color, religion, ancestry, national origin, sex, or marital status of any person. All such deeds, leases or contracts for sale shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:
- i. In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land".
  - ii. In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, ancestry, national origin, sex, or marital status in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the land herein leased.”

- iii. In contracts for sale: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, religion, ancestry, national origin, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sub-lessees or vendees of the land.”

### **3. Monitoring/Annual Report**

- a. Not later than ten (10) days prior to the commencement of marketing, Developer shall assign a single person as Project Manager, who shall have overall responsibility for the progress and execution of this Agreement. Subsequent to that assignment, Developer shall notify City of any change in the name and/or contact information of the Project Manager.
- b. Once each year, Developer shall provide City with a written report detailing the average annual income of tenants occupying the Affordable Housing Units, the number of persons in each household occupying the Affordable Housing Units, and the number of vacancies and new rentals during the year for the Affordable Housing Units (“Annual Report”). The Developer shall submit the Annual Report on or before September 30 of each year following the fiscal year (Period July 1 to June 30) covered by the Annual Report.
- c. Developer shall provide, within thirty (30) days of request, additional information concerning the Affordable Housing Units and/or Unit Allocation reasonably requested by the City in writing. The City shall have the right to examine and make copies of all books, records or other documents maintained by Developer or by any of Developer's agents that pertain to any Affordable Housing Unit and/or this Agreement.
- d. The Developer shall pay City on an annual basis, on or before September 30<sup>th</sup> of each year following the issuance date of the Certificate of Occupancy for the building, a multi-family monitoring fee per Affordable Housing Unit (the “Monitoring Fee”). The Monitoring Fee as of the date of this agreement is \$117 per unit. The Monitoring Fee is published in the City’s Municipal Fee Schedule and updated from time to time.

#### **4. Enforcement**

The City of Santa Clara is deemed to be the beneficiary of the terms and provisions of this Agreement and the covenants herein, both for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The City shall have the right if any covenants set forth in this Agreement are breached, to exercise all available rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled. No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient.

#### **5. Defaults**

- a. Failure or delay by Developer to perform any material obligation set forth in any term or provision of this Agreement, if such failure or delay is not cured within thirty (30) days after written notice by City to Developer, or if such failure or delay cannot be reasonably cured within the thirty (30) day period and Developer has not commenced curing the same, then such failure or delay constitutes a "Default."
- b. The City shall give written notice of default to the Developer, specifying the nature of the failure in performance which the City claims constitutes the Default, the time period during which the Default is alleged to have occurred or been occurring, and the manner in which such Default may be satisfactorily cured. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default.
- c. Any failures or delays by the City in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- d. Developer shall not be in Default where Developer's performance under this Agreement is affected by force majeure. In the context of these terms and conditions, "force majeure" is any event that the Developer could not, even with due care, reasonably foresee or avoid. These events include but are not limited to war, threat of war, riot, civil commotion or strife, hostilities, industrial dispute, natural disaster, fire, acts of god, terrorist activity, nuclear disaster, adverse weather, government action, City-caused delays, delays

caused by third parties, technical problems with transportation or other events outside the Developer's control.

## **6. Indemnification**

The Developer shall indemnify, hold harmless and defend the City, and its officers, officials, appointees, employees and agents from and against (a) any Default by Developer under this Agreement; (b) with respect to the Developer's performance hereunder, any and all loss, costs, damages, actions and liabilities of whatever nature directly or indirectly resulting from or arising out of the design, construction, occupancy or ownership of Project or any written statement or representation provided to the City, or to prospective or actual tenants or purchasers of Project. The foregoing obligations of Developer shall exclude claims, loss, costs, damages, actions and liabilities to the extent arising from City's gross negligence, willful misconduct or breach of this Agreement by the City. If any such claim is asserted, or any such impositions or charges are sought to be imposed, the City shall give prompt notice to Developer and Developer shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise and settle the same in its sole discretion, provided that the City shall have the right to review and reasonably approve or disapprove any such settlement or compromise if (1) such settlement or compromise would require the City to pay any money in connection with such settlement; or (2) the City would remain a litigant after such settlement or compromise is entered into. In addition, Developer shall pay upon demand all of the reasonable expenses paid or incurred by City in enforcing the provisions hereof.

## **7. General Provisions**

- a. Covenants Running with the Land. All covenants and conditions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer and its heirs, legatees, devisees, administrators, executors, successors and assigns.
- b. Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement.
- c. Irrevocability; Term of Agreement. This Agreement shall be irrevocable by the Developer, its successors and assigns to the Property or any portion thereof. The covenants against discrimination set forth in Section 2.i shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the Affordability Period.
- d. Amendment of Agreement. Only the City, its successors and assigns, and the Developer, and the heirs, legatees, devisees, administrators, executors, successors and assigns of the Developer in and to the fee title to the Project (or portion thereof) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or conditions

- e. Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.
- f. Interpretation. The provisions of this Agreement shall be liberally construed and interpreted to effectuate its purposes. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.
- g. Applicable Law. This Agreement and the covenants created hereby shall be governed by and construed according to the laws of the State of California.
- h. Number, Gender and Headings. As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.
- i. Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service) to the principal offices of the City and the Developer, as follows:

With a copy to: City Attorney  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050

To Developer: Benton and El Camino, LP  
c/o Prometheus Real Estate Group, Inc.  
1900 South Norfolk St., Suite 150  
San Mateo, CA 94403  
Attn: Ian Rogers, Director of Asset  
Management

With a copy to: Prometheus Real Estate Group, Inc.  
1900 South Norfolk St., Suite 150  
San Mateo, CA 94403  
Attn: Theresa McFarland, General  
Counsel

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

- j. Rights and Remedies Are Cumulative. The rights and remedies of the City with respect to the enforcement of the obligations contained in this Agreement are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default hereunder.
- k. Dispute Resolution. Any controversies between the City and Developer regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.
  - i. The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.
  - ii. The costs of mediation shall be borne by the parties equally.
  - iii. Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys' fees, expert witness costs and cost of suit, regardless of the outcome the litigation.
- l. Counterparts. This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart



copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

- m. Execution and Effective Date. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

[Signatures on Following Page]

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

APPROVED AS TO FORM:

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

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

**BENTON AND EL CAMINO, LP  
a California limited partnership**

BENTON AND EL CAMINO, LP  
a California limited partnership

By: SUNSET RIDGE DEVELOPMENT CO., INC.,  
a California corporation, its general partner

By: \_\_\_\_\_  
(Officer of Corporation or Agent)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
County of                                )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                 )  
County of                                 )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Real property in the City of Santa Clara, County of Santa Clara, State of California,  
described as follows:

LOT 1 AS SHOWN ON THE PARCEL MAP FILED OCTOBER 24, 2019 IN BOOK 926  
OF MAPS, AT PAGE 33 THROUGH 36, SANTA CLARA COUNTY RECORDS.

APN: APNS: 230-07-059, 230-07-009, 230-07-010, 230-07-038, 230-07-002, 230-07-  
031, 230-07-034, 230-07-004, 230-07-053, 230-07-029, 230-07-013, PORTION 230-07-  
060 AND PORTION NOT CURRENTLY ASSESSED

## EXHIBIT B

### DESIGNATED THIRTY-SIX (36) AFFORDABLE HOUSING UNITS BY INCOME CATEGORY AND UNIT SIZE

**11 LOW INCOME  
25 MODERATE INCOME**

<u>Income Level</u>	<u>1 Bedroom</u>	<u>2 Bedroom</u>	<u>Number of Units</u>
<b>80% AMI (Low)</b>	<b>6</b>	<b>5</b>	<b>11</b>
<b>120% AMI (Moderate)</b>	<b>14</b>	<b>11</b>	<b>25</b>
<b>Total</b>	<b>20</b>	<b>16</b>	<b>36</b>

<b>Unit type</b>	<b>Address ID</b>	<b>Name</b>	<b>SF</b>	<b>Low/Mod</b>
1br/1ba	129	A2	811	Low
1br/1ba	163	A5	880	Mod
2br/2ba	165	B7.1.2	1259	Low
2br/2ba	169	B7	1298	Mod
2br/2ba	172	B7	1298	Mod
1br/1ba	173	A3	789	Low
1br/1ba	180	A3	789	Low
2br/2ba	107	B12-L1 and L2	1545	Mod
1br/1ba	203	A1.2	907	Mod
1br/1ba	209	A2	811	Mod
2br/2ba	211	B3.1	1291	Mod
2br/2ba	224	B4.2	1110	Mod
2br/2ba	242	B1.1	1323	Mod
2br/2ba	265	B7.1	1194	Low
2br/2ba	269	B7	1298	Mod
1br/1ba	273	A3	789	Low
1br/1ba	278	A2C	895	Mod
2br/2ba	279	B1	1198	Low
1br/1ba	280	A3	789	Mod
1br/1ba	284	A2	811	Mod
1br/1ba	286	A2	811	Mod
1br/1ba	304	A1.2	907	Mod
1br/1ba	306	A1.5	1052	Mod

<b>1br/1ba</b>	<b>308</b>	<b>A2</b>	<b>811</b>	<b>Mod</b>
<b>1br/1ba</b>	<b>310</b>	<b>A1.5</b>	<b>1052</b>	<b>Mod</b>
<b>2br/2ba</b>	<b>314</b>	<b>B3.2</b>	<b>1236</b>	<b>Mod</b>
<b>1br/1ba</b>	<b>354</b>	<b>A3.2</b>	<b>755</b>	<b>Mod</b>
<b>2br/2ba</b>	<b>365</b>	<b>B7.1</b>	<b>1194</b>	<b>Low</b>
<b>2br/2ba</b>	<b>369</b>	<b>B7</b>	<b>1298</b>	<b>Mod</b>
<b>1br/1ba</b>	<b>405</b>	<b>A1.5</b>	<b>1052</b>	<b>Mod</b>
<b>1br/1ba</b>	<b>407</b>	<b>A2</b>	<b>811</b>	<b>Low</b>
<b>2br/2ba</b>	<b>414</b>	<b>B2.1.2</b>	<b>1236</b>	<b>Mod</b>
<b>2br/2ba</b>	<b>465</b>	<b>B7.1</b>	<b>1194</b>	<b>Low</b>
<b>1br/1ba</b>	<b>507</b>	<b>A2</b>	<b>811</b>	<b>Mod</b>
<b>1br/1ba</b>	<b>509</b>	<b>A2</b>	<b>811</b>	<b>Low</b>
<b>2br/2ba</b>	<b>514</b>	<b>B3.2</b>	<b>1236</b>	<b>Mod</b>



## Agenda Report

20-1168

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Note and File Informational Report on a Proposed Shared Mobility Permit Program and Updates to State Law

#### COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development and Enhance Community Engagement and Transparency

#### BACKGROUND

The purpose of this informational report is to provide the City Council with an update on the City's proposed Shared Mobility Permit Program (Program) and to highlight recent changes in state law that will affect the Program in Santa Clara. Shared mobility is a common term used to represent the shared use of a vehicle, motorcycle, scooter, bicycle, or other travel mode. For the purposes of the Program and this report, shared mobility refers to bicycle and scooter share.

In December 2018 and January 2019, the City Council discussed and took action on the operation of shared mobility devices in Santa Clara. The Council approved emergency and regular ordinances, which prohibited the operation of shared mobility programs in Santa Clara from December 20, 2018 to December 19, 2019. The City Council also directed staff to return with a proposed permanent shared mobility program to allow the City to properly regulate the use of these new mobility options within City limits.

Staff developed and implemented a workplan to help establish a Program and provided a detailed progress update at the June 4, 2019 City Council meeting. Based on feedback from that meeting, staff updated the draft Shared Mobility Permit Administrative Regulations (Administrative Regulations) and conducted additional outreach with the public, operators, and other stakeholders. On June 20, 2019, staff posted the updated draft Administrative Regulations to the City's website.

In addition, at the June 24, 2019 Bicycle and Pedestrian Advisory Committee (BPAC) meeting, staff provided the BPAC with an update on the Program and draft Administrative Regulations. After an extensive discussion focused on data-sharing and privacy rights under the Program, the BPAC approved a recommendation that the City Council approve the draft Administrative Regulations with the following two amendments: 1) that the Administrative Regulations provide more clarity regarding which rules apply to bicycles, scooters, or both, and 2) that Operators not be allowed to share user data with third party vendors. Following the June 24, 2019 BPAC meeting, staff was preparing to return to City Council with a final proposed Program and draft Administrative Regulations (Attachment 1) in August 2019.



Temporary Moratorium Extension: In July 2019, staff was informed of Americans with Disabilities Act (ADA) litigation that had the potential to impact the Program and draft Administrative Regulations. Additionally, there were two proposed State Assembly Bills (Assembly Bill 1112 and Assembly Bill 1286) that could affect the Program. Based on this, the City Attorney's Office recommended temporarily pausing the development of the Program to allow the City sufficient time to determine how these new developments would impact the Program.

On November 5, 2019, City Council adopted Ordinance 2010 to extend the City's temporary moratorium on shared mobility programs. The temporary moratorium is set to expire on December 19, 2020. Recent discussions with the City Attorney's Office indicate that potential risk regarding ADA litigation has been addressed and that Assembly Bill 1286 has been approved.

## **DISCUSSION**

On September 18, 2020, Governor Gavin Newsom approved Assembly Bill 1286 (Muratsuchi), Shared mobility devices; agreements (Attachment 2). AB 1286 requires that shared mobility service providers "enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use." AB 1286 also requires the following: 1) providers must maintain a specified amount of commercial general liability insurance and 2) that a city that authorizes a shared mobility device provider to operate within its jurisdiction on or after January 1, 2021, to adopt operation, parking, and maintenance rules, as provided, regarding the use of the shared mobility devices in its jurisdiction before the provider may offer shared mobility devices for rent or use. Effectively, AB 1286 requires that after January 1, 2021, shared mobility service providers in Santa Clara will be required to obtain a permit from the City prior to operation. The permit would be subject to the future rules and regulations adopted by Santa Clara.

As mentioned, the City's current temporary moratorium for operation of a shared mobility program is set to expire on December 19, 2020. Additionally, extension of the moratorium is not permitted beyond two years per California Government Code Section 65858. As AB 1286 effectively prohibits the operation of shared mobility programs until a permit is issued, the Department of Public Works and City Attorney's Office staff concluded that it is not necessary to pursue a permanent moratorium due to the limited number of days between December 19, 2020 and January 1, 2021.

In terms of next steps and based on City Council's previous direction to create a Program, staff will do the following:

1. Evaluate the latest draft of Shared Mobility Permit Administrative Regulations as changes may be needed based on changes to State Law, COVID-19 considerations, and interest by shared mobility program operators.
2. Reach out to potential shared mobility operators and coordinate on any new developments within the shared mobility industry (i.e. COVID considerations, etc.)
3. Continue to monitor and review proposed legislation related to shared mobility programs. Assembly Bill 1112 is currently being modified by the State legislature.
4. Update draft Administrative Regulations, if needed.

Staff anticipates that additional community (i.e. general public) and stakeholder (i.e. businesses, Santa Clara University) outreach may also be necessary. If there are substantial changes to the draft Administrative Regulations from 2019 an additional review by the City's Bicycle and Pedestrian

Advisory Committee may be necessary.

Ultimately, staff plans to return to City Council with a proposed Program and Administrative Regulations for review and consideration.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

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

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

Note and file the Informational Report on a Proposed Shared Mobility Permit Program and Updates to State Law.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Draft Shared Mobility Permit Administrative Regulations
2. Assembly Bill 1286

City of Santa Clara

# Shared Mobility Permit Administrative Regulations

June 20, 2019

## Purpose and Authority

Chapter 10.35 of the Santa Clara Municipal Code sets forth the requirements and procedures for permits issued for the operation of Shared Mobility Devices in the City of Santa Clara. These regulations implement the provisions of Chapter 10.35 and are issued by the City Manager or Designee under the authorization granted by Section 10.35.030 of the Code. These regulations are not intended to be exhaustive and may be amended at any time by the City Manager.

These regulations shall be referred to as the “Shared Mobility Permit Administrative Regulations.”

## Definitions

The definitions set for in Chapter 10.35, and herein, shall govern the application and interpretation of these regulations.

## Permit Requirements

The following requirements will be incorporated into the Terms and Conditions of all Shared Mobility Device permits issued. By submitting an application, Operator agrees to comply with all requirements, unless a specific modification is noted in the application and approved by the City prior to issuance of permit.

## Permit Issuance

1. Permit application period will be from September 1 to first Friday of November each year.
2. Permit will only be valid for a one-year period from January to December
3. Staff will review permit applications and issue permits by the Friday of the first week of December.
4. Permits can be denied, suspended or revoked by the City Manager for failure to meet the permit requirements.

## Shared Mobility Device Requirements

1. All shared mobility devices shall have, and clearly display, a unique, permanent identification number.
2. All shared mobility devices shall be equipped with GPS or means of continuously tracking locations.
3. All shared mobility devices shall clearly display share operator’s business name, customer service phone number, and email address.
4. All shared mobility devices shall comply with California State Law, California Vehicle Code, and industry standards.

5. Each Operator will be required to deploy “Geofencing” or technology capable of preventing the use of shared devices or to limit the maximum speed of devices in designated areas of the city.

## Parking

1. Operators will ensure that users are informed of State Laws and the following parking rules and limitations and ensure that users comply with these limitations.
2. All shared mobility devices shall be upright when parked.
3. All shared mobility devices shall not be parked in such a manner as to block or obstruct:
  - Pedestrian clear-zone area of the sidewalk
  - Any fire hydrant, call box, or other emergency facility
  - Light rail platforms, bus bench, stop, shelter, or passenger waiting area, except at existing bicycle racks or designated parking areas
  - Utility pole or box
  - Disabled parking zones
  - Loading zones
  - Time Limited Parking zones
  - Street furniture that requires pedestrian access (e.g. benches)
  - Areas within 15' of Curb ramps
  - Areas within 10' of entryways, exits, and driveways
  - City's Driveway triangle of safety and intersection visibility areas
  - Vehicular traffic lanes including bicycle lanes and associated buffers
4. When a sidewalk included a “furniture zone”, shared mobility devices shall be parked within the furniture zone. When a sidewalk lacks a “furniture zone”, shared mobility devices must not be parked in a way to deny meaningful access to City sidewalks and paths of travel for persons with disabilities. Towards this end, each Operator must ensure that shared mobility devices are parked so that (a) 48” clear spaces are provided on pedestrian rights-of-way, and (b) curb ramps, entryways, exits, and other accessible paths of travel are never blocked or obstructed. “Furniture zone” shall refer to that section of the sidewalk between the curb and the pedestrian through zone in which street furniture and public amenities, such as lighting, benches, newspaper kiosks, utility poles, tree wells and bicycle racks are provided.
5. Any shared mobility device that is parked incorrectly shall be reparked in a correct manner or shall be removed within two hours after Operator's customer service team receives notice of the report.
6. Operator shall not place or attach any personal property, fixtures or structures to City property without the prior written consent of City.
7. Operator shall coordinate and obtain written approval from the City Manager for all designated parking zones throughout the City.

8. Operator shall not deploy shared mobility devices or install parking on private property without the consent of the property owner.
9. Designated on-street parking zones may be established at selected locations after review and approval by the City Manager.
10. Operator shall obtain an encroachment permit for installation of infrastructure, signing or striping in the public right-of-way.
11. Operator shall be responsible for the cost and maintenance of any infrastructure including construction of new parking areas required for the operation of shared mobility devices.
12. The City Manager reserves the right to designate “priority parking zones” in coordination with private property owners. The purpose of these zones is to encourage parking in designated “shared parking areas” at commercial centers and other locations.
  - Operators shall be required to establish designated shared parking areas and deploy shared mobility devices at the priority parking zones listed below at initial deployment. The City Manager may adjust the locations every six months based on usage data.
  - The type of shared mobility device (bicycles, scooters or both) that can be deployed and parked at these locations will be determined in coordination with property owners.
  - For any priority parking area, all operators that are issued a shared mobility device permit shall be required to deploy shared mobility devices at the same shared parking area for each priority parking zone.
  1. City Place Project (future)
  2. AMC Mercado
  3. Santa Clara Square
  4. Rivermark
  5. Santa Clara Convention Center
  6. Lawrence Station Area
  7. Great America Theme Park
  8. Levi’s Stadium
  9. Central Park Library
  10. City Hall
  11. Great America Train Station
  12. Santa Clara Station
  13. Santa Clara University
  14. Mission College

## **Fleet Management and Balancing**

1. Each Operator must provide a minimum of 60 scooters and/or 60 bicycles whichever is applicable to ensure service availability. The minimum number of shared devices may be amended by the City Manager.

2. Dynamic Capping will be used to consider adjustments to the citywide maximum cap on shared mobility devices. The total size of the citywide device fleet shall not exceed 3,000 devices with up to 1,000 bicycles and 2,000 e-scooters. Following the review of shared mobility permit applications, the number of shared mobility devices will be allocated equally among the Operators based on the number of Operators that are permitted to operate shared mobility devices and the number and mix of shared mobility devices desired for deployment by each permitted Operator.
3. Any improperly parked shared mobility devices that are not removed within 2 hours may be impounded and taken to a City facility for storage at the Operator's expense. Operator shall be required to pay the impounding fee.
4. Operator shall be responsible for retrieving the impounded shared mobility devices from the city facility. Failure to retrieve shared mobility devices from the city facility within two working days of notification of impoundment may lead to permit revocation.
5. Shared mobility devices must be re-parked/re-distributed regularly to ensure daily compliance with the regulations.
6. Operators shall ensure that users do not operate shared mobility devices in public parks. Operators shall use geofencing or equivalent technology to prevent operations in public parks excluding the San Tomas Aquino/Saratoga Creek Trail. A complete list of public parks is available on the City's website at:  
<http://missioncity.maps.arcgis.com/apps/MapTour/index.html?appid=4c84d4f8913541cebd8a8ef3fc31a326&>.

## Customer Service

1. Operator shall maintain a 24-hour customer service telephone number for customers and members of the public to report safety concerns, complaints, or to ask questions. The customer service number shall be clearly displayed on all shared mobility devices in service.
2. Operator shall provide options for customer service inquiries to be submitted via email and text message.
3. Operators shall provide email, text message or phone confirmation of any issues reported to originator if requested.
4. Any shared mobility device that is parked incorrectly (as described in "Parking" section above) shall be reparked in a correct manner or shall be removed within two hours after Operator's customer service team receives notice of the report.
5. Operator shall maintain a multilingual (English, Spanish and Chinese) website, call center and mobile app customer interface that are available 24 hours a day, seven days a week.

## Maintenance

1. Operator must ensure that all shared mobility devices are in good working order, are clean, and are safe to operator for a wide variety of users.

2. Any shared mobility device that is reported by the City or any third party to be damaged, deficient, or otherwise unsafe to operate shall be immediately assessed and/or remotely disabled, as appropriate.
3. Any shared mobility device that is reported to be damaged, deficient, or otherwise unsafe to operate shall be checked in person and removed within two hours after Operator's customer service team receives notification.
4. Operator must maintain a record of all maintenance performed for each shared device and make such record available to the City upon request.

## Education and Outreach

1. Operator agrees to educate users regarding laws applicable to riding, operating and parking a shared mobility devices in the City and State of California, and to require users to acknowledge and comply with all of these applicable laws, including laws relating to helmets, age, parking, driver's license requirements, sidewalk riding, use of bike lanes and streets where scooters can operate with and without bike lanes and rules of the road.
2. Operator shall provide four public outreach/education events annually with the first event prior to deployment of the shared mobility devices.
3. Operator agrees to notify users by means of signage or visible language on shared mobility devices as well as through its website and mobile applications that:
  - 1) All State of California laws shall be obeyed while riding a shared mobility device, including laws related to age, driver's license requirements, and speeds
  - 2) Shared mobility devices may not be used on sidewalks, and generally shall be operated as close as practicable to the right curb of any street except as otherwise specified in state law.

## Data Sharing

1. Operator agrees to provide the City with access to an Application Programming Interface (API) offering data about its fleet and all trip activity within the City, meeting the requirements of the Mobility Data Specification (MDS) format developed by the Los Angeles Department of Transportation.
2. Data shall be made available to the City for the duration of the permit program on a monthly basis
3. Operator agrees to provide City with access to a dashboard providing comprehensive anonymized data about the origins, destinations, distances, and times of all trip activity related to devices deployed in the City, as well as aggregate data and heat maps categorized by vehicle type and allowing analysis by day, week, or month, at no cost to the city.
4. Operator agrees to make real-time open data on system status and usage available in General Bike Share Feed Specification (GBFS) format.
5. Data required beyond the GBFS and MDS specifications are:



- 1) Operator agrees to maintain timestamped records of maintenance activities including device ID and maintenance performed. Operator agrees to provide these records within seven business days upon request.
- 2) Operator agrees to maintain timestamped records of customer service inquiry including nature of issue, time reported, and time resolved. Operator agrees to provide these records on a monthly basis.
- 3) Operator agrees to provide collision data received from users.
- 4) Operator agrees to provide data related to age of members, number of members by resident, surrounding area resident or visitor.
- 5) Operators shall survey users every 6 months subsequently to provide information to the City for future planning, including asking questions about what mode of transportation was replaced for the use of a shared mobility device. Survey questions shall be consistent among Operators and determined in coordination with the City Manager.
- 6) If requested by the City, operator shall provide a dedicated City portal and/or dashboard for the City to view shared mobility device data.

## Membership and enrollment

1. Operator agrees to comply with all relevant state and local regulations regarding age limits for use of shared mobility devices.
2. Operator agrees to conduct outreach and to implement technology-based measures to verify ages of members during enrollment via mobile app and/or website.

## Levi's Stadium and Special Events

1. The maximum caps for shared mobility devices shall not apply on Levi's Stadium and other large Special event days at the Great America Theme Park. The City Manager may adopt a maximum cap for event days after review of shared mobility device data.
2. Operators shall comply with current and future requirements of the Levi's stadium Transportation Management and Operations Plan (TMOP).
3. Operators shall provide sufficient on-site, event day staff to support the City and the Stadium Manager with shared device operations on Levi's Stadium event days.
4. Operators shall actively monitor the locations of deployed devices including incorrectly parked devices on stadium event days.
5. Operators shall provide shared parking areas at the Silicon Valley Bicycle Coalition Valet Parking areas in the main parking lot east of Levi's Stadium and south of Tasman Drive. A path shall be provided to these designated parking areas through the parking lot. The rest of the parking lot shall be geofenced to prevent shared mobility device operations. Speed will be geofenced to 5 mph during ingress and egress from the designated shared parking areas.
6. Operators shall rebalance the shared mobility devices deployed in the area during

Levi's stadium event ingress to two designated parking locations (see attached map for Stadium Event egress parking locations) for egress.

7. Operators shall provide designated parking areas in the vicinity of the following intersections during egress

- Northeast corner of Great America Parkway and Old Glory Lane
- Tasman Drive and Lick Mill Boulevard

The City Manager may change these locations after review of shared mobility device data.

8. Geofencing shall be deployed to ensure that users are not able to ride the shared devices in any of the parking lots identified within the TMOP. Speed geofencing to reduce speeds to 5 mph will be deployed in the main parking lot for ingress and egress from shared parking areas
9. Operators shall respond to requests to pick up and rebalance incorrectly parked scooters within 15 minutes on Levi's Stadium event days within the "Stadium area". The Stadium area is defined as the area extending from SR 237 to the north, US 101 to the south, Calabazas Creek to the west and Guadalupe Creek to the east.

## Performance Bond

1. Operator shall maintain in effect at all times a valid performance bond in the amount of \$20,000 during the term of the annual permit starting with permit issuance.
2. The performance bond may be used for any future public property repair and maintenance costs that may be incurred as a result of operator's devices, as well as removal and storage of devices that are not addressed within specified timeframes. The performance bond may be used to cover staff time associated with performing or facilitating these activities.
3. The performance bond may be used for any unpaid fines for violations issued to the Operator.
4. The performance bond may be used for any future costs incurred by the City related to the Shared Mobility permits.

## Enforcement

Enforcement is designed to promote and achieve compliance with local law and the program guidelines. The Operators shall be required to pay fines per the schedule below related to improperly parked devices and failure to comply with the regulations.

1. Any improperly parked devices that are not removed or remedied within two (2) hours may be impounded and taken to a City facility for storage at the Operator's expense. The Operator shall be required to pay the impounding fee.
2. In addition to the impounding fee, the Operator shall be fined as follows for failure to remove the devices within two (2) hours:

- \$100 for the first violation
  - \$200 for the second violation
  - \$500 for third and subsequent violations
3. Operator shall be responsible for retrieving the impounded devices from the city facility. Failure to retrieve shared mobility devices from the city facility within two (2) working days of notification of impoundment may lead to permit revocation.

### **Denial, Suspension, or Revocation of Operating Permit**

An Operator's permit may be denied, suspended or revoked at the discretion of the City Manager based on any of the following grounds:

1. If the number of parking violations exceeds 20 during any two-month period.
2. If the number of parking violations exceeds 60 during the annual permit period.
3. Failure to retrieve shared mobility devices from the city facility within two working days of notification of impoundment may lead to permit revocation.
4. If an Operator's permit is suspended or revoked during the annual permit period, the Operator shall be required to remove all devices deployed in the City at the Operator's cost. If Operator does not remove the device within two working days of notification of permit suspension or revocation, the City shall have the authority to remove the shared mobility devices at Operator's cost and use the Performance Bond to cover the cost of removal of the Operator's devices.
5. If an Operator's permit is suspended, the minimum permit suspension period will be two weeks. The Operator shall be required to provide a plan for corrective actions to demonstrate ability to comply with the regulations for resumption of the Operating permit. Any time spent by City staff on meeting with Operators to facilitate permit resumption will be reimbursed by the Operator on a time and materials basis.
6. An applicant or Operator including its employees, managers, officers, principals, directors, owners, contractors, representatives, or agents has:
  - One or more false or misleading statements or material omissions on the permit application, during the application process.
  - Failed to provide information requested or required by the City
  - Operated or has proposed to operate in a manner that endangers public health or safety.
  - Failed to comply with any requirement imposed by the provisions of this Code including any rule, regulation, conditions or standard adopted pursuant to the Ordinance, or any term or condition imposed on the permit for the operation of shared mobility devices, or any provision of California law.
  - Conviction of the Operator, to include any of its officer, owners or principals, of a criminal offence that is substantially related to the qualifications, functions or duties of the shared business or profession, including, but not limited to, any criminal conviction involving a violent or serious felony, fraud, deceit, or embezzlement.

## Permit Costs

The applicant must pay the “Shared Mobility Device Permit Application Fee” in the amount of \$2,000 to the City of Santa Clara. The fee is non-refundable. This fee must be received before the City reviews the application. Once the City approves the permit application the applicant must pay an “Annual Permit Fee” of \$20,000 prior to receiving the permit. In addition, the applicant must pay a fee of \$59 per shared mobility device deployed within the City. The first 60 shared mobility devices deployed per Operator will not be subject to the per shared mobility device fee.

## Permit Application Contents

1. A description of the proposed plan of operation, including, at a minimum the applicant’s plan to comply with the Administrative Regulations including Shared Mobility Device requirements, parking, designated parking locations, fleet management and balancing, customer service, maintenance, education and outreach, data sharing, Levi’s Stadium and other special events;
2. Description of the number and mix of shared mobility device that will be deployed: e-scooters, bicycles, e-bicycles;
3. A map of the proposed deployment area and parking locations.
4. The applicant’s proposed operations in other jurisdictions;
5. The applicant’s regulatory compliance program;
6. The applicant’s history of and ability to comply with state and local law;
7. Any other requirements set forth by the Administrative Regulations.

## Insurance and Indemnification

Separate attachments for insurance and indemnification.

## Assembly Bill No. 1286

### CHAPTER 91

An act to add Title 10.1 (commencing with Section 2505) to Part 4 of Division 3 of the Civil Code, relating to mobility devices.

[Approved by Governor September 18, 2020. Filed with  
Secretary of State September 18, 2020.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1286, Muratsuchi. Shared mobility devices: agreements.

Existing law regulates contracts for particular transactions, including those in which one person agrees to give to another person the temporary possession and use of personal property, other than money for reward, and the latter agrees to return the property to the former at a future time.

This bill would require a shared mobility service provider, as defined, to enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use. The bill would require that the provider maintain a specified amount of commercial general liability insurance in a user agreement before distributing a shared mobility device within that jurisdiction. The bill would define shared mobility device to mean an electrically motorized board, motorized scooter, electric bicycle, bicycle, or other similar personal transportation device, except as provided.

This bill would require a city or county that authorizes a shared mobility device provider to operate within its jurisdiction on or after January 1, 2021, to adopt operation, parking, and maintenance rules, as provided, regarding the use of the shared mobility devices in its jurisdiction before the provider may offer shared mobility devices for rent or use. The bill would require a city or county that authorized a provider to operate within its jurisdiction before January 1, 2021, and continues to provide that authorization to adopt operation, parking, and maintenance rules, as provided, by January 1, 2022.

*The people of the State of California do enact as follows:*

SECTION 1. Title 10.1 (commencing with Section 2505) is added to Part 4 of Division 3 of the Civil Code, to read:

#### TITLE 10.1. SHARED MOBILITY DEVICES

2505. (a) For purposes of this title:

(1) "Shared mobility device" means an electrically motorized board as defined in Section 313.5 of the Vehicle Code, motorized scooter as defined in Section 407.5 of the Vehicle Code, electric bicycle as defined in Section

312.5 of the Vehicle Code, bicycle as defined in Section 231 of the Vehicle Code, or other similar personal transportation device, except as provided in subdivision (b) of Section 415 of the Vehicle Code, that is made available to the public by a shared mobility service provider for shared use and transportation in exchange for financial compensation via a digital application or other electronic or digital platform.

(2) “Shared mobility service provider” or “provider” means a person or entity that offers, makes available, or provides a shared mobility device in exchange for financial compensation or membership via a digital application or other electronic or digital platform.

(b) Before distribution of a shared mobility device, a shared mobility service provider shall enter into an agreement with, or obtain a permit from, the city or county with jurisdiction over the area of use. The agreement or permit shall, at a minimum, require that the shared mobility service provider maintain commercial general liability insurance coverage with a carrier doing business in California, with limits not less than one million dollars (\$1,000,000) for each occurrence for bodily injury or property damage, including contractual liability, personal injury, and product liability and completed operations, and not less than five million dollars (\$5,000,000) aggregate for all occurrences during the policy period. The insurance shall not exclude coverage for injuries or damages caused by the shared mobility service provider to the shared mobility device user.

(c) (1) A city or county that authorizes a provider to operate within its jurisdiction on or after January 1, 2021, shall adopt rules for the operation, parking, and maintenance of shared mobility devices before a provider may offer any shared mobility device for rent or use in the city or county by any of the following:

- (A) Ordinance.
- (B) Agreement.
- (C) Permit terms.

(2) A city or county that authorized a provider to operate within its jurisdiction before January 1, 2021, and continues to provide that authorization shall adopt rules for the operation, parking, and maintenance of shared mobility devices by January 1, 2022, by any of the following:

- (A) Ordinance.
- (B) Agreement.
- (C) Permit terms.

(3) A provider shall comply with all applicable rules, agreements, and permit terms established pursuant to this subdivision.

(d) Nothing in this section shall prohibit a city or county from adopting any ordinance or regulation that is not inconsistent with this title.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.



## Agenda Report

20-1195

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on Approval of a Tentative Parcel Map for 5407 and 5409 Stevens Creek Boulevard  
(Continued from November 10, 2020 Council Meeting)

#### COUNCIL PILLAR

Promote and Enhance Economic and Housing Development

#### BACKGROUND

The applicant is requesting approval of a Tentative Parcel Map (PLN2020-14419) to subdivide an existing 5.07-acre property into two parcels located at 5407 and 5409 Stevens Creek Boulevard. This application follows a prior Tentative Parcel Map approval that has expired. Per the City Code, consideration and action on a Tentative Parcel Map is a function of the City Council. A Planning Commission recommendation is not required for minor subdivisions of four lots or less.

A General Plan Amendment and rezone for the project site were approved in 2012 (PLN2011-08988) to change the land use designation from Regional Commercial to High Intensity Office/Research and Development and zoning from Thoroughfare Commercial (CT) to Planned Development (PD) to allow the phased development of a 295,500 square foot office campus consisting of two six-story buildings; above and below grade parking structures with a total of 1,118 parking spaces; and on-site and public right-of-way improvements. Phase 1 construction of a five-level parking structure and six-story 187,500 square foot office building over a subgrade parking garage was completed in 2014 and subsequently occupied by Apple Corporation. Phase 2 construction was initiated in 2019 and is currently underway with the construction of the 108,000 square foot, six-story office building over subgrade parking and on- and off-site public and private improvements. Upon completion, Apple will also occupy Phase 2.

The original Tentative Parcel Map application was approved in March 2016 (PLN2015-1148) to allow a two-lot subdivision of the property. Due to the absence of Final Map approval and recordation, the entitlement for the Tentative Parcel Map expired in March 2018. In February 2020 a Zoning Administrator Modification (PLN2020-14329) was approved for a reduction in the on-site parking requirement from 1,118 to 973 parking spaces to allow for reconfiguration of the parking garage for security and installation of EV charging stations.

The proposed Tentative Parcel Map, filed in May 2020, will create two separate parcels comprised of Parcel 1 at 3.12 acres and Parcel 2 at 1.95 acres. Parcel 1 is to include the Phase 1 office building over subgrade parking and five-level parking structure at 5409 Stevens Creek Boulevard. Parcel 2 includes the Phase 2 office building over subgrade parking and the surface parking lot at 5407 Stevens Creek Boulevard.



**DISCUSSION**

Tentative Parcel Map applications are reviewed for General Plan and Zoning Code consistency and conformance with the Subdivision Map Act. The proposed Tentative Parcel Map was reviewed by the City's Subdivision Clearance Committee and determined to be complete for review by Council in accordance with Section 17.05.220 of the City Code on July 21, 2020. Staff has confirmed that the proposed subdivision will not result in any inconsistencies with the General Plan and zoning designations for the property, Building Code, or other applicable requirements. Conditions of Approval have been prepared and are provided as Attachment 2. The proposed conditions include a requirement for recordation of Covenants, Conditions and Restrictions (CC&R's) or an equivalent instrument governing the shared use and maintenance of utilities, parking spaces (surface and garage), drive aisles, pedestrian walkways, trash, landscaping, and other related facilities.

The proposed Tentative Parcel Map would subdivide the existing parcel into two separate parcels. The office development has been designed to facilitate the proposed subdivision in that each site has separate utility service and recorded easements will provide for water, electric, storm drain, sanitary sewer, shared access to Stevens Creek Boulevard, shared parking, site circulation and ingress/egress for each building through the project conditions of approval and recordation of the map.

The proposed map facilitates land use activity consistent with the High Intensity Office/ Research and Development General Plan designation and PD zoning entitlements allowing office development on the project site. Approval of the Tentative Parcel Map would allow the property owner flexibility in financing and/or leasing of both properties individually, thereby supporting their long-term use consistent with the City's General Plan.

**ENVIRONMENTAL REVIEW**

The project is Categorically exempt per Section 15315, Minor Land Divisions of the California Environmental Quality Act, in that the project involves the subdivision of urbanized land into fewer than five parcels and is served by existing public infrastructure and facilities.

**FISCAL IMPACT**

There is no cost to the City other than administrative staff time and expense for the processing of this application typically covered by processing fees paid by the applicant.

**COORDINATION**

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

**PUBLIC CONTACT**

On October 28, 2020, a notice of public hearing was published in *The Weekly*, a newspaper of general circulation, and on October 29, 2020 notice of this item was posted in three conspicuous locations within 300 feet of the project site and mailed to property owners within 500 feet of the project site. At the time of this report, Planning staff has not received public comments regarding the proposed project.

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website



and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> .

### **ALTERNATIVES**

1. Adopt a resolution to approve the Tentative Parcel Map to subdivide the existing parcel into two lots at the property located at 5407 and 5409 Stevens Creek Boulevard.
2. Deny the application for a Tentative Parcel Map to subdivide the existing parcel into two lots at the property located at 5407 and 5409 Stevens Creek Boulevard.

### **RECOMMENDATION**

Alternative 1:

Adopt a resolution to approve the Tentative Parcel Map to subdivide the existing parcel into two lots at the property located at 5407 and 5409 Stevens Creek Boulevard.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Resolution Approving the Tentative Parcel Map
2. Conditions of Tentative Parcel Map Approval
3. Tentative Parcel Map

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
TO APPROVE A TENTATIVE PARCEL MAP FOR THE  
PROPERTY LOCATED AT 5407 AND 5409 STEVENS CREEK  
BOULEVARD, SANTA CLARA, CALIFORNIA**

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

**WHEREAS**, on May 27, 2020, James Howard with Vance Brown Builders (“Applicant”) made an application for a Tentative Parcel Map on behalf of Peery-Arrillaga (“Property Owner”) to subdivide an existing 5.07 acre parcel (APN: 316-19-031), into two parcels located at 5407 and 5409 Stevens Creek Boulevard in the City of Santa Clara (“Project Site”);

**WHEREAS**, the General Plan land use designation for the Project Site is High Intensity Office/Research and Development (R&D) and the zoning designation is Planned Development (PD) which allows for phased development of a 295,000 square foot office campus on the Project Site consisting of two six-story office buildings, above and below grade parking structures with a total of 973 parking spaces, and on-site and public right-of-way improvement;

**WHEREAS**, Phase 1 construction is completed and consists of a five-level parking structure and six-story 187,500 square foot office building over a subgrade parking garage and Phase 2 construction is currently underway with construction of a six-story 108,000 square foot office building over a subgrade parking garage and on- and off-site improvements;

**WHEREAS**, consistent with the General Plan and zoning designation for the Project Site, the proposal involves the subdivision of the Project Site into two parcels as shown on Exhibit “Tentative Parcel Map”, attached hereto and incorporated herein by this reference;

**WHEREAS**, pursuant to Section 17.05.220 of the Code of the City of Santa Clara (“SCCC”), a Tentative Parcel Map shall be required for all divisions of land into four or fewer parcels;

**WHEREAS**, on July 21, 2020, the Subdivision Committee determined that the application was complete and directed that the parcel map be reviewed by the City Council in conformance with

Section 17.05.400 of the SCCC as a Tentative Parcel Map, subdividing the existing 5.07 acre parcel into two parcels;

**WHEREAS**, SCCC Section 17.05.110(h) requires that the Subdivision Committee makes recommendations of denial, approval or conditional approval to the City Council on the Tentative Parcel Map;

**WHEREAS**, on July 21, 2020, the Subdivision Committee recommended that the City Council approve the Tentative Parcel Map, subject to conditions;

**WHEREAS**, the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*, requires a public agency to evaluate the environmental impacts of a proposed project. CEQA contains a list of categorical exemptions for projects that are not required to undergo environmental evaluation. The Project is categorically exempt from CEQA per Guidelines Section 15315, in that the Project involves subdivision of the existing parcel into two separate parcels in a manner that is consistent with the General Plan High Intensity Office/R&D designation and PD zoning designation for the Project Site, in an urbanized area, all services and access to the proposed parcels to City standards are available, the Project Site was not involved in the division of a larger parcel, within the previous two years, the parcel does not have a slope greater than 20 percent, and no issuance of a variance or exception is necessary;

**WHEREAS**, Section 17.05.400 (d) of the SCCC requires that the City Council hold a public hearing before considering the approval of a Tentative Parcel Map for the division of land;

**WHEREAS**, Section 17.05.400(d) of the SCCC further requires that notice of the public hearing before the City Council be given by publishing notice in a newspaper of general circulation, by providing notice to all property owners within three hundred (300) feet of the proposed Tentative Parcel Map area by mail, by providing mailed notice to each local agency expected to provide essential facilities to the project, and by posting a notice of public hearing in at least three places within the vicinity of the project site;

**WHEREAS**, notice of the public hearing on the proposed Tentative Parcel Map was published in the *Weekly*, a newspaper of general circulation for the City, on October 28, 2020;

**WHEREAS**, on October 29, 2020, the City posted notice of the public hearing at three conspicuous locations within three hundred (300) feet of the Project Site;

**WHEREAS**, on October 29, 2020, the City mailed notice of the public hearing to the Santa Clara Valley Water District, which will supply water to the site;

**WHEREAS**, on October 29, 2020, notices of the public hearing on the Tentative Parcel Map were mailed to all property owners within 500 feet of the Project Site, according to the most recent assessor's roll; and,

**WHEREAS**, on November 10, 2020, the City Council reviewed the Tentative Parcel Map and conducted a public hearing, at which time all interested persons were given an opportunity to provide testimony and the City Council considered all verbal and written evidence.

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. Tentative Map Findings. Pursuant to California Government Code Sections 66426 and 66428 and SCCC Section 17.05.400(e), and (f), City Council finds and determines that:

A. The proposed subdivision is substantially consistent with the objectives, policies, general land use and programs specified in the City's General Plan. The existing 5.07 acre parcel (APN: 316-19-031) will be reconfigured to create two parcels, one at 3.12 acres and one at 1.95 acres, located in Santa Clara. Both parcels will continue to maintain the General Plan High Intensity Office/R&D designation and the PD zoning designation. The subdivision facilitates development of the site in a manner consistent with the General Plan and Zoning of the City of Santa Clara.

B. The design and improvements of the proposed subdivision are substantially consistent with the City's General Plan in that the Tentative Parcel Map facilitates development in accordance with the approved entitlements for the Project Site and is subject to conditions set forth in the Conditions of Approval, attached hereto and incorporated by this reference.

C. The site is physically suitable for the proposed type of development, in that the Project Site is served by existing municipal facilities; and water, sanitary sewer, storm drain, electric and vehicle ingress/egress easements are retained for service of the Project Site, as specified in the Conditions of Approval, attached hereto and incorporated herein by this reference.

D. The site is physically suitable for the planned intensity of development, in that the site is located in an urbanized area served by existing public infrastructure and facilities.

E. The design of the subdivision and type of improvements are not likely to cause serious public health problems, in that the site is surrounded by urban uses; is currently developed and has no value as habitat for endangered, rare or threatened species; would not result in significant related traffic, noise, air quality, or water quality impacts; and is adequately served by all required utilities and public services..

F. The design of the subdivision and type of improvements are not likely to cause substantial environmental damage and will not substantially or unavoidably injure fish or wildlife or their habitat, in that the Project is located in an urbanized setting on a developed site.

G. The design of the subdivision and type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision, in that the Project is designed to avoid encroachments and conflicts with public easements.

H. The Tentative Subdivision Map provides, to the extent feasible, for future or natural heating or cooling opportunities, in that the approved PD zoning for the Project Site allows for flexibility in the development standards to maximize the benefits of green building standards for site and building design.

3. Based on the findings set forth in this Resolution and the evidence in the Staff Report and such other evidence as received at the public hearings on this matter before the City Council, the City Council hereby approves the Tentative Parcel Map, substantially in the form on file as shown in Exhibit "Tentative Parcel Map", subject to the conditions of approval, attached as Exhibit "Conditions of Tentative Parcel Map Approval".

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_\_ 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. Conditions of Tentative Parcel Map Approval
2. Tentative Parcel Map

## **CONDITIONS OF TENTATIVE PARCEL MAP APPROVAL**

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

### **CONDITIONS OF APPROVAL**

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

#### **GENERAL**

- G1. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.
- G2. Comply with all applicable codes, regulations, ordinances and resolutions.

#### **ATTORNEY'S OFFICE**

- A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

#### **COMMUNITY DEVELOPMENT**

##### **PLANNING**

- C1. The project shall comply with Conditions of Approval for the 5403/5405 Stevens Creek Boulevard Office Project (PLN2011-08988) and EIR/Mitigation Monitoring and Reporting Program (CEQ2011-01130).
- C2. Developer shall submit to the City Covenants, Conditions and Restrictions (CC&Rs) or equivalent prior to issuance of building permits. Said document shall be recorded along with the Title for each property with the Santa Clara County Recorder's Office.

##### **BUILDING**

- C3. Prior to overall construction permit application, submit to the Santa Clara Building Division, 2 copies of an addressing diagram request, to be prepared by a licensed architect or engineer. The addressing diagram(s) shall include all proposed streets and all building floor plans. The addressing diagram(s) shall conform to Santa Clara City Manager Directive #5; Street Name and Building Number Changes, and Santa Clara Building Division Address Policy For Residential and Commercial Developments. The addressing diagram(s) shall indicate all unit numbers to be based off established streets, not alleys nor access-ways to garages. Allow a minimum of 10 working days for initial staff review. Please note city staff policy that existing site addresses typically are retired. Provide digital pdf printed from design software, not scanned from printed paper sheet
- C4. The construction permit application drawings submitted to the Santa Clara Building Division shall include a copy of the latest Federal Emergency Management Agency (FEMA) Flood Zone Map: <https://msc.fema.gov/portal/home>. The project drawings shall indicate how the project complies with the Santa Clara Flood Damage Prevention Code.
- C5. The construction permit application drawings submitted to the Santa Clara Building Division shall include Santa Clara Valley Urban Runoff Pollution Prevention Program Low Impact Development (LID) practices [http://www.scvurppp-w2k.com/nd\\_wp.shtml](http://www.scvurppp-w2k.com/nd_wp.shtml). All projects that disturb more than one acre, or projects that are part of a larger

development that in total disturbs more than one acre, shall comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program Best Management Practices (BMP): [http://www.scvurppp-w2k.com/construction\\_bmp.shtml](http://www.scvurppp-w2k.com/construction_bmp.shtml), and shall provide a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer (QSD). All site drainage and grading permit applications submitted to the Santa Clara Building Division shall include a city of Santa Clara "C3" data form, available on this web page: <https://www.santaclaraca.gov/our-city/departments-g-z/public-works/environmental-programs/stormwater-pollution-prevention> and will be routed to a contract consultant for review.

- C6. Informational: no California construction code review is being done at this time. The construction permit application drawings submitted to the Santa Clara Building Division shall include an overall California Building Code analysis, including; proposed use and occupancy of all spaces (19' CBC Ch. 3), all building heights and areas (19' CBC Ch. 5), all proposed types of construction (19' CBC Ch. 6), all proposed fire and smoke protection features, including all types of all fire rated penetrations proposed (19' CBC Ch. 7), all proposed interior finishes fire resistance (19' CBC Ch. 8), all fire protection systems proposed (19' CBC Ch. 9), and all means of egress proposed (19' CBC Ch. 10). Noncombustible exterior wall, floor, and roof finishes are strongly encouraged. During construction retaining a single company to install all fire rated penetrations is highly recommended.
- C7. The overall project construction permit application shall include the geotechnical, architectural, structural, energy, electrical, mechanical, and plumbing drawings and calculations. Prior to the issuance of the overall project construction permit, a conditions of approval review meeting must be held in city hall, which meeting must be attended by the on-site field superintendent(s). The meeting will not be held without the attendance of the on-site field superintendent(s). The on-site grading permit shall be a separate permit application to the Building Division.
- C8. The construction permit application drawings submitted to the Santa Clara Building Division shall include all accessibility requirements of the 19' CBC Ch. 11 as applicable.
- C9. The construction permit application drawings submitted to the Santa Clara Building Division shall include checklist(s) indicating compliance with the applicable Mandatory Measures of the 19' Cal. Green Building Standards Code (CGBSC). Provide Construction Waste Management (CWM) Plan per the 19' CGBSC guides on pp 59-63 of the CGBSC. Provide a Phase 1 and/ or Phase 2 Hazardous Materials site assessment, as applicable. Note: The Santa Clara Public Works Department Environmental Programs Division will require compliance with the Santa Clara Construction & Demolition Debris Recycling Program: <http://santaclaraca.gov/government/departments/public-works/environmental-programs/commercial-garbage-recycling/construction-demolition-debris-recycling-program>. Note: the Environmental Programs Division may require development projects to register with the Green Halo online waste tracking system: <https://www.greenhalosystems.com>.
- C10. Note: Temporary Certificates of Occupancy will not be routinely issued, and will be considered on a very limited basis only when there is a clear and compelling reason for city staff to consider a TCO. A TCO will be approved only after all applicable City staff have approved in writing; Planning, P.W./ Engineering, Fire Prev., Santa Clara Water, Silicon Valley Power, and any other applicable agencies such as the Santa Clara County Health Dept., with the Building Division being the final approval of all TCO.'s.



## **ENGINEERING**

- E1. Obtain site clearance through Public Works Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Public Works Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a Single Encroachment Permit issued by the City Public Works Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.
- E3. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.
- E4. Dedicate, as required, on-site easements for new public utilities and/or sidewalk, and emergency vehicle access by means of a Subdivision Map or approved instrument at time of development.
- E5. Obtain Council approval of a resolution ordering vacation of existing public easement(s) proposed to be abandoned (traffic detector easement, etc.) through Public Works Department, and pay all appropriate fees, prior to issuance of a building permit.
- E6. After City Council approval of the Tentative Map, submit 10 copies of the Subdivision Map, prepared by a Licensed Land Surveyor or a Registered Civil Engineer with Land Surveyor privileges to the Public Works Department. The submittal shall include a title report, closure calculations, and all appropriate fees.
- E7. File and record Subdivision Map to create parcels and pay all appropriate fee(s) prior to issuance of a building permit.
- E8. Submit payment for Public Works Project Clearance Committee review.

## **ELECTRICAL**

- EL1. No electric cross parcel distribution is allowed.

## **STREETS**

- ST1. The parcel located at 5407 Stevens Creek Blvd (former address: 5405 Stevens Creek Blvd). currently has two stormwater treatment facilities (BLD2015-39041). A condition of the parcel subdivision is the execution of an Operations & Maintenance agreement between the property owner and the City of Santa Clara with amended map and stormwater management plan as exhibits to the agreement. Contact Environmental Service Program at (408) 615-3080 or [environment@santaclaraca.gov](mailto:environment@santaclaraca.gov) for additional information.

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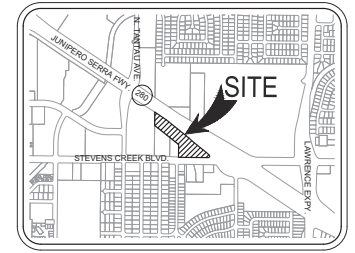


#### LEGEND

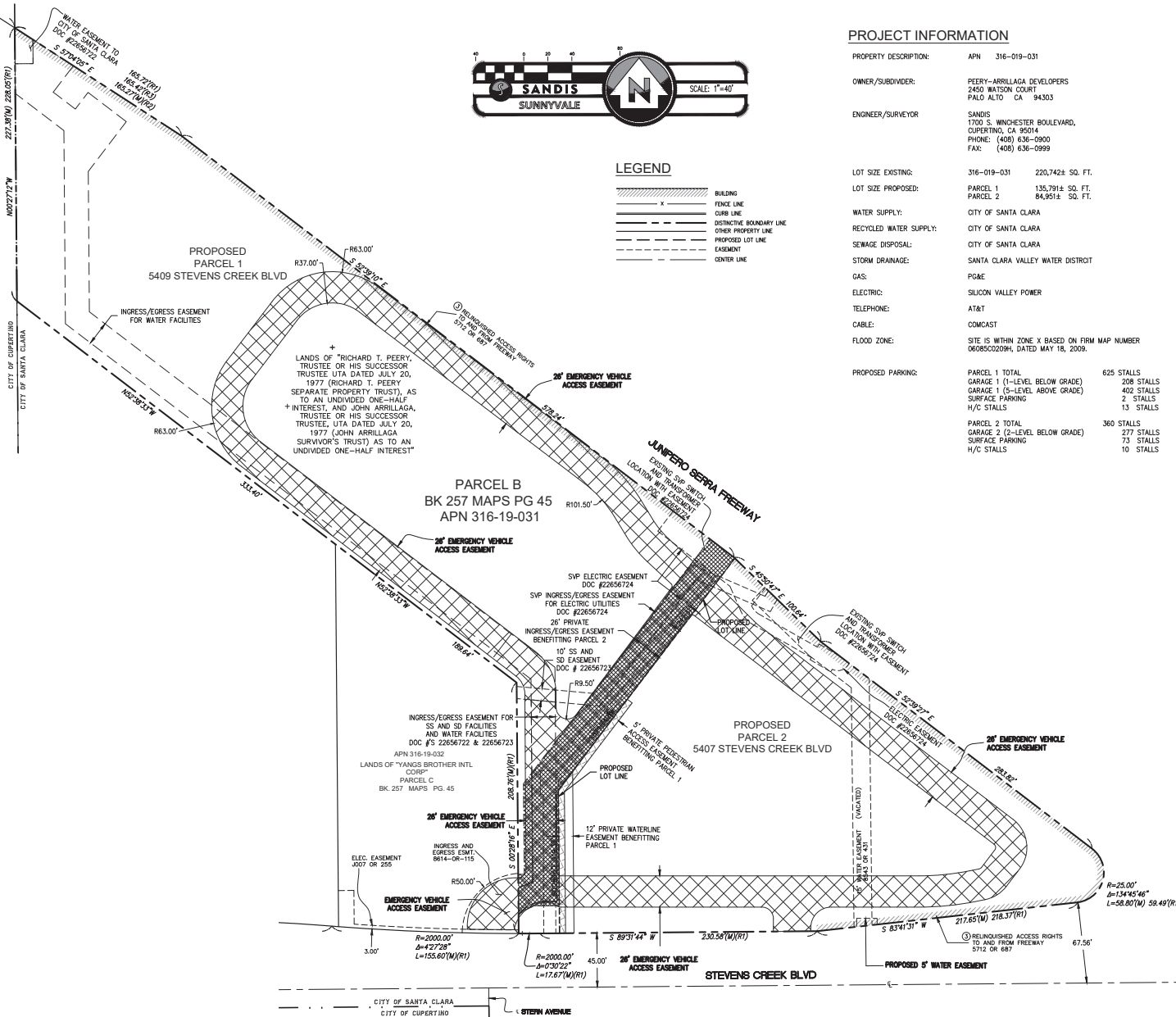
	BUILDING
	FENCE LINE
	CURB LINE
	DISTINCTIVE BOUNDARY LINE
	OTHER PROPERTY LINE
	PROPOSED LOT LINE
	EASEMENT
	CENTER LINE

#### PROJECT INFORMATION

PROPERTY DESCRIPTION:	APN 316-019-031
OWNER/SUBDIVIDER:	PEERY-ARRILLAGA DEVELOPERS 2450 WATSON COURT PALO ALTO CA 94303
ENGINEER/SURVEYOR:	SANDIS 1700 S. WINCHESTER BOULEVARD, CUPERTINO, CA 95014 PHONE: (408) 436-0900 FAX: (408) 436-0999
LOT SIZE EXISTING:	316-019-031 220,742± SQ. FT.
LOT SIZE PROPOSED:	PARCEL 1 135,791± SQ. FT. PARCEL 2 84,951± SQ. FT.
WATER SUPPLY:	CITY OF SANTA CLARA
RECYCLED WATER SUPPLY:	CITY OF SANTA CLARA
SEWAGE DISPOSAL:	CITY OF SANTA CLARA
STORM DRAINAGE:	SANTA CLARA VALLEY WATER DISTRICT
GAS:	PG&E
ELECTRIC:	SILICON VALLEY POWER
TELEPHONE:	AT&T
CABLE:	COMCAST
FLOOD ZONE:	SITE IS WITHIN ZONE X BASED ON FIRM MAP NUMBER 06085C0209H, DATED MAY 18, 2009.
PROPOSED PARKING:	PARCEL 1 TOTAL 625 STALLS GARAGE 1 (1-LEVEL BELOW GRADE) 208 STALLS GARAGE 1 (5-LEVEL ABOVE GRADE) 402 STALLS SURFACE PARKING 2 STALLS H/C STALLS 13 STALLS PARCEL 2 TOTAL 360 STALLS GARAGE 2 (2-LEVEL BELOW GRADE) 277 STALLS SURFACE PARKING 73 STALLS H/C STALLS 10 STALLS



VICINITY MAP  
N.T.S.



#### EASEMENTS

1. HATCHED EASEMENTS TO BE CREATED ON PARCEL MAP
2. NON-HATCHED EASEMENTS ARE EXISTING RECORDED EASEMENT.

#### BENCHMARK

NAME: BM #M127: A CITY OF CUPERTINO BENCHMARK  
DATE: 10/02/09  
ELEVATION: 179.09'  
DESCRIPTION: THE LETTER "C" IN THE WORD "CAL" ON TOP OF CATCH BASIN LOCATED AT THE MIDDLE OF THE RETURN AT THE SOUTHWEST CORNER OF STEVENS CREEK BLVD. & N. TANTAU AVE. WAS USED AS THE BASIS OF THE BEARINGS SHOWN ON THIS SURVEY.

#### BASIS OF BEARINGS

THE BEARING NORTH 89°31'44" EAST FOR THE CENTERLINE OF STEVENS CREEK BLVD. AS SHOWN ON THAT MAP RECORDED IN BOOK 257 OF MAPS AT PAGE 45, SANTA CLARA COUNTY RECORDS, WAS USED AS THE BASIS OF THE BEARINGS SHOWN ON THIS SURVEY.

#### REFERENCES

- (1) - PARCEL MAP, BK 257 OF MAPS PG 45
- (2) - PARCEL MAP, BK 559 OF MAPS PG 4
- (3) - STATE OF CALIFORNIA RIGHT OF WAY MAP R-153.19



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DATE: 07/01/20  
SCALE: 1"=40'  
DRAWN BY: DB  
APPROVED BY: ND  
DRAWING NO: 215006

No.	REVISION/ISSUE	DATE	BY
1	TENTATIVE MAP SUBMITTAL	05/19/20	
2	TENTATIVE MAP RESUBMITTAL	07/01/20	

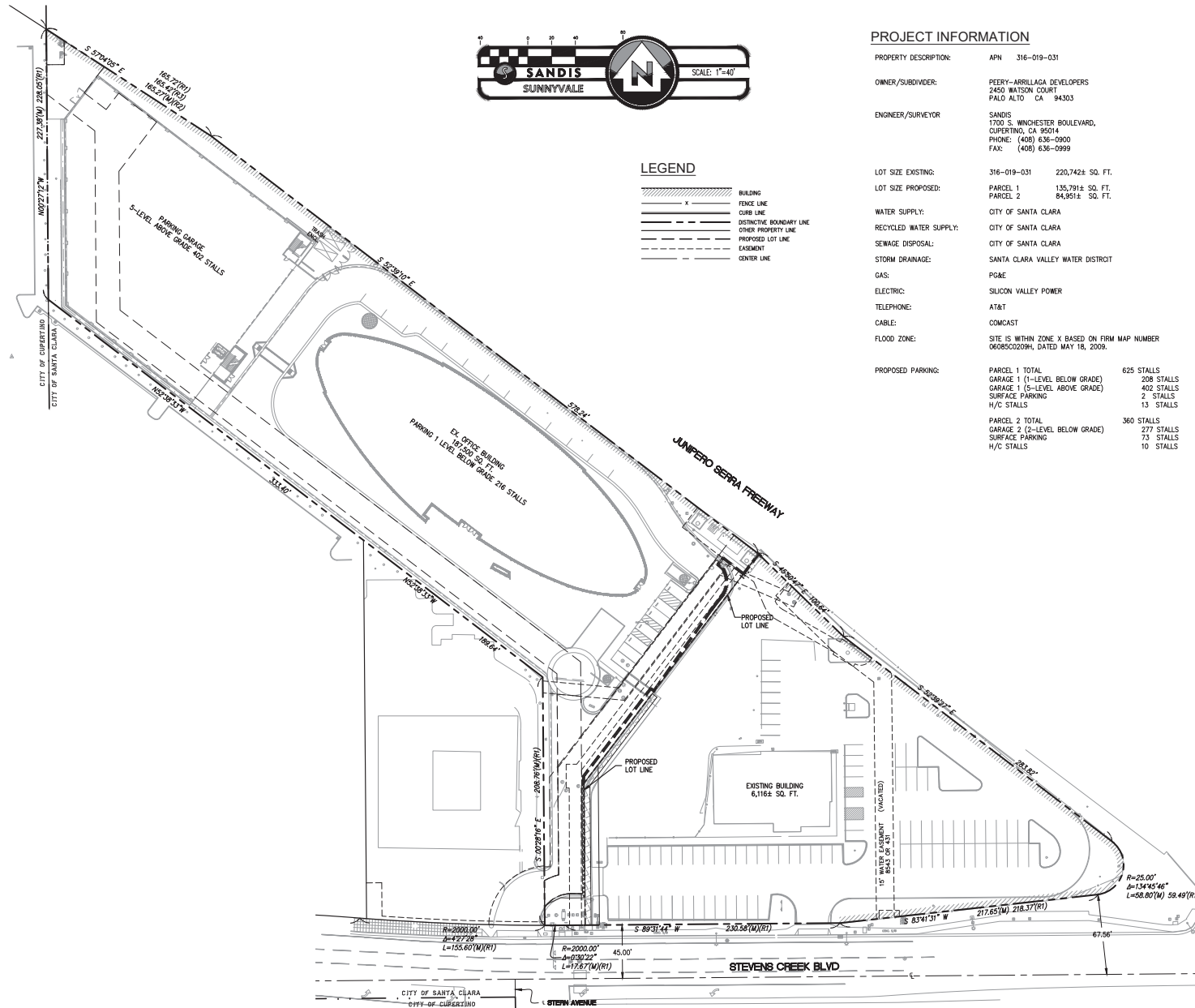
TENTATIVE MAP - FINAL CONFIGURATION  
BOUNDARY AND EASEMENTS  
STEVENS CREEK OFFICE DEVELOPMENT  
SANTA CLARA  
CALIFORNIA

SHEET

1

OF 3 SHEETS

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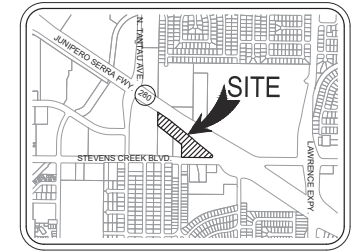


#### LEGEND

	BUILDING
	FENCE LINE
	CURBS LINE
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	EASEMENT
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GAS:	PG&E
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TELEPHONE:	AT&T
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VICINITY MAP  
N.T.S.

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CREATED BY: J. L. LEBLANC | CHECKED BY: J. L. LEBLANC | DATE: 07/01/20

DATE: 07/01/20  
SCALE: 1"=40'  
DRAWN BY: DB  
APPROVED BY: ND  
DRAWING NO: 215006

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1	TENTATIVE MAP SUBMITTAL	05/19/20	
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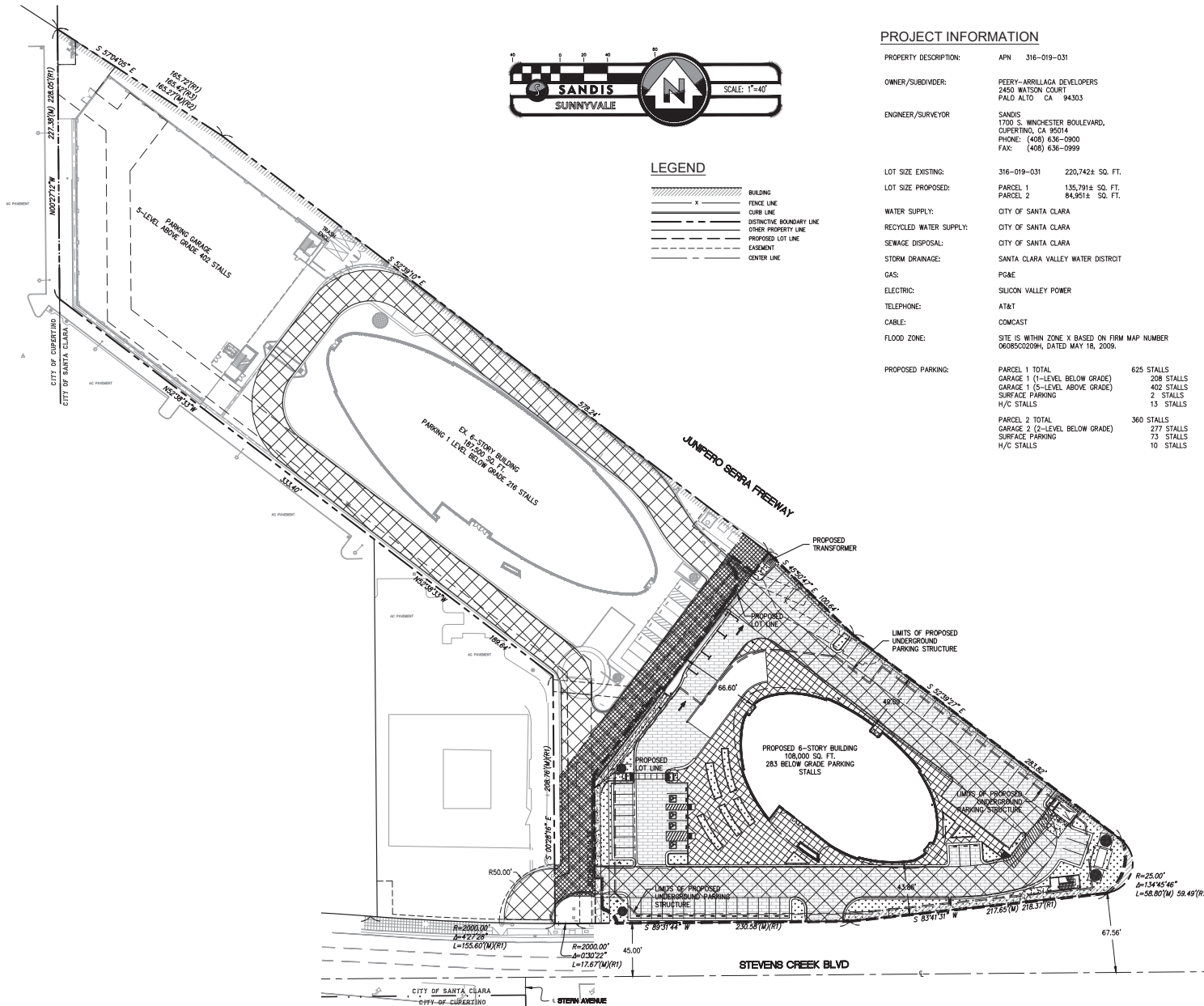
TENTATIVE MAP - PHASE 1  
EXISTING CONDITIONS  
STEVENS CREEK OFFICE DEVELOPMENT  
SANTA CLARA CALIFORNIA

SHEET

2

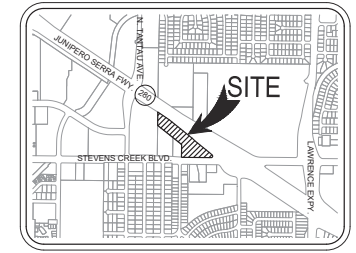
OF 3 SHEETS

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CITY OF SANTA CLARA | CITY OF CUPERTINO | CITY OF SAN JOSE

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TENTATIVE MAP - PHASE 2  
PROPOSED SITE IMPROVEMENTS  
STEVENS CREEK OFFICE DEVELOPMENT  
SANTA CLARA CALIFORNIA

SHEET  
3  
OF 3 SHEETS  
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## Agenda Report

20-1197

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Tentative Parcel Map for 2250 Lawson Lane (Continued from November 10, 2020 Council Meeting)

#### **COUNCIL PILLAR**

Promote and Enhance Economic, Housing and Transportation Development

#### **BACKGROUND**

The applicant is requesting approval of a Tentative Parcel Map (PLN2020-14515) to subdivide the 7.55 acre Lawson Lane West Campus property at 2250 Lawson Lane into a single lot subdivision with three commercial condominium units. Per the City Code, consideration and action on a Tentative Parcel Map is a function of the City Council. Planning Commission recommendation is not required for minor subdivisions of four lots or less.

This application follows a rezoning of the property from Planned Development (PD) to Planned Development (PD) for Phase 2 development of the Lawson Lane Office Campus Project on the southern portion of the West Campus (PLN2018-13593) and completion of Phase 1 office development on the East Campus. The rezone application was approved on June 3, 2020 to allow intensification of office development with construction of a 241,419 square foot office building, 670 square addition to the common building and expansion of the six-level parking garage on the southern portion of the West Campus. Upon completion, the West Campus will consist of two buildings totaling 486,074 square feet of office, 18,631 square feet of common building space, and a six-level parking garage and surface parking lot with a total of 1,445 parking spaces. Build-out of the Lawson Lane Campus project (East and West Campus development) will provide 792,974 square feet of office, 26,631 square feet of common building area and 2,468 parking spaces.

#### **DISCUSSION**

The proposed Tentative Parcel Map would create a single lot subdivision with three commercial condominium units consisting of the two office buildings and common building, and common area. Tentative Parcel Map applications are reviewed for General Plan and Zoning Code consistency and conformance with the Subdivision Map Act.

The proposed Tentative Parcel Map was reviewed by the City's Subdivision Clearance Committee and determined complete for review by Council in accordance with Section 17.05.220 of the City Code on October 20, 2020. Staff has confirmed that the proposed subdivision will not result in any inconsistencies with the General Plan and zoning designations for the property, Building Code, or other applicable requirements. Conditions of Approval have been prepared and are provided as Attachment 2. The conditions include a requirement for recordation of Covenants, Conditions and Restrictions (CC&R's) or equivalent instrument governing the shared use and maintenance of



utilities, parking spaces (surface and garage), drive aisles, pedestrian walkways, trash, landscaping, and other related facilities.

The proposed map facilitates land use activity consistent with the Low Intensity Office/ Research and Development General Plan designation and PD zoning entitlements allowing office development on the project site. Approval of the Tentative Parcel Map would allow the property owner flexibility in financing and/or leasing of the property, thereby supporting their long-term use consistent with the City's General Plan.

### **ENVIRONMENTAL REVIEW**

The project is Categorically exempt per Section 15315, Minor Land Divisions of the California Environmental Quality Act, in that the project involves the subdivision of urbanized land into fewer than five parcels and is served by existing municipal facilities.

### **FISCAL IMPACT**

There is no cost to the City other than administrative staff time and expense for the processing of this application typically covered by processing fees paid by the applicant.

### **COORDINATION**

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

### **PUBLIC CONTACT**

On October 28, 2020, a notice of public hearing was published in *The Weekly*, a newspaper of general circulation, and on October 29, 2020, notice of this item was posted in three conspicuous locations within 300 feet of the project site and mailed to property owners within 1,000 feet of the project site. At the time of this report, Planning staff has not received public comments regarding the proposed project.

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

### **ALTERNATIVES**

1. Adopt a resolution to approve the Tentative Parcel Map to create a single lot subdivision for commercial condominium purposes at the property located at 2250 Lawson Lane.
2. Deny the application for a Tentative Parcel Map to create a single lot subdivision for commercial condominium purposes at the property located at 2250 Lawson Lane.

### **RECOMMENDATION**

Alternative 1:

Adopt a resolution to approve the Tentative Parcel Map to create a single lot subdivision for commercial condominium purposes at the property located at 2250 Lawson Lane.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Resolution
2. Conditions of Tentative Parcel Map Approval
3. Tentative Parcel Map

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
TO APPROVE A TENTATIVE PARCEL MAP TO CREATE A  
SINGLE LOT SUBDIVISION FOR THE PROPERTY LOCATED  
AT 2250 LAWSON LANE, SANTA CLARA, CALIFORNIA**

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

**WHEREAS**, on July 21, 2020, Ryan Amaya with Kier+Wright Civil Engineers (“Applicant”) on behalf of The Sobrato Organization (“Property Owner”) made an application for a Tentative Parcel Map create a single lot subdivision with three commercial condominium units on an existing 7.55 acre parcel (APN: 224-44-024), located at 2250 Lawson Lane in the City of Santa Clara (“Project Site”);

**WHEREAS**, the General Plan land use designation for the Project Site is Low Intensity Office/Research and Development (R&D) and the zoning designation is Planned Development (PD) which allows for the construction of two, five-story buildings totaling 486,074 square feet of office, 18,361 square feet of common building space, a six-level parking garage and surface parking for a total of 1,445 parking spaces, and landscaping and on- and off-site improvements on the Project Site;

**WHEREAS**, consistent with the General Plan and zoning designation for the Project Site, the proposal involves the creation of a single lot subdivision with three commercial units and common area as shown on Exhibit “Tentative Parcel Map”, attached hereto and incorporated herein by this reference;

**WHEREAS**, pursuant to Section 17.05.220 of the Code of the City of Santa Clara (“SCCC”), a Tentative Parcel Map shall be required for all divisions of land into four or fewer parcels;

**WHEREAS**, on August 8, 2020, the Subdivision Committee determined that the application was complete and directed that the parcel map be reviewed by the City Council in conformance with Section 17.05.400 of the SCCC as a Tentative Parcel Map, to create a single lot subdivision for



commercial purposes consisting of the two office buildings and common building, and common area;

**WHEREAS**, SCCC Section 17.05.110(h) requires that the Subdivision Committee makes recommendations of denial, approval or conditional approval to the City Council on the Tentative Parcel Map;

**WHEREAS**, on October 20, 2020, the Subdivision Committee recommended that the City Council approve the Tentative Parcel Map, subject to conditions;

**WHEREAS**, the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*, requires a public agency to evaluate the environmental impacts of a proposed project. CEQA contains a list of categorical exemptions for projects that are not required to undergo environmental evaluation. The Project is categorically exempt from CEQA per Guidelines Section 15315, in that the Project creates a single lot subdivision with three commercial units and common area in a manner that is consistent with the General Plan Low Intensity Office/R&D designation and PD zoning designation for the Project Site, in an urbanized area, all services and access to the proposed parcels to City standards are available, the Project Site was not involved in the division of a larger parcel, within the previous two years, the parcel does not have a slope greater than 20 percent, and no issuance of a variance or exception is necessary;

**WHEREAS**, Section 17.05.400(d) of the SCCC requires that the City Council hold a public hearing before considering the approval of a Tentative Parcel Map for the division of land;

**WHEREAS**, Section 17.05.400(d) of the SCCC further requires that notice of the public hearing before the City Council be given by publishing notice in a newspaper of general circulation, by providing notice to all property owners within three hundred (300) feet of the proposed Tentative Parcel Map area by mail, and by posting a notice of public hearing in at least three places within the vicinity of the project site;

**WHEREAS**, notice of the public hearing on the proposed Tentative Parcel Map was published in the *Weekly*, a newspaper of general circulation for the City, on October 28, 2020;

**WHEREAS**, on October 29, 2020, the City posted notice of the public hearing at three conspicuous locations within three hundred (300) feet of the Project Site;

**WHEREAS**, on October 29, 2020, notices of the public hearing on the Tentative Parcel Map were mailed to all property owners within 1,000 feet of the Project Site, according to the most recent assessor's roll; and,

**WHEREAS**, on November 10, 2020, the City Council reviewed the Tentative Parcel Map for the proposed single lot subdivision and conducted a public hearing, at which time all interested persons were given an opportunity to provide testimony and the City Council considered all verbal and written evidence.

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. Tentative Map Findings. Pursuant to California Government Code Sections 66426 and 66428 and SCCC Section 17.05.400(e), and (f), City Council finds and determines that:

A. The proposed subdivision is substantially consistent with the objectives, policies, general land use and programs specified in the City's General Plan. The existing 7.55 acre parcel (APN: 224-44-024) is proposed a single lot subdivision with three commercial condominium units and common area. The project site will continue to maintain the General Plan Low Intensity Office/R&D designation and the PD zoning designation. The subdivision facilitates development of the site in a manner consistent with the General Plan and Zoning of the City of Santa Clara.

B. The design and improvements of the proposed subdivision are substantially consistent with the City's General Plan in that the Tentative Parcel Map facilitates development in accordance with the approved entitlements for the Project Site and is subject to conditions set forth in the Conditions of Approval, attached hereto and incorporated by this reference.

C. The site is physically suitable for the proposed type of development, in that the Project Site is served by existing municipal facilities; and water, sanitary sewer, storm drain, electric and vehicle ingress/egress easements are retained for service of the Project Site, as specified in the Conditions of Approval, attached hereto and incorporated herein by this reference.

D. The site is physically suitable for the planned intensity of development, in that the site is located in an urbanized area served by existing public infrastructure and facilities.

E. The design of the subdivision and type of improvements are not likely to cause serious public health problems, in that the site is surrounded by urban uses; is currently developed and has no value as habitat for endangered, rare or threatened species; would not result in significant related traffic, noise, air quality, or water quality impacts; and is adequately served by all required utilities and public services.

F. The design of the subdivision and type of improvements are not likely to cause substantial environmental damage and will not substantially or unavoidably injure fish or wildlife or their habitat, in that the Project is located in an urbanized setting on a developed site.

G. The design of the subdivision and type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision, in that the Project is designed to avoid encroachments and conflicts with public easements.

H. The Tentative Subdivision Map provides, to the extent feasible, for future or natural heating or cooling opportunities, in that the approved PD zoning for the Project Site allows for flexibility in the development standards to maximize the benefits of green building standards for site and building design.

3. Based on the findings set forth in this Resolution and the evidence in the Staff Report and such other evidence as received at the public hearings on this matter before the City Council, the City Council hereby approves the Tentative Parcel Map, substantially in the form on file as shown

in Exhibit "Tentative Parcel Map", subject to the conditions of approval, attached as Exhibit "Conditions of Tentative Parcel Map Approval".

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_\_ 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. Conditions of Tentative Parcel Map Approval
2. Tentative Parcel Map

## **CONDITIONS OF TENTATIVE PARCEL MAP APPROVAL**

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

### **CONDITIONS OF APPROVAL**

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

#### **GENERAL**

- G1. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.
- G2. Comply with all applicable codes, regulations, ordinances and resolutions.

#### **ATTORNEY'S OFFICE**

- A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

#### **COMMUNITY DEVELOPMENT**

- C1. The project shall comply with the mitigation measures identified in the Environmental Impact Report for the Lawson Lane Project and the Mitigated Negative Declaration for the Lawson Lane West Campus Expansion Project.
- C1. Developer shall submit to the City Covenants, Conditions and Restrictions (CC&Rs) or equivalent prior to issuance of building permits. Said document shall be recorded along with the Title for each property with the Santa Clara County Recorder's Office.

#### **ENGINEERING**

- E1. Obtain site clearance through Public Works Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Public Works Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a single Encroachment Permit issued by the City Public Works Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.
- E3. All work within Santa Clara County right-of-way shall require Santa Clara County encroachment permit.
- E4. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.

- E5. Dedicate, as required, on-site easements for new public utilities and/or sidewalk, and emergency vehicle access by means of a Subdivision Map or approved instrument at time of development.
- E6. After City Council approval of the Tentative Map, submit 10 copies of the Subdivision Map, prepared by a Licensed Land Surveyor or a Registered Civil Engineer with Land Surveyor privileges to the Public Works Department. The submittal shall include a title report, closure calculations, and all appropriate fees.
- E7. File and record Subdivision Map to create parcels and pay all appropriate fee(s).
- E8. Submit payment for Public Works Project Clearance Committee review.
- E9. Obtain Council approval of a resolution ordering vacation of existing public easement(s) proposed to be abandoned, if any, through Public Works Department, and pay all appropriate fees, prior to start of construction.
- E10. Coordinate proposed non-access easement dedication and vacation with County of Santa Clara and provide documentation of recordation to the City of Santa Clara.

### **STREETS**

- ST1. The property owner shall enter into an Operation and Maintenance (O&M) Agreement with the City for all installed stormwater treatment measures in perpetuity. Applicants should contact Karin Hickey at (408) 615-3097 or [KaHickey@santaclaraca.gov](mailto:KaHickey@santaclaraca.gov) for assistance completing the Agreement. For more information and to download the most recent version of the O&M Agreement, visit the City's stormwater resources website at <http://santaclaraca.gov/stormwater>. For porous pavement and underground vault, inspection of these facilities is to be done annually.

TENTATIVE PARCEL MAP  
OF  
2250 LAWSON LANE  
FOR  
THE SOBRATO ORGANIZATION

DATE	OCT., 2020
SCALE	1"=30'
DESIGNER	BMA
DRAFTER	CJ
JOB NO.	A06154-34
SHEET	1
OF	1 SHEETS



## Agenda Report

20-988

Agenda Date: 11/17/2020

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Action on Stadium Authority Bills and Claims for the Month of September 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 September 2020 include:

- Payments totaling \$81,318.88 to the City of Santa Clara for reimbursement of General and Administrative (G&A) City payroll costs (e.g.: City Manager's Office, City Attorney's Office, and Finance Department)
- Payment totaling \$52,013.41 to Forty Niners SC Stadium Co, LLC for CFD Advance Payment - Interest
- Payment totaling \$2,909.04 to J.S. Held LLC for audit services
- Payment totaling \$104,000.00 to KPMG LLP for SCSA's FY2019/20 Audit
- Payment totaling \$4,516.69 to Motorola Solutions Inc for CapEx Project: Motorola APX 6000 Radio/Charger/Battery



**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 \$245,596.80 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 [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**RECOMMENDATION**

Approve the list of Stadium Authority Bills and Claims for September 2020.

Reviewed by: Kenn Lee, Treasurer

Approved by: Deanna J. Santana, Executive Director

**ATTACHMENTS**

1. September 2020 SCSA Bills and Claims

## Santa Clara Stadium Authority

### Bills and Claims Expenses Paid by Wire Transfer For the Month of September 2020

Payment Date	Vendor	Invoice No.	Description	Fund	Amount	
9/15/2020	Bank of America	N/A	August 2020 bank fees	Operating	737.53	
9/15/2020	Bank of America	N/A	August 2020 bank fees	Operating	67.57	
9/15/2020	Bank of America	N/A	August 2020 bank fees	Operating	33.68	
			Bank of America Subtotal			838.78
9/2/2020	City of Santa Clara	N/A	B2018 SCSA Admin Payroll Costs	Operating	34,921.60	
9/21/2020	City of Santa Clara	N/A	B2019 SCSA Admin Payroll Costs	Operating	46,397.28	
			City of Santa Clara Subtotal			81,318.88
9/30/2020	Forty Niners SC Stadium Co, LLC	N/A	CFD Advance payment - Interest	Debt Service		52,013.41
9/14/2020	J.S. Held LLC	1149990	July - August 2020 Audit Services	Operating		2,909.04
9/17/2020	KPMG LLP	8003243590	SCSA 2019/20 Audit	Operating		104,000.00
9/21/2020	Motorola Solutions Inc	41290620	CapEx Project - Motorola APX 6000	CIP		4,516.69
			<b>September 2020 Total</b>			<b><u>\$ 245,596.80</u></b>



## Agenda Report

20-1057

Agenda Date: 11/17/2020

### 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 Between June 5 and October 31, 2020

#### **BOARD PILLAR**

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 rescinded the Executive Director's delegated signature authority on agreements for services and required Board approval of contracts or agreements, by amending Chapter 17.30 of the City of Santa Clara City Code. As of the effective date of the Ordinance (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 purchase orders for public safety supplies and equipment and Board approval of miscellaneous Stadium Authority expenses that were incurred or invoiced between June 5 and October 31, 2020. The requested public safety 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).

#### **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 Chapters 2.105 and 17.30 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**

*Radiation Detector (\$18,234)* - The Fire Department's Joint Hazard Assessment Team (JHAT) had historically used an identiFINDER radiation detector, which has been decommissioned due to age and is no longer serviceable by the manufacturer. The Radiation (Gamma and Neutron) Detector will be a replacement purchase with an expected life of ten years. Due to the purchase exceeding \$15,000, staff obtained three quotes for the detector and warranty and recommends award of Purchase Order to 3south, LLC (\$18,234). 3south, LLC is the second lowest bidder with a quote of \$18,234 with tax and shipping included while the lowest bidder provided a quote of \$16,595 that didn't include tax and shipping. With tax and shipping the current lowest bidder's quote may exceed 3south, LLC's. The Stadium Authority FY 2020/21 CapEx Budget includes \$22,575 for this expense.

*Rope Rescue Gear (\$31,499)* - The Fire Department requires high angle and vertical rescue equipment due to the complex, inaccessible areas of the Stadium. This includes an artificial high point, full rope response kit, winch, rigging, fall protection, and patient extraction device. This is new equipment for the Stadium Team. Due to the purchase exceeding \$15,000, staff obtained three quotes and recommends award of Purchase Order to the lowest bidder L.N. Curtis & Sons Inc (\$31,499). The Stadium Authority FY 2020/21 CapEx Budget includes \$33,075 for this expense.

*Stadium Personal Protective Equipment (\$14,886)* - The Board approved the Fire Department's request for personal protective equipment on July 14, 2020. The July 14 request included APR adapters and cartridges; tactical ballistic vests and helmets; Active Shooter vests, helmets, fanny packs, ballistic plates, and backpacks; EMS equipment; and Stadium Personnel Uniform Nomex Pants. At the time of the July 14 request, staff noted that the Fire Department still required Stadium Personnel Uniform Nomex Blouses and would bring forth that request at a future meeting. Staff has obtained a quote from L.N. Curtis & Sons Inc. for 39 blouses at \$349 per unit (\$13,611 for 39 blouses for a total of \$14,886 including tax and shipping) and recommends award of Purchase Order to the vendor. The Stadium Authority FY 2020/21 CapEx Budget includes \$63,000 for Stadium Personal Protective Equipment and there is \$17,762 remaining to cover the Nomex Blouses.

#### **Police Department Supplies and Equipment**

*2-Way CAD/24-7 Link (\$67,369.45)* - The Police Department needs to 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 while SCPD and SCFD operate on the CAD system. A 2-way link would allow both systems to "talk" to each other and automatically create incidents in each other's system. The 2-Way CAD/24-7 Link has been determined a sole source item from Hexagon since the existing CAD system is a Hexagon product. Staff has obtained a quote from the vendor for \$67,369, not including sales tax, for the software and one year of maintenance and recommends award of a Purchase Order to Hexagon. The Stadium Authority FY 2020/21 CapEx Budget includes \$157,500 for this expense.

Both the Fire and Police Department have remaining CapEx purchases that are pending quotes or require a formal bidding process. These items will be brought forth to the Board for approval at a future meeting.

#### **Other Expenses**

There are approximately \$27,624 of miscellaneous operational expenses for the period between June 5 and October 28, 2020 that require retroactive Board approval as detailed in Attachment 2. As part of regular operations, some expenditures are incurred that require Stadium Authority reimbursement. In this instance, expenditures for upfits for Stadium Authority vehicles and minor supplies or miscellaneous expenses. There are sufficient funds in the Stadium Authority FY 2020/21 Adopted Budget under the CapEx and Operating Budget to cover these costs and the minor public safety supplies are within budget of their greater CapEx items.

#### **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 \$230,912 in the Stadium Authority FY 2020/21 Adopted Budget under the CapEx Budget to cover the costs of the Radiation Detector, Rope Rescue Gear Including Storage Container, Stadium Personal Protective Equipment, and 2-Way CAD/24-7 Link. There are also existing appropriations in the CapEx Budget to cover the costs of the miscellaneous expenses incurred by the Stadium Authority and the City on behalf of the Stadium Authority between June 5 and October 31, 2020 that are detailed in Attachment 2 which total \$27,624.

**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 [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**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 (Radiation Detector; Rope Rescue Gear; Stadium Personal Protective Equipment; and 2-Way CAD/24-7 Link), pursuant to Chapters 2.105 and 17.30 of the Santa Clara City Code and in an amount not-to-exceed \$230,912, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items;
2. Approve the miscellaneous expenses detailed in Attachment 2 that were incurred by or invoiced to the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between June 5 and October 31, 2020;
3. 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 (Radiation Detector; Rope Rescue Gear; Stadium Personal Protective Equipment; and 2-Way CAD/24-7 Link), pursuant to Chapters 2.105 and 17.30 of the Santa Clara City Code and in an amount not-to-exceed \$230,912, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items; or
4. Do not approve the miscellaneous expenses detailed in Attachment 2 that were incurred by or invoiced to the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between June 5 and October 31, 2020.

**RECOMMENDATION**

Alternatives 1, and 2.

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 (Radiation Detector; Rope Rescue Gear; Stadium Personal Protective Equipment; and 2-Way CAD/24-7 Link), pursuant to Chapters 2.105 and 17.30 of the Santa Clara City Code and in an amount not-to-exceed \$230,912, the budgeted amount in the Stadium Authority FY 2020/21 CapEx Budget for the items; and

2. Approve the miscellaneous expenses detailed in Attachment 2 that were incurred by or invoiced to the Stadium Authority and the City on behalf of the Stadium Authority (to be reimbursed by the Stadium Authority) between June 5 and October 31, 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

# 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	2020/21	2020/21	2020/21
	Final Budget	Year-End Actuals	Final Budget	Projected Actuals	Projected Carryover	Adopted Budget	Total Adopted Budget
<b>Beginning Balances</b>	\$ 12,358,833	\$ 12,718,700	\$ 14,532,870	\$ 14,516,225	\$ 17,837,300		\$ 17,837,300
<b>Resources</b>							
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>	-	-	-	-	-	-	-
<b>Total Resources</b>	<b>15,735,833</b>	<b>16,095,227</b>	<b>18,010,870</b>	<b>17,994,225</b>	<b>17,837,300</b>	<b>3,582,000</b>	<b>21,419,300</b>
	2018/19	2018/19	2019/20	2019/20	2020/21	2020/21	2020/21
	Final Budget	Projected Actuals	Final Budget	Projected Actuals <sup>(2)</sup>	Projected Carryover	Adopted Budget	Total Adopted Budget
<b>Expenses</b>							
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
<b>Total Expenses</b>	<b>7,982,932</b>	<b>1,579,002</b>	<b>14,213,509</b>	<b>156,926</b>	<b>7,976,195</b>	<b>5,297,187</b>	<b>13,273,382</b>
Capital Expense Reserve	\$ 7,752,901	\$ 14,516,225	\$ 3,797,361	\$ 17,837,300	\$ 9,861,105		\$ 8,145,918

<sup>(1)</sup> 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	Contingency (5%)	Total Cost
General Building		<b>Updated Stadium Wayfinding Signage</b> 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 Building		<b>Levi's Naming Rights Signage Replacement</b> Replace Levi's Naming Rights signage.	650,000	32,500	682,500
Plumbing		<b>Lift Station</b> 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		<b>Plumbing</b> Replace pressure reducing valves and other parts on domestic and recycled water systems.	100,000	5,000	105,000
Public Safety	x	<b>Stadium Vehicles (Gator &amp; Kubota) Upfits</b> 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 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.	9,000	450	9,450
Public Safety	x	<b>Storage Conex Garage for Apparatus</b> 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	x	<b>Pedestrian Safety Fencing</b> 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		<b>Enhance Stadium Security Coverage</b> Evaluate and replace existing cameras with technologically advanced multi-lens 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		<b>Enhance Stadium Security Access Control</b> 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.)

Item Type	SCSA Requested	Description	Cost	Contingency (5%)	Total Cost
Security		<b>CCTV Pop Up Trailers</b> 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.	\$ 235,000	\$ 11,750	\$ 246,750
Security		<b>Parking Lot Camera Upgrades</b> 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.	40,000	2,000	42,000
Security		<b>Bowl Camera Upgrade/Refurbish</b> 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).	135,000	6,750	141,750
Security		<b>Surveillance - Command Center Equipment</b> 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.	50,000	2,500	52,500
Security		<b>Software Upgrade to Genetec 5.8</b> Upgrade to Genetec's 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.	35,000	1,750	36,750
Security		<b>Video Analytics</b> Add video analytics to assist with video investigations. Video investigations 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.	35,000	1,750	36,750
Security		<b>License Plate Reader at Vehicle Entry Gates</b> 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.	45,000	2,250	47,250
Security		<b>Security X-Ray Scanners</b> 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.	150,000	7,500	157,500
Site		<b>Security Fencing - Main Lot</b> Remove and replace approximately 1,000 linear feet of 4-foot high security fencing in Main Lot per request of City.	150,000	7,500	157,500
Site		<b>Stationary Electric Pressure Washers</b> Install one (1) to two (2) demo stations on the 300 concourse. If these are effective, we would look to replace all gas-powered pressure washers with electrically powered ones.	75,000	3,750	78,750
<b>Subtotal CapEx Construction Costs</b>			<b>\$ 2,836,416</b>	<b>\$ 141,821</b>	<b>\$ 2,978,237</b>

## Santa Clara Stadium Authority

### 2020/21 CapEx Budget (cont.)

Item Type	SCSA Requested	Description	Cost	Contingency (5%)	Total Cost
Food and Beverage		<b>Beverage Distribution System</b> Add a beverage distribution system to stadium concession areas and bars. This includes the lines and CO2 dispensing equipment.	\$ 50,000	\$ 2,500	\$ 52,500
Food and Beverage		<b>CO2 Monitoring &amp; Sensors for Code Compliance</b> Install remote CO2 monitoring for enhanced safety for stadium staff per SCFD & State of CA.	200,000	10,000	210,000
HVAC/ Mechanical		<b>Variable Frequency Drive(s)</b> Replace exterior Variable Frequency Drive units for Cooling Tower pumps due to life expectancy issues. This system supports the mechanical cooling functions for the HVAC system.	150,000	7,500	157,500
HVAC/ Mechanical		<b>HVAC</b> Replace HVAC fan coils, motors, squirrel cage fans, and controls to heat pumps throughout facility.	100,000	5,000	105,000
HVAC/ Mechanical		<b>Cooling Towers</b> 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.	50,000	2,500	52,500
Information Technology		<b>Financial Management Information System Project</b>  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/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. <b>*Subject to subsequent court rulings on cost allocation.</b>	270,000	13,500	283,500
Life Safety/Fire	x	<b>Fire Alarm System</b> Replace/update fire alarm system field devices, including interior/exterior signaling devices, detectors, and control panel parts.	250,000	12,500	262,500
Life Safety/Fire		<b>Photoluminescent Tape for Life Safety</b> Replace photoluminescent tape in stairwells A1, A2, A3, A4, from level 100 to 900 per Santa Clara City Fire Marshall.	200,000	10,000	210,000
Public Safety Equipment	x	<b>Mass Decontamination Hydrant Nozzles</b> 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.	1,608	80	1,688
Public Safety Equipment	x	<b>Small Cooler and Ice Pack</b> Purchase a cooler to hold Anthrax Sample kits which need to be refrigerated for a minimum of 12 hours while on assignment.	250	13	263
Public Safety Equipment	x	<b>Radios</b>  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.	79,000	3,950	82,950
Public Safety Equipment	x	<b>Motor Vehicle Barricades</b>  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 barricades require substantial planning and are labor-intensive. Our new mobile barricades would reduce intense 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.	345,929	17,296	363,225

## Santa Clara Stadium Authority

### 2020/21 CapEx Budget (cont.)

Item Type	SCSA Requested	Description	Cost	Contingency (5%)	Total Cost
Public Safety Equipment		<b>Explosive Ordinance Detection Blankets/Water Barrier</b>	12,637	632	13,269
	x	Purchase bomb blankets and water barriers for the explosive ordinance detection (EOD) team. This team is responsible for the identification and 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 Equipment		<b>Bicycles</b>	\$ 25,000	\$ 1,250	\$ 26,250
	x	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 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.			
Public Safety Equipment		<b>Stadium Personal Protective Equipment</b>	60,000	3,000	63,000
	x	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 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 Equipment		<b>Heavy Lift Kit</b>	51,913	2,596	54,509
	x	Add a Heavy Lift Kit to be able to lift larger vehicles and equipment for rescue purposes in the event of an accident, stage or crane collapse. 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.			
Public Safety Equipment		<b>Radiation Detector</b>	21,500	1,075	22,575
	x	Purchase a radiation detector. The Joint Hazard Assessment Team (JHAT) had historically used the Identifinder radiation detector on the HazMat 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 purchase with expected life of 10 years.			
Public Safety Equipment		<b>Rope Rescue Gear Including Storage Container</b>	31,500	1,575	33,075
	x	Add high angle and vertical rescue equipment needed to address the intricate and complex areas of the stadium. This includes an artificial high point, full rope response kit, winch, rigging, fall protection, and patient extraction device. This is new gear for the Stadium Team.			
Public Safety Equipment		<b>Mass Casualty Incident Trailer</b>	120,000	6,000	126,000
	x	Purchase a Mass Casualty Incident (MCI) Trailer. The fire department currently has equipment to treat 25 patients during a large-scale emergency. 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 Equipment		<b>Motorola APX 6000 Radio/Charger/Battery</b>	4,600	230	4,830
	x	Add a radio charger and extra battery for the Fire Incident Commander in the Command Post to assist with monitoring multiple channels.			
Public Safety Equipment		<b>Motorola Earpieces</b>	1,000	50	1,050
	x	Replace earpieces for the radios used by the crews. The original earpieces were purchases six years ago and are at end of life.			
Public Safety Equipment		<b>Battery Pack for JHAT Crew</b>	72	4	76
	x	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 needed to recharge equipment for the long duration JHAT missions. This is a new purchase.			

## Santa Clara Stadium Authority

### 2020/21 CapEx Budget (cont.)

Item Type	SCSA Requested	Description	Cost	Contingency (5%)	Total Cost
Public Safety Equipment	x	<b>2-Way CAD/24-7 Link</b> 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.	150,000	7,500	157,500
Public Safety Equipment	x	<b>Dispatch Monitors</b> 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.	\$ 8,000	\$ 400	\$ 8,400
Public Safety Equipment	x	<b>Radio Batteries</b> 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.	15,514	776	16,290
Public Safety Equipment	x	<b>Safety Gear for Special Event Officers &amp; Traffic Control Personnel</b> 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 Equipment	x	<b>Radio Chargers</b> 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.	3,000	150	3,150
<b>Subtotal CapEx Equipment Costs</b>			<b>\$ 2,208,523</b>	<b>\$ 110,427</b>	<b>\$ 2,318,950</b>
<b>Total New CapEx Project Costs</b>			<b>\$ 5,044,939</b>	<b>\$ 252,248</b>	<b>\$ 5,297,187</b>

## Santa Clara Stadium Authority

### 2020/21 CapEx Budget Carryover

Item Type	SCSA Requested	Description	Cost	Remaining Contingency	Total Cost
Electrical		<b>Mechanical and Electrical Closet Lighting (2019/20 Carryover)</b> 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		<b>Broadcast Booth Power (2019/20 Carryover)</b> 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		<b>Concessions Cart Cabling (2019/20 Carryover)</b> 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		<b>Stadium Event Signage (2019/20 Carryover)</b> 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		<b>Miscellaneous (2019/20 Carryover)</b> Add funding for unforeseen building-related repairs.	100,000	5,000	105,000
General Building		<b>Command Post Window Treatment (2019/20 Carryover)</b> 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		<b>Stadium and Special Event Spaces (2019/20 Carryover)</b> 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		<b>Non-Slip Floor Matting (2019/20 Carryover)</b> 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		<b>Women's Locker Room (2019/20 Carryover)</b> 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		<b>Automatic Logic Control Building Engineering System (2019/20 Carryover)</b> 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		<b>Club Space Flooring (2019/20 Carryover)</b> 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		<b>Command Post Communication Equipment (2019/20 Carryover)</b> 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		<b>Stadium Field Conduits (2018/19 Carryover)</b> 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.)

Item Type	SCSA Requested	Description	Cost	Remaining Contingency	Total Cost
Security		<b>Stadium Camera Booth Card Readers (2019/20 Carryover)</b> Install card reader for north and south camera booths to secure the spaces that enter into/from general public access areas.	\$ 84,000	\$ 4,200	\$ 88,200
Site		<b>Stadium Insulation (above 300 level and below 400/500 level) (2019/20 Carryover)</b> 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.	150,000	7,500	157,500
Site		<b>Gold Lot 4 and 5 Lighting (2019/20 Carryover)</b> 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 personnel and provides energy cost savings with more efficient fixtures.	50,000	2,500	52,500
Site		<b>Rust Prevention Mitigation (2019/20 Carryover)</b> Implement rust prevention measures. The stadium railings, beams, and other steel areas need rust prevention and coating in specific areas throughout the	90,000	4,500	94,500
Site		<b>Stadium Event Power Upgrades &amp; Switchgear Electrical (2019/20)</b> Install and enhance Stadium Event wiring service on the 12 Kilovolt (KV) Primary Switch Gear (PMSG) to main electrical panel.	42,714	2,136	44,850
Site		<b>Asphalt (2018/19 Carryover)</b> Slurry coat the visitor parking on Tasman, Gold 4 & 5 parking lots and South Access Road.	190,000	9,500	199,500
<b>Subtotal CapEx Construction Carryover Costs</b>			<b>\$ 1,888,911</b>	<b>\$ 94,446</b>	<b>\$ 1,983,357</b>
Audio/Visual		<b>Radio Booth Cabling (2019/20 Carryover)</b> Install fiber optic cabling to increase the low voltage cabling backbone. This installation will accommodate the expanding requests for booth usage during stadium events and keep up with emerging trends.	\$ 600,000	\$ 30,000	\$ 630,000
Audio/Visual		<b>Creston Control &amp; Building Operating System Upgrades (2019/20)</b> Install a Creston Control System to monitor HVAC, lighting, electrical, and fire 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.	10,000	500	10,500
Furniture, Fixtures & Equipment		<b>Replace Furniture in Club and Special Event Spaces (2019/20 Carryover)</b> 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.	1,600,000	80,000	1,680,000
Furniture, Fixtures & Equipment		<b>Security and Life Safety Partitions/Dividers (2019/20 Carryover)</b> 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.	68,000	3,400	71,400
Furniture, Fixtures & Equipment		<b>Tunnel Slip and Fall Protection (2019/20 Carryover)</b> Install non-slip material at the South, Northeast, and Northwest Field Tunnels.	30,000	1,500	31,500
Furniture, Fixtures & Equipment		<b>Guest Service Booths (2018/19 Carryover)</b> Add two additional guest services booths on the main concourse for better enhanced customer service touchpoints.	70,000	3,500	73,500
HVAC/Mechanical		<b>Kitchen Exhaust Fans (2019/20 Carryover)</b> Install variable frequency drive (VFD) Units on kitchen exhaust fans for soft start (slow ramp up) capabilities. Kitchen exhaust fans currently operate 100 percent of the time. Installing VFD units will modulate the power and save energy whenever the fan is in use. Soft start extends the life of the equipment and saves energy.	300,000	15,000	315,000

## Santa Clara Stadium Authority

### 2020/21 CapEx Budget Carryover (cont.)

Item Type	SCSA Requested	Description	Cost	Remaining Contingency	Total Cost
Life Safety/Fire		<b>Fire Sprinkler Extension (2019/20 Carryover)</b> 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.	\$ 55,000	\$ 2,750	\$ 57,750
Public Safety Equipment	x	<b>GPS Software for Tracking Personnel (2019/20 Carryover)</b> Add GPS software to track public safety personnel. Live tracking of law enforcement personnel is critical in providing an accurate picture of public safety coverage. This technology and software will allow the Command Post 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	25,000	1,250	26,250
Public Safety Equipment	x	<b>Body Worn Cameras (BWCs) (2019/20 Carryover)</b> 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 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 public has come to expect.	150,000	7,500	157,500
Public Safety Equipment	x	<b>Fencing on Tasman (2019/20 Carryover)</b> Add fencing to prevent stadium event pedestrian traffic from crossing unsafely between Lafayette St. and the Tasman St. overcrossing.	70,000	3,500	73,500
Public Safety Equipment	x	<b>Street Signage (2017/18 Carryover)</b> Add street signage. This item was brought before the SCSA Board and 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 office to identify appropriate locations on surrounding city streets (Great 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	1,000,000	50,000	1,050,000
Public Safety Equipment	x	<b>Portable License Plate Reader/PTZ Cameras (2018/19 Carryover)</b> Purchase portable license plate readers. Placing temporary/moveable 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.	160,000	8,000	168,000
Public Safety Equipment	x	<b>Public Safety Command Post Dispatch System (2018/19 Carryover)</b> Add a system that will interface between the system that is used at Levi's 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.	94,034	4,702	98,736
Vertical Transport		<b>Elevator Door Replacement (2019/20 Carryover)</b> Replace and install new elevator doors on one of the freight elevators in the stadium.	20,000	1,000	21,000
<b>Subtotal CapEx Equipment Carryover Costs</b>			<b>\$ 4,252,034</b>	<b>\$ 212,602</b>	<b>\$ 4,464,636</b>
Stadium Warranty-Related Construction		Carryover costs from the original Stadium Construction Budget for warranty-related work.	<b>\$ 1,528,202</b>		<b>\$ 1,528,202</b>
<b>Total CapEx Carryover Costs</b>			<b>\$ 7,669,147</b>	<b>\$ 307,048</b>	<b>\$ 7,976,195</b>



# STADIUM AUTHORITY CAPITAL EXPENSE BUDGET (CONT'D)

## Santa Clara Stadium Authority Capital Expense Plan Summary - 5 Year Forecast

	2020/21 Budget	2021/22 Budget	2022/23 Budget	2023/24 Budget	2024/25 Budget
Electrical	\$ -	\$ -	\$ 750,000	\$ 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
<b>Subtotal CapEx Construction Costs</b>	<b>\$ 2,836,416</b>	<b>\$ 2,052,000</b>	<b>\$ 1,350,000</b>	<b>\$ 2,450,000</b>	<b>\$ 6,745,000</b>
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
<b>Subtotal CapEx Equipment Costs</b>	<b>\$ 2,208,523</b>	<b>\$ 345,000</b>	<b>\$ 1,117,500</b>	<b>\$ 245,000</b>	<b>\$ 3,176,669</b>
Contingency (5%)	252,248	119,850	123,375	134,750	496,083
<b>Total CapEx Project Costs</b>	<b>\$ 5,297,187</b>	<b>\$ 2,516,850</b>	<b>\$ 2,590,875</b>	<b>\$ 2,829,750</b>	<b>\$ 10,417,752</b>

**Miscellaneous Expenses Incurred by Stadium Authority or City of Santa Clara on behalf of the Stadium Authority (to be reimbursed)  
between June 5 and October 31, 2020**

Vendor Name	Total Amount	Description	Expense Type in SCSA Budget	Date
City of Santa Clara	\$ 26,450.59	Upfits for Stadium Authority vehicles performed by City staff in July 2019 (Invoiced to SCSA in August 2020)	CapEx	8/4/2020
North American Rescue, LLC	99.00	EMS supplies that were originally approved by the Board on 7/14/2020 as part of the Stadium Personal Protective Equipment. The supplies were purchased through a different vendor since the original vendor didn't have this specific type of supply.	CapEx	8/4/2020
Mutton Power Equipment	564.31	Additional part (heavy duty brush guard kit) required for the Stadium Vehicles (Gator & Kubota) Upfits that were approved by the Board on 7/14/2020.	CapEx	9/4/2020
FedEx Office	510.12	Communications Display Boards	Operating	10/5/2020
<b>TOTAL INCURRED BETWEEN 06/05/2020 AND 10/31/2020</b>	<b>\$ 27,624.02</b>			



# City of Santa Clara

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

## Agenda Report

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20-1036

Agenda Date: 11/17/2020

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### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Request from the Stadium Manager for Authority to Execute an Agreement with Silicon Valley Business Journal for Non-NFL Catered Events Advertising

#### **BOARD PILLAR**

Ensure Compliance with Measure J and Manage Levi's Stadium

#### **DISCUSSION**

The Stadium Manager submitted the attached email to request for authority to execute an agreement for a not-to-exceed amount of \$10,800 with Silicon Valley Business Journal (SVBJ). The one-year agreement with SVBJ is for two separate e-blast campaigns that will focus on Non-NFL Events. Each e-blast campaign is priced at \$5,400.

#### **ATTACHMENTS**

1. Stadium Manager Agenda Email Request and SVBJ Agreement

**From:** [MacNeil, Larry](#)  
**To:** [Deanna Santana](#)  
**Cc:** [Compliance Manager](#)  
**Subject:** Non-NFL Catered Events advertising - SVBJ  
**Date:** Friday, October 9, 2020 4:37:19 PM  
**Attachments:** [image002.png](#)  
[image004.png](#)  
[SVBJ Forty Niners Stadium Management Company 2021 agreement \(2\) E-Blast TBD.pdf](#)

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Deanna:

I write to request SCSA approval to enter into a contract with respect to lead generation for Non-NFL catered events.

It's important to get this underway as we look forward to emerging from COVID-19 restrictions.

### **Silicon Valley Business Journal – NTE \$10,800**

Levi's Stadium has advertised in the SVBJ since the Stadium opened in 2014. The SVBJ Dedicated Email Marketing Program currently serves 36,000 affluent business decision makers who have opted in to receive these bi-weekly e-blasts. The unique open rate of these emails is 18% and the click through rate runs between 1% and 5% depending on the content. The SVBJ has seen a 36% increase in views of these emails during the past 6 months of COVID. More information on the SVBJ reach can be found here: <https://advertise.bizjournals.com/brands/sanjose/>

These ads are important to achieve the following objectives for the Levis Stadium Special Events business:

- Generate new leads
- Increase visibility in the market
- Promote revenue generating programs

Over the past few years we have participated in a variety of advertising and sponsorship programs to increase the visibility of Levi's Stadium catered events within Silicon Valley, the Bay Area and the events industry. Our two year sponsorship of \$22K for the Silicon Valley Admin Awards led to booked events of over \$100K. Our two year participation of All Things Meeting with an investment of \$1,200 per year has secured us \$350K in booked events. A 2018 SVBJ event sponsorship of the Book of List launch party brought us a \$47K event. Our goal for this particular eblast is to book a minimum of one 50K event (or several smaller events) post COVID to cover the \$10,800 investment. The larger goal, of course, is to continue to book events through this partnership and continued outreach to the clients/data received.

The Levi's Stadium Special Events department has regularly placed print ads in a variety of the Business Journal publications. Metrics from print ads are hard to obtain which is why we have made the decision to move in a digital direction. The Business Journal will monitor the open rate and a "call to action" button will be placed on the ads which we will be able to trace as communications are received.

The proposed purchase is for two separate e-blast campaigns, which send emails to the 36,000 SVBJ subscribers. We would expect to launch these in March 2021 and in September 2021, but timing would be adjusted based on a number of factors, including COVID-19 restrictions. We need to be in a position to move quickly as the COVID-19 restrictions are fluid.

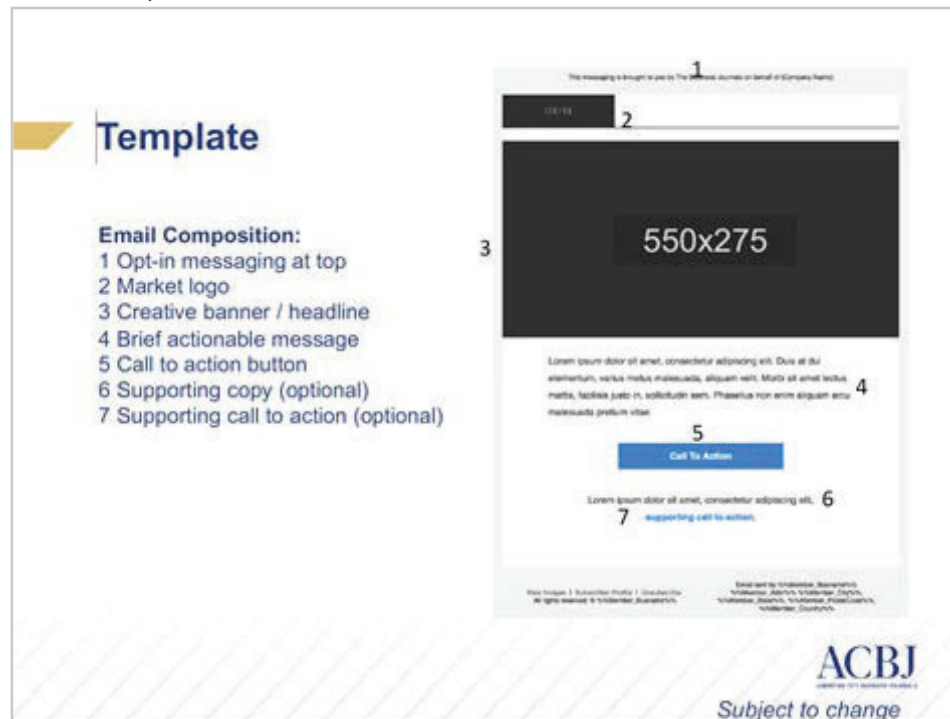
It's important to note that the proposed NTE of \$10,800 includes two separate mailers; however, we will only be charged for the actual costs not to exceed \$10,800. For example, if we decide to only do one e-blast, the cost would be cut roughly in half.

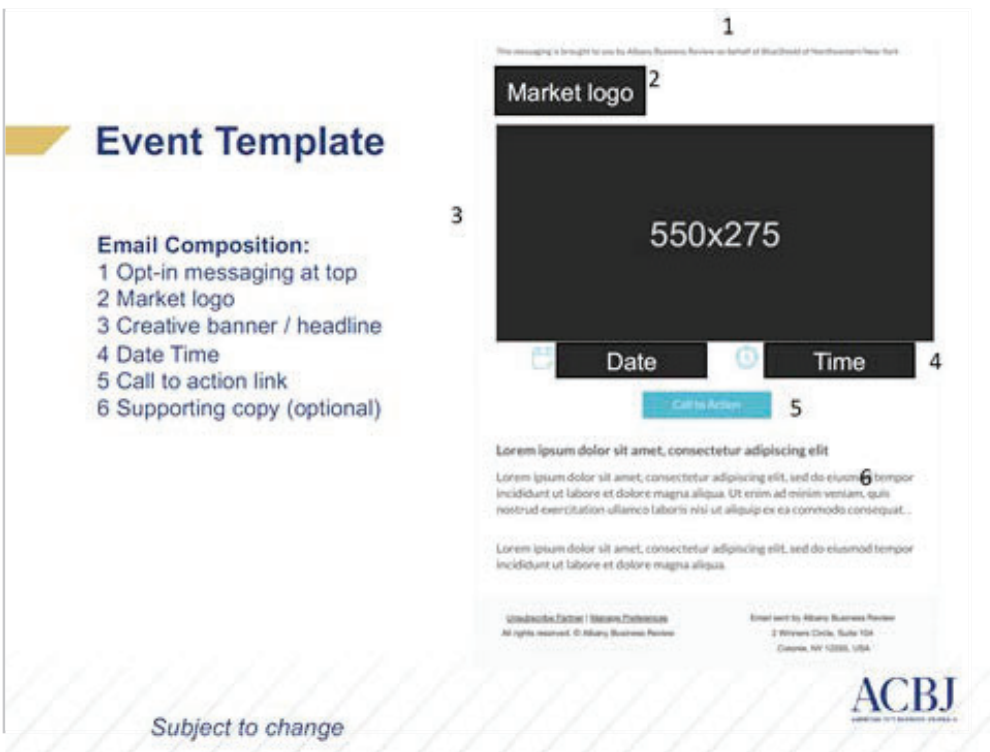
Pasted below is a sample layout for the e--blast campaign as provided by the SVBJ. The content and creative for the 2021 e-blasts is included in the cost, and would be determined a month before the launch.

Attached is the one page agreement that we will execute with SVBJ in order to launch the eblasts. The agreement provides a link to the detailed T&C's.

In the past you have requested that we prepare your Staff Agenda Reports to the SCSA Board for certain expenditures, resulting in lengthy delays in approvals. As a reminder, the preparation of agenda reports for your Board is outside the scope of the Stadium Manager's contract as indicated in Mr. Mercurio's email to you dated 7/31/2020. We are, however, happy to answer any questions you might have with respect to these specific expenditures.

Thanks for your attention to this matter.





Larry MacNeil  
San Francisco 49ers  
408.416.1639



## Rate Agreement

50 West San Fernando St. | Suite 425  
San Jose, CA 95113  
Direct Line: 408-295-3600

Rate Agreement Number	Account Executive
00252876	Monique Faylor

Client	Agency
<b>Company:</b> Forty Niners Stadium Management Company: I <b>Street:</b> 4900 Marie P. DeBartolo Way <b>City:</b> Santa Clara <b>State:</b> California <b>Zip:</b> 95054	<b>Company:</b> <b>Street:</b> <b>City:</b> <b>State:</b> <b>Zip:</b>

**Contact:** Vickie Eiges  
**Phone:** 408-579-4433  
**Email:** vickie.eiges@49ers-smc.com

I have the authority to execute this Rate Agreement on behalf of the above named company (hereinafter called "Company") and, with my signature, authorize the **Silicon Valley Business Journal** for and on behalf of the Company, to publish advertising as outlined below in the **Silicon Valley Business Journal** within a 12-month period beginning on 1/8/2021

Rate Agreement Details	
<b>Start Date:</b> 1/8/2021	<b>End Date:</b> 11/19/2021
<b>Agreement Level:</b> Open	<b>Rate Card:</b> 2020

Client

Signature: \_\_\_\_\_

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

Publisher or  
Ad Director  
\_\_\_\_\_

### Terms and Conditions:

This Rate Agreement is governed by ACBJ's Terms and Conditions available here:

<https://advertise.bizjournals.com/terms/>

**Notes:** (2) E-Blast dates TBD in 2021 Each E-Blast 36,000 sends \$5,400 each E-Blast total spend \$10,800



## Agenda Report

20-1043

Agenda Date: 11/17/2020

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Report from the Stadium Authority Regarding the Stadium Manager's Request to Execute an Agreement with Silicon Valley Business Journal for Non-NFL Catered Events Advertising

#### **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 rescinded the Executive Director's delegated purchasing authority and requires all contracts or agreements to acquire supplies, materials, equipment and services to require Board approval by amending Chapter 17.30 of the Santa Clara City Code. On October 8, 2019, the Board adopted Ordinance No. 2005, which became effective on November 8, 2019. As a result of the Board's revocation of the Executive Director's authority to procure good and services on behalf of the Stadium Authority as of November 8, 2019, the Stadium Manager must now seek approval from the Board and demonstrate that the Stadium Manager has properly and legally procured goods and services before contracts may be executed.

The Stadium Manager is required to develop an annual Marketing Plan to outline the Stadium Manager's plans to develop, implement, and monitor marketing, booking, advertising and promotion of Non-NFL Events for Levi's Stadium. The Marketing Plan needs to be mutually agreed upon by the Stadium Manager and the Stadium Authority.

On March 5, 2020, the Stadium Manager's draft 2020 Non-NFL Events Marketing Plan (Marketing Plan) (Attachment 1) was discussed during a Study Session. The draft 2020 Marketing Plan was reviewed against data results, alignment to Management Agreement provisions, and other key information. The Board ended up not taking any action on the draft 2020 Marketing Plan on March 24, 2020 when it was brought forth with the Stadium Authority FY 2020/21 Budget and Stadium Operation and Maintenance Plan for approval.

Those discussions took place around the time the State and County COVID-19 Shelter In Place Orders became effective. As result, Levi's Stadium has not held any Non-NFL Events since March 2020. However, the Stadium Manager has communicated to Stadium Authority staff that their sales team has continued to market Levi's Stadium and book events for 2021 during this time.

Silicon Valley Business Journal (SVBJ) serves the region's financial and technology community with its newspaper, website and events. SVBJ receives 476,519 monthly unique visitors and has 10,157 paid circulations and 19,772 afternoon edition newsletter subscribers. According to the Stadium Manager, SVBJ's Dedicated Email Marketing Program serves 36,000 business decision makers who



opt in to receive bi-weekly e-blasts and there is a 18% unique open rate for these emails and a 1-5% click through run rate depending on the content.

### **DISCUSSION**

The agreement with SVBJ is for two separate e-blast campaigns that will focus on Non-NFL catered events and take place within a 12-month period beginning January 8, 2021. Each e-blast campaign is priced at \$5,400 and the agreement is for a not-to-exceed amount of \$10,800. Stadium Authority staff determined that the supporting documents for this scope of work are complete and in order.

The Stadium Authority has reviewed this request and found that the advertising services aligns with one of the three key initiatives ("Increase New Business Leads & Bookings") the Stadium Manager identified in their draft 2020 Marketing Plan to grow the business and drive revenue. As outlined in pages 10-11, the Stadium Manager planned to focus on bringing back past clients and "continuing to cultivate and capture new business" through launching a quarterly newsletter, continuing to provide content through social media, and running strategic email campaigns.

### **ENVIRONMENTAL REVIEW**

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

The Stadium Manager has identified this advertising service with SVBJ as a Non-NFL Event Expense. Under Section 4.7.3 ("Stadium Authority Event Revenue and Expenses") of the Stadium Lease between the Stadium Authority and Forty Niners SC Stadium Company, the Stadium Authority is responsible for all Stadium Authority Event Expenses.

### **COORDINATION**

This report has been coordinated with the City's Purchasing Manager and the Stadium Authority Counsel and Treasurer'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. Approve the Stadium Manager's request for authority to execute an agreement with SVBJ in an amount not to exceed \$10,800 for two e-blasts campaigns focused on Non-NFL Events bookings;
2. Do not approve the Stadium Manager's request for authority to execute an agreement with SVBJ in an amount not to exceed \$10,800 for two e-blasts campaigns focused on Non-NFL Events bookings; or
3. Any other direction from the Board.

**RECOMMENDATION**

Alternative 1: Approve the Stadium Manager's request for authority to execute an agreement with SVBJ in an amount not to exceed \$10,800 for two e-blasts campaigns focused on Non-NFL Events bookings.

Prepared by: Christine Jung, Assistant to the City Manager (Executive Director)

Reviewed by: Deanna J. Santana, Executive Director

**ATTACHMENTS**

1. Draft 2020 Non-NFL Events Marketing Plan



# **2020 Non-NFL Events Marketing Plan**

*January 30, 2020*

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    Looking Forward ..... 13

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## Executive Summary

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Levi's Stadium's non-NFL events business continues to bring new shows and events to Santa Clara, delivering significant economic impacts and exposure for our region. Additionally, the local hotels and businesses benefit from the large number of people who travel to Santa Clara from all over the state and country to attend these events. Levi's Stadium has grown a distinct reputation as a premier entertainment venue, resulting from the combination of consistently high client satisfaction ratings, a steady pipeline of high-impact events, and incorporating data-driven decision-making into contracting, planning, and executing events.

As Stadium Manager, the Forty Niners Stadium Management Company continues to adapt its business strategy to the changing sports and entertainment landscape, and will focus our efforts in 2020 on business development, continued guest satisfaction, and building the Levi's Stadium brand as a global entertainment venue. To achieve these objectives, our strategy and approach to guest communication and engagement requires us to adapt our traditional communication vehicles and content strategies, tailored to different demographics. Specifically, the Stadium Manager plans to engage new and returning clients and guests by:

- Sourcing new events and relationships through active involvement in local and national organizations
- Leveraging historical event data to market Levi's Stadium's comparative advantages to the most relevant industries and organizations
- Creating engaging and informational sales collateral to educate new clients and spark interest in the marketplace
- Utilizing a CRM platform to update the way we manage sales leads and measure ROI on sales initiatives and marketing campaigns

Through this deeper connection between Levi's Stadium events and its guests, the Stadium Manager will achieve the optimal outcome for the business, Stadium Authority revenue and community engagement.

### Levi's Stadium Event Definitions and Profiles:

The venue's non-NFL business is comprised of two over-arching event categories, Major Events and Special Events.

**Major Events** are stadium-wide, ticketed events open to the public. The Stadium has successfully executed a variety of different events that have brought greater fandom and economic impact to the local market. Spanning numerous leagues, sports, and attractions, Major Events have helped establish Levi's Stadium as an iconic venue. These high-profile events keep Levi's Stadium in the limelight, which is a significant factor in driving the Special Events category of the non-NFL event business.

**Special Events** are private, contracted, and usually non-ticketed and exclusive events, subject to the event's nature and the client's objectives. These events span a wide range, from weddings to corporate anniversaries, charitable fundraisers, and conferences, and make up the vast majority of the venue's event calendar (over 80% of all Stadium events). The Special Events sales pipeline is driven primarily by relationships formed with local companies as well as our reputation and established experience in hosting a variety of events. Therefore, we are not only focused on the immediate health and profitability of our business, but also the connections we create with clients and opportunities to innovate the venue's guest experience.

## Levi's Stadium Special Events

### Looking back:

In the 2019 calendar year, Levi's Stadium hosted a total of 35,000 corporate and social event guests. From 30 guests to 3,000 guests and from corporate meetings, tradeshow and conferences to proms, wedding receptions and even an engagement with party to follow. It was a busy year for Special Events at Levi's Stadium including the busiest December since 2015. In addition to hosting the Pac-12 Championship game, the Redbox Bowl and two NFL games, Levi's Stadium hosted 26 holiday parties. December is undoubtedly the busiest time of the year for special events at the stadium and the 49ers winning season added an extra layer of excitement for clients and guests as they enjoyed the sights and sounds of the stadium. Outside of event bookings, the Levi's Stadium Special Events Sales team was busy taking part in national conferences, attending local networking events, partnering with industry organizations to amplify the brand, hosting prospecting events at the stadium, and reaching out to prospects with updated sales collateral. In addition to sales efforts, the stadium experienced continued success with consistently high client survey scores in event booking, event planning and event execution categories.



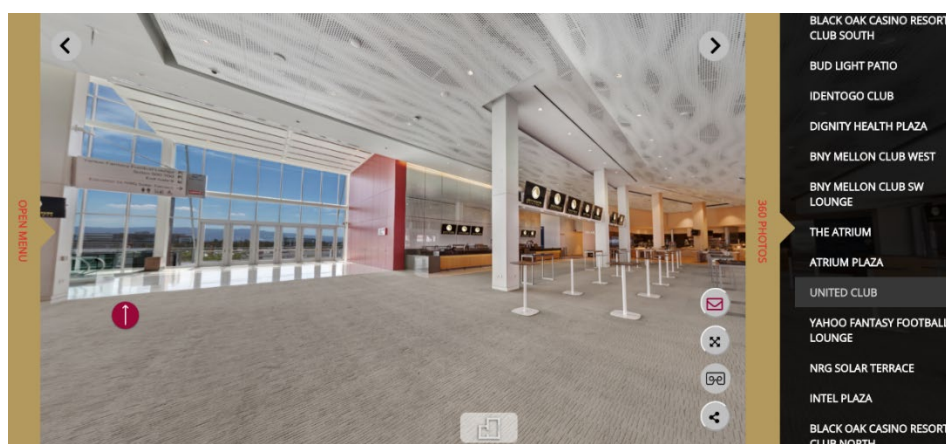
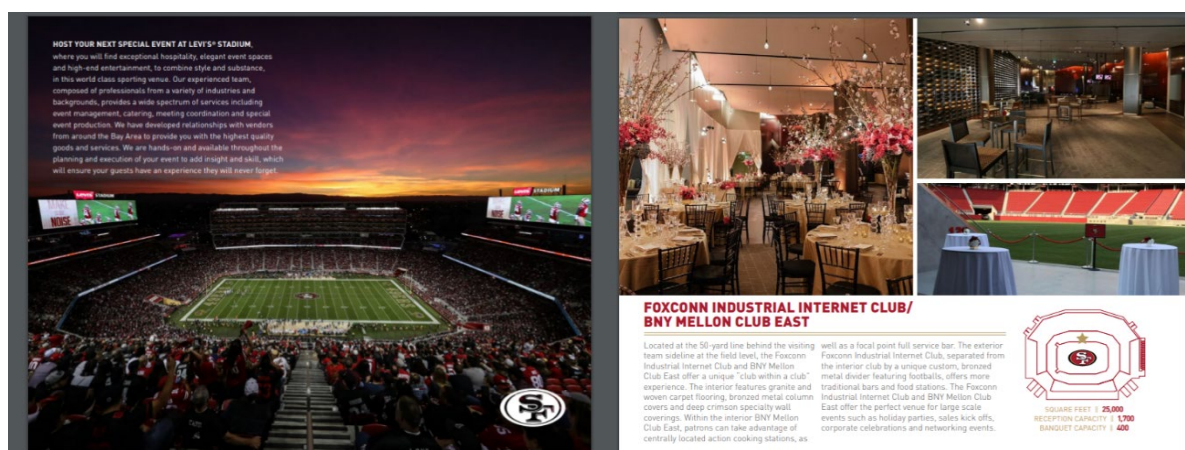
### 2019 Key Wins/Strengths

#### 1. Sales Collateral

A major component in selling the stadium to special event clients is being able to tell the story. When a person first thinks of an NFL stadium they think of the field, the bowl seats, and the concession stands. They don't typically see how a meeting or reception fits into those spaces and assume the stadium cannot fit their needs. What many people do not think about are the various premium club spaces and other rooms around the stadium that can transform into private event spaces. Levi's Stadium found this challenge to be an opportunity and created a sales kit that guides clients through each event space and provides photos and specifications to help clients understand what each space can offer. The sales kit is a valuable resource during the preliminary sales process, when clients are comparing venues and need a full concept of what an event at Levi's Stadium could look like. The sales kit is posted on the website for visitors who are just browsing for venues and it is also a useful tool to send as a digital link directly to clients we are prospecting with or who have inquired about event opportunities.

The sales kit is only the first step towards telling the story. In addition to the digital sales kit, Levi's Stadium also added high definition 360 degree photos of each event space along with adjacent spaces to provide an immersive tour experience for clients and prospects. Photos are helpful during preliminary conversations, but the 360 degree photos provide an opportunity for clients to step into the event spaces and "take a look around." These are especially valuable when clients are in another city, state or country. In-person site visits and walkthrough meetings are always preferred to work with clients in booking and planning their events, but it is not always possible given the number of national and international clients

we work with at Levi's Stadium.



## 2. Participation in local and national sales events to promote Levi's Stadium and continue to build a database of qualified prospects

In 2019, the Special Events Sales team was actively engaging with both local and national industry groups and events to continue to promote Levi's Stadium as a world class event venue. Although the stadium is a landmark in the Bay Area, the work is never done when it comes to educating corporate clients and event professionals about special event opportunities at Levi's Stadium. Tradeshows and networking events are extremely valuable in the sales process as most attendees are attending with a desire to book an event or obtain information for future event needs. This year, the Special Events Sales team engaged with 14 local events including San Francisco Business Journal (SFBJ) and Silicon Valley Business Journal (SVBJ) 40 Under 40 Awards, Admin Awards of San Francisco and Silicon Valley, Smart Meeting (San Francisco), All Things Meetings (Santa Clara), and the Meeting Planners International Northern California Chapter (MPINCC) Gala in San Francisco. By attending each of these events and participating as a sponsor or exhibitor, the sales team is able to connect directly with event professionals and also receive a list of attendees which becomes valuable for future outreach.







In addition to the local and regional industry events, the team attended three tradeshows which provided Levi's Stadium with a national platform to sell and promote special events. The team participated in Connect California, which is specifically geared towards qualified statewide buyers, connecting them with California suppliers like Levi's Stadium. Next the team traveled to Louisville, Kentucky for Connect Marketplace which is a national conference and tradeshow that provides one-on-one opportunities to meet directly with interested buyers. The team conducted 80 one-on-one meetings, engaged with hundreds of attendees as they visited the Levi's Stadium booth with four site visits booking directly out of the conference. Finally, the sales team participated in the annual International Meeting Executives (IMEX) Tradeshow where they joined together with Travel SF as a partner in their booth. The team booked 30 one-on-one meetings and co-hosted a networking happy hour event which brought in contacts from Destination Marketing Companies (DMCs) and major event production companies. IMEX is a highlight each year as it's one of the most well attended event tradeshows in the U.S. Many sports and entertainment venues participate with a goal to connect with national and international buyers and create lasting relationships that result in future bookings.



### 3. Developed creative sales campaigns & events to engage prospects

#### Campaigns:

In 2019 the Levis Stadium Special Events team focused on strategic marketing campaigns to expand visibility and create more opportunities to connect with qualified prospects. With the new sales collateral available, the team utilized the database of past clients and prospects to deliver the creative campaigns. The strategy behind the campaigns came from special event data collected over the past five years. The data collected includes categories such as, most common types of events booked at the stadium, the most common season for booking certain events, type of companies that typically book events at the stadium and the person most likely to book an event within the company.





The first campaign was geared towards proms & socials and went out in May, during prom season, on social media and via direct e-mail. Several proms were booked because of this campaign and it increased awareness among the high schools in the South Bay for future events. In June and October, the sales team delivered themed baskets to companies located within 5-10 miles of the stadium. The baskets were themed for a summer picnic in June and Oktoberfest in October. The goal of this campaign was to create an opportunity to meet with prospects in person and spark interest around hosting an event at the stadium. In August the team ran an e-mail campaign for last minute holiday party bookings. Although the December calendar typically books up in the first half of the year, there are usually dates and spaces available going into August, so it is a great time to reach out to companies to target short turnaround bookings. The final campaign of the year was direct marketing campaign via LinkedIn which targeted individuals who typically book events or are may be likely to book an event in the Bay Area. This campaign ran through the start of January 2020.

### Events:

Levi's Stadium Special Events hosted two prospecting events in 2019. The first event was the "Admin Wellness & Health Break", an event targeted to administrative professionals who are tasked with booking events for their companies. The event started with a detailed tour of the stadium event spaces and ended on the NRG Solar Terrace for a healthy snack and "office yoga," hosted by a yoga professional. The goal of this event was to bring Administrative Professionals to the stadium and educate them about the event spaces while also providing a moment to relax and recharge. Site visits and stadium tours are extremely valuable when selling a unique space. Often times it can be difficult to get a group of Administrative Professionals from various companies to the stadium at the same time, so adding elements like yoga, wellbeing etc. helps with attendance and provides a lasting impression.

In August the team hosted the second annual Levi's Stadium Special Events Summer Showcase. Similar to last year's event, it featured food and beverage prepared by Levy and event décor, entertainment and activities provided by Bay Area vendors. The goal of this event is to showcase the stadium in a new way each year, coming up with themes that are on-trend, creative food and beverage items and unique activations that will spark curiosity and excitement around the stadium. The Special Events team was able to double attendance from 2018 and capture many qualified leads and contacts from this year's event. The stadium has found that getting people in the door is the first step to selling events, but leaving

them with a lasting memory and a personal takeaway, will create an experience they will never forget. In an industry full of networking events and e-mail advertisements, going the extra mile to create one-of-a-kind sales opportunities and moments is key.

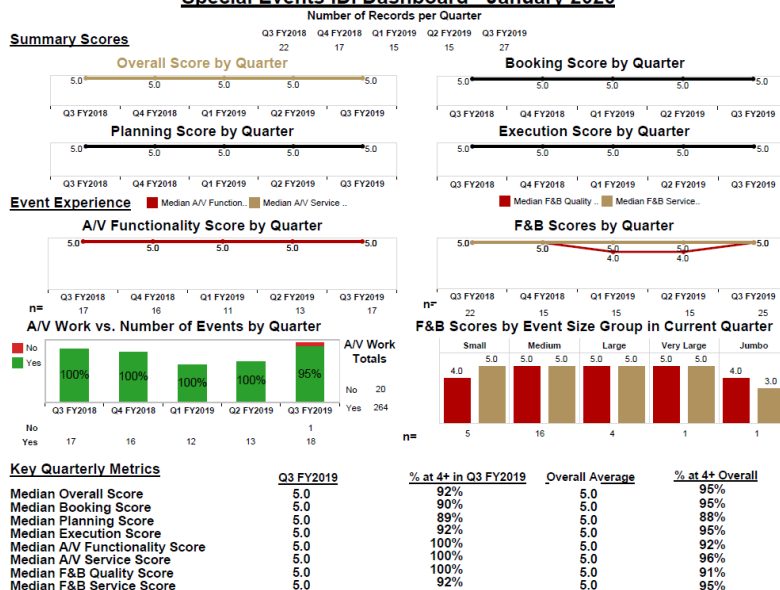


#### 4. Continued success with high client satisfaction ratings

Consistent with 2018, 2019 was another successful year for In-Depth-Interview (IDI) survey results. As much as the sale is important to book first time business, it's the customer service throughout the sales, service and successful execution of the event that is essential to repeat business and client loyalty. Levi's Stadium understands the importance of client retention and therefore puts an emphasis on providing clients with a "one stop shop" level of service. The special events planning team becomes the main point of contact for clients, providing an easy roadmap when navigating the stadium environment and all the elements and teams that go into supporting successful event execution.

This system reduces stress for clients which is clear through the IDI scores and client feedback received throughout the year. From booking, to planning to event execution and catering, all categories received an average of 4.6 or above. When asked if the clients would rebook an event at Levi's Stadium, 98% said they would re-book or were likely to re-book depending on budget, need for event spaces and geographic distribution of future events.

### Special Events IDI Dashboard - January 2020



**"I actually was able to enjoy the event knowing that everything was taken care of by Levi's staff." Corporate Client**

**"We have had this event every year for over 40 years. The entire Board commented that this year's event was the best so far. They are very happy with the venue, the event staff and the catering." Association Event**

**"Everyone I came across was friendly and extremely helpful I could not have imagined the planning of this event without the staff members." High School Social**

**"Levi's is my top choice for any event. They take care of everything while keeping in mind the budget. Superb service!" Corporate Client**

**"We were very impressed by the attentiveness and helpfulness of the Levi's staff. Every detail was covered and discussed. If any questions/issues came up, they were quick to resolve it. It really made event day stress free." Corporate Client**

### Learnings:

As covered in 2018's Marketing Plan, a major component to remaining relevant and exciting for buyers is the opportunity for new offerings. As the stadium continues to age, it becomes more and more important to look at it through a new lens each year. Whether it be updates to an existing space or creating completely new spaces and activations, repeat clients are always looking for something new to offer their attendees and drive excitement and attendance.

### **Adding to Inventory:**

In 2019, the green room off the south tunnel was upgraded to the South Club a beautiful premium space, adding new events space inventory for clients hosting events at Levi's Stadium. The unique location of the club, positioned behind the south end zone, provides a one-of-kind opportunity for clients to get a "behind the scenes" feel when visiting the stadium. Not to mention the modern design inside the club which adds to the "exclusive" vibe when hosting an event in that space. The sales team sold the first South Club event in the fall of 2019 and it was a huge success, providing the client with a perfect location for a VIP reception connected to a larger event in another space. The sales team looks forward to continuing to promote this new beautiful space and creating unforgettable experiences for clients and guests. Given the success of the South Club, the plan for 2020 is to create an additional premium club space in the northwest quadrant.

### **Turnkey Packages:**

Since opening in 2014, Levi's Stadium has hosted 33 proms and/or formals for Bay Area high schools. To further the engagement for these types of successful events, Levi's Stadium created turn-key prom packages that make the booking and planning process easier for high school students and their advisors. As staff has learned through years of experience, proms generally have fairly standard requirements and budgets are often limited. With the partnership of Levy, the team was able to create prom package levels to fit various budgets and needs. After creating the packages, the information was sent out via social media and direct e-mail communication, resulting in the booking of multiple proms.

### **Dynamic Pricing for Underutilized Spaces:**

Along with the data analyzed for proms/formals, the Special Events team was also able to look at underutilized spaces over the past year. Whether it is due to location, features of the space or price point, there are certain club spaces that book more often than others. When taking a look at the underutilized spaces it was discovered that both the price point and the location were two major factors that impacted the amount of bookings in those spaces. Since it was not possible to change the location of these spaces, the team decided to implement "dynamic pricing" to flex the rental rate and minimum spend with a goal to encourage more bookings. This adjustment created opportunities in spaces for smaller meetings and receptions to book as well as clients who put less of an emphasis on location within the stadium. Dynamic pricing has become a valuable resource when used with data from past events and understanding clients' priorities.

## **Business Updates:**

### **1. LinkedIn Page**

One of the ongoing initiatives of the Special Events department is brand awareness and exposure. LinkedIn has been a great platform for connecting with business professionals and sharing content in a forum where participants are looking for information. In 2019 the Special Events department started a business page on LinkedIn to help promote the brand, communicate business updates, sharing posts and connect with event professionals. The sales team manages the page weekly with a goal of gaining more followers through relevant and engaging posts as well as Levi's Stadium and 49ers updates. This is just one more platform to help boost the brand and keep Levi's Stadium top of mind for anyone searching for an event venue in the Bay Area.

### **2. Tracking in CRM**

Over the past year, the Special Events sales team has been successfully utilizing the CRM software by inputting and tracking leads and scheduling follow up communication. This software captures both inbound and outbound leads as well as any leads gained from corporate partnerships. Having all client data in a centralized CRM system helps with consistent client follow up and communication, tracking client history and



collecting data for sales campaigns.

CRM also acts as a resource for setting goals, allowing the sales team to measure output and results month over month. For example, there might be a goal to input a certain number of contacts in the system each month, or a goal of “X” amount of leads generated from outbound efforts.

This system is also a resource for the other departments involved in servicing the events. This process helps the larger stadium events team to understand where clients are in the process of booking and prepare for events months in advance.

### **3. Local Collaborations**

As the Special Events team continues to grow the business inside the stadium, it is also a priority to collaborate with local hospitality businesses outside the stadium to help draw more event business to Santa Clara. Throughout 2019, the sales team continued to work with the Santa Clara Convention Center, Great America and the local hotels to build a network of resources for clients looking to book events in Santa Clara. The goal of the Special Events team is to grow revenue through booked events inside the stadium, however, if the stadium is not able to accommodate an event, the next goal is to keep the business in Santa Clara. This would typically be the role of the Santa Clara CVB so until that role is filled, Levi’s Stadium continues to work closely with its neighbors to sell Santa Clara as an event destination.

In January of 2020, Levi’s Stadium partnered with the Santa Clara Convention Center, Great America and Santa Clara hotels to host a tradeshow booth at the California Society of Association Executives (CALSAE) in Sacramento. The goal of this partnership was to drive traffic to the booth to then create opportunities to educate attendees about what Santa Clara has to offer. Associations, corporate clients and Destination Management Companies are not only looking for a unique venue, they are looking for a complete city experience, from restaurants, to entertainment to hotels and more. As Santa Clara continues to grow, it will become more and more important to have strong relationships and partnerships between the local venues to provide the best value for clients and guests visiting the city.

## **Looking Forward:**

In 2020, the Levi’s Stadium Special Events team will focus on three key initiatives to help grow the business and drive revenue.

### **1. Increase New Business Leads & Bookings**

Levi’s Stadium is proud of the high percentage (52% in 2019) repeat business year over year as well as the diverse list of companies and organizations who have held events at the stadium. Repeat business is an important component to sustaining the special events business. It not only demonstrates the outstanding customer service and hospitality provided, but it also creates a foundation for future booking opportunities. As the stadium moves into its sixth year of operation, the sales team will not only focus on bringing back past clients, but also continuing to cultivate and capture new business. This goal will become a part of the sales team’s monthly tracking process, identifying which companies are “new business” versus “repeat business” as leads are generated and added to the system. The team will not only be measured on how many new clients are added to the system but also how many events are booked with those new clients. The special events sales process can be a lengthy one, sometimes lasting 9-12 months, so this will be a long-term tracking model.

In an effort to increase communication and touch points with new companies in the Bay Area and beyond, the Special Events team will be launching a quarterly newsletter. The newsletter will include updates about the stadium, new offerings and experiences, staff spotlights, event sales and planning tips, photos of featured events, and much more. The goal of this newsletter is to create engaging content that not only educates the reader but also inspires them to pick up the phone and call us or e-mail us.

In addition to the newsletter, the Special Events team will continue to provide content through social media, LinkedIn and run strategic e-mail campaigns.

## **2. Generate more opportunities to book large events**

Levi's Stadium has hosted private events of all sizes, from 20 guests to 20,000 guests. Although identifying events and inquiries for large events (over 5,000 guests) is less common, we continue to mine the opportunities in the Bay Area given the unique corporate landscape. Levi's Stadium is not only a unique venue perfect for small to medium groups but it also provides a valuable feature for large groups... square footage!

In 2020 the Special Events team plans to host focus groups that will be centered around third-party Event Planners/DMCs and Administrative Assistants, the two primary groups who book corporate events. The goal of these focus groups will be to understand the priorities of the companies and planners, as well as their decision making process while selecting an event venue. Although Levi's Stadium is now the only NFL stadium in the Bay Area, clients have many venue choices and there are many factors that impact the venue booking process. The Special Events team looks to learn more directly from clients regarding the stadium's strengths as well as its challenges in order to continue to grow with the industry and compete with new/updated venues.

## **3. Create Small Meetings & Reception Packages**

As we continually look for new sales avenues, creative offerings and ways to capture additional business, the sales team is working with internal stakeholders to create small meetings and reception packages. These packages will include standard room setups, menus designed for small groups, turnkey AV packages and other event enhancements. Large events vary in size and scope and lead times can be anywhere from 12-24 months in advance of the event date. Most of the event inquiries or sales requiring a short lead time (2-3 weeks) are for small meetings and receptions. The goal in creating these packages is to streamline the booking and contract process for clients by providing a turnkey event that can be executed within a short timeframe.

The packages will be created by using historical event data like event size, event location, duration of the event and the associated operational costs. The sales team will work closely with Levy and internal departments to build the packages, with a goal to reduce the workload and increase booking opportunities.

### **Section in-Review:**

**Increase New  
Business  
Leads &  
Bookings**

**Generate More  
Opportunities  
to Book Large  
Events**

**Create Small  
Meeting &  
Reception  
Packages**

# Levi's Stadium Major Events

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## Looking Back:

The Levi's Stadium's Major Events business since the stadium's inception has been a key driver in propelling the venue's reputation and popularity.

This past season we proudly hosted the USWNT v South Africa on their sendoff tour, the Mexican National Team and Rolling Stones. Major Events also drive the Special Event business, enticing corporate and social clients to book events at Levi's Stadium based on its popularity and prominence in the sports and entertainment industry. In 2019, we saw roughly 300,000 patrons come to Levi's Stadium for Major Events – many of these events also drawing national TV viewership.

These types of marquee events are also important to the thousands of SBL holders, who have committed more than \$500M to Levi's Stadium. Recent data shows that the quality and quantity of Major Events at Levi's Stadium is ranked as an important benefit for the SBL customers, and more than half of the SBL customers have purchased tickets to one or more Major Events. In a 2020 survey, 54% of the survey participants ranked Major Events as "Extremely or Very Important", with an additional 20+% ranking them as "Moderately Important".

To sustainably grow the business as well as develop a consistent event calendar for years to come, we cannot rest on prior achievements but must look ahead to how we can be innovative in the events we attract as well as the fan experience we provide. With that in mind, our Major Events business underwent three significant changes / updates over the last six months that will serve as initial groundwork to help grow this particular business:

### 1. Improved proposal process

The Stadium Manager has continually raised the quality of bids presented and has improved the contracted event agreements. Our goal is to optimize the proposal process to ensure we are competitive for attractive high-impact events and succeed in bringing new or established events to Levi's Stadium. Furthermore, by continually innovating our proposal process, we have effectively standardized roles and responsibilities within the greater bid process to better prepare ourselves on announcing, marketing, and delivering these events. We look forward to submitting several RFPs in 2020.

### 2. Cross-departmental involvement in the promotion and execution of an event

This past year, we created a Major Events Leadership team, led by Chief Revenue Officer, Brent Schoeb. The team covers all aspects of an event, with a particular emphasis on driving profitability and marketing for events. We have created more structure to incorporate internal Marketing and Design teams into the comprehensive event execution plan, which has not only helped overall exposure and caused attendance to rise but has also paid dividends on increasing demand and viewership for these events.

### 3. Proactivity on outreach

This past year, our team was focused on finding additional content to come to Levi's Stadium. Our team has met with organizations across all event sizes, from several large scale talent promoters to small ancillary festival events companies. We look forward to further cementing these relationships to drive events to Levi's Stadium.

As of January 2020, we currently have four major events slated for 2020, anchored by both BTS and Justin Bieber. Landing BTS was a major win for our building this year as BTS, the most popular band in the world, was very selective on their venues.

## Looking Forward:

After four years of attracting, contracting, and successfully executing several high-profile events and shows, we will continue to focus on innovation for both the fan's experience and the venue's brand.

### 1. Source new events and relationships

In conjunction with our existing relationships with teams, leagues, and industries, tremendous potential exists to bring in new events that could not only serve immediate financial and community benefits, but also create financial sustainability as recurring events. By working to break down and understand the event landscape relative to what our guests and community want, we can bring new events with less risk and greater potential to attract new, diverse groups.

We are looking into increasing the diversity of ticketed events to not only host large-scale concerts and sporting events, but also smaller and more intimate events as well. For example, one promoter has launched a non-traditional events business that encompasses smaller family/children events and book tours. We are one of the first football stadiums to have expressed strong interest in hosting these events and we believe that our strong relationship with the promoter may provide an opportunity to bring these events to Levi's Stadium in the future. We also have team members studying the feasibility and opportunity of other larger stadium events such as rugby, cricket, stadium golf, obstacle course racing, etc.

Furthermore, we will work to review the curfew policies with the City of Santa Clara and associated partners in order to align on an event calendar that is set up to host new, attractive events for the community. While there are several factors and aspects to the city curfew and associated policies, it will be critical to collaboratively develop a flexible event calendar that is attractive to the events and partners our collective community wants to bring to Santa Clara. The results of these efforts will be most clearly manifested in how many events are contracted and executed, along with lost or missed opportunities based on our policies and reputation in the entertainment industry.

Despite many restrictions and challenges in contracting, executing, and budgeting Major Events, our go-to-market strategy to actualize the three key initiatives above will help further the City of Santa Clara and venue's ability to keep new Major Events coming while working towards financial stability and consistent growth in event count and revenue.

Bid strategically and creatively: We are well-positioned with an established proposal framework, bid team, and drafting / execution process to bid on most stadium-relevant events that we believe will benefit the Stadium Authority and appeal to our community, increasing our opportunities to further develop our Major Events pipeline. While no proposals are the same, having the processes solidified with a framework to begin with and be executed by a trained department will help keep Levi's Stadium nimble in its non-NFL events business efforts and better adapt to new and / or immediate event opportunities. A new focus for the coming year will be reviewing and analyzing more opportunities to host different events, such as the Stadium Links event, that creatively leverage the Stadium and accommodating infrastructure. Expanding our event profile will not only help build out our event calendar, but also attract new audiences and guests to the venue.

Advertise and promote Major Events and NFL games and related activities: To help increase popularity, viewership, and demand for Major Events, the Stadium Manager expects to continue promoting Major Events at 49ers home games and related NFL activities. While this has been an effective strategy for past Major Events, such as Monster Jam and previous Coldplay concerts, the Stadium Manager will look to increase and prioritize promoting Major Events at NFL events, with the expectation of increasing a Major Event's demand while bringing new, diverse audiences to our non-NFL events. Furthermore, the Stadium Manager will increase efforts to capitalize on NFL activities as opportunities to promote



upcoming Major Events. These promotions at NFL Events, and on the exterior LED panels on Levi's Stadium, will need to be negotiated with the 49ers, and the costs of the promotions will be borne by the Major Events.

## 2. Leverage financial projections and ticketing data from past events to drive incremental revenue

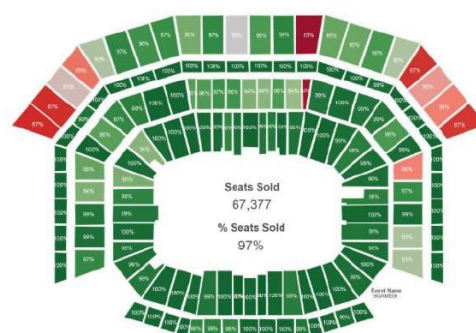
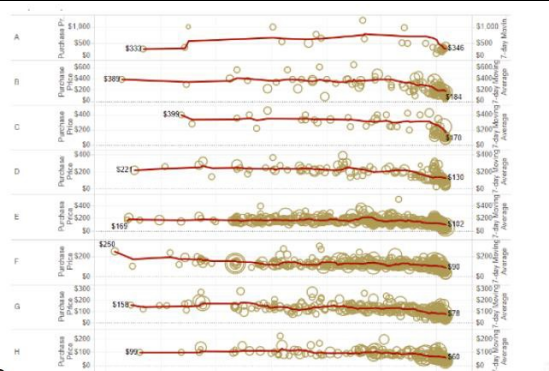
As the ticketing landscape and financial models behind sports and entertainment continue to change, we need to think of new ways to capitalize on high-demand products and events by tracking and monitoring the ticket marketplace with predictive analytics. With four successful previous years of hosting events we can leverage past results and key event metrics, including attendance, average ticket price (ATP), revenue per fan by event, number of new fans versus returning fans. Keeping our measurements tied to the revenue results of our events will provide the clearest indication of these effort's success and what elements of our strategy or initiatives need to be changed or improved moving forward.

Data-driven marketing campaigns: Similar to how we aim to apply the principles of A / B testing to determine optimum marketing strategies for Special Events, we will continue examining where fans go to learn about events, where they buy tickets, and what drives those actions in order to best market our events to fans and drive conversion. This concept is realized through a multitude of campaigns across email and social channels, especially Facebook. An iterative feedback loop will be instrumental in helping us continually improve our marketing strategy while learning what plans / campaigns work for different events, various target demographics, or other determining factors.

Dynamic Ticket Pricing: Applying dynamic ticket pricing as a common practice to all non-NFL events will help us better price ticketed events while allowing the venue to capture incremental revenue using predictive analytics of the secondary market. We have developed tools and dashboards similar to the following examples, which highlight secondary market activity and current sell-through rates for Stadium events.

**Ticket prices relative to secondary market**

**Levi's Stadium view by percentage seats sold**



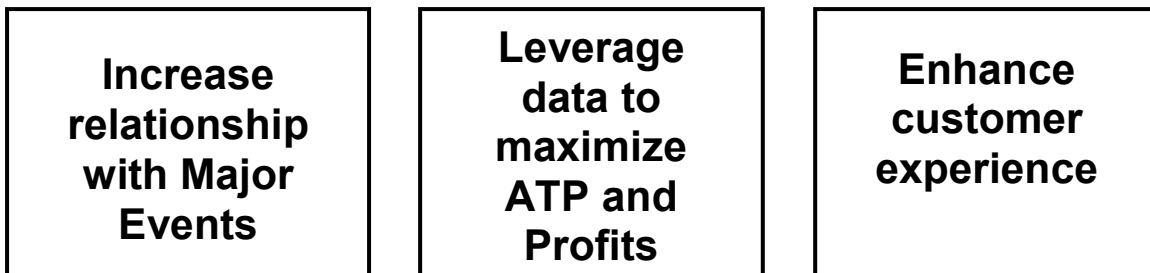
Group Packages and Experiences: To help drive demand and attendance for events that are not anticipated sell-outs, we have several methods to incentivize group ticket purchases, strategic use of complimentary tickets, and additional hospitality or premium packages to drive additional revenue. Specifically, Levi's Stadium events can leverage Loaded Tickets, a virtual payment method that allows fans to spend money by using their ticket at the game, in order to drive group sales and increased event day per cap. Additionally, Levi's Stadium seeks to leverage other elements of the Stadium Manager's business, especially fan-facing departments (i.e. Fan Engagement and 49ers EDU) to tap into viable group ticket sale targets.

### 3. Enhance Fan Experience at Major Events

We have issued thousands of surveys to our guests and gathered have a great understanding of our fans' highlights and pain points. Based off this feedback, we are planning to enhance our food and beverage experience. Our intent is to upgrade concessions and club areas by adding 100+ additional pieces of equipment for all of our concession stands, customized signage across all concessions stands, and upgraded technology to create a seamless experience for our guests.

In addition, we recently introduced the Executive Huddle, a real-time data center designed to help staff identify and resolve attendee issues during all major events at Levi's Stadium. This custom solution is the first-of-its kind, and helps us provide all attendees with a better experience across a myriad of stadium functions: parking, ingress, restrooms, concessions, retail, premium spaces, and guest services. The Executive Huddle is especially valuable during non-NFL events, when a higher percentage of attendees are new to the stadium. It can be daunting to navigate a new stadium, but with the Executive Huddle, we can better service first-time attendees and provide the level of experience one might expect of a seasoned veteran.

#### Section in-review:



## Conclusion

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We are confident that we have outlined a marketing plan and overall strategic approach that will continue to drive high-impact events and revenues for Levi's Stadium, but there are some additional risks and considerations we will need to address and work on with the SCSA Staff to ensure the Stadium Authority's success for years to come. Specific to costs, it will be important to continue working together with respect to changes / updates that may impact the venue. From a brand perspective, it will be important for all parties to collectively manage the venue's reputation, calendar availability, and event broadcasting as these three factors are significant in our efforts to bring high-impact events to the Stadium while attracting a wide variety of guests.

## Appendix

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### The Life Cycle of a Special Event

The life cycle of a special event begins with a lead and ideally will end with a lead. Whether it be a social gathering, association event or corporate meeting, groups are constantly planning events to help grow their business and build a stronger community within their industry. After a group determines what the event will be and how much they would like to spend, the next step is deciding on a venue. The objective of the Levi's Stadium Event Sales team is to be front and center when clients search for a venue whether it be online, through a referral or by attending events. Below is a brief description of our sales process from start to finish.

#### 1. Sales Leads - Inbound V. Outbound

- a. Source of Inbound Leads:
  - Website – Event Inquiry Form
  - Direct e-mail (listed on our website & marketing materials)
  - Phone call (listed on our website & marketing materials)
- b. Source of Outbound Leads:
  - Networking events
  - Cold calls (phone or in-person meeting)
  - E-mail (direct or e-blast)

#### 2. Initial Sales Call – Qualifying a lead

- a. Once a lead is generated, the sales representative will qualify the lead, discussing the client's budget and event specifications
  - If the lead does not fit the minimum requirements or the specifications are beyond what the stadium can accommodate, the sales representative will keep the lead on a list of prospective clients and include them in future e-mail campaigns and outreach. There is always a potential for these clients to come back to Levi's Stadium in the future.
  - If the client's budget and event specifications meet the stadium's requirements, then the lead is qualified as a "hot lead" meaning it's likely to go to contract.

#### 3. Proposal Phase – Sales calls & site visits

- a. After the lead has been qualified as a "hot lead," the sales representative will then continue conversations with the client, setting up additional calls as well as a stadium site visit. This is when the client has an opportunity to tour the event space and ask questions about logistics, layouts, space capabilities, food and beverage, AV, event add-ons and anything else they wish to discuss. The sales representative may also include an Event Manager, the Catering Sales Manager and the AV Manager on site visits if it benefits the client.
- b. Once the sales representative understands fully what the client is looking for and the event objectives, a proposal can be created which outlines the estimated event costs.
- c. This phase will likely include communication back and forth between the client and the sales representative, clarifying the costs in the proposal and making updates as needed.

#### 4. Contract Phase

- a. Once a proposal is agreed on, the sales representative will generate a standard event contract to include the estimated event costs and payment schedule as well as insurance requirements and other policies and procedures related to hosting an event at the stadium.
- b. Once the contract is signed by both parties and a deposit is paid by the client, the event is confirmed and can move on to the next phase, event planning.

**5. Event Planning Phase**

- a. After the contract has been fully executed, the Sales Representative introduces the client to their assigned Event Manager who will act as the main point of contact through the end of the event.
- b. The Event Manager is responsible for assisting in all event logistics, menu planning, AV requirements, event add-ons and 3<sup>rd</sup> party vendors as well as managing the client's budget and coordinating with internal departments. There are many roles involved in planning and executing private events, therefore the purpose of the stadium Event Manager is to streamline communication and reduce unnecessary stress on the client's side.

**6. Event Execution Phase**

- a. On the day of the event, the Event Manager works closely with the Event Operations Coordinator and internal department leads to ensure all event details have been properly communicated. From event install to a pre-event operations meeting to opening doors, there is always someone on site with the client making sure last minutes updates and adjustments can be accommodated.
- b. At the conclusion of the event, either the Event Manager or the Event Operations Coordinator remains onsite until all guests, client staff and vendors have exited the building.

**7. Post-Event Phase – Billing, Event Survey and Sales Outreach**

- a. In the days following the event, the Event Manager collects all final costs and sends the client a final invoice, typically within 48 hours. In addition to the final invoice, the client is sent a link to a post event survey. The survey covers every phase of the event, from sales to event planning to final billing. The goal of the survey is to give clients an opportunity to provide honest feedback immediately following the event, which is then reported and reviewed with internal departments.

**8. Final Phase - Sales Outreach**

- a. In an effort to keep the process truly cyclical, the Sales Representative will then reach out to the client to setup a call to discuss future event opportunities. Whether this call happens immediately following the event or weeks/months later, the Sales Representative will keep the client on a "past buyer" list and will check in with the client periodically. We never know when the next event opportunity will arise so frequent and consistent sales outreach is imperative.



## Agenda Report

20-1056

Agenda Date: 11/17/2020

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Informational Report on Dates and Purpose of Stadium Authority and Stadium Manager Meetings and Corresponding Minutes for the Period July 1, 2020 to September 30, 2020

#### **BOARD PILLAR**

Enhance Community Engagement and Transparency

#### **BACKGROUND**

On August 24, 2017, the Stadium Authority approved the Harvey Rose Audit titled "Comprehensive Audit of Stadium". Audit recommendation 1.Q states that "the Stadium Authority Board should direct the Executive Director to require that all meetings, including the date and purpose of the meetings, between Stadium Authority staff and Stadium Manager be documented and reported quarterly or annually to the Stadium Authority Board." Staff has implemented this audit recommendation on a quarterly basis.

Furthermore, at the August 25, 2020 meeting, the Stadium Authority Board directed staff to prepare minutes for all future Stadium Authority/Stadium Manager staff meetings.

#### **DISCUSSION**

In accordance with the Board approved audit recommendation, meetings between Stadium Authority staff and Stadium Manager for the period of July 1, 2020 to September 30, 2020 are listed below.

Date	Meeting Purpose
7/16/20	SCSA Staff/ManCo Monthly Coordination Meeting (via Zoom). This meeting occurred before the Board's direction for staff to take minutes.
8/11/20	Lender Cash Flow and ManCo's Forecast (via Microsoft Teams). This meeting occurred before the Board's direction for staff to take minutes.
8/26/20	Santa Clara Stadium Authority (SCSA) and 49ers Procurement Meeting (via Zoom)
8/27/20	Santa Clara Stadium Authority/Stadium Management Company Quarterly Status Meeting (via Zoom)
9/1/20	SCSA Year End Items (via Microsoft Teams)
9/10/20	Shared Stadium Expenses Review (via GoToMeeting)
9/17/20	Santa Clara Stadium Authority/Stadium Management Company Quarterly Status Meeting (via Zoom)
9/17/20	SCSA Outstanding Items (via Microsoft Teams)

The minutes for the meetings are attached. Discussions concerning confidential items have been redacted from the minutes per the request of the Stadium Manager or direction from the Stadium Counsel or Executive Director.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

There is no fiscal impact related to this report other than the staff time to prepare this report.

### **COORDINATION**

This report has been coordinated with the Treasurer and 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 [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

### **RECOMMENDATION**

Note and file the quarterly report on Stadium Authority and Stadium Manager Meetings and Corresponding Minutes for the period of July 1, 2020 to September 30, 2020.

Reviewed by: Nadine Nader, Assistant City Manager

Approved by: Deanna J. Santana, Executive Director

### **ATTACHMENTS**

1. Minutes for SA/Stadium Manager Meetings for Period 7/1/20 to 9/30/20

**MINUTES FROM  
STADIUM AUTHORITY/STADIUM MANAGER  
PROCUREMENT MEETING  
August 26, 2020 | 3:00 – 4:00 p.m.  
Zoom Meeting**

**ManCo Staff Present:**

Jenti Vandertuig  
Jihad Beauchman  
Vinette Ly

**Stadium Authority Staff Present:**

Deanna J. Santana, Executive Director  
Brian Doyle, Stadium Authority Counsel  
Kenn Lee, Treasurer  
Mark Giovannetti, Purchasing Manager  
Christine Jung, Assistant to the Executive Director

**A G E N D A**

**The Executive Director shared that the Stadium Authority Board directed last night, August 25, 2020, to require meetings minutes from all the Stadium Authority/ManCo staff meetings moving forward.**

**ManCo staff has received the solicitation documents from the Stadium Authority and the following agenda items are areas that they require more clarification on.**

**1. Protest procedures**

ManCo procurement staff, Jenti Vandertuig, sought more information about the protest procedures for informal and formal bidding processes. Stadium Authority procurement staff, Mark Giovannetti, provided that bidders are allowed 3 days to respond/express concern to an informal bidding process and 10 days for a formal bidding process. Protests are handled administratively unless they are for a formal bidding process, which then go to Council. Jenti also wanted to know when a protest would go to legal. Mark clarified that legal is involved with every protest. Stadium Authority Counsel Brian Doyle clarified that this protest procedures discussion was not for public works procurements.

**2. Notice of Intent to Proceed process**

This item is covered by the discussion had under Item #6

**3. Pre-Bid Conference – When do you require a mandatory pre-bid conference**

Jenti asked for more information about when the Stadium Authority would require a mandatory pre-bid conference. Mark stated that pre-bid conferences are only held when it benefits the potential bidders to view something (e.g., viewing a room for a paint job bid) or when the specifications are more complex in nature. A pre-bid conference is usually not necessary for a service agreement.



**4. What do you consider as minor irregularities or informalities to waive in a solicitation?**

Jenti asked for more information about when a minor irregularity or informality could be waived in a solicitation. Stadium Authority Counsel Brian Doyle clarified that the state law provides what can and can't be waived and there is a court case that provides additional clarification. You cannot waive anything that gives a bidder a competitive advantage.

**5. Performance Bonds**

Jenti wanted more clarification about how performance bonds can be issued since the Code provides that discretion to the Purchasing Manager. Mark clarified that he has not required any performance bonds for non-public works procurement, but does require payment bonds for certain contracts. Public works, on the other hand, almost always requires performance bonds.

**6. BidSync - bid management system overview of features utilized**

Jenti shared that ManCo has signed up for BidSync and are planning to test out the application for six months. They are planning to initially post and accept bids manually, which will require notifying bidders off BidSync, before synchronizing everything electronically. They want to follow the City's process of posting Notices of Intent. Mark clarified that the City posts its Notices of Intent electronically. Jenti requested a summary of how the Stadium Authority/City handles RFPs and RFQs. Mark explained that the City is trying convert all bids to BidSync and that all the bids that are posted on BidSync are either RFPs or RFQs. Mark also clarified that any supplies/equipment totaling more than \$100,000 that would require a RFP and Stadium Counsel Doyle added that procurements cannot be piecemealed to avoid bidding requirement thresholds.

**7. What discretion do you use for tie bids?**

Jenti sought more information on how to proceed with tie bids. Mark noted he has not experienced any tie bids but suggested that if the tie bid was for pricing the award could be divided 50/50 between the two bidders. He also stated that if the agency can decide what to do if the bid amount was low. If the bid amount was high, it would go to Council/Board for a decision.

**8. Number of bids/proposals received**

Jenti sought more information on what to do if the agency puts out a formal bid and receives less than 3 bids. Mark shared that if the agency received less than 3 bids, staff would try to find out why less than 3 were received (i.e., if there are any issues with the competitive process, specifications, or market conditions). If it is clear that there are no issues with the competitive process, the agency can move forward. Jenti also asked if they are allowed to negotiate if they receive only one bid. Stadium Authority Counsel Doyle clarified that the Code does not allow staff to negotiate with the bidder. Additionally, the bid should be within budget and the agency might want to consider throwing out the bid if and resoliciting if the bid is way above budget. Lastly, Jenti asked if there is competition required for small dollar purchases. Mark clarified that no competition is required for under \$15,000 and those can be purchased with a purchasing card or purchase order.

**9. Matrix of the various processes to use as a guideline**

Jenti asked if the Stadium Authority/City has a guideline for each process. Mark responded that the City has a draft but it requires review from the City Attorney's Office. Jenti provided an update that she has been working on redlining the solicitation documents that were shared and will send them over to Jihad for review.

**Additional topics that were discussed but were not on the agenda:**

Process for answering procurement questions moving forward: Jihad asked if there is a procurement contact on the Stadium Authority/City side who can answer these types of questions in the future. Executive Director Santana clarified that such questions can be sent to Christine Jung since the Stadium Authority would like to better understand what information or level of training the Stadium Manager is seeking regarding public procurement.

Bid Process Confidentiality Form: Jenti requested a copy of the confidentiality form that evaluators are required to complete. Mark agreed that the Stadium Authority/City would send a copy.

Meeting Minutes: Jihad asked if they can review the meeting minutes prior to them being published. Stadium Authority Counsel Doyle stated that any language regarding agreed upon next step will be clearly defined during each meeting. Executive Director Santana stated that the Stadium Authority will issue the minutes and that the Stadium Manager could issue notice of agreement or disagreement to the Board.

Upcoming Contracts: Stadium Authority Counsel Doyle asked if the Stadium Manager has any big contracts that are expiring soon and to let the Stadium Authority know if any contracts need to go to the Board. Jihad responded that are none. Executive Director Santana said it would be helpful for the Stadium Manager to share any contract schedules.

Procurement Matrix: Executive Director Santana asked if there was any progress/update to the contracts outlined in the matrix that the Stadium Manager shared and that the Stadium Authority reviewed and provided comments for a March 2020 Board report. Jihad said they will need to go back and look but it was their impression that the contracts were valid and in order. Executive Director Santana asked Christine to share the report and that the Stadium Authority would add it to next monthly meeting agenda.

Quarterly Status Meeting: Jihad noted that the quarterly status meeting schedule has shifted and it would be helpful to relook at the calendar to help with reporting. Executive Director Santana agreed.

**MINUTES FROM  
STADIUM AUTHORITY/STADIUM MANAGER  
QUARTERLY STATUS MEETING  
August 27, 2020 | 9:00 – 10:30 a.m.  
Zoom Meeting**

**ManCo Staff Present:**

Jim Mercurio, Executive Vice President & General Manager  
Jihad Beauchman, Vice President, Deputy General Counsel  
Jas Sajjan, Senior Manager, Public Affairs & Strategic Communications

**Stadium Authority Staff Present:**

Deanna J. Santana, Executive Director  
Brian Doyle, Stadium Authority Counsel  
Kenn Lee, Treasurer  
Ruth Mizobe Shikada, Assistant City Manager  
Manuel Pineda, Assistant City Manager  
Christine Jung, Assistant to the Executive Director  
Rachel Copes, Senior Management Analyst

**A G E N D A**

**Executive Director Santana shared that the Stadium Authority Board directed on August 25, 2020 to require meetings minutes from all Stadium Authority/Management Company (ManCo) staff meetings moving forward. Santana stated that if an item is confidential, that it should be noted beforehand so that the item can be appropriately captured as a confidential matter and not reflected in the minutes.**

**I. COVID Update from Stadium Manager**

**a. Updates on Attendance at Games**

ManCo's Executive Vice President & General Manager Jim Mercurio updated Stadium Authority staff that the September 13 home game will be held without fans, which has already been announced publicly. While there will still be people at the Stadium (e.g., football players, coach, broadcasters, etc.), they anticipate that number will be significantly reduced due to no fans (i.e., reduced number of traffic control, guest services, etc. in addition to no fans) and, therefore, less resources from the City will be required. Mercurio stated that ManCo is working with the City's Police Department on staffing and will finalize everything during the next 7 days.

**b. Status of Requested Transportation Management and Operations Plan (TMOP) and Parking Plans Addendums for No or Limited Audience**

ManCo staff noted that they have provided a copy of the TMOP, which incorporates Related information, back in March. *Note: This item has been placed on the agenda because it would need to be amended if COVID regulations allow for fans to attend events.*

**c. Status of Annual Parking Permits**

ManCo staff stated that they haven't submitted the parking applications yet because they don't expect any fans at the games. They will notify the Stadium Authority when they are ready to send the applications. *Note: This item has been placed on the agenda because it would need to be amended if COVID regulations allow for fans to attend events.*

**II. Updates from Stadium Manager: Quarterly Status Meeting (First Amendment to Stadium Management Agreement)**

As a follow up to a request made by ManCo's Vice President, Deputy General Counsel Jihad Beauchman at the 8/26 Procurement Meeting, ManCo and Stadium Authority staff agreed to shift the quarterly reporting to the September and December 2020 meetings.

**a. Financial performance of past Non-NFL Events**

**i. Non-NFL Events P&L for current year**

**b. Status of future Non-NFL Events**

**i. Booked Events**

**ii. Pipeline Events**

ManCo's Executive Vice President & General Manager Mercurio shared that ManCo has booked some events for 2021, which they will share at the next quarterly meeting. Executive Director Santana noted that it would be helpful if ManCo would include cancelled events in their quarterly reporting to understand the quantity of lost business due to COVID.

**c. Private Parking Agreements**

**i. Executed private parking agreements**

**ii. Ongoing negotiations for private parking agreements**

**III. Revenue Forecasts and Cost Savings**

ManCo's Executive Vice President & General Manager Mercurio shared that ManCo is tracking a 10% reduction in cost savings (about \$2M) due to staffing, utilities, etc. They will be able to provide more details as they get closer to the end of the year. ManCo's Vice President, Deputy General Counsel Beauchman noted that in terms of revenue, ManCo staff has already sent a revenue forecast. Treasurer Kenn Lee shared that any specifications would help the Stadium Authority better understand whether any Reserve funds are needed and to report back to the Board.

ManCo's Executive Vice President & General Manager Mercurio provided some clarification about the forecast for SBL payments and senior and youth surcharge fees. Stadium Authority Counsel Doyle and ManCo's Vice President, Deputy General Counsel Beauchman also discussed StadCo's position that StadCo does not need to pay facility rent. The Stadium Authority Counsel stated that it does not accept StadCo's position and asked if we were in anticipatory breach situation.

Beauchman requested further discussion. Doyle responded that no discussion would be productive without StadCo providing third-party documentation of their position.

**IV. Discussion on AIG Insurance Claim for SCSA**

Executive Director Santana stated that ManCo filed an insurance claim about lost revenue on the Stadium Authority's behalf and has not provided any detail to the Stadium Authority. Executive Director Santana stated that the Stadium Authority would like more details on what exactly was submitted, noting the two cancelled concerts and various meetings. ManCo's Vice President, Deputy General Counsel Beauchman clarified that the claim only stated general losses (e.g., concerts) and projected losses. He further stated that it is an industry practice among teams to give insurance notice that they are filing and that the documents shared with the Stadium Authority are the extent of what has been submitted. ManCo is working with their counsel to assemble more details. Stadium Authority Counsel Doyle stated that the claim should not include facility rent. ManCo's Vice President, Deputy General Counsel Beauchman confirmed that it would not and acknowledged that would be "double dipping."

**V. Stadium Builder Licenses (SBLs)**

**a. SBL Paper Copy Project Update**

ManCo's Vice President, Deputy General Counsel Beauchman updated the Stadium Authority that they anticipate completing the paper copy SBL project in 2-3 business days and will be able to transfer the hard copy SBL agreements to the Stadium Authority's Administrative Office in the Stadium by Labor Day.

**b. SBL Electronic Copy Project Update**

ManCo's Vice President, Deputy General Counsel Beauchman updated the Stadium Authority that they anticipate completing the electronic SBL project within the same timeframe as the hard copy SBL agreements. Stadium Authority staff noted that the Purchasing Manager will move forward with the digitization services RFP process once the transfer is completed. ManCo's Vice President, Deputy General Counsel Beauchman asked if ManCo could be provided copies as well once the SBL digitization is completed, so they won't need to ask for copies when making a change/relocation in the future.

**c. Owner's Club Amendment**

CONFIDENTIAL discussion about potential litigation.



**d. Other SBL Matters (Defaults and Class Action Direction)**

CONFIDENTIAL discussion about potential litigation.





**VI. Concessions Refresh Updates**

Stadium Authority staff is interested to know more about the funding of the project, expressing concern that the projects may exceed available funding. ManCo's Executive Vice President & General Manager Mercurio provided an update on the Concessions Refresh project. ManCo has received 100% of the equipment and expects that the project and final inspection will be completed in October. ManCo's Vice President, Deputy General Counsel Beauchman provided more clarification on the remaining fund balances for the Innovation and Investment Funds and stated that after the existing projects that there will be over \$1 million left for more work. Assistant City Manager Shikada asked for a reporting of the remaining balances for the funds as well as a summary of projects that were funded by the funds in the past. ManCo staff agreed to send the report to Assistant City Manager Shikada and Treasurer Lee.

**VII. Emergency Repairs at Stadium**

ManCo's Executive Vice President & General Manager Mercurio provided an update on the pipe repairs at the Stadium. The contractor is still working on the repairs and the cause of the damage is still unknown. The work should be completed in the week or 2 weeks.

**VIII. ADA Improvements on Red Lot**

ManCo's Executive Vice President & General Manager Mercurio provided an update on the ADA improvements on the Red Lot Parking Lot. ManCo is working on the agreements with Assistant City Attorney Su Reuter. ManCo staff noted that they will have more information in the next two weeks on next steps and confirmed that the work will not utilize using public funds.

**IX. Planned/Budgeted Capital Improvements (procurement schedule)**

ManCo's Executive Vice President & General Manager Mercurio provided an update that ManCo is pushing off inside remodeling projects/updates for now. ManCo has identified 8 projects of the outside work and/or safety nature that will be prioritized. They are aiming to bring forth the projects to the November 17 Board meeting and will provide an update at the next quarterly status meeting. Assistant City Manager Shikada requested the number of parking spaces. ManCo's Executive Vice President & General Manager Mercurio agreed to send drawings.

ManCo's Executive Vice President & General Manager Mercurio noted that the refresh and Cache Creek projects will most likely be completed in November and to ensure effective social distancing, ManCo will wait for those projects to be completed before starting the CapEx projects. He also provided update on Stadium seating.

**Future communication collaboration opportunities regarding the Stadium were discussed {CONFIDENTIAL}.**

**SCSA Board Direction for Stadium Manager Follow Up**

- Compliance Plan and Oversight of Corrective Action (including Validation)
- Number of public riders for large stadium events
- Analysis re Event Day Parking Costs
- Stadium Manager Report to Board Summarizing Contracts Let on Behalf of Stadium Authority
- May 27, 2020 Letter re COVID-19 Plan for the Stadium, revolving loan, the buffet invoice, maintenance of the Stadium, and event parking/public transportation.

**Upcoming SCSA Board Meeting Dates**

- November 17, 2020

Meeting Date/Time: 9/1/2020 4:00 PM via Teams  
Attendees: Rachel Copes and Darren Wong

1. Shared Expenses
  - a. Discussed ETA on final true-up
  - b. Discussed Meeting Time and Application: Thursday September 10, 2020 at 1PM for Shared Expense



**MINUTES FROM  
SHARED STADIUM EXPENSES REVIEW MEETING  
September 10, 2020 | 1:00 – 4:00 p.m.  
GoToMeeting**

**ManCo Staff Present:**

Darren Wong, Director of Accounting  
Esther Chi, Vice President, Controller

**Stadium Authority Staff Present:**

Deanna J. Santana, Executive Director  
Linh Lam, Assistant Director of Finance  
David Noce, Accounting Manager  
Rachel Copes, Senior Management Analyst  
David Presley, Accounting Technician  
Anne Tran, Staff Aide I

**A G E N D A**

**Stadium Authority Auditor Linh Lam asked if the meeting can be recorded for minute taking purposes and in case the City needed to review what invoices were requested at a later date. Esther stated that they would need to ask management/legal about the request and declined the request to record the meeting.**

**1. Overview of Shared Stadium Expenses Population and Sample Selection**

ManCo's Director of Accounting, Darren Wong, shared his screen to show the General Ledger of Shared Stadium Expenses on an Excel spreadsheet. Darren represented that what was being presented was all the detailed transactions that make up the Shared Stadium Expenses (e.g. Stadium Ops, Security, SBL Sales and Services, Grounds, and etc). He continued to discuss the breakdown of the Excel spreadsheet, going over the insurance costs and utility costs. Darren continued to review the Management Fee, the other G&A that was touched on earlier in the meeting and the details of the Lender Fees, which is separate.

Senior Management Analyst, Rachel Copes, established that the request for all the supporting documents for the G&A and Lender Fees has already been made and ManCo is pulling the invoices for that request. Rachel suggested that they review the spreadsheet from the top and pull the samples for each type of expense while going down the list. Darren showed the layout of the spreadsheets, which has been broken into multiple time periods as follows: April – June, July – September, October – February, and March, that make up the total Shared Stadium Expenses for the fiscal year. For any time period, there is a summary tab that summarizes the expenses in a pivot table and the transaction details would be included on the second tab. The sum of all the spreadsheets in each time period makes up the total Shared Stadium Expenses reported for the year.

ManCo's Vice President/Controller, Esther Chi, spoke on how this process was handled in a previous year at the Stadium. Both City and ManCo staff were present and City staff reviewed samples on a laptop to make their selection, with minimal discussion, then the supporting documents were brought to a follow up meeting two weeks later. Accounting Manager, David Noce, confirmed that previously City staff did review the samples independently and highlighted the entire sample on the printed excel sheet provided by ManCo staff. Esther stated that going through each line item and having Darren explain each item would be time consuming. She suggested that the City take control over the spreadsheet and look through the samples and make their selection.

Executive Director, Deanna J. Santana, stated that she believes it is reasonable for the City to request more information due to the negative \$2.7 million reported, especially since the first three quarters did not reflect that negative trend. Esther clarified that the \$2.7 million reported was for the Non-NFL Event Expense P&L. Deanna noted that ultimately it is all part of the same budget and financial transactions for the fiscal year between the agencies, therefore additional due diligence is expected on either non-NFL expenses or shared expenses. It was suggested that Stadium Authority staff take as many samples as they need to complete their work. Darren clarified that the documents being reviewed for this meeting are for the Shared Stadium Expenses and the test work for the Non- NFL lot is not included in this meeting. He suggested that if the City would like to discuss Non-NFL Event Expense P&L, a separate call needs to be made. Deanna agreed that another call would be needed.

Linh suggested that Darren provide a walkthrough of a few samples so that staff can have a quick overview of the process, the supporting documentation, and timing of review before selecting samples. Darren agreed and gave a brief summary and walkthrough of the first line item. Linh selected Invoice 4235 and requested for backup source documents to verify the charges; she also requested that the spreadsheet be expanded for a better view. Darren pulled up the invoice on SAP Concur for staff to review. Rachel was able to validate that the payment charged to the Stadium Authority had the correct allocation percentage. Linh agreed with Esther that the process is time consuming since Darren needs to spend some time looking for the invoice backup for each line item in a meeting. Linh requested copies of the GL detail and Excel spreadsheets so staff can fully review, combine all the GL details into one spreadsheet, and make their sample selections. She suggested that this process might be quicker and City staff can send a list of sample selections to ManCo staff and setup another meeting time to review the backup documents.

Darren explained that the purpose of this meeting was so that they did not have to give the City a copy of the detailed GL since they would like to keep all Stadium data within Levi Stadium, therefore he is declining the request. Linh asked if it is possible to upload the Excel spreadsheet into the laptop at the Stadium and have City staff go there to review and make sample selections. Esther stated that she will need to check on that request. Linh explained that that might be the best process to review all the information needed to make a selection. Deanna agreed with Linh that that seems like the most efficient way and that the Stadium Manager's proposed process was inefficient. Esther stated that she can check with legal on this request. Staff decided to reconvene after ManCo reviews the request and ended the call.

**Additional topics that were discussed but were not on the agenda:**

Linh reviewed the past practice of going on site to the Levi's Stadium to pull the soft copies of samples on SAP Concur. Linh asked Darren if SAP Concur was still being used for live invoicing and document retrieval. Darren confirmed that SAP Concur was still being used and they might be able to pull the invoices as the meeting goes on. However, it might take longer to pull the invoices up since he will need some time to research and retrieve the data.

Darren updated Rachel on the detailed GL and that the amount of \$1.9 million (previously given to Finance) excludes the BNY Club and is invoiced separately. The amount is invoiced on the O&M line, which is split into two pieces, the sales and services and the buffet. Darren believed that his predecessor, Connor, sent the B&Y invoices to the City in the past. Rachel requested that the total SBL sales and services, including the buffet cost, be sent to the City. The costs were not detailed in the O&M invoices that the City received.

Darren asked if the City would like to review the use of StadCo TI's, which are based on the number of events and a set rate per event. These costs are not necessarily in the transaction tiers, but the calculations of those actual numbers can be made available. City staff confirmed that they would like to review it as well.

**MINUTES FROM  
STADIUM AUTHORITY/STADIUM MANAGER  
QUARTERLY STATUS MEETING  
September 17, 2020 | 9:00 – 10:00 a.m.  
Zoom Meeting**

**Stadium Manager/ManCo Staff Present:**

Executive Vice President & General Manager, Jim Mercurio  
Vice President, Deputy General Counsel, Jihad Beauchman  
Senior Manager, Public Affairs & Strategic Communications, Jas Sajjan

**Stadium Authority Staff Present:**

Executive Director, Deanna J. Santana  
Stadium Authority Counsel, Brian Doyle  
Treasurer, Kenn Lee  
Assistant City Manager, Ruth Mizobe Shikada  
Assistant City Manager, Manuel Pineda  
Assistant to the Executive Director, Christine Jung  
Senior Management Analyst, Rachel Copes

Executive Director Santana reminded everyone that minutes will be taken for the meeting. Jihad asked if ManCo would receive a draft copy before the minutes are published. Executive Director Santana explained that the Stadium Authority was not planning to, which is the normal practice for a public agency preparing meeting minutes. ManCo staff were informed by Santana that if they had any issues with the published minutes that they could issue comments directly to the Board. ManCo staff confirmed that they understood.

**A G E N D A**

**I. COVID Update from Stadium Manager**

**a. Updates on Attendance at Upcoming Games**

ManCo's Executive Vice President & General Manager Mercurio provided a brief update on their September 13 game, which had no fans in attendance. He shared that some teams are hosting fans, but only about 25% capacity so that might be the next step when fans are allowed. He noted that the game went well and that they reminded fans through social media to respect the County order. They will continue pushing that information out since it seems to be working. They only heard of one service call, which was about a tent at the park, but it was quickly resolved.

CONFIDENTIAL discussion about Stadium security. [REDACTED]

**b. Status of Requested Transportation Management and Operations Plan (TMOP) and Parking Plans Addendums for No or Limited Audience**

ManCo's Executive Vice President & General Manager Mercurio didn't expect there to be much changes to the documents that they submitted earlier in the year. The 49ers have operations meetings the week before each game and will share any changes with City/Stadium Authority staff if they come up then, especially Police's traffic staff.

**c. Status of Annual Parking Permits**

Item was addressed/discussed as part of the traffic/parking documents above.

**II. Updates from Stadium Manager: Quarterly Status Meeting (First Amendment to Stadium Management Agreement)**

**a. Financial performance of past Non-NFL Events**

**i. Non-NFL Events P&L for current year**

ManCo's Vice President, Deputy General Counsel Beauchman shared that the report, if it hasn't already, will be placed in the Stadium Authority's Administrative Office. ManCo's Executive Vice President & General Manager Mercurio confirmed that the USB was placed in the office yesterday and that the Stadium Authority can coordinate Stadium access for Stadium Authority staff by emailing him.

**b. Status of future Non-NFL Events**

**i. Booked Events**

**ii. Pipeline Events**

CONFIDENTIAL discussion about Stadium Non-NFL Events. [REDACTED]

[REDACTED]

**c. Private Parking Agreements**

**i. Executed private parking agreements**

**ii. Ongoing negotiations for private parking agreements**

**III. Stadium Builder Licenses**

**a. SBL Paper Copy Project Update—Transfer of SBLs (paper and digital copies) to SCSA for proper archiving**

ManCo's Vice President, Deputy General Counsel Beauchman shared that the hard copy SBLs are all boxed. There are 75-100 boxes, which probably won't all fit in the Stadium Authority's Stadium Office. He asked how Stadium Authority staff wanted the boxes. Executive Director Santana asked how the boxes were organized for purpose of easy tracking or retrieval if the Stadium Manager required an SBL agreement (i.e., alphabetically or by SBL types). Vice President, Deputy General Counsel Beauchman responded that he was not sure. He said he would find out and let Stadium Authority staff know. Executive Director Santana asked him to let staff know via email when he finds out [REDACTED]

[REDACTED] ManCo's Vice President, Deputy General Counsel Beauchman also provided an update on the digital SBL files, which totaled about 80 gigabits. ManCo is determining the best process to transfer those records.

**b. Owner's Club Amendment**

CONFIDENTIAL discussion about potential litigation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**c. SBL Defaults**

CONFIDENTIAL discussion about potential litigation.

[REDACTED]

**IV. Emergency Repairs at Stadium**

There are two emergency repairs that are being worked on at the Stadium. ManCo staff noted that they sent the documents that the Stadium Authority requested. Executive Director Santana confirmed that staff was reviewing the documents and will let ManCo know if there are any questions.

**V. ADA Improvements on Red Lot**

ManCo's Vice President, Deputy General Counsel Beauchman provided an update on the progress that they were making on the ADA improvements. Once ManCo signs off on the settlement, they will need to amend the Design Building Agreement (DBA), which will go to the Board for approval. Under the proposed DBA amendment, no public funds will be used.

CONFIDENTIAL discussion about the funding of the improvements.

[REDACTED]

**VI. Planned/Budgeted Capital Improvements (procurement schedule)**

ManCo's Executive Vice President & General Manager Mercurio shared that not much has changed but the City has put a hold on building and fire permits because of Stadium Manager's fire code violations. He is trying to resolve those issues so that ManCo can move forward on projects, including Levi's Stadium signage, tunnel safety improvements, etc. The projects were all included as part of the approved 2019 and 2020 budgets. He noted that ManCo will not open any new projects until they get permits.

CONFIDENTIAL discussion about Stadium Improvements.

[REDACTED]

## **VII. Full Rental Payment**

**There are extensive notes on this topic due to its sensitive nature.**

ManCo's Vice President, Deputy General Counsel Beauchman and Stadium Authority Counsel Doyle discussed the conversation that took place regarding Stadium rent payment during the August meeting. ManCo's Vice President, Deputy General Counsel Beauchman stated he had hoped to have a collaborative conversation with Stadium Authority Counsel Doyle to walk through the steps before the Stadium Authority Board took action to initiate arbitration. He stated that he hopes in the future that he and Stadium Authority Counsel could discuss these things before resources were unnecessarily expended.

Stadium Authority Counsel noted that Vice President, Deputy General Counsel Beauchman could have just told him that ManCo was planning to pay the rent in full at the August meeting or at anytime thereafter, but instead was told at the last meeting that ManCo's position was that the rent should be reduced due to the cancellation of the games. Additionally, Stadium Authority Doyle had requested Vice President, Deputy General Counsel Beauchman to provide documentation of ManCo's justification for the reduction when the topic was discussed at the last meeting, which did not happen.

Executive Director Santana added that his efforts of a "collaborative" process or comments did not make sense, nor were his actions over the past months consisted with his comments today. Stadium Counsel Doyle noted that while Deputy General Counsel Beauchman discussed the cancellation of the pre-season games in several telephone conversations, he never mentioned any intention to rely on the cancellations to reduce rent. Executive Director Santana stated that instead Scott Sabatino issued a letter of Stadium Manager's intent to reduce rental payments by 10% for each canceled game, noting a 20% intended rental payment reduction. Executive Director Santana noted that she sent a letter rejecting the basis for reducing rent and disagreeing with their claims. Santana noted during July or August, Jihad had never reached out to collaborate on rental reduction and instead the Stadium Manager:

- (1) Took action in July to send a letter advising of its intent to reduce rental payments,
- (2) Rejected Stadium Authority's letter of its inability to take such action and, indeed,
- (3) Failed to pay rent in the amount of \$5+ million.

Executive Director Santana noted that the Stadium Authority acted reasonably with the information it had by taking this matter to the Board since nothing in the Stadium Manager's actions from June - September indicated their willingness to be collaborative or pay their full rent.

Stadium Authority Counsel Doyle said that what matters is that the Stadium Authority got the full rent payment and if Vice President, Deputy General Counsel Beauchman wants to talk in the future, he could call or email. ManCo's Vice President, Deputy General Counsel Beauchman said there is more than one reason why the rent was reduced. Executive Director Santana asked that he put those items on the agenda for future meetings and not delay collaborative discussion opportunities until after the fact.

## **VIII. \$2.7M for Non-NFL Event FYE 3/31/2020**

Stadium Manager asked when the fiscal report regarding last year's fiscal year would be presented to the Board and if would include the \$2.7 million. Stadium Treasurer Lee confirmed that the fourth quarter report is scheduled to go to the Board on October 13. Staff stated that it has been reviewing the documents and may have follow up questions. Stadium Authority staff stated that its focus is on the year end audit.

ManCo's Vice President, Deputy General Counsel Beauchman asked when the projected payment would be transferred. Executive Director Santana stated that she couldn't answer that question since it would depend on the Board discussion and action. ManCo's Vice President, Deputy

General Counsel Beauchman also wanted to clarify that the \$2.7M was not part of the Shared Expenses since it was brought up in conversation during the September 10 meeting between ManCo and Stadium Authority staff. Executive Director Santana clarified that she had brought up the \$2.7M during the meeting but only as an example for the need to have access to all information and not limit the audit review process, and not as a Shared Expense. She noted that Esther Chi from the 49ers was going to follow up to see if they would be open to showing the documents differently since last week's process was inefficient.

**IX. Public Safety Cost Billings**

Stadium Treasurer Lee noted there were a lot more questions than usual from the 49ers regarding public safety costs. Stadium Authority staff has the backup documents and is preparing them to send to ManCo, as time permits.

**X. LCPtracker Agreement**

Executive Director Santana shared that Stadium Authority staff checked notes from May's meeting regarding LCPtracker, which stated that ManCo would discuss internally about how to move forward with the "piggybacking" process and get back additional information to the Stadium Authority. ManCo's Vice President, Deputy General Counsel Beauchman noted that his understanding was that there were two different conversations.

Executive Director Santana clarified that the notes mentioned that Jihad was to get back with additional information and that she thought the follow up information could be about the difference in pricing (but that no detail was noted in the notes) and that we also are waiting for ManCo to submit changes to the report. Santana went on to state that ManCo needed to explain the difference in pricing and actual contract amount authority. ManCo's Vice President, Deputy General Counsel Beauchman didn't recall what information they needed to follow up about from May or if there was any discussion about the difference in pricing of the agreement.

Since there was confusion about the follow up information referenced in the May notes, Executive Director Santana asked him to revise the report to include an explanation about the difference in pricing, since it is not appropriate to request \$25,000 for a \$13,000 expenditure without an explanation of what the funds would be used for. ManCo's Vice President, Deputy General Counsel Beauchman noted that he would take another look at the report but that there was contention about ManCo writing the Stadium Authority's Board reports.

Executive Director Santana rejected that Stadium Authority should draft Stadium Manager's reports and clarified that Stadium Manager would have to do some work and provide an analysis to explain the difference in pricing in the report. Stadium Authority Counsel Doyle added that the 49ers procurement manager who has experience with the County should be able to draft the explanation for why there is a \$12/\$13K difference for the agreement. Executive Director Santana suggested that if there are any issues and items that they are waiting for in the future, ManCo shouldn't wait four months to follow up and that they caused the delay in action by not following up for four months on this item, because Stadium Authority notes show that Stadium Manager was to follow up with the Stadium Authority on both "piggybacking" and more information. Santana stated that it could take the Stadium Manager's request to the Board on October 13 as submitted and write a separate report from the Stadium Authority. There was not disagreement with that course of action.



### **SCSA Board Direction for Stadium Manager Follow Up**

- Compliance Plan and Oversight of Corrective Action (including Validation)
- Number of public riders for large stadium events
- Analysis re Event Day Parking Costs
- Stadium Manager Report to Board Summarizing Contracts Let on Behalf of Stadium Authority
- May 27, 2020 Letter re COVID-19 Plan for the Stadium, revolving loan, the buffet invoice, maintenance of the Stadium, and event parking/public transportation.

### **Upcoming SCSA Board Meeting Dates**

- October 13, 2020 Special Board Meeting
- November 17, 2020

Meeting Date/Time: 9/17/2020 2:45 PM via Teams  
Attendees: Rachel Copes and Darren Wong

1. Discussed Other G&A and Lender Fees Invoice
2. Discussed Non-NFL Other Operating Expenses
3. Discussed Naming Rights Agreement



## Agenda Report

20-744

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Actions on Amendments to the Tasman East Specific Plan (TESP) to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirement; to amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of mixed use buildings and to correct an error regarding permissible density ranges; and to override an Airport Land Use Commission (ALUC) determination of inconsistency with the SJC Airport Comprehensive Land Use Plan (CLUP)

#### **COUNCIL PILLAR**

Promote and Enhance Economic, Housing and Transportation Development

#### **BACKGROUND**

On November 13, 2018, the City Council adopted the Tasman East Specific Plan (TESP) to guide the transition of an underutilized 45-acre industrial neighborhood immediately adjacent to the Santa Clara Valley Transportation Authority (VTA) Lick Mill Light Rail Station into a pedestrian-friendly and transit-oriented development with the addition of 4,500 new residential units near transit and jobs. The Specific Plan incorporates approximately 100,000 square feet of neighborhood-oriented and convenience retail and 10 acres of open space including various outdoor recreational facilities and landscape features, a public plaza, pocket parks and paseos.

There has been strong development interest within the Specific Plan since its adoption and the City is currently processing permit applications for a total of 4,484 residential units out of the 4,500 unit capacity established within the TESP. These applications currently include four projects in the architectural review process and six projects that have completed the architectural review process and submitted building permit applications.

Working closely with the Tasman East developers to implement the TESP, staff has identified potential improvements relating to implementation of certain aspects of the Specific Plan, including modification of the TESP street plan. On August 20, 2019, City Council approved a contract amendment with Perkins + Will to act as the City's planning and environmental consultant for Tasman East to analyze the replacement of the Calle de Sol public street extension with a pedestrian and bicycle paseo in order to retain the existing Primavera sanitary sewer pump station at its current location. At the meeting, staff presented the recommended pedestrian and bicycle paseo alternative; including conceptual paseo sections, early design options for the pump station enclosure; and potential paseo programming activities. The City Council feedback was supportive of the presented pedestrian and bicycle paseo alternative to the Calle Del Sol street extension.

Additionally, developers have indicated more flexibility is needed to determine other Transportation

Demand Measure (TDM) options in lieu of some identified within the Specific Plan. Co-working and daycare activities are uses that have been raised as desirable and developers are interested in locating these uses on second or third stories of their multistory buildings yet the current Transit Neighborhood Zoning District limits these uses to the ground floor.

This agenda item includes proposed amendments to the Specific Plan (Specific Plan Amendment #1) and Transit Neighborhood Zoning District to address the issues raised. The proposed amendment would also correct some clerical errors in the TESP document.

The August 26, 2020 Planning Commission staff report (Attachment #1) includes a description and analysis of the proposed Amendments to the Specific Plan and the Transit Neighborhood Zoning District.

Because one of the proposed actions is the amendment of the Specific Plan, and the Tasman East Specific Plan area is within the land use referral area for the San Jose Mineta International Airport (SJC), the project was referred to the County Airport Land Use Commission (ALUC) on September 10, 2020 (Attachment 10). At the September 23, 2020 ALUC hearing, the ALUC evaluated the project and made a determination of inconsistency with the SJC adopted Comprehensive Land Use Plan (CLUP) (Attachment 11). At the September 29, 2020 City Council hearing, the City Council continued the scheduled hearing of the TESP Amendments to the November 17, 2020 City Council hearing and gave direction to staff to prepare a Resolution for the City Council to override the ALUC determination. Council action to override the determination requires a 2/3 vote of the Council, as well as a 45-day notification to the ALUC in advance of the Council hearing on the potential override action. Following the City Council direction, staff provided notification to the ALUC on October 1, 2020 of the City's intent to consider an override of their determination at the November 17, 2020 City Council meeting.

## **DISCUSSION**

At the August 26, 2020 Planning Commission meeting, following the staff presentation, the Commission asked clarifying questions. Several of the Commissioners expressed support for the paseo configuration and the outreach process to receive and incorporate community feedback into the paseo and pump station enclosure design. The Commission discussed an aspect of the Specific Plan Amendment which would provide greater flexibility for site-wide TDM measures. Currently in the Specific Plan, there is a requirement for developments to provide VTA SmartPasses for all residents. This requirement is triggered once 3,000 residents occupy the Tasman East area. The proposed Specific Plan Amendment would allow for alternative site-wide TDM measures to be provided, in-lieu of the SmartPasses. Developers in Tasman East expressed interest in other site-wide TDM measures such as a community shuttle serving Tasman East or rent reductions for tenants who use alternative modes of transportation.

Commissioner Jain expressed interest in supporting the Amendment to provide alternatives, in-lieu of the SmartPasses, only if one of the site-wide alternative TDMs included the formation of a Transportation Management Association (TMA) in Tasman East. Chair Saleme and Commissioner Ikezi then asked additional questions about the request for alternative TDM measures.

Two public speakers addressed the Commission during the public hearing. Both speakers supported the proposal to create the paseo. One speaker also expressed concern that the bicycle path in the paseo could cause conflicts with pedestrians and suggested that bicyclists not ride through the paseo

but walk bicycles through. Another speaker stated that there should not be a cap on the number of placemaking events. Staff clarified that there is a requirement for a minimum of eight placemaking events to be marketed and open to the public annually. These events are required to be fully funded and programmed by property owners participating in the Tasman East Property Owner Association. The eight placemaking events is a minimum requirement, not a cap, and more placemaking events could occur.

Through separate actions, the Planning Commission voted unanimously in favor of recommending the Council adopt the Addendum to the Environmental Impact Report and the proposed amendments to the Transit Neighborhood Zoning District (6-0-0). For the Specific Plan Amendment, Commissioner Jain proposed a friendly amendment which was accepted to add the listing of the formation of a TMA as a required site-wide TDM alternative should the SmartPasses not be provided. The Planning Commission voted unanimously in favor the Tasman East Specific Plan Amendment with the friendly amendment (6-0-0) to add the formation of a TMA as a site-wide TDM requirement should SmartPasses not be provided.

#### Transportation Management Association (TMA) vs. Tasman East Transportation Coordination Group (TETCG)

Staff researched the Planning Commission's recommendation requiring the formation of a TMA in the event SmartPasses are not provided as a site-wide TDM.

The adopted TESP already includes the requirement for the formation of the Tasman East Transportation Coordination Group (TETCG), which is comprised of private property owners that will implement Specific Plan-wide support, publicity, and incentives to increase non-motorized modes and/or personal transportation planning assistance. As such, the TETCG would be able to provide implementation at a Specific Plan scale of site-wide TDMs. Hexagon Transportation Consultants provided a memorandum explaining that the TETCG and a TMA are functionally similar (Attachment 9). The residential property owners in the TESP area have already submitted to the City their signed Memorandum of Agreement which requires participation in the TETCG (Attachment 8). In light of the existence of the TETCG, it would be redundant to implement a TMA.

The adopted Tasman East Specific Plan also already includes a requirement that the residential property owners of Tasman East participate in an TMA should one be established to provide TDM support services on a larger scale than the TESP area (Attachment 4, page 102). It is possible that a TMA may be established as part of long-range planning work underway with the developments of the Patrick Henry Specific Plan and/or Freedom Circle Focus Area, to serve the larger northern Santa Clara area.

#### Airport Land Use Commission Determination

The ALUC determination was based upon potential noise impacts to a potential school included within the TESP as an allowed land use. The ALUC did not raise this issue when the City adopted the original TESP in 2018. City staff in attendance at the September 23, 2020 ALUC hearing emphasized to the ALUC that the current Amendment was for items unrelated to the potential school site, and that the ALUC had previously reviewed the TESP, including the potential school, and not found it to be inconsistent with the CLUP. Nevertheless, following the guidance from ALUC staff that the item was a "de novo" hearing, the ALUC considered the entirety of the TESP and made their determination of inconsistency related to the potential impacts related to a school.

As a consequence of the ALUC determination, it would be necessary for the City to either further

revise the TESP to address the ALUC's new noise concerns, or for the City Council to override the inconsistency determination. The override requires a 2/3 vote by the City Council (a minimum of five Council members based on the current Council composition).

Staff recommends that the City Council adopt an override of the ALUC determination. The City has made significant progress toward implementation of the TESP based on the initial ALUC determination of no conflict. While the Santa Clara Unified School District has not indicated at this time an intent to develop a school within the TESP area, land continues to be available that could support a future school development. Other schools are located in proximity to the TESP area and closer to the Airport (e.g., Kathryn Hughes, Don Callejon and Montague) and are able to operate compatible with airport activity. Potential impacts would be addressed through the future design and environmental review process for a school should a school be developed.

Per the procedure described above, staff provided notice to the ALUC of the proposed override of their determination. The ALUC considered this notice at their meeting on October 28, 2020 and made no further comment.

### **ENVIRONMENTAL REVIEW**

The Tasman East Specific Plan was analyzed under an Environmental Impact Report (EIR) adopted and certified by the City Council on November 13, 2018. An Addendum to the EIR has been prepared which analyzes the proposed changes with this agenda item. Traffic flows have been analyzed to review the replacement of the Calle Del Sol extension with the pedestrian and bicycle paseo and determined that traffic circulation will not be adversely affected. The Addendum can be viewed as Attachment 2 of this report.

### **FISCAL IMPACT**

There is no fiscal impact to the City other than administrative staff time and expense processing the Specific Plan Amendment #1 and associated actions.

An Infrastructure Impact Fee for the Tasman East Specific Plan is proposed in a separate report (RTC 20-787) and should the Council vote to adopt the fee, it will be applied on development in the Specific Plan boundaries that will fund the construction cost of the pedestrian and bicycle paseo and custom-designed enclosure for the Primavera Lift Station including design and construction for upgrades required to the Primavera sanitary sewer pump station. Long-term maintenance of the paseo and lift station enclosure are to be addressed with private property owner funding through a Property Owners Association or Community Facilities District.

### **COORDINATION**

This report was coordinated with the Water and Sewer Utilities Department, Public Works Department, and City Attorney's Office.

### **PUBLIC CONTACT**

A virtual community meeting was held on August 10, 2020 and approximately 30 members of the public attended. Comments were provided regarding the proposed dimensions of the sidewalks in the paseo as being too narrow. Also, several commenters wanted more retail within the paseo itself. Staff conducted a follow-up virtual meeting on Monday, August 17, 2020 and shared how community input was incorporated into revised plans for the paseo and the land use plan. The conceptual design options for the pump station enclosure were also shared which includes

potential art elements. Participants made requests to add art pads or other areas of interest along the paseo and to ensure a safe environment to avoid conflict between bicycles and pedestrians.

Hearing notices were mailed on November 6, 2020, 2020 to properties within the Tasman East Specific Plan and within 300 feet from the Specific Plan boundaries. A notice of the hearing was also published in the Weekly on November 4, 2020.

Public contact was made by posting the City 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 to adopt the Addendum to the 2018 Final Environmental Impact Report Tasman East Specific Plan.
2. Adopt a resolution to override the Airport Land Use Commission's determination of inconsistency to the San Jose Mineta International Airport's Comprehensive Land Use Plan for the Tasman East Specific Plan Amendment #1.
3. Adopt a resolution to amend the Tasman East Specific Plan (Amendment #1) to replace a proposed street extension for Calle Del Sol with a multimodal paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirements.
4. Amend the Tasman East Specific Plan Amendment # 1, as recommended by the Planning Commission, to replace a proposed street extension for Calle Del Sol with a multimodal paseo, allow for alternate methods of trip reduction, require that a Transportation Management Association to be formed should SmartPasses not be provided, and correct a clerical error in the Plan regarding the affordable housing requirements, and direct staff to bring back a resolution reflecting this direction.
5. Introduce an ordinance to amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of a mixed-use building and correct an error regarding permissible density ranges.
6. Deny the amendments to the Adopted Tasman East Specific Plan (Amendment #1).
7. Deny the amendments to the Transit Neighborhood Zoning District.

## **RECOMMENDATION**

Alternatives 1, 2, 3 & 5:

1. Adopt a resolution to adopt the Addendum to the 2018 Final Environmental Impact Report Tasman East Specific Plan;
2. Adopt a resolution to override the Airport Land Use Commission's determination of inconsistency to the San Jose Mineta International Airport's Comprehensive Land Use Plan for the Tasman East Specific Plan Amendment #1;

3. Adopt a resolution to amend the Tasman East Specific Plan (Amendment #1) to replace a proposed street extension for Calle Del Sol with a multimodal paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirements; and
5. Introduce an ordinance to amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of a mixed-use building and to correct an error regarding permissible density ranges.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. August 26, 2020 Planning Commission Staff Report
2. Addendum to the Final EIR for the Tasman East Specific Plan
3. Addendum to the Final EIR for the Tasman East Specific Plan Resolution
4. Tasman East Specific Plan Amendment #1
5. Tasman East Specific Plan Amendment #1 Resolution
6. Transit Neighborhood Zoning District Amendment Ordinance
7. Conceptual renderings of Paseo and Primavera pump station enclosure
8. Memorandum of Agreement and CC&Rs
9. Hexagon Transportation Consultants Memorandum
10. City of Santa Clara Referral to the ALUC
11. ALUC Determination of Inconsistency
12. ALUC Determination Override Resolution
13. Minutes from the September 23, 2020 ALUC Meeting
14. Comments from the Caltrans Division of Aeronautics





## Agenda Report

20-667

Agenda Date: 8/26/2020

### REPORT TO PLANNING COMMISSION

#### **SUBJECT**

Actions on Amendments to the Tasman East Specific Plan to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirement and an error regarding permissible density ranges; and to amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of mixed use buildings.

#### **EXECUTIVE SUMMARY**

Staff is recommending amendments to the adopted Tasman East Specific Plan (TESP) and Transit Neighborhood zoning district to address issues arising during implementation. Amendments include the replacement of a vehicular street extension for Calle Del Sol with a pedestrian and bicycle paseo and the modification to the Specific Plan text to allow for alternative forms of Travel Demand Measures (TDM) beyond what was previously identified. Developers have also identified additional uses of co-working and daycare that they would like to include in their projects. Also proposed is amending the Transit Neighborhood Zoning District to allow these non-residential activities within the first three floors of mixed-use buildings to further the creation of a complete neighborhood.

#### **BACKGROUND**

On November 13, 2018, the City Council adopted the TESP to guide the transition of an underutilized 45-acre industrial neighborhood immediately adjacent to the Lick Mill Light Rail Station operated by the Santa Clara Valley Transportation Authority (VTA) into a pedestrian-friendly and transit-oriented development with the addition of 4,500 new residential units near transit and jobs. The Specific Plan also incorporates approximately 100,000 square feet of neighborhood-oriented and convenience retail and 10 acres of open space including various outdoor recreational facilities and landscape features, a public plaza, pocket parks and paseos.

There has been strong development interest within the Specific Plan since its adoption. To date, there are currently four projects in the architectural review process and six projects that have completed the architectural review process and submitted building permit applications. A total of 4,484 residential units are proposed for development out of the 4,500 units of capacity available within the adopted Tasman East Specific Plan.

As staff works closely with the Tasman East developers on projects in the Specific Plan, hurdles relating to implementation of certain aspects of the Specific Plan were identified. On August 20, 2019, City Council approved a contract amendment with the City's planning and environmental consultant for Tasman East, Perkins + Will, to analyze the replacement of the Calle de Sol public street extension with a pedestrian and bicycle paseo in order to retain the existing Primavera sanitary sewer pump station at its current location. At the meeting, staff presented the recommended pedestrian and bicycle paseo alternative; including conceptual paseo sections, early design options

for the pump station enclosure; and potential paseo programming activities. The City Council feedback was supportive of the presented pedestrian and bicycle paseo alternative to the Calle Del Sol street extension.

Additionally, developers have indicated more flexibility is needed to determine other TDM options than solely those identified within the Specific Plan. Co-working and daycare activities are uses that have been raised as desirable and developers are interested in locating these uses on second or third stories of their multistory buildings yet the current Transit Neighborhood Zoning District limits these uses to the ground floor.

This agenda item includes proposed amendments to the Specific Plan (Specific Plan Amendment #1) and Transit Neighborhood Zoning District to address the issues raised.

There is more potential to develop the Tasman East Specific Plan area as 12 acres within the Specific Plan boundaries are not yet proposed for redevelopment. On November 19, 2019, the City Council approved the application and receipt of grant funds for the SB2 Planning Grants Program Year One issued by the California Department of Housing and Community Development for the purposes of amending the Tasman East Specific Plan to add up to 1,500 more residential units and analyze the associated environmental and infrastructure impacts and improvements. The work associated with that Specific Plan Amendment (Specific Plan Amendment #2) to increase development capacity has not yet begun. The City Council will consider late Fall 2020 an amendment to a contract to Perkins + Will to assist staff with the preparation of the Specific Plan Amendment # 2 and the associated environmental analysis.

## **DISCUSSION**

Staff is recommending amendments to the adopted Specific Plan and Transit Neighborhood zoning district to address implementation challenges. These changes further the goals and policies of the General Plan to specifically build City identity, provide adequate infrastructure, encourage alternate forms of transportation, and provide more services within Santa Clara neighborhoods.

### **Amendments to the Adopted Specific Plan**

#### **Calle del Sol**

As a part of the adopted Specific Plan, several public improvements were proposed. One of these improvements was the proposed street extension of Calle del Sol northwards between Calle de Luna and Calle del Mundo. This extension was intended to lengthen the proposed main street within Tasman East with the additional benefit of providing additional vehicular circulation within the neighborhood.

#### ***Relocation of Primavera Sanitary Sewer Pump Station***

To implement the Calle del Sol extension as shown on the adopted Specific Plan the City's Primavera sanitary sewer pump station would either need to be relocated elsewhere within the Specific Plan boundaries, or otherwise be converted to an underground facility within the proposed new Calle de Sol street extension. Undergrounding the pump station in its current location was determined to be infeasible due to safety concerns with potential build-up of gases in maintenance areas, along with the added difficulty of performing routine maintenance in the public right-of-way which would require the closure of the intersection of Calle de Sol and Calle de Luna.

The City's Public Works Department hired Woodard and Curran consultants to perform an engineering study to assess the needs and requirements to determine the feasibility of relocating the pump station. Relocating the pump station required a full analysis of current sewer flows, identifying the extent necessary for reconstruction of sewer lines to redirect flows to a new location, determining connections to sewer mains, and ultimately identifying locations within the plan area that met all the necessary requirements. The City evaluated potential alternative locations for the pump station on private properties within Tasman East including sites currently being contemplated for development projects. The potentially affected developers indicated that relocation of the pump station to their properties would have a significant impact on their development projects. The developer group proposed an alternative that the pump station could be kept at its current location with upgrades to the pump station, added architectural screening treatment, and a reconfiguration of the Calle del Sol extension to make it a public pedestrian and bicycle paseo.

#### *Pedestrian and Bicycle Paseo Configuration*

As shown in the Specific Plan Amendment (pages 52-53, Attachment #3), the paseo will provide a continuous 16 foot wide pedestrian 'street life' zone alongside an 8 foot wide two-way bicycle track. These two zones shall together constitute a minimum 20 foot wide emergency vehicle lane (EVA), paved with suitable high-quality material to accommodate fire trucks. The cycle track shall be demarcated separately from the pedestrian zone with alternative texture/color/materials and shall include directional striping and signage. The northern portion of the paseo will also include a 25 foot wide outdoor seating grove with landscaping on the western side of the paseo; while the southern portion of the paseo accommodates the retention of the Primavera lift station along the west. Additional pedestrian realms with adjacent street life zones run continuously along the eastern and western edges of the paseo.

The proposed paseo will be comprised of land associated with four different properties. When at least three of the individual properties have commenced development, they will improve their affected sections, with the fourth owner completing the full paseo when all properties have developed. The properties will be required to provide a public access easement over the area designated for the paseo. Currently, one of the four properties has proposed redevelopment and received Architectural Review approval.

#### *Primavera Pump Station Upgrades and Enclosure Design*

As part of the decision to convert an existing industrial area to residential with the adoption of the Tasman East Specific Plan, it was anticipated that the existing Primavera sanitary sewer pump station would also be upgraded to utilize better design and technology to address odor control and noise resulting from pump station operations and maintenance. Also included in design considerations was equipment access and the safety of employees performing maintenance. The additional cost for the upgraded design and construction of the pump station will be funded through a proposed infrastructure impact fee. Most pump stations in the City are utilitarian pieces of equipment, often located in industrial areas. Given the visibility of retaining the Primavera pump station at its current location within an improved pedestrian and bicycle paseo, careful attention has been paid to adding a pump station enclosure that would enhance, not detract from the paseo. Conceptual renderings depicts the pump station enclosure design, which would be 20 feet tall, have a trellis roof designed to meet the operational functions of the pump station, while providing visual screening from equipment (Attachment #7). The contemporary design is intended to complement the modern architecture being developed with projects in the Tasman East Specific Plan area. The trellis is also proposed to extend above the roof line to form a larger canopy to provide a symmetrical line of sight

within the paseo. The pump station enclosure will be back-lit with LED lighting to give a lantern effect at night.

#### *Maintenance of the Paseo and Pump Station Enclosure*

The added cost of constructing the paseo and custom-designed pump station enclosure will be funded through a proposed infrastructure impact fee that will be applicable for all development projects in Tasman East. Additionally, both the paseo and enclosure will have long term maintenance needs. The developers in Tasman East have provided the City a Memorandum of Agreement between their parties indicating that they will include in their POA maintenance responsibility and standards for the paseo and enclosure (Attachment #8). The City cannot be a party of the POA and should the POA not fulfill its responsibilities, staff also recommends that the City Council create through a future action, a Shell Community Facilities District (CFD) for the area. Should the POA dissolve for some unanticipated reason, private properties participating in the CFD would be responsible for the costs associated with appropriate maintenance of the paseo and enclosure. A CFD would not be able to fund programming of the activities as proposed through the POA. As such, the paseo programming proposed by the developers in their POA would not continue should the POA dissolve.

#### *Placemaking on the Paseo*

The paseo, as proposed, is a unique space, where overflow seating for adjacent ground floor retail can occur. Also, this space will be closed to traffic, making it ideal for activities and events to support community building. The Tasman East developers have proposed as part of their Property Owners Association (POA), programming the paseo with a minimum of eight annual events which are to be publicized, free of charge, and open to all City of Santa Clara residents. The POA is a good faith private party arrangement, which is described in the section below in more detail.

#### Additional Transportation Demand Management Measures

The adopted Specific Plan, requires the creation of the Tasman East Transportation Coordination Group (TETCG), which is comprised of private property owners that will implement Specific Plan-wide support, publicity, and incentives to increase non-motorized modes and/or personal transportation planning assistance. The Specific Plan included a provision that the TETCG must offer Smart Passes through the Valley Transportation Authority after 3,000 residents have occupied constructed units for a period of three years. After three years, the TETCG could propose an alternate measure that is at least as effective in reducing single vehicle trips as the Smart Passes. The Tasman East developer group has expressed interest already in alternative measures to the Smart Pass. Such measures could include: establishment of Via, or Via-type service targeted community shuttle to Tasman East Specific Plan residents, which could be expanded if desired; funding for establishment of a Transportation Management Agency that could have broader reach than Tasman East Specific Plan; or rent credits for residents who use bike, carpool, shuttle or public transit, or walk to work. Should the Amendment be approved by the City Council, any alternative measures would be verified for effectiveness through annual reporting by the TETCG to ensure that the site wide goal of 10% VMT reduction through a combination of program measures are achieved. The Tasman East Specific Plan is located across the street from VTA's Lick Mill light rail station and as such there is obvious convenience to residents of Tasman East to utilize the light rail. Incentivizing alternative transportation measures could further incentivize other modes that may be of interest to residents but less convenient. The alternative language is located on page 154 of the Specific Plan



Amendment (Attachment #3).

#### Technical Correction to Affordable Housing Language

At the November 13, 2018, City Council meeting, in addition to adopting the specific plan, the City Council introduced Ordinance No. 1992, which added a section to the City's affordable housing ordinance specific to the Tasman East Area. The Council passed and adopted the Ordinance at the November 27, 2018 meeting, and the ordinance went into effect on December 27, 2018. Pursuant to that ordinance, the affordability requirement for individual projects within the TESP are tied to project density.

The Council's motion on November 13, 2018 was to adopt staff's recommendation, which included the affordability requirement of 15%, subject a reduction to 12% for densities between 120 and 140 du/ac, and further reduction to 10% for densities above 140 du/ac. Due to an oversight, however, page 12 of the Specific Plan itself was never updated to reflect the tiered affordability structure contained in Ordinance No. 1992. The proposed amendment would make a technical correction to page 12 of the Specific Plan so that it will conform to Ordinance No. 1992.

#### Amendments to the Transit Neighborhood Zoning District

With the adoption of the Tasman East Specific Plan, the Plan boundaries were also rezoned to a newly created Transit Neighborhood (TN) Zoning District. Developers have shared with staff interest in having co-working and daycare and/or preschool uses on higher floors of mixed-use buildings. The proposed change to the Transit Neighborhood District would allow such non-residential uses on the first three floors of mixed use buildings, in order to facilitate the location of complementary non-retail uses such as co-working or daycare, while at the same time maintaining ground floor space for potential retail uses.

In addition, there is a technical correction to the TN district to reflect the density ranges in the adopted Specific Plan. As adopted, the Specific Plan provides for a residential density of 100 - 350 du/ac, but also includes an exception for preexisting parcels of less than one acre. For such smaller parcels, the minimum density is only 60 du/ac. As adopted, however, the TN ordinance lists only the 100 - 350 du/ac range, and does not include the exception for smaller parcels. The proposed amendment would add this smaller parcel exception.

The Amendments to the Transit Neighborhood zoning district can be viewed in Attachment #5.

#### General Plan Conformance and Alignment

The proposed amendments to the adopted Specific Plan and Transit Neighborhood Zoning District further the strategies and goals of the City's General Plan including:

*Strategy 4.4 Enhance City Identity* as the replacement of the street extension with a paseo as designed will facilitate alternate modes of travel, allow for spill over seating of adjacent retail and create a special and unique area of the City that is optimized to serve as a community gathering node and host placemaking activities.

*Strategy 4.6 Maintain the City's Fiscal Health and Quality Services* as development will fully fund upgrades to the Primavera Lift Station and paseo will be privately constructed and maintained.

*Goal 5.3.1-G1 Reduced dependence on the single occupant automobile and*

*Goal 5.3.2 P21 Encourage new housing developments to incorporate design features, programs and incentives for increased transit ridership and decreased parking demand.*

-  
Alternative site-wide trip reduction offerings such as programming of a community shuttle, contribution to the creation of a Transportation Management Association for the greater area, or rent subsidies to incentivize alternate forms of transportation may be considered by residents as more useful, thus broadening the appeal of alternative transportation modes.

*Goal 5.3.1 P22 Encourage conveniently located child care and other family support services in the community, except in areas designated for Light and Heavy Industrial Uses.*

-  
Permitting childcare and preschools within the first three floors of mixed use buildings will increase the feasibility of locating such facilities in Tasman East's urban neighborhood, that would otherwise be limited solely to the ground floor.

## **ENVIRONMENTAL REVIEW**

The Tasman East Specific Plan was analyzed under an Environmental Impact Report (EIR) adopted and certified by the City Council on November 13, 2018. An Addendum to the EIR has been prepared which analyzes the proposed changes with this agenda item. Traffic flows have been analyzed to review the replacement of the Calle Del Sol extension with the pedestrian and bicycle paseo and determine that traffic circulation will not be adversely affected. The Addendum can be viewed as Attachment #2 of this report.

## **FISCAL IMPACT**

There is no fiscal impact to the City other than administrative staff time and expense processing the Specific Plan Amendment #1 and associated actions. Subject to future City Council approval, an infrastructure fee for the Tasman East Specific Plan will be applied on development in the Specific Plan boundaries that will fund the construction cost of the pedestrian and bicycle paseo and custom-designed enclosure for the Primavera Lift Station including design and construction for upgrades required to the Primavera sanitary sewer pump station. Long-term maintenance of the paseo and lift station enclosure are to be addressed with private property owner funding through a Property Owners Association or Community Facilities District.

## **COORDINATION**

This report was coordinated with the Water and Sewer Utilities Department, Public Works Department, and City Attorney's Office.

## **PUBLIC CONTACT**

A virtual community meeting was held on August 10, 2020 and approximately 30 members of the public attended. Comments were provided regarding the proposed dimensions of the sidewalks in the paseo as being too narrow. Also, several commenters wanted more retail within the paseo itself. Staff conducted a follow-up virtual meeting on Monday, August 17, 2020 and shared how community input was incorporated into revised plans for the paseo and the land use plan. The conceptual design options for the pump station enclosure were also shared which includes potential art elements. Participants made requests to add art pads or others areas of interest along

the paseo and to ensure a safe environment to avoid conflict between bicycles and pedestrians.

Hearing notices were mailed on August 14, 2020 to properties within the Tasman East Specific Plan and within 300 feet from the Specific Plan boundaries. A notice of the hearing was also published in the Santa Clara Weekly.

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

### **ALTERNATIVES**

1. Adopt a resolution to recommend the City Council adopt the Addendum to the 2018 Final Environmental Impact Report Tasman East Specific Plan
2. Adopt a resolution to recommend the City Council amend the adopted Tasman East Specific Plan (Amendment #1) to replace a proposed street extension for Calle Del Sol with a multimodal paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirement and an error regarding permissible density ranges.
3. Adopt a resolution to recommend the City Council amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of a mixed-use building.
4. Adopt a resolution to recommend the City Council deny the amendments to the Adopted Tasman East Specific Plan (Amendment #1).
5. Adopt a resolution to recommend the City Council deny the amendment to the Transit Neighborhood Zoning District.

### **RECOMMENDATION**

Alternatives 1, 2 & 3:

That the Planning Commission:

1. Adopt a resolution to recommend the City Council adopt the Addendum to the 2018 Final Environmental Impact Report Tasman East Specific Plan
2. Adopt a resolution to recommend the City Council amend the adopted Tasman East Specific Plan (Amendment #1) to replace a proposed street extension for Calle Del Sol with a multimodal paseo, allow for alternate methods of trip reduction, and correct a clerical error in the Plan regarding the affordable housing requirement and an error regarding permissible density ranges.
3. Adopt a resolution to recommend the City Council amend the Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of a mixed-use building.

Reviewed by: Andrew Crabtree, Director of Community Development  
Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Addendum to the Final Environmental Impact Report for the Tasman East Specific Plan Planning Commission Resolution
2. Addendum to the Final Environmental Impact Report for the Tasman East Specific Plan
3. Tasman East Specific Plan Amendment #1
4. Tasman East Specific Plan Amendment #1 Planning Commission Resolution
5. Transit Neighborhood Zoning District Amendment Ordinance
6. Transit Neighborhood Zoning District Amendment Planning Commission Resolution
7. Conceptual renderings of Paseo and Primavera pump station enclosure
8. Memorandum of Agreement and CCNRs regarding maintenance of Calle Del Sol paseo and Primavera pump station enclosure



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF SANTA CLARA, CALIFORNIA, RECOMMENDING THE  
CITY COUNCIL ADOPT AN ADDENDUM TO THE 2018  
ENVIRONMENTAL IMPACT REPORT FOR THE TASMAN EAST  
SPECIFIC PLAN**

**WHEREAS**, pursuant to the provisions of the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 et seq.) (“CEQA”) together with the State CEQA Guidelines (14 C.C.R. § 15000 et seq.) (“CEQA Guidelines”), on November 13, 2018, the City Council adopted and certified a Final Environmental Impact Report (“FEIR”), making findings with respect thereto and adopting a statement of overriding considerations and a Mitigation Monitoring or Reporting Program for the Tasman East Specific Plan;

**WHEREAS**, amendments to the adopted Tasman East Specific Plan (Amendment #1) are now under consideration to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo and to allow for alternate methods of trip reduction than required as part of the Tasman East Specific Plan which was adopted by City Council on November 13, 2018;

**WHEREAS**, in order to ensure that all potential environmental impacts of the Project were thoroughly analyzed, the City caused an addendum to the FEIR to be prepared pursuant to CEQA Guidelines 15164, attached hereto and incorporated herein by this reference (“Addendum”);

**WHEREAS**, the Addendum to the FEIR provides analysis and cites substantial evidence that supports the conclusion that no subsequent environmental review is required because the criteria of CEQA Section 21166 and CEQA Guidelines Section 15162 requiring additional environmental review under CEQA have not been met;

**WHEREAS**, the notice of public hearing for the August 26, 2020 Planning Commission meeting for this item was published in the Weekly, a newspaper of general circulation for the City, on August 12, 2020; and

**WHEREAS**, on August 26, 2020, the Planning Commission held a public hearing to consider the Addendum to the FEIR and amendments to the Tasman East Specific Plan (Amendment #1), a proposed amendment to the Transit Neighborhood zoning district and all pertinent information in the record, during which the Planning Commission invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to Amendment #1.

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

1. Recitals. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. Findings. That the Planning Commission has exercised its independent judgement and reviewed and considered the FEIR, together with the Addendum, and has determined that the criteria of CEQA Section 21166 and CEQA Guidelines Section 15162 that would have required additional environmental review under CEQA have not been met. Specifically, and without limitation, substantial evidence exists to support the conclusion that no supplemental or subsequent environmental review is required in connection with the City's consideration of the Rezone Application because (1) the Project would not result in any new or more severe significant impacts than those studied in the FEIR, (2) there exists no new information of substantial importance that would result in any new or more severe significant impacts as compared to those studied in the FEIR; (3) there are no substantial changes in circumstances that would result in any new or more severe significant impacts than those identified in the FEIR; and (4) there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted.
3. Approval Recommendation. That the Planning Commission hereby recommends that the City Council adopt the Addendum prior to acting on the amendments to the Tasman East Specific Plan (Amendment #1) and amendment to the Transit Neighborhood zoning district.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26TH DAY OF AUGUST, 2020, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST:

\_\_\_\_\_  
ANDREW CRABTREE  
DIRECTOR OF COMMUNITY DEVELOPMENT  
CITY OF SANTA CLARA

Attachment Incorporated by Reference:

1. Addendum

## ADDENDUM

### to the 2018 Tasman East Specific Plan Final Environmental Impact Report City of Santa Clara

June 2020

#### 1.1 PURPOSE OF ADDENDUM

The California Environmental Quality Act (CEQA) recognizes that between the date an environmental document is certified and the date the project is fully implemented, one or more of the following changes may occur: 1) the project may change; 2) the environmental setting in which the project is located may change; 3) laws, regulations, or policies may change in ways that impact the environment; and/or 4) previously unknown information can arise. Before proceeding with a project, CEQA requires the lead agency to evaluate these changes to determine whether or not they affect the conclusions in the environmental document, consistent with relevant case law.

The EIR for the Tasman East Specific Plan analyzed a change in land use classification from *High Density Residential* to a *Transit Neighborhood* classification for an existing industrial neighborhood, in order to create a Transit-Oriented Development mixed-use neighborhood. The EIR also included analysis of circulation improvements intended to create “complete streets” within the neighborhood. The Plan Area, 46 gross acres in size, is bounded by the City’s Santa Clara Golf & Tennis Club to the north, the Guadalupe River to the east, Tasman Drive to the south, and Lafayette Street to the west. The Plan Area includes approximately 36 parcels currently developed with light industrial and commercial uses, including one City-owned utility parcel, and has a total net land acreage of 41.4 acres with approximately 4.6 acres of public right-of-way.

Since the certification of the Tasman East Specific Plan Final EIR in 2018 (TESP EIR), the City is proposing changes to the Specific Plan, which are the subject of this Addendum. The purpose of this Addendum is to address the project’s likelihood to result in new significant impacts that were not addressed in the TESP EIR.

The CEQA Guidelines Section 15162 states that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance, which was not known and could have not been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative.

The CEQA Guidelines Section 15164 states that the lead or responsible agency shall prepare an addendum to a previously certified EIR if changes or additions are necessary but none of the conditions described in Section 15162 (see above) calling for preparation of a subsequent EIR have occurred.

## **1.2 PROJECT BACKGROUND**

### **General Plan Land Use Classification and Zoning District**

The Specific Plan created a framework for the development of a high-density transit-oriented neighborhood with supportive retail services. The zoning of the Plan Area was reclassified from *Light Industrial* to *Transit Neighborhood*, to allow for development of a high-density residential neighborhood with a mix of uses at the ground floor. The previously intended *High Density Residential* land use classification under Phase II (2015-2023) of the General Plan was reclassified as *Transit Neighborhood* to allow for mid- and high-rise mixed-use development in proximity to existing transit infrastructure and increase the density from 37-50 du/ac to 100-350 du/ac. The classification applies only within the Tasman East Specific Plan boundaries (Plan Area).

### **Development Summary**

The Specific Plan allows construction of up to 4,500 dwelling units and up to 106,000 square feet of retail space including a 25,000 square foot grocery store. The Specific Plan allows for a variety of uses including high-rise towers, mixed-use buildings with ground floor retail space, and live-work spaces. Residences would be allowed at minimum densities of 60 dwelling units per acre (du/ac) on sites smaller than one acre, and 100 du/ac on sites that are one acre or larger. The Specific Plan would also allow, upon issuance of a conditional use permit, an urban school for up to 600 students on two acres. The Plan also proposes 10 acres of non-contiguous parkland, open space, paseos, and private open space, as well as a two-acre, 600 student school, upon issuance of a conditional use permit.

## Surrounding Development

The Related Santa Clara (formerly CityPlace) mixed-use development project comprises five parcels adjacent to the Plan Area and west adjacent to Lafayette Street. The Related Santa Clara project includes up to 1,680 residential units, 700 hotel rooms, approximately 5.7 million square feet of office space, and approximately 1.1 million square feet of retail, restaurant and entertainment uses. In June 2016, the City certified the Final Environmental Impact Report and Master Community Plan for the Related Santa Clara project. The 240-acre mixed-use development will be developed in phases. Construction of the first phase is anticipated to begin in early 2021 and is anticipated to conclude in 2023. Future phases are expected to be developed over a period of 10-15 years subject to market demand. For the purposes of the TESP EIR, Phases 1-3 of Related Santa Clara were included in the background scenario. As part of the cumulative scenario, full buildout of Related Santa Clara (Phase 1-8) was analyzed in the TESP EIR.

## **Circulation Improvements**

The Specific Plan would maintain the existing roadway network and vehicular connections to Tasman Drive and Lafayette Street. Streets within the Plan Area would be designed as “Complete Streets”. As “complete streets”, internal roadways would be accessible for, and balance the mobility of, all users, in addition to supporting local land uses. According to the Tasman East Specific Plan, the transportation network should incorporate safe and convenient pedestrian and bicycle connections to existing transit facilities and neighboring trails. In addition to creating complete streets, the primary roadway network modifications in the Specific Plan involve the extension of Lick Mill Boulevard and Calle Del Sol. Lick Mill Boulevard would be extended through the Plan Area to connect with the existing roadway network and Related Santa Clara to the north. Planned improvements to Calle Del Sol consist of widening the right-of-way by six feet and extension of the roadway north from Calle De Luna to Calle Del Mundo. Calle Del Sol north of Calle De Luna would be a local street and include one vehicular travel lane in each direction. The proposed northerly ROW would accommodate a seven-foot sidewalk, five-foot landscape strip, and street parking in both directions.

## **1.3 DESCRIPTION OF THE PROPOSED PROJECT**

Since the certification of the TESP EIR and adoption of the Specific Plan the City has identified minor modifications to the TESP to facilitate pedestrian and bicycle movement through the Plan Area. Additionally, the City is seeking to clarify the EIR traffic analysis of the retail space to identify equivalent co-working and preschool trip generation which are allowed uses in the TESP. Under the revised project, co-working space would also be allowed on the second and third floors of proposed residential buildings.

The northern extension of Calle Del Sol, between Calle De Luna and Calle Del Mundo, will be designed as a pedestrian and bicycle paseo (refer to revised Figures 2.0-3 to 2.0-6). A public easement will be provided through four affected properties to facilitate a privately owned public open space to be developed incrementally in conjunction with the development of each affected property. At the Primavera Pump Station adjacent to Calle De Luna, an additional setback will be required to

allow for continued operation and enclosure of the pump station. The paseo will also serve as an emergency vehicle access (EVA) lane with electronically retractable bollards to allow emergency vehicles and prevent private vehicle access.

## **1.4 ENVIRONMENTAL IMPACTS OF THE PROPOSED CHANGE**

The discussion below describes the environmental impacts of the currently proposed project, as they compare with the impacts of the previously approved project analyzed in the Tasman East Specific Plan EIR (TESP EIR). Also noted are any changes that have occurred in the environmental setting that may result in new impacts or impacts of greater severity than those identified in the previously circulated EIR.

### **1.4.1.1 *Aesthetics***

The project is not located within a scenic viewshed or along a scenic highway. The Plan Area is not located within a designated scenic area, based on the Santa Clara General Plan. The Specific Plan area and the surrounding area are relatively flat with the exception of the elevated golf course to the north, and are, therefore, not visible from surrounding areas.

The Specific Plan EIR concluded the buildout of the Specific Plan would not substantially degrade the visual character or quality of the Plan Area or its immediate vicinity, block any designated scenic views or resources, or result in a substantial source of additional light or glare. The changes to the proposed project would not result in any new or more severe impacts than those identified in the EIR, because the only physical changes involve the conversion of the northern extension of Calle del Sol from a two-lane road into a pedestrian and bicycle paseo.

### **1.4.1.2 *Air Quality***

The Plan Area is located in the San Francisco Bay Area Air Basin. The air basin is considered a non-attainment area for ground-level O<sub>3</sub> and PM<sub>2.5</sub> under both the federal Clean Air Act and the California Clean Air Act. The area is also considered non-attainment for PM<sub>10</sub> under the California Clean Air Act, but not the federal act. The area has attained both state federal ambient air quality standards for CO. Sensitive receptors are located approximately 150 feet south of the Plan Area. The additional kinds of proposed uses for the second and third floors of buildings would not exceed the equivalent amount of allowed retail square footage and, therefore, would not result in new or more severe air quality impacts from operational emissions (refer to Section 1.4.14 Transportation/Traffic). Modification of the roadway network to construct a paseo would encourage non-vehicular travel within the Plan Area and would not result in substantial additional operational emissions. Construction related criteria pollutant, dust, or TAC emissions would be essentially unchanged for redevelopment within the Plan Area. For both operational and construction emissions, mitigation measures identified in the TESP EIR would be implemented and the changes to the proposed project would not result in new or more severe air quality impacts than those identified in the TESP EIR.

### **1.4.1.3 *Biological Resources***

The TESP EIR identified biological resource impacts to western pond turtles, burrowing owls, migrant birds, nesting birds, wetlands, riparian woodland, riparian buffer, other sensitive habitats,



mature trees, and bird species generally due to increased lighting and predation. Properties located adjacent to the Guadalupe River were generally more likely to have impacts to these biological resources. The proposed roadway network modifications are not located near sensitive habitats and, as with any redevelopment in the Plan Area, would be subject to the mitigation measures identified in the TESP EIR. The proposed changes to the Specific Plan would not result in new or more substantial biological resources impacts than those identified in the TESP EIR, because the changes to the Specific Plan do not involve changes to the overall height or intensity of the project, and do not include additional lighting near riparian areas.

#### **1.4.1.4      *Cultural Resources***

The TESP EIR concluded the Plan Area does not contain known archaeological resources, but due to the presence of adjacent archaeological resources, has a moderate-to-high potential to contain prehistoric cultural resources.

SB 18 (2005) requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process, including amendments to General Plans and Specific Plans. Consistent with this mandate, the City contacted local Native American tribes for consultation on this Specific Plan amendment regarding any tribal cultural resources known to be present in the Plan Area. None of the local tribes have responded to notification of the proposed Specific Plan. There are also no known tribal cultural resources within the Plan Area.

Based on the presence of Pleistocene sediments underlying the Plan Area at depths of 25 feet below ground surface (bgs), there is a high potential for subsurface paleontological resources within the site. The Plan Area does not contain any historic buildings. There is a low potential for historic-era archaeological resources to occur within the Plan Area.

The proposed changes to the Specific Plan, which include the conversion of the proposed Calle del Sol roadway extension to a pedestrian paseo, would not result in new or more severe impacts to cultural resources than those identified in the TESP EIR.

#### **1.4.1.5      *Energy***

Modification of the roadway network to construct a paseo would encourage non-vehicular travel within the Plan Area and would not result in substantial additional fuel use. The additional kinds of proposed uses for the second and third floors of buildings, including co-working and daycare, would not exceed the equivalent amount of allowed retail square footage for the Plan Area and, therefore, would not result in increased energy use from implementation of the TESP (refer to Section 1.4.14 Transportation/Traffic). Co-working and daycare use would adhere to all applicable policies for building energy efficiency and, therefore, are assumed to operate with comparable energy demands to the previously analyzed retail use. For these reasons, consistent with implementation of energy efficiency measures, the updated Specific Plan would not result in new or more severe energy impacts than those identified in the TESP EIR.



#### **1.4.1.6      *Geology and Soils***

The TESP EIR concluded the Specific Plan, in conformance with existing regulations, would not result in significant geologic and soils impacts. The proposed changes to the Specific Plan would not result in new or more severe geology and soils impacts than those identified in the TESP EIR.

#### **1.4.1.7      *Greenhouse Gas Emissions***

The TESP EIR concluded the Specific Plan would be consistent with the City's Climate Action Plan and would not result in greenhouse gas (GHG) emissions exceeding efficiency metrics required to reach state mandated emission reductions in 2030.

The changes to the Specific Plan relevant to the greenhouse gas emissions of the project are the altered circulation network resulting from construction of the Calle Del Sol extension as a pedestrian and bicycle paseo. The use of the planned retail square footage for co-working and daycare uses would not substantially increase greenhouse gas emissions because they would not exceed the equivalent trip generation resulting from the planned retail space. The extension of Calle Del Sol as a paseo would also encourage non-vehicular travel in the Plan Area. The proposed changes to the Specific Plan, with previously identified Climate Action Plan consistency measures, would not result in new or more severe GHG impacts than those identified in the TESP EIR.

#### **1.4.1.8      *Hazards and Hazardous Materials***

The 46-acre Plan Area was utilized for agriculture between the 1930s and 1970s. Between the 1970s and the present, the site has been developed with industrial uses. The project site contains hazardous materials both for ongoing industrial processes and as residual contamination from past use.

The TESP EIR concluded that the proposed Specific Plan would ensure contaminated sites are remediated such that redevelopment of the Plan Area would result in a less than significant hazardous materials impact. The proposed Specific Plan was determined to not result in other significant hazards, including wildfire hazards. The proposed changes to the Specific Plan would not result in new or more severe hazard or hazardous material impacts than those identified in the TESP EIR.

#### **1.4.1.9      *Hydrology and Water Quality***

The TESP EIR concluded that implementation of the proposed Specific Plan, in conformance with existing regulations and mitigation measures implemented in the northwest corner of the Plan Area to address flooding, would result in less than significant hydrology impacts. The proposed changes to the Specific Plan would not modify anticipated fill levels or the planned storm drainage system. The proposed changes to the Specific Plan, therefore, would not result in new or more severe impacts to hydrology or water quality than those identified in the TESP EIR.

#### **1.4.1.10     *Land Use and Planning***

The TESP EIR found implementation of the Specific Plan would not create new land use compatibility impacts due to substantially increasing residential development in this area of Santa Clara. Development of the Plan Area would conform to the *Transit Neighborhood* land use

classification adopted by the City. The proposed changes to the Specific Plan would not result in new or more severe land use or planning impacts than those identified in the TESP EIR.

#### **1.4.1.11      *Noise and Vibration***

Construction related noise and vibration impacts of the Specific Plan were identified in the TESP EIR and would be reduced to less than significant levels with implementation of mitigation measures. The proposed changes to the Specific Plan roadway network would not result in new or more significant noise and vibration impacts than those identified in the TESP EIR.

#### **1.4.1.12      *Public Services***

The TESP EIR concluded the Specific Plan, as analyzed, would result in less than significant impacts to public services. The proposed modifications to the planned roadway network would continue to allow adequate emergency vehicle access to all development within the Plan Area and would not result in new or more severe public service impacts than those identified in the TESP EIR.

#### **1.4.1.13      *Recreation***

The Plan Area is currently not served by neighborhood parkland within a 10-minute walk from the site. The 2018 EIR concluded that the provision of on-site park and recreational space, and payment of parkland dedication fees would ensure impacts to recreational facilities would be less than significant. The proposed changes to the Specific Plan roadway network would provide additional connectivity for pedestrians and bicycles to planned park uses and would not result in new or more severe impacts to parkland or recreational facilities than those identified the TESP EIR.

#### **1.4.1.14      *Transportation/Traffic***

The TESP EIR analyzed transportation and traffic impacts of the proposed project in accordance with the VTA's Congestion Management Program (CMP) guidelines, due to the project's estimated generation of greater than 100 peak hour trips. The Traffic Impact Analysis (TIA) was included in Appendix G of the TESP EIR and analyzed 4,500 residential units, 106,000 square feet of retail space, and a 600-student school. Co-working space and daycare uses are allowed uses under the Specific Plan that may be incorporated in proposed development in the Plan Area. The equivalent retail and school trip generation resulting from co-working space and daycare uses is provided in a trip generation memo prepared by Fehr & Peers in Attachment 1. Based upon the trip generation rates included in Attachment 1 and described above, future development within the Plan Area that proposes co-working and daycare uses would not significantly exceed the retail square footage and student assumptions analyzed in the TESP EIR.

Although VMT is currently the adopted metric for analyzing traffic impacts under CEQA, the City did not have an adopted VMT policy at the time of the adoption of the Specific Plan. The proposed changes to the planned circulation network are part of an existing approval and per the City's recently-adopted VMT Policy, do not require further environmental review. The TESP EIR analyzed traffic conditions using level of service (LOS) consistent with the City's then-current LOS standards. The TESP EIR concluded the project as proposed would result in significant unavoidable or cumulatively considerable impacts to traffic and transportation at 15 study intersections. The trip

generation memo analyzes the proposed changes to the Specific Plan in light of the conclusions reached and mitigation measures proposed in the adopted EIR.

The proposed change relevant to transportation or traffic impacts is the Calle Del Sol extension being converted from a “local street” to a pedestrian paseo. The TESP EIR analyzed the Calle Del Sol extension as a vehicle-accessible “local street”, which would feature up to three vehicular travel lanes, be generally designed to calm traffic, and would be pedestrian focused. Under the newly proposed circulation plan for the Plan Area, the northern extension of Calle Del Sol would be closed to private vehicle use and would serve as a pedestrian paseo with designated pathways for bicycles and pedestrians.

The Traffic Impact Analysis, Appendix G of the TESP EIR, included an Internal Streets Sensitivity Analysis (TIA Appendix I) that analyzed various roadway network alternatives and their effects on intersection LOS. Development of the Plan Area without the Calle Del Sol extension was analyzed and found a limited increase in traffic at the Lafayette Street and Lick Mill Boulevard intersections, due to vehicles being diverted east- and westbound rather than northbound. The analysis concluded, however, any increased traffic would not measurably increase unacceptable LOS at Plan Area intersections.<sup>1</sup> In addition, under the Specific Plan, any northern Calle Del Sol extension was anticipated to be completed as part of Phase Two construction, in order to serve development in the Plan’s Center District. For this reason, vehicular access to the northern Calle Del Sol extension is not critical to overall circulation within the Plan Area. Given the emphasis of the previous “local street” designation on pedestrian use, inclusion of a fully pedestrian serving paseo is not a significant deviation from the objectives of the original plan. Considering the pedestrian focus of the original “local street” designation, the secondary importance of the Calle Del Sol extension to the overall development of the Plan Area, and the less than significant traffic impact of a “no extension” alternative, conversion from a pedestrian focused roadway to paseo would not cause a new or more significant traffic impact than those identified in the TESP EIR.

#### **1.4.1.15      *Utilities and Service Systems***

The TESP EIR concluded the proposed specific plan would require upsizing of a water main in Lafayette Street that would be subject to mitigation measures related to ground-disturbing activities. A new stormwater catch basin within the Plan Area would have similar impacts due to ground disturbing activities and would also be subject to mitigation measures. The proposed Specific Plan would not result in significant impacts to water supply, sewage treatment or conveyance facilities, and solid waste facility capacity. As part of the proposed changes to the Plan Area circulation improvements, construction of the Calle Del Sol extension as a paseo would allow the retention of the Primavera sewer pump station in its current location on-site, and avoid impacts arising from the relocation or undergrounding of the station. Therefore, the proposed changes to the Specific Plan would not result in new or more severe impacts to utilities or service systems than those identified in the TESP EIR.

### **1.5                      CONCLUSION**

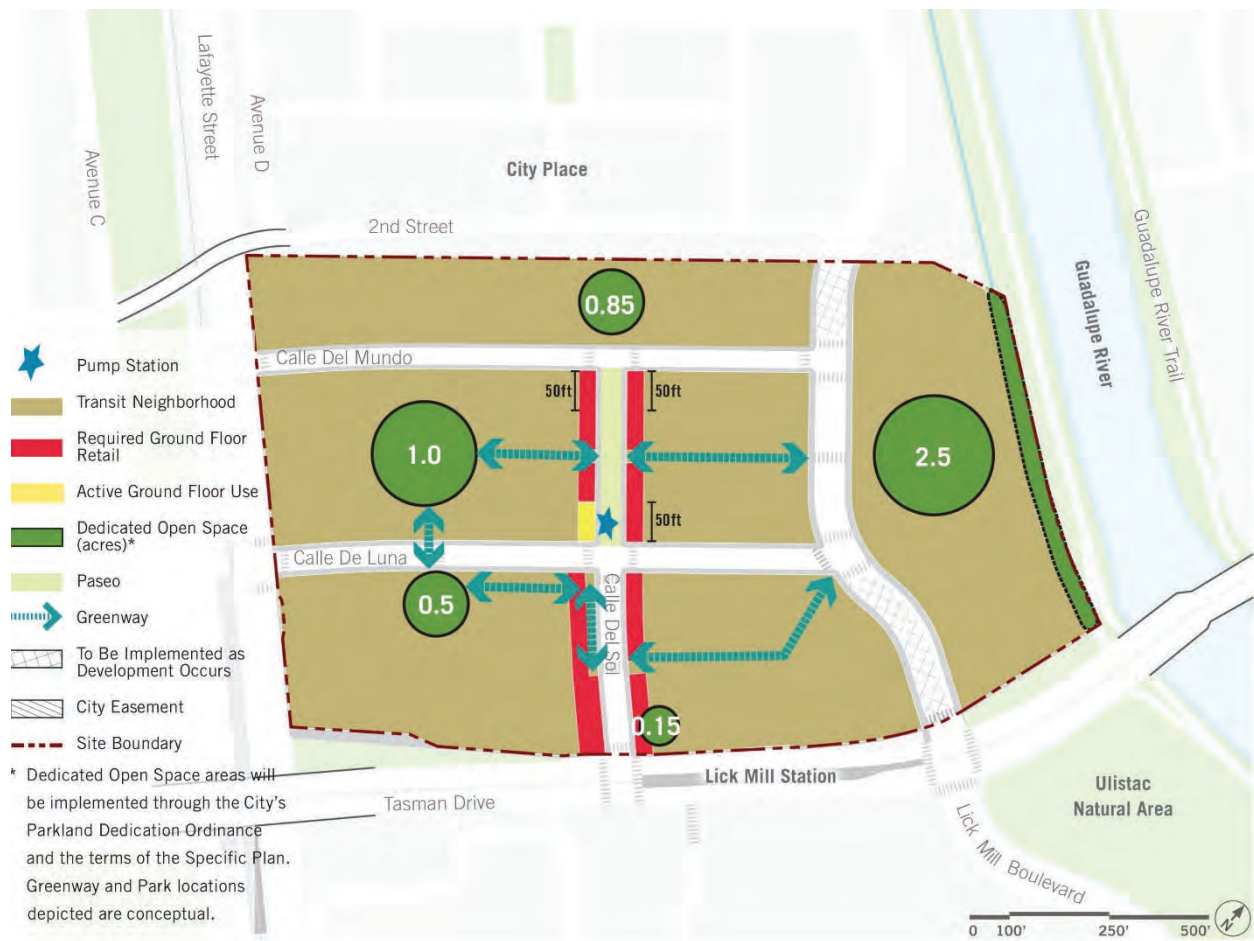
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<sup>1</sup> Fehr & Peers. *Traffic Impact Analysis for the Tasman East Specific Plan area: Appendix I. Internal Streets Sensitivity Analysis*. June 2018.

Based on the above analysis, no significant impacts would result from the proposed changes to the Tasman East Specific Plan. The proposed roadway network modifications would not result in new significant environmental impacts, and no new information has come to light that would indicate the potential for new significant impacts or substantially more severe impacts than were discussed in the TESP EIR; therefore, no further evaluation or Subsequent EIR is required. An EIR Addendum has therefore been appropriately prepared, pursuant to Section 15164.

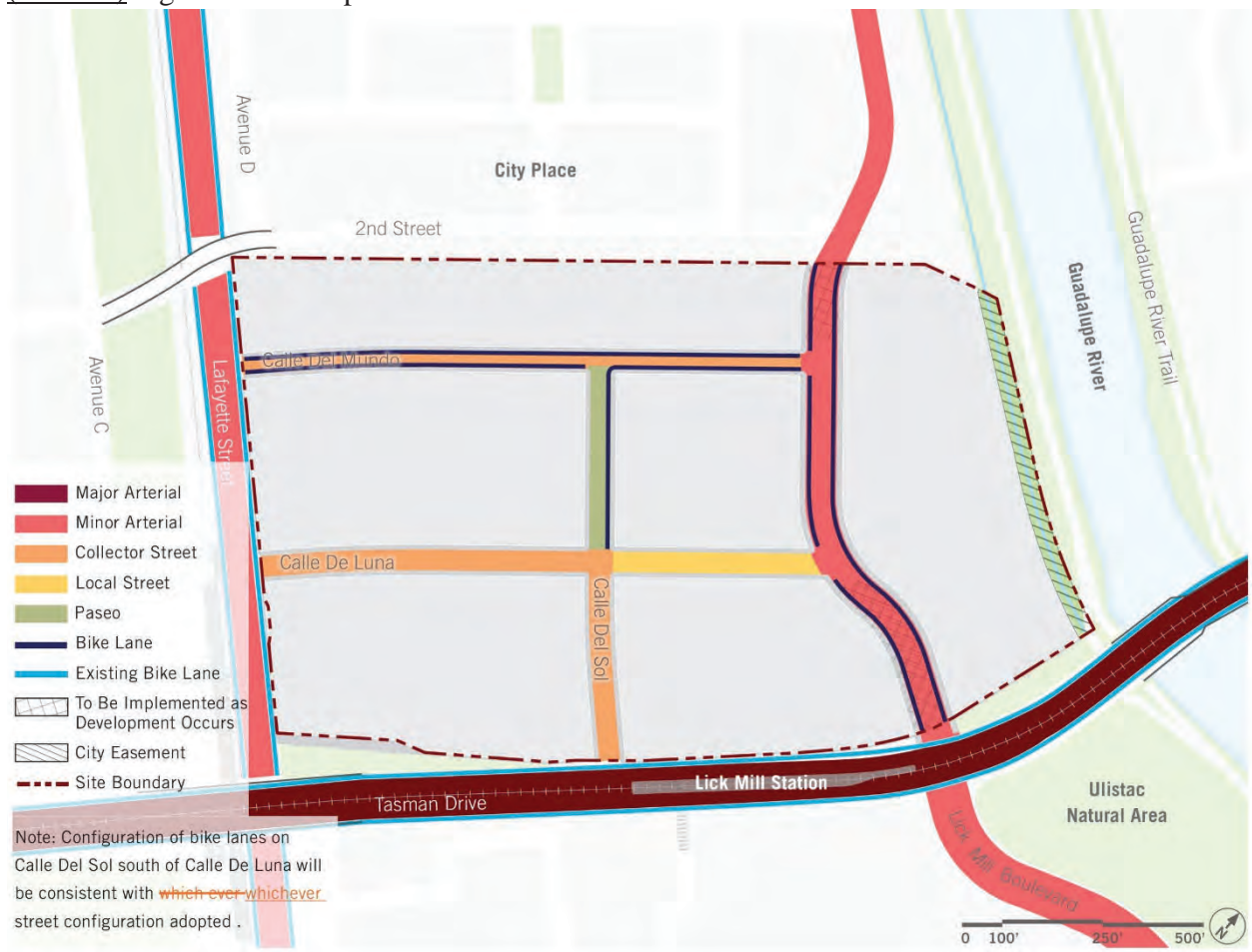
Pursuant to CEQA Guidelines Section 15164(c), this Addendum need not be circulated for public review, but will be included in the public record file for the Tasman East Specific Plan.

(Revised) Figure 2.0-3: Proposed Specific Plan Land Uses





(Revised) Figure 2.0-4: Proposed Circulation Network



(Revised) Figure 2.0-5: Planned Open Space Network



(Revised) Figure 2.0-6: Potential Specific Plan Phasing



Phase One Diagram



Phase Two Diagram



## **Attachment 1: Fehr & Peers Memo**

# Memorandum

Date: June 11, 2020

To: Dennis Dornan, Perkins + Will  
Will Burns, David J. Powers & Associates, Inc.

From: Matt Haynes, Fehr & Peers

**Subject: Land Use Equivalencies for Proposed Tasman East Specific Plan Revisions**

*SJ16-1669.03*

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Fehr & Peers conducted a trip generation equivalency analysis for a proposed change to the Tasman East Specific Plan (TESP) in Santa Clara, California. The TESP, as originally evaluated, included 4,500 residential units, 106,000 square feet of retail space (including a 25,000 square foot grocery store), and a 600 student school. Currently proposed uses include co-working and day care space, which do not fit into any of these land use categories. The purpose of this analysis is to determine the retail and school land use equivalencies for the proposed co-working and day care uses, based on expected vehicle trip generation rates.

## Analysis Approach

Daily, AM peak hour, and PM peak hour vehicle trip generation estimates were developed for the proposed co-working and day care uses using rates from the Institute of Transportation Engineers (ITE), *Trip Generation Manual*, 10<sup>th</sup> Edition. Co-working space is not specifically identified in the *Trip Generation Manual*, so general office trip generation rates are used.

The co-working vehicle trip rates were then divided by trip generation rates for shopping center (to represent retail space) from the *Trip Generation Manual* to obtain equivalent square feet (sf) of retail space.

Additionally, day care vehicle trip generation rates were divided by the rates for schools used in the TESP to obtain an equivalent student conversion rate.



## Analysis Results

The trip generation rates for the co-working and day care uses are presented in **Table 1**. Rates are shown per thousand square feet of floor area for co-working space and per student for day care space.

**Table 1: Vehicle Trip Generation Rates for Proposed Co-Working and Day Care Uses**

Use	Daily	AM Peak Hour	PM Peak Hour
Co-Working (per thousand square feet)	9.74	1.16	1.15
Day Care (per student)	4.09	0.78	0.79

Source: Institute of Transportation Engineers, *Trip Generation Manual*, 10<sup>th</sup> Edition, September 2017.

Retail trip rates were divided by the trip rates above to estimate equivalent amounts of retail space. The results are presented in **Table 2**. There is a range of equivalencies depending on whether daily, AM peak hour, or PM peak hour trips are used as the basis. The conversion rate to retail space therefore ranges from 0.81 to 3.88 for every 1,000 square feet of retail space.

**Table 2: Retail Vehicle Trip Generation Rates and Conversions**

Land Use	Daily	AM Peak Hour	PM Peak Hour
<i>Trip Generation Rates</i>			
Retail	37.75	0.94	3.81
<i>Equivalent Conversion Rate (per 1,000 of square feet of retail space)</i>			
Retail to Co-Working	3.88	0.81	3.31

Source: Institute of Transportation Engineers, *Trip Generation Manual*, 10<sup>th</sup> Edition, September 2017.

School trip rates were divided by the trip rates above to estimate an equivalent student conversion rate. The results are presented in **Table 3**. The student conversion rate ranges from 0.39 to 1.27 for every student depending on whether daily, AM peak hour, or PM peak hour trips are used.



**Table 3: School Vehicle Trip Generation Rates and Conversions**

Land Use	Daily	AM Peak Hour	PM Peak Hour
<i>Trip Generation Rates</i>			
School <sup>1</sup>	1.61	0.99	0.62
<i>Equivalent Conversion Rate (per student)</i>			
School to Day Care	0.39	1.27	0.78

Source: Institute of Transportation Engineers, *Trip Generation Manual*, 10<sup>th</sup> Edition, September 2017; Tasman East Specific Plan *Trip Generation Estimates Memorandum*, November 2017

Notes: <sup>1</sup> Rates used in the Tasman East Specific Plan are based only on the total number of students assumed to arrive by car. Of the total school size of 600 students, about 390 students (65%) are assumed to arrive via car. The remaining students would arrive on foot or by bike.

## Conclusions

Based on the results shown in **Table 2**, the AM peak hour would yield the lowest trip conversion rate. Using the lowest conversion rate values to be conservative, one could construct 810 square feet of co-working space for every 1,000 square feet of retail space.

In addition, based on **Table 3** results, the daily rate would yield the lowest trip conversion rate for school trips. One could therefore allow 0.39 day care students for every general school student.

## 02.1 VISION

Northern Santa Clara is at a moment of transformation from a patchwork of industrial parks and single-family communities into a walkable, transit and trail-oriented, high density area offering an urban lifestyle alongside regional destinations. The Tasman East Focus Area will be at the heart of this transformation.

In five to ten years we will likely see approximately half of the Tasman East Focus Area redeveloped with open space and high density residential buildings, including some that offer a mix of ground floor uses to support a vibrant public life. These developments will largely occur at the site's perimeter, fashioning a new identity for the urban neighborhood along Tasman Drive and Guadalupe River Trail. Such development will also bookend gateway developments along Lafayette Street.

At the center of the site, the pace of development may be slower as it will align with property owners' decision to redevelop or continue to operate light industrial businesses. This will lend diverse uses to the neighborhood and new development may choose to enhance this character by adding its own mix of urban industrial uses at the ground level of buildings such as beer gardens, furniture-makers, small press publishers, florists, arts and design activities and performance spaces.

Full buildout of the site will likely occur over the next 20 years, as the development of the center of the site responds to market ebbs and flows.

### **WALKABLE AND TRANSIT AND TRAIL-ORIENTED**

Development will build on the site's rich transit connections to both regional heavy-rail and local light-rail. Light-rail will be within a five-minute walk of every front door.

Connections to the Guadalupe River Trail, a recreational and commuter path for bikers and pedestrians, will carry residents through Santa Clara's unique geography of rivers and creeks south to Downtown San Jose and beyond.

### **COMPLETE COMMUNITY**

The Specific Plan targets the development of up to 4,500 residential units to contribute much needed housing supply in response to City Place's increased local employment opportunities. This will include a variety of housing types, retail and active uses within a vibrant urban neighborhood.

~~A minimum of 10 percent of all units that receive a discretionary approval before 2021 will be affordable by deed restriction to households making an average of 100% of area median income with this number increasing to 15% thereafter. This affordable requirement shall override any other City requirements, including General Plan and Affordable Housing Ordinance. Developments in the Specific Plan area shall adhere to the affordable housing requirements referenced in Section 17.40.115 of the Santa Clara City Code.~~ Other market rate units will be

made affordable 'by design,' with smaller units targeted for young professionals looking for their first apartment, empty-nesters looking to downsize and others who desire a walkable, urban lifestyle.

### **SUSTAINABLE COMMUNITY**

The site will target reductions in carbon emissions by creating a public realm that is well-connected, safe and walkable, decreasing the demands for private vehicles. Residents will take pleasure in choosing active modes of transit and shared mobility options.

### **AUTHENTIC CHARACTER**

The existing legacy of light industrial uses will be maintained and woven into the character of the Focus Area Plan. As some industrial users sell or redevelop their properties into housing, others will have the option to continue to operate their businesses, or sell to future industrial users that are compatible with an urban, mixed use neighborhood.

## 03.5 LAND USE FRAMEWORK

### Focus Area Targets

The Tasman East Focus Area Specific Plan aims to achieve the following targets for different uses within the overall plan area:

- Up to 4,500 dwelling units;
- Affordable housing in conformance with prevailing city ordinance in Section 17.40.115 of the Santa Clara City Code;
- 10 acres of open space distributed between public, private and semi-private spaces;
- Up to 106,000 square feet of retail uses, including a grocery store of approximately 25,000 square feet; and
- Potential for a small, urban school.

### TRANSIT NEIGHBORHOOD USES

#### Principal Use

This zoning district is intended to provide regulatory standards for height, setbacks, densities, parking standards, and allowed uses.

The Tasman East Focus Area will be principally high density, transit-oriented, residential use for sale and for rent. This includes multi-family dwellings, supportive housing and transitional housing. Private parking and home occupation are permitted as accessory uses. Single-family and two-family dwellings are not permitted in this district.

To achieve a vibrant public realm and support a walkable neighborhood, other active uses are encouraged at the ground floor of residential buildings. See Figure 03-5-2 for a full list of permitted, conditional and excluded uses.

### Density

There is a target of 4,500 units in the Tasman East Focus Area. Each parcel of one acre or more in size is required to accommodate a minimum density of 100 dwelling units per acre. Each parcel of less than one acre in size is required to achieve a minimum density of 60 dwelling units per acre. There are no density maximums for individual parcels. Density shall be calculated as net density, which excludes all of the following, whether public or private, from the calculation of minimum density: parks, streets, and greenways.

See Figure 03-5-1 for two scenarios of minimum residential development; one assumes no further consolidation of individual parcels and one assumes consolidation of parcels into an area of at least one acre.

### Retail uses

The Tasman East Focus Area will provide neighborhood-serving retail, which is defined as businesses that provide goods and services that people would frequently use to take care of their personal and household needs. Examples include grocery stores, drug stores, eating and drinking establishments, dry cleaners, hair salons etc.

As indicated in the Land Use Framework diagram rRetail uses are required for ground floor frontages facing onto the existing portion of Calle del Sol, and along the first 50 feet minimum frontage facing the Calle Del Sol Paseo at the intersection with Calle De Luna and Calle Del Mundo, as indicated in the Land Use Framework diagram. Ground floor retail is also required along the Calle Del Sol Paseo, except where active ground floor uses are shown as required. This use is also allowed and encouraged along all ground floor frontages.

### Neighborhood Light Industrial uses

This use is intended to protect existing industrial businesses and provide an opportunity for the inclusion of uses with an industrial character which have public-facing operations such as breweries, wineries, catering companies, garment manufacturers and crafts or artists studios (or similar).

Light industry is intended to accommodate businesses operating substantially within an enclosed building and without provision of storage or side yards. Such permitted uses shall not be objectionable or detrimental to adjacent properties because of signage, noise, smoke, odor, dust, noxious gases, vibrations, glare, heat, fire hazards or industrial wastes emanating from the property.

Neighborhood light industrial uses are also allowed along the ground floor of any building in the Urban Neighborhood district, except where retail uses are required.

### Active uses

To create a pedestrian friendly environment and visual activity at the ground floors of buildings, all buildings shall provide active uses on every frontage facing a public right-of-way, Paseo, greenway or park to the degree feasible, and where not governed by the requirement above to provide retail uses. Building frontage for mechanical equipment, transformer doors, parking garage entrances, exit stairs, and other facilities necessary to the operation of the building are excluded from this requirement.

The following uses qualify as active:

- Retail, Entertainment, Arts and Recreation Use;

- Retail, Entertainment, Arts and Recreation Use;
- Neighborhood Light Industrial Uses;
- Public Uses including a community room, an urban school, a bookmobile dock and/or a book vending machine stocked by the library;
- Residential or live/work units that are individually entered from the street;
- Building lobbies; and
- Spaces accessory to residential uses, such as fitness rooms, work spaces, leasing offices, shared kitchens, mail rooms and Class I bicycle parking facilities with direct access to the sidewalk or street.

#### Public uses

The Tasman East Focus Area will have a distributed, publicly accessible open space system where a series of neighborhood parks are connected throughout the district by a network of streets and greenways. These neighborhood parks and greenways count towards the 10-acre site-wide open space target.

Where parks and greenways are privately owned but publicly accessible, they shall be considered public uses. The Tasman East Focus Area also allows for other public or quasi-public facilities such as schools, municipal facilities, non-profit facilities and neighborhood recreational enterprises.

#### School Facility

The Specific Plan allows an urban school. The location would be identified during Specific Plan implementation. It is assumed that this “urban school” can be located at the ground floor of a mixed-use building and must be accessible to a public open space of a minimum of one acre. This urban school may be private or public.

DEVELOPMENT AREAS		AREA (ACRES)	MINIMUM DEVELOPMENT
Sitewide Areas	Total Site Boundary Area	46.1	
	Developable Area (Total site boundary area, minus: 7.9 acres of existing and proposed ROWs, 0.75 acre SCVWD easement, 5 acres of fixed open space and approximately 1.1 acres of greenways)	31.3	
Residential Scenarios	<b>Scenario 1</b> Assuming no consolidation of smaller parcels and achieving minimum required density		<b>2,830 units</b>
	Parcels larger than 1 acre (minimum 100 du/ac)	23.8	2,380 units
	Parcels smaller than 1 acre (minimum 60 du/ac)	7.5	450 units
	<b>Scenario 2</b> Assuming consolidation of smaller parcels into parcels of at least one acre in size and achieving minimum required density		<b>3,140 units</b>
	Parcels larger than 1 acre (minimum 100 du/ac)	31.3	3,140 units

Figure 03-5-1 Theoretical Residential Yield





## 03.6 CIRCULATION FRAMEWORK

### COMPLETE STREETS

The streets within the Tasman East Focus Area are designed as “complete streets” designed with people and place in mind, centered around providing a variety of mobility options within an inviting public realm. Complete Streets ensure accessibility for people of all ages and abilities, while balancing multiple mobility needs and supporting local land uses.

The circulation plan includes not only the improvement of existing rights-of-way, but also the addition of new streets to create additional connections in the area.

Streets and other transportation facilities are organized according to typologies that relate to the function and adjacent land uses. All roadways will be designed to accommodate multiple users and anticipated levels of vehicular traffic.

Special attention should be given to ensure safe and convenient pedestrian and bicycle connections to existing transit facilities and neighboring trails.

### PEDESTRIAN NETWORK

The City's General Plan encourages pedestrian connections from neighborhoods to public amenities and destinations that are accessible to all segments of the population. High quality pedestrian facilities improve the convenience and safety for pedestrians and reduce vehicle trips made for everyday activities. These facilities include sidewalks, paths, pedestrian bridges and crosswalks. In pedestrian-friendly environments, frequent crossing locations are essential to provide direct paths between origins and destinations. Special attention should be given to ensure safe and convenient pedestrian

and bicycle connections to existing transit facilities and neighboring trails.

### BICYCLE NETWORK

Bicycles provide a convenient, active and enjoyable method of travel, particularly for trips less than 4 miles. Bicycle facilities improve safety for cyclists and can also promote reductions in vehicle trips and vehicle miles traveled. A good bicycle network includes bike paths, bike lanes and design treatments such as pavement markings, bicycle signals and bicycle wayfinding.

Lick Mill Boulevard and Calle del Mundo will be the main bicycle streets with dedicated lanes that connect through the neighborhood to the bike lanes on Tasman Drive and Lafayette Street, as well as to the Guadalupe River Trail. All other streets will contribute to the bike network with sharrows to indicate that vehicles should share the road with bicycles.

### VEHICULAR NETWORK

While some roadways are designed to move higher volumes of vehicles quickly and efficiently, other streets prioritize space for pedestrians, bicyclists, on-street parking, loading zones and passenger drop-off locations. There are 3 street typologies derived from the General Plan within the site boundary: Minor Arterial, Collector Street and Local Street; Tasman Drive is a Major Arterial, but lies beyond the Focus Area site boundary. Goals and policies for roadway classifications as described in Santa Clara's General Plan within the Focus Area are below:

#### Minor Arterials

Minor arterials serve through-traffic and typically include transit vehicles. Minor arterials are generally designed with two to four travel lanes with dedicated left-turn

lanes, traffic signals at major intersections, and parallel street parking. Lafayette Street is a minor arterial that will move traffic to and around the site.

#### Collector Streets

Collector streets typically provide traffic circulation for residential and commercial uses. These streets penetrate residential neighborhoods and typically feature two to four lanes of vehicular traffic. Lick Mill Boulevard will be designed as a collector street that moves traffic at lower volumes through the Focus Area and connects to the broader network of minor arterials. The Lick Mill Boulevard extension is a responsibility of the adjacent City Place development; its timing is independent of the Tasman East Specific Plan.

#### Local Streets

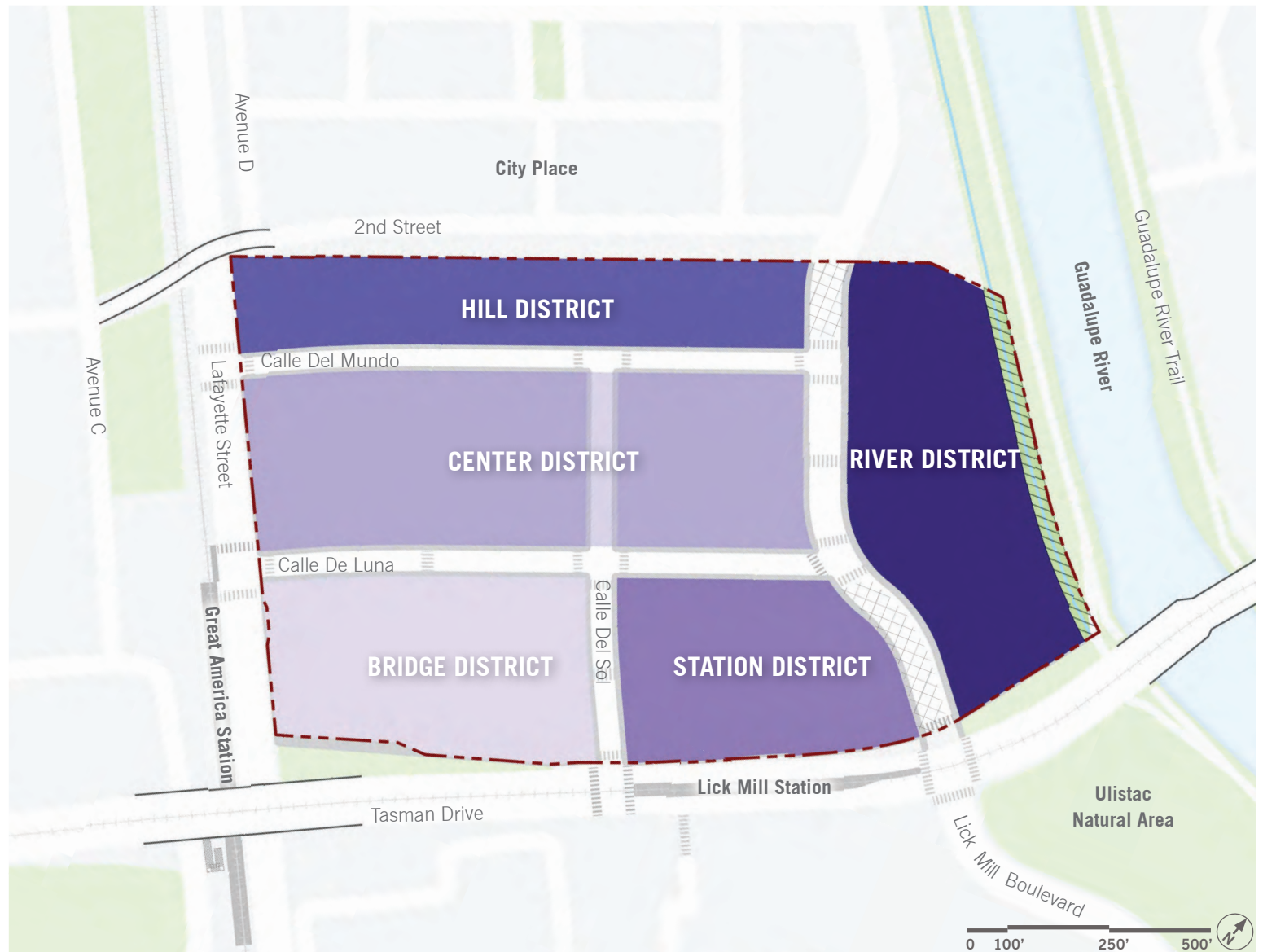
Local streets are designed to calm traffic and give pedestrians priority in terms of scale and facility. These streets typically serve as neighborhood streets, generally providing two travel lanes, on-street parallel parking, bike lanes and sidewalks. The eastern portion of Calle de Luna will be designed as local street. Although the eastern portion of Calle De Luna has the same right-of-way width and lane configuration as the western portion, it is anticipated that traffic volumes will be significantly lower due to the fact that it is not part of the current connection between Tasman Drive and Lafayette Street, thus justifying classification as a Local Street.

#### Paseo

The northern extension of Calle Del Sol, between Calle De Luna and Calle Del Mundo, is proposed as a pedestrian and bike oriented street with clearance for emergency vehicle access(EVA), but not open to private vehicles.



**Figure 03-6-1** Circulation Framework



**Figure 03-7-1** Districts

- To ensure visibility and safety, all points along the perimeter of an open space must maintain an unobstructed line of sight to at least one street or greenway frontage;
- The open space shall be generally flat; sloped areas programmed with active uses can be considered for credit.

Privately-owned publicly accessible open space located on a podium must meet all of the above criteria as well as:

- Provide adequate soil volume to support planting; and
- Ensure privacy for podium level units; and.
- Clear and visible signage indicating that the space is open for public use.

#### PRIVATE OPEN SPACE

In the case of PRIVATE OPEN SPACE, up to 50 percent of the area of each open space is eligible for credit toward the TEFA open space requirement. In addition, balconies or stoops that are a minimum of 36 square feet in area

	ACRES
<b>Total Open Space Requirement</b>	<b>10.0</b>
Dedicated Parkland	5.0
Greenways	1.1
Remaining Privately-Owned Open Space	3.9
<b>Need from Each Development (as a percent of 31.35 acres of developable area)</b>	<b>12.5% (or 3.9 acres)</b>

**Figure 03-7-2** Privately-Owned Open Space Requirement as a Percentage of Development Area.

and have a minimum dimension of 5 feet in any direction shall be allowed 25% of area credit toward the TEFA open space requirement.

#### Parkland Dedication Ordinance and TEFA Additions

Privately-Owned Publicly Accessible Open Space and PRIVATE OPEN SPACE as defined in the Specific Plan shall receive Park and Recreational Land PRIVATE OPEN SPACE credits when the combined area of over 0.75 acres meets 4 of the 8 required elements of the Park Ordinance defined in Municipal Code [Section 17.35.070](#) plus two new as noted below.

The eight required elements of the Park Ordinance defined in Municipal Code [Section 17.35.070](#) are listed below for reference:

- Turfed play field, comprised of a single unit of land which is generally level and free of physical barriers which would inhibit group play activities with a minimum contiguous area of one-half acre;
- Children's play apparatus area that conforms to the then current Federal Consumer Product Safety Commission guidelines;
- Landscaped and furnished, park-like quiet area;
- Recreational community gardens;
- Family picnic area;
- Game, fitness or sport court area;
- Accessible swimming pool (minimum size forty-two (42) feet by seventy-five (75) feet) with adjacent deck or lawn areas;
- Recreation center buildings and grounds;

Two additional recreational elements are noted in the Tasman East Focus Area Plan:

- Dog park with a minimum size of 3,000 square feet, and a minimum dimension of 30 feet; and

- Game area, a minimum of 2,000 square feet in area with a minimum dimension of 30 feet. This minimum area can be reduced to 1,000 square feet if next to another open space.

The City has the discretion to also allow Park Ordinance credit for costs associated with off-site improvements in areas which are functionally contiguous to dedicated parkland (or an easement with public access).



## DEDICATED PARKLAND (MINIMUM 5 ACRES)

- Hill District 0.85 acre
- Center District 1.0 acre
- River District 2.5 acres  
(Including 0.75 acre easement)
- Bridge District 0.5 acre
- Station District 0.15 acre

+

## PRIVATELY-OWNED OPEN SPACE

- Greenways
- At Grade & Publicly  
Accessible (100% Credit )
- PRIVATE OPEN SPACE  
(50% Credit )

=

**TOTAL 10 ACRES**














Public improvements beyond the site  
not included in 10.0 acres


\* Greenway and Park locations  
depicted are conceptual.

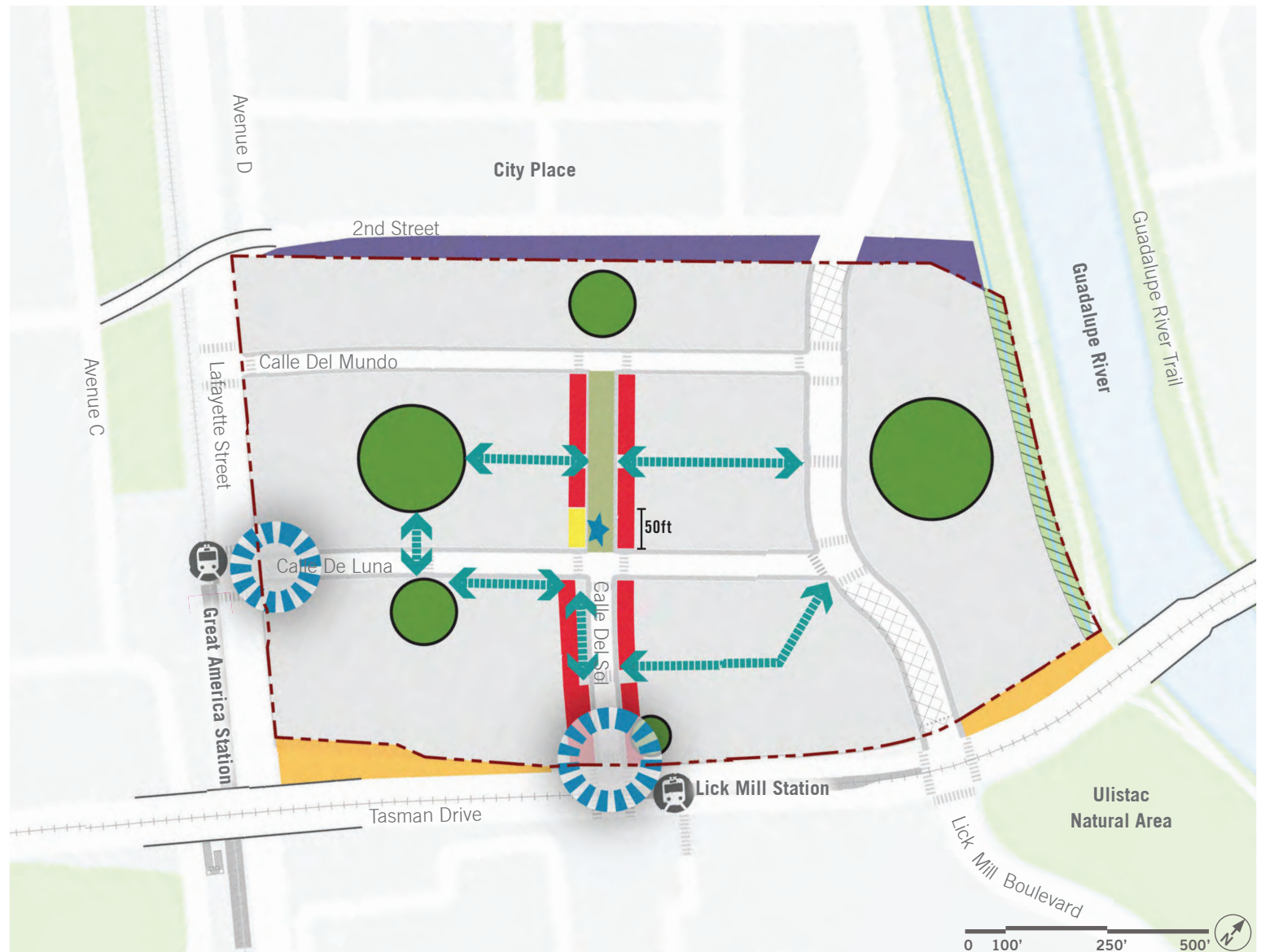
- Paseo
- Public Improvement Beyond  
the Site
- To Be Implemented as  
Development Occurs
- City Easement
- Site Boundary



Figure 03-7-3 Open Space Framework

-  Gateway
-  Pump Station
-  Grade Change Beyond Site
-  Filled and Landscaped Grade Change
-  Active Ground Floor Use
-  Required Ground Floor Retail
-  Dedicated Open Space\*
-  Paseo
-  Greenway
-  Vertical Circulation
-  To Be Implemented as Development Occurs
-  City Easement
-  Site Boundary

\* Greenway and  park locations depicted are conceptual.



**Figure 03-8-1** Urban Design Framework

## 04.1 RIGHTS OF WAY & SIDEWALK EASEMENTS

### Intent

The street network at Tasman East will be improved to create a safe, comfortable, and complete system. A well designed network will promote walking, encourage cycling and slow vehicles as they drive through this residential neighborhood.

Existing rights of way will remain, but the street network will be expanded to improve connections and increase widths as indicated in Figure 04-1-1.

Calle del Sol will be extended north of Calle de Luna as a pedestrian and bicycle paseo, Lick Mill Road will be extended for all modes of travel through the site northward to create a more robust, connected network. The Calle del Sol and Lick Mill Boulevard extensions will be implemented as development occurs.

Substandard sidewalks will be expanded within the right of way, or through easements within adjacent properties. See Figure 08-1-5 in the appendix for existing pedestrian sidewalks.

All street cross sections and figures shown in this Section of the Specific Plan depict the intent and vision for the individual rights-of-way. Should conflicts with utilities or easements make the right-of-way cross sections infeasible, adjustments to cross sections may be approved at the discretion of the Director of Community Development.

### Standards

- (A) Comfortable sidewalks shall line both sides of every street. A sidewalk easement may be required

within a property line adjacent to a right of way to expand the clear walkway of a sidewalk. Dimensions and locations vary, see Figure 04-1-1 and street sections for requirements. Sidewalk easements are to be measured as a perpendicular dimension from the edge of the right of way, horizontally into the adjacent property.

- (B) Striped pedestrian crosswalks shall be marked at intersections and mid-block crossings as illustrated in Figure 04-1-1.
- (C) Sidewalk extensions or bulb-outs shall be implemented at crosswalks on streets with parking for traffic calming.
- (D) The plan proposes an optional 15-foot diameter traffic circle at the intersection of Calle Del Sol and Calle De Luna as a traffic-calming measure. As an alternative, this intersection may be designed as a 4-way stop. The City of Santa Clara Department of Transportation will determine the daily traffic thresholds, below which the alternative may be implemented.
- (E) The existing sidewalk on Tasman Drive is sub-standard; the sidewalk shall be expanded within the Tasman Drive right of way and in accordance with plans for Tasman Drive (beyond the scope of this Specific Plan).

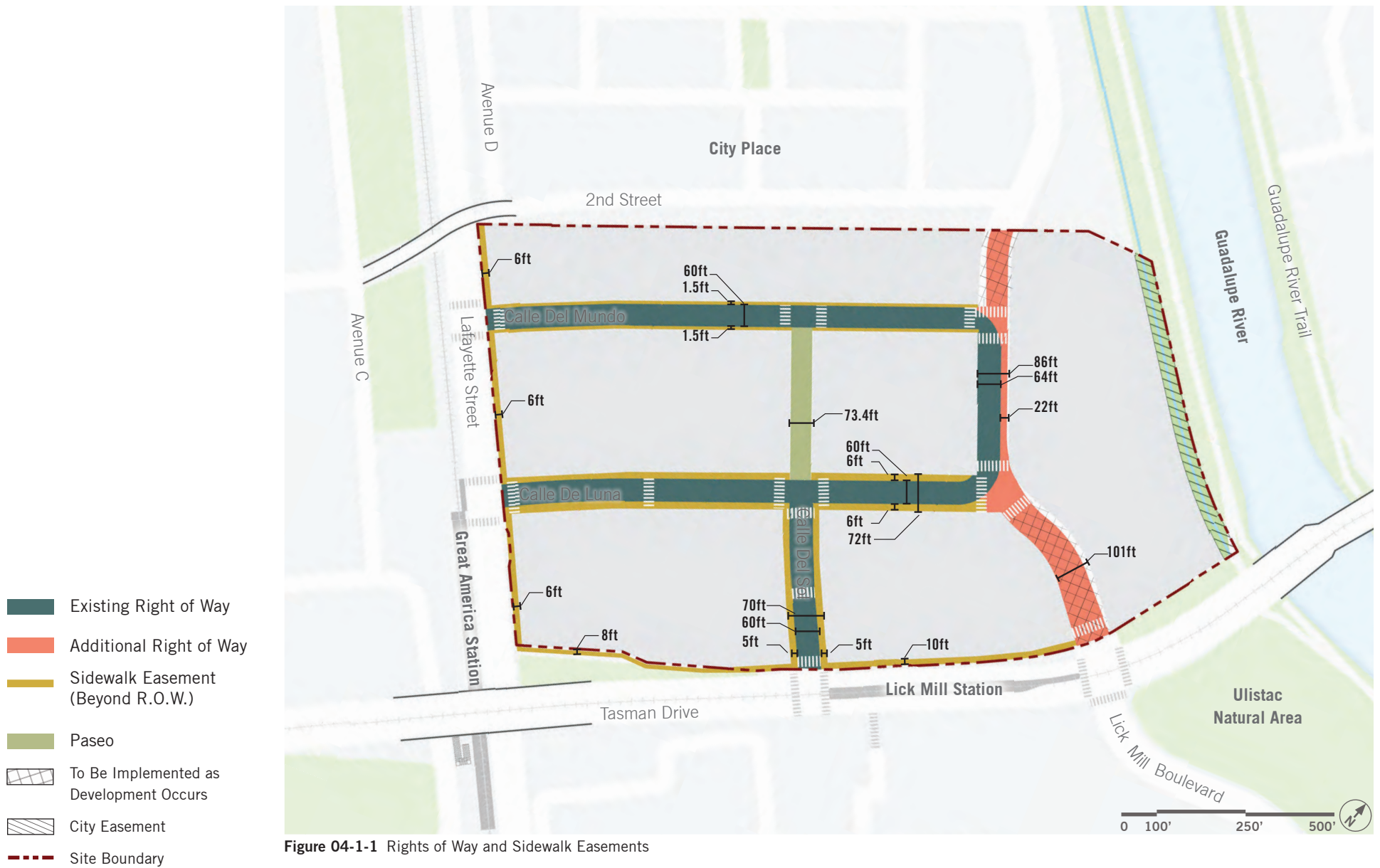
### Guidelines

- (F) Sidewalks should be designed with considerations for universal accessibility to accommodate people

with disabilities, children, seniors and adults.

- (G) Sidewalks should be designed with adequate space for street furniture that will provide an enhanced pedestrian environment with opportunities for people to linger, socialize and rest.









## 04.4 CALLE DEL SOL

### Intent

The existing section of Calle del Sol and its intersection with Calle De Sol-Luna will be the main retail focus of the Tasman East neighborhood, home to restaurants, cafes and neighborhood serving amenities that will support a vibrant public life. It will be enhanced and made more pedestrian-oriented, allowing the street to serve as a critical pedestrian link to the VTA Lick Mill Station. In addition to the existing street segment, Calle del Sol will be extended north of Calle de Luna, to connect to Calle del Mundo, creating a more complete street network for pedestrians, bicycles and emergency vehicles.

### Standards

- (A) The alignment and phasing of the northern segment of Calle del Sol will be determined based on the availability of land.
- (B) North of Calle de Luna, Calle del Sol will be designed ~~with street zones and lane configurations~~ as a pedestrian and bicycle paseo according to Figure 04-4-1 and Figure 04-4-2.
- (C) There are several options proposed for the segment of Calle del Sol between Tasman Drive and Calle de Luna that accommodate different levels of vehicular capacity, see Figure 04-4-3 through Figure 04-4-8. The most appropriate option will be selected before adoption of this plan based on input from the Transportation Impact Analysis (TIA).

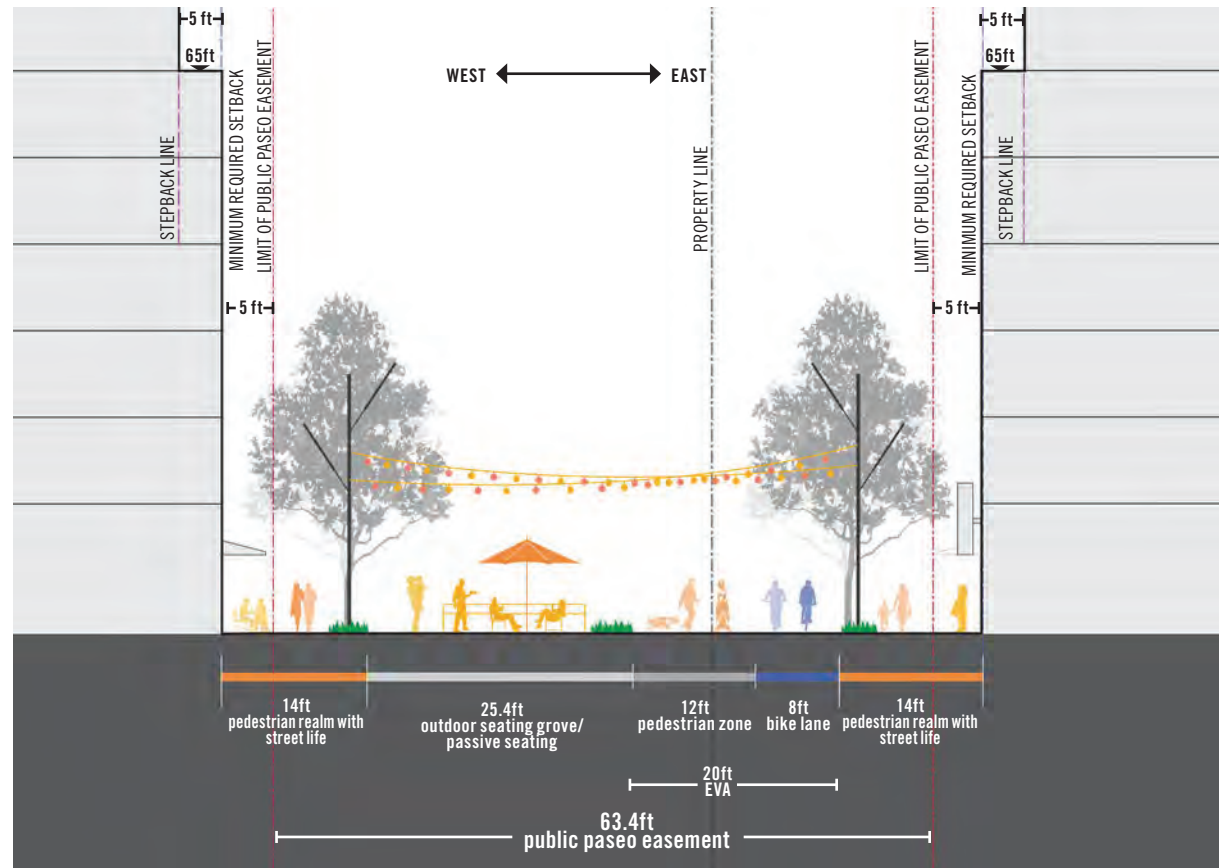


Figure 04-4-1 Calle Del Sol Street Section: North of Calle de Luna & North of Pump Station



## Intent

The proposed location of the Paseo affects four existing properties; development may occur incrementally in conjunction with the development of these properties. A public easement through the affected properties will facilitate a privately owned public open space. Buildings facing each other across the Paseo will be required to be set back from their property lines in accordance with the dimensions shown in Figures 04-4-2 and 04-4-4. The Paseo width shall be in accordance with the dimensions as shown on Figure 4-4-1, 4-4-2 and 4-4-3. At the Primavera Sewer Pump Station enclosure, an additional 15 feet setback will be required on the western adjacent property for maintenance and circulation.

As sections of the Paseo may be constructed by separate entities at different times, the following standards and guidelines will ensure a cohesive design.

## Standards

- (A) The paseo shall provide a continuous 12 feet wide pedestrian 'street life' zone alongside an 8 feet wide two-way cycle track. These two zones shall together constitute a minimum 20 feet wide emergency vehicle lane (EVA), paved with suitable high-quality material to accommodate fire trucks. The cycle track shall be demarcated separately from the pedestrian zone with alternative texture/color/materials and shall include directional striping and signage.
- (B) Both ends of the EVA lane shall be equipped with electronically retractable bollards to prevent private vehicle access but to permit emergency vehicle access.
- (C) In the interim condition where only a portion of the Paseo is constructed at a given phase, the access requirements of (A) and (B) above shall be provided within the partial or the temporary condition.
- (D) The Paseo should include, at various points along its length, gathering areas, seating zones, stormwater management zones, sufficiently large outdoor

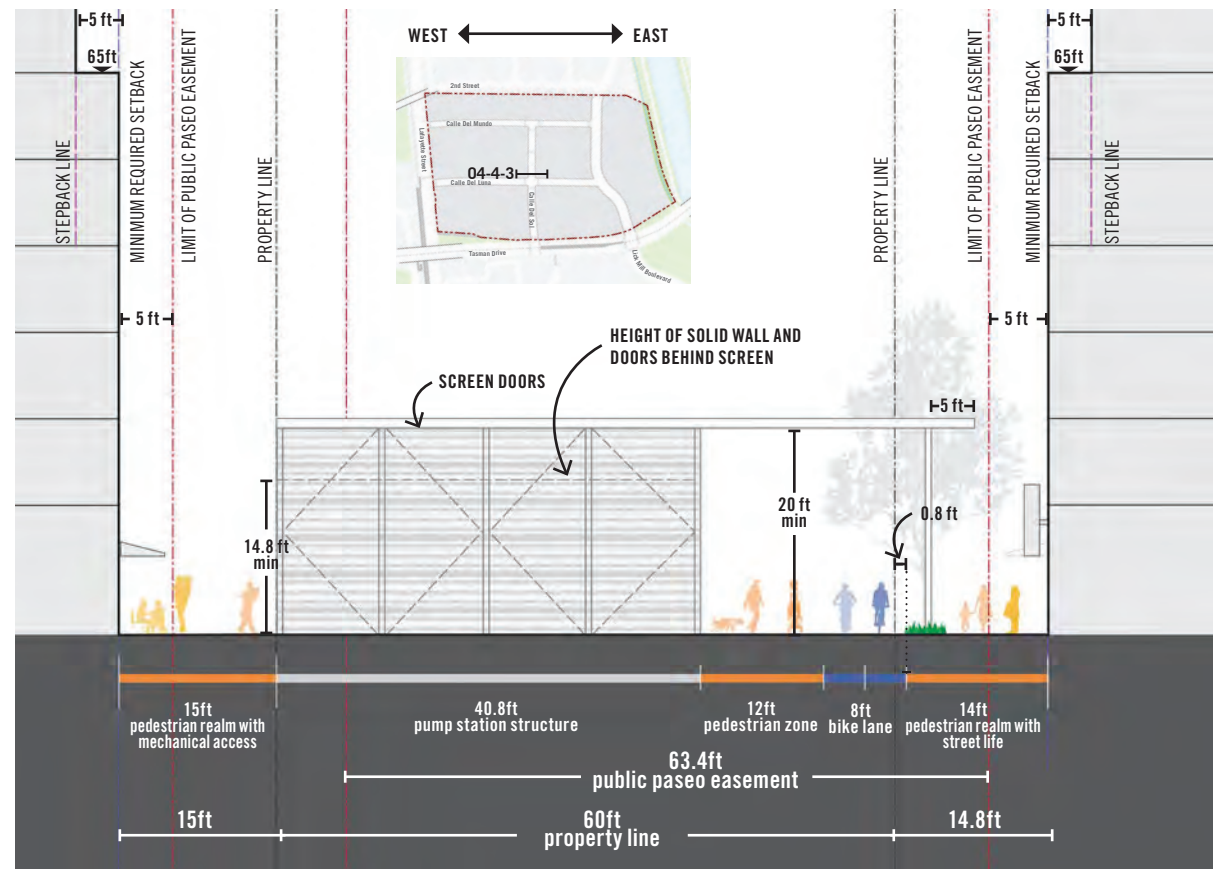


Figure 04-4-2 Calle Del Sol Street Section: North of Calle de Luna

space to accommodate a farmers market, outdoor performance etc. and lawn areas.

- (E) At the southernmost end of the paseo, the existing Primavera Sewer Pump Station and associated equipment must be enclosed in accordance with Figure 04-4-2 and 04-4-3. The relevant developer and/or property owner shall coordinate all access and maintenance requirements with City of Santa Clara Public Works and Planning

Departments. with Santa Clara City staff to determine all access and maintenance clearance requirements and establish the minimum size enclosure required. This enclosure shall be constructed of an inner solid wall, minimum 14 feet 6 inches high, with roll-up shutter-type openings as required for access and maintenance, and an outer screen wall with partial opacity, minimum 20ft high on all sides. The upper portion of the screen wall shall provide ventilation for the enclosure. The outer screen wall shall include 'blind' outward opening

doors, designed to match the fixed sections of screen, to provide access to the inner wall roll-up shutter openings. The design and rating of the wall shall comply with building code requirements for building separation. The enclosure shall be covered with an open trellis which is complementary to the design of the outer screen and which shall provide coverage of the entire enclosure. The trellis may extend on the north, west and south sides up to 10 feet beyond the walls of the enclosure, subject to access agreements on adjacent properties. On the east side, the trellis shall extend a minimum 20 feet to cover the pedestrian zone and bike lanes and be supported by a row of columns in the street-life zone. The screen walls, trellis and supporting columns in the street-life zone shall be constructed of high-quality tactile materials such as stainless steel, wood or terra-cotta or some combination thereof. The design of the enclosure shall be submitted for City approval. If the enclosure is constructed in phases as adjacent development occurs, Phase one shall, at a minimum, include the inner solid walls, outer screen walls and that portion of the trellis which covers the entire enclosure. Future phases may extend the trellis beyond the walls of the enclosure as noted above.

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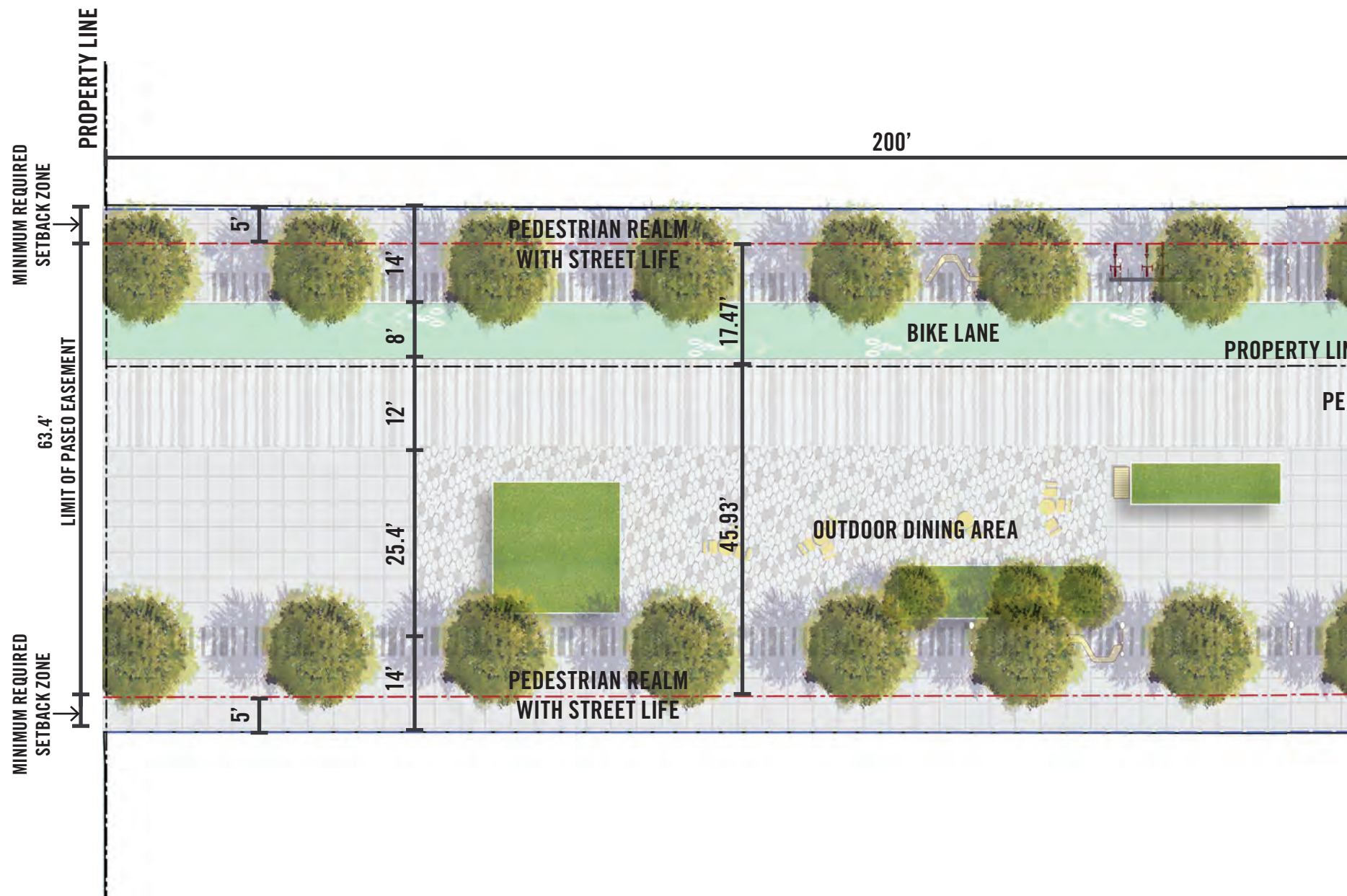
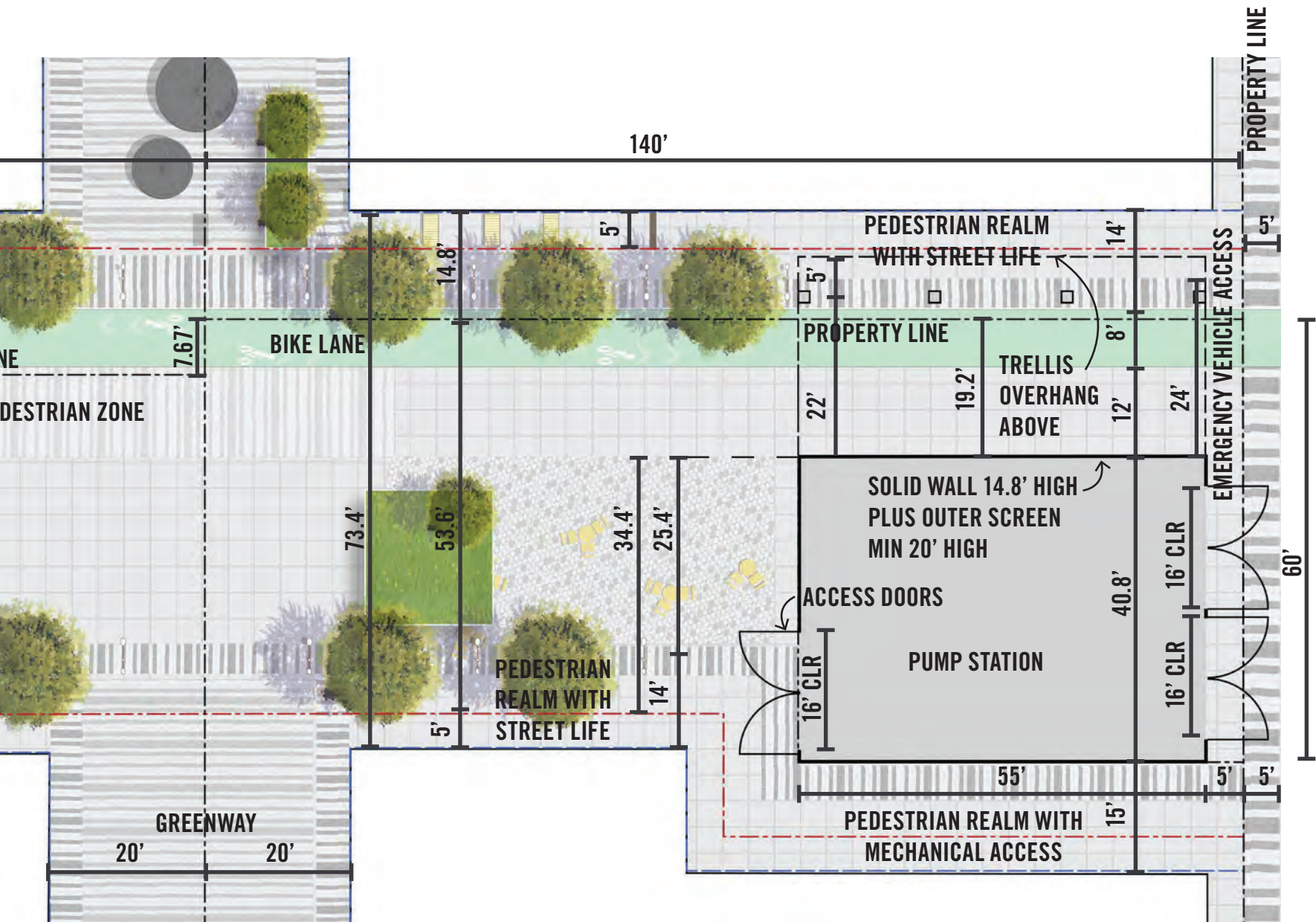


Figure 04-4-3 Calle Del Sol Street Plan: North of Calle de Luna





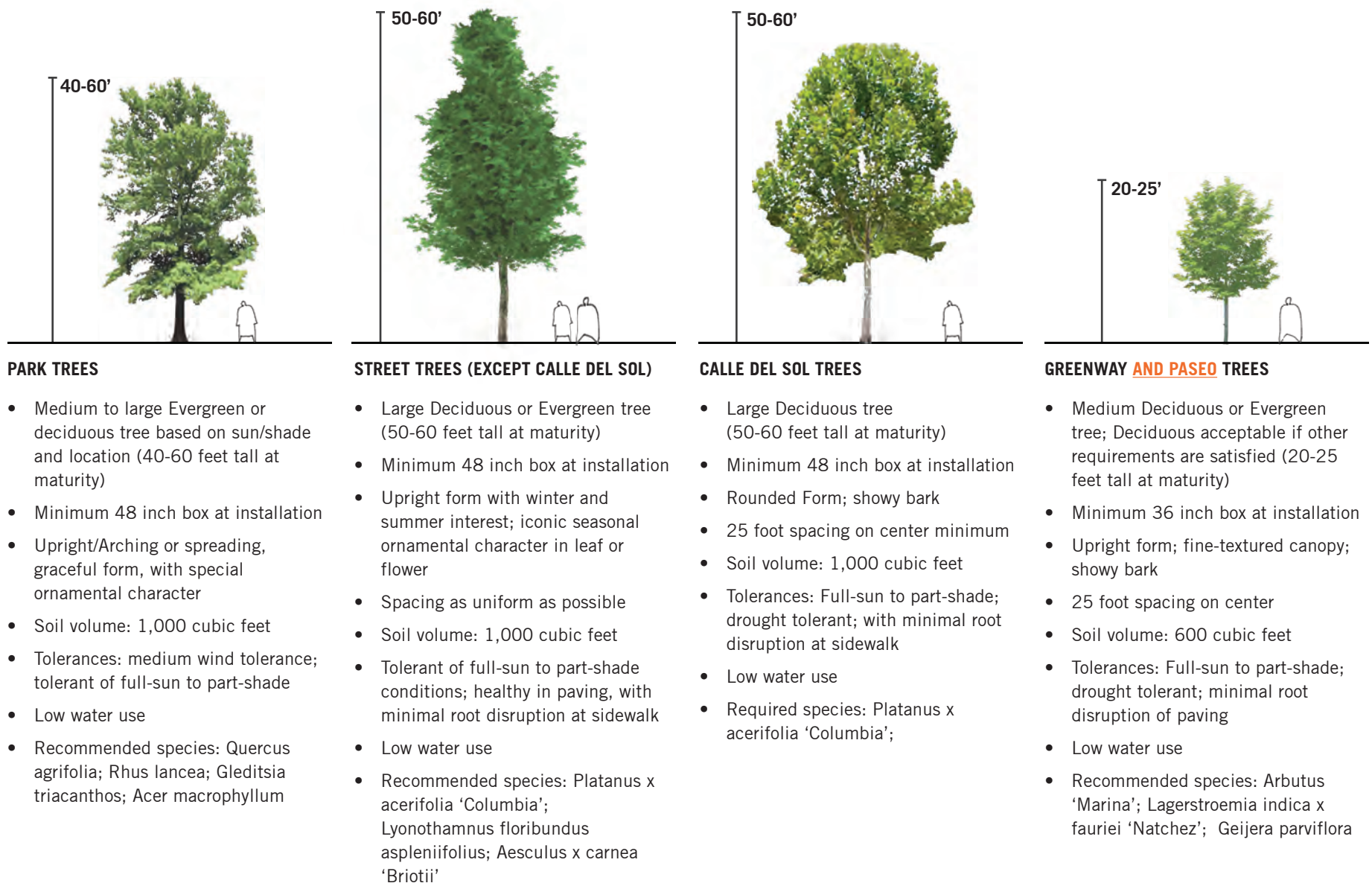
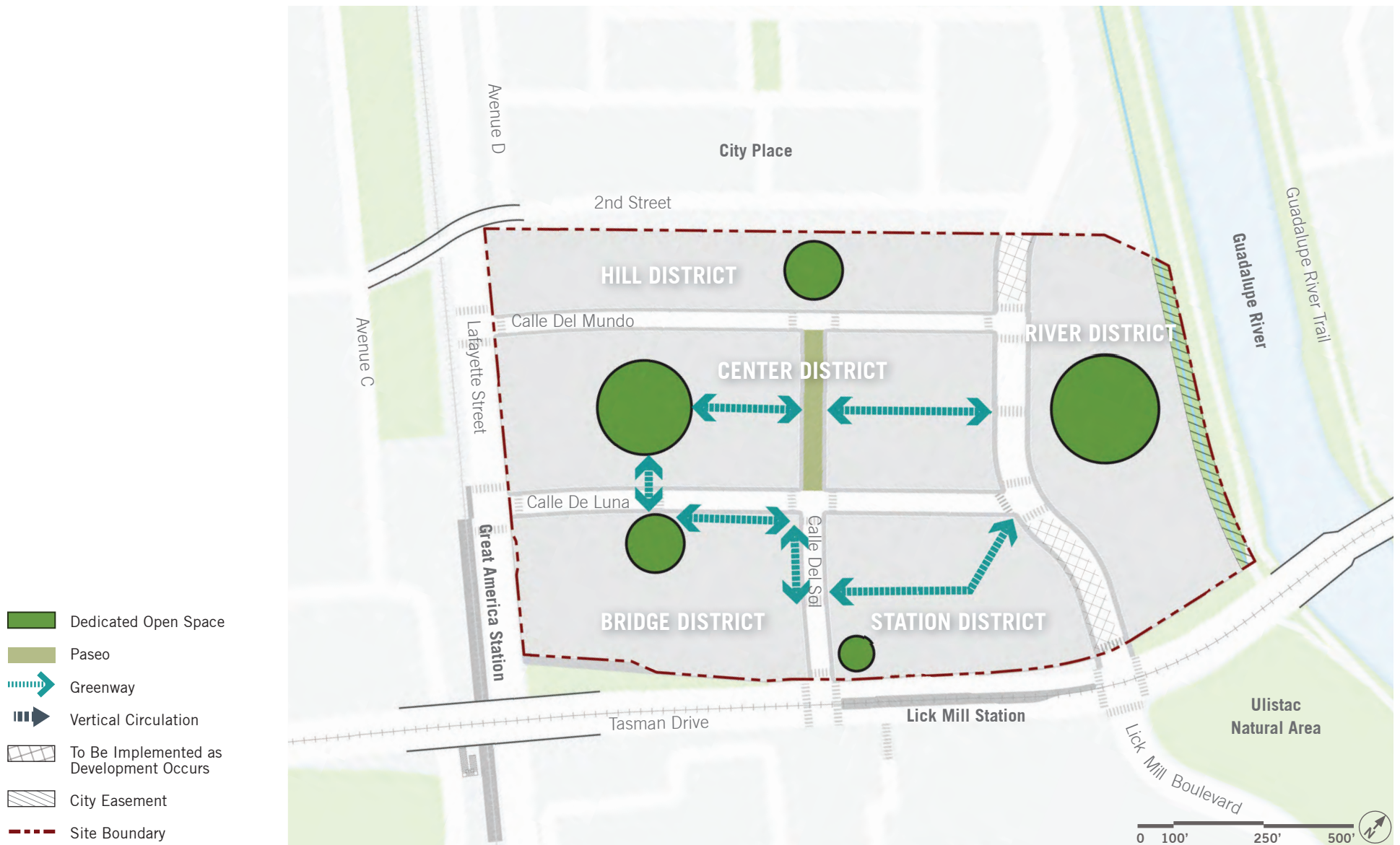


Figure 04-9-1 Urban Canopy Tree Selection





**Figure 05-1-1** Open Space Locations

## 05.3 HILL DISTRICT

### Intent

The Hill District park could potentially connect the site and City Place's proposed Second Street. Second Street connects northward and serves as an important bridge connection across Lafayette Street.

### Guidelines

- (A) Ramps and stairs should be aesthetically pleasing as well as functional.
- (B) Terraces along the grade change should be designed to serve as meeting points and visual landmarks. In bridging the grade change, the elevated open space should open views to Levi's Stadium, the Guadalupe River and beyond.
- (C) This park should include amenities to support the retail environment on Calle Del Sol neighborhood retail within the district such as flexible seating areas, social gathering spaces, play spaces and public art.
- (D) Surrounded by development on two sides, this park should be designed to be protected from wind and down-drafts from buildings with strategic tree planting and thoughtful siting of passive programming.



Credit: Drew Kelly

*Seating and landscape enhances and diversifies the functionality vertical circulation*



Credit: ASPECT Studios

*Permanent game tables create a social gathering space*



Credit: MVVA Inc.

*A variety of soft and hard scape creates a varied and interesting experience*

## 07.1 FUNDING, FINANCING, AND IMPLEMENTATION

### INTRODUCTION AND APPROACH

The Tasman East Specific Plan specifies new public infrastructure and amenities required to support the emergence of a walkable, transit-oriented district with residential and retail uses. This section outlines a strategic approach to selecting and implementing funding sources for constructing these public improvements. The first part of the strategy identifies major projects and their costs, followed by an overview of funding and financing sources/mechanisms applicable to the projects. This section concludes with a description of the next steps for determining final public and private funding responsibilities and mechanisms.

### MAJOR PROJECTS AND COSTS

The public infrastructure and amenity improvements identified in this Specific Plan fall into three primary categories of streets, utilities, and parks and open space. ~~The s~~Street and utility improvements are estimated to cost a total of approximately \$~~25-30~~~~30-50~~ million (in ~~2018~~~~2020~~ nominal dollars) for related design, construction, and land acquisition, ~~demolition, and construction costs. Implementation of the Plan relies on the creation of an Infrastructure Fee, which will assign the individual developments a prorated share of the \$25-35 million infrastructure costs. These improvements do not include project frontage sidewalks, driveways, curb & gutter, ADA ramps, streetlights, or utility lateral connections. To complete the street and utility improvements, there is a proposed Infrastructure Impact Fee for proposed residential development within the Specific Plan area. The proposed fee will be determined by dividing the total cost of street and utility improvements by the total number of residential units within the Specific Plan area. This fee will be due prior to issuance of building~~

### FUNDING SOURCE CATEGORIES AND EXAMPLES

CATEGORY	EXAMPLES
Developer Contributions	<del>Infrastructure Fee</del> Development Standards CEQA Mitigations <del>Infrastructure Fee</del> / Impact / In-Lieu Fees Negotiated Agreements
City Resources	General Fund Capital Improvement Program User Fees
Outside Grants	Regional, State, and Federal Grants
District-Based Tools	Assessment District Community Facilities District Enhanced Infrastructure Finance District

permits. The City Council will review and adopt the Infrastructure Impact Fee, which is anticipated to include funding the costs of the following construction items:

- ~~Relocation of Sanitary Sewer: Upgrades to the Primavera Sanitary Sewer Pump Station, a pump station enclosure with enhanced design and art work;~~
- Storm Drainage: Storm drain extension at Calle de Mundo at Lafayette Street and a 33-inch storm drain relocation.
- Pavement repair on Calle de Luna, Calle de Mundo, Calle de Sol
- Calle de Sol Pedestrian and Bicycle Paseo: Paseo construction and land dedication costs

- Traffic mitigations and fair share funding, new traffic signals, and traffic safety devices
- ~~Rabello & Northside Pump Stations Resizing~~
- Water line replacement on Calle Del Sol, Calle De Luna, & Calle De Mundo
- ~~Water line upsize (12-inch to 16-inch on Lafayette Drive~~
- New Recycled Water Lines
- ~~Storm Drain Extension for Calle Del Mundo/Lafayette~~
- ~~Calle Del Sol Extension~~
- ~~Pavement Repair, Overlay, Reconstruction, Striping, and Pavement Markings~~
- ~~Traffic Mitigations identified in EIR~~



## FUNDING SOURCE CATEGORIES AND EXAMPLES

### CATEGORY EXAMPLES

Developer Contributions Infrastructure Fee Development Standards

CEQA Mitigations

Impact / In-Lieu Fees

Negotiated Agreements

City Resources General Fund

Capital Improvement Program

User Fees

Outside Grants Regional, State, and Federal Grants

District-Based Tools Assessment District

Community Facilities District

Enhanced Infrastructure Finance District

The Tasman East Specific Plan will also require ongoing funding for operation and maintenance costs associated with new infrastructure, amenities, and general population growth. Examples include street maintenance, park maintenance, police and fire services, general government services, and administrative costs for implementation of the Specific Plan and any Transportation Demand Management programs.

## FUNDING AND FINANCING SOURCES AND MECHANISMS

A spectrum of potential funding sources and mechanisms exist for implementing the improvements identified in

the Tasman East Specific Plan. This section describes these sources and mechanisms and their potential uses in Tasman East. In many cases, While the Infrastructure Fee is anticipated to contribute substantial funding for the improvements, in some cases multiple funding sources ~~will~~ may need to be combined to pay for specific projects.

Although the terms “funding” and “financing” are often used interchangeably, there is an important distinction between the two terms. “Funding” typically refers to a revenue source such as a tax, fee, or grant that is used to pay for an improvement. Some funding sources, such as impact fees, are one-time payments, while others, such as assessments, are ongoing payments. “Financing” involves borrowing from future revenues by issuing bonds or other debt instruments that are paid back over time through taxes or fee payments, enabling agencies to pay for infrastructure before the revenue to cover the full cost of the infrastructure is available.

Funding for improvements in Tasman East will come from a mix of developer contributions (both required and negotiated), city resources, outside grants, and district-based “value capture” mechanisms. The funding responsibilities for private developers and the City are clear in some instances – for example, developers must meet minimum development standards requirements and pay citywide impact fees for infrastructure. However, funding many of the infrastructure improvements in Tasman East – improvements that are necessary to support the higher-density growth mutually desired by the City and developers – will require negotiations with developers and property owners to clarify funding responsibilities and to establish new mechanisms, such as the Infrastructure Fee.

Implementation of the Tasman East plan will also require more detailed studies and an ongoing management process involving the City, developers/property owners, and local utility providers. This process is described in more detail following this description of funding sources.

### Developer Contributions:

- **Development Standards:** Each new development project will contribute to the Specific Plan's implementation by meeting requirements regulating each project's land uses, height, density, bulk, parking requirements, on-site circulation, on-site open space, street frontage improvements, and other requirements specified in the Specific Plan. These standards are adopted in the City's zoning ordinance and must be satisfied in order for a project to be granted approval.
- **Infrastructure Fee:** As stated above, there are \$25-35 million of anticipated infrastructure improvements, which will be paid for by the individual developers through a prorated Infrastructure Fee. The Infrastructure Fee is subject to City Council review and approval.
- **Reimbursement Agreements:** If a developer is required to provide additional infrastructure capacity or amenities to serve the entire district, a reimbursement agreement ~~can~~ could be established to receive payments from later developers who benefit from these early improvements.
- **CEQA Mitigations:** As a requirement of approval under the Specific Plan Environmental Impact Report, developers may be required to contribute to mitigation measures. Traffic mitigations are anticipated to be paid for through the Infrastructure Fee.

- **Impact / In-Lieu Fees:** Impact fees are one-time fees imposed on new developments to pay for improvements and facilities that either serve the new development or reduce the impacts of the project on the existing community. Fee revenues cannot be used to fund existing deficiencies in infrastructure. The City of Santa Clara already has citywide impact fees for traffic mitigation, sanitary sewer, storm drain, and parks, but ~~may can~~ also ~~choose to~~ establish fees unique to the Specific Plan Area through a nexus study. Any Specific Plan fee and corresponding study will be brought forward for City Council review and approval.
- **Negotiated Agreements:** Community benefits are developer contributions that exceed the baseline features required under development standards, environmental mitigation measures, and ~~impact~~ fees. Community benefits agreements can be negotiated with developers individually, but the existence of multiple major developers in Tasman East creates an opportunity to craft a negotiated agreement with these developers simultaneously.

#### **City Resources:**

- **General Fund:** General Fund revenues include property tax, sales tax, transient occupancy tax, and other revenues that are primarily used to pay for ongoing municipal services and operations. Both the General Fund and the Capital Improvement Program are likely to be needed to fund the Specific Plan's highest-priority infrastructure improvements.
- **Capital Improvement Program (CIP):** Infrastructure projects identified in the Specific Plan are candidates for inclusion in the City's Capital Improvement Program.
- **User Fees:** User fees and rates include the fees charged for the use of public infrastructure or goods. It may be possible to use a portion of user fee or rate revenue toward financing the costs of new infrastructure, but user fees are unlikely to be a major source of funding for implementation of the Specific Plan.

#### **Outside Grants:**

Various federal, state, and regional grant programs distribute funding for public improvements. Because grant programs are typically competitive, grant funds are an unpredictable funding source, and the City of Santa Clara must remain vigilant in applying for grants to implement the Specific Plan. Unique grant funding opportunities may become available due to Tasman East's designation as a priority development area and its inclusion of high-capacity transit service.

#### **District-Based "Value Capture" Tools:**

Land-based financing tools are typically associated with new real estate development to generate benefit-based special assessment revenues or property tax revenues to finance improvements through bond repayment or paying for improvements over time. District-based tools provide a stable revenue stream while ensuring that properties benefitting from improvements also contribute to those public investments. The following table describes the three primary types of district-based funding and financing tools. Note that assessment districts and community facilities districts primarily capture additional funding from private entities, while the enhanced infrastructure financing district reinvests growth in public property tax revenues within the district.

## IMPLEMENTING THE INFRASTRUCTURE IMPROVEMENTS

The envisioned growth in Tasman East represents a long-term, ongoing generator of operating revenues for Santa Clara. Tasman East is likely to generate significant net revenue due to increases in assessed values. Growth will also help the City of Santa Clara accommodate desired housing increases in a format and setting that encourages fewer automobile trips on the City's roadways.

Achieving these fiscal, housing, and transportation benefits will require new infrastructure and amenities identified in this Specific Plan. Some infrastructure items need to be constructed or initiated in the early stages of transformation to support future population densities and avoid missed opportunities for land acquisition. Thus, the City must play an active role in these early investments, while ensuring that each development project contributes its fair share toward capital and operating costs.

The following implementation strategy outlines the process for delivering the infrastructure and programs necessary to support Tasman East's growth. ~~The actions are incorporated in the larger Implementation section of this plan.~~

### Short-Term Actions: Immediate Steps

"Short-term actions" should be undertaken immediately upon adoption of the Tasman East Specific Plan. These actions include determining more detailed costs of area improvements, establishing the specific legal mechanisms to fund development and implementation of the Specific Plan itself, and engaging with developers active in Tasman East to determine funding/financing responsibilities. The goal of the short-term actions is to ensure that the City and private property owners/developers share a clear understanding of who is paying for different

improvements, and to lay the groundwork for establishing new funding/financing tools.

1. Establish an ongoing City management structure and staffing resources for Specific Plan implementation: The City should ensure adequate staff resources and decision-making authority are in place to proactively undertake implementation of the Specific Plan and achieve the General Fund revenue increases resulting from growth in Tasman East.
2. Establish a reimbursement fee for Specific Plan and EIR creation, adoption, and ongoing implementation costs. A reimbursement fee will ensure developers contribute toward the City's costs of implementing the Specific Plan. These fees are enabled under Section 65456 of the California Government Code.
3. ~~(previous 6.)~~ Identify projects requiring partnerships with other implementing agencies/organizations. Several infrastructure projects – particularly utilities projects – are likely to require partnerships with other agencies, such as Santa Clara Valley Water District and Silicon Valley Power. The City must identify required partnerships to lay the groundwork for later construction and to explore funding and financing options.
4. ~~(previous 3.)~~ Engage with developers and property owners to evaluate the potential creation of district-based funding mechanisms for infrastructure construction ~~and or~~ operations ~~and maintenance of improvements~~. As shown in the following section, a variety of district-based funding mechanisms can be applied to the infrastructure and/or operations and maintenance costs of public facilities in Tasman East, each with unique considerations for use and approval. Many of these tools require a vote of local property owners, and may take time to study and

approve.

5. ~~(previous 4.)~~ Identify any infrastructure projects that will require funding sources beyond those required as a development standard or CEQA mitigation. ~~These infrastructure projects will require use of a public or district-based funding tool. Explore creation of a new Infrastructure Fee to fund these projects.~~
6. Complete a detailed public facilities financing plan. The plan would identify precise cost estimates for improvements, phasing of improvements, allocation of costs between public and private entities, and a detailed funding and financing plan.

### Mid-Term Actions: Tying to Development Activity

"Mid-term actions" should occur as development activity commences. These actions focus on establishing new funding/financing tools, commencing the first phases of construction of public improvements, and ensuring that developers build agreed-upon development-related and site-specific improvements. High priority should be given to acquiring any land needed for later infrastructure and parks projects. Major actions include:

1. ~~Establish an Infrastructure Fee, as determined in previous actions.~~
2. ~~(previous 1.) If agreement can be reached with property owners and developers, establish district-based funding mechanisms, as determined in prior actions.~~ The City, property owners, and developers should establish agreed-upon district-based funding mechanisms, including any impact fees, voter approvals, and enabling legislation.
3. ~~(previous 2.)~~ Pursue partnerships for implementation with other agencies/organizations, as determined in the short-term actions.

# INFRASTRUCTURE IMPROVEMENTS AND APPLICABLE FUNDING SOURCES IN THE TASMAN EAST SPECIFIC PLAN AREA

IMPROVEMENT CATEGORIES	DEVELOPER CONTRIBUTIONS			DISTRICT-BASED MECHANISMS				CITY RESOURCES		OUTSIDE SOURCES	
	Development Standards	CEQA Mitigations of Project Impacts	Impact / In-Lieu / <u>Other Fees*</u>	Negotiated Agreements	Assessment District (LLD, PBID, CBD)	CFD	EIFD	General Fund	Capital Improvement Program Funds	User Fees	Other Regional, State, and Federal Grants
Streets and Sidewalks											
Major intersection and street construction		X	X	X	X	X	X		X		X
Additions of new streets	X	X	X	X		X	X		X		X
New intersections at new streets	X	X	X	X		X	X	X	X		X
Streetscape enhancements: widened sidewalks, landscaping, lighting, street furniture	X		X	X	X	X	X	X	X		X
Parks and Open Space											
Acquisition of land for parks and plazas	X		X	X	X	X	X				X
Construction of new parks and plazas	X		X	X		X	X		X		X
Land Use											
Desired ground floor uses	X			X							
Utilities											
District-wide utilities improvements		X	X	X		X	X		X	X	
On-site utilities improvements	X	X	X	X		X				X	
School		X	X	X	X						X

\* Includes Infrastructure Fee

**Long-Term and Ongoing Actions**

“Long-term and ongoing actions” should occur over time as development proposals are submitted, outside grant funding opportunities arise and growth generates new needs.

1. Pursue grant funding opportunities, as available and applicable. The City should continuously monitor and pursue state, regional and local grant funding opportunities as they emerge.
2. Developments in the Tasman East Specific Plan may be required to participate in a Transportation Management Association, which may include a shuttle and/or other alternative mode measures.



## 07.2 PHASING & THRESHOLDS

Although it is not possible to accurately predict if and when each of the individual properties within Tasman East will redevelop, it is reasonable to assume, given the shared intentions of various property owners and stakeholders/developers, that the first phase of transformation is likely to include most of the perimeter properties (except the data center near Tasman Drive and Lafayette Street and the strip mall facing Tasman Drive), including the “loop” roads of Calle De Luna and Calle Del Mundo. See “Figure 07-2-1 Phase One Diagram”.

Phase two will include redevelopment of the “island properties”, should that occur, extension of Calle Del Sol, and relocation of the Primavera Pump Station and cell towers which are affected by the Calle Del Sol extension “Figure 07-2-2 Phase Two Diagram.”

The Lick Mill Boulevard extension between Tasman Drive and City Place 2nd Street will be contingent on the City Place development schedule.



Figure 07-2-1 Phase One Diagram

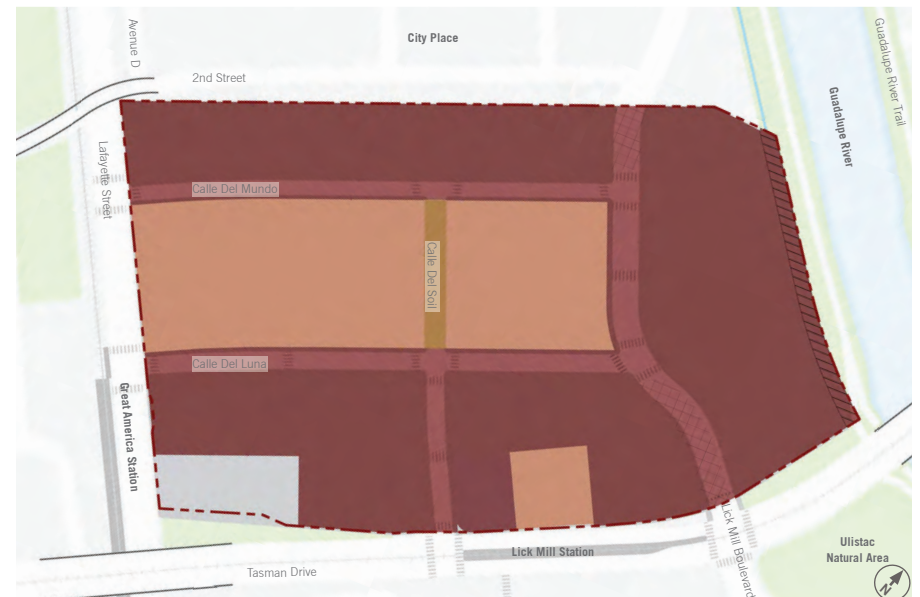


Figure 07-2-2 Phase Two Diagram.

- Site Boundary
- Phase One
- Phase Two
- Non-participating properties
- Phase One Roadway
- Paseo(Phase Two)

## OPEN SPACE

Each landowner/developer will be responsible for construction, dedication and maintenance of their parkland contribution.

## CALLE DEL SOL PEDESTRIAN AND BICYCLE PASEO EXTENSION

The extension of Calle Del Sol between Calle De Luna and Calle Del Mundo ~~is not anticipated until triggered by development as a pedestrian and bicycle paseo will be implemented as~~ development on the central block ~~occurs~~. The extension will require partial dedication of ~~four two~~ properties, ~~upgrades to the relocation and/or undergrounding of~~ the Primavera Pump Station ~~at its current location including an enclosure with enhanced design and art work~~, and the relocation of one cell tower, located towards the rear of the property facing Calle De Luna. The cost of these improvements, ~~excluding the cell tower relocation~~, will need to be shared among all ~~Tasman East~~ owners intending to redevelop their properties ~~within all of the Tasman East Specific Plan through a proposed area-wide Infrastructure Impact Fee which is to be adopted by the City Council. The pedestrian and bicycle paseo is to be maintained privately by properties that are redeveloping within Tasman East privately through participation in a Property Owners Association, Community Facilities District, or through another method of fair share contribution approved by the City of Santa Clara. A mechanism for contributing to the necessary funds will be negotiated created by City of Santa Clara staff.~~

## LICK MILL BOULEVARD EXTENSION

The construction of Lick Mill Boulevard by the Related Companies is required as a mitigation measure for the development of City Place. If the implementation of Lick Mill Boulevard, or some temporary alternative, is required by Tasman East prior to the date of intended implementation by City Place, further negotiations with the Related Companies will be required.



**Figure 08-1-5** Existing and City Place planned pedestrian network

The Tasman East TDM program is centered on an ambitious target for reducing single-occupancy vehicle trips and vehicle miles traveled relative to the rates seen today in the surrounding area. A new plan-area-wide entity, The Tasman East Transportation Coordination Group (TETCG), comprised of property owners and developers of residential development, will be charged with implementing and managing programs that are most cost effectively executed at a neighborhood scale. The owners and managers of individual parcels will be paying and voting members of the TETCG, and they will also be required to implement their own site-level programs that ensure that they are helping to encourage their residents, employees, and visitors to make smart travel choices. The TETCG and the owners of individual parcels will also be required to regularly monitor travel behavior and adjust programs to ensure that they are working effectively. Finally, the City will play an important role in holding everyone accountable and supporting various players as they work to meet targets.

#### **Sitewide Mode Split**

Because the strategies outlined in the TDM program below are generally aimed at encouraging people to shift to modes other than private automobiles, this should translate VMT reduction on the order of 20%. This reduction is consistent with the city's Climate Action Plan. This reduction is considered reasonable given the many characteristics of the site that make it particularly ripe for encouraging multimodal lifestyles, including its high levels of density relative to its surroundings, its mixed-use nature, its close proximity to what is anticipated to be a major shopping destination in CityPlace, and its location in the center of a regionally important cluster of jobs. The TDM program components described below have

been designed to enable the neighborhood to comfortably comply with the target.

#### **SITEWIDE PROGRAM COMPONENTS**

To reach the target, the following are TDM program components that shall be provided for the entire site and administered by the TETCG, which is described below.

##### **Tasman East Transportation Coordination Group (TETCG)**

This organization will provide transportation services, support for non-motorized modes, and/or personal travel planning assistance. The programs implemented are typically most cost-efficient when implemented at the district scale, rather than by single building managers.

The remainder of this section describes the specific TDM programs that are anticipated to be under the TETCG's purview.

##### **Universal Transit Pass Program**

Universal transit passes typically provide unlimited transit rides on local or regional transit providers for a monthly fee that is lower than the individual cost to purchase a pass, based on a bulk discount provided by the transit agency. By providing a universal pass to all residents and/or employees of a given site, tenants who currently do not use transit will often try taking transit since there is no cost barrier to do so. For this reason, universal transit pass programs are much more effective at reducing vehicle trips than a standard transit subsidy.

The TETCG will work to create partnerships with the Valley Transportation Agency (VTA) to establish a universal pass for local transit services that the managers of individual parcels can choose to buy into as part of their own TDM strategies. VTA's Smart Pass program is a universal transit

pass program that is available to any residential complex with 25 units or more in Santa Clara County. The program requires that building management purchase a pass for every resident or employee of the development. It is available in two forms: (1) "Regular," which is valid for unlimited rides on all VTA service, and (2) "Express," which is valid for unlimited rides on all VTA services as well as the Highway 17 Express, Dumbarton Express, and Monterey-San Jose Express bus service. Smart Pass pricing is based on the number of residents/employees and level of VTA services at a given site.

The TETCG would be responsible for establishing the Smart Pass program. The TETCG will purchase Smart Passes (currently priced at \$46 per pass for purchases of 3,000 passes or greater) for each resident of Tasman East after occupancy of 3,000 residents in constructed units. ~~The TETCG must offer Smart Passes for a period of three years.~~ The TETCG must offer Smart Passes for a period of three years unless an alternate measure that is at least as effective in reducing single vehicle trips or vehicle miles traveled as the Smart Passes is proposed by the TETCG and accepted by the City. These alternate measures must be verified for effectiveness through annual reporting by the TETCG to ensure that the site-wide goal of 10% VMT reduction, through a combination of program measures, is achieved. Afterwards, the TETCG may propose an alternate measure that is at least as effective in reducing single vehicle trips as the Smart Passes or the previously approved alternative. Individual parcel owners would be represented on the TETCG and be required to defray the costs of covering their residents and/or employees.



**Figure 08-4-7** Plan Level Trip Reduction

CAPCOA Strategy	CAPCOA Description	Tasman Project Elements	CAPCOA Trip Reduction
Increase Density (LUT-1)	Designing the Project with increased densities reduces GHG emissions associated with traffic in several ways. Density is usually measured in terms of persons, jobs, or dwellings per unit area. Increased densities affect the distance people travel and provide greater options for the mode of travel they choose. This strategy also provides a foundation for implementation of many other strategies which would benefit from increased densities. For example, transit ridership increases with density, which justifies enhanced transit service.	<ul style="list-style-type: none"> <li>High-density residential</li> </ul>	0.8 - 30.0%
Increase Diversity of Urban and Suburban Developments (LUT-3)	Having different types of land uses near one another can decrease VMT since trips between land use types are shorter and may be accommodated by non-auto modes of transport. For example when residential areas are in the same neighborhood as retail and office buildings, a resident does not need to travel outside of the neighborhood to meet his/her trip needs.	<ul style="list-style-type: none"> <li>On-site retail</li> <li>On-site open space</li> <li>Neighborhood serving amenities</li> </ul>	0.9 - 30.0%
Increase Destination Accessibility (LUT-4)	The project will be located in an area with high accessibility to destinations. Destination accessibility is measured in terms of the number of jobs or other attractions reachable within a given travel time, which tends to be highest at central locations and lowest at peripheral ones. The location of the project also increases the potential for pedestrians to walk and bike to these destinations and therefore reduces the VMT.	<ul style="list-style-type: none"> <li>Proximity and access to City Place</li> </ul>	0.9 - 30.0%
Increase Transit Accessibility (LUT-5)	Locating a project with high density near transit will facilitate the use of transit by people traveling to or from the Project site. The use of transit results in a mode shift and therefore reduced VMT. A project with a residential/commercial center designed around a rail or bus station, is called a transit-oriented development (TOD).	<ul style="list-style-type: none"> <li>Proximity to transit including VTA light-rail</li> </ul>	0.5 – 24.6%
Integrate Affordable and Below Market Rate Housing (LUT-6)	Income has a statistically significant effect on the probability that a commuter will take transit or walk to work. BMR housing provides greater opportunity for lower income families to live closer to jobs centers and achieve jobs/housing match near transit. Lower income families tend to have lower levels of auto ownership, allowing buildings to be designed with less parking which, in some cases, represents the difference between a project being economically viable or not.	<ul style="list-style-type: none"> <li><del>A minimum of 10 percent of all units that receive a discretionary approval before 2021 will be affordable by deed restriction to households making an average of 100% of area median income with this number increasing to 15% thereafter. Affordable housing shall be provided in conformance with Section 17.40.115 of the Santa Clara City Code</del></li> </ul>	0.04 – 1.20%

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF SANTA CLARA, CALIFORNIA RECOMMENDING  
ADOPTION OF AMENDMENTS TO THE TASMAN EAST  
SPECIFIC PLAN (AMENDMENT #1), A SPECIFIC PLAN  
PURSUANT TO GOVERNMENT CODE SECTION 65450, et seq.**

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

**WHEREAS**, the City of Santa Clara (the “City”) is contemplating the adoption of amendments to the Tasman East Specific Plan (Amendment #1), to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo, allow for alternate methods of site-wide Transportation Demand Management (TDM) measures, and correct a clerical error in the Plan regarding the affordable housing requirement and an error regarding permissible density ranges;

**WHEREAS**, the City Council adopted the Tasman East Specific Plan on November 13, 2018 for a transit-oriented pedestrian-friendly neighborhood of up to 4,500 residential units with supportive retail uses, located on approximately 45 acres of land proximate to the Lick Mill Light Rail Station that were developed with industrial uses;

**WHEREAS**, it has been determined to be difficult to move the City’s Primavera Lift Pump Station, which is currently located where the extension of Calle Del Sol is proposed in the adopted Tasman East Specific Plan;

**WHEREAS**, replacing the proposed vehicular street extension with a bicycle and pedestrian paseo will not adversely affect vehicular circulation in the area greater than determined through the previously adopted Environmental Impact Report (“EIR”) (SCH#2016122027);

**WHEREAS**, the adopted Tasman East Specific Plan identifies a site-wide TDM measure that requires property owners to provide SMARTPASSES through the Valley Transportation Authority to all residents after 3,000 residents occupy the Plan boundary area for a period of three years;

**WHEREAS,** an amendment is proposed to the adopted Tasman East Specific Plan's requirement for SMARTPASSES so that alternative measures would be also accepted as site-wide TDM in order to incentivize additional alternate modes of travel;

**WHEREAS,** an amendment is also proposed to the affordable housing requirements in the Specific Plan to make the requirements consistent with the City's Affordable Housing Ordinance;

**WHEREAS,** The Council's motion on November 13, 2018 was to adopt staff's recommendation, which included the affordability requirement of 15%, subject a reduction to 12% for densities between 120 and 140 du/ac, and further reduction to 10% for densities above 140 du/ac. Due to an oversight, however, page 12 of the Specific Plan itself was never updated to reflect the tiered affordability structure contained in Ordinance No. 1992. The amendment would make a technical correction to page 12 of the Specific Plan so that it will conform to Ordinance No. 1992.

**WHEREAS,** a specific plan is a tool for providing regulatory direction for specific parts of a city, and can include policy guidance, regulatory requirements, and design guidelines;

**WHEREAS,** as a part of implementation the Specific Plan, the City amended Title 18 ("Zoning"), of the City Code to create a new Transit Neighborhood zoning district, and to apply the zoning designation across the Project Site;

**WHEREAS,** an amendment to the Transit Neighborhood zoning district is proposed to allow non-residential uses within the first three floors of a mixed use building in order to allow flexibility to support commercial uses complementary to residential activity, such as office and co-working uses, within the plan area;

**WHEREAS,** the proposed Tasman East Specific Plan Amendment is consistent with the Goals and Policies of the Tasman East Future Focus Area in the General Plan;

**WHEREAS,** Santa Clara City Charter Section 1007 and Government Code sections 65353 and 65453 require that the Planning Commission provide input to the City Council on proposed specific plans and subsequent amendments;

**WHEREAS,** notice of the public hearing on the proposed Specific Plan was published in the Santa Clara Weekly, a newspaper of general circulation for the City, on August 12, 2020;

**WHEREAS,** on August 14, 2020, notice of the public hearing on the proposed Specific Plan Amendment was also mailed to all owners of real property within the Plan boundary area;

**WHEREAS,** before considering recommending adoption of the Specific Plan Amendment, the Planning Commission reviewed and considered the potential environmental impacts of the Project, and recommended that the City Council adopt the Addendum to the EIR in accordance with the requirements of CEQA; and

**WHEREAS,** on August 26, 2020, the Planning Commission reviewed the Specific Plan Amendment (Amendment #1) and conducted a public hearing, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed Specific Plan Amendment.

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

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. Specific Plan Findings. That the Planning Commission finds and determines that the Specific Plan is in the interest of the public good for the following reasons:

A. The proposed amendments to Specific Plan (Amendment #1) are deemed to be in the public interest, in that:

The Specific Plan is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with



high intensity mixed-use, pedestrian- and transit-oriented development that will contribute to the City both socially and economically.

B. The proposed amendments to the Specific Plan (Amendment #1) are consistent and compatible with the General Plan and any implementation programs that may be affected, in that:

The amendments to the Specific Plan (Amendment #1) further and are consistent with the goals, policies and major strategies of the General Plan that enhance the City's quality of life, preserve and cultivate neighborhoods, promote sustainability, enhance City identity, support General Plan Focus Areas and community vitality, maintain the City's fiscal health and quality of services, and maximize health and safety benefits with the creation of a new land use designation that allows for the development of a high-density mixed-use transit-oriented environment.

C. The proposed amendments to the Specific Plan (Amendment #1) have been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that:

An Addendum to the Final EIR for the Tasman East Specific Plan was prepared in accordance with CEQA and made available for public viewing with the posted materials on August 21, 2020 for the Planning Commission Hearing regarding the amendments to the Specific Plan (Amendment #1).

D. The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that:

An Addendum to the Final EIR for the Tasman East Specific Plan was prepared in accordance with CEQA and as it was determined that no substantial changes are proposed in the amendments to the Specific Plan (Amendment #1) which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

and the Planning Commission recommended that the City Council adopt the Addendum to the Final EIR.

3. That based on the findings set forth in this Resolution, the Approvals, and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the Planning Commission recommends that the City Council adopt the amendments to the Specific Plan (Amendment #1).

4. Effective date. This resolution shall become effective immediately upon adoption.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26<sup>th</sup> DAY OF AUGUST, 2020 , BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: \_\_\_\_\_  
ANDREW CRABTREE  
DIRECTOR OF COMMUNITY DEVELOPMENT  
CITY OF SANTA CLARA

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AMENDING CHAPTER 18.25,  
REGULATIONS FOR THE TRANSIT NEIGHBORHOOD  
ZONING DISTRICT, OF TITLE 18, ZONING, OF “THE CODE  
OF THE CITY OF SANTA CLARA, CALIFORNIA” TO  
ALLOW CERTAIN NONRESIDENTIAL USES AS  
PERMITTED USES WITHIN THE FIRST THREE FLOORS  
OF MIXED USE BUILDINGS AND TO MAKE OTHER  
TECHNICAL CHANGES**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, on November 13, 2018, the City Council approved adding a new Chapter, 18.25 to the Code of the City of Santa Clara to add regulations for the Transit Neighborhood Zoning District;

**WHEREAS**, on November 13, 2018, the City Council approved a Specific Plan for the Tasman East Area, which contemplates a transit-oriented pedestrian-friendly neighborhood of up to 4,500 residential units with supportive retail uses, proximate to the Lick Mill Light Rail Station;

**WHEREAS**, development in the Tasman East Specific Plan Area will include a variety of forms of high-density urban housing, including podium buildings, residential towers, and residential mixed-use buildings and complementary nonresidential activity will further the creation of a complete neighborhood;

**WHEREAS**, nonresidential uses, such as offices and co-working, have been proposed above ground floor spaces in the Tasman East Specific Plan Area, and the City desires to allow these complementary uses;

**WHEREAS**, the Tasman East Specific Plan and the Transit Neighborhood Zoning District require a minimum residential density of 100 dwelling units per acre, but the Specific Plan

also includes an exception for preexisting parcels of less than one acre. For such smaller parcels, the Specific Plan allows a residential density of 60 dwelling units; and

**WHEREAS**, to ensure full consistency between the zoning ordinance and the Specific Plan, the City now intends to amend the Specific Plan to add the exception for smaller lots.

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

**SECTION 1:** That Section 18.25.030 (entitled “Permitted Uses”) of Chapter 18.25 (entitled “Regulations for the Transit Neighborhood (TN) District”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is hereby amended to read as follows:

**“18.25.030 Permitted uses.**

- (a) Multiple-family dwellings.
- (b) Home occupation as defined under Chapter 18.06 SCCC.
- (c) Live/work units.
- (d) Supportive housing, subject to the same standards and restrictions as other dwelling units under this chapter.
- (e) Transitional housing, subject to the same standards and restrictions as other dwelling units under this chapter.
- (f) Housing for the Ambulatory Aged.
- (g) On the ground floor of mixed use structures, or in buildings intended solely for retail use, any use permitted in the CC Community Commercial district (Chapter 18.36 SCCC), CN Neighborhood Commercial district (Chapter 18.34 SCCC), or OG General

Office district (Chapter 18.32 SCCC), each as amended, except that auto repair and auto sales, other than product showcase venues, are not permitted, subject to the regulations set forth in this chapter.

(h) On the first three floors of mixed use structures, professional offices, financial and general business offices, and day care, preschool, and nursery school uses.

(i) Outdoor seating and dining areas appurtenant to retail uses.

(j) Live entertainment that is wholly incidental to an otherwise permitted commercial use.

(k) Outdoor walk-up facility appurtenant to retail uses.

(l) On-sale of alcohol appurtenant to restaurant uses.

(m) Neighborhood Light Industrial uses, with a public facing component, including but not limited to breweries, wineries, catering companies, garment manufacturing, and crafts and artists' studios. Such uses shall be operated completely within an enclosed building.”

**SECTION 2:** That Section 18.25.060 (entitled “Development Standards”) of Chapter 18.25 (entitled “Regulations for the Transit Neighborhood (TN) District”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is hereby amended to read as follows:

**“18.25.060 Development standards.**

(a) Maximum Dwelling Unit Density. For the Transit Neighborhood district, the maximum dwelling unit density is 350 dwelling units per acre.

(b) Minimum Dwelling Unit Density. For the Transit Neighborhood district, the minimum dwelling unit density is 60 dwelling units per acre on parcels less than one acre

in size legally existing as of November 13, 2018, and 100 dwelling units per acre for all other parcels.

- (c) Minimum Lot area. None.
- (d) Minimum Lot Width. None.
- (e) Building Height Limits. The maximum height limit in the Transit Neighborhood district is 220 feet in height.
- (f) Front Yard requirements. None.
- (g) Side yards requirements. None.
- (h) Maximum Building Coverage. No maximum, subject to providing adequate pervious area to meet stormwater requirements.”

**SECTION 3: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of September, 2020, by the following vote:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST:

\_\_\_\_\_  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL AMEND CHAPTER 18.25, REGULATIONS FOR THE TRANSIT NEIGHBORHOOD ZONING DISTRICT, OF TITLE 18, ZONING, OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO ALLOW CERTAIN NONRESIDENTIAL USES AS PERMITTED USES WITHIN THE FIRST THREE FLOORS OF MIXED USE BUILDINGS AND TO MAKE OTHER TECHNICAL CHANGES**

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

**WHEREAS**, on November 13, 2018, the City Council approved adding a new Chapter, 18.25 to the Code of the City of Santa Clara to add regulations for the Transit Neighborhood Zoning District;

**WHEREAS**, on November 13, 2018, the City Council approved a Specific Plan for the Tasman East Area, which contemplates a transit-oriented pedestrian-friendly neighborhood of up to 4,500 residential units with supportive retail uses, proximate to the Lick Mill Light Rail Station;

**WHEREAS**, development in the Tasman East Specific Plan Area will include a variety of forms of high-density urban housing, including podium buildings, residential towers, and residential mixed-use buildings and complementary nonresidential activity will further the creation of a complete neighborhood;

**WHEREAS**, nonresidential uses, such as offices and co-working, have been proposed above ground floor spaces in the Tasman East Specific Plan Area, and the City desires to allow these complementary uses;

**WHEREAS**, the Tasman East Specific Plan and the Transit Neighborhood Zoning District require a minimum residential density of 100 dwelling units per acre, but the Specific Plan also includes



an exception for preexisting parcels of less than one acre. For such smaller parcels, the Specific Plan allows a residential density of 60 dwelling units;

**WHEREAS**, to ensure full consistency between the zoning ordinance and the Specific Plan, the City now intends to amend the Specific Plan to add the exception for smaller lots;

**WHEREAS**, SCCC Section 18.112.040 provides for the review and recommendation by the Planning Commission of all proposed zoning amendments before any action is taken by the City Council;

**WHEREAS**, in order to ensure that all potential environmental impacts of the Project were thoroughly analyzed, the City caused an addendum to the FEIR to be prepared pursuant to CEQA Guidelines Section 15164 (“Addendum”);

**WHEREAS**, before considering the proposed amendment to the Transit Neighborhood Zoning District, the Planning Commission reviewed and considered the potential environmental impacts of the Project as identified in the Addendum;

**WHEREAS**, the Planning Commission has recommended that the City Council adopt the Addendum;

**WHEREAS**, on August 26, 2020, the Planning Commission held a duly noticed public hearing to consider the zoning amendment, at which time interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed ordinance.

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

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Planning Commission hereby recommends that the City Council amend SCCC Chapter 18.25, Regulations for the Transit Neighborhood (TN) Zoning District, within Title 18 (“Zoning”) as more specifically set forth in the draft Ordinance, attached hereto and incorporated herein by this reference.

3. 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 PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26<sup>th</sup> DAY OF AUGUST , 2020, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: \_\_\_\_\_  
ANDREW CRABTREE  
DIRECTOR OF COMMUNITY DEVELOPMENT  
CITY OF SANTA CLARA

Attachments Incorporated by Reference:  
1. Draft City Council Ordinance

I:\PLANNING\Advance Planning\Specific Plans\Tasman East Specific Plan\resos\Transit\_Neighborhood\_PC\_Zoning\_Reso.doc

# Related California REthink Development Tasman Paseo & Lift Station Design Progress Presentation

Bohlin Cywinski Jackson  
The Guzzardo Partnership  
August 21, 2020

## Agenda

- 1 Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents
- 4 Landscape Design

- 1** Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents
- 4 Landscape Design

Paseo Renderings  
View from North





Paseo Renderings  
View from North - Dusk





Paseo Renderings  
View from South



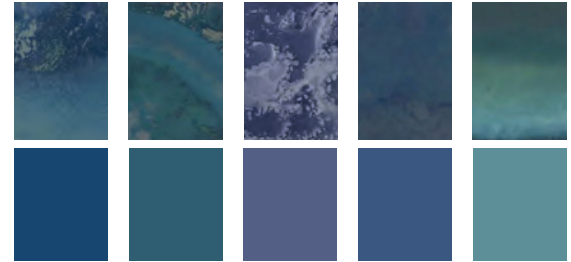


Paseo Renderings  
South and North Elevations



## Paseo Renderings View from Southeast

South San Francisco Bay  
color palette

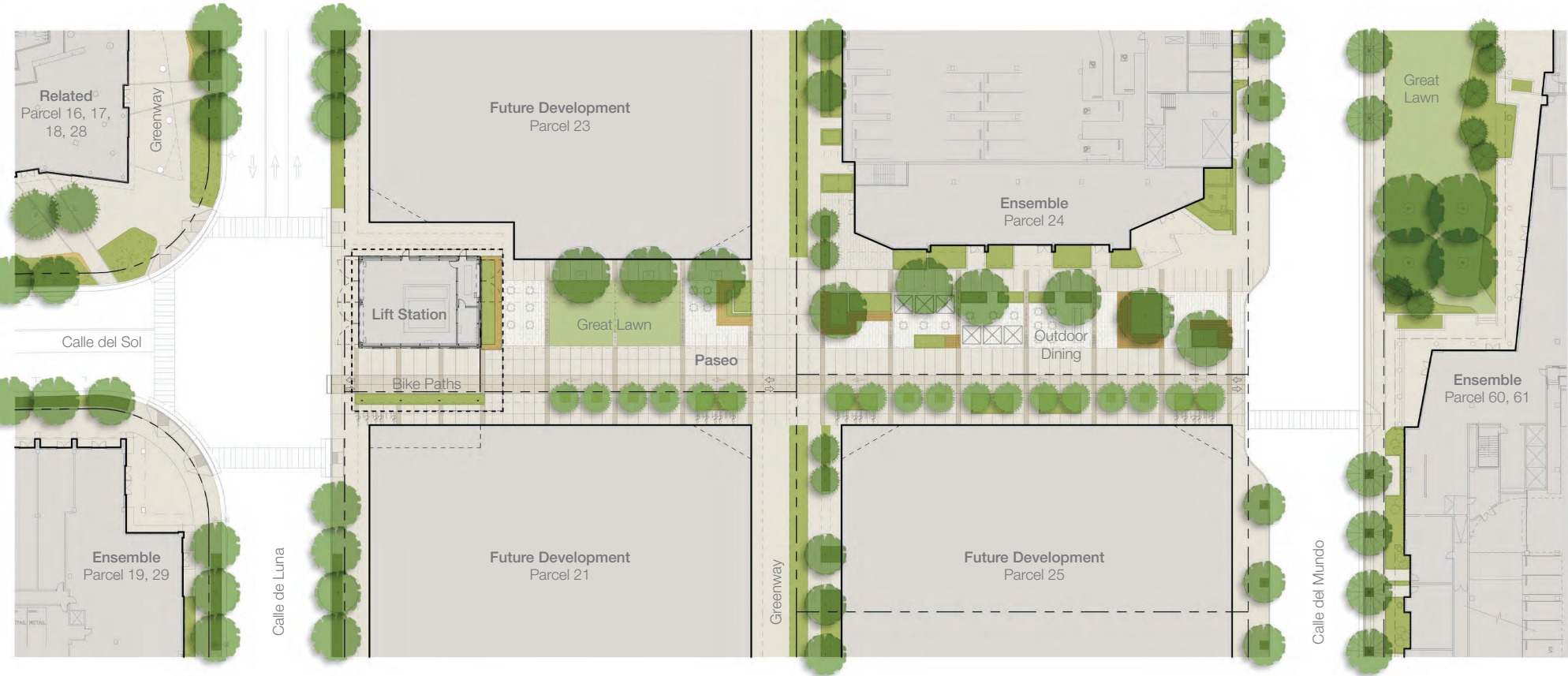




Paseo Renderings  
East Elevation



Calle del Sol Paseo  
Site Plan



- 1 Paseo Renderings
- 2 **Enclosure Concepts**
- 3 Precedents
- 4 Landscape Design



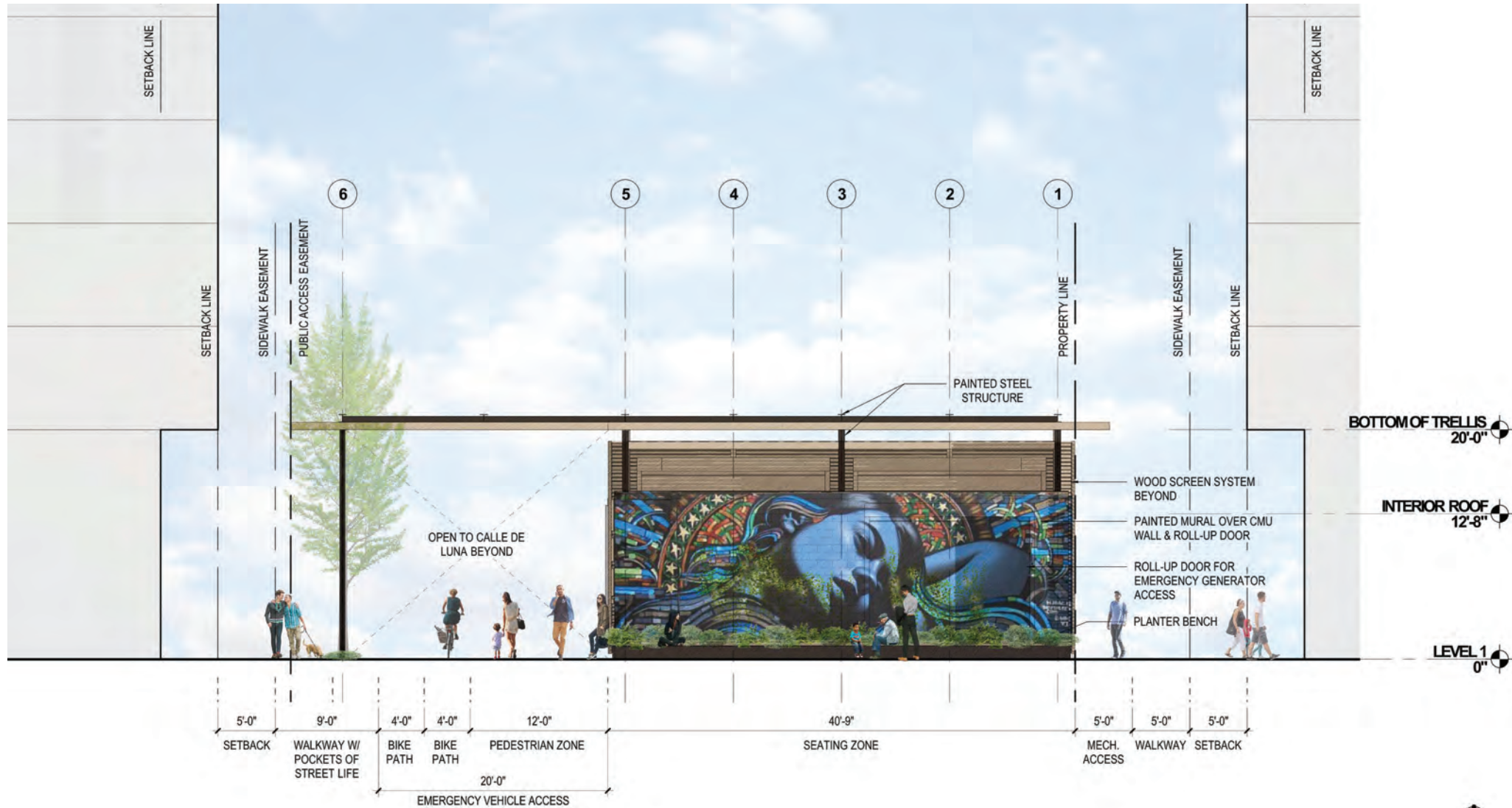
Enclosure Concepts  
Gallery Wall + Mural

Artist Example: El Mac



# Enclosure Concepts North Elevation - Mural Example 1

Artist Example: El Mac





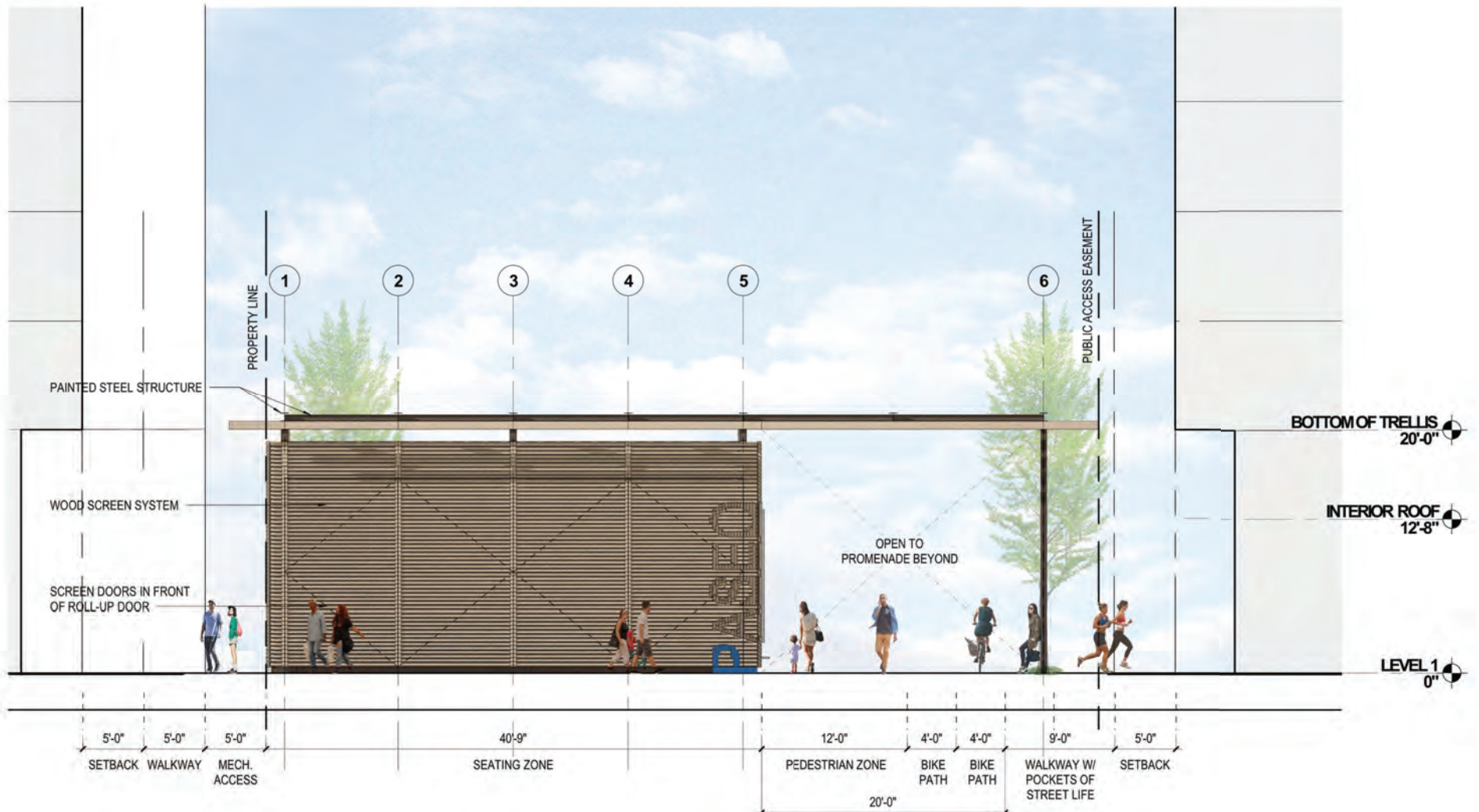
Enclosure Concepts  
East Elevation - Gallery Wall Example 1

Artist Example: Diego Rivera

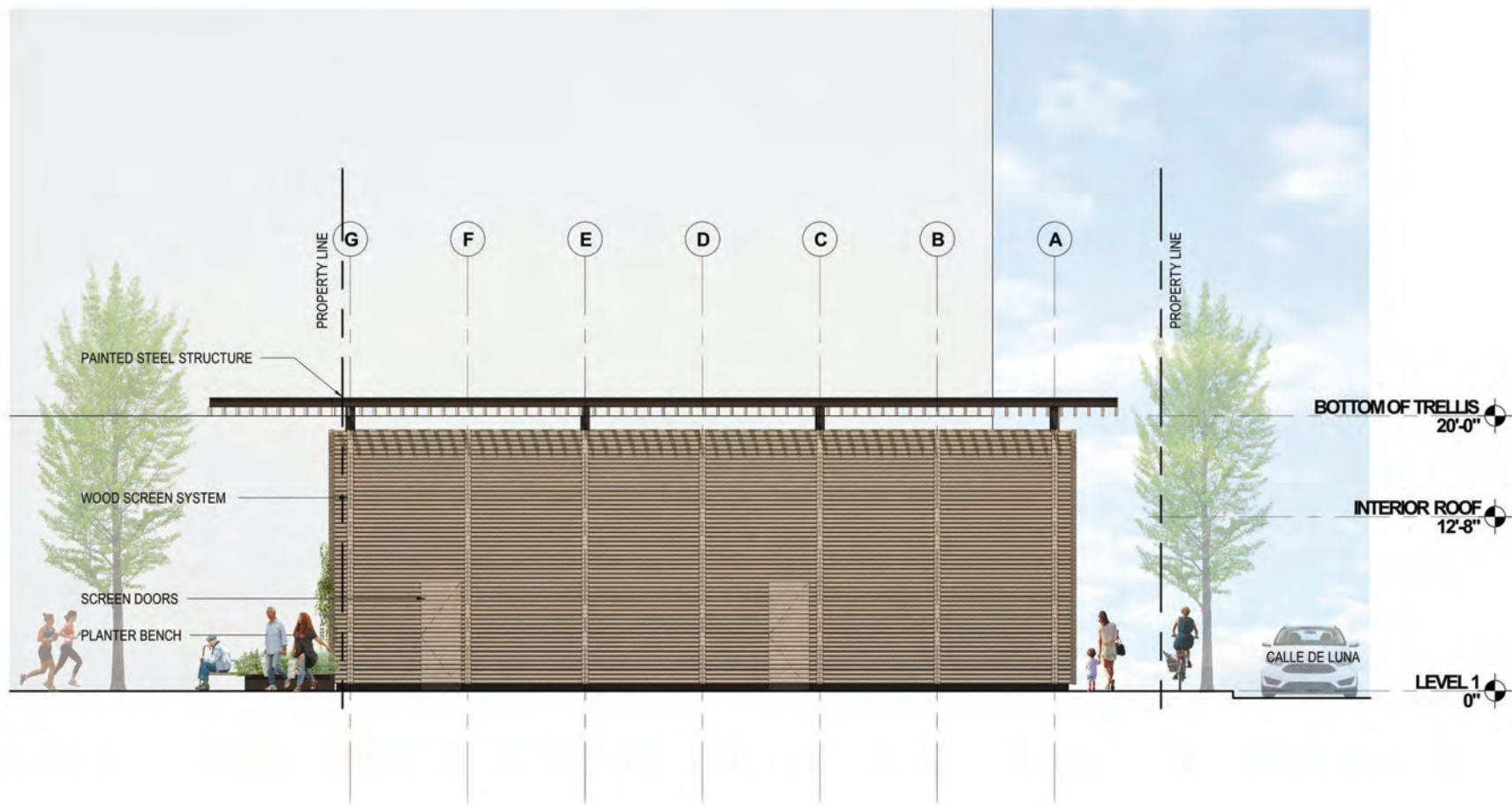




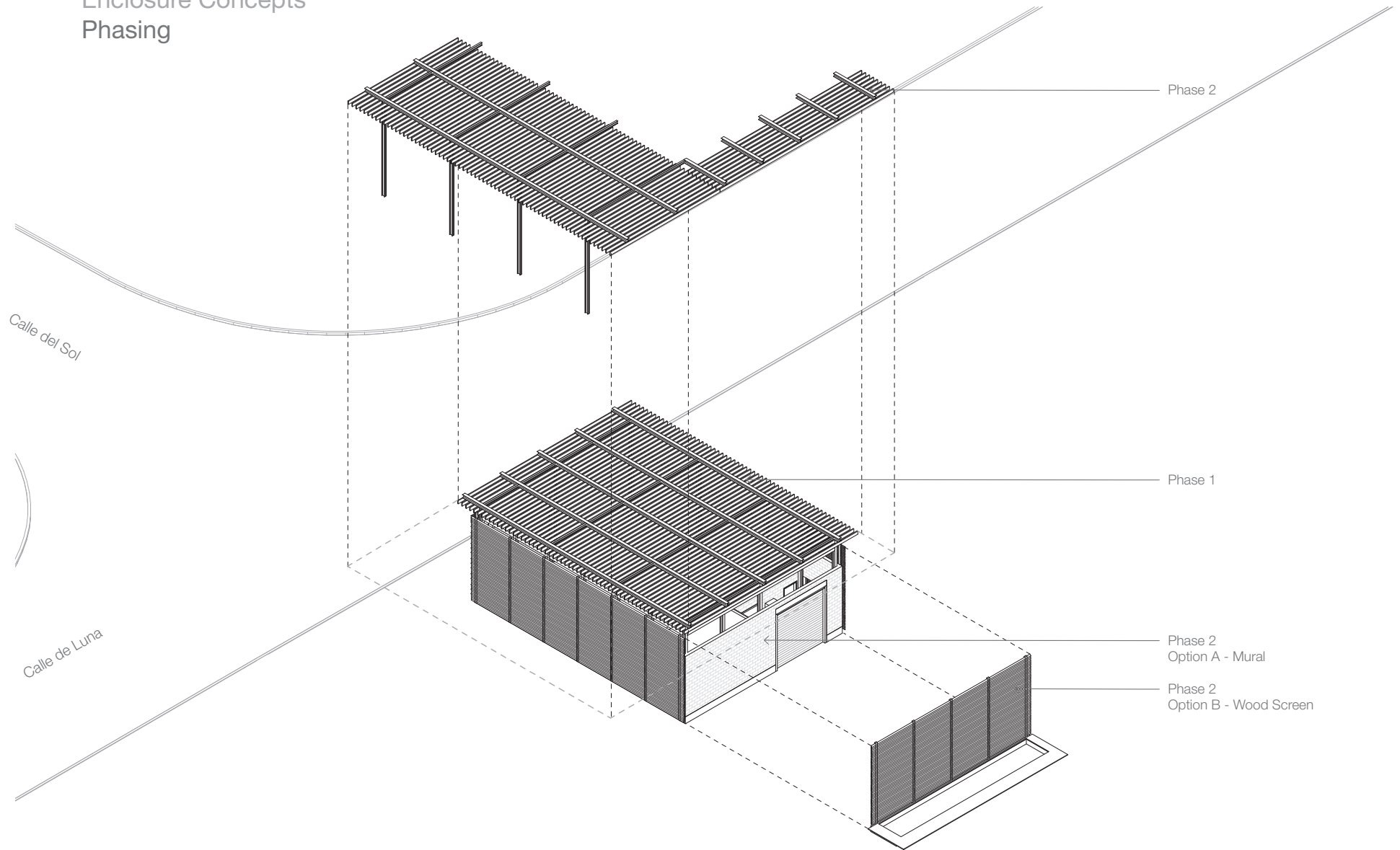
# Enclosure Concepts South Elevation - Signage



Enclosure Concepts  
West Elevation



## Enclosure Concepts Phasing





Enclosure Concepts  
East Elevation - Gallery Wall Example 1

Artist Example: Diego Rivera





Enclosure Concepts  
East Elevation - Gallery Wall Example 2

Artist Example: El Mac





Enclosure Concepts  
East Elevation - Gallery Wall Example 3

Artist Example: SF Bay Salt Ponds





Enclosure Concepts  
East Elevation - Gallery Wall Example 4

Artist Example: SF Bay Salt Ponds





Enclosure Concepts  
East Elevation - Gallery Wall Example 5

Artist Example: Barbara Stauffacher Solomon

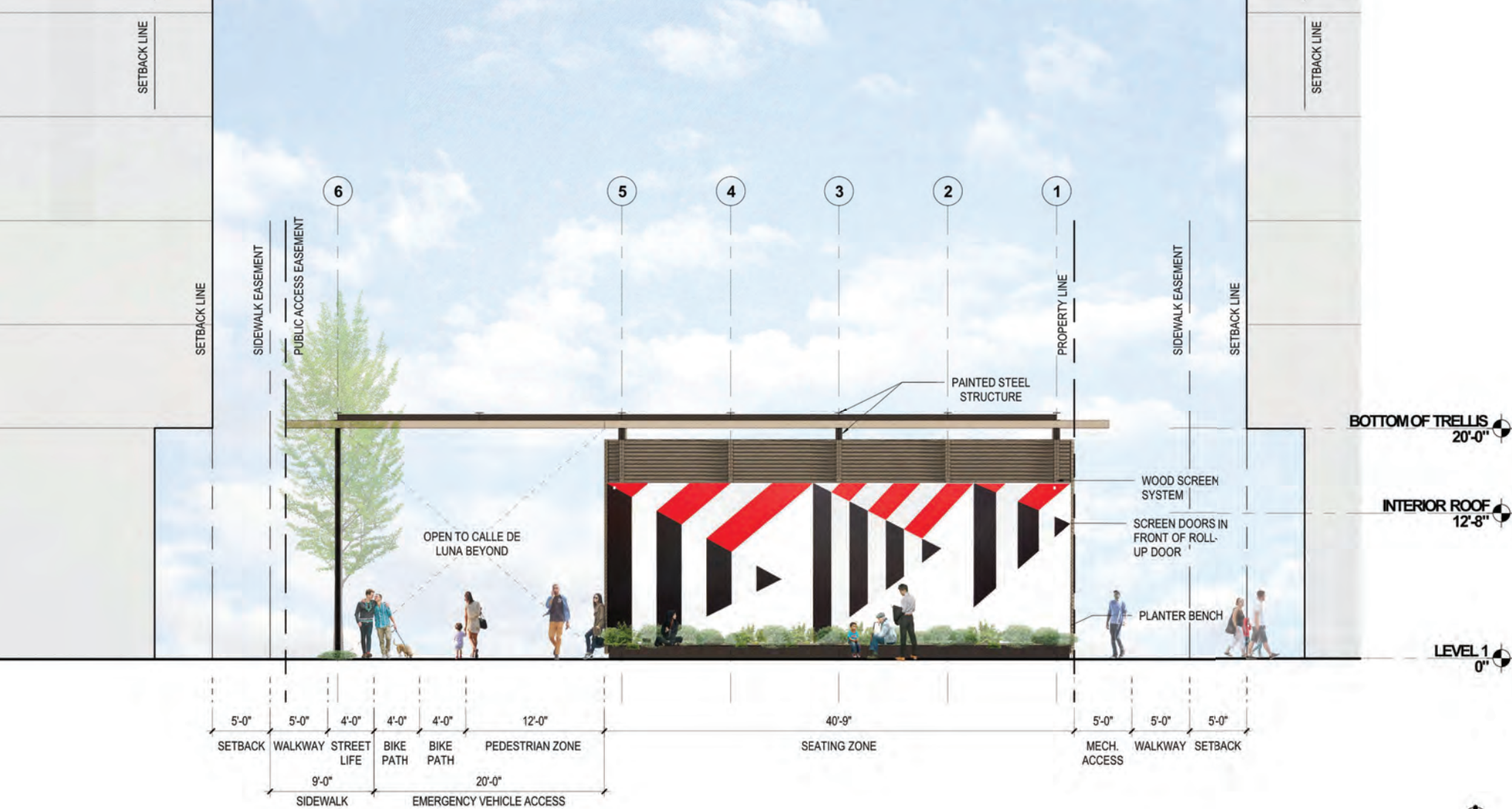




# Enclosure Concepts

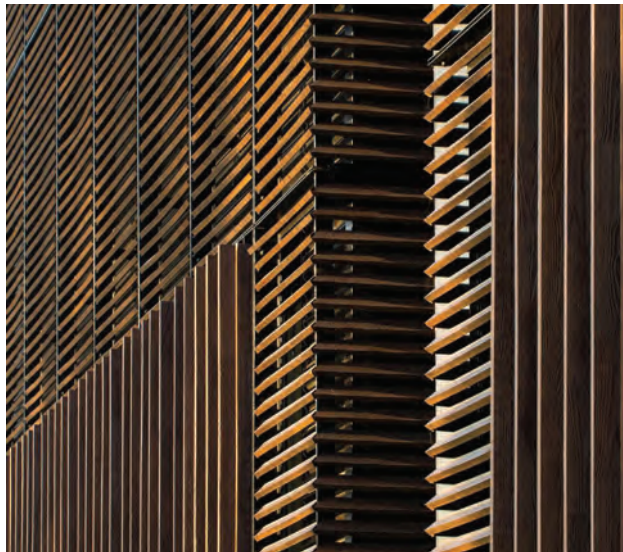
## North Elevation - Mural Example 2

Artist Example: Barbara Stauffacher Solomon



- 1 Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents**
- 4 Landscape Design

Precedents  
Elegant Box





## Precedents Floating Trellis

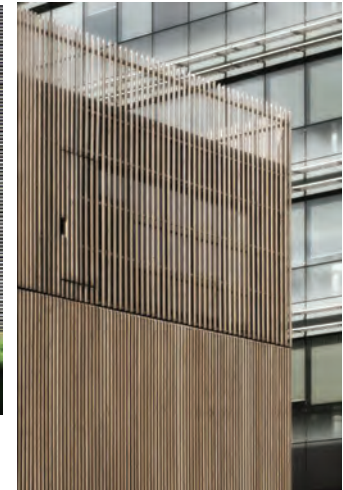
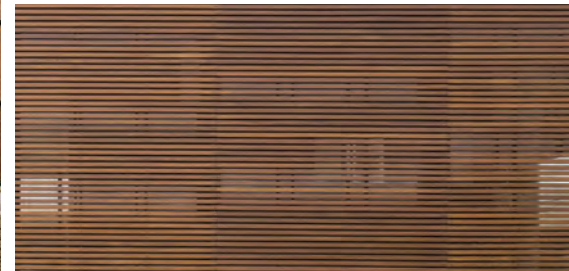
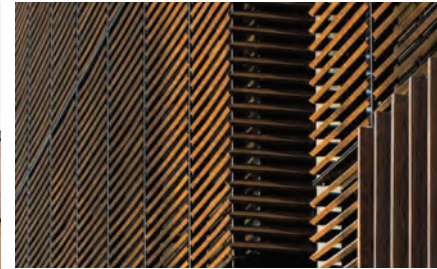


Tasman Paseo & Lift Station

Related California Rethink Development Bohlin Cywinski Jackson The Guzzardo Partnership August 21, 2020

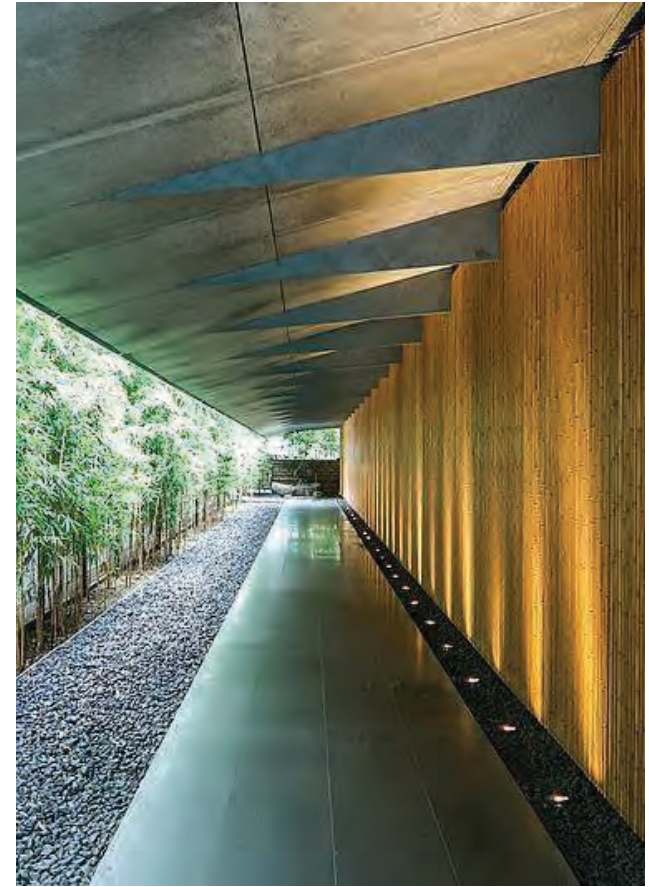


Material Precedents  
Wood Screen & Trellis

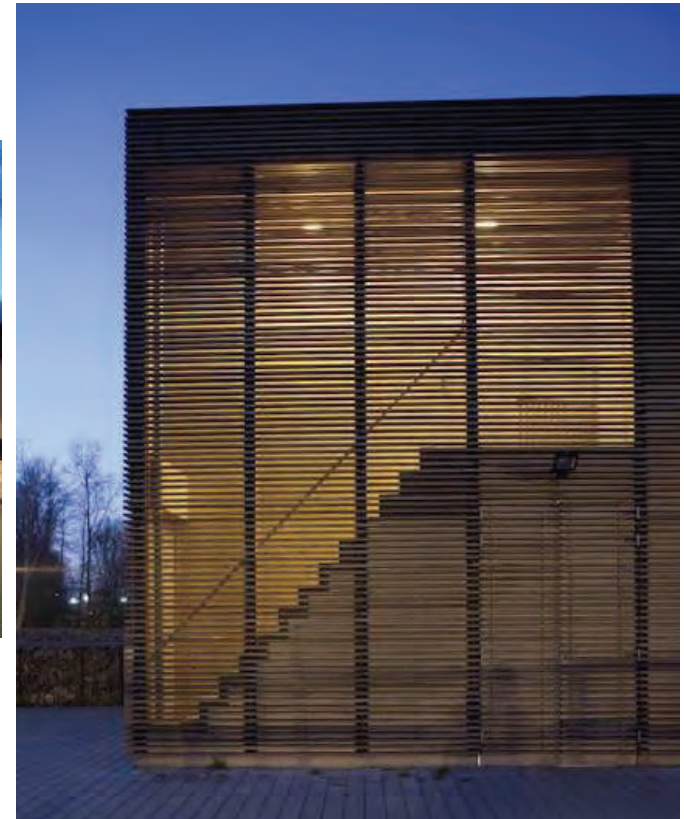




Precedents  
Facade Lighting

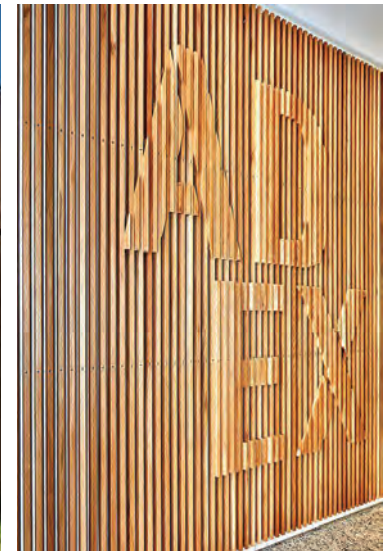
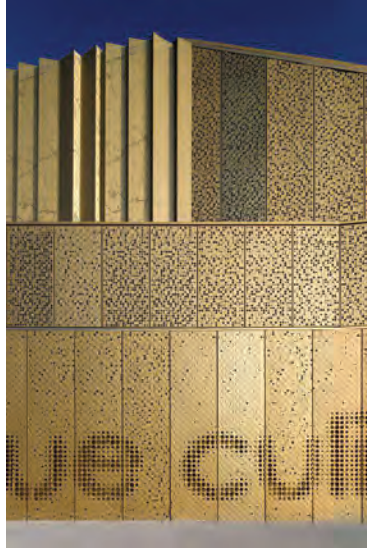


Precedents  
Facade Lighting





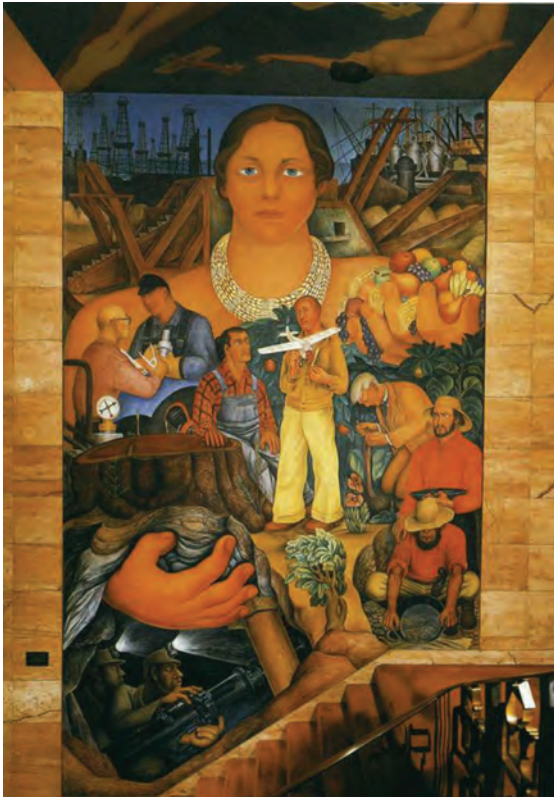
Precedents  
Signage



Tasman Paseo & Lift Station



Precedents  
Art



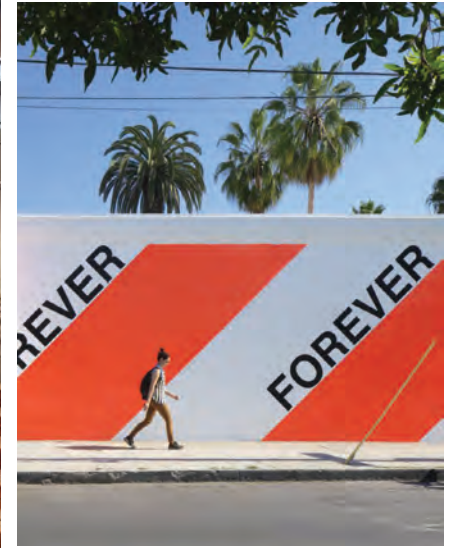
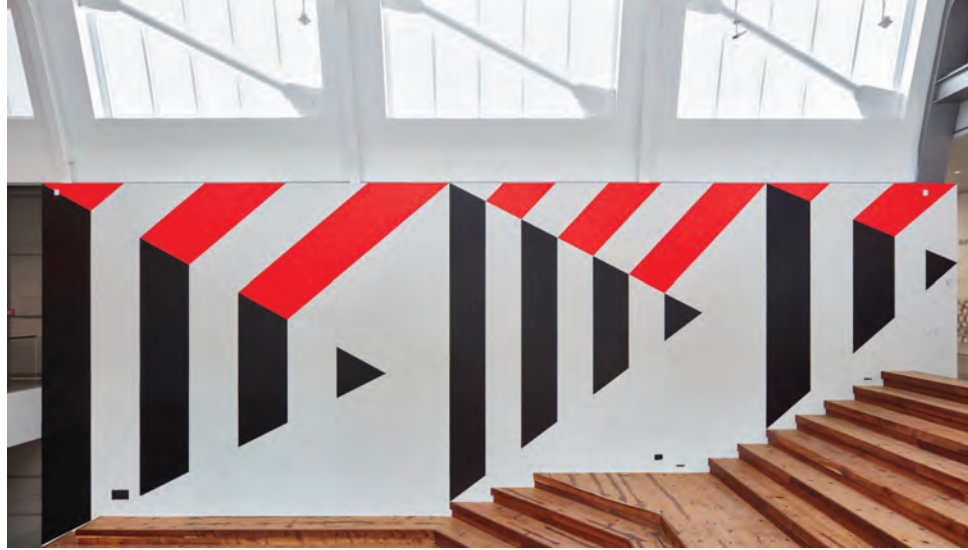
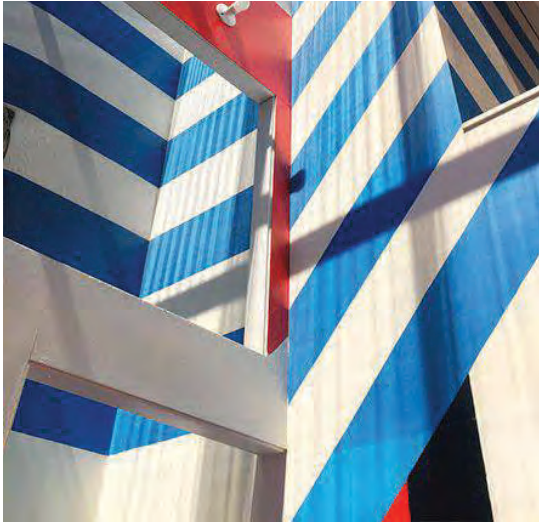
Artist: Diego Rivera



Artist: El Mac



Precedents  
Art



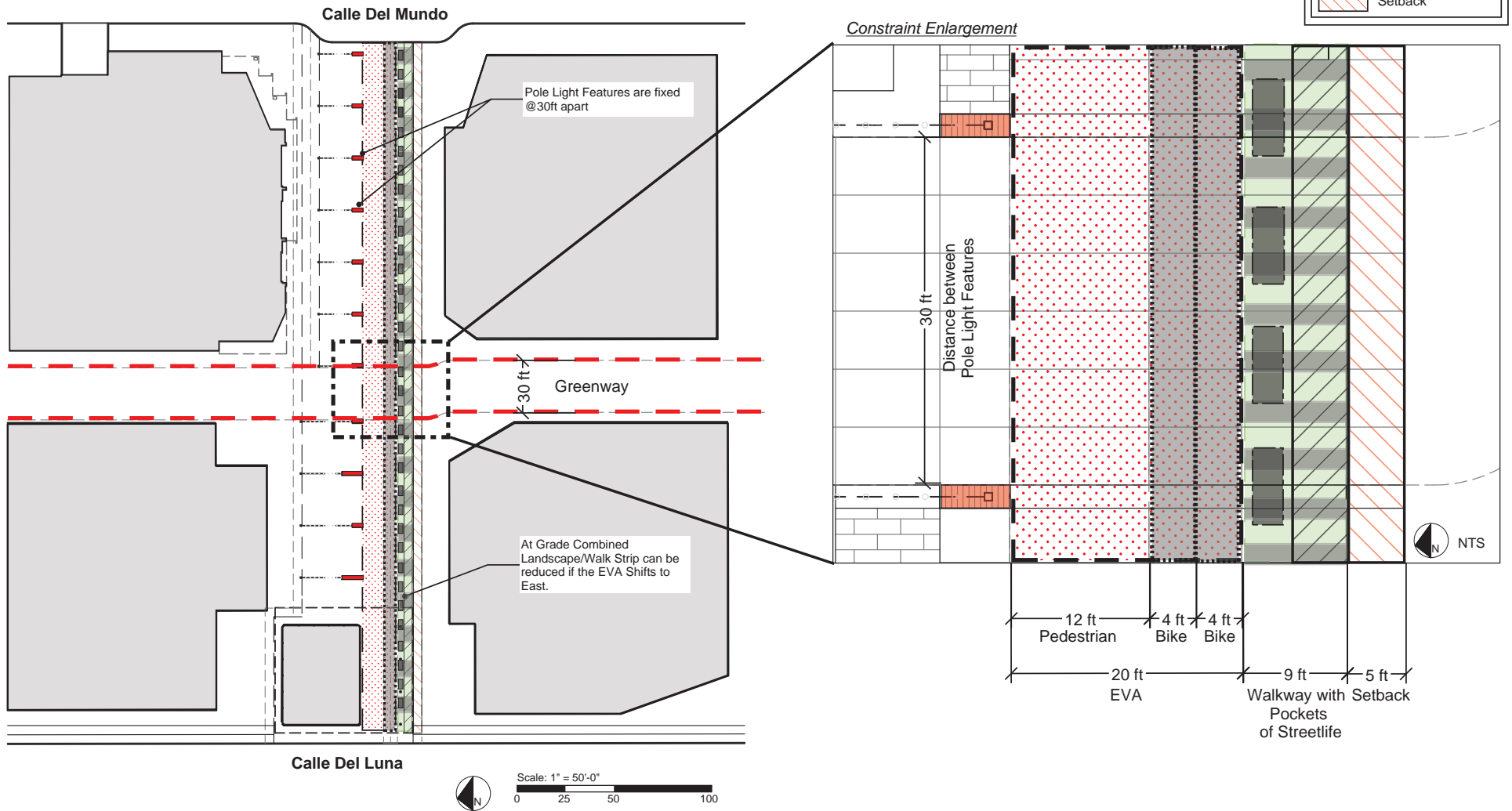
Artist: Barbara Stauffacher Solomon



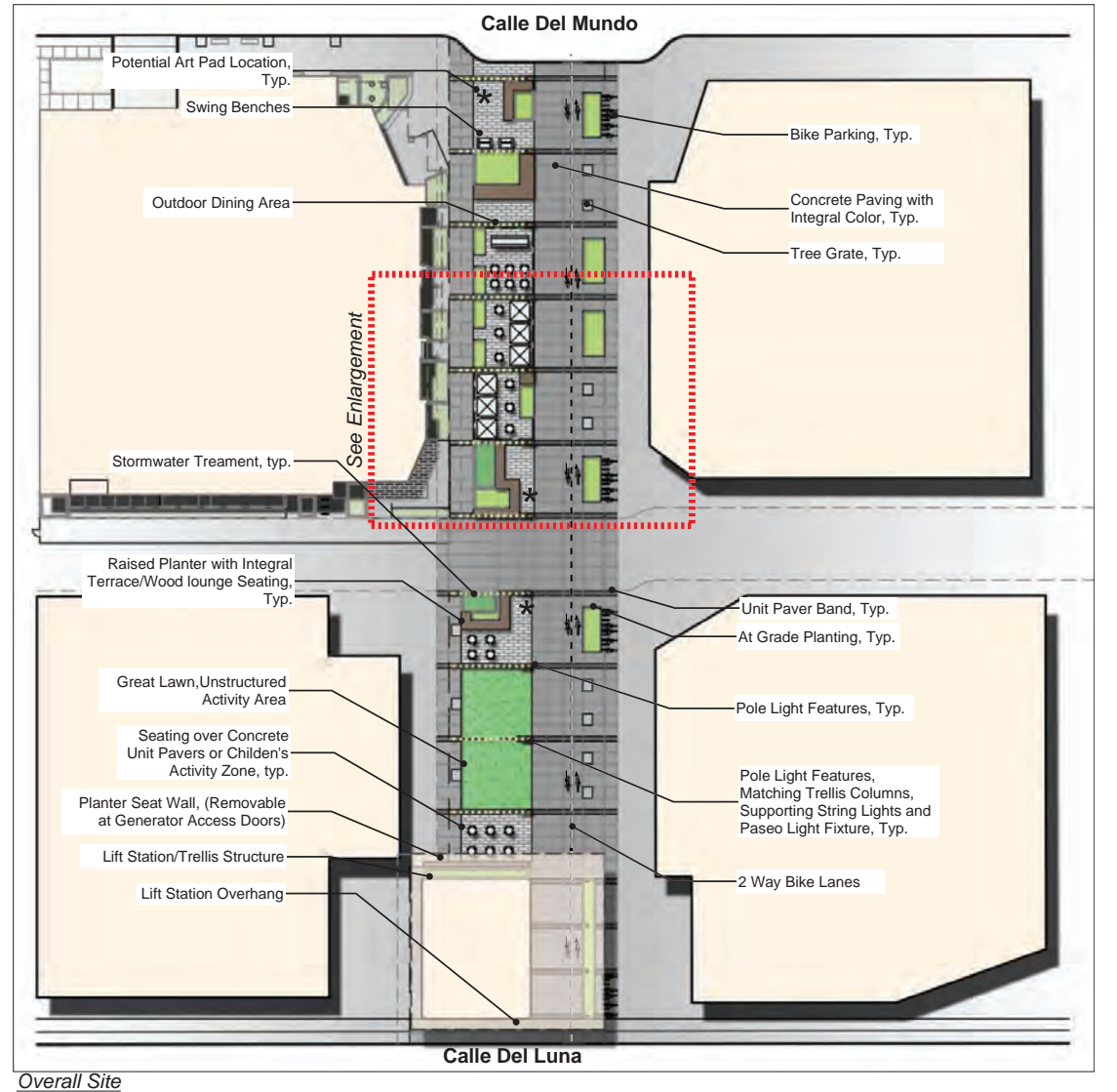
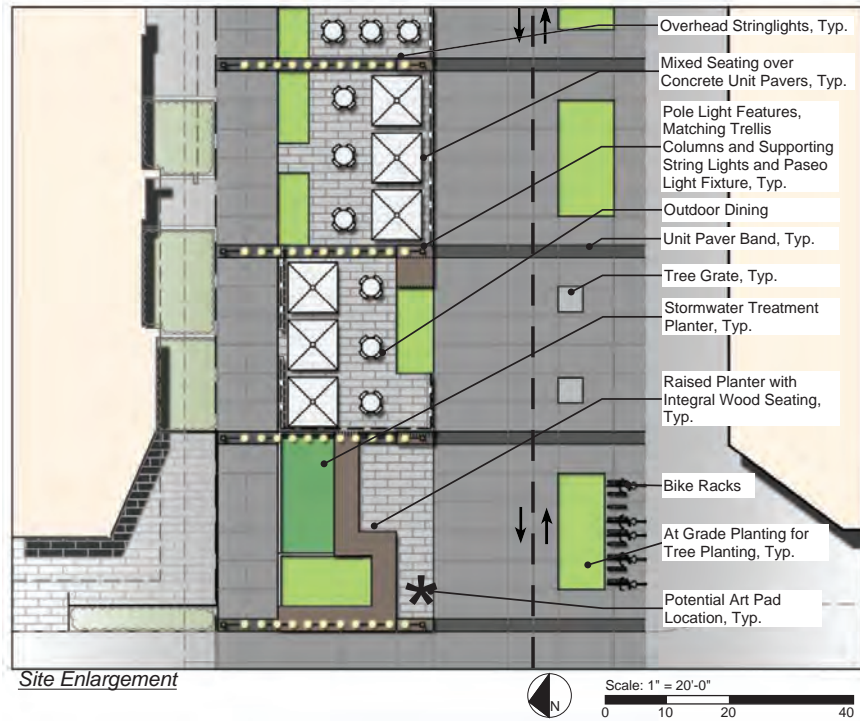
Tasman Paseo & Lift Station

- 1 Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents
- 4 **Landscape Design**

# Path Diagram Design Constraints and Fixed Features



# Landscape Plan Overall Plan and Enlargement





## Landscape Plan Images



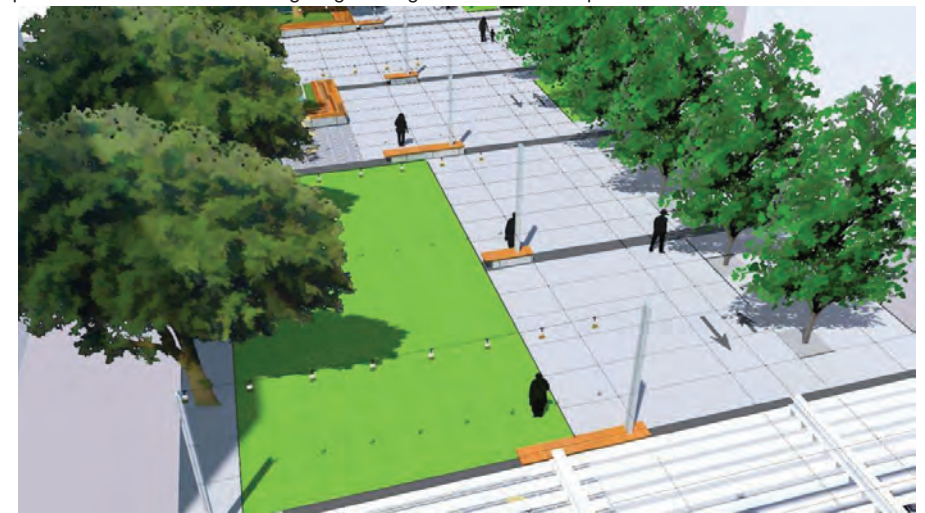
View from Trellis Structure toward Tasman Hill Site



Great Lawn Flexible, Active Area with String Lighting Above, seating area and partially removable planter at Lift Station. Paseo lighting from light mounted within poles.



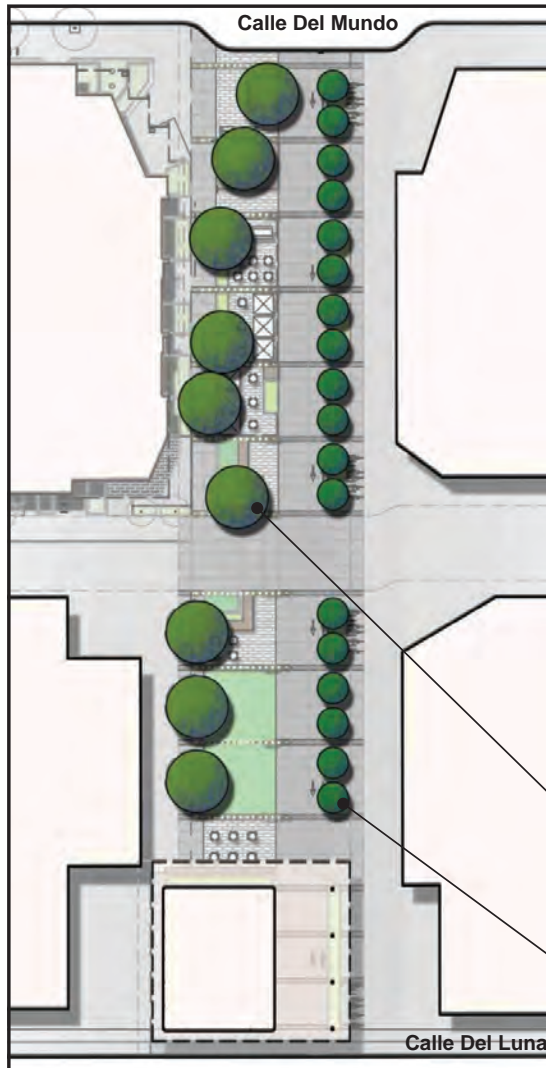
Outdoor Dining along Promenade



Great Lawn, a Flexible, Active Area with String Lighting Above. Bike Lane markings also shown on right side of Paseo.



## Tree Planting Plan Overall Plan and Images



### Tree Layout

Mix of large informally planted canopy trees and narrow, upright trees, reinforcing use areas and processional nature of Walk Street.

### Canopy Trees:

- Quercus virginiana
- Ulmus parvifolia 'Drake'
- Hymenosporum flavum
- Platanus acerifolia 'Columbia'

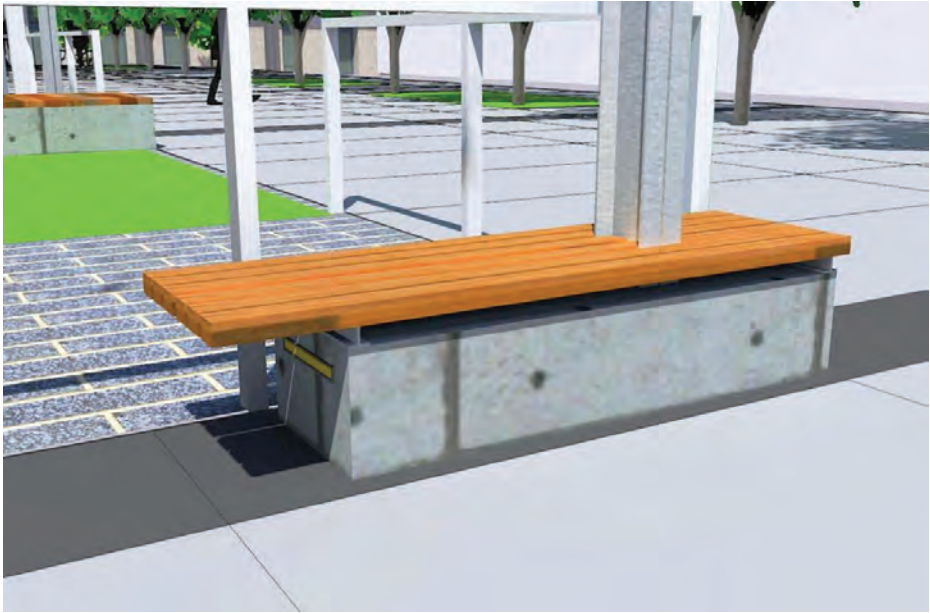
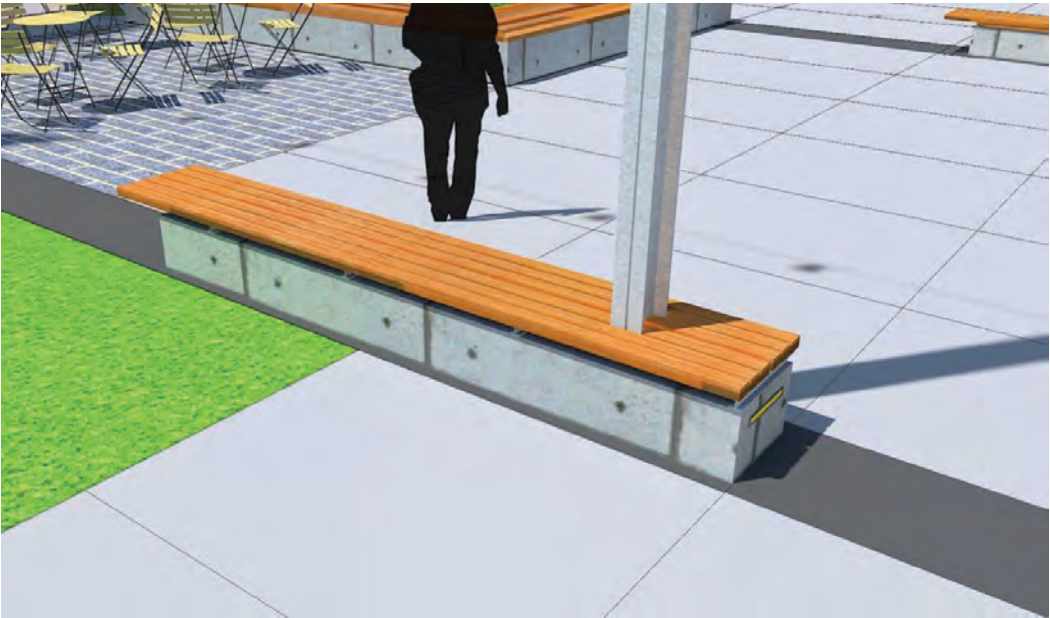
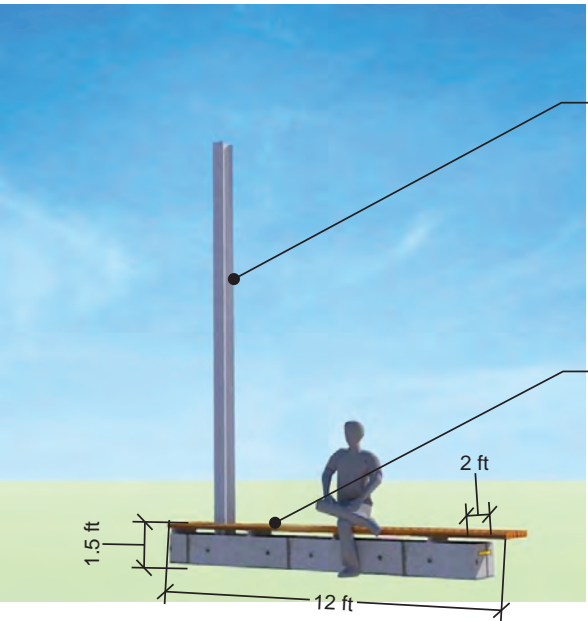
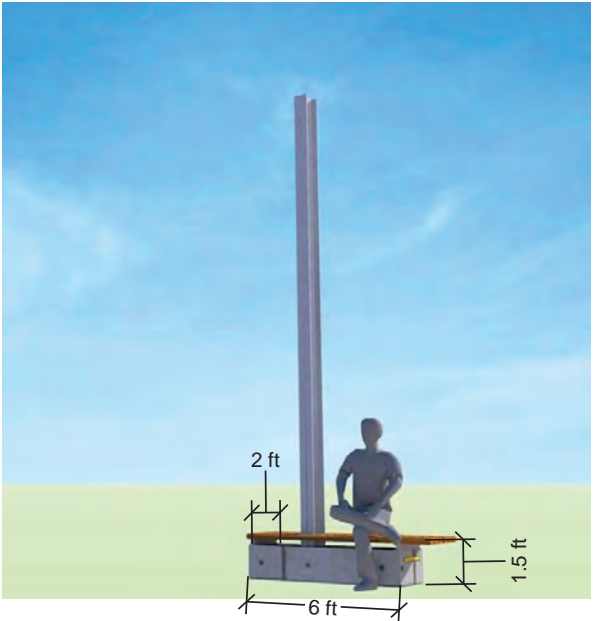
### Columnar Trees:

- Acer rubrum 'Armstrong'
- Liriodendron tulipifera 'Arnold'
- Ginkgo biloba 'Princeton Sentry'



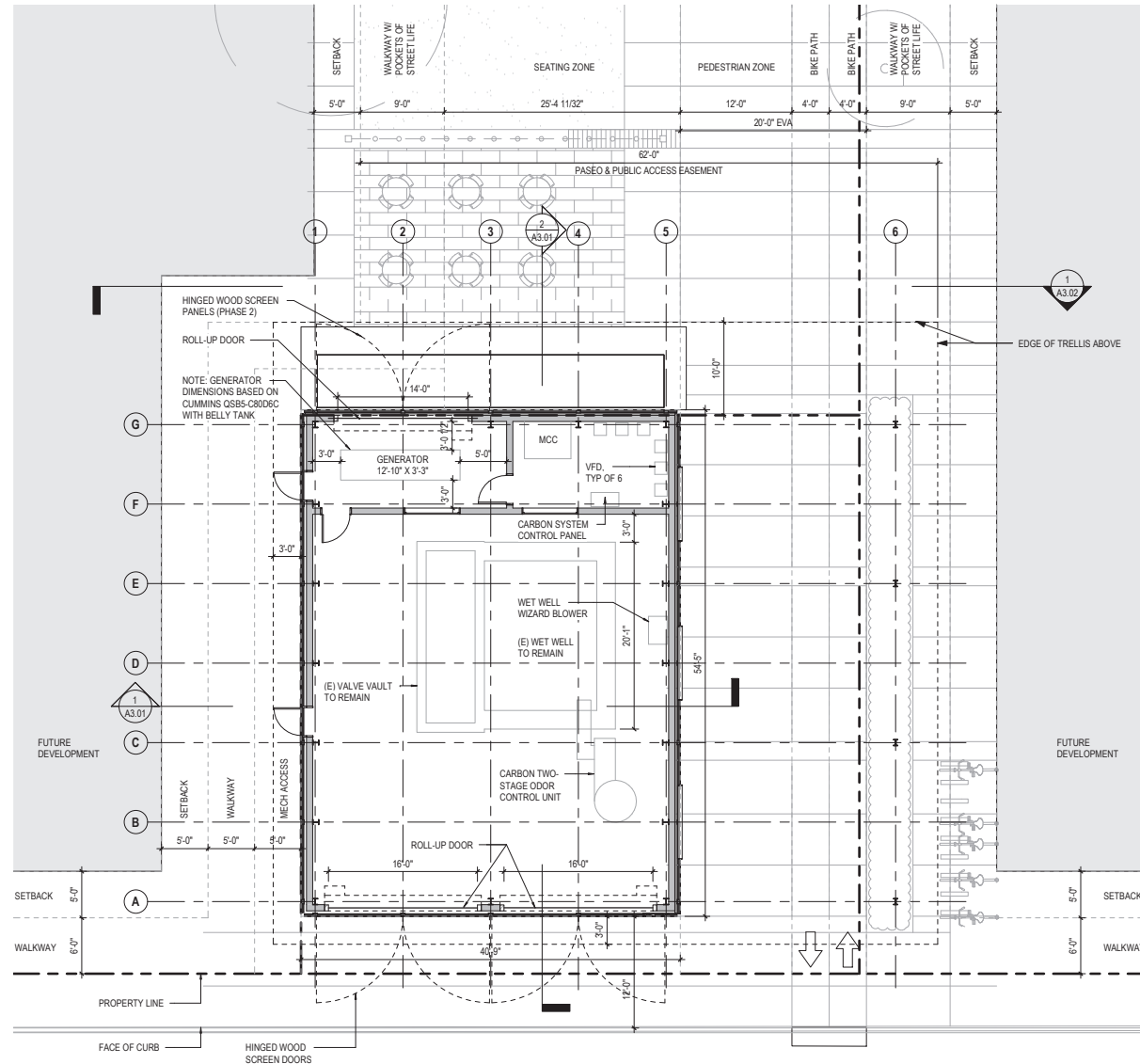


Pole Light and  
Fixed Seating  
Elements

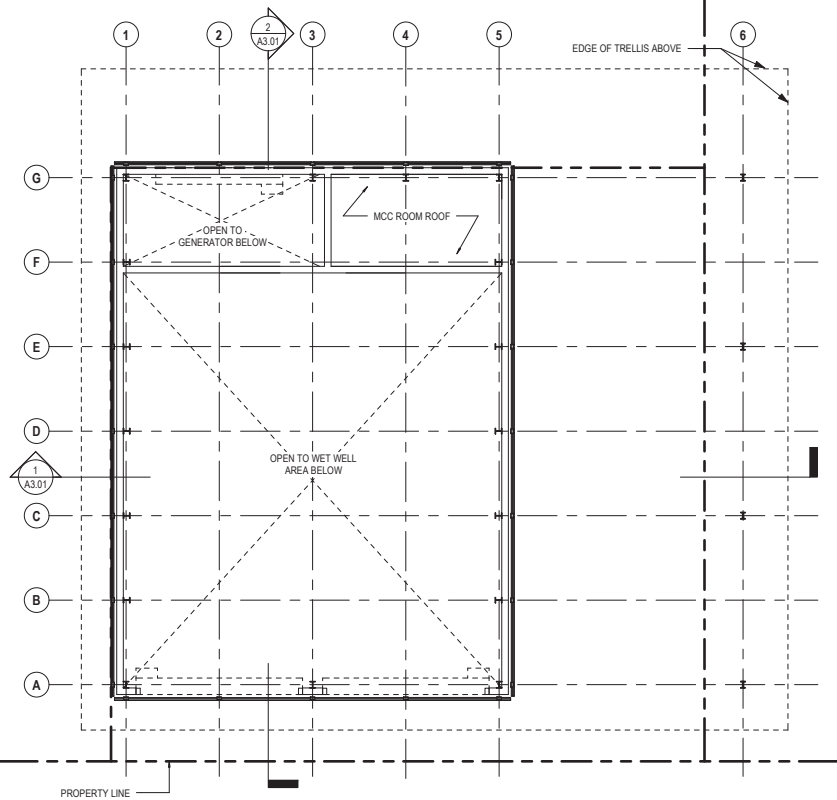


## Appendix

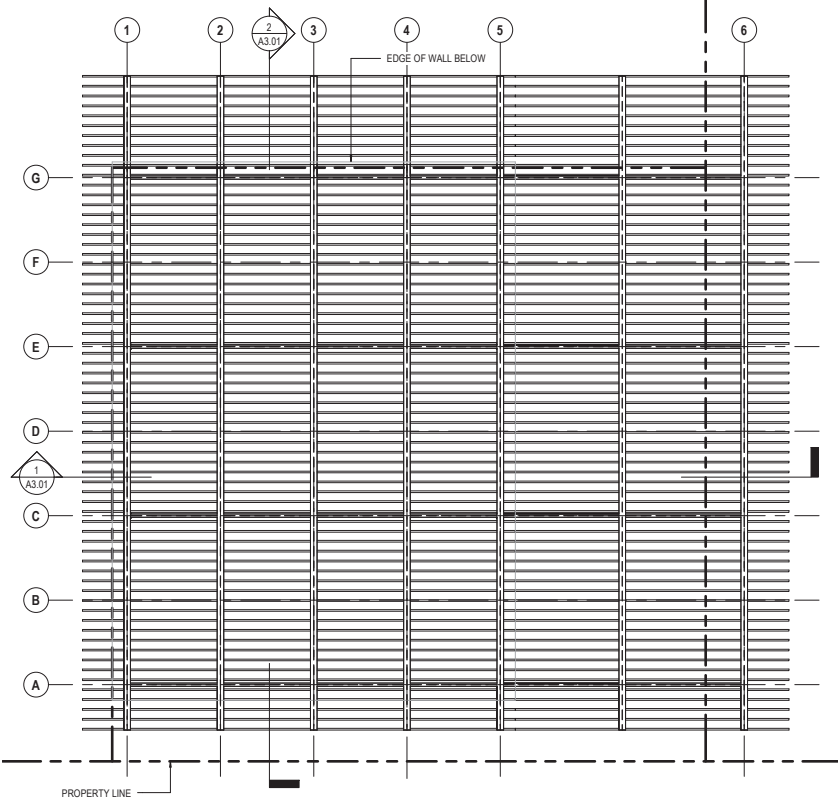
# Lift Station Ground Floor Plan



# Lift Station Plans

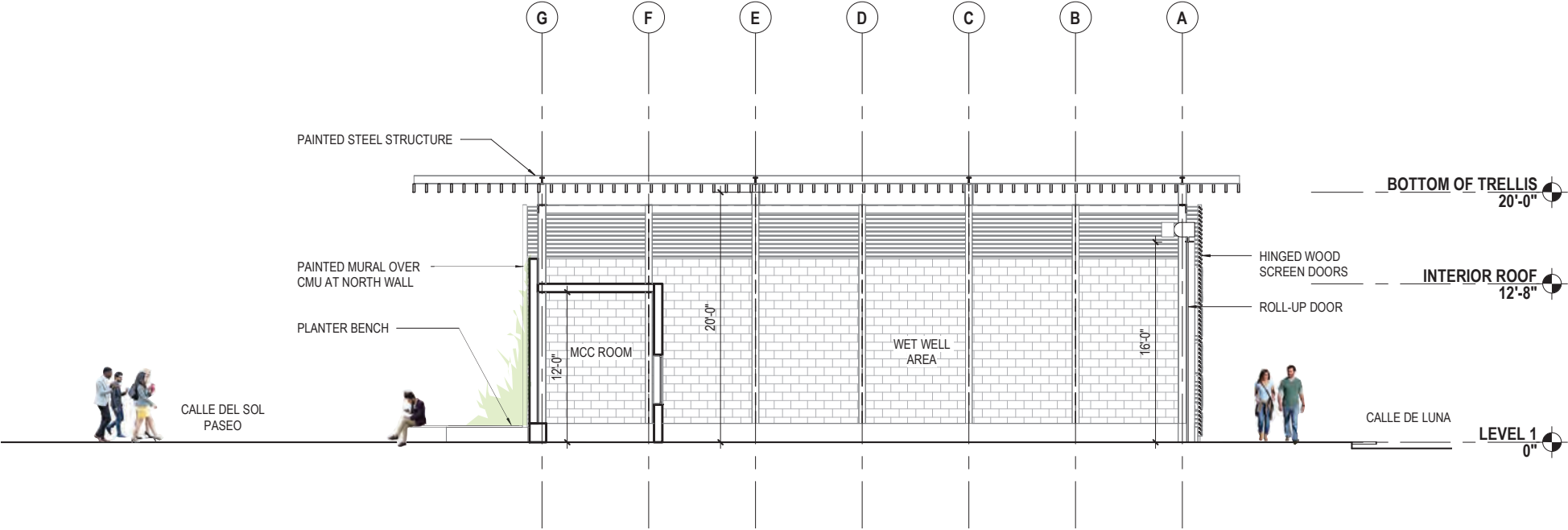


Interior Roof Plan



Trellis Plan

Lift Station  
Building Section





Paseo Renderings  
View from Calle del Sol



Floating trellis corrects the symmetry of the street with the off-set pump enclosure and provides an entry gateway to the Paseo



## Paseo Renderings Facade Lighting Options

Option 1A



Option 2A



Option 3



Option 1B



Option 2B



Lift Station  
Facade Lighting Option 1B

Down-lighting from the trellis structure, lighting entire structure and the Paseo entry





## Lift Station Facade Lighting Option 1B

Down-lighting from the trellis structure, lighting entire structure and the Paseo entry



## Enclosure Concepts Phasing





## Enclosure Concepts Phasing



WHEN RECORDED RETURN TO:

Miller Starr Regalia  
1331 N. California Blvd., 5th FL  
Walnut Creek, CA 94596 Attn:  
Tara C. Narayanan, Esq.

---

(Space Above This Line Reserved For Recorder's Use)

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT** (the "**MOA**") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between certain parties as the owners of certain property, all as described in **Exhibit A** hereto (collectively, the "**Developers**"), with reference to the facts set forth below:

### RECITALS

- A. Developers are a number of property owners who are constructing various projects within certain real property in Santa Clara, California, described in **Exhibit A**.
- B. The lots described in **Exhibit A** share the use of a paseo, identified as "Calle Del Sol" (the "**Paseo**") to be situated within four (4) lots described in **Exhibit B** (the "**Paseo Lots**"). The Paseo is intended to be used as an event space and is expected to include walkways, bicycle paths, outdoor restaurant seating, outdoor lounge areas, open space for events, markets, concerts, and similar amenities. Only one (1) of the four (4) Paseo Lots is owned by a current Developer.
- C. The maintenance of the Paseo and the dedication of a public access easement over the Paseo is a requirement of the City of Santa Clara, California ("**City**"), for the development of properties subject to the Tasman East Specific Plan (the "**Specific Plan**" and "**Specific Plan Area**"). The conditions of approval for the Specific Plan require that land developers either directly fund the costs of maintenance of the Paseo, or in the alternative, form and participate in a property owners association to cover such costs. To comply with this condition, the Developers have chosen to form a property owners association (the "**Association**") to manage, maintain and repair certain improvements within the Paseo, including the pedestrian and bicycle pathways, storm drainage systems, landscaping, decorative paving, pump station enclosure, and open spaces. In addition, the Developers have voluntarily agreed to operate public programs within the Paseo as described in the "Calle Del Sol Paseo Declaration of Restrictions (CC&Rs)" (the "**Declaration**"). Additional properties within the Specific Plan Area will potentially be annexed as property subject to the Declaration in the future.
- D. The Declaration grants easements over the Paseo for the maintenance of the Paseo and the improvements located thereon, imposes a duty on the Association to program events within the Paseo, and provides a mechanism for collecting funds for the Association to perform its management, programming, and maintenance duties. The Association will levy assessments against all properties subject to the Declaration in order to fund its performance of the maintenance and programming duties described herein.



- E. The City also proposes to establish a Community Facilities District (the “CFD”) that would assume certain of the Association’s responsibilities should the property owners vote to dissolve the Association or in the event the Association is otherwise terminated or determined invalid or otherwise of no force and effect. In this event, the assessments previously levied by the Association will be paid through special assessments levied by the CFD against the lots and parcels within the Specific Plan Area to fund the costs associated with the CFD’s maintenance and operation duties, which will be included in the property tax statements issued by the assessor’s office and due and payable at the same time as property taxes (the “CFD Special Tax”).
- F. The Specific Plan also requires the development and implementation of a transportation demand management (“TDM”) program supported by the properties within the Specific Plan Area to provide commute program support and to implement policies and systems to increase resident ride-sharing and decrease vehicle miles traveled within the Specific Plan Area. The TDM program is anticipated to require implementing and managing programs on a Specific Plan Area scale that could include information-providing and marketing, transit passes, bicycle and electrical scooter sharing, and monitoring and reporting functions.
- G. The management and funding of the TDM program is to be administered by the Tasman East Transportation Coordination Group (“TETCG”). The Developers that are party to this MOA will participate as members of the TETCG in conjunction with their participation with the Paseo.
- H. The Paseo has not yet been constructed and may not be built for a period of years. Consequently, the Association shall be formed and the Declaration recorded at a later time, as described in this MOA. The Developers hereto wish to record this MOA to give notice of the Developers’ intent and agreement to form an Association to maintain the Paseo and the improvements located thereon, program events within the Paseo as required by the City, collect funds for the Association to perform the management, programming, and maintenance duties of the Paseo in accordance with the Declaration, and participate in the TETCG to achieve the requirements of the City in connection with the TDM program.
- I. The pump station enclosure is expected to be constructed to enclose an operational pump station (which is to be maintained by the City) long before the formation of the Association. The funding of the pump station enclosure maintenance (the structure only) is anticipated to be arranged through a separate agreement between the Developers and the City. Thus, consistent with Recital H, above, the Developers that are party to this MOA agree in advance to execute an agreement yet to be drafted providing for the maintenance of the pump station structure until the Association is operational.
- J. Other lots exist within the Specific Plan Area that are not included in this MOA. It is anticipated they will be annexed at a later date to participate as members in the Association and comply with the Declaration and/or the CFD Special Tax. As additional properties within the Specific Plan Area participate in the Association, this MOA may be amended to include those lots until the Association is formed and this MOA is no longer relevant as described in **Section 11** below.

NOW, THEREFORE, in furtherance of the foregoing, and for good and valuable consideration, receipt of which is hereby acknowledged, the Developers hereto agree as follows:

1. Each Developer hereby agrees to become a member of the Calle Del Sol Paseo Property Owners Association, a California nonprofit mutual benefit corporation, upon its formation as described in **Section 4**, in accordance with and subject to the terms and conditions set forth in the Declaration described in **Section 2**.

2. Each Developer hereby agrees to permit the Developer's property (as described in **Exhibit A**) to be encumbered by the recorded Declaration. Upon recordation of the Declaration, each Developer agrees to be bound by and subject to the terms and conditions set forth in the Declaration.

3. All of the terms and conditions as set forth in the Declaration are incorporated herein by this reference as though fully set forth herein, but such terms and conditions will not be effective until the Association is formed and the Declaration is recorded. The Declaration to be recorded shall be substantially similar to the Declaration attached hereto as **Exhibit C**, which has been approved by the City as well as the Developers that are parties to this MOA.

4. The Association shall be formed and shall commence operations no later than acceptance by the City of the Public Access Easement (defined in the Declaration attached as **Exhibit C**), which shall occur only after: (i) the Declaration is recorded in the records of Santa Clara County, California; (ii) a minimum of three (3) Paseo Lots are made subject to the Declaration, and (iii) the Paseo's construction on the participating Paseo Lots is completed.

5. Each Developer hereby agrees to become a member of the TETCG described in Recitals G and H upon its formation in accordance with the terms and conditions of the TDM program, whenever created.

6. Each Developer acknowledges that, through its membership, it shall participate in the administration of the Tasman East TDM program and shall contribute financially on a proportionate basis as required by the TDM program.

7. Each Developer hereby agrees to execute an agreement between them and the City that provides for their maintenance of the pump station structure until the Association is operational and assumes such responsibility according to the terms of the Declaration.

8. This MOA shall constitute notice of each Developer's agreement to become a member of the Association and participate in the governance of the Paseo—including event programming and maintenance—through the Association, and pay the assessments allocated to the Developer's property, as set forth in the Declaration. In the event that a Developer fails to do any of the foregoing, the other Developers and/or the Association (if formed) shall have all of the rights and remedies available to them, including specific performance, monetary damages, and/or triggering the CFD to collect payments and/or assume the Association's responsibilities under the Declaration as to the defaulting Developer, at which point each Developer shall be obligated to pay the CFD Special Tax levied upon the Developer's property to fund the CFD's duties.

9. Nothing herein shall be interpreted to render invalid any deed of trust or mortgage on any portion of a Developer's 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 unless such obligation is expressly assumed in writing, provided that the purchaser or grantee shall take title subject to this MOA and shall assume the obligations of the predecessor Developer accruing from and after the date the purchaser or grantee received title. This MOA shall be subordinated to any financing obtained by a Developer to finance the acquisition and/or construction of the initial improvements on the Developer's property.

10. This MOA is being recorded to give notice of the rights and obligations of the Developers pursuant to the Declaration and the terms and conditions contained therein. This MOA is not intended to modify or alter in any way the terms and conditions of the Declaration. If there is any inconsistency



between the provisions of this MOA and the provisions of the Declaration, the provisions of the Declaration shall control.

11. Upon the formation of the Association and the recording of the Declaration against each Developer's property in accordance with the terms and conditions of the Declaration, this MOA shall automatically terminate and be of no further force and effect, and Developers shall execute and deliver a termination to be recorded in the records of Santa Clara County, California, to extinguish the effect of this MOA of record. Upon termination of the Declaration or the Association for any reason other than breach or default, Developers shall execute and deliver quitclaim deeds, also to extinguish the effect of this MOA of record.

12. This MOA may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one agreement with the same effect as if all Developers had signed the same signature page. Any signature page of this MOA may be detached from any counterpart of this MOA and reattached to any other counterpart of this MOA identical in form hereto, but having attached to it one or more additional signature pages.

*[Signatures on following page]*

## SIGNATURE PAGES TO MEMORANDUM OF AGREEMENT

IN WITNESS WHEREOF, the Developers have executed this Memorandum as of the date and year first above written.

Date: August 18, 2020

**SHAC TASMAN CDM APARTMENTS LLC,**  
a Delaware limited liability company

By: SHAC Tasman CDM Apartments Ventures LLC,  
a Delaware limited liability company, its manager

By: SHAC Tasman CDM Apartments Manager LLC,  
a Delaware limited liability company, its manager

By: Summerhill Apartment Communities,  
a California corporation, its managing member



**Jason Biggs**  
Secretary

By: [Signature]  
Name: Elaine Breeze  
Its: Senior Vice President

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

**ST. ANTON TASMAN EAST, LP,**  
a California limited partnership

By: Tasman East Workforce Housing, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Blue Bronco, LLC,  
a California limited liability company,  
its sole member and manager

By: \_\_\_\_\_  
Name: Peter H. Geremia  
Title: Manager

By: Pach Anton South Holdings, LLC,  
a California limited liability company,  
its Managing General Partner

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
Name: Mark A. Wiese  
Its: President

*[Additional Developer Signatures on Following Pages]*

## SIGNATURE PAGES TO MEMORANDUM OF AGREEMENT

IN WITNESS WHEREOF, the Developers have executed this Memorandum as of the date and year first above written.

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

**SHAC TASMAN CDM APARTMENTS LLC,**  
a Delaware limited liability company

By: SHAC Tasman CDM Apartments Ventures LLC,  
a Delaware limited liability company, its manager

By: SHAC Tasman CDM Apartments Manager LLC,  
a Delaware limited liability company, its manager

By: Summerhill Apartment Communities,  
a California corporation, its managing member

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

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

Its: \_\_\_\_\_

Date: AUGUST 17, 2020

**ST. ANTON TASMAN EAST, LP,**  
a California limited partnership

By: Tasman East Workforce Housing, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Blue Bronco, LLC,  
a California limited liability company,  
its sole member and manager

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

Name: Peter H. Geremia

Title: Manager

By: PacH Anton South Holdings, LLC,  
a California limited liability company,  
its Managing General Partner

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

Name: Mark A. Wiese

Its: President

*[Additional Developer Signatures on Following Pages]*



Date: 8/19/2020

**TASMAN EAST URBAN HOUSING, LLC,**  
a Delaware limited liability company

By:   
Name: Nicholas Vanderboom  
Its: Vice-President

Date: 8/19/2020

**TASMAN EAST HOLDCO, LLC,**  
a Delaware limited liability company

By:   
Name: Nicholas Vanderboom  
Its: Vice-President

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

**2354 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

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

**5185 LAFAYETTE STREET, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

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

**TASMAN 2278 CALLE DE LUNA, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

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

**2263 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

*[Additional Developer Signatures on Following Pages]*

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

**TASMAN EAST URBAN HOUSING, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Nicholas Vanderboom  
Its: Vice-President


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

**TASMAN EAST HOLDCO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Nicholas Vanderboom  
Its: Vice-President


Date: August 17, 2020

**2354 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member


Date: August 17, 2020

**5185 LAFAYETTE STREET, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member


Date: August 17, 2020

**TASMAN 2278 CALLE DE LUNA, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member

Date: August 17, 2020

**2263 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member

*[Additional Developer Signatures on Following Pages]*

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

**2302 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaoft  
Its: Managing Member

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

**TASMAN PROPERTIES, LLC,**  
a Delaware limited liability company

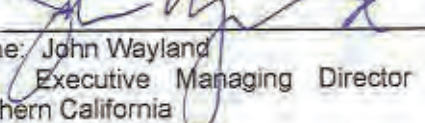
By: \_\_\_\_\_  
Name: Kambiz Babaoft  
Its: Managing Member

Date: 8/19/2020

**NASH – HOLLAND CALLE DE LUNA INVESTORS, LLC,**  
a Delaware limited liability company

By: HPG Calle De Luna, LLC,  
a Washington limited liability company,  
its Operating Member

By: Holland Partner Group Management, Inc.,  
a Delaware corporation,  
its Manager

By:  \_\_\_\_\_  
Name: John Wayland  
Its: Executive Managing Director of Development,  
Northern California

*[Final Signature Page]*



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of SANTA CLARA )

On 8/18/2020, before me, JUDY LEPULU, a Notary Public, personally appeared ELAINE BREEZE and JASON BIGGS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Sacramento )

On August 17, 2020 before me, Kellie Lyn Hamblin, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Peter H. Geremia  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF Sacramento )

On August 17, 2020 before me, Cheyenne Pike, Notary Public,  
personally appeared Mark A. Wiese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

[Signature]  
Signature of Notary Public



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State of California )  
County of Los Angeles )

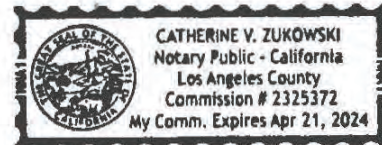
On August 19, 2020, before me, Catherine V. Zukowski, a Notary Public, personally appeared Nicholas Vanderboom, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Catherine V. Zukowski



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State of California )  
County of Los Angeles )

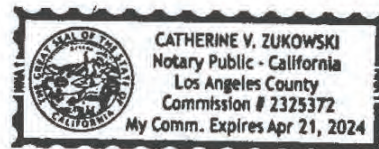
On August 19, 2020, before me, Catherine V. Zukowski, a Notary Public, personally appeared Nicholas Vanderboom, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Catherine V. Zukowski



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles \_\_\_\_\_ )

On August 18, 2020, before me, Sharon K. Foster, a Notary Public, personally appeared Kambiz Babaoff, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

*Sharon K. Foster*



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



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State of California  
County of \_\_\_\_\_ }

On August 19, 2020, before me, Fanny Rodriguez, a Notary Public, personally appeared Song Wayland, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



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State of California  
County of \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



EXHIBIT A – Developers

<u>Declarant</u>	<u>Property Owned by Declarant Within Tasman East Specific Plan Area</u>
2263 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 5 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2302 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2354 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 12 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
5185 Lafayette Street, LLC, a Delaware limited liability company	Parcel 13 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman 2278 Calle de Luna, LLC, a Delaware limited liability company	Parcel 22 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Properties, LLC, a Delaware limited liability company	Parcel 23 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
NASH - Holland Calle De Luna Investors, LLC, a Delaware limited liability company	Parcel 19 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Urban Housing, LLC, a Delaware limited liability company	Parcels 24, 25, 26 and 27 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Holdco, LLC	Parcels 20 and 21 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
St. Anton Tasman East, LP, a California limited partnership	Parcel 6 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
SHAC Tasman CDM Apartments LLC, a Delaware limited liability company	Parcels 1, 2 and 3 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.

EXHIBIT B – The Paseo Lots

2302 Calle del Mundo, LLC	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Company, LLC, a California limited liability company as to an undivided 1/2 interest and  The Family Trust of Harry Bruce Frumveller and Carolyn Ruth Frumveller, Harry Bruce Frumveller and Carolyn Ruth Frumveller, Trustees, Trust dated June 16, 2014 as to an undivided 1/2 interest	Parcel 16 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Berto Development, a California limited partnership	Parcel 17 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
True Solar USA Inc., a California corporation	Parcel 1 as shown on the Parcel Map filed on June 23, 1980, in Book 465 of Maps, at page 36, in the records of Santa Clara County, California.



EXHIBIT C – Calle de Sol Paseo Declaration of Restrictions (CC&Rs)

**RECORDED AT THE REQUEST OF AND WHEN  
RECORDED, RETURN TO:**

**Tara C. Narayanan  
MILLER STARR REGALIA  
1331 N. California Blvd., Fifth Floor  
Walnut Creek, CA 94596**

**CALLE DEL SOL PASEO**

**DECLARATION**

**OF**

**RESTRICTIONS (CC&Rs)**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income as defined in subdivision (p) of Section 12955, disability, veteran or military status, or genetic information, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

**CALLE DEL SOL PASEO**  
**DECLARATION OF RESTRICTIONS (CC&Rs)**

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## CALLE DEL SOL PASEO

### DECLARATION OF RESTRICTIONS (CC&Rs)

**THIS DECLARATION OF RESTRICTIONS (CC&Rs)** ("Declaration") is executed by certain parties, as the owners of the property subject to this Declaration, described in **Exhibit A** hereto (collectively, the "Declarant") with reference to the following facts:

- A. Declarant is comprised of a number of property owners who are constructing various developments consisting of certain real property in Santa Clara, California, described on **Exhibit A**.
- B. The lots described in **Exhibit A** share the use of a paseo, identified as "Calle Del Sol" (the "Paseo"), situated within four (4) of the lots (the "Paseo Lots"). The Paseo Lots are described in **Exhibit B**. Additional lots (the "Annexable Property") within the area described in **Exhibit C** to this Declaration will potentially be annexed as property subject to this Declaration in the future. The Paseo is intended to be used as an event space and is expected to include walkways, bicycle paths, outdoor restaurant seating, outdoor lounge areas, and open space for events.
- C. The maintenance of the Paseo and the dedication of a public access easement over the Paseo is a requirement of the City of Santa Clara, California ("City"), for the development of properties subject to the Tasman East Specific Plan (generally, the "Specific Plan" and the properties are the "Tasman East Specific Plan Area" or "Specific Plan Area"). The conditions of approval for the Specific Plan require that land developers either directly fund the costs of maintenance of the Paseo, or in the alternative, form and participate in a property owners association to cover such costs. To comply with this condition, Declarants (as land developers) have chosen to form a property owners association ("Association") to manage, maintain and repair certain improvements within the Paseo, including the pedestrian and bicycle pathways, storm drainage systems, landscaping, decorative paving, pump station enclosure and screening, and open spaces. In addition, Declarants have voluntarily agreed to operate public programs within the Paseo. Properties within the Specific Plan Area other than Declarant's will be annexed and subject to this Declaration in the future as described in **Section 11.1**. The Association will levy assessments against the properties subject to this Declaration in order to fund its performance of the maintenance and programming duties described herein. Each owner of a lot or parcel described in **Exhibits A** and/or **C** that become members of the Association, including any lots or parcels resulting from the subdivision of any lot or parcel shown in **Exhibits A** or **C**, will be obligated to pay the lot's or parcel's allocable share of the assessments levied by the Association.
- D. The Specific Plan Area's conditions of approval require the establishment of a Community Facilities District (the "CFD") that would assume the Association's responsibilities should the property owners vote to dissolve the Association or in the event the Association is otherwise terminated or determined invalid or otherwise of no force and effect. In this event, the assessments previously levied by the Association will be paid through special assessments levied by the CFD against the lots and parcels within the Specific Plan Area to fund the costs associated with the CFD's maintenance and operation duties, which will be

included in the property tax statements issued by the assessor's office and due and payable at the same time as property taxes(the "CFD Special Tax").

- E. The Annexable Property described in **Exhibit C** may be annexed at a later date, and shall be bound upon such annexation by the terms of this Declaration, the Association's assessments, and/or the CFD Special Tax. Pursuant to the Tasman East Specific Plan, the existing and additional lots within the Specific Plan Area will benefit from the amenities offered with participation in the Paseo, and will likewise be bound to contribute to its maintenance.
- F. The purpose of this Declaration is to: (i) confirm and grant easements over the Paseo for the management and maintenance of the Paseo and the improvements located thereon; and (ii) provide a mechanism for collecting funds for the association to perform its management and maintenance duties.
- G. The property that is subject to this Declaration at the time of recording, and the Annexable Property described in **Exhibit C** will benefit and be bound by the provisions of **Sections 2.1, 2.2, 9.1 and 11.1** of this Declaration on the recordation of this Declaration. The other covenants, easements, restrictions, rights and duties described in this Declaration will benefit and bind the initial lots upon the recordation of this Declaration and will benefit and bind the Annexable Property on the recordation of a declaration of annexation annexing that portion of the Annexable Property and rendering the Annexable Property subject to this Declaration.

#### **DECLARANT DECLARES AS FOLLOWS:**

##### Article 1 **DEFINITIONS**

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Annexable Property. The real property described in **Exhibit C** that may be annexed and become subject to this Declaration. Upon annexation of any portion of the Annexable Property and the commencement of assessments against that portion, the portion no longer shall be considered Annexable Property and shall be part of the Lots that are subject to this Declaration.

1.2 Applicable Laws. All federal, state and local laws, statutes, acts, ordinances, rules, regulations, permits, licenses and requirements of all governmental authorities (including any agency, authority, board, branch, division, department or similar unit of any federal, state, county, district or other governmental entity having jurisdiction over the Specific Plan Area) that now or hereafter during the term of this Declaration may be applicable to the Specific Plan Area.

1.3 Articles. The Articles of Incorporation of the Association and any amendments thereto.

1.4 Association. The Calle Del Sol Paseo Property Owners Association, a California nonprofit mutual benefit corporation.

1.5 Board. The Board of Directors of the Association.

1.6 Bylaws. The Bylaws of the Association and any amendments thereto.



1.7 CFD. The community facilities district formed by the City to manage, maintain and repair the Paseo in the event that the Association is dissolved, terminated, determined invalid or otherwise be of no force and effect.

1.8 City. The City of Santa Clara, California.

1.9 Declarant. The parties that own the properties subject to this Declaration that are described in **Exhibit A**, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There is more than one Declarant.

1.10 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments, annexations or corrections thereto.

1.11 Exclusive Use Area. The portion or portions of the Paseo described in **Section 1.21** subject to rights for the exclusive use of an Occupant of a retail space within a Paseo Lot.

1.12 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules.

1.13 Improvements. Any property in the Paseo constituting a fixture within the meaning of Civil Code section 660.

1.14 Lot or Lots. Any lot, parcel or other subdivision of real property subject to this Declaration.

1.15 Maintain, Maintained, Maintaining or Maintenance. Unless expressly stated otherwise, "maintain", "maintained", "maintaining" or "maintenance" as used in this Declaration includes inspection, cleaning, maintenance, repair, upgrading and/or replacement.

1.16 Member. A member of the Association.

1.17 Mortgage. A recorded mortgage or deed of trust against one or more Lots.

1.18 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot.

1.19 Occupant(s). Any Person entitled to use and occupy a Paseo Lot pursuant to an ownership right or any lease, license or other similar agreement with the Owner of the Lot. "Occupant" is limited to Occupants of any commercial or retail interest in a Lot, such as a café or a store, and shall not include a residential occupant such as the tenant of an apartment or renter of a residential condominium.

1.20 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Specific Plan Area. If any Lot is further subdivided into a common interest development such as a condominium or planned development, the owners association or equivalent shall be deemed to be the Owner of that Lot for all purposes of this Declaration and shall assume all the rights and duties of the Owner of the subject Lot hereunder.

1.21 Paseo. The portions of Parcels 21, 22, 23, 24 and/or 25 that are or shall be subject to the paseo easements described in **Sections 2.1 and 2.2** and that are annexed and subject to this Declaration. The term "Paseo" includes the Improvements, landscaping, and operation and management services, and including walkways, bicycle paths, outdoor restaurant seating, outdoor lounge areas, and open space for events. The Paseo includes the pump station screening enclosure, although the City is responsible for maintaining the pump station itself.

1.22 Paseo Lots. Parcels 21, 23, 24 and 25. Not all of the Paseo Lots may be subject to this Declaration at the time the Paseo becomes operational as described in **Section 4.1** and **Exhibit B**.



- 1.23 Permittee(s). All Owners and Occupants and their agents and invitees.
- 1.24 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.
- 1.25 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 4.6.2**.
- 1.26 Specific Plan Area. The properties subject to the Tasman East Specific Plan, on file with the City.

## Article 2 PROPERTY RIGHTS AND EASEMENTS

2.1 Establishment of Paseo. Declarant grants to the City an easement in gross, and to the Owner of each Lot and any Annexable Property that is made subject to this Declaration in favor of the Lot or Annexable Property as the dominant tenement, over the Paseo Lot(s) subject to this Declaration as the servient tenement, the following easements to establish the Paseo:

(i) The Paseo Lots that are subject to this Declaration are also subject to pedestrian and bicycle ingress and egress over the walkways and bicycle paths within the Paseo for the benefit of the public.

(ii) The Paseo Lots that are subject to this Declaration are subject to access to and use of (including the right to install or maintain) any utility lines, cables, wires, pipes, meters or other equipment installed within, on or over the Paseo that provides utility service to the dominant tenement, including water, electricity, gas, telecommunications, storm drainage and sanitary sewer services, pump station services, and life safety system, pursuant to the utility easement described in **Section 2.2.1**.

The easements described in this **Section 2.1** are granted to the City for purposes of public access and use of the servient tenement (the "Public Access Easement"). The Public Access Easement shall be established independent of this Declaration through separately-recorded instrument(s) and shall exist in perpetuity, subject to the terms of the separately-recorded instrument(s).

2.2 Paseo Easements. The Paseo Lots are (or shall be upon annexation) subject to the easements described in this **Section 2.2** and the general easement rights in **Section 2.3**. Declarant grants to the Owner of each Lot and any Annexable Property that is made subject to this Declaration, in favor of the Lot or Annexable Property as the dominant tenement over the Paseo Lots as the servient tenement, the following easements. The easements shall be effective upon acceptance of the completed Paseo Improvements by the City.

2.2.1 Paseo Utility and Storm Drainage Easement. The Paseo Lots are subject to easements for utilities, including: (i) rights for the Association to install, maintain, and retain utilities such as electricity, gas, water, and stormwater drainage systems that serve the Paseo; and (ii) public utilities such as joint trench, sewer, and storm drainage systems, including within the Public Access Easement, that serve the private portion(s) of the Paseo Lots. All private utilities serving the private portion(s) of the Paseo Lots shall be located within the portion(s) of the Paseo Lots outside of the Public Access Easement.

2.2.2 Paseo Maintenance and Signage Easement. The Paseo Lots are subject to easements for the right to maintain and/or upgrade the Paseo, including the structure screening and/or enclosing the pump station maintained by the City, and such access as may be reasonably necessary for the Association to perform its maintenance duties as described in **Section 3.1**, and for the right to install, retain, maintain, and/or upgrade signage that serves the Paseo located within the Paseo as may be approved by the Board, subject to any legal requirements for sign installation.



2.2.3 Other Paseo Easements. Each Paseo Lot is subject to such other easement(s), rights-of-way, or dedications as may be granted or reserved on any map, any deed, or any other appropriate recorded document.

2.3 General Easement Rights. Each easement described in **Section 2.1** is subject to, and construed in accordance with, the following provisions, except as otherwise expressly provided for elsewhere in this Declaration: (i) the easement is appurtenant to the dominant and servient tenements and any transfer of a dominant or servient tenement automatically transfers the easement appurtenant thereto regardless of whether the easement is described in the instrument of transfer; (ii) the easement is in perpetuity unless otherwise terminated by operation of law; (iii) all easement uses shall comply with the covenants, rights, duties and restrictions set forth in this Declaration, with all Applicable Laws and with any Rules adopted by the Board under the provisions of **Section 4.6.2**; (iv) each easement granted hereunder exists by virtue of this Declaration, without the necessity of confirmation by any other documents; (v) the easements are nonexclusive unless expressly provided otherwise; and (vi) the easements granted in **Section 2.1** are granted to the Owners of each Lot effective automatically on the date this Declaration and/or a declaration of annexation is recorded in the records of Santa Clara County, California.

2.4 Authority Over Paseo. The Public Access Easement described in **Section 2.1** shall be maintained at all times and no encroachment of the Public Access Easement shall take place without the express prior written authority of the City, pursuant to an easement encroachment agreement. Subject to the foregoing, the Board shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person easements, leasehold estates, exclusive use easements or rights, licenses, lot line adjustments, rights-of-way and/or dedications in, on, over or under the Paseo in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, and other telecommunications equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Paseo or a Paseo Lot; or (iii) accomplish any other purpose that in the discretion of the Board is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Paseo. Each Owner, by becoming a Member of the Association, expressly consents to such action and authorizes and appoints the Association as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot without the prior written consent of that Owner, or grant exclusive use of any portion of the Paseo to any Owner without the consent of a majority of the total voting power of the Association and such consent of the Mortgagees as may be required by **Article 8**.

2.5 Use of Exclusive Use Area. Certain portions of the Paseo may be set aside for the exclusive use of the Occupants of certain retail food and beverage spaces within the Paseo Lots and constitute Exclusive Use Area intended for such uses as restaurant, café and/or bar seating (the "Outdoor Dining Areas"). Outdoor Dining Areas within the Paseo shall be under the jurisdiction of the Association, including the designation thereof, subject to Applicable Laws. The Board may adopt Rules regulating the use of the Outdoor Dining Areas and may license the Outdoor Dining Areas to Occupants of retail food and beverage spaces within the Paseo Lots. Under no circumstances may the right to any Outdoor Dining Area be granted to any Person who is not an Occupant of a retail food and beverage space within a Paseo Lot unless otherwise authorized by the Board.

### Article 3

#### MAINTENANCE, OPERATION, AND PROGRAMMING OBLIGATIONS

3.1 Association's Maintenance and Operation Responsibilities. The Association shall maintain the Paseo in good condition and repair at all times, including, but not limited to, drive aisles (if



any), bicycle pathways, walkways and sidewalks, event spaces and stages, artwork, the pump station screening enclosure, trash collection areas, recreational facilities, landscaping and irrigation systems within the Paseo, lighting fixtures and utilities within and serving the Paseo, storm drainage systems within the Paseo, and sanitary sewer systems serving the Paseo not maintained by a government agency or a regulated utility company. The Association shall be responsible for maintaining all parts of any solar energy systems installed within the Paseo, and shall maintain any part of the solar energy systems and Paseo impacted thereby. Maintenance shall be performed in compliance with the Inspection and Maintenance Standards and Guidelines described in **Section 3.3**. The pump station in or around Parcel 22 shown on **Exhibit D** (but not its enclosing structure) shall be the City's responsibility and, in any event, shall not be the responsibility of the Association.

The Association shall also be responsible for public event programming in the Paseo's gathering spaces. A summary of the guidelines and requirements for such programming is attached hereto as **Exhibit E**. The Board shall have the full right, power and authority to act on behalf of the Association and its Members to operate and manage programming in the Paseo and the consent of the Members shall not be required.

The Association's maintenance responsibilities described in this **Section 3.1** shall commence upon acceptance by the City of the Paseo and subject to the requirements of **Section 4.1**.

**3.2 Maintenance of Exclusive Use Area.** Each Occupant licensed to use an Exclusive Use Outdoor Dining Area (the "Dining Area Occupant") shall maintain the Outdoor Dining Area and all Improvements therein as described in this **Section 3.2** and in compliance with the standards and guidelines described in **Section 3.3**. The Outdoor Dining Area may be used for all commercial purposes permitted by Applicable Laws, subject to any Rules and/or restrictions imposed by the Board even if authorized under local zoning laws. No commercial uses may be conducted in an Outdoor Dining Area until the Dining Area Occupant complies with all permit, licensing, insurance and other Applicable Laws and Board Rules.

The Dining Area Occupant shall allow agents of the Association access to the Exclusive Use Area for purposes of performing any of the Association's maintenance obligations under this Declaration. If any Dining Area Occupant fails or refuses to provide access, the Owner of the Lot on which the Outdoor Dining Area exists shall be responsible for any maintenance and repair costs that could have been avoided if access had been provided, and the Association may levy a reimbursement assessment against the Lot to recover the additional costs.

If damage to any of the Improvements maintained by the Dining Area Occupant is covered by insurance maintained by the Association, the Association, on request from the Dining Area Occupant or subject Paseo Lot Owner, may, at the discretion of the Board, submit an appropriate claim if the claim exceeds the deductible and shall remit any available insurance proceeds to the Dining Area Occupant and/or Paseo Lot Owner on receipt of satisfactory evidence that the proceeds are or will be used for repair. Any deductible amount shall be borne by the Dining Area Occupant and/or Paseo Lot Owner. In lieu of filing a claim, the Board may elect to cover the amount that would have been paid through insurance through other funds available to the Association.

If any Dining Area Occupant fails to maintain his or her Outdoor Dining Area as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Outdoor Dining Area and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot to recover the additional costs.

### **3.3 Inspection and Maintenance Standards and Guidelines.**

**3.3.1 Maintenance Standards.** All Improvements in the Paseo shall be maintained at all times: (i) in good condition and repair, ordinary wear and tear excepted; (ii) in a neat, clean and sanitary condition; and (iii) in proper operating condition. It is intended that the Improvements be maintained in a



like new condition similar to the condition on the completion of the original construction, reasonable wear and tear excepted. Maintenance of the Paseo shall include periodic inspections by a Person competent to conduct the inspection to confirm compliance with the required standards and the inspection and maintenance guidelines described in **Section 3.3.2**. Any maintenance, repair or replacement recommendations resulting from the inspection shall be performed as soon as is reasonably practical after the inspection. In addition, to the extent applicable, all Improvements and landscaping shall be maintained in compliance with the maintenance and inspection guidelines described in **Sections 3.3.1 and 3.3.2**, and commonly-accepted property owners' maintenance obligations.

Paseo maintenance shall include the maintenance of all paved surfaces and curbs in a smooth, level, and evenly covered condition with the type of material originally installed or material that is similar in quality, use and durability; installing, replacing, and keeping in good repair and operation of all necessary and appropriate lighting, signage, striping, curbs and gutters, and performing periodic sweeping and removal of debris.

Storm drainage systems shall be kept free and clear of litter, debris, obstruction, and stored materials at all times. No action shall be taken that would interfere with the operation of the storm drainage system in any manner, or modify any drainage or flow pattern, unless approved by the City and the Board, and in compliance with all Applicable Laws.

Landscaping shall be maintained in a healthy and weed-free condition. Dying or dead vegetation shall be immediately removed and replaced. Maintenance shall include regular fertilization, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed at all times. Appropriate steps shall be taken to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

The pump station screening enclosure may include such Improvements as siding, gutters and/or downspouts, trellises, art, screen and architectural lighting, and other appurtenances. The pump station screening enclosure shall be maintained in good condition and repair at all times normal wear and tear excepted. The exterior surfaces shall be periodically repainted and/or restained, and the roof materials periodically replaced in accordance with a schedule that maintains substantially the same quality of appearance as existed at the time original construction was completed and no less frequently than the periodic repainting and re-roofing recommendations of the manufacturer and/or the Guidelines described in **Section 3.3.2**.

**3.3.2 Inspection and Maintenance Guidelines.** The Board shall adopt guidelines for the periodic inspection and maintenance of the Paseo, including, but not limited to, utility equipment and sanitary sewer and storm drainage facilities maintained by the Association, drive aisles (if any), walkways and sidewalks, bicycle pathways, event structures such as stages, the pump station enclosure, landscaping, and the irrigation system. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

**3.4 Trash Removal.** The Association shall be responsible for the maintenance of the central trash collection points within the Paseo and for the periodic removal therefrom. The Association shall engage a trash removal service to remove trash periodically from these areas pursuant to a schedule that prevents the accumulation of trash in excess of the trash retaining capacity of the areas. All trash or refuse shall be kept only in sanitary containers, which containers shall be kept in the areas approved by the Board. The Association shall take reasonably appropriate, proper and required precautions to protect Persons and property from any injuries or damages from the trash or other refuse generated from the Paseo and shall comply with all laws and ordinances regarding the disposal of any hazardous materials. The Board may adopt rules regulating the trash collection areas.

**3.5 Cooperation and Access.** Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance obligations described in **Section 3.1** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its



managing agent of any maintenance problems for which the Association is responsible and access to the Owner's or Occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance.

3.6 Reimbursement and Indemnification. If the Association incurs any maintenance costs because of the willful or negligent act or omission of any Owner or Occupant or their Permittees, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in **Section 5.6**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of twelve percent (12%) per annum, but not in excess of the maximum rate authorized by Applicable Laws. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount and any costs in excess of such insurance coverage shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible and any amount in excess of insurance coverage.

#### Article 4 THE ASSOCIATION

4.1 Formation of the Association and Commencement of Operations. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than acceptance by the City of the Public Access Easement, which is expected to occur (i) when at least three (3) Paseo Lots have become subject to this Declaration, (ii) after the Paseo is completed on the initial three Paseo Lots, and (iii) this Declaration is recorded. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

4.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, Bylaws and any amendments thereto.

The Board may retain a property manager to manage the Paseo. The Board shall be responsible for supervising the performance of the manager under any management contract entered into by the Association for the management, operation, and maintenance of the Paseo and related Improvements.

4.3 Membership. Each Owner shall automatically be a Member of the Association at the time voting rights vest as described in **Section 4.4**. If there is more than one (1) fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

As described in **Section 1.20**, if any Lot is further subdivided into a common interest development such as a condominium or planned development, the owners association or equivalent shall be deemed to be the Owner of that Lot for all purposes of this Declaration and shall assume all the rights and duties of the Owner of the subject Lot hereunder.

4.4 Voting Rights. Each Lot shall have the number of votes set forth in **Exhibit F** attached hereto. Declarant or, after formation, the Association, shall amend **Exhibit F** whenever more Annexable Property is annexed in order to update the voting allocations. Voting rights shall vest at the time that



assessments are levied against the Owner's Lot. Except as otherwise provided in this Declaration or the Bylaws, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members.

Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(2) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the respective document to be amended.

(3) Legal Requirements. If the voting requirements and/or procedures conflict with any Applicable Laws, the Applicable Laws shall control.

4.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

4.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

4.6.1 Levying Assessments. The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of **Article 5** of this Declaration.

4.6.2 Adopting Rules. The Board may adopt, amend and repeal Rules as it considers appropriate, provided they are adopted, amended or repealed in accordance with all Applicable Laws. Rules shall apply generally to the management and operation of the Paseo and/or the conduct of the business and affairs of the Association and may regulate the use of utilities that are paid by the Association and such other matters as are authorized in this Declaration. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies.

Any Rules adopted by the Board shall apply to all Owners or Occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or Occupant their employees, clients, customers, vendors or Permittees, or a Rule that does not directly affect all Owners or Occupants in the same manner, as long as the Rule applies to all Owners or Occupants.



**4.6.3 Imposing Disciplinary Action.** In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by Applicable Laws and subject to the due process requirements imposed by this Declaration, the Bylaws or by Applicable Laws, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; and (b) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 10.8**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a Member or Member's Permittee or the Member's Occupant or their Permittee, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) **Notice of Hearing.** Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least fifteen (15) days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) **Hearing.** If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) **Notice of Action Taken.** If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten (10) days following the election to impose the disciplinary action.

(d) **No Forfeiture.** Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of this Declaration, the Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) **Assessment Charges.** The provisions of this **Section 4.6.3** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

**4.6.4 Delegating Duties.** Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.



4.6.5 Implementing Special Fees. The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners. Fees not paid in a timely manner may be collected through a reimbursement assessment levied against the Owner's Lot.

4.7 Duties of the Association. In addition to the duties described in the Articles, Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Paseo programming, perform the maintenance and trash collection as described in **Article 3**, prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 3.2**, prepare and distribute financial statements and reports as described in **Section 4.10**, levy and collect assessments as described in **Article 5**, and procure, maintain and review the insurance as described in **Article 6**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

4.8 Taxes and Assessments. The Association shall pay all personal property taxes and assessments levied against the Association or the personal property owned by the Association. If and only to the extent that taxes and/or assessments are levied against the Paseo separate from the remainder of the Paseo Lots, the Association shall pay such real property taxes and assessments. The Association shall not be responsible for payment of any taxes and/or assessments levied against a Paseo Lot beyond the Paseo. Taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.9 Utility Service to the Paseo. The Association shall acquire, provide and pay for water, trash collection, electrical, sewer, and other necessary utility services for the Paseo, including any recreational facilities therein.

4.10 Reporting Requirements. The Association shall prepare and distribute such financial statements and reports as may be required by the Board and by Applicable Laws.

## Article 5 ASSESSMENTS

5.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of a deed to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, any portion of the annual regular assessment not yet due and payable). The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Paseo or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Paseo Improvements, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, upon the recordation of a judgment lien, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Lot unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a judgment lien has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the judgment lien and except as provided in **Section 8.3**.

5.2 Obligations to Pay Assessments If Further Subdivision. If any Lot is further subdivided into additional lots and/or common interest developments (a "Subdivided Lot") and an owners association is formed to manage and maintain the Subdivided Lot, the association shall be deemed the Owner of that portion of the Subdivided Lot for purposes of this Declaration and the association's board of directors shall



have full right, power and authority to exercise all the rights and perform all the duties on behalf of the owners of the Subdivided Lots and the consent of these owners shall not be required. The association shall be obligated to collect the assessment attributable to the Subdivided Lot under this Declaration and remit payment to the Association in a timely manner. If the association fails to pay, the Association may bring an action against the association or against each Subdivided Lot for its allocable share and shall be eligible to recover late charges, interest, collection costs and attorneys' fees as described in **Section 5.10**.

5.3 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment may include a portion for reserves as described in **Section 5.4**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at any time during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

5.4 Reserves. Each annual regular assessment may include, at the discretion of the Board, a portion for reserves in such amount as the Board, in its discretion, considers appropriate to meet the cost of the future repair, replacement or additions to the capital Improvements that the Association is obligated to maintain. Reserve funds, if collected, shall be deposited in a separate account.

5.5 Special Assessments. The Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

5.6 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or Occupant of any Lot or their Permittees. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner and is subject to a reimbursement assessment. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within thirty (30) days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 5.10**.

In addition to reimbursing the Association for costs necessary to repair the Paseo or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or Occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules.

5.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots that are subject to this Declaration no later than the date the Association commences operations as described in **Section 4.1**.

5.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in twelve (12) equal monthly installments and each installment shall be due and payable on the first (1st) day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten (10) days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 10.11**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of ten percent (10%) per annum from thirty (30) days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by Applicable Laws.

5.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated among the Lots in accordance with the allocation described as follows and set forth in **Exhibit F**. One component of the assessments shall be allocated, per grouped parcels, a percentage of the total cost for annual programming and pump station enclosure maintenance based on the square footage net rentable measurements of the grouped parcels shown on **Exhibit F** in relation to the other groups of parcels. The second component of the assessments shall be allocated, also per grouped parcel, so that the Paseo Lot(s) that are then members of the Association shall be allocated fifty percent (50%) of the total cost for annual Paseo maintenance, prorated based on the square footage net rentable measurements of the Paseo Lots, and the remaining grouped parcels that are members of the Association shall be allocated the remaining fifty percent (50%) of the total cost for annual Paseo maintenance, also prorated based on the square footage net rentable measurements of the remaining parcels.

Declarant or, after formation, the Association, shall amend **Exhibit F** whenever more Annexable Property is annexed in order to update the assessment allocations.

5.10 Enforcement of Delinquent Assessments. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees.

5.11 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

## Article 6 INSURANCE

6.1 Association Liability Insurance. The Association shall obtain and maintain the following liability policies:



**6.1.1 General Liability Policy.** A general liability insurance policy insuring the Association, any manager, the Association's directors and officers, and the Owners (including Declarant as long as Declarant owns any Lots) against bodily injury or property damage from an accident or occurrence within the Paseo. The Association shall be the first named insured under the policy. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance (including the commercial general liability and any excess liability coverage) shall not be less than \$3,000,000 covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies. The insurance shall contain coverage terms equivalent to or better than the terms provided by Insurance Services Offices ("ISO") form CG001 or any successor form thereto. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability. Any notice of cancellation or material changes to the policy shall be provided by the issuing insurance company in accordance with the notice requirements in the policy. If cancelled the Board shall replace the policy with a substantially equivalent policy.

**6.1.2 Directors and Officers Liability Policy.** A directors and officers liability policy containing such terms and conditions that are normally and customarily carried for directors and officers of a commercial association.

**6.2 Association Property Insurance.** The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy on the Improvements within the Paseo and Association personal property in such amounts and containing such terms and conditions as the Board from time to time may select.

**6.3 Insurance Rating and Cancellation.** The insurance company providing the Association's insurance under **Sections 6.1 and 6.2**, if applicable, shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if not licensed to do business in the State of California. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes.

**6.4 Board's Authority to Revise Insurance Coverage.** The Board shall have the power and right to deviate from the insurance requirements contained in this **Article 6** in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this **Article 6**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by becoming a Member of the Association, irrevocably appoints the Association or the Insurance Trustee, described in **Section 6.6**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

**6.5 Periodic Insurance Review.** The Board periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the



current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

6.6 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 6.2**, subject to the rights of Mortgagees under **Article 8**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Specific Plan Area is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

6.7 Other Insurance. In addition to the policies described in **Sections 6.1 and 6.2**, the Association may obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by Applicable Laws;
- (ii) fidelity bonds or insurance covering officers, directors and employees who have access to any Association funds; and
- (iii) such other insurance as the Board in its discretion considers necessary or advisable.

#### Article 7 DAMAGE AND DESTRUCTION

7.1 Repair or Reconstruction. If the Paseo or any Improvement within the Paseo is damaged or destroyed by fire or other casualty, the Association shall repair or reconstruct the Improvement substantially in accordance with the original as-built plans and specifications subject to such modifications as may be required by Applicable Laws.

7.2 Reconstruction Contract. If the Paseo and/or the Improvements within the Paseo (collectively, the "Paseo") are to be rebuilt or restored and the repair costs are in excess of \$50,000, the Board shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Paseo in accordance with the original plans and specifications, subject to such changes as may be approved by the Board, the City's "Architectural Review Process", or required by Applicable Laws, and shall award the repair and reconstruction work to the lowest qualified bidder unless the Board in its reasonable judgment elects to select a higher bidder. The Association shall have the authority to enter into a written contract with the contractor or contractors for the repair and reconstruction, and the insurance proceeds held by the Association or insurance trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to ensure the commencement and completion of authorized rebuilding at the earliest possible date.

7.3 Minor Repair and Reconstruction and Deductibles. The Association shall have the duty to repair and reconstruct the Paseo within the Specific Plan Area without the requirement of any consent of the Owners and irrespective of the amount of available insurance proceeds in all cases of partial destruction when the estimated cost of repair or reconstruction does not exceed \$20,000, which amount shall be increased three percent (3%) per annum on a compounded basis commencing on the anniversary date of the recordation of this Declaration and each anniversary date thereafter. The Association may levy a special assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable pursuant to the procedures described in **Article 5**.

7.4 Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days subject to extensions because of delays that are

beyond the control of the Association. The Association immediately shall take such steps as may be reasonably required to secure any hazardous condition resulting from the damage or destruction and to screen any unsightly views.

7.5 Condemnation. If any action for condemnation of all or any portion of the Paseo is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least fifty-one percent (51%) of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Paseo or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Specific Plan Area grants to the Board, and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Paseo or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be allocated equally among the Lots and distributed equally to each Owner and their Mortgagees as their respective interests may appear.

Notwithstanding anything herein to the contrary, the Board may elect to retain all or any portion of any condemnation proceeds with the Association's funds in lieu of distribution.

#### Article 8 RIGHTS OF MORTGAGEES

8.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 8** shall have the definitions contained in this **Section 8.1**. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Lot or other portions of the Specific Plan Area.

8.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

8.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Lots as provided in **Section 5.9**.

8.4 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

#### Article 9 AMENDMENTS

9.1 Amendments. This Declaration may be amended or rescinded in any respect with the vote or written consent of not less than a majority of all votes of the Members, but no amendment or rescission shall be effective until such proposal has been submitted to the City Council of the City of Santa Clara, the City has conducted a public hearing on such proposal, and sixty (60) days have passed since



the hearing and the City Council has not vetoed the proposal. The City has the right and authority to veto any such proposed amendment or rescission that would adversely affect the long-term maintenance of the Paseo. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of the Owners in order to take affirmative or negative action under such provision, the same percentage of such Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee, Owner or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in Santa Clara County, California.

Notwithstanding anything herein to the contrary, the easements appurtenant to any Lot or Annexable Property as described in **Sections 2.1 and 2.2** may not be modified or terminated without the prior written consent of the Owner of the Lot or the owner of the Annexable Property, as applicable.

9.2 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Lot Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, any declarations of annexation, or any exhibits thereto, and the consent of neither the Association nor any Lot Owner shall be required provided that if the correction affects the size, location or access or use rights to any Lot, the consent of that Lot Owner shall be required. The amendment shall be effective when recorded in the records of Santa Clara County, California, signed by an authorized agent of Declarant.

9.3 Mortgagee Reserved Amendment Rights. Notwithstanding anything herein to the contrary, Declarant reserves the right to amend this Declaration as may be necessary or advisable in order to include provisions that satisfy the requirements of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) and/or the federal Department of Veterans Affairs (VA). The Association and each Owner shall fully cooperate in the delivery, execution and recordation of any documents necessary to effect the amendments.

#### Article 10 MISCELLANEOUS PROVISIONS

10.1 Headings. With the exception of **Article 1**, the headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

10.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

10.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

10.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin,



ancestry, familial status, source of income as defined in Government Code section 12955(p), disability, veteran or military status, or genetic information.

10.5 Notification of Sale. No later than five (5) days after the closing of the sale of any Lot, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

10.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

10.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

10.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each annexed Lot in the Specific Plan Area, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Lots in the Specific Plan Area.

Each Owner acknowledges and agrees that if any Person breaches any of the obligations and/or restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including securing a judgment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing any restrictions contained herein. If any Owner or Occupant desires the Association to take any enforcement action, the Owner or Occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within ninety (90) days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

10.9 Term of Declaration and Termination of Association. The term of this Declaration shall be for a period of fifty (50) years from the date on which this Declaration is recorded in the records of the county in which the Specific Plan Area is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten (10) year periods unless (i) this Declaration is rescinded, and (ii) the Association is terminated, by the written consent of Owners holding a majority of the total voting power of the Association, and (iii) the City Council of the City of Santa Clara has provided written consent to such rescission. The rescission shall be effective on recordation of a notice of rescission in the records of Santa Clara County, California, and the rescission of the Declaration and termination of the Association shall only be effective with the prior written approval of the City.



10.10 Attorneys' Fees. In the event of any litigation or alternative dispute resolution procedure arbitration regarding the rights or duties under the Governing Documents of the Association or any Member, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

10.11 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or forty-eight (48) hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Specific Plan Area.

10.12 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by becoming a Member of the Association, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

10.13 Statutory Reference. Any reference to a governmental statute in this Declaration includes any amendments to the statute. If the statute is replaced by an equivalent statute, the equivalent statute shall be the applicable statute.

#### Article 11 ANNEXATION

11.1 Unilateral Annexation. The Annexable Property described in **Exhibit C** or any portion thereof may be annexed and made subject to this Declaration upon the election of the owner of the Annexable Property. Declarant makes no representations or warranty that any Annexable Property will be annexed and has no obligation to annex any Annexable Property.

Each annexation shall be accomplished by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation to subject the property to the terms of this Declaration. Any declaration of annexation recorded in accordance with the terms of this section shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be subject to the provisions of this Declaration and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws and, thereafter, all Owners of Lots constituting a portion of the annexed real property shall automatically be Members of the Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in **Section 5.7**.

A declaration of annexation may be rescinded in any respect with the vote or written consent of not less than a majority of all votes of the Members. If the consent or approval of any governmental authority, Mortgagee, Owner or other Person is required with respect to any such rescission, no rescission shall become effective unless such consent or approval is obtained. The rescission shall be effective on the date a notice of rescission is recorded in the records of Santa Clara County, California. From and after this rescission, the property described in the declaration of annexation shall no longer be subject to the covenants, rights, duties, benefits or burdens set forth in this Declaration except as otherwise provided in the notice of rescission. Any declaration of annexation may be amended or corrected in the manner described in **Article 9**.

11.2 Annexation by Approval. Except for the automatic annexation provision contained in **Section 11.1**, no additional real property shall be annexed without the approval of Members holding two-thirds (2/3) of the total voting power of the Association and such approval of Mortgagees as may be required herein.

*[DECLARANT SIGNATURE PAGES FOLLOW]*

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

**SHAC TASMAN CDM APARTMENTS LLC,**  
a Delaware limited liability company

By: SHAC Tasman CDM Apartments Ventures LLC,  
a Delaware limited liability company, its manager

By: SHAC Tasman CDM Apartments Manager LLC,  
a Delaware limited liability company, its manager

By: Summerhill Apartment Communities,  
a California corporation, its managing member

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

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

Its: \_\_\_\_\_

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

**ST. ANTON TASMAN EAST, LP,**  
a California limited partnership

By: Tasman East Workforce Housing, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Blue Bronco, LLC,  
a California limited liability company,  
its sole member and manager

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

Name: Peter H. Geremia

Title: Manager

By: PacH Anton South Holdings, LLC,  
a California limited liability company,  
its Managing General Partner

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

Name: Mark A. Wiese

Its: President

*[Additional Declarant Signatures on Following Pages]*

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

**TASMAN EAST URBAN HOUSING, LLC,**  
a Delaware limited liability company

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

Name: Nicholas Vanderboom

Its: Vice-President

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

**TASMAN EAST HOLDCO, LLC,**  
a Delaware limited liability company

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

Name: Nicholas Vanderboom

Its: Vice-President

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

**2354 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

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

**5185 LAFAYETTE STREET, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

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

**TASMAN 2278 CALLE DE LUNA, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

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

**2263 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

*[Additional Declarant Signatures on Following Pages]*

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

**2302 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaoff  
Its: Managing Member

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

**TASMAN PROPERTIES, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaoff  
Its: Managing Member

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

**NASH – HOLLAND CALLE DE LUNA INVESTORS, LLC,**  
a Delaware limited liability company

By: HPG Calle De Luna, LLC,  
a Washington limited liability company,  
its Operating Member

By: Holland Partner Group Management, Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_  
Name: John Wayland  
Its: Executive Managing Director of Development, Northern  
California

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

**GREYSTAR GP II, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Troy Vernon  
Its: Development Director

*[Final Signature Page]*



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



EXHIBIT A – Declarants

<u>Declarant</u>	<u>Property Owned by Declarant Within Tasman East Specific Plan Area</u>
2263 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 5 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2302 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2354 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 12 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
5185 Lafayette Street, LLC, a Delaware limited liability company	Parcel 13 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman 2278 Calle de Luna, LLC, a Delaware limited liability company	Parcel 22 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Properties, LLC, a Delaware limited liability company	Parcel 23 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Greystar GP II, LLC, a Delaware limited liability company	Parcels 7 and 18 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Berto Development, a California limited partnership <i>[Include if this is one of the 3 Paseo Lots triggering commencement]</i>	Parcel 17 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
NASH - Holland Calle De Luna Investors, LLC, a Delaware limited liability company	Parcel 19 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Urban Housing, LLC, a Delaware limited liability company	Parcels 24, 25, 26 and 27 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Holdco, LLC	Parcels 20 and 21 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
St. Anton Tasman East, LP, a California limited partnership	Parcel 6 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.

<b><u>Declarant</u></b>	<b><u>Property Owned by Declarant Within Tasman East Specific Plan Area</u></b>
SHAC Tasman CDM Apartments LLC, a Delaware limited liability company	Parcels 1, 2 and 3 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Company, LLC, a California limited liability company as to an undivided 1/2 interest and The Family Trust of Harry Bruce Frumveller and Carolyn Ruth Frumveller, Harry Bruce Frumveller and Carolyn Ruth Frumveller, Trustees, Trust dated June 16, 2014 as to an undivided 1/2 interest <i>[Include if this is one of the 3 Paseo Lots triggering commencement]</i>	Parcel 16 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
TGR Associates, LLC, a California limited liability company	Parcels G, H and I as shown on the Parcel Map filed on July 6, 1978, in Book 422 of Maps, at pages 2 and 3, in the records of Santa Clara County, California.
True Solar USA Inc., a California corporation	Parcel 1 as shown on the Parcel Map filed on June 23, 1980, in Book 465 of Maps, at page 36, in the records of Santa Clara County, California.



EXHIBIT B – The Paseo Lots

2302 Calle del Mundo, LLC	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Company, LLC, a California limited liability company as to an undivided 1/2 interest and  The Family Trust of Harry Bruce Frumveller and Carolyn Ruth Frumveller, Harry Bruce Frumveller and Carolyn Ruth Frumveller, Trustees, Trust dated June 16, 2014 as to an undivided 1/2 interest	Parcel 16 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Berto Development, a California limited partnership	Parcel 17 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
True Solar USA Inc., a California corporation	Parcel 1 as shown on the Parcel Map filed on June 23, 1980, in Book 465 of Maps, at page 36, in the records of Santa Clara County, California.

EXHIBIT C – Annexable Property

Any property within the Tasman East Specific Plan Area that may be subject to this Declaration by the requirements of the Tasman East Specific Plan (as amended from time to time) and/or by the requirements of any other governmental agency.

EXHIBIT D – Paseo Location

*[TO BE ATTACHED WHEN AVAILABLE]*

EXHIBIT E – Summary of City Guidelines and Requirements for Event Programming

1. Paseo events shall occur at least eight times per year, with a minimum of two events per quarter.
2. Paseo events shall be advertised to reasonably reach all City residents, including but not limited to utilizing the City of Santa Clara's Event Calendar, and to all Tasman East residents via property management both onsite and electronically.
3. Excepting unusual circumstances, Paseo events are intended to be available to all members of the public at no cost to the public.

EXHIBIT F – Vote and Assessment Allocation<sup>1</sup>

Parcel No.	Paseo Lot?	Net Rentable		Annual Paseo Maintenance %	Annual Program & Pump Station Enclosure %	Votes
		SF	%			
16-18 & 28	No	562,456	16.40%	8.42%	16.40%	16.4
56-57	No	776,700	22.65%	11.63%	22.65%	22.65
62-64	No	275,360	8.03%	4.12%	8.03%	8.03
58	No	453,417	13.22%	6.79%	13.22%	13.22
11	No	200,900	5.86%	3.01%	5.86%	5.86
19	No	230,650	6.73%	3.45%	6.73%	6.73
29	No	195,395	5.70%	2.93%	5.70%	5.70
60-61	No	231,570	6.75%	3.4%	6.75%	6.75
2	No	62,746	1.83%	0.94%	1.83%	1.83
24 <sup>2</sup>	Yes	91,140	2.66%	50.00% <sup>2</sup>	2.66%	2.66
59	No	91,750	2.68%	1.37%	2.68%	2.68
20827	No	257,287	7.50%	3.85%	7.50%	7.50
<b>Total</b>		<b>3,429,371</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100</b>

<sup>1</sup> Pursuant to **Sections 4.4 and 5.9**, this exhibit shall be amended to update the members of the Association and their billable assessments and votes.

<sup>2</sup> All Paseo Lots that are members of the Association shall share, prorated based on the square footage rentable measurements of the Paseo Lots that are members of the Association, fifty percent (50%) of all annual Paseo maintenance costs.



## ADDENDUM

### to the 2018 Tasman East Specific Plan Final Environmental Impact Report City of Santa Clara

June 2020

#### 1.1 PURPOSE OF ADDENDUM

The California Environmental Quality Act (CEQA) recognizes that between the date an environmental document is certified and the date the project is fully implemented, one or more of the following changes may occur: 1) the project may change; 2) the environmental setting in which the project is located may change; 3) laws, regulations, or policies may change in ways that impact the environment; and/or 4) previously unknown information can arise. Before proceeding with a project, CEQA requires the lead agency to evaluate these changes to determine whether or not they affect the conclusions in the environmental document, consistent with relevant case law.

The EIR for the Tasman East Specific Plan analyzed a change in land use classification from *High Density Residential* to a *Transit Neighborhood* classification for an existing industrial neighborhood, in order to create a Transit-Oriented Development mixed-use neighborhood. The EIR also included analysis of circulation improvements intended to create “complete streets” within the neighborhood. The Plan Area, 46 gross acres in size, is bounded by the City’s Santa Clara Golf & Tennis Club to the north, the Guadalupe River to the east, Tasman Drive to the south, and Lafayette Street to the west. The Plan Area includes approximately 36 parcels currently developed with light industrial and commercial uses, including one City-owned utility parcel, and has a total net land acreage of 41.4 acres with approximately 4.6 acres of public right-of-way.

Since the certification of the Tasman East Specific Plan Final EIR in 2018 (TESP EIR), the City is proposing changes to the Specific Plan, which are the subject of this Addendum. The purpose of this Addendum is to address the project’s likelihood to result in new significant impacts that were not addressed in the TESP EIR.

The CEQA Guidelines Section 15162 states that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance, which was not known and could have not been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative.

The CEQA Guidelines Section 15164 states that the lead or responsible agency shall prepare an addendum to a previously certified EIR if changes or additions are necessary but none of the conditions described in Section 15162 (see above) calling for preparation of a subsequent EIR have occurred.

## **1.2 PROJECT BACKGROUND**

### **General Plan Land Use Classification and Zoning District**

The Specific Plan created a framework for the development of a high-density transit-oriented neighborhood with supportive retail services. The zoning of the Plan Area was reclassified from *Light Industrial* to *Transit Neighborhood*, to allow for development of a high-density residential neighborhood with a mix of uses at the ground floor. The previously intended *High Density Residential* land use classification under Phase II (2015-2023) of the General Plan was reclassified as *Transit Neighborhood* to allow for mid- and high-rise mixed-use development in proximity to existing transit infrastructure and increase the density from 37-50 du/ac to 100-350 du/ac. The classification applies only within the Tasman East Specific Plan boundaries (Plan Area).

### **Development Summary**

The Specific Plan allows construction of up to 4,500 dwelling units and up to 106,000 square feet of retail space including a 25,000 square foot grocery store. The Specific Plan allows for a variety of uses including high-rise towers, mixed-use buildings with ground floor retail space, and live-work spaces. Residences would be allowed at minimum densities of 60 dwelling units per acre (du/ac) on sites smaller than one acre, and 100 du/ac on sites that are one acre or larger. The Specific Plan would also allow, upon issuance of a conditional use permit, an urban school for up to 600 students on two acres. The Plan also proposes 10 acres of non-contiguous parkland, open space, paseos, and private open space, as well as a two-acre, 600 student school, upon issuance of a conditional use permit.

## Surrounding Development

The Related Santa Clara (formerly CityPlace) mixed-use development project comprises five parcels adjacent to the Plan Area and west adjacent to Lafayette Street. The Related Santa Clara project includes up to 1,680 residential units, 700 hotel rooms, approximately 5.7 million square feet of office space, and approximately 1.1 million square feet of retail, restaurant and entertainment uses. In June 2016, the City certified the Final Environmental Impact Report and Master Community Plan for the Related Santa Clara project. The 240-acre mixed-use development will be developed in phases. Construction of the first phase is anticipated to begin in early 2021 and is anticipated to conclude in 2023. Future phases are expected to be developed over a period of 10-15 years subject to market demand. For the purposes of the TESP EIR, Phases 1-3 of Related Santa Clara were included in the background scenario. As part of the cumulative scenario, full buildout of Related Santa Clara (Phase 1-8) was analyzed in the TESP EIR.

## **Circulation Improvements**

The Specific Plan would maintain the existing roadway network and vehicular connections to Tasman Drive and Lafayette Street. Streets within the Plan Area would be designed as “Complete Streets”. As “complete streets”, internal roadways would be accessible for, and balance the mobility of, all users, in addition to supporting local land uses. According to the Tasman East Specific Plan, the transportation network should incorporate safe and convenient pedestrian and bicycle connections to existing transit facilities and neighboring trails. In addition to creating complete streets, the primary roadway network modifications in the Specific Plan involve the extension of Lick Mill Boulevard and Calle Del Sol. Lick Mill Boulevard would be extended through the Plan Area to connect with the existing roadway network and Related Santa Clara to the north. Planned improvements to Calle Del Sol consist of widening the right-of-way by six feet and extension of the roadway north from Calle De Luna to Calle Del Mundo. Calle Del Sol north of Calle De Luna would be a local street and include one vehicular travel lane in each direction. The proposed northerly ROW would accommodate a seven-foot sidewalk, five-foot landscape strip, and street parking in both directions.

### **1.3 DESCRIPTION OF THE PROPOSED PROJECT**

Since the certification of the TESP EIR and adoption of the Specific Plan the City has identified minor modifications to the TESP to facilitate pedestrian and bicycle movement through the Plan Area. Additionally, the City is seeking to clarify the EIR traffic analysis of the retail space to identify equivalent co-working and preschool trip generation which are allowed uses in the TESP. Under the revised project, co-working space would also be allowed on the second and third floors of proposed residential buildings.

The northern extension of Calle Del Sol, between Calle De Luna and Calle Del Mundo, will be designed as a pedestrian and bicycle paseo (refer to revised Figures 2.0-3 to 2.0-6). A public easement will be provided through four affected properties to facilitate a privately owned public open space to be developed incrementally in conjunction with the development of each affected property. At the Primavera Pump Station adjacent to Calle De Luna, an additional setback will be required to

allow for continued operation and enclosure of the pump station. The paseo will also serve as an emergency vehicle access (EVA) lane with electronically retractable bollards to allow emergency vehicles and prevent private vehicle access.

## **1.4 ENVIRONMENTAL IMPACTS OF THE PROPOSED CHANGE**

The discussion below describes the environmental impacts of the currently proposed project, as they compare with the impacts of the previously approved project analyzed in the Tasman East Specific Plan EIR (TESP EIR). Also noted are any changes that have occurred in the environmental setting that may result in new impacts or impacts of greater severity than those identified in the previously circulated EIR.

### **1.4.1.1 *Aesthetics***

The project is not located within a scenic viewshed or along a scenic highway. The Plan Area is not located within a designated scenic area, based on the Santa Clara General Plan. The Specific Plan area and the surrounding area are relatively flat with the exception of the elevated golf course to the north, and are, therefore, not visible from surrounding areas.

The Specific Plan EIR concluded the buildout of the Specific Plan would not substantially degrade the visual character or quality of the Plan Area or its immediate vicinity, block any designated scenic views or resources, or result in a substantial source of additional light or glare. The changes to the proposed project would not result in any new or more severe impacts than those identified in the EIR, because the only physical changes involve the conversion of the northern extension of Calle del Sol from a two-lane road into a pedestrian and bicycle paseo.

### **1.4.1.2 *Air Quality***

The Plan Area is located in the San Francisco Bay Area Air Basin. The air basin is considered a non-attainment area for ground-level O<sub>3</sub> and PM<sub>2.5</sub> under both the federal Clean Air Act and the California Clean Air Act. The area is also considered non-attainment for PM<sub>10</sub> under the California Clean Air Act, but not the federal act. The area has attained both state federal ambient air quality standards for CO. Sensitive receptors are located approximately 150 feet south of the Plan Area. The additional kinds of proposed uses for the second and third floors of buildings would not exceed the equivalent amount of allowed retail square footage and, therefore, would not result in new or more severe air quality impacts from operational emissions (refer to Section 1.4.14 Transportation/Traffic). Modification of the roadway network to construct a paseo would encourage non-vehicular travel within the Plan Area and would not result in substantial additional operational emissions. Construction related criteria pollutant, dust, or TAC emissions would be essentially unchanged for redevelopment within the Plan Area. For both operational and construction emissions, mitigation measures identified in the TESP EIR would be implemented and the changes to the proposed project would not result in new or more severe air quality impacts than those identified in the TESP EIR.

### **1.4.1.3 *Biological Resources***

The TESP EIR identified biological resource impacts to western pond turtles, burrowing owls, migrant birds, nesting birds, wetlands, riparian woodland, riparian buffer, other sensitive habitats,

mature trees, and bird species generally due to increased lighting and predation. Properties located adjacent to the Guadalupe River were generally more likely to have impacts to these biological resources. The proposed roadway network modifications are not located near sensitive habitats and, as with any redevelopment in the Plan Area, would be subject to the mitigation measures identified in the TESP EIR. The proposed changes to the Specific Plan would not result in new or more substantial biological resources impacts than those identified in the TESP EIR, because the changes to the Specific Plan do not involve changes to the overall height or intensity of the project, and do not include additional lighting near riparian areas.

#### **1.4.1.4        *Cultural Resources***

The TESP EIR concluded the Plan Area does not contain known archaeological resources, but due to the presence of adjacent archaeological resources, has a moderate-to-high potential to contain prehistoric cultural resources.

SB 18 (2005) requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process, including amendments to General Plans and Specific Plans. Consistent with this mandate, the City contacted local Native American tribes for consultation on this Specific Plan amendment regarding any tribal cultural resources known to be present in the Plan Area. None of the local tribes have responded to notification of the proposed Specific Plan. There are also no known tribal cultural resources within the Plan Area.

Based on the presence of Pleistocene sediments underlying the Plan Area at depths of 25 feet below ground surface (bgs), there is a high potential for subsurface paleontological resources within the site. The Plan Area does not contain any historic buildings. There is a low potential for historic-era archaeological resources to occur within the Plan Area.

The proposed changes to the Specific Plan, which include the conversion of the proposed Calle del Sol roadway extension to a pedestrian paseo, would not result in new or more severe impacts to cultural resources than those identified in the TESP EIR.

#### **1.4.1.5        *Energy***

Modification of the roadway network to construct a paseo would encourage non-vehicular travel within the Plan Area and would not result in substantial additional fuel use. The additional kinds of proposed uses for the second and third floors of buildings, including co-working and daycare, would not exceed the equivalent amount of allowed retail square footage for the Plan Area and, therefore, would not result in increased energy use from implementation of the TESP (refer to Section 1.4.14 Transportation/Traffic). Co-working and daycare use would adhere to all applicable policies for building energy efficiency and, therefore, are assumed to operate with comparable energy demands to the previously analyzed retail use. For these reasons, consistent with implementation of energy efficiency measures, the updated Specific Plan would not result in new or more severe energy impacts than those identified in the TESP EIR.

#### **1.4.1.6      *Geology and Soils***

The TESP EIR concluded the Specific Plan, in conformance with existing regulations, would not result in significant geologic and soils impacts. The proposed changes to the Specific Plan would not result in new or more severe geology and soils impacts than those identified in the TESP EIR.

#### **1.4.1.7      *Greenhouse Gas Emissions***

The TESP EIR concluded the Specific Plan would be consistent with the City's Climate Action Plan and would not result in greenhouse gas (GHG) emissions exceeding efficiency metrics required to reach state mandated emission reductions in 2030.

The changes to the Specific Plan relevant to the greenhouse gas emissions of the project are the altered circulation network resulting from construction of the Calle Del Sol extension as a pedestrian and bicycle paseo. The use of the planned retail square footage for co-working and daycare uses would not substantially increase greenhouse gas emissions because they would not exceed the equivalent trip generation resulting from the planned retail space. The extension of Calle Del Sol as a paseo would also encourage non-vehicular travel in the Plan Area. The proposed changes to the Specific Plan, with previously identified Climate Action Plan consistency measures, would not result in new or more severe GHG impacts than those identified in the TESP EIR.

#### **1.4.1.8      *Hazards and Hazardous Materials***

The 46-acre Plan Area was utilized for agriculture between the 1930s and 1970s. Between the 1970s and the present, the site has been developed with industrial uses. The project site contains hazardous materials both for ongoing industrial processes and as residual contamination from past use.

The TESP EIR concluded that the proposed Specific Plan would ensure contaminated sites are remediated such that redevelopment of the Plan Area would result in a less than significant hazardous materials impact. The proposed Specific Plan was determined to not result in other significant hazards, including wildfire hazards. The proposed changes to the Specific Plan would not result in new or more severe hazard or hazardous material impacts than those identified in the TESP EIR.

#### **1.4.1.9      *Hydrology and Water Quality***

The TESP EIR concluded that implementation of the proposed Specific Plan, in conformance with existing regulations and mitigation measures implemented in the northwest corner of the Plan Area to address flooding, would result in less than significant hydrology impacts. The proposed changes to the Specific Plan would not modify anticipated fill levels or the planned storm drainage system. The proposed changes to the Specific Plan, therefore, would not result in new or more severe impacts to hydrology or water quality than those identified in the TESP EIR.

#### **1.4.1.10     *Land Use and Planning***

The TESP EIR found implementation of the Specific Plan would not create new land use compatibility impacts due to substantially increasing residential development in this area of Santa Clara. Development of the Plan Area would conform to the *Transit Neighborhood* land use



classification adopted by the City. The proposed changes to the Specific Plan would not result in new or more severe land use or planning impacts than those identified in the TESP EIR.

#### **1.4.1.11      *Noise and Vibration***

Construction related noise and vibration impacts of the Specific Plan were identified in the TESP EIR and would be reduced to less than significant levels with implementation of mitigation measures. The proposed changes to the Specific Plan roadway network would not result in new or more significant noise and vibration impacts than those identified in the TESP EIR.

#### **1.4.1.12      *Public Services***

The TESP EIR concluded the Specific Plan, as analyzed, would result in less than significant impacts to public services. The proposed modifications to the planned roadway network would continue to allow adequate emergency vehicle access to all development within the Plan Area and would not result in new or more severe public service impacts than those identified in the TESP EIR.

#### **1.4.1.13      *Recreation***

The Plan Area is currently not served by neighborhood parkland within a 10-minute walk from the site. The 2018 EIR concluded that the provision of on-site park and recreational space, and payment of parkland dedication fees would ensure impacts to recreational facilities would be less than significant. The proposed changes to the Specific Plan roadway network would provide additional connectivity for pedestrians and bicycles to planned park uses and would not result in new or more severe impacts to parkland or recreational facilities than those identified the TESP EIR.

#### **1.4.1.14      *Transportation/Traffic***

The TESP EIR analyzed transportation and traffic impacts of the proposed project in accordance with the VTA's Congestion Management Program (CMP) guidelines, due to the project's estimated generation of greater than 100 peak hour trips. The Traffic Impact Analysis (TIA) was included in Appendix G of the TESP EIR and analyzed 4,500 residential units, 106,000 square feet of retail space, and a 600-student school. Co-working space and daycare uses are allowed uses under the Specific Plan that may be incorporated in proposed development in the Plan Area. The equivalent retail and school trip generation resulting from co-working space and daycare uses is provided in a trip generation memo prepared by Fehr & Peers in Attachment 1. Based upon the trip generation rates included in Attachment 1 and described above, future development within the Plan Area that proposes co-working and daycare uses would not significantly exceed the retail square footage and student assumptions analyzed in the TESP EIR.

Although VMT is currently the adopted metric for analyzing traffic impacts under CEQA, the City did not have an adopted VMT policy at the time of the adoption of the Specific Plan. The proposed changes to the planned circulation network are part of an existing approval and per the City's recently-adopted VMT Policy, do not require further environmental review. The TESP EIR analyzed traffic conditions using level of service (LOS) consistent with the City's then-current LOS standards. The TESP EIR concluded the project as proposed would result in significant unavoidable or cumulatively considerable impacts to traffic and transportation at 15 study intersections. The trip

generation memo analyzes the proposed changes to the Specific Plan in light of the conclusions reached and mitigation measures proposed in the adopted EIR.

The proposed change relevant to transportation or traffic impacts is the Calle Del Sol extension being converted from a “local street” to a pedestrian paseo. The TESP EIR analyzed the Calle Del Sol extension as a vehicle-accessible “local street”, which would feature up to three vehicular travel lanes, be generally designed to calm traffic, and would be pedestrian focused. Under the newly proposed circulation plan for the Plan Area, the northern extension of Calle Del Sol would be closed to private vehicle use and would serve as a pedestrian paseo with designated pathways for bicycles and pedestrians.

The Traffic Impact Analysis, Appendix G of the TESP EIR, included an Internal Streets Sensitivity Analysis (TIA Appendix I) that analyzed various roadway network alternatives and their effects on intersection LOS. Development of the Plan Area without the Calle Del Sol extension was analyzed and found a limited increase in traffic at the Lafayette Street and Lick Mill Boulevard intersections, due to vehicles being diverted east- and westbound rather than northbound. The analysis concluded, however, any increased traffic would not measurably increase unacceptable LOS at Plan Area intersections.<sup>1</sup> In addition, under the Specific Plan, any northern Calle Del Sol extension was anticipated to be completed as part of Phase Two construction, in order to serve development in the Plan’s Center District. For this reason, vehicular access to the northern Calle Del Sol extension is not critical to overall circulation within the Plan Area. Given the emphasis of the previous “local street” designation on pedestrian use, inclusion of a fully pedestrian serving paseo is not a significant deviation from the objectives of the original plan. Considering the pedestrian focus of the original “local street” designation, the secondary importance of the Calle Del Sol extension to the overall development of the Plan Area, and the less than significant traffic impact of a “no extension” alternative, conversion from a pedestrian focused roadway to paseo would not cause a new or more significant traffic impact than those identified in the TESP EIR.

#### **1.4.1.15      *Utilities and Service Systems***

The TESP EIR concluded the proposed specific plan would require upsizing of a water main in Lafayette Street that would be subject to mitigation measures related to ground-disturbing activities. A new stormwater catch basin within the Plan Area would have similar impacts due to ground disturbing activities and would also be subject to mitigation measures. The proposed Specific Plan would not result in significant impacts to water supply, sewage treatment or conveyance facilities, and solid waste facility capacity. As part of the proposed changes to the Plan Area circulation improvements, construction of the Calle Del Sol extension as a paseo would allow the retention of the Primavera sewer pump station in its current location on-site, and avoid impacts arising from the relocation or undergrounding of the station. Therefore, the proposed changes to the Specific Plan would not result in new or more severe impacts to utilities or service systems than those identified in the TESP EIR.

### **1.5                      CONCLUSION**

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<sup>1</sup> Fehr & Peers. *Traffic Impact Analysis for the Tasman East Specific Plan area: Appendix I. Internal Streets Sensitivity Analysis*. June 2018.

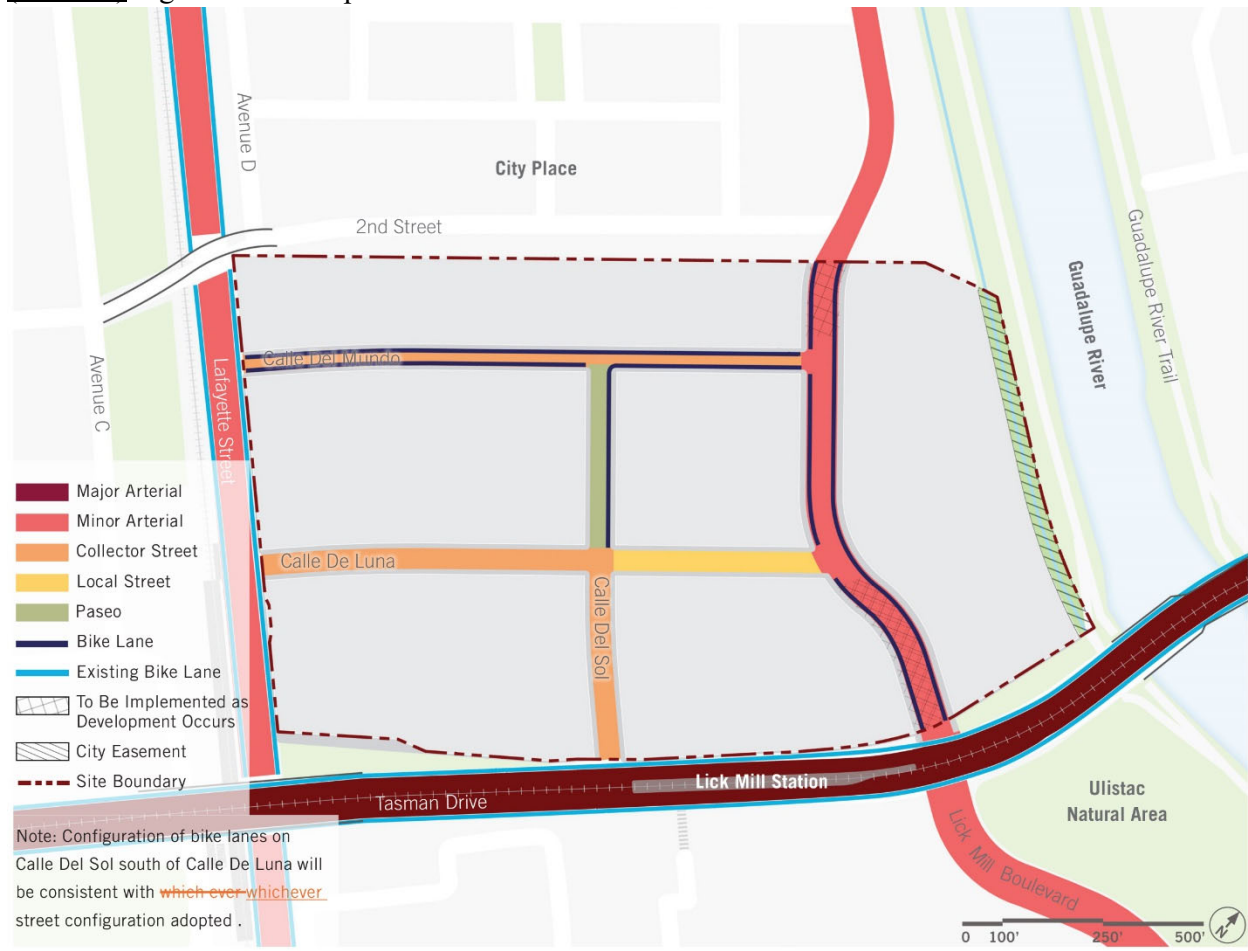
Based on the above analysis, no significant impacts would result from the proposed changes to the Tasman East Specific Plan. The proposed roadway network modifications would not result in new significant environmental impacts, and no new information has come to light that would indicate the potential for new significant impacts or substantially more severe impacts than were discussed in the TESP EIR; therefore, no further evaluation or Subsequent EIR is required. An EIR Addendum has therefore been appropriately prepared, pursuant to Section 15164.

Pursuant to CEQA Guidelines Section 15164(c), this Addendum need not be circulated for public review, but will be included in the public record file for the Tasman East Specific Plan.

(Revised) Figure 2.0-3: Proposed Specific Plan Land Uses



(Revised) Figure 2.0-4: Proposed Circulation Network



(Revised) Figure 2.0-5: Planned Open Space Network





(Revised) Figure 2.0-6: Potential Specific Plan Phasing



Phase One Diagram



Phase Two Diagram

## **Attachment 1: Fehr & Peers Memo**

# Memorandum

Date: June 11, 2020

To: Dennis Dornan, Perkins + Will  
Will Burns, David J. Powers & Associates, Inc.

From: Matt Haynes, Fehr & Peers

**Subject: Land Use Equivalencies for Proposed Tasman East Specific Plan Revisions**

*SJ16-1669.03*

---

Fehr & Peers conducted a trip generation equivalency analysis for a proposed change to the Tasman East Specific Plan (TESP) in Santa Clara, California. The TESP, as originally evaluated, included 4,500 residential units, 106,000 square feet of retail space (including a 25,000 square foot grocery store), and a 600 student school. Currently proposed uses include co-working and day care space, which do not fit into any of these land use categories. The purpose of this analysis is to determine the retail and school land use equivalencies for the proposed co-working and day care uses, based on expected vehicle trip generation rates.

## Analysis Approach

Daily, AM peak hour, and PM peak hour vehicle trip generation estimates were developed for the proposed co-working and day care uses using rates from the Institute of Transportation Engineers (ITE), *Trip Generation Manual*, 10<sup>th</sup> Edition. Co-working space is not specifically identified in the *Trip Generation Manual*, so general office trip generation rates are used.

The co-working vehicle trip rates were then divided by trip generation rates for shopping center (to represent retail space) from the *Trip Generation Manual* to obtain equivalent square feet (sf) of retail space.

Additionally, day care vehicle trip generation rates were divided by the rates for schools used in the TESP to obtain an equivalent student conversion rate.



## Analysis Results

The trip generation rates for the co-working and day care uses are presented in **Table 1**. Rates are shown per thousand square feet of floor area for co-working space and per student for day care space.

**Table 1: Vehicle Trip Generation Rates for Proposed Co-Working and Day Care Uses**

Use	Daily	AM Peak Hour	PM Peak Hour
Co-Working (per thousand square feet)	9.74	1.16	1.15
Day Care (per student)	4.09	0.78	0.79

Source: Institute of Transportation Engineers, *Trip Generation Manual*, 10<sup>th</sup> Edition, September 2017.

Retail trip rates were divided by the trip rates above to estimate equivalent amounts of retail space. The results are presented in **Table 2**. There is a range of equivalencies depending on whether daily, AM peak hour, or PM peak hour trips are used as the basis. The conversion rate to retail space therefore ranges from 0.81 to 3.88 for every 1,000 square feet of retail space.

**Table 2: Retail Vehicle Trip Generation Rates and Conversions**

Land Use	Daily	AM Peak Hour	PM Peak Hour
<i>Trip Generation Rates</i>			
Retail	37.75	0.94	3.81
<i>Equivalent Conversion Rate (per 1,000 of square feet of retail space)</i>			
Retail to Co-Working	3.88	0.81	3.31

Source: Institute of Transportation Engineers, *Trip Generation Manual*, 10<sup>th</sup> Edition, September 2017.

School trip rates were divided by the trip rates above to estimate an equivalent student conversion rate. The results are presented in **Table 3**. The student conversion rate ranges from 0.39 to 1.27 for every student depending on whether daily, AM peak hour, or PM peak hour trips are used.



**Table 3: School Vehicle Trip Generation Rates and Conversions**

Land Use	Daily	AM Peak Hour	PM Peak Hour
<i>Trip Generation Rates</i>			
School <sup>1</sup>	1.61	0.99	0.62
<i>Equivalent Conversion Rate (per student)</i>			
School to Day Care	0.39	1.27	0.78

Source: Institute of Transportation Engineers, *Trip Generation Manual*, 10<sup>th</sup> Edition, September 2017; Tasman East Specific Plan *Trip Generation Estimates Memorandum*, November 2017

Notes: <sup>1</sup> Rates used in the Tasman East Specific Plan are based only on the total number of students assumed to arrive by car. Of the total school size of 600 students, about 390 students (65%) are assumed to arrive via car. The remaining students would arrive on foot or by bike.

## Conclusions

Based on the results shown in **Table 2**, the AM peak hour would yield the lowest trip conversion rate. Using the lowest conversion rate values to be conservative, one could construct 810 square feet of co-working space for every 1,000 square feet of retail space.

In addition, based on **Table 3** results, the daily rate would yield the lowest trip conversion rate for school trips. One could therefore allow 0.39 day care students for every general school student.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA, ADOPTING AN ADDENDUM TO THE 2018  
ENVIRONMENTAL IMPACT REPORT FOR THE TASMAN EAST  
SPECIFIC PLAN**

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

**WHEREAS**, pursuant to the provisions of the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 et seq.) (“CEQA”) together with the State CEQA Guidelines (14 C.C.R. § 15000 et seq.) (“CEQA Guidelines”), on November 13, 2018, the City Council adopted and certified a Final Environmental Impact Report (“FEIR”), making findings with respect thereto and adopting a statement of overriding considerations and a Mitigation Monitoring or Reporting Program for the Tasman East Specific Plan;

**WHEREAS**, amendments to the adopted Tasman East Specific Plan (Amendment #1) are now under consideration to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo and to allow for alternate methods of trip reduction than required as part of the Tasman East Specific Plan which was adopted by City Council on November 13, 2018;

**WHEREAS**, an amendment to the Transit Neighborhood (TN) zoning district is also proposed, to allow non-residential uses within the first three floors of a mixed use building in order to allow flexibility to support commercial uses complementary to residential activity, such as office and co-working uses, within the plan area;

**WHEREAS**, in order to ensure that all potential environmental impacts of the Project were thoroughly analyzed, the City caused an addendum to the FEIR to be prepared pursuant to CEQA Guidelines 15164, attached hereto and incorporated herein by this reference (“Addendum”);

**WHEREAS**, the Addendum to the FEIR provides analysis and cites substantial evidence that supports the conclusion that no subsequent environmental review is required because the criteria of CEQA Section 21166 and CEQA Guidelines Section 15162 requiring additional environmental review under CEQA have not been met;



**WHEREAS**, on August 26, 2020, the Planning Commission held a duly noticed public hearing to consider the Addendum to the FEIR, amendments to the Tasman East Specific Plan (Amendment #1), and the proposed amendment to the Transit Neighborhood zoning district, at the conclusion of which, the Planning Commission voted to recommend that the City Council adopt the Addendum;

**WHEREAS**, the notice of public hearing for the November 17, 2020 City Council meeting for this item was published in the Weekly, a newspaper of general circulation for the City, on November 4, 2020; and

**WHEREAS**, on November 17, 2020 the City Council held a public hearing to consider the Addendum to the FEIR, during which the City Council invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to the Addendum.

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

1. Recitals. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. Findings. That the City Council has exercised its independent judgement and reviewed and considered the FEIR, together with the Addendum, and has determined that the criteria of CEQA Section 21166 and CEQA Guidelines Section 15162 that would have required additional environmental review under CEQA have not been met. Specifically, and without limitation, substantial evidence exists to support the conclusion that no supplemental or subsequent environmental review is required in connection with the City's consideration of Amendment #1 and the proposed amendment to the TN zoning district because (1) the Project would not result in any new or more severe significant impacts than those studied in the FEIR, (2) there exists no new information of substantial importance that would result in any new or more severe significant impacts as compared to those studied in the FEIR; (3) there are no substantial changes in circumstances that would result in any new or more severe significant impacts than those

identified in the FEIR; and (4) there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted.

3. Approval. That the City Council hereby adopts the Addendum for the amendments to the Tasman East Specific Plan (Amendment #1) and amendment to the Transit Neighborhood zoning district.

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

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

Attachment Incorporated by Reference:

1. Addendum

## 02.1 VISION

Northern Santa Clara is at a moment of transformation from a patchwork of industrial parks and single-family communities into a walkable, transit and trail-oriented, high density area offering an urban lifestyle alongside regional destinations. The Tasman East Focus Area will be at the heart of this transformation.

In five to ten years we will likely see approximately half of the Tasman East Focus Area redeveloped with open space and high density residential buildings, including some that offer a mix of ground floor uses to support a vibrant public life. These developments will largely occur at the site's perimeter, fashioning a new identity for the urban neighborhood along Tasman Drive and Guadalupe River Trail. Such development will also bookend gateway developments along Lafayette Street.

At the center of the site, the pace of development may be slower as it will align with property owners' decision to redevelop or continue to operate light industrial businesses. This will lend diverse uses to the neighborhood and new development may choose to enhance this character by adding its own mix of urban industrial uses at the ground level of buildings such as beer gardens, furniture-makers, small press publishers, florists, arts and design activities and performance spaces.

Full buildout of the site will likely occur over the next 20 years, as the development of the center of the site responds to market ebbs and flows.

### **WALKABLE AND TRANSIT AND TRAIL-ORIENTED**

Development will build on the site's rich transit connections to both regional heavy-rail and local light-rail. Light-rail will be within a five-minute walk of every front door.

Connections to the Guadalupe River Trail, a recreational and commuter path for bikers and pedestrians, will carry residents through Santa Clara's unique geography of rivers and creeks south to Downtown San Jose and beyond.

### **COMPLETE COMMUNITY**

The Specific Plan targets the development of up to 4,500 residential units to contribute much needed housing supply in response to City Place's increased local employment opportunities. This will include a variety of housing types, retail and active uses within a vibrant urban neighborhood.

~~A minimum of 10 percent of all units that receive a discretionary approval before 2021 will be affordable by deed restriction to households making an average of 100% of area median income with this number increasing to 15% thereafter. This affordable requirement shall override any other City requirements, including General Plan and Affordable Housing Ordinance. Developments in the Specific Plan area shall adhere to the affordable housing requirements referenced in Section 17.40.115 of the Santa Clara City Code.~~ Other market rate units will be

made affordable 'by design,' with smaller units targeted for young professionals looking for their first apartment, empty-nesters looking to downsize and others who desire a walkable, urban lifestyle.

### **SUSTAINABLE COMMUNITY**

The site will target reductions in carbon emissions by creating a public realm that is well-connected, safe and walkable, decreasing the demands for private vehicles. Residents will take pleasure in choosing active modes of transit and shared mobility options.

### **AUTHENTIC CHARACTER**

The existing legacy of light industrial uses will be maintained and woven into the character of the Focus Area Plan. As some industrial users sell or redevelop their properties into housing, others will have the option to continue to operate their businesses, or sell to future industrial users that are compatible with an urban, mixed use neighborhood.

## 03.5 LAND USE FRAMEWORK

### Focus Area Targets

The Tasman East Focus Area Specific Plan aims to achieve the following targets for different uses within the overall plan area:

- Up to 4,500 dwelling units;
- Affordable housing in conformance with prevailing city ordinance in Section 17.40.115 of the Santa Clara City Code;
- 10 acres of open space distributed between public, private and semi-private spaces;
- Up to 106,000 square feet of retail uses, including a grocery store of approximately 25,000 square feet; and
- Potential for a small, urban school.

### TRANSIT NEIGHBORHOOD USES

#### Principal Use

This zoning district is intended to provide regulatory standards for height, setbacks, densities, parking standards, and allowed uses.

The Tasman East Focus Area will be principally high density, transit-oriented, residential use for sale and for rent. This includes multi-family dwellings, supportive housing and transitional housing. Private parking and home occupation are permitted as accessory uses. Single-family and two-family dwellings are not permitted in this district.

To achieve a vibrant public realm and support a walkable neighborhood, other active uses are encouraged at the ground floor of residential buildings. See Figure 03-5-2 for a full list of permitted, conditional and excluded uses.

### Density

There is a target of 4,500 units in the Tasman East Focus Area. Each parcel of one acre or more in size is required to accommodate a minimum density of 100 dwelling units per acre. Each parcel of less than one acre in size is required to achieve a minimum density of 60 dwelling units per acre. There are no density maximums for individual parcels. Density shall be calculated as net density, which excludes all of the following, whether public or private, from the calculation of minimum density: parks, streets, and greenways.

See Figure 03-5-1 for two scenarios of minimum residential development; one assumes no further consolidation of individual parcels and one assumes consolidation of parcels into an area of at least one acre.

### Retail uses

The Tasman East Focus Area will provide neighborhood-serving retail, which is defined as businesses that provide goods and services that people would frequently use to take care of their personal and household needs. Examples include grocery stores, drug stores, eating and drinking establishments, dry cleaners, hair salons etc.

As indicated in the Land Use Framework diagram rRetail uses are required for ground floor frontages facing onto the existing portion of Calle del Sol, and along the first 50 feet minimum frontage facing the Calle Del Sol Paseo at the intersection with Calle De Luna and Calle Del Mundo, as indicated in the Land Use Framework diagram. Ground floor retail is also required along the Calle Del Sol Paseo, except where active ground floor uses are shown as required. This use is also allowed and encouraged along all ground floor frontages.

### Neighborhood Light Industrial uses

This use is intended to protect existing industrial businesses and provide an opportunity for the inclusion of uses with an industrial character which have public-facing operations such as breweries, wineries, catering companies, garment manufacturers and crafts or artists studios (or similar).

Light industry is intended to accommodate businesses operating substantially within an enclosed building and without provision of storage or side yards. Such permitted uses shall not be objectionable or detrimental to adjacent properties because of signage, noise, smoke, odor, dust, noxious gases, vibrations, glare, heat, fire hazards or industrial wastes emanating from the property.

Neighborhood light industrial uses are also allowed along the ground floor of any building in the Urban Neighborhood district, except where retail uses are required.

### Active uses

To create a pedestrian friendly environment and visual activity at the ground floors of buildings, all buildings shall provide active uses on every frontage facing a public right-of-way, Paseo, greenway or park to the degree feasible, and where not governed by the requirement above to provide retail uses. Building frontage for mechanical equipment, transformer doors, parking garage entrances, exit stairs, and other facilities necessary to the operation of the building are excluded from this requirement.

The following uses qualify as active:

- Retail, Entertainment, Arts and Recreation Use;

- Retail, Entertainment, Arts and Recreation Use;
- Neighborhood Light Industrial Uses;
- Public Uses including a community room, an urban school, a bookmobile dock and/or a book vending machine stocked by the library;
- Residential or live/work units that are individually entered from the street;
- Building lobbies; and
- Spaces accessory to residential uses, such as fitness rooms, work spaces, leasing offices, shared kitchens, mail rooms and Class I bicycle parking facilities with direct access to the sidewalk or street.

#### Public uses

The Tasman East Focus Area will have a distributed, publicly accessible open space system where a series of neighborhood parks are connected throughout the district by a network of streets and greenways. These neighborhood parks and greenways count towards the 10-acre site-wide open space target.

Where parks and greenways are privately owned but publicly accessible, they shall be considered public uses. The Tasman East Focus Area also allows for other public or quasi-public facilities such as schools, municipal facilities, non-profit facilities and neighborhood recreational enterprises.

#### School Facility

The Specific Plan allows an urban school. The location would be identified during Specific Plan implementation. It is assumed that this “urban school” can be located at the ground floor of a mixed-use building and must be accessible to a public open space of a minimum of one acre. This urban school may be private or public.

DEVELOPMENT AREAS		AREA (ACRES)	MINIMUM DEVELOPMENT
Sitewide Areas	Total Site Boundary Area	46.1	
	Developable Area (Total site boundary area, minus: 7.9 acres of existing and proposed ROWs, 0.75 acre SCVWD easement, 5 acres of fixed open space and approximately 1.1 acres of greenways)	31.3	
Residential Scenarios	<b>Scenario 1</b> Assuming no consolidation of smaller parcels and achieving minimum required density		<b>2,830 units</b>
	Parcels larger than 1 acre (minimum 100 du/ac)	23.8	2,380 units
	Parcels smaller than 1 acre (minimum 60 du/ac)	7.5	450 units
	<b>Scenario 2</b> Assuming consolidation of smaller parcels into parcels of at least one acre in size and achieving minimum required density		<b>3,140 units</b>
	Parcels larger than 1 acre (minimum 100 du/ac)	31.3	3,140 units

Figure 03-5-1 Theoretical Residential Yield



\* Dedicated Open Space areas will be implemented through the City's Parkland Dedication Ordinance and the terms of the Specific Plan.

\* Greenway and Park locations depicted are conceptual.

## 03.6 CIRCULATION FRAMEWORK

### COMPLETE STREETS

The streets within the Tasman East Focus Area are designed as “complete streets” designed with people and place in mind, centered around providing a variety of mobility options within an inviting public realm. Complete Streets ensure accessibility for people of all ages and abilities, while balancing multiple mobility needs and supporting local land uses.

The circulation plan includes not only the improvement of existing rights-of-way, but also the addition of new streets to create additional connections in the area.

Streets and other transportation facilities are organized according to typologies that relate to the function and adjacent land uses. All roadways will be designed to accommodate multiple users and anticipated levels of vehicular traffic.

Special attention should be given to ensure safe and convenient pedestrian and bicycle connections to existing transit facilities and neighboring trails.

### PEDESTRIAN NETWORK

The City’s General Plan encourages pedestrian connections from neighborhoods to public amenities and destinations that are accessible to all segments of the population. High quality pedestrian facilities improve the convenience and safety for pedestrians and reduce vehicle trips made for everyday activities. These facilities include sidewalks, paths, pedestrian bridges and crosswalks. In pedestrian-friendly environments, frequent crossing locations are essential to provide direct paths between origins and destinations. Special attention should be given to ensure safe and convenient pedestrian

and bicycle connections to existing transit facilities and neighboring trails.

### BICYCLE NETWORK

Bicycles provide a convenient, active and enjoyable method of travel, particularly for trips less than 4 miles. Bicycle facilities improve safety for cyclists and can also promote reductions in vehicle trips and vehicle miles traveled. A good bicycle network includes bike paths, bike lanes and design treatments such as pavement markings, bicycle signals and bicycle wayfinding.

Lick Mill Boulevard and Calle del Mundo will be the main bicycle streets with dedicated lanes that connect through the neighborhood to the bike lanes on Tasman Drive and Lafayette Street, as well as to the Guadalupe River Trail. All other streets will contribute to the bike network with sharrows to indicate that vehicles should share the road with bicycles.

### VEHICULAR NETWORK

While some roadways are designed to move higher volumes of vehicles quickly and efficiently, other streets prioritize space for pedestrians, bicyclists, on-street parking, loading zones and passenger drop-off locations. There are 3 street typologies derived from the General Plan within the site boundary: Minor Arterial, Collector Street and Local Street; Tasman Drive is a Major Arterial, but lies beyond the Focus Area site boundary. Goals and policies for roadway classifications as described in Santa Clara’s General Plan within the Focus Area are below:

#### Minor Arterials

Minor arterials serve through-traffic and typically include transit vehicles. Minor arterials are generally designed with two to four travel lanes with dedicated left-turn

lanes, traffic signals at major intersections, and parallel street parking. Lafayette Street is a minor arterial that will move traffic to and around the site.

#### Collector Streets

Collector streets typically provide traffic circulation for residential and commercial uses. These streets penetrate residential neighborhoods and typically feature two to four lanes of vehicular traffic. Lick Mill Boulevard will be designed as a collector street that moves traffic at lower volumes through the Focus Area and connects to the broader network of minor arterials. The Lick Mill Boulevard extension is a responsibility of the adjacent City Place development; its timing is independent of the Tasman East Specific Plan.

#### Local Streets

Local streets are designed to calm traffic and give pedestrians priority in terms of scale and facility. These streets typically serve as neighborhood streets, generally providing two travel lanes, on-street parallel parking, bike lanes and sidewalks. The eastern portion of Calle de Luna will be designed as local street. Although the eastern portion of Calle De Luna has the same right-of-way width and lane configuration as the western portion, it is anticipated that traffic volumes will be significantly lower due to the fact that it is not part of the current connection between Tasman Drive and Lafayette Street, thus justifying classification as a Local Street.

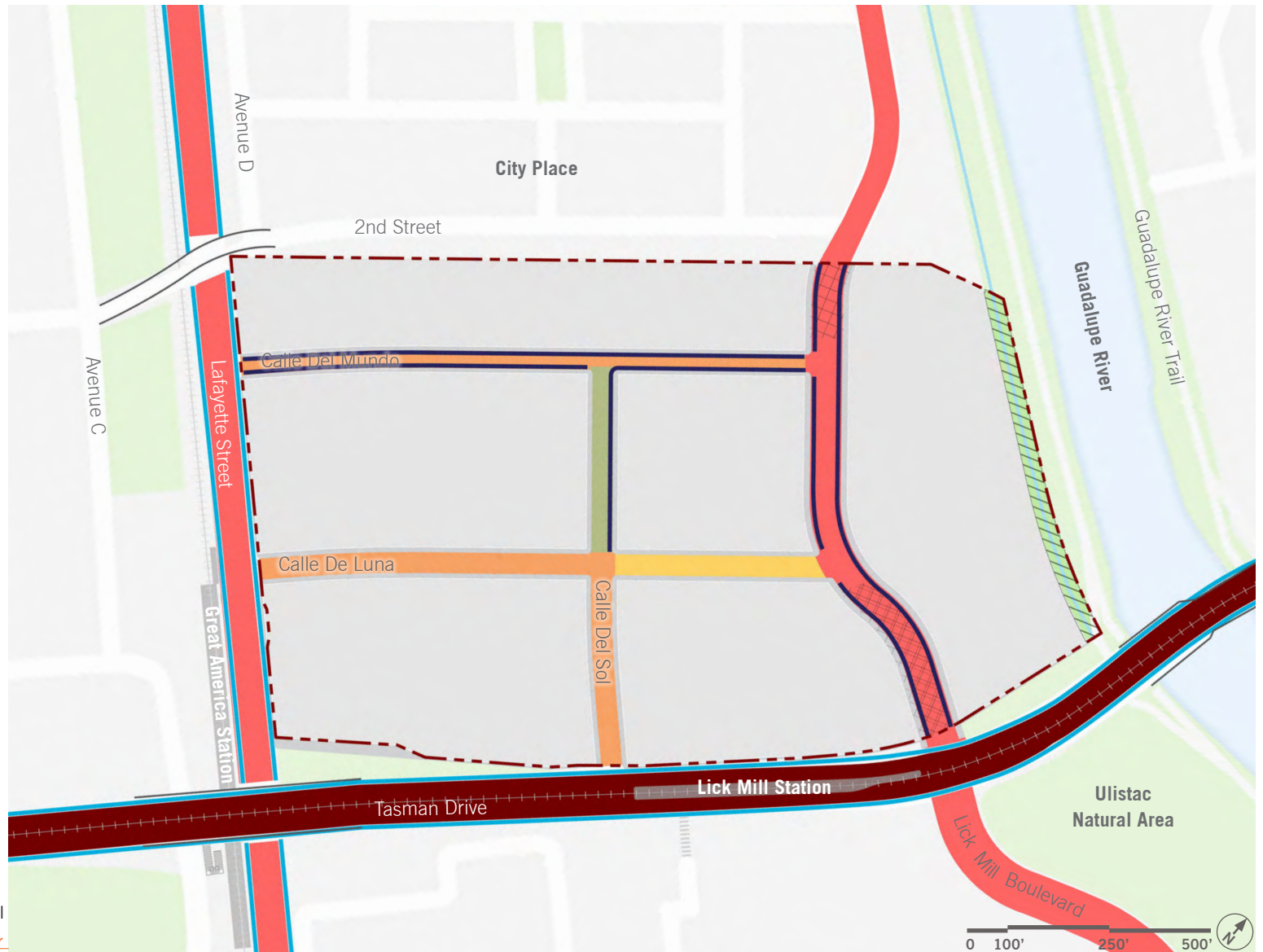
#### Paseo

The northern extension of Calle Del Sol, between Calle De Luna and Calle Del Mundo, is proposed as a pedestrian and bike oriented street with clearance for emergency vehicle access(EVA), but not open to private vehicles.

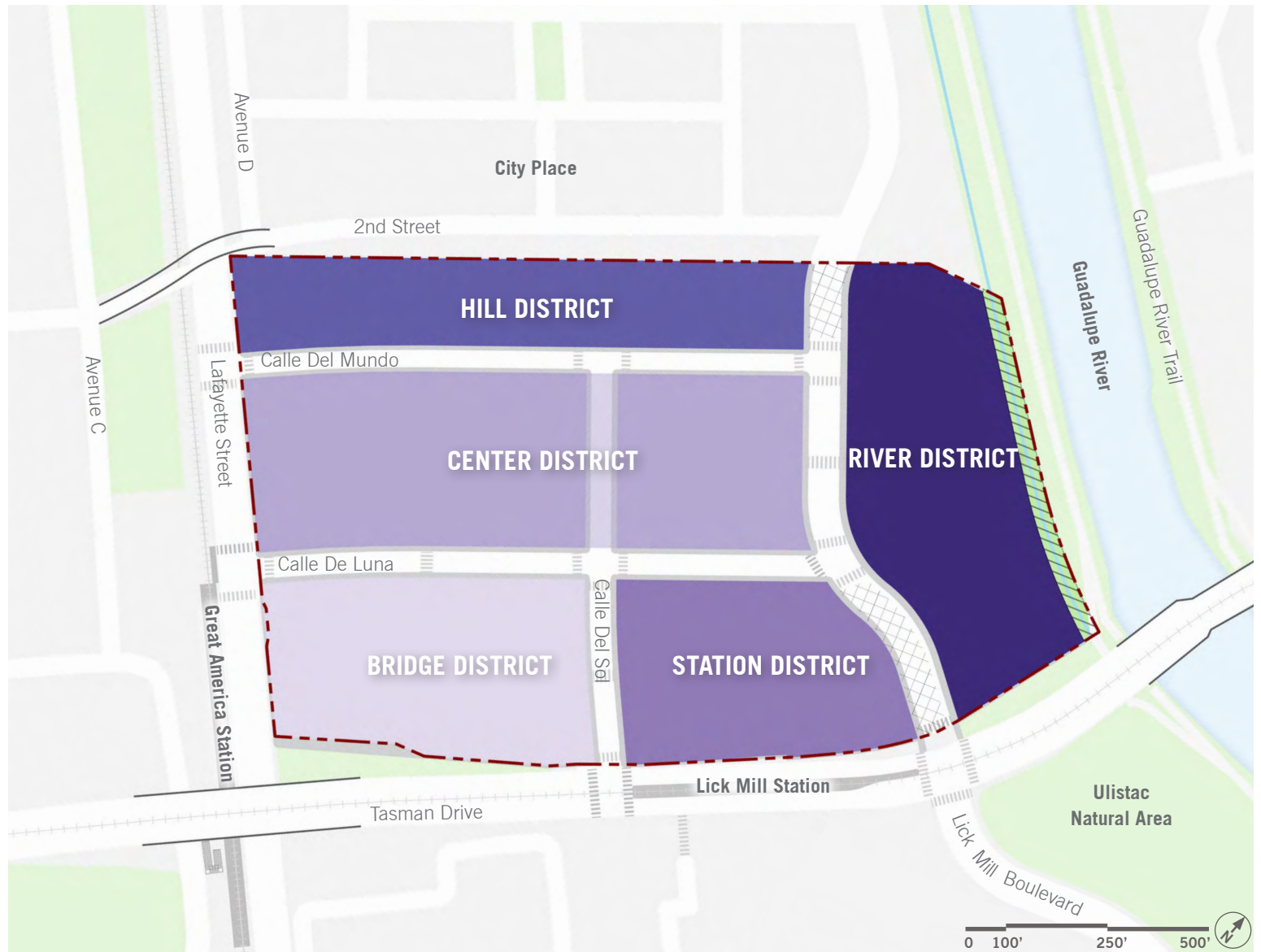


- Major Arterial
- Minor Arterial
- Collector Street
- Local Street
- Paseo
- Bike Lane
- Existing Bike Lane
- To Be Implemented as Development Occurs
- City Easement
- Site Boundary




Note: Configuration of bike lanes on Calle Del Sol south of Calle De Luna will be consistent with which ever whichever street configuration adopted .



**Figure 03-6-1** Circulation Framework



**Figure 03-7-1** Districts

-  To Be Implemented as Development Occurs
-  City Easement
-  Site Boundary

- To ensure visibility and safety, all points along the perimeter of an open space must maintain an unobstructed line of sight to at least one street or greenway frontage;
- The open space shall be generally flat; sloped areas programmed with active uses can be considered for credit.

Privately-owned publicly accessible open space located on a podium must meet all of the above criteria as well as:

- Provide adequate soil volume to support planting; and
- Ensure privacy for podium level units; and.
- Clear and visible signage indicating that the space is open for public use.

#### PRIVATE OPEN SPACE

In the case of PRIVATE OPEN SPACE, up to 50 percent of the area of each open space is eligible for credit toward the TEFA open space requirement. In addition, balconies or stoops that are a minimum of 36 square feet in area

	ACRES
<b>Total Open Space Requirement</b>	<b>10.0</b>
Dedicated Parkland	5.0
Greenways	1.1
Remaining Privately-Owned Open Space	3.9
<b>Need from Each Development</b> (as a percent of 31.35 acres of developable area)	<b>12.5% (or 3.9 acres)</b>

**Figure 03-7-2** Privately-Owned Open Space Requirement as a Percentage of Development Area.

and have a minimum dimension of 5 feet in any direction shall be allowed 25% of area credit toward the TEFA open space requirement.

#### Parkland Dedication Ordinance and TEFA Additions

Privately-Owned Publicly Accessible Open Space and PRIVATE OPEN SPACE as defined in the Specific Plan shall receive Park and Recreational Land PRIVATE OPEN SPACE credits when the combined area of over 0.75 acres meets 4 of the 8 required elements of the Park Ordinance defined in Municipal Code [Section 17.35.070](#) plus two new as noted below.

The eight required elements of the Park Ordinance defined in Municipal Code [Section 17.35.070](#) are listed below for reference:

- Turfed play field, comprised of a single unit of land which is generally level and free of physical barriers which would inhibit group play activities with a minimum contiguous area of one-half acre;
- Children's play apparatus area that conforms to the then current Federal Consumer Product Safety Commission guidelines;
- Landscaped and furnished, park-like quiet area;
- Recreational community gardens;
- Family picnic area;
- Game, fitness or sport court area;
- Accessible swimming pool (minimum size forty-two (42) feet by seventy-five (75) feet) with adjacent deck or lawn areas;
- Recreation center buildings and grounds;

Two additional recreational elements are noted in the Tasman East Focus Area Plan:

- Dog park with a minimum size of 3,000 square feet, and a minimum dimension of 30 feet; and

- Game area, a minimum of 2,000 square feet in area with a minimum dimension of 30 feet. This minimum area can be reduced to 1,000 square feet if next to another open space.

The City has the discretion to also allow Park Ordinance credit for costs associated with off-site improvements in areas which are functionally contiguous to dedicated parkland (or an easement with public access).



## DEDICATED PARKLAND (MINIMUM 5 ACRES)

- Hill District 0.85 acre
- Center District 1.0 acre
- River District 2.5 acres  
(Including 0.75 acre easement)
- Bridge District 0.5 acre
- Station District 0.15 acre

+

## PRIVATELY-OWNED OPEN SPACE

- Greenways
- At Grade & Publicly  
Accessible (100% Credit )
- PRIVATE OPEN SPACE  
(50% Credit )

=

## TOTAL 10 ACRES

Public improvements beyond the site  
not included in 10.0 acres

\* Greenway and Park locations  
depicted are conceptual.

- Paseo
- Public Improvement Beyond  
the Site
- To Be Implemented as  
Development Occurs
- City Easement
- Site Boundary

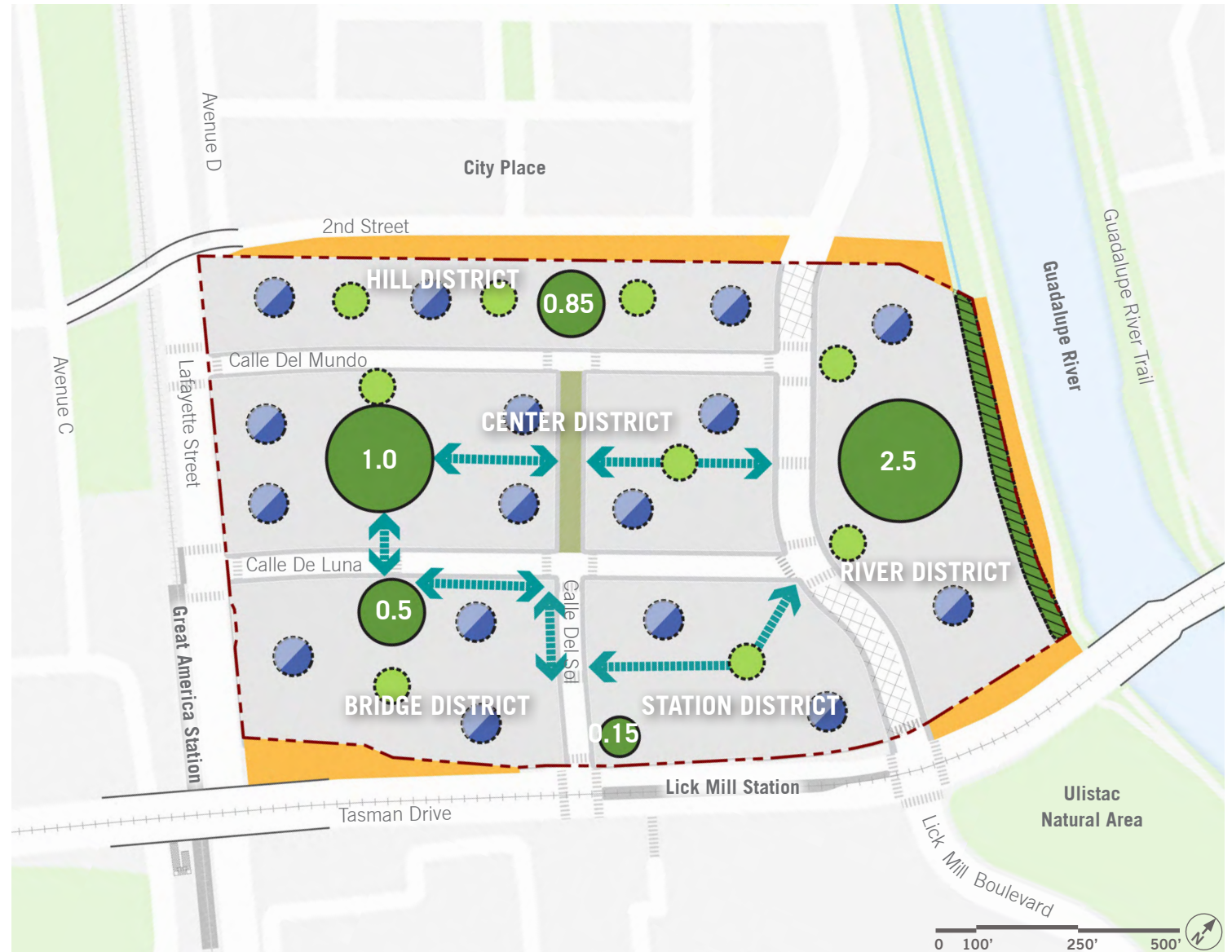
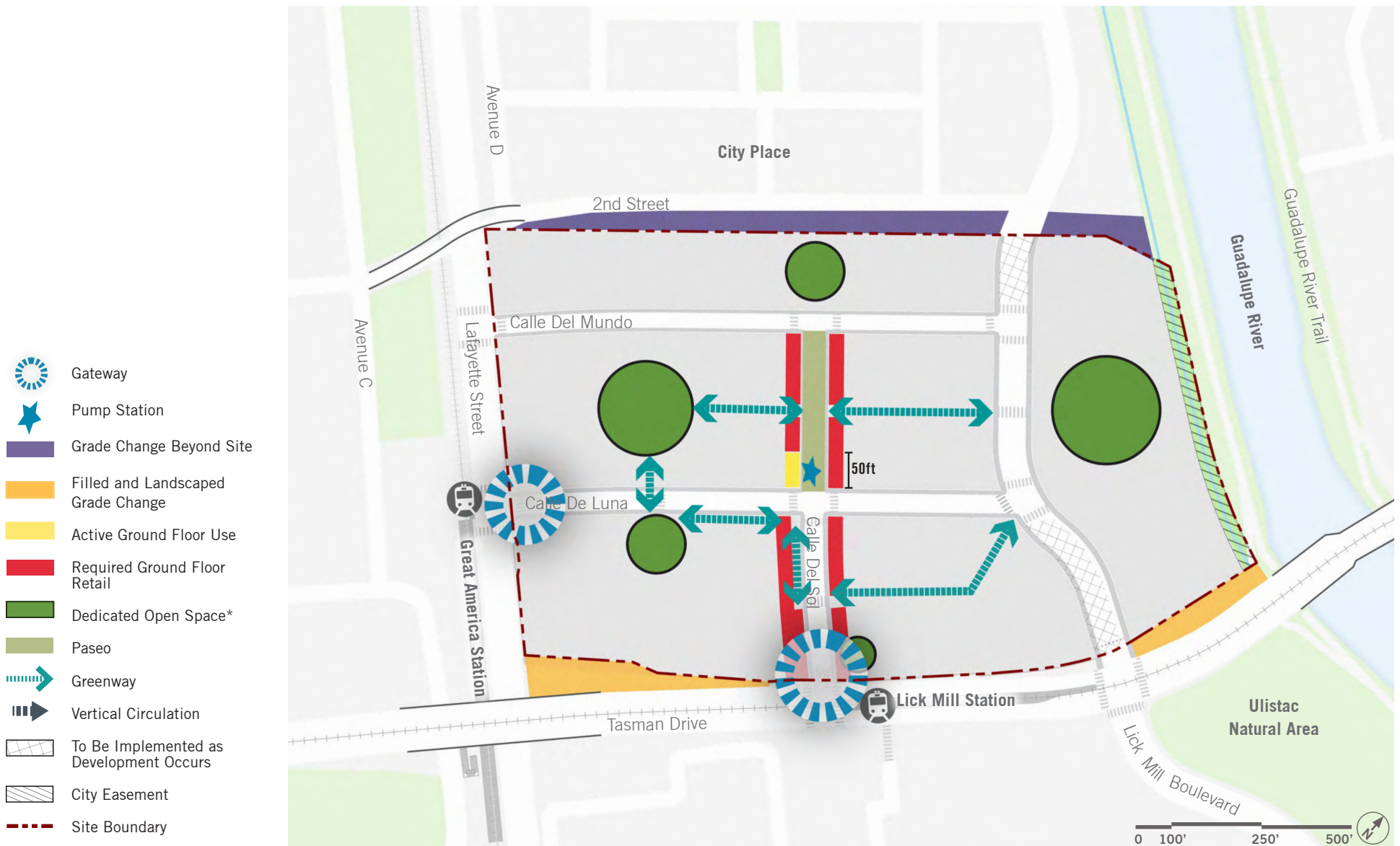


Figure 03-7-3 Open Space Framework



\* Greenway and Park locations depicted are conceptual.

**Figure 03-8-1** Urban Design Framework

## 04.1 RIGHTS OF WAY & SIDEWALK EASEMENTS

### Intent

The street network at Tasman East will be improved to create a safe, comfortable, and complete system. A well designed network will promote walking, encourage cycling and slow vehicles as they drive through this residential neighborhood.

Existing rights of way will remain, but the street network will be expanded to improve connections and increase widths as indicated in Figure 04-1-1.

Calle del Sol will be extended north of Calle de Luna as a pedestrian and bicycle paseo, Lick Mill Road will be extended for all modes of travel through the site northward to create a more robust, connected network. The Calle del Sol and Lick Mill Boulevard extensions will be implemented as development occurs.

Substandard sidewalks will be expanded within the right of way, or through easements within adjacent properties. See Figure 08-1-5 in the appendix for existing pedestrian sidewalks.

All street cross sections and figures shown in this Section of the Specific Plan depict the intent and vision for the individual rights-of-way. Should conflicts with utilities or easements make the right-of-way cross sections infeasible, adjustments to cross sections may be approved at the discretion of the Director of Community Development.

### Standards

- (A) Comfortable sidewalks shall line both sides of every street. A sidewalk easement may be required

within a property line adjacent to a right of way to expand the clear walkway of a sidewalk. Dimensions and locations vary, see Figure 04-1-1 and street sections for requirements. Sidewalk easements are to be measured as a perpendicular dimension from the edge of the right of way, horizontally into the adjacent property.

- (B) Striped pedestrian crosswalks shall be marked at intersections and mid-block crossings as illustrated in Figure 04-1-1.
- (C) Sidewalk extensions or bulb-outs shall be implemented at crosswalks on streets with parking for traffic calming.
- (D) The plan proposes an optional 15-foot diameter traffic circle at the intersection of Calle Del Sol and Calle De Luna as a traffic-calming measure. As an alternative, this intersection may be designed as a 4-way stop. The City of Santa Clara Department of Transportation will determine the daily traffic thresholds, below which the alternative may be implemented.
- (E) The existing sidewalk on Tasman Drive is sub-standard; the sidewalk shall be expanded within the Tasman Drive right of way and in accordance with plans for Tasman Drive (beyond the scope of this Specific Plan).

### Guidelines

- (F) Sidewalks should be designed with considerations for universal accessibility to accommodate people

with disabilities, children, seniors and adults.

- (G) Sidewalks should be designed with adequate space for street furniture that will provide an enhanced pedestrian environment with opportunities for people to linger, socialize and rest.

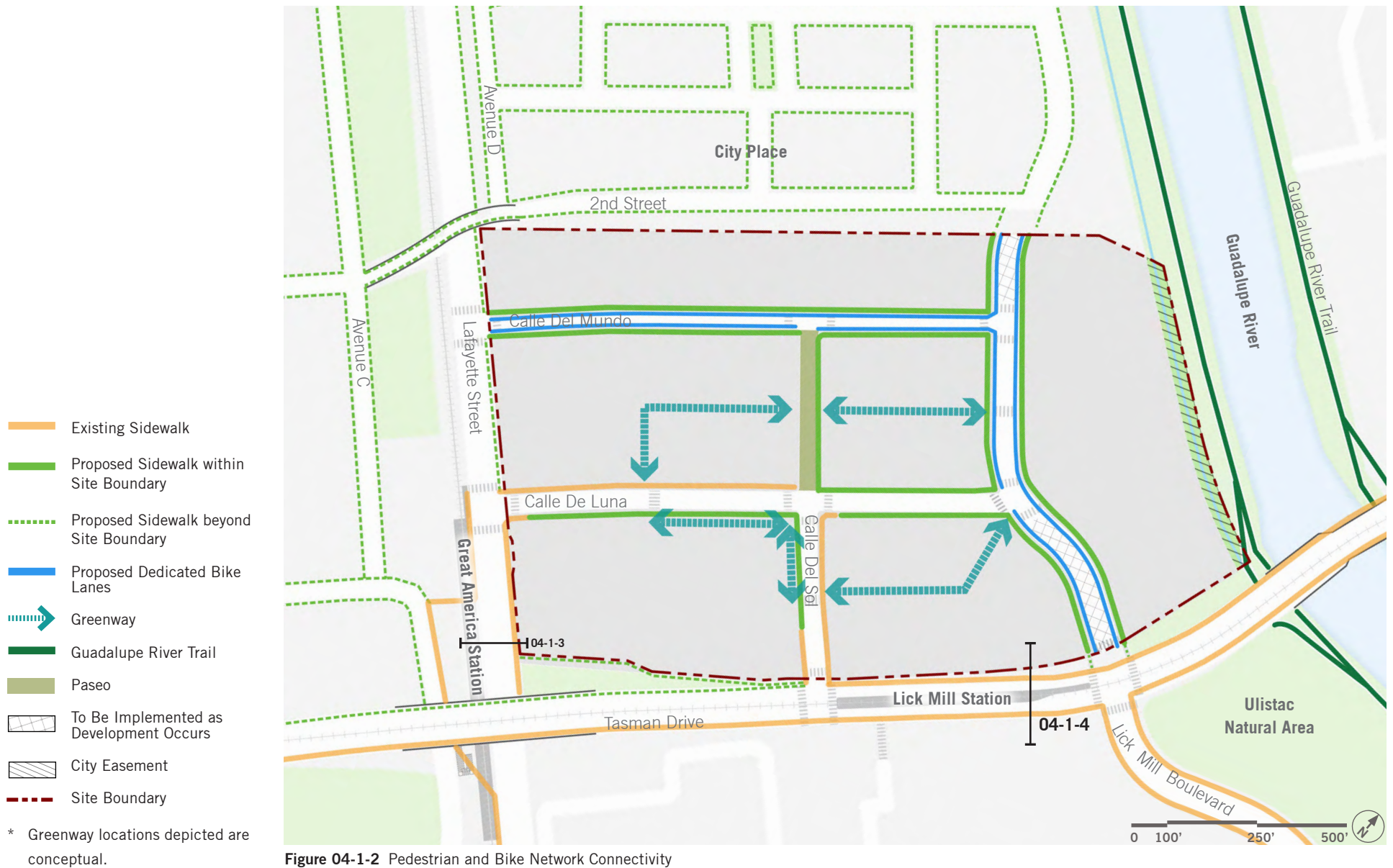


- Existing Right of Way
- Additional Right of Way
- Sidewalk Easement (Beyond R.O.W.)
- Paseo
- To Be Implemented as Development Occurs
- City Easement
- Site Boundary



**Figure 04-1-1** Rights of Way and Sidewalk Easements





## 04.4 CALLE DEL SOL

### Intent

The existing section of Calle del Sol and its intersection with Calle De Sol-Luna will be the main retail focus of the Tasman East neighborhood, home to restaurants, cafes and neighborhood serving amenities that will support a vibrant public life. It will be enhanced and made more pedestrian-oriented, allowing the street to serve as a critical pedestrian link to the VTA Lick Mill Station. In addition to the existing street segment, Calle del Sol will be extended north of Calle de Luna, to connect to Calle del Mundo, creating a more complete street network for pedestrians, bicycles and emergency vehicles.

### Standards

- (A) The alignment and phasing of the northern segment of Calle del Sol will be determined based on the availability of land.
- (B) North of Calle de Luna, Calle del Sol will be designed ~~with street zones and lane configurations~~ as a pedestrian and bicycle paseo according to Figure 04-4-1 and Figure 04-4-2.
- (C) There are several options proposed for the segment of Calle del Sol between Tasman Drive and Calle de Luna that accommodate different levels of vehicular capacity, see Figure 04-4-3 through Figure 04-4-8. The most appropriate option will be selected before adoption of this plan based on input from the Transportation Impact Analysis (TIA).

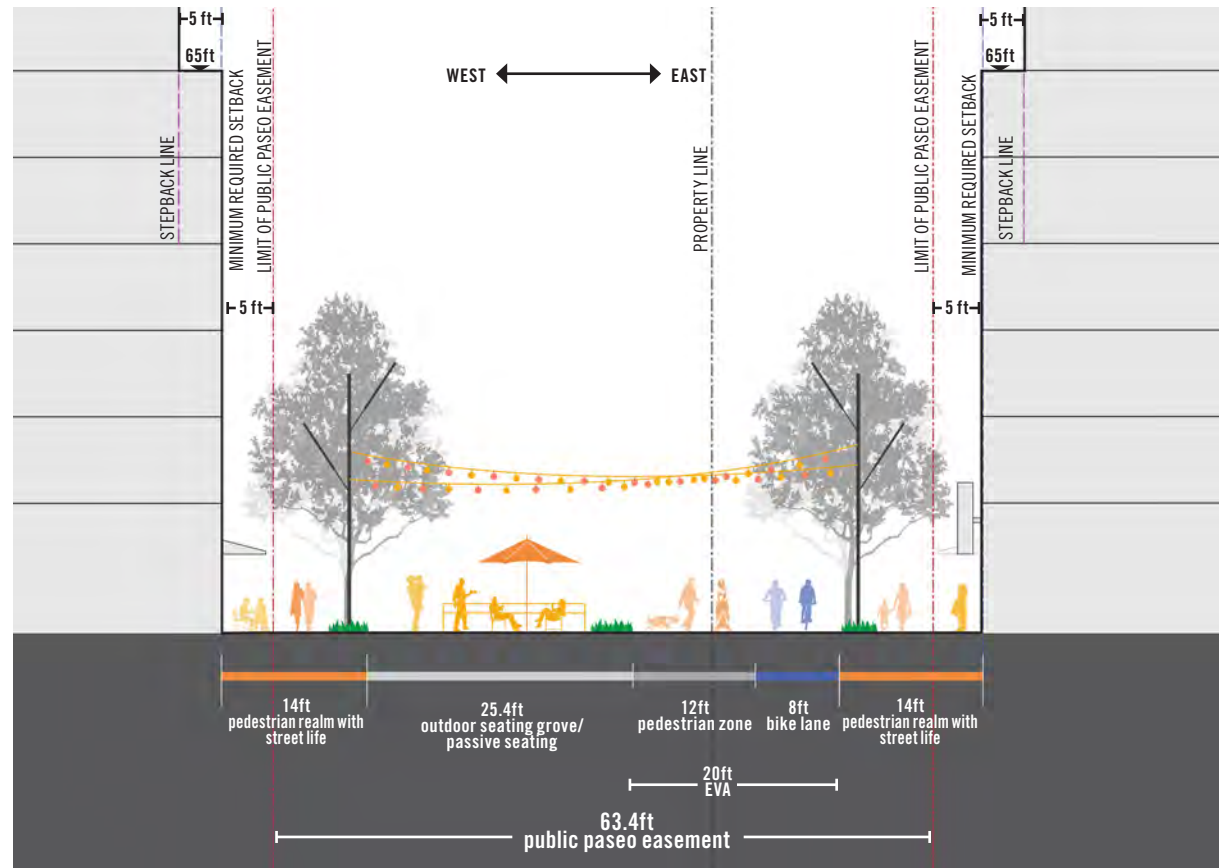


Figure 04-4-1 Calle Del Sol Street Section: North of Calle de Luna & North of Pump Station



## Intent

The proposed location of the Paseo affects four existing properties; development may occur incrementally in conjunction with the development of these properties. A public easement through the affected properties will facilitate a privately owned public open space. Buildings facing each other across the Paseo will be required to be set back from their property lines in accordance with the dimensions shown in Figures 04-4-2 and 04-4-4. The Paseo width shall be in accordance with the dimensions as shown on Figure 4-4-1, 4-4-2 and 4-4-3. At the Primavera Sewer Pump Station enclosure, an additional 15 feet setback will be required on the western adjacent property for maintenance and circulation.

As sections of the Paseo may be constructed by separate entities at different times, the following standards and guidelines will ensure a cohesive design.

## Standards

- (A) The paseo shall provide a continuous 12 feet wide pedestrian 'street life' zone alongside an 8 feet wide two-way cycle track. These two zones shall together constitute a minimum 20 feet wide emergency vehicle lane (EVA), paved with suitable high-quality material to accommodate fire trucks. The cycle track shall be demarcated separately from the pedestrian zone with alternative texture/color/materials and shall include directional striping and signage.
- (B) Both ends of the EVA lane shall be equipped with electronically retractable bollards to prevent private vehicle access but to permit emergency vehicle access.
- (C) In the interim condition where only a portion of the Paseo is constructed at a given phase, the access requirements of (A) and (B) above shall be provided within the partial or the temporary condition.
- (D) The Paseo should include, at various points along its length, gathering areas, seating zones, stormwater management zones, sufficiently large outdoor

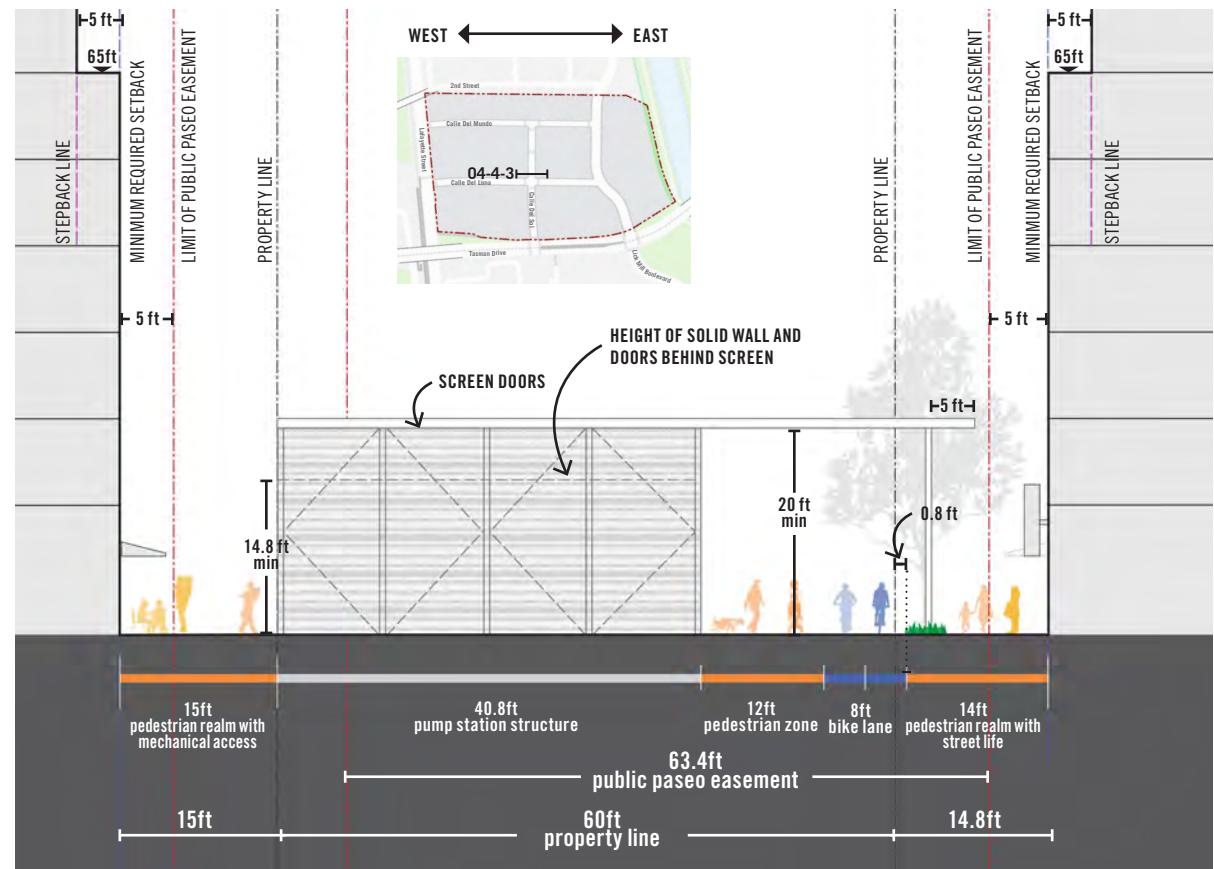


Figure 04-4-2 Calle Del Sol Street Section: North of Calle de Luna

space to accommodate a farmers market, outdoor performance etc. and lawn areas.

- (E) At the southernmost end of the paseo, the existing Primavera Sewer Pump Station and associated equipment must be enclosed in accordance with Figure 04-4-2 and 04-4-3. The relevant developer and/or property owner shall coordinate all access and maintenance requirements with City of Santa Clara Public Works and Planning

Departments. with Santa Clara City staff to determine all access and maintenance clearance requirements and establish the minimum size enclosure required. This enclosure shall be constructed of an inner solid wall, minimum 14 feet 6 inches high, with roll-up shutter-type openings as required for access and maintenance, and an outer screen wall with partial opacity, minimum 20ft high on all sides. The upper portion of the screen wall shall provide ventilation for the enclosure. The outer screen wall shall include 'blind' outward opening

doors, designed to match the fixed sections of screen, to provide access to the inner wall roll-up shutter openings. The design and rating of the wall shall comply with building code requirements for building separation. The enclosure shall be covered with an open trellis which is complementary to the design of the outer screen and which shall provide coverage of the entire enclosure. The trellis may extend on the north, west and south sides up to 10 feet beyond the walls of the enclosure, subject to access agreements on adjacent properties. On the east side, the trellis shall extend a minimum 20 feet to cover the pedestrian zone and bike lanes and be supported by a row of columns in the street-life zone. The screen walls, trellis and supporting columns in the street-life zone shall be constructed of high-quality tactile materials such as stainless steel, wood or terra-cotta or some combination thereof. The design of the enclosure shall be submitted for City approval. If the enclosure is constructed in phases as adjacent development occurs, Phase one shall, at a minimum, include the inner solid walls, outer screen walls and that portion of the trellis which covers the entire enclosure. Future phases may extend the trellis beyond the walls of the enclosure as noted above.

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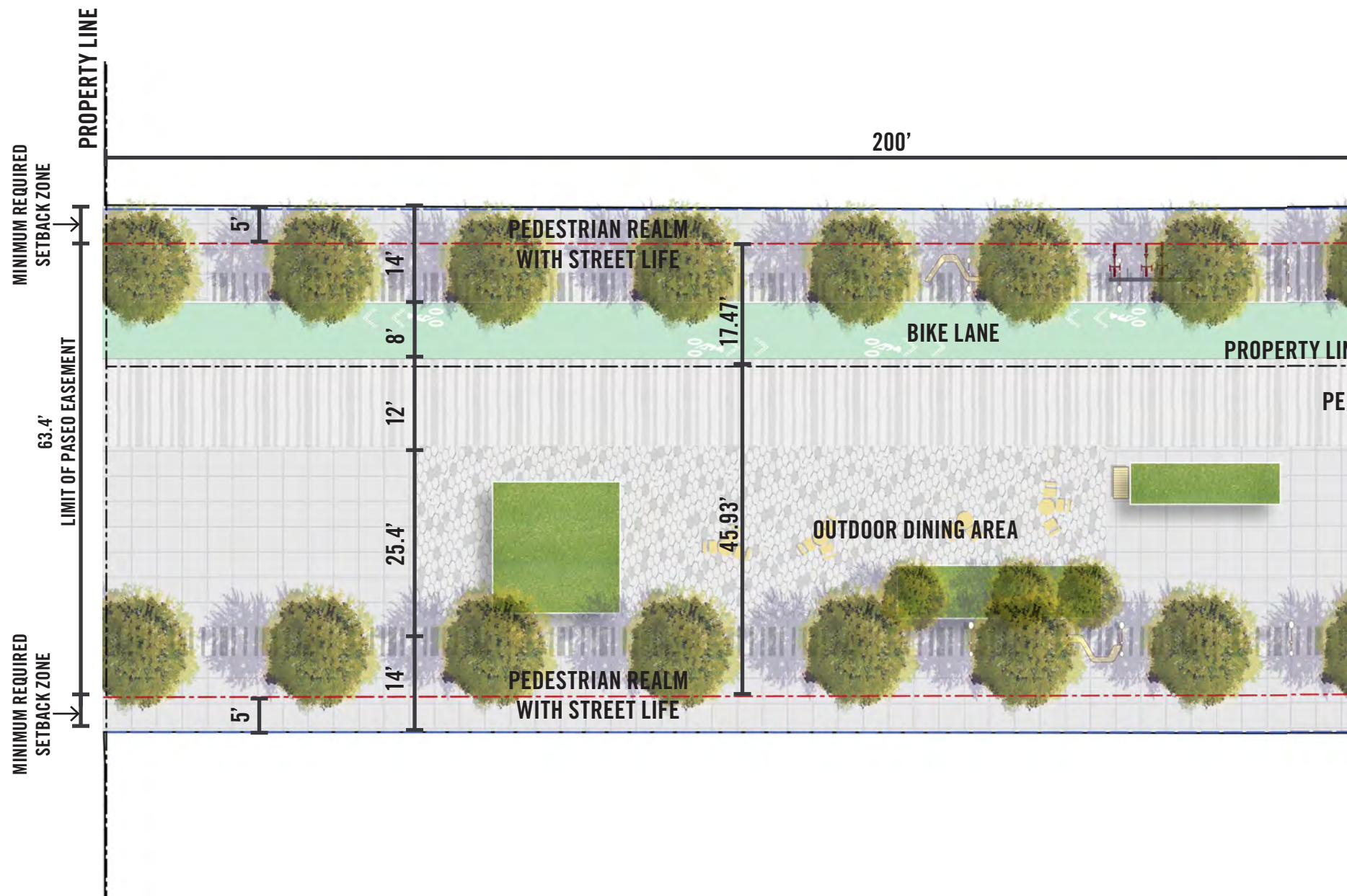


Figure 04-4-3 Calle Del Sol Street Plan: North of Calle de Luna





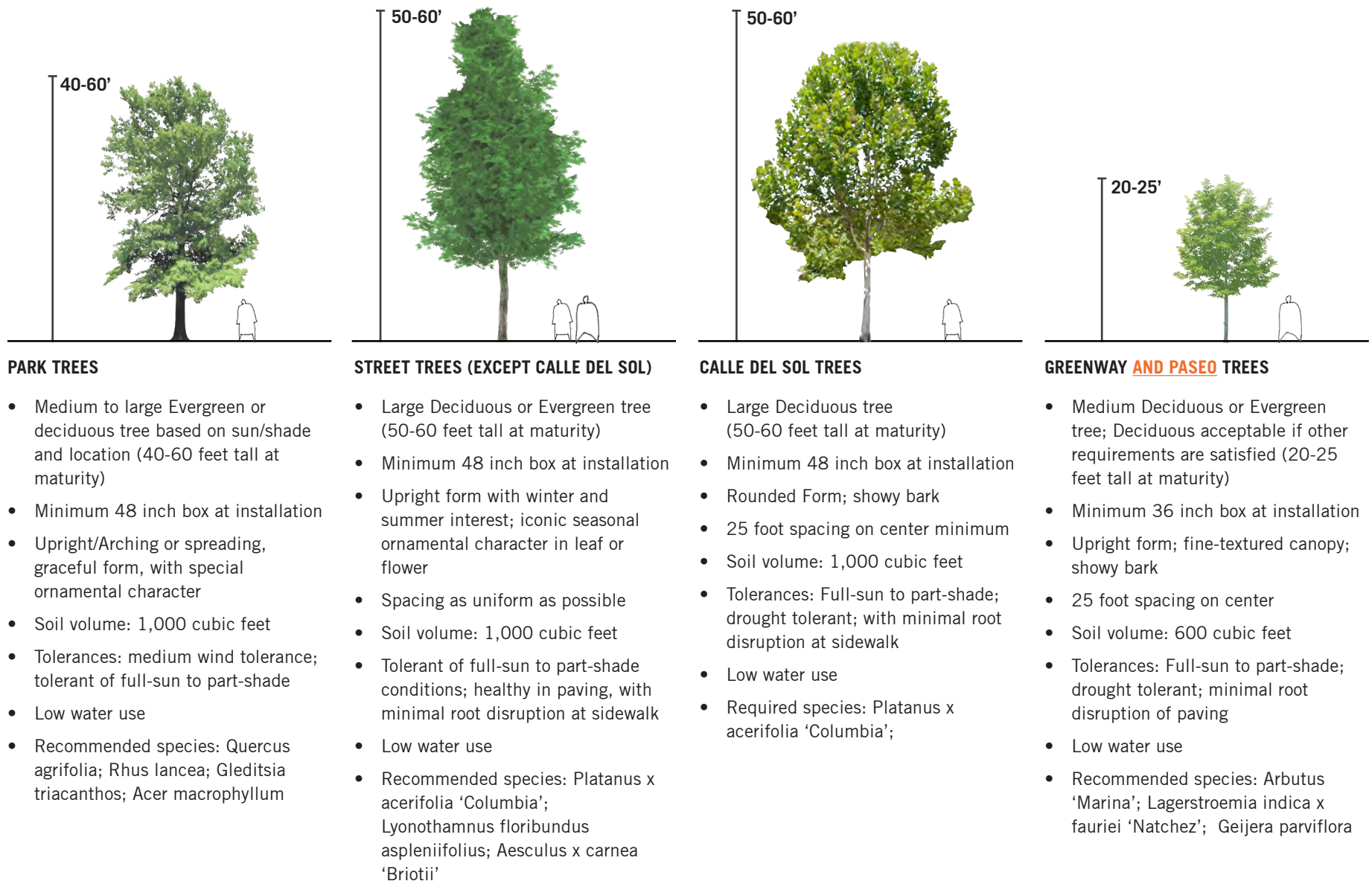







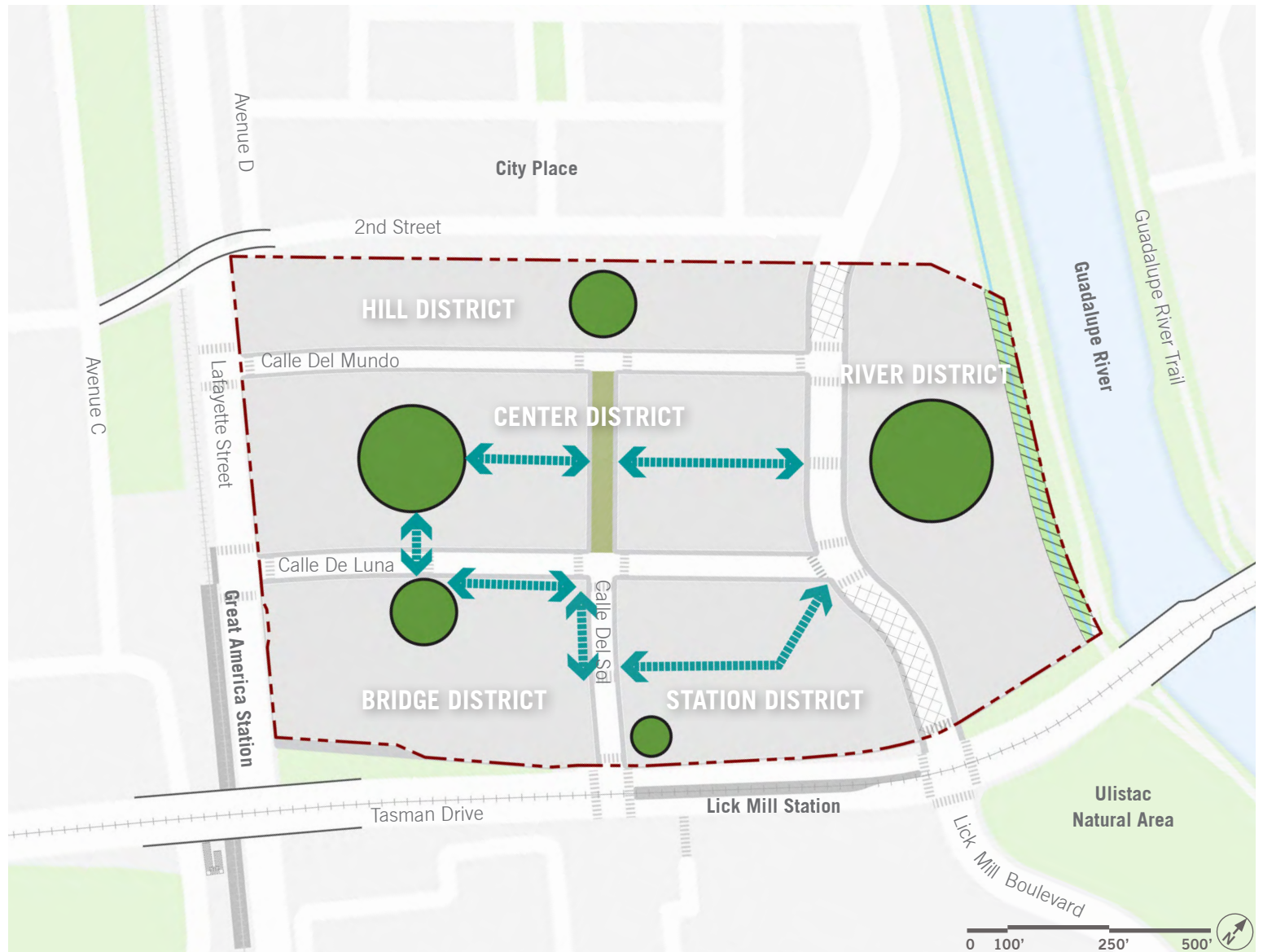


Figure 04-9-1 Urban Canopy Tree Selection

-  Dedicated Open Space
-  Paseo
-  Greenway
-  Vertical Circulation
-  To Be Implemented as Development Occurs
-  City Easement
-  Site Boundary

\* Greenway and Park locations depicted are conceptual.



**Figure 05-1-1** Open Space Locations



## 05.3 HILL DISTRICT

### Intent

The Hill District park could potentially connect the site and City Place's proposed Second Street. Second Street connects northward and serves as an important bridge connection across Lafayette Street.

### Guidelines

- (A) Ramps and stairs should be aesthetically pleasing as well as functional.
- (B) Terraces along the grade change should be designed to serve as meeting points and visual landmarks. In bridging the grade change, the elevated open space should open views to Levi's Stadium, the Guadalupe River and beyond.
- (C) This park should include amenities to support the retail environment on Calle Del Sol neighborhood retail within the district such as flexible seating areas, social gathering spaces, play spaces and public art.
- (D) Surrounded by development on two sides, this park should be designed to be protected from wind and down-drafts from buildings with strategic tree planting and thoughtful siting of passive programming.



Credit: Drew Kelly

*Seating and landscape enhances and diversifies the functionality vertical circulation*



Credit: ASPECT Studios

*Permanent game tables create a social gathering space*



Credit: MVVA Inc.

*A variety of soft and hard scape creates a varied and interesting experience*

## 07.1 FUNDING, FINANCING, AND IMPLEMENTATION

### INTRODUCTION AND APPROACH

The Tasman East Specific Plan specifies new public infrastructure and amenities required to support the emergence of a walkable, transit-oriented district with residential and retail uses. This section outlines a strategic approach to selecting and implementing funding sources for constructing these public improvements. The first part of the strategy identifies major projects and their costs, followed by an overview of funding and financing sources/mechanisms applicable to the projects. This section concludes with a description of the next steps for determining final public and private funding responsibilities and mechanisms.

### MAJOR PROJECTS AND COSTS

The public infrastructure and amenity improvements identified in this Specific Plan fall into three primary categories of streets, utilities, and parks and open space. ~~The s~~Street and utility improvements are estimated to cost a total of approximately \$~~25-30~~~~30-50~~ million (in ~~2018~~~~2020~~ nominal dollars) for related design, construction, and land acquisition, ~~demolition, and construction costs. Implementation of the Plan relies on the creation of an Infrastructure Fee, which will assign the individual developments a prorated share of the \$25-35 million infrastructure costs. These improvements do not include project frontage sidewalks, driveways, curb & gutter, ADA ramps, streetlights, or utility lateral connections. To complete the street and utility improvements, there is a proposed Infrastructure Impact Fee for proposed residential development within the Specific Plan area. The proposed fee will be determined by dividing the total cost of street and utility improvements by the total number of residential units within the Specific Plan area. This fee will be due prior to issuance of building~~

### FUNDING SOURCE CATEGORIES AND EXAMPLES

CATEGORY	EXAMPLES
Developer Contributions	<del>Infrastructure Fee</del> Development Standards CEQA Mitigations <del>Infrastructure Fee</del> / Impact / In-Lieu Fees Negotiated Agreements
City Resources	General Fund Capital Improvement Program User Fees
Outside Grants	Regional, State, and Federal Grants
District-Based Tools	Assessment District Community Facilities District Enhanced Infrastructure Finance District

permits. The City Council will review and adopt the Infrastructure Impact Fee, which is anticipated to include funding the costs of the following construction items:

- ~~Relocation of Sanitary Sewer: Upgrades to the Primavera Sanitary Sewer Pump Station, a pump station enclosure with enhanced design and art work;~~
- Storm Drainage: Storm drain extension at Calle de Mundo at Lafayette Street and a 33-inch storm drain relocation.
- Pavement repair on Calle de Luna, Calle de Mundo, Calle de Sol
- Calle de Sol Pedestrian and Bicycle Paseo: Paseo construction and land dedication costs

- Traffic mitigations and fair share funding, new traffic signals, and traffic safety devices
- ~~Rabello & Northside Pump Stations Resizing~~
- Water line replacement on Calle Del Sol, Calle De Luna, & Calle De Mundo
- ~~Water line upsize (12-inch to 16-inch on Lafayette Drive~~
- New Recycled Water Lines
- ~~Storm Drain Extension for Calle Del Mundo/Lafayette~~
- ~~Calle Del Sol Extension~~
- ~~Pavement Repair, Overlay, Reconstruction, Striping, and Pavement Markings~~
- ~~Traffic Mitigations identified in EIR~~

## FUNDING SOURCE CATEGORIES AND EXAMPLES

### CATEGORY EXAMPLES

Developer Contributions Infrastructure Fee Development Standards

CEQA Mitigations

Impact / In-Lieu Fees

Negotiated Agreements

City Resources General Fund

Capital Improvement Program

User Fees

Outside Grants Regional, State, and Federal Grants

District-Based Tools Assessment District

Community Facilities District

Enhanced Infrastructure Finance District

The Tasman East Specific Plan will also require ongoing funding for operation and maintenance costs associated with new infrastructure, amenities, and general population growth. Examples include street maintenance, park maintenance, police and fire services, general government services, and administrative costs for implementation of the Specific Plan and any Transportation Demand Management programs.

## FUNDING AND FINANCING SOURCES AND MECHANISMS

A spectrum of potential funding sources and mechanisms exist for implementing the improvements identified in

the Tasman East Specific Plan. This section describes these sources and mechanisms and their potential uses in Tasman East. In many cases, While the Infrastructure Fee is anticipated to contribute substantial funding for the improvements, in some cases multiple funding sources ~~will~~ may need to be combined to pay for specific projects.

Although the terms “funding” and “financing” are often used interchangeably, there is an important distinction between the two terms. “Funding” typically refers to a revenue source such as a tax, fee, or grant that is used to pay for an improvement. Some funding sources, such as impact fees, are one-time payments, while others, such as assessments, are ongoing payments. “Financing” involves borrowing from future revenues by issuing bonds or other debt instruments that are paid back over time through taxes or fee payments, enabling agencies to pay for infrastructure before the revenue to cover the full cost of the infrastructure is available.

Funding for improvements in Tasman East will come from a mix of developer contributions (both required and negotiated), city resources, outside grants, and district-based “value capture” mechanisms. The funding responsibilities for private developers and the City are clear in some instances – for example, developers must meet minimum development standards requirements and pay citywide impact fees for infrastructure. However, funding many of the infrastructure improvements in Tasman East – improvements that are necessary to support the higher-density growth mutually desired by the City and developers – will require negotiations with developers and property owners to clarify funding responsibilities and to establish new mechanisms, such as the Infrastructure Fee.

Implementation of the Tasman East plan will also require more detailed studies and an ongoing management process involving the City, developers/property owners, and local utility providers. This process is described in more detail following this description of funding sources.

### Developer Contributions:

- **Development Standards:** Each new development project will contribute to the Specific Plan's implementation by meeting requirements regulating each project's land uses, height, density, bulk, parking requirements, on-site circulation, on-site open space, street frontage improvements, and other requirements specified in the Specific Plan. These standards are adopted in the City's zoning ordinance and must be satisfied in order for a project to be granted approval.
- **Infrastructure Fee:** As stated above, there are \$25-35 million of anticipated infrastructure improvements, which will be paid for by the individual developers through a prorated Infrastructure Fee. The Infrastructure Fee is subject to City Council review and approval.
- **Reimbursement Agreements:** If a developer is required to provide additional infrastructure capacity or amenities to serve the entire district, a reimbursement agreement ~~can~~ could be established to receive payments from later developers who benefit from these early improvements.
- **CEQA Mitigations:** As a requirement of approval under the Specific Plan Environmental Impact Report, developers may be required to contribute to mitigation measures. Traffic mitigations are anticipated to be paid for through the Infrastructure Fee.

- **Impact / In-Lieu Fees:** Impact fees are one-time fees imposed on new developments to pay for improvements and facilities that either serve the new development or reduce the impacts of the project on the existing community. Fee revenues cannot be used to fund existing deficiencies in infrastructure. The City of Santa Clara already has citywide impact fees for traffic mitigation, sanitary sewer, storm drain, and parks, but ~~may can~~ also ~~choose to~~ establish fees unique to the Specific Plan Area through a nexus study. Any Specific Plan fee and corresponding study will be brought forward for City Council review and approval.
- **Negotiated Agreements:** Community benefits are developer contributions that exceed the baseline features required under development standards, environmental mitigation measures, and ~~impact~~ fees. Community benefits agreements can be negotiated with developers individually, but the existence of multiple major developers in Tasman East creates an opportunity to craft a negotiated agreement with these developers simultaneously.

#### **City Resources:**

- **General Fund:** General Fund revenues include property tax, sales tax, transient occupancy tax, and other revenues that are primarily used to pay for ongoing municipal services and operations. Both the General Fund and the Capital Improvement Program are likely to be needed to fund the Specific Plan's highest-priority infrastructure improvements.
- **Capital Improvement Program (CIP):** Infrastructure projects identified in the Specific Plan are candidates for inclusion in the City's Capital Improvement Program.
- **User Fees:** User fees and rates include the fees charged for the use of public infrastructure or goods. It may be possible to use a portion of user fee or rate revenue toward financing the costs of new infrastructure, but user fees are unlikely to be a major source of funding for implementation of the Specific Plan.

#### **Outside Grants:**

Various federal, state, and regional grant programs distribute funding for public improvements. Because grant programs are typically competitive, grant funds are an unpredictable funding source, and the City of Santa Clara must remain vigilant in applying for grants to implement the Specific Plan. Unique grant funding opportunities may become available due to Tasman East's designation as a priority development area and its inclusion of high-capacity transit service.

#### **District-Based "Value Capture" Tools:**

Land-based financing tools are typically associated with new real estate development to generate benefit-based special assessment revenues or property tax revenues to finance improvements through bond repayment or paying for improvements over time. District-based tools provide a stable revenue stream while ensuring that properties benefitting from improvements also contribute to those public investments. The following table describes the three primary types of district-based funding and financing tools. Note that assessment districts and community facilities districts primarily capture additional funding from private entities, while the enhanced infrastructure financing district reinvests growth in public property tax revenues within the district.



## IMPLEMENTING THE INFRASTRUCTURE IMPROVEMENTS

The envisioned growth in Tasman East represents a long-term, ongoing generator of operating revenues for Santa Clara. Tasman East is likely to generate significant net revenue due to increases in assessed values. Growth will also help the City of Santa Clara accommodate desired housing increases in a format and setting that encourages fewer automobile trips on the City's roadways.

Achieving these fiscal, housing, and transportation benefits will require new infrastructure and amenities identified in this Specific Plan. Some infrastructure items need to be constructed or initiated in the early stages of transformation to support future population densities and avoid missed opportunities for land acquisition. Thus, the City must play an active role in these early investments, while ensuring that each development project contributes its fair share toward capital and operating costs.

The following implementation strategy outlines the process for delivering the infrastructure and programs necessary to support Tasman East's growth. ~~The actions are incorporated in the larger Implementation section of this plan.~~

### Short-Term Actions: Immediate Steps

"Short-term actions" should be undertaken immediately upon adoption of the Tasman East Specific Plan. These actions include determining more detailed costs of area improvements, establishing the specific legal mechanisms to fund development and implementation of the Specific Plan itself, and engaging with developers active in Tasman East to determine funding/financing responsibilities. The goal of the short-term actions is to ensure that the City and private property owners/developers share a clear understanding of who is paying for different

improvements, and to lay the groundwork for establishing new funding/financing tools.

1. Establish an ongoing City management structure and staffing resources for Specific Plan implementation: The City should ensure adequate staff resources and decision-making authority are in place to proactively undertake implementation of the Specific Plan and achieve the General Fund revenue increases resulting from growth in Tasman East.
2. Establish a reimbursement fee for Specific Plan and EIR creation, adoption, and ongoing implementation costs. A reimbursement fee will ensure developers contribute toward the City's costs of implementing the Specific Plan. These fees are enabled under Section 65456 of the California Government Code.
3. ~~(previous 6.)~~ Identify projects requiring partnerships with other implementing agencies/organizations. Several infrastructure projects – particularly utilities projects – are likely to require partnerships with other agencies, such as Santa Clara Valley Water District and Silicon Valley Power. The City must identify required partnerships to lay the groundwork for later construction and to explore funding and financing options.
4. ~~(previous 3.)~~ Engage with developers and property owners to evaluate the potential creation of district-based funding mechanisms for infrastructure construction ~~and or~~ operations ~~and maintenance of improvements~~. As shown in the following section, a variety of district-based funding mechanisms can be applied to the infrastructure and/or operations and maintenance costs of public facilities in Tasman East, each with unique considerations for use and approval. Many of these tools require a vote of local property owners, and may take time to study and

approve.

5. ~~(previous 4.)~~ Identify any infrastructure projects that will require funding sources beyond those required as a development standard or CEQA mitigation. ~~These infrastructure projects will require use of a public or district-based funding tool. Explore creation of a new Infrastructure Fee to fund these projects.~~
6. Complete a detailed public facilities financing plan. The plan would identify precise cost estimates for improvements, phasing of improvements, allocation of costs between public and private entities, and a detailed funding and financing plan.

### Mid-Term Actions: Tying to Development Activity

"Mid-term actions" should occur as development activity commences. These actions focus on establishing new funding/financing tools, commencing the first phases of construction of public improvements, and ensuring that developers build agreed-upon development-related and site-specific improvements. High priority should be given to acquiring any land needed for later infrastructure and parks projects. Major actions include:

1. Establish an Infrastructure Fee, as determined in previous actions.
2. ~~(previous 1.) If agreement can be reached with property owners and developers,~~ establish district-based funding mechanisms, ~~as determined in prior actions.~~ The City, property owners, and developers should establish agreed-upon district-based funding mechanisms, including any impact fees, voter approvals, and enabling legislation.
3. ~~(previous 2.)~~ Pursue partnerships for implementation with other agencies/organizations, as determined in the short-term actions.

# INFRASTRUCTURE IMPROVEMENTS AND APPLICABLE FUNDING SOURCES IN THE TASMAN EAST SPECIFIC PLAN AREA

IMPROVEMENT CATEGORIES	DEVELOPER CONTRIBUTIONS			DISTRICT-BASED MECHANISMS			CITY RESOURCES		OUTSIDE SOURCES	
	Development Standards	CEQA Mitigations of Project Impacts	Impact / In-Lieu / <u>Other Fees*</u>	Negotiated Agreements	Assessment District (LLD, PBID, CBD)	CFD	EIFD	General Fund	Capital Improvement Program Funds	User Fees Other Regional, State, and Federal Grants
Streets and Sidewalks										
Major intersection and street construction		X	X	X	X	X	X		X	X
Additions of new streets	X	X	X	X		X	X		X	X
New intersections at new streets	X	X	X	X		X	X	X	X	X
Streetscape enhancements: widened sidewalks, landscaping, lighting, street furniture	X		X	X	X	X	X	X	X	X
Parks and Open Space										
Acquisition of land for parks and plazas	X		X	X	X	X	X			X
Construction of new parks and plazas	X		X	X		X	X		X	X
Land Use										
Desired ground floor uses	X			X						
Utilities										
District-wide utilities improvements		X	X	X		X	X		X	X
On-site utilities improvements	X	X	X	X		X				X
School		X	X	X	X					X

\* Includes Infrastructure Fee

**Long-Term and Ongoing Actions**

“Long-term and ongoing actions” should occur over time as development proposals are submitted, outside grant funding opportunities arise and growth generates new needs.

1. Pursue grant funding opportunities, as available and applicable. The City should continuously monitor and pursue state, regional and local grant funding opportunities as they emerge.
2. Developments in the Tasman East Specific Plan may be required to participate in a Transportation Management Association, which may include a shuttle and/or other alternative mode measures.

## 07.2 PHASING & THRESHOLDS

Although it is not possible to accurately predict if and when each of the individual properties within Tasman East will redevelop, it is reasonable to assume, given the shared intentions of various property owners and stakeholders/developers, that the first phase of transformation is likely to include most of the perimeter properties (except the data center near Tasman Drive and Lafayette Street and the strip mall facing Tasman Drive), including the “loop” roads of Calle De Luna and Calle Del Mundo. See “Figure 07-2-1 Phase One Diagram”.

Phase two will include redevelopment of the “island properties”, should that occur, extension of Calle Del Sol, and relocation of the Primavera Pump Station and cell towers which are affected by the Calle Del Sol extension “Figure 07-2-2 Phase Two Diagram.”

The Lick Mill Boulevard extension between Tasman Drive and City Place 2nd Street will be contingent on the City Place development schedule.



Figure 07-2-1 Phase One Diagram

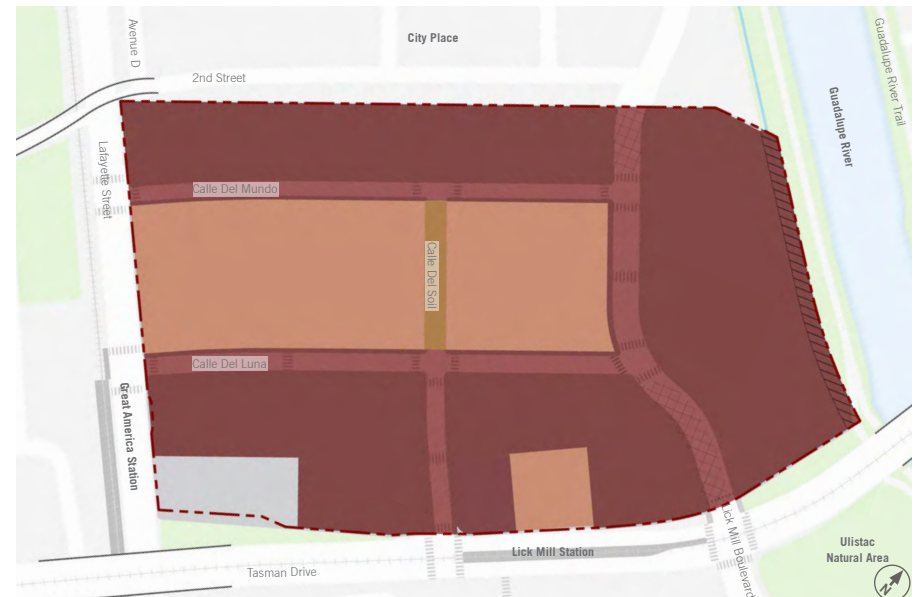


Figure 07-2-2 Phase Two Diagram.

- Site Boundary
- Phase One
- Phase Two
- Non-participating properties
- Phase One Roadway
- Paseo(Phase Two)

## OPEN SPACE

Each landowner/developer will be responsible for construction, dedication and maintenance of their parkland contribution.

## CALLE DEL SOL PEDESTRIAN AND BICYCLE PASEO EXTENSION

The extension of Calle Del Sol between Calle De Luna and Calle Del Mundo ~~is not anticipated until triggered by development as a pedestrian and bicycle paseo will be implemented as~~ development on the central block ~~occurs~~. The extension will require partial dedication of ~~four two~~ properties, ~~upgrades to the relocation and/or undergrounding of~~ the Primavera Pump Station ~~at its current location including an enclosure with enhanced design and art work~~, and the relocation of one cell tower, located towards the rear of the property facing Calle De Luna. The cost of these improvements, ~~excluding the cell tower relocation~~, will need to be shared among all ~~Tasman East~~ owners intending to redevelop their properties ~~within all of the Tasman East Specific Plan through a proposed area-wide Infrastructure Impact Fee which is to be adopted by the City Council. The pedestrian and bicycle paseo is to be maintained privately by properties that are redeveloping within Tasman East privately through participation in a Property Owners Association, Community Facilities District, or through another method of fair share contribution approved by the City of Santa Clara. A mechanism for contributing to the necessary funds will be negotiated created by City of Santa Clara staff.~~

## LICK MILL BOULEVARD EXTENSION

The construction of Lick Mill Boulevard by the Related Companies is required as a mitigation measure for the development of City Place. If the implementation of Lick Mill Boulevard, or some temporary alternative, is required by Tasman East prior to the date of intended implementation by City Place, further negotiations with the Related Companies will be required.





The Tasman East TDM program is centered on an ambitious target for reducing single-occupancy vehicle trips and vehicle miles traveled relative to the rates seen today in the surrounding area. A new plan-area-wide entity, The Tasman East Transportation Coordination Group (TETCG), comprised of property owners and developers of residential development, will be charged with implementing and managing programs that are most cost effectively executed at a neighborhood scale. The owners and managers of individual parcels will be paying and voting members of the TETCG, and they will also be required to implement their own site-level programs that ensure that they are helping to encourage their residents, employees, and visitors to make smart travel choices. The TETCG and the owners of individual parcels will also be required to regularly monitor travel behavior and adjust programs to ensure that they are working effectively. Finally, the City will play an important role in holding everyone accountable and supporting various players as they work to meet targets.

#### **Sitewide Mode Split**

Because the strategies outlined in the TDM program below are generally aimed at encouraging people to shift to modes other than private automobiles, this should translate VMT reduction on the order of 20%. This reduction is consistent with the city's Climate Action Plan. This reduction is considered reasonable given the many characteristics of the site that make it particularly ripe for encouraging multimodal lifestyles, including its high levels of density relative to its surroundings, its mixed-use nature, its close proximity to what is anticipated to be a major shopping destination in CityPlace, and its location in the center of a regionally important cluster of jobs. The TDM program components described below have

been designed to enable the neighborhood to comfortably comply with the target.

#### **SITEWIDE PROGRAM COMPONENTS**

To reach the target, the following are TDM program components that shall be provided for the entire site and administered by the TETCG, which is described below.

##### **Tasman East Transportation Coordination Group (TETCG)**

This organization will provide transportation services, support for non-motorized modes, and/or personal travel planning assistance. The programs implemented are typically most cost-efficient when implemented at the district scale, rather than by single building managers.

The remainder of this section describes the specific TDM programs that are anticipated to be under the TETCG's purview.

##### **Universal Transit Pass Program**

Universal transit passes typically provide unlimited transit rides on local or regional transit providers for a monthly fee that is lower than the individual cost to purchase a pass, based on a bulk discount provided by the transit agency. By providing a universal pass to all residents and/or employees of a given site, tenants who currently do not use transit will often try taking transit since there is no cost barrier to do so. For this reason, universal transit pass programs are much more effective at reducing vehicle trips than a standard transit subsidy.

The TETCG will work to create partnerships with the Valley Transportation Agency (VTA) to establish a universal pass for local transit services that the managers of individual parcels can choose to buy into as part of their own TDM strategies. VTA's Smart Pass program is a universal transit

pass program that is available to any residential complex with 25 units or more in Santa Clara County. The program requires that building management purchase a pass for every resident or employee of the development. It is available in two forms: (1) "Regular," which is valid for unlimited rides on all VTA service, and (2) "Express," which is valid for unlimited rides on all VTA services as well as the Highway 17 Express, Dumbarton Express, and Monterey-San Jose Express bus service. Smart Pass pricing is based on the number of residents/employees and level of VTA services at a given site.

The TETCG would be responsible for establishing the Smart Pass program. The TETCG will purchase Smart Passes (currently priced at \$46 per pass for purchases of 3,000 passes or greater) for each resident of Tasman East after occupancy of 3,000 residents in constructed units. ~~The TETCG must offer Smart Passes for a period of three years.~~ The TETCG must offer Smart Passes for a period of three years unless an alternate measure that is at least as effective in reducing single vehicle trips or vehicle miles traveled as the Smart Passes is proposed by the TETCG and accepted by the City. These alternate measures must be verified for effectiveness through annual reporting by the TETCG to ensure that the site-wide goal of 10% VMT reduction, through a combination of program measures, is achieved. Afterwards, the TETCG may propose an alternate measure that is at least as effective in reducing single vehicle trips as the Smart Passes or the previously approved alternative. Individual parcel owners would be represented on the TETCG and be required to defray the costs of covering their residents and/or employees.

**Figure 08-4-7** Plan Level Trip Reduction

CAPCOA Strategy	CAPCOA Description	Tasman Project Elements	CAPCOA Trip Reduction
Increase Density (LUT-1)	Designing the Project with increased densities reduces GHG emissions associated with traffic in several ways. Density is usually measured in terms of persons, jobs, or dwellings per unit area. Increased densities affect the distance people travel and provide greater options for the mode of travel they choose. This strategy also provides a foundation for implementation of many other strategies which would benefit from increased densities. For example, transit ridership increases with density, which justifies enhanced transit service.	<ul style="list-style-type: none"> <li>High-density residential</li> </ul>	0.8 - 30.0%
Increase Diversity of Urban and Suburban Developments (LUT-3)	Having different types of land uses near one another can decrease VMT since trips between land use types are shorter and may be accommodated by non-auto modes of transport. For example when residential areas are in the same neighborhood as retail and office buildings, a resident does not need to travel outside of the neighborhood to meet his/her trip needs.	<ul style="list-style-type: none"> <li>On-site retail</li> <li>On-site open space</li> <li>Neighborhood serving amenities</li> </ul>	0.9 - 30.0%
Increase Destination Accessibility (LUT-4)	The project will be located in an area with high accessibility to destinations. Destination accessibility is measured in terms of the number of jobs or other attractions reachable within a given travel time, which tends to be highest at central locations and lowest at peripheral ones. The location of the project also increases the potential for pedestrians to walk and bike to these destinations and therefore reduces the VMT.	<ul style="list-style-type: none"> <li>Proximity and access to City Place</li> </ul>	0.9 - 30.0%
Increase Transit Accessibility (LUT-5)	Locating a project with high density near transit will facilitate the use of transit by people traveling to or from the Project site. The use of transit results in a mode shift and therefore reduced VMT. A project with a residential/commercial center designed around a rail or bus station, is called a transit-oriented development (TOD).	<ul style="list-style-type: none"> <li>Proximity to transit including VTA light-rail</li> </ul>	0.5 – 24.6%
Integrate Affordable and Below Market Rate Housing (LUT-6)	Income has a statistically significant effect on the probability that a commuter will take transit or walk to work. BMR housing provides greater opportunity for lower income families to live closer to jobs centers and achieve jobs/housing match near transit. Lower income families tend to have lower levels of auto ownership, allowing buildings to be designed with less parking which, in some cases, represents the difference between a project being economically viable or not.	<ul style="list-style-type: none"> <li><del>A minimum of 10 percent of all units that receive a discretionary approval before 2021 will be affordable by deed restriction to households making an average of 100% of area median income with this number increasing to 15% thereafter. Affordable housing shall be provided in conformance with Section 17.40.115 of the Santa Clara City Code</del></li> </ul>	0.04 – 1.20%

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA ADOPTING AMENDMENTS TO THE TASMAN  
EAST SPECIFIC PLAN (AMENDMENT #1), A SPECIFIC PLAN  
PURSUANT TO GOVERNMENT CODE SECTION 65450, et seq.**

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

**WHEREAS**, the City of Santa Clara (the “City”) is contemplating the adoption of amendments to the Tasman East Specific Plan (Amendment #1), to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo, allow for alternate methods of site-wide Transportation Demand Management (TDM) measures, and correct a clerical error in the Plan regarding the affordable housing requirement and an error regarding permissible density ranges;

**WHEREAS**, the City Council adopted the Tasman East Specific Plan on November 13, 2018 for a transit-oriented pedestrian-friendly neighborhood of up to 4,500 residential units with supportive retail uses, located on approximately 45 acres of land proximate to the Lick Mill Light Rail Station that were developed with industrial uses;

**WHEREAS**, it has been determined to be difficult to move the City’s Primavera Lift Pump Station, which is currently located where the extension of Calle Del Sol is proposed in the adopted Tasman East Specific Plan;

**WHEREAS**, replacing the proposed vehicular street extension with a bicycle and pedestrian paseo will not adversely affect vehicular circulation in the area greater than determined through the previously adopted Environmental Impact Report (“EIR”) (SCH#2016122027);

**WHEREAS**, the adopted Tasman East Specific Plan identifies a site-wide TDM measure that requires property owners to provide SMARTPASSES through the Valley Transportation Authority to all residents after 3,000 residents occupy the Plan boundary area for a period of three years;

**WHEREAS**, an amendment is proposed to the adopted Tasman East Specific Plan's requirement for SMARTPASSES so that alternative measures would be also accepted as site-wide TDM in order to incentivize additional alternate modes of travel;

**WHEREAS**, an amendment is also proposed to the affordable housing requirements in the Specific Plan to make the requirements consistent with the City's Affordable Housing Ordinance;

**WHEREAS**, the Council's motion on November 13, 2018 was to adopt staff's recommendation, which included the affordability requirement of 15%, subject a reduction to 12% for densities between 120 and 140 du/ac, and a further reduction to 10% for densities above 140 du/ac. Due to an oversight, however, page 12 of the Specific Plan itself was never updated to reflect the tiered affordability structure contained in Ordinance No. 1992. The amendment would make a technical correction to page 12 of the Specific Plan so that it will conform to Ordinance No. 1992;

**WHEREAS**, a specific plan is a tool for providing regulatory direction for specific parts of a city, and can include policy guidance, regulatory requirements, and design guidelines;

**WHEREAS**, as a part of implementation the Specific Plan, the City amended Title 18 ("Zoning"), of the City Code to create a new Transit Neighborhood zoning district, and to apply the zoning designation across the Project Site;

**WHEREAS**, an amendment to the Transit Neighborhood zoning district is proposed to allow non-residential uses within the first three floors of a mixed use building in order to allow flexibility to support commercial uses complementary to residential activity, such as office and co-working uses, within the plan area;

**WHEREAS**, the proposed Tasman East Specific Plan Amendment is consistent with the Goals and Policies of the Tasman East Future Focus Area in the General Plan;

**WHEREAS**, on August 26, 2020, the Planning Commission reviewed the Specific Plan Amendment (Amendment #1) and conducted a duly noticed public hearing, at the conclusion of which, the Planning Commission voted to recommend that the City Council adopt the proposed Specific Plan Amendment.

**WHEREAS**, before considering recommending adoption of the Specific Plan Amendment, the City Council reviewed and considered the potential environmental impacts of the Project, and adopted the Addendum to the EIR in accordance with the requirements of CEQA;

**WHEREAS**, notice of the public hearing on the proposed Specific Plan Amendment was published in the Weekly, a newspaper of general circulation for the City, on November 4, 2020;

**WHEREAS**, on November 6, 2020, notice of the public hearing on the proposed Specific Plan Amendment was also mailed to all owners of real property within the Plan boundary area; and

**WHEREAS**, on November 17, 2020, the City Council reviewed the Specific Plan Amendment (Amendment #1) and conducted a public hearing, at which time all interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed Specific Plan Amendment.

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

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. Specific Plan Findings. That the City Council finds and determines that the proposed Specific Plan amendments are in the interest of the public good for the following reasons:

A. The proposed amendments to Specific Plan (Amendment #1) are deemed to be in the public interest, in that:

The Specific Plan is located in an urbanized area served by existing municipal services and implements smart growth principles by redeveloping underutilized properties with

high intensity mixed-use, pedestrian- and transit-oriented development that will contribute to the City both socially and economically.

B. The proposed amendments to the Specific Plan (Amendment #1) are consistent and compatible with the General Plan and any implementation programs that may be affected, in that:

The amendments to the Specific Plan (Amendment #1) further and are consistent with the goals, policies and major strategies of the General Plan that enhance the City's quality of life, preserve and cultivate neighborhoods, promote sustainability, enhance City identity, support General Plan Focus Areas and community vitality, maintain the City's fiscal health and quality of services, and maximize health and safety benefits with the creation of a new land use designation that allows for the development of a high-density mixed-use transit-oriented environment.

C. The proposed amendments to the Specific Plan (Amendment #1) have been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), in that:

An Addendum to the Final EIR for the Tasman East Specific Plan was prepared in accordance with CEQA and made available for public viewing with the posted materials on August 21, 2020 for the Planning Commission Hearing and on November 13, 2020 for the City Council hearing regarding the amendments to the Specific Plan (Amendment #1).

D. The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare, in that:

An Addendum to the Final EIR for the Tasman East Specific Plan was prepared in accordance with CEQA and as it was determined that no substantial changes are proposed in the amendments to the Specific Plan (Amendment #1) which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial



increase in the severity of previously identified significant effects, and the City Council adopted the Addendum to the Final EIR.

3. That based on the findings set forth in this Resolution, the Approvals, and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the City Council hereby adopts the amendments to the Specific Plan (Amendment #1).

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

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

Attachment Incorporated by Reference:

1. Tasman East Specific Plan Amendment #1

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AMENDING CHAPTER 18.25,  
REGULATIONS FOR THE TRANSIT NEIGHBORHOOD  
ZONING DISTRICT, OF TITLE 18, ZONING, OF “THE CODE  
OF THE CITY OF SANTA CLARA, CALIFORNIA” TO  
ALLOW CERTAIN NONRESIDENTIAL USES AS  
PERMITTED USES WITHIN THE FIRST THREE FLOORS  
OF MIXED USE BUILDINGS AND TO MAKE OTHER  
TECHNICAL CHANGES**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, on November 13, 2018, the City Council approved adding a new Chapter, 18.25 to the Code of the City of Santa Clara to add regulations for the Transit Neighborhood Zoning District;

**WHEREAS**, on November 13, 2018, the City Council approved a Specific Plan for the Tasman East Area, which contemplates a transit-oriented pedestrian-friendly neighborhood of up to 4,500 residential units with supportive retail uses, proximate to the Lick Mill Light Rail Station;

**WHEREAS**, development in the Tasman East Specific Plan Area will include a variety of forms of high-density urban housing, including podium buildings, residential towers, and residential mixed-use buildings and complementary nonresidential activity will further the creation of a complete neighborhood;

**WHEREAS**, nonresidential uses, such as offices and co-working, have been proposed above ground floor spaces in the Tasman East Specific Plan Area, and the City desires to allow these complementary uses;

**WHEREAS**, the Tasman East Specific Plan and the Transit Neighborhood Zoning District require a minimum residential density of 100 dwelling units per acre, but the Specific Plan also includes an exception for preexisting parcels of less than one acre. For such smaller

parcels, the Specific Plan allows a residential density of 60 dwelling units per acre; and

**WHEREAS**, to ensure full consistency between the zoning ordinance and the Specific Plan, the City now intends to amend the Specific Plan to add the exception for smaller lots.

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

**SECTION 1:** That Section 18.25.030 (entitled “Permitted Uses”) of Chapter 18.25 (entitled “Regulations for the Transit Neighborhood (TN) District”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is hereby amended to read as follows:

**“18.25.030 Permitted uses.**

- (a) Multiple-family dwellings.
- (b) Home occupation as defined under Chapter 18.06 SCCC.
- (c) Live/work units.
- (d) Supportive housing, subject to the same standards and restrictions as other dwelling units under this chapter.
- (e) Transitional housing, subject to the same standards and restrictions as other dwelling units under this chapter.
- (f) Housing for the Ambulatory Aged.
- (g) On the ground floor of mixed use structures, or in buildings intended solely for retail use, any use permitted in the CC Community Commercial district (Chapter 18.36 SCCC), CN Neighborhood Commercial district (Chapter 18.34 SCCC), or OG General Office district (Chapter 18.32 SCCC), each as amended, except that auto repair and auto sales, other than product showcase venues, are not permitted, subject to the regulations

set forth in this chapter.

(h) On the first three floors of mixed use structures, professional offices, financial and general business offices, and day care, preschool, and nursery school uses.

(i) Outdoor seating and dining areas appurtenant to retail uses.

(j) Live entertainment that is wholly incidental to an otherwise permitted commercial use.

(k) Outdoor walk-up facility appurtenant to retail uses.

(l) On-sale of alcohol appurtenant to restaurant uses.

(m) Neighborhood Light Industrial uses, with a public facing component, including but not limited to breweries, wineries, catering companies, garment manufacturing, and crafts and artists' studios. Such uses shall be operated completely within an enclosed building.”

**SECTION 2:** That Section 18.25.060 (entitled “Development Standards”) of Chapter 18.25 (entitled “Regulations for the Transit Neighborhood (TN) District”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is hereby amended to read as follows:

**“18.25.060 Development standards.**

(a) Maximum Dwelling Unit Density. For the Transit Neighborhood district, the maximum dwelling unit density is 350 dwelling units per acre.

(b) Minimum Dwelling Unit Density. For the Transit Neighborhood district, the minimum dwelling unit density is 60 dwelling units per acre on parcels less than one acre in size legally existing as of November 13, 2018, and 100 dwelling units per acre for all other parcels.

(c) Minimum Lot area. None.

(d) Minimum Lot Width. None.

(e) Building Height Limits. The maximum height limit in the Transit Neighborhood district is 220 feet in height.

(f) Front Yard requirements. None.

(g) Side yards requirements. None.

(h) Maximum Building Coverage. No maximum, subject to providing adequate pervious area to meet stormwater requirements.”

**SECTION 3: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this 17th day of November, 2020, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

\_\_\_\_\_  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None

# Related California REthink Development Tasman Paseo & Lift Station Design Progress Presentation

Bohlin Cywinski Jackson  
The Guzzardo Partnership  
August 21, 2020



## Agenda

- 1 Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents
- 4 Landscape Design

- 1** Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents
- 4 Landscape Design

Paseo Renderings  
View from North





Paseo Renderings  
View from North - Dusk



Tasman Paseo & Lift Station



Paseo Renderings  
View from South



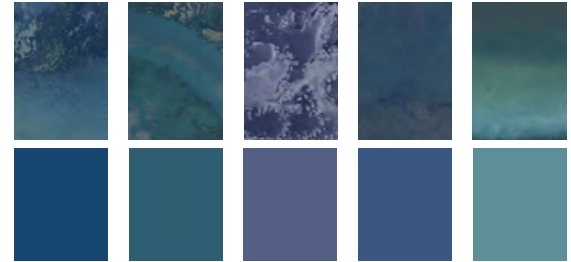
Paseo Renderings  
South and North Elevations





## Paseo Renderings View from Southeast

South San Francisco Bay  
color palette

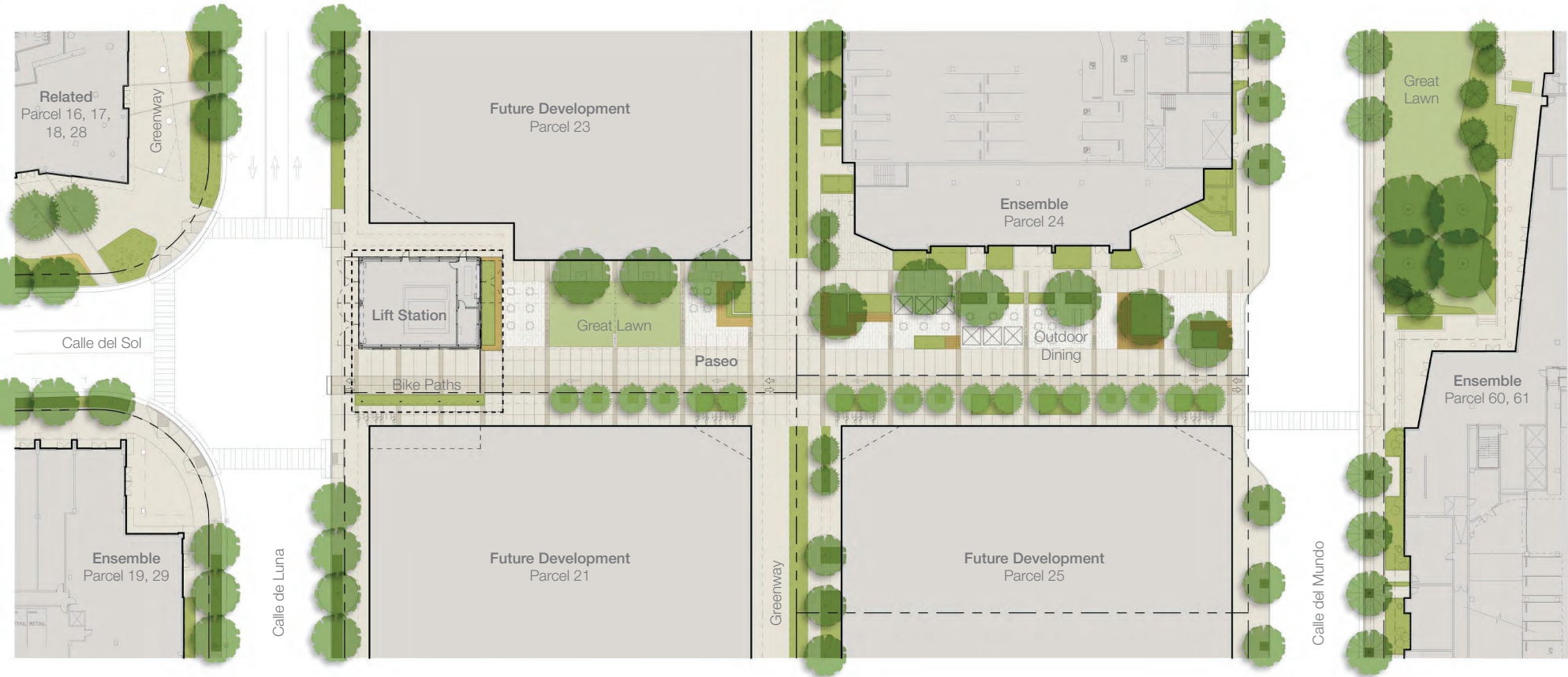




Paseo Renderings  
East Elevation



Calle del Sol Paseo  
Site Plan



- 1 Paseo Renderings
- 2 **Enclosure Concepts**
- 3 Precedents
- 4 Landscape Design



Enclosure Concepts  
Gallery Wall + Mural

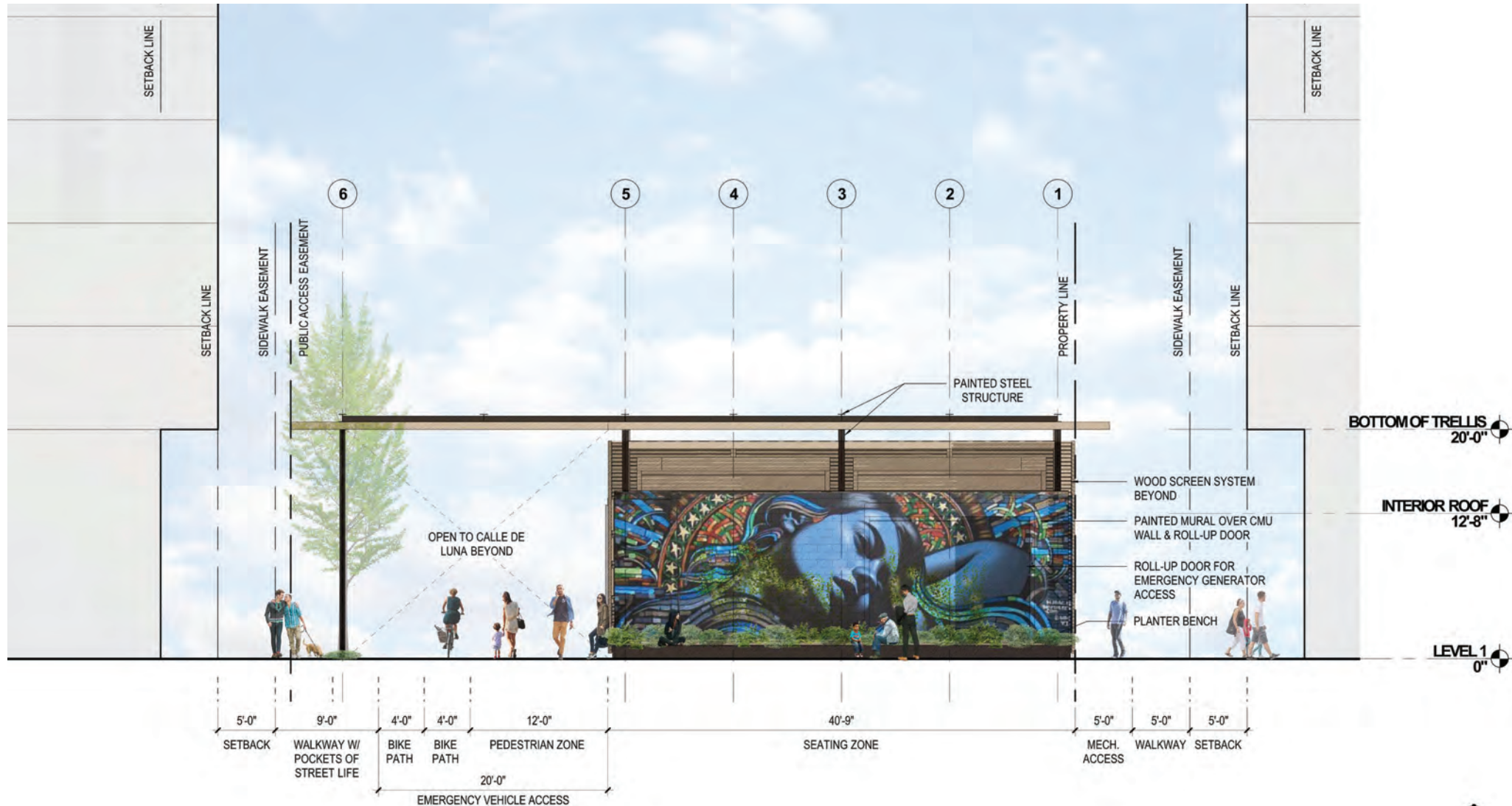
Artist Example: El Mac



# Enclosure Concepts

## North Elevation - Mural Example 1

Artist Example: El Mac





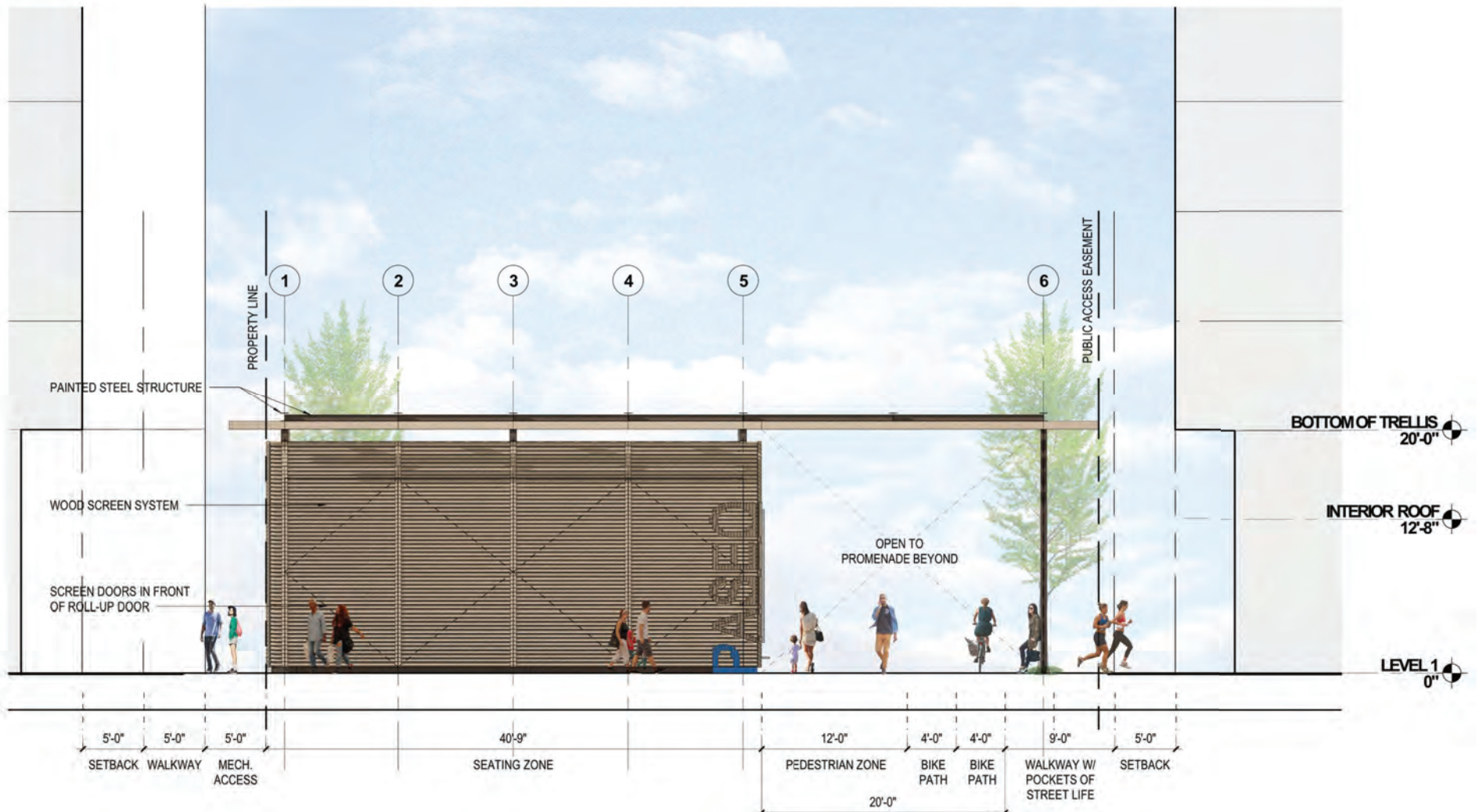
Enclosure Concepts  
East Elevation - Gallery Wall Example 1

Artist Example: Diego Rivera



# Enclosure Concepts

## South Elevation - Signage

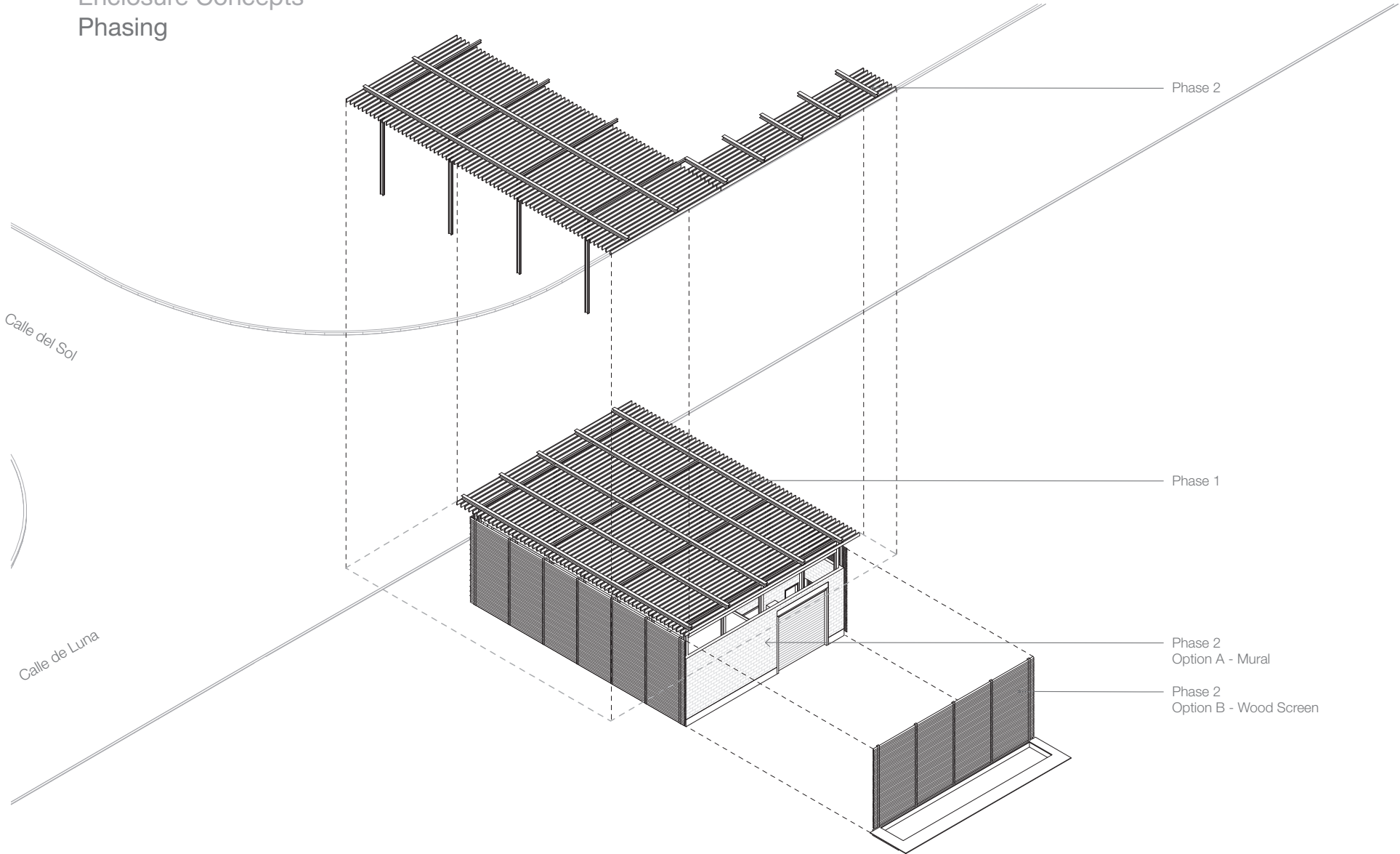


Enclosure Concepts  
West Elevation





Enclosure Concepts  
Phasing



Enclosure Concepts  
East Elevation - Gallery Wall Example 1

Artist Example: Diego Rivera





Enclosure Concepts  
East Elevation - Gallery Wall Example 2

Artist Example: El Mac





Enclosure Concepts  
East Elevation - Gallery Wall Example 3

Artist Example: SF Bay Salt Ponds





Enclosure Concepts  
East Elevation - Gallery Wall Example 4

Artist Example: SF Bay Salt Ponds





Enclosure Concepts  
East Elevation - Gallery Wall Example 5

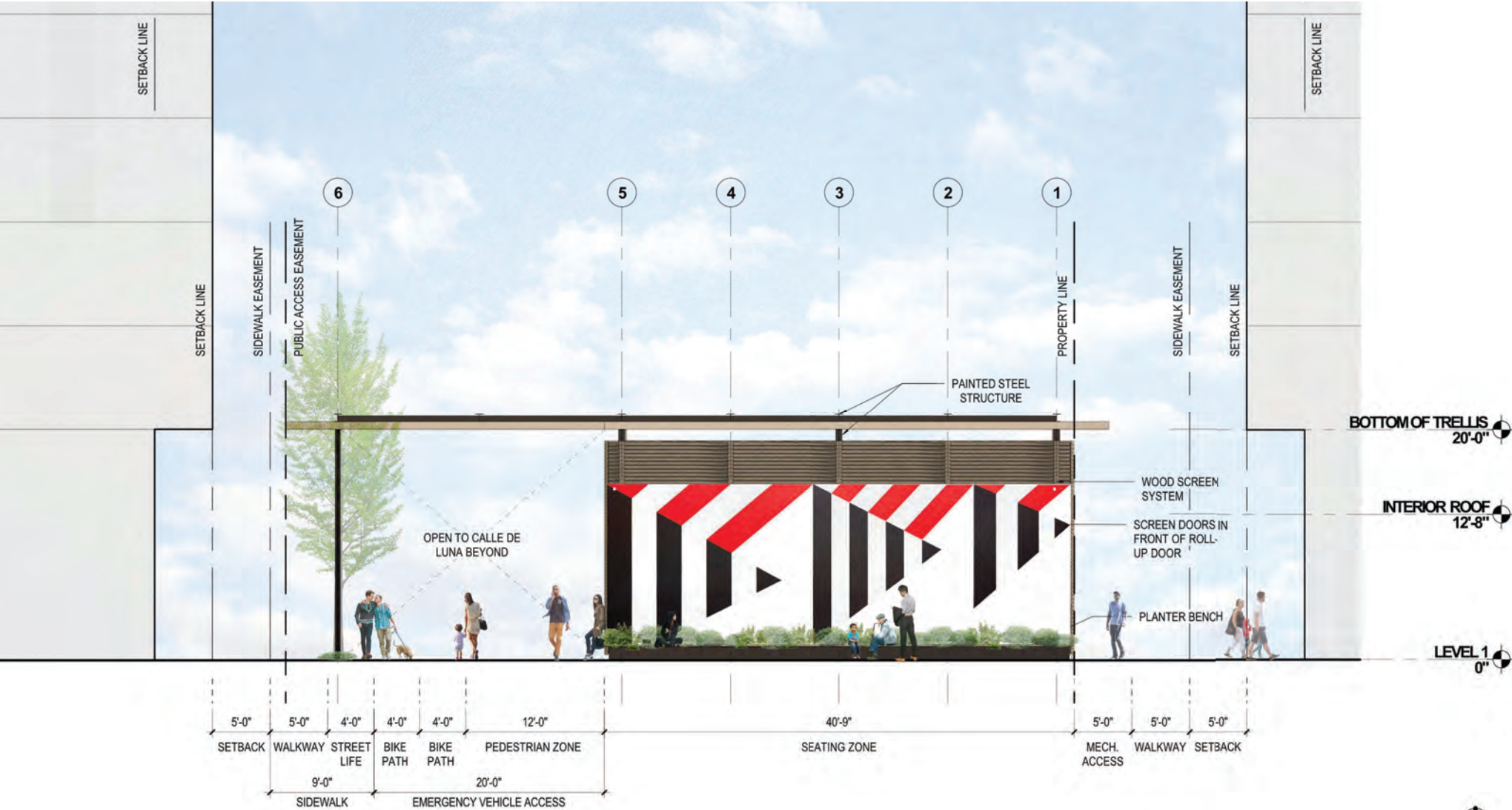
Artist Example: Barbara Stauffacher Solomon



# Enclosure Concepts

## North Elevation - Mural Example 2

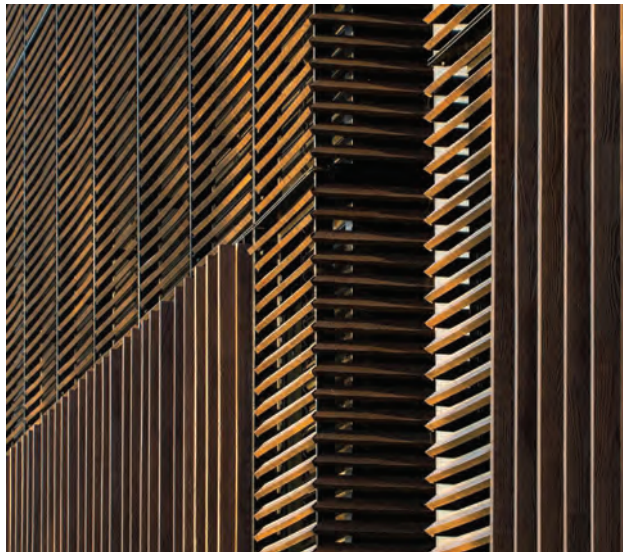
Artist Example: Barbara Stauffacher Solomon



- 1 Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents**
- 4 Landscape Design



Precedents  
Elegant Box





## Precedents Floating Trellis

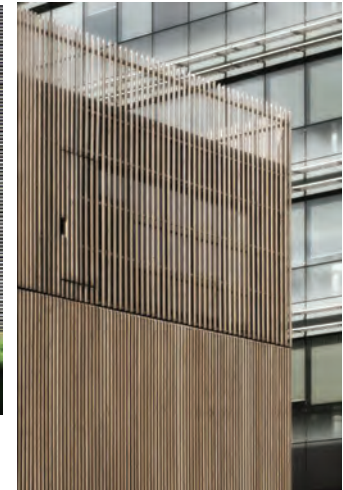
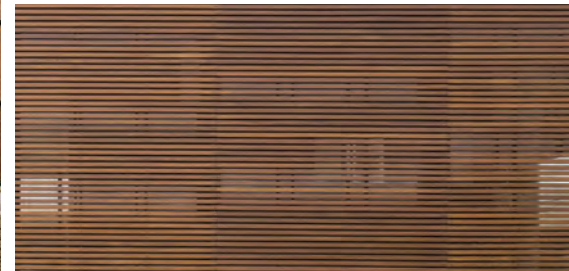
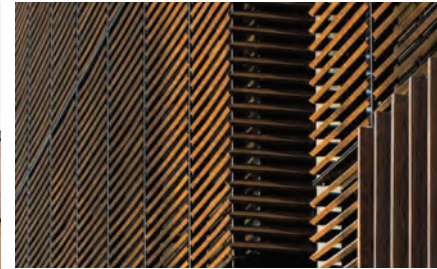


Tasman Paseo & Lift Station

Related California Rethink Development Bohlin Cywinski Jackson The Guzzardo Partnership August 21, 2020

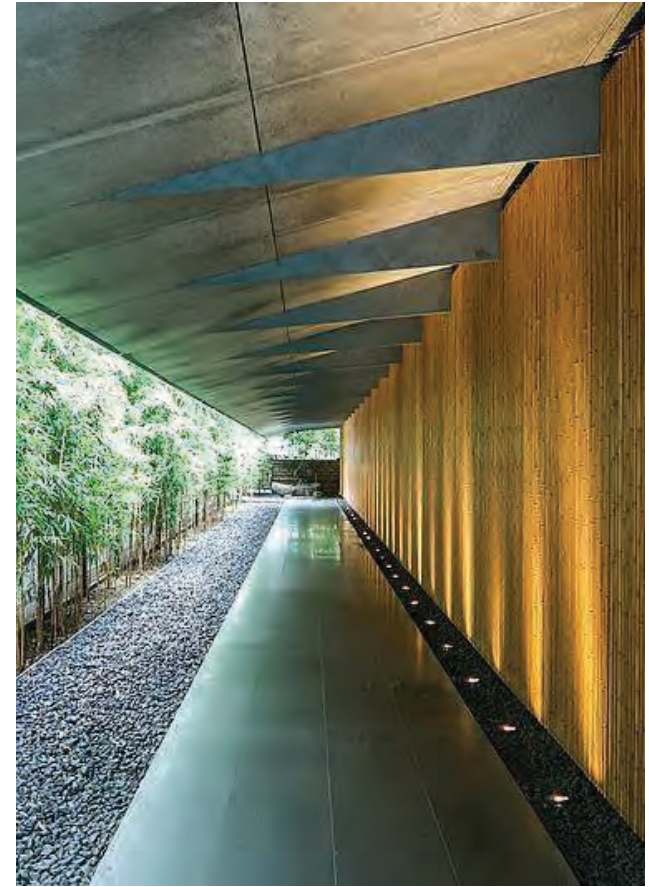


Material Precedents  
Wood Screen & Trellis

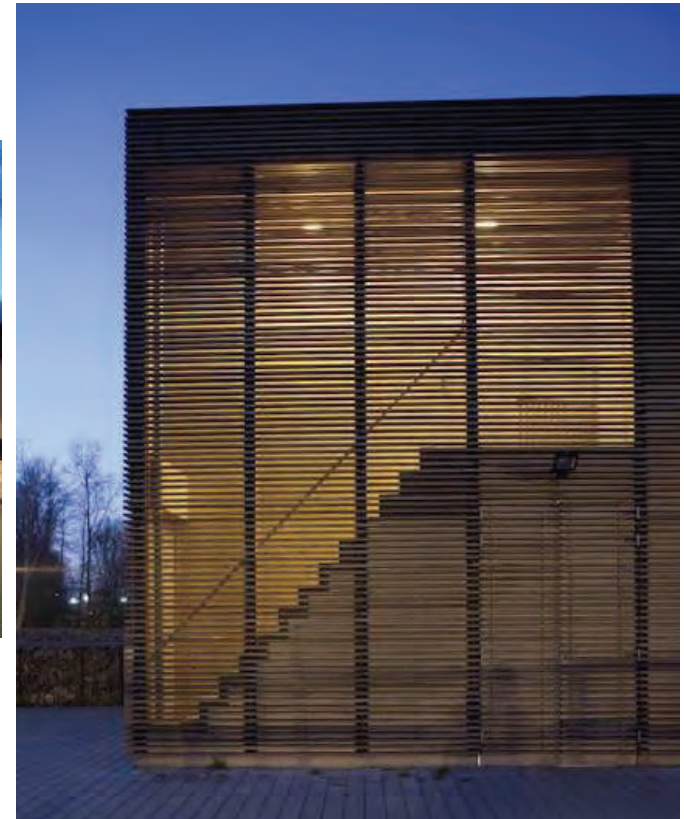




Precedents  
Facade Lighting

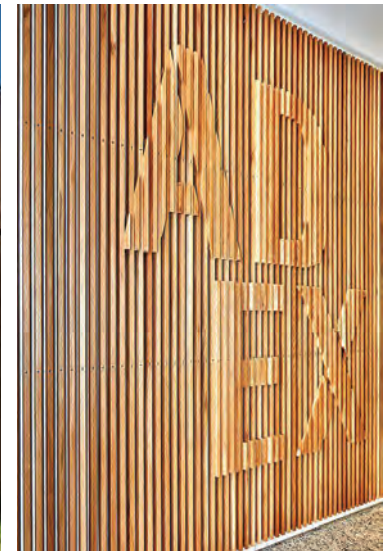
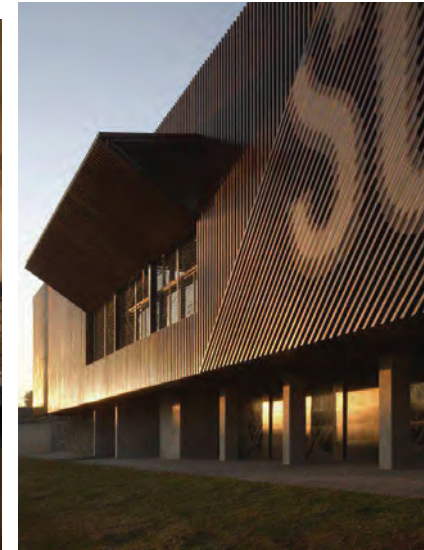
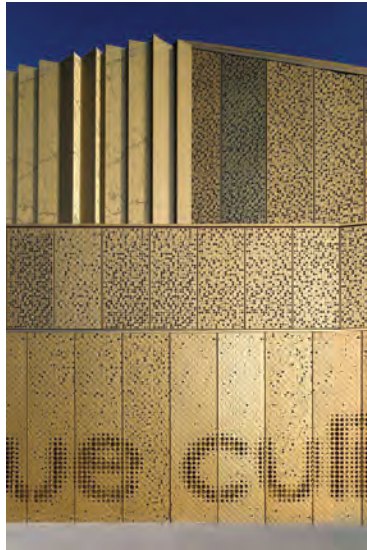


Precedents  
Facade Lighting





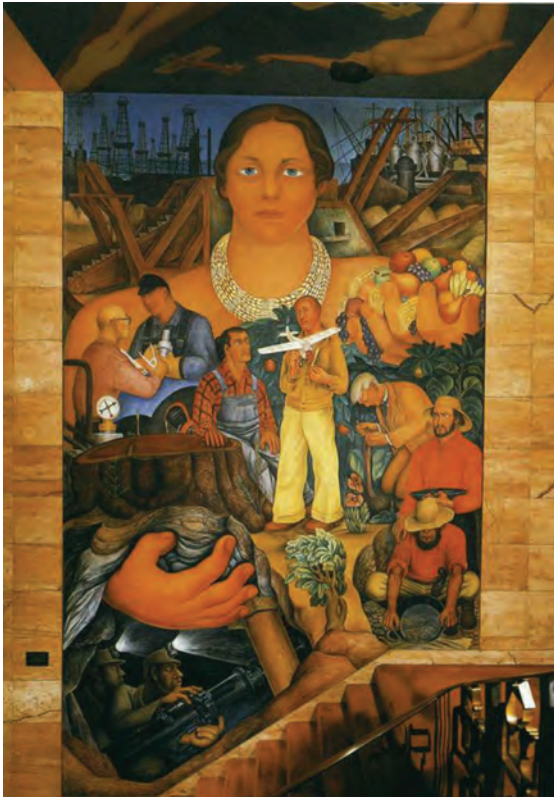
Precedents  
Signage



Tasman Paseo & Lift Station



## Precedents Art



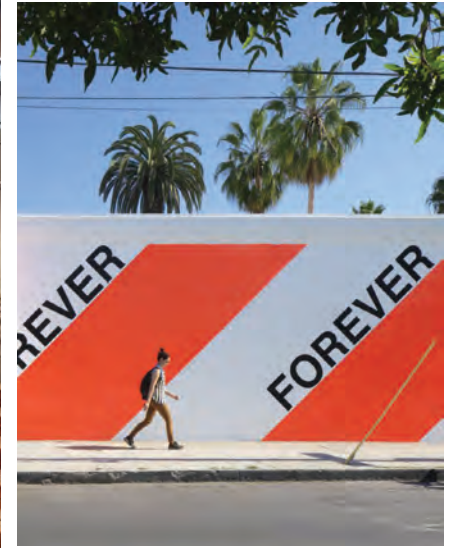
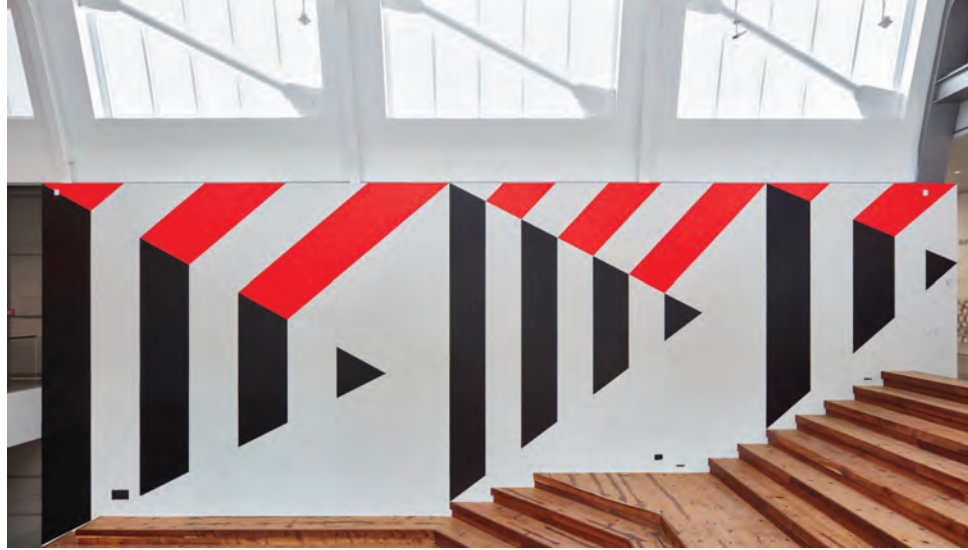
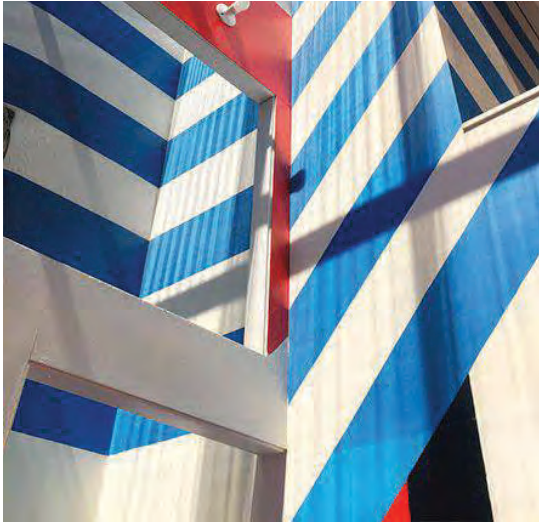
Artist: Diego Rivera



Artist: El Mac



Precedents  
Art



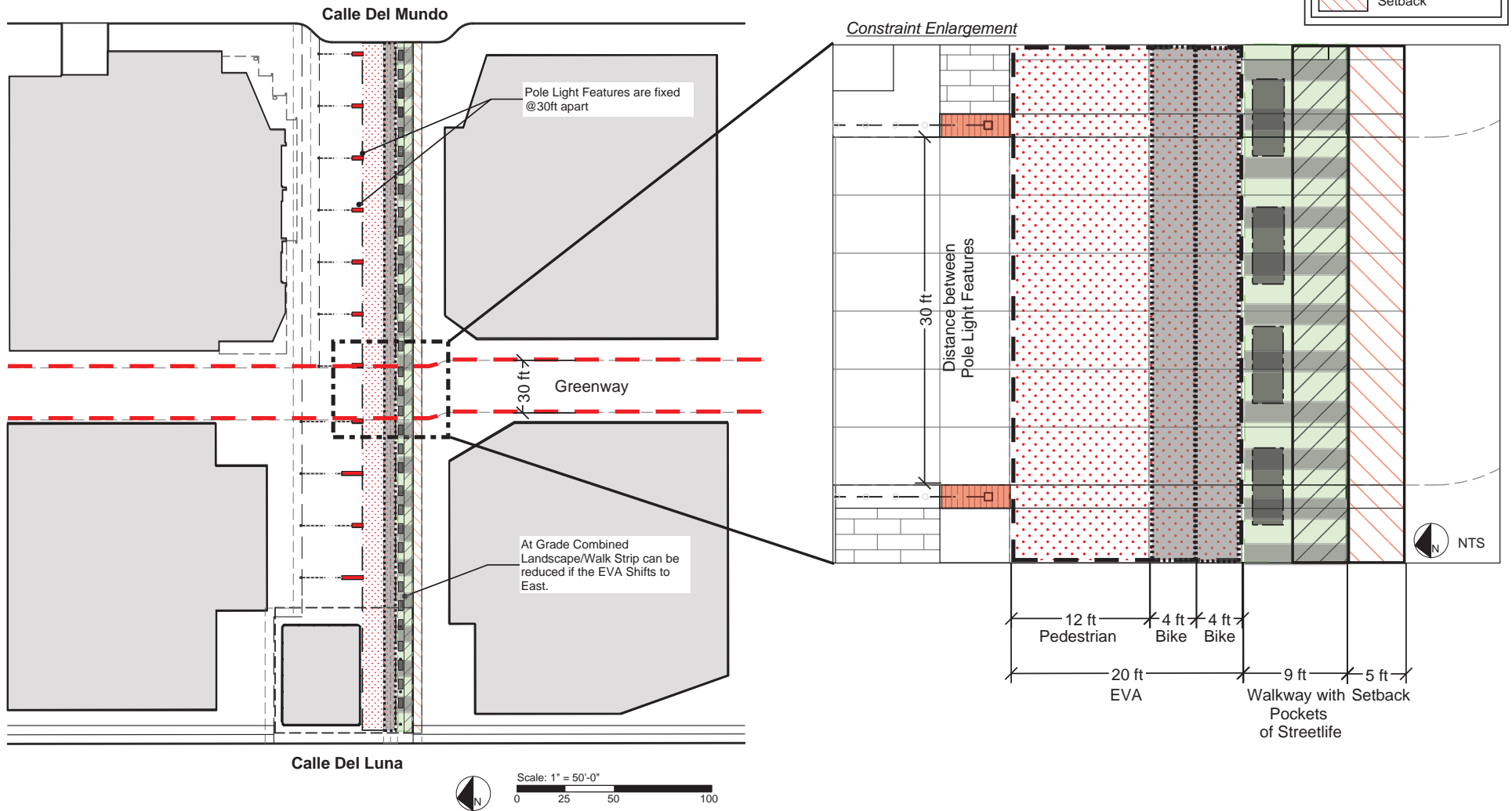
Artist: Barbara Stauffacher Solomon



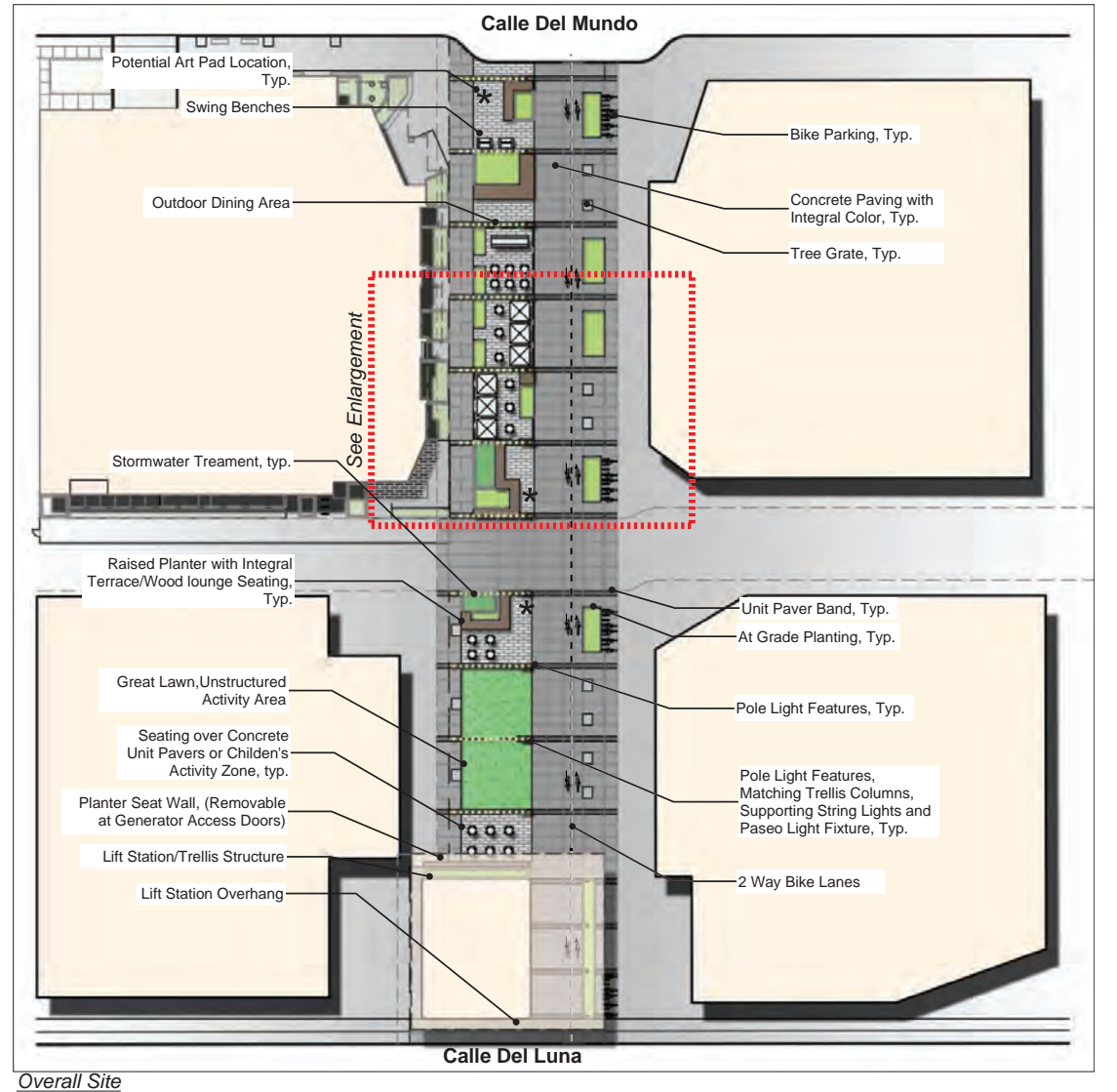
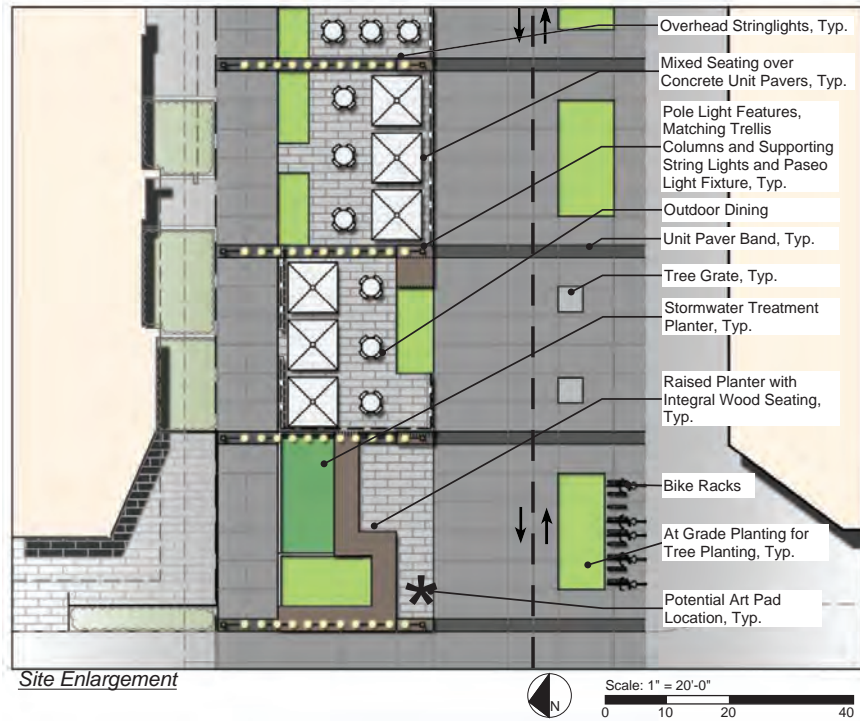
Tasman Paseo & Lift Station

- 1 Paseo Renderings
- 2 Enclosure Concepts
- 3 Precedents
- 4 **Landscape Design**

# Path Diagram Design Constraints and Fixed Features



# Landscape Plan Overall Plan and Enlargement





## Landscape Plan Images



View from Trellis Structure toward Tasman Hill Site



Great Lawn Flexible, Active Area with String Lighting Above, seating area and partially removable planter at Lift Station. Paseo lighting from light mounted within poles.



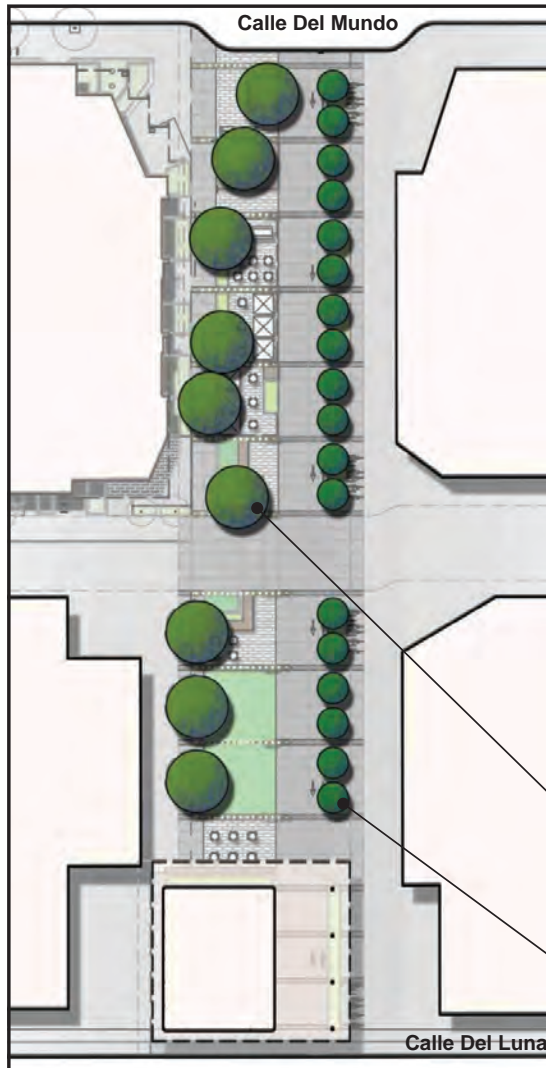
Outdoor Dining along Promenade



Great Lawn, a Flexible, Active Area with String Lighting Above. Bike Lane markings also shown on right side of Paseo.



## Tree Planting Plan Overall Plan and Images



### Tree Layout

Mix of large informally planted canopy trees and narrow, upright trees, reinforcing use areas and processional nature of Walk Street.

### Canopy Trees:

- Quercus virginiana
- Ulmus parvifolia 'Drake'
- Hymenosporum flavum
- Platanus acerifolia 'Columbia'

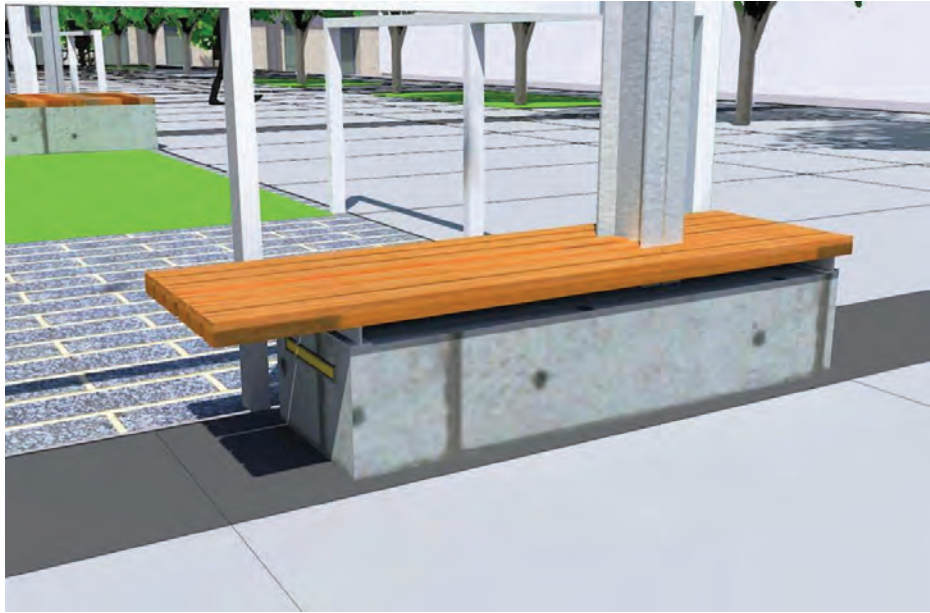
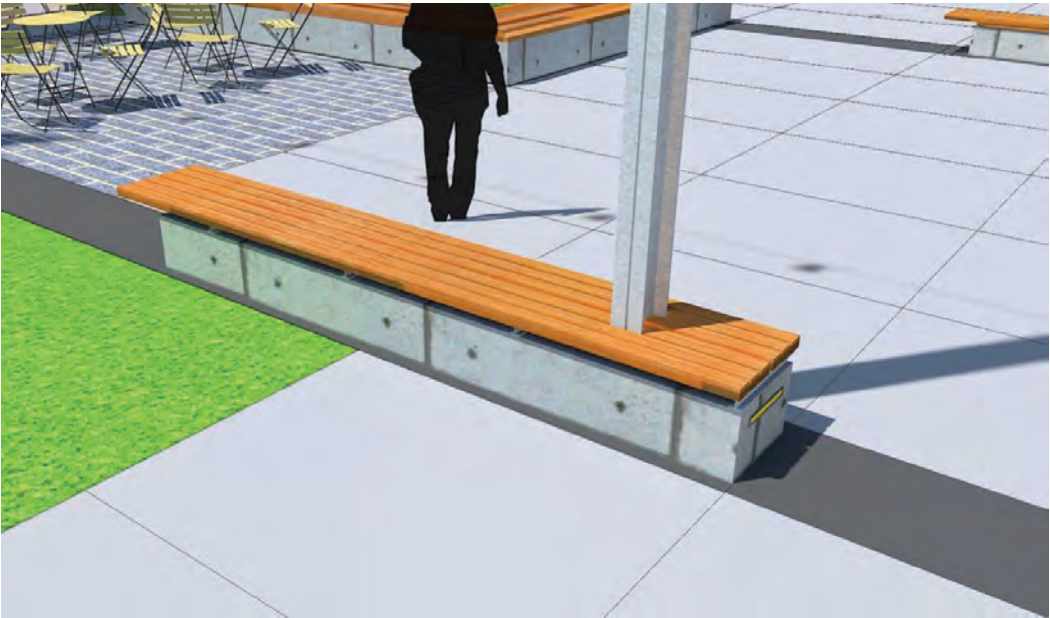
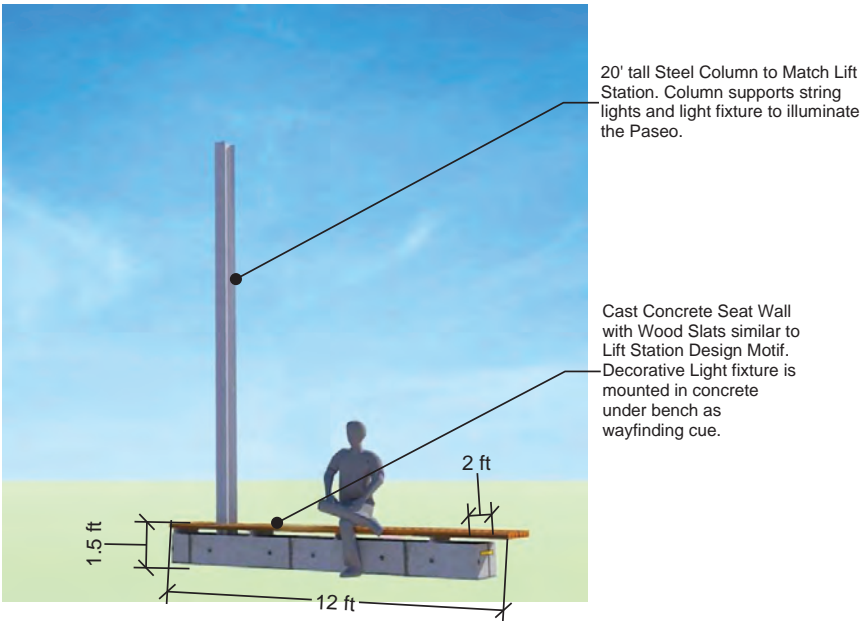
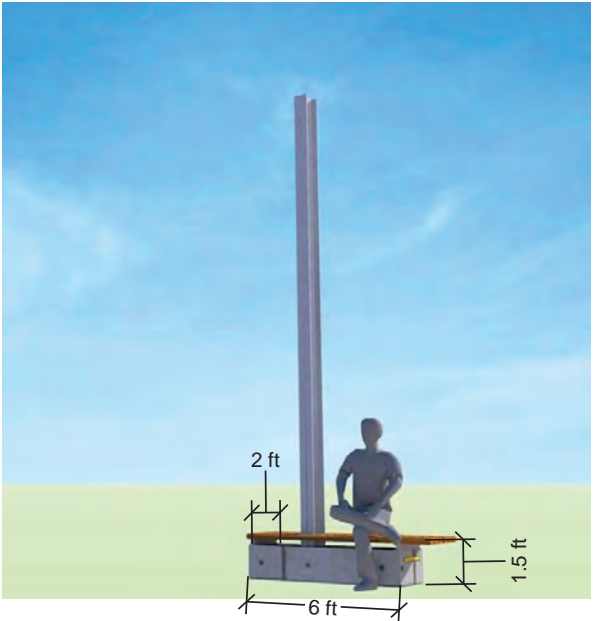
### Columnar Trees:

- Acer rubrum 'Armstrong'
- Liriodendron tulipifera 'Arnold'
- Ginkgo biloba 'Princeton Sentry'



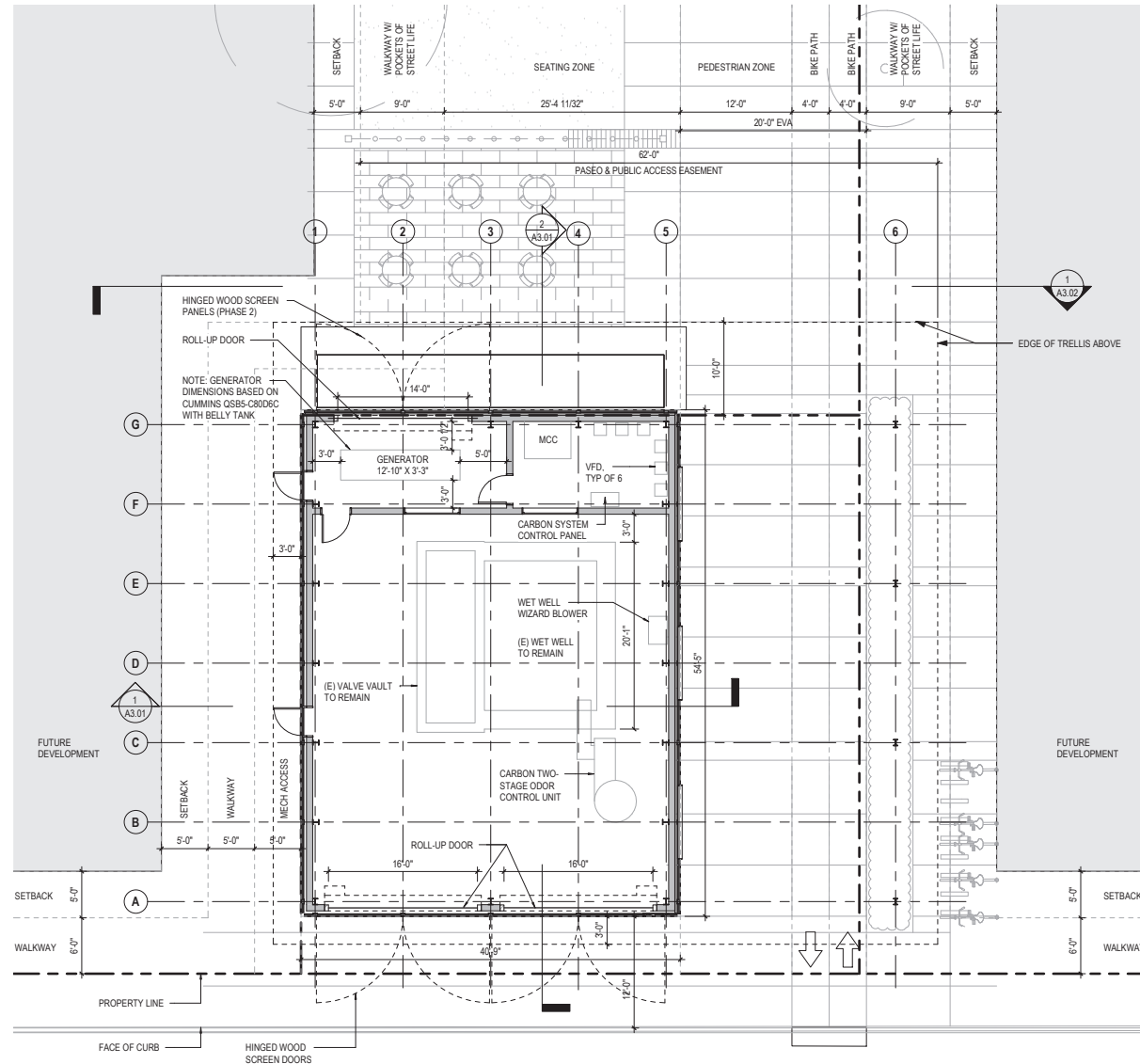


Pole Light and  
Fixed Seating  
Elements

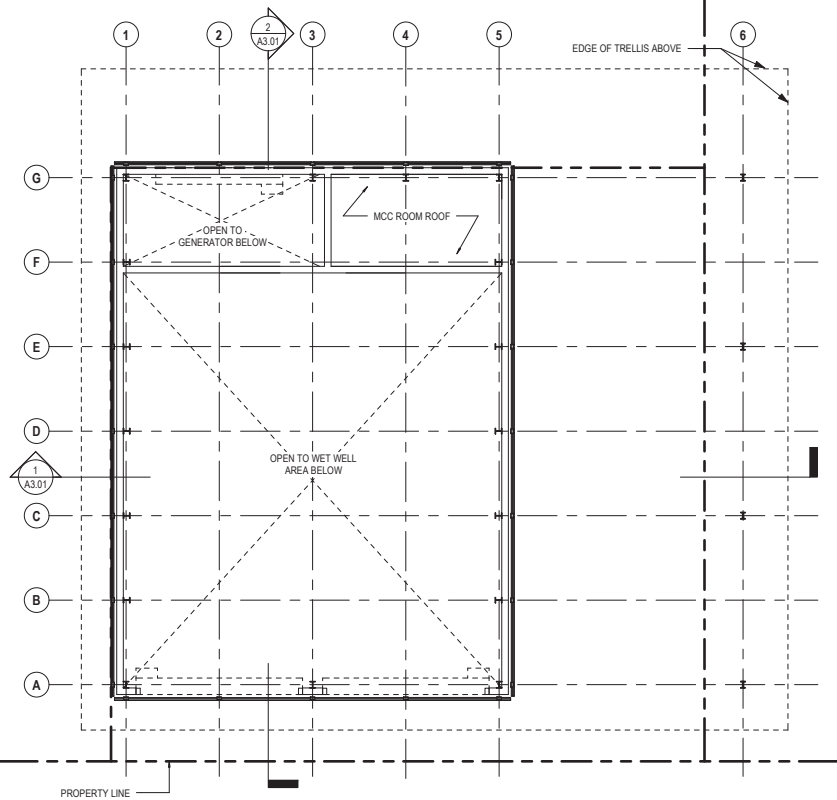


## Appendix

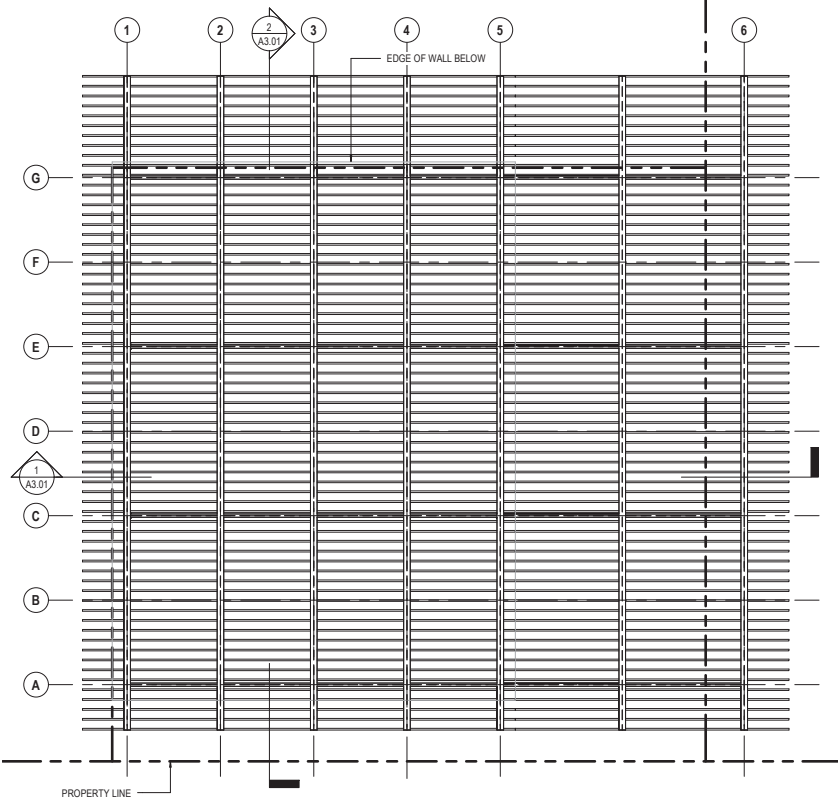
# Lift Station Ground Floor Plan



# Lift Station Plans

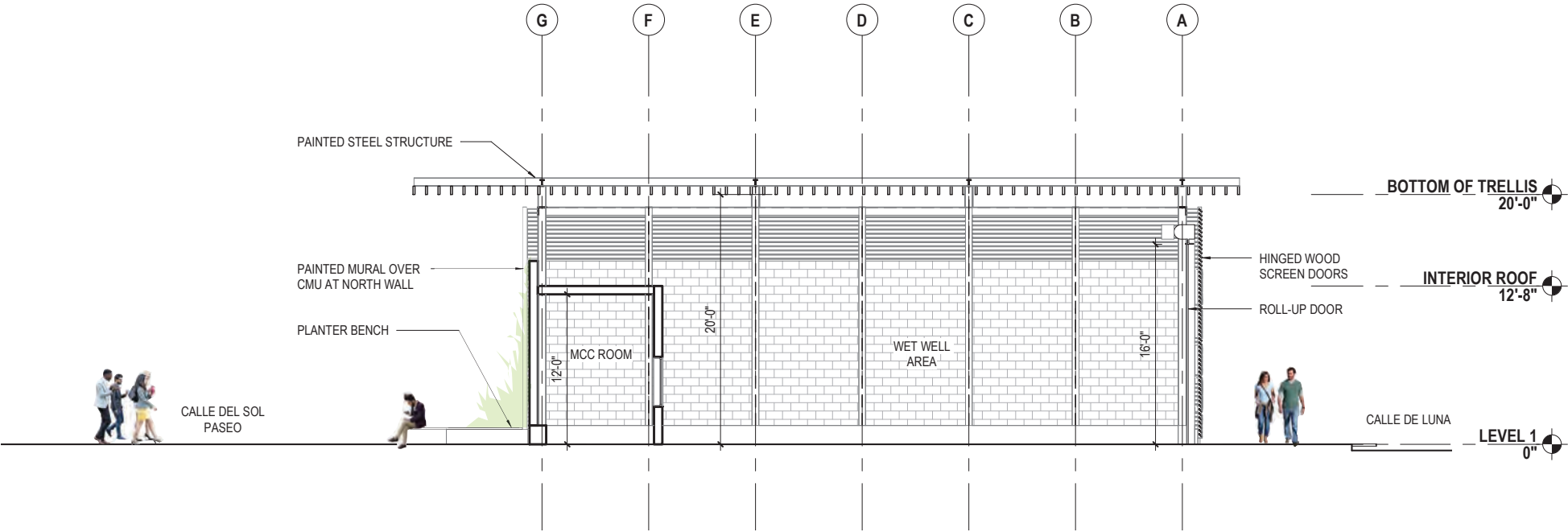


Interior Roof Plan



Trellis Plan

Lift Station  
Building Section





Paseo Renderings  
View from Calle del Sol



Floating trellis corrects the symmetry of the street with the off-set pump enclosure and provides an entry gateway to the Paseo



## Paseo Renderings Facade Lighting Options

Option 1A



Option 2A



Option 3



Option 1B



Option 2B



Lift Station  
Facade Lighting Option 1B

Down-lighting from the trellis structure, lighting entire structure and the Paseo entry



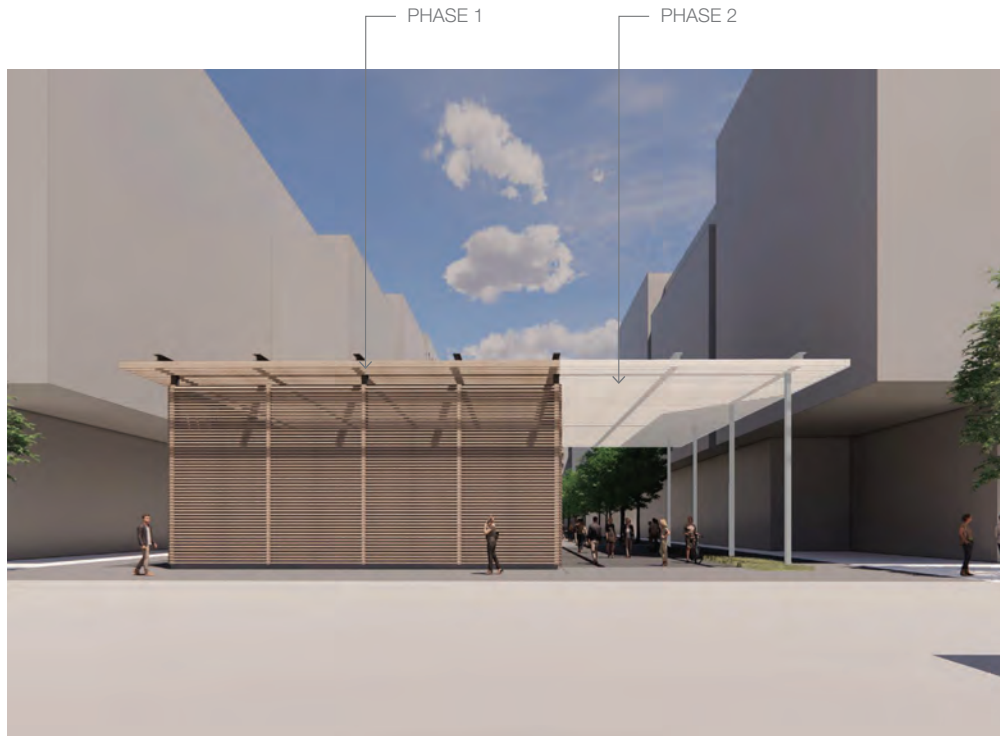


## Lift Station Facade Lighting Option 1B

Down-lighting from the trellis structure, lighting entire structure and the Paseo entry



## Enclosure Concepts Phasing





## Enclosure Concepts Phasing



WHEN RECORDED RETURN TO:

Miller Starr Regalia  
1331 N. California Blvd., 5th FL  
Walnut Creek, CA 94596 Attn:  
Tara C. Narayanan, Esq.

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(Space Above This Line Reserved For Recorder's Use)

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT** (the "**MOA**") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between certain parties as the owners of certain property, all as described in **Exhibit A** hereto (collectively, the "**Developers**"), with reference to the facts set forth below:

### RECITALS

- A. Developers are a number of property owners who are constructing various projects within certain real property in Santa Clara, California, described in **Exhibit A**.
- B. The lots described in **Exhibit A** share the use of a paseo, identified as "Calle Del Sol" (the "**Paseo**") to be situated within four (4) lots described in **Exhibit B** (the "**Paseo Lots**"). The Paseo is intended to be used as an event space and is expected to include walkways, bicycle paths, outdoor restaurant seating, outdoor lounge areas, open space for events, markets, concerts, and similar amenities. Only one (1) of the four (4) Paseo Lots is owned by a current Developer.
- C. The maintenance of the Paseo and the dedication of a public access easement over the Paseo is a requirement of the City of Santa Clara, California ("**City**"), for the development of properties subject to the Tasman East Specific Plan (the "**Specific Plan**" and "**Specific Plan Area**"). The conditions of approval for the Specific Plan require that land developers either directly fund the costs of maintenance of the Paseo, or in the alternative, form and participate in a property owners association to cover such costs. To comply with this condition, the Developers have chosen to form a property owners association (the "**Association**") to manage, maintain and repair certain improvements within the Paseo, including the pedestrian and bicycle pathways, storm drainage systems, landscaping, decorative paving, pump station enclosure, and open spaces. In addition, the Developers have voluntarily agreed to operate public programs within the Paseo as described in the "Calle Del Sol Paseo Declaration of Restrictions (CC&Rs)" (the "**Declaration**"). Additional properties within the Specific Plan Area will potentially be annexed as property subject to the Declaration in the future.
- D. The Declaration grants easements over the Paseo for the maintenance of the Paseo and the improvements located thereon, imposes a duty on the Association to program events within the Paseo, and provides a mechanism for collecting funds for the Association to perform its management, programming, and maintenance duties. The Association will levy assessments against all properties subject to the Declaration in order to fund its performance of the maintenance and programming duties described herein.



- E. The City also proposes to establish a Community Facilities District (the “CFD”) that would assume certain of the Association’s responsibilities should the property owners vote to dissolve the Association or in the event the Association is otherwise terminated or determined invalid or otherwise of no force and effect. In this event, the assessments previously levied by the Association will be paid through special assessments levied by the CFD against the lots and parcels within the Specific Plan Area to fund the costs associated with the CFD’s maintenance and operation duties, which will be included in the property tax statements issued by the assessor’s office and due and payable at the same time as property taxes (the “CFD Special Tax”).
- F. The Specific Plan also requires the development and implementation of a transportation demand management (“TDM”) program supported by the properties within the Specific Plan Area to provide commute program support and to implement policies and systems to increase resident ride-sharing and decrease vehicle miles traveled within the Specific Plan Area. The TDM program is anticipated to require implementing and managing programs on a Specific Plan Area scale that could include information-providing and marketing, transit passes, bicycle and electrical scooter sharing, and monitoring and reporting functions.
- G. The management and funding of the TDM program is to be administered by the Tasman East Transportation Coordination Group (“TETCG”). The Developers that are party to this MOA will participate as members of the TETCG in conjunction with their participation with the Paseo.
- H. The Paseo has not yet been constructed and may not be built for a period of years. Consequently, the Association shall be formed and the Declaration recorded at a later time, as described in this MOA. The Developers hereto wish to record this MOA to give notice of the Developers’ intent and agreement to form an Association to maintain the Paseo and the improvements located thereon, program events within the Paseo as required by the City, collect funds for the Association to perform the management, programming, and maintenance duties of the Paseo in accordance with the Declaration, and participate in the TETCG to achieve the requirements of the City in connection with the TDM program.
- I. The pump station enclosure is expected to be constructed to enclose an operational pump station (which is to be maintained by the City) long before the formation of the Association. The funding of the pump station enclosure maintenance (the structure only) is anticipated to be arranged through a separate agreement between the Developers and the City. Thus, consistent with Recital H, above, the Developers that are party to this MOA agree in advance to execute an agreement yet to be drafted providing for the maintenance of the pump station structure until the Association is operational.
- J. Other lots exist within the Specific Plan Area that are not included in this MOA. It is anticipated they will be annexed at a later date to participate as members in the Association and comply with the Declaration and/or the CFD Special Tax. As additional properties within the Specific Plan Area participate in the Association, this MOA may be amended to include those lots until the Association is formed and this MOA is no longer relevant as described in **Section 11** below.

NOW, THEREFORE, in furtherance of the foregoing, and for good and valuable consideration, receipt of which is hereby acknowledged, the Developers hereto agree as follows:

1. Each Developer hereby agrees to become a member of the Calle Del Sol Paseo Property Owners Association, a California nonprofit mutual benefit corporation, upon its formation as described in **Section 4**, in accordance with and subject to the terms and conditions set forth in the Declaration described in **Section 2**.

2. Each Developer hereby agrees to permit the Developer's property (as described in **Exhibit A**) to be encumbered by the recorded Declaration. Upon recordation of the Declaration, each Developer agrees to be bound by and subject to the terms and conditions set forth in the Declaration.

3. All of the terms and conditions as set forth in the Declaration are incorporated herein by this reference as though fully set forth herein, but such terms and conditions will not be effective until the Association is formed and the Declaration is recorded. The Declaration to be recorded shall be substantially similar to the Declaration attached hereto as **Exhibit C**, which has been approved by the City as well as the Developers that are parties to this MOA.

4. The Association shall be formed and shall commence operations no later than acceptance by the City of the Public Access Easement (defined in the Declaration attached as **Exhibit C**), which shall occur only after: (i) the Declaration is recorded in the records of Santa Clara County, California; (ii) a minimum of three (3) Paseo Lots are made subject to the Declaration, and (iii) the Paseo's construction on the participating Paseo Lots is completed.

5. Each Developer hereby agrees to become a member of the TETCG described in Recitals G and H upon its formation in accordance with the terms and conditions of the TDM program, whenever created.

6. Each Developer acknowledges that, through its membership, it shall participate in the administration of the Tasman East TDM program and shall contribute financially on a proportionate basis as required by the TDM program.

7. Each Developer hereby agrees to execute an agreement between them and the City that provides for their maintenance of the pump station structure until the Association is operational and assumes such responsibility according to the terms of the Declaration.

8. This MOA shall constitute notice of each Developer's agreement to become a member of the Association and participate in the governance of the Paseo—including event programming and maintenance—through the Association, and pay the assessments allocated to the Developer's property, as set forth in the Declaration. In the event that a Developer fails to do any of the foregoing, the other Developers and/or the Association (if formed) shall have all of the rights and remedies available to them, including specific performance, monetary damages, and/or triggering the CFD to collect payments and/or assume the Association's responsibilities under the Declaration as to the defaulting Developer, at which point each Developer shall be obligated to pay the CFD Special Tax levied upon the Developer's property to fund the CFD's duties.

9. Nothing herein shall be interpreted to render invalid any deed of trust or mortgage on any portion of a Developer's 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 unless such obligation is expressly assumed in writing, provided that the purchaser or grantee shall take title subject to this MOA and shall assume the obligations of the predecessor Developer accruing from and after the date the purchaser or grantee received title. This MOA shall be subordinated to any financing obtained by a Developer to finance the acquisition and/or construction of the initial improvements on the Developer's property.

10. This MOA is being recorded to give notice of the rights and obligations of the Developers pursuant to the Declaration and the terms and conditions contained therein. This MOA is not intended to modify or alter in any way the terms and conditions of the Declaration. If there is any inconsistency

between the provisions of this MOA and the provisions of the Declaration, the provisions of the Declaration shall control.

11. Upon the formation of the Association and the recording of the Declaration against each Developer's property in accordance with the terms and conditions of the Declaration, this MOA shall automatically terminate and be of no further force and effect, and Developers shall execute and deliver a termination to be recorded in the records of Santa Clara County, California, to extinguish the effect of this MOA of record. Upon termination of the Declaration or the Association for any reason other than breach or default, Developers shall execute and deliver quitclaim deeds, also to extinguish the effect of this MOA of record.

12. This MOA may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one agreement with the same effect as if all Developers had signed the same signature page. Any signature page of this MOA may be detached from any counterpart of this MOA and reattached to any other counterpart of this MOA identical in form hereto, but having attached to it one or more additional signature pages.

*[Signatures on following page]*

## SIGNATURE PAGES TO MEMORANDUM OF AGREEMENT

IN WITNESS WHEREOF, the Developers have executed this Memorandum as of the date and year first above written.

Date: August 18, 2020

**SHAC TASMAN CDM APARTMENTS LLC,**  
a Delaware limited liability company

By: SHAC Tasman CDM Apartments Ventures LLC,  
a Delaware limited liability company, its manager

By: SHAC Tasman CDM Apartments Manager LLC,  
a Delaware limited liability company, its manager

By: Summerhill Apartment Communities,  
a California corporation, its managing member



**Jason Biggs**  
Secretary

By: [Signature]  
Name: Elaine Breeze  
Its: Senior Vice President

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

**ST. ANTON TASMAN EAST, LP,**  
a California limited partnership

By: Tasman East Workforce Housing, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Blue Bronco, LLC,  
a California limited liability company,  
its sole member and manager

By: \_\_\_\_\_  
Name: Peter H. Geremia  
Title: Manager

By: PacH Anton South Holdings, LLC,  
a California limited liability company,  
its Managing General Partner

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
Name: Mark A. Wiese  
Its: President

*[Additional Developer Signatures on Following Pages]*

**SIGNATURE PAGES TO MEMORANDUM OF AGREEMENT**

IN WITNESS WHEREOF, the Developers have executed this Memorandum as of the date and year first above written.

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

**SHAC TASMAN CDM APARTMENTS LLC,**  
a Delaware limited liability company

By: SHAC Tasman CDM Apartments Ventures LLC,  
a Delaware limited liability company, its manager

By: SHAC Tasman CDM Apartments Manager LLC,  
a Delaware limited liability company, its manager

By: Summerhill Apartment Communities,  
a California corporation, its managing member

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

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

Its: \_\_\_\_\_

Date: AUGUST 17, 2020

**ST. ANTON TASMAN EAST, LP,**  
a California limited partnership

By: Tasman East Workforce Housing, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Blue Bronco, LLC,  
a California limited liability company,  
its sole member and manager

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

Name: Peter H. Geremia

Title: Manager

By: PacH Anton South Holdings, LLC,  
a California limited liability company,  
its Managing General Partner

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

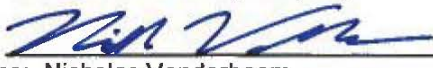
Name: Mark A. Wiese

Its: President

*[Additional Developer Signatures on Following Pages]*

Date: 8/19/2020

**TASMAN EAST URBAN HOUSING, LLC,**  
a Delaware limited liability company

By:   
Name: Nicholas Vanderboom  
Its: Vice-President

Date: 8/19/2020

**TASMAN EAST HOLDCO, LLC,**  
a Delaware limited liability company

By:   
Name: Nicholas Vanderboom  
Its: Vice-President

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

**2354 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

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

**5185 LAFAYETTE STREET, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

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

**TASMAN 2278 CALLE DE LUNA, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

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

**2263 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

*[Additional Developer Signatures on Following Pages]*



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

**TASMAN EAST URBAN HOUSING, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Nicholas Vanderboom  
Its: Vice-President


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

**TASMAN EAST HOLDCO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Nicholas Vanderboom  
Its: Vice-President


Date: August 17, 2020

**2354 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member

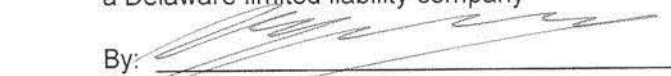
Date: August 17, 2020

**5185 LAFAYETTE STREET, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member

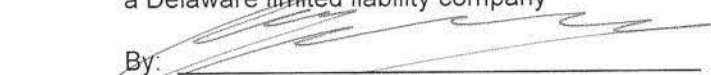
Date: August 17, 2020

**TASMAN 2278 CALLE DE LUNA, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member

Date: August 17, 2020

**2263 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By:   
Name: Kambiz Babaoff  
Its: Managing Member

*[Additional Developer Signatures on Following Pages]*

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

**2302 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

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

**TASMAN PROPERTIES, LLC,**  
a Delaware limited liability company


By: \_\_\_\_\_  
Name: Kambiz Babaooff  
Its: Managing Member

Date: 8/19/2020

**NASH – HOLLAND CALLE DE LUNA INVESTORS, LLC,**  
a Delaware limited liability company

By: HPG Calle De Luna, LLC,  
a Washington limited liability company,  
its Operating Member

By: Holland Partner Group Management, Inc.,  
a Delaware corporation,  
its Manager

By:  \_\_\_\_\_  
Name: John Wayland  
Its: Executive Managing Director of Development,  
Northern California

*[Final Signature Page]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

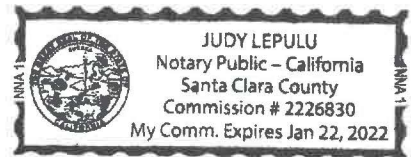
State of California )  
County of SANTA CLARA )

On 8/18/2020, before me, JUDY LEPULU, a Notary Public, personally appeared ELAINE BREEZE and JASON BIGGS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Sacramento )

On August 17, 2020 before me, Kellie Lyn Hamblin, Notary Public,  
Date Here Insert Name and Title of the Officer  
personally appeared Peter H. Geremia  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF Sacramento )

On August 17, 2020 before me, Cheyenne Pike, Notary Public,  
personally appeared Mark A. Wiese,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

[Signature]  
Signature of Notary Public

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State of California )  
County of Los Angeles )

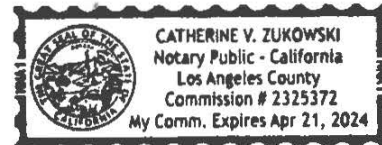
On August 19, 2020, before me, Catherine V. Zukowski, a Notary Public, personally appeared Nicholas Vanderboom, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Catherine V. Zukowski



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State of California )  
County of Los Angeles )

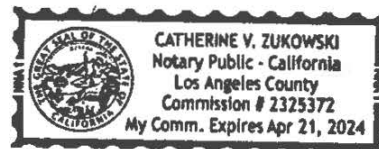
On August 19, 2020, before me, Catherine V. Zukowski, a Notary Public, personally appeared Nicholas Vanderboom, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Catherine V. Zukowski





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State of California )  
County of Los Angeles \_\_\_\_\_ )

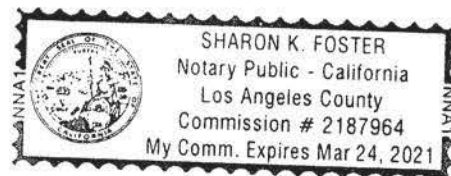
On August 18, 2020, before me, Sharon K. Foster, a Notary Public, personally appeared Kambiz Babaoff, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

*Sharon K. Foster*



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

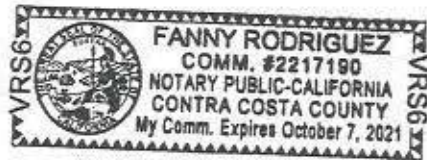
State of California )  
County of \_\_\_\_\_ )

On August 19, 2020, before me, Fanny Rodriguez, a Notary Public, personally appeared Song Wayland, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A – Developers

<u>Declarant</u>	<u>Property Owned by Declarant Within Tasman East Specific Plan Area</u>
2263 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 5 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2302 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2354 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 12 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
5185 Lafayette Street, LLC, a Delaware limited liability company	Parcel 13 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman 2278 Calle de Luna, LLC, a Delaware limited liability company	Parcel 22 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Properties, LLC, a Delaware limited liability company	Parcel 23 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
NASH - Holland Calle De Luna Investors, LLC, a Delaware limited liability company	Parcel 19 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Urban Housing, LLC, a Delaware limited liability company	Parcels 24, 25, 26 and 27 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Holdco, LLC	Parcels 20 and 21 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
St. Anton Tasman East, LP, a California limited partnership	Parcel 6 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
SHAC Tasman CDM Apartments LLC, a Delaware limited liability company	Parcels 1, 2 and 3 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.

EXHIBIT B – The Paseo Lots

2302 Calle del Mundo, LLC	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Company, LLC, a California limited liability company as to an undivided 1/2 interest and  The Family Trust of Harry Bruce Frumveller and Carolyn Ruth Frumveller, Harry Bruce Frumveller and Carolyn Ruth Frumveller, Trustees, Trust dated June 16, 2014 as to an undivided 1/2 interest	Parcel 16 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Berto Development, a California limited partnership	Parcel 17 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
True Solar USA Inc., a California corporation	Parcel 1 as shown on the Parcel Map filed on June 23, 1980, in Book 465 of Maps, at page 36, in the records of Santa Clara County, California.



RECORDED AT THE REQUEST OF AND WHEN  
RECORDED, RETURN TO:

Tara C. Narayanan  
MILLER STARR REGALIA  
1331 N. California Blvd., Fifth Floor  
Walnut Creek, CA 94596

**CALLE DEL SOL PASEO**

**DECLARATION**

**OF**

**RESTRICTIONS (CC&Rs)**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income as defined in subdivision (p) of Section 12955, disability, veteran or military status, or genetic information, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

**CALLE DEL SOL PASEO**  
**DECLARATION OF RESTRICTIONS (CC&Rs)**

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## CALLE DEL SOL PASEO

### DECLARATION OF RESTRICTIONS (CC&Rs)

**THIS DECLARATION OF RESTRICTIONS (CC&Rs)** ("Declaration") is executed by certain parties, as the owners of the property subject to this Declaration, described in **Exhibit A** hereto (collectively, the "Declarant") with reference to the following facts:

- A. Declarant is comprised of a number of property owners who are constructing various developments consisting of certain real property in Santa Clara, California, described on **Exhibit A**.
- B. The lots described in **Exhibit A** share the use of a paseo, identified as "Calle Del Sol" (the "Paseo"), situated within four (4) of the lots (the "Paseo Lots"). The Paseo Lots are described in **Exhibit B**. Additional lots (the "Annexable Property") within the area described in **Exhibit C** to this Declaration will potentially be annexed as property subject to this Declaration in the future. The Paseo is intended to be used as an event space and is expected to include walkways, bicycle paths, outdoor restaurant seating, outdoor lounge areas, and open space for events.
- C. The maintenance of the Paseo and the dedication of a public access easement over the Paseo is a requirement of the City of Santa Clara, California ("City"), for the development of properties subject to the Tasman East Specific Plan (generally, the "Specific Plan" and the properties are the "Tasman East Specific Plan Area" or "Specific Plan Area"). The conditions of approval for the Specific Plan require that land developers either directly fund the costs of maintenance of the Paseo, or in the alternative, form and participate in a property owners association to cover such costs. To comply with this condition, Declarants (as land developers) have chosen to form a property owners association ("Association") to manage, maintain and repair certain improvements within the Paseo, including the pedestrian and bicycle pathways, storm drainage systems, landscaping, decorative paving, pump station enclosure and screening, and open spaces. In addition, Declarants have voluntarily agreed to operate public programs within the Paseo. Properties within the Specific Plan Area other than Declarant's will be annexed and subject to this Declaration in the future as described in **Section 11.1**. The Association will levy assessments against the properties subject to this Declaration in order to fund its performance of the maintenance and programming duties described herein. Each owner of a lot or parcel described in **Exhibits A** and/or **C** that become members of the Association, including any lots or parcels resulting from the subdivision of any lot or parcel shown in **Exhibits A** or **C**, will be obligated to pay the lot's or parcel's allocable share of the assessments levied by the Association.
- D. The Specific Plan Area's conditions of approval require the establishment of a Community Facilities District (the "CFD") that would assume the Association's responsibilities should the property owners vote to dissolve the Association or in the event the Association is otherwise terminated or determined invalid or otherwise of no force and effect. In this event, the assessments previously levied by the Association will be paid through special assessments levied by the CFD against the lots and parcels within the Specific Plan Area to fund the costs associated with the CFD's maintenance and operation duties, which will be

included in the property tax statements issued by the assessor's office and due and payable at the same time as property taxes(the "CFD Special Tax").

- E. The Annexable Property described in **Exhibit C** may be annexed at a later date, and shall be bound upon such annexation by the terms of this Declaration, the Association's assessments, and/or the CFD Special Tax. Pursuant to the Tasman East Specific Plan, the existing and additional lots within the Specific Plan Area will benefit from the amenities offered with participation in the Paseo, and will likewise be bound to contribute to its maintenance.
- F. The purpose of this Declaration is to: (i) confirm and grant easements over the Paseo for the management and maintenance of the Paseo and the improvements located thereon; and (ii) provide a mechanism for collecting funds for the association to perform its management and maintenance duties.
- G. The property that is subject to this Declaration at the time of recording, and the Annexable Property described in **Exhibit C** will benefit and be bound by the provisions of **Sections 2.1, 2.2, 9.1 and 11.1** of this Declaration on the recordation of this Declaration. The other covenants, easements, restrictions, rights and duties described in this Declaration will benefit and bind the initial lots upon the recordation of this Declaration and will benefit and bind the Annexable Property on the recordation of a declaration of annexation annexing that portion of the Annexable Property and rendering the Annexable Property subject to this Declaration.

#### **DECLARANT DECLARES AS FOLLOWS:**

##### Article 1 **DEFINITIONS**

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Annexable Property. The real property described in **Exhibit C** that may be annexed and become subject to this Declaration. Upon annexation of any portion of the Annexable Property and the commencement of assessments against that portion, the portion no longer shall be considered Annexable Property and shall be part of the Lots that are subject to this Declaration.

1.2 Applicable Laws. All federal, state and local laws, statutes, acts, ordinances, rules, regulations, permits, licenses and requirements of all governmental authorities (including any agency, authority, board, branch, division, department or similar unit of any federal, state, county, district or other governmental entity having jurisdiction over the Specific Plan Area) that now or hereafter during the term of this Declaration may be applicable to the Specific Plan Area.

1.3 Articles. The Articles of Incorporation of the Association and any amendments thereto.

1.4 Association. The Calle Del Sol Paseo Property Owners Association, a California nonprofit mutual benefit corporation.

1.5 Board. The Board of Directors of the Association.

1.6 Bylaws. The Bylaws of the Association and any amendments thereto.

1.7 CFD. The community facilities district formed by the City to manage, maintain and repair the Paseo in the event that the Association is dissolved, terminated, determined invalid or otherwise be of no force and effect.

1.8 City. The City of Santa Clara, California.

1.9 Declarant. The parties that own the properties subject to this Declaration that are described in **Exhibit A**, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There is more than one Declarant.

1.10 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments, annexations or corrections thereto.

1.11 Exclusive Use Area. The portion or portions of the Paseo described in **Section 1.21** subject to rights for the exclusive use of an Occupant of a retail space within a Paseo Lot.

1.12 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules.

1.13 Improvements. Any property in the Paseo constituting a fixture within the meaning of Civil Code section 660.

1.14 Lot or Lots. Any lot, parcel or other subdivision of real property subject to this Declaration.

1.15 Maintain, Maintained, Maintaining or Maintenance. Unless expressly stated otherwise, "maintain", "maintained", "maintaining" or "maintenance" as used in this Declaration includes inspection, cleaning, maintenance, repair, upgrading and/or replacement.

1.16 Member. A member of the Association.

1.17 Mortgage. A recorded mortgage or deed of trust against one or more Lots.

1.18 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot.

1.19 Occupant(s). Any Person entitled to use and occupy a Paseo Lot pursuant to an ownership right or any lease, license or other similar agreement with the Owner of the Lot. "Occupant" is limited to Occupants of any commercial or retail interest in a Lot, such as a café or a store, and shall not include a residential occupant such as the tenant of an apartment or renter of a residential condominium.

1.20 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Specific Plan Area. If any Lot is further subdivided into a common interest development such as a condominium or planned development, the owners association or equivalent shall be deemed to be the Owner of that Lot for all purposes of this Declaration and shall assume all the rights and duties of the Owner of the subject Lot hereunder.

1.21 Paseo. The portions of Parcels 21, 22, 23, 24 and/or 25 that are or shall be subject to the paseo easements described in **Sections 2.1 and 2.2** and that are annexed and subject to this Declaration. The term "Paseo" includes the Improvements, landscaping, and operation and management services, and including walkways, bicycle paths, outdoor restaurant seating, outdoor lounge areas, and open space for events. The Paseo includes the pump station screening enclosure, although the City is responsible for maintaining the pump station itself.

1.22 Paseo Lots. Parcels 21, 23, 24 and 25. Not all of the Paseo Lots may be subject to this Declaration at the time the Paseo becomes operational as described in **Section 4.1** and **Exhibit B**.

1.23 Permittee(s). All Owners and Occupants and their agents and invitees.

1.24 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.25 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 4.6.2**.

1.26 Specific Plan Area. The properties subject to the Tasman East Specific Plan, on file with the City.

## Article 2 PROPERTY RIGHTS AND EASEMENTS

2.1 Establishment of Paseo. Declarant grants to the City an easement in gross, and to the Owner of each Lot and any Annexable Property that is made subject to this Declaration in favor of the Lot or Annexable Property as the dominant tenement, over the Paseo Lot(s) subject to this Declaration as the servient tenement, the following easements to establish the Paseo:

(i) The Paseo Lots that are subject to this Declaration are also subject to pedestrian and bicycle ingress and egress over the walkways and bicycle paths within the Paseo for the benefit of the public.

(ii) The Paseo Lots that are subject to this Declaration are subject to access to and use of (including the right to install or maintain) any utility lines, cables, wires, pipes, meters or other equipment installed within, on or over the Paseo that provides utility service to the dominant tenement, including water, electricity, gas, telecommunications, storm drainage and sanitary sewer services, pump station services, and life safety system, pursuant to the utility easement described in **Section 2.2.1**.

The easements described in this **Section 2.1** are granted to the City for purposes of public access and use of the servient tenement (the "Public Access Easement"). The Public Access Easement shall be established independent of this Declaration through separately-recorded instrument(s) and shall exist in perpetuity, subject to the terms of the separately-recorded instrument(s).

2.2 Paseo Easements. The Paseo Lots are (or shall be upon annexation) subject to the easements described in this **Section 2.2** and the general easement rights in **Section 2.3**. Declarant grants to the Owner of each Lot and any Annexable Property that is made subject to this Declaration, in favor of the Lot or Annexable Property as the dominant tenement over the Paseo Lots as the servient tenement, the following easements. The easements shall be effective upon acceptance of the completed Paseo Improvements by the City.

2.2.1 Paseo Utility and Storm Drainage Easement. The Paseo Lots are subject to easements for utilities, including: (i) rights for the Association to install, maintain, and retain utilities such as electricity, gas, water, and stormwater drainage systems that serve the Paseo; and (ii) public utilities such as joint trench, sewer, and storm drainage systems, including within the Public Access Easement, that serve the private portion(s) of the Paseo Lots. All private utilities serving the private portion(s) of the Paseo Lots shall be located within the portion(s) of the Paseo Lots outside of the Public Access Easement.

2.2.2 Paseo Maintenance and Signage Easement. The Paseo Lots are subject to easements for the right to maintain and/or upgrade the Paseo, including the structure screening and/or enclosing the pump station maintained by the City, and such access as may be reasonably necessary for the Association to perform its maintenance duties as described in **Section 3.1**, and for the right to install, retain, maintain, and/or upgrade signage that serves the Paseo located within the Paseo as may be approved by the Board, subject to any legal requirements for sign installation.



2.2.3 Other Paseo Easements. Each Paseo Lot is subject to such other easement(s), rights-of-way, or dedications as may be granted or reserved on any map, any deed, or any other appropriate recorded document.

2.3 General Easement Rights. Each easement described in **Section 2.1** is subject to, and construed in accordance with, the following provisions, except as otherwise expressly provided for elsewhere in this Declaration: (i) the easement is appurtenant to the dominant and servient tenements and any transfer of a dominant or servient tenement automatically transfers the easement appurtenant thereto regardless of whether the easement is described in the instrument of transfer; (ii) the easement is in perpetuity unless otherwise terminated by operation of law; (iii) all easement uses shall comply with the covenants, rights, duties and restrictions set forth in this Declaration, with all Applicable Laws and with any Rules adopted by the Board under the provisions of **Section 4.6.2**; (iv) each easement granted hereunder exists by virtue of this Declaration, without the necessity of confirmation by any other documents; (v) the easements are nonexclusive unless expressly provided otherwise; and (vi) the easements granted in **Section 2.1** are granted to the Owners of each Lot effective automatically on the date this Declaration and/or a declaration of annexation is recorded in the records of Santa Clara County, California.

2.4 Authority Over Paseo. The Public Access Easement described in **Section 2.1** shall be maintained at all times and no encroachment of the Public Access Easement shall take place without the express prior written authority of the City, pursuant to an easement encroachment agreement. Subject to the foregoing, the Board shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person easements, leasehold estates, exclusive use easements or rights, licenses, lot line adjustments, rights-of-way and/or dedications in, on, over or under the Paseo in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, and other telecommunications equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Paseo or a Paseo Lot; or (iii) accomplish any other purpose that in the discretion of the Board is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Paseo. Each Owner, by becoming a Member of the Association, expressly consents to such action and authorizes and appoints the Association as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot without the prior written consent of that Owner, or grant exclusive use of any portion of the Paseo to any Owner without the consent of a majority of the total voting power of the Association and such consent of the Mortgagees as may be required by **Article 8**.

2.5 Use of Exclusive Use Area. Certain portions of the Paseo may be set aside for the exclusive use of the Occupants of certain retail food and beverage spaces within the Paseo Lots and constitute Exclusive Use Area intended for such uses as restaurant, café and/or bar seating (the "Outdoor Dining Areas"). Outdoor Dining Areas within the Paseo shall be under the jurisdiction of the Association, including the designation thereof, subject to Applicable Laws. The Board may adopt Rules regulating the use of the Outdoor Dining Areas and may license the Outdoor Dining Areas to Occupants of retail food and beverage spaces within the Paseo Lots. Under no circumstances may the right to any Outdoor Dining Area be granted to any Person who is not an Occupant of a retail food and beverage space within a Paseo Lot unless otherwise authorized by the Board.

### Article 3

## MAINTENANCE, OPERATION, AND PROGRAMMING OBLIGATIONS

3.1 Association's Maintenance and Operation Responsibilities. The Association shall maintain the Paseo in good condition and repair at all times, including, but not limited to, drive aisles (if

any), bicycle pathways, walkways and sidewalks, event spaces and stages, artwork, the pump station screening enclosure, trash collection areas, recreational facilities, landscaping and irrigation systems within the Paseo, lighting fixtures and utilities within and serving the Paseo, storm drainage systems within the Paseo, and sanitary sewer systems serving the Paseo not maintained by a government agency or a regulated utility company. The Association shall be responsible for maintaining all parts of any solar energy systems installed within the Paseo, and shall maintain any part of the solar energy systems and Paseo impacted thereby. Maintenance shall be performed in compliance with the Inspection and Maintenance Standards and Guidelines described in **Section 3.3**. The pump station in or around Parcel 22 shown on **Exhibit D** (but not its enclosing structure) shall be the City's responsibility and, in any event, shall not be the responsibility of the Association.

The Association shall also be responsible for public event programming in the Paseo's gathering spaces. A summary of the guidelines and requirements for such programming is attached hereto as **Exhibit E**. The Board shall have the full right, power and authority to act on behalf of the Association and its Members to operate and manage programming in the Paseo and the consent of the Members shall not be required.

The Association's maintenance responsibilities described in this **Section 3.1** shall commence upon acceptance by the City of the Paseo and subject to the requirements of **Section 4.1**.

**3.2 Maintenance of Exclusive Use Area.** Each Occupant licensed to use an Exclusive Use Outdoor Dining Area (the "Dining Area Occupant") shall maintain the Outdoor Dining Area and all Improvements therein as described in this **Section 3.2** and in compliance with the standards and guidelines described in **Section 3.3**. The Outdoor Dining Area may be used for all commercial purposes permitted by Applicable Laws, subject to any Rules and/or restrictions imposed by the Board even if authorized under local zoning laws. No commercial uses may be conducted in an Outdoor Dining Area until the Dining Area Occupant complies with all permit, licensing, insurance and other Applicable Laws and Board Rules.

The Dining Area Occupant shall allow agents of the Association access to the Exclusive Use Area for purposes of performing any of the Association's maintenance obligations under this Declaration. If any Dining Area Occupant fails or refuses to provide access, the Owner of the Lot on which the Outdoor Dining Area exists shall be responsible for any maintenance and repair costs that could have been avoided if access had been provided, and the Association may levy a reimbursement assessment against the Lot to recover the additional costs.

If damage to any of the Improvements maintained by the Dining Area Occupant is covered by insurance maintained by the Association, the Association, on request from the Dining Area Occupant or subject Paseo Lot Owner, may, at the discretion of the Board, submit an appropriate claim if the claim exceeds the deductible and shall remit any available insurance proceeds to the Dining Area Occupant and/or Paseo Lot Owner on receipt of satisfactory evidence that the proceeds are or will be used for repair. Any deductible amount shall be borne by the Dining Area Occupant and/or Paseo Lot Owner. In lieu of filing a claim, the Board may elect to cover the amount that would have been paid through insurance through other funds available to the Association.

If any Dining Area Occupant fails to maintain his or her Outdoor Dining Area as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Outdoor Dining Area and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot to recover the additional costs.

### **3.3 Inspection and Maintenance Standards and Guidelines.**

**3.3.1 Maintenance Standards.** All Improvements in the Paseo shall be maintained at all times: (i) in good condition and repair, ordinary wear and tear excepted; (ii) in a neat, clean and sanitary condition; and (iii) in proper operating condition. It is intended that the Improvements be maintained in a

like new condition similar to the condition on the completion of the original construction, reasonable wear and tear excepted. Maintenance of the Paseo shall include periodic inspections by a Person competent to conduct the inspection to confirm compliance with the required standards and the inspection and maintenance guidelines described in **Section 3.3.2**. Any maintenance, repair or replacement recommendations resulting from the inspection shall be performed as soon as is reasonably practical after the inspection. In addition, to the extent applicable, all Improvements and landscaping shall be maintained in compliance with the maintenance and inspection guidelines described in **Sections 3.3.1 and 3.3.2**, and commonly-accepted property owners' maintenance obligations.

Paseo maintenance shall include the maintenance of all paved surfaces and curbs in a smooth, level, and evenly covered condition with the type of material originally installed or material that is similar in quality, use and durability; installing, replacing, and keeping in good repair and operation of all necessary and appropriate lighting, signage, striping, curbs and gutters, and performing periodic sweeping and removal of debris.

Storm drainage systems shall be kept free and clear of litter, debris, obstruction, and stored materials at all times. No action shall be taken that would interfere with the operation of the storm drainage system in any manner, or modify any drainage or flow pattern, unless approved by the City and the Board, and in compliance with all Applicable Laws.

Landscaping shall be maintained in a healthy and weed-free condition. Dying or dead vegetation shall be immediately removed and replaced. Maintenance shall include regular fertilization, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed at all times. Appropriate steps shall be taken to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

The pump station screening enclosure may include such Improvements as siding, gutters and/or downspouts, trellises, art, screen and architectural lighting, and other appurtenances. The pump station screening enclosure shall be maintained in good condition and repair at all times normal wear and tear excepted. The exterior surfaces shall be periodically repainted and/or restained, and the roof materials periodically replaced in accordance with a schedule that maintains substantially the same quality of appearance as existed at the time original construction was completed and no less frequently than the periodic repainting and re-roofing recommendations of the manufacturer and/or the Guidelines described in **Section 3.3.2**.

**3.3.2 Inspection and Maintenance Guidelines.** The Board shall adopt guidelines for the periodic inspection and maintenance of the Paseo, including, but not limited to, utility equipment and sanitary sewer and storm drainage facilities maintained by the Association, drive aisles (if any), walkways and sidewalks, bicycle pathways, event structures such as stages, the pump station enclosure, landscaping, and the irrigation system. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

**3.4 Trash Removal.** The Association shall be responsible for the maintenance of the central trash collection points within the Paseo and for the periodic removal therefrom. The Association shall engage a trash removal service to remove trash periodically from these areas pursuant to a schedule that prevents the accumulation of trash in excess of the trash retaining capacity of the areas. All trash or refuse shall be kept only in sanitary containers, which containers shall be kept in the areas approved by the Board. The Association shall take reasonably appropriate, proper and required precautions to protect Persons and property from any injuries or damages from the trash or other refuse generated from the Paseo and shall comply with all laws and ordinances regarding the disposal of any hazardous materials. The Board may adopt rules regulating the trash collection areas.

**3.5 Cooperation and Access.** Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance obligations described in **Section 3.1** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its



managing agent of any maintenance problems for which the Association is responsible and access to the Owner's or Occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance.

3.6 Reimbursement and Indemnification. If the Association incurs any maintenance costs because of the willful or negligent act or omission of any Owner or Occupant or their Permittees, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in **Section 5.6**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of twelve percent (12%) per annum, but not in excess of the maximum rate authorized by Applicable Laws. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount and any costs in excess of such insurance coverage shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible and any amount in excess of insurance coverage.

#### Article 4 THE ASSOCIATION

4.1 Formation of the Association and Commencement of Operations. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than acceptance by the City of the Public Access Easement, which is expected to occur (i) when at least three (3) Paseo Lots have become subject to this Declaration, (ii) after the Paseo is completed on the initial three Paseo Lots, and (iii) this Declaration is recorded. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

4.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, Bylaws and any amendments thereto.

The Board may retain a property manager to manage the Paseo. The Board shall be responsible for supervising the performance of the manager under any management contract entered into by the Association for the management, operation, and maintenance of the Paseo and related Improvements.

4.3 Membership. Each Owner shall automatically be a Member of the Association at the time voting rights vest as described in **Section 4.4**. If there is more than one (1) fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

As described in **Section 1.20**, if any Lot is further subdivided into a common interest development such as a condominium or planned development, the owners association or equivalent shall be deemed to be the Owner of that Lot for all purposes of this Declaration and shall assume all the rights and duties of the Owner of the subject Lot hereunder.

4.4 Voting Rights. Each Lot shall have the number of votes set forth in **Exhibit F** attached hereto. Declarant or, after formation, the Association, shall amend **Exhibit F** whenever more Annexable Property is annexed in order to update the voting allocations. Voting rights shall vest at the time that

assessments are levied against the Owner's Lot. Except as otherwise provided in this Declaration or the Bylaws, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members.

Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(2) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the respective document to be amended.

(3) Legal Requirements. If the voting requirements and/or procedures conflict with any Applicable Laws, the Applicable Laws shall control.

4.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

4.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

4.6.1 Levying Assessments. The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of **Article 5** of this Declaration.

4.6.2 Adopting Rules. The Board may adopt, amend and repeal Rules as it considers appropriate, provided they are adopted, amended or repealed in accordance with all Applicable Laws. Rules shall apply generally to the management and operation of the Paseo and/or the conduct of the business and affairs of the Association and may regulate the use of utilities that are paid by the Association and such other matters as are authorized in this Declaration. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies.

Any Rules adopted by the Board shall apply to all Owners or Occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or Occupant their employees, clients, customers, vendors or Permittees, or a Rule that does not directly affect all Owners or Occupants in the same manner, as long as the Rule applies to all Owners or Occupants.



**4.6.3 Imposing Disciplinary Action.** In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by Applicable Laws and subject to the due process requirements imposed by this Declaration, the Bylaws or by Applicable Laws, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; and (b) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 10.8**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a Member or Member's Permittee or the Member's Occupant or their Permittee, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) **Notice of Hearing.** Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least fifteen (15) days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) **Hearing.** If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) **Notice of Action Taken.** If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten (10) days following the election to impose the disciplinary action.

(d) **No Forfeiture.** Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of this Declaration, the Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) **Assessment Charges.** The provisions of this **Section 4.6.3** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

**4.6.4 Delegating Duties.** Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.



4.6.5 Implementing Special Fees. The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners. Fees not paid in a timely manner may be collected through a reimbursement assessment levied against the Owner's Lot.

4.7 Duties of the Association. In addition to the duties described in the Articles, Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Paseo programming, perform the maintenance and trash collection as described in **Article 3**, prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 3.2**, prepare and distribute financial statements and reports as described in **Section 4.10**, levy and collect assessments as described in **Article 5**, and procure, maintain and review the insurance as described in **Article 6**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

4.8 Taxes and Assessments. The Association shall pay all personal property taxes and assessments levied against the Association or the personal property owned by the Association. If and only to the extent that taxes and/or assessments are levied against the Paseo separate from the remainder of the Paseo Lots, the Association shall pay such real property taxes and assessments. The Association shall not be responsible for payment of any taxes and/or assessments levied against a Paseo Lot beyond the Paseo. Taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.9 Utility Service to the Paseo. The Association shall acquire, provide and pay for water, trash collection, electrical, sewer, and other necessary utility services for the Paseo, including any recreational facilities therein.

4.10 Reporting Requirements. The Association shall prepare and distribute such financial statements and reports as may be required by the Board and by Applicable Laws.

## Article 5 ASSESSMENTS

5.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of a deed to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, any portion of the annual regular assessment not yet due and payable). The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Paseo or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Paseo Improvements, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, upon the recordation of a judgment lien, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Lot unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a judgment lien has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the judgment lien and except as provided in **Section 8.3**.

5.2 Obligations to Pay Assessments If Further Subdivision. If any Lot is further subdivided into additional lots and/or common interest developments (a "Subdivided Lot") and an owners association is formed to manage and maintain the Subdivided Lot, the association shall be deemed the Owner of that portion of the Subdivided Lot for purposes of this Declaration and the association's board of directors shall

have full right, power and authority to exercise all the rights and perform all the duties on behalf of the owners of the Subdivided Lots and the consent of these owners shall not be required. The association shall be obligated to collect the assessment attributable to the Subdivided Lot under this Declaration and remit payment to the Association in a timely manner. If the association fails to pay, the Association may bring an action against the association or against each Subdivided Lot for its allocable share and shall be eligible to recover late charges, interest, collection costs and attorneys' fees as described in **Section 5.10**.

5.3 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment may include a portion for reserves as described in **Section 5.4**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at any time during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

5.4 Reserves. Each annual regular assessment may include, at the discretion of the Board, a portion for reserves in such amount as the Board, in its discretion, considers appropriate to meet the cost of the future repair, replacement or additions to the capital Improvements that the Association is obligated to maintain. Reserve funds, if collected, shall be deposited in a separate account.

5.5 Special Assessments. The Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

5.6 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or Occupant of any Lot or their Permittees. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner and is subject to a reimbursement assessment. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within thirty (30) days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 5.10**.

In addition to reimbursing the Association for costs necessary to repair the Paseo or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or Occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules.

5.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots that are subject to this Declaration no later than the date the Association commences operations as described in **Section 4.1**.

5.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in twelve (12) equal monthly installments and each installment shall be due and payable on the first (1st) day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten (10) days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 10.11**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of ten percent (10%) per annum from thirty (30) days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by Applicable Laws.

5.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated among the Lots in accordance with the allocation described as follows and set forth in **Exhibit F**. One component of the assessments shall be allocated, per grouped parcels, a percentage of the total cost for annual programming and pump station enclosure maintenance based on the square footage net rentable measurements of the grouped parcels shown on **Exhibit F** in relation to the other groups of parcels. The second component of the assessments shall be allocated, also per grouped parcel, so that the Paseo Lot(s) that are then members of the Association shall be allocated fifty percent (50%) of the total cost for annual Paseo maintenance, prorated based on the square footage net rentable measurements of the Paseo Lots, and the remaining grouped parcels that are members of the Association shall be allocated the remaining fifty percent (50%) of the total cost for annual Paseo maintenance, also prorated based on the square footage net rentable measurements of the remaining parcels.

Declarant or, after formation, the Association, shall amend **Exhibit F** whenever more Annexable Property is annexed in order to update the assessment allocations.

5.10 Enforcement of Delinquent Assessments. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees.

5.11 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

## Article 6 INSURANCE

6.1 Association Liability Insurance. The Association shall obtain and maintain the following liability policies:



6.1.1 General Liability Policy. A general liability insurance policy insuring the Association, any manager, the Association's directors and officers, and the Owners (including Declarant as long as Declarant owns any Lots) against bodily injury or property damage from an accident or occurrence within the Paseo. The Association shall be the first named insured under the policy. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance (including the commercial general liability and any excess liability coverage) shall not be less than \$3,000,000 covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies. The insurance shall contain coverage terms equivalent to or better than the terms provided by Insurance Services Offices ("ISO") form CG001 or any successor form thereto. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability. Any notice of cancellation or material changes to the policy shall be provided by the issuing insurance company in accordance with the notice requirements in the policy. If cancelled the Board shall replace the policy with a substantially equivalent policy.

6.1.2 Directors and Officers Liability Policy. A directors and officers liability policy containing such terms and conditions that are normally and customarily carried for directors and officers of a commercial association.

6.2 Association Property Insurance. The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy on the Improvements within the Paseo and Association personal property in such amounts and containing such terms and conditions as the Board from time to time may select.

6.3 Insurance Rating and Cancellation. The insurance company providing the Association's insurance under **Sections 6.1 and 6.2**, if applicable, shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if not licensed to do business in the State of California. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes.

6.4 Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this **Article 6** in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this **Article 6**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by becoming a Member of the Association, irrevocably appoints the Association or the Insurance Trustee, described in **Section 6.6**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

6.5 Periodic Insurance Review. The Board periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the

current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

6.6 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 6.2**, subject to the rights of Mortgagees under **Article 8**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Specific Plan Area is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

6.7 Other Insurance. In addition to the policies described in **Sections 6.1 and 6.2**, the Association may obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by Applicable Laws;
- (ii) fidelity bonds or insurance covering officers, directors and employees who have access to any Association funds; and
- (iii) such other insurance as the Board in its discretion considers necessary or advisable.

#### Article 7 DAMAGE AND DESTRUCTION

7.1 Repair or Reconstruction. If the Paseo or any Improvement within the Paseo is damaged or destroyed by fire or other casualty, the Association shall repair or reconstruct the Improvement substantially in accordance with the original as-built plans and specifications subject to such modifications as may be required by Applicable Laws.

7.2 Reconstruction Contract. If the Paseo and/or the Improvements within the Paseo (collectively, the "Paseo") are to be rebuilt or restored and the repair costs are in excess of \$50,000, the Board shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Paseo in accordance with the original plans and specifications, subject to such changes as may be approved by the Board, the City's "Architectural Review Process", or required by Applicable Laws, and shall award the repair and reconstruction work to the lowest qualified bidder unless the Board in its reasonable judgment elects to select a higher bidder. The Association shall have the authority to enter into a written contract with the contractor or contractors for the repair and reconstruction, and the insurance proceeds held by the Association or insurance trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to ensure the commencement and completion of authorized rebuilding at the earliest possible date.

7.3 Minor Repair and Reconstruction and Deductibles. The Association shall have the duty to repair and reconstruct the Paseo within the Specific Plan Area without the requirement of any consent of the Owners and irrespective of the amount of available insurance proceeds in all cases of partial destruction when the estimated cost of repair or reconstruction does not exceed \$20,000, which amount shall be increased three percent (3%) per annum on a compounded basis commencing on the anniversary date of the recordation of this Declaration and each anniversary date thereafter. The Association may levy a special assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable pursuant to the procedures described in **Article 5**.

7.4 Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days subject to extensions because of delays that are

beyond the control of the Association. The Association immediately shall take such steps as may be reasonably required to secure any hazardous condition resulting from the damage or destruction and to screen any unsightly views.

7.5 Condemnation. If any action for condemnation of all or any portion of the Paseo is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least fifty-one percent (51%) of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Paseo or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Specific Plan Area grants to the Board, and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Paseo or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be allocated equally among the Lots and distributed equally to each Owner and their Mortgagees as their respective interests may appear.

Notwithstanding anything herein to the contrary, the Board may elect to retain all or any portion of any condemnation proceeds with the Association's funds in lieu of distribution.

## Article 8 RIGHTS OF MORTGAGEES

8.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 8** shall have the definitions contained in this **Section 8.1**. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Lot or other portions of the Specific Plan Area.

8.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

8.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Lots as provided in **Section 5.9**.

8.4 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

## Article 9 AMENDMENTS

9.1 Amendments. This Declaration may be amended or rescinded in any respect with the vote or written consent of not less than a majority of all votes of the Members, but no amendment or rescission shall be effective until such proposal has been submitted to the City Council of the City of Santa Clara, the City has conducted a public hearing on such proposal, and sixty (60) days have passed since



the hearing and the City Council has not vetoed the proposal. The City has the right and authority to veto any such proposed amendment or rescission that would adversely affect the long-term maintenance of the Paseo. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of the Owners in order to take affirmative or negative action under such provision, the same percentage of such Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee, Owner or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in Santa Clara County, California.

Notwithstanding anything herein to the contrary, the easements appurtenant to any Lot or Annexable Property as described in **Sections 2.1 and 2.2** may not be modified or terminated without the prior written consent of the Owner of the Lot or the owner of the Annexable Property, as applicable.

9.2 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Lot Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, any declarations of annexation, or any exhibits thereto, and the consent of neither the Association nor any Lot Owner shall be required provided that if the correction affects the size, location or access or use rights to any Lot, the consent of that Lot Owner shall be required. The amendment shall be effective when recorded in the records of Santa Clara County, California, signed by an authorized agent of Declarant.

9.3 Mortgagee Reserved Amendment Rights. Notwithstanding anything herein to the contrary, Declarant reserves the right to amend this Declaration as may be necessary or advisable in order to include provisions that satisfy the requirements of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) and/or the federal Department of Veterans Affairs (VA). The Association and each Owner shall fully cooperate in the delivery, execution and recordation of any documents necessary to effect the amendments.

#### Article 10 MISCELLANEOUS PROVISIONS

10.1 Headings. With the exception of **Article 1**, the headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

10.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

10.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

10.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin,

ancestry, familial status, source of income as defined in Government Code section 12955(p), disability, veteran or military status, or genetic information.

10.5 Notification of Sale. No later than five (5) days after the closing of the sale of any Lot, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

10.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

10.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

10.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each annexed Lot in the Specific Plan Area, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Lots in the Specific Plan Area.

Each Owner acknowledges and agrees that if any Person breaches any of the obligations and/or restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including securing a judgment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing any restrictions contained herein. If any Owner or Occupant desires the Association to take any enforcement action, the Owner or Occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within ninety (90) days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

10.9 Term of Declaration and Termination of Association. The term of this Declaration shall be for a period of fifty (50) years from the date on which this Declaration is recorded in the records of the county in which the Specific Plan Area is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten (10) year periods unless (i) this Declaration is rescinded, and (ii) the Association is terminated, by the written consent of Owners holding a majority of the total voting power of the Association, and (iii) the City Council of the City of Santa Clara has provided written consent to such rescission. The rescission shall be effective on recordation of a notice of rescission in the records of Santa Clara County, California, and the rescission of the Declaration and termination of the Association shall only be effective with the prior written approval of the City.

10.10 Attorneys' Fees. In the event of any litigation or alternative dispute resolution procedure arbitration regarding the rights or duties under the Governing Documents of the Association or any Member, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

10.11 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or forty-eight (48) hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Specific Plan Area.

10.12 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by becoming a Member of the Association, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

10.13 Statutory Reference. Any reference to a governmental statute in this Declaration includes any amendments to the statute. If the statute is replaced by an equivalent statute, the equivalent statute shall be the applicable statute.

#### Article 11 ANNEXATION

11.1 Unilateral Annexation. The Annexable Property described in **Exhibit C** or any portion thereof may be annexed and made subject to this Declaration upon the election of the owner of the Annexable Property. Declarant makes no representations or warranty that any Annexable Property will be annexed and has no obligation to annex any Annexable Property.

Each annexation shall be accomplished by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation to subject the property to the terms of this Declaration. Any declaration of annexation recorded in accordance with the terms of this section shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be subject to the provisions of this Declaration and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws and, thereafter, all Owners of Lots constituting a portion of the annexed real property shall automatically be Members of the Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in **Section 5.7**.

A declaration of annexation may be rescinded in any respect with the vote or written consent of not less than a majority of all votes of the Members. If the consent or approval of any governmental authority, Mortgagee, Owner or other Person is required with respect to any such rescission, no rescission shall become effective unless such consent or approval is obtained. The rescission shall be effective on the date a notice of rescission is recorded in the records of Santa Clara County, California. From and after this rescission, the property described in the declaration of annexation shall no longer be subject to the covenants, rights, duties, benefits or burdens set forth in this Declaration except as otherwise provided in the notice of rescission. Any declaration of annexation may be amended or corrected in the manner described in **Article 9**.

11.2 Annexation by Approval. Except for the automatic annexation provision contained in **Section 11.1**, no additional real property shall be annexed without the approval of Members holding two-thirds (2/3) of the total voting power of the Association and such approval of Mortgagees as may be required herein.

*[DECLARANT SIGNATURE PAGES FOLLOW]*

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

**SHAC TASMAN CDM APARTMENTS LLC,**  
a Delaware limited liability company

By: SHAC Tasman CDM Apartments Ventures LLC,  
a Delaware limited liability company, its manager

By: SHAC Tasman CDM Apartments Manager LLC,  
a Delaware limited liability company, its manager

By: Summerhill Apartment Communities,  
a California corporation, its managing member

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

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

Its: \_\_\_\_\_

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

**ST. ANTON TASMAN EAST, LP,**  
a California limited partnership

By: Tasman East Workforce Housing, LLC,  
a California limited liability company,  
its Administrative General Partner

By: Blue Bronco, LLC,  
a California limited liability company,  
its sole member and manager

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

Name: Peter H. Geremia

Title: Manager

By: PacH Anton South Holdings, LLC,  
a California limited liability company,  
its Managing General Partner

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its sole member and manager

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

Name: Mark A. Wiese

Its: President

*[Additional Declarant Signatures on Following Pages]*

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

**TASMAN EAST URBAN HOUSING, LLC,**  
a Delaware limited liability company

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

Name: Nicholas Vanderboom

Its: Vice-President

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

**TASMAN EAST HOLDCO, LLC,**  
a Delaware limited liability company

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

Name: Nicholas Vanderboom

Its: Vice-President

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

**2354 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

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

**5185 LAFAYETTE STREET, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

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

**TASMAN 2278 CALLE DE LUNA, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

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

**2263 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

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

Name: Kambiz Babaoff

Its: Managing Member

*[Additional Declarant Signatures on Following Pages]*



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

**2302 CALLE DEL MUNDO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaoff  
Its: Managing Member

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

**TASMAN PROPERTIES, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Kambiz Babaoff  
Its: Managing Member

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

**NASH – HOLLAND CALLE DE LUNA INVESTORS, LLC,**  
a Delaware limited liability company

By: HPG Calle De Luna, LLC,  
a Washington limited liability company,  
its Operating Member

By: Holland Partner Group Management, Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_  
Name: John Wayland  
Its: Executive Managing Director of Development, Northern  
California

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

**GREYSTAR GP II, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Troy Vernon  
Its: Development Director

*[Final Signature Page]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A – Declarants

<u>Declarant</u>	<u>Property Owned by Declarant Within Tasman East Specific Plan Area</u>
2263 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 5 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2302 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
2354 Calle del Mundo, LLC, a Delaware limited liability company	Parcel 12 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
5185 Lafayette Street, LLC, a Delaware limited liability company	Parcel 13 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman 2278 Calle de Luna, LLC, a Delaware limited liability company	Parcel 22 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Properties, LLC, a Delaware limited liability company	Parcel 23 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Greystar GP II, LLC, a Delaware limited liability company	Parcels 7 and 18 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Berto Development, a California limited partnership <i>[Include if this is one of the 3 Paseo Lots triggering commencement]</i>	Parcel 17 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
NASH - Holland Calle De Luna Investors, LLC, a Delaware limited liability company	Parcel 19 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Urban Housing, LLC, a Delaware limited liability company	Parcels 24, 25, 26 and 27 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman East Holdco, LLC	Parcels 20 and 21 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
St. Anton Tasman East, LP, a California limited partnership	Parcel 6 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.

<b><u>Declarant</u></b>	<b><u>Property Owned by Declarant Within Tasman East Specific Plan Area</u></b>
SHAC Tasman CDM Apartments LLC, a Delaware limited liability company	Parcels 1, 2 and 3 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Company, LLC, a California limited liability company as to an undivided 1/2 interest and The Family Trust of Harry Bruce Frumveller and Carolyn Ruth Frumveller, Harry Bruce Frumveller and Carolyn Ruth Frumveller, Trustees, Trust dated June 16, 2014 as to an undivided 1/2 interest <i>[Include if this is one of the 3 Paseo Lots triggering commencement]</i>	Parcel 16 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
TGR Associates, LLC, a California limited liability company	Parcels G, H and I as shown on the Parcel Map filed on July 6, 1978, in Book 422 of Maps, at pages 2 and 3, in the records of Santa Clara County, California.
True Solar USA Inc., a California corporation	Parcel 1 as shown on the Parcel Map filed on June 23, 1980, in Book 465 of Maps, at page 36, in the records of Santa Clara County, California.

EXHIBIT B – The Paseo Lots

2302 Calle del Mundo, LLC	Parcel 9 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Tasman Company, LLC, a California limited liability company as to an undivided 1/2 interest and  The Family Trust of Harry Bruce Frumveller and Carolyn Ruth Frumveller, Harry Bruce Frumveller and Carolyn Ruth Frumveller, Trustees, Trust dated June 16, 2014 as to an undivided 1/2 interest	Parcel 16 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
Berto Development, a California limited partnership	Parcel 17 as shown on the Parcel Map filed on February 27, 1976, in Book 368 of Maps, at pages 14 and 15, in the records of Santa Clara County, California.
True Solar USA Inc., a California corporation	Parcel 1 as shown on the Parcel Map filed on June 23, 1980, in Book 465 of Maps, at page 36, in the records of Santa Clara County, California.

EXHIBIT C – Annexable Property

Any property within the Tasman East Specific Plan Area that may be subject to this Declaration by the requirements of the Tasman East Specific Plan (as amended from time to time) and/or by the requirements of any other governmental agency.



EXHIBIT D – Paseo Location

*[TO BE ATTACHED WHEN AVAILABLE]*

EXHIBIT E – Summary of City Guidelines and Requirements for Event Programming

1. Paseo events shall occur at least eight times per year, with a minimum of two events per quarter.
2. Paseo events shall be advertised to reasonably reach all City residents, including but not limited to utilizing the City of Santa Clara's Event Calendar, and to all Tasman East residents via property management both onsite and electronically.
3. Excepting unusual circumstances, Paseo events are intended to be available to all members of the public at no cost to the public.

EXHIBIT F – Vote and Assessment Allocation<sup>1</sup>

Parcel No.	Paseo Lot?	Net Rentable		Annual Paseo Maintenance %	Annual Program & Pump Station Enclosure %	Votes
		SF	%			
16-18 & 28	No	562,456	16.40%	8.42%	16.40%	16.4
56-57	No	776,700	22.65%	11.63%	22.65%	22.65
62-64	No	275,360	8.03%	4.12%	8.03%	8.03
58	No	453,417	13.22%	6.79%	13.22%	13.22
11	No	200,900	5.86%	3.01%	5.86%	5.86
19	No	230,650	6.73%	3.45%	6.73%	6.73
29	No	195,395	5.70%	2.93%	5.70%	5.70
60-61	No	231,570	6.75%	3.4%	6.75%	6.75
2	No	62,746	1.83%	0.94%	1.83%	1.83
24 <sup>2</sup>	Yes	91,140	2.66%	50.00% <sup>2</sup>	2.66%	2.66
59	No	91,750	2.68%	1.37%	2.68%	2.68
20827	No	257,287	7.50%	3.85%	7.50%	7.50
<b>Total</b>		<b>3,429,371</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100</b>

<sup>1</sup> Pursuant to **Sections 4.4 and 5.9**, this exhibit shall be amended to update the members of the Association and their billable assessments and votes.

<sup>2</sup> All Paseo Lots that are members of the Association shall share, prorated based on the square footage rentable measurements of the Paseo Lots that are members of the Association, fifty percent (50%) of all annual Paseo maintenance costs.



# HEXAGON TRANSPORTATION CONSULTANTS, INC.

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September 8, 2020

Ms. Elaine Breeze  
SummerHill Apartment Communities  
777 S. California Avenue  
Palo Alto, CA 94304

**Re: *Potential Plan Area-Specific Transportation Management Association at Tasman East, Santa Clara, CA***

Dear Ms. Breeze:

Hexagon prepared a Transportation Demand Management (TDM) Plan for the Tasman East development area on behalf of the approved developments in the area, referred to as the Tasman East Transportation Coordination Group (TETCG). The City of Santa Clara is suggesting that a Transportation Management Association (TMA) be formed for Tasman East instead of the TETCG. Very broadly, TMA services can be provided by a city government or TMAs can form under the umbrella of a chamber of commerce or other private entity with the members providing dues to the TMA. TMAs provide a variety of services related to TDM and are focused on actively promoting transportation alternatives.

The TETCG is comprised of property owners and developers of the residential development in the Tasman East area. It is responsible for reducing single-occupancy vehicle trips by implementing a variety of TDM measures like providing informational packages, setting up a website, and engaging with vendors to install bike and scooter parking hubs. The TETCG also will be responsible for providing SmartPasses (VTA's universal transit passes) for each resident of Tasman East for a period of three years. Therefore, the TETCG is functionally similar to a TMA and is appropriate for the current scope and scale of the Tasman East development.

Other developments planned in north Santa Clara include CityPlace, Kylli Mixed-Use Development Project, Patrick Henry Specific Plan, and Freedom Circle Focus Area. In the future, there may be a shuttle service connecting these developments including Tasman East. In that case, a TMA involving all these developments is recommended once they are developed at a later date.

We appreciate the opportunity to provide this review to the TETCG. If you have any questions, please do not hesitate to call.

Sincerely,  
**HEXAGON TRANSPORTATION CONSULTANTS, INC.**

Gary K. Black  
President



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

Community Development

September 10, 2020

Mark Connolly, ALUC Program Manager  
County of Santa Clara Planning Department  
70 West Hedding Street, East Wing, 7<sup>th</sup> Floor  
San José, CA 95110

**Subject: ALUC Referral for an Amendment to the Tasman East Specific Plan**

Dear Mark:

The City of Santa Clara would like to have the ALUC review a Specific Plan Amendment for the Tasman East area in North Santa Clara at their September hearing.

Project Title:	Amendments to Tasman East Specific Plan (Amendment #1) and an Amendment to Santa Clara City Code Section 18.75, the Transit Neighborhood Zoning District.
Location:	Approximately 45 gross acre plan area bounded by Tasman Drive to the south, the Guadalupe River to the east, the Santa Clara Golf Club to the north, and Lafayette Street to the west; APN: multiple; property is zoned Transit Neighborhood (TN).
Applicant / Owners:	The City of Santa Clara / Various Owners
Subject:	The City proposes to amend the Tasman East Specific Plan adopted on November 13, 2018 to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo, to allow for alternate methods of trip reduction, and to correct a clerical error in the Plan regarding the affordable housing requirement; and to amend Santa Clara City Code Section 18.75 Transit Neighborhood Zoning District to allow certain non-residential uses within the first three floors of a mixed use building and to correct an error regarding permissible density ranges. The project would not result in a change to the overall number of units or approved residential densities.

Please contact both me and Reena Brilliot, Planning Manager, with information on payment for processing of the referral.

Sincerely,

John Davidson  
Principal Planner, City of Santa Clara

cc: Reena Brilliot, Planning Manager



SANTA CLARA  
COUNTY AIRPORT LAND  
USE COMMISSION

## Airport Land Use Commission

County Government Center, 70 W. Hedding Street, East Wing, 7<sup>th</sup> Fl., San Jose, CA  
95110  
(408) 299-5786 FAX (408) 288-9198

September 25, 2020

John Davidson  
Principal Planner  
Planning Division | Community Development Department  
1500 Warburton Avenue | Santa Clara, CA 95050

**RE: ALUC consistency determination for a referral from the City of Santa Clara for an amendment of the Tasman E. Specific Plan, affecting lands within the San Jose International Airport Influence Area (AIA).**

Dear Mr. Davidson:

The ALUC considered the above referral for consistency with the policies of safety, height and noise contained within the San Jose International Airport Comprehensive Land Use Plan (SJC CLUP), at their September 23, 2020 Meeting.

The proposed amendment to the Tasman E. Specific Plan would allow the replacement of a street extension of Calle Del Sol with a pedestrian and bicycle paseo and to allow for additional methods of site-wide transportation demand management measures. Also, the Specific Plan proposes an amendment to the City's Transit Neighborhood Zoning District, which would allow for non-residential uses to be permitted within the first three floors of new mixed-use buildings, which are currently only allowed for non-residential uses on the ground floor of new mixed-use buildings.

The ALUC found the referral ***Inconsistent*** with the noise policies as defined in the San Jose International Comprehensive Land Use Plan (CLUP), because the Plan allows for a potential school for up to 600 students within the 60dBA CNEL Noise Contour.

According to Table 4-1 of the SJC CLUP, Schools are Generally Unacceptable land uses within the 60dBA CNEL Noise Contour, with the following:

New construction or development should be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design. Outdoor activities are likely to be adversely affected.

A primary concern and reason for the ALUC's decision, was because outdoor school play areas cannot be mitigated for aviation activity occurring over the site.

Please note that pursuant to the Public Resources Code 21670, the City of Santa Clara has the option of overruling the ALUC's determination. Overrules require a 2/3 vote of the entire body of the City of Santa Clara City Council. The notification process to the ALUC and Cal Trans Division of Aeronautics shall also be complied with.



# ALUC

SANTA CLARA  
COUNTY AIRPORT LAND  
USE COMMISSION

## Airport Land Use Commission

---

County Government Center, 70 W. Hedding Street, East Wing, 7<sup>th</sup> Fl., San Jose, CA  
95110  
(408) 299-5786 FAX (408) 288-9198

If you have any questions, please feel free to contact ALUC staff, Mark Connolly, at 408-299-5786, or via e-mail at [mark.connolly@pln.sccgov.org](mailto:mark.connolly@pln.sccgov.org).

Sincerely,



Mark J. Connolly  
Senior Planner / ALUC Program Manager

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, ADOPTING OVERRIDING FINDINGS REGARDING THE SANTA CLARA COUNTY AIRPORT LAND USE COMMISSION DETERMINATION OF INCONSISTENCY FOR THE TASMAN EAST SPECIFIC PLAN AMENDMENT PROJECT, A 45 GROSS ACRE PLAN AREA BOUNDED BY TASMAN DRIVE TO THE SOUTH, THE GUADALUPE RIVER TO THE EAST, THE SANTA CLARA GOLF CLUB TO THE NORTH, AND LAFAYETTE STREET TO THE WEST.**

SCH# 2016122027

CEQ2016-01026 (EIR)

PLN2016-12400 (General Plan Amendment, Specific Plan and Rezoning)

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

**WHEREAS**, on November 13, 2018, the City of Santa Clara (the "City") adopted the Tasman East Specific Plan ("TESP") for the approximately 45 gross acre plan area bounded by Tasman Drive to the south, the Guadalupe River to the east, the Santa Clara Golf Club to the north, and Lafayette Street to the west, to guide the transition of this underutilized, industrial area into a pedestrian-friendly and transit-oriented development with the addition of 4,500 new residential units, 100,000 square feet of neighborhood-oriented and convenience retail, 10 acres of open space, and an urban school (the "2018 Specific Plan");

**WHEREAS**, the urban school authorized by the 2018 Specific Plan is permitted to be located at the ground floor of a mixed-use building, and will be accessible to public open space of a minimum of one acre. This urban school may be private or public;

**WHEREAS**, because the TESP is located within the Mineta San Jose International Airport Influence Area ("AIA"), prior to taking action on the 2018 Specific Plan, the City submitted the proposal to the Airport Land Use Commission of Santa Clara County ("ALUC") for a determination of consistency with the ALUC's Comprehensive Land Use Plan ("CLUP");

**WHEREAS**, at its September 26, 2018 meeting, the ALUC found the 2018 Specific Plan to be consistent with the policies of the CLUP;

**WHEREAS**, the City is now contemplating the adoption of amendments to the TESP, the most significant of which is to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo. The proposed amendments would also allow for alternate methods of trip reduction and correct a clerical error related to affordable housing, and the City is also considering a minor amendment to the zoning ordinance to allow certain non-residential uses within the first three floors of mixed-use buildings, and to correct another clerical error related to density. (The Specific Plan Amendments and Zoning Code Amendments are referred to collectively hereinafter as the "Paseo Amendments"). The Paseo Amendments do not propose any changes to the previously-authorized urban school;

**WHEREAS**, on September 10, 2020, pursuant to the provisions of Section 21670 et seq. of the California Public Utilities Code ("Section 21670"), the City referred the Paseo Amendments to the ALUC for a determination of consistency with the CLUP;

**WHEREAS**, on September 23, 2020, the ALUC, acting pursuant to its authority under Section 21670, determined that the Paseo Amendments were inconsistent with the CLUP. The project would not result in a change to the overall number of units or approved residential densities, but the ALUC nevertheless found that the proposed amendment would be inconsistent with the Noise Policies of the CLUP for areas surrounding Santa Clara County airports, based on the fact that the 2018 Specific Plan authorized the construction of the urban school within an airport noise contour; and

**WHEREAS**, a city may overrule a determination of the ALUC if it makes findings that the proposed project is consistent with the purposes of Section 21670 regarding the protection of public health, safety and welfare in areas surrounding airports and by providing the ALUC with a copy of the proposed decision and findings at least 45 days prior to the City's action to overrule the ALUC; and

**WHEREAS**, on October 1, 2020, the City of Santa Clara provided the ALUC and the California Department of Transportation, Division of Aeronautics ("Division") with the

proposed decision and findings in accordance with the 45-day period required under Section 21670;

**WHEREAS**, the Public Utilities Code provides that the ALUC and the Division shall respond to the referral of the findings of override within 30 days of receiving the proposed decision and findings; and

**WHEREAS**, in the event that the ALUC or Division's comments are not available within this time limit, the City may act without them; and

**WHEREAS**, on October 28, 2020, at a regularly scheduled meeting, the ALUC reviewed the City's proposed decision and findings to overrule the ALUC's determination of inconsistency and the ALUC decided to not provide comments on the proposed decision and findings to the City of Santa Clara; and

**WHEREAS**, the City has obtained the meeting minutes from the September 23, 2020 meetings containing ALUC comments, which are attached herein and incorporated hereto by this reference; and

**WHEREAS**, the City received comments from the Division on October 22, 2020, regarding the City's proposed decision and findings to override the ALUC's determination of inconsistency, which are attached hereto and incorporated by this reference;

**WHEREAS**, the comments by the ALUC or Division are advisory to the City under State law and;

**WHEREAS**, the City Council shall include comments from the ALUC and the Division in the final record of any final decision to overrule the ALUC, which may only be adopted by a two-thirds vote of the Council.

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

1. That the City of Santa Clara hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. That Public Utilities Code Section 21676 provides that a local governing body may overrule the Commission if it makes specific findings that the proposed action is consistent with the purposes of Public Utilities Code Section 21670. The City Council therefore finds the following:

A. The first purpose of Section 21670 is to provide for the orderly development of each public use airport in this State and the area surrounding these airports so as to promote the overall goals and objectives of California airport noise standards and to prevent the creation of new noise and safety problems. The second purpose of Section 21670 is to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

B. At the September 26, 2018 Airport Land Use Commission (ALUC) meeting, the County Airport Land Use Commission found the 2018 Specific Plan, which authorized the urban school, to be consistent with the policies of San Jose Airport Comprehensive Land Use Plan (CLUP), in that the Tasman East plan area is outside of the airport safety zone and the noise contours of the airport area. The ALUC also found that any individual buildings proposed within the Specific Plan area that would be more than approximately 175 feet in height are required to obtain a No Hazard Determination from the Federal Aviation Administration. That consistency determination and the associated requirement for a No Hazard Determination remains in effect.

C. The proposed Paseo Amendments would not introduce new uses into the plan area or create new conflicts with adopted CLUP policies, so as to create safety or noise concerns. The only significant change to the 2018 Specific Plan proposed by the Paseo Amendments is related to the proposed conversion of the Calle del Sol extension to a pedestrian paseo. The proposed Specific Plan Amendment does not increase residential densities, building height limits or the total number of units within the plan area. The ability to

locate the urban school within the plan area was allowed as a part of the original 2018 Specific Plan approval, and will remain so whether or not the City Council adopts the Paseo Amendments.

D. The Paseo Amendments would also authorize nonresidential uses on the first three floors of mixed-use buildings, as opposed to only the ground floor, as is currently permitted. This minor conversion of more-sensitive residential uses to less-sensitive nonresidential uses would not have any adverse noise or safety impacts.

E. The Paseo Amendments do not address, expand or revise the ability to locate the urban school within the plan area, which was adopted as part of the original General Plan Amendment, 2018 Specific Plan and Zoning Code approvals, and therefore the basis for the ALUC's determination of inconsistency is not related to the proposal referred to the Commission. The original approval that permits a school to be located in the plan area remains in effect, and will remain so regardless of whether the City approves or disapproves the Paseo Amendments. Accordingly, even if the ALUC had a valid basis for concluding that the urban school was an incompatible use, the property is already devoted to that use under the 2018 Specific Plan.

3. That the City of Santa Clara, based on the above findings, does hereby override the ALUC determination of inconsistency, as provided by laws of the State of California.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED  
AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING  
THEREOF HELD ON THE \_\_\_ 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. City of Santa Clara Referral to the ALUC
2. ALUC Determination of Inconsistency
3. Minutes from the September 23, 2020 ALUC meeting
4. Comments from the Caltrans Division of Aeronautics

I:\...\Specific Plans\Tasman East Specific Plan\Calle del Sol amendment\CC RTC attachments\ALUC override reso.docx



SANTA CLARA  
COUNTY AIRPORT LAND  
USE COMMISSION

## Airport Land Use Commission

County Government Center, 70 W. Hedding Street, East Wing, 7<sup>th</sup> Fl., San Jose, CA  
95110  
(408) 299-5786 FAX (408) 288-9198

September 25, 2020

John Davidson  
Principal Planner  
Planning Division | Community Development Department  
1500 Warburton Avenue | Santa Clara, CA 95050

**RE: ALUC consistency determination for a referral from the City of Santa Clara for an amendment of the Tasman E. Specific Plan, affecting lands within the San Jose International Airport Influence Area (AIA).**

Dear Mr. Davidson:

The ALUC considered the above referral for consistency with the policies of safety, height and noise contained within the San Jose International Airport Comprehensive Land Use Plan (SJC CLUP), at their September 23, 2020 Meeting.

The proposed amendment to the Tasman E. Specific Plan would allow the replacement of a street extension of Calle Del Sol with a pedestrian and bicycle paseo and to allow for additional methods of site-wide transportation demand management measures. Also, the Specific Plan proposes an amendment to the City's Transit Neighborhood Zoning District, which would allow for non-residential uses to be permitted within the first three floors of new mixed-use buildings, which are currently only allowed for non-residential uses on the ground floor of new mixed-use buildings.

The ALUC found the referral ***Inconsistent*** with the noise policies as defined in the San Jose International Comprehensive Land Use Plan (CLUP), because the Plan allows for a potential school for up to 600 students within the 60dBA CNEL Noise Contour.

According to Table 4-1 of the SJC CLUP, Schools are Generally Unacceptable land uses within the 60dBA CNEL Noise Contour, with the following:

New construction or development should be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design. Outdoor activities are likely to be adversely affected.

A primary concern and reason for the ALUC's decision, was because outdoor school play areas cannot be mitigated for aviation activity occurring over the site.

Please note that pursuant to the Public Resources Code 21670, the City of Santa Clara has the option of overruling the ALUC's determination. Overrules require a 2/3 vote of the entire body of the City of Santa Clara City Council. The notification process to the ALUC and Cal Trans Division of Aeronautics shall also be complied with.

# ALUC

SANTA CLARA  
COUNTY AIRPORT LAND  
USE COMMISSION

## Airport Land Use Commission

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County Government Center, 70 W. Hedding Street, East Wing, 7<sup>th</sup> Fl., San Jose, CA  
95110  
(408) 299-5786 FAX (408) 288-9198

If you have any questions, please feel free to contact ALUC staff, Mark Connolly, at 408-299-5786, or via e-mail at [mark.connolly@pln.sccgov.org](mailto:mark.connolly@pln.sccgov.org).

Sincerely,



Mark J. Connolly  
Senior Planner / ALUC Program Manager

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF AERONAUTICS – M.S. #40

1120 N STREET

P. O. BOX 942874

SACRAMENTO, CA 94274-0001

PHONE (916) 654-4959

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October 22, 2020

*Making Conservation  
a California Way of Life.*

Mr. John Davidson, Principal Planner  
City of Santa Clara  
Planning Division  
1500 Warburton Avenue  
Santa Clara, CA 95050-3713

Electronically Sent  
[JDavidson@SantaClaraCA.gov](mailto:JDavidson@SantaClaraCA.gov)

Dear Mr. Davidson:

One of the goals of the California Department of Transportation (Caltrans), Division of Aeronautics (Division), is to assist cities, counties, and Airport Land Use Commissions (ALUC) in the development and implementation of policies that protect the safety and general welfare of their communities in which aeronautical activities take place. Caltrans encourages collaboration with our partners in the planning process and thanks you for including the Division in the review of the proposed override of the Santa Clara County ALUC for the Norman Y. Mineta San Jose International (SJC) Airport.

On October 1, 2020, the Division received a notification letter from the City of Santa Clara (City) regarding a proposed override of the Santa Clara County ALUC determination of inconsistency regarding an amendment of the Tasman East Specific Plan (Plan). The Plan covers an area in Santa Clara County of approximately 45 gross acres. The location of this area is bounded by Tasman Drive to the south, the Guadalupe River to the east, the Santa Clara Golf Club to the north, and Lafayette Street to the west.

On September 23, 2020, the ALUC found the Plan was inconsistent with the current SJC-Airport Comprehensive Land Use Plan (CLUP) as amended on November 16, 2016. The ALUC found the Plan inconsistent with the noise policies of the CLUP because this Plan allows for a school to be located within the 60 decibel Community Noise Equivalent Level (CNEL) Noise Contour.

The Division agrees with the ALUC that the Plan is inconsistent with the current adopted CLUP for the SJC Airport. The CLUP states that schools are generally unacceptable land uses within the 60 decibel CNEL Noise Contour, and that new construction or development should be discouraged. If new construction

or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design. The CLUP also states that outdoor activities are likely to be adversely affected.

The ALUC is correct in applying the noise policies of the CLUP. As mandated (California Public Utilities Code sections 21674(c), 21675, and 21676 (b)), Land Use Plans such as this CLUP are the fundamental tool used by ALUCs in fulfilling their purpose of promoting airport land use compatibility, in order to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare. The ALUC used the criteria of the CLUP in making its determination of inconsistency, and the Division supports the ALUC's determination.

Please note: The Division comments are to be included in the public record of any decision to overrule the ALUC.

If you have questions or we may be of further assistance, please contact me via email at [tony.sordello@dot.ca.gov](mailto:tony.sordello@dot.ca.gov).

Sincerely,

Originally signed by

TONY SORDELLO, Aviation Planner  
Office of Aviation Planning

c: Mr. Mark Connolly, ALUC Program Manager, County of Santa Clara, Planning Department, 70 West Hedding Street, East Wing, 7<sup>th</sup> Floor, San Jose, CA 95110, [Mark.Connolly@PLN.SCCGOV.ORG](mailto:Mark.Connolly@PLN.SCCGOV.ORG)



## Agenda Report

20-787

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Resolution Approving the Findings from the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study and Setting the Rates for the Infrastructure Impact Fee, Action on the Introduction of an Ordinance Adding Section 17.15.350 to Chapter 15 of Title 17 of the Santa Clara City Code, and Establishment of the Tasman East Infrastructure Improvement Fund and Related Budget Actions

#### **COUNCIL PILLAR**

Promote and Enhance Economic, Housing and Transportation Development

#### **BACKGROUND**

Impact fees are governed by State law (Assembly Bill 1600, 1989, Government Code Section 66000) and allow a City to charge one-time fees to new developments to finance capital facility and infrastructure costs needed to serve those developments. Impact fees are established based on a reasonable relationship (i.e. nexus) between the impacts caused by new development and the improvements to mitigate those impacts that will be funded by the fee. These fees cannot be used to pay for the cost of existing deficiencies and are distinct from taxes and special assessments.

On November 13, 2018, the City Council adopted the Tasman East Specific Plan (Specific Plan) to guide the transition of an underutilized 45-acre industrial neighborhood east of the Great America Transit Center into a pedestrian-friendly, transit-oriented development, providing for the addition of 4,500 new residential units near transit and jobs. The Specific Plan also incorporates approximately 100,000 square feet of neighborhood-oriented and convenience retail and 10 acres of open space including various outdoor recreational facilities and landscape features, such as a community garden, a public plaza, pocket parks and paseos.

Included with the Specific Plan and the accompanying Environmental Impact Report (EIR) are analyses of various infrastructure impacts and requirements to support the proposed development within the Specific Plan. Based on discussions with the prospective developers of the Specific Plan, the City initiated the process of creating a Tasman East Specific Plan Infrastructure Impact Fee (Fee) to facilitate development. The intent of the Fee is to create an equitable distribution of area-wide and common infrastructure costs for all residential developers within the Specific Plan. Infrastructure that provides common benefits to development within the Specific Plan was analyzed and calculated for probable construction costs.

#### **DISCUSSION**

The City contracted with municipal financial consultant Economic & Planning Systems, Inc. (EPS Consultants), to prepare a nexus study to justify the creation of the Fee. Cost estimates (in 2020 dollars) were prepared for Specific Plan area-wide infrastructure items including on-site roadway



facilities (i.e. traffic signals, traffic safety devices, pavement rehabilitation), sanitary sewer facilities and structures, storm drainage facilities, and potable and recycled water facilities. The specific infrastructure items are included in Table 1.

**Table 1: Tasman East Specific Plan Infrastructure Improvements**

Item #	Description	Category	Total Costs
1	Sanitary Sewer Pump Station (Primavera) Improvements	Sanitary Sewer	\$2,320,000
2	Primavera Pump Station Building/ Architectural Treatments	Sanitary Sewer	\$3,190,000
3	Water Line Replacement (Calle De Sol, Calle De Luna, Calle De Mundo)	Potable Water	\$4,205,000
4	New Recycled Water Line	Non-potable Water	\$3,335,000
5	Storm Drain Mitigation	Storm Drainage	\$36,685
6	33-inch Storm Drain Relocation	Storm Drainage	\$726,450
7	Calle De Sol Pedestrian/Bicycle Paseo (includes land acquisition costs)	Roadway	\$8,810,168
8	Sidewalk Installation from Tasman to Lafayette	Roadway	\$250,850
9	Pavement Repair - Calle de Luna (Lick Mill Portion)	Roadway	\$536,500
10	Pavement Repair - Calle de Mundo, Calle de Luna, Calle de Sol	Roadway	\$1,145,500
11	Pavement Repair - Calle de Luna w/o Calle de Sol	Roadway	\$1,073,000
12	Traffic Mitigation (Signalize Lafayette & Calle De Mundo)	Roadway	\$1,305,000
13	Traffic Mitigation (Signalize Lick Mill & Calle de Luna)	Roadway	\$1,305,000
14	Traffic Mitigation (Modify southbound approach to 1 right turn and 1 through right at Great America Parkway & WB SR 237 Ramps)	Roadway	\$101,500
15	Traffic Mitigation (Convert WB approach to 1 left and 1 right turn at Lafayette and Calle de Luna)	Roadway	\$58,000
16	New HAWK Signal on Lick Mill for midblock crossing between Calle de Luna and Calle de Mundo)	Roadway	\$652,500
17	New Rectangular Rapid Flashing Beacon at Calle de Mundo and Calle de Sol	Roadway	\$159,500
18	Traffic Fair Share Payments	Roadway	\$333,321
<b>CONSTRUCTION SUBTOTAL</b>			<b>\$29,543,974</b>

Costs include land acquisition, design, bid/award, construction, construction support, and project contingencies. The construction cost subtotal equals \$29,543,974. In addition to construction costs, the City completed two engineering studies related to the Primavera Pump station with an estimated cost of \$132,000 and the cost to prepare the nexus study (Attachment 1) was included at \$20,000. As is typical with the creation of impact fees, the City also included a 2 percent administrative fee to manage Fee program administration moving forward. This 2 percent fee equates to an average of \$23,757 over the estimated 25-year life of the Fee and totals \$593,920. After combining the construction costs, engineering study costs, nexus fee report costs, and the 2 percent administrative fee, the total common infrastructure costs equates to \$30,289,894.

As noted above, the Specific Plan includes up to 4,500 multifamily residential units as well as up to 100,000 square feet of supporting, neighborhood-serving commercial services. As the commercial development (e.g., clustered ground-floor retail) is expected to be ancillary to and supportive of Specific Plan housing, the Fee is structured to apply only to new residential development.

Table 2 provides the methodology by which the Fee will be calculated per unit. In summary, the total common infrastructure costs of \$30,289,894 are divided by the maximum new multifamily unit count of 4,500, which equates to a proposed Fee of \$6,731 per new unit.

**Table 2: Fee Methodology and Calculation**

<b>Fee Calculation</b>		<b>Amount</b>
Total Common Infrastructure Cost	<i>a</i>	\$30,289,894
Number of New Multi-family Residential Units	<i>b</i>	4,500
<b>Fee per New Multi-family Residential Units</b>	<b><i>c = a / b</i></b>	<b>\$6,731</b>

The City is required to identify a reasonable relationship (nexus) between an impact fee and new development, and to make findings regarding the following: the purpose of the fee; the mitigation projects the fee will be used to fund; the nexus between the needed mitigation projects and the type of development that will be charged a fee; and the nexus between the amount of the fee and the cost of the needed mitigation. The Study is designed to support these findings.

As development is approved and constructed within the Specific Plan, the City will coordinate with developers to include the subject infrastructure improvements with the scope of the approved development projects as much as possible. Inclusion of these improvements with the development projects will reduce construction impacts and provide the infrastructure as development occurs. In situations where improvements are included with development projects, the cost of these improvements will be credited towards any required Fee payments. In situations where the included improvements exceed the required Fee payments, the City will enter into a reimbursement agreement with developers subject to the availability of Fee funds for reimbursement and City Council approval.

Staff also recommends that fee levels be adjusted annually, subject to Council approval, in line with the latest Construction Cost Index for San Francisco, published by Engineering News Record (ENR) or equivalent. The automatic fee adjustment will occur when the City conducts its annual update of the Municipal Fee Schedule. Indexing the fees will allow the fees collected to increase over time in order to keep up with construction costs and inflation.

Staff has closely coordinated the development of the Fee, including cost elements, calculation methodology, and escalation with the Tasman East Specific Plan developer team. Consequently, the Tasman East Specific Plan developer team supports the creation of the Fee as outlined in this report.

### **ENVIRONMENTAL REVIEW**

The action being considered is subject to a statutory exemption from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21080(b)(8)(D) as the purpose of the Fee is to collect revenue to fund capital projects (i.e. infrastructure) necessary to support the proposed development within the Specific Plan. Environmental analysis for the infrastructure improvements are included within the EIR prepared for the Specific Plan or any subsequent amendments or addendums.

### **FISCAL IMPACT**

The nexus study identifies a list of infrastructure items that would cost approximately \$30 million to complete with the full cost of these improvements to be funded by the proposed Fee of \$6,731 per residential unit. Additionally, staff recommends that Fee levels be adjusted annually, subject to Council approval, to keep up with construction costs and inflation. Typical improvements such as roadway, sanitary, storm, and water facilities will be operated and maintained by the City. Non-standard improvements such as the Calle de Sol Extension and the Primavera Pump Station Building/Architectural Treatments will be maintained privately through a proposed Property Owner's Association.

The recommended actions include the establishment of the Tasman East Infrastructure Improvement Fund (Fund 541) to account for the impact fee revenues and project expenditures. It is anticipated that impact fee collections may reach approximately \$6 million to \$8 million in FY 2020/21. Budget actions are included in this memorandum to recognize fee revenue of \$175,757 and to appropriate those funds to support Fee Administration (\$23,757), Sanitary Sewer Engineering Studies (\$132,000), and the Nexus Study (\$20,000). Additional budget actions will be brought forward as necessary during FY 2020/21 to recognize additional fee revenue and to appropriate the funding to support various projects.

### **COORDINATION**

This report has been coordinated with the Community Development Department, Water & Sewer Utilities Department, Finance Department and City Attorney's Office.

### **PUBLIC CONTACT**

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

Public Notices for this agenda item were advertised twice in the Santa Clara Weekly two weeks prior to this meeting. In addition, staff notified members of the City's development community by electronic mail on September 15, 2020, September 28, 2020, and November 5, 2020. The City did not receive any responses to these emails. On September 15, 2020, staff posted the draft nexus

study on the City's web page and notified the development community that it was available.

### **ALTERNATIVES**

1. Approve the Tasman East Specific Plan Infrastructure Impact Fee; and adjust fees annually in line with the latest Construction Cost Index for San Francisco, as published by Engineering News Record or equivalent, in order to keep up with construction costs and inflation.
2. Adopt a Resolution Approving the Findings from the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study and Setting the Rates for the Infrastructure Impact Fee.
3. Approve the Introduction of an Ordinance adding subsection 17.15.350 to the Santa Clara City Code.
4. Approve the establishment of the Tasman East Infrastructure Improvement Fund (Fund 541) to account for the impact fee revenues and project expenditures and related budget amendments.
5. Do not approve the Tasman East Specific Plan Infrastructure Impact Fee, do not adopt a Resolution Approving the Findings from the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study and Setting the Rates for the Infrastructure Impact Fee, do not approve the Introduction of an Ordinance adding subsection 17.15.350 to the Santa Clara City Code, do not establish the Tasman East Infrastructure Improvement Fund and related budget amendments, and provide direction to staff for next steps.

### **RECOMMENDATION**

Alternatives 1, 2, 3, and 4:

1. Approve the Tasman East Specific Plan Infrastructure Impact Fee; and adjust fees annually in line with the latest Construction Cost Index for San Francisco, as published by Engineering News Record or equivalent, in order to keep up with construction costs and inflation;
2. Adopt a Resolution Approving the Findings from the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study and Setting the Rates for the Infrastructure Impact Fee;
3. Approve the Introduction of an Ordinance adding subsection 17.15.350 to the Santa Clara City Code; and
4. Approve the establishment of the Tasman East Infrastructure Improvement Fund (Fund 541) to account for the impact fee revenues and project expenditures; and establish a FY 2020/21 impact fee revenue estimate in the amount of \$175,757 and appropriate those funds to support Fee Administration (\$23,757), Sanitary Sewer Engineering Studies (\$132,000), and the Nexus Study (\$20,000).

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Tasman East Specific Plan Infrastructure Impact Fee Nexus Study
2. Resolution
3. Ordinance

*The Economics of Land Use*



## Final Report

# Tasman East Specific Plan Area Infrastructure Impact Fee Nexus Study

Prepared for:

City of Santa Clara

Prepared by:

Economic & Planning Systems, Inc. (EPS)

*Economic & Planning Systems, Inc.  
1330 Broadway  
Suite 450  
Oakland, CA 94612  
510 841 9190 tel*

*Oakland  
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Denver  
Los Angeles*

**[www.epsys.com](http://www.epsys.com)**

September 2020

EPS #181136

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# 1. INTRODUCTION AND FEE OVERVIEW

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## Introduction

This Nexus Report provides the analysis and necessary technical documentation to support the adoption of a development impact fee program for the Tasman East Specific Plan (TESP) area (Plan Area) in the City of Santa Clara (City). Development impact fees are one-time charges on new development collected and used by the City to cover the cost of capital facilities and improvements required to serve real estate development. Fees are typically collected upon issuance of a building permit, though in some cases upon certificate of occupancy or final inspection.

This Nexus Report has been prepared by Economic & Planning Systems, Inc. (EPS), with direction and input from City staff. It provides a legal basis for requiring payment of a TESP areawide infrastructure development impact fee consistent with Mitigation Fee Act (AB 1600/ Government Code Section 66000 et seq.). The TESP Area Infrastructure Impact Fee Program must be approved by the City Council and will be effective 60 days following the City's final action on the ordinance authorizing collection of the fee.

The TESP, adopted by the Santa Clara City Council in November, 2018, provides the land use and regulatory framework for the development of a high-density transit-oriented neighborhood. This TESP Area Infrastructure Impact Fee is based the proposed TESP land use program as well as current estimates of the infrastructure and improvement costs needed to serve the area. The following documents produced by or for the City have been used to inform this analysis:

- Tasman East Focus Area Specific Plan Document.
- Tasman East Infrastructure Costs and Proposed Infrastructure Fee Spreadsheet.
- Infrastructure cost estimates prepared by the City, BKF, and Woodard & Curran.

## Legal Context

This Nexus Study is designed to provide the necessary technical analysis to support a TESP Area Infrastructure Impact Fee to be established by a City Ordinance and Resolution. The Mitigation Fee Act allows the City to adopt, by resolution, the TESP Area Infrastructure Impact Fee consistent with the supporting technical analysis and findings provided in this Report. The Resolution approach to setting the fee allows periodic adjustments of the fee amount that may be necessary over time, without amending the enabling ordinance.

Impact fee revenue are used to cover the cost of constructing capital and infrastructure improvements required to serve new development and growth in the City. As such, impact fees must be based on a reasonable nexus, or connection, between new development and the need for a specific capital facilities and improvements. Impact fee revenue cannot be used to cover the operation and maintenance costs of these or any other facilities and infrastructure. In addition, impact fee revenue cannot be collected or used to cover the cost of pre-existing infrastructure needs or deficiencies.

In establishing, increasing, or imposing a fee as a condition for the approval of a development project, Government Code 66001(a) and (b) state that the local agency must:

1. Identify the purpose of the fee;
2. Identify how the fee is to be used;
3. Determine how a reasonable relationship exists between the fee use and type of development project for which the fee is being used;
4. Determine how the need for the public facility relates to the type of development project for which the fee is imposed; and
5. Show the relationship between the amount of the fee and the cost of the public facility.

These statutory requirements have been followed in establishing this TESP Area Infrastructure Impact Fee, as documented in subsequent chapters. **Chapter 3** summarizes the specific findings that explain or demonstrate this nexus.

If the TESP Area Infrastructure Impact Fee is adopted, this Nexus Report and the technical information it contains should be maintained and reviewed periodically by the City to ensure Impact Fee accuracy and to enable the adequate programming of funding sources. To the extent that infrastructure requirements, costs, and development potential changes over time, the Fee Program will need to be updated. Further information on the implementation and administration of the TESP Area Fee program is provided in **Chapter 4**.

## **TESP Area Infrastructure Impact Fee**

**Table 1** shows the TESP Area Infrastructure Impact Fee supported by the nexus findings and analysis contained in this Technical Report. As currently calculated, the fee would be applied to all new multi-family residential development projects within the TESP area (the Plan does not currently allow for single-family development). The TESP Area Infrastructure Impact Fee Program will be independent and separate from all other City, Santa Clara County (County), other agency, or regional development impact fees that may also be applicable to TESP development.

**Table 1      Proposed TESP Area Infrastructure Impact Fee (\$ 2020)**

Use	Measure	Fee <sup>1</sup>
Multi-family Residential <sup>2</sup>	per Unit	<b>\$6,731</b>

[1] Fee is set to cover full costs of required TESP infrastructure facilities. Includes a 2 percent administrative fee to cover City costs of reporting, managing, and updating fee program.

[2] Single family residential use is not permitted in the TESP area.

Source: BKF; City of Santa Clara; Woodard & Curran; Economic & Planning Systems, Inc.

The calculated TESP fee amount of \$6,731 per multi-family residential units includes a program administration fee equal to 2 percent of the program costs, consistent with other Mitigation Fee Act program administrative costs in many other California jurisdictions.<sup>1</sup> It also covers 100 percent of the infrastructure costs needed to serve build-out of the TESP. In particular, the TESP Area Fee covers the following infrastructure items:

- On-Site Roadway Facilities (i.e., traffic signals, traffic safety devices, pavement).
- Sanitary Sewer Facilities and associated structures.
- Potable Water Facilities.
- Non-potable Water Facilities (i.e., Recycled Water).
- Storm Drainage Facilities.

<sup>1</sup> The 2 percent administration cost is designed to cover expenses for preparing subsequent updates impact fee technical report as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges. The cost of preparing this Report has been included as a separate line item.

## 2. TESP LAND USE AND INFRASTRUCTURE ASSUMPTIONS

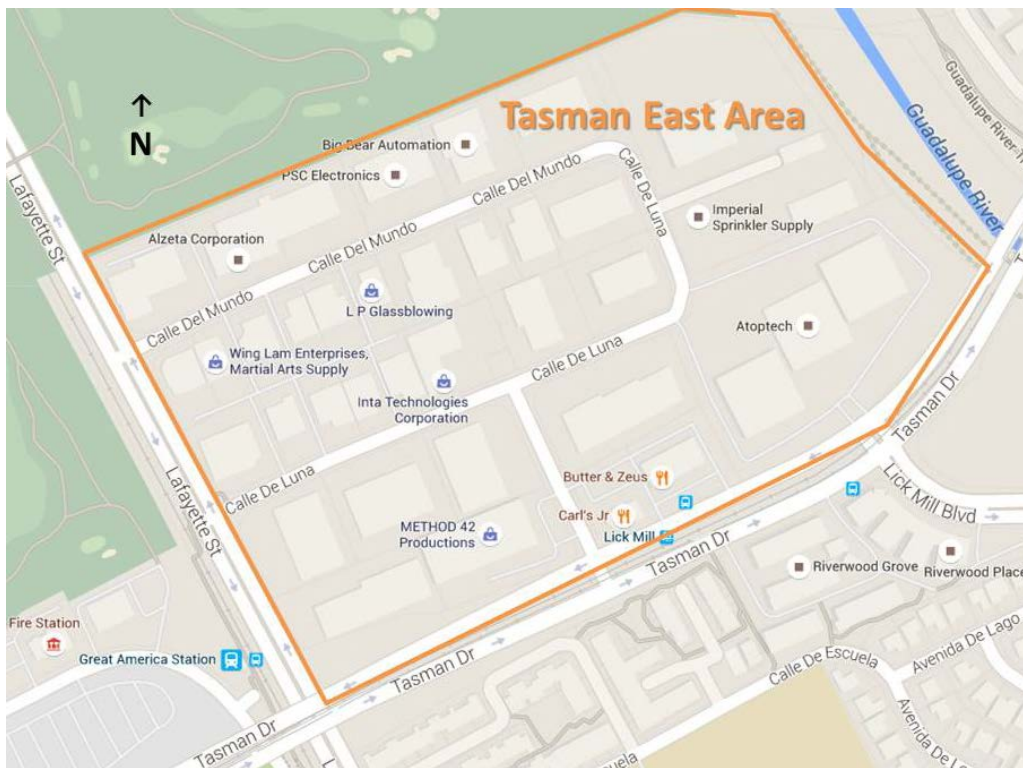
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This chapter documents the land use growth projections and required infrastructure improvement costs associated with the TESP. These assumptions underlie the TESP Area Infrastructure Impact Fee calculations.

### Existing and Planned Development

The TESP covers an approximately 46.1 acre area in the City of Santa Clara bounded by Tasman Drive to the south, the Guadalupe River to the East, the Santa Clara golf course to the north, and Lafayette Street to the west (see **Figure 1**). The Plan Area is currently zoned as “Manufacturing Light” (or ML) which allows for manufacturing, processing, repair, and storage uses. Consistent with this zoning, existing uses include a data center, several office and warehouse buildings and rear-yard storage areas.

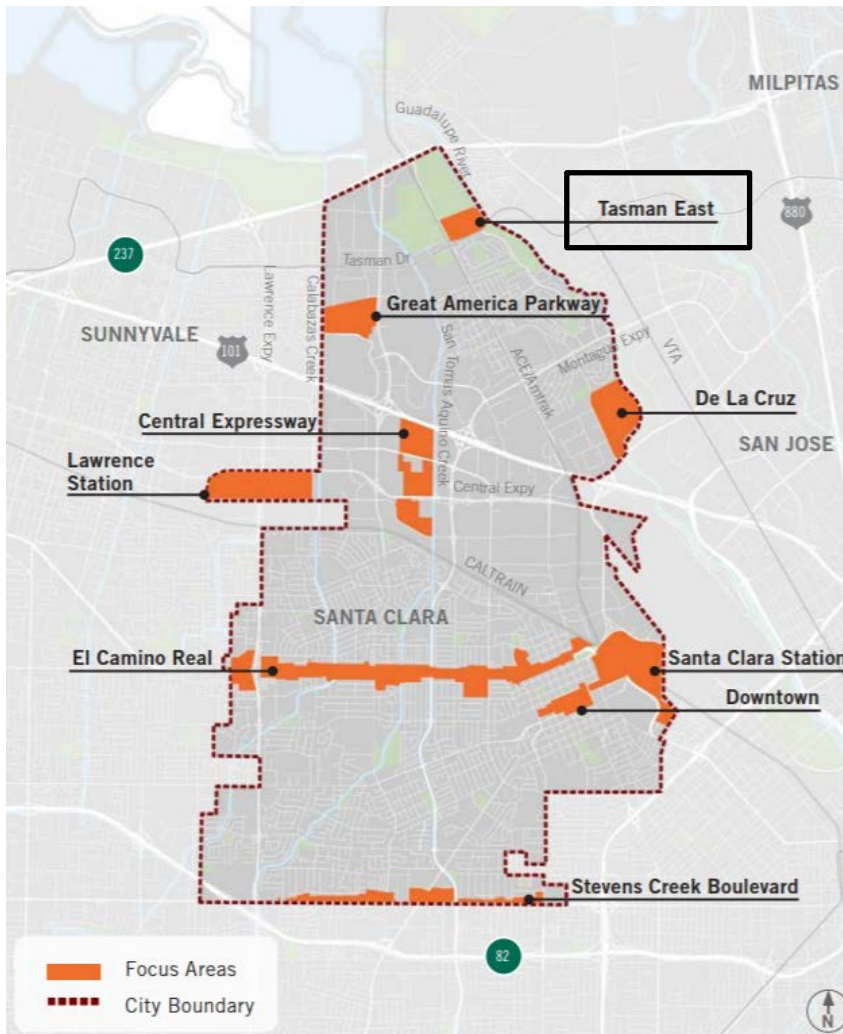
**Figure 1 TESP Area Boundaries**



Source: City of Santa Clara

Adopted in November, 2018, the TESP is designated by the City's 2010-2035 General Plan as one of nine Focus Areas in the City with potential to contribute to the City's Regional Housing Needs Allocation (RHNA) goals (see **Figure 2**). The TESP area provides an opportunity to develop higher density residential homes near transit while balancing existing commercial uses along the Tasman corridor.

**Figure 2 City of Santa Clara Focus Areas**



Source: City of Santa Clara

Implementation of the TESP involves updating the zoning from ML to transit residential, which would allow for a high-density residential neighborhood to take shape. In particular the TESP targets up to 4,500 residential units as well as up to 106,000 square feet of supporting, neighborhood-serving commercial services. As the commercial development is expected to be ancillary to and supportive of TESP housing (e.g., clustered ground-floor retail), the TESP Area Infrastructure Impact Fee is limited to residential development. However, retail development will be subject to other applicable City-wide fees, including the existing City-wide traffic impact fee.

Given that the Plan Area consists of multiple property owners and existing uses, the timing of future development, and thus generation of fee revenue, will depend on economic and a variety of other factors. Existing property owners may wish to continue to operate under the current light industrial zoning for the foreseeable future while others may seek to pursue residential development in the short-term. For the initial set of property owners who are interested in residential development, funding for any required up-front infrastructure may need to come from sources other than the Plan Area Impact Fee. Consequently, infrastructure phasing will likely require a process for developer credits and reimbursements, as described further in **Chapter 5**.

## Plan Area Capital Improvements and Costs

Development impact fees are derived from a list of specific capital improvement projects and associated costs that are needed in part or in full to accommodate new growth. Consequently, the capital improvements included in the fee program need to be described in sufficient detail to generate cost estimates.

The capital improvements included in the TESP Area Infrastructure Impact fee are based on information provided by City staff, working in consultation with civil engineers (BKF, and Woodard & Curran) and input from local property owners/developers. None of the capital projects included in the TESP Area Infrastructure Impact Fee addresses existing deficiencies (e.g., these improvements are not required by existing land uses in the area). The specific infrastructure and improvement categories include:

- On-Site Roadway
- Sanitary Sewer
- Potable Water
- Non-potable Water
- Storm Drainage

These infrastructure improvements represent improvements that resolve an areawide impact and are included to equitably distribute the cost amongst the development of all 4,500 residential units (i.e., no single development site in the TESP is responsible for the Sanitary Sewer pump station facility upgrades).

**Table 2** summarizes the estimated cost of TESP Area Infrastructure Impact Fee Program capital improvements. As shown, the estimated infrastructure hard and soft costs amount to a total of \$30.3 million (additional cost detail is provided in **Appendix Table A-1**). A 2 percent administrative charge is included to account for program administration.



**Table 2      TESP Area Capital Improvements and Cost Estimates (\$ 2020)**

Item	Description	Category	Total Costs <sup>1 2</sup>
1	Sanitary Sewer Studies (Siting and Retrofit)	Sanitary Sewer	\$132,000
2a	Sanitary Sewer Pump Station (Primavera) Improvements	Sanitary Sewer	\$2,320,000
2b	Pump Station Building/Architectural Treatments	Sanitary Sewer	\$3,190,000
3	Water Line Replacement (Calle De Sol, Calle De Luna, Calle De Mundo)	Potable Water	\$4,205,000
4	New Recycled Water Line	Non-potable Water	\$3,335,000
5	Storm Drain Mitigation	Drainage	\$36,685
6	33-inch Storm Drain Relocation	Drainage	\$726,450
7	Calle de Sol Pedestrian/Bicycle Paseo <sup>3</sup>	Roadway	\$8,810,168
8	Sidewalk Installation from Tasman to Lafayette (Related Property)	Roadway	\$250,850
9	Pavement Repair - Calle de Luna (Lick Mill Portion)	Roadway	\$536,500
10	Pavement Repair - Calle de Mundo, Calle de Luna, Calle de Sol	Roadway	\$1,145,500
11	Pavement Repair - Calle de Luna w/o Calle de Sol	Roadway	\$1,073,000
12	Traffic Mitigation (Signalize Lafayette & Calle De Mundo)	Roadway	\$1,305,000
13	Traffic Mitigation (Signalize Lick Mill & Calle de Luna)	Roadway	\$1,305,000
14	Traffic Mitigation (Modify southbound approach to 1 right turn and 1 through right at Great America Parkway & WB SR 237 Ramps)	Roadway	\$101,500
15	Traffic Mitigation (Convert WB approach to 1 left and 1 right turn at Lafayette and Calle de Luna)	Roadway	\$58,000
16	New HAWK Signal on Lick Mill for midblock crossing between Calle de Luna and Calle de Mundo)	Roadway	\$652,500
17	New Rectangular Rapid Flashing Beacon at Calle de Mundo and Calle de Sol	Roadway	\$159,500
18	Traffic Fair Share Payments	Roadway	\$333,321
19	TESP Plan Area Fee Program Nexus Report	Administrative	\$20,000
	Subtotal		\$29,695,974
	2% Administrative Cost <sup>4</sup>		<u>\$593,920</u>
	<b>Total Common Infrastructure Cost<sup>5</sup></b>		<b>\$30,289,894</b>

[1] Includes a 15 percent contingency cost when applicable.

[2] Delivery costs are calculated as a percentage of construction costs. 20 percent is for Design, 10 percent for Administration and Permitting, 5 percent to Construction Management, and 10 percent to Inspection.

[3] Calle de Sol Pedestrian/Bicycle Paseo total costs include construction, delivery, and land acquisition costs. Land acquisition assumes the purchase of a 23,157 sq.ft. parcel at a cost of \$169 per sq.ft. along with a 1 percent administrative cost associated with the purchase. Estimate as of August 2020.

[4] The 2 percent administration cost is designed to cover expenses for subsequent updates to the development impact fee technical report and as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges.

[5] See Appendix Table A-1 for details.

Source: BKF; City of Santa Clara; Woodard & Curran; Economic & Planning Systems, Inc.

### 3. PLAN AREA FEE CALCULATION AND NEXUS FINDINGS

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This chapter documents the Plan Area Fee calculation and methodology as well as required nexus findings. Specifically, it demonstrates "nexus" between new development in the TESP and the infrastructure improvements needed to serve it, as required under Government Code Section 66000 (also referred to as AB1600/the Mitigation Fee Act).

#### **Nexus Findings**

The development impact fee to be collected for residential land use is calculated based on the proportionate share of the total facility use that residential land use represents. With this approach, the following finding is made regarding the Fee Program.

##### ***Purpose of Fee***

The purpose of the Fee Program is to provide a funding mechanism to help the City provide adequate infrastructure necessary to support development in the TESP.

##### ***Use of Fees***

The fee charged to new development will be used to fund needed additions and improvements to infrastructure to accommodate new residential development. Infrastructure additions and improvements include water line replacements, storm drain relocations, and road widening and construction. The list of eligible capital projects and costs are summarized in Chapter 2 and further detailed in the **Appendix A**.

##### ***Relationship between Use of Fees and Type of Development***

Development of new residential units in the TESP will require additional infrastructure capacity. This infrastructure is not currently required by existing land uses in the area.

##### ***Relationship between Need for Facility and Type of Project***

The specific infrastructure improvements identified in this study are designed to accommodate residential development. In addition, the infrastructure is based on the land use and urban design goals and standards embodied in the TESP.

##### ***Relationship between Amount of Fees and Cost of or Portion of Facility Attributed to Development on which Fee is Imposed***

The fee levels calculated in this Nexus Report are based on a fair share cost allocation to new TESP development. In particular, 100 percent of the costs are allocated to the planned residential development because (1) the identified infrastructure is not required by existing land uses in the area, and (2) all new commercial development is assumed to be ancillary or supporting the residential development (e.g., ground floor retail). New commercial development will, however, be responsible for paying all applicable citywide fees.

## Plan Area Fee Calculation

The following steps describe the methodology for calculating the Plan Area Fee level:

1. Determine the total amount of land uses that will benefit from the infrastructure improvements. In this case, the Fee Program applies to the 4,500 residential units permitted under the Tasman East Specific Plan (discussed in **Chapter 2**).
2. Determine the infrastructure needed to serve new development (identified by the City and shown on **Table 2**).
3. Determine the cost of infrastructure to be funded by the Fee Program (also estimated in **Table 2**).
4. Divide the allocated cost by the number of units to determine the justifiable fee per unit for residential development (shown on **Table 3** below).

**Table 3      Plan Area Fee Calculation (\$ 2020)**

Fee Calculation		Amount
Total Common Infrastructure Cost <sup>1</sup>	<i>a</i>	\$30,289,894
Number of Multi-family Residential Units <sup>2</sup>	<i>b</i>	4,500
<b>Fee per Multi-family Residential Unit<sup>3</sup></b>	<b><math>c = a / b</math></b>	<b>\$6,731</b>

[1] See Table 2 for TESP capital improvements and cost estimates.

[2] Per the Tasman East Specific Plan (adopted by City Council on November 13, 2018).

[3] Fee is set to cover full costs of required TESP infrastructure facilities. Includes a 2 percent administrative fee to cover City costs of reporting, managing, and updating fee program.

Source: BKF; City of Santa Clara; Woodard & Curran; Economic & Planning Systems, Inc.

## 4. *TESP AREA FEE IMPLEMENTATION AND ADMINISTRATION*

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The proposed TESP Fee Program is anticipated to be adopted by the City through an ordinance establishing and authorizing collection of the fee. The City also will adopt a resolution to establish the fee amount. This chapter describes the additional implementation and administrative issues and procedures to be addressed in the Fee Program.

### **Credits and Reimbursement**

As is typical with development impact fee programs, some of the required infrastructure and facilities may be needed up front, before adequate revenue from the fee collection would be available to fund such improvements. Consequently, private funding may be necessary to pay for infrastructure facilities when needed. This private funding may be in the form of land-secured bonds, developer equity, or another form of private funding. There shall be no adjustment to the Fee Program based on the method by which a constructing party funds or constructs eligible project costs.

#### **Fee Credits**

Impact fee ordinances frequently allow for fee credits if a developer provides a particular facility or improvement that replaces facilities that would have otherwise been funded in whole or in part by the TESP Area Infrastructure Impact Fee. For example, the City may elect to offer a fee credit to developers who provide transportation related improvements, consistent with those specified in the current Area Fee program. The fee credit is usually equal to the most current cost estimate of the infrastructure item (as defined by annual cost review or other recent evaluation of cost) regardless of the actual cost to construct. The City's Ordinance should allow for fee credits under specific terms.

#### **Fee Reimbursements**

Fee reimbursements are typically considered for developers who contribute more funding and/or build and dedicate infrastructure items that exceed their proportional obligation, especially if the project funded is a priority project. Such reimbursements should be provided as fee revenue becomes available and should include a reasonable factor for interest earned on the reimbursable amount. It should not compromise the implementation of other priority capital projects. A provision for including such interest payments as additional costs in subsequent fees can also be included in the Ordinance.

As will be more specifically detailed in an Infrastructure Fee Program Reimbursement Agreement (Fee Reimbursement Agreement), a form of which shall be approved by the City Council, reimbursements will be provided under the following conditions:

- A Constructing Owner shall have executed a Fee Reimbursement Agreement with the City.
- Constructing Owner-installed improvements or dedicated public facility land in excess of a Constructing Owner's obligations, which shall be illustrated and identified in a Fee

Reimbursement Agreement, would be eligible for reimbursement. Only funds collected from the Fee Program shall be used to reimburse a developer who installed eligible infrastructure improvements identified in this report. Reimbursements are an obligation of the Fee Program and not an obligation of the City General Fund or other operating funds.

The total amount of reimbursement for completed infrastructure will be based on actual costs incurred for eligible hard costs based on a properly bid construction contract. Soft costs will be calculated as a fixed percentage (e.g., 20 percent) of hard costs. Descriptions of hard costs and soft costs will be more specifically detailed in the Fee Reimbursement Agreement. All hard costs will be subject to verification by the City and actual costs expended will go through a true-up process upon completion of the infrastructure component. The true-up process, which will be more specifically detailed in the Fee Reimbursement Agreement.

## **Periodic Program Updates and Fee Adjustments**

This fee program is based on the estimated TESP development program as well as the associated capital facility needs as of 2020. It is recognized that these individual projects and associated costs may change over time due to economic, technological, or other factors. The amount of residential development may also deviate from the projections included in the TESP. These factors may affect the appropriate fee level needed to cover necessary infrastructure. Accordingly, the Nexus Study should be updated periodically to account for these potential changes. Ideally this would occur every five (5) years, however, more frequent updates may be necessary to account for major changes.

The Development Impact Fee Ordinance should also allow for an automatic annual adjustment to account for inflation. This adjustment will be based on data from the Engineering News Record Construction Cost Index.

## **Annual Reporting and Fund Management**

State Law (at Govt. Code. §§ 66001(c), 66006(b)(1)) stipulates that each local agency that requires payment of a fee make specific information available to the public annually within 180 days of the last day of the fiscal year. This information includes the following:

- A description of the type of fee in the account
- The amount of the fee
- The beginning and ending balance of the fund
- The amount of fees collected and interest earned
- Identification of the improvements constructed
- The total cost of the improvements constructed
- The fees expended to construct the improvement
- The percentage of total costs funded by the fee

If sufficient fees have been collected to fund specific improvements, the agency must specify the approximate date for the development of that improvement. Because of the dynamic nature of growth and capital equipment requirements, the City should monitor inventory activity, the need

for infrastructure improvements, and the adequacy of the fee revenues and other available funding. Formal annual review of the Fee Program should occur, at which time adjustments should be made. Costs associated with this monitoring and updating effort are included in the Plan Area Fee and are assumed to be 2 percent of overall Fee Program capital costs.

State Law also requires that if any portion of a fee remains unexpended or uncommitted in an account for five years or more after deposit of the fee, the City Council shall make findings once each year: (1) to identify the purpose to which the fee is to be put, (2) to demonstrate a reasonable relationship between the fee and the purpose for which it was charged, (3) to identify all sources and amounts of funding anticipated to complete financing of incomplete improvements, and (4) to designate the approximate dates on which the funding identified in (3) is expected to be deposited into the appropriate fund (§66001(d)).

If adequate funding has been collected for planned improvements, an approximate date must be specified as to when the cost of the improvement will be incurred. If the findings show no need for the unspent funds, or if the conditions discussed above are not met, and the administrative costs of the refund do not exceed the refund itself, the local agency that has collected the funds must refund them (Govt. Code §66001(e)(f)).



## APPENDIX A:

### TESP Capital Improvements and Cost Estimates



**Table A-1 TESP Capital Improvements and Construction Cost Estimates (\$ 2020)**

Item	Description	Category	Construction Costs (Rounded) <sup>1</sup>	Delivery Costs <sup>2</sup>	Total Costs
1	Sanitary Sewer Studies (Siting and Retrofit)	Sanitary Sewer	\$132,000	\$0	\$132,000
2a	Sanitary Sewer Pump Station (Primavera) Improvements	Sanitary Sewer	\$1,600,000	\$720,000	\$2,320,000
2b	Pump Station Building/Architectural Treatments	Sanitary Sewer	\$2,200,000	\$990,000	\$3,190,000
3	Water Line Replacement (Calle De Sol, Calle De Luna, Calle De Mundo)	Potable Water	\$2,900,000	\$1,305,000	\$4,205,000
4	New Recycled Water Line	Non-potable Water	\$2,300,000	\$1,035,000	\$3,335,000
5	Storm Drain Mitigation	Drainage	\$25,300	\$11,385	\$36,685
6	33-inch Storm Drain Relocation	Drainage	\$501,000	\$225,450	\$726,450
7	Calle de Sol Pedestrian/Bicycle Paseo <sup>3</sup>	Roadway	\$3,350,000	\$1,507,500	\$8,810,168
8	Sidewalk Installation from Tasman to Lafayette (Related Property)	Roadway	\$173,000	\$77,850	\$250,850
9	Pavement Repair - Calle de Luna (Lick Mill Portion)	Roadway	\$370,000	\$166,500	\$536,500
10	Pavement Repair - Calle de Mundo, Calle de Luna, Calle de Sol	Roadway	\$790,000	\$355,500	\$1,145,500
11	Pavement Repair - Calle de Luna w/o Calle de Sol	Roadway	\$740,000	\$333,000	\$1,073,000
12	Traffic Mitigation (Signalize Lafayette & Calle De Mundo)	Roadway	\$900,000	\$405,000	\$1,305,000

[1] Includes a 15 percent contingency cost when applicable.

[2] Delivery costs are calculated as a percentage of construction costs. 20 percent is for Design, 10 percent for Administration and Permitting, 5 percent to Construction Management, and 10 percent to Inspection.

[3] Calle de Sol Pedestrian/Bicycle Paseo total costs include construction, delivery, and land acquisition costs. Land acquisition assumes the purchase of a 23,157 sq.ft. parcel at a cost of \$169 per sq.ft. along with a 1 percent administrative cost associated with the purchase. Estimate as of August 2020.

[4] The 2 percent administration cost is designed to cover expenses for subsequent updates to the development impact fee technical report and as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges.

Source: BKF; City of Santa Clara; Woodard & Curran; Economic & Planning Systems, Inc.

**Table A-1 (cont.) TESP Capital Improvements and Construction Cost Estimates (\$ 2020)**

Item	Description	Category	Construction Costs (Rounded) <sup>1</sup>	Delivery Costs <sup>2</sup>	Total Costs
13	Traffic Mitigation (Signalize Lick Mill & Calle de Luna)	Roadway	\$900,000	\$405,000	\$1,305,000
14	Traffic Mitigation (Modify southbound approach to 1 right turn and 1 through right at Great America Parkway & WB SR 237 Ramps)	Roadway	\$70,000	\$31,500	\$101,500
15	Traffic Mitigation (Convert WB approach to 1 left and 1 right turn at Lafayette and Calle de Luna)	Roadway	\$40,000	\$18,000	\$58,000
16	New HAWK Signal on Lick Mill for midblock crossing between Calle de Luna and Calle de Mundo)	Roadway	\$450,000	\$202,500	\$652,500
17	New Rectangular Rapid Flashing Beacon at Calle de Mundo and Calle de Sol	Roadway	\$110,000	\$49,500	\$159,500
18	Traffic Fair Share Payments	Roadway	\$333,321	\$0	\$333,321
19	TESP Plan Area Fee Program Nexus Report	Administrative	<u>\$20,000</u>	<u>\$0</u>	<u>\$20,000</u>
	Subtotal		\$17,772,621	\$7,838,685	\$29,695,974
	2% Administrative Cost <sup>4</sup>				<u>\$593,920</u>
	<b>Total Common Infrastructure Cost</b>				<b>\$30,289,894</b>

[1] Includes a 15 percent contingency cost when applicable.

[2] Delivery costs are calculated as a percentage of construction costs. 20 percent is for Design, 10 percent for Administration and Permitting, 5 percent to Construction Management, and 10 percent to Inspection.

[3] Calle de Sol Pedestrian/Bicycle Paseo total costs include construction, delivery, and land acquisition costs. Land acquisition assumes the purchase of a 23,157 sq.ft. parcel at a cost of \$169 per sq.ft. along with a 1 percent administrative cost associated with the purchase. Estimate as of August 2020.

[4] The 2 percent administration cost is designed to cover expenses for subsequent updates to the development impact fee technical report and as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges.

Source: BKF; City of Santa Clara; Woodard & Curran; Economic & Planning Systems, Inc.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
ADOPTING THE FINDINGS OF THE TASMAN EAST  
INFRASTRUCTURE IMPACT FEE NEXUS STUDY AND  
SETTING THE IMPACT FEES FOR FISCAL YEAR 2020-2021**

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

**WHEREAS**, on November 13, 2018 the City Council adopted the Tasman East Specific Plan (the “Project”), a specific plan for a transit-oriented pedestrian friendly neighborhood of up to 4,500 residential units with supportive retail uses, located on approximately 45 acres of land proximate to the Lick Mill Light Rail Station that are currently developed with industrial uses:

**WHEREAS**, on November 13, 2018 the City Council adopted and certified the Environmental Impact Report (“EIR”) for the Project (SCH #2016122027), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA;

**WHEREAS**, amendments to the adopted Tasman East Specific Plan (Amendment #1) are now under consideration to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo;

**WHEREAS**, in order to ensure that all potential environmental impacts of the Project (including Amendment #1) were thoroughly analyzed, the City caused an addendum to the EIR to be prepared pursuant to CEQA Guidelines 15164;

**WHEREAS**, the Project, EIR, Project amendments, and environmental addendums specified that certain public improvements are necessary to support the Project and include sanitary sewer facility upgrades, storm sewer facility upgrades, potable water facility upgrades, non-potable water facility expansion, public street improvements and expansions, traffic signal installations, traffic safety device installations, traffic signal mitigations and fair-share traffic payments;

**WHEREAS**, in 2019, the City contracted with Economic & Planning Systems, Inc. (EPS Consultants), to prepare a nexus study to justify the creation of an infrastructure impact fee (“Infrastructure Impact Fee”) to apply to new residential development within the Tasman East

Specific Plan area;

**WHEREAS**, the intent of the of the Infrastructure Impact Fee is to create an equitable distribution of area-wide and common infrastructure costs for all new residential development within the Tasman East Specific Plan area;

**WHEREAS**, the Department of Public Works has prepared a report entitled “TASMAN EAST SPECIFIC PLAN INFRASTRUCTURE IMPACT FEE NEXUS STUDY” (the “Study”), which provides the purpose, nexus, improvements, cost estimates, and justification for the creation of an Infrastructure Impact Fee, and is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by this reference;

**WHEREAS**, the Study proposes that the fee applies to new residential uses within the Tasman East Specific Plan area;

**WHEREAS**, the Study recommends fee levels be adjusted annually in order to keep up with construction costs and inflation;

**WHEREAS**, the Study provides an evaluation of the need for an infrastructure impact fee and establishes the nexus between the imposition of such impact fee and the estimated reasonable cost of providing the improvements for which the fees are charged;

**WHEREAS**, The Mitigation Fee Act, California Government Code section 66001 et seq., requires that, in any action establishing a fee as a condition of approval of a development project, a local agency shall make the following findings:

- 1) Under Government Code Section 66001(a)(1), identify the purpose of the fee.
- 2) Under Government Code Section 66001(a)(2), identify the use to which the fee is to be put.
- 3) Under Government Code Section 66001(a)(3), determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.
- 4) Under Government Code Section 66001(a)(4), determine how there is a reasonable

relationship between the need for the public facility and the type of development project on which the fee is imposed.

- 5) Under Government Code Section 66001(b), Determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed;

**WHEREAS**, the City wishes to adopt these proposed Infrastructure Impact Fee in accordance with the calculations and recommendations contained in the Study;

**WHEREAS**, pursuant to Sections 6062a and 66018 of the California Government Code, notice of a public hearing to be held on September 29, 2020 was published in the *Santa Clara Weekly*, a newspaper of general circulation in the City, on September 16, 2020 and September 23, 2020;

**WHEREAS**, on September 7, 2020, a notice of the public hearing to be held on September 29, 2020 was mailed to persons who requested notice of new and increased fees in accordance with Government Code Section 66019;

**WHEREAS**, on September 29, 2020, the City Council held a full public hearing with respect to the Study and the proposed Infrastructure Impact Fee;

**WHEREAS**, the Study was made available for public inspection at least ten days before the public hearing by placing the data on file with the City Clerk's Office on September 15, 2020 in accordance with Government Code 66016;

**WHEREAS**, on September 29, 2020 the City Council introduced an ordinance to add Section 17.15.350 "TASMAN EAST SPECIFIC PLAN INFRASTRUCTURE IMPACT FEE" to Chapter 15 "Property Development of Title 17 "Development" establishing an infrastructure impact fee for the Tasman East Specific Plan Area.

**WHEREAS**, the City Council adopts a Master Fee Schedule as part of its budget, fixing and establishing fees, rates, and charges for good and services provided by the City

**WHEREAS**, pursuant to the Mitigation Fee Act (California Government Code Section 66000 et



seq.) of the California Government Code the City Council now desires to approve the Study and proposed Infrastructure Impact Fee.

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

1. That in accordance with the Mitigation Fee Act and the Report, and based on the facts and substantial evidence in the record, the Infrastructure Impact Fee is hereby adopted by the City Council based on the following findings:

A. Development projects in the Tasman East Specific Plan area will create the need for improvements to support increased residential uses at in the Specific Plan area.

B. The Tasman East Specific Plan provides the analysis and justification for the need for the required improvements with new residential development within the Tasman East Specific Plan

C. The Study estimates the cost of each infrastructure improvement necessary to support the anticipated new residential development in the Tasman East Specific Plan Area and substantiates an Infrastructure Impact Fee rate that will charge each new development project only for the portion of the costs of the improvements necessary to support that development project.

D. There is a reasonable relationship between the need for the identified improvements and the development projects on which the Infrastructure Impact Fee will be imposed.

E. The Infrastructure Impact Fee does not exceed the estimated reasonable cost of providing the facilities for which the Infrastructure Impact Fee is imposed. The Infrastructure Impact Fee is not levied, collected or imposed for general government purposes.

F. As the purpose of this Resolution is to begin collection of an impact fee to fund improvements identified within and necessary to support development within the Tasman East Specific Plan of which an EIR was adopted by the City Council, the setting and imposition of the

Infrastructure Fee is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 21080(b)(8)(D) of the California Public Resources Code.

2. The Fee is hereby imposed upon every person or entity having equitable or legal title, or other interest as owner, lessee, or otherwise who causes the development of new Multifamily Residential Use Buildings within the Tasman East Specific Plan Area on or after November 13, 2018 at the following rate:

Multi-Family Residential	\$6,731 per dwelling unit
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3. Unless otherwise modified by the City Council, the Infrastructure Impact Fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index. If this index ceases to exist, the Director of Public Works shall substitute another construction cost index, which in his or her judgment is as nearly equivalent to the original index as possible.

4. That the Study is hereby approved, confirmed and adopted.

5. Effective date. This resolution shall become effective 60 days following the date of its passage and adoption.

6. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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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. Tasman East Specific Plan Infrastructure Impact Fee Nexus Study

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, ADDING SUBSECTION 17.15.350  
("TASMAN EAST SPECIFIC PLAN INFRASTRUCTURE  
IMPACT FEE") TO TITLE 17 ("DEVELOPMENT") TO  
ESTABLISH AN INFRASTRUCTURE IMPACT FEE FOR  
THE TASMAN EAST SPECIFIC PLAN AREA**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, on November 13, 2018 the City Council adopted the Tasman East Specific Plan (the "Project"), a specific plan for a transit-oriented pedestrian friendly neighborhood of up to 4,500 residential units with supportive retail uses, located on approximately 45 acres of land proximate to the Lick Mill Light Rail Station that are currently developed with industrial uses:

**WHEREAS**, on November 13, 2018 the City Council adopted and certified the Environmental Impact Report ("EIR") for the Project (SCH #2016122027), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA;

**WHEREAS**, amendments to the adopted Tasman East Specific Plan (Amendment #1) are now under consideration to replace a proposed street extension for Calle Del Sol with a pedestrian and bicycle paseo;

**WHEREAS**, in order to ensure that all potential environmental impacts of the Project (including Amendment #1) were thoroughly analyzed, the City caused an addendum to the EIR to be prepared pursuant to CEQA Guidelines 15164;

**WHEREAS**, the Project, EIR, Project amendments, and environmental addendums specified that certain public improvements are necessary to support the Project and

include sanitary sewer facility upgrades, storm sewer facility upgrades, potable water facility upgrades, non-potable water facility expansion, public street improvements and expansions, traffic signal installations, traffic safety device installations, and traffic signal mitigations and fair-share traffic payments;

**WHEREAS**, in 2019, the City contracted with Economic & Planning Systems, Inc. (EPS Consultants), to prepare a nexus study to justify the creation of an infrastructure impact fee (“Infrastructure Impact Fee”) to apply to new residential development within the Tasman East Specific Plan area;

**WHEREAS**, the intent of the of the Infrastructure Impact Fee is to create an equitable distribution of area-wide and common infrastructure costs for all new residential development within the Tasman East Specific Plan area;

**WHEREAS**, the Department of Public Works has prepared a report entitled “TASMAN EAST SPECIFIC PLAN INFRASTRUCTURE IMPACT FEE NEXUS STUDY” (the “Study”), which provides the purpose, nexus, improvements, cost estimates, and justification for the creation of an Infrastructure Impact Fee, and is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by this reference;

**WHEREAS**, the Study proposes that the fee applies to new residential uses within the Tasman East Specific Plan area;

**WHEREAS**, the Study recommends fee levels be adjusted annually in order to keep up with construction costs and inflation;

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

**SECTION 1:** That a new subsection 17.15.350 (entitled “Tasman East Specific Plan

Infrastructure Impact Fee” is hereby added to Title 17 (entitled “Development”) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

**“Subsection 17.15.350 Tasman East Specific Plan Infrastructure Impact Fee**

(a) Intent and Purpose. The City Council of the City of Santa Clara does hereby find and declare:

(1) The City, pursuant to the home rule provisions of Article 11, Section [5](#), of the California Constitution, may make and enforce all ordinances and regulations with respect to municipal affairs.

(2) The City, pursuant to Article 11, Section [7](#), of the California Constitution, may make and enforce all local ordinances not in conflict with general laws.

(3) The purpose of this section is to implement the necessary improvements required to support the completion of the proposed development within the Tasman East Specific Plan which was adopted by the City Council on November 13, 2018.

(4) The Tasman East Specific Plan identified that certain improvements are necessary to support completion of the Specific Plan. These improvements include sanitary sewer facility upgrades, storm sewer facility upgrades, potable water facility upgrades, non-potable water facility expansion, public street improvements and expansions, new traffic signal installations, traffic safety device installations, and traffic signal mitigations and fair-share traffic payments.



(5) In order to provide equitable distribution of costs to complete such improvements, the intent of this fee is to distribute costs to new residential development within the Tasman East Specific Plan area.

(b) Definitions. When used in this chapter, the following words and phrases will be defined as set forth below. When examples are given, they are illustrative only, and they are not intended to be an exhaustive itemization of all potentially includable items.

(1) “Building” means any structure (as defined in Section 420 of the Uniform Building Code) used or intended for supporting or sheltering any use or occupancy.

(2) “Building permit” means the permit issued or required for the construction or improvement of any structure in connection with the development of land pursuant to and as defined by the Uniform Building Code.

(3) “Costs” means amounts spent or authorized to be spent in connection with the planning, financing, acquisition and completion of the improvements identified in the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study including, without limitation, the costs of land, construction, engineering, administration, financing costs, legal and financial consulting fees, and incidental expenses.

(4) “Multifamily Residential Use” means a building or portion thereof used and designed as a residence for two or more families living independently of each other, including apartment houses, apartment hotels, and flats, but not including automobile courts, motels, hotels, or boarding houses. Each unit in the structure is separated from other units by one or more common, fire-resistant walls.

(5) “Person” means any individual, domestic stock company, partnership of any kind, joint venture, club, business or common law trust, society, legal entity, or any other manner of owning property or conducting business.

(6) “Tasman East Specific Plan Area” refers to the approximately 45 acres of land within the City of Santa Clara generally north of Tasman Drive, east of Lafayette Street, west of the Guadalupe River to the East, south of the Santa Clara golf course, and Lafayette Street to the west. The Tasman East Specific Plan, the final environmental impact report certified on November 13, 2018, by Resolution No. 18-8622, and is maintained for public review in the office of the planning division of the department of community development.

(7) “Tasman East Specific Plan Area Infrastructure Impact Fee” schedule” refers to the document, as amended from time to time, on file in the City’s Public Works Department used to determine applicability of the fees to particular land uses. If a proposed building use, or use within a portion of the building, does not fall under a use listed in said schedule, but, in the Director of Public Works or City Engineer’s opinion, closely corresponds to a use listed in said schedule, the Infrastructure Impact fees will be imposed.

(c) Imposition of Tasman East Specific Plan Infrastructure Impact Fees.

(1) Imposition of Fee. The Tasman East Specific Plan Infrastructure Impact Fee is hereby imposed upon every person (person having equitable or legal title, or other interest as owner, lessee, or otherwise) who causes the development of new Multifamily

Residential Use Buildings within the Tasman East Specific Plan Area, as each is defined herein, on or after November 13, 2018.

(2) Exceptions. There are no exceptions for the payment of the Tasman East Specific Plan Infrastructure Impact Fee.

(3) Amount of Fee . The amount of the Tasman East Specific Plan Infrastructure Impact Fee shall be established by resolution of the City Council.

(4) Fee Adjustments and Escalation

(A) Periodic Adjustments to Tasman East Specific Plan Infrastructure Impact Fee. The Tasman East Specific Plan Infrastructure Impact Fee shall be adjusted periodically to reflect the current status of cost and scope of the improvements identified in the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study. The Director of Public Works or City Engineer shall make a periodic review of the improvements within the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study and make recommendations for amendment, if any, in a report to the City Council. After receiving said report and making it available for public distribution and review, the City Council shall give notice and, no less than ten days after public notice has been given, conduct a public hearing in which it shall consider these reports, receive testimony and information from any interested members of the public, and receive such other evidence as it may deem necessary. At the conclusion of that hearing, the City Council shall determine what changes, if any, are to be made to the Tasman East Specific Plan Infrastructure Impact Fee.

(B) Annual Adjustments for Inflation. Unless otherwise modified by the City Council, Tasman East Specific Plan Infrastructure Impact Fees will automatically adjust for inflation annually at the start of each fiscal year, using the latest Construction Cost Index for San Francisco, published by Engineering News Record (ENR). If this index ceases to exist, the Director of Public Works shall substitute another construction cost index, which in his or her judgment is as nearly equivalent to the original index as possible. The automatic fee adjustment will occur when the City conducts its annual update of the municipal fee schedule, unless it is otherwise modified by the City Council during its approval of the municipal fee schedule.

(5) Time of Payment of Fee. Any Infrastructure Impact Fees imposed under this section shall be due and payable prior to issuance of any building permit for a Multifamily Residential Use project.

(6) Use of the Proceeds from the Tasman East Specific Plan Infrastructure Impact Fee. The sums derived from the collection of the Tasman East Specific Plan Infrastructure Impact Fee, and any interest thereon, shall be held by the City's Director of Finance and shall be distributed according to the fiscal and budgetary policies of the City. Said funds are to be used for the projects identified in the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study, as amended from time to time. In no case shall any of the moneys be used for maintenance.

(7) Provisions of Section Are Not Exclusive. The provisions of this section are intended to establish an alternative method for spreading the costs of certain public improvements against the land that will be primarily benefited thereby; the provisions of

this section shall not be construed to limit the powers of the City Council to utilize any other method for accomplishing this purpose. This shall be in addition to any other requirements which the City Council is authorized to impose as a condition to approving development pursuant to State and local law.

(8) Developer Construction of Facilities. Tasman East Specific Plan Infrastructure Impact Fees are the minimum to be paid by new residential development. Tasman East Specific Plan Infrastructure Impact Fees are to be initially paid in all circumstances. However, if because of special conditions caused by a particular new development, a development is required (pursuant to SCCC [17.15.090](#) and/or [17.15.310](#)) to construct the improvements included within the Tasman East Specific Plan Infrastructure Impact Fee Nexus Study, the development will be reimbursed for said construction costs as determined by the Director of Public Works or City Engineer and based on the availability of fees paid to the City. To be entitled to said reimbursement, the new development must prove its claimed construction costs to the satisfaction of the Director of Public Works or City Engineer, or designee.

(9) Appeal from Decisions of City Staff. An appeal from a City staff decision shall be made within seven calendar days of the decision to the City Council. Written application for the appeal shall be filed with the City Clerk's office. The application shall state the factual basis of the appeal. The City Council will hear the appeal application at a public hearing to be conducted within thirty (30) calendar days of filing of the application. The decision of the City Council shall be final.

**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.

**SECTION 3: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 4: Constitutionality, severability.** If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

**SECTION 5: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2020, by the following vote:



AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

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NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Tasman East Specific Plan Infrastructure Impact Fee Nexus Study



## Agenda Report

20-1096

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 925 Walsh Avenue, Santa Clara, California, from PSB Northern California Industrial Portfolio LLC, a Delaware Limited Liability Company

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), is proposing to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission line within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project (Project) is to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

The majority of the new 60 kV transmission line would be constructed along the following city streets in areas where existing power lines do not currently exist: Lafayette Street, Mathew Street, Martin Avenue and De La Cruz Boulevard. The remaining segments of the Project would be along routes that have existing distribution power lines and/or telecommunication lines.

The City Council has previously taken a number of actions on the project:

- June 16, 2015 - Adopted the FY 2015/16 Capital Improvement Program (CIP) Budget which included the initial funding for the engineering for this 60kV conductoring and upgrading project.
- July 12, 2016 - Approved a professional services agreement with Electrical Consultants, Inc. to provide transmission line engineering design services which included reconfiguring the south transmission loop.
- January 14, 2020 - Amended a service agreement with Valbridge Property Advisors to perform appraisal services as part of the easement acquisition for the Project.
- July 7, 2020 - Adopted the Negative Declaration and Mitigation, Monitoring and Reporting Program for the Project and increased the capital funding of the Transmission System Reinforcements Capital Improvement Program Project (No. 2124) by \$6,300,000.
- October 13, 2020 - Approved three Purchase and Sale Agreements for Utility Easements

#### **DISCUSSION**

The adoption of the attached Resolution of Necessity requires the City to consider and make the following findings:

- The public interest and necessity require the Project.
- The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- The property sought to be acquired is necessary for the Project.
- The offer required by Section 7267.2 of the Government Code has been made to the owner of record for the full amount established as the fair market value of the property.

***The public interest and necessity require the Project.***

The Project is critical to maintain reliability of the power system in Santa Clara. SVP maintains a redundant system on its 60kV network, allowing for the loss of a single line without interrupting power delivery or causing outages. This Project ensures that this ability remains as the electrical demand in Santa Clara grows. The Project is also necessary for future development in the area.

***The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.***

SVP identified a study area that considered criteria necessary to meet the Project objectives, e.g., maintain system reliability while allowing for an increase in electrical demand. Staff engineers and design consultants looked for route alternatives, focusing on locations that paralleled existing roads and/or existing overhead utilities, and our own existing transmission corridors. In places where we could not use our existing transmission corridors or did not have an existing transmission corridor, staff considered route alternatives looking at their potential impacts to the environment, existing and probable future development, the topography/terrain, roadway access, scenic areas, and recreation uses, among other factors. Weighing the above considerations with the technical needs for the Project, the final Transmission route was determined.

***The property sought to be acquired is necessary for the Project.***

The Easement on 925 Walsh Avenue is necessary to achieve the technical needs of the Project.

***The offer required by Section 7267.2 of the Government Code has been made to the Owner of record for the full amount established as the fair market value of the property.***

On May 20, 2020, the City made an offer to PSB Northern California Industrial Portfolio LLC, a Delaware limited liability company, to acquire the Easement upon the value determined by an independent state licensed and certified appraiser in accordance with the above referenced Government Code.

The Resolution of Necessity requires approval by a two-thirds vote of the Council. If the Council adopts the recommended Resolution of Necessity, the City would deposit the necessary funds for the Easement's probable compensation with the State Condemnation Deposit Fund and file an eminent domain complaint with the Court to seek possession of the property.

As always, the parties can continue to negotiate in an effort to come to a mutual agreement on compensation for the leasehold (including any compensation due for furniture, fixtures and

equipment) and loss of business goodwill.

### **ENVIRONMENTAL REVIEW**

This Project was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration (MND) [SCH#2020-05-9009] was prepared for the Project by the environmental consultant firm, Aspen Environmental Group, and adopted by Council on July 7, 2020 by Resolution No. 20-8869.

### **FISCAL IMPACT**

The South Loop reconfiguration cost was approved as part of the Adopted FY 2020/21 and FY 2021/22 Biennial Capital Improvement Program in Transmission System Reinforcement CIP Project. This action has no fiscal impact to General Fund as the Project is funded by developer contributions

### **COORDINATION**

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

### **PUBLIC CONTACT**

The property owner was provided written notice that the City intends to consider adoption of a Resolution of Necessity to acquire real property interest for South Loop Reconfiguration Project. Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

### **ALTERNATIVES**

1. Adopt a Resolution of Necessity to Acquire Certain Real Property Interests.
2. Do not adopt a Resolution of Necessity.

### **RECOMMENDATION**

Alternative 1: Adopt a Resolution of Necessity to Acquire Certain Real Property Interests on 925 Walsh Avenue, Santa Clara, California, from PSB Northern California Industrial Portfolio LLC, a Delaware limited liability company.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. May 20, 2020 Offer Letter
2. Resolution of Necessity



*Powering* The Center of What's Possible

May 20, 2020

PSB Northern CA Industrial  
Attn: Eric Radmacher  
701 Western Ave  
Glendale, CA, 91201

SUBJECT: OFFER TO PURCHASE OVERHEAD POWER LINE EASEMENT  
SITE: 925 Walsh Avenue, Santa Clara; APNs 224-56-001 & 224-57-015  
South Loop Project

Dear Mr. Radmacher:

The City of Santa Clara, acting by and through its municipally owned utility, Silicon Valley Power (SVP) is currently pursuing acquisition of power line easements for the South Loop Project ("Project"). The power lines that are proposed to be built for the project requires the acquisition of property rights affecting approximately 41,137 square feet over a portion of your property located at 925 Walsh Avenue, Santa Clara, CA ("Property").

SVP's primary objective of the South Loop Project is to increase system capacity and reliability. The majority of the new 60 kilo-volt (kV) transmission line would be constructed along the following city streets: Lafayette Street, Mathew Street, Martin Avenue, Walsh Avenue and De La Cruz Boulevard. Approximately 2.5 miles of the proposed route would be located in areas where existing power lines do not currently exist. The remaining segments of the Proposed Project would be along routes that have existing distribution power lines and/or telecommunication lines. The project is anticipated to be completed in 2021.

SVP designs its transmission system so that a loss of a single transmission line does not result in the loss of power for its customers. This design philosophy ensures the maximum reliability for its customers. As the power demands of the City grow, so does the necessity to construct infrastructure upgrades, such as this project, to continue to maintain this level of service reliability and increase the power capacity to support load growth and development. SVP is proactive about addressing future reliability issues and committed to providing the best service reliability for its customers.

Our preliminary title report shows PSB Northern California Industrial Portfolio LLC, a Delaware Limited Liability Company to be the owner of the property located at 925 Walsh Avenue Santa





*Powering* The Center of What's Possible

Clara, CA. This property is within the Project area, and is also identified by the County Assessor as Parcel No. APNs 224-56-001 & 224-57-015.

Subject to, and upon the terms and conditions set forth herein, SVP officers to purchase an easement over your property, as defined in the Easement Deed attached hereto. SVP hereby offers the sum of Six Hundred and Eighteen Thousand Dollars (\$618,000) as just compensation for the acquisition of the easement.

It is the policy of SVP to acquire property interests that are in private interests through voluntary purchase, if possible, and only when it is necessary to do so. In accordance with applicable law, SVP has obtained, reviewed and approved an appraisal to establish the fair market value of the property to be acquired. The attached Appraisal Summary outlines the basis for this offer pursuant to Government Code §7267.2.

Pursuant to Code of Civil Procedure §1263.025, SVP offers to pay your reasonable costs up to five thousand dollars (\$5,000) for an independent appraisal of the property interests. By law, an appraiser licensed by the Office of Real Estate Appraisers must prepare the independent appraisal. Although you are not required to obtain an appraisal at this time, or at all, if you believe such appraisal can assist you in evaluating this offer, it is in your interest to obtain an independent appraisal as expeditiously as possible. If you choose to obtain an appraisal, please forward SVP an invoice from your appraiser, identifying the Property at 925 Walsh Avenue Santa Clara, CA is the subject of the appraisal and the fee charged.

Materials enclosed for your information include:

- An Easement with Exhibit showing the location of the acquisition area(s);
- The Appraisal Summary for your easement area.

The agent assigned to your property and to whom you will be working with is Keith Corry Senior Right of Way Professional, who can be reached at (801) 419-4507 or by email at [keith.corry@eciusa.com](mailto:keith.corry@eciusa.com). Please contact him if you have any questions or if you wish further clarification of this offer.

If you are agreeable to the offer please indicate your acceptance by signing in the space provided below and return an original signed copy of this letter to Mr. Corry using the postage paid return envelope, which is attached, for your use. Upon receipt of your acceptance of this purchase offer, a contract for sale and escrow instructions will be prepared for your execution. SVP will pay all of the conveyance and escrow costs. All taxes and assessments, if any, will be pro-rated, and possession will be delivered to SVP at the close of escrow.





*Powering* The Center of What's Possible

Sincerely,

A handwritten signature in blue ink, appearing to read "MP", followed by a horizontal line.

Manuel Pineda

Assistant City Manager/ Chief Electric Utility Officer

Enclosures:

SVP Easement with exhibit  
Appraisal Summary  
Postage paid return envelope

**ACCEPTANCE OF OFFER**

This offer, dated May 20, 2020 from the City of Santa Clara acting by and through its municipally owned utility, Silicon Valley Power, for \$618,000 is accepted for the acquisition of a permanent surface utility easement.

Owner's Name

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

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

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

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

**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

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

## **OVERHEAD ELECTRIC EASEMENT DEED**

**925 Walsh Avenue, APNs 224-56-001 & 224-57-015  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, PSB Northern California Industrial Portfolio LLC, a Delaware limited liability company (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

[SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE]

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///

IN WITNESS WHEREOF, said grantors have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED FOR FORM:

\_\_\_\_\_  
Brian Doyle  
City Attorney

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

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

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

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

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

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

-  
  
**"OWNER" APNs 224-56-001 & 224-57-015  
(2020-05)**

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.  
**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

# CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

## **Appendix A**

May 18, 2020

**City of Santa Clara  
South Loop Interconnect Project  
Appraisal Summary Statement And  
Summary of the Basis for Just Compensation  
(Pursuant to Government Code Section 7267.2)**

The following is a statement of and summary of the basis for the appraisal and the amount that Silicon Valley Power has established as just compensation required by California Government Code Section 7267.2. The appraisal on which this summary is based was made in accordance with accepted appraisal principles, consistent with California valuation law.

The purpose of this appraisal is to estimate the fair market value of the proposed acquisition appraised. Section 1263.320 of the Code of Civil Procedure defines fair market value as:

- A. The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*
- B. The fair market value of property taken for which there is no relevant market is its value on the date of valuation as determined by any method of valuation that is just and equitable.*

The date of value is October 10, 2019, which was the date of inspection.

The intended use of this appraisal is for potential acquisition of easements rights for the Silicon Valley Power Project, which is called the South Loop Interconnect Project. The intended user is Silicon Valley Power.



The scope of work included inspecting the property, research and analysis of comparable data, and highest and best use analysis.

The appraised rights are further identified as follows:

- 1) The fair market value of a 41,137-square-foot permanent powerline easement.
- 2) The fair market value of a 2,715-square-foot temporary construction easement that is three weeks in duration

#### **Statement of the Amount Established as Just Compensation**

The amount Silicon Valley Power has established as just compensation for the property rights described in the accompanying offer is: **\$618,000 (Six Hundred Eighteen Thousand Dollars).**

#### **Summary of Basis for the Amount Established as Just Compensation**

This Summary of the Basis for the Amount Established as Just Compensation (prepared pursuant to Government Code Section 7267.2) is a summary of the appraisal used by Silicon Valley Power to determine the amount it established as just compensation for an easement.

#### **(A) Property Identification – Subject Property**

<b>Owner of Record:</b>	PSB Northern California Industrial Portfolio, LLC
<b>Assessor's Parcel Numbers (APNs):</b>	Santa Clara County Assessor's Parcel Number (APN) 224-56-001 and 224-57-015
<b>Property Address:</b>	925 Martin Avenue, Santa Clara, Santa Clara County, CA 95050
<b>Property Transfers in the Past Three Years:</b>	The property has not been sold within the past three years.
<b>General Character of Interest Being Appraised:</b>	Easement
<b>Larger Parcel Land Size:</b>	740,962 square feet
<b>Improvements:</b>	There are existing industrial buildings onsite.
<b>Topography:</b>	Level
<b>Shape:</b>	Rectangular



<b>Access:</b>	Access to the Larger Parcel is available off of Walsh Avenue and Lafayette Street.
<b>Utilities:</b>	Typical municipal and public utilities are available.
<b>Environmental Conditions:</b>	We did not receive a Phase I report for the Subject Property, and we assume there are no adverse environmental conditions.
<b>Date of Valuation:</b>	October 10, 2019
<b>Highest and Best Use</b>	The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.
<b>Highest and Best Use – As If Vacant:</b>	Industrial
<b>Highest and Best Use – As Improved:</b>	Existing use
<b>Present Use Subject Property:</b>	The Larger Parcel is currently used as an industrial property.
<b>Applicable Zoning:</b>	MH, Heavy Industrial

**(B) Approaches Used in the Appraisal**

We employed the "before" and "after" methodology for the Larger Parcel. In the "before" condition, we have not considered the Project.

In the "after" condition, we have considered the impacts attributed to the proposed easement and the Project.

Three methods of valuation can be applied to the appraisal of land. The most often used approach is the Direct Sales Comparison Approach. This method involves the comparison of the subject with recent sales of comparable properties.

A second method of land appraisal is the Land Development Approach. This approach involves estimating the development costs of installing all utilities and off-sites. These costs can be subtracted from a known improved lot value (established by sales comparison) to arrive at an estimate of raw land value or added to the known raw land value to arrive at the value of an improved site.

The third method employed is an Income Residual Method. An estimate is made of the potential net income, which can be earned from the site improved with buildings. The cost of these improvements is estimated to determine the portion of the income needed to supply a fair return on these costs. The residual income is available for a return on the land. Therefore, this income is capitalized into an indicated land value.

For purposes of this appraisal, the Sales Comparison Approach has been employed. Sufficient sales data was available that it was felt this method yielded a reliable result. This is the method that would most often be applied by a typical buyer of this type of property. The comparable sales are provided in Exhibit A.

#### Sales Comparison Approach

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison.

Based on our analysis of sale comparables provided in Exhibit A, we estimate the land value of the Larger Parcel to be \$44,457,720 (land only). This is based on a price per square foot of land of \$60 x 740,962 square feet.

#### **(C) Value of Part Taken**

We have valued the part taken next. This consists of the value of the permanent easement, plus the temporary construction easement.

#### Permanent Easement

In the "after" condition, the highest and best use of the Larger Parcel remains for continuation of the existing use.

For this valuation, the rationale for estimating the easement value can be shown as an equation:

#### **Fee simple land value x % of fee rights being acquired = easement value**

Based on our experience, an easement that is solely for subsurface utilities, as one example, may command a 10-35% share of the fee rights. As another example, exclusive control of surface rights may capture 90-100% of the fee simple value.

The subject is a perpetual easement. The grantor has significant remaining rights at the surface, landscaping, parking and signage for example. We estimate that the easement encumbers 25% of the total bundle of rights.

Therefore, the fair market value for the permanent easement is estimated at **\$617,055**, or 41,137 square feet x \$60 x 25%.

#### Temporary Construction Easement

The TCE measures 2,715 square feet, and the TCE period is 3 weeks (or 0.75 months). Based on our analysis of land rental rates in the Bay Area, a reasonable land rental rate is between 8% and 10% annually. The upper range is supported for this analysis, at 10%.

We have also added the depreciated value of the asphalt pavement, at \$5,091. This is derived as 2,715 square feet x \$3.75 per square foot, including profit, less 50% depreciation.

Therefore, the land rental for the TCE is estimated at \$1,050 or  $2,715 \text{ s.f.} \times \$60 \text{ per square foot} + \$5,091 \text{ depreciated asphalt value} \times 10\% / 12 \text{ months} \times 0.75 \text{ months}$ .

Therefore, the fair market value for the TCE is estimated at \$1,050.

#### **(D) Severance Damages/Benefits Analysis**

Severance damages and benefits involve measuring the effect that the "acquisition" and "Project" have on the value of the property remaining, i.e., on the "remainder."

The acquisition is not expected to result in any severance damages to the remainder.

The highest and best use of the Larger Parcel upon partial acquisition is unchanged, relative to the "before" condition. We have not identified any damages from the Project.

Benefits result when the value of the remainder increases because of either the Project or the acquisition. Any resulting benefits are offset only against severance damages and not against acquisition value.

Each case for benefits is unique. In the case of the subject, we envision that the electric utility upgrades would be superior relative to the existing conditions. Since we have not identified any severance damages, we have not quantified any potential benefits.

#### **(E) Conclusion of Just Compensation and Value in the "After" Condition**

The market value of the acquisition is shown on the following page.

### Summary of Valuation

A. Land Value of the whole before acquisition: (\$60 PSF x 740,962 SF)	\$44,457,720
B. Value of the part acquired as part of the whole:	\$617,055
Permanent Easement (\$60 x 41,137 SF x 25%)	\$617,055
Site Improvements (e.g. trees)	\$ -
C. Value of the remainder as part of the whole: (Line A less Line B)	\$43,840,665
D. Value of the remainder after the acquisition and before consideration of benefits (Line C - Line E)	\$43,840,665
E. Severance Damages/Cost to Cure	\$0
F. Value of the remainder after the acquisition and after considering benefits	\$43,840,665
G. Benefits (Line F less Line D)	0
H. Net Damages or Net Benefits (Line E minus Line G)	\$0
Plus: TCE:	<u>\$1,050</u>
Total	\$1,050
I. Market Value of the Acquisition (Just Compensation) (Line B plus Line H)	\$617,055
	\$1,050
Subtotal	\$618,105
Rounded	<b><u>\$618,000</u></b>

The resulting land value of the remainder in the "after" condition is \$43,840,665, or \$44,457,720 - \$617,055.

The fair market value for the acquisition is, **\$618,000**, as summarized below:

Value Conclusions: 925 Walsh Avenue					
	Permanent Easement	Temporary Construction Easement	Site Improvements	Net Severance Damages	Total Fair Market Value
Value Type	Fair Market Value	Fair Market Value	Fair Market Value	Fair Market Value	Fair Market Value
Property Rights Appraised	Permanent Easement	Temporary Construction Easement			Acquisition
Date of Value	October 10, 2019	October 10, 2019	October 10, 2019	October 10, 2019	October 10, 2019
Fair Market Value	\$617,055	\$1,050	\$0	\$0	Total: \$618,000 (rounded)

The previous is a summary of the appraisal prepared at the request of Silicon Valley Power to comply with Government Code Section 7267.2 that fairly and correctly states my opinions and knowledge.

Dated: May 18, 2020

# Addenda

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Exhibit A: Land Sales

Exhibit B: Easement Area

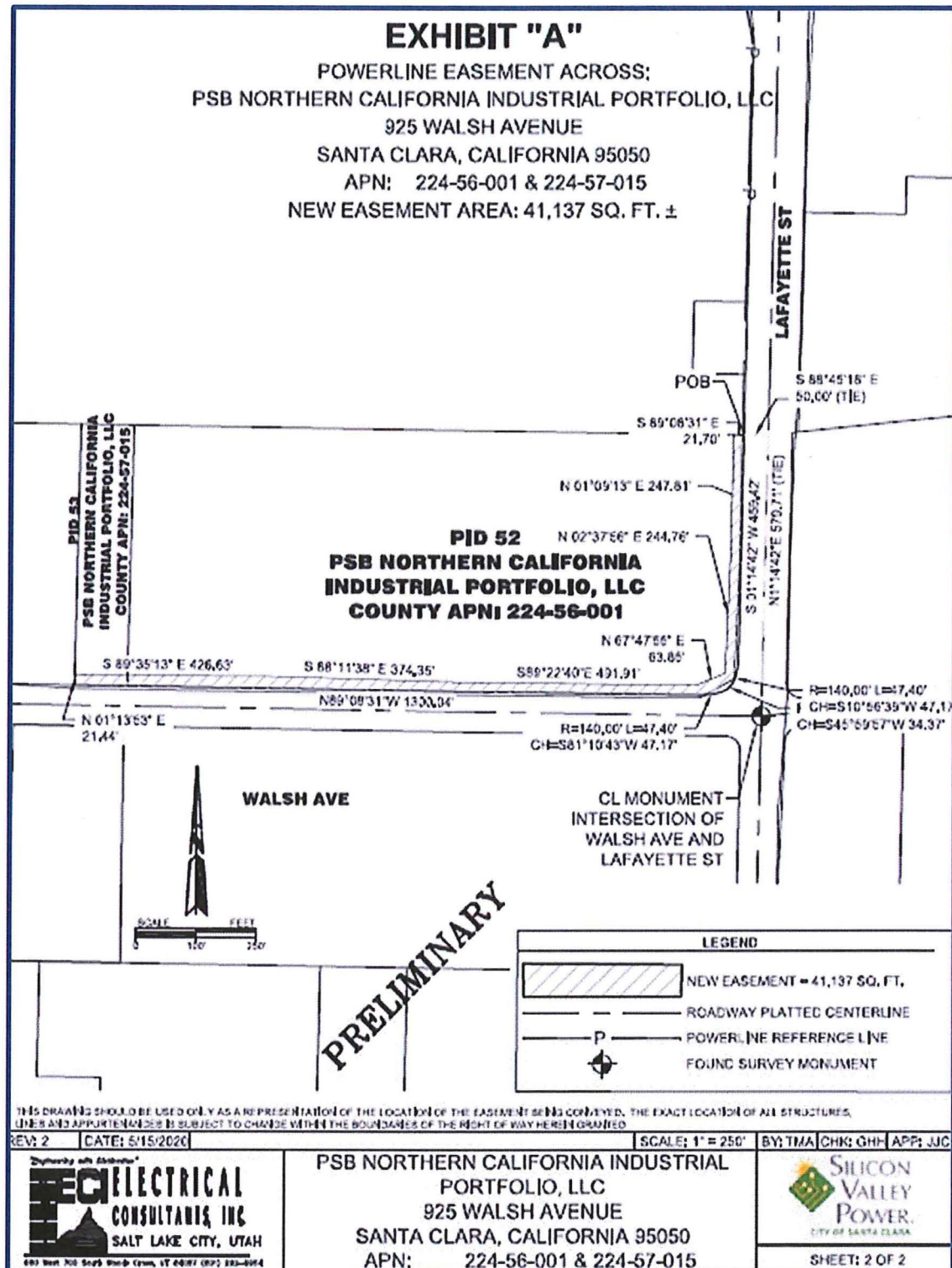


## Exhibit A: Land Sales

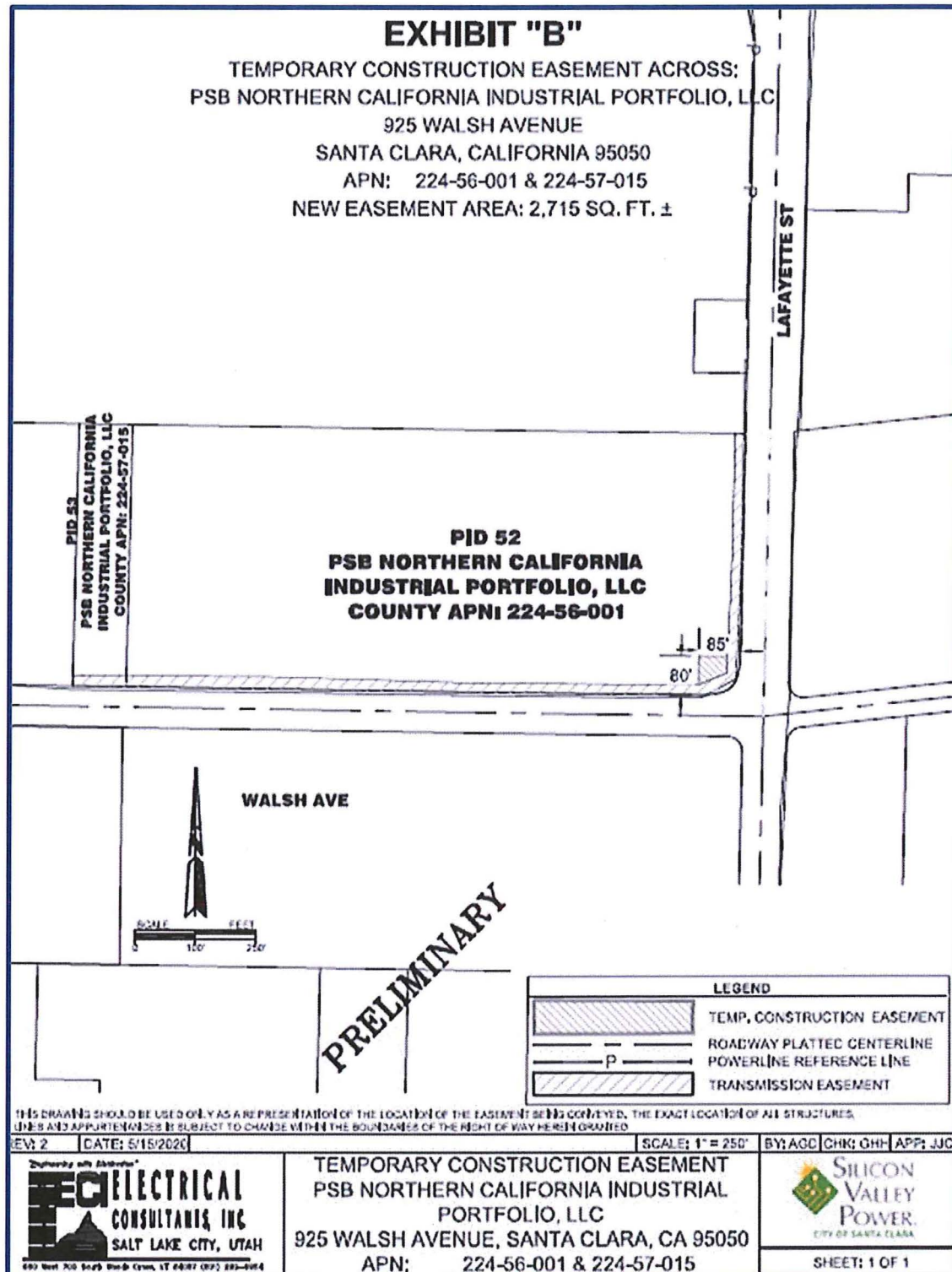
### Comparable Sales Summary

Comp	No.	Address	COE date	Land SF	Sale Price	Price per SF of Land	Grantor / Grantee and Recording #
1		1000 South 3rd Street San Jose APN: 472-15-027	Aug-17	51,401	\$2,100,000	\$40.86	Grifall Trucking Inc. Richard Cohen Trust Recording # 23716163
2		650 Martin Avenue Santa Clara APN: 224-35-017	Aug-16	207,128	\$12,310,000	\$59.43	Recology Properties Inc. Peninsula Building Materials Recording # 23398465
3		720 Comstock Street Santa Clara APN: 224-36-025	Oct-18	7,100	\$570,000	\$80.28	Jeff Olofsen Parker Albanese I LLC Recording # 24065356

# Exhibit B: Easement Area



## Temporary Construction Easement





**EXHIBIT "A"****POWERLINE EASEMENT ACROSS:****PSB NORTHERN CALIFORNIA INDUSTRIAL PORTFOLIO, LLC****925 WALSH AVENUE****SANTA CLARA, CALIFORNIA 95050****APN: 224-56-001 & 224-57-015****NEW EASEMENT AREA: 41,137 SQ. FT. ±****DESCRIPTION:**

A portion of the parcel of land conveyed in that certain Grant Deed recorded December 22, 2011 as Document No. 21467584, in the Office of the Recorder of the County of Santa Clara (ORCSC), herein after referred to as the Grantor's Parcel, being a portion of Lots 1, 2, 3, 4, 6 and 7 as shown upon that certain Map entitled, "Map of the Oak's Subdivision," which Map was filed for record on November 25, 1907 in Book M of Maps, at page 5, ORCSC, being located in the City of Santa Clara, County of Santa Clara, State of California, and described as follows:

**COMMENCING** at the monument located at the centerline intersection of Lafayette Street and Walsh Avenue; thence North 01°14'42" East 579.71 feet along said centerline of Lafayette Street; thence North 88°45'18" West 50.00 feet to the northeasterly corner of said Grantor's Parcel and the **POINT OF BEGINNING**; thence southerly along the westerly right-of-way line of said Lafayette Street and westerly along the northerly right-of-way line of said Walsh Avenue the following five (5) courses:

- 1) South 01°14'42" West 459.42 feet to the beginning of a curve concave westerly, having a radius of 140.00 feet;
- 2) southerly 47.40 feet along said curve through a central angle of 19°23'55" to the beginning of a compound curve concave northwesterly having a radius of 40.00 feet;
- 3) southwesterly 35.53 feet along said curve through a central angle of 50°53'40" to the beginning of a compound curve concave northerly having a radius of 140.00 feet;
- 4) westerly 47.40 feet along said curve through a central angle of 19°23'55";
- 5) North 89°08'31" West 1,300.04 feet to the southwesterly corner of said Grantor's Parcel;

thence North 01°13'53" East 21.44 feet along the westerly line of said Grantor's Parcel; thence South 89°35'13" East 426.63 feet; thence South 88°11'38" East 374.35 feet; thence South 89°22'40" East 491.91 feet; thence North 67°47'55" East 63.85 feet; thence North 02°37'56" East 244.76 feet; thence North 01°09'13" East 247.81 feet to the northerly line of said Grantor's Parcel; thence South 89°08'31" East 21.70 feet along said northerly line to the **POINT OF BEGINNING**.

Containing 41,137 square feet, more or less.



REV: 2 | DATE: 5/20/2020 | SCALE: N/A | BY: TMA | CHK: GHH | APP: JJC



**PSB NORTHERN CALIFORNIA INDUSTRIAL  
PORTFOLIO, LLC**  
925 WALSH AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-56-001 & 224-57-015



SHEET: 1 OF 2

**EXHIBIT "A"**

POWERLINE EASEMENT ACROSS:

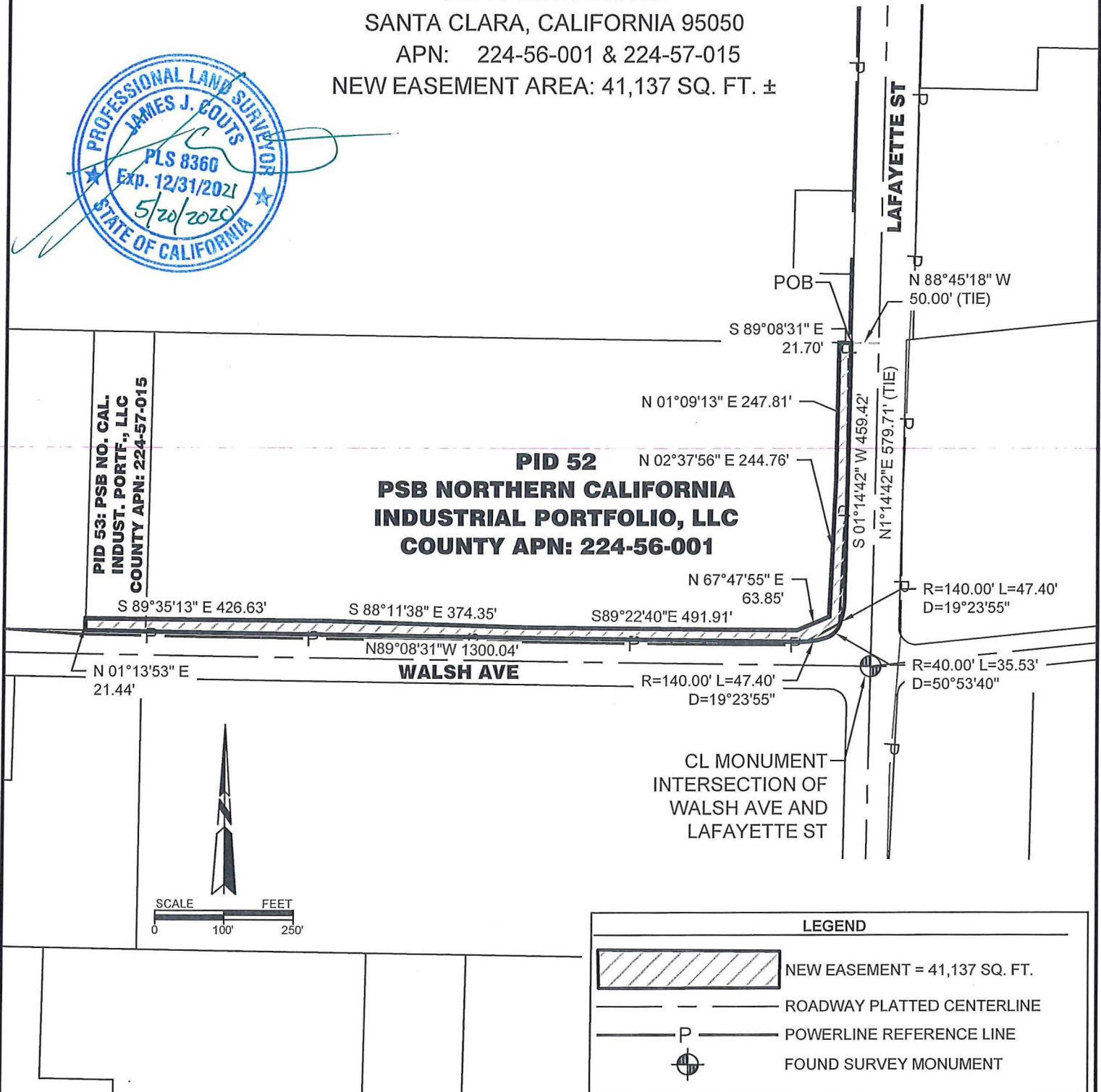
PSB NORTHERN CALIFORNIA INDUSTRIAL PORTFOLIO, LLC

925 WALSH AVENUE

SANTA CLARA, CALIFORNIA 95050

APN: 224-56-001 &amp; 224-57-015

NEW EASEMENT AREA: 41,137 SQ. FT. ±



THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 2 DATE: 5/20/2020

SCALE: 1" = 250'

BY: TMA CHK: GHH APP: JJC

**ECI ELECTRICAL**  
CONSULTANTS, INC.  
SALT LAKE CITY, UTAH  
660 West 700 South Woods Cross, UT 84087 (801) 292-8954

PSB NORTHERN CALIFORNIA INDUSTRIAL  
PORTFOLIO, LLC  
925 WALSH AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-56-001 & 224-57-015

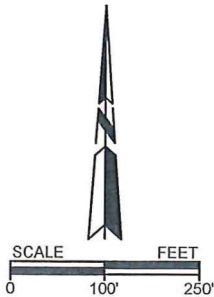
**SILICON VALLEY POWER**  
CITY OF SANTA CLARA

SHEET: 2 OF 2



**EXHIBIT "B"**

TEMPORARY CONSTRUCTION EASEMENT ACROSS:  
 PSB NORTHERN CALIFORNIA INDUSTRIAL PORTFOLIO, LLC  
 925 WALSH AVENUE  
 SANTA CLARA, CALIFORNIA 95050  
 APN: 224-56-001 & 224-57-015  
 NEW EASEMENT AREA: 2,715 SQ. FT. ±



LEGEND	
	TEMP. CONSTRUCTION EASEMENT
	ROADWAY PLATTED CENTERLINE
	POWERLINE REFERENCE LINE
	TRANSMISSION EASEMENT

PID 53: PSB NO. CAL.  
 INDUST. PORTF., LLC  
 COUNTY APN: 224-57-015



**PID 52**  
**PSB NORTHERN CALIFORNIA**  
**INDUSTRIAL PORTFOLIO, LLC**  
**COUNTY APN: 224-56-001**

**WALSH AVE**

**LAFAYETTE ST**

85'  
 80'

**DESCRIPTION:**

A portion of the parcel of land conveyed in that certain Grant Deed recorded December 22, 2011 as Document No. 21467584, in the Office of the Recorder of the County of Santa Clara (ORCSC), herein after referred to as the Grantor's Parcel, being a portion of Lots 1, 2, 3, 4, 6 and 7 as shown upon that certain Map entitled, "Map of the Oak's Subdivision," which Map was filed for record on November 25, 1907 in Book M of Maps, at page 5, ORCSC, being located in the City of Santa Clara, County of Santa Clara, State of California, and described as follows:

The easterly 85 feet of the southerly 80 feet of that portion of said Grantor's parcel lying outside and adjoining the Powerline Easement shown on Exhibit "A", as shown hereon.

Containing 2,715 square feet, more or less.

THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 0 DATE: 5/20/2020

SCALE: 1" = 250'

BY: AGD CHK: GHH APP: JJC

*"Engineering with Distinction"*  
**ECI ELECTRICAL**  
 CONSULTANTS, INC.  
 SALT LAKE CITY, UTAH  
 680 West 700 South Woods Cross, UT 84087 (801) 292-9954

**TEMPORARY CONSTRUCTION EASEMENT**  
**PSB NORTHERN CALIFORNIA INDUSTRIAL**  
**PORTFOLIO, LLC**  
 925 WALSH AVENUE, SANTA CLARA, CA 95050  
 APN: 224-56-001 & 224-57-015

**SILICON VALLEY**  
**POWER**  
 CITY OF SANTA CLARA

SHEET: 1 OF 1



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY  
REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY  
INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE  
FILING OF EMINENT DOMAIN PROCEEDINGS**

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

**WHEREAS**, the City of Santa Clara, a chartered city and municipal corporation acting by and through its municipally owned utility, Silicon Valley Power (hereinafter the “City”) is engaged in a continuing effort to upgrade and enhance its Overhead and Underground Distribution and Transmission systems to meet new customer demand and to maintain the reliability of SVP’s systems. The Transmission System Reinforcement Project (Project) is a keystone project for this effort; and

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing Electric Overhead and Wire Clearance Easements or the acquisition of new easements; and

**WHEREAS**, it is desirable and necessary for the City to acquire the following real property interests necessary for the Project

[i] a 41,137 square foot permanent Overhead Electric Easement in, on, over, along and across the real property described and depicted in Exhibit “A” and incorporated herein by this reference (“Easement Area”) for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of fee owner. In exercising said right of ingress and egress, easement holder shall, wherever practical, use existing roads and lanes across lands of fee owner, if such there be, and if not, by such route or routes as shall result in the least practicable

inconvenience to fee owner and any occupants of fee owner's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the fee owner for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the easement holder's use of the Easement. Any other use of the Easement Area by fee owner shall be subject to easement holder's express written consent and only after easement holder's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Easement holder may trim any trees or remove any tree or structure which are in or adjacent to the Easement Area which, in easement holder's reasonable determination, interferes with its use of the Easement. Easement holder may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 feet or poses a risk of falling onto the easement holder's facilities or equipment located within the Easement; and

[ii] a 2,715 square foot nonexclusive temporary easement for construction purposes ("TCE") related to the Project, and all purposes related thereto, in, on, upon, over, under and across that real property described and depicted in Exhibit "B" and incorporated herein by this reference ("TCE Area").

Actual physical use and occupation of the TCE Area will occur only intermittently and only for a timeframe not to exceed twenty-one (21) days total, each phase of which to commence following forty-eight (48) hours prior written notice to fee owner. Access and use of portions of the TCE Area by fee owner, tenants, invitees and guests will be allowed to the extent that said portion is not being used for Project construction or staging purposes at that time. Construction of

the Project is expected to take no more than six months, and this TCE shall terminate upon written notice from easement holder that the TCE is no longer needed for the Project. Under all circumstances, unless it expires or is terminated earlier, the TCE term shall expire nine (9) months following the date the TCE is first used for the Project. Easement holder will stage and coordinate work in the TCE Area with the fee owner so as not to unreasonably impede/hinder access to/from and within the larger parcel.

Upon completion of the TCE Term, easement holder will cause the removal of all construction equipment and materials from the TCE area, and will restore the TCE area to a condition which is safe and reasonably suited to its original use; and

**WHEREAS**, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Sections 37350.5 of the California Government Code, Section 612 of the California Public Utilities Code and Sections 1240.010 and 1240.220 of the California Code of Civil Procedure; and

**WHEREAS**, pursuant to the provisions of Section 1245.235 of the California Code of Civil Procedure, notice has been duly given to PSB Northern California Industrial Portfolio LLC, a Delaware limited liability company, whose property interests are to be acquired by eminent domain and whose name and address appears on the Santa Clara County Equalized Assessment Roll, and the property owner has been given a reasonable opportunity to appear and be heard before the City Council; and

**WHEREAS**, on July 7, 2020, by Resolution No. 20-8869, the City Council [certified the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP)] for the Project in accordance with the California Environmental Quality Act (CEQA). No further environmental review is necessary pursuant to CEQA; and

**WHEREAS**, pursuant to the provisions of Section 7267.2 of the California Government Code,

the City has made an offer to the owner(s) of record to acquire its interests under the Lease for the amount which it has established to be just compensation, therefore.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA THAT  
THE CITY FINDS AND DETERMINES AS FOLLOWS:**

1. That the public interest and necessity require the Project.
2. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The Subject Property Interests sought to be acquired are necessary for the Project.
4. That all environmental review required by law has been prepared and adopted.
5. That the offer required by Section 7267.2 of the California Government Code has been made to the owner(s) of record of the Subject Property Interests.
6. That the necessary notice of hearing has been given, as required by Code of Civil Procedure section 1245.235.
7. That to the extent the Subject Property Interests are already devoted to a public use, the use of the Subject Property Interests for the Project is a compatible use that will not unreasonably interfere with or impair the continuance of the public use as it presently exists or may reasonably be expected to exist in the future (California Code of Civil Procedure Section 1240.510), or the use of the Subject Property Interests for the Project is a more necessary public use than the presently existing public use (California Code of Civil Procedure Section 1240.610).
8. The City has complied with requirements of CEQA for the Project.
9. That the City Attorney or his duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the estates and interests aforesaid and to take such actions as he may deem advisable or necessary in connection therewith.
10. That the City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the Subject Property Interests.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. Exhibit A
2. Exhibit B

**EXHIBIT "A"**

POWERLINE EASEMENT ACROSS:  
 PSB NORTHERN CALIFORNIA INDUSTRIAL PORTFOLIO, LLC  
 925 WALSH AVENUE  
 SANTA CLARA, CALIFORNIA 95050  
 APN: 224-56-001 & 224-57-015  
 NEW EASEMENT AREA: 41,137 SQ. FT. ±

**DESCRIPTION:**

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**COMMENCING** at the monument located at the centerline intersection of Lafayette Street and Walsh Avenue; thence North 01°14'42" East 579.71 feet along said centerline of Lafayette Street; thence North 88°45'18" West 50.00 feet to the northeasterly corner of said Grantor's Parcel and the **POINT OF BEGINNING**; thence southerly along the westerly right-of-way line of said Lafayette Street and westerly along the northerly right-of-way line of said Walsh Avenue the following five (5) courses:

- 1) South 01°14'42" West 459.42 feet to the beginning of a curve concave westerly, having a radius of 140.00 feet;
- 2) southerly 47.40 feet along said curve through a central angle of 19°23'55" to the beginning of a compound curve concave northwesterly having a radius of 40.00 feet;
- 3) southwesterly 35.53 feet along said curve through a central angle of 50°53'40" to the beginning of a compound curve concave northerly having a radius of 140.00 feet;
- 4) westerly 47.40 feet along said curve through a central angle of 19°23'55";
- 5) North 89°08'31" West 1,300.04 feet to the southwesterly corner of said Grantor's Parcel;

thence North 01°13'53" East 21.44 feet along the westerly line of said Grantor's Parcel; thence South 89°35'13" East 426.63 feet; thence South 88°11'38" East 374.35 feet; thence South 89°22'40" East 491.91 feet; thence North 67°47'55" East 63.85 feet; thence North 02°37'56" East 244.76 feet; thence North 01°09'13" East 247.81 feet to the northerly line of said Grantor's Parcel; thence South 89°08'31" East 21.70 feet along said northerly line to the **POINT OF BEGINNING**.

Containing 41,137 square feet, more or less.



REV: 2 DATE: 5/20/2020

SCALE: N/A

BY: TMA CHK: GHJ APP: JJC



PSB NORTHERN CALIFORNIA INDUSTRIAL  
 PORTFOLIO, LLC  
 925 WALSH AVENUE  
 SANTA CLARA, CALIFORNIA 95050  
 APN: 224-56-001 & 224-57-015



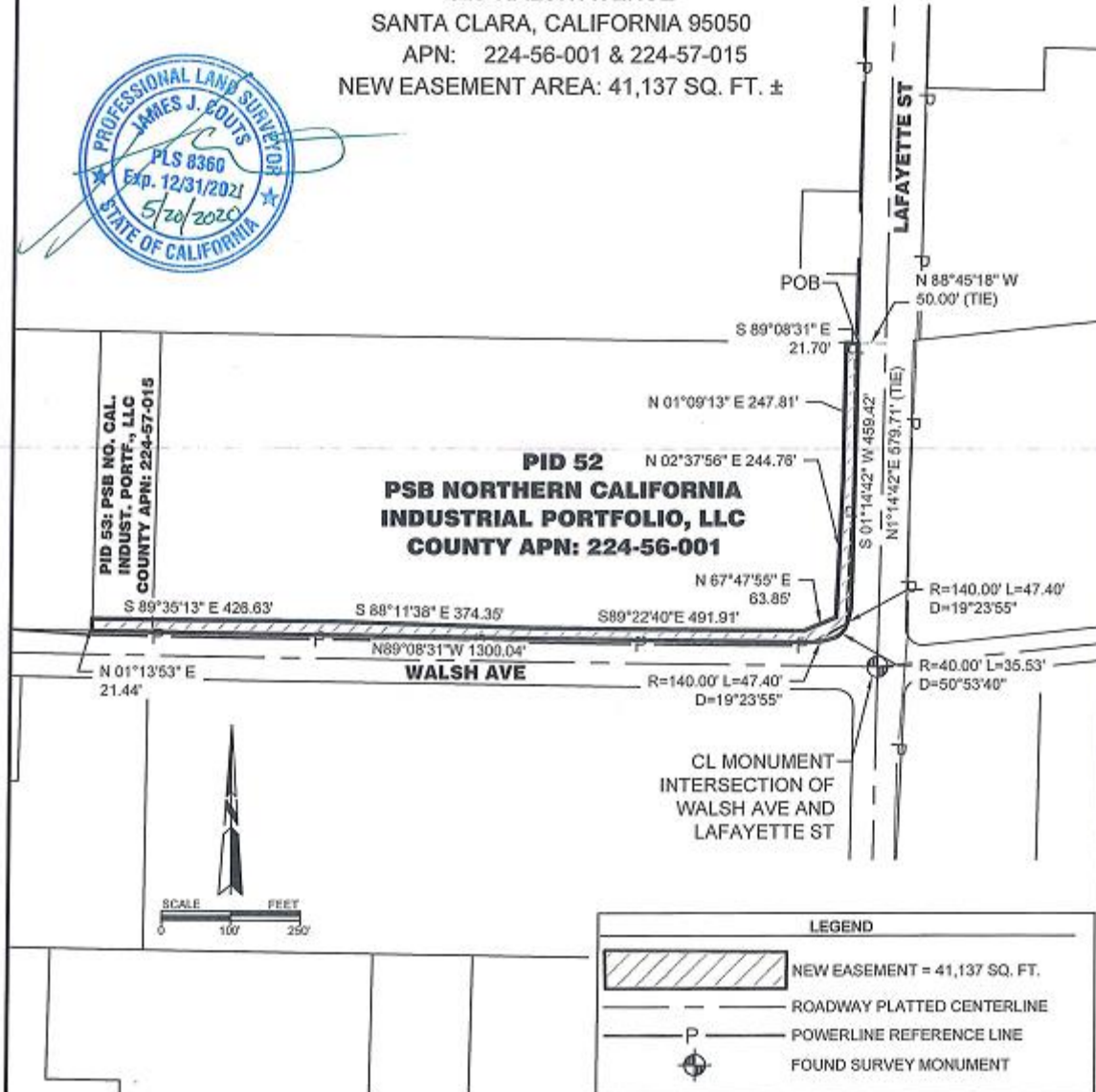
SHEET: 1 OF 2





# EXHIBIT "A"

SVP REF: SC 19-306

POWERLINE EASEMENT ACROSS:  
PSB NORTHERN CALIFORNIA INDUSTRIAL PORTFOLIO, LLC  
925 WALSH AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-56-001 & 224-57-015  
NEW EASEMENT AREA: 41,137 SQ. FT. ±



THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED.						
REV: 2	DATE: 5/20/2020	SCALE: 1" = 250'		BY: TMA	CHK: GHJ	APP: JJC
 Engineering with Distinction SALT LAKE CITY, UTAH 892 West 700 South Woodcreek, UT 84007 (801) 262-2654		PSB NORTHERN CALIFORNIA INDUSTRIAL PORTFOLIO, LLC 925 WALSH AVENUE SANTA CLARA, CALIFORNIA 95050 APN: 224-56-001 & 224-57-015			 SILICON VALLEY POWER. CITY OF SANTA CLARA SHEET: 2 OF 2	

## EXHIBIT "B"

SVP REF: SC 19-306

TEMPORARY CONSTRUCTION EASEMENT ACROSS:  
PSB NORTHERN CALIFORNIA INDUSTRIAL PORTFOLIO, LLC  
925 WALSH AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-56-001 & 224-57-015  
NEW EASEMENT AREA: 2,715 SQ. FT. ±



LEGEND	
	TEMP. CONSTRUCTION EASEMENT
	ROADWAY PLATTED CENTERLINE
	POWERLINE REFERENCE LINE
	TRANSMISSION EASEMENT

PID 53: PSB NO. CAL.  
INDUST. PORTF., LLC  
COUNTY APN: 224-57-015



**PID 52**  
**PSB NORTHERN CALIFORNIA**  
**INDUSTRIAL PORTFOLIO, LLC**  
**COUNTY APN: 224-56-001**

WALSH AVE

LAFAYETTE ST

### DESCRIPTION:

A portion of the parcel of land conveyed in that certain Grant Deed recorded December 22, 2011 as Document No. 21467584, in the Office of the Recorder of the County of Santa Clara (ORCSC), herein after referred to as the Grantor's Parcel, being a portion of Lots 1, 2, 3, 4, 6 and 7 as shown upon that certain Map entitled, "Map of the Oak's Subdivision," which Map was filed for record on November 25, 1907 in Book M of Maps, at page 5, ORCSC, being located in the City of Santa Clara, County of Santa Clara, State of California, and described as follows:

The easterly 85 feet of the southerly 80 feet of that portion of said Grantor's parcel lying outside and adjoining the Powerline Easement shown on Exhibit "A", as shown hereon.

Containing 2,715 square feet, more or less.

THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 0 DATE: 5/20/2020

SCALE: 1" = 250'

BY: AGD CHK: GHJ APP: JJC



TEMPORARY CONSTRUCTION EASEMENT  
PSB NORTHERN CALIFORNIA INDUSTRIAL  
PORTFOLIO, LLC  
925 WALSH AVENUE, SANTA CLARA, CA 95050  
APN: 224-56-001 & 224-57-015



SHEET: 1 OF 1



## Agenda Report

20-1098

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 1401 Martin Avenue, Santa Clara, California, from Diana J. Alman, Trustee et al

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), is proposing to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission line within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project (Project) is to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

The majority of the new 60 kV transmission line would be constructed along the following city streets in areas where existing power lines do not currently exist: Lafayette Street, Mathew Street, Martin Avenue and De La Cruz Boulevard. The remaining segments of the Project would be along routes that have existing distribution power lines and/or telecommunication lines.

The City Council has previously taken a number of actions on the project:

- June 16, 2015 - Adopted the FY 2015/16 Capital Improvement Program (CIP) Budget which included the initial funding for the engineering for this 60kV conductoring and upgrading project.
- July 12, 2016 - Approved a professional services agreement with Electrical Consultants, Inc. to provide transmission line engineering design services which included reconfiguring the south transmission loop.
- January 14, 2020 - Amended a service agreement with Valbridge Property Advisors to perform appraisal services as part of the easement acquisition for the Project.
- July 7, 2020 - Adopted the Negative Declaration and Mitigation, Monitoring and Reporting Program for the Project and increased the capital funding of the Transmission System Reinforcements Capital Improvement Program Project (No. 2124) by \$6,300,000.
- October 13, 2020 - Approved three Purchase and Sale Agreements for Utility Easements

#### **DISCUSSION**

The adoption of the attached Resolution of Necessity requires the City to consider and make the following findings:

- The public interest and necessity require the Project.

- The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- The property sought to be acquired is necessary for the Project.
- The offer required by Section 7267.2 of the Government Code has been made to the owner of record for the full amount established as the fair market value of the property.

***The public interest and necessity require the Project.***

The Project is critical to maintain reliability of the power system in Santa Clara. SVP maintains a redundant system on its 60kV network, allowing for the loss of a single line without interrupting power delivery or causing outages. This Project ensures that this ability remains as the electrical demand in Santa Clara grows. The Project is also necessary for future development in the area.

***The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.***

SVP identified a study area that considered criteria necessary to meet the Project objectives, i.e. maintain system reliability while allowing for an increase in electrical demand. Staff engineers and design consultants looked for route alternatives, focusing on locations that paralleled existing roads and/or existing overhead utilities, and our own existing transmission corridors. In places where we could not use our existing transmission corridors or did not have an existing transmission corridor, staff considered route alternatives looking at their potential impacts to the environment, existing and probable future development, the topography/terrain, roadway access, scenic areas, and recreation uses, among other factors. Weighing the above considerations with the technical needs for the Project, the final Transmission route was determined.

***The property sought to be acquired is necessary for the Project.***

The Easement on 1401 Martin Avenue is necessary to achieve the technical needs of the Project.

***The offer required by Section 7267.2 of the Government Code has been made to the Owner of record for the full amount established as the fair market value of the property.***

On April 6, 2020, the City made an offer to Diana J. Alman, Trustee et al, to acquire the Easement upon the value determined by an independent state licensed and certified appraiser in accordance with the above referenced Government Code.

The Resolution of Necessity requires approval by a two-thirds vote of the Council. If the Council adopts the recommended Resolution of Necessity, the City would deposit the necessary funds for the Easement's probable compensation with the State Condemnation Deposit Fund and file an eminent domain complaint with the Court to seek possession of the property.

As always, the parties can continue to negotiate in an effort to come to a mutual agreement on compensation for the leasehold (including any compensation due for furniture, fixtures and equipment) and loss of business goodwill.

**ENVIRONMENTAL REVIEW**

This Project was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration (MND) [SCH#2020-05-9009] was prepared for the Project by the environmental consultant firm, Aspen Environmental Group, and adopted by Council on July 7, 2020 by Resolution No. 20-8869.

**FISCAL IMPACT**

The South Loop reconfiguration cost was approved as part of the Adopted FY 2020/21 and FY 2021/22 Biennial Capital Improvement Program in Transmission System Reinforcement CIP Project. This action has no fiscal impact to General Fund as the Project is funded by developer contributions

**COORDINATION**

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

**PUBLIC CONTACT**

The property owner was provided writing notice that the City intends to consider adoption of a Resolution of Necessity to acquire real property interest for South Loop Reconfiguration Project. Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**ALTERNATIVES**

1. Adopt a Resolution of Necessity to Acquire Certain Real Property Interests.
2. Do not adopt a Resolution of Necessity.

**RECOMMENDATION**

Alternative 1: Adopt a Resolution of Necessity to acquire Certain Real Property Interests on 1401 Martin Avenue, Santa Clara, California, from Diana J. Alman, Trustee et al.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. April 6, 2020 Offer Letter
2. Resolution of Necessity





*Powering* The Center of What's Possible

April 6, 2020

Diana J. Alman, Trustee et al  
Attn: Mark Alman  
159 Longmeadow Dr.  
Los Gatos, CA, 95032-5655

SUBJECT: OFFER TO PURCHASE OVERHEAD POWER LINE EASEMENT  
SITE: 1401 Martin Avenue, Santa Clara; APNs 224-61-002 & 224-61-001  
South Loop Project

Dear Mr. Alman:

The City of Santa Clara, acting by and through its municipally owned utility, Silicon Valley Power (SVP) is currently pursuing acquisition of power line easements for the South Loop Project ("Project"). The power lines that are proposed to be built for the project requires the acquisition of property rights affecting approximately 1,975 square feet over a portion of your property located at 1401 Martin Avenue, Santa Clara, CA ("Property").

SVP's primary objective of the South Loop Project is to increase system capacity and reliability. The majority of the new 60 kilo-volt (kV) transmission line would be constructed along the following city streets: Lafayette Street, Mathew Street, Martin Avenue, Walsh Avenue and De La Cruz Boulevard. Approximately 2.5 miles of the proposed route would be located in areas where existing power lines do not currently exist. The remaining segments of the Proposed Project would be along routes that have existing distribution power lines and/or telecommunication lines. The project is anticipated to be completed in 2021.

SVP designs its transmission system so that a loss of a single transmission line does not result in the loss of power for its customers. This design philosophy ensures the maximum reliability for its customers. As the power demands of the City grow, so does the necessity to construct infrastructure upgrades, such as this project, to continue to maintain this level of service reliability and increase the power capacity to support load growth and development. SVP is proactive about addressing future reliability issues and committed to providing the best service reliability for its customers.

Our preliminary title report shows Mark D. Alman and Laura A. Alman, Trustees of the Mark D. Alman and the Laura A. Alman Family Trust (created by a Declaration of Trust dated August 27, 1995, as to an undivided 35% interest; Milvin J. La Russa and Carol A. La Russa, Trustees of the





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Melvin J. La Russa and Carol A. La Russa Family Trust dated March 1, 1993, as to an undivided 30% interest; and Diana J. Alman, Trustee of the Douglas S. Alman Family Trust, as to an undivided 35% interest to be the owner of the property located at 1401 Martin Avenue Santa Clara, CA. This property is within the Project area, and is also identified by the County Assessor as Parcel No. APNs 224-61-001 and 224-61-002.

Subject to, and upon the terms and conditions set forth herein, SVP officers to purchase an easement over your property, as defined in the Easement Deed attached hereto. SVP hereby offers the sum of Thirty Two Thousand One Hundred Dollars (\$32,100) as just compensation for the acquisition of the easement.

It is the policy of SVP to acquire property interests that are in private interests through voluntary purchase, if possible, and only when it is necessary to do so. In accordance with applicable law, SVP has obtained, reviewed and approved an appraisal to establish the fair market value of the property to be acquired. The attached Appraisal Summary outlines the basis for this offer pursuant to Government Code §7267.2.

Pursuant to Code of Civil Procedure §1263.025, SVP offers to pay your reasonable costs up to five thousand dollars (\$5,000) for an independent appraisal of the property interests. By law, an appraiser licensed by the Office of Real Estate Appraisers must prepare the independent appraisal. Although you are not required to obtain an appraisal at this time, or at all, if you believe such appraisal can assist you in evaluating this offer, it is in your interest to obtain an independent appraisal as expeditiously as possible. If you choose to obtain an appraisal, please forward SVP an invoice from your appraiser, identifying the Property at 1401 Martin Avenue Santa Clara, CA is the subject of the appraisal and the fee charged.

Materials enclosed for your information include:

- An Easement with Exhibit showing the location of the acquisition area(s);
- The Appraisal Summary for your easement area.

The agent assigned to your property and to whom you will be working with is Keith Corry Senior Right of Way Professional, who can be reached at (801) 419-4507 or by email at [keith.corry@eciusa.com](mailto:keith.corry@eciusa.com). Please contact him if you have any questions or if you wish further clarification of this offer.

If you are agreeable to the offer please indicate your acceptance by signing in the space provided below and return an original signed copy of this letter to Mr. Corry using the postage paid return envelope, which is attached, for your use. Upon receipt of your acceptance of this purchase offer, a contract for sale and escrow instructions will be prepared for your execution. SVP will



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pay all of the conveyance and escrow costs. All taxes and assessments, if any, will be pro-rated, and possession will be delivered to SVP at the close of escrow.

Sincerely,

A blue ink signature of Manuel Pineda, consisting of stylized initials and a surname.

Manuel Pineda

Assistant City Manager/ Chief Electric Utility Officer

Enclosures:

SVP Easement with exhibit

Appraisal Summary

Postage paid return envelope

### **ACCEPTANCE OF OFFER**

This offer, dated January \_\_, 2020 from the City of Santa Clara acting by and through its municipally owned utility, Silicon Valley Power, for \$32,100 is accepted for the acquisition of a permanent surface utility easement.

Owner's Name

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

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

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

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

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

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

## OVERHEAD ELECTRIC EASEMENT DEED

**1401 Martin Avenue & APNs 224-61-001 & 224-61-002  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, Mark D. Alman and Laura A. Alman, Trustees of the Mark D. Alman and Laura A. Alman Family Trust (created by a Declaration of Trust dated August 27, 1995, as to an undivided 35% interest; Melvin J. La Russa and Carol A. La Russa, Trustees of the Melvin J. La Russa and Carol A. La Russa Family Trust dated March 1, 1993 as to an undivided 30% interest; and Diana J. Alman, Trustee of the Douglas S. Alman Family Trust, as to an undivided 35% interest (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.



Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

[SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE]

///

///

IN WITNESS WHEREOF, said grantors have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

APPROVED FOR FORM:

\_\_\_\_\_  
Brian Doyle  
City Attorney

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

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

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

-

"OWNER" APN 224-61-001 & 224-61-002 (2020-04)

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

# CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

## **Appendix A**

April 3, 2020

**City of Santa Clara  
South Loop Interconnect Project  
Appraisal Summary Statement And  
Summary of the Basis for Just Compensation  
(Pursuant to Government Code Section 7267.2)**

The following is a statement of and summary of the basis for the appraisal and the amount that Silicon Valley Power has established as just compensation required by California Government Code Section 7267.2. The appraisal on which this summary is based was made in accordance with accepted appraisal principles, consistent with California valuation law.

The purpose of this appraisal is to estimate the fair market value of the proposed acquisition appraised. Section 1263.320 of the Code of Civil Procedure defines fair market value as:

- A. The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*
- B. The fair market value of property taken for which there is no relevant market is its value on the date of valuation as determined by any method of valuation that is just and equitable.*

The date of value is January 31, 2020, which was the date of inspection.

The intended use of this appraisal is to provide information on the value of the acquisition for the Silicon Valley Power Project, which is called the South Loop Interconnect Project. The intended user is Silicon Valley Power.



The scope of work included inspecting the property, research and analysis of comparable data, and highest and best use analysis.

The appraised rights are further identified as follows:

- 1) The fair market value of a 1,975-square-foot permanent powerline easement.

### **Statement of the Amount Established as Just Compensation**

The amount Silicon Valley Power has established as just compensation for the property rights described in the accompanying offer is: **\$32,100 (Thirty Two Thousand One Hundred Dollars).**

### **Summary of Basis for the Amount Established as Just Compensation**

This Summary of the Basis for the Amount Established as Just Compensation (prepared pursuant to Government Code Section 7267.2) is a summary of the appraisal used by Silicon Valley Power to determine the amount it established as just compensation for an easement.

#### **(A) Property Identification – Subject Property**

<b>Owner of Record:</b>	Mark D. Alman & Laura A. Alman Family Trust (35%) Melvin J. La Russa & Carol A. La Russa Family Trust (30%) Douglas S. Alman Family Trust (35%)
<b>Assessor's Parcel Numbers (APNs):</b>	Santa Clara County Assessor's Parcel Number (APN) 224-61-001 and -002
<b>Property Address:</b>	1401 Martin Avenue, Santa Clara, Santa Clara County, CA 95054
<b>Property Transfers in the Past Three Years:</b>	There have been no other transfers within three years.
<b>General Character of Interest Being Appraised:</b>	Easement
<b>Larger Parcel Land Size:</b>	58,802 square feet
<b>Improvements:</b>	There is an existing R&D/manufacturing building on the property.
<b>Topography:</b>	Level

<b>Shape:</b>	Rectangular
<b>Access:</b>	Access to the Larger Parcel is available off of Martin Avenue.
<b>Utilities:</b>	Typical municipal and public utilities are available.
<b>Environmental Conditions:</b>	We did not receive a Phase I report for the Subject Property, and we assume there are no adverse environmental conditions.
<b>Date of Valuation:</b>	January 31, 2020
<b>Highest and Best Use</b>	The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.
<b>Highest and Best Use – As If Vacant:</b>	R&D
<b>Highest and Best Use – As Improved:</b>	Existing use
<b>Present Use</b>	
<b>Subject Property:</b>	The Larger Parcel is currently used as an R&D/Manufacturing property.
<b>Applicable Zoning:</b>	MH, Heavy Industrial

#### **(B) Approaches Used in the Appraisal**

We employed the "before" and "after" methodology for the Larger Parcel. In the "before" condition, we have not considered the Project.

In the "after" condition, we have considered the impacts attributed to the proposed easement and the Project.

Three methods of valuation can be applied to the appraisal of land. The most often used approach is the Direct Sales Comparison Approach. This method involves the comparison of the subject with recent sales of comparable properties.

A second method of land appraisal is the Land Development Approach. This approach involves estimating the development costs of installing all utilities and off-sites. These costs can be subtracted from a known improved lot value (established by sales comparison) to arrive at an estimate of raw land value or added to the known raw land value to arrive at the value of an improved site.

The third method employed is an Income Residual Method. An estimate is made of the potential net income, which can be earned from the site improved with buildings. The cost of these improvements is estimated to determine the portion of the income needed to supply a fair return on these costs. The residual income is available for a return on the land. Therefore, this income is capitalized into an indicated land value.

For purposes of this appraisal, the Sales Comparison Approach has been employed. Sufficient sales data was available that it was felt this method yielded a reliable result. This is the method that would most often be applied by a typical buyer of this type of property. The comparable sales are provided in Exhibit A.

#### Sales Comparison Approach

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison.

Based on our analysis of sale comparables provided in Exhibit A, we estimate the land value of the Larger Parcel to be \$3,822,130 (land only). This is based on a price per square foot of land of \$65 x 58,802 square feet.

#### **(C) Value of Part Taken**

We have valued the part taken next. This consists of the value of the permanent easement and one tree in the easement area that will be removed.

#### Permanent Easement

In the "after" condition, the highest and best use of the Larger Parcel remains for continuation of the existing use.

For this valuation, the rationale for estimating the easement value can be shown as an equation:

#### **Fee simple land value x % of fee rights being acquired = easement value**

Based on our experience, an easement that is solely for subsurface utilities, as one example, may command a 10-35% share of the fee rights. As another example, exclusive control of surface rights may capture 90-100% of the fee simple value.

The subject is a perpetual easement. The grantor has significant remaining rights at the surface, landscaping, parking and signage for example. We estimate that the easement encumbers 25% of the total bundle of rights.

Therefore, the fair market value for the permanent easement is estimated at **\$32,094**, or 1,975 square feet x \$65 x 25%.

**(D) Severance Damages/Benefits Analysis**

Severance damages and benefits involve measuring the effect that the "acquisition" and "Project" have on the value of the property remaining, i.e., on the "remainder."

The acquisition is not expected to result in any severance damages to the remainder.

The highest and best use of the Larger Parcel upon partial acquisition is unchanged, relative to the "before" condition. We have not identified any damages from the Project.

Benefits result when the value of the remainder increases because of either the Project or the acquisition. Any resulting benefits are offset only against severance damages and not against acquisition value.

Each case for benefits is unique. In the case of the subject, we envision that the electric utility upgrades would be superior relative to the existing conditions. Since we have not identified any severance damages, we have not quantified any potential benefits.

**(E) Conclusion of Just Compensation and Value in the "After" Condition**

The market value of the acquisition is shown on the following page.



### Summary of Valuation

A. Land Value of the whole before acquisition: (\$65 x 58,802 SF)		\$3,822,130
B. Value of the part acquired as part of the whole:		\$32,094
Permanent Easement (\$65 x 1,975 SF x 25%)	\$32,094	
Site Improvements (e.g. trees)	\$0	
C. Value of the remainder as part of the whole: (Line A less Line B)		\$3,790,036
D. Value of the remainder after the acquisition and before consideration of benefits (Line C - Line E)		\$3,790,036
E. Severance Damages/Cost to Cure		\$0
F. Value of the remainder after the acquisition and after considering benefits		\$3,790,036
G. Benefits (Line F less Line D)		0
H. Net Damages or Net Benefits (Line E minus Line G)		\$0
Plus: TCE:		<u>\$0</u>
Total		\$0
I. Market Value of the Acquisition (Just Compensation) (Line B plus Line H)		\$32,094
		\$0
Subtotal		\$32,094
Rounded		<b><u>\$32,100</u></b>

The resulting land value of the remainder in the "after" condition is \$3,790,036, or \$3,822,130 - \$32,094.

In summary, the value of the acquisition was valued in the "before" condition and then we valued the partial acquisition. The fair market value for the acquisition is, **\$32,100**, as summarized below:

**Value Conclusions: 1401 Martin Avenue**

	Permanent Easement	Site Improvements	Net Severance Damages	Total Fair Market Value
Value Type	Fair Market Value	Fair Market Value	Fair Market Value	Fair Market Value
Property Rights Appraised	Permanent Easement			Acquisition
Date of Value	January 31, 2020	January 31, 2020	January 31, 2020	January 31, 2020
<b>Fair Market Value</b>	<b>\$32,094</b>	<b>\$0</b>	<b>\$0</b>	<b>Total: \$32,100 (rounded)</b>

The previous is a summary of the appraisal prepared at the request of Silicon Valley Power to comply with Government Code Section 7267.2 that fairly and correctly states my opinions and knowledge.

Dated: April 3, 2020



# Addenda

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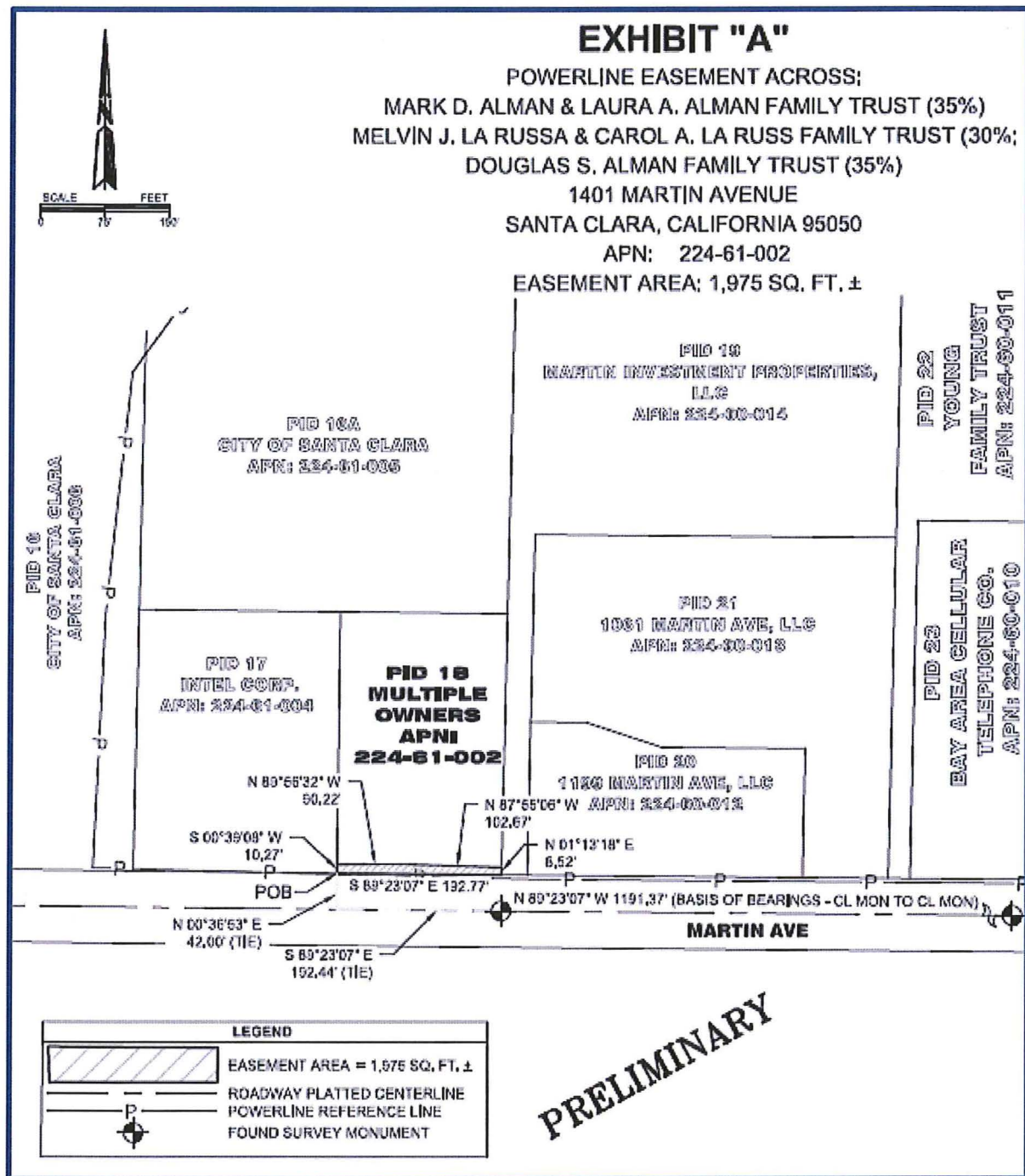
Exhibit A: Land Sales

Exhibit B: Easement Area

## Exhibit A: Land Sales

Comparable Sales Summary							
Comp	No.	Address	COE date	Land SF	Sale Price	Price per SF of Land	Grantor / Grantee and Recording #
1		1000 South 3rd Street San Jose APN: 472-15-027	Aug-17	51,401	\$2,100,000	\$40.86	Grifall Trucking Inc. Richard Cohen Trust Recording # 23716163
2		650 Martin Avenue Santa Clara APN: 224-35-017	Aug-16	207,128	\$12,310,000	\$59.43	Recology Properties Inc. Peninsula Building Materials Recording # 23398465
3		720 Comstock Street Santa Clara APN: 224-36-025	Oct-18	7,100	\$570,000	\$80.28	Jeff Olofsen Parker Albanese I LLC Recording # 24065356
Valbridge Property Advisors							

# Exhibit B: Easement Area



**EXHIBIT "A"****POWERLINE EASEMENT ACROSS:**

MARK D. ALMAN & LAURA A. ALMAN FAMILY TRUST (35%)  
 MELVIN J. LA RUSSA & CAROL A. LA RUSSA FAMILY TRUST (30%;  
 DOUGLAS S. ALMAN FAMILY TRUST (35%)  
 1401 MARTIN AVENUE  
 SANTA CLARA, CALIFORNIA 95050  
 APN: 224-61-002  
 EASEMENT AREA: 1,975 SQ. FT. ±



**DESCRIPTION:**

A portion of Parcel 1, as shown on that parcel map filed for record in the Office of the Recorder of Santa Clara County, State of California on October 4, 1978 in Book 427 of Maps, page 41, located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

**COMMENCING** at a monument located on the centerline of Martin Avenue being 42' southerly of the southeasterly corner of said Parcel 1 (Basis of Bearings is North 89°23'07" West along said monumented centerline); thence North 01°03'46" East 42.00 feet to said southeasterly corner of Parcel 1 and the **POINT OF BEGINNING**; thence North 01°13'18" East 8.52 feet along the easterly line of said Parcel 1; thence North 87°55'06" West 102.67 feet; thence North 89°56'32" West 90.22 feet to the westerly line of said Parcel 1; thence South 00°39'08" West 10.27 feet along said westerly line to the northerly line of said Martin Avenue; thence South 89°23'07" East 192.77 feet along said northerly line to the **POINT OF BEGINNING**.

Containing 1,975 square feet, more or less.



REV: 0	DATE: 4/1/2020	SCALE: N/A	BY: AGD	CHK: GHH	APP: JJC
<div><div>Engineering with Distinction</div><div><div>ECI ELECTRICAL CONSULTANTS, INC. SALT LAKE CITY, UTAH</div></div><div>660 West 700 South Woods Cross, UT 84087 (801) 292-9954</div></div>		MULTIPLE OWNERS (ALMAN, LA RUSSA, ALMAN) APN: 224-61-002 1401 MARTIN AVENUE SANTA CLARA, CALIFORNIA 95050		<div><div>SILICON VALLEY POWER. CITY OF SANTA CLARA</div></div> <div>SHEET: 1 OF 2</div>	



**EXHIBIT "A"****POWERLINE EASEMENT ACROSS:**

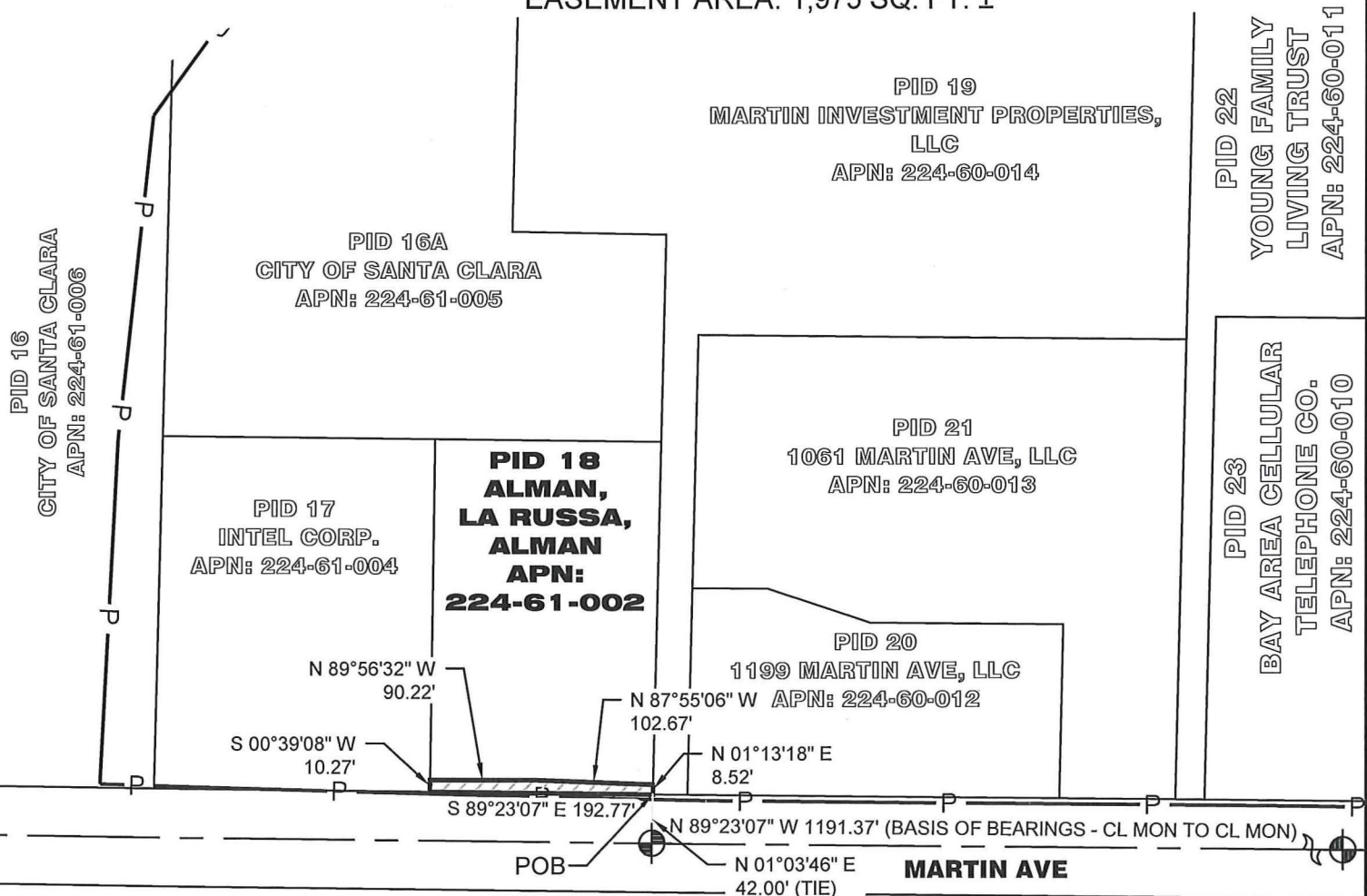
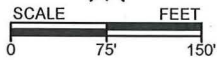
MARK D. ALMAN & LAURA A. ALMAN FAMILY TRUST (35%)  
 MELVIN J. LA RUSSA & CAROL A. LA RUSSA FAMILY TRUST (30%);  
 DOUGLAS S. ALMAN FAMILY TRUST (35%)

1401 MARTIN AVENUE

SANTA CLARA, CALIFORNIA 95050

APN: 224-61-002

EASEMENT AREA: 1,975 SQ. FT. ±



THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 0 | DATE: 4/1/2020 | SCALE: 1" = 150' | BY: AGD | CHK: GHM | APP: JJC

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY  
REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY  
INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE  
FILING OF EMINENT DOMAIN PROCEEDINGS**

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

**WHEREAS**, the City of Santa Clara, a chartered city and municipal corporation acting by and through its municipally owned utility, Silicon Valley Power (hereinafter the “City”) is engaged in a continuing effort to upgrade and enhance its Overhead and Underground Distribution and Transmission systems to meet new customer demand and to maintain the reliability of SVP’s systems. The Transmission System Reinforcement Project (Project) is a keystone project for this effort; and

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing Electric Overhead and Wire Clearance Easements or the acquisition of new easements; and

**WHEREAS**, it is desirable and necessary for the City to acquire the following real property interests necessary for the Project

[i] a 1,975 square foot permanent Overhead Electric Easement in, on, over, along and across the real property described and depicted in Exhibit “A” and incorporated herein by this reference (“Easement Area”) for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of fee owner. In exercising said right of ingress and egress, easement holder shall, wherever practical, use existing roads and lanes across lands of fee owner, if such there be, and if not, by such route or routes as shall result in the least practicable



inconvenience to fee owner and any occupants of fee owner's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the fee owner for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the easement holder's use of the Easement. Any other use of the Easement Area by fee owner shall be subject to easement holder's express written consent and only after easement holder's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Easement holder may trim any trees or remove any tree or structure which are in or adjacent to the Easement Area which, in easement holder's reasonable determination, interferes with its use of the Easement. Easement holder may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 feet or poses a risk of falling onto the easement holder's facilities or equipment located within the Easement; and

**WHEREAS**, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Sections 37350.5 of the California Government Code, Section 612 of the California Public Utilities Code and Sections 1240.010 and 1240.220 of the California Code of Civil Procedure; and

**WHEREAS**, pursuant to the provisions of Section 1245.235 of the California Code of Civil Procedure, notice has been duly given to Diana J Alman, Trustee et al, whose property interests are to be acquired by eminent domain and whose name and address appears on the Santa Clara County Equalized Assessment Roll, and the property owner has been given a reasonable opportunity to appear and be heard before the City Council; and

**WHEREAS**, on July 7, 2020, by Resolution No. 20-8869, the City Council [certified the Mitigated

Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP)] for the Project in accordance with the California Environmental Quality Act (CEQA). No further environmental review is necessary pursuant to CEQA; and

**WHEREAS**, pursuant to the provisions of Section 7267.2 of the California Government Code, the City has made an offer to the owner(s) of record to acquire its interests under the Lease for the amount which it has established to be just compensation, therefore.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA THAT THE CITY FINDS AND DETERMINES AS FOLLOWS:**

1. That the public interest and necessity require the Project.
2. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The Subject Property Interests sought to be acquired are necessary for the Project.
4. That all environmental review required by law has been prepared and adopted.
5. That the offer required by Section 7267.2 of the California Government Code has been made to the owner(s) of record of the Subject Property Interests.
6. That the necessary notice of hearing has been given, as required by Code of Civil Procedure section 1245.235.
7. That to the extent the Subject Property Interests are already devoted to a public use, the use of the Subject Property Interests for the Project is a compatible use that will not unreasonably interfere with or impair the continuance of the public use as it presently exists or may reasonably be expected to exist in the future (California Code of Civil Procedure Section 1240.510), or the use of the Subject Property Interests for the Project is a more necessary public use than the presently existing public use (California Code of Civil Procedure Section 1240.610).
8. The City has complied with requirements of CEQA for the Project.
9. That the City Attorney or his duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the

estates and interests aforesaid and to take such actions as he may deem advisable or necessary in connection therewith.

10. That the City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the Subject Property Interests.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. Exhibit A

## EXHIBIT A

SVP REF: SC 19-189

### EXHIBIT "A"

#### POWERLINE EASEMENT ACROSS:

MARK D. ALMAN & LAURA A. ALMAN FAMILY TRUST (35%)  
MELVIN J. LA RUSSA & CAROL A. LA RUSSA FAMILY TRUST (30%);  
DOUGLAS S. ALMAN FAMILY TRUST (35%)  
1401 MARTIN AVENUE  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-61-002  
EASEMENT AREA: 1,975 SQ. FT. ±



#### DESCRIPTION:

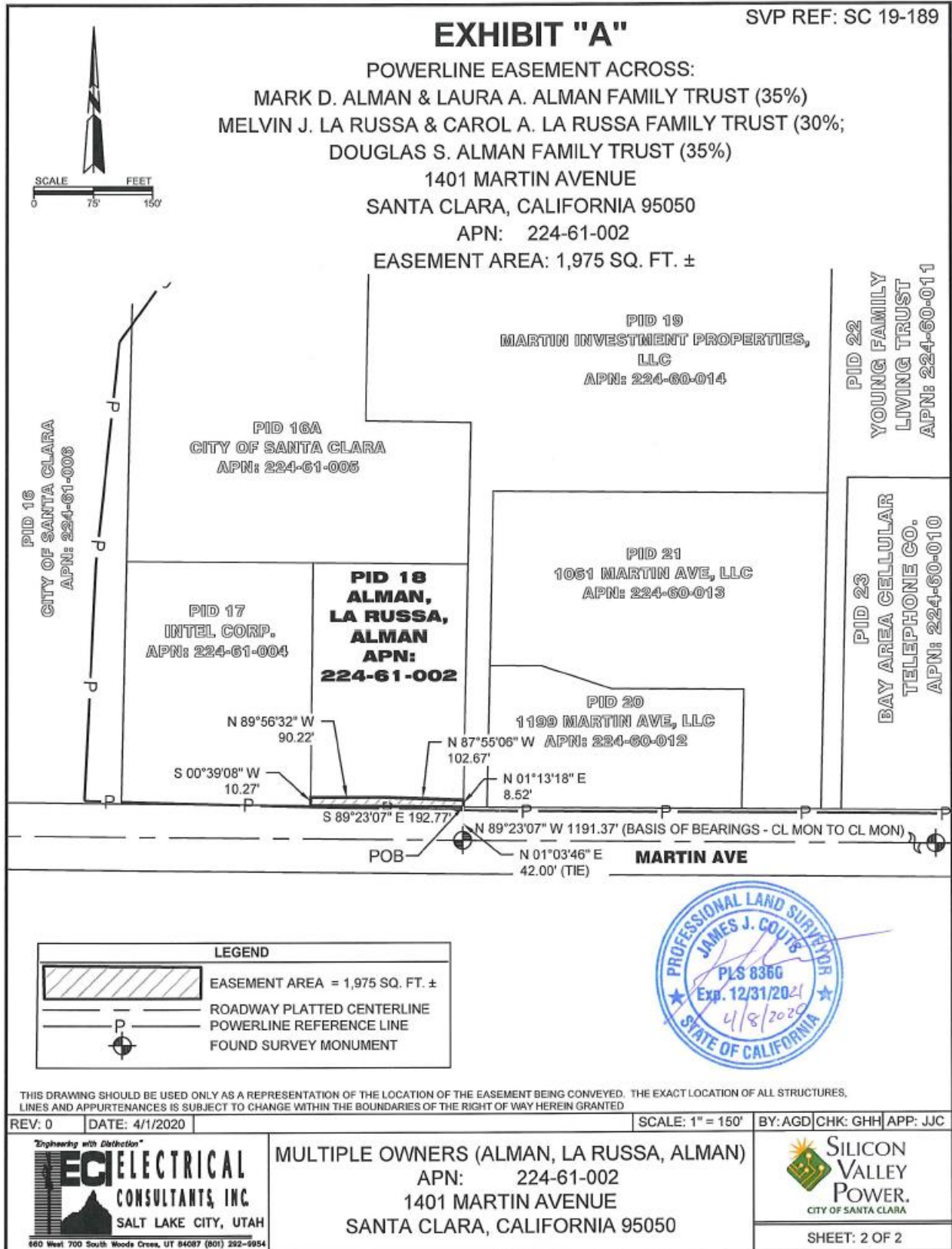
A portion of Parcel 1, as shown on that parcel map filed for record in the Office of the Recorder of Santa Clara County, State of California on October 4, 1978 in Book 427 of Maps, page 41, located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

**COMMENCING** at a monument located on the centerline of Martin Avenue being 42' southerly of the southeasterly corner of said Parcel 1 (Basis of Bearings is North 89°23'07" West along said monumented centerline); thence North 01°03'46" East 42.00 feet to said southeasterly corner of Parcel 1 and the **POINT OF BEGINNING**; thence North 01°13'18" East 8.52 feet along the easterly line of said Parcel 1; thence North 87°55'06" West 102.67 feet; thence North 89°56'32" West 90.22 feet to the westerly line of said Parcel 1; thence South 00°39'08" West 10.27 feet along said westerly line to the northerly line of said Martin Avenue; thence South 89°23'07" East 192.77 feet along said northerly line to the **POINT OF BEGINNING**.

Containing 1,975 square feet, more or less.



REV: 0	DATE: 4/1/2020	SCALE: N/A	BY: AGD	CHK: GHH	APP: JJC
 SALT LAKE CITY, UTAH 660 West 700 South Woods Cree, UT 84087 (801) 292-9954		MULTIPLE OWNERS (ALMAN, LA RUSSA, ALMAN) APN: 224-61-002 1401 MARTIN AVENUE SANTA CLARA, CALIFORNIA 95050		 CITY OF SANTA CLARA SHEET: 1 OF 2	





## Agenda Report

20-1101

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 800 Mathew Street, Santa Clara, California, from Patel Jitendra G. and Shashi J. Trustee

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), is proposing to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission line within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project (Project) is to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

The majority of the new 60 kV transmission line would be constructed along the following city streets in areas where existing power lines do not currently exist: Lafayette Street, Mathew Street, Martin Avenue and De La Cruz Boulevard. The remaining segments of the Project would be along routes that have existing distribution power lines and/or telecommunication lines.

The City Council has previously taken a number of actions on the project:

- June 16, 2015 - Adopted the FY 2015/16 Capital Improvement Program (CIP) Budget which included the initial funding for the engineering for this 60kV conductoring and upgrading project.
- July 12, 2016 - Approved a professional services agreement with Electrical Consultants, Inc. to provide transmission line engineering design services which included reconfiguring the south transmission loop.
- January 14, 2020 - Amended a service agreement with Valbridge Property Advisors to perform appraisal services as part of the easement acquisition for the Project.
- July 7, 2020 - Adopted the Negative Declaration and Mitigation, Monitoring and Reporting Program for the Project and increased the capital funding of the Transmission System Reinforcements Capital Improvement Program Project (No. 2124) by \$6,300,000.
- October 13, 2020 - Approved three Purchase and Sale Agreements for Utility Easements

#### **DISCUSSION**

The adoption of the attached Resolution of Necessity requires the City to consider and make the following findings:

- The public interest and necessity require the Project.



- The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- The property sought to be acquired is necessary for the Project.
- The offer required by Section 7267.2 of the Government Code has been made to the Owner of Record for the full amount established as the fair market value of the property.

***The public interest and necessity require the Project.***

The Project is critical to maintain electric reliability of the power system in Santa Clara. Santa Clara maintains a redundant system on its 60kV network, allowing for the loss of a single line without interrupting power delivery or causing outages. This Project ensures that this ability remains as the electrical demand in Santa Clara grows. The Project is also necessary for future development in the area.

***The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.***

SVP identified a study area that considered criteria necessary to meet the Project objectives, e.g., maintain system reliability while allowing for an increase in electrical demand. Staff engineers and design consultants looked for route alternatives, focusing on locations that paralleled existing roads and/or existing overhead utilities, and our own existing transmission corridors. In places where we could not use our existing transmission corridors or did not have an existing transmission corridor, staff considered route alternatives looking at their potential impacts to the environment, existing and probable future development, the topography/terrain, roadway access, scenic areas, and recreation uses, among other factors. Weighing the above considerations with the technical needs for the Project, the final Transmission route was determined.

***The property sought to be acquired is necessary for the Project.***

The Easement on 800 Mathew Street is necessary to achieve the technical needs of the Project.

***The offer required by Section 7267.2 of the Government Code has been made to the Owner of record for the full amount established as the fair market value of the property.***

On April 24, 2020, the City made an offer to Patel Jitendra G. and Shashi J. Trustee, to acquire the Easement upon the value determined by an independent state licensed and certified appraiser in accordance with the above referenced Government Code.

The City Code Chapter 16.10.050 ("Final determination of necessity by resolution"), requires a four-fifths (4/5) affirmative vote of the Council for adoption, which would be five (5) votes if all six members are present. If the Council adopts the recommended Resolution of Necessity, the City would deposit the necessary funds for the Easement's probable compensation with the State Condemnation Deposit Fund and file an eminent domain complaint with the Court to seek possession of the property.

As always, the parties can continue to negotiate in an effort to come to a mutual agreement on compensation for the leasehold (including any compensation due for furniture, fixtures and

equipment) and loss of business goodwill.

### **ENVIRONMENTAL REVIEW**

This Project was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration (MND) [SCH#2020-05-9009] was prepared for the Project by the environmental consultant firm, Aspen Environmental Group, and adopted by Council on July 7, 2020 by Resolution No. 20-8869.

### **FISCAL IMPACT**

The South Loop reconfiguration cost was approved as part of the Adopted FY 2020/21 and FY 2021/22 Biennial Capital Improvement Program in Transmission System Reinforcement CIP Project. This action has no fiscal impact to General Fund as the Project is funded by developer contributions

### **COORDINATION**

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

### **PUBLIC CONTACT**

The property owner was provided writing notice that the City intends to consider adoption of a Resolution of Necessity to acquire real property interest for South Loop Reconfiguration Project. Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

### **ALTERNATIVES**

1. Adopt a Resolution of Necessity to Acquire Certain Real Property Interests.
2. Do not adopt a Resolution of Necessity.

### **RECOMMENDATION**

Alternative 1: Adopt a Resolution of Necessity to acquire Certain Real Property Interests on 800 Mathew Street, Santa Clara, California, from Patel Jitendra G. and Shashi J. Trustee.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. April 24, 2020 Offer Letter
2. Resolution of Necessity



*Powering* The Center of What's Possible

April 24, 2020

Jitendra G. & Shashi J. Patel  
800 Mathew Street Suite 102  
Santa Clara, CA, 95050

SUBJECT: OFFER TO PURCHASE OVERHEAD POWER LINE EASEMENT  
SITE: 800 Mathew Street, Santa Clara; APN 224-03-081  
South Loop Project

Dear Mr. & Mrs. Patel:

The City of Santa Clara, acting by and through its municipally owned utility, Silicon Valley Power (SVP) is currently pursuing acquisition of power line easements for the South Loop Project ("Project"). The power lines that are proposed to be built for the project requires the acquisition of property rights affecting approximately 1,224 square feet over a portion of your property located at 800 Mathew Street, Santa Clara, CA ("Property").

SVP's primary objective of the South Loop Project is to increase system capacity and reliability. The majority of the new 60 kilo-volt (kV) transmission line would be constructed along the following city streets: Lafayette Street, Mathew Street, Martin Avenue, Walsh Avenue and De La Cruz Boulevard. Approximately 2.5 miles of the proposed route would be located in areas where existing power lines do not currently exist. The remaining segments of the Proposed Project would be along routes that have existing distribution power lines and/or telecommunication lines. The project is anticipated to be completed in 2021.

SVP designs its transmission system so that a loss of a single transmission line does not result in the loss of power for its customers. This design philosophy ensures the maximum reliability for its customers. As the power demands of the City grow, so does the necessity to construct infrastructure upgrades, such as this project, to continue to maintain this level of service reliability and increase the power capacity to support load growth and development. SVP is proactive about addressing future reliability issues and committed to providing the best service reliability for its customers.

Our preliminary title report shows Jitendra G. Patel and Shashi J. Patel as Co-Trustees of The Patel 1994 Living Trust to be the owner of the property located at 800 Mathew Street Santa Clara, CA. This property is within the Project area, and is also identified by the County Assessor as Parcel No. [APN 224-03-081].



*Powering* The Center of What's Possible

Subject to, and upon the terms and conditions set forth herein, SVP officers to purchase an easement over your property, as defined in the Easement Deed attached hereto. SVP hereby offers the sum of Twenty One Thousand Nine Hundred (\$21,900) as just compensation for the acquisition of the easement.

It is the policy of SVP to acquire property interests that are in private interests through voluntary purchase, if possible, and only when it is necessary to do so. In accordance with applicable law, SVP has obtained, reviewed and approved an appraisal to establish the fair market value of the property to be acquired. The attached Appraisal Summary outlines the basis for this offer pursuant to Government Code §7267.2.

Pursuant to Code of Civil Procedure §1263.025, SVP offers to pay your reasonable costs up to five thousand dollars (\$5,000) for an independent appraisal of the property interests. By law, an appraiser licensed by the Office of Real Estate Appraisers must prepare the independent appraisal. Although you are not required to obtain an appraisal at this time, or at all, if you believe such appraisal can assist you in evaluating this offer, it is in your interest to obtain an independent appraisal as expeditiously as possible. If you choose to obtain an appraisal, please forward SVP an invoice from your appraiser, identifying the Property at 800 Mathew Street Santa Clara, CA is the subject of the appraisal and the fee charged.

Materials enclosed for your information include:

- An Easement with Exhibit showing the location of the acquisition area(s);
- The Appraisal Summary for your easement area.

The agent assigned to your property and to whom you will be working with is Keith Corry Senior Right of Way Professional, who can be reached at (801) 419-4507 or by email at [keith.corry@eciusa.com](mailto:keith.corry@eciusa.com). Please contact him if you have any questions or if you wish further clarification of this offer.

If you are agreeable to the offer please indicate your acceptance by signing in the space provided below and return an original signed copy of this letter to Mr. Corry using the postage paid return envelope, which is attached, for your use. Upon receipt of your acceptance of this purchase offer, a contract for sale and escrow instructions will be prepared for your execution. SVP will pay all of the conveyance and escrow costs. All taxes and assessments, if any, will be pro-rated, and possession will be delivered to SVP at the close of escrow.





*Powering* The Center of What's Possible

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Pineda".

Manuel Pineda

Assistant City Manager/ Chief Electric Utility Officer

Enclosures:

SVP Easement with exhibit  
Appraisal Summary  
Postage paid return envelope

**ACCEPTANCE OF OFFER**

This offer, dated April 24, 2020 from the City of Santa Clara acting by and through its municipally owned utility, Silicon Valley Power, for \$21,900 is accepted for the acquisition of a permanent surface utility easement.

Owner's Name

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

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

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

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

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

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

## OVERHEAD ELECTRIC EASEMENT DEED

**800 Mathew Street & APN 224-03-081  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, Jitendra G. Patel and Shashi J. Patel, as Co-Trustees of the Patel 1994 Living Trust (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

[SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE]

///



///

IN WITNESS WHEREOF, said grantors have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED FOR FORM:

\_\_\_\_\_  
Brian Doyle  
City Attorney

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

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

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

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

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

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

-

**"OWNER" APN 224-03-081 (2020-04)**

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

# CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

## **Appendix A**

April 24, 2020

**City of Santa Clara  
South Loop Interconnect Project  
Appraisal Summary Statement And  
Summary of the Basis for Just Compensation  
(Pursuant to Government Code Section 7267.2)**

The following is a statement of and summary of the basis for the appraisal and the amount that Silicon Valley Power has established as just compensation required by California Government Code Section 7267.2. The appraisal on which this summary is based was made in accordance with accepted appraisal principles, consistent with California valuation law.

The purpose of this appraisal is to estimate the fair market value of the proposed acquisition appraised. Section 1263.320 of the Code of Civil Procedure defines fair market value as:

- A. The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*
- B. The fair market value of property taken for which there is no relevant market is its value on the date of valuation as determined by any method of valuation that is just and equitable.*

The date of value is November 25, 2019, which was the date of inspection.

The intended use of this appraisal is to provide information on the value of the acquisition for the Silicon Valley Power Project, which is called the South Loop Interconnect Project. The intended user is Silicon Valley Power.

The scope of work included inspecting the property, research and analysis of comparable data, and highest and best use analysis.

The appraised rights are further identified as follows:

- 1) The fair market value of a 1,224-square-foot permanent powerline easement.

#### **Statement of the Amount Established as Just Compensation**

The amount Silicon Valley Power has established as just compensation for the property rights described in the accompanying offer is: **\$21,900 (Twenty One Thousand Nine Hundred Dollars).**

#### **Summary of Basis for the Amount Established as Just Compensation**

This Summary of the Basis for the Amount Established as Just Compensation (prepared pursuant to Government Code Section 7267.2) is a summary of the appraisal used by Silicon Valley Power to determine the amount it established as just compensation for an easement.

#### **(A) Property Identification – Subject Property**

<b>Owner of Record:</b>	Patel 1994 Living Trust
<b>Assessor's Parcel Numbers (APNs):</b>	Santa Clara County Assessor's Parcel Number (APN) 224-03-081
<b>Property Address:</b>	800 Mathew Street, Santa Clara, Santa Clara County, CA 95050
<b>Property Transfers in the Past Three Years:</b>	There have been no other transfers within three years.
<b>General Character of Interest Being Appraised:</b>	Easement
<b>Larger Parcel Land Size:</b>	21,780 square feet
<b>Improvements:</b>	There is an existing industrial building on the property.
<b>Topography:</b>	Level
<b>Shape:</b>	Generally rectangular

<b>Access:</b>	Access to the Larger Parcel is available off of Mathew Street.
<b>Utilities:</b>	Typical municipal and public utilities are available.
<b>Environmental Conditions:</b>	We did not receive a Phase I report for the Subject Property, and we assume there are no adverse environmental conditions.
<b>Date of Valuation:</b>	November 25, 2019
<b>Highest and Best Use</b>	The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.
<b>Highest and Best Use – As If Vacant:</b>	Industrial
<b>Highest and Best Use – As Improved:</b>	Existing use
<b>Present Use</b>	
<b>Subject Property:</b>	The Larger Parcel is currently used as an industrial property.
<b>Applicable Zoning:</b>	MH, Heavy Industrial

**(B) Approaches Used in the Appraisal**

We employed the "before" and "after" methodology for the Larger Parcel. In the "before" condition, we have not considered the Project.

In the "after" condition, we have considered the impacts attributed to the proposed easement and the Project.

Three methods of valuation can be applied to the appraisal of land. The most often used approach is the Direct Sales Comparison Approach. This method involves the comparison of the subject with recent sales of comparable properties.

A second method of land appraisal is the Land Development Approach. This approach involves estimating the development costs of installing all utilities and off-sites. These costs can be subtracted from a known improved lot value (established by sales comparison) to arrive at an estimate of raw land value or added to the known raw land value to arrive at the value of an improved site.



The third method employed is an Income Residual Method. An estimate is made of the potential net income, which can be earned from the site improved with buildings. The cost of these improvements is estimated to determine the portion of the income needed to supply a fair return on these costs. The residual income is available for a return on the land. Therefore, this income is capitalized into an indicated land value.

For purposes of this appraisal, the Sales Comparison Approach has been employed. Sufficient sales data was available that it was felt this method yielded a reliable result. This is the method that would most often be applied by a typical buyer of this type of property. The comparable sales are provided in Exhibit A.

#### Sales Comparison Approach

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison.

Based on our analysis of sale comparables provided in Exhibit A, we estimate the land value of the Larger Parcel to be \$1,415,700 (land only). This is based on a price per square foot of land of \$65 x 21,780 square feet.

#### **(C) Value of Part Taken**

We have valued the part taken next. This consists of the value of the permanent easement and one tree in the easement area that will be removed.

#### Permanent Easement

In the "after" condition, the highest and best use of the Larger Parcel remains for continuation of the existing use.

For this valuation, the rationale for estimating the easement value can be shown as an equation:

#### **Fee simple land value x % of fee rights being acquired = easement value**

Based on our experience, an easement that is solely for subsurface utilities, as one example, may command a 10-35% share of the fee rights. As another example, exclusive control of surface rights may capture 90-100% of the fee simple value.

The subject is a perpetual easement. The grantor has significant remaining rights at the surface, landscaping, parking and signage for example. We estimate that the easement encumbers 25% of the total bundle of rights.

Therefore, the fair market value for the permanent easement is estimated at **\$21,830**, or 1,224 square feet x \$65 x 25%.

Per Marshall and Swift cost data, the estimated cost for the tree that will be removed is **\$1,940**, which is added to the value of the permanent easement.



**(D) Severance Damages/Benefits Analysis**

Severance damages and benefits involve measuring the effect that the "acquisition" and "Project" have on the value of the property remaining, i.e., on the "remainder."

The acquisition is not expected to result in any severance damages to the remainder.

The highest and best use of the Larger Parcel upon partial acquisition is unchanged, relative to the "before" condition. We have not identified any damages from the Project.

Benefits result when the value of the remainder increases because of either the Project or the acquisition. Any resulting benefits are offset only against severance damages and not against acquisition value.

Each case for benefits is unique. In the case of the subject, we envision that the electric utility upgrades would be superior relative to the existing conditions. Since we have not identified any severance damages, we have not quantified any potential benefits.

**(E) Conclusion of Just Compensation and Value in the "After" Condition**

The market value of the acquisition is shown on the following page.

### Summary of Valuation

A. Land Value of the whole before acquisition: (21,780 SF x \$65 PSF)	\$1,415,700
B. Value of the part acquired as part of the whole:	\$21,830
Permanent Easement (\$65 x 1,224 SF x 25%)	\$19,890
Site Improvements (e.g. trees)	\$1,940
C. Value of the remainder as part of the whole: (Line A less Line B)	\$1,393,870
D. Value of the remainder after the acquisition and before consideration of benefits (Line C - Line E)	\$1,393,870
E. Severance Damages/Cost to Cure	\$0
F. Value of the remainder after the acquisition and after considering benefits	\$1,393,870
G. Benefits (Line F less Line D)	0
H. Net Damages or Net Benefits (Line E minus Line G)	\$0
Plus: TCE:	<u>\$0</u>
Total	\$0
I. Market Value of the Acquisition (Just Compensation) (Line B plus Line H)	\$21,830
	\$0
Subtotal	\$21,830
Rounded	<b><u>\$21,900</u></b>

The resulting land value of the remainder in the "after" condition is \$1,393,870, or \$1,415,700 - \$21,830.

The fair market value for the acquisition is, **\$21,900**, as summarized below:

**Value Conclusions: 800 Mathew Street**

	Permanent Easement	Site Improvements	Net Severance Damages	Total Fair Market Value
Value Type	Fair Market Value	Fair Market Value	Fair Market Value	Fair Market Value
Property Rights Appraised	Permanent Easement			Acquisition
Date of Value	November 25, 2019	November 25, 2019	November 25, 2019	November 25, 2019
<b>Fair Market Value</b>	<b>\$19,890</b>	<b>\$1,940</b>	<b>\$0</b>	<b>Total: \$21,900 (rounded)</b>

The previous is a summary of the appraisal prepared at the request of Silicon Valley Power to comply with Government Code Section 7267.2 that fairly and correctly states my opinions and knowledge.

Dated: April 24, 2020

## Addenda

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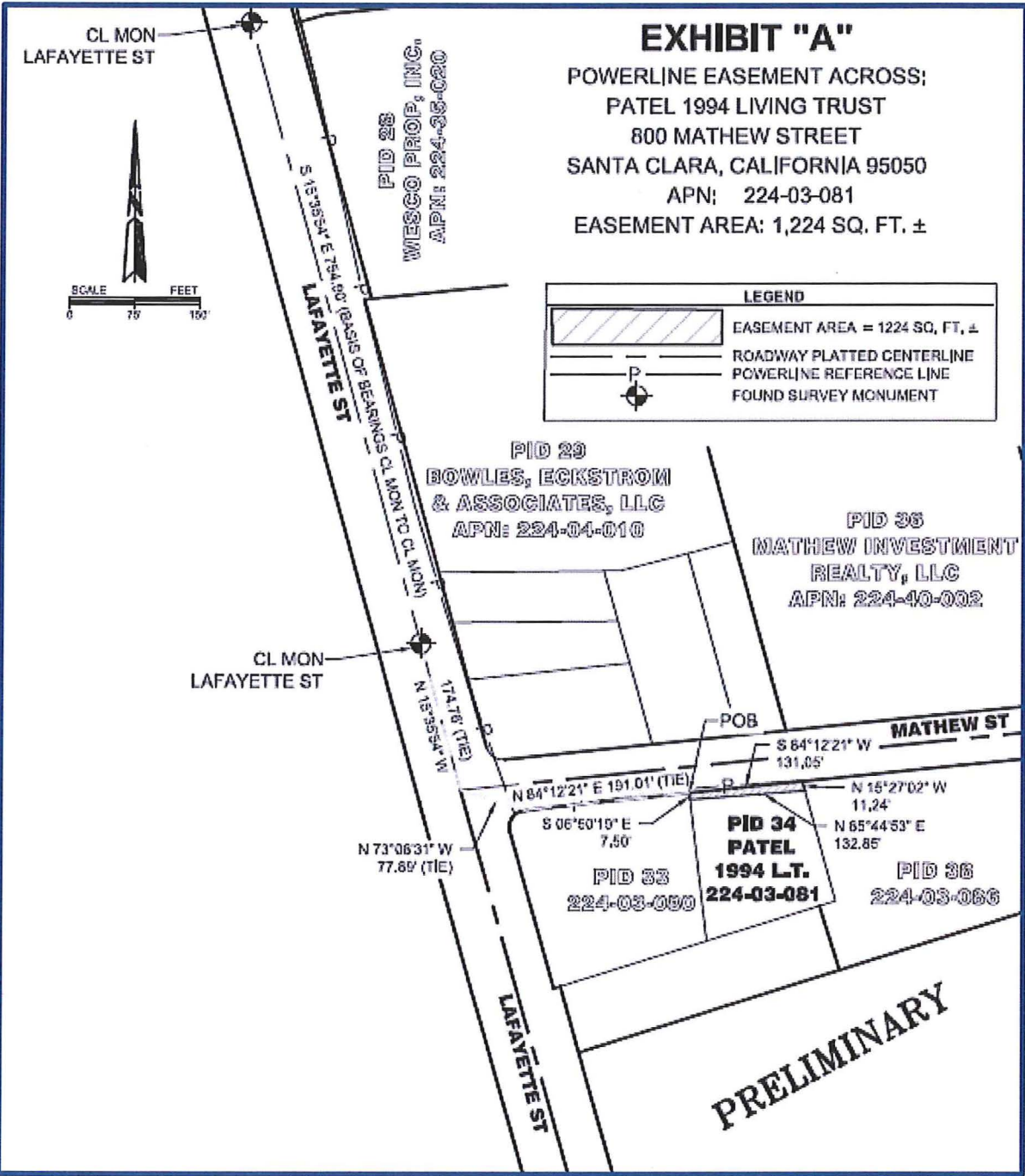
Exhibit A: Land Sales

Exhibit B: Easement Area

## Exhibit A: Land Sales

Comparable Sales Summary							
Comp	No.	Address	COE date	Land SF	Sale Price	Price per SF of Land	Grantor / Grantee and Recording #
1		1000 South 3rd Street San Jose APN: 472-15-027	Aug-17	51,401	\$2,100,000	\$40.86	Grifall Trucking Inc. Richard Cohen Trust Recording # 23716163
2		650 Martin Avenue Santa Clara APN: 224-35-017	Aug-16	207,128	\$12,310,000	\$59.43	Recology Properties Inc. Peninsula Building Materials Recording # 23398465
3		720 Comstock Street Santa Clara APN: 224-36-025	Oct-18	7,100	\$570,000	\$80.28	Jeff Olofsen Parker Albanese I LLC Recording # 24065356

Exhibit B: Easement Area





**EXHIBIT "A"**

POWERLINE EASEMENT ACROSS:  
 PATEL 1994 LIVING TRUST  
 800 MATHEW STREET  
 SANTA CLARA, CALIFORNIA 95050  
 APN: 224-03-081  
 EASEMENT AREA: 1,224 SQ. FT. ±

**DESCRIPTION:**

A portion of Parcel A as shown upon that certain Parcel Map For Lot Line Adjustment Purposes filed for record on October 1, 1985 in Book 550 of Maps, at Page 6, Santa Clara County Records, being located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

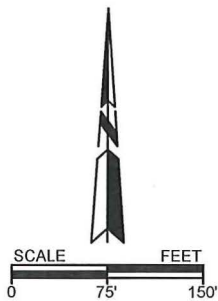
**COMMENCING** at a Centerline Monument in Lafayette Street; thence South 15°35'54" East 174.76 feet along the centerline to the centerline of Mathew Street; thence North 84°12'21" East 262.90 feet along said centerline of Mathew Street; thence South 05°47'39" East 30.00 feet to the northwesterly corner of said Parcel A and the **POINT OF BEGINNING**; thence North 84°12'21" East 131.05 feet along the southerly right-of-way line of said Mathew Street to the northeasterly corner of said Parcel A; thence South 15°27'02" East 11.24 feet along the easterly line of said Parcel A; thence South 85°44'53" West 132.85 feet to the westerly line of said Parcel A; thence North 06°50'19" West 7.50 feet along said westerly line to the **POINT OF BEGINNING**.

Containing 1,224 square feet, more or less



REV: 0 | DATE: 4/29/2020 | SCALE: N/A | BY: TMA | CHK: GHH | APP: JJC

CL MON  
LAFAYETTE ST



## EXHIBIT "A"

POWERLINE EASEMENT ACROSS:  
PATEL 1994 LIVING TRUST  
800 MATHEW STREET  
SANTA CLARA, CALIFORNIA 95050  
APN: 224-03-081  
EASEMENT AREA: 1,224 SQ. FT. ±

PID 28  
WESCO PROP, INC.  
APN: 224-35-020

LAFAYETTE ST

PID 29  
BOWLES, ECKSTROM  
& ASSOCIATES, LLC  
APN: 224-40-010

PID 36  
MATHEW REALTY  
INVESTMENT, LLC  
APN: 224-40-002

CL MON  
LAFAYETTE ST

S 15°35'54" E  
174.76' (TIE)

N 84°12'21" E  
262.90' (TIE)

S 05°47'39" E 30.00' (TIE)

MATHEW ST

POB

N 84°12'21" E  
131.05'

N 06°50'19" W  
7.50'

S 15°27'02" E  
11.24'

S 85°44'53" W  
132.85'

PID 33  
224-03-080

**PID 34  
PATEL  
1994 L.T.  
224-03-081**

PID 38  
224-03-086

LAFAYETTE ST



SVP REF: SC 19-203

THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV: 0 | DATE: 4/29/20

SCALE: 1" = 150' | BY: TMA | CHK: GHM | APP: JJC

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY  
REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY  
INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE  
FILING OF EMINENT DOMAIN PROCEEDINGS**

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

**WHEREAS**, the City of Santa Clara, a chartered city and municipal corporation acting by and through its municipally owned utility, Silicon Valley Power (hereinafter the “City”) is engaged in a continuing effort to upgrade and enhance its Overhead and Underground Distribution and Transmission systems to meet new customer demand and to maintain the reliability of SVP’s systems. The Transmission System Reinforcement Project (Project) is a keystone project for this effort;

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing Electric Overhead and Wire Clearance Easements or the acquisition of new easements;

**WHEREAS**, it is desirable and necessary for the City to acquire the following real property interests necessary for the Project

[i] a 1,224 square foot permanent Overhead Electric Easement in, on, over, along and across the real property described and depicted in Exhibit “A” and incorporated herein by this reference (“Easement Area”) for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of fee owner. In exercising said right of ingress and egress, easement holder shall, wherever practical, use existing roads and lanes across lands of fee owner, if such there be, and if not, by such route or routes as shall result in the least practicable

inconvenience to fee owner and any occupants of fee owner's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the fee owner for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the easement holder's use of the Easement. Any other use of the Easement Area by fee owner shall be subject to easement holder's express written consent and only after easement holder's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Easement holder may trim any trees or remove any tree or structure which are in or adjacent to the Easement Area which, in easement holder's reasonable determination, interferes with its use of the Easement. Easement holder may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 feet or poses a risk of falling onto the easement holder's facilities or equipment located within the Easement; and

**WHEREAS**, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Sections 37350.5 of the California Government Code, Section 612 of the California Public Utilities Code and Sections 1240.010 and 1240.220 of the California Code of Civil Procedure;

**WHEREAS**, pursuant to the provisions of Section 1245.235 of the California Code of Civil Procedure, notice has been duly given to Patel Jitendra G and Shashi J Trustee, whose property interests are to be acquired by eminent domain and whose name and address appears on the Santa Clara County Equalized Assessment Roll, and the property owner has been given a reasonable opportunity to appear and be heard before the City Council;

**WHEREAS**, on July 7, 2020, by Resolution No. 20-8869, the City Council [certified the Mitigated

Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP)] for the Project in accordance with the California Environmental Quality Act (CEQA). No further environmental review is necessary pursuant to CEQA; and

**WHEREAS**, pursuant to the provisions of Section 7267.2 of the California Government Code, the City has made an offer to the owner(s) of record to acquire its interests under the Lease for the amount which it has established to be just compensation, therefore.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA THAT  
THE CITY FINDS AND DETERMINES AS FOLLOWS:**

1. That the public interest and necessity require the Project.
2. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The Subject Property Interests sought to be acquired are necessary for the Project.
4. That all environmental review required by law has been prepared and adopted.
5. That the offer required by Section 7267.2 of the California Government Code has been made to the owner(s) of record of the Subject Property Interests.
6. That the necessary notice of hearing has been given, as required by Code of Civil Procedure section 1245.235.
7. That to the extent the Subject Property Interests are already devoted to a public use, the use of the Subject Property Interests for the Project is a compatible use that will not unreasonably interfere with or impair the continuance of the public use as it presently exists or may reasonably be expected to exist in the future (California Code of Civil Procedure Section 1240.510), or the use of the Subject Property Interests for the Project is a more necessary public use than the presently existing public use (California Code of Civil Procedure Section 1240.610).
8. The City has complied with requirements of CEQA for the Project.
9. That the City Attorney or his duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the

estates and interests aforesaid and to take such actions as he may deem advisable or necessary in connection therewith.

10. That the City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the Subject Property Interests.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:  
1. Exhibit A



**EXHIBIT "A"**

POWERLINE EASEMENT ACROSS:  
 PATEL 1994 LIVING TRUST  
 800 MATHEW STREET  
 SANTA CLARA, CALIFORNIA 95050  
 APN: 224-03-081  
 EASEMENT AREA: 1,224 SQ. FT. ±

**DESCRIPTION:**

A portion of Parcel A as shown upon that certain Parcel Map For Lot Line Adjustment Purposes filed for record on October 1, 1985 in Book 550 of Maps, at Page 6, Santa Clara County Records, being located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

**COMMENCING** at a Centerline Monument in Lafayette Street; thence South 15°35'54" East 174.76 feet along the centerline to the centerline of Mathew Street; thence North 84°12'21" East 262.90 feet along said centerline of Mathew Street; thence South 05°47'39" East 30.00 feet to the northwesterly corner of said Parcel A and the **POINT OF BEGINNING**; thence North 84°12'21" East 131.05 feet along the southerly right-of-way line of said Mathew Street to the northeasterly corner of said Parcel A; thence South 15°27'02" East 11.24 feet along the easterly line of said Parcel A; thence South 85°44'53" West 132.85 feet to the westerly line of said Parcel A; thence North 06°50'19" West 7.50 feet along said westerly line to the **POINT OF BEGINNING**.

Containing 1,224 square feet, more or less



REV: 0	DATE: 4/29/2020	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
		<p>PATEL 1994 LIVING TRUST          APN: 224-03-081          800 MATHEW STREET          SANTA CLARA, CALIFORNIA 95050</p>			
SHEET: 1 OF 2					





## Agenda Report

20-1097

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Resolution of Necessity to Acquire Certain Real Property Interests on 2908 Lafayette Street, Santa Clara, California, from Dollinger Lafayette Associates, a California General Partnership

#### **COUNCIL PILLAR**

Deliver and Enhance High Quality Efficient Services and Infrastructure

#### **BACKGROUND**

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), is proposing to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission line within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project (Project) is to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

The majority of the new 60 kV transmission line would be constructed along the following city streets in areas where existing power lines do not currently exist: Lafayette Street, Mathew Street, Martin Avenue and De La Cruz Boulevard. The remaining segments of the Project would be along routes that have existing distribution power lines and/or telecommunication lines.

The City Council has previously taken a number of actions on the project:

- June 16, 2015 - Adopted the FY 2015/16 Capital Improvement Program (CIP) Budget which included the initial funding for the engineering for this 60kV conductoring and upgrading project.
- July 12, 2016 - Approved a professional services agreement with Electrical Consultants, Inc. to provide transmission line engineering design services which included reconfiguring the south transmission loop.
- January 14, 2020 - Amended a service agreement with Valbridge Property Advisors to perform appraisal services as part of the easement acquisition for the Project.
- July 7, 2020 - Adopted the Negative Declaration and Mitigation, Monitoring and Reporting Program for the Project and increased the capital funding of the Transmission System Reinforcements Capital Improvement Program Project (No. 2124) by \$6,300,000.
- October 13, 2020 - Approved three Purchase and Sale Agreements for Utility Easements

#### **DISCUSSION**

The adoption of the attached Resolution of Necessity requires the City to consider and make the following findings:

- The public interest and necessity require the Project.
- The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- The property sought to be acquired is necessary for the Project.
- The offer required by Section 7267.2 of the Government Code has been made to the owner of record for the full amount established as the fair market value of the property.

***The public interest and necessity require the Project.***

The Project is critical to maintain reliability of the power system in Santa Clara. SVP maintains a redundant system on its 60kV network, allowing for the loss of a single line without interrupting power delivery or causing outages. This Project ensures that this ability remains as the electrical demand in Santa Clara grows. The Project is also necessary for future development in the area.

***The Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.***

SVP identified a study area that considered criteria necessary to meet the Project objectives, e.g., maintain system reliability while allowing for an increase in electrical demand. Staff engineers and design consultants looked for route alternatives, focusing on locations that paralleled existing roads and/or existing overhead utilities, and our own existing transmission corridors. In places where we could not use our existing transmission corridors or did not have an existing transmission corridor, staff considered route alternatives looking at their potential impacts to the environment, existing and probable future development, the topography/terrain, roadway access, scenic areas, and recreation uses, among other factors. Particular to 2908 Lafayette Street, staff engineers and design consultants redesigned the Electric Overhead Easements, reducing it from 5,091 S.F. with two poles to 1,242 S.F. and only one pole. Weighing the above considerations with the technical needs for the Project, the final Transmission route was determined.

***The property sought to be acquired is necessary for the Project.***

The Easements on 2908 Lafayette Street is necessary to achieve the technical needs of the Project.

***The offer required by Section 7267.2 of the Government Code has been made to the Owner of record for the full amount established as the fair market value of the property.***

On August 24, 2020, the City made an offer to Dollinger Lafayette Associates, a California general partnership, to acquire the Easements upon the value determined by an independent state licensed and certified appraiser in accordance with the above referenced Government Code.

The Resolution of Necessity requires approval by a two-thirds vote of the Council. If the Council adopts the recommended Resolution of Necessity, the City would deposit the necessary funds for the Easement's probable compensation with the State Condemnation Deposit Fund and file an eminent domain complaint with the Court to seek possession of the property.

As always, the parties can continue to negotiate in an effort to come to a mutual agreement on compensation for the leasehold (including any compensation due for furniture, fixtures and

equipment) and loss of business goodwill.

### **ENVIRONMENTAL REVIEW**

This Project was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration (MND) [SCH#2020-05-9009] was prepared for the Project by the environmental consultant firm, Aspen Environmental Group, and adopted by Council on July 7, 2020 by Resolution No. 20-8869.

### **FISCAL IMPACT**

The South Loop reconfiguration cost was approved as part of the Adopted FY 2020/21 and FY 2021/22 Biennial Capital Improvement Program in Transmission System Reinforcement CIP Project. This action has no fiscal impact to General Fund as the Project is funded by developer contributions.

### **COORDINATION**

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

### **PUBLIC CONTACT**

The property owner was provided a written notice that the City intends to consider adoption of a Resolution of Necessity to acquire real property interest for South Loop Reconfiguration Project. Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

### **ALTERNATIVES**

1. Adopt a Resolution of Necessity to Acquire Certain Real Property Interests.
2. Do not adopt a Resolution of Necessity.

### **RECOMMENDATION**

Alternative 1: Adopt a Resolution of Necessity to acquire Certain Real Property Interests on 2908 Lafayette Street, Santa Clara, California, from Dollinger Lafayette Associates, a California general partnership.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. August 24, 2020 Offer Letter
2. Resolution of Necessity





August 24, 2020

Dollinger Lafayette Associates  
Attn: Michael Helenius, Property Manager  
555 Twin Dolphin Dr. Suite 600  
Redwood City, CA, 94065

**SUBJECT: OFFER TO PURCHASE OVERHEAD POWER LINE EASEMENT**  
SITE: 2908 Lafayette Street, Santa Clara; APN 224-08-109  
South Loop Project

Dear Mr. Helenius:

The City of Santa Clara, acting by and through its municipally owned utility, Silicon Valley Power (SVP) is currently pursuing acquisition of power line easements for the South Loop Project ("Project"). The power lines that are proposed to be built for the project requires the acquisition of property rights affecting approximately 1,242 square feet over a portion of your property located at 2908 Lafayette Street, Santa Clara, CA ("Property").

SVP's primary objective of the South Loop Project is to increase system capacity and reliability. The majority of the new 60 kilo-volt (kV) transmission line would be constructed along the following city streets: Lafayette Street, Mathew Street, Martin Avenue, Walsh Avenue and De La Cruz Boulevard. Approximately 2.5 miles of the proposed route would be located in areas where existing power lines do not currently exist. The remaining segments of the Proposed Project would be along routes that have existing distribution power lines and/or telecommunication lines. The project is anticipated to be completed in 2021.

SVP designs its transmission system so that a loss of a single transmission line does not result in the loss of power for its customers. This design philosophy ensures the maximum reliability for its customers. As the power demands of the City grow, so does the necessity to construct infrastructure upgrades, such as this project, to continue to maintain this level of service reliability and increase the power capacity to support load growth and development. SVP is proactive about addressing future reliability issues and committed to providing the best service reliability for its customers.

Our preliminary title report shows Dollinger Lafayette Associates, a California general partnership to be the owner of the property located at 2908 Lafayette Street Santa Clara, CA.





*Powering* The Center of What's Possible

This property is within the Project area, and is also identified by the County Assessor as Parcel No. 224-08-109.

Subject to, and upon the terms and conditions set forth herein, SVP officers to purchase an easement over your property, as defined in the Easement Deed attached hereto. SVP hereby offers the sum of Twenty Two Thousand Six Hundred Dollars (\$22,600) as just compensation for the acquisition of the easement.

It is the policy of SVP to acquire property interests that are in private interests through voluntary purchase, if possible, and only when it is necessary to do so. In accordance with applicable law, SVP has obtained, reviewed and approved an appraisal to establish the fair market value of the property to be acquired. The attached Appraisal Summary outlines the basis for this offer pursuant to Government Code §7267.2.

Pursuant to Code of Civil Procedure §1263.025, SVP offers to pay your reasonable costs up to five thousand dollars (\$5,000) for an independent appraisal of the property interests. By law, an appraiser licensed by the Office of Real Estate Appraisers must prepare the independent appraisal. Although you are not required to obtain an appraisal at this time, or at all, if you believe such appraisal can assist you in evaluating this offer, it is in your interest to obtain an independent appraisal as expeditiously as possible. If you choose to obtain an appraisal, please forward SVP an invoice from your appraiser, identifying Property 2908 Lafayette Street Santa Clara, CA that is the subject of the appraisal and the fee charged.

Materials enclosed for your information include:

- An Easement with Exhibit showing the location of the acquisition area(s);
- The Appraisal Summary for your easement area.

The agent assigned to your property and to whom you will be working with is Keith Corry Senior Right of Way Professional, who can be reached at (801) 419-4507 or by email at keith.corry@eciusa.com. Please contact him if you have any questions or if you wish further clarification of this offer.

If you are agreeable to the offer please indicate your acceptance by signing in the space provided below and return an original signed copy of this letter to Mr. Corry using the postage paid return envelope, which is attached, for your use. Upon receipt of your acceptance of this purchase offer, a contract for sale and escrow instructions will be prepared for your execution. SVP will pay all of the conveyance and escrow costs. All taxes and assessments, if any, will be pro-rated, and possession will be delivered to SVP at the close of escrow.



*Powering* The Center of What's Possible

Sincerely,

A handwritten signature in blue ink, appearing to read "MP", followed by a horizontal line.

Manuel Pineda  
Assistant City Manager/ Chief Electric Utility Officer

Enclosures:

- SVP Easement with exhibit
- Appraisal Summary
- Postage paid return envelope

**ACCEPTANCE OF OFFER**

This offer, dated August 24, 2020 from the City of Santa Clara acting by and through its municipally owned utility, Silicon Valley Power, for \$22,600 is accepted for the acquisition of a permanent surface utility easement.

Owner's Name

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

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

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

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

**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

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

EXEMPT FROM RECORDING FEE  
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE  
PER GOV'T CODE § 27388.1 (a)(2)(D)

## OVERHEAD ELECTRIC EASEMENT DEED

**2908 Lafayette Street & APN 224-08-109  
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, **Dollinger Lafayette Associates, a California General Partnership**, (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

[SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE]

///

///

IN WITNESS WHEREOF, said grantors have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED FOR FORM:

\_\_\_\_\_  
Brian Doyle  
City Attorney

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

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

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

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

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

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

-

**"OWNER" APN 224-08-109 (2020-03)**

**ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT.** IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.  
**ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.**

# CALIFORNIA NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

## **Appendix A**

August 24, 2020

**City of Santa Clara  
South Loop Interconnect Project  
Appraisal Summary Statement And  
Summary of the Basis for Just Compensation  
(Pursuant to Government Code Section 7267.2)**

The following is a statement of and summary of the basis for the appraisal and the amount that Silicon Valley Power has established as just compensation required by California Government Code Section 7267.2. The appraisal on which this summary is based was made in accordance with accepted appraisal principles, consistent with California valuation law.

The purpose of this appraisal is to estimate the fair market value of the proposed acquisition appraised. Section 1263.320 of the Code of Civil Procedure defines fair market value as:

- A. *The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*
- B. *The fair market value of property taken for which there is no relevant market is its value on the date of valuation as determined by any method of valuation that is just and equitable.*

The date of value is January 30, 2020, which was the date of inspection.

The intended use of this appraisal is to provide information on the value of the acquisition for the Silicon Valley Power Project, which is called the South Loop Interconnect Project. The intended user is Silicon Valley Power.



The scope of work included inspecting the property, research and analysis of comparable data, and highest and best use analysis.

The appraised rights are further identified as follows:

- 1) The fair market value of a 1,242-square-foot permanent powerline easement.
- 2) The fair market value of a 1,830-square-foot Temporary Construction Easement (TCE) that is three weeks in duration.

### **Statement of the Amount Established as Just Compensation**

The amount Silicon Valley Power has established as just compensation for the property rights described in the accompanying offer is: **\$22,600 (Twenty Two Thousand Six Hundred Dollars).**

### **Summary of Basis for the Amount Established as Just Compensation**

This Summary of the Basis for the Amount Established as Just Compensation (prepared pursuant to Government Code Section 7267.2) is a summary of the appraisal used by Silicon Valley Power to determine the amount it established as just compensation for an easement.

#### **(A) Property Identification – Subject Property**

<b>Owner of Record:</b>	Dollinger Lafayette Associates
<b>Assessor's Parcel Numbers (APNs):</b>	Santa Clara County Assessor's Parcel Number (APN) 224-08-109
<b>Property Address:</b>	2908 Lafayette Street, Santa Clara, Santa Clara County, CA 95054
<b>Property Transfers in the Past Three Years:</b>	There have been no other transfers within three years.
<b>General Character of Interest Being Appraised:</b>	Easement
<b>Larger Parcel Land Size:</b>	44,387 square feet
<b>Improvements:</b>	There is an existing industrial building on the property.
<b>Topography:</b>	Level

<b>Shape:</b>	Generally rectangular
<b>Access:</b>	Access to the Larger Parcel is available off of Comstock Street.
<b>Utilities:</b>	Typical municipal and public utilities are available.
<b>Environmental Conditions:</b>	We did not receive a Phase I report for the Subject Property, and we assume there are no adverse environmental conditions.
<b>Date of Valuation:</b>	January 30, 2020
<b>Highest and Best Use</b>	The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.
<b>Highest and Best Use – As If Vacant:</b>	Industrial
<b>Highest and Best Use – As Improved:</b>	Existing use
<b>Present Use</b>	
<b>Subject Property:</b>	The Larger Parcel is currently used as an industrial property.
<b>Applicable Zoning:</b>	MH, Heavy Industrial

#### **(B) Approaches Used in the Appraisal**

We employed the “before” and “after” methodology for the Larger Parcel. In the “before” condition, we have not considered the Project.

In the “after” condition, we have considered the impacts attributed to the proposed easement and the Project.

Three methods of valuation can be applied to the appraisal of land. The most often used approach is the Direct Sales Comparison Approach. This method involves the comparison of the subject with recent sales of comparable properties.

A second method of land appraisal is the Land Development Approach. This approach involves estimating the development costs of installing all utilities and off-sites. These costs can be subtracted from a known improved lot value (established by sales comparison) to arrive at an estimate of raw land value or added to the known raw land value to arrive at the value of an improved site.

The third method employed is an Income Residual Method. An estimate is made of the potential net income, which can be earned from the site improved with buildings. The cost of these improvements is estimated to determine the portion of the income needed to supply a fair return on these costs. The residual income is available for a return on the land. Therefore, this income is capitalized into an indicated land value.

For purposes of this appraisal, the Sales Comparison Approach has been employed. Sufficient sales data was available that it was felt this method yielded a reliable result. This is the method that would most often be applied by a typical buyer of this type of property. The comparable sales are provided in Exhibit A.

#### Sales Comparison Approach

The sales comparison approach is used to derive a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the comparables based on the elements of comparison.

Based on our analysis of sale comparables provided in Exhibit A, we estimate the land value of the Larger Parcel to be \$3,107,090 (land only). This is based on a price per square foot of land of \$70 x 44,387 square feet.

### **(C) Value of Part Taken**

We have valued the part taken next. This consists of the value of the permanent easement.

#### Permanent Easement

In the "after" condition, the highest and best use of the Larger Parcel remains for continuation of the existing use.

For this valuation, the rationale for estimating the easement value can be shown as an equation:

#### **Fee simple land value x % of fee rights being acquired = easement value**

Based on our experience, an easement that is solely for subsurface utilities, as one example, may command a 10-35% share of the fee rights. As another example, exclusive control of surface rights may capture 90-100% of the fee simple value.

The subject is a perpetual easement. The grantor has significant remaining rights at the surface, landscaping, parking and signage for example. We estimate that the easement encumbers 25% of the total bundle of rights.

Therefore, the fair market value for the permanent easement is estimated at **\$21,735**, or 1,242 square feet x \$70 x 25%.

#### Temporary Construction Easement

The TCE measures 1,242 square feet, and the TCE period is 3 weeks (or 0.75 months). Based on our analysis of land rental rates in the Bay Area, a reasonable land rental rate is between 8% and 10% annually. The upper range is supported for this analysis, at 10%.

We have also added the depreciated value of the asphalt pavement, at \$3,431. This is derived as 1,830 square feet x \$3.75 per square foot, including profit, less 50% depreciation.

Therefore, the land rental for the TCE is estimated at \$822 or 1,830 s.f. x \$70 per square foot + \$3,431 depreciated asphalt value x 10% /12 months x 0.75 months.

Therefore, the fair market value for the TCE is estimated at \$822.

#### **(D) Severance Damages/Benefits Analysis**

Severance damages and benefits involve measuring the effect that the "acquisition" and "Project" have on the value of the property remaining, i.e., on the "remainder."

The acquisition is not expected to result in any severance damages to the remainder.

The highest and best use of the Larger Parcel upon partial acquisition is unchanged, relative to the "before" condition. We have not identified any damages from the Project.

Benefits result when the value of the remainder increases because of either the Project or the acquisition. Any resulting benefits are offset only against severance damages and not against acquisition value.

Each case for benefits is unique. In the case of the subject, we envision that the electric utility upgrades would be superior relative to the existing conditions. Since we have not identified any severance damages, we have not quantified any potential benefits.

#### **(E) Conclusion of Just Compensation and Value in the "After" Condition**

The market value of the acquisition is shown on the following page.

### Summary of Valuation

A. Land Value of the whole before acquisition: (\$70 PSF x 44,387 SF)		\$3,107,090
B. Value of the part acquired as part of the whole:		\$21,735
Permanent Easement (\$70 x 1,242 SF x 25%)	\$21,735	
Site Improvements (e.g. trees)	\$0	
C. Value of the remainder as part of the whole: (Line A less Line B)		\$3,085,355
D. Value of the remainder after the acquisition and before consideration of benefits (Line C - Line E)		\$3,085,355
E. Severance Damages/Cost to Cure		\$0
F. Value of the remainder after the acquisition and after considering benefits		\$3,085,355
G. Benefits (Line F less Line D)		0
H. Net Damages or Net Benefits (Line E minus Line G)		\$0
Plus: TCE:		<u>\$822</u>
Total		\$822
I. Market Value of the Acquisition (Just Compensation) (Line B plus Line H)		\$21,735
		\$822
Subtotal		\$22,557
Rounded		<b><u>\$22,600</u></b>

The resulting land value of the remainder in the "after" condition is \$3,084,490, or \$3,107,090 - \$22,600.

The fair market value for the acquisition is, **\$22,600**, as summarized below:

**Value Conclusions: 2908 Lafayette Street**

	Permanent Easement	Temporary Construction Easement	Site Improvements	Net Severance Damages	Total Fair Market Value
Value Type	Fair Market Value	Fair Market Value	Fair Market Value	Fair Market Value	Fair Market Value
Property Rights Appraised	Permanent Easement	TCE			Acquisition
Date of Value	January 30, 2020	January 30, 2020	January 30, 2020	January 30, 2020	January 30, 2020
<b>Fair Market Value</b>	<b>\$21,735</b>	<b>\$822</b>	<b>\$0</b>	<b>\$0</b>	<b>Total: \$22,600 (rounded)</b>

The previous is a summary of the appraisal prepared at the request of Silicon Valley Power to comply with Government Code Section 7267.2 that fairly and correctly states my opinions and knowledge.

Dated: August 24, 2020



## Addenda

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Exhibit A: Land Sales

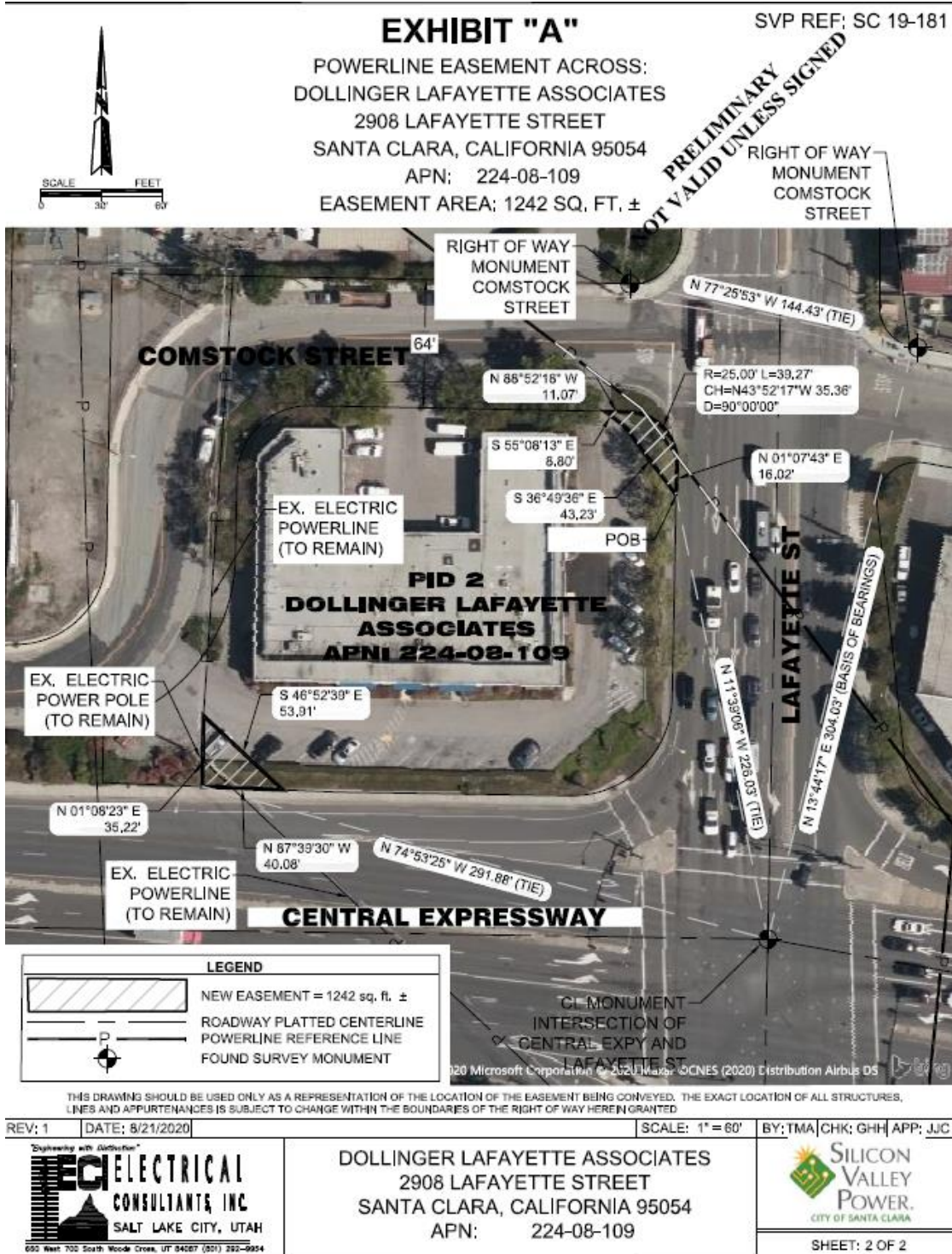
Exhibit B: Easement Area

## Exhibit A: Land Sales

Comparable Sales Summary							
Comp	No.	Address	COE date	Land SF	Sale Price	Price per SF of Land	Grantor / Grantee and Recording #
	1	1000 South 3rd Street San Jose APN: 472-15-027	Aug-17	51,401	\$2,100,000	<b>\$40.86</b>	Grifall Trucking Inc. Richard Cohen Trust Recording # 23716163
	2	650 Martin Avenue Santa Clara APN: 224-35-017	Aug-16	207,128	\$12,310,000	<b>\$59.43</b>	Recology Properties Inc. Peninsula Building Materials Recording # 23398465
	3	720 Comstock Street Santa Clara APN: 224-36-025	Oct-18	7,100	\$570,000	<b>\$80.28</b>	Jeff Olofsen Parker Albanese I LLC Recording # 24065356
Valbridge Property Advisors							

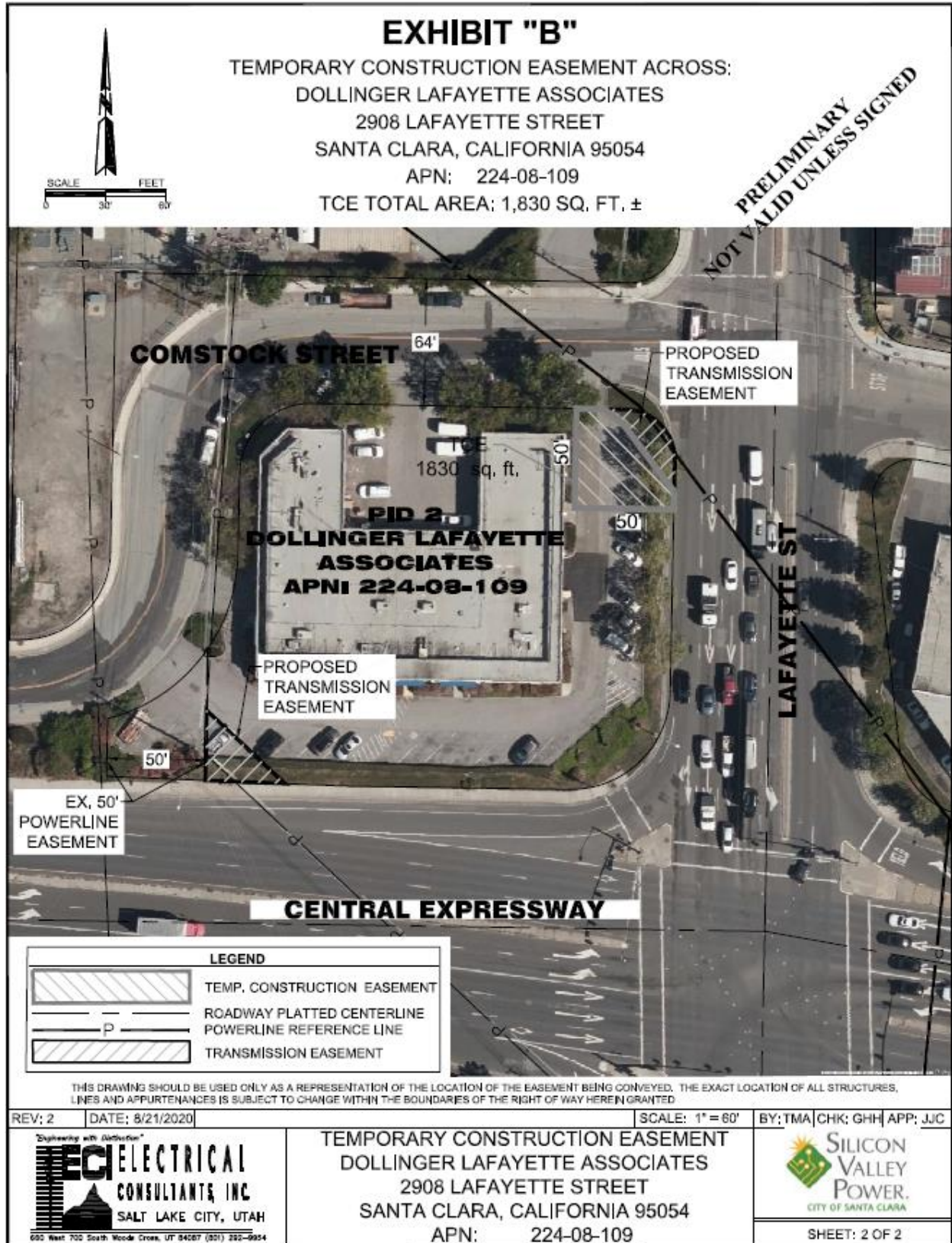
Exhibit B: Easement Area

**Permanent Easement**





**Temporary Construction Easement**



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY  
REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY  
INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE  
FILING OF EMINENT DOMAIN PROCEEDINGS**

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

**WHEREAS**, the City of Santa Clara, a chartered city and municipal corporation acting by and through its municipally owned utility, Silicon Valley Power (hereinafter the “City”) is engaged in a continuing effort to upgrade and enhance its Overhead and Underground Distribution and Transmission systems to meet new customer demand and to maintain the reliability of SVP’s systems. The Transmission System Reinforcement Project (Project) is a keystone project for this effort; and

**WHEREAS**, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing Electric Overhead and Wire Clearance Easements or the acquisition of new easements; and

**WHEREAS**, it is desirable and necessary for the City to acquire the following real property interests necessary for the Project

[i] a 1,242 square foot permanent Overhead Electric Easement in, on, over, along and across the real property described and depicted in Exhibit “A” and incorporated herein by this reference (“Easement Area”) for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of fee owner. In exercising said right of ingress and egress, easement holder shall, wherever practical, use existing roads and lanes across lands of fee owner, if such there be, and if not, by such route or routes as shall result in the least practicable

inconvenience to fee owner and any occupants of fee owner's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the fee owner for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the easement holder's use of the Easement. Any other use of the Easement Area by fee owner shall be subject to easement holder's express written consent and only after easement holder's review of plans and specifications and determination that such use will not interfere with its use of the Easement. Easement holder may trim any trees or remove any tree or structure which are in or adjacent to the Easement Area which, in easement holder's reasonable determination, interferes with its use of the Easement. Easement holder may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 feet or poses a risk of falling onto the easement holder's facilities or equipment located within the Easement; and

[ii] a 1,830 square foot nonexclusive temporary easement for construction purposes ("TCE") related to the Project, and all purposes related thereto, in, on, upon, over, under and across that real property described and depicted in Exhibit "B" and incorporated herein by this reference ("TCE Area").

Actual physical use and occupation of the TCE Area will occur only intermittently and only for a timeframe not to exceed twenty-one (21) days total, each phase of which to commence following forty-eight (48) hours prior written notice to fee owner. Access and use of portions of the TCE Area by fee owner, tenants, invitees and guests will be allowed to the extent that said portion is not being used for Project construction or staging purposes at that time. Construction of



the Project is expected to take no more than six months, and this TCE shall terminate upon written notice from easement holder that the TCE is no longer needed for the Project. Under all circumstances, unless it expires or is terminated earlier, the TCE term shall expire nine (9) months following the date the TCE is first used for the Project. Easement holder will stage and coordinate work in the TCE Area with the fee owner so as not to unreasonably impede/hinder access to/from and within the larger parcel.

Upon completion of the TCE Term, easement holder will cause the removal of all construction equipment and materials from the TCE area, and will restore the TCE area to a condition which is safe and reasonably suited to its original use; and

**WHEREAS**, the City is vested with the power of eminent domain to acquire real property by virtue of Article I, Section 19 of the Constitution of the State of California, Sections 37350.5 of the California Government Code, Section 612 of the California Public Utilities Code and Sections 1240.010 and 1240.220 of the California Code of Civil Procedure; and

**WHEREAS**, pursuant to the provisions of Section 1245.235 of the California Code of Civil Procedure, notice has been duly given to Dollinger Lafayette Associates, a California general partnership, whose property interests are to be acquired by eminent domain and whose name and address appears on the Santa Clara County Equalized Assessment Roll, and the property owner has been given a reasonable opportunity to appear and be heard before the City Council; and

**WHEREAS**, on July 7, 2020, by Resolution No. 20-8869, the City Council [certified the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP)] for the Project in accordance with the California Environmental Quality Act (CEQA). No further environmental review is necessary pursuant to CEQA; and

**WHEREAS**, pursuant to the provisions of Section 7267.2 of the California Government Code,

the City has made an offer to the owner(s) of record to acquire its interests under the Lease for the amount which it has established to be just compensation, therefore.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA THAT  
THE CITY FINDS AND DETERMINES AS FOLLOWS:**

1. That the public interest and necessity require the Project.
2. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The Subject Property Interests sought to be acquired are necessary for the Project.
4. That all environmental review required by law has been prepared and adopted.
5. That the offer required by Section 7267.2 of the California Government Code has been made to the owner(s) of record of the Subject Property Interests.
6. That the necessary notice of hearing has been given, as required by Code of Civil Procedure section 1245.235.
7. That to the extent the Subject Property Interests are already devoted to a public use, the use of the Subject Property Interests for the Project is a compatible use that will not unreasonably interfere with or impair the continuance of the public use as it presently exists or may reasonably be expected to exist in the future (California Code of Civil Procedure Section 1240.510), or the use of the Subject Property Interests for the Project is a more necessary public use than the presently existing public use (California Code of Civil Procedure Section 1240.610).
8. The City has complied with requirements of CEQA for the Project.
9. That the City Attorney or his duly authorized designee is hereby authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the estates and interests aforesaid and to take such actions as he may deem advisable or necessary in connection therewith.
10. That the City may deposit with the State Treasury the probable amount of compensation and obtain an order for prejudgment possession of the Subject Property Interests.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. Exhibit A
2. Exhibit B

## EXHIBIT "A"

SVP REF: SC 19-181

POWERLINE EASEMENT ACROSS:  
DOLLINGER LAFAYETTE ASSOCIATES  
2908 LAFAYETTE STREET  
SANTA CLARA, CALIFORNIA 95054  
APN: 224-08-109  
EASEMENT AREA: 1,242 SQ. FT. ±

### DESCRIPTION:

Two (2) parcels of land, being part of the parcel of land conveyed in that certain Grant Deed recorded December 3, 2009 as Document No. 20527116, in the Office of the Recorder of Santa Clara County (ORSCC), located in the City of Santa Clara, County of Santa Clara, and described as follows:

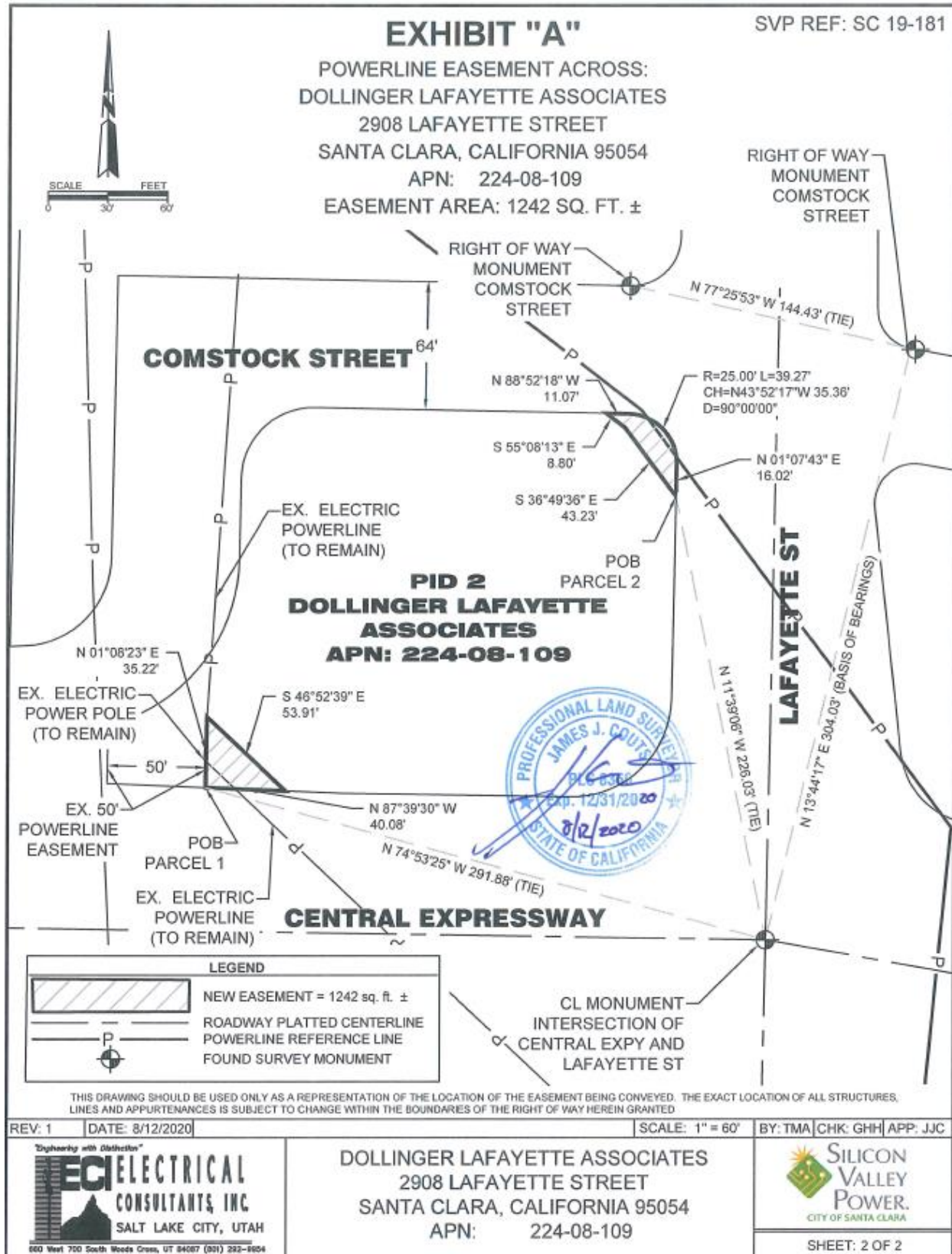
**PARCEL 1: COMMENCING** at the Centerline Monument at the intersection of Central Expressway and Lafayette Street; thence North 74°53'25" West 291.88 feet to the northerly right-of-way line of Central Expressway and the **POINT OF BEGINNING**, (Basis of Bearings is North 13°44'17" East 304.03 feet between said Centerline Monument and a Right-of-Way Monument on the northerly right-of-way line of Comstock Street); thence North 01°08'23" East 35.22 feet; thence South 46°52'39" East 53.91 feet to said northerly right-of-way line of central Expressway; thence North 87°39'30" West 40.08 feet along said northerly right-of-way line to the **POINT OF BEGINNING**.

**PARCEL 2: COMMENCING** at the Centerline Monument at the intersection of Central Expressway and Lafayette Street; thence North 11°39'06" West 226.03 feet to the westerly right-of-way line of said Lafayette Street and the **POINT OF BEGINNING**, (Basis of Bearings is North 13°44'17" East 304.03 feet between said Centerline Monument and a Right-of-Way Monument on the northerly right-of-way line of Comstock Street); thence North 01°07'43" East 16.02 feet along the said westerly right-of-way line of Lafayette Street to the beginning of a curve to the left having a radius of 25 feet; thence northwesterly 39.27 feet along said curved right-of-way line through a central angle of 90°00'00" (chord bears North 43°52'17" West 35.36 feet); thence North 88°52'18" West 11.07 feet along the southerly right-of-way line of said Comstock Street; thence South 55°08'13" East 8.80 feet; thence South 36°49'36" East 43.23 feet t to the **POINT OF BEGINNING**.

Containing in Total 1,242 square feet, more or less.



REV: 1	DATE: 8/12/2020	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
<div><div><div>Engineering with Distinction</div><div></div></div><div><div>ECI ELECTRICAL</div><div>CONSULTANTS, INC.</div><div>SALT LAKE CITY, UTAH</div><div>990 West 700 South Woods Cross, UT 84087 (801) 282-9954</div></div></div>		DOLLINGER LAFAYETTE ASSOCIATES 2908 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95054 APN: 224-08-109		<div><div></div><div><div>SILICON VALLEY</div><div>POWER</div><div>CITY OF SANTA CLARA</div></div></div>	
SHEET: 1 OF 2					





## EXHIBIT "B"

TEMPORARY CONSTRUCTION EASEMENT ACROSS:  
DOLLINGER LAFAYETTE ASSOCIATES  
2908 LAFAYETTE STREET  
SANTA CLARA, CALIFORNIA 95054  
APN: 224-08-109  
TCE TOTAL AREA: 1,830 SQ. FT. ±

### DESCRIPTION:



A Parcel of land, being part of the parcel of land conveyed in that certain Grant Deed recorded December 3, 2009 as Document No. 20527116, in the Office of the Recorder of Santa Clara County (ORSCC) and herein after known as the Grantor's Parcel, being located in the City of Santa Clara, County of Santa Clara, and described as follows:

The northerly 50' of the easterly 50' of said Grantor's Parcel. Less and excepting any portion lying within the Powerline Easement described in Exhibit A.

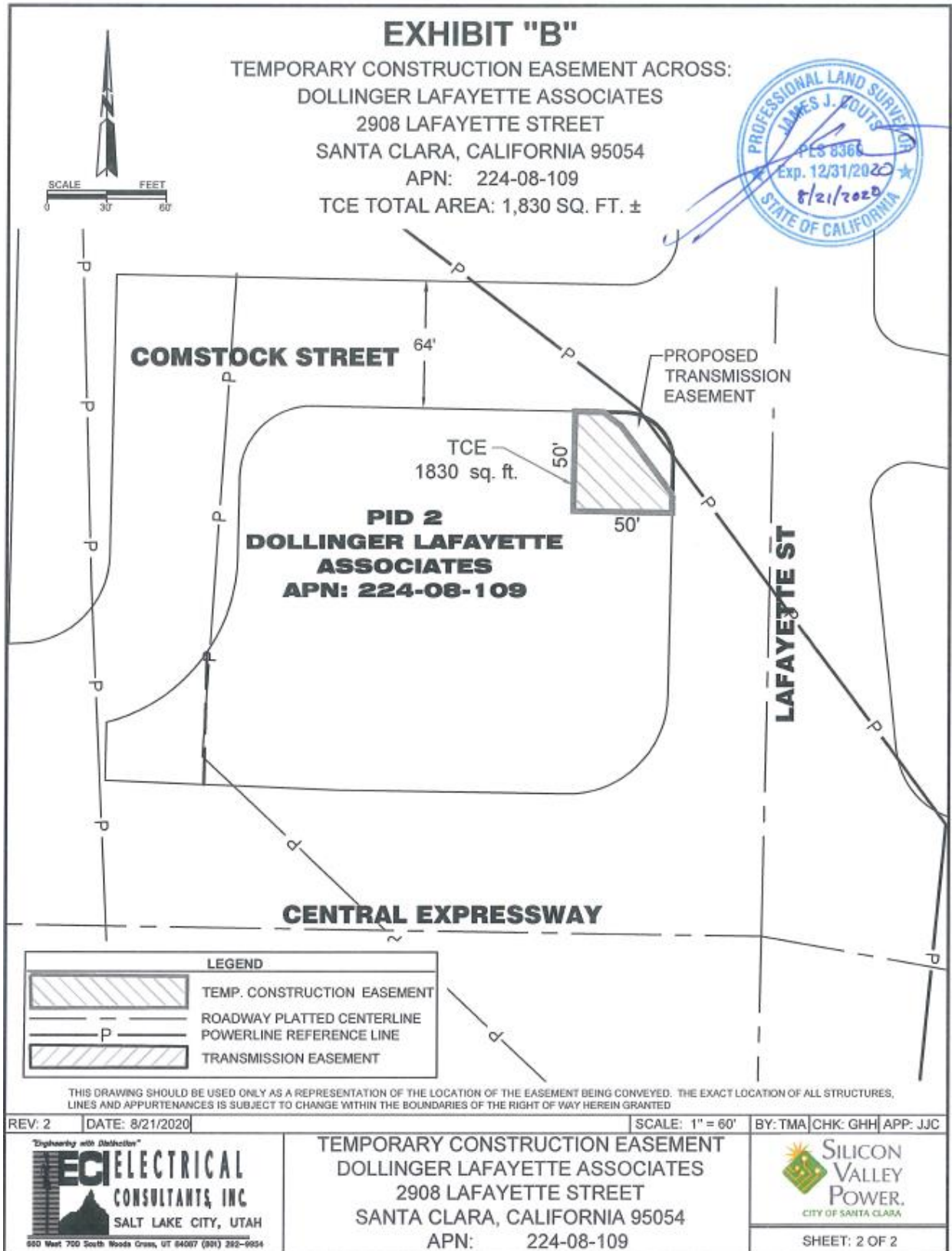
Containing in Total 1,830 square feet, more or less.

EXHIBIT B PAGE 2 by this reference made apart hereof.



REV: 2	DATE: 8/21/2020	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
 SALT LAKE CITY, UTAH 800 West 700 South Woods Cross, UT 84087 (801) 292-8854	TEMPORARY CONSTRUCTION EASEMENT DOLLINGER LAFAYETTE ASSOCIATES 2908 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95054 APN: 224-08-109		 SHEET: 1 OF 2		







## Agenda Report

20-1189

Agenda Date: 11/17/2020

### REPORT TO COUNCIL

#### SUBJECT

Approval of no cost of living and merit compensation increases for the City Manager and City Attorney and approval to apply the benefit changes for the City Manager and City Attorney, unless stated otherwise in the employment agreement, as included in the new Miscellaneous Unclassified Management Employees (Unit 9) Memorandum of Understanding

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND

As the Human Resources Director, charged with ensuring compliance with the Council Appointees employment contracts, this report recommends COLA, merit, and benefit changes to the City Manager and City Attorney, similar to those included in the Unit 9 successor MOU for calendar years 2019 and 2020. The City Manager and City Attorney each have employment contracts that outline the compensation for each incumbent. For the salary and benefits, unless articulated differently in their individual agreements, prior cost of living adjustments (COLA) for both City Manager and City Attorney were aligned with those received by the Miscellaneous Unclassified Management Employees (Unit 9) Memorandum of Understanding (MOU). For example, on December 16, 2018, Unit 9 received a 4% COLA, which the City Council also approved for the City Attorney, and also provided to the City Manager in accordance with the terms of the City Manager's employment contract. Additionally, both the City Attorney's and City Manager's employment contracts provide, to varying degrees, that fringe benefits will align with those benefits provided to Unit 9.

The City of Santa Clara's collective bargaining agreement with Unit 9 expired on December 14, 2019. On or about November 3, 2020, the City and Unit 9 reached an overall Tentative Agreement on the terms to be contained in the successor Memorandum of Understanding (MOU) between the City and Unit 9. The terms of the MOU are placed on the November 17, 2020, Consent Calendar for City Council approval. The successor MOU includes a term of December 15, 2019 through and including December 31, 2024. For the period of December 2019 through December 2021, the Unit 9 MOU provides a 0% COLA and changes to the Vacation and Management Leave benefits.

#### DISCUSSION

Government Code, Section 54953(c)(3) requires that, "Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken."

**COLA Increases**

The City Manager and City Attorney previously received the same percentage COLA increase as Unit 9. Both of their employment contracts reference Unit 9 for purposes of a COLA adjustment, which shall be effective when approved by the City Council. The suspension of COLA increases for a two year term results in no salary growth and the Council Appointees will be effected by the same provisions as Unit 9. The City Manager's employment agreement also ties cost of living increases to Unit 9 and a suspension of COLA is consistent with the employment agreement. Therefore, it is recommended that the City Manager and City Attorney not receive a COLA from December 15, 2019 to December 25, 2021.

**Merit Increases**

Consistent with Unit 9, the City Manager and City Attorney will not receive merit increases for the same two-year term that Unit 9 has agreed to through its MOU (January 1, 2021 - December 31, 2022).

**Benefit Changes**

The contracts of the City Attorney and City Manager to varying degrees link to fringe benefits in the Unit 9 MOU. Most Unit 9 MOU fringe benefits remain unchanged by the MOU, and therefore, it is recommended that the benefits of the City Manager and City Attorney should not change prior to the 2022 calendar year, with two exceptions: vacation leave and management leave. First, applicable to both the City Attorney and City Manager, the Unit 9 Agreement includes revisions to the Vacation accrual maximum, lifting the vacation cap, and shifting accrued unused vacation hours to the Temporary Supplemental Vacation Accrual balance. Second, applicable to the City Attorney, the Unit 9 Agreement includes revisions to rollover up to 120 hours of management leave. It is recommended that these benefits be extended to the City Manager and City Attorney consistent with their employment contracts. With respect to the Management Leave rollover limit, this will not apply to the City Manager as the employment contract for the City Manager provides the specific amount of annual Management Leave and is silent on rollover limit.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

The recommendation provides no salary changes for the City Manager and City Attorney, therefore, there is no additional increased cost.

The Management Leave and Vacation Leave benefits provide time off and have no cost impact unless the incumbent separates employment, resulting in a payout of any unused accrued vacation leave.

**COORDINATION**

This report has been coordinated with the Finance Department and the Assistant City Attorney. As the Human Resources Director, charged with implementing all employment contracts including

Council Appointees, this item is being advanced to ensure compliance with employment agreements and alignment to Unit 9 MOU changes.

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Approve to make no Cost of Living or Merit Pay Adjustments to the City Manager and City Attorney compensation effective December 15, 2019 to December 25, 2021; no merit increase adjustments effective January 1, 2021 to December 31, 2022; extend the Unit 9 benefit changes to the City Manager and City Attorney as articulated in this staff report.

Approved by: Aracely Azevedo, Director of Human Resources



# City of Santa Clara

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

## Agenda Report

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20-1141

Agenda Date: 11/17/2020

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### 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.



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FOR FOLLOW-UP/ACTION**  
Updated 11/10/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
1.	10/27/20	Council Meeting	Return to Council with an Informational Report upon executing Master Agreement that provides information on negotiated terms as related to BART Silicon Valley Phase II Extension Project	Public Works	Dec 2020	
2.	10/13/20	Stadium Authority	Stadium Bills and Claims – Return on a future agenda with an informational report on the on the Stadium Authority’s responsibility of unfunded liability	Finance	April 2021	
3.	10/13/20	Council Meeting	Noise Monitoring at Levi’s Stadium – Return to Council with a revised scope of work that includes a monthly consultant report with data related to all noise, including airplane noise by Levi’s Stadium. Report should include data on peak noise, how many days we exceed the noise ordinance, etc. and notify Council regarding excessive noise complaints.	Community Development	Jan 2021	
4.	10/13/20	Council Meeting	Community Input Policy – Return to the Governance Committee with potential models of a Community Benefits Policy with feedback from various Community groups (i.e. CatalyzeSV) and best practices from other Cities	Community Development	TBD	
5.	9/29/20	Council Meeting	Governance Committee Referrals – Discussion on Planning Commission’s referral process and citywide Board and Commission workplan process	City Manager	Dec 2020	
6.	8/25/20	Council Meeting	Staff to return on 12/15/20 regarding a written petition from Joseph Ducato requesting changes to the sewer ordinance whereby the City reassumes responsibility for maintenance and or/replacement of the sewer laterals located in the public right-of-way	Water & Sewer	12/15/20	
7.	7/14/20	Council Meeting	Garbage Rates – explore long-term rate assistance programs for solid waste	Public Works	Jan/Feb 2021	
8.	4/7/20	Council Meeting	Pruneridge Ave. Complete Streets Plan Project – Council voted to postpone awarding the contract and requested staff bring it back to Council when there was more certainty about public outreach efforts in relation to COVID-19 shelter in place order	Public Works	11/17/20	
9.	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	
10.	10/29/19	Council Meeting	Provide options for the \$750,000 commitment from Levy for community enrichment	City Manager	TBD	
11.	9/24/19	Council Meeting	Staff to review the Ordinance and enforcement of illegal street food vendors. At the 9/25/20 Council meeting, Council asked staff to review enforcement of vendors outside of Levi’s Stadium	Police	Feb 2021	
12.	8/27/19	Council Meeting	Agendize Korea Town designation for a future Council meeting and return with information about outreach and what Sunnyvale is doing on El Camino Real	City Manager	2/2/21	





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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
13.	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	TBD	
14.	7/9/19	Council Meeting	Update on age-friendly activities per commission annual Work Plan	Parks & Rec	TBD	
15.	6/4/19	Council Meeting	Regarding bicycle and scooter share devices: staff to bring back final plan for Council approval – Council asked staff to further look into items such as outreach events, insurance, speed monitoring, data, fee structure and drop-off locations (Per the City Attorney's Office this item was placed on hold – pending the outcome of other public entities' litigation)	Public Works	TBD	
16.	4/30/19	Council Meeting	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
17.	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	
18.	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	Nov 2020	
19.	10/9/18	Council Meeting	Dedicate Jerry Marsalli Community Center at grand opening of the facility	Parks & Rec	TBD	
20.	10/2/18	Council Meeting	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	TBD	
21.	3/13/18	Council Meeting	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	Summer 2021	



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Updated 11/10/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
1.	10/13/20	Council Meeting	Worker Retention and Recall Protections – Prepare an Urgency Ordinance for worker recall for the 10/27/20 Council Meeting and amend current Worker Retention Ordinance to add hotel workers and look at long-term outreach (first reading of Ordinance on 10/27)	City Manager/ City Attorney	10/27/20	10/27/20	Reported at Council Meeting
2.	8/25/20	Stadium Authority Meeting	For meetings requiring public reporting, staff to begin producing Stadium Authority and Stadium Manager meeting minutes	City Manager	10/13/20	10/13/20	Reported at Council Meeting
3.	8/18/20	Council Meeting	Staff to return on 10/13/20 with options regarding Worker Retention Ordinance in relation to the Pandemic	City Manager/ City Attorney	10/13/20	10/13/20	Reported at Council Meeting
4.	9/29/20	Council Meeting	Provide information to the community regarding 49er-initiated litigation via mailer, social media, blogs, website, utility inserts, etc.	City Attorney/ City Manager	TBD	10/5/20	Informational flyer posted on City website on 10/5/20
5.	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	Dec 2020	9/29/20	Reported at Council Meeting
6.	9/24/19	Council Meeting	Staff to review the potential for rebates for the purchase of electric bicycles	SVP	Fall 2020	9/29/20	Reported at Council Meeting
7.	8/18/20	Council Meeting	Staff to send a letter to State of California regarding the relocation of the Courthouse	City Manager/ Community Development	TBD	9/2/20	Letter sent on 9/2/20; City Manager sent Council an email update on 9/25/20
8.	8/25/20	Council Meeting	Add an agenda item on the Santa Clara Downtown and Courthouse for the 9/1/20 Council Meeting	City Manager	9/1/20	9/1/20	Reported at Council Meeting
9.	7/14/20	Council Meeting	Return after Council break with an informational update on the progress of the implementation of the Tasman East Specific Plan.	Community Development	8/25/20	8/25/20	Reported at Council Meeting
10.	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	8/24/20	Email sent on 8/24/20 from City Manager to Council
11.	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	7/14/20	Reported at Council Meeting



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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
12.	6/23/20	Council Meeting	Create an Ad Hoc Committee on Human Rights/Racial Inequalities in Santa Clara	City Manager	7/14/20	7/14/20	Reported at Council Meeting
13.	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	7/14/20	Reported at Council Meeting
14.	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	7/13/20	Reported at Council Meeting
15.	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	Reported at Council Meeting
16.	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	Reported at Council Meeting
17.	7/10/18	Council Meeting	Annual update on PD community engagement efforts	Police	6/23/20	6/23/20	Reported at Council Meeting
18.	6/9/20	Council Meeting	City Code requirements related to outdoor dining – review permit application processes to streamline review and approval process	Community Development	TBD	6/16/20	Email sent on 6/16/20 from City Manager to Council
19.	6/9/20	Council Meeting	Santa Clara Convention Center 3rd Quarter Report – why are audiovisual expenses higher than expected? Are the food expenses high due to providing food for the Senior Food Distribution and/or School Lunches? (Respond via email or Council Informational Memo)	City Manager	6/9/20	6/9/20	Email sent (via Council question/response process on 6/9/20); also posted on website with agenda packet
20.	4/28/20	Council Meeting	Invite Supervisor Susan Ellenberg to provide a COVID-19 update at the 5/12 City Council Meeting	City Manager	6/9/20	6/9/20	Reported at Council Meeting
21.	12/17/19	Council Meeting	Initiate discussions with Santa Clara Unified School District regarding Healthier Kids Foundation services (staff met with SCUSD on 2/5/20 to initiate discussions; will return to Council in June with a transition plan)	Parks & Rec/ City Manager	5/26/20	5/26/20	Reported at Council Meeting
22.	4/7/20	Council Meeting	Legislative Advocacy Positions - staff to return with information regarding the City's position on: Redistricting after census, public records and campaign reform (Council to provide questions in advance)	City Manager	TBD	5/26/20	Per City Manager, no questions from Council
23.	4/28/20	Council Meeting	Nonprofits may apply for the City's Small Business Assistance Grant and business license simultaneously	City Manager	5/12/20	5/12/20	Reported at Council Meeting



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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
24.	10/8/19	Council Meeting	Staff to review the expenditure limits for November 2020 – to designate appropriately the expenditure limit for Districts vs. At-Large seats	City Clerk/City Manager	Spring 2020	5/12/20	Reported at Council Meeting
25.	2/11/20	Council Meeting	Update and Direction on Commercial Cannabis-Related Items – staff to return with an Ordinance to ban commercial cannabis	City Manager/City Attorney	4/28/20	4/28/20	Reported at Council Meeting
26.	10/29/19	Council Meeting	Regarding GIS system, provide biannual updates via the City Manager/Executive Director Report at Council meeting	IT	Spring 2020	4/28/20	Reported at Council Meeting
27.	12/10/19	Council Meeting	Add labor peace provision to GreenWaste Agreement	Public Works	Spring 2020	4/16/20	Email sent to Council on 4/16/20 re: labor peace
28.	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 info about alternate funding is received	City Manager/Finance	May 2020	4/8/20	Reported at Council Meeting
29.	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
30.	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. (Staff returned to closed session in August 2020 and is scheduled to return at closed session on 10/13/20).	City Manager	3/31/20	4/7/20	Reported at Council Meeting
31.	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
32.	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
33.	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
34.	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	Public Works	TBD	2/12/20	Staff prepared letter for Mayor's



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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
			specifics on an Innovation Zone project for Santa Clara to consider that does not impact residents)				signature; signed letter mailed on 2/12/20
35.	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
36.	11/12/19	Council Meeting	Provide a comparison of the district assessment/TOT with other cities – are there other cities that also have the same type of district assessment? What are the Pros and Cons of the TID assessment change taking into consideration overall TOT? How do the TID Hotels feel about an increase in TOT (potentially 3%)	City Manager	2/11/20	2/11/20	Reported at Council Meeting
37.	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
38.	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
39.	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	
40.	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
41.	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
42.	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



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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
43.	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
44.	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
45.	12/10/19	Council Meeting	False Alarm Ordinance – Continue item to 1/14/20 for staff to conduct broader public outreach and gather public input	Police/ City Attorney	1/14/20	1/14/20	Reported at Council Meeting
46.	12/10/19	Council Meeting	False Alarm Ordinance – Police Department to follow up with resident regarding financial assistance for fees	Police	1/14/20	1/14/20	Reported at Council Meeting
47.	12/17/19	Council Meeting	Community Room Study Session – Continue item to 1/14/20 and return with responses to Suds Jain's questions regarding reservation process, rates for facilities at Oracle and houses across the street behind Triton, and provide a master list of facilities and who to contact for reservation	Parks & Rec/ City Manager	1/14/20	1/14/20	Reported at Council Meeting
48.	9/18/19	Economic Development, Communications and Marketing Committee	The Committee referred for Council consideration a request to the City Council to terminate the billboard agreement with All Vision, LLC (staff in process of analyzing further)	City Manager	January 2020	1/9/20	Letter sent from City Manager to All Vision on 1/9/20; Memo to Council from City Attorney on 1/9/20





# City of Santa Clara

1500 Warburton Avenue  
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## Agenda Report

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20-871

Agenda Date: 11/17/2020

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### REPORT TO COUNCIL

#### **SUBJECT**

Tentative Meeting Agenda Calendar (TMAC)

#### **COUNCIL PILLAR**

Enhance Community Engagement and Transparency

#### **BACKGROUND AND DISCUSSION**

The purpose of the TMAC is to provide the public advanced notifications of tentative dates of Council Study Sessions, Joint Council/Commission meetings, as well as Council Public Hearing and General Business agenda items. It is important to note that the TMAC is a Tentative Calendar planning tool and reports listed are subject to change due to Public Hearing publication requirements and agenda management.

The TMAC will be published weekly no later than Friday on the City's website.



# City of Santa Clara

## Tentative Meeting Agenda Calendar

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### **Tuesday, December 1, 2020 Special Stadium Authority Meeting**

#### **3:30 PM Study Session**

**20-496** Study Session: Update from Forensic Auditor

#### **Public Hearing/General Business**

**20-756** Action on the Santa Clara Stadium Authority Financial Report for Quarters Ending June 30, 2020 and September 30, 2020 and Related Budget Amendments

**20-1129** Report on the Review of Santa Clara Stadium Authority's Non-NFL Events Documents by JS Held, LLC.

### **Tuesday, December 8, 2020 Council and Authorities Concurrent Meeting**

#### **Special Order of Business**

**20-716** Adopt a Resolution Declaring the Results of the Canvass of Returns of the Consolidated Municipal Election held on November 3, 2020 with the Presidential General Election [Tentative]

**20-717** Administration of the Oath of Office to the newly Elected Officers for Council District 1, 4, 5 and 6, Chief of Police and City Clerk [Tentative]

### **Friday, December 11, 2020 New Council Orientation 10:00 AM – 5:00 PM**

### **Tuesday, December 15, 2020 Council and Authorities Concurrent Meeting**

#### **Public Hearing/General Business**

**20-806** Review of Sanitary Sewer Services in the City and Discussion of Private Sewer Lateral Responsibilities

**20-1037** **Public Hearing:** 2019 Consolidated Annual Performance and Evaluation Report (CAPER) to HUD, and the Substantial Amendment to the 2020-2020 Annual Action Plan (AAP)

- 20-334**      Action on the Introduction of an Ordinance Amending Chapter 5 of the City Code (“Business Licenses and Regulations”) to Address Soliciting in Parks
- 20-1034**      Action on the Consideration of the Nomination of Pomeroy Green Townhouses at the Northeast Corner of Pomeroy Avenue and Benton Street to the National Register of Historic Places

**Friday, December 18, 2020 New Council Orientation 10:00 AM – 5:00 PM**

**Tuesday, January 12, 2021 Council and Authorities Concurrent Meeting**

**Public Hearing/General Business**

- 20-694**      **Public Hearing:** Action on a Proposed Resolution Amending Rates for Attachments to City Owned Utility Poles by Third Party Communications Providers

**Tuesday, January 26, 2021 Council and Authorities Concurrent and Stadium Authority Meeting**

**Public Hearing/General Business**

- 20-974**      CAP Update Study Session

**Monday, February 1, 2021 Council Priority Setting Session I 8:00 AM – 5:00 PM**

**Tuesday, February 2, 2021 Council Priority Setting Session II 8:00 AM – 5:00 PM**

**Tuesday, February 23, 2021 Council and Authorities Concurrent Meeting**

**Public Hearing/General Business**

- 20-792**      Action on the Introduction of an Ordinance Amending Chapter 10.05 of the City Code (“Motor Vehicle and Traffic Regulations”) to Address Assembly Bill 503

**Tuesday, March 2, 2021 Santa Clara Stadium Authority Meeting**

**Public Hearing/General Business**

- 20-496**      Agenda Items Pending – To Be Scheduled

**Tuesday, March 9, 2021 Council and Authorities Concurrent Meeting**

**Public Hearing/General Business**

- 20-918** Study Session: Housing Element Update/Affordable Housing Ordinance Feasibility Analysis

**Tuesday, March 16, 2021 Santa Clara Stadium Authority Meeting**

**Public Hearing/General Business**

- 20-496** Agenda Items Pending – To Be Scheduled

**Tuesday, March 23, 2021 Council and Authorities Concurrent Meeting**

**Public Hearing/General Business**

- 20-1146** El Camino Real Specific Plan Study Session on the Draft Plan for adoption

**Tuesday, April 20, 2021 Council and Authorities Concurrent Meeting**

**Public Hearing/General Business**

- 20-1156** Study Session: Overview of Patrick Henry Drive Specific Plan

**AGENDA ITEMS TO BE SCHEDULED TO A FUTURE DATE**

- 20-496** Action to Authorize the City Manager to enter into an agreement to conduct an organizational assessment of information technology services
- 20-496** Action to Authorize the City Manager to enter into an agreement to exceed \$200,000 to conduct a review and update of the City's Administrative Policies
- 20-1335** Action on the Central Park Master Plan Update and Introduction of an Ordinance in accordance with City Charter section 714.1
- 20-496** Comprehensive Signage Program
- 20-496** CFD Petition
- 20-496** Park rules update ordinance- two readings [signs]
- 20-1216** Joint Dinner Meeting with Planning Commission
- 20-1311** Joint Dinner Meeting with Parks and Recreation Commission

- 20-338** Recognition of the Santa Clara Women’s League donation of \$15,000 to support the Senior Center Health & Wellness Case Management Program and the “Be Strong, Live Long” Health & Wellness Fair
- 20-187** Update on the Downtown Precise Plan
- 20-705** Early Consideration of Proposed General Plan Amendment Application for the Project located at 500 Benton Street [APN’s 230-08-061 (Santa Clara Valley Transportation Authority) and 230-08-078 City)]