



**City of Santa Clara**  
**Santa Clara Stadium Authority**  
**Meeting Agenda**  
**Call and Notice of Special Meeting**  
**City Council**

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**Tuesday, December 3, 2019**

**5:00 PM**

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

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NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Mayor calls for a Special Meeting of the City Council of the City of Santa Clara to commence and convene on December 3, 2019, at 5:00 pm for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

**5:00 PM CLOSED SESSION**

**Call to Order in the Council Chambers**

**Confirmation of a Quorum**

**Public Comment**

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

- 19-1380** [Conference with Labor Negotiators \(CC\)](#)  
[Pursuant to Gov. Code § 54957.6](#)  
[City representative: Deanna J. Santana, City Manager \(or designee\)](#)  
[Employee Organization\(s\):](#)  
[Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171](#)  
[Unit #2-Santa Clara Police Officer's Association](#)  
[Unit #3-IBEW Local 1245 \(International Brotherhood of Electrical Workers\)](#)  
[Unit #4-City of Santa Clara Professional Engineers](#)  
[Units #5, 7 & 8-City of Santa Clara Employees Association](#)  
[Unit #6-AFSCME Local 101 \(American Federation of State, County and Municipal Employees\)](#)  
[Unit #9-Miscellaneous Unclassified Management Employees](#)  
[Unit #9A-Unclassified Police Management Employees](#)  
[Unit #9B-Unclassified Fire Management Employees](#)  
[Unit #10-PSNSEA \(Public Safety Non-Sworn Employees Association\)](#)

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

**6:00 PM STADIUM AUTHORITY & SPECIAL MEETING**

**Call to Order**

**Pledge of Allegiance and Statement of Values**

**Roll Call**

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

**CONTINUANCES/EXCEPTIONS**

**SPECIAL ORDER OF BUSINESS**

1. **19-1342** [Recognition of Santa Clara University Students' Downtown Plan Scroll Concept](#)

**CONSENT CALENDAR**

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

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

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

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

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

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

**Recommendation:**

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

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

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

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

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

**PUBLIC PRESENTATIONS**

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

**CONSENT ITEMS PULLED FOR DISCUSSION**

**PUBLIC HEARING/GENERAL BUSINESS**

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

**Recommendation:** Staff makes no recommendation.

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

**Recommendation:**

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

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

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

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

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

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

**Recommendation:** Note and file the report.

**REPORTS OF MEMBERS AND SPECIAL COMMITTEES**

**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

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

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

**ADJOURNMENT**

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

## **MEETING DISCLOSURES**

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

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

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

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

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

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



# City of Santa Clara

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

## Agenda Report

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**19-1380**

**Agenda Date: 12/3/2019**

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### **SUBJECT**

Conference with Labor Negotiators (CC)

Pursuant to Gov. Code § 54957.6

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

Employee Organization(s):

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

Unit #2-Santa Clara Police Officer's Association

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

Unit #4-City of Santa Clara Professional Engineers

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

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

Unit #9-Miscellaneous Unclassified Management Employees

Unit #9A-Unclassified Police Management Employees

Unit #9B-Unclassified Fire Management Employees

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



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## Agenda Report

19-1342

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Recognition of Santa Clara University Students' Downtown Plan Scroll Concept

#### **BACKGROUND**

The Downtown Community Task Force (DCTF) was approved by the City Council at its December 4, 2018 meeting. The DCTF is an advisory, non-voting body which meets over the course of the Downtown Precise Plan planning process to provide input on the vision, land use, circulation, and urban design aspects of the Plan, as well as key policy issues. The DCTF includes representatives from a diverse range of backgrounds and perspectives including the Old Quad Residents Association, Reclaiming Our Downtown, Santa Clara University, and the Historical and Cultural Commissions.

#### **DISCUSSION**

Santa Clara University (SCU) Associated Student Government (ASG) members attend the triannual Neighborhood University Relations Committee (NURC) meetings held in Santa Clara.

In this capacity, the SCU ASG member students gained insight on the workings of their neighborhood community. During this process, the SCU ASG member students identified the need for the general student population to be equipped with the knowledge to provide suggestions for the development process of the Downtown Precise Plan (Plan). In order to raise awareness of the Plan among the SCU general student body, students Vidya Pingali and Eleanore Lammers-Lewis developed "The Scroll," a hand-crafted paper for participants to sign and give suggestions for the new downtown. The Scroll was presented to the DCTF during public comment at its October 30, 2019 meeting, and the students' work will be recognized at the December 3, 2019 City Council meeting.

#### **ENVIRONMENTAL REVIEW**

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

#### **FISCAL IMPACT**

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

#### **PUBLIC CONTACT**

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Reviewed by: Julie Minot, Executive Assistant to the Mayor and City Council  
Approved by: Deanna J. Santana, City Manager



## Agenda Report

19-1205

Agenda Date: 12/3/2019

### REPORT TO STADIUM AUTHORITY BOARD

#### SUBJECT

Action on Bills and Claims for the month of September 2019

#### 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, 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, staff received direction to pay Stadium Authority invoices related to SBL sales and services, insurance, and utilities. Payments made in September are in compliance with this direction.

Significant expenses in September 2019 include:

- Payment of \$493,000 to Forty Niners Stadium Management Company, LLC (Stadium Manager) for stadium operations costs for SBL sales and services and insurance.
- Payments totaling \$133,563 to the City of Santa Clara for the following:
  - \$91,490 for reimbursement of G&A City staff time (e.g.: City Manager's Office, City Attorney's Office, and Finance Department)
  - \$42,073 for payment of the Senior/Youth Fee for NFL games 1 & 2

#### 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 \$630,681 fiscal impact to the Stadium Authority.

#### COORDINATION

This report has been coordinated with the Stadium Authority Counsel's Office.

**PUBLIC CONTACT**

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**RECOMMENDATION**

Approve the list of Bills and Claims for September 2019.

Reviewed by: Kenn Lee, Treasurer

Approved by: Deanna J. Santana, Executive Director

**ATTACHMENTS**

1. September 2019 SCSA Bills and Claims

## Santa Clara Stadium Authority

### Bills and Claims Expenses Paid by Wire Transfer For the Month of September 2019

| Payment Date                | Vendor                            | Invoice No.  | Description                                | Fund      | Amount    |                   |
|-----------------------------|-----------------------------------|--------------|--|-----------|-----------|-------------------|
| 9/16/19                     | Bank of America                   | N/A          | Aug 2019 bank fees acct 0444               | Operating | \$        | 169.15            |
| 9/16/19                     | Bank of America                   | N/A          | Aug 2019 bank fees acct 0425               | Operating |           | 18.18             |
|                             |                                   |              | Bank of America Subtotal                   |           |           | 187.33            |
| 9/5/19                      | Forty Niners Stadium Mgmt Co, LLC | SLS-081919-A | Sep 19 Std Mgr - Insurance                 | Operating |           | 78,000.00         |
| 9/5/19                      | Forty Niners Stadium Mgmt Co, LLC | SLS-081919-A | Sep 19 Std Mgr - SBL Sales                 | Operating |           | 415,000.00        |
|                             |                                   |              | Forty Niners Stadium Mgmt Co, LLC Subtotal |           |           | 493,000.00        |
| 9/6/19                      | City of Santa Clara               | N/A          | B1916 SCSA Admin PR Costs                  | Operating |           | 26,640.54         |
| 9/13/19                     | City of Santa Clara               | N/A          | B1917 SCSA Admin PR Costs                  | Operating |           | 31,204.27         |
| 9/16/19                     | City of Santa Clara               | N/A          | Sr/Yth Fee NFL gm 1 addl rent              | Operating |           | 21,756.00         |
| 9/16/19                     | City of Santa Clara               | N/A          | Sr/Yth Fee NFL gm 2 addl rent              | Operating |           | 20,316.80         |
| 9/24/19                     | City of Santa Clara               | N/A          | B1918 SCSA Admin PR Costs                  | Operating |           | 33,644.91         |
|                             |                                   |              | City of Santa Clara Subtotal               |           |           | 133,562.52        |
| 9/6/2019                    | Wilson Ihrig & Associates Inc.    | 16125N24     | July 2019 Noise Monitoring                 | Operating |           | 3,931.00          |
| <b>September 2019 Total</b> |                                   |              |  |           | <b>\$</b> | <b>630,680.85</b> |



## Agenda Report

19-934

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on an Agreement with HSQ Technology for the Upgrade of an Existing MISER Supervisory Control and Data Acquisition (SCADA) Core System

#### BACKGROUND

The City's potable water distribution system infrastructure is comprised of approximately 335 miles of water mains, 27 wells, seven above ground potable water storage tanks with more than 28 million gallons of water storage capacity, three water import connections, nine emergency standby connections to external water systems, and four booster pump stations. The City's sewer collection system consists of more than 288 miles of sewer main with two pump stations and five lift stations controlling flow to the San José-Santa Clara Regional Wastewater Facility (RWF). The City's storm drain system has 22 pump lift stations.

The department uses HSQ Technology's Supervisory Control and Data Acquisition (SCADA) system to monitor and control the City's water, sewer, and storm drain infrastructure described above. The SCADA system is utilized by both the Water and Sewer Utilities Department and the Public Works Department's Storm Division ("Storm"). SCADA data is stored in a proprietary HSQ database and mirrored to a relational database on the City's business network. The SCADA system monitors water, sewer, and storm stations and can control a small number of water components.

The system was originally installed in the early 1990's. Servers, computers, hardware, software, and components throughout the system are aged, obsolete and beyond their useful life. Most of the work on the system is repairing and/or replacing components with similar or hard to find parts, on an as-needed or an emergency basis. Some servers and workstations were upgraded in 2000 to keep up with repairs and updates. However, many of the circuit boards in the control panels at the remote sites are over 20 years old and in need of upgrades. The core system consists of two legacy Servers, two legacy Work Stations, one Master Radio, network appliances, and software, all located at the City Corporation Yard. There are approximately 1700 points being monitored over approximately 60 Remote Telemetry Units (RTU).

#### DISCUSSION

Staff requested a proposal from HSQ to upgrade computer hardware, software, and network and relocate key components of the core system to an existing fiber network. In addition, the City desires to install a second antenna/master radio on an existing tower at the SCADA Building, to rectify the single point of failure problem that currently exists with having only a single master radio (located near the electric meter shop).

The following sites with specified equipment are getting upgraded in addition to networking connections between the locations:

|                        | Water & Sewer Operations Library | Emergency Operations Center | SCADA Building | City Hall Data Center | City Hall Water & Sewer Office |
|------------------------|----------------------------------|-----------------------------|----------------|-----------------------|--------------------------------|
| Rack                   | 1                                | 1                           | 1              | existing              |                                |
| Switches               | 2                                | 2                           | 2              | 2                     |                                |
| Workstation            | 1                                | 1                           | 1              |                       |                                |
| Windows client         | 3                                |                             |                |                       | 1                              |
| Server                 |                                  |                             | 1              | 1                     |                                |
| Master Radio & Antenna | 1                                |                             | 1              |                       |                                |

Importantly, the core system will be deployed on a closed network, utilizing purpose-built Silicon Valley Power (SVP) dark fiber. In addition, the servers will be housed in the recently constructed SCADA Building at the Corporation Yard and at the City Data Center at City Hall; both facilities are designed for cyber security. This upgrade is an essential step to enable reliable and continuous monitoring and operation and provide preparatory infrastructure in order to move forward with subsequent upgrades of critical in-field hardware and programming components such as:

- Upgrade remote sites for primary communication over already installed fiber network;
- Downgrade existing Radio Network to secondary, backup network;
- Upgrade sub-components at remote sites as needed for communications over less proprietary protocols; and
- Add points/tags and upgrade functionality, including control, as desired / needed.

A core upgrade is required in order to maintain compatibility and operability with the numerous remote sites. The remote sites would not be able to communicate with a non-HSQ core and upgrading the remote sites simultaneously would entirely change the scope and intent of this effort. Once the HSQ core system has been upgraded and moved to fiber, there would be options to transition remote sites to less proprietary equipment and protocols and subsequent project phases may be candidates for competitive solicitation. The remote sites could also be outfitted with equipment allowing it to communicate on the faster and more reliable fiber network, leaving the radio network as an effective backup.

This recommendation meets the single/sole source criteria in Section 2.105.160(b)(2) of the City Code "When required to ensure operation or function to match other products with respect to repair, expansion, or completion of a system, existing structure or program currently in use by the City, including, but not limited to, utility and technology purchases required to achieve interoperability with existing systems or programs."

HSQ submitted a quote with a not-to-exceed amount of \$452,353. Staff benchmarked HSQ's proposed pricing against projects at other cities in the area including San Jose, Palo Alto, Burlingame, Millbrae, and Turlock. In addition, the vendors Standard Parts and Service Price List has been reviewed and is the basis for their quotation. Pricing was therefore deemed to be fair and

reasonable.

**ENVIRONMENTAL REVIEW**

This project being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301, "Existing Facilities," as the activity consists of the repair, maintenance or minor alteration of existing facilities involving no or negligible expansion of the use beyond that presently existing.

**FISCAL IMPACT**

The Water & Sewer Utilities Department has sufficient budget in the SCADA Replacement and Process Improvement Project in the Water Utility Capital Fund to cover the not-to-exceed amount of \$452,353 and a 10% contingency for this project. Ongoing maintenance will be programmed in future operating budgets, subject to the appropriation of funds.

**COORDINATION**

This report has been coordinated with the Finance Department, the City's IT Department, Silicon Valley Power Utility and the City Attorney's Office.

**PUBLIC CONTACT**

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**RECOMMENDATION**

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

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

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. HSQ Quotation



26227 Research Road  
Hayward, California 94545-3725  
Telephone: (510) 259-1334 ◆

<http://www.hsq.com>  
Facsimile: (510) 259-1392

By email: [FMortensen@SantaClaraCA.gov](mailto:FMortensen@SantaClaraCA.gov)  
[GKoepplin@SantaClaraCA.gov](mailto:GKoepplin@SantaClaraCA.gov)

October 29, 2019

City of Santa Clara  
1705 Martin Avenue  
Santa Clara, CA 95050

Attention: Franz Mortensen

Reference: **HSQ MISER SCADA System Upgrade – Phase 1**  
**City of Santa Clara**  
**HSQ Quotation No. 1910-00XX-MP - DRAFT**

Gentlemen:

HSQ Technology is pleased to offer you the following quotation for upgrading your HSQ MISER SCADA System. The quote is only for the Phase 1 upgrade, which includes new servers and workstations, MISER software upgrades, MISER graphics conversions, new networking hardware, dedicated server and workstation racks, and necessary communication infrastructure installation. Also included are new master radio systems and converting all existing SCADA graphics screens.

Per our most recent meeting with you on 8/12/19, and in review of the previous emails and budgetary quote, HSQ Technology has detailed a plan for upgrading your HSQ MISER SCADA System, including labor and material summaries.

#### **HSQ MISER System Hardware Upgrade Sequence Description**

1. Coordinate and upgrade HSQ MISER software on the two (2) existing HSQ MISER Servers, in the Electric Control Room and library, and two (2) existing Workstations, in Electric Control Room and EOC, in conjunction deployment of the new HSQ MISER Servers.
2. Concurrently, HSQ Technology will, optionally, install the new server/workstation racks, one (1) in the SCADA Building, one (1) in the Library, and one (1) in the EOC, and install new Ethernet cable for racks as needed.
3. Eight (8) current model rack mounted HP Switches will be provided to facilitate redundant communication between the Library, Electric Control Room, new SCADA building, EOC, the City Hall Data Center, and City Hall office. The City Hall Office will be connected to the redundant switches in the City Hall Data Center. HSQ will install and configure network components to bring HSQ SCADA network to the Library, Electric Control Room, new SCADA building, the EOC, City Hall Data Center, and City Hall office. Existing fiber communication installed and commissioned by City of Santa Clara, will be utilized for the communication.

Santa Clara Water Dept.

HSQ Quotation No.: 1908-00XX-MP

Attention: Mr. Franz Mortensen

Page 2

October 29, 2019

4. Procure, configure, install and deploy new redundant HSQ MISER Servers, two (2), to replace existing servers, STCVSA and STCVSB. New servers will be located in the SCADA Building (STCVSA), and City Hall Data Center (STCVSB).
5. Procure, configure, install and deploy HSQ MISER Workstations, three (3), to replace existing workstations STCVS1 and STCVS4 and new workstation STCVS2. Workstations will be located in Library (STCVS1), SCADA Building (STCVS2), and EOC (STCVS4). One (1) workstation, STCVS1, will be configured as the primary MISER Windows PC Client Server, with an additional workstation configured as a backup MISER Windows PC Client Server.
6. Procure, configure, install and deploy HSQ MISER Xview Windows PC clients, four (4), to be STCVS3, STCVS5, STCVS6, and STCVS7. Three (3) Xview Windows PC clients will be located in Library and will be small PC clients with a single monitor. Using KVM hardware, HSQ will locate one Monitor, Keyboard, and mouse set within the library, and two Monitor, keyboard, and mouse sets within the Electric Control Room. All KVM hardware will include audio and a set of speakers. Existing Ethernet network within the building will be used for the KVM extender hardware. One (1) Xview Windows PC client will be located at City Hall Office and will not require KVM hardware.
7. Each of the three (3) new SCADA network and hardware racks will be provided with a rack mount UPS to power all rack mounted hardware for fifteen (15) minutes upon power outage. A rack mount UPS will be provided for installation in the existing City Hall Data Center Rack.
8. After successful installation and deployment of new HSQ MISER Servers, including verification of full HSQ MISER System functionality with the existing HSQ RTUs and associated existing communications infrastructure, migrate active monitoring and control of City of Santa Clara facilities with existing HSQ RTUs to the new HSQ MISER Servers by changing the data source of the existing workstations from existing HSQ MISER Server to the new HSQ MISER Servers.
9. After successful migration of the existing Servers and Workstations data source, the existing HSQ MISER Servers and workstations will be removed from the system. The existing servers and workstations will not be reconfigured as workstations due to the age of the computers.
10. During this process, the Server and Workstation computer hardware will be upgraded to new, rack mountable models and relocated to a designated computer racks location in the Library (Workstation Only), SCADA building, City Hall Data Center (Server Only) and EOC building (Workstation Only).
11. After the MISER SCADA hardware and software upgrades are complete and operational, HSQ will, optionally, complete upgrade to thirteen (13) existing MISER SCADA Graphics screens.

Santa Clara Water Dept.  
HSQ Quotation No.: 1908-00XX-MP  
Attention: Mr. Franz Mortensen  
Page 3  
October 29, 2019

12. Concurrently, HSQ will supply and install new master radios, and associated antenna and cable accessories, at the SCADA building and Electrical Shop (Master Radio Only), with optional installation of the antenna and cabling on existing mast at the SCADA Building. HSQ and City of Santa Clara will work together for all FCC related license and permitting. Radios will be setup for an Online/Standby configuration

### **HSQ MISER SCADA System Upgrade Scope of Work**

HSQ will provide two (2) new rack mounted HPE rx2800 i6 servers running the latest version of VSI OpenVMS operating system and HSQ MISER software at time of delivery. These systems will each have 16GB RAM, a 146 GB system drive, and a 300GB history drive. These servers will also be provided with redundant power supplies.

HSQ will provide three (3) new rack mounted HPE rx2800 i6 workstations running the latest version of VSI OpenVMS operating system and HSQ MISER software at time of delivery. These systems will each have 16GB RAM, a 146 GB system drive. One workstation will be setup as the Windows PC Xview Server to facilitate adding Xview Windows PC clients. These workstations will also be provided with redundant power supplies.

HSQ will provide four (4) new Xview Windows PC Clients, running Windows 10 Pro x64 and the latest version of XView for Windows, Exceed Edition. Windows PC basic specs will be a Dell Optiplex 5070, 24" Monitor, Intel Core i5 processor, 8 GB Ram, and a 1 TB Hard Drive. Exact specifications will be confirmed at the time of order.

HSQ will provide eight (8) HP Aruba 2540 Switches with Fiber ports, to provide network redundancy for your upgraded network that has the additional flexibility of accommodating any Layer 3 transports for future isolation and control of the SCADA network, including the ability to add encrypted tunnels and support DECnet across your network. Switches will have 1 Gbps Copper Ethernet Ports and 1 Gbps Fiber Ethernet Ports.

HSQ will provide two (2) new GE MDS Master Radios, with required cabling, antennas, and accessories. The new master radios will be installed within the rack at the new SCADA building and the Electrical Shop.

HSQ will, optionally, upgrade thirteen (13) existing SCADA graphics screens to the currently available MISER graphic offerings. HSQ will provide a submittal package with upgrades to screens for approval. Upon approval, HSQ will install and test the upgraded graphic screens. The new SCADA graphic screens are functional, the existing SCADA graphics screens will be removed from the system. HSQ has allotted three (3) days per screen for the above work.

At our Hayward office, we will upgrade a recent backup of your system to the current MISER

revision, including modifying the database to accommodate an extended acronym length of Santa Clara Water Dept.

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thirty-five (35) characters, and install a SNMP driver (SNMPNCC) to allow SCADA to directly monitor your network devices. The new servers and network router/switches will be configured and tested at our Hayward Office.

Once tested, the new HSQ MISER configuration will be prepared for the upgrade of the existing HSQ MISER Servers and Workstations. A plan to minimize downtime will be developed, and our installation engineers will be scheduled for two (2) days of startup to complete the upgrade of the existing HSQ MISER Servers and Workstations and to field test the upgraded system.

Once all MISER SCADA Hardware and software is upgraded, including network switches, and fully operational, HSQ will, optionally, work with the City of Santa Clara to upgrade thirteen (13) existing SCADA Graphics screens. HSQ as accounted for thirteen (13) screens and has allocated three (3) days of work per screen for coordination, submittal of upgraded screens for approval, installation and testing of new screens, and eventual removal of existing screens.

### **Bill of Material and Cost Summary**

#### ***MISER SCADA Software, Hardware and Networking Upgrades***

- Hardware - \$151,070.00
  - Two (2) HPE rx2800 i6 servers, rack mounted, running the latest version of VSI OpenVMS operating system and HSQ MISER software, 16 GB RAM, 146 GB system drive, 300 GB history drive, redundant power supplies
  - Three (3) HPE rx2800 i6 workstations, rack mounted, running the same version of VSI OpenVMS operating system and HSQ MISER software, 16GB RAM, 146 GB system drive, redundant power supplies
  - Four (4) HSQ MISER Xview Windows PC clients, Windows 10 Pro x64, Dell Optiplex 5070, 24" monitor, Intel Core i5 processor, 8 GB Ram, and a 1 TB Hard Drive.
  - Three (3) 19", full height, floor mount rack
  - Five (5) 24" HP Monitors
  - Four (4) 24" Dell Monitors
  - Eight (8) HP Aruba 2540 Switches with 1 Gbps Copper Ethernet and 1 Gbps Fiber ports
  - Four (4) N-Tron Fiber/Ethernet Media Converters
  - Eight (8) KVM Extender pairs for Server and Workstation connection to desks (Monitor, Keyboard, Mouse) with sound and speakers
  - SCADA Network cabling
  - Four (4) rack mounted UPS, 120V, 2000VA, 10 outlets

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- Software - \$16,100.00
  - One (1) Miser Upgrade License for new Servers (Redundant) (Replacing existing)
  - Two (2) Miser Upgrade License for new Workstations (Replacing existing)
  - One (1) Miser Full License for new Workstation
  - Four (4) Miser XView for Windows, Exceed Edition, Full Version for Windows PC
- Labor - \$36,800.00
  - Field investigation of existing conditions related to network and server rack location
  - Network device configuration
  - MISER software and database upgrade and graphics conversion
  - Existing server and workstation field upgrades for MISER
  - New networking hardware installation and cutover, including KVM hardware
  - New server and workstation field deployment and installation, including existing system functionality with new equipment
  - Cutover from existing servers and workstations to new servers and workstations

***Master Radio Upgrades at SCADA Building and Electrical Shop***

- Hardware - \$35,000.00
  - Two (2) GE MDS Master Radios
  - One (1) set Antenna, Cable, and Accessories
- Labor - \$23,000.00
  - Master Radio installation and configuration support
  - FCC License coordination and procurement

***Project Management and Expenses (For all mandatory and optional scopes)***

- Project Management and Expenses (For all above scopes) - \$56,150.00
  - Project Management
  - Project Administration
  - Submittal prep and consumables
  - SCADA Network Upgrade Planning and Drawings
  - Drawing Drafting
  - Freight in and out

***Optional Work Scopes***

- Optional MISER SCADA Graphic Screen Upgrades (13 screens @ 3 days per screen)
  - Labor - \$62,410.00
    - SCADA Graphics Screen upgrades (drafting)
    - SCADA Graphics Screen upgrades submittal and approval
    - SCADA Graphics installation, testing and removal of exiting screens

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- Optional MISER SCADA System and Graphics Screen Development Training
  - Labor and Expenses - \$11,400.00
    - Three (3) days of training for two (2) City of Santa Clara Employees
      - One (1) day of system training and two (2) days of graphics training
      - Includes training course development, preparation time, and lunch
- Optional Network Cabling and Server Rack Installation
  - Labor - \$14,450.00
- Optional Master Radio Antenna and Cable Installations at SCADA Building
  - Labor - \$23,470.00

#### ***Sales Tax***

- City of Santa Clara Sales Tax – 9% on \$250,039.00 = \$22,503.00

#### **Excluded**

- Fiber optic cable installation and testing
- Bonds
- Permits
- Submittals – other than ‘Plans’ included above

The total lump sum for the above HSQ MISER Central System Upgrade Scope of Work is as Follows;

|  |              |
|--|--------------|
| MISER SCADA Software, Hardware, Networking, and Radio Upgrades:          | \$318,120.00 |
| Estimated Sales Tax on Hardware, Software, and Subcontractor             | \$22,503.00  |
| Optional MISER SCADA Graphics upgrades:                                  | \$62,410.00  |
| Optional MISER SCADA Graphics Screen Development Training:               | \$11,400.00  |
| Optional network cabling and server rack installation is an additional:  | \$14,450.00  |
| Optional Master Radio antenna and cabling installation is an additional: | \$23,470.00  |

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**Total lump sum including options and sales tax: \$452,353.00**

Total lump sum above is a not to exceed amount, unless modified by an approved change order.

The quote is valid for a period of ninety (90) days. The HSQ MISER Central System Upgrade Scope of Work, as described above, will be completed according to a schedule mutually agreed upon between HSQ Technology and the City of Santa Clara.

HSQ appreciates the opportunity to provide you with this quotation and looks forward to working with you to finalize the scope of work, pricing, and any required adjustments to the phasing plan scheduling for upgrading your HSQ MISER System.



Please contact the undersigned if you have any questions and/or ready to proceed with the HSQ MISER Central System Upgrade Scope of Work.

Sincerely yours,

HSQ TECHNOLOGY

Matt Puskas  
Senior Estimator

MP

Attachments: 1. HPE Integrity rx2800 i6 Server Data Sheet  
2. HP Aruba 2540 Switch Data Sheet  
3. GE MDS Master Radio Data Sheet  
4. APC UPS Data Sheet



## Agenda Report

19-1217

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on an Affordable Housing Agreement with LS-Santa Clara, LLC for Project located at 1433-1493 El Camino Real

#### BACKGROUND

LS-Santa Clara LLC (the "Developer") is proposing to construct a 39-unit residential project with seven live/work units on three contiguous parcels totaling 1.70 acres. The project site is located on the north side of El Camino Real between Lincoln Street and Monroe Street and is within the El Camino Real Focus Area, a local and regional commercial and transportation corridor envisioned for a mix of high intensity commercial and residential development in the City's 2010-2030 General Plan.

On June 25, 2019, City Council approved a rezoning of the project site from Thoroughfare Commercial (CT) and General Office (OG) to Planned Development (PD) to allow a residential development consisting of 39 condominium units, including seven live/work units.

The project consists of for-sale condominium units with attached two-car garage distributed among five three-story buildings; a private street and eight visitor parking spaces with access from Civic Center Drive; and common landscaped open space and 3,048 square foot on-site private recreation area. The project also includes future private maintenance provisions with the establishment of a Homeowners Association and Covenants, Conditions and Restrictions.

As a condition of the land use entitlements, and per the City's inclusionary housing policy governing at the time of the entitlement, 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., 3.9 dwelling units) as Below Market Purchase (BMP) units to be sold to qualified first-time homebuyers at an affordable price based upon Area Median Income (AMI).

#### DISCUSSION

The proposed AHA with the Developer uses the City's standard form and will enable and guarantee the delivery of four (4) BMP units for sale within Santa Clara. The AHA fulfills an obligation placed upon the Developer through the City's land use entitlement process.

The BMP Policies and Procedures Guidelines adopted by the City Council ("BMP Program") provide that in the case of a fractional obligation of 3.9 units, a developer can either elect to provide four (4) BMP units or three (3) BMP units and pay a BMP in-lieu fee for the fractional units. In this case the Developer is proposing to provide four BMP units. The BMP units will be sold to households whose incomes are at or below 110 percent of 2019 AMI with an average affordability level of 100% AMI. The resulting sales prices for the BMP units will be as follows:

- 3 bedroom/ and 3 Bath, Plan 1 \$388,000 (90% AMI)
- 3 bedroom/ and 3 Bath, Plan 1 \$445,000 (100% AMI)
- 3 bedroom/ and 3 Bath, Plan 2 \$445,000 (100% AMI)
- 3 bedroom/ and 3.5 Bath, Plan 3 \$472,000 (110% AMI)

To maintain long-term affordability, a 20-year restrictive resale covenant is enforced and recorded against the BMP unit. The resale restrictions within the covenant include:

1. If the BMP unit is sold within five years of acquisition, the owner must sell the BMP unit to another income-eligible homebuyer.
2. After five years of ownership, the owner can resell the BMP unit at market price; however, the City and the owner will share the appreciated value of the unit. The owner's share of any appreciation beyond the Initial Market Value will increase by five percent (5%) per year for twenty (20) years.
3. After the covenant expires in twenty (20) years, the equity sharing requirements is exhausted and the homeowner will realize full gain beyond the Initial Market Value.

Approval of the proposed AHA 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 for the project by the environmental consultant firm David Powers J. & Associates, Inc., in accordance with the California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on the City's website at [www.santaclaraca.gov/ceqa](http://www.santaclaraca.gov/ceqa) and circulated for 30-day review on March 27, 2019 and closed on April 26, 2019, in accordance with CEQA requirements.

### **FISCAL IMPACT**

In accordance with the policies of the BMP Program, the City will realize a recapture of the inclusionary subsidy value of the BMP units when resold in the future if the unit is sold within twenty (20) years of the date of the AHA. The principal amount of the BMP subsidy value is due in full at the end of the 20-year term.

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

1. Approve and authorize the City Manager to execute the Affordable Housing Agreement with LS-

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

Reviewed by: Andrew Crabtree, Director, Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Affordable Housing Agreement with LS-Santa Clara, LLC

**RECORD WITHOUT FEE  
PURSUANT TO GOV'T CODE SECTION 6103**

**Recording Requested by:**  
Office of the City Attorney  
City of Santa Clara, California

**When Recorded, Mail to:**  
LS-Santa Clara, LLC  
3130 Crow Canyon Pl. #325  
San Ramon, CA 94583  
And  
Office of the City Clerk  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
For Units 6, 10, 24, and 26

**AFFORDABLE HOUSING AGREEMENT  
by and between the  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
LS-SANTA CLARA, LLC**

**PREAMBLE**

This Affordable Housing Agreement (the "Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, (the "Effective Date") between LS-Santa Clara LLC, a Delaware Limited Liability Company with its principal place of business located at 3130 Crow Canyon Pl. Suite #325 San Ramon, CA 94583, (the "Developer"), and the City of Santa Clara, a chartered municipal organization, with its primary business address located at 1500 Warburton Avenue, Santa Clara, CA 95050 (the "City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. The purpose of this Agreement is to increase, improve and preserve the supply of low and moderate income housing in the City by ensuring the Developer's construction and sale of housing affordably priced for Median Income Household(s), as defined in Section 1.b below.
- B. Developer owns certain real property (the "Project Site") located within the jurisdiction of the City, which is described in Attachment A attached hereto and incorporated herein.
- C. Developer intends to construct thirty nine (39) townhouse housing units ("Units") on the Project Site pursuant to the June 25, 2019 City Council land use approvals ("Project").
- D. As a condition of Project entitlement by the City, and to satisfy the City's Inclusionary Housing Policy, the Developer is required to designate four (4) condominium housing

units, as shown on Attachment B attached hereto and incorporated herein, to be marketed and made available for sale exclusively to Moderate Income Household(s), as defined on an annual basis according to Household Income Limits set by the California Department of Housing and Community Development based on gross (pre-tax) annual household income ("Low and Moderate Income Household"), for a below market price (the "BMP Units") that is required by the Project's conditions of approvals and the City's Below Market Purchase Program Policies and Procedures Guidelines (the BMP Program Policies & Procedures") The BMP Units will be sold at a price not to exceed an Affordable Sales Price as defined in Section 1.b below.

- E. "Developer," for purposes of this Agreement, includes Developer and any assignee or successor in interest, but excluding a homeowner that purchases a completed residence for which a certificate of occupancy has issued.

The Parties therefore agree as follows:

### **AGREEMENT PROVISIONS**

#### **1. DEVELOPER OBLIGATIONS.**

As provided in this Agreement, in compliance with the Project conditions of approval and subject to the approval of the City, the Developer hereby designates four (4) of the units to be completed on the Project Site as BMP Units. Such BMP Units shall be the units designated as such on Attachment B attached. Developer agrees to complete the 4 BMP units (units 6, 10, 24, 26) in 5 phases of development, and shall meet the following criteria: The BMP Units shall all have the standard amenities available to market rate units, including equivalent parking facilities, and shall have 3 bedrooms and 3 and 3.5 bathrooms. The BMP units shall be offered for sale by the City or its designee.

- a. The BMP Units shall be sold at the following "Affordable Sales Price":
  - i. Unit # 10, 3 bedroom/ and 3 Bath, Plan 1 \$445,000 (100% AMI)
  - ii. Unit # 26, 3 bedroom/ and 3 Bath, Plan 1 \$388,000 ( 90% AMI)
  - iii. Unit # 6, 3 bedroom/ and 3.5 Bath, Plan 2 \$445,000 (100% AMI)
  - iv. Unit # 24, 3 bedroom/ and 3.5 Bath, Plan 3 \$472,000 (110% AMI)
- b. The BMP Units shall be sold exclusively to and for occupancy by persons and families whose affordable housing cost is not less than 25 percent of the gross income of the household, nor which exceeds the product of 35 percent times 100 percent of area median income adjusted for family size ("Median Income Household(s)")
- c. The BMP Units shall be marketed and made available for sale by the City or its designee to Low and Moderate Income Households at the applicable Affordable Sales Price. The City reserves the right to use consultants as necessary to qualify eligible buyers and to market the BMP Units. Developer agrees not to engage in direct marketing of the BMP Units without prior approval of the City.

- d. Developer agrees to abide by the BMP Program Policies & Procedures, as they may be amended from time to time. A true and correct copy of the current BMP Program Policies & Procedures is attached hereto and incorporated herein as Attachment C.
- e. Unless otherwise released from this Agreement as provided herein, Developer and City agree that concurrently with the closing of the sale of each BMP Unit: (i) City and the BMP Unit buyer shall execute and record against the BMP Unit covenants substantially in the form of Exhibit A of the BMP Program Policies & Procedures; (ii) the BMP Unit buyer shall execute a promissory note substantially in the form of Exhibit B of the BMP Program Policies & Procedures; and (iii) the BMP Unit buyer shall execute and record against the BMP Unit a deed of trust substantially in the form of Exhibit C of the BMP Program Policies & Procedures.

## **2. CITY OBLIGATIONS.**

The City agrees to make a good faith effort to initiate marketing of the BMP Units itself or through its designee, within 30-days of the Developer providing notice to the City of completion of construction, and availability for sale, of the BMP Units. The City, at its sole discretion, may consent to a developer request to conduct earlier marketing efforts.

## **3. TERM OF AGREEMENT.**

The term of this Agreement shall begin on the Effective Date, and shall automatically terminate when all BMP Units have received certificates of occupancy and escrow has closed on all BMP Units, thereby transferring title to City-approved buyers. Upon such termination, Developer shall have no further obligations or liabilities with respect to the BMP Units, including without limitation, any responsibility for compliance by the buyer or its successors with the terms and conditions of the resale restrictions applicable to such BMP Units.

## **4. ASSIGNMENT OF AGREEMENT; SUCCESSORS IN INTEREST.**

No interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld.

## **5. RELATIONSHIP OF CITY AND DEVELOPER.**

No written or verbal statement, including but not limited to this Agreement, shall be deemed or construed to create a partnership, tenancy, joint venture or co-ownership between the City and the Developer. The City shall not be responsible or liable for the debts, losses, obligations or duties of the Developer with respect to the Project Site, the Project or otherwise.

## **6. NO THIRD PARTY BENEFICIARY.**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties other than the record owner of title to the Project Site, and no other third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

## **7. FAIR EMPLOYMENT.**

Developer shall not discriminate against any employee 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 in the performance of this Agreement.

## **8. HOLD HARMLESS/INDEMNIFICATION.**

Developer agrees to defend, hold harmless and indemnify the City, its Council members, officers, employees and agents (collectively, the "Indemnified Parties") from any claim, injury, liability, loss, cost, and/or expense or damage arising from or in any way connected with this Agreement and the performance thereof, including any such claim, etc., arising from the actual or alleged presence of hazardous substances on the Property, or any environmental claim relating in any way to the Property or Project. Developer's duty to defend, hold harmless and indemnify the Indemnified Parties shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

## **9. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

Developer shall comply with all environmental laws and environmental permits applicable to the operations of the Developer on the Project Site and the ownership or use of the Project Site and the Project, shall immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, shall keep the Project Site and Project free and clear of any environmental claims or liens imposed pursuant to any environmental law, and shall obtain and renew all environmental permits required for ownership or use of the Project Site and the Project.

## **10. INSURANCE REQUIREMENTS.**

During the term of this Agreement, and for any required time thereafter as set forth below, Developer shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

- Commercial general liability policy (bodily injury and property damage);
- Comprehensive automobile liability policy; and
- Workers' compensation and employer's liability policy

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as set forth in Attachment E, attached hereto and incorporated herein.

## **11. INTEGRATED DOCUMENT; AMENDMENT.**

This Agreement and its terms and conditions, and the Project's conditions of approval, embody the entire agreement between the Parties. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

**12. SEVERABILITY CLAUSE.**

In case any one or more of the provisions contained herein 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.

**13. WAIVER.**

Developer agrees that waiver by a Party 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.

**14. NOTICES.**

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

City: Housing & Community Services Division  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050  
or by facsimile at (408) 248-3381

Developer: LS-Santa Clara, LLC  
3130 Crow Canyon Pl.#325  
San Ramon, CA 94583

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.

**15. GOVERNING LAW; VENUE.**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, in the United States District Court, Northern District of California.

**16. COMPLIANCE WITH LAWS.**

Developer shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, applicable to the Project Site and Project.

**17. DISPUTE RESOLUTION.**

- a. Unless otherwise mutually agreed to by the Parties, any controversies between Developer and the City 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. Submission to mediation shall be a pre-condition to filing of any litigation.

- 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. The costs of mediation shall be borne by the Parties equally.

#### 18. **CONFLICTS OF INTEREST.**

Developer certifies that to the best of its knowledge, no City employee or officer has any pecuniary interest in the business of Developer and that no person associated with Developer has any interest that would conflict in any manner or degree with the performance of this Agreement. Developer represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree 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 that constitute a violation of said provisions. Developer will advise City if a conflict arises.

#### 19. **COVENANTS RUNNING WITH THE LAND.**

The Parties agree that this Agreement shall run with the land, and, subject to the terms hereof, shall bind any and all successors in interest. The Parties agree that this Agreement shall be duly recorded with the County of Santa Clara against each legal parcel associated with the BMP Units within twenty (20) days after the date the Final Map creating the separate legal parcels associated with the BMP Units is recorded. Upon recordation of a condominium plan establishing condominium units for the Project, at the request of Developer, the parties shall record an amendment to this Agreement specifically identifying the Affordable Units by reference to the Condominium Plan, upon which event this Agreement shall be automatically terminated and released as to all portions of the Project other than the BMP Units designated in Section 1 above. A "Condominium Plan" for this Agreement is defined as "each of the following: (a) each condominium plan recorded against the Property pursuant to California Civil Code Section 4285, *et seq.* that encumbers all or any portion of the Property, and all amendments to each such plan; and (b) any recorded condominium plan or plans, including amendments thereto, affecting any Phase which has been annexed hereto.

#### 20. **COMPLIANCE WITH ETHICAL STANDARDS.**

As a condition precedent to entering into this Agreement, Developer shall review and agrees to comply with the City's "Ethical Standards Ethical Standards For Contractors Seeking To Enter Into An Agreement With The City Of Santa Clara, California" (viewable at <http://santaclaraca.gov/home/showdocument?id=58299>).

#### 21. **MARKET RATE UNITS.**

Upon the request of the Developer, the City shall execute one or more agreements in recordable form certifying that a market rate unit within the Project is not subject to the requirements of this Agreement.

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


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"

**LEGEND SANTA CLARA, LLC**  
A California limited liability company

Dated: 10/21/2019  
By:   
(Signature of Person executing the Agreement on behalf of Developer)  
Name: Alec Tappin  
Title: Assistant Vice President  
Local Address: 3130 Crow Canyon Pl. #325  
San Ramon, CA 94583  
Email Address: atappin@landsea.us  
Telephone: 925-683-7782  
Fax: NA

"DEVELOPER"

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss:

COUNTY OF Contra Costa )

On October 21, 2019 before me,  
Emily Ann Slater

Notary Public

(insert name and title of the officer),

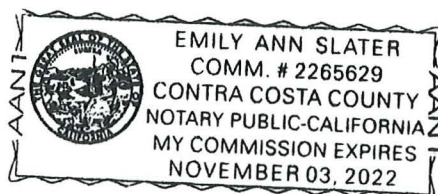
personally appeared Alec Tappin, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) 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]



**AFFORDABLE HOUSING AGREEMENT  
by and between the  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**LEGEND SANTA CLARA, LLC**

**ATTACHMENT A**

**LEGAL DESCRIPTION OF PROJECT SITE**

[behind this page]

## LEGAL DESCRIPTION FOR CATALINA II

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

COMMENCING AT A STAKE IN THE NORTHWESTERLY LINE OF CLAY STREET, DISTANT THEREON EIGHT HUNDRED AND TWENTY-FIVE FEET SOUTHWESTERLY FROM THE POINT OF INTERSECTION OF THE SAID NORTHWESTERLY LINE OF CLAY STREET WITH THE SOUTHWESTERLY LINE OF JACKSON STREET, THE SAID STAKE BEING ALSO DISTANT SOUTHWESTERLY ALONG THE SAID NORTHWESTERLY LINE OF CLAY STREET, FOUR HUNDRED AND SEVENTY-SIX FEET FROM THE EASTERLY CORNER OF SUBLOT NO. 17 OF THE TOWN OF SANTA CLARA; AND RUNNING THENCE NORTHWESTERLY ON A LINE PARALLEL WITH THE SOUTHWESTERLY LINE OF THE SAID SUBLOT NO. 17, THREE HUNDRED AND FOURTEEN AND FORTY-SEVEN HUNDREDTHS FEET TO A STAKE IN THE NORTHWESTERLY LINE OF THE SAID SUBLOT NO. 17; THENCE SOUTHWESTERLY ALONG THE SAID NORTHWESTERLY LINE OF THE SAID SUBLOT NO. 17, TWO HUNDRED AND SEVENTYSEVEN FEET TO A STAKE STANDING IN THE MOST WESTERLY CORNER OF THE SAID SUBLOT NO. 17; THENCE SOUTHEASTERLY ALONG THE SAID SOUTHWESTERLY LINE OF THE SAID SUBLOT NO. 17, THREE HUNDRED AND FOURTEEN AND SEVENTY-FOUR HUNDREDTHS FEET TO A STAKE STANDING IN THE NORTHWESTERLY LINE OF CLAY STREET AT THE MOST SOUTHERLY CORNER OF THE SAID SUBLOT NO. 17; THENCE NORTHEASTERLY ALONG THE SAID NORTHWESTERLY LINE OF CLAY STREET, TWO HUNDRED AND SEVENTY-SEVEN FEET TO THE POINT OF COMMENCEMENT; AND BEING A PORTION OF THE SAID SUBLOT NO. 17 OF THE SAID TOWN OF SANTA CLARA.

EXCEPTING THEREFROM THE FOLLOWING:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF CLAY STREET, SAID POINT BEING DISTANT THEREON 606 FEET EASTERLY FROM THE INTERSECTION OF THE NORTHERLY LINE OF CLAY STREET WITH THE EASTERLY LINE OF LINCOLN STREET; AND RUNNING THENCE SOUTH 66° WEST ALONG THE NORTHERLY LINE OF CLAY STREET 277 FEET; THENCE NORTH 24° 25' WEST 52 FEET; THENCE ALONG THE ARC OF A CIRCLE HAVING A RADIUS OF 1450 FEET AND ITS CENTER TO THE LEFT AND A TANGENT BEARING OF NORTH 78° 56' EAST 280.08 FEET; THENCE SOUTH 24° 25' EAST 16 FEET TO THE NORTHERLY LINE OF CLAY STREET, AND POINT OF COMMENCEMENT, AND BEING A PART OF SUBLOT NO. 17 OF THE CITY OF SANTA CLARA. ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF SANTA CLARA BY INSTRUMENT RECORDED JUNE 1, 1970 IN BOOK 8938 OF OFFICIAL RECORDS AT PAGE 445, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EXISTING SOUTHEASTERLY LINE OF CIVIC CENTER DRIVE (FORMERLY SCOTT STREET), WHICH IS COINCIDENT WITH THE NORTHERLY COMMON CORNER OF THE LANDS OF IVANCOVICH AND THE LANDS CONVEYED TO BACON BY DEED FILED FOR RECORD IN BOOK 1319 OF SAID OFFICIAL RECORDS, AT PAGE 44; THENCE SOUTHEASTERLY, FOLLOWING THE COMMON BOUNDARY BETWEEN SAID LANDS OF IVANCOVICH AND BACON, SOUTH 24° 00' 00" EAST 21.32 FEET TO A POINT IN A LINE PARALLEL TO AND DISTANT SOUTHEASTERLY 35 FEET,

MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF CIVIC CENTER DRIVE, AS SAID CENTERLINE IS SHOWN ON THE MAP OF SAID DRIVE FILED FOR RECORD IN THE OFFICE OF SAID COUNTY RECORDER IN BOOK 3 OF OFFICIAL PLAN LINE MAPS, AT PAGE 47; THENCE FOLLOWING SAID PARALLEL LINE SOUTH  $65^{\circ} 48' 10''$  WEST 96.06 FEET TO THE POINT OF TANGENCY WITH A 788 FOOT RADIUS CIRCULAR CURVE DEFLECTING TO THE RIGHT; THENCE FOLLOWING THE ARC OF SAID CIRCULAR CURVE THROUGH A CENTRAL ANGLE OF  $13^{\circ} 16' 11''$  AN ARC DISTANCE OF 182.50 FEET TO A POINT IN THE EASTERLY LINE OF THOSE CENTER LANDS CONVEYED TO THE CITY OF SANTA CLARA, A MUNICIPAL CORPORATION, BY DEED FILED FOR RECORD IN BOOK 5358 OF SAID OFFICIAL RECORDS, AT PAGE 332; THENCE NORTHWESTERLY, FOLLOWING THE COMMON BOUNDARY BETWEEN SAID LANDS OF THE CITY OF SANTA CLARA AND SAID LANDS OF IVANCOVICH, NORTH  $24^{\circ} 00' 20''$  WEST 1.29 FEET TO A POINT IN THE ABOVE MENTIONED SOUTHEASTERLY LINE OF CIVIC CENTER DRIVE; THENCE NORTHEASTERLY COINCIDENT WITH SAID SOUTHEASTERLY LINE OF CIVIC CENTER DRIVE NORTH  $66^{\circ} 00' 44''$  EAST 277.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THE COURSE WITH A LENGTH OF 52.00 FEET AS SHOWN ON THE RECORD OF SURVEY, LANDS OF ANNA IVANCOVICH RECORDED MARCH 5, 1965 IN BOOK 191 OF MAPS, AT PAGE 47, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY PROLONGATION OF SAID COURSE NORTH  $23^{\circ} 25' 06''$  WEST 0.33 OF A FOOT; THENCE FROM A TANGENT THAT BEARS NORTH  $82^{\circ} 09' 02''$  EAST ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1490.00 FEET, THROUGH AN ANGLE OF  $0^{\circ} 19' 30''$  AN ARC LENGTH OF 8.45 FEET TO THE NORTHERLY LINE OF THE EXISTING EL CAMINO REAL; THENCE ALONG LAST SAID LINE FROM A TANGENT THAT BEARS SOUTH  $79^{\circ} 37' 22''$  WEST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1449.92 FEET, THROUGH AN ANGLE OF  $0^{\circ} 19' 50''$  AN ARC LENGTH OF 8.37 FEET TO THE POINT OF COMMENCEMENT.

APN: 224-48-004 and 224-48-005 and 224-48-006

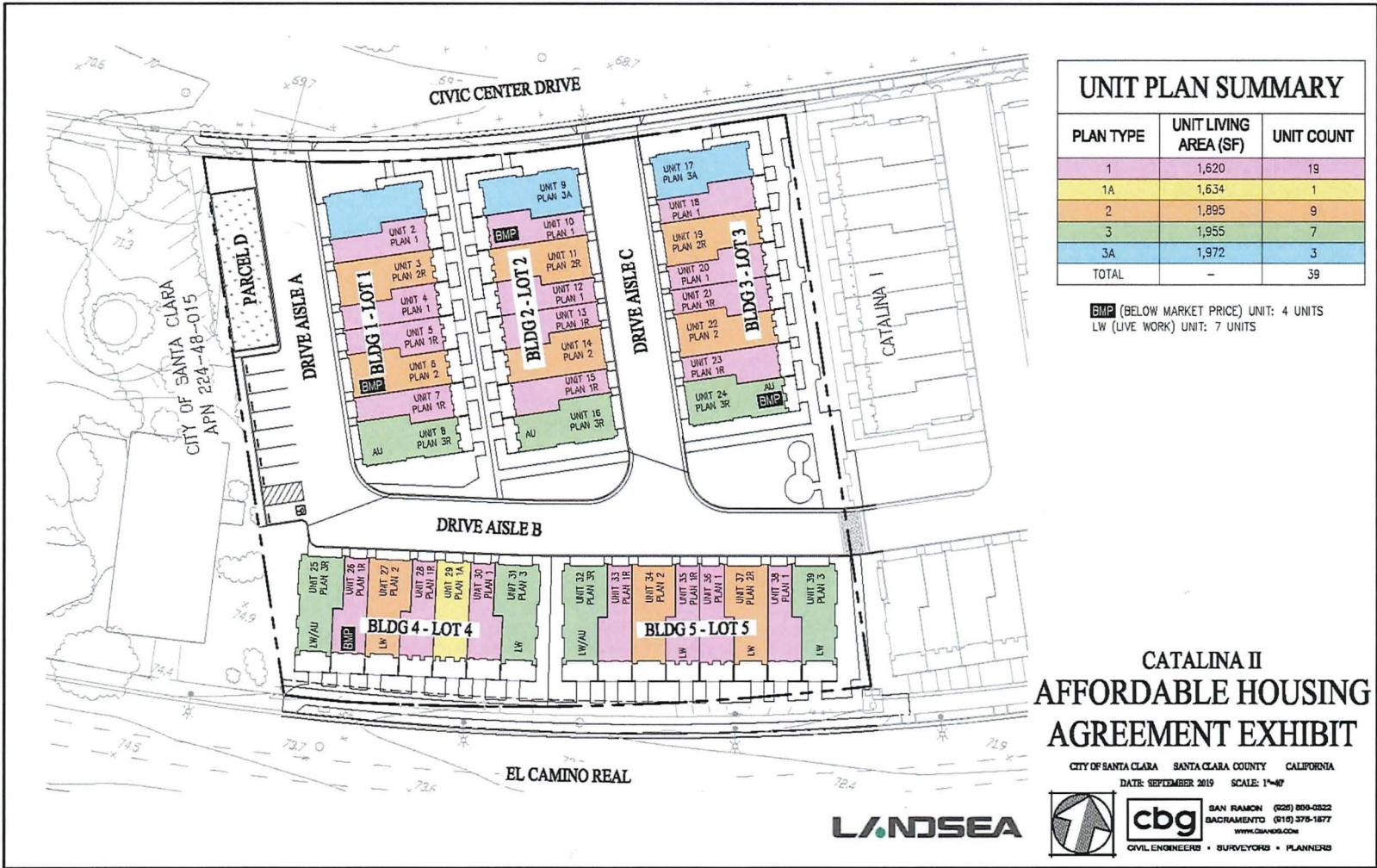
**AFFORDABLE HOUSING AGREEMENT  
by and between the  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**LEGEND SANTA CLARA, LLC**

**ATTACHMENT B**

**BMP UNIT LOCATIONS**

(Map Attached)



**AFFORDABLE HOUSING AGREEMENT  
by and between the  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**LEGEND SANTA CLARA, LLC**

**ATTACHMENT C**

**BMP PROGRAM POLICIES AND PROCEDURES**

(Attached hereto)

**AFFORDABLE HOUSING AGREEMENT  
by and between the  
CITY OF SANTA CLARA, CALIFORNIA,  
AND**

**LEGEND SANTA CLARA, LLC**

**ATTACHMENT D**

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**AFFORDABLE HOUSING AGREEMENT**  
**by and between the**  
**CITY OF SANTA CLARA, CALIFORNIA,**  
**AND**  
**LEGEND SANTA CLARA, LLC**

**ATTACHMENT E**

**INSURANCE COVERAGE REQUIREMENTS**

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer shall purchase 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 Developer; 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 Developer 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;
  - 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;
  - d. Coverage shall contain no Contractor's' limitation endorsement limiting the scope of coverage for liability arising from pollution, personal injury, Owners' and Contractor's' protective Liability; and
  - e. Contractual Liability coverage shall expressly include all liability assumed under this Agreement.

## 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, Developer and/or its sub-contractor's 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 Developer 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 Developer or any sub-contractor 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. The City of Santa Clara, its officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer'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 Developer 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 Developer'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 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.
- 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 Attachment E, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developer and City agree as follows:

1. Developer agrees to ensure that sub-contractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Developer, except as with respect to limits. Developer 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. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such sub-contractors and others engaged in the project will be submitted to City for review.
2. Developer 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 Developer 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 Developer 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, Developer, and each and every sub-contractor (of every tier) shall, at its sole cost and expense, purchase 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. Developer 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

Developer 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, Developer 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.                             |                        |
| The City of Santa Clara               |                        |
| Housing & Community Services Division |                        |
| 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 Developer shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.



## Agenda Report

19-1264

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on Appointment of Members to the Bicycle and Pedestrian Advisory Committee

#### BACKGROUND

The Bicycle Advisory Committee (BAC) was established by City Council in May 1991 to act as an advisory body to City Council for the development of safe bicycle lanes on City streets. In March 2014, by City Council action, the BAC's name and role was changed to become the Bicycle and Pedestrian Advisory Committee (BPAC). It is a committee composed of nine members and is presently chaired by Councilmember Karen Hardy, with Councilmember Raj Chahal as the alternate. The BPAC represents a cross section of Santa Clara's bicycling and pedestrian community, contributing their knowledge to the City regarding bicycle and pedestrian-related issues and projects.

#### DISCUSSION

Members serve for three-year terms with the option to apply for additional terms. The terms for members Diane Harrison, Craig Larsen, and Rafael Rius expire on December 31, 2019, and only member Harrison indicated that she was interested in serving another term. The upcoming openings on the BPAC were advertised on the City's website, the City Manager's Bi-weekly Blog, social media, the City's channel 15, and the Silicon Valley Bicycle Coalition's social media channels to allow potential candidates to apply for membership. Six membership applications were received. The applicants are Anthony Carnesecca, Betsy Megas, Diane Harrison, Frank Kim, Mercedes Mack, and Yury Perzov (Attachments 1 through 6). At the October 28, 2019 BPAC meeting, Committee members voted to recommend to the City Council that Betsy Megas, Diane Harrison, and Yury Perzov be appointed to serve three-year terms expiring on December 31, 2022. This process is based on the past practice of the BPAC accepting applications and advising Council on the appointment of new members.

#### 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 additional cost to the City other than staff 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>> or at the public information desk at any City of Santa Clara public library. In addition, this item was discussed at the City's Bicycle and Pedestrian Advisory Committee meeting on October 28, 2019.

**RECOMMENDATION**

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

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Application - Anthony Carnesecca
2. Application - Betsy Megas
3. Application - Diane Harrison
4. Application - Frank Kim
5. Application - Mercedes Mack
6. Application - Yury Perzov

**APPLICATION**  
**BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE**  
**CITY OF SANTA CLARA**

Submit to: Marshall Johnson, Traffic Engineering  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Tel: (408) 615-3023 Fax: (408) 985-7936  
Email: MJohnson@santaclaraca.gov

(Any information provided will be public record)

Name: Anthony Carnesecca

Address\*:

Telephone:

Email

Present employer: City of Los Altos

Employer address\*: 1 N San Antonio Road Los Altos, CA 94022

Job Title: Economic Development Coordinator

**Please answer the following questions. If you need additional space, please attach additional sheets.**

1. State reasons why you want to become a member of this Committee:

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2. What specific objectives you would be working toward as a member of this Committee:

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3. Describe your bicycling history: \_\_\_\_\_

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4. Describe your community involvement: \_\_\_\_\_

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5. Special interests/hobbies/talents: \_\_\_\_\_

6. Any other information that you feel would be useful to the Committee in reviewing your application: \_\_\_\_\_

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*\*Applicants must either be a resident of Santa Clara or work within Santa Clara.*

Anthony Carnesecca  
BPAC Application Questions

1. I want to become a member of this Committee for two major reasons. First and foremost, I have a passion for public service as evidenced by my career in governmental work. I have over six years of experience with various government agencies which exemplifies my passion for giving my time and effort to the common good. From the County of Santa Clara to currently the City of Los Altos, I have a strong background in the public sector that will benefit me on this Committee. Second, I have a passion for cycling. As an electric bicycle commuter in this community, I have a strong interest in helping maintain and improve conditions for all cyclists and pedestrians in our community. This Committee will allow me to help provide feedback and work towards the common goal of safe streets for everyone.
2. I have three major objectives as a member of this Committee:
  - a. Ensure that all individuals feel safe on all the pathways and roadways throughout the City of Santa Clara. Nobody should feel that they cannot walk, bicycle, skate, scoot, or drive safely.
  - b. Provide staff with the necessary feedback to achieve their goals. I want to provide City staff with the necessary information from the community that will help them to achieve all the major transportation goals for the next year.
  - c. Promote resources that will educate the public about safe transportation in our community.
3. I was a late bloomer that learned how to ride a bicycle at age twelve, but I surely made up for it. While I was an undergraduate student at Santa Clara University, I rode my bicycle six miles down Park Avenue to the City of San Jose City Hall for my internship every day. Now that I live near Santa Clara City Hall and commute to Los Altos City Hall, I ride my electric bicycle 22 miles roundtrip every day. This electric bicycle is the coolest thing in the world and I love waking up a little bit earlier every day to start my day on two wheels.
4. I have attached my resume, but I am strongly tied to the Santa Clara Community. Both of my parents attended Santa Clara University before I ultimately attended SCU following in their footsteps. At Santa Clara University, I majored in Environmental Studies and Communication with an emphasis in Environmental Public Policy. After graduating from SCU, I worked for almost three years for Silicon Valley Power, the electric utility for the City of Santa Clara. Around the time I began my current role in Los Altos, my fiancée and I purchased a home in Santa Clara within the historic quad so we live less than a mile away from where we met. Much of my life has been spent in this beautiful community that feels like a small town with the resources and amenities of a big city.
5. I love hockey. I play in both a roller hockey and ice league while coaching the Saint Francis High School Varsity Ice Hockey team. I don't know if I am quite good enough to consider my love a talent so let's call it an interest or hobby.
6. I am a hard-working, attentive individual with a passion for making an impact through thorough analysis and then tangible action. This role will be an opportunity to really do more

# Anthony Carnesecca

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## Skills

Technical: Microsoft Office; Adobe Creative Suite: Illustrator, InDesign, Photoshop; HTML  
Personal: Communication; Public Speaking; Public Relations; Community Outreach

## Employment

Economic Development Coordinator, City of Los Altos Community Development Department 6/2018 - Present  
Assists current and prospective businesses in their efforts within the City of Los Altos.

Energy Conservation Specialist, City of Santa Clara Electric Department 10/2015 – 6/2018  
Developed and disseminated conservation and services programs for the public and other city departments.

Financial Center Operations Manager, Bank of America 6/2015 - 10/2015  
Supervised and coached teammates on the proper execution of financial and customer service goals.

Assistant Area Coordinator, Santa Clara University Office of Residence Life 8/2014 - 6/2015  
Managed the administration and staffing necessary to create a functioning community of 465 residents.

Administrative Intern, City of San Jose Public Works Department 1/2014 - 6/2015  
Wrote and edited various proposals, plans, and submittals for capital projects and improvements.

Communication Intern, Santa Clara University Campus Ministry 8/2013 - 6/2014  
Developed an innovative outreach campaign, including weekly flyers, tabling efforts, and social media.

Community Facilitator, Santa Clara University Office of Residence Life 8/2012 - 6/2014  
Built a community with the residents through organized programs and every day interactions.

Senior Recreation Leader, City of Cupertino Parks and Recreation Department 6/2013- 12/2013  
Created a city-wide marketing campaign in schools to increase attendance at the Teen Center.

Marketing Intern, Santa Clara University Athletic Department 8/2012 - 3/2013  
Created and implemented marketing campaigns to increase student and alumni attendance at events.

## Education

University of San Francisco Spring 2018  
Master of Public Administration  
Emphasis in Program Management

Santa Clara University Spring 2015  
Bachelor of Sciences in Communication and Environmental Studies  
Emphasis in Environmental Public Policy

## Volunteer Leadership

Ice Hockey Coach, Saint Francis High School 2016-Present  
Outreach Volunteer, Community United San Jose 2015-Present  
Eagle Scout, Boy Scouts of America Troop 390 2004-2011

## Awards

Buck Bannan Leadership Scholar, Santa Clara University 2015  
Community Facilitator of the Year, Santa Clara University 2013

## APPLICATION

Submit to: Marshall Johnson, Traffic Engineering  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Tel: (408) 615-3023  
Fax: (408) 985-7936  
Email: MJohnson@santaclaraca.gov

(Any information provided will be public record)

Name: Elizabeth "Betsy" Megas

Address: Santa Clara 95050

Telephone: Work (\_\_\_\_)\_\_\_\_\_ Home(\_\_\_\_)\_\_\_\_\_

Email \_\_\_\_\_

Present employer: Arista Networks (Santa Clara 95054)

Job Title: Mechanical engineer

Please answer the following questions. If you need additional space, please attach additional sheets.

1. State reasons why you want to become a member of this Committee:

Please see additional sheets.

2. What specific objectives you would be working toward as a member of this Committee. Please see additional sheets.

3. Describe your bicycling history: \_\_\_\_\_  
Please see additional sheets.

4. Describe your community involvement:  
Please see additional sheets.

5. Special interests/hobbies/talents: Please see additional sheets.

6. Any other information that you feel would be useful to the Committee in reviewing your application\_\_\_\_\_

Please see additional sheets.

**1. State reasons why you want to become a member of this Committee.**

I never set out to become a bicycling, walking, or transit advocate. Rather, I tried to rely less on my car to move around the city where I live and work. I find the car-centric infrastructure and the culture are greater hindrances to car-free or car-light mobility, than anything under my own direct control, such as my physical fitness, attitude/motivation, or which bicycle I own.

I would like to apply my own experience bicycling and walking in and around the City of Santa Clara to make the city safer and more accessible for people of all ages and abilities, and to make bicycling and walking a more attractive and effective mode of transportation—not just something done occasionally for exercise, or an “alternative” for those who cannot or will not drive.

I also hope to help focus the bicycle and pedestrian committee on identifying and promoting efforts that will be both efficient and effective.

**2. What specific objectives you would be working toward as a member of this Committee?**

Our 2018 Bicycle Plan is a big improvement over the 2009 plan; our upcoming pedestrian and trails plan will be our first. However, our 2009 Bicycle Plan listed a number of streets that didn’t change, even though some of them got resurfaced and restriped in that decade.

I’d like to work with the BPAC along with consultants, staff, and council, to encourage the completion of the pedestrian and trail plans, and especially to implement the plans in a timely manner, with an emphasis on improving safety and connectivity. I hope to promote a future including Vision Zero (a stated goal to design and build for zero fatalities and major injuries on our roadways). I hope to see the plans implemented in the spirit of the city’s own complete streets policy and Climate Action Plan, and in keeping with 2016 Measure B complete streets requirements for paving maintenance.

At the same time, I see some opportunities we could start soon and complete quickly, with minimal cost and controversy, to improve bicycling in Santa Clara. The entire list of bicycle parking called out in the plan costs about the same as one car stall in a parking garage, and the vast majority is at parks, schools, and other public facilities. Why couldn’t it happen in the first year or two? I’d also like to work with the stadium traffic and safety teams to locate electronic signs so they don’t block bike lanes, or to mount signs on utility poles if there is no place to put trailers other than across a bicycle lane.

Promoting bicycling and walking requires more than safe infrastructure. It also requires a cultural shift. I’d like to see the BPAC become more active—and frankly, more creative—in programming, too. I’d like to see fun rides and walks start to happen around Santa Clara. The library has done a few tours of different branches. We could hold walking and bicycling tours either for practical, educational reasons (such as exploring options for a new and improved El Camino Real, or discovering and cataloging local nature) or for fun (such as touring public art or ice cream shops).

### **3. Describe your bicycling [and walking] history.**

- Bicycling without training wheels since third grade. (Never thought I'd put that on a resume!)
- Started bicycling across Santa Clara to attend high school in 10<sup>th</sup> grade, when the school bus to my neighborhood was canceled. Most streets haven't changed that much, but there's more traffic.
- Attended University of California, Davis, likely the most bicycle-friendly city and campus in California and perhaps in the U.S. Earned my B.S. before reluctantly getting my driver's license.
- Currently bicycling more than 3000 miles per year in and around Santa Clara, primarily for transportation. I've traveled most of the San Tomas Aquino Creek Trail nearly every weekday for the past 6 years to commute to my current job.
- Shop at Costco by bicycle, using a trailer and the Santa Clara Transit Center undercrossing.
- Walk to nearby destinations (farmer's market, library, parks, transit, recreation).
- Walk to transit when bicycling is not the best option (e.g. weather, darkness, distance).

### **4. Describe your community involvement.**

- Library Board of Trustees, City of Santa Clara, 2008-2016.
  - Suggested inserting a request slip into the cases of aging DVDs, so patrons could report those that skipped or failed to play, and staff could identify which to clean or replace.
  - Suggested placing some of the donated children's books from the library book sale, into waiting rooms throughout Kaiser Hospital. Over a thousand such books have since been sent.
  - Accepted the "Community Quarterback" award from the 49ers Foundation in 2016, including a \$1000 award to the library.
  - Referred a \$5000 grant opportunity to the Library Foundation, which they applied for and won.
- Member and volunteer of the Silicon Valley Bicycle Coalition since 2012.
  - Volunteer bicycle valet at Levi's Stadium events.
- Spoke and wrote on behalf of bicycling, walking, and transit in several South Bay cities, Santa Clara County (VTA), and to the State of California.
- Read and commented the City of Santa Clara's Bicycle Plan and Pedestrian Plan drafts end to end; contributed many suggestions in both map surveys. Familiar with the VTA 2018 Bicycle Plan.
- Regularly report maintenance requests via the MySantaClara app and (through their respective channels) to the Water District, County Roads, VTA, Caltrans, and neighboring cities.
- Volunteer adult literacy tutor, Read Santa Clara, ~2002-2010.
- Remove litter (time, hygiene, and safety permitting) when I'm walking or biking.

### **5. Special interests/hobbies/talents.**

- Volunteer writer, editor and administrator, Wiktionary (2003) and wikiHow (2006).
- Working to improve Santa Clara coverage in OpenStreetMap, with a focus on parks and sidewalks. Also extending trail imagery throughout Santa Clara County in Mapillary.
- Photographing local plants and animals, for identification in iNaturalist.

### **6. Any other information that you feel would be useful to the Committee in reviewing your application.**

Bicycling, walking, and riding public transit are themselves community involvement. Riding a recumbent bicycle gets people's attention, and along with answering questions and letting children try out the seat, I get to talk to people about bicycling and walking in the city. No matter how crowded the freeway gets, I've never met anyone new while traveling that way.

By far, the greatest barrier to bicycling for most people is safety. I hope to speak both for those who already walk and ride bicycles in Santa Clara, and for the many more who would bike or walk more if it were safer, more accessible, and more inviting to do so.

**APPLICATION**  
**BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE**  
**CITY OF SANTA CLARA**

Submit to: Marshall Johnson, Traffic Engineering  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Tel: (408) 615-3023  
Fax: (408) 985-7936  
Email: MJohnson@santaclaraca.gov

(Any information provided will be public record)

Name: Diane Harrison

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

Telephone: Work (\_\_\_\_) \_\_\_\_\_ Home (\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

Present employer: None -

Job Title: Retired

**Please answer the following questions. If you need additional space, please attach additional sheets.**

1. State reasons why you want to become a member of this Committee:

I want to continue to contribute to a positive cycling & walking experience for all, not only by attending the BPAC meetings, but by voting.

2. What specific objectives you would be working toward as a member of this Committee.

Pedestrian -> Bicycle -> Driver education from kindergarten on up. Bike lanes on ECR. Way-finding. Road/Trail interface problems on STACT.

Ensuring that newly adopted Bike Plan is not forgotten in future projects. Consideration of roundabouts. Reversal of black sand slurry pavement trend.

3. Describe your bicycling history: Utilitarian cyclist since 1975. Extensive touring in the 80's.

4. Describe your community involvement:

BPAC primarily.

5. Special interests/hobbies/talents: Bicycling

6. Any other information that you feel would be useful to the Committee in reviewing your application I feel that I have future agenda items and on-going projects, like way-finding, that I wish to continue to pursue.

**APPLICATION**  
**BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE**  
**CITY OF SANTA CLARA**

Submit to: Marshall Johnson, Traffic Engineering  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Tel: (408) 615-3023 Fax:(408) 985-7936  
Email: MJohnson@santaclaraca.gov

(Any information provided will be public record)

Name: Frank Kim

Address\*: , Santa Clara Telephone:

Work

Home

Email

Present employer: Google

Employer address\*: 1950 Charleston Rd., Mountain View

Job Title: Senior Software Engineer

Please answer the following questions. If you need additional space, please attach additional sheets.

1. State reasons why you want to become a member of this Committee:

I have been an avid biker for as long as I can remember. Whenever I can I have always commuted by bike. Right now I am commuting every morning 11+ miles to work.

It is important to me to help make biking safer and encourage others to bike. It is better for the environment, better for traffic, better for health and better for the community.

But I especially want to be a member of the Committee to help my children. Right now my sons ride to school. Unfortunately the ride to Santa Clara High School along Benton St. is not entirely safe. There are no bike lanes and at some points along the route the space for bike riders is quite narrow.

I want to help expedite the installation of bike lanes along all major routes to schools to safeguard the children as they commute to school.

2. What specific objectives you would be working toward as a member of this Committee:

My major objective would be to making the Santa Clara Bike Plan reality as soon as possible. Whether this means meeting with council members, members of the community, rallying support, helping with fundraising, etc. I will want to help.

3. Describe your bicycling history:

I have always enjoyed biking and have chosen to bike whenever I can, whether that's to school, work or church. I have since tried to encourage my whole family to bike and my two older boys now bike to school.

Unfortunately I have not succeeded in convincing my wife to bike but I understand her reluctance. Biking alongside cars is unappealing and I hope one day that people such as her will have many more options for biking in Santa Clara.

4. Describe your community involvement:

I have been a parent volunteer at Washington Open since my eldest started attending the school in 2010. One year ago I was the head volleyball coach for the Grade 5 boys and girls.

I am also a regular member of The River Church Community in San Jose.

5. Special interests/hobbies/talents: Basketball, programming

6. Any other information that you feel would be useful to the Committee in reviewing your application:

*\*Applicants must either be a resident of Santa Clara or work within Santa Clara.*

**APPLICATION BICYCLE AND PEDESTRIAN  
ADVISORY COMMITTEE CITY OF SANTA CLARA**

Submit to: Marshall Johnson, Traffic Engineering 1500  
Warburton Avenue Santa Clara, CA 95050 Tel: (408)  
615-3023 Fax:(408) 985-7936 Email:  
MJohnson@santaclaraca.gov

(Any information provided will be public record)

Name: MERCEDES MACK

Address\*:

Telephone: Work (\_\_\_\_)\_\_\_\_\_ Home

Present employer: CHILD ADVOCATES OF SILICON VALLEY

Employer address\*: 509 VALLEY WAY, MILPITAS, CA 95035

Job Title: EXECUTIVE ASSISTANT

**Please answer the following questions. If you need additional space, please attach additional sheets.**

1. State reasons why you want to become a member of this Committee:

I WANT TO BE INVOLVED MORE DEEPLY IN THE BICYCLE COMMUNITY AT THE CROSS-SECTION OF GOVERNMENT AND CYCLISTS. I CARE ABOUT MAKING SANTA CLARA A MORE RIDEABLE CITY. I HAVE BEEN A FULL TIME BICYCLE COMMUTER FOR OVER TWO YEARS-I DO NOT HAVE A CAR. I'VE COMMUTED ALL OVER THE SOUTH BAY AND PENINSULA. I HAVE FIRSTHAND EXPERIENCE, AS WELL AS OBSERVATIONAL KNOWLEDGE, OF THE BICYCLE EXPERIENCES OF FREQUENT AND RECREATIONAL USERS OF SANTA CLARA'S BIKE PATHWAYS.

2. What specific objectives you would be working toward as a member of this Committee:

I WILL WORK TOWARDS BEING AN EFFECTIVE, THOUGHTFUL AND VALUED MEMBER OF THE COMMITTEE THAT TAKES THEIR REPRESENTATION OF CYCLISTS SERIOUSLY. THAT BEING SAID, I DO HAVE A PARTICULAR INTEREST IN INCREASED COMMUNITY AWARENESS OF BICYCLE PATHWAYS/ROUTES, EXPANSION AND CONNECTIVITY OF ROUTES IN SANTA CLARA TO BIKEWAYS IN THE SOUTH BAY AND MAJOR PUBLIC

TRANSIT. GIVEN THE CURRENT MOMENT OF BART AND THE BETTER BIKEWAYS SYSTEM, THIS IS A GREAT TIME TO SERVE ON THE COMMITTEE.

3. Describe your bicycling history: I LEARNED TO BIKE WHEN I WAS YOUNG, BUT DID NOT BIKE REGULARLY UNTIL 2009. I AM ORIGINALLY FROM HAWAII, AND IT HAS NOT BECOME VERY CYCLING FRIENDLY UNTIL RECENTLY. IN 2009 I BOUGHT MY FIRST BIKE, AND WAS ACTIVELY INVOLVED IN THE CYCLING COMMUNITY IN SAN LUIS OBISPO, CA. SINCE THEN I HAVE CYCLED FOR COMMUTING, BIKED IN FUN RIDES, RACES, AND PLANNED/COMPLETED SEVERAL LONG DISTANCE RIDES. MOST RECENTLY I'VE STARTED MOUNTAIN BIKING AND BIKEPACKING-ADDING A DIFFERENT ELEMENT TO CYCLING AND I'M REALLY ENJOYING THAT!

4. Describe your community involvement: I VOLUNTEER WITH THE SILICON VALLEY BICYCLE COALITION, USUALLY FOR VARIOUS COMMUNITY RIDES. I HAVE SERVED AS A COURT APPOINTED SPECIAL ADVOCATE TO 2 SANTA CLARA FOSTER KIDS.

5. Special interests/hobbies/talents: BIRDWATCHING, BIKEPACKING, CLIMBING, WATERCOLOR

6. Any other information that you feel would be useful to the Committee in reviewing your application: I CARE DEEPLY ABOUT MAKING BIKEWAYS IN SANTA CLARA SAFER, MORE CONNECTED, AND A SYSTEM THAT GETS ME WHERE I WANT TO GO AS A COMMUTER OR A RECREATIONAL RIDER. I BELIEVE IN THE EFFICACY OF BPAC TO PROVIDE THOUGHTFUL CONSIDERATION IN MATTERS INVOLVING THE BIKEWAY SYSTEM. THIS ALSO SOUNDS LIKE IT WOULD BE A SUPER FUN AND REWARDING EXPERIENCE.

*\*Applicants must either be a resident of Santa Clara or work within Santa Clara.*

**APPLICATION**  
**BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE**  
**CITY OF SANTA CLARA**

Submit to: Marshall Johnson, Traffic Engineering  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Tel: (408) 615-3023 Fax: (408) 985-7936  
Email: MJohnson@santaclaraca.gov

(Any information provided will be public record)

Name: Yury Perzov

Address\*:

Telephone: Work ( ) \_\_\_\_\_ Home ( ) \_\_\_\_\_

Email \_\_\_\_\_

Present employer: \_\_\_\_\_ Adobe Inc. \_\_\_\_\_

Employer address\*: \_\_\_\_\_ 345 Park Ave, San Jose, CA 95110 \_\_\_\_\_

Job Title: \_\_\_\_\_ Solution Architect \_\_\_\_\_

**Please answer the following questions. If you need additional space, please attach additional sheets.**

1. State reasons why you want to become a member of this Committee:

I would like to advocate for more people to bike in Santa Clara, starting with the neighborhood schools. It would make biking to school safer, reduce traffic, help the environment and promote a healthy lifestyle.

2. What specific objectives you would be working toward as a member of this Committee:

I would like to work on getting more kids to bike to school in Santa Clara. I believe it would create a lifelong appreciation for biking from a young age. I would do this by organizing bike trains, setting up bike to school days and working with Adobe and other Bay Area tech companies to sponsor raffles to incentivize kids to ride to school. I think the approach has a good chance of succeeding, because it has a low barrier of entry, and ultimately frees up parents. Most live biking distance from their schools. It doesn't take much more time than going by car, it's a lot less stressful, and gets both parents and kids outside together.

3. Describe your bicycling history:

I learned to bike when I was three years old and biked most of my life. Except in the winter in Buffalo. I taught my kids to ride when they were three as well, my son rides to daycare every morning and my daughter to school.

4. Describe your community involvement:

I attended the Bicycle Plan community outreach events. I organized a bike train on my street. I volunteer at Sutter Elementary.

5. Special interests/hobbies/talents:

Biking, Photography, Latin Jazz, Travel, On2 Salsa

6. Any other information that you feel would be useful to the Committee in reviewing your application:

I lived in different cities in the Bay Area: Santa Clara, Sunnyvale, San Jose, and Mountain View and have an appreciation of how different city policies and the number of riders impact the experience. This is the third year of biking with my kids to their school and daycare, and I'm very motivated to make it easier and safer.

7. *\*Applicants must either be a resident of Santa Clara or work within Santa Clara.*



## Agenda Report

19-1296

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on Confirmation 0144 under NCPA Support Services Agreement for Efficiency Services Group, LLC to Provide the Commercial Refrigeration Direct Install Program

#### BACKGROUND

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

In order to expand its programs, Silicon Valley Power is utilizing the NCPA Support Services Agreement to provide additional energy efficiency programs. The Commercial Refrigeration Direct Install Program was previously offered to Silicon Valley Power customers, but the contract ended in January 2019. At that time, there was still significant potential for additional energy efficiency retrofits. In addition, new technologies have become available to further increase efficiency in commercial refrigeration, such as retrofit doors for open refrigeration cases. In order to determine the market potential for program enrollment if it were offered again, Efficiency Services Group, LLC contacted eligible customers who were previously unable to commit to participating in the program. This information was used to determine the program's energy savings potential and program budget.

#### DISCUSSION

The Commercial Refrigeration Direct Install Program delivers energy efficiency measures that reduce the energy consumption of businesses with refrigeration equipment through the installation of strip curtains, door closers, anti-sweat heater controls, electronically commutated motors, Q-sync motors, LED case and canopy lighting, and retrofit doors for open refrigeration cases. Under this program, Efficiency Services Group, LLC will assist customers in identifying energy savings opportunities in their refrigeration equipment and will install the measures approved by the customers. Customers will pay a 30% co-pay for all installed measures and the remaining 70% of the cost will be covered under the program. This program is anticipated to achieve an additional 2.3 million kWh in first year energy savings.

#### ENVIRONMENTAL REVIEW

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

**FISCAL IMPACT**

The total cost of Confirmation Number 0144 under NCPA Support Services Agreement for Efficiency Services Group, LLC to provide the Commercial Refrigeration Direct Install Program will not exceed \$815,000 through the contract end date of June 30, 2021. Sufficient funds in FY 2019/2020 and FY 2020/21 are available in the Electric Department's Public Benefits Program operating materials, services, and supplies adopted 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**

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

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Confirmation 0144 Under the NCPA Support Services Program Agreement

## **CONFIRMATION UNDER THE NCPA SUPPORT SERVICES PROGRAM AGREEMENT**

1. This is a Confirmation pursuant to the Support Services Program Agreement and subject to the terms and conditions of that agreement, except as expressly provided in this Confirmation. All capitalized terms have the meaning given to them in the Support Services Program Agreement.

2. The Participating Member for this Confirmation is the CITY OF SANTA CLARA in the amount of not-to-exceed \$811,158.97 for the Efficiency Services Group, LLC services described in paragraph 3.

3. CITY OF SANTA CLARA requests the following described Support Services in the dollar amount specified above, as follows:

Efficiency Services Group, LLC (ESG) shall provide its “Keep Your Cool” Commercial Refrigeration Direct Install Program as designed to meet the goals and objectives of the City of Santa Clara/Silicon Valley Power to help commercial business owners save a significant amount of energy. The Program includes Customer Recruitment, Site Audit Report, Project Logistics, Retrofit Installations, Quality Assurance/Quality Control, Program Metrics and Measures, Budget Tracking and Invoicing, Contractor Management, and related Tasks, as specifically outlined in its proposal dated September 6, 2019, copy attached and incorporated herein. The services shall commence in FY 2020 and continue through FY 2021.

Pursuant to the Shared Services Agreement between NCPA and the Southern California Public Power Authority (SCPPA), NCPA agrees to provide the support services in accordance with the Goods and Services Agreement between Southern California Public Power Authority and Efficiency Services Group, LLC dated July 19, 2018, and the Task Order executed among SCPPA, NCPA, and ESG for these services.

4. The Participating Member executing this Confirmation agrees to pay for the Support Services in the not to exceed amount specified in paragraph 2, above; plus the Administrative Cost of not-to-exceed \$3,655 (\$685 to develop the Confirmation and first month of administration plus \$165 per month for each additional month administrative costs are actually incurred), in accordance with the provisions of the Support Services Program Agreement. The total amount expended under this Confirmation will not exceed \$814,813.97.

5. A Security Account deposit is not required for this Confirmation.

Participating Member:

CITY OF SANTA CLARA  
By its Designated Representatives:

NORTHERN CALIFORNIA POWER AGENCY

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Deanna J. Santana, City Manager

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Randy S. Howard, General Manager

And

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Brian Doyle, City Attorney

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Cary A. Padgett, Assistant Secretary to Commission

Approved as to form:

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Jane E. Luckhardt, NCPA General Counsel



## **COMMERCIAL REFRIGERATION DIRECT INSTALL PROGRAM**

**Submitted by Efficiency Services Group, LLC**

**Mark Gosvener  
Chief Operating Officer  
5605 NE Elam Young Parkway  
Hillsboro, OR 97124  
(888) 883-9879 Toll-Free  
(503) 718-3733 Phone  
(503) 344-6942 Fax  
[markg@esgroupllc.com](mailto:markg@esgroupllc.com)**

Submitted in Accordance with  
City of Santa Clara, DBA Silicon Valley Power

**REQUEST FOR PROPOSAL  
FOR  
Third Party Energy Efficiency Programs**

September 6, 2019

## Program Description

The goal of the Commercial Refrigeration Direct Install Program is to help commercial customers of Silicon Valley Power (SVP) save energy by providing low-risk, high-return refrigeration upgrade measures. The program is marketed under the name Keep Your Cool (KYC). ESG and our program partner have effectively delivered this program in over ten utility service territories throughout California and have successfully completed thousands of refrigeration upgrade projects over the last six years.

### Overview

The KYC program has proven to be a very popular program with the utility customers that have been served in the past and is currently operating with high customer satisfaction.

ESG believes that offering this program will provide the opportunity for SVP to:

- Strengthen their customer relationships by providing a great customer experience in the program
- Afford significant energy and cost savings to targeted customers
- Contribute savings toward AB2021 targets

The success of the program requires the effective implementation of four strategies:

- 1) Selection of a comprehensive mix of measures to address the upgrade opportunities identified at customer sites.
- 2) Identifying eligible customers with the need for refrigeration upgrades, and effectively presenting the program to them and securing their participation.
- 3) Installations by professional and experienced field technicians.
- 4) Complete and accurate invoicing and reporting of all program activity to SVP.

The KYC program is designed to perform well in all phases of the program.

### Mix of Measures

The KYC program began several years ago by offering gaskets, strip curtains and door closers. Over the years, additional measures have been added to program. ESG proposes that SVPs program include the following measures:

- Strip Curtains
- Door Closers
- Anti-Sweat Heater (ASH) controls
- Electronically Commutated Motors (ECM)
- Q-Sync Motors
- Motor Controllers
- LED Case Lighting
- LED Canopy Lighting
- LED T8 Lamps in horizontal cases
- Retrofit Doors for Open Cases

## Measure Descriptions

### Strip Curtains

Walk-in cooler and freezer doors often stand open for extended periods of time while product is being moved in and out. Strip curtains are installed in walk-in cooler and freezer doors and substantially reduce the amount of warm air entering the coolers during stocking.

### Door Closers

The door latches on walk-in cooler and freezer doors often do not fully hold the door closed. Door closers hold the doors snugly closed, reducing the amount of warm air entering the cooled areas.

### Anti-Sweat Heater (ASH) Controls

Reach-in cooler doors have heaters in the frames that turn on each time they are opened to clear the frost that appears from humidity condensing on the glass. This is to prevent frost/condensation from hindering the view of the product. ASH controllers sense the humidity in the air and override the door-frame heaters from coming on when humidity levels are low.

### Electronically Commutated Motors (ECM)

ECMs are electronic, lower wattage, variable speed capable motors that replace standard, shaded pole motors on evaporator fan motors.

### Q-Sync Motors

The Q-sync motor is a permanent magnet, synchronous AC motor (PMSM). The design is inherently more energy efficient than all current motor technologies, including electronically commutated, due to a number of design improvements. It operates at a higher power factor than ECM, utilizes AC power, eliminating an inefficiency as well as electronics which in turn improves the reliability. Because of the simplified design the cost is similar to existing EC motors on the market. As a result, it is not only possible to realize greater gains when replace shaded-pole and PSC motors, but it is cost-effective to upgrade aging EC motors with PMSM technology. The Emerging Technologies Coordinating Council has recommended in project report ET15SDG1061 that these motors be integrated into incentive programs. The Dept. of Energy has also funded studies showing reliable energy savings moving from EC to PMSM technology.

### Motor Controllers

Motor controllers sense the outdoor temperature and reduce the RPMs of the ECMs on cooler days when cooling loads are lighter. By operating at lower RPMs, motor controllers provide additional savings over and above the wattage reduction achieved by the ECMs.

### LED Case Lighting

LED case lights replace fluorescent T12s and T8s in reach-in coolers. Many customers feel that LED case lights improve the look of product being displayed. This is the most visible measure to the customers and is therefore one of the most popular measures.

### LED Canopy Lighting

LED canopy lights replace HID lights in the canopies over gas station pumps. This measure is usually installed in conjunction with other KYC measures installed in gas station food marts.

#### LED T8 Lamps in horizontal cases

LED T8 lamps can easily replace horizontal fluorescent T8 lamps in meat, produce and dairy cases in grocery stores. T8 LEDs can be installed on the first visit to customer site or installed at the same time as other KYC measures are being installed at a customer site.

#### Retrofit Doors for Open Cases

Adding doors to open medium temperature refrigerated cases significantly reduces energy use. Retrofit doors installed in this program will not have anti-sweat heaters.

### **Subscribing the Program**

In 2017 and 2018, ESG provided the KYC program for SVPs small to mid-sized commercial customers. While in the service territory, we discovered that many customers have already upgraded their equipment. However, some larger customers still had opportunity. In addition to first-hand experience with SVPs commercial customers, ESG will employ the successful targeting/subscribing strategies used in other utility service territories. These may include sending postcards announcing the program and visiting customer sites to present the program to prospective customers. The following customer types will be targeted in the KYC program:

- Restaurants
- Food Marts
- Liquor Stores
- Grocery Stores
- Schools and other institutions with commercial kitchens
- Florists

### **Professional Installations**

All installations in the KYC Program will be performed by experienced technicians with an emphasis on a great customer experience in the program.

### **Customer Satisfaction**

ESG assures that any customer questions or concerns are addressed and resolved before closing the project and invoicing SVP. ESG and our program partner understand the importance of emphasizing with the customer that the program is coming from SVP and using the program experience to help SVP build/strengthen their relationships with their customers.

### **Reporting and Invoicing**

ESG thoroughly understands the CEC reporting requirements for utility energy efficiency programs. Because of this, ESG can generate complete and accurate activity report and invoice formats that make it easy for SVP

to track budgets, program expenses, and report program results to the State. ESG will prepare monthly activity reports and invoices as required by SVP.

### **Turnkey Administration**

ESG will provide complete turnkey program administration, including:

- Program development (product selection, marketing materials, customer outreach)
- Customer service/support
- Measure installation
- Warranty fulfillment
- Reporting/invoicing
- CEC compliance support

### **Program Targets**

This program is designed to target any customers with commercial refrigeration. SVP's service territory contains approximately the following number of potential commercial accounts which could take advantage of the measures included in this program:

| Type                 | Estimated kWh by Business Type |
|----------------------|--------------------------------|
| Restaurants          | 20,181                         |
| Bars                 | 257,382                        |
| Liquor Retail        | 149,341                        |
| Florists             | 13,842                         |
| Hotels               | 32,034                         |
| Education            | 11,923                         |
| Small/Medium Grocery | 1,281,348                      |
| Supermarket          | 1,010,261                      |
| <b>Totals</b>        | <b>2,776,312</b>               |

### **Incentive Structure**

In order to achieve SVP's cost effectiveness goals, the program measures be will be offered at a 30% co-pay to customers. SVP will pay 70% of the measure cost and the administrative fee. The incentive structure is based on per unit pricing for installed measures. SVP is only charged for measures installed, which guarantees that reportable energy savings are associated with all program costs. The following table reflects the 70% measure cost plus administrative fees and does not include the customer co-pay.

| Measure  | Cost Unit   | Per Unit Cost to SVP |
|--|-------------|----------------------|
| ASH Controller: Coolers                          | door        | \$147.92             |
| ASH Controller: Freezers                         | door        | \$230.52             |
| Auto Door Closer: Reach-In, Cooler               | closer      | \$114.48             |
| Auto Door Closer: Reach-In, Freezer              | closer      | \$114.48             |
| Auto Door Closer: Walk-In, Cooler                | closer      | \$150.62             |
| Auto Door Closer: Walk-In, Freezer               | closer      | \$150.62             |
| ECM Motor Controller                             | controller  | \$897.55             |
| Horizontal Case Lights                           | linear feet | \$7.27               |
| LED Canopy Light                                 | fixture     | \$560.88             |
| LED Case Light                                   | fixture     | \$259.19             |
| Programmable EC Motor (3/4 HP, 5.6A)             | motor       | \$485.61             |
| Programmable EC Motor (1/2 HP, 4.0A)             | motor       | \$464.97             |
| Programmable EC Motor (1/3 HP, 2.6A)             | motor       | \$399.91             |
| Programmable EC Motor (1/15 HP, 1.8A)            | motor       | \$221.64             |
| Programmable EC Motor (1/47 HP, 1.1A), 16W       | motor       | \$180.35             |
| Programmable EC Motor (1/5 HP, 3.2A)             | motor       | \$392.68             |
| Q Sync Motor (1/15 HP), replacing Standard Motor | motor       | \$221.64             |
| Q Sync Motor (1/15 HP), replacing EC Motor       | motor       | \$221.64             |
| Q Sync Motor (1/47 HP), replacing Standard Motor | motor       | \$180.35             |
| Q Sync Motor (1/47 HP), replacing EC Motor       | motor       | \$180.35             |
| Retrofit Doors for Open Cases                    | linear feet | \$377.00             |
| Strip Curtain: Walk-in                           | square feet | \$9.47               |

### Program Budget

The KYC program fees are on a price per measure basis. All program costs, including program development, program administration, marketing, measure installation, and customer follow-up are covered in the fees for measures installed. This model allows SVP to only pay for measures that are installed and allows SVP to scale the program budget up or down as needed.

A Program not to exceed budget of \$815,000 is expected to serve approximately 15 to 30 businesses. The actual number of customers served will be determined by the size of the customers that ultimately participate. The projected quantities and budget by measure are as follows:

| Measure  | Cost Unit   | Per Unit Cost to SVP | Estimated Units | Estimated Cost to SVP |
|--|-------------|----------------------|-----------------|-----------------------|
| ASH Controller: Coolers                          | door        | \$147.92             | 582             | \$86,092.07           |
| ASH Controller: Freezers                         | door        | \$230.52             | 25              | \$5,763.07            |
| Auto Door Closer: Reach-In, Cooler               | closer      | \$114.48             | 15              | \$1,717.22            |
| Auto Door Closer: Reach-In, Freezer              | closer      | \$114.48             | 10              | \$1,144.82            |
| Auto Door Closer: Walk-In, Cooler                | closer      | \$150.62             | 12              | \$1,807.45            |
| Auto Door Closer: Walk-In, Freezer               | closer      | \$150.62             | 10              | \$1,506.21            |
| ECM Motor Controller                             | controller  | \$897.55             | 22              | \$19,746.08           |
| Horizontal Case Lights                           | linear feet | \$7.27               | 956             | \$6,946.94            |
| LED Canopy Light                                 | fixture     | \$560.88             | 10              | \$5,608.75            |
| LED Case Light                                   | fixture     | \$259.19             | 311             | \$80,477.72           |
| Programmable EC Motor (3/4 HP, 5.6A)             | motor       | \$485.61             | 25              | \$12,140.37           |
| Programmable EC Motor (1/2 HP, 4.0A)             | motor       | \$464.97             | 25              | \$11,624.18           |
| Programmable EC Motor (1/3 HP, 2.6A)             | motor       | \$399.91             | 25              | \$9,997.86            |
| Programmable EC Motor (1/15 HP, 1.8A)            | motor       | \$221.64             | 543             | \$120,350.54          |
| Programmable EC Motor (1/47 HP, 1.1A), 16W       | motor       | \$180.35             | 543             | \$97,927.47           |
| Programmable EC Motor (1/5 HP, 3.2A)             | motor       | \$392.68             | 25              | \$9,816.99            |
| Q Sync Motor (1/15 HP), replacing Standard Motor | motor       | \$221.64             | 35              | \$7,757.40            |
| Q Sync Motor (1/15 HP), replacing EC Motor       | motor       | \$221.64             | 35              | \$7,757.40            |
| Q Sync Motor (1/47 HP), replacing Standard Motor | motor       | \$180.35             | 35              | \$6,312.08            |
| Q Sync Motor (1/47 HP), replacing EC Motor       | motor       | \$180.35             | 35              | \$6,312.08            |
| Retrofit Doors for Open Cases                    | linear feet | \$377.00             | 800             | \$301,600.00          |
| Strip Curtain: Walk-in                           | square feet | \$9.47               | 924             | \$8,752.24            |
| <b>Total</b>                                     |             |                      |                 | <b>\$811,158.97</b>   |

### Term

This program will begin upon contract approval until program and end on June 30, 2021.

### Program Strategy/Avoiding Lost Opportunities

This program is a completely turnkey offer. The KYC Program has a proven success in gaining access to customer businesses by going door-to-door and by making several callbacks if needed to assure the customer has multiple interactions with the program and lost opportunities are minimized. ESG's knowledge of SVP's

service territory and commercial customers will allow us to effectively target and approach customers, present the program, and persuade them to participate.

### **Program Objectives**

Program objectives include:

Objective #1: Employ effective marketing/sales strategies to persuade customers to participate in the program

Objective #2: Fully utilize the budget allocated to the program

Objective #3: Maintain a 100% customer satisfaction rate

### **Program Metrics**

The proposed metrics for this program include but are not limited to, the following:

- # of business subscribed
- # of measures installed
- Amount of program budget utilized
- Mix of measures installed
- Customer satisfaction

All program metrics will be tracked on a monthly and program-to-date basis. Metrics will be generated by site audit data detailing measure upgrade opportunities, verified measures installed, and customer satisfaction. Activity reports will include a budget tracker to show how much of the program budget has been utilized and the amount of remaining program budget.

### **Program Implementation**

ESG anticipates that program development tasks will be completed within 30 days of notice to proceed from SVP. These tasks include, but are not limited to:

- Working with SVP to finalize the program mix of measures
- Preparation of reporting and invoicing templates
- Prepare target list of customers to be approached
- Preparation of introduction letter from SVP and other program promotional materials

The term for the program is two years. If SVP allocates more or less funding to the program, the program delivery timeline will be adjusted accordingly.

### **Program Development**

#### Task: Finalize Customer Eligibility

All SVP customers with commercial refrigeration equipment are eligible to participate. ESG and SVP will work together to verify that customer's electricity is provided by SVP.

#### Task: ESG and Staff Training

ESG will train the marketing, administrative and installation staff on the specifics of the SVP program and protocols.

#### Task: Marketing Materials

ESG will update marketing materials (program flyers, utility letters, door hangers, post cards etc.) from the previous program. ESG will obtain SVP's approval of all collateral prior to distribution. SVP will provide ESG with any leave-behind materials which are intended to promote other SVP programs/services.

#### Task: Customer Outreach

ESG has found that employing a door-to-door outreach approach is very successful for this type of program. ESG will prepare a list of customers to be approached in the program that will allow us to market the program in an efficient and effective way. ESG understands the sensitivity of customer information and will assure it is only used in the context of delivering the services approved for this program.

ESG may request that SVP mail a utility-endorsed letter to customers in the targeted geographic area(s) or on the targeted customer list in order to announce the program and "warm up the doors" for the KYC marketing staff.

### **Program Delivery**

#### Task: Customer Service/Support

The KYC Program will have a local phone number for customers to call with general inquiries and to schedule appointments for site visits. This number will connect customers directly to program staff that can answer questions about the program and put them in a queue for an on-site visit by program subscription staff. ESG also staffs a toll-free program hotline for multiple utility programs which can be used for customer service/support at the request of SVP. This assures that SVP customers will always be able to get in touch with KYC program staff.

#### Task: Refrigeration Audits

The KYC subscription staff will visit customer sites to present the program and sign them up to participate. The following are the objectives for the site visit.

- Identify the decision maker and present the program to them.
- Gain permission to perform a refrigeration audit.
- Evaluate refrigeration equipment and identify energy upgrade opportunities.
- Prepare a customer project proposal including a work order itemizing measures, customer signature documents.
- Forward work order and signature documents to program administrative staff.
- Persuade customer to participate and have them sign signature documents.

#### Task: Measure Installation

The KYC installation staff will perform the following when installing KYC measures.

- Order product necessary to complete the project.
- Contact customer to schedule the installation appointment.
- Install all measures and assure they are functioning correctly before completing the project.
- Get customer signature on completion documents.
- Notify ESG that project is complete.

#### Task: Warranty Fulfillment

Technicians engage in a walk-through process with customers prior to job close, ensuring customer is fully satisfied and all issues are resolved at project completion. Customers also have unlimited access to ongoing technical support after project completion in order to address issues with equipment performance that arises after post inspection. KYC answers calls from Participants during normal business hours. During non-business hours, Participants are encouraged to leave a message for an on-call technician who can expedite a return call. Steps taken for issue resolution are first a phone troubleshoot, warranty on-site troubleshoot if needed, and finally warranty product replacement if needed. Measures installed under the KYC program have a minimum 1year warranty from date of installation (parts and labor). Warranty periods for KYC Measures are:

| MEASURE         | PARTS WARRANTY | INSTALLATION WARRANTY |
|-----------------|----------------|-----------------------|
| Q SYNC MOTORS   | 2 Year         | 1 Year                |
| STRIP CURTAINS  | 1 Year         | 1 Year                |
| HARDWARE        | 1 Year         | 1 Year                |
| ECMs            | 2 Years        | 1 Year                |
| MOTOR CONTROLS  | 5 Years        | 1 Year                |
| LED CASE LIGHTS | 1 Year         | 1 Year                |
| ASH CONTROLS    | 1 Year         | 1 Year                |
| LED LIGHTS      | 50,000 Hours   | 1 Year                |

#### Task: Reporting/Invoicing

Detailed customer, site and measure installation data will be reported to SVP in Excel spreadsheet format. All reports will be submitted to SVP on a monthly basis, along with the monthly invoice for work completed. Reports will include all customers served, and detailed information regarding measures installed at each customer site.

#### Task: CEC Compliance Support

ESG will maintain the documentation necessary to support SVP's reporting requirements (SB 1037, EM&V) for no less than five years.

#### **Payment Schedule**

All program costs will be paid on a per-unit-installed basis. Per-unit prices include all costs associated with program development, program implementation, administration and marketing/outreach of the program. ESG shall bear the time and material costs associated with program development tasks and recover those costs upon successful installation of measures (via the per-unit prices); there is no risk of SVP incurring costs with no associated energy savings.

ESG will submit invoices to SVP monthly, accompanied by detailed reports on work performed by customer/business.

In the event that an invoice error is identified by SVP, a corrected invoice will be submitted by ESG within five business days of receiving notification from SVP.

### Customer Interface

ESG will employ the same successful recruitment strategy utilized in delivering this program for numerous utilities. Effective recruitment of program participants begins with the coordination of effort between ESG and SVP. Target customer lists will be generated based on the results of ESGs snapshot audit program and the marketing efforts of previous refrigeration programs in SVPs service territory. ESG is recommending that eligibility for the program be any SVP commercial customer that uses refrigeration in their business that can be addressed with the KYC measures.

The KYC program has been successfully subscribed utilizing a cold-call approach. However, the KYC subscription staff has the most success when the doors have been “warmed up” for them. For example, a post card describing the program, or a utility-endorsed letter can be sent to customers that are located in the targeted geographic area(s). Following this initial contact, the KYC subscription staff will be deployed to follow-up with customers in the target area(s). If the subscription staff is unable to gain access to a customer site, leave-behind materials will be provided and will include information for the customer to schedule a future visit.

### Subcontractor

ESG will serve as the program administrator for the Keep Your Cool Program. In addition, ESG has one partner we plan to have help in the implementation of the program. ESG has had a relationship with this partner for several years and have successfully delivered utility programs with both. Our program partner is:

Redwood Energy Services, PO Box 7072, Menlo Park CA 94026

**Efficiency Services Group** key program personnel include:

**Mark Gosvener, COO** – Contract related issues and general oversight of the program.

**Miranda Boutelle, Program Manager** – Program administration, coordination with General Pacific, reporting, invoicing, main point of contact for SVP.

ESG program administration responsibilities include:

- Communication with SVP. ESG will serve as SVP’s point of contact for anything related to the Residential Program.
- Coordinating all program development tasks for program partners
- Activity reporting and invoicing
- Budget tracking
- Customer follow-up visits and measure verification

**Redwood Energy Services** key personnel:

**John Pink** is the program representative from Redwood Energy Services. John will coordinate with ESG regarding program subscription activities and will oversee all aspects of measure installation. Tasks will:

- Initial customer outreach and program subscription activities
- Ordering product to be installed at customer sites
- Measure installation
- Submitting project paperwork to ESG

### **Quality Assurance and Measure Verification Activities**

Projects will not be closed until customers have indicated satisfaction with all services provided and they have signed the Project Completion Form.

### **Customer Complaint Resolution**

Customer complaints are dealt with on a case-by-case basis depending on the specific needs of the customer. Customers may call ESG directly on our toll-free line or contact Redwood Energy Services directly. Phone numbers will be listed in program marketing materials, and on a door tag attached to each door that is serviced in the program. Customer complaints are considered urgent and receive an immediate call-back from a KYC representative. Every effort is made to resolve the customer complaint completely and promptly.

When ESG performs the follow-up site visit, the customer is asked if they have any questions or concerns. Any concerns or complaints are forwarded via email to the KYC representative responsible for its resolution, and the responsible person is required to send an email reply that the complaint has been resolved and the customer is completely satisfied.

### **Marketing Activities**

Experience has shown that customer response to the program is significantly improved by endorsement from their utility. This can be accomplished by SVP mailing a letter to a targeted list of customers prior to the deployment of the KYC subscription staff. Field staff will have a copy of the utility endorsement or reference it when they approach businesses.

ESG will coordinate with SVP to determine which promotional materials will be used in the program and produce custom marketing materials for SVP's program. These materials may include, but are not limited to:

- Utility letter
- Postcards
- Door Hangers
- Product Information Sheets
- Warranty Flyers

ESG has experienced tremendous success accessing customer facilities and securing their participation. Customers typically display a positive response to an unscheduled visit because the subscription staff represent a known entity (SVP).

### Savings Estimate per Item

| Measure  | Estimated Units | Estimated kWh | Estimated kW | Source   |
|--|-----------------|---------------|--------------|--|
| ASH Controller: Coolers                          | 582             | 217,668       | 25.608       | TRM (version 6.9.16)   |
| ASH Controller: Freezers                         | 25              | 13,900        | 0.025        | TRM (version 6.9.16)   |
| Auto Door Closer: Reach-In, Cooler               | 15              | 5,970         | 1.125        | PGECOREF113 R1 Auto Closers for Reach in Cooler or Freezer Doors.doc |
| Auto Door Closer: Reach-In, Freezer              | 10              | 12,050        | 2.27         | PGECOREF113 R1 Auto Closers for Reach in Cooler or Freezer Doors.doc |
| Auto Door Closer: Walk-In, Cooler                | 12              | 11,772        | 1.716        | TRM (version 6.9.16)   |
| Auto Door Closer: Walk-In, Freezer               | 10              | 23,650        | 3.63         | TRM (version 6.9.16)   |
| ECM Motor Controller                             | 22              | 69,344        | 7.92         | TRM (version 6.9.16) average of measures/custom calculation          |
| Horizontal Case Lights                           | 956             | 55,448        | 9.56         | TRM (version 6.9.16)/custom calculation                              |
| LED Canopy Light                                 | 10              | 11,620        | 0            | TRM (version 6.9.16)/custom calculation                              |
| LED Case Light                                   | 311             | 230,702       | 31.671       | TRM (version 6.9.16) average of measures/custom calculation          |
| Programmable EC Motor (3/4 HP, 5.6A)             | 25              | 69,550        | 7.95         | TRM (version 6.9.16)/custom calculation                              |
| Programmable EC Motor (1/2 HP, 4.0A)             | 25              | 63,950        | 7.3          | TRM (version 6.9.16)/custom calculation                              |
| Programmable EC Motor (1/3 HP, 2.6A)             | 25              | 49,850        | 5.7          | TRM (version 6.9.16)/custom calculation                              |
| Programmable EC Motor (1/15 HP, 1.8A)            | 543             | 577,752       | 65.703       | TRM (version 6.9.16)/custom calculation                              |
| Programmable EC Motor (1/47 HP, 1.1A), 16W       | 543             | 221,544       | 25.521       | TRM (version 6.9.16)/custom calculation                              |
| Programmable EC Motor (1/5 HP, 3.2A)             | 25              | 35,225        | 4.025        | TRM (version 6.9.16)/custom calculation                              |
| Q Sync Motor (1/15 HP), replacing Standard Motor | 35              | 52,220        | 5.964        | TRM, PGE3PREF123, published values                                   |
| Q Sync Motor (1/15 HP), replacing EC Motor       | 35              | 15,260        | 1.7395       | TRM, PGE3PREF123, published values                                   |
| Q Sync Motor (1/47 HP), replacing Standard Motor | 35              | 23,275        | 2.6565       | TRM, PGE3PREF123, published values                                   |
| Q Sync Motor (1/47 HP), replacing EC Motor       | 35              | 4,970         | 0.567        | ETCC Project ID ET15SDG1061, TRM and PGE3PREF123                     |

|                                |     |                  |                |  |
|--------------------------------|-----|------------------|----------------|--|
| Retrofit Doors with Open Cases | 800 | 407,840          | .0608          | SCE13RN027.0 Add Door to Low and Medium Temp Display Cases |
| Strip Curtain: Walk-in         | 924 | 134,904          | 5.544          | TRM (version 6.9.16) 80% Cooler, 20% Freezer               |
| <b>Totals</b>                  |     | <b>2,308,464</b> | <b>264.835</b> |  |

### Measurement and Verification of Savings Discussion

Technical Reference Manual (TRM) values were used to estimate all measures that were listed in the TRM. Sources for measures not listed in the TRM are identified in the table above. Custom savings calculators will determine the savings for all motors, motor controllers, and lighting measures.



## Agenda Report

19-1382

Agenda Date: 12/3/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

Action on Councilmember Watanabe's Request Related to Airport Noise Monitoring

#### **BACKGROUND**

On November 18, 2019, Councilmember Watanabe (Attachment 1) sent an email to the City Manager and Assistant City Manager requesting an item be placed on the next City Council agenda related to the relocation of one of the four noise monitors.

Per Council Policy 30, Adding an Item to an Agenda (Attachment 2), the Mayor or any individual Council Member may submit a written request to the City Manager's Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet. It is worth noting that the City Council Policy does not require a staff report on the matter, rather the request for it to be added for future consideration.

#### **ENVIRONMENTAL REVIEW**

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

#### **FISCAL IMPACT**

There is no fiscal impact other than staff time for preparing this report. Depending on Council action, a fiscal impact will be determined in the future.

#### **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**

Staff makes no recommendation.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager

#### **ATTACHMENTS**

1. Email from Councilmember Watanabe
2. Council Policy 30, Adding an Item on the Agenda

## Simrat Dhadli

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**Subject:** RE: Noise Monitor Location

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**From:** Kathy Watanabe <[KWatanabe@SantaClaraCA.gov](mailto:KWatanabe@SantaClaraCA.gov)>  
**Sent:** Thursday, November 21, 2019 10:17 AM  
**To:** Nora Pimentel <[NPimentel@SantaClaraCA.gov](mailto:NPimentel@SantaClaraCA.gov)>  
**Cc:** Deanna Santana <[DSantana@SantaClaraCA.gov](mailto:DSantana@SantaClaraCA.gov)>; Lisa Gillmor <[LGillmor@SantaClaraCA.gov](mailto:LGillmor@SantaClaraCA.gov)>  
**Subject:** Noise Monitor Location

Good morning, Nora,

Please see my email below. I am submitting my request to be added to the next Council agenda.

Thank you,

Kathy

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**From:** Kathy Watanabe <[KWatanabe@SantaClaraCA.gov](mailto:KWatanabe@SantaClaraCA.gov)>  
**Sent:** Monday, November 18, 2019 6:57 PM  
**To:** Deanna Santana  
**Cc:** Manuel Pineda; Lisa Gillmor  
**Subject:** Noise Monitor Location

Hi Deanna and Manuel,

I would like to make a suggestion about relocating one of the four noise monitors in an effort to save City money but at the same time place a very important instrument in a location that is impacted by airplane noise.

I have spoken to residents in the Los Arboles neighborhood and they are not as impacted by stadium noise. If you look at the data, you will see they aren't as impacted by airplane noise either.

There are no noise monitors across Montague Expressway in the flight takeoff path that impacts many residents in that area starting at 6:20 AM (yes, this is before the official curfew of 6:30 AM and I have been filing noise complaints each time I hear this plane takeoff). I will be meeting with residents in that area at 6 AM this week along with District Director, Tom Pyke, from Rep. Ro Khanna's office in an effort to hear firsthand what residents are hearing. Based on what we have heard from residents, I would like to propose that the Los Arboles noise monitor be moved to the other side of Montague Expressway.

I will follow-up with you after the meeting. I hope the possibility of moving that noise monitor is something that can be accomplished soon.

Thank you in advance,

Kathy Watanabe

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## **ADDING AN ITEM ON THE AGENDA**

### **PURPOSE**

To establish a clear, effective and easily understood process for members of the City Council and the public to have items within the jurisdiction of the City Council, placed on the City Council agenda for consideration.

### **POLICY**

#### **Members of the City Council:**

1. The Mayor or any individual Council Member may submit a written request to the City Manager's Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet.

#### **Referral from a Council Committee:**

1. Council Committees may submit a written request to the City Manager's Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet.
2. Council Committees may bring forward a recommendation to the full City Council by way of the Committee Minutes, which are typically prepared within three weeks following the Committee meeting.

#### **Items Referred During a Council Meeting:**

By Council consensus, an item may be referred to the City Manager for inclusion on a City Council agenda. If the request requires further study of the item from staff, a full analysis shall be prepared at the direction of the City Manager with at least thirty (30) calendar days prior to the meeting, unless otherwise directed by the City Council. If the request requires more than thirty (30) calendar days to prepare, status updates will be provided to the Council every sixty (60) days as an informational memo.

## ADDING AN ITEM ON THE AGENDA (cont.)

### Written Petitions and Public Presentations:

1. Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the City Council to be heard under the "Written Petition" section of the City Council's regular agenda within two (2) Council meetings after received. After the initial Written Petition is placed on the agenda, a simple majority vote of the Council may add the item to a future Council meeting for action.
2. Any member of the public may address the City Council under the "Public Presentations" section of the agenda. If the presentation includes a request of the Council, the Mayor or a consensus of the City Council may refer the item to the City Manager to be properly agendized at a future meeting, in compliance with The Brown Act.

### **PROCEDURE FOR WRITTEN PETITIONS**

All requests to address the City Council shall be submitted in writing. Written Petition forms are available for the petitioner's convenience on the City's website and in the City Manager's Office, City Clerk's Office and the Mayor and Council Offices. Alternatively, an email may be submitted to [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov).

Once the Written Petition is received by the City Clerk's Office, it should immediately be forwarded to the City Manager for placement on an agenda within two (2) Council meetings after receipt of the original request from the City Clerk's Office. All written material (request and support material) will be submitted on the agenda in the form substantially provided by the requester without any staff analysis, including fiscal review, legal review and policy review, until the City Council has had the opportunity to provide direction to the City Manager.

At the meeting where the item is first considered, if a simple majority of the City Council supports further study of the item, then a full staff analysis shall be prepared within thirty (30) days, unless otherwise directed by the City Council.



## Agenda Report

19-806

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing: Action on a Successor Agreement with Recology South Bay, dba Recology Santa Clara for Residential Curbside Recycling Services and Related Budget Amendment

#### **BACKGROUND**

In 2008, the City entered in to an agreement with Recology South Bay (Recology) to provide single-stream residential recycling services following a competitive procurement. Recology collects over 9,000 tons of recyclables per year from approximately 45,000 customers living in townhouses, single-family, and multi-family homes. An amendment to the original agreement was subsequently approved by Council on January 29, 2019, which extended the term through 2021 and increased the monthly compensation per unit served to account for the decline in the international recyclables commodities markets.

At a November 13, 2018 study session, Council directed staff to proceed with negotiation of a successor agreement with Recology guided by the negotiation framework outlined below:

1. Increase landfill diversion to a minimum of 75 percent waste diversion.
2. Ensure compliance with existing State law, including the implementation of City-wide organics collection by January 1, 2022.
3. Minimize hauler profit.
4. Ensure annual price escalations are based on documentable costs and business industry best practices.
5. Align contract term to future expected conditions, such as the amortization of equipment (e.g., hauling trucks), landfill disposal contract terms, and/or material recovery facility contract terms.
6. Develop a flexible revenue structure from recyclable materials to account for ever-changing market conditions.
7. Maximize franchise revenue benefitting the General Fund.
8. Include other key terms as proposed by the City's expert in these agreements.

Staff hired R3 Consulting, Inc. to facilitate negotiations on the City's behalf and to assist in preparing the scope of services for the successor agreement. On September 17, 2019 staff presented tentative agreement terms with Recology to the City Council. The City Council directed staff to finalize terms with Recology for a proposed agreement for residential recycling services for consideration at a subsequent meeting.

#### **DISCUSSION**

After six months and numerous negotiating sessions, Staff and Recology have reached a 15-year proposed agreement that extends the term to June 30, 2036 ("proposed agreement"). Under the terms of the proposed agreement, all residents will continue to receive the same recycling services

that are currently in place using the same containers. If approved, the compensation that the City pays to Recology will be based on negotiated increases beginning July 1, 2020. Recology will be required to purchase new renewable diesel collection trucks and have them in service by July 1, 2021. The 15-year term is longer than the current ten-year agreement, which enables lower pricing because the collection equipment can be amortized over a longer period of time. The proposed agreement contains terms and conditions to ensure reporting is consistent with the upcoming short-lived climate pollutant (SLCP) regulations, to enact penalties for contamination and missed pick-ups, and to mandate distribution of recycling bags for multi-family dwelling units to make it easier to store and transport recyclables in a centralized container. The proposed agreement includes a section covering Prevailing Wages.

#### Compensation Analysis

The proposed agreement stipulates three years of compensation increases, resulting in an increase from the current \$4.54 per unit per month cost to approximately \$6.48 per unit per month, effective July 1, 2022. The base compensation to Recology over these three years will be fixed, however, the proposed agreement provides baseline adjustments for actual growth in the number of times containers are serviced throughout the agreement. Below is a summary of the estimated per unit compensation increases, which are inclusive of all cost-of-living adjustments.

| Effective Date | Compensation to Recology per unit per month | Change in compensation | Percentage change in compensation |
|----------------|---|------------------------|-----------------------------------|
| July 1, 2019   | ~\$4.54                                     |                        |                                   |
| July 1, 2020   | ~\$5.14                                     | + \$0.60               | 14.3%                             |
| July 1, 2021   | ~\$5.72                                     | + \$0.58               | 12.0%                             |
| July 1, 2022   | ~\$6.48                                     | + \$0.76               | 13.8%                             |

After FY 2022/23, compensation would be adjusted annually according to the Water, Sewer and Trash Collection Services Consumer Price Index. This would entail a 2 percent minimum increase, a 5 percent cap, and possible percentage adjustments in the number of containers serviced annually to capture population growth and accounts serviced multiple times per week.

Recyclables processing after December 31, 2021 is not included in the compensation methodology under the terms of the proposed agreement. The City will have the option to direct recyclables to a specific processor or have them processed by Recology or its processing contractor. The City will either pay for the recyclables processing or receive the revenue generated from the sale of the recyclables to a processor, depending on market conditions. This will help to alleviate future issues related to the price fluctuation of recyclables.

#### Comparison to Market

The monthly cost per unit for residential recycling service under the proposed agreement is a good value. The table below compares the FY 2022/23 projected compensation levels from the 2008 proposals received from the City's most recent procurement that have been increased using the Consumer Price Index (CPI). These costs are inclusive of a 5 percent adjustment to reflect the recent international recyclable commodities price decline and the fact that the CPI did not keep pace with costs in the solid waste industry from 2008 to 2018. The table also shows that compensation paid for residential recycling services in the subject agreement is significantly less than the rates

recently secured by the South Bayside Waste Management Authority and the City of San Jose.

**Comparison of FY 2022/23 Monthly Cost per Unit**

|  |         |
|--|---------|
| Proposed Recology Agreement  | ~\$6.48 |
| Mission Trail Waste Systems 2008 proposal with CPI escalation            | \$6.51  |
| Republic Services 2008 proposal with CPI escalation                      | \$7.18  |
| GreenWaste Recovery, Inc. 2008 proposal with CPI escalation              | \$8.34  |
| California Waste Solutions 2008 proposal with CPI escalation             | \$8.90  |
| South Bayside Waste Management Authority 2018 actual with CPI escalation | \$10.75 |
| City of San Jose 2019 proposals with CPI escalation                      | \$15.50 |

**Future Impact on Customer Rates**

The costs will be incorporated into customer's solid waste utility rates, so future customer rate increases will be necessary to achieve cost recovery. The current monthly rate charged to customers for residential recycling services is \$4.40 per unit. The table below shows the estimated impacts to the residential recycling component of customer rates through FY 2022/23 for customers receiving service one time per week. R3 Consulting, Inc. will be conducting a cost of service analysis for the City upon the completion of successful negotiations with other service providers for garbage and organics collection and processing that will be used to set future rates.

**Estimated Impacts to Residential Recycling Component of Customer Rates**

| Effective Date | Customer Rate per unit per month | Change in customer rate | Percentage change in customer rate |
|----------------|----------------------------------|-------------------------|------------------------------------|
| July 1, 2019   | ~\$4.40                          |                         |                                    |
| July 1, 2020   | ~\$5.00                          | + \$0.60                | 13.6%                              |
| July 1, 2021   | ~\$5.58                          | + \$0.58                | 11.6%                              |
| July 1, 2022   | ~\$6.34                          | + \$0.76                | 13.6%                              |

The SCCC Chapter 8.25 specifies the process for granting refuse contracts. Section 8.25.220 states that the Council may notice and provide a public hearing to review an application for a refuse contract. Section 8.25.250 permits the Council to grant a refuse contract following the consideration of an application at a public hearing.

**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 as a reasonably foreseeable indirect physical change in the environment.

**FISCAL IMPACT**

The proposed agreement will result in increased compensation paid to Recology for residential recycling services. The table below shows the estimated annual compensation increases for the first three years of the proposed agreement (not inclusive of separate recyclables processing costs

starting January 1, 2022). Rate increases beyond those already approved will be brought forward separately for City Council consideration.

| Effective date | Annual compensation paid to Recology |
|----------------|--------------------------------------|
| July 1, 2020   | \$2,837,000                          |
| July 1, 2021   | \$3,194,000                          |
| July 1, 2022   | \$3,635,000                          |

There is funding of \$2,637,140 budgeted as compensation to Recology in the Solid Waste Fund included in the FY 2020/21 Adopted Operating Budget. Staff recommends a budget amendment of \$199,860 in appropriations and revenues for Year 1 of the successor agreement to be added to the Solid Waste Fund in the FY 2020/21 Adopted Operating Budget. The subsequent years of the proposed agreement will be included in the appropriate future Biennial Operating Budgets for FY 2021/22 and FY 2022/23.

### **Budget Amendment FY 2020/21**

|  | <b>Current</b> | <b>Increase/<br/>(Decrease)</b> | <b>Revised</b> |
|--|----------------|---------------------------------|----------------|
| <b>Solid Waste Fund</b>                            |                |                                 |                |
| <u>Revenue</u>                                     |                |                                 |                |
| Refuse Collection Charges                          | \$20,958,398   | \$199,860                       | \$21,158,258   |
| <u>Expenditures</u>                                |                |                                 |                |
| Garbage Collection, Disposal and Recycling Expense | \$2,637,140    | \$199,860                       | \$2,837,000    |

### **COORDINATION**

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

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library. Notice of the Publication was published in the November 20, 2019 edition of the Santa Clara Weekly to satisfy the 10-day noticing requirement in SCCC Section 8.25.240.

### **RECOMMENDATION**

1. Approve and authorize the City Manager to execute a successor agreement with Recology South Bay, dba Recology Santa Clara for residential curbside recycling services;
2. Authorize the City Manager to make minor modifications to the proposed agreement, if necessary;

and

3. Approve the Related FY 2020/21 Budget Amendment increasing the Solid Waste Fund appropriations and revenues in the amount of \$199,860.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Proposed agreement
2. R3 Pricing Verification Letter

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
RECOLOGY SOUTH BAY, DBA RECOLOGY SANTA CLARA**

**PREAMBLE**

This Agreement is entered into on \_\_\_\_, 2019 (the "Effective Date") between the City of Santa Clara, California, a chartered California municipal corporation (City) and Recology South Bay dba Recology Santa Clara, a California corporation, (Collector). City and Collector may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 *et. seq.*) ("AB 939"), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions to meet the goals and requirements of AB 939;
- B. WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), City has determined that in order to protect the public health and safety of the residents and business within the City of Santa Clara, it is appropriate to provide for recycling collection and disposal by a private waste hauler as an alternative to providing such services through public resources; and to that end has determined that an exclusive franchise be awarded to a qualified company for the handling of recyclable materials and other services to meet the goals and requirements of AB 939; which franchise can be appropriately integrated into and function as part of the solid waste system provided by City;
- C. WHEREAS, City has determined pursuant to California Public Resources Code Section 40059 that as a matter of local concern it has separate exclusive franchises for Solid Waste (as defined herein) and Recyclable Materials, and this Agreement is for the exclusive franchise for the City's residential recycling program and collection;
- D. WHEREAS, Public Resources Code Section 40059 permits City to impose terms and conditions on the award of a solid waste and/or recycling franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions;
- E. WHEREAS, Collector has represented and warranted to City that it has the qualifications, expertise, necessary licenses, and desire to provide Recyclable

Materials handling services, as defined in Public Resources Code Section 49505 and as described herein;

- F. WHEREAS, the City Council of City has determined that Collector, by demonstrated experience, reputation and capacity is qualified to exclusively provide for the collection of recyclable materials within the residential areas of the corporate limits of City and to transport such recyclable materials to places of processing and disposal, which may be designated in accordance with this Agreement, and City and Collector desire that Collector be engaged to perform such services on the terms and conditions set forth in this Agreement;
- G. WHEREAS, the City Council of City has determined that the public health, safety and wellbeing of its residents require that recyclable materials collection, processing and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such services be governed by and provided under an exclusive recyclable materials franchise agreement;
- H. WHEREAS, the City Council of City has selected Collector to provide to City a residential recycling program for such term, on such conditions and for the consideration as set forth in this Agreement;
- I. WHEREAS, Collector desires to provide to City such a residential recycling program and Collector further represents that it has the expertise and resources necessary to provide such a Program to City; and
- J. 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 Collector 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 – Definitions

Exhibit C – Schedule of Compensation

Exhibit D – Insurance Requirements

Exhibit E – [Reserved]

Exhibit F-1 – Ethical Standards

Exhibit F-2 – Affidavit of Compliance with Ethical Standards

Exhibit G – Solid Waste Collection Vehicle Replacement Schedule

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 provided, however, that this Agreement shall not relieve Collector of any financial obligations that may have existed under any former agreement with City. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

### **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on July 1, 2021 and terminate on June 30, 2036.

### **3. FIVE (5) YEAR EXTENSION**

Collector may request one five (5) year term extension to the original fifteen (15) year term, and if mutually agreeable, City may grant Collector's request to extend the term. Under no circumstances will the City be obligated to extend the term.

### **4. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Collector shall perform those Services specified in Exhibit A within the time stated in Exhibit A.

## **5. WARRANTY**

Collector 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. Collector 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 Collector. If Collector fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Collector for the cost incurred by City.

## **6. QUALIFICATIONS OF COLLECTOR - STANDARD OF CARE**

Collector 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 Collector's representations regarding its skills and knowledge. Collector 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.

## **7. NOTICE OF FAILURE TO PERFORM, PENALTIES, LIQUIDATED DAMAGES, AND REMEDIES**

- A. Notice of Failure to Perform. In addition to any other remedies available to City or provided under this Agreement or by law, City may give written notice to Collector for failure to perform any services and terms of this Agreement. In the notice, City shall also identify allowable Collector period of compliance.
- B. General. City finds, and Collector agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Collector of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

- Collector \_\_\_\_\_ City \_\_\_\_\_  
Initial Here \_\_\_\_\_ Initial Here \_\_\_\_\_

| LIQUIDATED DAMAGES |   |                        |
|--------------------|---|------------------------|
| Item               |   | Amount                 |
| a.                 | Each failure to commence service to a new customer account within seven (7) days after order  | \$ 500.00 per incident |
| b.                 | Each occurrence of damage to private property if not resolved   | \$ 500.00 per incident |
| c.                 | Each failure to remove graffiti from a Front-Loading Bin or Container within four (4) days of notification by City or customer                          | \$ 500.00 per incident |
| d.                 | Each occurrence of beginning collection at property zoned for residential use before 7:00 a.m. or after 6:00 p.m. after first notification of violation | \$ 500.00 per incident |

| LIQUIDATED DAMAGES |  |                                    |
|--------------------|--|------------------------------------|
| Item               |  | Amount                             |
| e.                 | Each occurrence of discourteous behavior to a Customer   | \$ 500.00 per incident             |
| f.                 | Each failure to clean up spill or leakage of oil, hydraulic fluid, coolant, or other fluid from any collection vehicle used by Collector, which causes a stain of 0.5 square feet or greater   | \$ 500.00 per incident or location |
| g.                 | Each failure to initially respond to a Customer complaint within one (1) business day  | \$ 300.00 per incident             |
| h.                 | Each failure to remedy missed collections within one (1) business day of compliant   | \$ 125.00 per incident             |
| i.                 | Each failure to collect Recyclable Material, which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within the period described in this Agreement  | \$ 125.00 per incident             |
| j.                 | Each failure to collect Recyclable Material, which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within the period described in this Agreement, two (2) or more times at the same customer address during a Quarter | \$ 500.00 per incident             |
| k.                 | Each failure to properly return empty Containers to proper set-out location that avoids pedestrian or vehicular traffic impediments  | \$ 125.00 per incident             |
| l.                 | Each failure to clean up Collector spills from Recyclable Material Containers  | \$ 125.00 per incident             |
| m.                 | Failure to renew Performance Bond or renew Insurance and submit Certificate of Insurance prior to expiration date  | \$ 125.00 per calendar day         |
| n.                 | Failure to submit monthly or annual report(s), as required. If City determines report is not complete, the Collector shall be given ten (10) business days to complete report. Report shall be considered late until such time as a correct and complete report is received by City.                   | \$ 125.00 per calendar day         |
| o.                 | Failure to maintain collection vehicle and equipment in condition specified by City  | \$ 125.00 per calendar day         |

| LIQUIDATED DAMAGES |  |   |
|--------------------|--|---|
| Item               |  | Amount  |
| p.                 | Failure to provide Alternative Fueled Collection and/or any other supervisory vehicles specified in Section 5.e  | \$ 125.00 per calendar day  |
| q.                 | Failure to collect and deliver all Collector Containers to point of reuse or recycling processing location after cessation of collection and handling services at the end of the Agreement term, per Collector's schedule, submitted to and approved by City | \$ 500.00 per calendar day  |
| r.                 | Disposal of Recyclable Materials that has been separately collected by Collector at a disposal area without first obtaining the required permission of City  | \$ 1,000 per day 1 <sup>st</sup> and 2 <sup>nd</sup> instance, \$5,000 per day subsequent instances |

D. Procedure for Assessment of Liquidated Damages. City may assess liquidated damages for each calendar day or event, as appropriate, that Collector is determined to be liable in accordance with this Agreement. Prior to assessing liquidated damages, City shall give Collector notice of its intention to do so. The notice will include a brief description of the violation or incident of non-performance. Collector may review (and make copies at its own expense) all information in the possession of City relating to the violation or incident of non-performance. Collector may, within ten (10) days after receiving the notice, request a meeting with City. Collector may present evidence in writing and through testimony of its employees and others relevant to the violation or incident of non-performance. City will provide Collector with a written explanation of its determination as to each violation or incident of non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

E. Timing of Payment. City will deduct liquidated damages from monthly payment(s) to Collector until outstanding damages are fully paid. A summary explanation of the damages that have been deducted will be provided along with the payment.

## 8. COMPENSATION AND PAYMENT

### A. Annual Compensation.

City will pay to Collector the amounts set forth in Exhibit "C", titled "Collector Compensation". Collector compensation shall be adjusted annually in accordance with the provisions set forth in Exhibit C of this Agreement. No additional payments shall be sought and/or accepted by Collector either from City or any other person for any of Collector's services in carrying out

the terms of this agreement. City shall be responsible for billing and collection of the charges to Customers for the residential recycling program (other than certain Special Services not billed by City).

**B. Time of Payment and Disputes.**

During the full term of this Agreement, all amounts due hereunder shall be paid monthly by City to Collector on or before the twenty-fifth (25<sup>th</sup>) day of each month and shall cover services rendered during the preceding month. The monthly payment amount shall be equal to the sum of the following: (1) the annual Collector compensation for the then current compensation year, divided by twelve (12), (ii) the monthly compensation for Special Services provided in the previous month, and (iii) the monthly reimbursement of the net cost (if any) of Recyclable Materials processing for the previous month. Collector shall review monthly payment and all monthly service charges included in Exhibit C received from City and shall respond in writing to City of any disputed payment amounts within 60 days of receiving payment, after which payment will be considered full and complete for said services and Collector will have waived all right to contest. Without limiting City's obligation to timely pay Collector's invoices, late payments by City shall accrue interest at 1.5% per month.

**9. CHANGE IN LAW / CHANGE IN SCOPE**

- A. Change in Law. If a change in Applicable Law occurs after the date hereof (a "Change in Law") that increases Collector's reasonable and necessary costs of performing its obligations under this Agreement, Collector's compensation shall be adjusted in an amount sufficient to cover such increased costs. Collector shall bear the burden of justifying any such adjustment, and shall be deemed to have satisfied such burden upon providing substantial evidence that (a) a Change in Law has occurred or will occur, (b) such Change in Law has caused or will cause Collector to incur increased costs, and (c) the amount of such increased costs is reasonable. Collector shall provide City with such additional information as City may reasonably request in order to evaluate Collector's application. City shall not unreasonably withhold approval of an adjustment requested by Collector under this subsection. City shall use its best efforts to cause the compensation adjustment to be heard by the City Council within 90 days of Collector's application. Change in Law includes without limitation any increase in (or any new) governmental or regulatory fees.
- B. Change in Scope. City may from time to time request that Collector provide additional services, that Collector change existing services, or that Collector's obligations under this Agreement be otherwise modified (each, a "Change in Scope"). In the event of a Change in Scope requested by the City, the Parties shall for a period of ninety (90) days negotiate in good faith an appropriate adjustment to Collector's compensation resulting from such

Change in Scope and any modifications to this Agreement that may be necessary or desirable to reflect such Change in Scope. If requested by City, Collector shall provide a proposal for the implementation of the Change in Scope. Collector shall not be required to implement a Change in Scope unless and until the terms thereof and any adjustment to Collector's compensation have been mutually agreed and reflected in an amendment to this Agreement. A Change in Scope includes without limitation any City-directed change in the Processing Facility.

- C. Change in Processing Facility. It is contemplated that Collector shall deliver all Recyclable Materials collected under this Agreement to the Processing Facility located at 1500 Berger Avenue in San Jose, currently owned and operated by GreenWaste Recovery Inc. If such facility (or any successor Processing Facility selected in accordance with this Agreement) is destroyed, is shut down, goes out of business, refuses to deal, or for any other reason is not available to Collector for the delivery of Recyclable Materials collected by Collector hereunder, then Collector may utilize a different Processing Facility, so long as it is properly permitted. In that event, Collector's compensation shall be adjusted in an equitable manner in an amount sufficient to cover the increased (or decreased) costs of transportation to such facility (and transfer, if applicable), as compared to the facility previously being used. It is understood that any increased (or decreased) processing costs (or revenues) at such new facility, as compared to the facility previously being used, will be captured in the monthly reimbursement of net Recyclable Materials processing costs provided for in Exhibit C.
- D. Labor Code. City and Collector acknowledge and agree that the Services provided under this Agreement are not subject to the Prevailing Wage requirements of California Labor Code section 1720. If the Services provided hereunder become subject to Labor Code Section 1720 by some future action, that action shall be deemed a Change in Law and paragraph A of this Section 9 shall apply.

## **10. TERMINATION**

- A. Termination for Breach. City may, by written notice to Collector, terminate the whole or any part of this Agreement at any time as a result of an uncured violation of this Agreement by Collector by giving written notice to Collector of such termination and the violation, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon receipt of a notice of termination, Collector shall have sixty (60) days to cure or correct the violation of this Agreement noted by City (provided that, if the violation is such that it is not capable of being cured within sixty (60) days, the cure period shall be reasonably extended provided that Collector diligently pursues a cure). During the 60-day cure period, Collector shall have the right to a hearing before the City Council to

discuss the violation and proposed termination, provided that the request for a hearing is made in sufficient time to schedule a hearing at a regular meeting of the City Council falling within the 60-day cure period. If the violation has not been cured or corrected within the 60-day cure period, City may proceed with the termination of this Agreement on the noticed date. Upon termination, Collector shall be compensated only for those Services which have been adequately rendered to City, and Collector shall be entitled to no further compensation. Upon termination, City shall be entitled to damages caused by such violation and the resulting termination, including, but not limited to the liquidated damages provided for in this Agreement. Notwithstanding the 90-day pre-termination notice requirement described above, if, in City's determination (which determination may be made in the sole and absolute discretion of City), the violation endangers public health, safety or welfare, termination may be effective immediately.

- B. Remedies Not Exclusive. The rights and remedies of City under this Agreement, including the right to make a claim under the Performance Bond deposited with City by Collector for reimbursement of any costs borne or damages incurred by City as a result of a default by Collector under this Agreement and the right to perform during an emergency, shall be in addition to any and all other rights and privileges City may have, and shall not be deemed to limit any such other rights or privileges of City under this Agreement or by virtue of any law.
- C. Procurement of Services Following Termination. In the event this Agreement is terminated in whole or in part as provided in this Section, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

## **11. ASSIGNMENT AND SUBCONTRACTING**

- A. City and Collector 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. Collector shall not hire subcontractors without express written permission from City.

Collector 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 Collector is for the acts and omissions of persons directly employed by it.

- B. Assignment and Transferability; Subcontracting

Except as provided herein, this Agreement is not assignable or transferable in whole or in part by Collector, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. In addition, the services to be performed by Collector pursuant

to this Agreement shall not be subcontracted to any third party without the written consent of City.

The sale, transfer, assignment or hypothecation of a majority ownership interest in Collector after the Effective Date of this Agreement, including a cumulative sale, transfer, assignment or hypothecation, shall be deemed an assignment within the meaning of this Section and is prohibited in the absence of a written amendment to this Agreement. Placement of an ownership interest in a living trust shall not be deemed an assignment within the meaning of this Section, but distribution of the ownership interest from the living trust shall be deemed an assignment.

Any dispute between the City and the Collector with respect to a determination of whether a sale, transfer, assignment, subcontracting, or hypothecation of a number of shares or other units of ownership in Collector has occurred or will occur shall be subject to reference pursuant to Code of Civil Procedure Section 638, et seq. with the presiding judge of the Santa Clara County Superior Court.

In the event that the City agrees to an assignment of this Agreement to a qualified service provider, Collector shall make payment to the City in an amount to be determined by the City for the right to any such assignment and to reimburse the City's costs of reviewing the assignment, such amount not to exceed Five Hundred Thousand Dollars (\$500,000). Payment will be made within thirty (30) days of City's consent to assignment, and if full payment is not made then any such assignment shall be null and void.

## **12. 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.

## **13. INDEPENDENT COLLECTOR**

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

## **14. CONFIDENTIALITY OF MATERIAL**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Collector and all other written information submitted by City to Collector in connection with the performance of this Agreement and designated as confidential by City shall be held confidential by Collector 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 Collector which is otherwise known to Collector or becomes generally known to the related industry or is or becomes generally available to the public or is required to be disclosed by law shall be deemed confidential.

All customer information developed or received by or for Collector in connection with the performance of this Agreement shall be held confidential by Collector and shall not, without the prior written consent of City, be used for any purposes other than the performance of this Agreement, nor be disclosed or sold to any entity not connected with performance of this Agreement. Nothing furnished to Collector which is otherwise known to Collector or becomes generally known to the related industry or is or becomes generally available to the public or is required to be disclosed by law shall be deemed confidential.

## **15. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Collector 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 the Services performed by Collector pursuant to this Agreement – including claims of any kind by Collector's employees or persons contracting with Collector 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. Collector'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, Collectors, subcontractors or other agents of Collector, against City (either alone, or jointly with Collector), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Collector 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, Collector 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 Collector's responsibilities under the Act.

## **16. INSURANCE REQUIREMENTS**

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

## **17. WAIVER**

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

## **18. NOTICES**

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

City of Santa Clara  
Attention: Deputy Director of Public Works  
1500 Warburton Avenue  
Santa Clara, CA 95050

and by e-mail at [Environment@santaclaraca.gov](mailto:Environment@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Collector addressed as follows and sent by nationally recognized overnight courier, with notice deemed to have been given upon confirmed delivery:

Recology South Bay  
Attn: Legal Department  
50 California Street, 24<sup>th</sup> Floor  
San Francisco, CA 94111

and with a copy (which shall not constitute notice) sent by e-mail to  
[jzirelli@recology.com](mailto:jzirelli@recology.com)

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

## **19. COMPLIANCE WITH LAWS**

Collector 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, Collector'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, Collector has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

## **20. CONFLICTS OF INTEREST**

Collector certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Collector and that no person associated with Collector has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Collector 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. Collector will advise City if a conflict arises.

## **21. FAIR EMPLOYMENT**

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

## **22. NO USE OF CITY NAME OR EMBLEM**

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

## **23. GOVERNING LAW AND VENUE**

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

## **24. SEVERABILITY CLAUSE**

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

**25. AMENDMENTS**

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

**26. COUNTERPARTS**

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

**27. SIGNATURE CLAUSE**

The signatures of City's duly authorized representatives confirm City's offer of the franchise to Collector as set forth in the terms and conditions of this Agreement. The signature of the Collector's duly authorized representative confirms Collector's acceptance of the franchise as set forth in the terms and conditions of this Agreement. Acceptance of this Agreement operates as an abandonment of any prior Residential Recyclable Materials franchise agreement between City and Collector and the rights and privileges granted therein. This Agreement is deemed to be effective on the Effective Date, as defined above.

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

Approved as to Form:

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

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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"

Recology South Bay dba Recology Santa Clara  
a California corporation

Dated: \_\_\_\_\_  
By (Signature): \_\_\_\_\_  
Name: Michael J. Sangiacomo  
Title: President & CEO  
Principal Place of Business Address: 1675 Rogers Avenue  
San Jose, CA 95112  
Email Address: [jzirelli@recology.com](mailto:jzirelli@recology.com)  
Telephone: (408) 368-1776

“COLLECTOR”

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## **EXHIBIT A**

### **SCOPE OF SERVICES**

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

#### **1. GRANT OF EXCLUSIVE CONTRACT**

City grants to Collector during the term of this Agreement the exclusive right and privilege to collect and transport Recyclable Material generated from areas in the City limit that are zoned for residential use. Recyclable Material from Residential areas that is donated to a 501(c)(3) non-profit or sold is exempt from this Agreement.

#### **2. COLLECTOR RESPONSIBILITY**

Collector agrees to perform all of its obligations under this Agreement for the term of this Agreement. Collector shall furnish all of the labor and equipment necessary for the collection, processing and recycling of all Recyclable Material subject to the terms, conditions and provisions of this Agreement. Collector represents that it has the professional and technical personnel required to perform the services in conformance with such terms, conditions and provisions of this Agreement. Collector shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

#### **3. SCOPE OF SERVICE**

##### **A. General**

- i. Collector shall provide Single-Stream Recycling Containers, collection, transportation, processing and disposal services within City in accordance with the terms of this Agreement. Collector shall not be required to provide such collection, transportation, processing and disposal services for any other type of waste under this Agreement, except to the extent provided herein. Unless otherwise approved by City, only Containers and Front-Loading Bins are authorized to be used by Customers for the deposit of Residential Recyclable Material.
- a. City shall retain the right to direct Collector to deliver Residential Recyclable material to a different Processing Facility selected by the City. Such direction shall be a Change in Scope. However, if the new facility is within ten (10) miles of 1500 Warburton Avenue (City Hall) and Collector can direct-haul Residential Recyclable material there (as is the case with the current Processing Facility), then it is agreed

that there will be no adjustment to Collector's compensation for increased or decreased transport costs in connection with the change.

- ii. While engaged in activities authorized or required by this Agreement, Collector's employees and agents shall be attired in suitable and acceptable uniforms mutually approved by City and Collector. All Collector's employees shall make collections as reasonably quiet as possible and shall avoid unnecessary disturbance. Collector and its employees shall not trespass or loiter on Customers' property and shall use due care in entering and exiting such property, using paved walks or surfaces where practicable. Collector shall exercise due care when handling Containers and shall not cause the Containers to be damaged or dropped during collection services. Collector's employees shall replace Containers upright once emptied and shall clean up any contents spilled during the collection process, including Recyclable Material spilled prior to the arrival of Collector's employees.
- iii. Collector shall be responsible for any damage to any property if proven to be the result of the Collector's vehicles exceeding the legal maximum weight limits of the State of California or the Collector's negligent operation of the vehicles. Collector shall be responsible for damage to public and private utilities, and shall repair or replace such damaged utilities, if proven, to the satisfaction of the City, to be caused by the inattention, carelessness or negligence of Collector.
- iv. City shall provide Collector with a copy of collection routes that detail the boundaries of each collection route by September 30, 2021. City reserves the right to change assigned collection day boundaries at its discretion. Any route changes proposed by Collector shall be submitted, in writing, for City approval at least sixty (60) days prior to the proposed date of implementation. City reserves the right to construct any improvement or to permit construction in any street or alley which may have the incidental effect of preventing Collector from driving an established collection route, in which event Collector will adjust its route without cost adjustment therefor. City reserves the right to conduct audits of Collector's collection routes. Upon request, Collector shall provide City with route maps detailing all collection routes.

B. Residential Service

- i. Single-Family Unit Residential. Collector shall collect Single-Stream Recyclable Material placed in Collector-provided Containers placed out at the Curbside for collection once a week on the same collection

day as Garbage, Clean Green, and Organic Waste service, regardless of weather conditions.

The default size Containers provided by Collector shall be 64 gallons in size unless an alternate (96-gallon) or (32-gallon) size is requested by a Customer. Collector is required to keep a stock of containers on hand and provide Customers the size container desired upon request. Customers requesting a different size Container shall not receive a discount, reduction, or increase in rates for service. Upon request, Collector shall provide City a list, monthly, of names and addresses of those residents who received different size containers than 64 gallons in size.

Containers to be used shall be standard configuration wheeled automated loading containers having a design, color (blue), sizes, and specifications reasonably acceptable to the City. The recycling Containers shall display the name of Collector, the type of Recyclable Material to be placed therein, and such other information as is agreeable to City and Collector.

All Recyclable Materials shall be placed in Containers except for motor oil, motor oil filters, large cardboard, and compact fluorescent bulbs. Customers shall be directed to set out motor oil in one-gallon, screw-top containers that they provide for a maximum of three-gallons per pick up. Customers shall be directed to place drained motor oil filters and compact fluorescent light bulbs into separate slide-locking, clear Ziploc-type plastic bags on top of their Container. Customers shall be directed to break down cardboard containers to no larger than 4'x4' and stack them adjacent to their Container. The driver of the collection vehicle will need to manually load these Recyclable Materials onto the vehicle. Collector shall not charge City or Customer any additional fee for this service.

Containers shall be placed by Customers at or near the Curbside prior to Collector's normal weekly collection time. Collector shall only be required to collect Collector-provided Containers which are set out in conformity to the provisions of this Agreement. To reduce contamination and increase recycling education, Collector must leave Customer a Notice of Violation on their Container that documents the reason service was not provided if Container was not collected.

Collector shall not receive compensation, including sign-up or similar charges, from Single-Family Unit Residential Customers in addition to the rates set forth in Exhibit "A", except for Special Services involving Push/Pull, requested Multi-Family bin cleaning services, customer requested extra driver time call-outs, lock jam bin

installations, contamination charges, and other Special Services permitted under this Agreement.

- ii. Multi-Family Unit Residential. Collector shall collect Single Stream Recyclable Materials which have been placed, kept or accumulated in Front-Loading Bins or Containers at Multi-Family Unit Residential Premises. Participation in the Multi-Family Unit Residential Recycling Program is currently by subscription only, and it is the responsibility of Collector to help expand the program to those Multi-Family complexes that can be reasonably served economically as determined by Collector and City. Multi-Family Unit Residential Customers or owners may arrange with Collector for Container service in lieu of Front-Loading Bin service. If Collector disagrees with a Customer regarding the Customer's preference for Container service, Collector shall promptly notify the City in writing of such disagreement. If the City determines that Container service would be appropriate, the City may authorize Container service in lieu of Front-Loading Bin service.

Front-Loading Bins to be used shall be standard configuration having a design, color, and specifications reasonably acceptable to City. The recycling containers shall display the name, address and phone number of Collector, the type of Recyclable Material to be placed therein, and such other information as is agreeable to City and Collector.

Front-Loading Bins and Containers shall be placed by Customers at or near the Curbside, or in a bin enclosure prior to collection. Collection shall be once a week on the same day as garbage collection service unless otherwise requested by the customer or Recology.

Collector is required to manually move Front-Loading Bins and Containers up to ten (10) feet in order to empty it into the truck without charging the Customer. Collector and Customer may mutually agree to establish a Push/Pull service at the rates set forth in Exhibit "A". Collector shall not be required to collect Containers which are not set out in conformity to the provisions of this Agreement. Collector must leave Customer a Notice of Violation on their Container that documents the reason service was not provided.

Collector is responsible for maintaining a reasonable business effort in the marketing of the recycling program for Multi-Family Unit Residential Customers. Any agreements for recycling services must be signed by the property owner or agent for the complex. Collector must provide City a monthly report of all complexes that began service in the preceding month that includes the following information

for each: name of complex, address of complex, complex contact number, and number of units in complex as described in Section 8.B.ii.

Collector is not required to provide used motor oil, oil filter, or compact fluorescent light bulb collection and recycling service at Multi-Family Unit Residential Premises.

- iii. Hours of Collection. Collection service at Residential Premises shall be Monday through Fridays, and not start before 7:00 a.m. or continue after 6:00 p.m., subject to change by resolution of the City Council. Collection services to Residential Premises shall not take place on Sundays, but may be on Saturdays due to observed Holidays, as herein defined, and collections thereafter occurring one day late that week.
- iv. Customer Obligation. City shall, by ordinance, resolution or otherwise, require that all Customers receiving Recycling Containers from Collector for the purpose of the residential curbside recycling program shall be used only for such purposes and that said Customer shall be responsible for any damage, destruction or loss of such recycling containers.

City shall, by ordinance, resolution or otherwise, require that all Customers receiving services pursuant to this Agreement store and set out such Recyclable materials to be collected by Collector in the following manner:

- a. The Recycling Containers containing Recyclable Materials shall be placed in gutter at the curb in front of the Customer's residence, or other location as directed by City, on the regular collection day by 7:00 a.m.
- b. Recycling Containers shall not be stored upon public streets at any time except for the date during which Collector is to make collections from such premises.

- C. Container Purchase and Distribution. Collector shall purchase and deliver at Collector's sole cost and expense all Containers and Front-Loading Bins necessary to provide residential recycling services to Customers in the City. The ownership of the Recycling Containers shall be and remain with Collector. Single-Family Unit Residences shall be provided a Container, approximately 64 gallons in size, as the default container. After initial issue of Containers, Customers may request to switch to a larger (96-gallon) or smaller (32-gallon) Container instead at no additional charge. Collector shall make reasonable efforts to exchange Container sizes within ten (10) business days of receiving requests. If request cannot be fulfilled, Collector

to notify City of Plan to complete requests within reasonable period acceptable to City.

Collector shall repair and maintain in a reasonable and serviceable condition to City all provided Containers and Front-Loading Bins for the duration of the Agreement. Containers which, due to normal use, normal exposure, or manufacturing defects, become unusable shall be replaced at no charge. In the event that recycling Containers need to be replaced because of loss, theft, damage or destruction, Collector shall replace such recycling containers at no cost to City or customer. With City's approval, Collector may seek reimbursement from parties who may have stolen, vandalized, or destroyed said Containers or Front-Loading Bins.

At the end of the collection and handling services term of the Agreement, Collector shall be responsible for the disposition and removal of all Containers. Removed Containers shall be reused or recycled per plan submitted, and approval by City at least ninety days prior to end of cessation of collection and handling services term. Completion of this Plan is necessary prior to City issuing Notice of Termination of Agreement.

D. Marketing of Recyclable Materials

- i. Discretion of Marketing. Collector shall take ownership of all Recyclable Material stored in Containers or Front-Loading Bins.
- ii. Processing
  - a. Facility Selection. Collector shall transport and deliver all Recyclable Materials collected within the City to a Processing Facility permitted by all applicable regulating agencies of the State of California or Federal Government to collect, store, process and re-transport for sale such Recyclable Materials. City shall retain the right to direct Collector to transport and deliver all Recyclable Materials to a Processing Facility of its choosing. Absent City's selection of a Processing Facility for Recyclable Materials, Collector shall make contractual arrangements for processing of Recyclable Materials.
  - b. Weighing and Record Requirements. Collector shall use reasonable efforts to ensure that, at a minimum, all materials shall be weighed upon delivery to a Processing Facility, and all weight and related delivery information recorded. Collector shall use reasonable efforts to make arrangements with the Processor to allow the City to review during such facility's normal operating hours any recordings or video of tipping. Collector shall use reasonable efforts to ensure that all scales shall maintained in compliance with Applicable Law and

regularly maintained to ensure reliability and continued functioning.

- c. Recyclable Materials Specifications. City is not responsible for the quality of Recyclable Materials delivered to or rejected by the Processing Facility. City makes no warranty, either express or implied, with respect to the Recyclable Materials, including but not limited to warranties of merchantability and fitness for a particular purpose.
  - d. Disposal of Residue. Collector shall use reasonable efforts to ensure that disposal of any and all residue remaining from the processing of Recyclable Materials and any non-processable materials is in accordance with Applicable Law.
- iii. Indemnification. To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by Collector's breach of or noncompliance with a provision of this Agreement, Collector agrees to protect and defend City, with counsel selected by City, and to indemnify and hold harmless City from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in the California Public Resources Code are not met by the City with respect to the Recyclable Material collected by Collector under this Agreement. Upon receipt from the California Integrated Waste Management Board of a stipulated order of noncompliance with the diversion goals, which is at least partially caused by Collector's breach of or noncompliance with a provision of this Agreement, the City may require Collector to provide a performance bond in the amount of Six Hundred Thousand Dollars (\$600,000) until such time as compliance is attained.
- iv. Anti-Scavenging Laws. Collector shall cooperate with City in enforcing anti-scavenging laws (i.e. laws prohibiting theft of recyclables from the authorized collector's containers).
- E. Collection on Holidays. If the day of collection on any given route falls on a Holiday or a day on which the Processing Facility utilized by Collector is closed, Collector may provide collection service for such route on the next workday following such holiday (including Saturdays for regularly scheduled Friday collections) or Processing Facility closure day or shall provide such collection service on such Holiday or Disposal Facility closure day, except that Collector shall never provide collection service (unless in case of emergency where such pickup is authorized by City) on New Year's Day, Thanksgiving Day or Christmas Day.

- F. Provision and Replacement of Containers and Bins. Collector shall replace existing Containers and Front-Loading Bins with clean and freshly painted replacements as often as deemed necessary by City and requested by City, but in no event more often than once per Contract Year at no cost to City or any Customer. All cleaning of Front-Loading Bins and Containers shall be completed in full compliance with all Applicable Laws, including any requirements of the National Pollution Discharge Elimination System.

Upon request of any Customer for a replacement Container, Collector shall provide such Container without cost to the Customer or to City. Collector must attach a tag to the Container or Front Load Container for purposes of notice to the Customer one (1) full week in advance if removal is directed by City.

- G. Graffiti Removal. Collector must remove graffiti vandalism from Containers and Front-Loading Bins within four (4) business days of notification.

#### **4. ADDITIONAL SERVICES PROVIDED BY COLLECTOR**

- A. Special Services. Collector shall offer to its Customers the following Special Services for additional service fees. The services detailed in this Section shall be billed to Customer by City except when otherwise noted. Collector must notify City Finance Department when these Special Services are rendered so Customer can be billed. City shall pay Collector for Special Services rendered on a monthly basis. The rates to provide Special Services are detailed in Exhibit C, and shall be eligible for annual adjustment, as described in Exhibit C.

- i. Manual "push-pull" service for Front-Loading Bins, including opening and closing of enclosure doors. Push-Pull service may be charged on a price per foot moved basis if the driver must move it more than ten (10) feet to service it.
- ii. One-time charge for front-loading bin cleaning service.
- iii. Driver-time reimbursement for delays lasting over fifteen (15) minutes caused by blocked access ways on the property or to level and/or manually reload containers or front-loading bins.
- iv. Lock-jam bin installations.
- v. Contaminated Container Collection Charge.

In addition to the exclusions set forth in Section 2 to the exclusive rights and privileges granted to Collector in this Agreement, nothing in this Section 6.b shall prohibit a Customer from calling upon a third party to render a specific Special Service in the event that Collector, following that Customer's

request for Collector to perform a specific Special Service, is either unwilling or unable to perform that Special Service.

Collector may offer Special Services besides those listed above, which shall not be billed by City. For Special Services not billed by City, Collector shall bill and receive fees for performance of Special Services as agreed upon in separate arrangements between Collector and each Customer requesting such Special Service. Such Special Services may include, without limitation, Compactor services.

- B. Hazardous Waste. Collector shall use reasonable business efforts to ensure the delivery of Hazardous Waste to a Hazardous Waste Facility, and to screen, identify and prevent against the disposal of Hazardous Wastes at any Processing Facility or Disposal Facility used by Collector under this Agreement. If Collector inadvertently delivers materials to any Processing Facility or Disposal Facility which comprise Hazardous Waste and Collector cannot or fails to remove it, Collector shall arrange for its proper disposal in accordance with Applicable Law. Collector shall use reasonable business efforts to recover the costs of such disposal from the Customer which generated such Hazardous Waste and failed to identify it for collection as part of the Household Hazardous Waste pickup program (if one is in operation pursuant to this Agreement, as it may be amended), if the Customer can be identified, and charge such cost to such Customer. If Collector delivers reportable quantities of Hazardous Waste to any Processing Facility or Disposal Facility, Collector shall to the extent required by law promptly notify the City, the local fire department, and the Santa Clara County Health Department, providing the name, address, and telephone number of the collector and the facility or premises from which the Hazardous Waste was collected, the type and quantity of the Hazardous Waste, and the location and method of final disposition of Hazardous Waste.
- C. Indemnification. Collector shall indemnify, defend with counsel approved by City, protect and hold harmless the City from and against all claims, actions, damages or liabilities paid, incurred or suffered by, or asserted against, the City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where Collector delivers, stores, processes, recycles, composts or disposes of materials or wastes to the extent that such liabilities are caused by Collector's negligence or willful misconduct. Nothing in this subsection shall be construed to require Collector to indemnify the City for liabilities caused by the sole negligence of the City.
- D. AB 341 Multi-Family Unit Recycling Outreach. Collector shall contact the property owner or manager for every Multi-Family Unit residential complex

that does not have recycling services at least once a year to inquire why they are not receiving recycling services. Collector must document the contact with each property owner or manager and submit a summary report to City in the Annual Report that covers each calendar year as described in Section 8.D.ii. This report shall contain the following information for each complex: name of complex, address of complex, name of contact person, contact person title, contact person phone number, and reason why complex is not participating in the recycling program, and recommendations on making complex serviceable.

- E. Multi-Family Unit Recycling Bags. At the beginning of the contract term, Collector shall purchase and distribute recycling bags to all Multi-Family Unit Residential Premises it services for the purpose of better recycling practices. The style and design of the bags shall be approved by the City prior to purchasing. Collector shall contact all existing Multi-Family Unit Residential Premises by September 30, 2021 and confirm the quantity of Multi-Family Unit Recycling Bags desired by each Multi-Family Unit Residential Premises (no more than one (1) bag per dwelling unit). Collector will deliver Multi-Family Unit Recycling Bags to Multi-Family Unit Residential Premises and include total amount of Multi-Family Unit Recycling Bags distributed in the Collector's monthly report to the City. After the initial distribution, Collector shall also provide Multi-Family Unit Recycling Bags (no more than one (1) bag per dwelling unit) as new Multi-Family Unit Residential Premises are developed and occupied. Collector shall make available up to 500 Multi-Family Unit Recycling Bags for the City to distribute as needed.
- F. Community Relations Plan. Collector shall use reasonable business efforts to outreach and educate the public on the importance of recycling and separating Garbage from Recycling order to achieve maximum waste diversion. Collector shall develop a recycling brochure that describes the recycling program and mail it out to all Customers. The recycling brochure must be approved by City prior to printing and shall be available in English, Spanish, and Mandarin. Brochure must note that it is available in Spanish and Mandarin upon request and online. Collector shall be responsible for all costs associated with the design, printing, and delivery of the recycling brochure. Collector must submit the recycling brochure to the City for review by July 1, 2021. Collector must deliver brochure to Customers by September 30, 2021. Collector's recycling brochure shall be updated and reprinted as necessary to maintain reasonable supply for community-related purposes. Collector shall supply City with brochures for activities and customer requests. Collector shall link the brochure to the Collector's website.
- G. Inspection of Containers. Collector shall assign an employee(s) to inspect Containers reported as contaminated for contamination. Collector must submit an annual report, titled "Container Inspection Report" detailing the

routes that were inspected and addresses where a Notice of Violation were left. Collector will spot check one rotating route day per year leaving Notice of Violations when necessary (routes with single family and multi-family units are preferred). Collector is required maintain a database of Notices of Violation issued that goes back at least one full year. Collector shall notify City of customers that have had multiple violations in the last one-year period so appropriate enforcement action can be taken. City may also inspect Container contents at any time and issue its own notice of violations and/or citations. A separate collection charge which shall be billed and collected by Collector may be assessed to Customer to service a contaminated Container.

- H. Review of City's Solid Waste Enclosure Guidelines. City shall retain the right to direct Collector to review and provide comments on solid waste enclosure plans on an as needed basis. Collector shall review guidelines and provide recommendations to the City within two (2) weeks.
- I. Electric Vehicle Pilot Project. Should electric and/or hybrid solid waste vehicles become a viable technology during the term of this Agreement, the Collector and the City shall meet and confer to discuss the implementation of a pilot project for the purposes of operating electric and/or hybrid vehicles in the City.
- J. Customer Service Phone Line. Collector shall staff a telephone information and complaint service. All calls received must be documented and kept on file. The dedicated customer support telephone service must be staffed with an employee(s) from 7:30 a.m. to 4:30 p.m. on all business days.
- K. Accommodation for Disabled Customers. Collector shall provide accommodation for customers with affirmed and qualified disabilities pursuant to the Americans with Disabilities Act of 1990, which may include Collector transporting Containers to and from the street adjacent to the Customer's residence.
- L. Environmental Day Events. Collector shall provide all necessary equipment and staffing to conduct two Environmental Day events for City of Santa Clara residents at its facility located at 1675 Rogers Avenue in San Jose. There shall be no charge to City or Santa Clara residents to utilize these events. Environmental Days will be held on the first Saturday in March and third Saturday in October each year and shall be open for no less than 8:00 a.m. to 12:00 p.m. or four (4) hours. Collector shall be responsible for obtaining any and all necessary permits to conduct Environmental Days. Collector may, at its discretion, require attendees to make an appointment to utilize an Environmental Day event.

Each Environmental Day shall include a document destruction component for Santa Clara residents to destroy all types of paper documents and have

them recycled. Computer disks, magnetic disks, magnetic tapes, transparencies, and video cassettes will be accepted but not recycled. Universal waste and electronic waste may be dropped off for recycling at each Environmental Day event. Other items which shall be accepted for drop-off for recycling and reuse shall include clothing in reusable condition as determined by the Collector's non-profit partner. Upon the completion of each Environmental Day, Collector shall submit to City a report that summarizes the number of Santa Clara residents that utilized the service, and the weights of materials dropped off by category.

Language and logos created by the Collector may be used to promote the Environmental Day events on the City's website, cable channel, calendar, or other written publications.

- M. Coats for Kids Program. On an annual basis, Collector shall sponsor a Coats For Kids program in the City of Santa Clara. Program shall collect coats at designated locations throughout the City. Coats will be given to local schools and/or non-profit agencies for sorting and distribution.

## **5. COLLECTION EQUIPMENT AND PRACTICES**

### **A. Number and Maintenance of Vehicle**

- i. Collector shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which Collector is responsible under this Agreement. After phasing in new vehicles as described in Exhibit G, Collector shall ensure that primary collection vehicles are not over fifteen (15) years of age for this Agreement and no back-up collection vehicle will ever be more than fifteen (15) years of age. If a breakdown or unforeseen circumstance requires Collector to use a vehicle that is greater than fifteen (15) years of age to adequately service the day's collection routes, Collector must notify City verbally and receive approval to send the vehicle on a collection route. For purposes of this paragraph, a vehicle's "age" shall consist of the age of the older of its chassis and body. All vehicles shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean, safe, in good body condition, and in good repair. Collector shall keep all collected materials covered during transportation and shall be regularly inspected and certified by the Santa Clara County Health Department at the sole expense of Collector. Such vehicles shall be kept and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid.
- ii. All collection vehicles operated by Collector shall be newly painted and detailed in a uniform color to enhance the visibility of the vehicle

and distinguish them from other authorized collectors. Such vehicles shall be numbered and shall have the Collector's name, in-service telephone number, place of business, and the number of the vehicle painted in letters of contrasting color on each side and rear of each vehicle. Collector's name, phone number and vehicle number shall be visibly displayed on its vehicles in letters and figures no less than four inches (4") high. Said rear number, and any cautionary message or device shall be readable from a distance of one hundred (100) feet. Vehicles shall be cleaned and repainted as necessary to maintain a reasonable, acceptable condition to City.

- B. Compliance With Applicable Air Pollution Control Laws. Collector shall maintain all equipment and conduct all business activities in accordance with all applicable air pollution control laws. Upon request from City, Collector shall provide records of all collection vehicles in service in the City, including fuel source and engine and chassis numbers. In addition to any indemnification obligations set forth elsewhere in this Agreement, Collector shall defend, indemnify, and hold harmless City against any fines, penalties, losses, or claims arising out of Collector's failure to comply with this paragraph.
- C. Clean Collection Practices. Collector shall not cause or permit private property or City streets or property to be littered with debris because of Collector's activities under this Agreement. Collector shall clean up any debris in the immediate vicinity of any Container, Front Loading-Bin, and/or storage area that results from collection services under this Agreement. In the event of repeated litter not caused by Collector directly, Collector shall first notify the Customer and, if litter continues, Collector may request the City's assistance to rectify the situation.
- D. Communication System. Collector shall equip each vehicle and central dispatch office with a radio communication system or cellular phone equipment to provide communication ability. Collector shall instruct collection route supervisors and drivers to be aware of and report scavenging, suspicious activity, fires, and other serious occurrences to Collector's dispatch office, or 911.
- E. Alternative Fuel Collection Vehicles. Collector shall use only Alternative Fuel Collection and supervisor vehicles for all work associated with Agreement. Collector shall fuel collection vehicles with renewable diesel and supervisor vehicles will be hybrid or renewable diesel vehicles. Collector must obtain City approval to use any other type of Alternative Fuel Vehicle for this Agreement. Collector will be subject to liquidated damages set forth in Section 7.C for failure to use alternative fuel for collection vehicles and supervisor vehicles used specifically for this Agreement.

## **6. PUBLIC ACCESS TO COLLECTOR**

- A. Local Office and Regular Hours. Collector's office hours shall be, at a minimum, from 7:30 a.m. to 4:30 p.m. Monday through Friday, except federal holidays. A representative of Collector shall be available during office hours for communication with the public at Collector's principal office. The representative shall, at a minimum, provide service information to the public. Collector shall also maintain a telephone number for off hour message and voice recording when the local office is closed. Collector shall have a representative or answering service available for emergency contact by City during all hours other than normal office hours.
- B. Service Complaints and Dispute Resolution. All service complaints received by City from Customers shall be directed to Collector. Collector shall record all complaints received (including date, name, address, phone number, and nature of complaint), and action taken, or other disposition. Collector shall make all such records available for inspection by the City during normal business hours, upon demand by the City. Collector agrees to use its best efforts to resolve all such complaints within the business day next following the date on which such complaint is received.

If Collector misses a scheduled pickup, it shall provide a special pickup within twenty-four (24) hours (Sundays and Holidays excepted) of notice thereof to Collector at no charge to Customer or City.

Collector shall provide a monthly summary report in writing to the City of types and numbers of missed service, complaints, and disputes.

In the event that the City determines that Collector has failed to render performance in accordance with the requirements of this Agreement, City may assess damages against Collector and reduce payment otherwise due to Collector accordingly. Collector shall in all cases be given a reasonable opportunity to remedy the defect in performance prior to such assessment of damages.

- C. Customer Information. Collector shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless authorized or required by Applicable Law, the City or a court of competent jurisdiction.

## **7. GENERAL PROVISIONS**

- A. Force Majeure. Collector shall not be in default under this Agreement in the event that the collection, transportation, processing and/or disposal services of Collector are temporarily interrupted or discontinued for any of the following reasons: riots, wars, civil disturbances, insurrections,

epidemics, hurricanes, earthquakes, floods, acts of God, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of Collector. It is specifically understood that "other catastrophic events" include strikes, lockouts and other labor disturbances. When any of these events interrupt collection, transportation, processing of Recyclable Material by Collector as required under this Agreement, City may elect to exercise its rights under Section 7.E.

- B. Annexation. In the event that any community, neighborhood or other territory is hereafter annexed to City, recycling services shall, if requested by City, be immediately provided to such area by Collector pursuant to this Agreement. City agrees to give all required notice and to do all acts necessary under applicable statutes to accomplish this result as soon as permissible by law.
- C. Fees and Gratuities. Collector shall not, nor shall it permit any agent, employee or subcontractor employed by it to request, solicit, or demand either directly or indirectly, any compensation or gratuity for the collection of Recyclable Material otherwise required to be collected under this Agreement. Collector shall not, nor shall it permit any agent, employee or subcontractor employed by it to accept any monetary compensation or gratuity for the collection of Recyclable Material otherwise required to be collected under this Agreement.
- D. Rights of City to Perform During Emergency. Should Collector, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in Section 7.A, fail, refuse or be unable to collect, transport, process and dispose of any or all of the Recyclable Material for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours, and if as a result thereof Recyclable Material should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event City shall have the right, in addition to any other rights under this Agreement or pursuant to law, upon twenty-four (24) hour prior written notice to Collector, or without such notice should the City determine that a further delay would endanger the health, safety, and welfare of City residents during the period of such emergency, to take possession of any or all equipment of Collector previously used in the collection, transportation, processing and disposal of Recyclable Material or which Collector would otherwise be obligated to collect and transport pursuant to this Agreement. Collector agrees that in such event it will fully cooperate with City to affect such a transfer of possession for City's use. Collector agrees that, in such event, City may take possession of and use all of said equipment and facilities without paying Collector any rental or other charge, provided that City agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities.

Collector further agrees that, in such event, it shall reimburse City for any and all costs and expenses, including the cost of City employees and/or third party laborers in the performance of emergency services pursuant to this Section, incurred by City in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of Collector under the terms of this Agreement. City shall first subtract such reimbursement costs from compensation otherwise due Collector under this Agreement, and to the extent such costs exceed those due Collector, an itemized statement of costs and expenses shall be submitted for reimbursement to Collector. To facilitate reimbursement of costs and expenses to City, Collector agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement to the extent that such services have been rendered to said Customers by City and further agrees to allow City to collect such payments directly from the Customers. City agrees that it shall relinquish possession of all of the above-mentioned property to Collector upon written notice from Collector to the effect that it is able to resume its responsibilities under this Agreement. It is agreed that City's exercise of its rights under this Section shall not affect Section 9 of this Agreement.

## **8. REPORTING, ACCOUNTING AND AUDITING**

- A. Daily. Collector shall maintain and make available to the City, upon request, records of the number of tons of Recyclable Material collected from Residential premises and the route number, the vehicle number and Collector's weight ticket for each load disposed or processed. The records shall also reflect amounts received by Collector from the sale of Recyclable Materials.
- B. Monthly. Collector shall submit a report due within thirty (30) calendar days after the end of the reporting period of:
  - i. The number of all households serviced by the Collector;
  - ii. All MFD complexes serviced including the following information for each: name of complex, address of complex, number of units in complex, and contact number for the complex;
  - iii. The number of compactors serviced by the Collector;
  - iv. Number of Multi-Family Unit Recycling Bags distributed and addresses of Multi-Family Unit Residential Premises where Multi-Family Unit Recycling Bags are distributed;
  - v. Collector shall submit a summary of all customer service calls and complaints with resolutions, including the address and contact information of caller; and

- C. Quarterly. Collector shall submit written quarterly reports to the City totaling the information contained in the monthly reports. Reports are due within thirty (30) calendar days after the end of the reporting period.
- D. Annual. Collector shall submit annual reports that cover a calendar year's activity (January 1 – December 31) to the City on or before March 1 of each year totaling the information contained in the quarterly reports for the year. For the first year of this Agreement, Collector will include any additional reporting as described in Section 8, for the entire calendar year (i.e., January 2021 – December 31 2021). Collector shall cooperate fully with City's AB 939 and AB 341 reporting requirements by providing City with information reasonably requested by City regarding Collector's operations and services hereunder, within a reasonable time of Collector's receipt of City's request, but in no event longer than fifteen (15) days after such receipt. Upon request, Collector shall make an oral presentation of the annual report to the City Council of the City at the City Council meeting specified by the City. In addition, Collector must submit:
- i. Beverage Container Recycling reporting specifying the percentage of California Refund Value (CRV) items collected by the Collector in the City's Recyclable Materials stream (i.e., the CRV audit performed by the Processing Facility);
  - ii. Annual Community Relations Plan for the upcoming year; and
  - iii. Container Inspection Report containing the results of contamination and Notice of Violation issued as described in Section 4.G.
- E. Additional Information. Collector shall use reasonable business efforts to incorporate into the reports required by this Section any additional information requested by the City. Collector shall incorporate into such reports any new reporting information required by Applicable Law.

## **EXHIBIT B**

### **DEFINITIONS**

For the purpose of this Agreement, certain words and terms shall be constructed as herein set forth unless it is apparent from the context that a different meaning is intended.

- A.     Applicable Law. All law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders, or requirements of the United States, State of California, County of Santa Clara, CITY, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, including AB 939, AB 341, SB 1383, SB 1016 and all amendments and related subsequent legislation, that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and the Santa Clara County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments thereto, unless otherwise specifically limited.
- B.     Alley. A dedicated public or private way giving access to the rear of lots or buildings.
- C.     Commercial. The designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.
- D.     Compactor. Any roll-off container or bin which has a compaction mechanism, whether stationary or mobile.
- E.     Container. A wheeled automated cart receptacle designed specifically for the storage and collection of Recyclable Material from Single-Family and Multi-Family Units, and which has a tight-fitting lid. Containers also include one to eight cubic yard bin receptacles, where the lid of the container is entirely blue in color provided by Collector to Customers for the storage and collection of Multi-Family Recyclable Material.
- F.     Curbside. At or near the curb and gutter in front of Residential properties.
- G.     Customer. Any person, owner or occupant, who receives Recyclable Materials collection service from Collector.
- H.     Disposal. "Disposal" means the final disposition of refuse at a landfill or other permitted disposal facility, as defined in California Public Resources Code Section [40192](#).

- I. Drop Body Debris Bin. An open top metal refuse container, ten (10) to forty (40) cubic yards in capacity, that is serviced by a roll-off truck.
- J. Electronic Waste (E-Waste). Appliances, devices, and other objects containing electronic components, and includes (but is not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCR's, televisions, printers, microwaves, and toasters.
- K. Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission.
- L. Fluorescent Bulbs. Light bulbs that utilize fluorescent as opposed to incandescent technology.
- M. Front-Load Bin. Industrial standard metal bins that are provided by Collector for recycling at Multi-Family Unit Residential Premises, are one to eight cubic yards in capacity, and are serviced by front-load apparatus-equipped vehicles.
- N. Garbage. All classes of refuse, including but not limited to, putrescible or decomposable animal or vegetable matter and disposable food containers. Garbage does not include Organic Waste, Recyclable Materials, or Exempt Waste.
- O. Hazardous Waste. Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time.
- P. Industrial. A parcel of real property designated as being located in an industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara. A map of the industrial-zoned areas of the city is available at the following web address: <https://map.santaclaraca.gov/public/index.html?viewer=regional>
- Q. Institutional. The designated zoning for public or quasi-public development as shown on the official Zoning Map of the City of Santa Clara.
- R. Holiday. Limited to:
  - i. January 1<sup>st</sup> – New Year's Day
  - ii. The date set aside in November for Thanksgiving Day
  - iii. December 25<sup>th</sup> – Christmas

- S. Multi-Family Unit Residential Premises. Any building and/or structure, or portion thereof, in City which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having five (5) or more self-contained living units.
- T. Notice of Violation. A notice, as approved by City, issued by Collector to a customer on a container or front-loading bin that documents non-compliance with a particular set-out rule specified in this Agreement, and includes the address and date.
- U. Processing Facility. A facility or facilities for sorting and/or processing commingled or source separated Recyclable Materials.
- V. Push/Pull Service. The driver of the collection vehicle pushes a Container or Front-Loading Bin to the service point, empties it, and then pulls it back to its original location. This service is charged to Customer on a price per foot moved basis, with the first ten (10) feet being complimentary.
- W. Recyclable Material. Materials which have been discarded, thrown away or abandoned by the generator or owner thereof, and have been source-separated by the generator from other Refuse, and are of the type commonly collected in recycling programs in California, which as of the date hereof consist of the following:
  - i. newspaper
  - ii. corrugated cardboard
  - iii. mixed paper
  - iv. glass bottles and jars
  - v. beverage containers
  - vi. aluminum cans
  - vii. tin cans, and discharged metal spray paint cans
  - viii. steel and other types of kitchen scrap metals
  - ix. any plastic container or bag marked with a #1, #2, #3, #4, #5, #6 or #7 inside of three arrows
  - x. compact fluorescent light bulbs
  - xi. used motor oil
  - xii. used motor oil filters

This list may be expanded or revised to include other materials as may be mutually agreed upon by City and Collector. The term "Recyclable Material" may be used interchangeably with the terms "Recycling" and "Recyclables".

- X. Refuse. All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including

garbage and recoverable material, and excluding hazardous wastes. The term “refuse” may be used interchangeably with the term “solid waste”.

- Y. Residential. The designated zoning for residential development as shown on the official zoning map of the City, or other property used for single-family or multifamily residential purposes, regardless of zoning designation.
- Z. Single-Family Unit Residential Premises. Any building, and/or structure, or portion thereof, in City which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having four (4) or less self-contained living units.
- AA. Single-Stream Recycling. All acceptable Recyclable Materials consisting of paper, plastics, metals, and glass that are co-mingled in the same Container or Front-Loading Bin for collection by Collector. Motor oil, bagged motor oil filters, and large cardboard may also be set-out for collection outside of the approved Front-Loading Bin or Container.
- BB. Street. A dedicated public or private way used for public travel.

**EXHIBIT C**  
**COLLECTOR COMPENSATION**

1. **Annual Compensation:** City shall pay to Collector, for services rendered via this agreement, the following annual compensation amounts:
  - A. July 1, 2021 through June 30, 2022 - \$3,194,000 total annual compensation.
  - B. July 1, 2022 through June 30, 2023 - \$3,635,000 total annual compensation.
  - C. **Annual WST Adjustment:** Annual compensation for the year starting July 1, 2023 through June 30, 2024, and annually thereafter, shall be adjusted by the same percentage as the percentage of increase, if any, in the Water and Sewer and Trash Index. The "Water and Sewer and Trash Index" (WST Index) means the "Water and sewer and trash collection services in U.S. city average" published by the Bureau of Labor Statistics, series identification number CUSR0000SEHG. The percentage increase or decrease, if any, shall be determined by the percentage increase or decrease in the index for the most recent month of December over the same index for the month of December of the previous year, rounded to the nearest hundredth of a percent. For example, Collector's compensation for the year starting July 1, 2023 through June 30, 2024 shall equal \$3,635,000 times 100% plus the percentage increase in the WST Index, as described above, rounded to the nearest whole dollar. Still as an example, if the percentage increase in the WST Index calculated per the above is 2.50%, then the Collector's compensation for the year starting July 1, 2023 would be \$3,635,000 times 102.50% yielding \$3,725,875 in compensation.
    - i. **Cap on Annual Adjustment:** The actual annual WST Index compensation adjustment percentage may not exceed five percent (5%) in any year or be below two percent (2%) in any year. In the event the annual WST compensation adjustment is less than two percent (2%), Collector compensation shall be adjusted by two percent (2%). In the event the annual WST Index rate adjustment is more than five percent (5%), the annual compensation shall be adjusted by five percent (5%). This cap applies only to the WST annual adjustment and is applied prior to the growth adjustment described below.
  - D. **Annual Growth Adjustment:** Annual compensation for the year starting July 1, 2023 through June 30, 2024, and for each year thereafter, shall also be adjusted by the percentage change in the total number of weekly container service lifts performed by the Collector, effective January 1 of the

current year, compared to January 1 of the prior year. For example, Collector compensation for the year starting July 1, 2023 through June 30, 2024 shall be adjusted first by the annual WST Index compensation adjustment described in Sections 1.C above, and then shall be further adjusted based on the percentage change, if any, in the total number of weekly container service lifts as of January 1, 2023 compared to the total number of weekly container service lifts as of January 1, 2022 (rounded to the nearest hundredth of a percent).

On October 8, 2019, the total number of weekly container service lifts performed by the Collector was 28,521 as shown in the information contained in the table on the following page. The Collector shall pull an identical report of the total number of weekly container service lifts on January 1, 2022 and then again on January 1, 2023, and annually thereafter. As example of the growth adjustment calculation, if the total number of service lifts is 29,000 on January 1, 2022 and 30,000 on January 1, 2023, then the percentage adjustment for growth in the number of lifts that would take effect July 1, 2023 would be 30,000 divided by 29,000, yielding a percentage increase of 103.45%, rounded to the nearest whole dollar.

Using the prior example from Section C, above, the growth adjustment would be applied to the result of the annual adjustment using the WST Index. In the prior example this yielded a resulting annual compensation starting July 1, 2023 of \$3,725,875, which, using the container lift numbers shown above, would further increase by 103.45%, yielding total annual compensation of \$3,854,418.

| TYPE | CODE | TM | UNITS              | LIFTS         |
|------|------|----|--------------------|---------------|
| A    | MIX1 | 1  | 45                 | 45            |
| A    | MIX1 | 2  | 8                  | 16            |
| A    | MIX2 | 1  | 25                 | 25            |
| A    | MIX2 | 2  | 4                  | 8             |
| A    | MIX2 | 3  | 6                  | 18            |
| A    | MIX3 | 1  | 53                 | 53            |
| A    | MIX3 | 2  | 43                 | 86            |
| A    | MIX3 | 3  | 4                  | 12            |
| A    | MIX4 | 1  | 49                 | 49            |
| A    | MIX4 | 2  | 5                  | 10            |
| A    | MIX4 | 3  | 6                  | 18            |
| A    | MIX6 | 1  | 2                  | 2             |
| A    | R32  | 1  | 9                  | 9             |
| A    | R64  | 1  | 355                | 355           |
| A    | R64  | 2  | 79                 | 158           |
| A    | R64  | 3  | 24                 | 72            |
| A    | R96  | 1  | 1126               | 1,126         |
| A    | R96  | 2  | 237                | 474           |
| A    | R96  | 3  | 88                 | 264           |
| R    | R32  | 1  | 673                | 673           |
| R    | R64  | 1  | 24169              | 24,169        |
| R    | R64  | 2  | 12                 | 24            |
| R    | R96  | 1  | 855                | 855           |
|      |      |    | <b>Total Lifts</b> | <b>28,521</b> |

2. **Monthly Compensation:** In addition to the total annual Collector compensation described in Section 1 of this Exhibit, Collector shall be due compensation from the City for the following, which shall be calculated and invoiced by the Collector to the City and paid by City on a monthly basis:

A. Special Services Charges

- (i) Manual "Push/Pull Charges": \$1.00 per foot moved
- (ii) Front-Loading Bin Cleaning Service Charge: \$125.00 flat fee cleaning charge
- (iii) Driver-time reimbursement for delays lasting over fifteen (15) minutes caused by blocked access ways on the property or to level and/or manually reload containers or front-loading bins: \$95.00 per hour
- (iv) Lock-Jam Bin Installations: \$75.00 flat fee

- (v) Fee to Service Contaminated Recycle Containers:
  - a. Toters: \$25.00 flat fee
  - b. Front-Loading Bins: \$125.00 flat fee

Effective July 1, 2023, and each July 1 thereafter, each of the above Special Services Charges shall be adjusted by the same percentage as the annual WST Index adjustment under Section 1.C of this Exhibit.

**B. Recycling Costs Reimbursement**

Any net costs (or revenues) associated with the processing of Recyclable Materials starting July 1, 2021 shall be passed through without profit or markup to the City. Collector shall remit a monthly statement to the City documenting all net costs (or revenues) for processing of Recyclable Materials for the prior month. The City shall reimburse the Collector for the monthly net cost of processing Recyclable Materials, if applicable, and the Collector shall pay the City the amount of the monthly net revenues from processing Recyclable Materials (if applicable). The City shall retain the right to audit the Collector's net Recyclable Materials processing costs (or revenues) for accuracy annually.

- 3. **Other Special Services**: In addition to the total annual and monthly Collector compensation described in Sections 1 and 2 of this Exhibit, Collector shall be entitled to directly bill and collect compensation from customers, at pricing set by Collector, for Special Services not billed by City, provided, however, that Collector shall not charge more than \$512.00 per haul for Compactor Service (minimum service frequency of 1 time per week). Effective July 1, 2023, and each July 1 thereafter, such maximum shall be adjusted by the same percentage as the annual WST Index adjustment under Section 1.C of this Exhibit.

## **EXHIBIT D**

### **INSURANCE REQUIREMENTS**

Without limiting the Collector's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Collector shall purchase 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:

#### **1. COMMERCIAL GENERAL LIABILITY INSURANCE**

- A. 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:
  - i. \$5,000,000 Each occurrence
  - ii. \$5,000,000 General Aggregate
  - iii. \$5,000,000 Products/Completed Operations Aggregate
  - iv. \$5,000,000 Personal Injury
- B. Exact structure and layering of the coverage shall be left to the discretion of Collector; 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.
- C. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Collector to comply with the insurance requirements of this Agreement:
  - i. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - ii. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - iii. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **2. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as

broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Collector and/or its subcontractors involved in such activities shall provide coverage with a limit of five million dollars (\$5,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

### **3. WORKERS' COMPENSATION**

- A. 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.
- B. The indemnification and hold harmless obligations of Collector 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 Collector or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
- C. 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.

### **4. POLLUTION LIABILITY**

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Collector and/or its subcontractors shall provide a Collector's Pollution Legal Liability Insurance policy with coverage limits not less than five million dollars (\$5,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any self-insured retention must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Collector will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

- A. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
- B. Products/completed operations coverage shall extend a minimum of 3 years after project completion.
- C. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent Collectors.
- D. If the insured is using subcontractors, the Policy must include work performed “by or on behalf” of the insured.

## **5. 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.

- A. 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 Collector’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.
- B. Primary and non-contributing. Each insurance policy provided by Collector 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 Collector’s insurance.
- C. Cancellation.
  - i. 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.
  - ii. 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.

- D. 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 2 through 4 of this Exhibit D, above.

## **6. ADDITIONAL INSURANCE RELATED PROVISIONS**

Collector and City agree as follows:

- A. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Collector or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
- B. Collector shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Collector shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Collector shall submit evidence that insurance policies will be in effect during requested additional period of time.
- C. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Collector thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Collector, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
- D. Any type of insurance or any increase of limits of liability not described in this Exhibit which Collector requires for its own protection or in compliance with applicable statutes or regulations, shall be Collectors' responsibility and at its own expense.
- E. No liability insurance coverage provided by Collector to comply with the terms of this Agreement shall prohibit Collector, or Collector's employees, or agents, from waiving the right of subrogation prior to a loss. Collector waives its right of subrogation against Indemnitees. Any property insurance policies affected by Collector shall be endorsed to delete the subrogation

condition as to indemnitees or shall specifically allow Collector to waive subrogation prior to a loss. Collector hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.

- F. Collector 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 Collector, provide the same minimum insurance coverage required of Collector, except as with respect to limits. Collector 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. Collector 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.
- G. Collector shall cooperate fully with City and Collector's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
- H. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Collector shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
- I. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
- J. Collector acknowledges and agrees that any actual or alleged failure on the part of City to inform Collector of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
- K. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
- L. Collector 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 Collector 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.

- M. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Collector. The Collector's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.
- N. The City reserves the right to withhold payments from the Collector in the event of material noncompliance with the insurance requirements set forth in this Agreement.

## **7. EVIDENCE OF COVERAGE**

Prior to commencement of any Services under this Agreement, Collector, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase 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. Collector 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.

## **8. EVIDENCE OF COMPLIANCE**

Collector 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. 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:

Email to Email address: [ctsantacalara@ebix.com](mailto:ctsantacalara@ebix.com)  
Or by U.S. Mail to:

EBIX Inc.  
City of Santa Clara Public Works Department (Streets Division)  
P.O. Box 100085-S2  
Deluth, GA 30096

## **9. QUALIFYING INSURERS**

All of the insurance companies providing insurance for Collector 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 E**  
**[RESERVED]**

**EXHIBIT F-1**  
**ETHICAL STANDARDS FOR COLLECTORS SEEKING TO ENTER INTO AN**  
**AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

**1. TERMINATION OF AGREEMENT FOR CERTAIN ACTS**

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
- i. If a Collector<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted 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 Collector in the performance of this Agreement; and/or,
    - e. Makes any false statement(s) or representation(s) with respect to this Agreement.
  - ii. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Collector can be imputed to the Collector when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Collector, with the Collector's knowledge, approval or acquiescence, the Collector's acceptance of

---

<sup>1</sup> For purposes of this Agreement, the word "Collector" (whether a person or a legal entity) 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.

the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
- i. If City determines that Collector 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,
  - ii. If City determines that the Collector fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Collector's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
  - iii. Provided, however, that the City shall not exercise its rights pursuant to this Section B unless the City gives written notice to Collector of its determination, including the factual basis for making its determination, and Collector fails to eliminate the cause for the determination within forty-five (45) days on those matters which may be cured within forty-five (45) days and is taking reasonable action to eliminate those matters which cannot be cured within a forty-five (45) day period.
- C. In the event the Agreement is terminated pursuant to these provisions, Collector 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 Collector will have the burden of proof on the appeal. The Collector shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> Collector 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 Collector.

<sup>5</sup> Loss of personnel deemed essential by the City for the successful performance of the obligations of the Collector to the City.

**EXHIBIT F-2**  
**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**  
**[CITY OF SANTA CLARA]**

I, Michael J. Sangiacomo, being first duly sworn, depose and state I am President & CEO of Recology South Bay dba Recology Santa Clara and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit F-1. 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 "Collector" 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 "Collector" 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.

**RECOLOGY SOUTH BAY**  
a California corporation

\_\_\_\_\_  
Michael J. Sangiacomo  
President & CEO

\_\_\_\_\_  
Cary Chen  
Secretary

**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.

**EXHIBIT G**  
**SOLID WASTE COLLECTION VEHICLE REPLACEMENT SCHEDULE**

| <b>7</b> | Total quantity of new vehicles to be purchased to service customer routes |              |                        |                     |   |
|----------|---|--------------|------------------------|---------------------|---|
| <b>#</b> | <b>Make</b>   | <b>Model</b> | <b>Year of Chassis</b> | <b>Year of Body</b> | <b>Delivery Date / Proposed First Day of Service To Occur In:</b> |
| 2        | Automated Side Loader   | Heil         | 2022                   | 2022                | Q4-2022**   |
| 2        | Automated Side Loader   | Heil         | 2023                   | 2023                | Q4-2023**   |
| 2        | Automated Side Loader   | Heil         | 2024                   | 2024                | Q4-2024**   |
| 1        | Front Loader  | Heil         | 2025                   | 2025                | Q4-2025**   |

\*\*Q4 of calendar year

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Northern California Office  
1512 Eureka Road, Suite 220, Roseville, CA 95661  
Tel: 916-782-7821 | Fax: 916-782-7824

San Francisco Bay Area Office  
2600 Tenth Street, Suite 424, Berkeley, CA 94710  
Tel: 510-647-9674

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October 7, 2019

Mr. Dave Staub  
Deputy Director of Public Works  
City of Santa Clara Public Works Department  
1700 Walsh Avenue  
Santa Clara, CA 95050

Subject: Review and Recommendation for a Successor Agreement with Recology South Bay

Dear Mr. Staub:

The City of Santa Clara (City) has an exclusive franchise agreement (Agreement) with Recology South Bay (Recology) for the collection and processing of the City's recyclables. Services provided by Recology via the current Agreement are set to expire on December 31, 2021. The Council has previously extended the Agreement's original expiration date from January 20, 2020 to be coterminous with the City's other exclusive solid waste agreement with Mission Trail Waste Systems. City staff hired R3 Consulting Group, Inc. (R3) to assist the City with negotiations and prepare the scope of services for the successor agreement with Recology. R3 has worked with the City to negotiate in good faith, review all negotiation documents, verify the accuracy of escalations and rate calculations, and believes that the City has secured the best deal it can negotiate with Recology.

## Summary of Findings

The City and Recology have reached tentative agreement for a 15-year successor term beginning July 1, 2021 and terminating on June 30, 2036.

### Secured Existing Services

The City has secured the same recycling services that the City's residents currently have. Residents will continue to use the same carts and bins. Recology will be required to purchase new renewable diesel collection trucks to replace the existing fleet. These trucks must be in service by July 1, 2021.

### Secured New Services

In addition to its existing services, the City has also secured new services via its negotiations with Recology. The City will have the ability to direct recycling to the processor of its choice, creating more options for the City and making future solid waste decisions more flexible. In addition, the term has been extended to fifteen (15) years from the original ten (10) years to bring down the annual cost of amortizing equipment. In terms of reporting and outreach, Recology has agreed to changes to its reporting requirements with the City to support the City's compliance with State Laws and reduce City overhead time spent on solid waste reporting. Recology has also agreed to provide multi-family dwelling recycling

bags and continue its outreach efforts to promote proper recycling and reducing contamination to the City's residents and businesses.

### Cost Comparison

During the negotiation process, R3 reviewed Recology's historical and projected operating expenditures and confirmed the validity of calculations and escalations used as the basis for the compensation due to Recology under the Agreement. R3 confirms the accuracy of the mathematical calculations behind the compensation. R3 recommends that the City execute the Agreement with Recology in particular because the proposed compensation is competitive with the current marketplace.

R3's findings are based on escalating the monthly compensation per unit included in prior proposals the City received in its 2008 procurement for solid waste services (Mission Trail Waste Systems, Republic Services, GreenWaste Recovery, and California Waste Solutions) and comparing them to the cost per unit price in the proposed Recology Agreement. R3 also identified and escalated actual proposed costs for similar services recently contracted in by the City of San Jose and the South Bayside Waste Management Authority). R3 used a Consumer Price Index (CPI) escalator to bring the proposal amounts from other regional haulers up to the current market. These escalations do not reflect the recent international recyclable commodities price decline (i.e., China's National Sword) that increased the cost of recycling dramatically in California and nationwide. The effects of the recycling markets decline are much higher (5-10% higher on average) than the normal CPI increases that occurred over the course of the City's current Agreement. Table 1 below, compares the negotiated cost the City will pay Recology to the other haulers and other regional jurisdictions with recently negotiated rates that are at "market price".

Table 1: Cost Per Unit Comparison

| FY 2022/23 Comparison  | Monthly Cost Per Unit |
|--|-----------------------|
| Proposed Recology Agreement  | ~\$6.48               |
| Mission Trail Waste Systems 2008 proposal with CPI escalation            | \$6.20                |
| Republic Services 2008 proposal with CPI escalation                      | \$6.84                |
| GreenWaste Recovery, Inc. 2008 proposal with CPI escalation              | \$7.94                |
| California Waste Solutions 2008 proposal with CPI escalation             | \$8.48                |
| South Bayside Waste Management Authority 2018 actual with CPI escalation | \$10.75               |
| City of San Jose 2019 proposals with CPI escalation                      | \$15.50               |

The negotiated monthly cost per unit secured with Recology is much lower than neighboring jurisdictions in San Jose and the jurisdictions that are members of the South Bayside Waste Management Authority. Additionally, the cost per unit is still lower than many of the City's other bids escalated from its 2008 procurement and not including additional costs such as the China National Sword impacts. With a simple 5% escalator to account for the impacts of China's National Sword, Recology's monthly cost per unit is the lowest in the comparison. Therefore, it is in R3's professional opinion that the proposed Recology Agreement is a good value proposition for the City and recommends that the City seek to execute a successor Agreement with Recology.

Mr. Dave Staub

Review and Recommendation for a Successor Agreement with Recology South Bay

October 7, 2019

Page 3 of 3

If the successor Agreement is approved, the City would begin to pay Recology based on the negotiated compensation amounts beginning at the start of the agreement on July 1, 2020. Based on the findings above and the negotiated outcomes, we see no reason for the City to not agree to a successor Agreement for recycling collection and processing with Recology.

\* \* \* \* \*

We appreciate the opportunity to be of service to the City. Should you have any questions regarding our proposal or need any additional information please contact me by phone at (510) 647-9674 or by email at [gschultz@r3cgi.com](mailto:gschultz@r3cgi.com).

Sincerely,

A handwritten signature in blue ink that reads "Garth Schultz". The signature is written in a cursive, flowing style.

R3 CONSULTING GROUP

Garth Schultz | Principal



## Agenda Report

19-1355

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### SUBJECT

Action on Substation Service Agreement with Related Santa Clara, LLC for Esperanca Substation

#### BACKGROUND

On July 12, 2016, the City Council approved the adoption of Ordinance No. 1956 which authorized the City Manager to enter into a Development Agreement with Related Santa Clara, LLC (Related) for the development of the 240-acre City Place Santa Clara project ("City Place"). As part of this Development Agreement, the City has agreed to provide new electric capacity and power transmission facilities to Related for City Place. The City Place development will require certain increased and/or special electric service facilities that will be provided by the City's electric utility provider, Silicon Valley Power (SVP). The City and Related have negotiated a Substation Service Agreement to address the rights and obligations of the parties with respect to providing interim electric capacity and service at full build-out. This Substation Service Agreement addresses such matters as the construction obligations of the City for the additional substation and off-site distribution facilities, electrical service requirements to be provided by the City, construction and payment obligations of Related, and the granting of easements or other property rights.

#### DISCUSSION

Electric service to City Place will be provided from Esperanca Substation under the terms of this Substation Service Agreement. In addition, SVP will provide interim service capacity of 9MVA which will enable Related to begin construction and operate without interruption until the Esperanca Substation is fully constructed and operational. SVP will design, procure, construct, test and commission all substation equipment necessary and required per SVP's specifications to provide electric service to City Place. Since Esperanca Substation is a general distribution substation, Related will be responsible for their prorated portion of the total cost incurred by SVP related to the design, procurement, installation, construction, fabrication, inspection and testing of the Esperanca Substation. Related's prorated share of the total cost will be paid in full by Related to the City as Developer Contributions. The completed Esperanca Substation will be owned, operated and maintained by SVP at SVP's sole cost and expense.

This Substation Service Agreement requires the City to procure a control building, circuit breakers, switchgear and two substation transformers (long lead materials), and Related will be responsible for the prorated costs for 27 MVA of the total 63 MVA Esperanca Substation capacity. These items typically have a long lead time between procurement ordering and delivery of the items to the site. Due to the expedited time frame associated with this agreement, staff is requesting that Council delegate the authority to approve the purchase of the long lead materials to the City Manager.

#### ENVIRONMENTAL REVIEW

Esperanca Substation will be within the site boundary of SVP's existing Northern Receiving Station.

The Bayshore North Redevelopment Projects Environmental Impact Report (EIR) was adopted by the City Council on September 14, 1999 and the full buildout of the Northern Receiving Station substation facility was included as a part of that EIR review. The EIR approval allows SVP to proceed with the required design, procurement, and construction activities necessary for the Esperanca Substation project.

**FISCAL IMPACT**

Related will be responsible for paying the actual prorated costs related to the design, procurement, installation, construction, fabrication, inspection and testing of the Esperanca Substation as listed in Exhibit B (Payment Terms) of this Agreement estimated at \$9,7079,794. This developer contribution has been included in the Capital Improvement Program project budget in the Electric Utility Capital Fund in the affected fiscal years. Related will also be charged a Load Development fee, with rate listed in Exhibit B. This fee will be in effect until August 12, 2023 per the Development Agreement between the City and Related. After this date, the Load Development fee will be based on the current published fee in the Municipal Fee Schedule.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

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

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Service Agreement

**ESPERANÇA SUBSTATION AGREEMENT  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
RELATED SANTA CLARA, LLC**

**PREAMBLE**

This Esperança Substation Agreement ("Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date") by and between the City of Santa Clara, California, a chartered California municipal corporation ("City") and Related Santa Clara, LLC, a Delaware limited liability company ("Customer"). The City and Customer may be referred to in this Agreement individually as a "Party" or collectively as the "Parties".

**RECITALS**

- A. The City of Santa Clara owns and operates a municipal electric utility, doing business as Silicon Valley Power ("SVP"). City and Customer have entered into a Development Agreement in which City has agreed to provide new electric capacity and power transmission facilities to Customer for its development known as "City Place", the location of which is shown on Exhibit A attached hereto and incorporated herein;
- B. City has determined that it will build a new electric distribution substation with a capacity of 60 MVA to be known as the Esperança Substation ("Substation Facilities") to fulfill its obligations to Customer. Customer and City have determined that 27 MVA of the total capacity will be allocated to Customer;
- C. The purpose of this Agreement is to set forth the mutual obligations of the parties with respect to supplying Customer with initial interim electric power and then with permanent capacity and transmission infrastructure for City Place.

Therefore, in consideration of the foregoing, the Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. PROJECT OVERVIEW**

The buildout of City Place is expected to occur over several decades and will occur in several phases. Customer will require an initial electric power capacity of 9 MVA that SVP will supply prior to completion of the Substation Facilities ("Interim Phase"). "Capacity" as used in this Agreement is defined as the amount of energy that can be received for Customer's use.

City and Customer have agreed that Customer will fund the development and construction of the Substation Facilities ("Substation Development Phase") to serve City Place at 5155 Stars and Stripes Drive in Santa Clara, California, ("Premises"), the location of which is generally shown in Exhibit A.

In the course of the development of City Place, City and Customer will finalize interconnection points, distribution through the project, and ancillary facilities necessary for supplying electrical power within the project ("Connection Phase").

The estimated locations of the interconnection points on the Premises will be developed based on the proposed locations of individual transformers. The layout of and requirements for these interconnection points is subject to change over time; provided that the interconnection points shall be complete and agreed upon by the Parties prior to commencement of any construction on the Substation Facilities.

The beginning and the ends of these successive phases may overlap. The respective responsibilities and obligations of the City and Customer for each of these phases are more particularly described below.

## **2. INTERIM PHASE**

### **A. SVP OBLIGATIONS**

To enable Customer to begin construction and operate without interruption until the Substation Facilities are fully constructed and begin operation, SVP shall use its best efforts to deliver 9 MVA of interim capacity of "Electric Service" as defined in SVP Rules and Regulations No. 1 at locations to be identified in Customer's proposed Phase 1 construction plans ("Interim Service"). Interim Service will be provided from two (2) 12 kV distribution feeders.

The Interim Service shall be provided 12 months after Customer provides its written request for the Interim Service to SVP. In the event that the Customer requests changes to the interconnection point after the written request, this may extend the 12 month timeline on a day for day basis. The 9 MVA of Interim Service will be split into two 4.5 MVA segments to be provided to Customer at or near the locations set forth in the Interim Service diagram attached as Exhibit C.

### **B. CUSTOMER OBLIGATIONS**

Customer shall provide a written request for Interim Service that shall contain the following information: site address, capacity requested, service voltage, point of interconnection, load schedule, and requested energization date.

Customer shall pay, 30 days prior to the energization of the Interim Service, a non-refundable "Load Development Fee" as shown in Exhibit B.

## **3. SUBSTATION DEVELOPMENT PHASE**

### **A. SVP OBLIGATIONS**

SVP will provide 27 MVA of capacity for Customer's use (the "27 MVA Capacity"), such capacity amount to be confirmed and finalized by the parties through the design and due diligence process, to the Premises, upon completion of, and served by, the Substation Facilities.

The 27 MVA Capacity will be made available to the Customer from the Substation Facilities and connected to the Premises through existing electric utility infrastructure.

SVP will use commercially reasonable efforts to design, procure, construct, test, and commission the Substation Facilities to be able to deliver the 27 MVA Capacity (inclusive of any Interim Service that is transferred to the Substation Facilities) at 12 kV.

SVP shall use commercially reasonable efforts to complete and operate the Substation Facilities to serve the load associated with the construction of City Place within thirty (30) months after the Effective Date of this Agreement, subject to the following terms:

1. SVP shall own, design, construct, operate, and maintain, and pay for all costs directly incurred by SVP that are related to, the Substation Facilities.
2. SVP shall work with Customer to transfer from Interim Service to the new Substation Facilities within three (3) months after completion of the Substation Facilities.
3. Upon completion of the Substation Facilities, SVP shall provide the 27 MVA Capacity (inclusive of any Interim Service that is transferred to the Substation Facilities). Such capacity shall include primary and, as necessary, secondary, services to the Premises. SVP shall make available the 27 MVA Capacity for Customer's use for 25 years (the "Reservation Period") from the completion date of the Substation Facilities. Any force majeure event, as described in Section 6 will extend this Reservation Period on a day for day basis during the entire period of the force majeure event.
4. SVP shall be responsible, at its sole cost, for all ancillary improvements including landscaping, if any, that may be required on or near the Substation Facilities.
5. SVP shall keep Customer informed on a regular ongoing basis as to the costs it is incurring to design and construct the Substation Facilities, including periodic updates to Exhibit B as appropriate. Once preliminary engineering review is complete, SVP will provide Customer with a detailed estimate of project cost to fully complete the Substation Facilities. SVP shall provide Customer with reasonable access to SVP's books and records that substantiate any costs SVP proposes to bill to Customer related to the Substation Facilities.

## **B. CUSTOMER OBLIGATIONS**

The design and due diligence process begins with the Customer providing a detailed electric service site plan from which SVP will prepare an electric utility distribution design layout for the Premises. This design layout will become the basis for the detailed design for the electric utility substructures on the Premises.

Customer shall pay City its pro rated share (42.9%) of the labor, material and other related costs associated with the design, procurement, construction, testing, and commissioning of the Substation Facilities per the Payment Milestones in Exhibit B.

Customer shall pay the City for SVP's actual costs per Payment Milestones set forth in Exhibit B. Invoiced costs by SVP shall be due within thirty (30) days of receipt of invoice. Invoices from SVP shall describe in detail the allocation of costs to Customer for its pro rata share of Substation Facilities capacity.

If Customer desires to use 27 MVA Capacity, Customer must pay a "Load Development Fee" in the amount set forth in Exhibit B. Customer will receive a credit to the Load Development Fees for the amount of Interim Service capacity already provided to the Premises. The Load Development Fee will be payable 30 days prior to the energization of the additional Electric Service.

To the extent Customer requests additional capacity above the 27 MVA Capacity, the costs of any such additional capacity shall also be determined on a pro rata basis based on the overall 60 MVA capacity of the Substation Facilities.

#### **4. CONNECTION PHASE**

##### **A. SVP OBLIGATIONS**

SVP will work with Customer to create a functional set of electric substructure construction drawings for City Place. These drawings will conform to SVP requirements and design guides. SVP shall give final approval of these drawings prior to Customer's installation of substructures.

SVP will prepare an electric utility distribution design layout for City Place. This design layout will become the basis for the detailed design for the substructures for City Place.

Any substructures that are proposed to be installed in City Place that do not conform with existing SVP Underground Design and Construction standard documents may require a Special Facilities Agreement to be properly executed prior to SVP accepting the final drawings. SVP will inform Customer as soon as reasonably possible to the extent a Special Facilities Agreement will be required.

As detailed in SVP's UG 1000, the Inspector will meet with the Customer, upon a minimum of 24 hours advance notification, before Customer commences installation of any substructures, items of construction or installation of material in order to permit SVP to confirm that the substructure materials and workmanship are consistent with the final approved drawings. SVP's inspector shall inspect installed substructures prior to Customer backfilling or otherwise covering the substructures.

Upon completion of electric substructures to SVP's satisfaction, SVP shall accept the work. SVP shall furnish and install all cable, switches, street lighting poles, luminaires, transformers, meters and other equipment that it deems necessary for supplying electric power to the Customer and consistent with prudent utility practices.

All electrical equipment, installed by SVP upon the Premises for the purpose of, but not limited to, delivery and metering of Customer's Electric Service, shall continue to be the property of SVP. SVP shall own, operate, and maintain the electric utility facilities on the Premises at its sole cost and expense, in accordance with the SVP Rules and Regulations as they may be updated. Any service by SVP to other retail customers using the Substation Facilities shall not adversely affect service by SVP to Customer.

## **B. CUSTOMER OBLIGATIONS**

Customer shall install all electric substructures in City Place, in accordance with current Santa Clara City Code ("SCCC") Section 17.15.210, which states: "The Developer shall provide the City, in accordance with then current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communications systems, as required by the City in the development of frontage and on-site property. Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his/her cost the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City." For purposes of this Agreement, Customer is the "Developer", and Customer is responsible for all duties assigned to "Developer" under SCCC Section 17.15.210. Customer is responsible for meeting all typical City standard requirements for the design, construction, and dedication of Public Infrastructure, including but not limited to providing all appropriate bonds and warranties.

SVP and Customer will negotiate and prepare one or more easement agreements providing for certain limited easements on the Premises, as may be required by SVP, to install any necessary distribution facilities;

## **5. NON-INTERFERENCE**

Neither party nor any of its agents or contractors shall perform any work relating to the Interim Service, the Substation Facilities, or City Place in a manner which unreasonably interferes with the other party's work or property. City and Customer and each of their respective agents and contractors shall use their best efforts to minimize disruption to each other. Without limiting the generality of the foregoing, each party shall consult in good faith with the other regarding the manner in which work will be performed.

## **6. FORCE MAJEURE**

Neither Party shall be considered to be in default in performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force. The term "Uncontrollable Force" as used in this Agreement, shall mean any cause beyond the reasonable control of the Party affected, and which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Such Uncontrollable Force includes: war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming an extension; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics;

quarantine restrictions; freight embargoes; lack of transportation not caused by, or outside the reasonable control of, the Party claiming an extension; governmental restrictions or priority; environmental conditions existing or discovered on or affecting City Place or any portion thereof, including those resulting from the investigation or remediation of such conditions; litigation that enjoins construction or other work on City Place or any portion thereof, causes a lender to refuse to fund a loan or to accelerate payment on a loan, or would cause a reasonably prudent developer either to forbear from commencing construction or other work on City Place or any phase or portion thereof or to suspend construction or other work; disruptions in the public or private financing markets that delay or materially increase the cost of public or private financing for the Project; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; moratorium, as defined in California Government Code Section 66452.6(f); litigation, ballot measures or referenda challenging the City of Santa Clara's or another regulatory body's approval of City Place (or any part thereof); the inability to obtain on a timely basis other approvals required for commencement and completion of the improvements contemplated for City Place (assuming that Customer is using commercially reasonable efforts to obtain such approvals); actions or inquiries by a federal, state, local and/or regional governmental or quasi-governmental body or authority including departments, agencies, boards, or councils, or any political subdivision, public corporation, district or other political or public entity or department thereof having or exercising jurisdiction over the City of Santa Clara, the Customer or City Place, or such portions thereof as the context indicates, that results in a delay; the occurrence of landfill or other construction cost premiums that render development of a parcel or portion thereof commercially uneconomic; delays caused by the City of Santa Clara's inability to comply with its obligations regarding title under its Disposition and Development Agreement with the Customer; and a Materially Adverse Economic Condition that means (i) with respect to office product, that the Class A Office vacancy as published in the Cushman & Wakefield's Marketbeat Office Snapshot-Silicon Valley (or such successor or comparable publication reasonably approved by each of the Parties) is fifteen percent (15%) or higher; and (ii) with respect to retail product, that the comparable vacancy rate is more than ten percent (10%) at Valley Fair Shopping Center and/or Stanford Shopping Center (except that if the vacancy rate is more than ten percent (10%) at only one of those two centers because of circumstances unrelated to market forces, such as bankruptcy, foreclosure or substantial renovation, then such vacancy rate would be required at both centers).

No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices, or due to unreasonable delay by the Party claiming or seeking to claim relief from liability. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

**7. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST**

Customer and City each bind itself, its successors, and assigns, to all of its respective covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, by either Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed; any such assignment shall not relieve the assignor from any of its obligations under this Agreement. Notwithstanding the foregoing, and without any prior consent of City, Customer shall have the right to assign this Agreement to an affiliate or successor of Customer.

**8. NO THIRD PARTY BENEFICIARY**

Except permitted assignees per Section 5 above, 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.

**9. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Customer agrees to protect, defend, hold harmless and indemnify the City, its Directors, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which the City shall become legally liable arising from Customer's gross negligence or willful misconduct with respect to or in any way connected with its performance under this Agreement.

To the extent permitted by law, City agrees to protect, defend, hold harmless and indemnify Customer and its affiliates and their directors, officers, employees, and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Customer shall become legally liable arising from SVP and the City of Santa Clara's gross negligence or willful misconduct with respect to or in any way connected with its performance under this Agreement.

**10. AMENDMENTS**

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated as an Amendment to this Agreement.

**11. SEVERABILITY CLAUSE**

In case any one or more of the provisions contained herein shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, it shall not affect the validity of the other provisions which shall remain in full force and effect.

**12. WAIVER**

Waiver by either Party of any provision of this Agreement shall not be construed as waiver(s) of any other provision of this Agreement.

**13. NOTICES**

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

Chief Electric Utility Officer  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050  
And by e-mail at [svpcontracts@santaclaraca.gov](mailto:svpcontracts@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Customer addressed as follows:

c/o The Related Companies, L.P.  
60 Columbus Circle  
New York, New York 10023  
Attn: Chief Legal Officer  
Email:

and

Related Santa Clara, LLC  
5201 Great America Parkway  
Techmart Center, Suite 532  
Santa Clara, California 95054  
Attn: Legal Officer  
Email:

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

#### **14. 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.

#### **15. 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.

#### **16. COMPLIANCE WITH LAWS**

The Parties shall comply with all laws, ordinances, codes and regulations of the federal, state and local governments applicable to their respective obligations and activities contemplated by this Agreement, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Customer'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 Customer has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

#### **17. DISPUTE RESOLUTION**

- A. Unless otherwise mutually agreed to by the Parties, any controversies between the Parties 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. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation that 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, regardless of the outcome of the litigation.

## **18. OTHER AGREEMENTS**

This Agreement shall not prevent either Party from entering into similar agreements with other entities or individuals.

## **19. TERMINATION OF AGREEMENT**

### **A. TERMINATION FOR CAUSE**

For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement. Either Party may terminate this Agreement in the event of a default by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement.

### **B. OPPORTUNITY TO CURE DEFAULT**

Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have thirty (30) days from the receipt of such notice to cure the default by making such payment or performing the required obligation (or additional time, if any that is reasonably necessary to promptly and diligently cure the default). If the default is cured to the reasonable, mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

### **C. TERMINATION WITHOUT CAUSE**

At any time, Customer may elect to terminate construction of the Substation Facilities upon delivery of thirty (30) days written notice thereof to SVP. If Customer chooses to terminate construction of the Substation Facilities, Customer will reimburse any and all SVP expenses, termination fees, and cancellation fees reasonably incurred by SVP related to the Substation Facilities prior to the expiration of such 30-day notice period; provided that SVP will use its best efforts to minimize any such costs incurred after it receives notice of termination.

## **20. 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.

## **21. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT**

This Agreement and its Exhibits embody the entire agreement between the Parties regarding the subject matter of this Agreement. No other understanding, agreements, conversations, or otherwise, with any officer, agent, or employee of the City shall affect or modify any of the terms in or obligations created by this Agreement.

(continued on page 12 of 15)

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.

**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"

**RELATED SANTA CLARA, LLC.**  
a Delaware limited liability company

Dated: 11/7/19

By (Signature): [Signature]

Name: Stephen Eimer

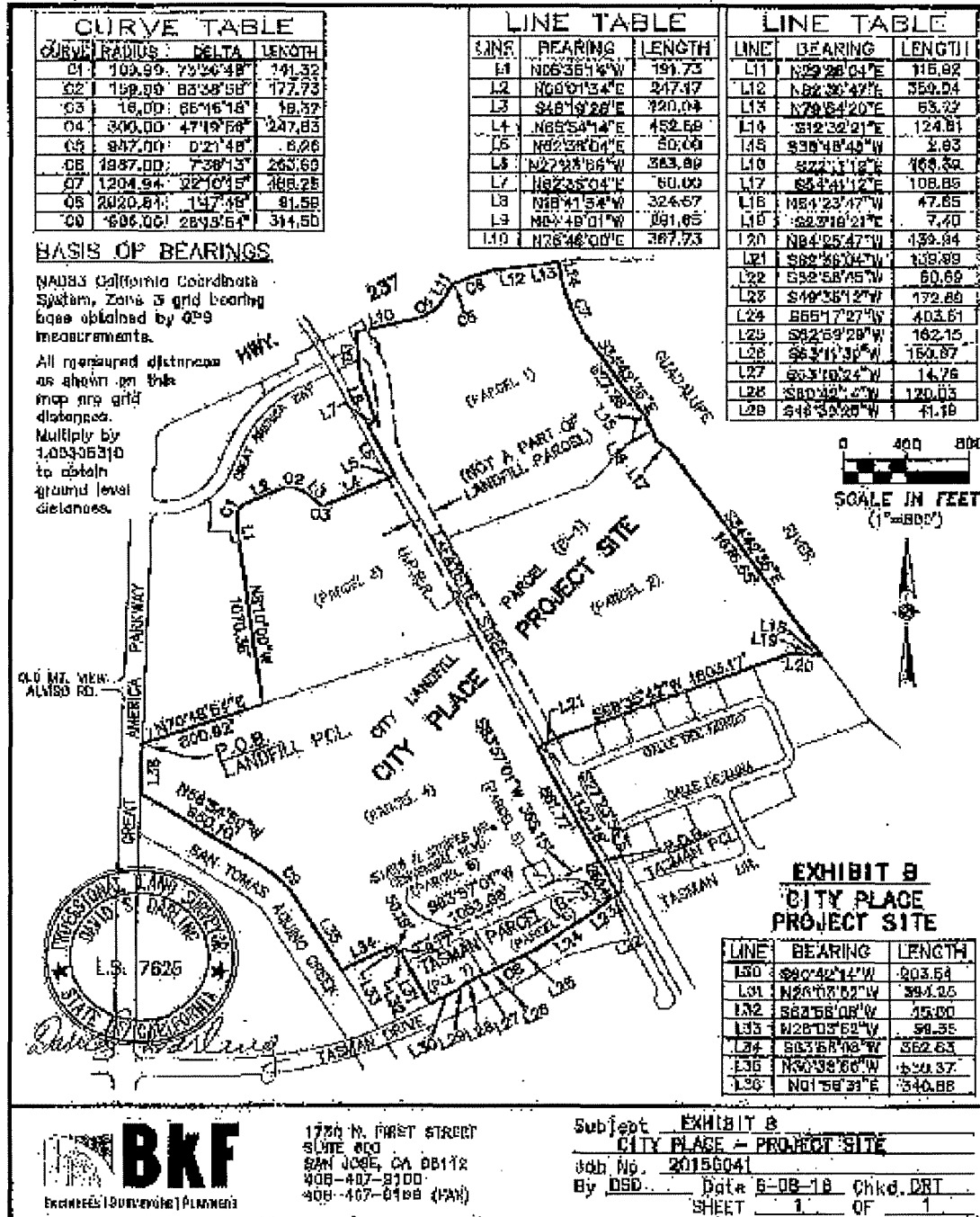
Title: EVP

"CUSTOMER"

# EXHIBIT A

## Parcel Map

(as excerpted from the original Development Agreement Exhibit B signed between Customer and the City on August 12, 2016)



**EXHIBIT B**  
**Payment Terms**

**Payment Rates**

Load Development Fee is \$111.73 / kVA in effect until August 12, 2023 per the Development Agreement. After this date, the Load Development Fee will be based on the current published fee in the Municipal Fee Schedule.

**Payment Schedule**

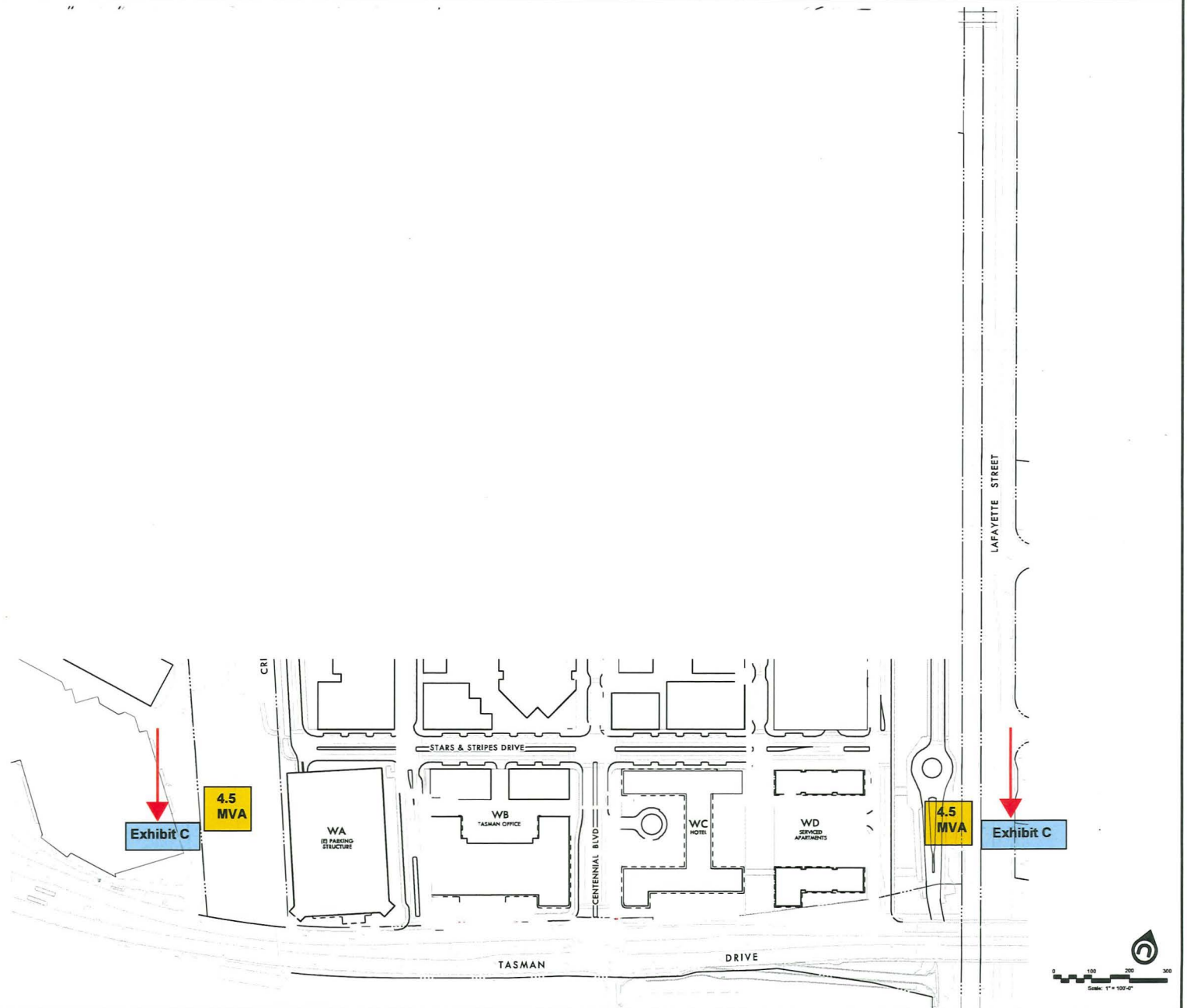
| Milestone | SVP Invoice Date (payment due 30 days after invoicing)           | Amount      |
|-----------|--|-------------|
| 1         | 30 Days following City Council Approval of Agreement             | \$965,250   |
| 2         | 30 Days following City Council Approval of Procurement Contract  | \$3,933,768 |
| 3         | 30 Days following City Council Approval of Construction Contract | \$4,180,775 |
| 4         | 30 Days following True Up Invoice                                | TBD         |

## EXHIBIT B Payment Terms

| Substation Design & Construction Elements  | Duration Time Frame of work | SVP's Estimated Cost | Customer's Estimated Pro-rated reimbursement cost | Payment Milestone  | Comments   |
|--|-----------------------------|----------------------|---|--|--|
| Council Approval of Substation Agreement   | 3 Months                    |                      |   | PM #1: \$965,250 - City to invoice 30 days after City Council approves Substation agreement. Payment due in 30 days. Work to commence once City receives payment in full.  | Payment Milestone #1: Pro-rated Design cost = (\$1.25 million + \$1.0 Million) * 0.429 = \$965,250. SVP would need \$965,250.00 from Customer when Council approves Substation Agreement for Customer's pro-rated share of design costs. |
| <b>Substation Design Build and Test Process plus Long Lead Time Procurement</b>                      |                             |                      |   |  |  |
| Transformer, Control Building & Switchgear Procurement Drawings & Contract Specification Preparation | 8 Months                    | \$ 1,250,000         | \$ 536,250  |  | Concurrent with Substation Drawing Prep. Cost included in PM #1  |
| Council Approval of Procurement Agreements   | 3 Months                    |                      |   | PM #2: \$3,933,768 City to invoice 30 days before Procurement Agreements are approved by City Council. Payment due 30 days from invoice date. (Approx. 4 months after effective date of agreement)   | Payment Milestone #2: Pro-rated Long Lead Equipment cost = (\$1.365 million + \$3.207 Million + \$4.598 Million) * 0.429 = \$3,933,768. SVP would need \$3,933,768 prior to Council approval of the material procurement agreements.     |
| Control Building Procurement   | 9 Months                    | \$ 1,365,000         | \$ 585,585  |  |  |
| Transformer Procurement  | 12 Months                   | \$ 3,206,838         | \$ 1,375,734                                      |  |  |
| Switchgear Procurement   | 12 Months                   | \$ 4,597,786         | \$ 1,972,450                                      |  |  |
| <b>Substation Site Construction</b>  |                             |                      |   |  |  |
| Substation Design Drawings & Contract Specification Preparation                                      | 8 Months                    | \$ 1,000,000         | \$ 429,000  |  | Concurrent with Switchgear Drawing Prep. Cost included in PM #1  |
| Public Works Bidding   | 4 Months                    |                      |   |  |  |
| Council Award of Public Works Contract   |                             |                      |   | PM #3: \$4,180,775 City to invoice 30 days before Public Works contract is approved by City Council. Payment due 30 days from invoice date. Work will commence once Public Works Contract is approved and payment is received in full. (Approx. 12 months after effective date of agreement) | Payment Milestone #3: Construction, Commissioning, and Testing cost = (\$8.370 million + \$1.375 Million) * 0.429 = \$4,180,775. SVP would need \$4,180,775.00 from Customer prior to Council approval Public Works Contract.            |
| Substation Construction  | 10 Months                   | \$ 8,370,397         | \$ 3,590,900                                      |  |  |
| Substation Commissioning & Testing   | 3 Months                    | \$ 1,375,000         | \$ 589,875  |  | Begins after completion of Substation  |
| <b>Substation Design, Construct, Test process best case</b>  | 22 months                   |                      |   |  |  |
| <b>City invoices difference between estimated and actual costs for project</b>                       |                             |                      |   | PM #4 - City to invoice customer difference between estimated and actual costs for project. Payment due 30 days after invoice date.  | City to invoice Customer difference between estimated and actual costs at the end of the project. Payment due 30 days after invoice date.  |
| <b>ESTIMATED GRAND TOTAL FOR ENTIRE PROJECT</b>  | 26 Months                   | \$ 21,165,021        | \$ 9,079,794*                                     |  | PM #1 + PM #2 + PM #3 = \$965,250 + \$3,933,768 + \$4,104,230 = \$9,003,248. Net time with schedule overlaps included.   |

Notes:

\* Includes \$643,500 pro-rated share of SVP staff costs  
 Substation capacity is based on 14 feeders at 4.5 MVA per feeder for a total of 63 MVA  
 Customer's requested capacity is 27 MVA. This represents 42.9% of the total substation feeder



| REVISIONS |          |                          |    |
|-----------|----------|--------------------------|----|
| NO.       | DATE     | DESCRIPTION              | BY |
| 01        | 08.30.18 | DRAFT ISSUE FOR REVIEW   | JN |
| 02        | 08.16.18 | REVISED DRAFT FOR REVIEW | JN |
| 03        | 08.24.18 | COMPOSITE SET            | JN |
|           |          |                          |    |
|           |          |                          |    |



**RELATED  
SANTA CLARA**

**RELATED SANTA CLARA CITY PLACE  
ELECTRIC POWER DISTRIBUTION SYSTEMS**

CITY OF SANTA CLARA

STATE OF CALIFORNIA

SHEET TITLE

**RSC- MV distribution system  
Exhibit C**

DATE **10/28/2019**

SCALE AS SHOWN

DRAWN BY STAFF

CHECKED JN

JOB NO. 19-017

SHEET

**C1.0**



## Agenda Report

19-074

Agenda Date: 12/3/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

Consideration of Silicon Valley Power Quarterly Strategic Plan Update

#### **BACKGROUND**

On December 4, 2018, Council adopted a Strategic Plan ("Plan") for the City's Electric Utility Department, dba Silicon Valley Power (SVP). SVP is making quarterly updates to Council on the implementation of the Plan in the form of a Power Point Presentation. This is the Third of those updates. Staff has scheduled a future quarterly update for December. The update will provide a status of the advancement of the Plan and current conditions within this industry.

SVP is a recognized industry leader with a strong history and reputation of providing excellent customer service. The electric industry is rapidly changing and undergoing a fundamental transformation shifting from a centralized resource grid toward an increasing decentralized electrical grid with distributed renewable energy resources (e.g. wind, solar, hydrogen, and biogas), shifting variability in supply, and greater customer choice.

To maintain our competitive advantage and respond to these changes, the City adopted the Plan to ensure continued growth and actions that support our mission. SVP must focus on offering our customers products and services that are innovative, intuitive and engaging. The report to be presented to Council will provide update on the implementation of the Plan as well updating Council on the current status of the utility and the current opportunities and challenges it is facing.

#### **DISCUSSION**

Staff has completed or is currently working on over half of the 30 initiatives included in the Strategic Plan, and a summary of the initiatives was presented as part of the September quarterly update. This report will focus on an update on SVP's major Capital Improvement Projects and upcoming Council 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 is no fiscal impact associated with the approval of the 2018 Strategic Plan. Implementation of certain elements of the Strategic Plan will require funding that will be appropriated through the normal budget process.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

Note and file the SVP Quarterly Strategic Plan Update.

Reviewed by: Manuel Pineda, Chief Electric Utility Officer

Approved by: Deanna J. Santana, City Manager



## Agenda Report

19-1383

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### SUBJECT

Discussion and Possible Action on Report from City Attorney on Taking Action by Council Consensus

#### BACKGROUND

At the Governance and Ethics Committee (Committee) meeting held on October 24, 2019, the Committee discussed potentially updating Council Policy 030 entitled "Adding an Item on the Agenda" (Attachment 1). During the discussion, the Committee inquired about the process to have an item placed on the agenda, as well as to have that item worked on and acted on. The Committee also asked for clarification on whether the City Council could refer an item to a future City Council meeting by Council consensus or by a majority vote of the City Council. The Committee requested that the City Attorney report back on the definition of "Council consensus" and what action the City Council can take by "Council consensus" versus by a majority vote of the City Council.

This item was referred from the November 21, 2019 Governance and Ethics Committee meeting to the December 3, 2019 City Council Special meeting for discussion.

#### DISCUSSION

Council Policy 030 "Adding an Item on the Agenda" addresses the various ways in which an item can be added to a Council meeting agenda by the Mayor or a Council Member. In the scenario where an issue is raised during Public Presentations by a member of the public, the Council Policy states that either the Mayor or a "consensus of the City Council" can refer the issue to the City Manager for inclusion on a future agenda. If an issue is raised by Written Petition to Council, then a "simple majority vote" can place the item on a future agenda for discussion. The Policy does not contain a definition of the term "consensus."

There is no process under the Brown Act that refers to a legislative body taking action by consensus. However, the Brown Act specifically allows a legislative body to take the following actions in response to an item that is not on the agenda:

Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

Government Code Section 54954.2(a)(3)

The City Attorney's Office has been unable to determine the origin of this concept of Council consensus. Neither do Robert's Rules of Order shed any light on the process. It appears that the

notion is somewhat unique to Santa Clara. That said, based upon the language of Section 54954.2, the current "Council consensus" process to place an item on a future agenda (not to take action on an item) does not appear to violate the Brown Act. However, as a matter of record-keeping, and in light of the relatively recent switch to the action minutes format, it would be more clear to place a referral or item on a future agenda via a motion and vote.

In conclusion, Council may take action to place matters on a future agenda even if the matter does not appear on a Council agenda. Discussion of the matter should simply be limited to placing it on a future agenda and should not involve an extensive, substantive discussion of the issue itself. The Council may take the actions described in Government Code Section 54954.2(a)(3) by usual motion. If the Council wishes to continue with taking action "by consensus," it would be advisable to clarify how this process actually works by amending Council Policy 030.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

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

### **PUBLIC CONTACT**

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

### **RECOMMENDATION**

Note and file the report.

Reviewed by: Sujata Reuter, Assistant City Attorney

Approved by: Brian Doyle, City Attorney

### **ATTACHMENTS**

1. Council Policy 030 - Adding an Item on the Agenda



## **ADDING AN ITEM ON THE AGENDA**

### **PURPOSE**

To establish a clear, effective and easily understood process for members of the City Council and the public to have items within the jurisdiction of the City Council, placed on the City Council agenda for consideration.

### **POLICY**

#### **Members of the City Council:**

1. The Mayor or any individual Council Member may submit a written request to the City Manager's Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet.

#### **Referral from a Council Committee:**

1. Council Committees may submit a written request to the City Manager's Office for inclusion of an item on a City Council agenda, provided the request is received two (2) days prior to the public release of the agenda packet.
2. Council Committees may bring forward a recommendation to the full City Council by way of the Committee Minutes, which are typically prepared within three weeks following the Committee meeting.

#### **Items Referred During a Council Meeting:**

By Council consensus, an item may be referred to the City Manager for inclusion on a City Council agenda. If the request requires further study of the item from staff, a full analysis shall be prepared at the direction of the City Manager with at least thirty (30) calendar days prior to the meeting, unless otherwise directed by the City Council. If the request requires more than thirty (30) calendar days to prepare, status updates will be provided to the Council every sixty (60) days as an informational memo.

## ADDING AN ITEM ON THE AGENDA (cont.)

### Written Petitions and Public Presentations:

1. Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the City Council to be heard under the "Written Petition" section of the City Council's regular agenda within two (2) Council meetings after received. After the initial Written Petition is placed on the agenda, a simple majority vote of the Council may add the item to a future Council meeting for action.
2. Any member of the public may address the City Council under the "Public Presentations" section of the agenda. If the presentation includes a request of the Council, the Mayor or a consensus of the City Council may refer the item to the City Manager to be properly agendized at a future meeting, in compliance with The Brown Act.

### **PROCEDURE FOR WRITTEN PETITIONS**

All requests to address the City Council shall be submitted in writing. Written Petition forms are available for the petitioner's convenience on the City's website and in the City Manager's Office, City Clerk's Office and the Mayor and Council Offices. Alternatively, an email may be submitted to [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov).

Once the Written Petition is received by the City Clerk's Office, it should immediately be forwarded to the City Manager for placement on an agenda within two (2) Council meetings after receipt of the original request from the City Clerk's Office. All written material (request and support material) will be submitted on the agenda in the form substantially provided by the requester without any staff analysis, including fiscal review, legal review and policy review, until the City Council has had the opportunity to provide direction to the City Manager.

At the meeting where the item is first considered, if a simple majority of the City Council supports further study of the item, then a full staff analysis shall be prepared within thirty (30) days, unless otherwise directed by the City Council.



# City of Santa Clara

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

## Agenda Report

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19-1315

Agenda Date: 12/3/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

Update on City Council and Stadium Authority Staff Referrals

#### **BACKGROUND AND DISCUSSION**

During Council and Stadium Authority meetings, the City Council or Stadium Authority Board provide direction on policy issues or refer information requests to staff for follow-up.

The purpose of the City Council and Stadium Authority Referrals Update is to provide the City Council/Stadium Authority Board and the public a current status report. Completion of the referrals may be communicated by various means such as: Report to Council, Information Memorandum provided through a Council Agenda, City Manager Biweekly Report/Blog, or a City Manager/Executive report out during a future Council meeting.

The Referrals list will be published in the Council agenda packet under the "City Manager/Executive Director Report" section of the Council Agenda. Reports will include both open and closed referrals.



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

**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS  
FOR FOLLOW-UP/ACTION**  
Updated 11/20/19



|     | Date Assigned | Source          | Referral Description  | Assigned Department         | Projected Completion | Completed |
|-----|---------------|-----------------|---|-----------------------------|----------------------|-----------|
| 1.  | 11/19/19      | Council Meeting | Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street – return to Council in 120 days with a term sheet, a drinking well study and discussion on the preservation of historical railroad property   | City Manager                | March 2020           |           |
| 2.  | 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                | TBD                  |           |
| 3.  | 11/12/19      | Council Meeting | Destination Marketing Organization – Report back to Council in 90 days regarding CEO search; include detailed timeline for hiring of CEO  | City Manager                | February 2020        |           |
| 4.  | 11/12/19      | Council Meeting | Provide update on the International Association of Science Parks (IASP) Conference in 2021 to the Economic Development, Communications and Marketing Committee  | City Manager                | Fall 2020            |           |
| 5.  | 11/5/19       | Council Meeting | Regarding the request to annex two hotel parcels (AC Hotel and Element Hotel) into the Community Facilities District, staff to report via the City Manager's Biweekly Report/Blog the estimated revenue from the special Transient Occupancy Tax  | Finance                     | 12/6/19              |           |
| 6.  | 11/5/19       | Council Meeting | Schedule a Study Session regarding the pros and cons of General Obligation (GO) bonds and parcel tax  | Finance                     | February 2020        |           |
| 7.  | 10/29/19      | Council Meeting | Regarding GIS system, provide biannual updates via the City Manager/Executive Director Report at Council meeting  | IT                          | April 2020           |           |
| 8.  | 10/29/19      | Council Meeting | Provide options for the \$750,000 commitment from Levy for community enrichment   | City Manager                | TBD                  |           |
| 9.  | 10/29/19      | Council Meeting | City Manager to provide information on IASP Conference held in Nantes, France   | City Manager                | 11/12/19             | 11/12/19  |
| 10. | 10/22/19      | Council Meeting | Provide a City Manager Biweekly Report item on why food truck vendors at the Library are being fingerprinted as well as what are food truck permitting requirements (in lieu of a Biweekly Report, staff prepared a Report to Council)  | Police                      | 11/19/19             | 11/19/19  |
| 11. | 10/22/19      | Council Meeting | Staff to return with budget appropriations in the budget cycle to improve the gazebo area at Mission Branch Library   | Finance                     | May 2020             |           |
| 12. | 10/8/19       | Council Meeting | Add for a future Council meeting a Special Order of Business for the Parade of Champions planning team  | City Manager                | 11/12/19             | 11/12/19  |
| 13. | 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/<br>City Manager | TBD                  |           |
| 14. | 9/24/19       | Council Meeting | Staff to review the potential for rebates for the purchase of electric bicycles   | SVP                         | Spring 2020          |           |
| 15. | 9/24/19       | Council Meeting | Staff to review the Ordinance and enforcement of illegal street food vendors  | Police                      | Spring 2020          |           |



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|     | Date Assigned | Source   | Referral Description  | Assigned Department | Projected Completion | Completed |
|-----|---------------|--|---|---------------------|----------------------|-----------|
| 16. | 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        | December 2019        |           |
| 17. | 9/17/19       | Council Meeting  | Stadium Financial Audits – Forward comments and suggestions from the Stadium Authority Board to KPMG regarding the financial audits and seeking support documentation for the data in the audit reports                 | Finance             | November 2019        |           |
| 18. | 9/5/19        | Governance Session   | Review current Santa Clara Code of Ethics and Values and discuss  | City Manager        | 11/21/19             |           |
| 19. | 9/5/19        | Governance Session   | Discuss framework for January 2020 Council Priority Setting Session   | City Manager        | 11/21/19             |           |
| 20. | 9/5/19        | Governance Session   | Review current Council referral policy and process; discuss potential updates   | City Manager        | February 2020        |           |
| 21. | 9/5/19        | Governance Session   | Council would like a better understanding of staff capacity and current workload allocation   | City Manager        | January 2020         |           |
| 22. | 9/5/19        | Governance Session   | Provide increased transparency and education on Public Records Act requests, what drives this workload and how it impacts staff capacity  | City Manager        | January 2020         |           |
| 23. | 9/5/19        | Governance Session   | Direction to establish process for scheduling Council and City Manager one-on-ones  | City Manager        | January 2020         |           |
| 24. | 9/5/19        | Governance Session   | Define a central location for Council to obtain accurate information from City staff before disseminating   | City Manager        | January 2020         |           |
| 25. | 9/5/19        | Governance Session   | Improve communication out to the public from official City staff (easy to understand, timely, accurate)   | City Manager        | January 2020         |           |
| 26. | 9/5/19        | Governance Session   | Provide scheduled communications and strategy   | City Manager        | January 2020         |           |
| 27. | 9/5/19        | Governance Session   | Need general guidelines for all social media  | City Manager        | January 2020         |           |
| 28. | 9/5/19        | Governance Session   | CAO to provide refresher course on the Brown Act as it pertains to confidentiality and what can be covered in closed session, and will include options regarding a “signed pledge;” this course will be in open session | City Attorney       | January 2020         |           |
| 29. | 9/5/19        | Governance Session   | Develop a reporting method to keep Council better informed about the status of referred resident inquiries  | City Manager        | January 2020         |           |
| 30. | 9/5/19        | Governance Session   | Council expressed interest in being able to hold their own town halls or community meetings and asked whether City resources could be available, including use of City facilities, etc.                                 | City Manager        | January 2020         |           |
| 31. | 9/5/19        | Governance Session   | Refer discussion about another governance check-in to the Governance Committee  | City Manager        | January 2020         |           |
| 32. | 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        | TBD                  |           |



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|     | Date Assigned | Source   | Referral Description   | Assigned Department           | Projected Completion | Completed       |
|-----|---------------|--|--|-------------------------------|----------------------|-----------------|
| 33. | 8/27/19       | Council Meeting  | City North Framework – Accept report to allow staff to continue work on the project with direction to staff to return with more specific policies for density, building height, and traffic mitigation   | Community Development         | 12/10/19             |                 |
| 34. | 8/20/19       | Council Meeting  | Staff to return with report on establishing an ad-hoc committee to make recommendations regarding VTA Governance   | City Manager/<br>Public Works | December 2019        |                 |
| 35. | 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                   | December 2019        |                 |
| 36. | 7/9/19        | Council Meeting  | Update on age-friendly activities per commission annual Work Plan  | Parks & Rec                   | February 2020        |                 |
| 37. | 7/9/19        | Economic Development, Communications and Marketing Committee | Review if any legal restrictions exist for the City to post or advertise non-City sponsored events on the City's website or social media outlets   | City Attorney                 | TBD                  |                 |
| 38. | 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                  | December 2019        |                 |
| 39. | 6/4/19        | Council Meeting  | Councilmember O'Neill to provide more clarity on Innovation Zone referral (on 11/19/19 Council deferred this item to the January Council Priorities and Goal Setting Sessions)   | City Manager                  | January 2020         |                 |
| 40. | 6/4/19        | Council Meeting  | Regarding bicycle and scooter share devices: staff to bring back final plan for Council approval – Council asked staff to further look into items such as outreach events, insurance, speed monitoring, data, fee structure and drop-off locations (on hold – pending other public entities' litigation) | Public Works                  | TBD                  |                 |
| 41. | 5/21/19       | Council Meeting  | User Fee Study Session Follow-up: report on Proposed Housing Fee, Recreation Costs as related to Senior Center Space Use (implement space feedback forms and studying the marginal costs) and Nonprofit Room Rental Fees Rates, and Unit or Plot Costs for the Cemetery                                  | Finance                       | 11/19/19             | <b>11/19/19</b> |
| 42. | 4/30/19       | Council Meeting  | Number of public transit riders for large stadium events   | 49ers Stadium Manager         | TBD                  |                 |
| 43. | 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                  |                 |
| 44. | 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/<br>City Clerk  | January 2020         |                 |



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|-----|---------------|-----------------|--|-------------------------------|----------------------|-----------|
| 45. | 4/23/19       | Council Meeting | Children's Health Screening Service Model: statistics on case management and procurement of services                                 | Parks & Rec                   | December 2019        |           |
| 46. | 4/9/19        | Council Meeting | Street Racing and Sideshows: take steps to make the 2004 ordinance operative and increase enforcement within existing resources      | Police                        | Fall 2019            |           |
| 47. | 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 | Finance                       | January 2020         |           |
| 48. | 10/9/18       | Council Meeting | Dedicate Jerry Marsalli Community Center at grand opening of the facility  | Parks & Rec                   | Spring 2020          |           |
| 49. | 10/2/18       | Council Meeting | Amend sign ordinance to prohibit signs on public property  | Parks & Rec/<br>City Attorney | Spring 2020          |           |
| 50. | 7/10/18       | Council Meeting | Annual update on PD community engagement efforts   | Police                        | January 2020         |           |
| 51. | 3/13/18       | Council Meeting | Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor    | Finance                       | December 2019        |           |



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Updated 11/15/19



|    | Date Assigned | Source   | Referral Description   | Assigned Department   | Projected Completion | Completed | Resolution   |
|----|---------------|--|--|-----------------------|----------------------|-----------|--|
| 1. | 9/17/19       | Council Meeting  | Ask the Mercury News why an article published in the print edition concerning the Rolling Stones concert contained some different information than the one that was published in an earlier version online   | City Manager          | 11/5/19              | 11/5/19   | Reported at Council Meeting                                  |
| 2. | 10/22/19      | Council Meeting  | Provide an update via the City Manager's Biweekly Report regarding what has already occurred on placemaking activities   | Community Development | 11/1/19              | 11/1/19   | Biweekly Report  |
| 3. | 9/18/19       | Economic Development, Communications and Marketing Committee | The Committee referred the next steps on the Worker Cooperative to the City Council for review and approval, which includes directing staff to review the resolution and the process and procedures that the City of Berkeley used for their Worker Cooperative Program, and to have the Council consider allocating \$100,000 in the budget for this effort (funding request to be heard by Council on 11/5/19) | City Manager          | 10/29/19             | 10/29/19  | Reported at Council Meeting                                  |
| 4. | 8/27/19       | Council Meeting  | Parkland In Lieu Fee – Return to Council on 9/24/19 with alternatives to phase in the park improvement portion of the fee to longer than 3 years to lessen impact on new housing development and provide the pros and cons. (Remove paragraph 3.C of page 9 of the resolution)   | Parks & Rec           | 10/29/19             | 10/29/19  | Reported at Council Meeting                                  |
| 5. | 6/25/19       | Council Meeting  | Council, by consensus, requested that the City Attorney/staff review the matter related to the Cross at Memorial Cross Park (recent U.S. Supreme Court ruling)   | City Attorney         | November 2019        | 10/29/19  | Council Meeting Closed Session                               |
| 6. | 6/4/19        | Council Meeting  | Comparison study on how the staffing budget and expenses is less in other cities from the general fund; provide a written update on the 1% Development Impact Fee  | Finance               | 10/29/19             | 10/29/19  | Reported at Council Meeting                                  |
| 7. | 1/29/19       | Council Meeting  | Monitor and update to Council if the City of San Jose waives fees for developments along Steven Creek Blvd   | Public Works          | Ongoing              | 10/29/19  | Updates to Council will be ongoing                           |
| 8. | 11/13/18      | Council Meeting  | Review post-agenda material distribution to reduce paper (staff will continue with implementation of the paperless agenda process)   | Clerk's Office        | Fall 2019            | 10/29/19  | Ongoing process to implement paperless agenda                |
| 9. | 9/17/19       | Council Meeting  | Complete community outreach for garbage contracts  | Public Works          | TBD                  | 10/9/19   | Email to Council on 10/9/19 re: community engagement efforts |



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|-----|---------------|--------------------------|--|-----------------------------|----------------------|-----------|--|
| 10. | 1/19/18       | Council Meeting          | Explore joint golf course use with City of Sunnyvale due to the forthcoming closure of the Santa Clara golf course   | Parks & Rec                 | October 2019         | 10/8/19   | Reported at Council Meeting                  |
| 11. | 5/7/19        | Council Meeting          | Silicon Valley Power (SVP) Strategic Plan: provide information on rebate and community benefits programs   | SVP                         | September 2019       | 9/24/19   | Reported at Council Meeting                  |
| 12. | 11/27/18      | Council Meeting          | Massage Ordinance: recover administrative enforcement actions; explore charging a fee for non-conforming uses; develop a community engagement program (letters, workshops, in multiple languages)  | Police/Finance              | 9/24/19              | 9/24/19   | Reported at Council Meeting                  |
| 13. | 9/4/19        | Council Meeting          | Staff was asked if the names of Public Records Act (PRA) requestors could be provided (effective 9/20/19 PRA Log posted weekly online)   | City Clerk                  | 9/20/19              | 9/20/19   | Biweekly Report                              |
| 14. | 4/9/19        | Civil Service Commission | Work with Civil Service Commission on a Job Fair   | Human Resources             | 9/20/19              | 9/20/19   | Biweekly Report                              |
| 15. | 7/9/19        | Council Meeting          | Worker Cooperative – referred to a future Economic Development, Communication and Marketing Committee Meeting for City support options (heard by EDCM on 9/18/19; Committee's recommendations to be heard by Council in December 2019)   | City Manager                | Winter 2019          | 9/18/19   | EDCM Committee                               |
| 16. | 7/9/19        | Council Meeting          | Provide a status report on the City's existing billboard contract and termination status of contract (heard by EDCM on 9/18/19; Committee's recommendations went to Council on 10/29/19)   | City Attorney               | 9/18/19              | 9/18/19   | EDCM Committee                               |
| 17. | 9/4/19        | Council Meeting          | Civil Grand Jury Report – Prepare a letter to the Honorable Deborah A. Ryan Presiding Judge, Santa Clara County Superior Court, for the Mayor's signature emphasizing the City Council's concern regarding: the lack of benchmarking that should have taken place during the investigation and inquiring why has the City of Santa Clara been targeted | City Manager/<br>City Clerk | 9/13/19              | 9/13/19   | Incorporated into Grand Jury response letter |
| 18. | 8/27/19       | BPAC                     | BPAC Request for Letter regarding Freedom Bridge – Council to draft letter to Santa Clara Valley Water District in support of preserving Freedom Bridge  | Public Works                | 9/10/19              | 8/30/19   | Letter sent by staff on 8/30/19              |
| 19. | 3/5/19        | Council Meeting          | Korea Town: legislative record, news article, etc. about previous effort to designate Korea Town (see 8/27/19 referral for follow-up request from Council)   | City Manager                | 8/27/19              | 8/27/19   | Reported at Council Meeting                  |
| 20. | 7/9/19        | Council Meeting          | Staff to add language to Development Agreement in regard to Phase II of Gateway Crossings being referred to the Architectural Committee  | Community Development       | 8/23/19              | 8/23/19   | Biweekly Report                              |



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|     | Date Assigned | Source          | Referral Description  | Assigned Department   | Projected Completion | Completed | Resolution  |
|-----|---------------|-----------------|---|-----------------------|----------------------|-----------|---|
| 21. | 7/9/19        | Council Meeting | Staff to evaluate wild geese at Central Park in response to community member John Haggerty's presentation   | Parks & Rec           | 8/23/19              | 8/23/19   | Biweekly Report   |
| 22. | 5/21/19       | Council Meeting | Reopen public hearing for Gateway Crossing and provide additional information on retail and lease options for PAL   | Community Development | 7/9/19               | 7/9/19    | Reported at Council Meeting   |
| 23. | 2/5/19        | Council Meeting | Anti-Smoking Ordinance: Develop a police department policy regarding enforcement for persons under 21 (Information Report to Council)   | Police                | 7/9/19               | 7/9/19    | Reported at Council Meeting   |
| 24. | 6/4/19        | Council Meeting | Allocate \$70,000 funding in support of the Parade of Champions   | Finance               | 6/25/19              | 6/25/19   | Reported at Council Meeting; funding approved by Council                      |
| 25. | 3/5/19        | Council Meeting | Parade of Champions: confirm nonprofit status; report out on fundraising efforts  | Parks & Rec           | 6/4/19               | 6/4/19    | Reported at Council Meeting   |
| 26. | 5/21/19       | Council Meeting | Provide additional public information/outreach on Hauling and Recyclable items  | Public Works          | June 2019            | 5/31/19   | Biweekly Report   |
| 27. | 5/7/19        | Council Meeting | Saratoga Creek Trail (Homeridge Park to Central Park): provide funding sources  | Public Works          | 5/17/19              | 5/31/19   | Biweekly Report   |
| 28. | 4/23/19       | Council Meeting | Street Trees: for newly developed homes, are street trees required? Who is responsible to water newly planted trees until they are established?   | Public Works          | 5/31/19              | 5/31/19   | Biweekly Report   |
| 29. | 2/19/19       |                 | Attend Community Day School and talk to kids about the opportunities for jobs (staff has been in communication with the school and offered to make a presentation to students about job opportunities; date for event pending school's reply) | Parks & Rec           | May 2019             | 5/21/19   | Letter sent by staff on 5/21/19; no response from school to schedule an event |
| 30. | 5/22/18       | Council Meeting | Review children at dog park signs   | Public Works          | June 2019            | 5/21/19   | Reported at Council Meeting   |
| 31. | 5/22/18       | Council Meeting | Review use of canine turf at Reed & Grant Dog Park  | Parks & Rec           | 5/21/19              | 5/21/19   | Reported at Council Meeting   |
| 32. | 4/23/19       | Council Meeting | BART Extension: what is the estimated ridership for the future Santa Clara BART Station   | Public Works          | May 2019             | 5/3/19    | Biweekly Report   |
| 33. | 3/5/19        | Council Meeting | Parade of Champions: SCPOC to respond to City Council Questions   | Parks & Rec           | 5/17/19              | 5/3/19    | Biweekly Report   |



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|-----|---------------|-----------------|--|---------------------------------------|----------------------|-----------|---------------------------------------|
| 34. | 12/11/18      | Council Meeting | Field Seats: Does the Stadium Authority receive revenue? Are the seats permanent or temporary? Are they allowable under the lease?                                   | Stadium Manager                       | 4/30/19              | 4/30/19   | Reported at Stadium Authority Meeting |
| 35. | 11/27/18      | Council Meeting | Taylor Swift Concerts: how many tickets were given away while we had to cover the full Public Safety costs   | Stadium Manager                       | 4/30/19              | 4/30/19   | Reported at Stadium Authority Meeting |
| 36. | 3/26/19       | Council Meeting | Monthly Financial Status Report: add prior year comparative information for Capital Expenditures   | Finance                               | May 2019             | 4/23/19   | Reported at Council Meeting           |
| 37. | 2/5/19        | Council Meeting | El Camino Real - Additional cost and scope to analyze a lane removal on El Camino and verify that whole Council cannot participate in the specific plan              | Community Development                 | 4/23/19              | 4/23/19   | Reported at Council Meeting           |
| 38. | 3/26/19       | Council Meeting | Investment Policy: identify whether any investments are linked to oil exploration, production, etc.  | Finance                               | 4/19/19              | 4/5/19    | Biweekly Report                       |
| 39. | 3/26/19       | Council Meeting | List of Measure A funded projects  | Community Development                 | 4/19/19              | 4/5/19    | Biweekly Report                       |
| 40. | 12/11/18      | Council Meeting | Parking in neighborhoods around the stadium during event dates: add to FY 2019/20 Stadium Authority Work Plan  | Public Works/<br>Police/City Attorney | Mar 2019             | 3/27/19   | Reported at Stadium Authority Meeting |
| 41. | 10/29/18      | Council Meeting | Levi's Stadium Consolidated Parking Plan (Board approved – scheduled on FY 2019/20 Work Plan.)   | City Manager                          | Winter 2019          | 3/27/19   | Reported at Stadium Authority Meeting |
| 42. | 3/13/18       |                 | Work with the Stadium Manager to develop Key Performance Indicators (KPIs) regarding Non-NFL Event Management. (Board approved – scheduled on FY 2019/20 Work Plan.) | City Manager                          | 3/19/19              | 3/27/19   | Reported at Stadium Authority Meeting |
| 43. | 1/29/19       | Council Meeting | Naming of Relay for Life City Team through outreach campaign   | City Manager                          | 3/26/19              | 3/26/19   | Reported at Council Meeting           |
| 44. | 12/4/18       | Council Meeting | Quarterly SVP Strategic Plan Report  | SVP                                   | 3/26/19              | 3/26/19   | Reported at Council Meeting           |
| 45. | 2/19/19       | Council Meeting | Trash and RV parking along Hope Drive  | Police/<br>Public Works               | 3/8/19               | 3/8/19    | Biweekly Report                       |
| 46. | 2/19/19       | Council Meeting | Post summary of Council's 12/13/18 session on Governance on the City's website   | City Manager                          | 3/8/19               | 3/8/19    | Biweekly Report                       |



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|-----|---------------|-----------------|---|---------------------------------|----------------------|-----------|---|
| 47. | 8/28/18       |                 | Workers' Comp Case related to injury at Stadium: does the Stadium Authority pay for these expenses?   | HR/ Finance                     | 3/8/19               | 3/8/19    | Biweekly Report   |
| 48. | 2/5/19        | Council Meeting | Convention Center Transition Reports  | City Manager                    | 3/5/19               | 3/5/19    | Council Meeting Verbal Report   |
| 49. | 2/5/19        | Council Meeting | Anti-Smoking Ordinance: Work with the Apartment Association to develop a condensed version of the ordinance attached to leases (Information Report) | City Attorney                   | Apr 2019             | 3/5/19    | CAO completed 3/5/19; developed 2-sided 1-pager version of ordinance; shared with CA Apt. Assn. |
| 50. | 10/9/18       | Council Meeting | Parade of Champions: sponsorships, budget (revenues and costs), contact cities in the County to learn from their experiences                        | Parks & Rec                     | 3/5/19               | 3/5/19    | Reported at Council Meeting   |
| 51. | 7/16/18       | Council Meeting | Provide information on Cannabis insurance and banking issues  | City Manager                    | 2/19/19              | 2/19/19   | Reported at Council Meeting   |
| 52. | 12/11/18      | Council Meeting | Lawn Bowling Clubhouse: Analyze health and safety and maintenance issues; explore acquiring a used modular from the school district                 | Parks & Rec/<br>Public Works    | 2/22/19              | 2/8/19    | Biweekly Report   |
| 53. | 11/15/18      | Council Meeting | Convention Center Contract Recommendation RTC: describe reasons for not recommending other proposals  | Finance                         | 2/5/19               | 2/5/19    | Reported at Council Meeting   |
| 54. | 12/11/18      | Council Meeting | 10-Year Financial Forecast: model a lower CalPERS investment return 6.5% vs. 6%; and deeper recession; quantify impact for trade-offs               | Finance                         | 1/31/19              | 1/31/19   | Priority Setting Session  |
| 55. | 12/11/18      | Council Meeting | Provide General Fund Revenue Strategy Options   | Finance                         | 1/31/19              | 1/31/19   | Priority Setting Session  |
| 56. | 1/19/18       |                 | Present employees' residence data   | Human Resources                 | 1/31/19              | 1/31/19   | Priority Setting Session  |
| 57. | 10/9/18       | Council Meeting | Agrihood Project DDA: Review for potential Project Labor Agreement  | City Manager                    | 1/29/19              | 1/29/19   | Reported at Council Meeting   |
| 58. | 1/15/19       | Council Meeting | Enforcement of Sidewalk Vendors vs. SB 946  | Police/<br>City Attorney        | 1/25/19              | 1/25/19   | Biweekly Report   |
| 59. | 12/11/18      | Council Meeting | Amend Resolution for the annual selection of Vice Mayor and Chaplain during a Council meeting in January  | City Manager/<br>Mayor's Office | 1/15/19              | 1/15/19   | Reported at Council Meeting   |



# City of Santa Clara

1500 Warburton Avenue  
Santa Clara, CA 95050  
[santaclaraca.gov](http://santaclaraca.gov)  
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## Agenda Report

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19-320

Agenda Date: 12/3/2019

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### REPORT TO COUNCIL

#### SUBJECT

Tentative Meeting Agenda Calendar (TMAC)

#### 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 10, 2019 Council and Authorities Concurrent Meeting**

**Closed Session – 4:00 PM**

**Joint Dinner – 5:00 PM**

**19-1195** Joint Dinner Meeting with Youth Commission

#### **Public Hearing/General Business**

**19-1199** **Public Hearing:** Action on Patrick Henry Drive Specific Plan Notice of Preparation

**19-1272** **Public Hearing:** Action on an Agreement with Greenwaste Recovery, Inc. for Solid Waste Processing, Transfer, Transport, Recycling and Disposal Services

**19-807** **Public Hearing:** Action on a Successor Agreement with Mission Trail Waste Systems for Exclusive Franchise for the Collection and Transportation of Garbage, Organics, and Commercial Recyclables and Related Budget Amendment

**19-324** Action on an Amendment to the Zoning Code, SCCC Chapter 18.76 Architectural Review

**19-1081** Action on the Financial Status Report for the Quarter and /Fiscal Year Ending March 31, 2019

#### **Tuesday, December 17, 2019 Council and Authorities Concurrent Meeting**

#### **Study Session**

**19-496** **User Fee Phase III 4:00 p.m. - 5:00 p.m.**

**19-496** **City Hall Master Plan 5:00 p.m. - 6:00 p.m.**

#### **Public Hearing/General Business**

**19-1225** **Public Hearing:** Action on 3035 El Camino Real Residential Project located at 3035 El Camino Real

**19-1260** **Public Hearing:** Action on Amendment No. 1 to Development Agreement with Innovation Commons Owner LLC (Previously Yahoo)

- 19-1279** Action on the City of Santa Clara Audited Comprehensive Annual Financial Report (CAFR), Audited Silicon Valley Power (SVP) Financial Statements, an Audited Transportation Development Act (TDA) Financial Statements for Fiscal Year Ended June 30, 2019, as Recommended by the City Council Audit Committee
- 19-1300** Action on the Award of Agreement to Cascadia Consulting Group, Inc. for Climate Action Plan Update Services
- 19-1036** Adoption of a Resolution nominating the establishment of six new Priority Development Areas (PDAs) in the City of Santa Clara
- 19-1377** Discuss and consider 2020 Special Election Options for electing the office of Police Chief

**Tuesday, January 14, 2020 Council and Authorities Concurrent Meeting**

**Study Session 5:00 PM**

- 19-1196** Joint Dinner with Senior Advisory Commission

**Special Order of Business**

- 19-1364** Recognition of Hunter Storm for Support of Santa Clara PAL

**Public Hearing/General Business**

- 19-496** Update on the Settlement Agreements governing development in North San José
- 19-1239** Action on Santa Clara Convention Center 1<sup>st</sup> Quarter Financial Status Report

**Tuesday, January 28, 2020 Council and Authorities Concurrent Meeting**

**Study Session 5:00 PM**

- 19-1376** 2020 Census Update
- 19-1275** Discussion and Council Direction on Assigned Responsibilities of the City Council Appointed City Auditor

**Special Order of Business**

- 19-1352** Recognition of Holiday Home Decorating Contest Winners

**Public Hearing/General Business**

- 19-1154** Approve a Resolution to Approve and Adopt the 2019 Update to the Sanitary Sewer Management Plan (SSMP)
- 19-451** Update on Requested Information on Commercial Cannabis Activities
- 19-1341** Actions on Proposed 65 Residential Unit Affordable Housing Project at 2330 Monroe Street

**Thursday, January 30, 2020 City Council Goal and Policy Setting Session (time and location TBD)**

**Friday, January 31, 2020 City Council Goal and Policy Setting Session (time and location TBD)**

**Tuesday, February 11, 2020 Council and Authorities Concurrent Meeting**

**Joint Dinner – 5:00 PM**

**19-1213** Joint Dinner meeting with Library Trustees

**Public Hearing/General Business**

**19-1369** Action on Resolution Adopting the San Clara Pedestrian Master Plan

**Tuesday, February 18, 2020 Santa Clara Stadium Authority Board Meeting**

**Public Hearing/General Business**

**20-496** Agenda Items Pending – To Be Scheduled

**Tuesday, February 25, 2020 Council and Authorities Concurrent Meeting**

**Joint Dinner – 5:00 PM**

**19-1212** Joint Dinner meeting with Cultural Commission

**Public Hearing/General Business**

**20-496** Agenda Items Pending – To Be Scheduled

**Tuesday, March 17, 2020 Council and Authorities Concurrent Meeting**

**Joint Dinner – 5:00 PM**

**19-1214** Joint Dinner meeting with Historical and Landmarks Commission

**Public Hearing/General Business**

**20-496** Agenda Items Pending – To Be Scheduled

**Tuesday, March 31, 2020 Council and Authorities Concurrent Meeting**

**Public Hearing/General Business**

**20-496** Agenda Items Pending – To Be Scheduled

**Tuesday, April 21, 2020 Council and Authorities Concurrent Meeting**

**Study Session**

**19-1215** Joint Dinner Meeting with Civil Service Commission

**Public Hearing/General Business**

**20-496**          Agenda Items Pending – To Be Scheduled

**Tuesday, May 19, 2020 Council and Authorities Concurrent Meeting**

**Study Session**

**19-1311**          Joint Dinner Meeting with Parks and Recreation Commission

**Public Hearing/General Business**

**20-496**          Agenda Items Pending – To Be Scheduled

**Tuesday, June 2, 2020 Council and Authorities Concurrent Meeting**

**Study Session**

**19-1310**          Joint Dinner Meeting with Planning Commission

**Public Hearing/General Business**

**20-496**          Agenda Items Pending – To Be Scheduled

**AGENDA ITEMS TO BE SCHEDULED TO A FUTURE DATE**