



# City of Santa Clara

## Meeting Agenda

### Council and Authorities Concurrent Meeting

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**Tuesday, May 26, 2020**

**2:00 PM**

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

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

- Via Zoom:

- o <https://santaclaraca.zoom.us/j/99706759306>

Meeting ID: 997-0675-9306 or

- o Phone: 1(669) 900-6833

- Via the City's eComment (now available during the meeting)

- Via email to [PublicComment@santaclaraca.gov](mailto:PublicComment@santaclaraca.gov)

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

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

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

#### **2:00 PM COUNCIL REGULAR MEETING**

#### **Call to Order**

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

#### **Roll Call**

#### **CLOSED SESSION**

- 20-584** [Conference with Legal Counsel-Anticipated Litigation \(SA\)](#)  
[Pursuant to Gov. Code § 54956.9\(4\)\(d\) - Initiation of Litigation](#)  
[Number of potential cases: 1](#)
- 20-585** [Conference with Legal Counsel-Existing Litigation \(CC, SA\)](#)  
[Pursuant to Gov't Code § 54956.9\(d\)\(1\)](#)  
[Nevarez v. City of Santa Clara, et al., United States District](#)  
[Court, Northern District of California Case No.](#)  
[5:16-CV-07013-HRL](#)

### **Public Comment**

*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.*

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

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

### **CONTINUANCES/EXCEPTIONS**

### **SPECIAL ORDER OF BUSINESS**

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

### **CONSENT CALENDAR**

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

- 2.A 20-276** [Action on Council and Authorities Concurrent and Special City](#)  
[Council Meeting Minutes \[Council Pillar: Enhance Community](#)  
[Engagement and Transparency\]](#)

**Recommendation:** Note and file the:  
Special City Council Meeting Minutes on March 9,  
2020  
Council and Authorities Concurrent Meeting Minutes  
of March 17, 2020  
Special Council and Authorities Concurrent Meeting  
Minutes March 24, 2020

**2.B 20-08** [Board, Commissions and Committee Minutes \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

**Recommendation:** Note and file the Minutes of:  
Civil Service Commission - February 10, 2020  
Civil Service Commission - March 12, 2020

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

**Recommendation:** Alternative 1:  
Approve the contract amendment and reimbursement agreement for the revised scope of services with MIG, Inc. and accept the report on the Freedom Circle / Greystar General Plan Amendment Notice of Preparation as presented by staff.

**2.D 20-537** [Adoption of Ordinance No. 2019 Amending the Compensation for the City Clerk As Set by the Salary Setting Commission \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

**Recommendation:** Adopt Ordinance No. 2019 amending Section 2.20.015 (Compensation), of Chapter 2.20 ("City Clerk") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California" which will amend the compensation for the City Clerk.

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

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

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

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



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

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

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

**Recommendation:**

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

2.I      20-445      [Action on the Approval of State Homeland Security Grant Funding and Related Budget Amendment \[Council Pillar - Deliver and Enhance High Quality Efficient Services and Infrastructure\]](#)

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

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

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

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

**Recommendation:**

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

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

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

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

**Recommendation:**

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

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

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

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

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

**2.P     20-571     [Action on Landfill Post-Closure Operation and Management Agreement for Related Santa Clara project \[Council Pillar: Promote and Enhance Economic and Housing Development\]](#)**

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

**2.Q     20-572     [Adoption of a Resolution extending the Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for Tenants with Incomes Affected by the Novel Coronavirus \(COVID-19\) to June 30, 2020 \[Council Pillar: Promote and Enhance Economic and Housing Development\]](#)**

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

**PUBLIC PRESENTATIONS**

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

**CONSENT ITEMS PULLED FOR DISCUSSION**

**PUBLIC HEARING/GENERAL BUSINESS**

3.      20-169      [Action on the Annual Report and Resolution of Intention for Levy of Annual Assessment for the Santa Clara Tourism Improvement District \[Council Pillar: Promote and Enhance Economic and Housing Development\]](#)

**Recommendation:**

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

4.      20-472      [Adoption of Resolutions Approving Financing for the City of Santa Clara's \(the "City"\) portion of Capital Costs at the Regional Wastewater Facility \(RWF\) in an Amount Not-to-Exceed \\$50,000,000 \[Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure\]](#)

**Recommendation:** That the Council:

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

That the Financing Corporation:

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

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

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

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

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

- 20-528**      [Update on City Council and Stadium Authority Staff Referrals \[Council Pillar: Enhance Community Engagement and Transparency\]](#)
- 20-212**      [Tentative Meeting Agenda Calendar \(TMAC\) \[Council Pillar: Enhance Community Engagement and Transparency\]](#)

#### **ADJOURNMENT**

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



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## MEETING DISCLOSURES

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

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

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

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

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

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



# City of Santa Clara

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

## Agenda Report

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**20-584**

**Agenda Date: 5/26/2020**

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### **SUBJECT**

Conference with Legal Counsel-Anticipated Litigation (SA)  
Pursuant to Gov. Code § 54956.9(4)(d) - Initiation of Litigation  
Number of potential cases: 1



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## Agenda Report

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**20-585**

**Agenda Date: 5/26/2020**

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### **SUBJECT**

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

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

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



# City of Santa Clara

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## Agenda Report

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**20-546**

**Agenda Date: 5/26/2020**

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### REPORT TO COUNCIL

#### **SUBJECT**

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



# City of Santa Clara

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## Agenda Report

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20-276

Agenda Date: 5/26/2020

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### REPORT TO COUNCIL

#### SUBJECT

Action on Council and Authorities Concurrent and Special City Council Meeting Minutes [Council Pillar: Enhance Community Engagement and Transparency]

#### RECOMMENDATION

Note and file the:

Special City Council Meeting Minutes on March 9, 2020

Council and Authorities Concurrent Meeting Minutes of March 17, 2020

Special Council and Authorities Concurrent Meeting Minutes March 24, 2020



# City of Santa Clara

## Special Meeting Minutes

### City Council

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03/09/2020

6:00 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 March 9, 2020, at 6:00 PM for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

#### **6:00 PM SPECIAL MEETING**

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

**Mayor Gillmor** called the Special City Council meeting to order at 6:04 PM.

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

##### **Roll Call**

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

**City Manager Santana** provided an update on the City's implementation of the County of Santa Clara's order in regards to prevent the spread of Coronavirus.

#### **PUBLIC PRESENTATIONS**

**None.**

#### **INTERVIEWS AND APPOINTMENT**

1. [20-327](#) Conduct Interviews and Appoint Candidate to fill the Vacancy for a Partial Term Ending November 2020 in Council District 5

**Recommendation:** Staff makes no recommendation regarding the appointment.

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

**City Clerk Haggag** provided a verbal update on the Council District #5 vacancy interview process and noted that **Candidate Keri Procunier McLain** withdrew her application.

**A motion was made by Councilmember Chahal, seconded by Vice Mayor Hardy, to appoint Suds Jain to the vacant seat of District 5**

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to table the motion made by Councilmember Chahal.**

**Aye:** 4 - Councilmember O'Neill, Councilmember Davis, Councilmember Watanabe, and Mayor Gillmor

**Nay:** 2 - Vice Mayor Hardy, and Councilmember Chahal

**Vice Mayor Hardy** and **Councilmember Chahal** indicated that they would not participate further in the interview process would like the vacancy to proceed to an election.

**Public Speaker(s):** Public Speakers (13)

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

None.

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

None.

## **ADJOURNMENT**

The meeting was adjourned at 7:13 PM.

**City Manager Santana** noted the Santa Clara County Health Officer Sara Cody had placed a moratorium on events over 100 people to prevent the spread of Coronavirus.

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

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

The next regular scheduled meeting is on Tuesday evening, March 17, 2020 in the City Hall Council Chambers.

## **MEETING DISCLOSURES**

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

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

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

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# City of Santa Clara

## Meeting Minutes

### Council and Authorities Concurrent Meeting

---

03/17/2020

3:00 PM

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

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

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

**Mayor Gillmor** called the meeting to order at 3:03 PM.

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

##### **Roll Call**

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

#### **CONTINUANCES/EXCEPTIONS**

**Mayor Gillmor** noted that Closed Session will be convened immediately following the regular meeting agenda.

**A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to continue the balance of the meeting agenda (except Item 1) to March 24, 2020.**

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

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

1. [20-378](#) Action on a Resolution Ratifying the Proclamation of Existence of a Local Emergency by the Director of Emergency Services

**Recommendation:** Adopt a Resolution Ratifying the Proclamation of Existence of a Local Emergency by the Director of Emergency Services.

**City Manager Santana** provided information regarding the resolution to ratify the proclamation as well as actions taken by the City to continue essential services during the Shelter in Place due to the COVID19 Pandemic.

**Councilmember Chahal** requested staff to return with a Moratorium on Renters Eviction for 30 days.

**City Manager Santana** noted that staff will return with more information on March 24, 2020 on providing food service to the most vulnerable (children and Seniors) in the City.

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

**A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to adopt Resolution No. 20-8815 to ratify the Proclamation of Existence of Local Emergency by the Director of Emergency Services for COVID 19 Pandemic.**

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

## **CONSENT CALENDAR**

**The balance of the agenda was continued to March 24, 2020.**

- 2.A [20-222](#) Action on Council and Authorities Concurrent Meeting Minutes of February 11, 2020 and February 25, 2020 [Council Pillar: Enhance Community Engagement and Transparency]

**Recommendation:** Note and file Council and Authorities Concurrent Meeting Minutes of February 11, 2020 and February 25, 2020.

- 2.B**     [20-05](#)     Board, Commissions and Committee Minutes [Council Pillar: Enhance Community Engagement and Transparency]

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

Cultural Commission - January 6, 2020  
Parks & Recreation Commission - January 21, 2020  
Senior Advisory Commission - January 27, 2020  
Cultural Commission - February 3, 2020  
Audit Committee - December 9, 2019  
Planning Commission - January 29, 2020  
Historical and Landmarks Commission - January 2, 2020

- 2.C**     [20-363](#)     Authorization to enter into a Memorandum of Understanding for Building Permit Review with the City of San Jose for the Property at located at the southwest corner of Coleman Avenue and Champions Way [Council Pillar: Promote and Enhance Economic and Housing Development]

**Recommendation:** Alternative: 1.  
Authorize the City Manager to enter into a Memorandum of Understanding with San Jose for San Jose to administer Building Permit and related inspection activities for the proposed commercial development at the southwest corner of Coleman Avenue and Champions Way.

- 2.D**     [20-1284](#)     Action on an Agreement with the Santa Clara Valley Transportation Authority Congestion Management Program Transportation Fund for Clean Air Grants for Fiscal Year 2019/20 and Related Budget Amendments [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:**

1. Approve and authorize the City Manager to execute the Santa Clara Valley Transportation Authority Congestion Management Program Transportation Fund for Clean Air Agreement FY 2019/20 to receive \$175,500 from the TFCA Program Manager Funds; and
2. Approve budget amendments in the Streets and Highways Fund to recognize grant funding in the amount of \$175,500, establish a new project appropriation for the Scott Boulevard Signal Timing Phase II project in the amount of \$165,500, establish a new project appropriation for the Saratoga Avenue Bicycle Lanes project in the amount of \$71,000, reduce the Traffic Signal Controller Upgrade Project by \$28,500, and reduce the Pedestrian and Bicycle Enhancement Facilities Project by \$32,500.

- 2.E**      [20-189](#)      Action on Bills and Claims Report (CC, SA) for the period January 31st, 2020 - February 20th, 2020 [Council Pillar: Enhance Community Engagement and Transparency]
- Recommendation:** Approve the list of Bills and Claims for January 31, 2020 - February 20, 2020.
- 2.F**      [20-1438](#)      Action on Monthly Financial Status and Investment Reports for December 2019 and Approve the Related Budget Amendments [Council Pillar: Enhance Community Engagement and Transparency]
- Recommendation:** Note and file the Monthly Financial Status and Investment Reports for December 2019 as presented and Approve Related Budget Amendments.
- 2.G**      [20-90](#)      Action on the Santa Clara Convention Center FY 2019/20 2nd Quarter Financial Status Report [Council Pillars: Promote and Enhance Economic and Housing Development, Enhance Community Engagement and Transparency, and Sustainability]
- Recommendation:** Note and file the Santa Clara Convention Center Financial Status Report for the second quarter ended December 31, 2019, as submitted by Spectra.
- 2.H**      [20-190](#)      Action on the Single Audit Report for Fiscal Year 2018/19 [Council Pillar: Enhance Community Engagement and Transparency]
- Recommendation:** Note and file the City of Santa Clara Single Audit Report for the year ended June 30, 2019, as recommended by the Council Audit Committee.
- 2.I**      [20-57](#)      Action on a Resolution Ordering the Vacation of a Water Easement at 5405 Stevens Creek Boulevard [Council Pillar: Promote and Enhance Economic and Housing Development]
- Recommendation:** 1. Adopt a Resolution Ordering the Vacation of a Water Easement at 5405 Stevens Creek Boulevard [APN 316-19-031 (2019-20); SC 19,241]; and  
2. Authorize the recordation of the Resolution.
- 2.J**      [20-123](#)      Action on Resolutions Ordering the Vacation of Underground Electric Easements at 3303 Octavius Drive and 3326 Scott Boulevard [Council Pillar: Promote and Enhance Economic and Housing Development]
- Recommendation:** 1. Adopt a Resolution Ordering the Vacation of Underground Electric Easement at 3303 Octavius Drive [APN 216-45-053 (2019-20); SC 19,154];  
2. Adopt a Resolution Ordering the Vacation of Underground Electric Easements at 3326 Scott Boulevard [APN 216-29-053 (2019-20); SC19,155]; and  
3. Authorize the recordation of the Resolutions.

- 2.K**      [20-92](#)      Action on a Resolution of Intention to Establish the Santa Clara Tourism Improvement District under the Property and Business Improvement District Law of 1994 [Council Pillar: Promote and Enhance Economic and Housing Development]

**Recommendation:** Alternative 1: Adopt a Resolution of Intention declaring the City's intent to establish the Santa Clara Tourism Improvement District (SCTID) for 5 years starting July 1, 2020.

- 2.L**      [20-120](#)      Action on Final Map for Tract 10515 for the Catalina II Residential Development Project located at 1433-1493 El Camino Real [Council Pillar: Promote and Enhance Economic and Housing Development]

**Recommendation:** 1. Approve Final Map for Tract 10515;  
2. Authorize the City Manager to make minor modifications, if necessary, prior to recordation; and,  
3. Authorize the recordation of Final Map for Tract 10515, which subdivides the site into nine lots located at 1433-1493 El Camino Real [APN 224-48-004, 005, and 006 (2019-20)].

- 2.M**      [20-171](#)      Action on a request for a Special Permit to allow a temporary sales trailer at 3305 Kifer Road from April 2020 to April 2021 (File No. PLN2020-14281) (Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure)

**Recommendation:** Approve the request of a Special Permit to allow a temporary sales trailer at 3305 Kifer Road from April 1, 2020 to April 30, 2021 (PLN2020-14281), subject to conditions.

- 2.N**      [20-185](#)      Action on a Resolution in Support of Worker Cooperatives [Council Pillar: Promote and Enhance Economic and Housing Development]

**Recommendation:** Adopt a Resolution in Support of Worker Cooperatives.

- 2.O**      [20-205](#)      Action to the Introduction of an Ordinance Amending Chapter 9.30 of the City Code ("Trespassing") Related to the Storage and Removal of Personal Property from Public Property [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:** Approve the Introduction of an Ordinance Amending Chapter 9.30 of the City Code ("Trespassing") Related to the Storage and Removal of Personal Property from Public Property.

- 2.P**     [20-224](#)     Action on a Resolution Delegating Authority to enter into Confirmation Agreements for Electric Industry Related Commodities [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]
- Recommendation:** Adopt a Resolution authorizing the City Manager, or designee, to execute Confirmation Agreements and all related documents for Electric Industry Related Commodities for up to a 5 year term.
- 2.Q**     [20-238](#)     Action on the Police Department's Recommendation to Name the Police Building's Temporary Holding Facility as the "Carla Munoz Temporary Holding Facility" [Council Pillar - Deliver and Enhance High Quality Efficient Services and Infrastructure]
- Recommendation:** Approve the naming of the Police Building's Temporary Holding Facility as the "Carla Munoz Temporary Holding Facility".
- 2.R**     [20-335](#)     Action on a Resolution Revising the Council and Authorities/Stadium Authority Regular Meetings Dates for the 2020 Calendar Year [Council Pillar: Enhance Community Engagement and Transparency]
- Recommendation:** Adopt a Resolution revising the Council and Authorities/Stadium Authority regular meeting dates for the 2020 calendar year to reflect the cancellation of the April 14, 2020 and April 21, 2020 Council and Authorities regular meetings and to set April 7, 2020 and April 28, 2020 as Council and Authorities regular meetings.
- 2.S**     [20-337](#)     Action on the City Auditor's Office Semi-Annual Status Report as of December 31, 2019 and the Contract Audit of the Public Affairs and Media Relation Services [Council Pillar: Enhance Community Engagement and Transparency and Ensure Compliance with Measure J and Manage Levi's Stadium]
- Recommendation:** Note and file the City Auditor's Office Semi-Annual Status Report as of December 31, 2019 and the Contract Audit of the Public Affairs and Media Relation Services as recommended by the Council Audit Committee.
- 2.T**     [20-345](#)     Actions to Adopt a Resolution Approving and Adopting Updated Salary Plans for Various Classified and Unclassified Positions, and Approve the Related Budget Amendment [Council Pillar: Enhance Community Engagement and Transparency]
- Recommendation:**
1. Adopt a Resolution to approve the revised salary plans for various classified and unclassified positions to satisfy the requirements of California Code of Regulations Section 570.5; and
  2. Approve the related budget amendment to increase the FY 2019/20 Police Department General Fund budget by \$60,000 and decrease the General Fund Budget Stabilization Reserve by \$60,000.

- 2.U     [20-168](#)     Action on a Resolution for the Use of City Water Forces at 809 Aldo Avenue [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

**Recommendation:** Adopt a Resolution approving the use of City Water forces for water and fire service upgrades at 809 Aldo Avenue.

#### **PUBLIC PRESENTATIONS**

None.

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

None.

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

The meeting agenda was continued to March 24, 2020.

3.     [20-117](#)     Related Santa Clara Development Area Plan (DAP) 1 located on Vacant Parcels at Tasman Drive and Centennial Boulevard (Council Pillar: Promote and Enhance Economic and Housing Development)
- Recommendation:** Alternatives 1 and 2:  
Adopt resolutions for the Related Santa Clara (City Place) Phase I Development Area Plan application located at 5155 Stars and Stripes Drive to:
1. Adopt the EIR Addendum for DAP 1 for the Related Santa Clara project; and
  2. Approve the DAP 1 Application for the Related Santa Clara project, subject to conditions.

4.     [20-197](#)     Consideration of Silicon Valley Power Quarterly Strategic Plan Update [Deliver and Enhance High Quality Efficient Services and Infrastructure]

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

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

The meeting agenda was continued to March 24, 2020.

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**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

**The balance of the agenda was continued to March 24, 2020.**

[20-255](#) Update on City Council and Stadium Authority Staff Referrals  
[Council Pillar: Enhance Community Engagement and Transparency]

[20-390](#) Tentative Meeting Agenda Calendar (TMAC) [Council Pillar: Enhance  
Community Engagement and Transparency]

**3:00 PM CLOSED SESSION**

**Call to Order in the Council Chambers**

**Confirmation of Quorum**

**Public Comment**

**None.**

[20-383](#) Conference with Legal Counsel-Existing Litigation (SOSA)  
Pursuant to Gov. Code § 54956.9(d)(1)  
D.E. Restaurants, Inc. v. The Sports and Open Space Authority of the City  
of Santa Clara, et al., Santa Clara Superior Court Case No. 17cv311968

[20-384](#) Conference with Legal Counsel-Existing Litigation (CC, SOSA, SARDA)  
Pursuant to Gov. Code § 54956.9(d)(1)  
D.E. Restaurants, Inc. v. The City of Santa Clara, The Redevelopment  
Agency of the City of Santa Clara, The Sports and Open Space Authority of  
the City of Santa Clara, et al., Santa Clara Superior Court Case No.  
115cv275606

[20-386](#) Conference with Legal Counsel-Anticipated Litigation (CC)  
Pursuant to Gov. Code § 54956.9(d)(4) - Initiation of litigation  
Number of potential cases: 2



- [20-385](#) Conference with Labor Negotiators (CC)  
Pursuant to Gov. Code § 54957.6  
City representative: Deanna J. Santana, City Manager (or designee)  
Employee Organization(s):  
Unit #1-Santa Clara Firefighters Association, IAFF, Local 1171  
Unit #2-Santa Clara Police Officer's Association  
Unit #3-IBEW Local 1245 (International Brotherhood of Electrical Workers)  
Unit #4-City of Santa Clara Professional Engineers  
Units #5, 7 & 8-City of Santa Clara Employees Association  
Unit #6-AFSCME Local 101 (American Federation of State, County and Municipal Employees)  
Unit #9-Miscellaneous Unclassified Management Employees  
Unit #9A-Unclassified Police Management Employees  
Unit #9B-Unclassified Fire Management Employees  
Unit #10-PSNSEA (Public Safety Non-Sworn Employees Association)
- [20-387](#) Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: APN 104-03-040 (Tasman Parking Garage)  
City/Authority Negotiator: Deanna J. Santana, City Manager/Executive Director (or designee)  
Negotiating Parties: Stephen Eimer, Executive Vice President, Related Companies  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)
- [20-391](#) Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: APNs 015-32-042 and 015-32-043  
City Negotiator: Deanna J. Santana, City Manager (or designee)  
Negotiating Parties: Nanci Klein, City of San Jose; Rechelle Blank, Santa Clara Valley Water District  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)
- [20-394](#) Conference with Real Property Negotiators (CC)  
Pursuant to Gov. Code § 54956.8  
Property: Please see below listing for APNs and addresses  
City Negotiator: Deanna J. Santana, City Manager (or designee)  
Negotiating Parties: Please see below listing for names for negotiating party(ies)  
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

	<b>APN</b>	<b>Property Address</b>	<b>Property Owner (Name)</b>
1	224-04-062	2755 LAFAYETTE STREET, SANTA CLARA	WITKIN PROPERTIES LP
2	224-04-057	890 WALSH AVENUE, SANTA CLARA	L.A.W. LLC
3	224-04-088	2555 LAFAYETTE STREET, SANTA CLARA	GAHRAHMAT FAMILY LP 1
4	230-03-090	525 MATHEW STREET, SANTA CLARA	NEWARK GROUP INDUSTRIES INC
5	224-35-014	630 MARTIN AVENUE, SANTA CLARA	D & R MILLER PROPS LLC
6	224-08-109	2908 LAFAYETTE STREET, SANTA CLARA	DOLLINGER LAFAYETTE ASSOCIATES
7	224-36-001	840 COMSTOCK STREET, SANTA CLARA	LAPTALO JAKOV, TRUSTEE
8	224-04-090	851 MARTIN AVENUE, SANTA CLARA	GAHRAHMAT FAMILY LP II
9	224-04-071	651 MARTIN AVENUE, SANTA CLARA	GAHRAHMAT FAM LP II LP
10	224-61-002	1401 MARTIN AVENUE, SANTA CLARA	ALMAN DIANA J TRUSTEE & ET AL
11	224-60-014	1261 MARTIN AVENUE, SANTA CLARA	MARTIN INVESTMENT PROPERTIES LLC
12	224-60-012	1199 MARTIN AVENUE, SANTA CLARA	1065 MARTIN AVE LLC
13	224-60-013	1061 MARTIN AVENUE, SANTA CLARA	1065 MARTIN AVE LLC
14	224-60-011	1055 MARTIN AVENUE, SANTA CLARA	YOUNG SANG A AND ANNE C TRUSTEE
15	224-60-010	1015 MARTIN AVENUE, SANTA CLARA	1015 Martin Ave LLC
16	224-60-006	1051 MARTIN AVENUE, SANTA CLARA	BAY AREA CELLULAR TELEPHONE CO
17	224-60-005	999 MARTIN AVENUE, SANTA CLARA	POLLACK ENTERPRISES INC
18	224-60-004	953 MARTIN AVENUE, SANTA CLARA	ROBINSON OIL CORPORATION
19	224-35-019	2495 LAFAYETTE STREET, SANTA CLARA	WONG KING WAN TRUSTEE & ET AL
20	224-35-020	2435 LAFAYETTE STREET, SANTA CLARA	WESCO PROPERTIES INC
21	224-40-010	2365 LAFAYETTE STREET, SANTA CLARA	BOWLES, ECKSTROM & ASSOCIATES LLC
22	224-40-009	2325 LAFAYETTE STREET, SANTA CLARA	RICHARD & DOROTHY LONG REVOCABLE
23	224-40-008	2311 LAFAYETTE STREET, SANTA CLARA	WHITNEY BRUCE S AND JUDITH R TRUSTEE
24	224-40-007	2301 LAFAYETTE STREET, SANTA CLARA	MEUSER WILLIAM E AND ANN E TRUSTEE
25	224-03-080	2265 LAFAYETTE STREET, SANTA CLARA	SEW LLC
26	224-03-081	800 MATHEW STREET, SANTA CLARA	PATEL JITENDRA G AND SHASHI J TRUSTEE
27	230-03-106	2500 DE LA CRUZ BLVD, SANTA CLARA	EMF LLC
28	224-07-099	960 CENTRAL EXPRESSWAY, SANTA CLARA	OWENS CORNING INSULATING
29	224-56-001	925 WALSH AVENUE, SANTA CLARA	PSB NORTHERN CA INDUSTL PORTFOLIO LLC
30	224-57-015	925 WALSH AVENUE, SANTA CLARA	PSB NORTHERN CA INDUSTL PORTFOLIO LLC
31	224-57-014	1451 Walsh Ave. Santa Clara	UNITED STATES POSTAL SERVICE
32	224-57-003	1515 Walsh Avenue, Santa Clara	The Malisic Survivor's Trust, Malisic Residual Trust
33	224-58-003	1150 Walsh Avenue, Santa Clara	Ragingwire Data Centers, Inc. A Nevada Corp.
34	224-04-093	2845 LAFAYETTE STREET, SANTA CLARA CA	Digital Lafayette, LLC
35	224-04-094	2805 LAFAYETTE STREET, SANTA CLARA	DIGITAL BH 800 LLC
36	224-61-004	1501 MARTIN AVENUE, SANTA CLARA	INTEL CORPORATION
37	230-03-105	2600 DE LA CRUZ BLVD, SANTA CLARA	C-1 Santa Clara, LLC

### Convene to Closed Session (Council Chambers)

Mayor Gillmor convened to Closed Session at 4:00 PM.

### REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

Council reconvened at Council Chambers.

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

## **ADJOURNMENT**

The meeting was adjourned at 6:15 PM in memory of **Commodore Krishan Kumar Garg** (Indian Navy - Father of Director of Information Technology Gaurav Garg), **Eileen Mary Crane** (Long-Time Resident of Santa Clara), **Clare Callejon** (Long-Time Santa Clara Resident).

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

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

**20-427** Adjournment of the March 17, 2020 City Council Meeting Post Meeting Material

The next regular scheduled meeting is on Tuesday evening, March 31, 2020 in the City Hall Council Chambers.

## **MEETING DISCLOSURES**

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

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

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

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

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

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



# City of Santa Clara

## Special Meeting Minutes

### Council and Authorities Concurrent Meeting

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03/24/2020

2:00 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 March 24, 2020, at 2:00 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.

#### **2:00 PM COUNCIL MEETING**

#### **Call to Order**

**Mayor Gillmor** called the Special Meeting to order at 2:07 PM.

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

#### **Roll Call**

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

**Absent:** 1 - Vice Mayor Karen Hardy

#### **CLOSED SESSION**

20-67

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)

**PUBLIC COMMENT**

None.

**ROLL CALL**

**Present:** 5 - Councilmember Teresa O'Neill, Councilmember Debi Davis,  
Councilmember Kathy Watanabe, Councilmember Raj Chahal, and  
Mayor Lisa M. Gillmor  
**Absent:** 1 - Vice Mayor Karen Hardy

**City Manager Santana and Emergency Services Coordinator  
Schoenthal** provided an update on the Coronavirus COVID-19 and the  
Shelter-In-Place.

**CONTINUANCES/EXCEPTIONS**

None.

**REPORTS OF ACTION TAKEN IN CLOSED SESSION**

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

**ROLL CALL**

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

**CONSENT CALENDAR**

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to approve the balance of the Consent Calendar (except Items 1.G and 1.J).**

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

**1.A**     [20-403](#)     Action on Council and Authorities Concurrent Meeting Minutes of February 11, 2020 and February 25, 2020 [Council Pillar: Enhance Community Engagement and Transparency] Deferred from March 17, 2020

**Recommendation:** Note and file Council and Authorities Concurrent Meeting Minutes of February 11, 2020 and February 25, 2020.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to note and file the Council and Authorities Concurrent Meeting Minutes of February 11, 2020 and February 25, 2020.**



- 1.B [20-406](#) Action on the City Auditor's Office Semi-Annual Status Report as of December 31, 2019 and the Contract Audit of the Public Affairs and Media Relation Services [Council Pillar: Enhance Community Engagement and Transparency and Ensure Compliance with Measure J and Manage Levi's Stadium] Continued from March 17, 2020

**Recommendation:** Note and file the City Auditor's Office Semi-Annual Status Report as of December 31, 2019 and the Contract Audit of the Public Affairs and Media Relation Services as recommended by the Council Audit Committee.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to note and file the City Auditor's Office Semi-Annual Status Report as of December 31, 2019 and the Contract Audit of the Public Affairs and Media Relation Services as recommended by the Council Audit Committee.**

- 1.C [20-409](#) Action on a Resolution Revising the Council and Authorities/Stadium Authority Regular Meetings Dates for the 2020 Calendar Year [Council Pillar: Enhance Community Engagement and Transparency] Continued from March 17, 2020

**Recommendation:** Adopt a Resolution revising the Council and Authorities/Stadium Authority regular meeting dates for the 2020 calendar year to reflect the cancelation of the April 14, 2020 and April 21, 2020 Council and Authorities regular meetings and to set April 7, 2020 and April 28, 2020 as Council and Authorities regular meetings.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to adopt Resolution No. 20-8816 revising the Council and Authorities/Stadium Authority regular meeting dates for the 2020 calendar year to reflect the cancelation of the April 14, 2020 and April 21, 2020 Council and Authorities regular meetings and to set April 7, 2020 and April 28, 2020 as Council and Authorities regular meeting dates.**

- 1.D [20-410](#) Action on the Police Department's Recommendation to Name the Police Building's Temporary Holding Facility as the "Carla Munoz Temporary Holding Facility" [Council Pillar - Deliver and Enhance High Quality Efficient Services and Infrastructure] Continued from March 17, 2020

**Recommendation:** Approve the naming of the Police Building's Temporary Holding Facility as the "Carla Munoz Temporary Holding Facility".

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to approve the naming of the Police Building's Temporary Holding Facility as the "Carla Munoz Temporary Holding Facility".**

- 1.E [20-411](#) Action on a Resolution Delegating Authority to enter into Confirmation Agreements for Electric Industry Related Commodities [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure] Continued from March 17, 2020

**Recommendation:** Adopt a Resolution authorizing the City Manager, or designee, to execute Confirmation Agreements and all related documents for Electric Industry Related Commodities for up to a 5 year term.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to adopt Resolution No. 20-8817 authorizing the City Manager, or designee, to execute Confirmation Agreements and all related documents for Electric Industry Related Commodities for up to a 5 year term.**

- 1.F [20-412](#) Action to the Introduction of an Ordinance Amending Chapter 9.30 of the City Code ("Trespassing") Related to the Storage and Removal of Personal Property from Public Property [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure] Continued from March 17, 2020

**Recommendation:** Approve the Introduction of an Ordinance Amending Chapter 9.30 of the City Code ("Trespassing") Related to the Storage and Removal of Personal Property from Public Property.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to approve the Introduction Ordinance No. 2013 Amending Chapter 9.30 of the City Code ("Trespassing") Related to the Storage and Removal of Personal Property from Public Property.**

- 1.H [20-414](#) Action on a request for a Special Permit to allow a temporary sales trailer at 3305 Kifer Road from April 2020 to April 2021 (File No. PLN2020-14281) [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure] Deferred from March 17, 2020

**Recommendation:** Approve the request of a Special Permit to allow a temporary sales trailer at 3305 Kifer Road from April 1, 2020 to April 30, 2021 (PLN2020-14281), subject to conditions.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to approve the request of a Special Permit to allow a temporary sales trailer at 3305 Kifer Road from April 1, 2020 to April 30, 2021 (PLN2020-14281), subject to conditions.**



- 1.I [20-415](#) Action on Final Map for Tract 10515 for the Catalina II Residential Development Project located at 1433-1493 El Camino Real [Council Pillar: Promote and Enhance Economic and Housing Development] Continued from March 17, 2020

**Recommendation:**

1. Approve Final Map for Tract 10515;
2. Authorize the City Manager to make minor modifications, if necessary, prior to recordation; and,
3. Authorize the recordation of Final Map for Tract 10515, which subdivides the site into nine lots located at 1433-1493 El Camino Real [APN 224-48-004, 005, and 006 (2019-20)].

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

- 1.K [20-417](#) Action on Resolutions Ordering the Vacation of Underground Electric Easements at 3303 Octavius Drive and 3326 Scott Boulevard [Council Pillar: Promote and Enhance Economic and Housing Development] Continued from March 17, 2020

**Recommendation:**

1. Adopt a Resolution Ordering the Vacation of Underground Electric Easement at 3303 Octavius Drive [APN 216-45-053 (2019-20); SC 19,154];
2. Adopt a Resolution Ordering the Vacation of Underground Electric Easements at 3326 Scott Boulevard [APN 216-29-053 (2019-20); SC19,155]; and
3. Authorize the recordation of the Resolutions.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to (1) adopt Resolution No. 20-8818 Ordering the Vacation of Underground Electric Easement at 3303 Octavius Drive [APN 216-45-053 (2019-20); (2) adopt Resolution No. 20-8819 Ordering the Vacation of Underground Electric Easements at 3326 Scott Boulevard [APN 216-29-053 (2019-20); SC19,1550]; and authorize the recordation of the Resolutions.**

- 1.L      [20-418](#)      Action on a Resolution Ordering the Vacation of a Water Easement at 5405 Stevens Creek Boulevard [Council Pillar: Promote and Enhance Economic and Housing Development] Continued from March 17, 2020

**Recommendation:** 1. Adopt a Resolution Ordering the Vacation of a Water Easement at 5405 Stevens Creek Boulevard [APN 316-19-031 (2019-20); SC 19,241]; and  
2. Authorize the recordation of the Resolution.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to (1) adopt Resolution No. 20-8820 Ordering the Vacation of a Water Easement at 5405 Stevens Creek Boulevard [APN 316-19-031 (2019-20); SC 19,241]; and (2) authorize the recordation of the Resolution.**

- 1.M      [20-419](#)      Board, Commissions and Committee Minutes [Council Pillar: Enhance Community Engagement and Transparency] Continued from March 17, 2020

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

Cultural Commission - January 6, 2020  
Parks & Recreation Commission - January 21, 2020  
Senior Advisory Commission - January 27, 2020  
Cultural Commission - February 3, 2020  
Audit Committee - December 9, 2019  
Planning Commission - January 29, 2020  
Historical and Landmarks Commission - January 2, 2020

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

- 1.N [20-420](#) Authorization to enter into a Memorandum of Understanding for Building Permit Review with the City of San Jose for the Property at located at the southwest corner of Coleman Avenue and Champions Way [Council Pillar: Promote and Enhance Economic and Housing Development] Continued from March 17, 2020

**Recommendation:** Alternative: 1.  
Authorize the City Manager to enter into a Memorandum of Understanding with San Jose for San Jose to administer Building Permit and related inspection activities for the proposed commercial development at the southwest corner of Coleman Avenue and Champions Way.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to approve Alternative 1: authorize the City Manager to enter into a Memorandum of Understanding with the City of San Jose for San Jose to administer Building Permit and related inspection activities for the proposed commercial development at the southwest corner of Coleman Avenue and Champions Way.**

- 1.O [20-421](#) Action on the Single Audit Report for Fiscal Year 2018/19 [Council Pillar: Enhance Community Engagement and Transparency] Continued from March 17, 2020

**Recommendation:** Note and file the City of Santa Clara Single Audit Report for the year ended June 30, 2019, as recommended by the Council Audit Committee.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to Note and file the City of Santa Clara Single Audit Report for the year ended June 30, 2019, as recommended by the Council Audit Committee.**

- 1.P [20-422](#) Action on an Agreement with the Santa Clara Valley Transportation Authority Congestion Management Program Transportation Fund for Clean Air Grants for Fiscal Year 2019/20 and Related Budget Amendments [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure] Continued from March 17, 2020

**Recommendation:**

1. Approve and authorize the City Manager to execute the Santa Clara Valley Transportation Authority Congestion Management Program Transportation Fund for Clean Air Agreement FY 2019/20 to receive \$175,500 from the TFCA Program Manager Funds; and
2. Approve budget amendments in the Streets and Highways Fund to recognize grant funding in the amount of \$175,500, establish a new project appropriation for the Scott Boulevard Signal Timing Phase II project in the amount of \$165,500, establish a new project appropriation for the Saratoga Avenue Bicycle Lanes project in the amount of \$71,000, reduce the Traffic Signal Controller Upgrade Project by \$28,500, and reduce the Pedestrian and Bicycle Enhancement Facilities Project by \$32,500.

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

- 1.Q [20-423](#) Action on Bills and Claims Report (CC, SA) for the period January 31st, 2020 - February 20th, 2020 [Council Pillar: Enhance Community Engagement and Transparency] Continued from March 17, 2020

**Recommendation:** Approve the list of Bills and Claims for January 31, 2020 - February 20, 2020.

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

- 1.R [20-424](#) Action on the Santa Clara Convention Center FY 2019/20 2nd Quarter Financial Status Report [Council Pillars: Promote and Enhance Economic and Housing Development, Enhance Community Engagement and Transparency, and Sustainability] Continued from March 17, 2020

**Recommendation:** Note and file the Santa Clara Convention Center Financial Status Report for the second quarter ended December 31, 2019, as submitted by Spectra.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to Note and file the Santa Clara Convention Center Financial Status Report for the second quarter ended December 31, 2019, as submitted by Spectra.**

- 1.S      [20-425](#)      Action on Monthly Financial Status and Investment Reports for December 2019 and Approve the Related Budget Amendments [Council Pillar: Enhance Community Engagement and Transparency] Continued from March 17, 2020

**Recommendation:** Note and file the Monthly Financial Status and Investment Reports for December 2019 as presented and Approve Related Budget Amendments.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to note and file the Monthly Financial Status and Investment Reports for December 2019 as presented and Approve Related Budget Amendments.**

- 1.T      [20-404](#)      Action on a Resolution for the Use of City Water Forces at 809 Aldo Avenue [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure] Continued from March 17, 2020

**Recommendation:** Adopt a Resolution approving the use of City Water forces for water and fire service upgrades at 809 Aldo Avenue.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to adopt Resolution No. 20-8821 approving the use of City Water forces for water and fire service upgrades at 809 Aldo Avenue.**

- 1.U      [20-405](#)      Actions to Adopt a Resolution Approving and Adopting Updated Salary Plans for Various Classified and Unclassified Positions, and Approve the Related Budget Amendment [Council Pillar: Enhance Community Engagement and Transparency] Continued from March 17, 2020

**Recommendation:**

1. Adopt a Resolution to approve the revised salary plans for various classified and unclassified positions to satisfy the requirements of California Code of Regulations Section 570.5; and
2. Approve the related budget amendment to increase the FY 2019/20 Police Department General Fund budget by \$60,000 and decrease the General Fund Budget Stabilization Reserve by \$60,000.

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to (1) adopt Resolution No. 20-8822 approving the revised salary plans for various classified and unclassified positions to satisfy the requirements of California Code of Regulations Section 570.5; and (2) approve the related budget amendment to increase the FY 2019/20 Police Department General Fund budget by \$60,000 and decrease the General Fund Budget Stabilization Reserve by \$60,000.**

## **PUBLIC PRESENTATIONS**

**Kirk Vartan** expressed comments on how his business implemented social distancing to help prevent the spread of COVID19.

## **CONSENT ITEMS PULLED FOR DISCUSSION**

- 1.G**      [20-413](#)      Action on a Resolution in Support of Worker Cooperatives [Council Pillar: Promote and Enhance Economic and Housing Development] Continued from March 17, 2020

**Recommendation:** Adopt a Resolution in Support of Worker Cooperatives.

**Vice Mayor Hardy** pulled this item for further clarification and review.

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

**A motion was made by Councilmember Davis, seconded by Councilmember O'Neill, to adopt Resolution No. 20-8823 in support of Worker Cooperative.**

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

- 1.J**      [20-416](#)      Action on a Resolution of Intention to Establish the Santa Clara Tourism Improvement District under the Property and Business Improvement District Law of 1994 [Council Pillar: Promote and Enhance Economic and Housing Development] Continued from March 17, 2020

**Recommendation:** Alternative 1: Adopt a Resolution of Intention declaring the City's intent to establish the Santa Clara Tourism Improvement District (SCTID) for 5 years starting July 1, 2020.

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

**A motion was made by Councilmember Davis, seconded by Vice Mayor Hardy, to approve Alternative 1: adopt Resolution of Intention declaring the City's intent to establish the Santa Clara Tourism Improvement District (SCTID) for 5 years starting July 1, 2020.**

**Aye:** 3 - Vice Mayor Hardy, Councilmember Davis, and Councilmember Chahal

**Nay:** 3 - Councilmember O'Neill, Councilmember Watanabe, and Mayor Gillmor

**Motion Fails.**

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to continue this item to April 7, 2020.**

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

**PUBLIC HEARING/GENERAL BUSINESS**

3. [20-408](#) Related Santa Clara Development Area Plan (DAP) 1 located on Vacant Parcels at Tasman Drive and Centennial Boulevard (Council Pillar: Promote and Enhance Economic and Housing Development) Continued from March 17, 2020 TO BE HEARD AT 3:00 PM

**Recommendation:** Alternatives 1 and 2:

Adopt resolutions for the Related Santa Clara (City Place) Phase I Development Area Plan application located at 5155 Stars and Stripes Drive to:

1. Adopt the EIR Addendum for DAP 1 for the Related Santa Clara project; and
2. Approve the DAP 1 Application for the Related Santa Clara project, subject to conditions.

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

**Executive Vice President (Related Companies) Steve Eimer** gave a PowerPoint Presentation and addressed Council questions.

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

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

**A motion was made by Councilmember Davis, seconded by Councilmember Watanabe, to approve Alternatives 1 and 2: Adopt resolutions for the Related Santa Clara (City Place) Phase I Development Area Plan application located at 5155 Stars and Stripes Drive to: (1) adopt Resolution No. 20-8824 adopting the EIR Addendum for DAP 1 for the Related Santa Clara project; and (2) adopt Resolution No. 20-8825 approving the DAP 1 Application for the Related Santa Clara project, subject to conditions.**

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

**Nay:** 1 - Councilmember Chahal

4. [20-430](#) Action on an Urgency Ordinance Establishing a Temporary 45-day Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for Residential Tenants with incomes affected by the novel coronavirus (COVID-19), approval of an Ordinance to establish the eviction regulations for a longer term and Related Budget Amendment

- Recommendation:**
1. Adopt an Urgency Ordinance Establishing a Temporary Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for Tenants affected by the novel coronavirus (COVID-19).
  2. Introduce an Ordinance Establishing a Temporary Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for tenants affected by COVID-19.
  3. Approve the related FY 2019/20 budget amendment in the General Fund to increase the Housing and Community Services Division Contractual Services budget by \$100,000 and decrease the Budget Stabilization Reserve by \$100,000.
  4. Authorize the City Manager to enter into agreements as needed to address the administrative, tenant support and enforcement efforts of the proposed ordinances up to a maximum of \$100,000.

**Mayor Gillmor** noted that she is abstaining from this item due to potential conflict of interest as she owns rental property and left the dais.

**Vice Mayor Hardy** presided over this item.

**City Manager Santana, City Attorney Doyle, and Housing Manager Veach** gave a PowerPoint Presentation.

**A motion was made by Councilmember Davis, seconded by Councilmember Chahal, to (1) adopt Urgency Ordinance No. 2014 Establishing a Temporary Moratorium on Evictions for the Non-payment of Rent and No-Fault Evictions for Tenants affected by the novel coronavirus (COVID-19); (2) introduce Ordinance No. 2015 Establishing a Temporary Moratorium on Evictions for the Non-payment of Rent and No Fault Evictions for tenants affected by COVID-19; (3) approve the related FY 2019/20 budget amendment in the General Fund to increase the Housing and Community Services Division Contractual Services budget by \$100,000 and decrease the Budget Stabilization Reserve by \$100,000; and (4) authorize the City Manager to enter into agreements as needed to address the administrative, tenant support and enforcement efforts of the proposed ordinances up to a maximum of \$100,000.**

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

**Abstained:** 1 - Mayor Gillmor



5. [20-432](#) Report and Possible Action on City Small Business Relief Program in Response to COVID-19 and Related Budget Amendment

**Recommendation:**

1. Direct the City Manager to develop a COVID-19 Small Business Relief Program for Council consideration.
2. Approve the related FY 2019/20 budget amendment in the General Fund to increase the City Manager's Office budget by \$250,000 and decrease the Budget Stabilization Reserve by \$250,000.

**Mayor Gillmor** returned to the dais and presided over the meeting.

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

**A motion was made by Councilmember Chahal, seconded by Councilmember Watanabe, to (1) direct staff to return on April 7, 2020 with a COVID-19 Small Business Relief Program and (2) approve the related FY 2019/20 budget amendment in the General Fund to increase the City Manager's Office budget \$250,000 and decrease the Budget Stabilization Reserve by \$250,000.**

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

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

**None.**

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

**None.**

The meeting was adjourned at 6:50 pm in memory of **Robert (Bob) Young** (Northern California Power Association (NCPA) Geothermal Facility Manager) and **Gerda Jensen-Bull** (Long-Time Santa Clara Resident and Founding member of the Old Quad Residents Association).

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

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

[20-441](#)

## MEETING ADJOURNMENT

The next regular scheduled meeting is on Tuesday evening, March 31, 2020 in the City Hall Council Chambers.

## MEETING DISCLOSURES

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

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

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

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

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

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



# City of Santa Clara

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

## Agenda Report

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20-08

Agenda Date: 5/26/2020

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### REPORT TO COUNCIL

#### SUBJECT

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

#### RECOMMENDATION

Note and file the Minutes of:

Civil Service Commission - February 10, 2020

Civil Service Commission - March 12, 2020



# City of Santa Clara

## Meeting Minutes

### Civil Service Commission

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02/10/2020

7:00 PM

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

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

Chairperson Brown called the meeting to order at 7:00 pm, and lead the meeting in the Pledge of Allegiance.

**Present** 3 - Commissioner Mario Bouza, Vice Chair Carolyn McAllister, and Chair Willie D. Brown Jr.

**Absent** 2 - Commissioner Franklin Felizardo, and Commissioner John Casey

#### **CONSENT CALENDAR**

**1.A**     [20-29](#)     Action to Approve the Civil Service Commission Meeting Minutes of November 18, 2019

**Recommendation:** Approve the Meeting Minutes of November 18, 2019

**A motion was made by Commissioner McAllister, seconded by Commissioner Bouza to approve the meeting minutes of November 18, 2019.**

**Aye:** 3 - Commissioner Bouza, Vice Chair McAllister, and Chair Brown Jr.

**Absent:** 2 - Commissioner Felizardo, and Commissioner Casey

**1.B**     [20-30](#)     Action to Approve the Open Recruitment Report for February 1, 2019 Through January 31, 2020

**Recommendation:** Approve the Open Recruitment Report for February 1, 2019 through January 31, 2020

**A motion was made by Commissioner Bouza, seconded by Commissioner McAllister, to approve the Open Recruitment Report for February 1, 2019 through January 31, 2020.**

**Aye:** 3 - Commissioner Bouza, Vice Chair McAllister, and Chair Brown Jr.

**Absent:** 2 - Commissioner Felizardo, and Commissioner Casey

**PUBLIC PRESENTATIONS**

None

**GENERAL BUSINESS**

- 2      [20-1442](#)      Action to Modify the Class Specification for Trouble Shooter

**Recommendation:** Approve the modified class specification for Trouble Shooter

**A motion was made by Commissioner McAllister, seconded by Commissioner Bouza, to approve the modified class specification for Trouble Shooter.**

**Aye:** 3 - Commissioner Bouza, Vice Chair McAllister, and Chair Brown Jr.

**Absent:** 2 - Commissioner Felizardo, and Commissioner Casey

- 3      [20-193](#)      Action to Modify the Class Specification for Electric Crew Foreperson

**Recommendation:** Approve the modified class specification for Electric Crew Foreperson

**A motion was made by Commissioner McAllister, seconded by Commissioner Bouza, to approve the modified class specification for Electric Crew Foreperson.**

**Aye:** 3 - Commissioner Bouza, Vice Chair McAllister, and Chair Brown Jr.

**Absent:** 2 - Commissioner Felizardo, and Commissioner Casey

- 4      [20-194](#)      Action to Modify the Class Specification for Service Coordinator Inspector

**Recommendation:** Approve the modified class specification for Service Coordinator Inspector

**A motion was made by Commissioner Bouza, seconded by Commissioner McAllister to approve the modified class specification for Service Coordinator Inspector.**

**Aye:** 3 - Commissioner Bouza, Vice Chair McAllister, and Chair Brown Jr.

**Absent:** 2 - Commissioner Felizardo, and Commissioner Casey

- 5      [20-196](#)      Action to Modify the Class Specification for Senior Plans Examiner

**Recommendation:** Approve the modified class specification for Senior Plans Examiner

**A motion was made by Commissioner McAllister, seconded by Commissioner Bouza, to approve the modified class specifications for Senior Plans Examiner.**

**Aye:** 3 - Commissioner Bouza, Vice Chair McAllister, and Chair Brown Jr.

**Absent:** 2 - Commissioner Felizardo, and Commissioner Casey

**STAFF REPORT**

Brown Act Presentation

Due to the absence of two commissioners, staff recommended to postpone the Brown Act presentation until the next meeting.

**COMMISSIONERS REPORT**

None

**ADJOURNMENT**

Chairperson Bouza adjourned the meeting at 8:18 pm to the next regularly scheduled on March 9, 2020.



# City of Santa Clara

## Meeting Minutes

### Civil Service Commission

03/12/2020

7:00 PM

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

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Chairperson calls for a Special Meeting of the Civil Service Commission of the City of Santa Clara, to commence and convene on Thursday, March 12, 2020, at 7:00 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.

**Present** 4 - Commissioner Mario Bouza, Chair Willie D. Brown Jr., Commissioner Franklin Felizardo, and Commissioner John Casey

**Absent** 1 - Vice Chair Carolyn McAllister

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

Chairperson Brown called the meeting to order at 7:00 pm, and lead the meeting in the Pledge of Allegiance.

**Present** 4 - Commissioner Mario Bouza, Chair Willie D. Brown Jr., Commissioner Franklin Felizardo, and Commissioner John Casey

**Absent** 1 - Vice Chair Carolyn McAllister

#### **CONSENT CALENDAR**

**1.A**     [20-328](#)     Action to Approve the Civil Service Commission Meeting Minutes of February 10, 2020

**Recommendation:** Approve the Meeting Minutes of February 10, 2020

This item was deferred to the next Civil Service Commission Meeting due to lack of a quorum from the previous meeting. No action was taken.

**Continued**

**1.B**     [20-330](#)     Action to Approve the Open Recruitment Report for March 1, 2019 through February 29, 2020

**Recommendation:** Approve the Open Recruitment Report for March 1, 2019 through February 29, 2020

**A motion was made by Commissioner Bouza, seconded by Commissioner Casey to approve the Open Recruitment Report for March 1, 2019 through February 29, 2020.**

**Aye:** 4 - Commissioner Bouza, Chair Brown Jr., Commissioner Felizardo, and Commissioner Casey

**Absent:** 1 - Vice Chair McAllister

### **PUBLIC PRESENTATIONS**

None

### **GENERAL BUSINESS**

- 2      [20-351](#)      Action to Modify the Class Specifications for Fire Prevention Specialist I/II (Job Code 489/478), Office Specialist III (Job Code 938), and Senior Inspector (Job Code 750) and to Adjust the Examination Weighting Plan for Journey Lineworker (Job Code 560) [Council Pillar: Manage Strategically Our Workforce Capacity and Resources]

**Recommendation:** Approve the modified class specifications for Fire Prevention Inspector I/II, Office Specialist III, and Senior Inspector and approve the modified weighting plan for Journey Lineworker

The Commissioners discussed and requested that staff separates each job classification as individuals items for discussion and consideration.

**A motion was made by Commissioner Felizardo, seconded by Commissioner Casey to approve the modified class specification for Fire Prevention Specialist I/II.**

**Aye:** 4 - Commissioner Bouza, Chair Brown Jr., Commissioner Felizardo, and Commissioner Casey

**Absent:** 1 - Vice Chair McAllister

**A motion was made by Commissioner Casey, seconded by Commissioner Bouza to approve the modified class specification for Office Specialist III.**

**Aye:** 4 - Commissioner Bouza, Chair Brown Jr., Commissioner Felizardo, and Commissioner Casey

**Absent:** 1 - Vice Chair McAllister

**A motion was made by Commissioner Felizardo, seconded by Commissioner Bouza to approve the modified class specification for Senior Inspector.**

**Aye:** 4 - Commissioner Bouza, Chair Brown Jr., Commissioner Felizardo, and Commissioner Casey



**Absent:** 1 - Vice Chair McAllister

**A motion was made by Commissioner Bouza, seconded by Commissioner Felizardo to adjust the examination weighting plan for Journey Lineworker.**

**Aye:** 4 - Commissioner Bouza, Chair Brown Jr., Commissioner Felizardo, and Commissioner Casey

**Absent:** 1 - Vice Chair McAllister

### **STAFF REPORT**

Due to the absence of a commissioner, the Commission postponed the Brown Act presentation until the next meeting.

### **COMMISSIONERS REPORT**

Commissioner Brown inquired about the Joint Dinner with Council and staff advised that the event is postponed until further notice.

### **ADJOURNMENT**

Chairperson Brown adjourned the meeting at 7:25 pm to the next regularly scheduled meeting on April 13, 2020.

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.

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## Agenda Report

20-102

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### SUBJECT

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

#### BACKGROUND

On August 27, 2019, the City Council directed staff to proceed with the long-range planning process to designate the Freedom Circle area as a Future Focus Area within the General Plan instead of the preparation of a Specific Plan. This direction was given following the decision by two of the three Freedom Circle property owners funding the Specific Plan (The Sobrato Organization and Irvine Company) to withdraw from their funding of the Freedom Circle Specific Plan process, which had begun in August 2018. The remaining property owner (Greystar) is continuing to fund the Focus Area process while also moving forward with their General Plan Amendment (GPA) application.

#### DISCUSSION

The change from preparation of a Specific Plan to a Focus Area necessitates a change of scope of the City's contract with Moore Iacofano Goltsman, Inc (MIG) for preparation of the Focus Area. As a next step in the creation of the Freedom Circle Focus Area and processing of the Greystar GPA, the City will start the environmental review process for both by releasing a Notice of Preparation (NOP).

Based on prior City Council direction, staff is considering preparation of the Freedom Circle Focus Area to be a precondition of the City Council for completing the processing of the GPA for the Greystar parcel.

#### Contract Amendment with MIG, Inc.

In conjunction with the Greystar GPA, the City Council directed Planning staff to plan for a future transition to a mix of residential and office uses in Freedom Circle by creating a new General Plan Focus Area for the properties around Freedom Circle.

To reflect this change in circumstances and scope, the City is proposing to amend its current contract with MIG. The planning document to be prepared will be an illustrated description of the Freedom Circle Focus Area, which communicates the development potential of the Focus Area and which will be incorporated into the General Plan text. Like other focus areas, the Freedom Circle Focus Area will be subject to a future planning process prior to any change in land use designation.

The contract amendment also includes the preparation of a combined Environmental Impact Report (EIR) covering both the Greystar GPA and the Freedom Circle Focus Area. Environmental Impacts of the Greystar GPA will be analyzed at a project level, meaning that the specific impacts of the 1,100 residential unit Greystar development proposal will be analyzed, including traffic and noise. Impacts

of development under the proposed focus area will be described at a program level because the size and location of individual development proposals beyond the Greystar development is not known at this time.

The contract amendment reflects the change in project scope from preparation of a Specific Plan to a reduced work scope for designation of a Focus Area along with increased analysis specific to the Greystar project. The amendment also addresses the decoupling of the Freedom Circle and Patrick Henry Specific Plan processes to be independent projects. The contract amendment recognizes the \$172,962 already spent on the Freedom Circle project, and describes the tasks involved with the preparation of the focus area and the associated EIR. The total of new costs in the contract amendment is \$450,342. Including a 10% contingency, the total cost of the contract amendment is \$685,635. This is a reduction from the original contract for \$840,497 which included a 10% contingency.

Because Greystar is the sole remaining funder of the Freedom Circle Focus Area, the reimbursement agreement for the preparation of the Freedom Circle focus area and EIR by MIG, Inc. has been revised to be between Greystar and the City.

### **Notice of Preparation**

The release of a Notice of Preparation (NOP) is the first public action in the EIR preparation process. The purpose of the NOP is to inform agencies and interested parties that an EIR will be prepared for a project, and allow an opportunity for comment on the scope and content of the environmental information to be included in the EIRs noted above, the EIR and the NOP will address both the City's designation of the Focus Area and the Greystar project.

The vision for the Freedom Circle Focus Area is an urban environment, with Great America Parkway and Mission College Boulevard retaining their commercial character. For the NOP the Focus Area is proposed to allow 2,500 dwelling in addition to the 1,100 proposed through the Greystar GPA, for a total of 3,600 dwelling units. The NOP also address the potential development of 2 million square feet of office space in addition to the current General Plan capacity, allowing a total of 9.6 million square feet of potential office/industrial development. The parcels designated High Intensity Office are currently developed with approximately 2.35 million square feet of building space.

The Freedom Circle area (shown in Attachment 1) is not considered for conversion to residential uses under any phase of the 2010 - 2035 General Plan, but rather is currently planned over the long-term to be preserved for employment uses. The buildings in the Freedom Circle area are a mix of concrete tilt-ups, office towers, and single-use commercial buildings such as the Santa Clara Marriott Hotel and Pedro's Cantina. The Greystar site, which sits directly north of 101 and directly west of San Tomas Aquino Creek, is undeveloped.

Most of the proposed Specific Plan Area currently has a High Intensity Office General Plan designation, which supports high-rise and campus style office development with an allowed Floor Area Ratio (FAR) of up to 2.0. The Marriott Hotel site is the lone exception and is currently designated Regional Commercial. Unlike other focus areas where the City anticipates conversion of all or a large majority of lands to residential use, this area currently supports key commercial and office uses and a more even mix of employment and residential uses consistent with overall General Plan goals.

The Greystar General Plan Amendment proposes to change the General Plan land use designation for the 13.3 acre Greystar site, which is bounded by San Tomas Aquino Creek to the East, Freedom Circle to the West, and Highway 101 to the south from High Intensity Office (maximum Floor Area Ratio of 2.0) to Very High Density Residential (51-100 Dwelling Unit/Acre). Greystar is proposing a total of 1,100 dwelling units in three 7-story buildings, all of which are proposed to be a maximum of 100 feet in height. The proposal also includes a two-acre public park with a connection to the San Tomas Aquino Creek trail, and up to 2,000 square feet of neighborhood-serving retail. The proposal also includes removing existing view easements along the Bayshore Freeway (US 101) and relocating the City of Santa Clara/Great America sign from its current location to the southeastern corner of the property.

### **ENVIRONMENTAL REVIEW**

The action being considered is simply to accept a report on the planning process for Greystar and the Freedom Circle focus area, and approval of the amendment to the consultant contract. These actions do not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5), in that they are governmental organizational or administrative activities that will not result in direct or indirect changes in the environment.

### **FISCAL IMPACT**

Amendment No. 1 with MIG decreases the not-to-exceed amount to \$685,635 and extends the term of the agreement to December 31, 2021. The City’s consultant costs for preparation of the Freedom Circle focus area and Greystar General Plan Amendment will be covered through a reimbursement agreement with Greystar. The applicant previously deposited \$300,000 under the original Greystar Reimbursement Agreement and will be expected to deposit an additional \$300,000 following execution of the amended Reimbursement Agreement in order to fully fund the land use and environmental planning services. The additional funds will be collected in the City’s Deposit Fund from which payments will also be made.

While the City has not conducted a fiscal analysis for the focus area and General Plan Amendment, it is understood that residential land uses generally have a net negative fiscal impact (as increased land value revenue does not completely offset increased costs for service), but infill and higher density mixed-use development, particularly utilizing Type I or Type III construction, can provide for more efficient delivery of services and support more tax revenue generating activity, potentially resulting in net neutral or positive fiscal implications. Consistent with the General Plan, the addition of new residentially designated land helps the City to achieve its Regional Housing Needs Assessment (RHNA) goals for housing production.

### **COORDINATION**

This report has been coordinated with the City Attorney’s Office and the City Manager’s Office.

### **PUBLIC CONTACT**

The City held a community meeting on the North Santa Clara area including the Freedom Circle area on February 25, 2019. Approximately 28 members of the public attended the meeting.

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and

in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

### **ALTERNATIVES**

1. Approve the contract amendment and reimbursement agreement for the revised scope of services with MIG, Inc. and accept the report on the Freedom Circle / Greystar General Plan Amendment Notice of Preparation as presented by staff.
2. Do not approve the contract amendment and reimbursement agreement for the revised scope of services with MIG, Inc. and do not accept the report on the Freedom Circle / Greystar General Plan Amendment Notice of Preparation as presented by staff.

### **RECOMMENDATION**

Alternative 1:

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

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Proposed Freedom Circle Focus Area
2. Contract Amendment No. 1 with MIG Freedom Circle
3. Amendment to the Greystar Reimbursement Agreement, April 2020
4. Freedom Circle Draft Notice of Preparation May 2020
5. Focus Area and EIR Milestone Schedule



Figure 1. Proposed Freedom Circle focus area. The Greystar property is outlined in yellow.



**AMENDMENT NO. 1  
TO THE AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
MOORE IACOFANO GOLTSMAN, INC.**

**PREAMBLE**

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

**RECITALS**

- A. The Parties previously entered into an agreement entitled "Agreement for Services Between the City of Santa Clara, California, and Moore Iacofano Goltsman, Inc.," with an Effective Date of July 17, 2018 (Agreement); and
- B. The Parties entered into the Agreement for the purpose of having Contractor provide professional services to prepare a Specific Plan for the Freedom Circle plan area, and the Parties now wish to amend the Agreement to instead prepare a Focus Area Plan for the Freedom Circle plan area.

NOW, THEREFORE, the Parties agree as follows:

**AMENDMENT TERMS AND CONDITIONS**

- 1. Section 2 of the Agreement, entitled "Term of Agreement" is amended to reflect a termination date of December 31, 2021.
- 2. Section 6 of the Agreement, entitled "Compensation and Payment" is amended to reflect a maximum compensation of six hundred eighty-five thousand, six hundred thirty-five dollars (\$685,635), subject to budget appropriations.
- 3. Exhibit A of the Agreement, entitled "Scope of Services" is replaced in its entirety by the attached "Revised Scope of Services."
- 4. Exhibit B of the Agreement, entitled "Schedule of Fees" is replaced in its entirety by the attached "Revised Schedule of Fees."

5. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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

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

Approved as to Form:

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

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

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

“CITY”

**MOORE IACOFANO GOLTSMAN, INC.**  
a California corporation

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

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

Name: Chris Beynon

Title: Chief Development Officer

Principal Place of Business Address: 800 Hearst Avenue  
Berkeley, CA 94710

Email Address: chrisb@migcom.com

Telephone: (510) 845-7549

Fax: (510) 845-8750

“CONTRACTOR”

I:\PLANNING\Admin\Contracts\M.I.G. - Moore Iacofano Goltsman, Inc\Freedom Circle Specific  
Plan\Amendment No 1\Amendment No. 1 - Form.doc



## **EXHIBIT A REVISED SCOPE OF SERVICES**

### **INTRODUCTION**

The Freedom Circle (FC) Focus Area Plan will establish a comprehensive planning framework to guide the development of a new mixed-use district in northern Santa Clara that includes high-density residential uses, commercial spaces, and an array of community amenities.

The development program will include two layers, based on the level of detail available from property owners and their projected development time frame:

- A reasonable estimate of the development umbrella for the entire Focus Area, including predominate land uses, a range of housing units and residential densities, open space and community amenities, and non-residential square feet (NRSF), and
- A complete land use program and site diagram for the Greystar property, consistent with their pending General Plan Amendment application.

This document establishes the scope of work to be completed by MIG, Inc. (MIG) and its subconsultant in conjunction with City staff and Greystar.

### **PHASE 1. PROJECT INITIATION**

#### **TASK 1.1: PROJECT TEAM MEETING #1: SCOPE AND WORK TO-DATE REVIEW**

MIG will convene a meeting with City staff, Hexagon and Greystar to review key work conducted to date via the Freedom Circle Specific Plan process, including prerequisite studies, preliminary plan alternatives, planning principles, and stakeholder feedback. Following the meeting, MIG will produce a brief meeting summary.

##### **TASK 1.1 DELIVERABLES**

- Meeting materials: agenda, handouts, base maps, and PowerPoint presentation (Word/PDF/PPT/JPG)
- Meeting #1 Summary (Word/PDF)

### **PHASE 2. CONCEPTS AND STRATEGIES**

#### **TASK 2.1: PLANNING AND DESIGN FRAMEWORK**

MIG will produce a concise document establishing the goals, policies, and design principles that will guide redevelopment in the Focus Area, leveraging past content from the Specific Plan process as well as new direction provided by the project team in Task 1.1. Based on the proposed land use framework, the document will also estimate an upper limit of residential units and non-residential square feet anticipated at full buildout. These projections will be used as inputs for the subsequent EIR process (Phase 3) to evaluate anticipated environmental impacts and any required mitigations.

Hexagon will provide recommendations to the project team regarding access and circulation for the Focus Area, including multi-modal connectivity to existing roadways, transit, bikeways, trails, and open spaces and areas to accommodate transportation network companies (e.g., Uber and Lyft) and private shuttles. Hexagon also will make recommendations on Transportation Demand

Management (TDM) strategies and a TDM monitoring program to reduce impacts of vehicular traffic on the project area. Hexagon will also advise the project team on parking strategies designed to reduce single-occupant vehicle trips, to ensure the efficient use of parking resources, and to discourage parking intrusion beyond the Focus area. City staff will be responsible for reviewing the document and will provide one round of consolidated comments on the Draft Planning and Design Framework.

#### **TASK 2.1 DELIVERABLES**

- Draft and Final Planning and Design Framework, approximately 2-3 pages (Word/PDF)

#### **TASK 2.2: STRATEGY DIAGRAM**

Based on the conceptual framework articulated in Task 2.1, MIG will develop a highly graphic Strategy Diagram illustrating the key physical improvements that will implement the goals of this Plan. The Strategy Diagram may build from the latest “Plan Alternative” scenario developed in May 2019 as part of the former Freedom Circle Specific Plan process.

The Strategy Diagram will convey the Focus Area’s urban design, land use, open space, and connectivity frameworks and may be supplemented with additional information as needed.

These supporting items may include a brief definition of each land use designation (including density ranges and building heights) and up to three street sections that illustrate key streetscape features envisioned in the Focus Area. The street cross-sections will be designed to accommodate the anticipated traffic volume, bicycle, and pedestrians, as necessary.

#### **TASK 2.2 DELIVERABLES**

- Draft and Final Strategy Diagram (Illustrator/PDF)
- Three Street Sections (Illustrator/PDF)

### **PHASE 3. PROGRAM-PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)**

The City of Santa Clara 2010-2035 General Plan did not designate Freedom Circle as a Focus Area and consequently did not anticipate in its EIR the potential land use changes described in this scope of services. To evaluate both the proposed Freedom Circle Focus Area Plan and the proposed Greystar land use program, MIG will prepare a two-layered Draft EIR that parallels the two layers of the Focus Area Plan development program: (1) a General Plan-level (program-level) EIR for the entire Future Focus Area, and (2) a project-level analysis for the Greystar project, which is expected to be entitled once the EIR is certified and the Focus Area Plan approved. This program-project EIR structure indicates that additional environmental review will be required for all future developments apart from the Greystar project, although the program-level analysis will be deliberately designed to facilitate CEQA streamlining for future site-specific development proposals.

#### **TASK 3.1: INITIAL STUDY, NOTICE OF PREPARATION, AND SCOPING MEETING**

MIG’s in-house environmental planning team will complete an Initial Study (IS) checklist and narrative (based on CEQA Guidelines Appendix G) to appropriately identify the environmental topics of the Focus Area Plan’s EIR. Those project conditions determined to have a “potentially significant impact” on the environment will then be further analyzed during development of the Draft EIR and refinement of the Focus Area Plan, with associated mitigation measures closely linked to Focus Area Plan policies. MIG will also prepare the EIR Notice of Preparation (NOP) to attach to the IS and will attend one CEQA-required EIR scoping session with responsible/interested agencies and members of the public. City staff will be responsible for reviewing and approving the NOP/IS, compiling the mailing list (with MIG assistance), and

distributing the NOP/IS to responsible and interested agencies. As a viable option under CEQA, the City does not need to prepare an entire Appendix G checklist once the City has decided that an EIR is the required CEQA document; under this option, the NOP will list and briefly describe each of the environmental topics that the EIR will evaluate.

### **TASK 3.1 DELIVERABLES**

- Initial Study and NOP (Word/PDF)

### **Task 3.2: Transportation Impact Analysis (TIA)**

\*NOTE: To the extent practicable, the Transportation Impact Analysis (TIA) will be prepared in coordination with the Patrick Henry Drive Specific Plan. This coordination is expected to include one set of intersection counts and a single existing conditions traffic analysis, one set of forecasted volumes and intersection LOS calculations for cumulative no project and cumulative plus project conditions.

The purpose of the traffic impact analysis (TIA) is to satisfy the requirements of the City of Santa Clara, the Congestion Management Program (CMP) of the Santa Clara Valley Transportation Authority (VTA), and the California Environmental Quality Act (CEQA). As a result of Senate Bill 743, VMT will replace level of service (LOS) as a CEQA significance criterion by July 1, 2020. The City of Santa Clara is currently working on their SB 743 implementation process that would develop policies and guidelines for VMT impact evaluation. It is expected that the EIR for the Freedom Circle Focus Area Plan will be certified after July 1, 2020 and thus be based on VMT for CEQA impact assessment purposes. Nevertheless, this scope retains level of service analyses as this study is being conducted during the transition period. The level of service analysis will evaluate key intersections in the vicinity of the site during weekday AM and PM peak hours. The study area will be determined based on the City of Santa Clara's (CSC) travel demand forecast model. Preliminarily, we estimate that the TIA will include the analysis of up to 50 intersections, 40 freeway segments, and 25 freeway ramps. Additional study intersections, freeway segments or ramps will require authorization and additional budget.

The CSC travel demand model will be used to develop traffic forecasts for city streets and freeways, project trips, public transit ridership, and VMT.

The tasks to be included in the traffic analysis are:

#### *Site Reconnaissance*

The physical characteristics of the site and the surrounding roadway network will be reviewed to identify existing roadway cross-sections, intersection lane configurations, traffic control devices, and surrounding land uses.

#### *Observation of Existing Traffic Conditions in the Study Area*

Existing traffic conditions will be observed in the field in order to identify any operational deficiencies and to confirm the accuracy of calculated levels of service. Freeway ramps will be observed for queuing.

#### *Data Collection*

Existing weekday AM (7:00 – 9:00 AM) and PM (4:00 – 6:00 PM) peak-hour traffic volumes will be obtained from the City of Santa Clara, and traffic reports recently prepared for other nearby projects. PM peak-hour counts for CMP intersections will be obtained from the CMP database. New manual peak-hour turning movement counts were conducted at many intersections in May

2019 under the original scope of work developed for the Specific Plan process. Thus, it is assumed that current counts within the last two years are available at all study intersections and no new intersection counts will be needed. Freeway segment traffic counts will be obtained from the latest Congestion Management Program (CMP) monitoring report. Freeway ramp volumes will be obtained from Caltrans and supplemented with new manual peak-hour counts, if necessary. Freeway ramp queues and metering rates will be counted in the field.

#### *Evaluation of Existing Conditions*

Existing traffic conditions will be evaluated based on existing traffic volumes at the study intersections. The existing traffic conditions at the key study intersections will be evaluated using the TRAFFIX software, which employs the 2000 Highway Capacity Manual (HCM) methodology for intersection analyses and is the designated level of service methodology for the City of Santa Clara.

#### *Travel Demand Model Validation*

The VTA recently updated the 2015 land use data file based on ABAG Projections 2017. The 2015 land use file was developed with input from the County's local jurisdictions, including the City of Santa Clara. In addition, the United States Census Bureau recently released the 2011-2015 journey to work data from the American Community Survey and MTC compiled transit ridership data from household and on-board surveys and developed a database of regional transit trips by sub-mode and by mode of access for the Bay Area Region. These data sources will be used to recalibrate the City of Santa Clara's Travel Demand Model's home-based work trip distribution and mode choice models for year 2015. Subsequently, the Year 2019 land use data for the City of Santa Clara will be developed by adding to the Year 2015 land uses the sizes of new development projects constructed between 2015 and 2019 based on information provided by the City of Santa Clara's Planning Department. The Year 2019 land use data for areas outside the City of Santa Clara will be developed by interpolating the 2015 and 2040 data sets. The interpolated Year 2019 land use data will be adjusted as necessary based on information provided by the Cities of San Jose and Sunnyvale regarding recently completed projects in those jurisdictions. In addition, Year 2019 land use data will be adjusted to reflect the completion of the new Apple campus in Cupertino, which opened in 2017.

Hexagon will validate the model against existing traffic counts and most-recent publicly available observed transit ridership on VTA, Caltrain, ACE and Capitol Corridor. The model validation will be based on statistic validation criteria set forth in the 2017 California Regional Transportation Plan Guidelines, as well as validation by facility type following the criteria recommended in the FHWA's Travel Model Validation and Reasonableness Checking Manual, Second Edition. The model validation effort will bring the model base year to Year 2019, the same year as when most traffic counts for study intersections were conducted.

#### *Evaluation of Existing Plus Project Conditions*

The evaluation of existing plus project conditions will include two project scenarios: (1) the Greystar project by itself, and (2) buildout of the entire Freedom Circle Focus Area including the proposed Greystar project. Project trip generation for each scenario will be determined based on ITE trip rates. The CSC travel demand forecasting model will be used to estimate trip reductions for internalization and usage of alternative modes. Likewise, the trip distribution and assignment of project trips will be determined with the CSC travel demand forecasting model. Model forecasts under existing plus project conditions will also reflect any diversion of existing trips on study area roadways. Intersection level of service calculations will be conducted to estimate existing plus project traffic conditions during the AM and PM peak hours using the TRAFFIX software. Adverse effects on intersection levels of service associated with the

development of the proposed Greystar project and with buildout of the Focus Area Plan will be evaluated relative to existing conditions.

#### *Evaluation of Background Conditions*

Background traffic volumes will be developed using the CSC travel demand forecasting model and will reflect trips associated with approved projects in Santa Clara, San Jose, and Sunnyvale. Intersection levels of service under background conditions will be evaluated using the City methodology.

#### *Evaluation of Background Plus Project Conditions*

The CSC travel demand forecasting model will be used to develop traffic forecasts under the background plus Focus Area Plan and Background plus Greystar project scenarios. Intersection levels of service under background plus project conditions will be evaluated using the TRAFFIX software during the AM and PM peak hours. Adverse effects on intersection levels of service associated with the project will be evaluated relative to background conditions.

#### *Evaluation of Cumulative No Project Conditions*

Cumulative no-project traffic volumes will be developed using the CSC travel demand forecast model. Cumulative conditions will reflect future development outside of the Patrick Henry Drive Specific Plan Area or the Freedom Circle Focus Area (e.g. the approved City Place project, the pending Kylli project, and other pending developments in Santa Clara and surrounding jurisdictions) and planned transportation improvements. Intersection levels of service under cumulative no project conditions will be evaluated using the City methodology.

#### *Evaluation of Cumulative Plus Project Conditions*

Cumulative plus project traffic volumes will be developed using the CSC travel demand forecast model and will reflect trips generated by the buildout of the Patrick Henry Drive Specific Plan Area and the Freedom Circle Focus Area including the proposed Greystar project. Intersection levels of service under cumulative plus project conditions will be evaluated using the City methodology. The analysis will show changes in intersection levels of service associated with each project separately and together.

#### *VMT Analysis*

The VMT associated with the proposed Greystar project and with buildout of the Freedom Circle Focus Area will be estimated using the CSC travel forecast model. The model forecasts will reflect internalization of project trips, transit reductions, and proposed TDM measures. The VMT analysis will evaluate each land use component separately. The total residential VMT will be divided by the project's residents to calculate the project's residential VMT per capita. The total office VMT will be divided by the projected employment to calculate the project's office VMT per capita. The project's residential and office VMT per capita will be compared to citywide, countywide, and/or regional average VMT per capita also estimated using the CSC model. The analysis will include per capita calculations for the office and residential components combined. The VMT will be calculated without and with the project to determine the project's effects on the transportation network. This scope of work includes 12 hours of Hexagon staff time for coordination with the City regarding the VMT thresholds and calculation methods.

Hexagon's VMT estimates will be provided to MIG for their use in air quality modeling for greenhouse gas (GHG) emissions analysis for the environmental document.

#### *Freeway Segment and Ramp Analysis*

Project trips will be assigned to freeway segments and ramps in accordance with the trip distribution patterns determined from the model. The number of trips on nearby freeway segments will be compared to the CMP's threshold for determining the need for freeway level of service analysis. Freeway segments that require a level of service analysis will be analyzed for the AM and PM peak hours as required by the CMP guidelines. Freeway ramps will be evaluated based on volume-to-capacity ratios. The results of this task will be documented in the traffic study.

#### *Site Access, On-Site Circulation and Parking*

Internal roadways and site driveways depicted in the Greystar site plan will be reviewed to determine the overall adequacy of the site access and on-site circulation in accordance with generally accepted traffic engineering standards and to identify any access or circulation issues that should be improved. An analysis of vehicle operations and queuing and pedestrian safety on the Greystar site will be included in the traffic study. On-site circulation within the larger Focus Area will not be analyzed due to the lack of detail available in the program level document.

The parking demand ratios set forth in the Focus Area Plan and proposed on the Greystar site will be compared to ITE's published nationwide parking survey data, available local parking survey data, and existing zoning code requirements. The analysis will consider the reduction in parking demand associated with the selected TDM strategies as well as creative parking solutions, such as shared parking to confirm the proposed parking ratios will ensure sufficient parking to fulfill the anticipated demand.

#### *Signal Warrant Analysis*

The need for future signalization of unsignalized study intersections will be evaluated on the basis of the Peak Hour Warrant (Warrant 3 – Part B) in the California Manual on Uniform Traffic Control Devices. The warrant will be evaluated using peak-hour volumes for all study scenarios.

#### *Evaluation of Vehicle Queuing*

For selected locations where the Greystar project or buildout of the Focus Area Plan would add a significant number of left-turning vehicles, the adequacy of existing/planned storage at turn pockets will be assessed by means of comparison with expected maximum vehicle queues. Vehicle queues will be estimated using a Poisson probability distribution. It is anticipated that up to 30 intersections will be analyzed for queuing.

#### *Bicycle, Pedestrian, and Transit Facilities*

A qualitative analysis of the project's effect on bicycle and pedestrian circulation in the study area will be included in the traffic report. Any impacts of the project on the nearby facilities will be identified and improvements recommended to mitigate the impacts. The project's effects on transit facilities will include an analysis of transit route capacity, rail station platform passenger capacity, and transit vehicle travel times.

#### *Description of Impacts and Mitigation Measures*

Based on the results of the VMT analysis, impacts of the proposed Greystar project and the buildout of the Freedom Circle Focus Area Plan will be identified and described. The potential to partially or fully mitigate significant impacts through TDM measures will be discussed. Mitigation measures also may include improvements to pedestrian, bicycle, or transit facilities.

### *Recommendations*

Furthermore, deficiencies in intersection levels of service caused or exacerbated by the project will be identified. Recommendations will be formulated that identify the locations and types of improvements or modifications necessary to address intersection level of service deficiencies or other operational issues. Improvements could include street widenings, lane additions, changes in lane usage, modifications to existing traffic signals, or installation of new traffic signals. The potential secondary effects of motor vehicle improvements on other modes will be discussed. Hexagon's scope of work includes the preparation of conceptual layouts of recommended transportation improvements (conceptual designs on aerial photos) and planning-level cost estimates pertinent to such improvements. The scope also includes a sensitivity analysis to determine the development level that would trigger each necessary improvement.

### *Fair-Share Calculations for Effected Intersections*

Using up to two fair-share methods, Hexagon will prepare fair share calculations for the effected intersections under Existing Plus Project Conditions, Background Plus Project Conditions, and Cumulative Plus Project Conditions. These fair share calculations will be prepared for the Greystar project and the Freedom Circle Focus Area and documented in an excel spreadsheet for City staff use. In addition, the Cumulative Plus Project fair share calculations will be conducted for the Freedom Circle Focus Area by itself and in combination with the Patrick Henry Drive Specific Plan (eight total impact scenarios).

### *Transportation Impact Analysis (TIA) Report*

Hexagon's findings and recommendations will be summarized in an Administrative Draft Transportation Impact Analysis (TIA) report. Following review and comment on the administrative draft by MIG and the City, a draft report will be submitted. Hexagon will prepare a final report that addresses all of the comments received from the environmental consultant and City of Santa Clara staff on the draft transportation report.

### *Evaluate Project Alternatives*

Hexagon will estimate the project trip generation for up to three project alternatives to be evaluated in the Draft EIR. The VMT associated with each alternative will be estimated using the CSC travel forecast model. The residential and office VMT per capita and the combined VMT per capita for each alternative will be compared to citywide, countywide, and/or regional average VMT per capita to assess potential impacts associated with each alternative.

## **TASK 3.2 DELIVERABLES**

- Administrative Draft, Draft and Final TIA Report

## **TASK 3.3: DRAFT ENVIRONMENTAL IMPACT REPORT (EIR)**

\*NOTE: To the extent practicable, the Draft EIR will be prepared in coordination with the Patrick Henry Drive Specific Plan Draft EIR. This coordination is expected to include one database search and existing conditions assessments for both projects; the inclusion of the Patrick Henry Drive development potential in the cumulative impact analysis; and the identification of feasible mitigation measures that apply to both projects. Because, as noted in this scope, a Focus Area Plan (Freedom Circle) is less detailed than a Specific Plan (Patrick Henry Drive), this situation must be considered when coordinating the EIR analyses.

The MIG Team will develop a Draft EIR that considers all aspects of Focus Area Plan implementation to streamline both future entitlements and CEQA work. Mitigations will be developed through close coordination with Focus Area Plan policies, Greystar project components, integration of uniformly applicable development standards (CEQA section 15183 -

Projects Consistent with a Community Plan or Zoning), and application of compatible and feasible mitigation measures from recent projects. In turn, the evaluation of environmental topics in the Draft EIR will not necessarily result in significant environmental impacts but instead will identify how these proactive measures will avoid or reduce potential impacts to less-than-significant levels, without the need for additional mitigation. Similarly, feasible mitigation measures will be written to be incorporated directly into site-specific development proposals, including the Greystar project. This integration of the Focus Area Plan and EIR will prepare the City for CEQA streamlining of more detailed, future development proposals in the Focus Area.

This task will be concurrent and collaborative with the Focus Area Plan preparation process. MIG will prepare an Administrative Draft EIR for City staff review, then a Screencheck Draft EIR will be prepared for final review by a limited number of City staff before a public release Draft EIR is completed.

EIR topic areas and potential CEQA-defined impacts will be evaluated against Focus Area Plan policies and Greystar project components intended to avoid or reduce potential environmental impacts.

CEQA encourages the efficient use of applicable, certified CEQA documents and discourages redundancy. The EIR will enable streamlined CEQA review for future individual development proposals, based on the following CEQA Guidelines sections:

- 15168 – Program EIR
- 15183 – Projects Consistent with a Community Plan or Zoning
- 15183.3 – Streamlining for Infill Projects
- 15063 – Initial Study
- 15152 – Tiering
- 15162 – Subsequent EIRs and Negative Declarations
- 15163 – Supplement to an EIR
- Current CEQA and land use case law

Each of the CEQA Guidelines sections listed above affords opportunities for significant streamlining. As one example, we prepared the program EIR for the Redwood City Downtown Precise Plan and are now the on-call CEQA consultant for preparing internal Initial Study checklists (as an attachment to the staff reports) for individual project proposals in the plan area. Since 2013, fifteen individual projects have been approved using this process, with no further CEQA review required.

MIG will prepare an EIR that addresses the following environmental topics and questions included in CEQA Guidelines Appendix G (Environmental Checklist Form), as listed below. Potential project and cumulative impacts under each of these required topics will be determined and evaluated with text, graphics, and tables. Based on existing environmental conditions and Focus Plan components, some topics will be evaluated in more detail than others. This task forms the basis of the Administrative Draft EIR, which will include a separate chapter on each of the following CEQA-defined environmental issues:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural /Historic/Tribal Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions and Energy



- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation/Traffic
- Utilities and Service Systems

Each environmental topic chapter will present a two-layered approach and analysis that parallels the two layers of the Focus Area Plan development program: (1) a General Plan-level (program-level) EIR for the entire Future Focus Area, and (2) a project-level analysis for the Greystar project. In each environmental topic chapter and consistent with CEQA, the Greystar project will be included as part of the overall Focus Area Plan impact evaluation, then the Greystar project will have its own, more detailed individual impact analysis under a separate heading in the chapter. In several instances, the Focus Area Plan and Greystar information may overlap (e.g., applicable environmental regulations), so that information will be referenced, but not be repeated, for the Greystar analysis.

MIG will draft the transportation chapter of the Draft EIR using the final TIA report (Task 3.2). MIG's in-house team will complete technical studies for air quality, greenhouse gas emissions, energy consumption, noise, and cultural/tribal resources. We will evaluate the level of Toxic Air Contaminants given the site's proximity to Highway 101. EPS will provide relevant support for the demographic, economic, and real estate trends to provide market-based parameters for the EIR. The analysis will consist of an assessment of Santa Clara's demographic trends and labor force characteristics over the last ten to fifteen years, to confirm the likely range of population and housing growth through buildout of the Focus Area Plan.

Before EIR mitigation measures are recommended within any environmental topic area, MIG will identify Focus Area Plan policies and Greystar project components that would avoid or reduce potentially significant impacts.

The MIG Team will prepare an Administrative Draft EIR in Word format, with graphics included. City staff will provide the MIG Team with one set of consolidated, internally consistent edits. The MIG Team will produce a Screencheck Draft EIR based on City staff comments. City staff will review the Screencheck Draft EIR and provide the MIG Team with one set of consolidated, internally consistent edits. MIG will then prepare a Public Draft EIR based on staff edits.

### **Task 3.3 Deliverables**

- Administrative Draft EIR (Word/PDF)
- Screencheck Draft EIR (Word/PDF)
- Public Release Draft EIR (Word/PDF/15 hard copies/15 CDS)

## **PHASE 4. PLAN PRODUCTION**

### **TASK 4.1: FOCUS AREA PLAN**

MIG will develop a Focus Area Plan that details a compelling vision for the entire study area, including comprehensive narrative and supporting graphics that establish a coherent blueprint

for the future. City staff and Greystar will be responsible for reviewing the document and will provide one round of consolidated comments.

The Draft Focus Area Plan will be submitted in Word format, including PDFs of all original MIG graphics. Once the document has been reviewed by Greystar and City staff and revised accordingly, MIG will produce and submit the Final Focus Area Plan in Adobe InDesign format.

#### **TASK 4.1 DELIVERABLES**

- Draft and Final Focus Area Plan, approximately 8-10 pages (Word/InDesign/PDF)

### **PHASE 5. EIR CERTIFICATION AND ADOPTION OF FREEDOM CIRCLE FOCUS AREA PLAN**

#### **TASK 5.1: RESPONSE TO PUBLIC COMMENTS**

The MIG Team will respond to all public and agency comments received pertaining to the content or adequacy of the Draft EIR during the 45-day public review period. Hexagon will assist MIG in responding to transportation related comments received on the Draft EIR. Responding to comments that require any new analyses that is beyond the above-listed scope of services or revisions to the transportation impact analysis assumptions or methodology will be considered an additional service.

#### **TASK 5.1 DELIVERABLES**

- Responses to public and agency comments (Word/PDF)

#### **TASK 5.2 FINAL EIR**

MIG will prepare a Final EIR and a Mitigation Monitoring and Reporting Program for adoption with the Focus Area Plan. An Administrative Final EIR will be delivered for City staff review before a public release Final EIR is completed. City staff will be responsible for reviewing and providing one consolidated, internally consistent set of City comments to the MIG Team on the Administrative Final EIR, Final EIR, and the Mitigation Monitoring and Reporting Program.

#### **TASK 5.2 DELIVERABLES**

- Draft Final EIR with Mitigation Monitoring and Reporting Program (Word/PDF/10 hard copies)
- Final EIR (Word/PDF/26 hard copies)

#### **TASK 5.3: PLANNING COMMISSION AND COUNCIL MEETINGS**

\*NOTE: Commission and Council Meetings will be held jointly with the Patrick Henry Drive Specific Plan project.

The MIG Team will meet with the Planning Commission and City Council during the Focus Area Plan adoption process to present, discuss, and receive input/direction on the Draft Focus Area Plan and EIR. This task includes participation by MIG and Hexagon at up to four public hearings and two study sessions.

#### **TASK 5.3 DELIVERABLES**

- Planning Commission City Council Work Session/Hearing materials for up to six meetings: staff report content and presentation (Word/PPT/PDF)

## **PHASE 6. PROJECT MANAGEMENT**

### **TASK 6.1 PROJECT MANAGEMENT AND COORDINATION**

MIG will prepare monthly invoices and progress reports. This task also accounts for the MIG Team's regular project management and coordination (emails, calls, data transfers, etc.) with both City staff and the subconsultant team as well as project setup and close-out. Team members will attend ad hoc conference calls with City staff to coordinate on the project, discuss strategies and work products, and schedule near term items and data needs.

#### **TASK 6.1 DELIVERABLES**

- Monthly invoices and progress reports (Word/ Excel/PDF)
- Ongoing coordination and management

**EXHIBIT B**  
**REVISED SCHEDULE OF FEES**

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

The Consultant has provided a schedule of rates and fees which includes all billing amounts and costs entitled, "Freedom Circle Focus Area Plan Budget" dated March 2020, which is attached to this Exhibit B. In no event shall the amount billed to City by Contractor for services under this Agreement exceed six hundred eighty-five thousand six hundred thirty-five dollars (\$685,635), subject to budget appropriations.

FREEDOM CIRCLE FOCUS AREA PLAN BUDGET March 2020	MIG																Hexagon		Total
	C. Beynon		E. Fiore		E. Saman		R. Dhody		R. Pendro Environmental Planner		CEQA		P. Zamora		MIG				
	PIC		PM/Planner		Project Associate		Sr. Project Associate		Analysts		Administrator		Total						
	Hours @	295	Hours @	175	Hours @	105	Hours @	135	Hours @	195	Hours @	110	Hours @	120					
TASK 1: Project Initiation																			
1.1 Project Team Meeting #1: Scope and Work To-Date Review	6	\$1,770	8	\$1,400	12	\$1,260	0	\$0	0	\$0	0	\$0	1	\$120	27	\$ 4,550	\$960	\$ 5,510	
Subtotal	6	\$1,770	8	\$1,400	12	\$1,260	0	\$0	0	\$0	0	\$0	1	\$120	27	\$4,550	\$960	\$5,510	
TASK 2: Concepts and Strategies																			
2.1 Planning and Design Framework	4	\$1,180	8	\$1,400	20	\$2,100	0	\$0	0	\$0	0	\$0	0	\$0	32	\$ 4,680	\$1,450	\$ 6,130	
2.2 Strategy Diagram	4	\$1,180	4	\$700	4	\$420	12	\$1,620	0	\$0	0	\$0	0	\$0	24	\$ 3,920	\$3,860	\$ 7,780	
Subtotal	8	\$2,360	12	\$2,100	24	\$2,520	12	\$1,620	0	\$0	0	\$0	0	\$0	56	\$ 8,600	\$5,310	\$13,910	
TASK 3: Program-Project Environmental Impact Report (EIR)																			
3.1 Initial Study, Notice of Preparation, and Scoping Meeting	0	\$0	4	\$700	16	\$1,680	0	\$0	50	\$9,750	20	\$2,200	0	\$0	90	\$ 14,330	-	\$ 14,330	
3.2 Transportation Impact Analysis	2	\$590	4	\$700	40	\$4,200	0	\$0	100	\$19,500	0	\$0	0	\$0	146	\$ 24,990	\$142,830	\$ 167,820	
3.3 Draft EIR (DEIR)	2	\$590	12	\$2,100	8	\$840	0	\$0	200	\$39,000	920	\$101,200	0	\$0	1,142	\$ 143,730	-	\$ 143,730	
Subtotal	4	\$1,180	20	\$3,500	64	\$6,720	0	\$0	350	\$68,250	940	\$103,400	0	\$0	1,378	\$ 183,050	\$142,830	\$ 325,880	
TASK 4: Plan Production																			
4.1 Focus Area Plan	4	\$1,180	12	\$2,100	24	\$2,520	0	\$0	0	\$0	0	\$0	0	\$0	40	\$ 5,800	\$1,730	\$ 7,530	
Subtotal	4	\$1,180	12	\$2,100	24	\$2,520	0	\$0	0	\$0	0	\$0	0	\$0	40	\$ 5,800	\$1,730	\$ 7,530	
TASK 5: EIR Certification and Plan Adoption																			
5.1 Response to Public Comments	0	\$0	4	\$700	0	\$0	0	\$0	32	\$6,240	32	\$3,520	0	\$0	68	\$ 10,460	\$7,840	\$ 18,300	
5.2 Final EIR	2	\$590	16	\$2,800	40	\$4,200	0	\$0	50	\$9,750	120	\$13,200	0	\$0	228	\$ 30,540	-	\$ 30,540	
5.3 Planning Commission and Council Meetings	4	\$1,180	36	\$6,300	24	\$2,520		\$0	24	\$4,680		\$0	2	\$240	90	\$ 14,920	\$1,480	\$ 16,400	
Subtotal	6	\$1,770	56	\$9,800	64	\$6,720	0	\$0	106	\$20,670	152	\$16,720	2	\$240	386	\$ 55,920	\$9,320	\$ 65,240	
TASK 6: Project Management																			
6.1 Ongoing Coordination and Management	8	\$2,360	24	\$4,200	2	\$210	2	\$270	24	\$4,680	0	\$0	16	\$1,920	76	\$ 13,640	\$7,020	\$ 20,660	
Subtotal	8	\$2,360	24	\$4,200	2	\$210	2	\$270	24	\$4,680	0	\$0	16	\$1,920	76	\$ 13,640	\$7,020	\$ 20,660	
SUBTOTAL																\$ 271,560	\$ 167,170	\$ 438,730	
EXP / Direct Costs																\$ 10,862	\$750	\$ 11,612	
Subtotal																		\$ 450,342	
SPENT TO DATE (Through 2/25/2020)																			
MIG Team																		\$ 172,962	
TOTAL	36	10,620	132	23,100	190	19,950	14	1,890	480	93,600	1,092	120,120	19	2,280	1,963	\$ 282,422	\$ 167,920	\$ 623,304	
																10% Contingency		\$ 62,330	
																		\$ 685,635	

**AMENDMENT NO. 1 TO THE  
REIMBURSEMENT AGREEMENT  
FOR SPECIFIC PLANNING AND ENVIRONMENTAL PLANNING SERVICES  
FOR THE FREEDOM CIRCLE SPECIFIC PLAN**

**NOW KNOWN AS**

**REIMBURSEMENT AGREEMENT  
FOR LAND USE AND ENVIRONMENTAL PLANNING SERVICES  
FOR THE GREYSTAR GENERAL PLAN AMENDMENT  
AND FREEDOM CIRCLE FOCUS AREA**

**PREAMBLE**

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Freedom Circle Venture, LLC, a Delaware limited liability company, (Applicant). City and Applicant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. An agreement entitled "Reimbursement Agreement for Specific Planning and Environmental Planning Services for the Freedom Circle Specific Plan", dated August 24, 2018 (Agreement), was previously entered into by the City and the following three parties: Freedom Circle Venture, LLC, The Sobrato Organization, LLC, and Freedom Circle, LLC; and,
- B. The Parties entered into the Agreement for the purpose of having the developers provide reimbursement of costs of consultant services to prepare a Specific Plan for the Freedom Circle plan area; and,
- C. On June 5, 2019, the City consented to the voluntary withdrawal of Freedom Circle, LLC from the project and promptly issued a prorated refund of deposited funds; and,
- D. On June 10, 2019, the City consented to the voluntary withdrawal of The Sobrato Organization, LLC from the project and promptly issued a prorated refund of deposited funds; and,
- E. The remaining Parties now wish to amend the Agreement to change the project from a Specific Plan to a General Plan Amendment and Focus Area Plan with Freedom Circle Venture, LLC as the sole Applicant.

NOW, THEREFORE, the Parties agree as follows:

### **AMENDMENT TERMS AND CONDITIONS**

1. All references in the Agreement to the former Specific Plan proposal shall now be interpreted as referring to the current General Plan Amendment and Focus Area Plan project.
2. Attachment "A" (the "Service Agreement"), with an Effective Date of July 17, 2018, is hereby appended with the Amendment No. 1 to the Service Agreement, dated May 26, 2020.
3. Article II, entitled "Funding of Deposit Account", subsection "A", is revised to reflect a deposit amount equal to six hundred twenty-two thousand dollars (\$622,000). The Applicant previously deposited \$300,000 under the original Reimbursement Agreement and shall deposit an additional \$322,000 promptly following the execution of this Amendment No. 1 to fully fund the obligations of this Reimbursement Agreement as amended.
4. Article V, entitled "General Provisions", subsection "F", is revised to formally remove the two withdrawn applicants, Freedom Circle, LLC and The Sobrato Organization, LLC.
5. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

***[Signatures follow on next page]***

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

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

Approved as to Form:

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

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

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

"CITY"

**FREEDOM CIRCLE VENTURE, LLC**  
a Delaware limited liability company

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

By (Signature): \_\_\_\_\_  
Name: Ali Warner

Title: Vice President

Principal Place of Business Address: 450 Sansome Street, Suite 500  
San Francisco, CA 94111

Email Address: [awarner@greystar.com](mailto:awarner@greystar.com)

Telephone: (415) 524-0992

"APPLICANT"





## NOTICE OF PREPARATION

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**DATE:** May 28, 2020

**TO:** Responsible Agencies, Trustee Agencies, and Interested Parties

**LEAD AGENCY:** City of Santa Clara  
Contact: John Davidson, Principal Planner  
1500 Warburton Avenue  
Santa Clara, CA 95050

**SUBJECT:** Notice of Preparation of a Draft Environmental Impact Report for the Freedom Circle Focus Area<sup>1</sup> and Greystar General Plan Amendment

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The City of Santa Clara (City) will be the Lead Agency and will prepare a Draft Environmental Impact Report (DEIR) for the proposed Freedom Circle Focus Area and Greystar General Plan Amendment (project) described below. The City is interested in your agency's views as to the appropriate scope and content of the DEIR's environmental information pertaining to your agency's statutory responsibilities related to the project. Your agency may need to use the environmental impact report prepared by the City when considering permits or other approvals for the project. The City will need the name of a contact person for your agency. For interested individuals, the City would like to be informed of environmental topic(s) of interest to you regarding the project.

The proposed Freedom Circle Focus Area is located in the northern portion of the City of Santa Clara, encompassing several office and industrial parks. The City of Santa Clara will be responsible for certifying the EIR and adopting the Focus Area for the parcels within its jurisdiction. Because the City of Santa Clara has already determined that an EIR is required for the proposed Freedom Circle Focus Area, and as permitted by CEQA Guidelines section 15060(d) (Preliminary Review), the City will not prepare an Initial Study for the project.

The proposed project, its location, and its potential environmental effects are described below. The City of Santa Clara welcomes public input during the Notice of Preparation (NOP) review period. The purpose of the scoping process is to solicit public comment regarding the full spectrum of issues and concerns,

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<sup>1</sup> References: Title 14, California Code of Regulations, California Environmental Quality Act (CEQA) Guidelines, sections 15082, 15103, and 15375.

including a suitable range of alternatives, and the nature and extent of potential environmental impacts and appropriate mitigation measures that should be addressed in the EIR process.

Due to the time limits mandated by the CEQA Guidelines, your response must be sent ***not later than 30 days after your receipt of this notice***. In the event no response or request for additional time is received by the end of the review period, the City may presume that you have no response. Please send your comments to:

City of Santa Clara  
Contact: John Davidson, Principal Planner  
1500 Warburton Avenue  
Santa Clara, CA 95050  
[JDavidson@santaclaraca.gov](mailto:JDavidson@santaclaraca.gov)

To allow for mailing, receipt, and 30-day review of this NOP, the comment period closes on ***June 30, 2020***.

#### **Notice of Scoping Meeting:**

Pursuant to CEQA Guidelines section 15082(c) (Notice of Preparation and Determination of Scope of EIR), the City of Santa Clara will conduct a scoping meeting for the purpose of soliciting comments of adjacent cities, responsible agencies, trustee agencies, and interested parties requesting notice as to the appropriate scope and content of the DEIR.

The scoping meeting will include a presentation of the proposed project and a summary of the environmental issues to be analyzed in the DEIR. Following the presentation, interested agencies, organizations, and members of the public will be encouraged to present views concerning what environmental issues should be included in the DEIR. The oral and written comments provided during the scoping meeting will assist the City in scoping the potential environmental effects of the project to be addressed by the DEIR.

The scoping meeting will be held on ***June 11, 2020***, from 3:00 to 5:00 p.m., online. For more information, contact John Davidson, Principal Planner, at [JDavidson@santaclaraca.gov](mailto:JDavidson@santaclaraca.gov).

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John Davidson  
Principal Planner  
Phone (408)615-2478  
[JDavidson@santaclaraca.gov](mailto:JDavidson@santaclaraca.gov)

**Project Title:** Greystar General Plan Amendment / Freedom Circle Focus Area

**Project Applicant:** City of Santa Clara

**Project Location:** The proposed Freedom Circle Focus Area encompasses approximately 108 gross acres in an employment-rich area of northern Santa Clara, comprising several moderate-intensity office and industrial parks accompanied by surface parking, along with the Santa Clara Marriot hotel. The Plan Area is bounded by San Tomas Aquino Creek to the east, Great America Parkway to the west, Great America Theme Park to the north, and Highway 101 to the south. It is proximate to a range of regional destinations and amenities, including Levi's Stadium, Great America Theme Park, and the Santa Clara Convention Center.

**Project Description:** The Notice of Preparation describes the two parts of the Freedom Circle project: preparation of a Focus Area description, to be incorporated into the General Plan; and the Greystar General Plan Amendment. The Focus Area Plan will describe the vision for the Freedom Circle Area as an intensely urban environment, with Great America Parkway and Mission College Boulevard retaining their commercial character. The Focus Area would allow, subject to a future planning study, 2,500 dwelling units beyond those anticipated in the Greystar General Plan Amendment (described below), and 2 million square feet of additional office space beyond that allowed under the current high-intensity office designation.

The Greystar General Plan Amendment proposes to change the General Plan land use designation for the 13.3 acre Greystar site, which is bounded by San Tomas Aquino Creek to the East, Freedom Circle to the West, and Highway 101 to the south from High Intensity Office (maximum Floor Area Ratio of 2.0) to Very High Density Residential (51-100 Dwelling Unit/Acre). Greystar is proposing a total of 1,100 dwelling units in three 7-story buildings, all of which are proposed to be a maximum of 100 feet in height. The proposal also includes a two-acre public park with a connection to the San Tomas Aquino Creek trail, and up to 2,000 square feet of neighborhood-serving retail. The proposal also includes removing existing view easements along the Bayshore Freeway (US 101) and relocating the City of Santa Clara/Great America sign from its current location to the southeastern corner of the property.

**Required Approvals:**

***City of Santa Clara Discretionary Approvals.*** Implementation of the Freedom Circle Focus Area will require, but is not limited to, the following discretionary approvals by the City of Santa Clara:

- Certification of the Final Environmental Impact Report
- Adoption of a Mitigation Monitoring and Reporting Program
- Creation of a Freedom Circle focus area within Phase III of the General Plan
- Creation of a land use plan for the subject area to implement the Focus Area land uses.
- Adoption of General Plan amendments and zoning changes as necessary to ensure consistency between the Freedom Circle Focus Area and the City of Santa Clara 2014 General Plan and current zoning code
- Discretionary review as necessary, including CEQA review, for future individual public and private development proposals in the Plan Area

***Other Government Agency Approvals.*** Future individual public and private development proposals in the Plan Area would be expected to also require review or approvals from other jurisdictional agencies, including, but not limited to:

- Santa Clara Valley Transportation Authority (VTA)
- Santa Clara Water and Sewer Utilities
- Silicon Valley Power (SVP)
- San Francisco Bay Regional Water Quality Control Board (RWQCB)
- Bay Area Air Quality Management District (BAAQMD)
- California Department of Transportation (Caltrans)

**EIR Scope:**

The City of Santa Clara has determined that the proposed Freedom Circle Focus Area will require preparation of a program-level Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA). The project-specific environmental impacts of the Greystar General Plan Amendment will also be analyzed. The following probable environmental effects of the project and any required mitigation measures will be evaluated in the EIR:

- **Aesthetics:** The EIR will describe the aesthetic and urban design implications of the proposed Focus Area, including its visual relationships to the surrounding vicinity and the potential impacts of Focus Area development (e.g., the proposed array of building masses, heights, view corridors) on important surrounding public vantage points.
- **Air Quality:** The EIR will describe the potential short- and long-term impacts of Focus Area development capacity on local and regional air quality based on methodologies defined by the Bay Area Air Quality Management District (BAAQMD).
- **Biological Resources:** The EIR will evaluate potential impacts on biological resources resulting from Focus Area implementation, including potential impacts on nesting birds.
- **Cultural, Historic, and Tribal Cultural Resources:** The EIR will describe any potential Focus Area impacts and mitigation needs associated with historic and cultural resources. The EIR also will determine whether the project would cause a substantial adverse change in the significance of a tribal cultural resource, as defined in Public Resources Code section 21074.
- **Energy:** The EIR will evaluate whether project would result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation. Any conflicts with State or local plans for renewable energy and energy efficiency will also be described.
- **Geology and Soils:** The EIR will describe the potential geotechnical implications of Focus Area implementation.
- **Greenhouse Gas Emissions:** The EIR will describe the potential Focus Area impacts on local greenhouse gas emissions and global climate change (including sea level rise), following the latest approach and methodologies recommended by State and regional agencies.
- **Hazards and Hazardous Materials:** The EIR will describe any hazardous material activities anticipated in the Plan Area and will describe any associated potential impacts and mitigation needs. The EIR will also analyze potential conflicts with any adopted airport land use plan. Any potential construction period hazards and hazardous material impacts and mitigation needs will also be described.

- **Hydrology and Water Quality:** The EIR will evaluate potential impacts on hydrology and water quality resulting from Focus Area implementation, including possible effects related to drainage and flooding. Focus Area components that address hydrology and water quality also will be described.
- **Land Use and Planning:** The EIR will describe the potential effects of Focus Area implementation on existing and planned land use characteristics in the Focus Area vicinity, including the Focus Area's relationship to other adopted regional and local plans.
- **Noise:** The EIR will describe project-related construction and long-term operation (e.g., traffic, mechanical systems) noise impacts and related mitigation needs.
- **Population and Housing:** The EIR will describe the anticipated effects of Focus Area development capacity on existing and projected population and housing characteristics. This information will be used to forecast public service and utility needs in the Plan Area.
- **Public Services:** The EIR will describe potential impacts on public services (police and fire protection, parks, and schools) and any mitigation needs.
- **Recreation:** The EIR will evaluate whether buildout of the Focus Area would accelerate the physical deterioration of existing parks and/or other recreational facilities as a result of increased use. It will also assess whether the construction of any planned recreational amenities in the Plan Area would have an adverse physical impact on the environment.
- **Transportation:** The EIR transportation analysis will satisfy the requirements of the City and the Santa Clara Valley Transportation Authority (VTA), including the project's relationship to regional vehicle miles traveled (VMT), transit implications, and effects on pedestrian and bicycle circulation.
- **Utilities and Service Systems:** The EIR will describe potential Focus Area impacts on local utility and service systems, including water supply, water and wastewater treatment, and solid waste and recycling.
- **Agriculture and Forestry Resources, Mineral Resources, and Wildfire:** The EIR will briefly describe why these environmental topics do not apply to the project, based on the Plan Area's location.
- **Alternatives:** Pursuant to CEQA Guidelines section 15126.6, the EIR will identify and compare a reasonable range of alternatives to the Focus Area.



Figure 1. Proposed Freedom Circle focus area. The Greystar property is outlined in yellow.

FOCUS AREA PLAN SCHEDULE FREEDOM CIRCLE Revised January 2020	2020												2021			
	Jan	Feb	Mar	April	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April
<b>PROJECT INITIATION</b>																
City Council Meeting																
<b>CONCEPTS AND STRATEGIES</b>																
Planning and Design Framework (D)																
Strategy Diagram (D)																
<b>PLAN PRODUCTION</b>																
Focus Area Plan (D)																
<b>EIR PREPARATION</b>																
NOP and Scoping Meeting																
Additional LOS Analysis and Modeling - Hexagon																
Transportation Impact Analysis - Admin Draft (D)																
Transportation Impact Analysis - 2nd Draft (D)																
Transportation Impact Analysis - Final Draft (D)																
Administrative Draft EIR (D)																
Screencheck/Public Review Draft EIR (D)																
Final EIR (D)																
EIR Certification and Plan Adoption																
(D): Denotes task including a deliverable.																

Draft Product

City to Review and/or Comment

Public to Review and/or Comment





## Agenda Report

20-537

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Adoption of Ordinance No. 2019 Amending the Compensation for the City Clerk As Set by the Salary Setting Commission [Council Pillar: Enhance Community Engagement and Transparency]

#### **BACKGROUND**

At the May 12, 2020 Council meeting, proposed Ordinance No. 2019 was introduced and passed for the purpose of publication. Pursuant to City Charter Sections 808 and 812, a summary of proposed Ordinance No. 2019 was published by The Weekly on May 20, 2020, and copies were posted in three public places. The Ordinance now comes to Council for final adoption.

#### **DISCUSSION**

The proposed ordinance would amend Section 2.20.015 (Compensation), of Chapter 2.20 ("City Clerk") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California."

The proposed amended Ordinance provides clarity and transparency by including in the Ordinance itself a reference to the reduced compensation rate of \$1,500 per month for the approximately six month period of time beginning when the individual elected to the position at the next election takes office, and ending when the next Salary Setting Commission's decision is effective. The aim is to ensure that candidates for the position (as well as the public at large) are aware of the compensation schedule prior to running for the position.

#### **ENVIRONMENTAL REVIEW**

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

#### **FISCAL IMPACT**

There are sufficient funds to pay for the Elected City Clerk's monthly stipend in the City Clerk's Office Salaries budget that was included as part of the Adopted FY 2019/20 and 2020/21 Biennial Operating Budget. The reduction in compensation for the City Clerk will result in savings of approximately \$6,000 annually and will be factored into future operating budgets if necessary.

#### **COORDINATION**

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



**PUBLIC CONTACT**

A summary of proposed Ordinance No. 2019 was published to the Santa Clara Weekly on May 20, 2020, and copies were posted in three public places and made available for public inspection at the City Clerk's Office.

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

**RECOMMENDATION**

Adopt Ordinance No. 2019 amending Section 2.20.015 (Compensation), of Chapter 2.20 ("City Clerk") of Title 2 ("Administration and Personnel") of "The Code of the City of Santa Clara, California" which will amend the compensation for the City Clerk.

Reviewed by: Aracely Azevedo, Director of Human Resources

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. City Clerk Ordinance No. 2019 (Intro)

**ORDINANCE NO. 2019**

**AN ORDINANCE OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AMENDING SECTION 2.20.015  
(COMPENSATION) OF CHAPTER 2.20 ("CITY CLERK") OF  
"THE CODE OF THE CITY OF SANTA CLARA,  
CALIFORNIA"**

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

**WHEREAS**, the City Clerk position is an elected position under City Charter Section 600;

**WHEREAS**, City Charter Section 702 allows the Salary Setting Commission to set compensation for the elected positions of Mayor and City Council Member, but does not limit the Commissions ability to set salaries for other positions as determined by the City Council;

**WHEREAS**, by Ordinance No. 1983, the City Council required the Salary Setting Commission to set the compensation of the elected City Clerk;

**WHEREAS**, the Salary Setting Commission did set the City Clerk compensation by Resolution; and

**WHEREAS**, the City Council deems it to be in the best interest of the City of Santa Clara to amend the existing City Clerk compensation Ordinance to align with the decision of the Salary Setting Commission and thus provide greater transparency for the public and for potential candidates for the position of City Clerk.

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

**SECTION 1:** That Section 2.20.015 (entitled "Compensation") of Chapter 2.20 (entitled "City Clerk"), of Title 2 (entitled "Administration and Personnel") of "The Code of the City of Santa Clara, California," ("SCCC") is amended to read as follows:

**“2.20.015 City Clerk – Compensation.**

Commencing on July 1, 2019, and until such time as the individual elected to the position of City Clerk at the November 2020 election for that position takes office (if such oath of office is taken before June 30, 2021), the salary for the position of the City Clerk shall be \$2,000 per month. For the period commencing when the individual elected to the position of City Clerk at the November 2020 election for that position takes office (if such oath of office is taken before June 30, 2021) and ending on June 30, 2021, the salary for the position of City Clerk shall be \$1,500 per month. Commencing on July 1, 2021, and every two years thereafter, the salary for the position of City Clerk shall be set by a Salary Setting Commission consisting of five members to be appointed by the Civil Service Commission, as set forth in City Charter Section 702. The City Council shall take all necessary legislative action to implement the salary set by the Salary Setting Commission.”

**SECTION 2: Ordinances Repealed.** With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.


**SECTION 3: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 4:** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

**PASSED FOR THE PURPOSE OF PUBLICATION** this 12<sup>TH</sup> day of MAY, 2020, by the following vote:

AYES:	COUNCILORS:	Chahal, Davis, Hardy, O'Neill, and Watanabe and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:

*For*   
\_\_\_\_\_  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:  
1. None



## Agenda Report

20-342

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### SUBJECT

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

#### BACKGROUND

The City's street pavement network consists of approximately 250 centerline miles of arterial, collector, residential and local streets. Through the Pavement Management Program, staff prioritizes various street segments for preventative maintenance and rehabilitation work based on condition, use and available funding.

The 2020 Annual Street Maintenance and Rehabilitation Project (Project) consists of preventative maintenance and rehabilitation of approximately 29.6 lane miles of street pavement along 18 street segments (Attachment 1). The scope of work for the Project includes: repair and replacement of asphalt pavement; placement of slurry seal; adjustment of utility valves and covers; construction of accessible concrete ramps in accordance with the requirements of the Americans with Disabilities Act; replacement of traffic striping and pavement markings; and other necessary work to complete the Project.

The project includes a CalRecycle grant and a Transportation Fund for Clean Air (TFCA) grant. In 2019, a CalRecycle grant was awarded to the City to incorporate recycled rubberized materials in pavement maintenance projects. The City will receive reimbursement of up to the \$274,033 from CalRecycle based on the quantity of rubberized materials used. A portion of this grant funding has been expended on the previous 2019 Pavement Rehabilitation Project (CE 17-18-19), and the remaining grant funds will be expended on this Project. The TFCA grant funding is associated with the March 17, 2020, Council approved agreement with the Valley Transportation Authority, which will install Class II bicycle lanes on Saratoga Avenue between San Tomas Expressway and Los Padres Boulevard (RTC 20-1284). The TFCA grant-funded work is included in this 2020 Annual Street Maintenance and Rehabilitation Project in order to complete it in a cost-efficient way by incorporating it into a larger project.

Additionally, this project includes pavement rehabilitation at Westridge Drive, which is located along the city limit between the City of Santa Clara and the City of San Jose, and the street is partially within both jurisdictions. In order to rehabilitate the entire street for the benefit of the public, staff has coordinated with the City of San Jose to enter into a cooperative agreement between the two agencies in which Santa Clara will perform the construction work and San Jose will contribute a respective share of funding for work completed within San Jose's jurisdiction. Approval of this cooperative agreement is in progress and is anticipated to be executed by the City Manager in the near future.

**DISCUSSION**

On April 15, 2020, bids for construction of the Project were opened via video conference. Five bids were received ranging from \$6,332,671 to \$9,196,690. The Bid Summary is included as Attachment 2. The bids included a Base Bid for the project of 14 street segments, and two Add Alternate bids for an additional four street segments. The additional street segments were included as Add Alternates so that if bids received for the project were higher than the available funding, then these alternate streets could be removed from the current project and deferred to a subsequent project. Based on the bids being lower than the engineer's estimate and within the available funding amount, staff recommends awarding both the Base Bid and Add Alternates.

DeSilva Gates Construction LP (DGC) submitted the lowest total bid in the amount of \$6,332,671, which is approximately 11 percent below the Engineer's Estimate of \$7,174,000. DGC's bid was reviewed for compliance with the Bid Documents and was determined to be the lowest responsive and responsible bidder. Staff recommends awarding the contract, including the Base Bid and all Add Alternates, to DeSilva Gates Construction LP.

The award of contract will allow construction to commence in order to complete the pavement work during the dry summer and fall months of 2020. This timeframe is subject to change based on the current issues related to the COVID-19 situation. The contract includes prevailing wage requirements.

**ENVIRONMENTAL REVIEW**

This project being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301(c), "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, and specifically includes the repair of existing highways and streets.

**FISCAL IMPACT**

The approximate cost of the contract is \$6,332,671 (Base Bid plus Alternates A and B) plus 10 percent contingency, or \$633,267, for any potential change orders for a total not-to-exceed contract amount of \$6,965,938.

Funding for the contract is available in the Annual Street Maintenance and Rehabilitation Program (\$6,652,051) and Saratoga Avenue Bicycle Lanes (\$71,000) projects. In addition, staff recommends funding of \$149,000 and \$93,887 from the Water Utility and Sewer Utility Funds, respectively, to be transferred to the Annual Street Maintenance and Rehabilitation Program project. This Project involves removing and replacing water valve boxes and adjusting sanitary sewer manhole frames. The transfers from the Water and Sewer Utility funds will fund that portion of the project costs.

	Budget Amendment FY 2019/20		
	Current	Increase/ (Decrease)	Revised
<b>Streets and Highways Capital Fund</b>			
<u>Transfers From</u>			
Transfer from Water Utility	\$145,748	\$149,000	\$294,748
Transfer from Sewer Utility	\$81,642	\$93,887	\$175,529
<u>Expenditures</u>			
Annual Street Maintenance and Rehabilitation Program	\$15,514,872	\$242,887	\$15,757,759
<b>Water Utility Fund</b>			
<u>Expenditures</u>			
Unrestricted Fund Balance	\$970,917	(\$149,000)	\$821,917
<u>Transfers To</u>			
Transfer to Streets and Highways Capital Fund	\$116,855	\$149,000	\$265,855
<b>Sewer Utility Fund</b>			
<u>Expenditures</u>			
Unrestricted Fund Balance	\$911,570	(\$93,887)	\$817,683
<u>Transfers To</u>			
Transfer to Streets and Highways Capital Fund	\$74,725	\$93,887	\$168,612

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

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

of \$149,000 from the Water Utility Fund and \$93,887 from the Sewer Utility Fund, and increase the Annual Street Maintenance and Rehabilitation Program project by \$242,887; in the Water Utility Fund, increase the transfer to the Streets and Highways Capital Fund and reduce the unrestricted ending fund balance by \$149,000; and in the Sewer Utility Fund, increase the transfer to Streets and Highways Capital Fund and reduce the unrestricted ending fund balance by \$93,887.

Reviewed by: Craig Mobeck, Director of Public Works

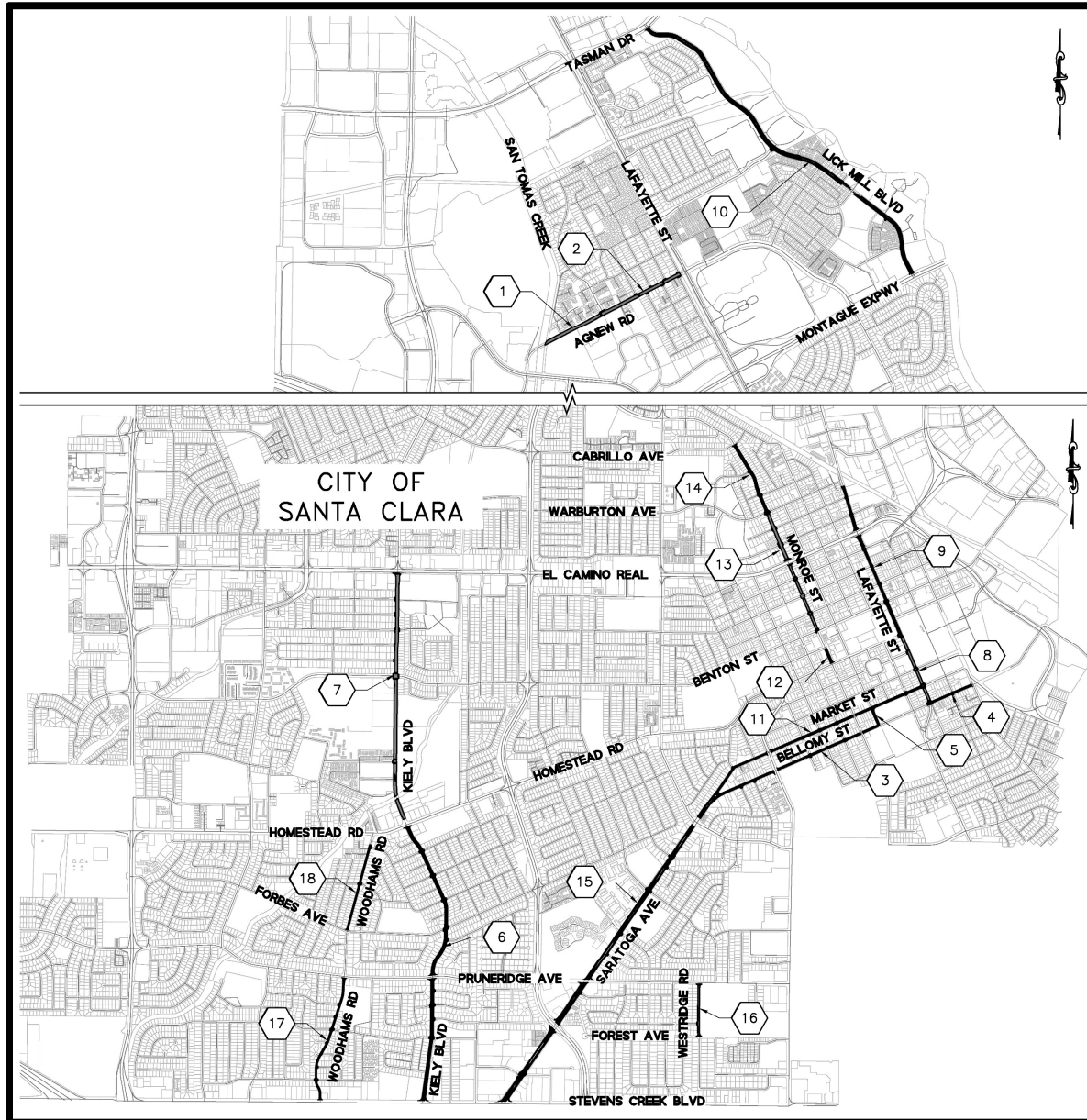
Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Project Location Map
2. Bid Summary



## PROJECT LOCATION MAP



LOCATION NO.	STREET NAME	BEGIN	END	PROPOSED TREATMENT
1	AGNEW RD	SAN TOMAS CREEK	LAKE SHORE DR	2" RHMA MILL AND FILL
2	AGNEW RD	LAKE SHORE DR	LAFAYETTE ST	2" RHMA MILL AND FILL
3	BELLOMY ST	SARATOGA AVE	JACKSON ST	SLURRY SEAL
4	BELLOMY ST	LAFAYETTE ST	PARK AVE	SLURRY SEAL
5	JACKSON ST	MARKET ST	BELLOMY ST	SLURRY SEAL
6	KIELY BLVD	STEVENS CREEK BLVD	HOMESTEAD RD	SLURRY SEAL
7	KIELY BLVD	HOMESTEAD RD	EL CAMINO REAL	2" RHMA MILL AND FILL
8	LAFAYETTE ST	BELLOMY ST	HOMESTEAD RD	2" RHMA MILL AND FILL
9	LAFAYETTE ST	HOMESTEAD RD	230' N. OF REEVE ST	SLURRY SEAL
10	LICK MILL BLVD	MONTAGUE EXPWY	TASMAN DR	SLURRY SEAL
11	MARKET ST	SARATOGA AVE	LAFAYETTE ST	SLURRY SEAL
12	MONROE ST	HOMESTEAD RD	BENTON ST	SLURRY SEAL
13	MONROE ST	BENTON ST	WARBURTON AVE	2" RHMA MILL AND FILL
14	MONROE ST	WARBURTON AVE	CABRILLO AVE	SLURRY SEAL
15	SARATOGA AVE	STEVENS CREEK BLVD	MARKET ST	SLURRY SEAL
16	WESTRIDGE RD	FOREST AVE	PRUNERIDGE AVE	2" HMA MILL AND FILL
17	WOODHAMS RD	STEVENS CREEK BLVD	PRUNERIDGE AVE	SLURRY SEAL
18	WOODHAMS RD	FORBES AVE	FAIRLANE AVE	SLURRY SEAL



## Attachment No. 2 Bid Summary

20-342

### REPORT TO COUNCIL

#### SUBJECT

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

BID SUMMARY	Bid Opening Date: April 15, 2020				
ENGINEER'S ESTIMATE:	\$7,174,000				
Contractor	Bid (\$)				Percentage above/below Engineer's Estimate
	Base	Alt A	Alt B	Total	
DeSilva Gates	\$5,401,640.00	\$735,063.00	\$195,968.00	<b>\$6,332,671.00</b>	11.7% below
O'Grady Paving, Inc.	\$5,293,009.50	\$887,744.90	\$274,259.15	<b>\$6,455,013.55</b>	10.0% below
Interstate Grading & Paving	\$5,909,956.75	\$822,669.80	\$203,511.85	<b>\$6,936,138.40</b>	3.3% below
Granite Construction Company	\$6,370,878.89	\$920,746.15	\$313,155.25	<b>\$7,604,780.29</b>	6.0% above
G.Bortolotto & Company, Inc.	\$7,723,962.45	\$1,112,433.35	\$360,293.95	<b>\$9,196,689.75</b>	28.2% above



## Agenda Report

20-347

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

Following prior City Council direction, the City is preparing a Specific Plan for the Patrick Henry Plan Area using planning consultant Moore Iacofano Goltsman, Inc. (MIG). As provided for in the City's General Plan, the consultant agreement for the Specific Plan is fully funded by a Reimbursement Agreement entered into by the City with a group of ten developers with real estate interests within the Specific Plan area.

#### **DISCUSSION**

The Sobrato Organization, LLC, (Sobrato) is one of the ten parties to the existing Reimbursement Agreement (Agreement). Sobrato recently sold its property interest within the Specific Plan area to the entity "4590 Patrick Henry LLC", an affiliate of Walnut Hill Acquisitions.

Pursuant to Article VI.B of the Reimbursement Agreement, assignment of the agreement from one party to another is subject to City approval. The Sobrato Organization, LLC, and 4590 Patrick Henry LLC have mutually agreed to the terms of the attached Assignment and Assumption of Reimbursement Agreement and have requested the City's consent to said agreement. The City's current procedures require the City Council to approve such an assignment.

#### **ENVIRONMENTAL REVIEW**

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

#### **FISCAL IMPACT**

There is no fiscal impact associated with this consent to assignment agreement. The financial obligations of the original reimbursement agreement will be transferred to the new ownership party, 4590 Patrick Henry LLC.

#### **COORDINATION**

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

#### **PUBLIC CONTACT**

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

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

**RECOMMENDATION**

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

Reviewed by: Andrew Crabtree, Director of Community Development  
Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Assignment and Assumption Agreement
2. Original Patrick Henry Reimbursement Agreement

## ASSIGNMENT AND ASSUMPTION OF REIMBURSEMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF REIMBURSEMENT AGREEMENT (this "Assignment") is made and entered into as of \_\_\_\_\_, 2020, by The Sobrato Organization, LLC, a California limited liability company ("Assignor"), and 4590 Patrick Henry LLC, a Delaware limited liability company ("Assignee"), with reference to the following facts:

A. Pursuant to that certain Purchase and Sale Agreement dated for reference purposes as of November 21, 2019, between The Sobrato Family Foundation, a California nonprofit public benefit corporation (the "Foundation"), as Seller, and Assignee's affiliate, Walnut Hill Acquisitions II LLC, a Delaware limited liability company, as Buyer (as the same may have been amended, the "Purchase Agreement"), Assignee has acquired Foundation's right, title and interest in that certain land and improvements thereon located in Santa Clara, California, commonly known as 4590 Patrick Henry Drive (the "Real Property").

B. With respect to the Real Property, Assignor is a party to that certain reimbursement Agreement dated for identification July 17, 2019 naming as parties thereto the City of Santa Clara ("City"), CLPF – 2901 Patrick Henry, L.P., Pearlman Himy, I LP, Patrick Henry Recovery Acquisition LLC, 3055 Patrick Henry Development LLC, Assignor, International Asset Holding Company, Drawbridge 4600 Patrick Henry, LLC, Bigler Trusts, Pactron, and Dollinger Patrick Henry Associates, relating to reimbursement to the City for certain consulting service costs incurred by the City with respect to the Patrick Henry Drive Specific Plan referenced therein (the "Reimbursement Agreement").

C. In connection with its acquisition of the Real Property from the Foundation, Assignee has asked Assignor to assign, transfer and convey to Assignee all of Assignor's right, title and interest in and to the Reimbursement Agreement, subject to obtaining the City's consent thereto, and Assignor is willing to do so, upon the terms and conditions set forth herein.

D. Assignee also desires to assume all of Assignor's obligations pursuant to the Reimbursement Agreements upon the terms and conditions set forth herein.

NOW, THEREFORE, Assignor and Assignee agree as follows:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the Reimbursement Agreement. Assignor agrees to indemnify, protect, defend with counsel reasonably acceptable to Assignee and hold harmless Assignee from and against any and all claims, demands, damages, suits, causes of action, judgments, obligations, costs, liabilities, losses and expenses (including without limitation, reasonable attorneys' fees) relating to the Reimbursement Agreement to the extent arising on or before the date hereof or arising as a result of Assignor's breach of its obligations pursuant to this Assignment.

2. Assignee hereby presently assumes the obligations and agrees to perform and comply with the terms, provisions, covenants and conditions of the Reimbursement Agreement to be performed and complied with by Assignor from and after the date of this Assignment. Assignee agrees to indemnify, protect, defend with counsel reasonably acceptable to Assignor and hold harmless Assignor from and against any and all claims, demands, damages, suits, causes of action, judgments, obligations, costs, liabilities, losses and expenses (including without limitation,

reasonable attorneys' fees) relating to the Reimbursement Agreement to the extent arising on or after the date hereof or arising as a result of Assignee's breach of its obligations pursuant to this Assignment.

3. Assignor makes no representations, guaranties, promises, statements, assurances or warranties of any kind concerning the Reimbursement Agreement, except that to Assignor's knowledge, no amounts are due from Assignor under the Reimbursement Agreement as of the date of this Assignment.

4. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns; shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be wholly performed within said State without regard to any choice of law principles; and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith. Venue for all court proceedings or alternative forms of dispute resolution proceedings shall be Santa Clara County, California. In the event of any litigation or arbitration proceeding between Assignor and Assignee arising out of this Assignment, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in any such action. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law. This Assignment may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. ARBITRATION OF DISPUTES:

ASSIGNOR AND ASSIGNEE AND ANY OTHER PARTY THAT MAY BECOME A PARTY TO THIS ASSIGNMENT, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AGREE THAT, EXCEPT FOR ANY CLAIM (I) FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF WITH RESPECT TO THIS ASSIGNMENT, OR (II) WITHIN THE JURISDICTION OF THE SMALL CLAIMS COURT (WHICH SMALL CLAIMS COURT SHALL BE THE SOLE COURT OF COMPETENT JURISDICTION FOR SUCH SMALL CLAIMS MATTER), ANY CONTROVERSY, DISPUTE, OR CLAIM OF WHATEVER NATURE ARISING OUT OF, IN CONNECTION WITH OR IN RELATION TO THE INTERPRETATION, PERFORMANCE OR BREACH OF THIS ASSIGNMENT, INCLUDING WITHOUT LIMITATION ANY CLAIM BASED ON CONTRACT, TORT, OR STATUTE, SHALL BE RESOLVED AT THE REQUEST OF ANY PARTY TO THIS ASSIGNMENT THROUGH A DISPUTE RESOLUTION PROCESS ADMINISTERED BY JAMS, OR IF JAMS NO LONGER EXISTS THEN SUCH OTHER DISPUTE RESOLUTION SERVICE REASONABLY SELECTED BY ASSIGNOR, OR IF THE PARTIES AGREE TO ANOTHER DISPUTE RESOLUTION SERVICE THEN PURSUANT TO SUCH OTHER DISPUTE RESOLUTION SERVICE MUTUALLY ACCEPTABLE TO THE PARTIES, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA. THE DISPUTE RESOLUTION PROCESS SHALL CONSIST OF A FINAL AND BINDING ARBITRATION ADMINISTERED BY AND IN ACCORDANCE WITH THE THEN EXISTING RULES AND PRACTICES OF JAMS OR OTHER DISPUTE RESOLUTION



SERVICE SELECTED, AND JUDGMENT UPON ANY AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED BY ANY STATE OR FEDERAL COURT HAVING JURISDICTION THEREOF AS PROVIDED BY CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1280 ET. SEQ, AS SAID STATUTES THEN APPEAR, INCLUDING ANY AMENDMENTS TO SAID STATUTES OR SUCCESSORS TO SAID STATUTES OR AMENDED STATUTES, AND IN CONNECTION WITH THE PROCEEDINGS SHALL HAVE THE RIGHT TO DISCOVERY AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1283.05 AS SAID STATUTE THEN APPEARS, INCLUDING ANY AMENDMENTS TO SAID STATUTE OR SUCCESSOR TO SAID STATUTE, EXCEPT THAT IN NO EVENT SHALL THE PARTIES BE ENTITLED TO PROPOUND INTERROGATORIES OR REQUESTS FOR ADMISSIONS DURING THE ARBITRATION PROCESS. THE ARBITRATOR SHALL BE A RETIRED JUDGE OR A LICENSED CALIFORNIA ATTORNEY. THE VENUE FOR ANY SUCH ARBITRATION SHALL BE IN SANTA CLARA COUNTY, CALIFORNIA.

NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

ASSIGNOR'S INITIALS:

<sup>DS</sup>  
MS

ASSIGNEE'S INITIALS:

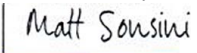
R

[Signature page follows]

WITNESS WHEREOF, Assignor and Assignee have signed this Assignment as of the date first set forth above.

ASSIGNOR:

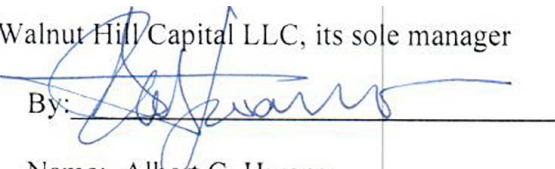
THE SOBRATO ORGANIZATION, LLC,  
a California limited liability company

DocuSigned by:  
By:   
Matthew W. Sonsini  
Its: President/Chief Executive Officer

ASSIGNEE:

4590 Patrick Henry LLC,  
a Delaware limited liability company

By: Walnut Hill Capital LLC, its sole manager

By:   
Name: Albert C. Hwang

As: Managing Principal



Pursuant to Article VI.B of the Reimbursement Agreement, the City of Santa Clara consents to this assignment.

**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

**REIMBURSEMENT AGREEMENT  
FOR SPECIFIC PLANNING AND ENVIRONMENTAL PLANNING SERVICES  
FOR THE PATRICK HENRY DRIVE SPECIFIC PLAN**

This Agreement is dated for identification this 17<sup>th</sup> day of July, 2018, by and among the City of Santa Clara, a chartered California municipal corporation (City) and CLPF – 2901 Patrick Henry, L.P., Pearlman Himy, I LP, Patrick Henry Recovery Acquisition LLC, 3055 Patrick Henry Development LLC, The Sobrato Organization, International Asset Holding Company, Drawbridge 4600 Patrick Henry, LLC, Bigler Trusts, Pactron, and Dollinger Patrick Henry Associates; (collectively "Applicants"). City and any of the Applicants may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

**WHEREAS**, City is initiating a Specific Plan and related Environmental Review (collectively, the "Patrick Henry Drive Specific Plan") for certain real property commonly known as the "Patrick Henry Drive Future Focus Area"; and

**WHEREAS**, Applicants desire to develop separate mixed-use or residential projects (each a "Project") upon real property owned by Applicants within the Patrick Henry Drive Future Focus Area and prepare and submit applications to City for approval of the development and construction of their Projects (the "Applications"); and

**WHEREAS**, the processing of the Applications, preparation of the Patrick Henry Drive Specific Plan and evaluation of the potential impacts of the Projects requires specialized expertise; and

**WHEREAS**, City is in need of specialized consulting services to review the Projects for such impacts, prepare the Patrick Henry Drive Specific Plan and process the Applications for the Projects (the "Consultant Services") and City intends to enter into the agreement attached hereto as Attachment "A" (the "Service Agreement") with M.I.G. (hereinafter referred to as "Consultant"), whereby Consultant will provide the Consultant Services to City; and

**WHEREAS**, Applicants are willing and able to provide funding for the reimbursement of City's costs for the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement.

**NOW THEREFORE**, in consideration of the recitals and mutual promises contained herein, City and Applicants agree as follows:

**ARTICLE I - REIMBURSEMENT OF COSTS OF CONSULTANT SERVICES**

A. Applicants shall deposit funds into a deposit account established by City (the "Deposit Account") in accordance with Article II below. The funds deposited into the

Deposit Account shall be used to reimburse City for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement.

B. City agrees to enter into the Service Agreement with Consultant promptly following Applicants' deposit of the Original Deposit Amount (as defined below) into the Deposit Account. The Consultant shall perform the Consultant Services (including the preparation of a Specific Plan document and an environmental document on behalf of City to evaluate environmental impacts and the completion of the other work contracted for in the Service Agreement), as directed by City in accordance with the Service Agreement and Consultant's "Scope of Work" set forth therein.

## **ARTICLE II – APPLICANTS' RESPONSIBILITIES**

A. Promptly following the execution of this Agreement, Applicants shall deposit funds into the Deposit Account for the purposes stated in Article I above in the amount of Eight Hundred Ninety Six Thousand Eight Hundred Ninety Six dollars (\$896,896.00) (the "Original Deposit Amount"). Applicants have agreed to apportion the costs of the preparation of the Patrick Henry Drive Specific Plan based upon the pro rata share that each Applicant owns of the Applicants' Property, as set forth in Exhibit "B." Provided any unexpended funds in the Deposit Account have not been previously returned to Applicants in accordance with Paragraph D of Article V below, such funds shall be returned to the Applicants promptly after the City Council of City makes a decision on whether to certify the Final Environmental Impact Report for the Patrick Henry Drive Plan Area. At any Applicant's request, subject to any redactions determined to be necessary by the City Attorney to preserve attorney-client privilege, City shall promptly provide such Applicant with copies of all invoices and other documents (the "Cost Records") to verify the amounts released from the Deposit Account to reimburse City for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement. If any audit reveals inaccuracies between the Cost Records and the amounts released from the Deposit Account to reimburse City for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement, City shall cause such inaccuracy to be corrected within thirty (30) days of City's receipt of such audit.

B. Applicants agree to submit all required documents and to respond to City's reasonable requests for information in a timely manner.

## **ARTICLE III - CITY'S RESPONSIBILITIES**

A. City agrees to stay within the scope and budget of the Service Agreement. In the event that additional services are required of Consultant, each of the Applicants shall have the right to review and approve such additional services and the costs thereof, which approval may be granted or withheld by each of the Applicants in its sole and absolute discretion. If City and Applicants cannot agree to the scope and cost of said additional services in writing, this Agreement may be terminated by any Party pursuant to Article V. If City and Applicants agree to the scope and cost of said additional services in writing, Applicants shall deposit funds in an amount equal to the cost of said additional services

into the Deposit Account prior to the commencement of said additional services by the Consultant.

B. City reserves the right to seek reimbursement for costs incurred by City from any third parties who submit development applications under the Patrick Henry Drive Specific Plan for properties within or in the vicinity of the Patrick Henry Drive Plan Area in the future. City shall impose a specific plan fee upon such third parties pursuant to Government Code section 65456(a), plus interest thereon. Any such reimbursement received by City from such third parties shall be paid by City to Applicants, promptly following City's receipt thereof in order to reimburse Applicants for the funds withdrawn from the Deposit Account to reimburse City for the costs of the Consultant Services provided by Consultant pursuant to the terms of the Service Agreement.

C. Except as otherwise provided in this Agreement, City shall diligently and in good faith administer the Service Agreement in accordance with the scope of work set forth therein. City agrees to prepare, publish and process the Patrick Henry Drive Specific Plan and all associated City approvals in an expeditious manner.

D. Subject to Article IV, Paragraphs B and C, below, City agrees to bring the Patrick Henry Drive Specific Plan and associated approvals to public hearings for consideration by the City's Planning Commission and City Council. Specifically, City commits to conduct at least one public hearing before the Planning Commission and one public hearing before the City Council to consider the Specific Plan.

E. City shall designate in writing a representative authorized to act on its behalf and to interact with Applicants and Consultant with respect to this Agreement.

F. City shall forward any written information supplied by Applicants to Consultant for its review. Consultant's scope of work and bid were based on the information available as of March 1, 2018, and City shall provide such information to Applicants. As required by State law, City, as lead agency for the Patrick Henry Drive Specific Plan, is required to make the final determination of the adequacy and completeness of the environmental evaluation and documentation for the Patrick Henry Drive Specific Plan. City will control and administer the Service Agreement between City and Consultant.

#### **ARTICLE IV – EXERCISE OF FUTURE DISCRETION**

A. Independent Applications; No Obligation to Proceed with Development Transactions. None of the Applicants have an obligation to any other Applicants to proceed with their respective Applications; provided, however, that each Applicant shall promptly advise the other Applicants and the City of any decision not to proceed with their respective Applications.

B. No Guaranty of City Approval. Notwithstanding any other provision of this Agreement, nothing herein shall commit or otherwise require the City to approve the Patrick Henry Drive Specific Plan or the Applications. The Parties agree that the City shall retain full discretionary authority with respect to the Patrick Henry Drive Specific Plan

and the Applications and may deny, condition, or approve the same, consistent with applicable law. Further, the City retains full authority under CEQA to impose feasible mitigation measures and/or adopt alternatives to reduce significant environmental impacts of the Specific Plan and/or the Applications.

C. No Influence on City Decisions. The Applicants expressly understand and agree that all charges against Deposits paid to the City pursuant to this Agreement represent reimbursement for processing costs, and shall in no way influence the decision of the City concerning the planning, zoning, or development of any real property within the City or any decision concerning any public improvements, whether publicly or privately financed. No promises, representations, or warranties have been made, expressly or impliedly, by the City, its officers, agents, or employees, regarding the approval of the Environmental Impact Report, the Specific Plan, or the Applications. It is further specifically understood and agreed that no person has the authority to make any such promise, representation, or warranty. The Parties hereto understand and agree that the Deposits paid to the City by the Applicants under this Agreement shall not influence any decision of the City, or guarantee any recommendation which is favorable to, or which benefits, the Applicants.

## **ARTICLE V - TERM AND TERMINATION**

A. The effective term of this Agreement shall be from the date of execution of this Agreement until the date the Consultant Services to be performed by Consultant in accordance with the terms of the Service Agreement have been fully performed and paid for, and City has held hearings in accordance with Article III, paragraph D, above, unless this Agreement is terminated earlier in accordance with Paragraph B below.

B. Any of the Applicants may terminate this Agreement without cause by delivering to the other Parties written notice of such termination ("Notice of Termination"), which clearly expresses that Applicant's intent to terminate this Agreement, and this Agreement shall terminate on the date that is thirty (30) calendar days after such Applicant's delivery of the Notice of Termination to the other Parties; provided that, in the event that the Applicants other than the terminating Applicant agree in writing, delivered to the City within such 30 day period, to assume the obligations of the terminating Applicant, then within this Agreement shall not terminate, and shall continue in full force and effect as to all Parties other than the terminating Applicant.

C. City may terminate this Agreement for cause by delivering to the other Parties a written Notice of Termination, which clearly expresses that Party's intent to terminate this Agreement, and this Agreement shall terminate on the date that is thirty (30) calendar days after City's delivery of the Notice of Termination to the other Parties.

D. In the event of the termination of this Agreement or the Service Agreement prior to the completion of the Consultant Services to be performed by Consultant in accordance with the terms of the Service Agreement, City shall promptly thereafter (i) prepare and deliver to Applicants a statement of all amounts paid by City to Consultant in accordance with the terms of the Service Agreement and (ii) refund to Applicants, in pro-rata shares,

the Original Deposit Amount, less the amounts paid by City to Consultant in accordance with the terms of the Service Agreement as of the date of the termination of this Agreement.

## **ARTICLE VI - GENERAL PROVISIONS**

A. Mutual Cooperation. City and Applicants shall cooperate with one another and use good faith efforts in the timely processing of the Specific Plan and the Applications, consistent with this Agreement, and shall execute such other and further documents and take such other and further actions as may be necessary or convenient to effect the transaction described herein.

B. Successors and Assigns. This Agreement is binding on Applicants and their respective agents, successors and assigns and legal representatives. Applicants shall not assign or transfer their interest in this Agreement without the prior written consent of City, which shall not unreasonably be withheld, and any attempt to do so shall be voidable by City.

C. Applicable Laws and Attorneys' Fees. This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

D. Amendment. This Agreement may only be amended in writing and signed by all Parties. City and Applicants acknowledge and agree that subsequent Parties may be added to this Agreement by way of amendment to establish such Parties' responsibility for their proportional share in the costs associated with the Service Agreement.

E. Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

F. Public Records. The Parties recognize and acknowledge that City is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

G. Notices. Any notice required to be given to Applicants shall be deemed to be duly and properly given if mailed to Applicants, postage prepaid, addressed to:

CLPF – 2901 Patrick Henry, L.P. 701 8 <sup>th</sup> Street, NW, Suite 800 Washington, DC. 20001  and by email at: timothy.bright@clarionpartners.com	Pearlman Himy I LP 411 Borel Avenue, Suite 100 San Mateo, CA 94402  and by email at: Zack.Pearlman@pearlmanprop.com
Patrick Henry Recovery Acquisition LLC 5796 Armada Drive, Suite 375 Carlsbad, CA 92008  and by email at: cjanson@raintree.us.com	3055 Patrick Henry Development LLC 950 Tower Lane, Suite 870 Foster City, CA 94404  and by email at: lwu@zlproperties.com
The Sobrato Organization 10600 N. De Anza Blvd, Suite 200 Cupertino, CA 95014  and by email at: ptsai@sobrato.com	International Asset Holding Company 3118 Patrick Henry Drive Santa Clara, CA 95054  and by email at: Lynn.lin@o2micro.com
Drawbridge 4600 Patrick Henry, LLC Three Embarcadero Center, Ste 2310 San Francisco, CA 94111  and by email at: bdoyle@drawbridgerealty.com	Bigler Trusts 730 Morningside Drive Los Altos, CA 94022  and by email at: <u>RBigler7@gmail.com</u>
Pactron 3000 Patrick Henry Drive Santa Clara, CA 95054  and by email at: john_choe@pactroninc.com	Dollinger Patrick Henry Associates 555 Twin Dolphin Drive, Suite 600 Redwood City, CA 94065  and by email at: mhelenius@dollingerproperties.com

or personally delivered to Applicants at such address or at such other addresses as Applicants may designate in writing to City.

Any notice required to be given City shall be deemed to be duly and properly given if mailed to City, postage prepaid, addressed to:

City of Santa Clara  
Attention: John Davidson, Principal Planner  
1500 Warburton Avenue  
Santa Clara, CA 95050

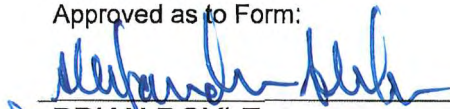
or personally delivered to City at such address or at such other addresses as City may designate in writing to Applicants.

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

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

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

Approved as to Form:

  
BRIAN DOYLE  
City Attorney

Dated:

4/10/19  
  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**CLPF – 2901 PATRICK HENRY, L.P.**  
a Delaware limited partnership

Dated:

By (Signature):

Name: Timothy W. Bright

Title: Authorized Signatory

Principal Place of Business Address: 701 8<sup>th</sup> Street, NW, Suite 800  
Washington, DC. 20001

Email Address: Timothy.bright@clarionpartners.com

Telephone: (202) 879-9494

Fax: ( )

"Applicant"  
(1 of 10)

*[Additional Applicant Signatures on Following Pages]*



**PEARLMAN HIMY I LP**

a California limited liability company

By: Pearlman Himy, I LLC,  
a California limited liability company

Its: General Partner

Dated: November 26, 2018

By (Signature):

Name: Zachary Pearlman

Title: Manager

Principal Place of  
Business Address: 411 Borel Ave, Suite 100, San Mateo, CA 94402

Email Address: Zack.Pearlman@pearlmanprop.com

Telephone: (650)520-0789

Fax: (888)406-3159

"Applicant"

(2 of 10)

*[Additional Applicant Signatures on Following Pages]*

**PATRICK HENRY RECOVERY ACQUISITION LLC**

a Delaware limited liability company

Dated: 12/06/18

By (Signature): 

Name: Jon Shumaker

Title: Authorized Signatory

c/o: RainTree Investment Corporation

Principal Place of Business Address: 5796 Armada Drive, Suite 375  
Carlsbad, CA 92008

Email Address: cjanson@raintree.us.com

Telephone: (602) 955-1375

Fax: ( )

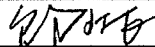
"Applicant"

(3 of 10)

*[Additional Applicant Signatures on Following Pages]*

**3055 PATRICK HENRY DEVELOPMENT LLC**  
a California limited liability company

Dated: 2018. Nov. 30.

By (Signature): 

Name: Lin Wu on behalf of Z&L Properties, Inc.

Title: President

Principal Place of 950 Tower Lane, Suite 870

Business Address: Foster City, CA 94404

Email Address: lwu@zlproperties.com, jxie@zlproperties.com

Telephone: (650) 294-0526, (650) 645-0378


Fax: (650) 627-4165

"Applicant"

(4 of 10)

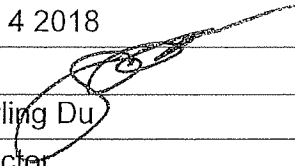
*[Additional Applicant Signatures on Following Pages]*

**The Sobrato Organization**  
a California limited liability company

Dated: 10/29/18  
By (Signature):   
Name: Peter Tsai  
Title: VP, Development  
Principal Place of  
Business Address: 10600 N. De Anza | Cupertino, CA  
Email Address: ptsai@sobrato.com  
Telephone: ( ) (408) 446-0700  
Fax: ( ) \_\_\_\_\_  
"Applicant"  
(5 of 10)

*[Additional Applicant Signatures on Following Pages]*


**INTERNATIONAL ASSET HOLDING COMPANY  
A CAYMAN ISLAND COMPANY**

Dated: Dec 4 2018  
By (Signature):   
Name: Sterling Du  
Title: Director  
Principal Place of Business Address: 3118 Patrick Henry Drive Santa Clara CA 95054  
Email Address: [Lynn.lin@o2micro.com](mailto:Lynn.lin@o2micro.com)  
Telephone: 4089875920  
Fax: 4089875929

"Applicant"  
(6 of 10)

*[Additional Applicant Signatures on Following Pages]*

**DRAWBRIDGE 4600 PATRICK HENRY, LLC**  
**A DE LLC**

Dated: April 8, 2019  
By (Signature):   
Name: Charlie McEachron  
Title: COO  
Principal Place of  
Business Address: Three Embarcadero Center – Suite 2310  
Email Address: cmceachron@drawbridgerealty.com  
Telephone: 415-391-8340  
Fax: --

"Applicant"  
(7 of 10)

*[Additional Applicant Signature on Following Pages]*

**DEVELOPER 8**

Bigler Trusts

Dated: 12/11/2018

By (Signature):

Name: Robert Bigler

Title: Owner/Manager

Principal Place of  
Business Address: 730 Morningside Drive, Los Altos, CA 94022

Email Address: Rbigler7@gmail.com

Telephone: (408) 691-2415

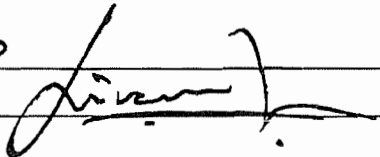
Fax: ( )

"Applicant"

(8 of 10)

*[Additional Applicant Signature on Following Pages]*

**PACTRON**  
a California Corporation

Dated: 11/26/2018  
By (Signature):   
Name: Sriram Iyer  
Title: President & CEO  
Principal Place of Business Address: 3000 Patrick Henry Drive, Santa Clara, CA 95054  
Email Address: john\_choe@pactroninc.com , ravi\_iyer@pactroninc.com  
Telephone: (408) 329-5505  
Fax: (408) 747-1239


"Applicant"

(9 of 10)

*[Additional Applicant Signature on Following Pages]*



**DOLLINGER PATRICK HENRY ASSOCIATES**  
a California Limited Partnership

Dated: 11/20/18  
By (Signature):   
Name: David Dollinger  
Title: General Partner  
Principal Place of Business Address: 555 Twin Dolphin Drive, Suite 600  
Redwood City, CA 94065  
Email Address: [mhelenius@dollingerproperties.com](mailto:mhelenius@dollingerproperties.com)  
Telephone: (650) 508-8666  
Fax: (650) 508-8686

"Applicant"

(10 of 10)

*[End of Document]*



## Agenda Report

20-368

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### SUBJECT

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

#### BACKGROUND

The Santa Clara Valley Transportation Authority (VTA), as the County of Santa Clara Congestion Management Agency (CMA), is soliciting project proposals from cities for FY 2020/21 Transportation Development Act (TDA) Article 3 grant funding. TDA funds may be used for bicycle or pedestrian related improvement projects and funding is derived from a quarter cent of the general sales tax collected statewide. The Metropolitan Transportation Commission (MTC) delegated authority to the local CMA to coordinate how funds are spent within the County. An authorizing resolution is required for the City of Santa Clara to apply for TDA funds from the VTA. VTA will submit a consolidated application to the MTC for its final approval. Once MTC approves the allocation of funds, local agencies have three years to complete projects and submit a claim for reimbursement.

The TDA grant program is comprised of two components. The first component consists of a dedicated 25 percent portion of the funds set aside for the Santa Clara Countywide Bicycle Expenditure Program (BEP). The second component consists of guaranteed annual funds available to each City, which may be banked up to four years. The City has banked these funds for the past four years and it is recommended that the City now apply this year to use the oldest annual funds from FY 2016/17 or risk forfeiting this allocation. For FY 2020/21, staff recommends requesting approval for the use of banked TDA funds for upgrades to existing bicycle and pedestrian facilities at multiple locations within the City.

#### DISCUSSION

The City currently has a FY 2016/17 banked TDA allocation of \$94,054. Staff recommends that these banked TDA funds be used to improve striping and signage at the following locations (Attachment 1): 1. Along San Tomas Aquino Creek Trail; 2. Monroe Street (Homestead to Newhall Street); 3. Los Padres Avenue (Cabrillo Avenue to Saratoga Avenue); 4. Calabazas Boulevard at Georgetown Place; and other miscellaneous locations within the City. These locations represent facilities where the City has received inquiries regarding the need for improved striping and signage. Improving these areas is intended to increase safety for bicyclists as the striping and signage delineates the extent of the bicycle facilities and also alerts motorists and pedestrians that bicyclists may be present.

At the Bicycle and Pedestrian Advisory Committee meeting on January 27, 2020, the BPAC discussed and supported staff's recommendation to apply for the use of FY 2016/17 banked TDA funds.

**ENVIRONMENTAL REVIEW**

The action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15304, "Minor Alterations to Land," subdivision (h), as the activity consists of the creation of bicycle lanes on existing rights-of-way, and 15301, "Existing Facilities," subdivision (c), as the activity consists of the minor alteration to existing highways and streets.

**FISCAL IMPACT**

The FY 2020/21 TDA grant funding application to be submitted by staff will request funding in the amount of \$94,054 to upgrade existing bicycle and pedestrian facilities at multiple locations. A budget amendment to appropriate this funding within the City's Capital Improvement Budget will occur after the City receives notification from VTA that MTC has approved the allocation of funds for the project. It is estimated that the City will receive notification from the MTC in the fall of 2020. There are no local match requirements for this project.

**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).

At the BPAC's January 27, 2020 meeting, the members discussed projects for potential application for FY 2019/20 TDA grant funding and supported staff's recommendation.

**RECOMMENDATION**

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

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Location Map
2. Resolution

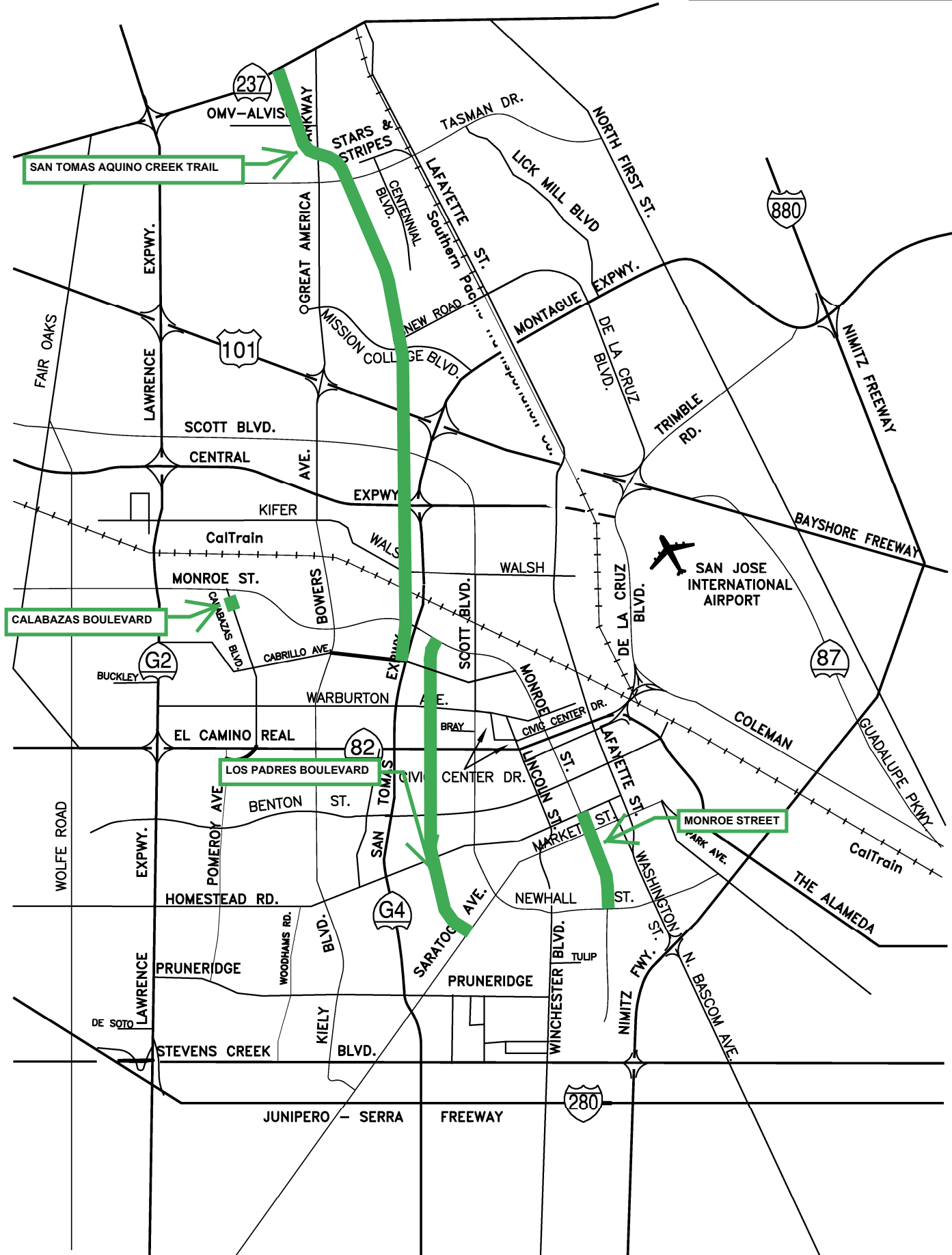


NOT TO SCALE

# VICINITY MAP

## LEGEND

 PROJECT LOCATION



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

**A RESOLUTION OF THE CITY OF SANTA CLARA,  
CALIFORNIA, AUTHORIZING THE FILING OF AN  
APPLICATION WITH THE METROPOLITAN  
TRANSPORTATION COMMISSION FOR ALLOCATION OF  
TRANSPORTATION DEVELOPMENT ACT ARTICLE 3,  
PEDESTRIAN AND BICYCLE PROJECT FUNDING FOR  
FISCAL YEAR 2020/21**

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

**WHEREAS**, Article 3 of the California Transportation Development Act (TDA), California Public Utilities Code (PUC) Section 99200 et seq., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists;

**WHEREAS**, the Metropolitan Transportation Commission (MTC), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No.4108, entitled "Transportation Development Act, Article 3, Pedestrian and Bicycle Projects," which delineates procedures and criteria for submission of requests for the allocation of "TDA Article 3" funding;

**WHEREAS**, MTC Resolution No. 4108 requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and,

**WHEREAS**, the City of Santa Clara desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the projects described in Attachment B to this resolution, which are for the exclusive benefit and/or use of pedestrians and/or bicyclists.

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

1. That the City of Santa Clara declares it is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the California Public Utilities Code;
2. That there is no pending or threatened litigation that might adversely affect the project or projects described in Attachment B to this resolution, or that might impair the

ability of the City of Santa Clara to carry out the project;

3. That the project has been reviewed by the Bicycle and Pedestrian Advisory Committee (BPAC) of the City of Santa Clara;

4. That the City of Santa Clara attests to the accuracy of and approves the statements in Attachment A to this resolution; and

5. That a certified copy of this resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation planning agency, or county association of governments, as the case may be, of Santa Clara County for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Attachment A - Findings
2. Attachment B – TDA Article 3 Project Application Form

## Attachment A

Re: Request to the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2020/21 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding

### **Findings**

Page 1 of 1

1. That the City of Santa Clara is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the City of Santa Clara legally impeded from undertaking the project(s) described in “Attachment B” of this resolution.
2. That the City of Santa Clara has committed adequate staffing resources to complete the project(s) described in Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or design engineering; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the City of Santa Clara within the prior five fiscal years.
8. That the project(s) described in Attachment B is included in a locally approved bicycle, pedestrian, transit, multimodal, complete streets, or other relevant plan.
9. That any project described in Attachment B that is a bikeway meets the mandatory minimum safety design criteria published in Chapter 1000 of the California Highway Design Manual.
10. That the project(s) described in Attachment B will be completed before the funds expire.
11. That the City of Santa Clara agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

Attachment B

Page 1 of 1

**TDA Article 3 Project Application Form**

Fiscal Year of this Claim: **2019/20**

Applicant: **City of Santa Clara**

Contact person: **Marshall Johnson**

Mailing Address: **1500 Warburton Avenue, Santa Clara, CA 95050**

E-Mail Address: **MJohnson@santaclaraca.gov**

Telephone: **408-615-3023**

Secondary Contact (in event primary not available) **Carol Shariat**

E-Mail Address: **CShariat@santaclaraca.gov**

Telephone: **408-615-3024**

**Short Title Description of Project: Upgrade of Bicycle and Pedestrian Facilities at Multiple locations**

Amount of claim: **\$94,054**

**Functional Description of Project:**

**Upgrading older existing bicycle and pedestrian facilities at multiple location throughout the City. Upgrades would involve striping and signage.**

**Financial Plan:**

List the project elements for which TDA funding is being requested (e.g., planning, engineering, construction, contingency). Use the table below to show the project budget for the phase being funded or total project. Include prior and proposed future funding of the project. Planning funds may only be used for comprehensive bicycle and pedestrian plans. Project level planning is not an eligible use of TDA Article 3.

**Project Elements: Design, construction, and construction engineering**

Funding Source	All Prior FYs	Application FY	Next FY	Following FYs	Totals
TDA Article 3		\$94,054			\$94,054
list all other sources:					
1.					
2.					
3.					
4.					
<b>Totals</b>		\$94,054			\$94,054

Project Eligibility:	YES?/ NO?
<b>A.</b> Has the project been approved by the claimant's governing body? (If "NO," provide the approximate date approval is anticipated).	No 5/19/20
<b>B.</b> Has this project previously received TDA Article 3 funding? If "YES," provide an explanation on a separate page.	No
<b>C.</b> For "bikeways," does the project meet Caltrans minimum safety design criteria pursuant to Chapter 1000 of the California Highway Design Manual? (Available on the internet via: <a href="http://www.dot.ca.gov">http://www.dot.ca.gov</a> ).	Yes
<b>D.</b> Has the project been reviewed by a Bicycle Advisory Committee (BAC)? (If "NO," provide an explanation). Enter date the project was reviewed by the BAC: <b>January 27, 2020</b>	Yes
<b>E.</b> Has the public availability of the environmental compliance documentation for the project (pursuant to CEQA) been evidenced by the dated stamping of the document by the county clerk or county recorder? (required only for projects that include construction).	Yes
<b>F.</b> Will the project be completed before the allocation expires? Enter the anticipated completion date of project (month and year) <b>April 2023</b>	Yes
<b>G.</b> Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency? (If an agency other than the Claimant is to maintain the facility provide its name: _____)	Yes







## Agenda Report

20-443

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Action on Agreements for Land Surveying Services for Public Works Projects [Council Pillar: Deliver and Enhance High Quality Efficient Services and Infrastructure]

#### **BACKGROUND**

The Department of Public Works oversees design and construction management for various capital projects including pavement rehabilitation, traffic signal and transportation infrastructure, parks, storm drain and sanitary sewer improvements, building renovations, and capital maintenance. Land surveying work including design surveys and construction surveying is necessary to deliver these projects. In addition, Public Works maintains survey benchmark and monumentation systems to ensure reliable survey markers are available for both public and private use. When numerous design and construction survey projects are under way concurrently, Public Works will rely on consultant resources to supplement City staff to perform the land surveying services.

The purpose and scope of these agreements (Attachments 1, 2 and 3) is to provide on-call land surveying services to supplement City staff for various Public Works projects.

#### **DISCUSSION**

A Request for Qualifications (RFQ) process was utilized to solicit proposals for on-call land surveying services. The RFQ was advertised February 2020 and five proposals were received on March 4, 2020. Public Works staff evaluated the qualifications of the proposers and BKF Engineers, R.E.Y. Engineers, Inc. and Sandis were selected as the top three ranked firms due to their respective performance track record, qualified staffing, and experience.

Based on Capital Improvement Program and workload projections, the estimated need for on-call land surveying services for the remainder of the current fiscal year and the next two fiscal years is approximately \$400,000. Additionally, Staff requests further agreement capacity of \$50,000 to account for unforeseen needs that may arise (new projects and projects not currently detailed). Staff requests the approval of agreements with three different consultants so there is flexibility in case one or two of them cannot provide timely services to the City based on workload. Because of this, Staff also requests approval for City Manager authority to amend the agreements' not-to-exceed amounts as long as the cumulative total does not exceed \$450,000.

Staff recommends approval of three, three-year agreements, each with a not-to-exceed amount of \$150,000, for a total aggregate not-to-exceed amount of \$450,000.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no

potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **FISCAL IMPACT**

The amount to be paid to consultants for land surveying services over the three-year term of the agreements is estimated to be \$450,000. The amounts to be paid to each of the three consultants (BKF Engineers, R.E.Y. Engineers, Inc. and Sandis) will not exceed \$150,000 over the three-year term of each respective agreement. Funding of \$462,000 is budgeted for these services in the Public Works Department General Fund budget, including \$265,000 in the FY 2019/20 Adopted Operating Budget and \$197,000 in the FY 2020/21 Adopted Operating Budget.

### **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).

### **RECOMMENDATION**

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

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Agreement with BKF Engineers
2. Agreement with R.E.Y. Engineers, Inc.
3. Agreement with Sandis

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
BKF ENGINEERS**

**PREAMBLE**

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

**RECITALS**

- A. Consultant agrees to provide professional consulting services in the area of Land Surveying ("Services") on an on-call basis;
- B. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Rates and Charges

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes

and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the date of execution by the City and terminate on June 15, 2023.

## **3. SCOPE OF SERVICES & SERVICE ORDERS**

Consultant shall provide professional consulting services described in Exhibit A to the City on an as-needed basis pursuant to individual service orders ("Service Orders") issued in accordance with the Terms and Conditions of this Agreement.

- A. City will initiate each Service Order by specifying and describing the services and deliverables (collectively "Work") requested, which the Consultant must respond to by providing proposals and estimates of the time limit(s) within which the Consultant must complete the Work, and the compensation for the Work. Exhibit A further describes the procedure for Service Orders.
- B. The Consultant shall not perform any Work pursuant to a Service Order, and therefore will not be entitled to any compensation for any Work, until the City has approved and executed the service order for such Work ("Approved Service Order").
- C. Each Approved Service Order incorporates the Terms and Conditions of this Agreement.
- D. The City has no obligation to approve, issue, or execute any Service Orders under this Agreement, nor does it have any obligation to pay Consultant for any Work absent an Approved Service Order. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation defined in Section 6 below.

To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara

## **4. WARRANTY**

Consultant expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this

Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

## **5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE**

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

## **6. COMPENSATION AND PAYMENT**

There is a maximum total compensation for this Agreement and a separate maximum compensation for each Approved Service Order.

- A. Maximum Total Compensation – Agreement: The maximum total, aggregate compensation the City will pay the Consultant for all professional fees for all Approved Service Orders issued under this Agreement shall not exceed One Hundred Fifty Thousand Dollars (\$150,000). All work performed or materials provided in excess of the Total Maximum Compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the Total Maximum Compensation under any circumstance.
- B. Maximum Compensation – Service Order: Each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees related to the Consultant providing the Work ("Maximum Service Order Compensation"). The Consultant shall fully complete all Work required by the Approved Service Order for no more than that Maximum Service Order Compensation. Exhibit B sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges") that applies to any services provided in an Approved Service Order.

## **7. TERMINATION**

Termination for Convenience. City shall have the right to terminate this Agreement or any Service Order under this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.

Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement or any Service Order under this Agreement, in

addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.

Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Consultant will deliver to City all City information or material that Consultant has in its possession.

## **8. ASSIGNMENT AND SUBCONTRACTING**

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

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

## **9. NO THIRD PARTY BENEFICIARY**

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

## **10. INDEPENDENT CONTRACTOR**

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

## **11. CONFIDENTIALITY OF MATERIAL**

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

## **12. OWNERSHIP OF MATERIAL**

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

## **13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

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

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

## **14. HOLD HARMLESS/INDEMNIFICATION**

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



Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

To the extent Consultant is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Consultant warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Consultant's responsibilities under the Act.

## **15. INSURANCE REQUIREMENTS**

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

## **16. WAIVER**

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

## **17. NOTICES**

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

City of Santa Clara  
Attention: Department of Public Works  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [ctemple@santaclaraca.gov](mailto:ctemple@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Consultant addressed as follows:

BKF Engineers  
Benjamin Santos, PLS  
255 Shoreline Drive, Suite 200  
Redwood City, CA 94065  
and by e-mail at [bsantos@bkf.com](mailto:bsantos@bkf.com)

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

## **18. COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Consultant's attention is called to California Health and Safety Code section 26250, and regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Consultant has read and agrees to comply with City's Ethical Standards

(<http://santaclaraca.gov/home/showdocument?id=58299>).

## **19. CONFLICTS OF INTEREST & ECONOMIC DISCLOSURE**

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

Furthermore, due to the nature of the Services to be performed hereunder, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the Agreement in accordance with California Government Code section 87200.

## **20. FAIR EMPLOYMENT**

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

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

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

**22. GOVERNING LAW AND VENUE**

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

**23. SEVERABILITY CLAUSE**

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

**24. AMENDMENTS**

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

**25. COUNTERPARTS**

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

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

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

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

Approved as to Form:


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

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

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager

"CITY"

**BKF ENGINEERS**  
a California corporation

Dated: 4.17.2020  
By (Signature):   
Name: Davis Thresh  
Title: Principal / Vice President  
Principal Place of Business Address: 255 Shoreline Drive, Suite 200, Redwood City, CA 94065  
Email Address: dthresh@bkf.com  
Telephone: (408) 467-9100  
Fax: (408) 467-9199

"CONSULTANT"

**EXHIBIT A**  
**SCOPE OF SERVICES**

**1. SERVICE AREAS – SCOPE OF SERVICES**

**1.1 Introduction**

- 1.1.1** Annually, the City of Santa Clara constructs various capital projects to provide improvements for the community. The projects are varied and include street pavement reconstruction & rehabilitation; pedestrian and traffic signal improvements; building construction and renovation; storm drain and sanitary sewer pipeline and pump station rehabilitation; parks and recreation facilities construction and rehabilitation; curb ramp improvements; etc.
- 1.1.2** The City's land area continues to develop and re-develop resulting in new and revised right-of-way lines, easements and parcel maps. This development may be due to the City's own capital projects or through private development projects.
- 1.1.3** The City maintains a surveying benchmark system and oversees the maintenance of the survey monumentation system throughout the City right-of-way.
- 1.1.4** In general, the scope of services to be provided by Consultant includes on-call land surveying services to support the delivery of City capital improvement projects, land development activities, and ongoing survey operations.
- 1.1.5** Consultant shall be expected to provide complete, professional, high-quality services and products; to provide consultation and work with City staff and others involved with the work; and to provide the expertise, staffing, and assistance in accomplishing the work.
- 1.1.6** The Consultant shall employ a licensed land surveyor and/or licensed civil engineer registered prior to January 1, 1982.
- 1.1.7** The City maintains various GIS information sets to facilitate management of City infrastructure assets. Information includes records maps, record drawings, right-of-way maps, encroachment permits, storm drainage infrastructure, and survey monumentation. On an on-call basis, the City may request Consultant to provide GIS support services.

- 1.1.8** During the planning, design and/or construction of City capital projects, the City may determine the need for utility locating services. On an on-call basis, the City may request Consultant to provide Subsurface Utility Engineering services.

## **1.2 Land Surveying Consultant Services**

- 1.2.1** Perform field survey work to locate property and easement lines (boundary surveying), gather data for topographic surveys (pre-design or design surveying), and stake construction projects (construction surveying).
- 1.2.2** Perform field marking.
- 1.2.3** Perform office survey work to develop base topographic CAD files from field gathered data.
- 1.2.4** Assist office engineering staff/division staff by providing information on existing field conditions (field investigations).
- 1.2.5** Prepare drawings, corner records, plats, legal descriptions, and records of survey. Stamp and sign documents based on Registered Land Surveyor or Civil Engineering Professional license. Civil Engineering license shall only be used if issued prior to January 1, 1982.
- 1.2.6** Review and provide comments on subdivision maps and/or other survey documents.
- 1.2.7** Research existing records and compile data required for survey projects.
- 1.2.8** Support maintenance of the City's benchmark system.
- 1.2.9** Perform leveling circuits.
- 1.2.10** Identify and perpetuate survey monuments. Research survey monument records and investigate monument locations that may have been hidden or covered.
- 1.2.11** Develop records and prepare reports as required.
- 1.2.12** Review City survey procedures and methods. Make recommendations as requested to improve efficiency and productivity in survey operations.
- 1.2.13** Perform aerial photogrammetry.

- 1.2.14** Perform corner records.
- 1.2.15** Establish new benchmarks.
- 1.2.16** Use Global Positioning System (GPS) equipment to perform survey field work.
- 1.2.17** Perform field data collection work in support of City Public Works GIS asset management needs.
- 1.2.18** Perform field work to identify utilities (above ground and subsurface).
- 1.2.19** Provide all maintenance and control of traffic to perform work.

### **1.3 GIS Consultant Services**

- 1.3.1** Review Public Works GIS information & tools and make recommendations for improvements/enhancements to data collection, use and access.
- 1.3.2** Review Public Works GIS systems and make recommendations for technical improvements (hardware, software, etc).
- 1.3.3** Perform field data collection work in support of City Public Works GIS asset management needs.
- 1.3.4** Provide information on GIS best practices, GIS technology advances, and use of GIS in Public Works environments.
- 1.3.5** Recommend and/or develop GIS standards and quality control/assurance plans appropriate to Public Works' needs.
- 1.3.6** Provide training to City staff on GIS applications.
- 1.3.7** Other tasks as requested by the City in support of an efficient, robust and optimized GIS asset management system.

### **1.4 Subsurface Utility Engineering Services**

- 1.4.1** Locate (indicate) the presence and horizontal location of underground utilities using geophysical prospecting techniques, including electromagnetic, magnetic, sonic or other energy fields.
- 1.4.2** Locate utility lines and obtain precise horizontal and vertical position of utility lines by excavating test holes using vacuum excavation or comparable nondestructive equipment in a manner as to cause no damage to the utility lines.

- 1.4.3** After excavating test hole(s), perform a field survey to determine the exact location and position of utility line(s).
- 1.4.4** Backfill test holes and perform surface restoration in accordance with City standards.
- 1.4.5** Coordinate with utility companies or other entities as required to research locations of existing utilities. Secure all "as-built" plans, plats, and other necessary and/or relevant data. While obtaining information, ascertain the age, the size, the material type, the general condition, etc... of the utility.
- 1.4.6** Obtain all necessary permits required by other (non-City of Santa Clara) agencies/entities as required to perform locating work.
- 1.4.7** Provide all maintenance and control of traffic to perform work. Coordinate with City prior to initiating work to determine if a traffic control plan is required.
- 1.4.8** If required, furnish, install, and color code a permanent above ground marker (i.e. PK nail, peg, steel pin, or hub) directly above the utility/facility or at designated offsets if necessary.
- 1.4.9** Provide the following test hole information to the City: a) elevation of top and bottom of utility; b) elevation of existing grade over utility test hole; c) horizontal location referenced to nearby feature(s); d) outside diameter or width of facility and configuration of facilities if co-located (duct banks, etc.); e) utility structure material composition and condition; and f) identification of benchmarks used to determine elevations (2 required unless approved otherwise by the City).
- 1.4.10** Assemble and present utility information in format as requested by the City (generally AutoCADD format).

## **2. PROCEDURE FOR SERVICE ORDERS**

- 2.1** City will provide a description of the desired Work to be performed by Consultant.
- 2.2** Consultant will prepare a written service order proposal in accordance with the City's request. Consultant shall consider and incorporate into the proposal any City input regarding City staffing availability to participate in the delivery of the Work. The proposal must include, but is not limited to, the following:
  - 2.2.1** The proposed scope of Work;



- 2.2.2** The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
  - 2.2.3** A time schedule and total cost for providing the Work; and
  - 2.2.4** Any other information requested by the City.
- 2.3** City will review and provide comments to Consultant. Or, City will accept Consultant's written proposal without comments.
- 2.4** If the City provides comments on Consultant's proposal, Consultant shall revise the proposal to address City's comments.
- 2.5** Once the Consultant and the City agree on the terms of the proposed Service Order, the City will prepare the final ("Approved Service Order").
- 2.6** Consultant will be authorized to proceed with the Work under the Approved Service Order upon notification by the City that the Approved Service Order has been executed by the City or at some later date as designated by the City in writing.

## **EXHIBIT B SCHEDULE OF RATES AND CHARGES**

This Exhibit B sets forth Consultant's rates that apply to any services provided in an Approved Service Order. The rates shall remain fixed for the term of the Agreement.

The attached Rate Schedule contains the Consultant rates to be used and is hereby incorporated into this Exhibit B.

### **Invoicing:**

1. If an Approved Service Order requires invoicing to be generated in a timesheet format, Consultant shall provide information for each Consultant staff person including name and position title (i.e. relevant role with respect to work performed under the service order). Position hourly rates shall comply with the rates included in the table above.

In addition, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours) for each employee, the name of the employee and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Work shall then be determined by adding the value for the Work rendered by each employee for that particular month.

2. If an Approved Service Order requires invoicing to be generated in a progress or percent complete format, Consultant shall provide information describing in detail the services performed and how those services correlate to the percent complete. The detailed descriptions shall be for each category of services as identified in the Approved Service Order.
3. Within thirty (30) days of receipt of an itemized written invoice from the Consultant, City shall pay Consultant the amount billed for Work performed under the Approved Service Order during that billing period.

## BKF ENGINEERS PROFESSIONAL SERVICES RATE SCHEDULE

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
<b>PROJECT MANAGEMENT</b>	
Principal/Vice President	\$251.00
Senior Associate/Vice President	\$225.00
Associate	\$219.00
Senior Project Manager   Senior Technical Manager	\$214.00
Project Manager   Technical Manager	\$209.00
Engineering Manager   Surveying Manager   Planning Manager	\$193.00
<b>TECHNICAL STAFF</b>	
Senior Project Engineer   Senior Project Surveyor   Senior Project Planner	\$179.00
Project Engineer   Project Surveyor   Project Planner	\$157.00
Design Engineer   Staff Surveyor   Staff Planner	\$137.00
BIM Specialist I, II, III	\$137.00 - \$157.00 - \$179.00
Technician I, II, III, IV	\$130.00 - \$139.00 - \$152.00 - \$164.00
Drafter I, II, III, IV	\$102.00 - \$112.00 - \$121.00 - \$135.00
<b>FIELD SURVEYING</b>	
Survey Party Chief	\$179.00
Instrumentman	\$154.00
Survey Chainman	\$116.00
Utility Locator I, II, III, IV	\$93.00 - \$132.00 - \$158.00 - \$180.00
Apprentice I, II, III, IV	\$71.00 - \$95.00 - \$105.00 - \$111.00
<b>CONSTRUCTION ADMINISTRATION</b>	
Senior Consultant	\$234.00
Senior Construction Administrator	\$203.00
Resident Engineer	\$151.00
Field Engineer I, II, III	\$137.00 - \$157.00 - \$179.00
<b>ASSISTANTS</b>	
Project Assistant	\$84.00
Engineering Assistant   Surveying Assistant   Planning Assistant	\$82.00
Clerical   Administrative Assistant	\$70.00

Expert witness rates are available upon request.

Subject to the terms of a services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

#### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:  
  
\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

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

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

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

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

#### F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to

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

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

#### G. EVIDENCE OF COVERAGE

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

#### H. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

City of Santa Clara – Department of Public Works

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: ctsantaclara@ebix.com

#### I. QUALIFYING INSURERS

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



## **EXHIBIT D LABOR COMPLIANCE ADDENDUM**

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

### **A. Prevailing Wage Requirements**

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

requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

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

#### B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at

any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

#### C. Enforcement

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

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

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
R.E.Y. ENGINEERS, INC.**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and **R.E.Y. ENGINEERS, INC.**, a California corporation (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. Consultant agrees to provide professional consulting services in the area of Land Surveying ("Services") on an on-call basis;
- B. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Rates and Charges

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes

and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the date of execution by the City and terminate on June 15, 2023.

## **3. SCOPE OF SERVICES & SERVICE ORDERS**

Consultant shall provide professional consulting services described in Exhibit A to the City on an as-needed basis pursuant to individual service orders ("Service Orders") issued in accordance with the Terms and Conditions of this Agreement.

- A. City will initiate each Service Order by specifying and describing the services and deliverables (collectively "Work") requested, which the Consultant must respond to by providing proposals and estimates of the time limit(s) within which the Consultant must complete the Work, and the compensation for the Work. Exhibit A further describes the procedure for Service Orders.
- B. The Consultant shall not perform any Work pursuant to a Service Order, and therefore will not be entitled to any compensation for any Work, until the City has approved and executed the service order for such Work ("Approved Service Order").
- C. Each Approved Service Order incorporates the Terms and Conditions of this Agreement.
- D. The City has no obligation to approve, issue, or execute any Service Orders under this Agreement, nor does it have any obligation to pay Consultant for any Work absent an Approved Service Order. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation defined in Section 6 below.

To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara

## **4. WARRANTY**

Consultant expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this

Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

## **5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE**

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

## **6. COMPENSATION AND PAYMENT**

There is a maximum total compensation for this Agreement and a separate maximum compensation for each Approved Service Order.

- A. Maximum Total Compensation – Agreement: The maximum total, aggregate compensation the City will pay the Consultant for all professional fees for all Approved Service Orders issued under this Agreement shall not exceed One Hundred Fifty Thousand Dollars (\$150,000). All work performed or materials provided in excess of the Total Maximum Compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the Total Maximum Compensation under any circumstance.
- B. Maximum Compensation – Service Order: Each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees related to the Consultant providing the Work ("Maximum Service Order Compensation"). The Consultant shall fully complete all Work required by the Approved Service Order for no more than that Maximum Service Order Compensation. Exhibit B sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges") that applies to any services provided in an Approved Service Order.

## **7. TERMINATION**

Termination for Convenience. City shall have the right to terminate this Agreement or any Service Order under this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.

Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement or any Service Order under this Agreement, in

addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.

Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Consultant will deliver to City all City information or material that Consultant has in its possession.

## **8. ASSIGNMENT AND SUBCONTRACTING**

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

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

## **9. NO THIRD PARTY BENEFICIARY**

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

## **10. INDEPENDENT CONTRACTOR**

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

## **11. CONFIDENTIALITY OF MATERIAL**

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

## **12. OWNERSHIP OF MATERIAL**

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

## **13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

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

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

## **14. HOLD HARMLESS/INDEMNIFICATION**

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



Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

To the extent Consultant is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Consultant warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Consultant's responsibilities under the Act.

## **15. INSURANCE REQUIREMENTS**

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

## **16. WAIVER**

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

## **17. NOTICES**

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

City of Santa Clara  
Attention: Department of Public Works  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [ctemple@santaclaraca.gov](mailto:ctemple@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Consultant addressed as follows:

Mike Shoup, PLS  
R.E.Y. Engineers, Inc.  
707 N. Shoreline Boulevard  
Mountain View, CA 94043  
and by e-mail at [mshoup@reyengineers.com](mailto:mshoup@reyengineers.com)

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

## **18. COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Consultant's attention is called to California Health and Safety Code section 26250, and regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

## **19. CONFLICTS OF INTEREST & ECONOMIC DISCLOSURE**

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises. Furthermore, due to the nature of the Services to be performed hereunder, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the Agreement in accordance with California Government Code section 87200.

## **20. FAIR EMPLOYMENT**

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

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

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

**22. GOVERNING LAW AND VENUE**

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

**23. SEVERABILITY CLAUSE**

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

**24. AMENDMENTS**

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

**25. COUNTERPARTS**

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

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

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

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

Approved as to Form:

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

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

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager

"CITY"

**R.E.Y. ENGINEERS, INC.**  
a California corporation

Dated: April 21, 2020

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

Name: Mike Shoup \_\_\_\_\_

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

Principal Place of Business Address: 707 N. Shoreline Blvd., Mountain View, CA  
94043 \_\_\_\_\_

Email Address: [mshoup@reyengineers.com](mailto:mshoup@reyengineers.com) \_\_\_\_\_

Telephone: (408) 219-3236 \_\_\_\_\_

Fax: (650) 396-4012 \_\_\_\_\_

"CONSULTANT"

**EXHIBIT A**  
**SCOPE OF SERVICES**

**1. SERVICE AREAS – SCOPE OF SERVICES**

**1.1 Introduction**

- 1.1.1** Annually, the City of Santa Clara constructs various capital projects to provide improvements for the community. The projects are varied and include street pavement reconstruction & rehabilitation; pedestrian and traffic signal improvements; building construction and renovation; storm drain and sanitary sewer pipeline and pump station rehabilitation; parks and recreation facilities construction and rehabilitation; curb ramp improvements; etc.
- 1.1.2** The City's land area continues to develop and re-develop resulting in new and revised right-of-way lines, easements and parcel maps. This development may be due to the City's own capital projects or through private development projects.
- 1.1.3** The City maintains a surveying benchmark system and oversees the maintenance of the survey monumentation system throughout the City right-of-way.
- 1.1.4** In general, the scope of services to be provided by Consultant includes on-call land surveying services to support the delivery of City capital improvement projects, land development activities, and ongoing survey operations.
- 1.1.5** Consultant shall be expected to provide complete, professional, high-quality services and products; to provide consultation and work with City staff and others involved with the work; and to provide the expertise, staffing, and assistance in accomplishing the work.
- 1.1.6** The Consultant shall employ a licensed land surveyor and/or licensed civil engineer registered prior to January 1, 1982.
- 1.1.7** The City maintains various GIS information sets to facilitate management of City infrastructure assets. Information includes records maps, record drawings, right-of-way maps, encroachment permits, storm drainage infrastructure, and survey monumentation. On an on-call basis, the City may request Consultant to provide GIS support services.

- 1.1.8** During the planning, design and/or construction of City capital projects, the City may determine the need for utility locating services. On an on-call basis, the City may request Consultant to provide Subsurface Utility Engineering services.

## **1.2 Land Surveying Consultant Services**

- 1.2.1** Perform field survey work to locate property and easement lines (boundary surveying), gather data for topographic surveys (pre-design or design surveying), and stake construction projects (construction surveying).
- 1.2.2** Perform field marking.
- 1.2.3** Perform office survey work to develop base topographic CAD files from field gathered data.
- 1.2.4** Assist office engineering staff/division staff by providing information on existing field conditions (field investigations).
- 1.2.5** Prepare drawings, corner records, plats, legal descriptions, and records of survey. Stamp and sign documents based on Registered Land Surveyor or Civil Engineering Professional license. Civil Engineering license shall only be used if issued prior to January 1, 1982.
- 1.2.6** Review and provide comments on subdivision maps and/or other survey documents.
- 1.2.7** Research existing records and compile data required for survey projects.
- 1.2.8** Support maintenance of the City's benchmark system.
- 1.2.9** Perform leveling circuits.
- 1.2.10** Identify and perpetuate survey monuments. Research survey monument records and investigate monument locations that may have been hidden or covered.
- 1.2.11** Develop records and prepare reports as required.
- 1.2.12** Review City survey procedures and methods. Make recommendations as requested to improve efficiency and productivity in survey operations.
- 1.2.13** Perform aerial photogrammetry.

- 1.2.14** Perform corner records.
- 1.2.15** Establish new benchmarks.
- 1.2.16** Use Global Positioning System (GPS) equipment to perform survey field work.
- 1.2.17** Perform field data collection work in support of City Public Works GIS asset management needs.
- 1.2.18** Perform field work to identify utilities (above ground and subsurface).
- 1.2.19** Provide all maintenance and control of traffic to perform work.

### **1.3 GIS Consultant Services**

- 1.3.1** Review Public Works GIS information & tools and make recommendations for improvements/enhancements to data collection, use and access.
- 1.3.2** Review Public Works GIS systems and make recommendations for technical improvements (hardware, software, etc).
- 1.3.3** Perform field data collection work in support of City Public Works GIS asset management needs.
- 1.3.4** Provide information on GIS best practices, GIS technology advances, and use of GIS in Public Works environments.
- 1.3.5** Recommend and/or develop GIS standards and quality control/assurance plans appropriate to Public Works' needs.
- 1.3.6** Provide training to City staff on GIS applications.
- 1.3.7** Other tasks as requested by the City in support of an efficient, robust and optimized GIS asset management system.

### **1.4 Subsurface Utility Engineering Services**

- 1.4.1** Locate (indicate) the presence and horizontal location of underground utilities using geophysical prospecting techniques, including electromagnetic, magnetic, sonic or other energy fields.
- 1.4.2** Locate utility lines and obtain precise horizontal and vertical position of utility lines by excavating test holes using vacuum excavation or comparable nondestructive equipment in a manner as to cause no damage to the utility lines.

- 1.4.3** After excavating test hole(s), perform a field survey to determine the exact location and position of utility line(s).
- 1.4.4** Backfill test holes and perform surface restoration in accordance with City standards.
- 1.4.5** Coordinate with utility companies or other entities as required to research locations of existing utilities. Secure all "as-built" plans, plats, and other necessary and/or relevant data. While obtaining information, ascertain the age, the size, the material type, the general condition, etc... of the utility.
- 1.4.6** Obtain all necessary permits required by other (non-City of Santa Clara) agencies/entities as required to perform locating work.
- 1.4.7** Provide all maintenance and control of traffic to perform work. Coordinate with City prior to initiating work to determine if a traffic control plan is required.
- 1.4.8** If required, furnish, install, and color code a permanent above ground marker (i.e. PK nail, peg, steel pin, or hub) directly above the utility/facility or at designated offsets if necessary.
- 1.4.9** Provide the following test hole information to the City: a) elevation of top and bottom of utility; b) elevation of existing grade over utility test hole; c) horizontal location referenced to nearby feature(s); d) outside diameter or width of facility and configuration of facilities if co-located (duct banks, etc.); e) utility structure material composition and condition; and f) identification of benchmarks used to determine elevations (2 required unless approved otherwise by the City).
- 1.4.10** Assemble and present utility information in format as requested by the City (generally AutoCADD format).

## **2. PROCEDURE FOR SERVICE ORDERS**

- 2.1** City will provide a description of the desired Work to be performed by Consultant.
- 2.2** Consultant will prepare a written service order proposal in accordance with the City's request. Consultant shall consider and incorporate into the proposal any City input regarding City staffing availability to participate in the delivery of the Work. The proposal must include, but is not limited to, the following:
  - 2.2.1** The proposed scope of Work;



- 2.2.2** The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
  - 2.2.3** A time schedule and total cost for providing the Work; and
  - 2.2.4** Any other information requested by the City.
- 2.3** City will review and provide comments to Consultant. Or, City will accept Consultant's written proposal without comments.
- 2.4** If the City provides comments on Consultant's proposal, Consultant shall revise the proposal to address City's comments.
- 2.5** Once the Consultant and the City agree on the terms of the proposed Service Order, the City will prepare the final ("Approved Service Order").
- 2.6** Consultant will be authorized to proceed with the Work under the Approved Service Order upon notification by the City that the Approved Service Order has been executed by the City or at some later date as designated by the City in writing.

## **EXHIBIT B SCHEDULE OF RATES AND CHARGES**

This Exhibit B sets forth Consultant's rates that apply to any services provided in an Approved Service Order. The rates shall remain fixed for the term of the Agreement.

The attached Fee and Rate Schedules contain the Consultant rates to be used and are hereby incorporated into this Exhibit B.

### **Invoicing:**

1. If an Approved Service Order requires invoicing to be generated in a timesheet format, Consultant shall provide information for each Consultant staff person including name and position title (i.e. relevant role with respect to work performed under the service order). Position hourly rates shall comply with the rates included in the table above.

In addition, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours) for each employee, the name of the employee and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Work shall then be determined by adding the value for the Work rendered by each employee for that particular month.

2. If an Approved Service Order requires invoicing to be generated in a progress or percent complete format, Consultant shall provide information describing in detail the services performed and how those services correlate to the percent complete. The detailed descriptions shall be for each category of services as identified in the Approved Service Order.
3. Within thirty (30) days of receipt of an itemized written invoice from the Consultant, City shall pay Consultant the amount billed for Work performed under the Approved Service Order during that billing period.



**R.E.Y. ENGINEERS, INC.  
CITY OF SANTA CLARA FEE SCHEDULE**

<b><u>CLASSIFICATION</u></b>	<b><u>MAX HOURLY RATE</u></b>
Principal Manager – II	\$288
Principal Manager – I	\$268
Senior Engineer/Surveyor – V	\$258
Senior Engineer/Surveyor – IV	\$243
Senior Engineer/Surveyor - III	\$228
Senior Engineer/Surveyor - II	\$213
Senior Engineer/Surveyor - I	\$198
Associate Engineer/Surveyor - V	\$185
Associate Engineer/Surveyor - IV	\$175
Associate Engineer/Surveyor - III	\$165
Associate Engineer/Surveyor - II	\$155
Associate Engineer/Surveyor - I	\$145
Assistant Engineer/Surveyor - V	\$151
Assistant Engineer/Surveyor - IV	\$141
Assistant Engineer/Surveyor - III	\$131
Assistant Engineer/Surveyor - II	\$121
Assistant Engineer/Surveyor - I	\$111
Senior Technical/LiDAR Specialist - II	\$247
Senior Technical/LiDAR Specialist - I	\$205
LiDAR Technician - III	\$179
LiDAR Technician - II	\$164
LiDAR Technician - I	\$149
Senior Technician - III	\$173
Senior Technician - II	\$158
Senior Technician - I	\$143
Technician - III	\$123
Technician - II	\$107
Technician - I	\$ 92
3-Person Survey Crew	\$385
2-Person Survey Crew	\$295
1 Person Survey Crew	\$190
Expert Witness	\$400
Project Coordinator	\$125
Project Administrator	\$ 95
Terrestrial LiDAR Scanning Equipment	\$ 75
Mobile LiDAR Equipment	\$600
UAV LiDAR ( <i>per project flight day</i> )	<i>\$450 per day</i>

These rates represent maximum rates to be charged for classifications. All rates are valid for three years from the date of our contract with the City of Santa Clara. Reimbursement for mileage expenses, if applicable, shall not exceed the rate established by the IRS for the current year. Cost of normal survey stakes and other field supplies are included in the above rates. Special monuments, iron stakes, etc., will be charged at cost. Filing fees, checking fees, and other outside charges will be billed at cost. Outside reproductions, services, and consultants will be charged at cost plus 10%. In-house large format reproduction will be charged at \$0.30/ SF for black and white and \$0.75/SF for color. Rates for overtime and double time for field and non-exempt employees will be charged at 135% and 170% of the regular rate.

Don McCormick, PE, President



## Hourly Rates and Special Fixed Fee Agreement Provision

Principal .....	\$ 237.00
Project Manager.....	\$ 225.00
Project Engineer/Supervisor .....	\$ 202.00
Senior Engineer/Senior Surveyor .....	\$ 186.00
Associate Engineer/Associate Surveyor.....	\$ 169.00
Staff Engineer/Staff Surveyor .....	\$ 156.00
Computer Designer/Surveyor/Assistant Engineer .....	\$ 143.00
Designer/Senior Draftsperson/Senior Assistant .....	\$ 124.00
Computer Aided Design/Drafting .....	\$ 106.00
Junior Draftsperson.....	\$ 94.00
One-Person Field Party .....	\$ 218.00
Two-Person Field Party .....	\$ 287.00
Three-Person Field Party.....	\$ 363.00
Administrative Assistant.....	\$ 80.00
Delivery (Minimum) .....	\$ 45.00
Project Assistant .....	\$ 94.00

### Expert Witness Services

Expert Witness .....	\$ 465.00
Principal Litigation.....	\$ 514.00
Per Court Appearance (Minimum) .....	\$ 4,542.00

Extra work charged beyond the contract (Fixed Fee Agreement will be adjusted to reflect the increases for the following services):

- 1) Prints, Reproducible, Delivery Service and Express Mail Services will be billed at cost plus 15%.
- 2) Mileage reimbursement for personal vehicle usage will be billed at .60¢ per mile.

Field Survey Crew Mobilizations: The staking fee for lump sum contracts anticipates one mobilization per 8 hours of field work. If Client requests a field crew to complete a staking item in the contract to mobilize more than once per 8 hours of work, the Client will incur an additional cost of \$700.00 per mobilization.

Aliquot Associates, Inc. | Website: [www.aliquot.com](http://www.aliquot.com) | Telephone: (925) 476-2300 | Fax:  
(925) 476-2350

**WALNUT CREEK** 1390 S. Main Street, Suite 310 | Walnut Creek, CA 94596  
**OAKLAND** 953 West MacArthur Blvd. Suite 11 | Oakland, CA 94608

Civil Engineers | Traffic Engineers | Surveyors

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

#### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:  
  
\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

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

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

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

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to

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

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

#### G. EVIDENCE OF COVERAGE

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

#### H. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

City of Santa Clara – Department of Public Works

P.O. Box 100085 – S2

or

1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097



Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: ctsantaclara@ebix.com

#### I. QUALIFYING INSURERS

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

## **EXHIBIT D LABOR COMPLIANCE ADDENDUM**

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

### **A. Prevailing Wage Requirements**

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

requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

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

#### B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at

any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

C. Enforcement

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

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

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
SANDIS**

**PREAMBLE**

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

**RECITALS**

- A. Consultant agrees to provide professional consulting services in the area of Land Surveying ("Services") on an on-call basis;
- B. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Rates and Charges

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes

and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the date of execution by the City and terminate on June 15, 2023.

## **3. SCOPE OF SERVICES & SERVICE ORDERS**

Consultant shall provide professional consulting services described in Exhibit A to the City on an as-needed basis pursuant to individual service orders ("Service Orders") issued in accordance with the Terms and Conditions of this Agreement.

- A. City will initiate each Service Order by specifying and describing the services and deliverables (collectively "Work") requested, which the Consultant must respond to by providing proposals and estimates of the time limit(s) within which the Consultant must complete the Work, and the compensation for the Work. Exhibit A further describes the procedure for Service Orders.
- B. The Consultant shall not perform any Work pursuant to a Service Order, and therefore will not be entitled to any compensation for any Work, until the City has approved and executed the service order for such Work ("Approved Service Order").
- C. Each Approved Service Order incorporates the Terms and Conditions of this Agreement.
- D. The City has no obligation to approve, issue, or execute any Service Orders under this Agreement, nor does it have any obligation to pay Consultant for any Work absent an Approved Service Order. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation defined in Section 6 below.

To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara

## **4. WARRANTY**

Consultant expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this

Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

## **5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE**

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

## **6. COMPENSATION AND PAYMENT**

There is a maximum total compensation for this Agreement and a separate maximum compensation for each Approved Service Order.

- A. Maximum Total Compensation – Agreement: The maximum total, aggregate compensation the City will pay the Consultant for all professional fees for all Approved Service Orders issued under this Agreement shall not exceed One Hundred Fifty Thousand Dollars (\$150,000). All work performed or materials provided in excess of the Total Maximum Compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the Total Maximum Compensation under any circumstance.
- B. Maximum Compensation – Service Order: Each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees related to the Consultant providing the Work ("Maximum Service Order Compensation"). The Consultant shall fully complete all Work required by the Approved Service Order for no more than that Maximum Service Order Compensation. Exhibit B sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges") that applies to any services provided in an Approved Service Order.

## **7. TERMINATION**

Termination for Convenience. City shall have the right to terminate this Agreement or any Service Order under this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.

Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement or any Service Order under this Agreement, in

addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.

Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Consultant will deliver to City all City information or material that Consultant has in its possession.

## **8. ASSIGNMENT AND SUBCONTRACTING**

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

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

## **9. NO THIRD PARTY BENEFICIARY**

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

## **10. INDEPENDENT CONTRACTOR**

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

## **11. CONFIDENTIALITY OF MATERIAL**

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



## **12. OWNERSHIP OF MATERIAL**

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

## **13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

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

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

## **14. HOLD HARMLESS/INDEMNIFICATION**

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

Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

To the extent Consultant is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Consultant warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Consultant's responsibilities under the Act.

## **15. INSURANCE REQUIREMENTS**

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

## **16. WAIVER**

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

## **17. NOTICES**

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

City of Santa Clara  
Attention: Department of Public Works  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [ctemple@santaclaraca.gov](mailto:ctemple@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Consultant addressed as follows:

Kelly Johnson, PLS  
SANDIS  
1700 S. Winchester Boulevard, Suite 200  
Campbell, CA 95008  
and by e-mail at [kjohnson@sandis.net](mailto:kjohnson@sandis.net)

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

## **18. COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Consultant's attention is called to California Health and Safety Code section 26250, and regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

## **19. CONFLICTS OF INTEREST & ECONOMIC DISCLOSURE**

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises. Furthermore, due to the nature of the Services to be performed hereunder, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the Agreement in accordance with California Government Code section 87200.

## **20. FAIR EMPLOYMENT**

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

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

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

**22. GOVERNING LAW AND VENUE**

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

**23. SEVERABILITY CLAUSE**

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

**24. AMENDMENTS**

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

**25. COUNTERPARTS**

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

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

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

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

Approved as to Form: \_\_\_\_\_

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

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

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager

"CITY"

**SANDIS**  
a California corporation

Dated: April 20, 2020

By (Signature): 

Name: Laura Cabral

Title: Vice President

Principal Place of Business Address: 1700 S. Winchester Blvd., Suite 200, Campbell, CA 95008

Email Address: [lcabral@sandis.net](mailto:lcabral@sandis.net)

Telephone: (408) 564-3181

Fax: (408) 636-0999

"CONSULTANT"

**EXHIBIT A**  
**SCOPE OF SERVICES**

**1. SERVICE AREAS – SCOPE OF SERVICES**

**1.1 Introduction**

- 1.1.1** Annually, the City of Santa Clara constructs various capital projects to provide improvements for the community. The projects are varied and include street pavement reconstruction & rehabilitation; pedestrian and traffic signal improvements; building construction and renovation; storm drain and sanitary sewer pipeline and pump station rehabilitation; parks and recreation facilities construction and rehabilitation; curb ramp improvements; etc.
- 1.1.2** The City's land area continues to develop and re-develop resulting in new and revised right-of-way lines, easements and parcel maps. This development may be due to the City's own capital projects or through private development projects.
- 1.1.3** The City maintains a surveying benchmark system and oversees the maintenance of the survey monumentation system throughout the City right-of-way.
- 1.1.4** In general, the scope of services to be provided by Consultant includes on-call land surveying services to support the delivery of City capital improvement projects, land development activities, and ongoing survey operations.
- 1.1.5** Consultant shall be expected to provide complete, professional, high-quality services and products; to provide consultation and work with City staff and others involved with the work; and to provide the expertise, staffing, and assistance in accomplishing the work.
- 1.1.6** The Consultant shall employ a licensed land surveyor and/or licensed civil engineer registered prior to January 1, 1982.
- 1.1.7** The City maintains various GIS information sets to facilitate management of City infrastructure assets. Information includes records maps, record drawings, right-of-way maps, encroachment permits, storm drainage infrastructure, and survey monumentation. On an on-call basis, the City may request Consultant to provide GIS support services.

- 1.1.8** During the planning, design and/or construction of City capital projects, the City may determine the need for utility locating services. On an on-call basis, the City may request Consultant to provide Subsurface Utility Engineering services.

## **1.2 Land Surveying Consultant Services**

- 1.2.1** Perform field survey work to locate property and easement lines (boundary surveying), gather data for topographic surveys (pre-design or design surveying), and stake construction projects (construction surveying).
- 1.2.2** Perform field marking.
- 1.2.3** Perform office survey work to develop base topographic CAD files from field gathered data.
- 1.2.4** Assist office engineering staff/division staff by providing information on existing field conditions (field investigations).
- 1.2.5** Prepare drawings, corner records, plats, legal descriptions, and records of survey. Stamp and sign documents based on Registered Land Surveyor or Civil Engineering Professional license. Civil Engineering license shall only be used if issued prior to January 1, 1982.
- 1.2.6** Review and provide comments on subdivision maps and/or other survey documents.
- 1.2.7** Research existing records and compile data required for survey projects.
- 1.2.8** Support maintenance of the City's benchmark system.
- 1.2.9** Perform leveling circuits.
- 1.2.10** Identify and perpetuate survey monuments. Research survey monument records and investigate monument locations that may have been hidden or covered.
- 1.2.11** Develop records and prepare reports as required.
- 1.2.12** Review City survey procedures and methods. Make recommendations as requested to improve efficiency and productivity in survey operations.
- 1.2.13** Perform aerial photogrammetry.

- 1.2.14** Perform corner records.
- 1.2.15** Establish new benchmarks.
- 1.2.16** Use Global Positioning System (GPS) equipment to perform survey field work.
- 1.2.17** Perform field data collection work in support of City Public Works GIS asset management needs.
- 1.2.18** Perform field work to identify utilities (above ground and subsurface).
- 1.2.19** Provide all maintenance and control of traffic to perform work.

### **1.3 GIS Consultant Services**

- 1.3.1** Review Public Works GIS information & tools and make recommendations for improvements/enhancements to data collection, use and access.
- 1.3.2** Review Public Works GIS systems and make recommendations for technical improvements (hardware, software, etc).
- 1.3.3** Perform field data collection work in support of City Public Works GIS asset management needs.
- 1.3.4** Provide information on GIS best practices, GIS technology advances, and use of GIS in Public Works environments.
- 1.3.5** Recommend and/or develop GIS standards and quality control/assurance plans appropriate to Public Works' needs.
- 1.3.6** Provide training to City staff on GIS applications.
- 1.3.7** Other tasks as requested by the City in support of an efficient, robust and optimized GIS asset management system.

### **1.4 Subsurface Utility Engineering Services**

- 1.4.1** Locate (indicate) the presence and horizontal location of underground utilities using geophysical prospecting techniques, including electromagnetic, magnetic, sonic or other energy fields.
- 1.4.2** Locate utility lines and obtain precise horizontal and vertical position of utility lines by excavating test holes using vacuum excavation or comparable nondestructive equipment in a manner as to cause no damage to the utility lines.



- 1.4.3** After excavating test hole(s), perform a field survey to determine the exact location and position of utility line(s).
- 1.4.4** Backfill test holes and perform surface restoration in accordance with City standards.
- 1.4.5** Coordinate with utility companies or other entities as required to research locations of existing utilities. Secure all "as-built" plans, plats, and other necessary and/or relevant data. While obtaining information, ascertain the age, the size, the material type, the general condition, etc... of the utility.
- 1.4.6** Obtain all necessary permits required by other (non-City of Santa Clara) agencies/entities as required to perform locating work.
- 1.4.7** Provide all maintenance and control of traffic to perform work. Coordinate with City prior to initiating work to determine if a traffic control plan is required.
- 1.4.8** If required, furnish, install, and color code a permanent above ground marker (i.e. PK nail, peg, steel pin, or hub) directly above the utility/facility or at designated offsets if necessary.
- 1.4.9** Provide the following test hole information to the City: a) elevation of top and bottom of utility; b) elevation of existing grade over utility test hole; c) horizontal location referenced to nearby feature(s); d) outside diameter or width of facility and configuration of facilities if co-located (duct banks, etc.); e) utility structure material composition and condition; and f) identification of benchmarks used to determine elevations (2 required unless approved otherwise by the City).
- 1.4.10** Assemble and present utility information in format as requested by the City (generally AutoCADD format).

## **2. PROCEDURE FOR SERVICE ORDERS**

- 2.1** City will provide a description of the desired Work to be performed by Consultant.
- 2.2** Consultant will prepare a written service order proposal in accordance with the City's request. Consultant shall consider and incorporate into the proposal any City input regarding City staffing availability to participate in the delivery of the Work. The proposal must include, but is not limited to, the following:
  - 2.2.1** The proposed scope of Work;

- 2.2.2** The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
    - 2.2.3** A time schedule and total cost for providing the Work; and
    - 2.2.4** Any other information requested by the City.
- 2.3** City will review and provide comments to Consultant. Or, City will accept Consultant's written proposal without comments.
- 2.4** If the City provides comments on Consultant's proposal, Consultant shall revise the proposal to address City's comments.
- 2.5** Once the Consultant and the City agree on the terms of the proposed Service Order, the City will prepare the final ("Approved Service Order").
- 2.6** Consultant will be authorized to proceed with the Work under the Approved Service Order upon notification by the City that the Approved Service Order has been executed by the City or at some later date as designated by the City in writing.

## **EXHIBIT B SCHEDULE OF RATES AND CHARGES**

This Exhibit B sets forth Consultant's rates that apply to any services provided in an Approved Service Order. The rates shall remain fixed for the term of the Agreement.

The attached schedule (Standard Hourly Charge Rates) contains the Consultant rates to be used and is hereby incorporated into this Exhibit B.

### **Invoicing:**

1. If an Approved Service Order requires invoicing to be generated in a timesheet format, Consultant shall provide information for each Consultant staff person including name and position title (i.e. relevant role with respect to work performed under the service order). Position hourly rates shall comply with the rates included in the table above.

In addition, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours) for each employee, the name of the employee and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Work shall then be determined by adding the value for the Work rendered by each employee for that particular month.

2. If an Approved Service Order requires invoicing to be generated in a progress or percent complete format, Consultant shall provide information describing in detail the services performed and how those services correlate to the percent complete. The detailed descriptions shall be for each category of services as identified in the Approved Service Order.
3. Within thirty (30) days of receipt of an itemized written invoice from the Consultant, City shall pay Consultant the amount billed for Work performed under the Approved Service Order during that billing period.



## **SANDIS STANDARD HOURLY CHARGE RATES**

### **SURVEYING SERVICES / HIGH DEFINITION SCANNING/ 3-D MODELING SERVICES HOURLY RATE**

CAD/Surveying/Scanning Technician	Level 1	\$105.00
	Level II	\$110.00
	Level III	\$125.00
Project Surveyor/Scanning Specialist	Level 1	\$135.00
	Level II	\$145.00
	Level III	\$175.00
Survey Project Manager	Level 1	\$185.00
	Level 2	\$215.00
Senior Field Survey Supervisor (PLS)		\$235.00
Utility Locating Services 1-person Crew		\$175.00
Traffic Safety Flagger		\$115.00
Survey Crew	1-person Crew	\$195.00
	2-person Crew	\$295.00
	2-person Crew w/Apprentice	\$365.00

**REIMBURSABLE COSTS:** Printing, monuments, materials, outside services and consultants, courier/delivery services, express/overnight mail, travel/per diem, agency fees advanced, etc., at cost plus 10%.

**OVERTIME:** All overtime charges are invoiced on the basis of one and one-half times the above rates. Double time invoiced at two times above rates.

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

#### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:  
  
\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

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

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

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

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to

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

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

#### G. EVIDENCE OF COVERAGE

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

#### H. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

City of Santa Clara – Department of Public Works

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097



Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: ctsantaclara@ebix.com

#### I. QUALIFYING INSURERS

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

## **EXHIBIT D LABOR COMPLIANCE ADDENDUM**

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

### **A. Prevailing Wage Requirements**

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

requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

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

#### B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at

any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

### C. Enforcement

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

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



## Agenda Report

20-445

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

Each federal fiscal year, the California Governor's Office of Emergency Services (CalOES) serves as the State Administrative Agency for the U.S. Department of Homeland Security for the State Homeland Security Grant Program (SHSGP) funds.

In turn, CalOES solicits grant applications throughout California for equipment, training, and exercise funding for subrecipients based on the core mission of enhancing security and emergency preparedness across the State.

#### **DISCUSSION**

With the global increase in terror related incidents, SHSGP's Fiscal Year 2019 funding priority is anti-terrorism.

Separately, the Santa Clara County Police Chiefs' Association and Santa Clara County Fire Chiefs' Association identified equipment and training needs throughout the county with emergency preparedness and public safety being the utmost priority.

With multiple large venues in the City of Santa Clara (e.g. Santa Clara University, Mission College, California Great America Theme Park, Santa Clara Convention Center, Levi's Stadium, Central Park, etc.) and throughout Santa Clara County (e.g. Shoreline Amphitheater, Stanford University, Avaya Stadium, San José Convention Center, SAP Center, San José State University, etc.) it serves as a setting for high-visibility forums for sports and entertainment events, dignitary visits, political demonstrations/protests, etc.

Each venue faces a certain level of risk as a result of natural events, accidents, or intentional acts to cause harm. As a result, each major public event goes through a detailed threat assessment process to ensure adequate security measures are in place. Police and Fire Departments draw on existing equipment and personnel resources, including local, State, and federal law enforcement partners, to provide a secure environment which is prepared for the unknown. In addition, City employees receive regular training on how to respond to dynamic events.

Best practices evolve following each act of terrorism. The Police and Fire Departments would benefit from enhancing its equipment resources to protect or venues. The City of Santa Clara was fortunate to receive three SHSGP awards. All SHSGP purchases become a county regional asset for use at planned events or response to mutual aid situations.

Department	Amount	Project / Equipment
Fire	\$71,898	High Pressure Mass Spectroscopy
Fire	\$87,392	Backpack-portable radiation detection device
Police	\$52,000	Close Quarter Clearance training
Police	\$102,000	Portable bollards and mobile crash barriers
	<b>\$313,290</b>	<b>TOTAL</b>

#### Fire Department SHSGP Award #1

The Fire Department works in conjunction with the Police Department and Santa Clara County Sheriff's Office Bomb Squad to provide preventative screening, search and detection of chemical, and explosive threats. With its current technology, the Fire Department has the ability to classify, but not identify, most chemical threats.

As a result, the Fire Department sought SHSGP funding in the amount of \$71,898 to purchase one (1) high-pressure mass spectroscopy, including trace sampling swabs and a training kit which consists of chemical samples and vapors.

A high-pressure mass spectroscopy would enhance the detection and identification capabilities of the Fire Department and Joint Hazardous Assessment Team with the quick ability to identify most narcotics and their derivatives. This includes the ability to respond to fentanyl exposure.

#### Fire Department SHSGP Award #2

The Fire Department works in conjunction with the Police Department and Santa Clara County Sheriff's Office Bomb Squad to provide preventative screening for radiological or nuclear threats by clearing the venue pre-event, conducting roving patrols during the event, and responding to emergent incidents such as suspicious packages.

The South Bay does not currently have sufficient backpack-portable radiation detection capability. Currently, the Fire Department utilizes mostly belt-worn personal radiation detectors and hand-carried radio-isotope identifiers. Both instruments are limited to their detector size and radius and must be actively worn on a responder's person to be deployed. For major events at Levi's Stadium (e.g. Super Bowl 50), the Fire Department borrowed backpack-portable radiation detection capability from the Department of Homeland Security, located several states away.

Backpack-portable radiation detection would increase the size of detector deployed by Joint Hazardous Assessment Teams, increasing both the radius of detection and alarm sensitivity. This would allow teams to get a much wider and clearer picture of the operating environment for making threat vs. no-threat decisions. Backpack detectors have the further advantage of the ability to be staged by themselves at ingress and egress checkpoints to allow operators to perform remote screening in a more covert posture.

The SHSGP award in the amount of \$87,392 would allow the Fire Department to obtain two (2) backpack-portable radiation detection devices, including their associated accessories and user interfaces. Additionally, the cost of this project would include provisions for warranty extensions and routine maintenance (e.g. factory service, OEM parts, calibrations, and software upgrades). As a

result, there should be minimal impact, if any, on the Fire Department's operating budget.

#### Police Department SHSGP Award #1

The Police Department petitioned SHSGP to fund a regional training, to be hosted by our agency, titled Close Quarter Clearance by Tomahawk Strategic. The course would be made available to a few members of each law enforcement special operations team throughout Santa Clara County. In turn, these participants would return to their respective agencies to facilitate a "train the trainer" course.

Special operations team members are trained in basic fundamentals of single, two-man, and team room clearing with a firearm. This accelerated Close Quarter Clearance course would focus on concepts and techniques taught to, and utilized by, the military with an emphasis on individual officer and small team tactics.

The cost of the 40-hour course is \$52,000 for 40 participants.

#### Police Department SHSGP Award #2

With the global increase in terror related incidents involving vehicle borne assaults and mass casualties, the Santa Clara County Chiefs' of Police Association submitted individual funding requests by law enforcement agencies for portable bollards and mobile crash barriers.

These devices will provide protection to the public at events where significant numbers of pedestrians are present. All SHSGP funded equipment is to be a shared, regional asset, to be used by multiple agencies for protection against vehicle assaults during public events held in their jurisdictions. In order for this initiative to be effective, the Santa Clara County Chiefs' of Police Association requested the equipment be interoperable. The grant was approved based on this premise that the purchased equipment could be utilized together by different agencies.

Fiscal Years 2018, 2019 and 2020 funding for mobile crash barriers and portable bollards have been approved as follows:

Fiscal Year	Amount per Agency	Law Enforcement Agency
2018	\$90,000	Mountain View, Morgan Hill and San José
2019	\$102,000	Campbell, Los Gatos, Milpitas, Morgan Hill and Santa Clara
2020	\$90,000	Milpitas and San José

The Santa Clara Police Department plans to purchase two (2) mobile crash barriers and five (5) portable bollards with its SHSGP Fiscal Year 2019 funding. The grant performance period is September 1, 2019 through May 31, 2022, with all purchases to be made by April 1, 2022.

#### Stadium Authority Capital Improvement Program (CIP)

The Stadium Authority Budget for Fiscal Year 2020/2021 includes Capital Improvement Program funding of \$363,225 to purchase six mobile crash barriers. These funds will be available May 1, 2020.

Combined, these two sources of funding will allow the Police Department to purchase five (5)

portable bollards (paid for with SHSGP funds) and eight (8) mobile crash barriers (two purchased with SHSGP funds and six paid for with Stadium Authority CIP funding).

#### Portable Bollards and Mobile Crash Barriers

The mobile crash barriers can be towed to where vehicle security is needed and set up in less than fifteen minutes. It is self-contained and battery powered. A single operator can activate the security gate to restrict vehicle access or allow emergency vehicles (e.g. Fire, Police and EMS) to pass through. The mobile crash barriers are certified to meet the U.S. Department of State testing with a rating of K4/L1.

The portable bollards also allow law enforcement to block access to venues where vehicles can be used as weapons against large numbers of pedestrians. Up to five (5) portable bollards can be linked together via a cable system.

Both products are manufactured by Delta Scientific Corporation.

The Police Department will work with the Finance Department for this sole source purchase of eight mobile crash barriers (six purchased with the Stadium Authority CIP funding and two with SHSGP grant funding) and five portable bollards by July 2020, for use with all of the City's fall events (e.g. NFL season, National Night Out, Art and Wine Festival, Tree Lighting Ceremony, etc.).

In addition, the Finance Department will determine a per day, per piece of equipment cost. This will allow the City to bill Man Co for use of the SHSGP funded equipment for events at Levi's Stadium, and the Stadium Authority to bill the City for use of its CIP funded equipment for the City's various needs (e.g. sports and entertainment events, dignitary visits, political demonstrations/protests, other community events, etc.).

#### **ENVIRONMENTAL REVIEW**

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

#### **FISCAL IMPACT**

Acceptance of this State Homeland Security Grant Program (SHSGP) funding will allow the Fire Department and Police Department to be reimbursed for up to \$159,290 and \$102,000, respectively, in equipment to enhance security and preparedness. The acceptance of the grant awards will also allow the Police Department to be reimbursed for approximately \$52,000 for training and exercise. The grant funding for this item could end up being higher than the initial \$52,000 award. Should additional funding be received for training and exercise, a budget amendment to recognize and appropriate this funding will be brought forward.

#### **Budget Amendment FY 2019/20**

<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
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**Fire Department Operating  
Grant Trust Fund**
Revenue

Grant Funding	\$147,764	\$159,290	\$307,054
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Expenditure

State Homeland Security Grant Program 2019	\$0	\$159,290	\$159,290
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**Police Operating Grant Trust  
Fund**
Revenue

Grant Funding	\$1,510,658	\$154,000	\$1,664,658
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Expenditure

State Homeland Security Grant Program 2019	\$0	\$154,000	\$154,000
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The Police Department will be responsible for fulfilling standard grant requirements, such as compiling data to submit to SHSGP, invoicing and media requirements. These items are not reimbursable as part of the grant.

In addition, the Stadium Authority FY 2020/21 Capital Improvement Program includes funding of \$363,225 to purchase six additional mobile crash barriers.

**COORDINATION**

This report was coordinated with the Fire and Finance Departments and the City Attorney's Office.

**PUBLIC CONTACT**

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

**RECOMMENDATION**

1. Accept and approve the State Homeland Security Grant funding of \$159,290 for purchase of related Fire Department equipment;
2. Accept and approve the State Homeland Security Grant funding of \$154,000 for the purchase of a Regional Asset and training and exercise equipment;
3. Approve the related budget amendment in the Fire Operating Grant Trust Fund to recognize grant revenue in the amount of \$159,290 and establish a State Homeland Security Grant Program 2019 appropriation in the amount of \$159,290;
4. Approve the related budget amendment in the Police Operating Grant Trust Fund to recognize grant revenue in the amount of \$154,000 and establish a State Homeland Security Grant Program

2019 appropriation in the amount of \$154,000;

5. Authorize the Chief of Police, City Manager and Finance Director to sign grant-related documents, if any, including but not limited to a Memorandum of Understanding with CalOES;
6. Authorize the City Manager to execute a purchase order(s) for the purchase of eight (8) mobile crash barriers and five (5) portable bollards for a term starting on or about May 19, 2020 and ending on or about May 31, 2021 for a total amount not-to-exceed \$465,225; and
7. Authorize the City Manager to execute additional purchase orders for future purchases of mobile crash barriers and portable bollards, subject to the appropriation of funds.

Reviewed by: Patrick Nikolai, Chief of Police

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Agreement for 2019 State Homeland Security Grant Program Funds
2. FY19 SHSGP Project Funding Requests
3. FY19 SHSGP California State Guidance
4. FY19 SHSGP Federal Grant Assurances
5. FY19 SHSGP Notice of Funding Opportunity
6. FY19 SHSGP Quarterly Performance Report Requirements
7. FY19 SHSGP Performance Report Template

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND  
THE CITY OF SANTA CLARA GRANTING PROGRAM FUNDS FOR THE  
2019 STATE HOMELAND SECURITY GRANT PROGRAM FUNDS**

THIS AGREEMENT is made effective when fully executed by the County of Santa Clara (“County”) and the City of Santa Clara (“Santa Clara”) for the allocation and distribution of 2019 State Homeland Security Grant Program (SHSGP) funds.

**RECITALS**

WHEREAS, the 2019 SHSGP (CFDA #97.067) supports the implementation of State Homeland Security Strategies to address the identified planning, organization, equipment, training and exercise needs for acts of terrorism and other catastrophic events, and management and administration of the grant. In addition, SHSGP supports the implementation of the National Preparedness Guidelines, the National Incident Management System (NIMS), and the National Response Network (NRF);

WHEREAS, the State of California (“State”) has designated the County as the Operational Area for purposes of distributing SHSGP funds to the cities, special districts and other entities within the County. An Anti-Terrorism Approval Body (County Approval Authority), comprised of one County Public Health Officer, County Fire Chief, Municipal Fire Chief, County Sheriff, and Chief of Police, has been appointed for the purpose of approving the distribution of SHSGP funds at the Operational Area level;

WHEREAS, on September 1, 2019 the California Office of Emergency Services (“Cal OES”) awarded the County 2019 SHSGP funds in the amount of \$2,088,075. The allocation of the SHSGP funds will be determined by the County Approval Authority in accordance with the grant guidelines.

NOW, THEREFORE, the County and Santa Clara agree as follows:

**THE AGREEMENT**

**Article I. Definitions**

**1. Specific Terms**

- (a) **“Burdened Labor Rate”** shall mean the labor rate including benefits, taxes and other deductions from an employee’s paycheck. This rate does not include vacation benefits.
- (b) **“Santa Clara”** shall mean the City of Santa Clara, its officers, board members, employees, and agents.
- (c) **“County”** shall mean the County of Santa Clara, its officers, board members, employees, and agents.

- (d) **“SHSGP funds” or “SHSGP funding”** shall mean the funding Santa Clara receives under this Agreement.
- (e) **“Federal Program Guidance”** shall mean guidance documents issued by the Federal Emergency Management Agency, including the SHSGP Program Funding Opportunity Announcement, for Fiscal Year 2019.
- (f) **“Grant Certifications and Assurances”** shall mean the FY19 SHSGP Agreement Articles, Assurances, Certifications, Terms, and Conditions
- (g) **“Highly Compensated Individual”** shall mean an individual whose income is \$300,000 or more per year.
- (h) **“Prime Recipient”** shall refer to County.
- (i) **“State Guidance”** shall mean the California Supplement to the Federal Program Funding Opportunity Announcement, issued by Cal OES for Fiscal Year 2019.
- (j) **“Sub-Recipient”** shall refer to Santa Clara.

## **2. References to This Agreement**

Any reference to this Agreement shall include: (a) the Agreement; (b) all exhibits, appendices, schedules, and attachments to this Agreement; (c) all statutes, ordinances, regulations, rules, or other documents incorporated by reference into this Agreement; (d) all amendments, modifications, or supplements to this Agreement.

## **Article II. Payment**

### **1. Payment Eligibility**

Unless otherwise approved in advance by the County Office of Emergency Management (OEM) Grants Administrator (hereinafter “grants administrator”), only an actual cash disbursement by Santa Clara for a claimed expense shall be eligible for reimbursement by the County as approved and specified in Exhibit A, SHSGP Project Funding, which is attached and hereby incorporated into this Agreement.

### **2. Amount of Payment**

The County will provide Santa Clara, unless otherwise specified, with the equipment, supplies, and/or other resources as set forth in Exhibit A, SHSGP Project Funding. Specifications for such equipment shall be provided by Santa Clara’s requesting agency to the County for the appropriate procurement process. Santa Clara’s requesting agency will be notified when the procurement process is complete for final approval of equipment prior to the order being placed. If, through previous agreement with the County, Santa Clara is to procure its own equipment, performance milestone dates will apply (refer to Article IV, Section 3(b)).

The County may reallocate SHSGP funds as specified in Article II, section 4 of this Agreement. County

does not guarantee a minimum payment to Santa Clara.

Funds in the amount of \$318,454 have been set aside for the training and exercise programs from the SHSGP grant to be allocated during the term of this Agreement. OEM will allocate training and exercise funds to agencies as determined by the Training/Exercise Advisory Group.

Authorized personnel budgets are allowable within the County OEM, Central Fire, and County Emergency Medical Services. The personnel budget for these departments will reflect the expenditure authority. Reimbursement for actual cash disbursements will be requested through the County OEM. Based on the preference of the Department/Agency, reimbursement requests may be requested on a monthly or quarterly basis. For County Departments, reimbursements will be made via inter-county transfer. For all others, a County warrant will be issued.

### **3. Maximum Amount Payable**

Subject to the availability of funds and the priorities established by the County Approval Authority, the maximum amount of SHSGP funds payable by the County to Santa Clara under this Agreement must not exceed \$313,291, as allocated by the County Approval Authority.

### **4. Reallocation of SHSGP Grant Funds**

For the purpose of maximizing the resources available for preparedness for acts of terrorism and other catastrophic events within the Operational Area, Santa Clara agrees that the County Approval Authority may reallocate funds under this Agreement to Santa Clara or to another applicant if the County determines that Santa Clara is unable to utilize the amount allocated under this Agreement. The County may base its determination on factors that include but are not limited to the following: delivery timelines, fund expenditure capabilities, and timeliness of expenditure. The County will notify Santa Clara in writing of any determination to reallocate funds, by issuing a "Notice of Reallocation." SHSGP funds will be put forth to the County Approval Authority for reallocation. Santa Clara agrees that the County has the authority to increase or decrease the maximum amount payable under this Agreement as specified in the Notice of Reallocation document without liability and the County has the authority to amend Exhibit A, "SHSGP Project Funding," accordingly. Upon issuance, the Notice of Reallocation will automatically become part of this Agreement.

## **Article III. Requests for Reimbursement and Reimbursements**

### **1. Required Documentation for Reimbursement**

The SHSGP is a reimbursement grant under which Cal OES disburses reimbursement funds to County, and County disburses reimbursement funds to Santa Clara. No cash advances are permitted under the SHSGP program.

#### **(a) Requests for Equipment**

The following documentation is required for all reimbursement requests for equipment:

- Quote or solicitation documents
- Summary of pricing and chosen vendor
- Documentation that vendor is not on the excluded parties list (<https://www.epls.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Receiving documentation/packing slip
- Invoice
- Proof of payment

All equipment must be approved by the County Approval Authority and must be authorized per the web-based Authorized Equipment List on the Responder Knowledge Base, which is sponsored by Grants & Training and the National Memorial Institute for the Prevention of Terrorism at <https://www.rkb.us/>. (Contact the Grant Manager for a current Authorized Equipment List.)

#### (b) Subcontracts

If Santa Clara awards subcontracts totaling \$25,000 or more, it must report on any such subcontracts and on Highly Compensated Individuals on the Financial Disclosure Form, Exhibit D, within 30 days of the award. The following information must be included in Santa Clara's report on any sub-award exceeding \$25,000:

- Name of entity receiving award;
- Amount of award;
- Funding agency;
- Catalog of Federal Domestic Assistance program number;
- Award title (descriptive of the purpose of the funding action);
- Location of the receiving entity and primary location of performance including city, state, and federal Congressional district;
- Dun & Bradstreet (D&B) DUNS Number of the receiving entity, and of its parent if applicable; and
- Total compensation and names of receiving entity's five most highly compensated executives if:
  - In the preceding fiscal year, the subcontractor received 80 percent or more, and \$25,000,000 or more, of its gross annual revenue from federal procurement contracts or subcontracts or from federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.230; and
  - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or under section 6104 of the Internal Revenue Code of 1986.
  - Santa Clara must report subcontractor executive compensation by the end of the month following the month in which it makes the sub-award. For example, if the sub-award is obligated in any date in April 2020, Santa Clara must report any required compensation information by May 31, 2020.

Classified information that, in the interest of national security, requires protection against unauthorized disclosure (i.e., information deemed Top Secret, Secret, or Confidential under Executive Order 12958) is exempt from the Prime and Sub-Recipient reporting requirements, as are contracts with individuals.

(c) Sole Source Contracts

Sole source contracts of \$250,000 or more are not allowable under the SHSGP program unless first approved by Cal OES. Santa Clara must obtain sole source request documentation and submit it to the Grants Manager of County's OEM. Upon Santa Clara's completion and submission of the required sole source documentation, County's Grants Manager shall forward all sole source documents to the appropriate Cal OES contact for review and approval. Only after Cal OES approval is given can a sole source procurement be completed and expenditures reimbursed using SHSGP allocated funds. Sole source requests below the \$250,000 threshold must follow Santa Clara's own procurement policies.

(d) Other Requests

The following documentation is required for all reimbursement requests for contractors:

- Quote or solicitation documents
- Executive summary of how contractor was chosen
- Documentation that vendor is not on the excluded parties list (<https://www.sam.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Invoice showing deliverables and milestones completed
- Proof of payment
- Financial Disclosure Form (Exhibit D) if awarded contract exceeds \$25,000

The following documentation is required for reimbursement of Salaries:

- Functional timesheet
- Description of scope of job which includes Homeland Security-related functions
- Burdened Labor Rate
- Payroll reports showing amount paid for each pay period being claimed

The following documentation is required for reimbursement for Training activities:

- Class syllabus
- Class sign-in sheet
- Instructor/consultant contract documents
- Instructor's invoice
- Proof of payment

## **2. Submission of Requests for Reimbursement**

- (a) Santa Clara shall submit reimbursement requests to County's OEM on a quarterly basis. Unless pre-approved by County's OEM Director or designee, all reimbursement requests shall be due fifteen calendar days after the end of the quarter, with the exception of the final expenditure and/or invoice, as indicated below. Any expenditure during the final period identified in the chart below shall be made by April 15, 2022, and any related invoice shall be submitted by April 30, 2022, unless otherwise pre-approved by County's OEM Director or designee, in order to meet 2019 SHSGP deadlines.
- (b) During the term of this Agreement, County is not obligated to honor any request for reimbursement that is submitted after April 30, 2022.

#### **Article IV. Use of Funds**

##### **1. Master Grant Obligations**

- (a) Santa Clara shall comply with the SHSGP Federal Program Guidance, the State Guidance, and the Grant Certifications and Assurances, attached as Exhibit B. Santa Clara shall require any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Santa Clara to execute a copy of the Grant Certifications and Assurances, and shall be responsible for ensuring that sub-grantee, contractor, or other entity complies with the Grant Certifications and Assurances.
- (b) Santa Clara shall comply with all other applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement, provided that if any provisions of this Agreement conflict with any State requirements, the State requirements will control. Santa Clara shall ensure that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Santa Clara complies with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement.
- (c) Santa Clara shall establish and maintain administrative, programmatic and fiscal management records in accordance with federal and state requirements, and:
  - i. Maintain financial management systems that support grant activities in accordance with federal and state requirements, including but not limited to requirements in 44 Code of Federal Regulations ("C.F.R.") Part 13.20, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part II, Chapter 3.
  - ii. The County shall provide and affix equipment tracking numbers for all equipment purchased through its procurement process. Using the County-issued tracking number, Santa Clara shall maintain an equipment tracking ledger that tracks the equipment within Santa Clara and complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6.



- (d) By executing this Agreement, Santa Clara certifies that it is not debarred, suspended, or otherwise ineligible to receive SHSGP funds. In addition, Santa Clara shall ensure and independently verify that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Santa Clara complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6, and is not debarred, suspended, or otherwise excluded from participation in the SHSGP program. Santa Clara shall maintain documentary proof of this verification in its files.

## **2. Scope of Services**

- (a) If Santa Clara has been allocated funding for a project, Exhibit A, “SHSGP Project Funding,” will serve as the basis for the project. A further detailed description may be necessary and will be requested by the County if needed to be incorporated by reference herein. If future funding is allocated, Santa Clara shall provide a detailed description of the approved project to be attached hereto and incorporated by reference herein.
- (b) Santa Clara shall use the funds granted under this Agreement in a manner consistent with:
  - i. The applications submitted by the County to the State for the grant under this Agreement;
  - ii. The grant guidelines issued by the State for the grant under this Agreement; and
  - iii. The notifications issued by the State of the approval of the grant under this Agreement
- (c) The documents described in Exhibit B of this Agreement (collectively the “State Grant Requirements”) are on file with the County and the granting agencies of the State, and are hereby incorporated into this Agreement. Santa Clara hereby acknowledges that it has received a copy of the State Grant Requirements.
- (d) Santa Clara shall use the funds granted under this Agreement only for the purpose of implementing applicable initiatives under the 2019 SHSGP program, as indicated in Exhibit A, “SHSGP Project Funding”. Santa Clara shall not use the funds granted under this Agreement for any other purpose. Incumbents filling positions funded by the 2019 SHSGP program shall work at a location inside of the Santa Clara County Operational Area, and the work of grant-funded personnel must be solely focused on threats to the Santa Clara County Operational Area. County will not disburse funds to or otherwise pay Santa Clara for services that do not address a terrorism nexus, or for materials, equipment, or supplies provided by Santa Clara that are beyond the scope of the services, materials, equipment, or supplies agreed upon in this Agreement or a lawfully executed written amendment.

## **3. Performance and Reporting Requirements**

- (a) Performance reports indicating the status of outstanding projects are due to the County Grants Administrator on a quarterly basis as follows:

(b) The following dates represent the Grant Performance Period for the SHSGP program:

- Performance Period 1 (September 1, 2019 – December 31, 2019) – due by January 15, 2020
- Performance Period 2 (January 1, 2020 – March 31, 2020) – due by April 15, 2020
- Performance Period 3 (April 1, 2020 – June 30, 2020) – due by July 15, 2020
- Performance Period 4 (July 1, 2020 – September 30, 2020) – due by October 15, 2020
- Performance Period 5 (October 1, 2020 – December 31, 2020) – due by January 15, 2021
- Performance Period 6 (January 1, 2021 – March 31, 2021) – due by April 15, 2021
- Performance Period 7 (April 1, 2021 – June 30, 2021) – due by July 15, 2021
- Performance Period 8 (July 1, 2021 – September 30, 2021) – due by October 15, 2021
- Performance Period 9 (October 1, 2021 – December 31, 2021) – due by January 15, 2022
- Performance Period 10 (January 1, 2022 – March 31, 2022) – due by April 30, 2022

(c) The County will provide Santa Clara with a report template (Exhibit C, “Performance Report”), and Santa Clara will utilize the template to complete the performance submittal to the County.

(d) Payments made by the County to Santa Clara are conditioned upon the timely receipt of applicable, accurate and complete reports, including supporting document, to be submitted by Santa Clara.

(e) Santa Clara will notify the County representative identified in Article VII, Section I, within 15 days, when Santa Clara has completed all performance obligations for these grants.

(f) Santa Clara will provide single audit reports to the County by July 31<sup>st</sup> of each fiscal year.

## **Article V. Term and Termination**

### **1. Term of Agreement**

This Agreement is effective from September 1, 2019 through May 31, 2022.

### **2. Availability of Funds**

(a) The parties acknowledge and agree that this Agreement is dependent upon the availability of county, regional, State and/or federal funding.

(b) Budgetary Contingency: This Agreement is contingent upon the appropriation of sufficient funding by County for the products and services covered by this Agreement. If funding is reduced or eliminated by County for the products or services covered by this Agreement,

County has the option to either terminate this Agreement with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.

- (c) The obligations of County to make payments in accordance with the provisions of this Agreement may be delayed, reduced or terminated as a result of any delay, reduction, or change in allocation or allotment in funding to County from federal, State or other regional funding sources.

#### **4. Termination**

- (a) Termination for Convenience. County shall have the option, in its sole discretion, to terminate this Agreement at any time without cause upon written notice to Santa Clara. The written notice shall specify the date on which termination shall become effective, which shall be no less than seven (7) days from the date of the notice.
- (b) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other party. The written notice shall specify the date on which termination shall become effective, which shall be no less than thirty (30) days from the date of the notice. Termination for cause includes, but is not limited to, a material breach of this Agreement, a violation of any applicable laws, or failure to comply with applicable SHSGP guidelines.
- (c) Opportunity to Cure. In the event of termination for material breach of this Agreement, the non-breaching party shall give written notice of the breach to the breaching party, specifying the breach/cause. The breaching party shall not be deemed in default and the non-breaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the breaching party's receipt of the notice of breach, or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced its cure, correction or remedy within the thirty (30) day period and diligently and continuously pursues that cure, correction or remedy.
- (d) If this Agreement is terminated, Santa Clara shall return SHSGP funding in accordance with SHSGP program guidelines.

#### **Article VI. Indemnification and Liabilities**

##### **1. Indemnification by Santa Clara**

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the parties under Government Code section 895.6, County and Santa Clara agree instead that under Government Code section 895.4, Santa Clara shall fully indemnify and hold County, its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of Santa Clara, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to Santa Clara under this Agreement. This indemnity shall include, without limitation, reasonable attorneys' fees, consultants

and experts and related costs, and County's cost of investigating any claim.

## **2. Duty to Defend**

Santa Clara acknowledges and agrees that its obligation to defend County under Article VI: (a) is an immediate obligation, independent of its other obligations under this Agreement; and (b) applies to any claim, expense, cost, damage, or liability falling within the scope of Article VI, regardless of whether the allegations made in connection with that claim, expense, cost, damage, or liability may be groundless, false, or fraudulent. County shall provide Santa Clara with prompt notice of any claim, expense, cost, damage, or liability under Article VI and Santa Clara shall have the right to defend, settle, or compromise that claim, expense, cost, damage, or liability, provided, however, that County shall have the right to retain its own counsel at Santa Clara's expense if representation of County by counsel retained by Santa Clara would result in a conflict of interest, and that Santa Clara shall obtain County's prior written consent to settle or compromise if Santa Clara contends that County shares in any liability. County's failure to notify Santa Clara promptly of any claim, expense, cost, damage, or liability shall not relieve Santa Clara of liability to County under Article VI unless that failure materially impairs Santa Clara's ability to defend against the claim, expense, cost, damage, or liability.

## **3. Limitation on Liability**

County, its officers, board members, employees, and agents shall not be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of Santa Clara, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to Santa Clara under this Agreement.

County's obligations under this Agreement shall be limited to the aggregate amount of SHSGP funds actually disbursed. Notwithstanding any other provision in this Agreement or any other document or communication between County and Santa Clara relating to this Agreement, in no event shall County be liable for any damages arising out of or in connection with this Agreement, the SHSGP funds, Santa Clara's Spend Plan, or any activities performed in connection with this Agreement.

## **Article VII. Miscellaneous**

### **1. Notice**

All notices required by this Agreement shall be deemed given when provided in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To Santa Clara:

Carolyn McDowell  
Santa Clara Police Department  
601 El Camino Real  
Santa Clara, CA 95050

To County:

Michelle Sandoval  
Grant and Administrative Services Manager  
County of Santa Clara Office of Emergency Management  
55 W. Younger Ave., Suite 450  
San Jose, CA 95110

**2. Compliance with all Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention**

- (a) Compliance with All Laws. Santa Clara shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (b) Compliance with Non-Discrimination and Equal Opportunity Laws: Santa Clara shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Santa Clara shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Santa Clara discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- (c) Compliance with Wage and Hour Laws: Santa Clara shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- (d) Definitions: For purposes of this Subsection (h), the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment

and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the Santa Clara's Office of Equality Assurance.

- (e) **Prior Judgments, Decisions or Orders against Contractor:** By signing this Agreement, Santa Clara affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Santa Clara violated an applicable wage and hour law or pay equity law. Santa Clara further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.
- (f) **Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract:** If at any time during the term of this Agreement, Santa Clara receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Santa Clara shall promptly satisfy and comply with any such Final Judgment. Santa Clara shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Santa Clara shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- (g) **Access to Records Concerning Compliance with Pay Equity Laws:** In addition to and notwithstanding any other provision of this Agreement concerning access to Santa Clara's records, Santa Clara shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Santa Clara shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Santa Clara's normal business hours upon no less than 10 business days' advance notice.
- (h) **Pay Equity Notification:** Santa Clara shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Santa Clara for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Santa Clara's Employees and Job Applicants.

- (i) **Material Breach:** Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:
  - 1. Suspend or terminate any or all parts of this Agreement.
  - 2. Withhold payment to Santa Clara until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
  - 3. Offer Santa Clara an opportunity to cure the breach.
- (j) **Subcontractors:** Santa Clara shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

### **3. County No-Smoking Policy**

Santa Clara and its employees, agents and subcontractors shall comply with County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

### **4. Food and Beverage Standards**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Santa Clara with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low-fat and low-calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans-fat per serving. Whenever possible, Santa Clara shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high-calorie desserts; (3) attempt to accommodate special dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and Santa Clara should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are: (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, for which sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored nonfat or 1% low-fat dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8-ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8-ounce

serving. Sugar-sweetened beverages shall not be provided.

## **5. Governing Law**

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California.

## **6. Assignment**

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

## **7. Entire Agreement**

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

## **8. Amendments**

This Agreement may only be amended by an instrument signed by the parties.

## **9. Counterparts; Contract Execution**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed Agreement, or an electronically signed Agreement, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

## **10. Severability**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

## **11. Waiver**

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.



## 12. Conflict of Interest

In accepting this Agreement, Santa Clara covenants that is presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services under this Agreement. Santa Clara is responsible for assuring compliance of its subcontractors, if any, with the requirements of this provision.

## 13. Certified Resolution of Signature Authority

Upon request of County, Santa Clara shall deliver to County a copy of the resolution(s) authorizing execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of Santa Clara.

### Signed:

COUNTY OF SANTA CLARA

CITY OF SANTA CLARA

By \_\_\_\_\_  
Garry Herceg  
Deputy County Executive

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Deanna Santana  
City Manager

\_\_\_\_\_  
Date

Approved as to Form and Legality:

Approved as to Form and Legality:

\_\_\_\_\_  
Kavita Narayan  
Lead Deputy County Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian Doyle  
City Attorney

\_\_\_\_\_  
Date

### Enclosures

- |           |  |
|-----------|--|
| Exhibit A | 2019 SHSGP Project Funding                           |
| Exhibit B | Grant Assurances                                     |
| Exhibit C | Quarterly Reporting Requirements and Report Template |
| Exhibit D | Financial Disclosure Form                            |

FY19 Homeland Security Grant Program Project Requests

Line Item #	Discipline	Agency/Point of Contact	Funding Category	Project Description	Allocated Amount
1	Staffing/ M&A	Office of Emergency Management Michelle Sandoval	M/A/ Planning	0.5 FTE 1/2 time salary cost for Management & Administration of Homeland Security Grant Program	\$100,130.00
2	Staffing/ M&A	Office of Emergency Management Michelle Sandoval	M/A/ Planning	1.0 FTE SHSGP Training and Exercise Coordinator	\$160,000.00
3	Staffing/ Fire	Santa Clara County Fire Douglas Young, Battalion Chief	Planning	1.0 FTE All Hazards Coordinator Position - Fire	\$227,494.00
4	Staffing/ EMS	EMS Michael Cabano, All Hazards Coordinator	Planning	1.0 FTE All Hazards Coordinator Position - EMS	\$190,000.00
5	Fire	Santa Clara Fire Trevor Cantanho, Driver/Engineer HAZMAT Specialist	Equipment	MX 908 S2 High Pressure Mass Spectroscopy	\$71,898.00
6	Fire	Santa Clara Fire Gail W. Carter, Driver/Engineer HAZMAT Specialist	Equipment	Backpack portable radiation detection	\$87,393.00
7	EMS	EMS Michael Cabano, All Hazards Coordinator	Equipment	Hospital Evacuation Kits and Tags	\$13,000.00
8	EMS	EMS Michael Cabano, All Hazards Coordinator	Equipment	All Risk Triage Tags	\$7,000.00
9	EMS	EMS Michael Cabano, All Hazards Coordinator	Equipment	MCI Rapid Response Kits	\$8,000.00

FY19 Homeland Security Grant Program Project Requests

Line Item #	Discipline	Agency/Point of Contact	Funding Category	Project Description	Allocated Amount
10	EMS	EMS Michael Cabano, All Hazards Coordinator	Equipment	Mobile Satellite Phones/Case for Medical-Health Joint Ops Center	\$14,500.00
11	Law	Milpitas Police Department Raj Maharaj Lieutenant	Equipment	Portable Security Equipment for Public Events	\$102,000.00
12	Law	Morgan Hill Police Department Ray Ramos, Administrative Sergeant	Equipment	Portable Security Equipment for Public Events	\$102,000.00
13	Law	Santa Clara Police Department Carolyn McDowell, Management Analyst	Equipment	Portable Security Equipment for Public Events	\$102,000.00
14	Law	Sheriff's Office Dustin Davis, Mutual Aid Coordinator, Sergeant	Equipment	Bomb Squad X-Ray Generators	\$80,600.00
15	Law	Sheriff's Office Dustin Davis, Mutual Aid Coordinator, Sergeant	Equipment	Pilot Helmets (Helicopter)	\$11,564.00
17	Law	Los Gatos Monte Sereno Police Department Michael D'Antonio, Police Captain	Equipment	Portable Security Equipment for Public Events	\$102,000.00
18	Law	San Jose Police Department Steve Guggiana, Sergeant Air Support Unit	Equipment	SJPD Air Support Tactical Unit Deployment and Recovery Hoist	\$288,042.00
19	All	Operational Area	Training/ Exercise	Training	\$318,454.00
20	Law	Campbell Police Department Joe Cefalu, Police Captain	Equipment	Portable Security Equipment for Public Events	\$102,000.00
					\$2,088,075.00



***Cal* OES**

**GOVERNOR'S OFFICE  
OF EMERGENCY SERVICES**

**Fiscal Year 2019  
Homeland Security Grant Program**

***California Supplement to the  
Federal Notice of Funding Opportunity***

*September 2019*

<b>SECTION 1—OVERVIEW .....</b>	<b>2</b>
Federal Program Announcement	
Information Bulletins	
Purpose of the California Supplement	
Key Changes to the FY 2019 HSGP	
Grant Management Memoranda	
Eligible Subrecipients	
Tribal Allocations	
Subrecipient Allocations	
NIMS Implementation	
Supplanting	
Public/Private Organizations	
Debarred/Suspended Parties	
<b>SECTION 2—FEDERAL CHANGES AND INITIATIVES .....</b>	<b>5</b>
FY 2019 Program Priorities	
National Campaigns and Programs	
National Cybersecurity Review	
Law Enforcement Terrorism Prevention Activities	
Management and Administration	
Indirect Costs	
Organization Costs – Overtime	
Personnel Cap	
Equipment Typing/Identification and Use	
Equipment Maintenance/Sustainment	
Small Unmanned Aircraft Systems	
Emergency Operations Plans	
Emergency Communications Projects	
Whole Community Preparedness	
Conflict of Interest	
<b>SECTION 3—STATE CHANGES AND INITIATIVES .....</b>	<b>11</b>
FY 2019 Investments	
California Homeland Security Strategy Goals	
State Initiative Funding	
“On Behalf Of”	
Regional Approach	
Public Alert and Warning	
<b>SECTION 4—REQUIRED STATE APPLICATION COMPONENTS.....</b>	<b>13</b>
Financial Management Forms Workbook	
Subrecipient Grants Management Assessment	
Application Attachments	
Standard Assurances	
Operational Areas Only	
Urban Areas Only	
Fusion Centers Only	
State Agencies and Tribes Only	

<b>SECTION 5—THE STATE APPLICATION PROCESS.....</b>	<b>18</b>
Application Submission	
Late or Incomplete Application	
HSGP Contact Information	
Subrecipient Award Approval	
<b>SECTION 6—POST AWARD REQUIREMENTS .....</b>	<b>20</b>
Payment Request Process	
Advances and Interest Earned on Advances	
Semi-Annual Drawdown Requirements	
Modifications	
Training	
Exercises, Improvement Plans, and After Action Reporting	
Procurement Standards and Written Procedures	
Procurement Thresholds	
Noncompetitive Procurement	
Performance Bond	
Environmental Planning and Historic Preservation	
Construction and Renovation	
Inventory Control and Property Management	
Equipment Disposition	
Performance Reporting	
Extension Requests	
Progress Reports on Grant Extensions	
Monitoring	
Failure to Submit Required Reports	
Suspension/Termination	
Closeout	
Records Retention	
<b>ATTACHMENTS</b>	
A – FY 2019 HSGP Allocations	
B – FY 2019 HSGP Timeline	
C – FY 2019 HSGP Application Checklist	

**Federal  
Program  
Announcement**

In April 2019, the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) issued the Fiscal Year (FY) 2019 Homeland Security Grant Program (HSGP), [Notice of Funding Opportunity](#) (NOFO) and the [FEMA Preparedness Grants Manual](#). Subrecipients must follow the programmatic requirements set forth in the NOFO, FEMA Preparedness Grants Manual, and the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located in [Title 2, Code of Federal Regulations \(C.F.R.\), Part 200](#).

**Information  
Bulletins**

DHS issues [Information Bulletins](#) (IBs) to provide updates, clarification, and new requirements throughout the life of the grant.

**Purpose of the  
California  
Supplement**

The [FY 2019 HSGP California Supplement to the NOFO](#) (State Supplement) is intended to complement, rather than replace, the NOFO and the Preparedness Grants Manual published by DHS/FEMA. It is recommended that Applicants thoroughly read the NOFO and the Preparedness Grants Manual before referring to the State Supplement. The State Supplement will emphasize differences between the FY 2018 and FY 2019 HSGP, and highlight additional California policies and requirements applicable to the FY 2019 HSGP.

**Key Changes  
to the FY 2019  
HSGP**

- DHS/FEMA requires all Subrecipients to complete the [Nationwide Cybersecurity Review](#) (NCSR) by December 31, 2019. The Chief Information Officer (CIO), Chief Information Security Officer (CISO), or equivalent should complete the NCSR. If there is no CIO or CISO, the most senior cybersecurity professional should complete the assessment.
- DHS/FEMA now requires by December 31, 2019 that all states, territories and high-risk urban areas complete a Threat and Hazard Identification and Risk Assessment (THIRA) and Stakeholder Preparedness Review (SPR) for all 32 core capabilities. Also beginning in 2019, jurisdictions which are required to submit a THIRA are only required to do so every three years. Jurisdictions which are required to submit an SPR will continue to do so annually.
- Subrecipients will be required to complete and include the [Certification Regarding Lobbying Form](#) as part of the application package.

<b>Key Changes to the FY 2019 HSGP (cont.)</b>	<ul style="list-style-type: none"><li>EOC requirements were removed. Subrecipients are no longer required to submit an EOC form for projects related to an EOC. The EOC hold in the FMFW is also removed.</li></ul>
<b>Grant Management Memoranda</b>	Cal OES issues <a href="#">Grant Management Memoranda</a> (GMMs) which provide additional information and requirements regarding HSGP funds.
<b>Eligible Subrecipients</b>	Eligible Applicants, referred to as Subrecipients, include Counties/Operational Areas (OAs), Urban Areas (UAs), State Agencies (SAs), Departments, Commissions, Boards, who have or can obtain appropriate state Department of Finance budget authority for awarded funds, and federally-recognized tribes located in California.
<b>Tribal Allocations</b>	<p>The NOFO strongly encourages Cal OES to provide access to HSGP funds directly to tribes in California. To implement this requirement, a special Request for Proposal will be issued to California's federally recognized tribes and Indian organizations, as described in the Cal OES <a href="#">Tribal Consultation Policy</a>.</p> <p>All Subrecipients are encouraged to coordinate with tribal governments to ensure that tribal needs are considered in their grant applications.</p>
<b>Subrecipient Allocations</b>	FY 2019 HSGP Subrecipient allocations are included in Attachment A.
<b>NIMS Implementation</b>	Prior to allocation of any federal preparedness awards in FY 2019, Subrecipients must ensure and maintain adoption and implementation of the <a href="#">National Incident Management System</a> (NIMS).
<b>Supplanting</b>	Grant funds must be used to supplement existing funds, not replace (supplant) funds that have been appropriated for the same purpose. Subrecipients may be required to provide supporting documentation that certifies a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds. Supplanting will result in the disallowance of the activity(s) associated with this improper use of the federal grant funds.
<b>Public/Private Organizations</b>	Subrecipients may contract with any other public or private organizations to perform eligible activities on approved HSGP projects.



**Debarred/  
Suspended  
Parties**

Subrecipients must not make or permit any award (subaward or contract) at any tier, to any party, that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in federal assistance programs.

Subrecipients must obtain documentation of eligibility prior to making any subaward or contract funded by HSGP funds, and must be prepared to present supporting documentation to monitors/auditors.

Before entering into a Grant Subaward, the Subrecipient must notify Cal OES if it knows if any of the principals under the subaward fall under one or more of the four criteria listed at 2 C.F.R. § 180.335. The rule also applies to Subrecipients who pass-through funding to other local entities.

If at any time after accepting a subaward, Subrecipients learn that any of its principals fall under one or more of the criteria listed at 2 C.F.R. § 180.335, immediate written notice must be provided to Cal OES and all grant activities halted until further instructions are received from Cal OES. The rule also applies to subawards passed through by Subrecipients to local entities.

## **FY 2019 Program Priorities**

DHS/FEMA annually publishes the National Preparedness Report (NPR) to report national progress in building, sustaining, and delivering the core capabilities outlined in the goal of a secure and resilient nation. This analysis provides a national perspective on critical preparedness trends for whole community partners to use to inform program priorities, allocate resources, and communicate with stakeholders about issues of concern.

HSGP Subrecipients are required to prioritize grant funding to demonstrate how investments support closing capability gaps or sustaining capabilities identified in the THIRA/SPR process.

DHS/FEMA continually assesses changes to the threat landscape to further the National Preparedness Goal (NPG) of a secure and resilient nation. HSGP Subrecipients are encouraged to consider the following national priority areas:

- Emerging Threats, including Cybersecurity;
- Lifelines (more information in this [fact sheet](#) and [tool kit](#))
  - Safety and Security;
  - Food, Water, Sheltering;
  - Health and Medical;
  - Energy;
  - Communications;
  - Transportation; and
  - Hazardous Material

DHS does not prescribe a minimum funding amount for these priorities. However, Subrecipients are required to support local, regional, state, and national efforts in achieving the desired outcomes of these priorities.

## **National Campaigns and Programs**

**Active Shooter Preparedness** – DHS has developed a comprehensive [Active Shooter Preparedness website](#), which strives to enhance national preparedness through a whole-community approach by providing the necessary products, tools, and resources to help all stakeholders prepare for and respond to an active shooter incident. Subrecipients are encouraged to review the referenced active shooter resources and evaluate their preparedness needs.

### **National Campaigns and Programs (cont.)**

**Soft Targets and Crowded Places** – States, territories, UAs, and public and private sector partners are encouraged to identify security gaps and build capabilities that address security needs of soft targets and crowded places, understanding the unique challenges related to protecting locations which are open to the public.

**Community Lifelines** – FEMA has introduced a new lifeline construct to enable the operational continuity of government and critical business essential to human health, safety, or economic security during and after a disaster. These lifelines enable a true unity of effort between government, non-governmental organizations, and the private sector, including infrastructure owners and operators. Additional information may be found at the [Community Lifelines Implementation Toolkit website](#).

### **National Cybersecurity Review**

Beginning with FY 2019 HSGP, the [National Cybersecurity Review \(NCSR\)](#) is a required assessment for all Subrecipients of State Homeland Security Program (SHSP) and Urban Areas Security Initiative (UASI) funding to be completed between October and December 2019.

The NCSR is a no-cost, anonymous, and annual self-assessment designed to measure gaps and capabilities of state, local, tribal, territorial, nonprofit, and private sector agencies' cybersecurity programs.

The CIO, CISO, or equivalent should complete the NCSR. If there is no CIO or CISO, the most senior cybersecurity professional should complete the assessment. Additional information may be found in IB 439 and 429a.

### **Law Enforcement Terrorism Prevention Activities**

As in past grant years, a minimum of 25 percent of FY 2019 HSGP funds must be dedicated to Law Enforcement Terrorism Prevention Activities (LETPA). In order to leverage funds for LETPA, activities outlined in the National Prevention Framework and National Protection Framework are eligible for use of LETPA-focused funds. All other terrorism prevention activities proposed for funding under LETPA must be formally pre-approved by FEMA. Refer to IB 412 for additional information.

**Management  
and  
Administration**

The Management and Administration (M&A) allowance for Subrecipients is set at a maximum of 5 percent for the FY 2019 HSGP.

**Indirect Costs**

Indirect costs are allowable under the FY 2019 HSGP Grant Award. Subrecipients who claim indirect costs may do so, provided they use one of the following two methods:

1. Subrecipients with an indirect cost rate approved by their cognizant federal agency may claim indirect costs based on the established rate. Indirect costs claimed must be calculated using the base approved in the indirect cost negotiation agreement. A copy of the approved negotiation agreement is required at the time of application.
2. Subrecipients who have never received a negotiated indirect cost rate and receive *less than* \$35 million in *direct* federal funding per year may claim the 10 percent de minimis indirect cost rate based on Modified Total Direct Costs (MTDC) as described in 2 C.F.R. § 200.68 and Subpart E.

Indirect costs are *in addition to* the M&A allowance, and must be included in the Grant Award application as a “Project” and reflected in the FMFW on the Indirect cost category ledger if being claimed under the award.

Indirect costs must be based on the claimed direct project costs, excluding equipment expenditures and other distorting items. Up to \$25,000 of each subaward may be included as a direct project cost when calculating indirect costs based on MTDC.

Indirect costs must be claimed no more than once annually, and only at the end of the Subrecipient's fiscal year. An exception to this rule applies if there is a mid-year change to the approved indirect cost rate; in this case, costs incurred to date must be claimed. At that time, a Grant Subaward Modification reflecting the rate change must also be submitted to Cal OES, along with a copy of the new indirect cost rate agreement.

**Organization  
Costs -  
Overtime**

Operational overtime costs are allowable *for increased security measures at critical infrastructure sites* if associated with detecting, deterring, disrupting, and preventing acts of terrorism and other catastrophic events.

Per page A-17 of the Grants Preparedness Manual, all operational overtime requests must clearly explain how the request meets the criteria of one or more of the categories listed in *Table 2: Authorized Operational Overtime Categories*.

Requests must address the threat environment as it relates to the event or activity requiring operational overtime support and explains how the overtime activity is responsive to the threat. Post-event operational overtime requests will only be considered on a case-by-case basis, where it is demonstrated exigent circumstances prevented submission of a request in advance of the event or activity. Requests for overtime costs must be submitted via the [Request for Operational Overtime Form](#) to Cal OES at the time of application, if the activity will occur within one year of the final application submission. All subsequent requests must be submitted at least 60 days in advance of the activity. **All operational overtime costs must be formally pre-approved in writing by DHS/FEMA.**

**Personnel Cap**

Pursuant to 6 U.S.C. § 609(b), SHSP and UASI funds may be used for personnel costs, totaling up to 50 percent of each fund source. A Subrecipient may request this requirement be waived by DHS/FEMA, via Cal OES. Requests for personnel cap waivers must be submitted separately for each fund source in writing to the Program Representative on official letterhead, with the following information:

- Documentation explaining why the cap should be waived;
- Conditions under which the request is being submitted; and
- A budget and method of calculation of personnel costs both in percentages of the Grant Award **and** in total dollar amount (waivers must be calculated separately for SHSP and UASI, outlining salary, fringe benefits, and any M&A costs).

**Personnel Cap  
(cont.)**

Subrecipient requests to exceed the personnel cap must be received by Cal OES at the time of application. Subaward modifications impacting the personnel cap will be reviewed on a case-by-case basis, and may require submittal of the above-mentioned information.

**Equipment  
Typing/  
Identification  
and Use**

Allowable HSGP equipment is listed on the [FEMA Authorized Equipment List](#) (AEL) website.

Subrecipients that allocate FY 2019 HSGP funds for equipment are required to type and identify the capability associated with that equipment. Also, per FEMA policy, the purchase of weapons and weapon accessories are not allowed with HSGP funds. Special rules apply to pharmaceutical purchases, medical countermeasures, and critical emergency supplies; refer to page A-22 of the Preparedness Grants Manual for additional information.

Expenditures for general purpose equipment are allowable if they align to and support one or more core capabilities identified in the NPG, and in addition, are deployable/sharable through the Emergency Management Assistance Compact (EMAC) and allowable under 6 U.S.C. § 609. Refer to the NOFO for examples of allowable general purpose equipment.

**Equipment  
Maintenance/  
Sustainment**

Use of HSGP funds for maintenance contracts, warranties, repair or replacement costs, upgrades, and user fees are allowable as described in FEMA IBs 336 and 379, as well as Grant Programs Directorate (GPD) Policy FP-205-402-125-1.

**Small  
Unmanned  
Aircraft  
Systems**

All requests to purchase Small Unmanned Aircraft Systems (SUAS) with FEMA grant funding must comply with IB 426 and include copies of the policies and procedures in place to safeguard individuals' privacy, civil rights, and civil liberties of the jurisdiction that will purchase, take title to, or otherwise use the SUAS equipment. Please reference [Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems](#) for additional information.

**Emergency Operations Plans** Subrecipients must update their Emergency Operations Plan at least once every two years to remain compliant with the [Comprehensive Preparedness Guide 101 version 2.0](#).

**Emergency Communications Projects** All Subrecipient emergency communications projects must comply with the [SAFECOM Guidance on Emergency Communications Grants](#) and describe in their FMFW how such activities align with the goals of the [Statewide Communications Interoperability Plan](#).

Subrecipients are encouraged to update their Tactical Interoperable Communications Plan (TICP) and make it available upon request. Updating a TICP is an eligible activity under the FY 2019 HSGP.

**Whole Community Preparedness** Subrecipients conducting major planning projects (including, but not limited to Evacuation, Mass Care and Shelter, Disaster Recovery, etc.) should integrate program design and delivery practices that ensure representation and services for under-represented diverse populations that may be more impacted by disasters including children, seniors, individuals with disabilities or access and functional needs, individuals with diverse culture and language use, individuals with lower economic capacity, and other underserved populations.

**Conflict of Interest** To eliminate and reduce the impact of conflicts of interest in the subaward process, Subrecipients must follow their own policies and procedures regarding the elimination or reduction of conflicts of interest when making subawards. Subrecipients are also required to follow any applicable federal, state, local, and tribal statutes or regulations governing conflicts of interest in the making of subawards.

Subrecipients must disclose to their Program Representative, in writing, any real or potential conflict of interest as defined by the federal, state, local, or tribal statutes or regulations, which may arise during the administration of the HSGP subaward within five days of learning of the conflict of interest.

**FY 2019  
Investments**

The State has prioritized the following investment strategies for the FY 2019 subawards:

1. Strengthen Capabilities of the State Threat Assessment System *(Please note this Investment Justification is only to be used to report on Regional Threat Assessment Center activities)*;
2. Protect Critical Infrastructure and Key Resources;
3. Enhance Cybersecurity;
4. Strengthen Emergency Communications Capabilities Through Planning, Governance, Technology, and Equipment;
5. Enhance Medical and Public Health Preparedness;
6. Preventing Violent Extremism Through Multi-Jurisdictional and Inter-Jurisdictional Collaboration and Coordination;
7. Enhance Community Resilience, Including Partnerships With Volunteers and Community Based Organizations and Programs;
8. Strengthen Information Sharing and Collaboration;
9. Enhance Multi-Jurisdictional/Inter-Jurisdictional All Hazards Incident Planning, Response and Recovery Capabilities; and
10. Homeland Security Exercise, Evaluation and Training Programs.

**California  
Homeland  
Security  
Strategy  
Goals**

The State has prioritized the following California Homeland Security Strategy Goals for the FY 2019 subawards:

1. Enhance Information Collection, Analysis, and Sharing, in Support of Public Safety Operations Across California;
2. Protect Critical Infrastructure and Key Resources From All Threats and Hazards;
3. Strengthen Security and Preparedness Across Cyberspace;
4. Strengthen Communications Capabilities Through Planning, Governance, Technology, and Equipment;
5. Enhance Community Preparedness;
6. Enhance Multi-Jurisdictional/Inter-Jurisdictional All-Hazards Incident Catastrophic Planning, Response, and Recovery Capabilities;
7. Improve Medical and Health Capabilities;
8. Enhance Incident Recovery Capabilities;
9. Strengthen Food and Agriculture Preparedness;



<b>California Homeland Security Strategy Goals (cont.)</b>	<p>10. Prevent Violent Extremism Through Multi-Jurisdictional/Inter-Jurisdictional Collaboration and Coordination; and</p> <p>11. Enhance Homeland Security Exercise, Evaluation, and Training Programs.</p>
<b>State Initiative Funding</b>	For FY 2019, Cal OES shall retain 20 percent of the SHSP and approximately 17 percent of the UASI funding for state initiatives.
<b>“On Behalf Of”</b>	Cal OES may, in conjunction with local approval authorities, designate funds “on behalf of” local entities who choose to decline or fail to utilize their subaward in a timely manner.
<b>Regional Approach</b>	Subrecipients must take a regional approach and consider the needs of local units of government and applicable volunteer organizations in the projects and activities included in their FY 2019 HSGP application.
<b>Public Alert and Warning</b>	Cal OES encourages Subrecipients to consider use of this funding to assist their jurisdiction's alignment with the State of California Alert and Warning Guidelines developed pursuant to Senate Bill 833 of the 2018 Legislative Session.

**Financial  
Management  
Forms  
Workbook**

The FY 2019 Cal OES FMFW includes:

**Grant Subaward Face Sheet** – Use the Grant Subaward Face Sheet to apply for grant programs. The Grant Subaward Face Sheet must be signed and printed in portrait format.

**Authorized Body of 5** – Provide the contact information of Authorized Agents (AA), delegated via the Governing Body Resolution or Signature Authorization Form, including staff related to grant activities. More than one person is recommended for designation as the AA; in the absence of an AA, an alternate AA can sign requests.

**Project Ledger** – The project ledger is used in the application process to submit funding information and is used for submitting cash requests, grant subaward modifications, and assists with completion of the Biannual Strategy Implementation Report (BSIR).

**Planning Ledger** – Provides detailed information on grant-funded planning activities with a final product identified.

**Organization Ledger** – Provides detailed information on grant-funded organizational activities.

**Equipment Ledger** – Detailed information must be provided under the equipment description for all grant-funded equipment. AEL numbers must be included for all items of equipment. Always refer to the AEL for a list of allowable equipment and conditions, if any.

**Training Ledger** – Provides detailed information on grant-funded training activities. All training activities must receive Cal OES approval prior to starting the event, including a Training Feedback number. The [Training Request Form](#) must be submitted and approved to obtain a Training Feedback number.

**Exercise Ledger** – Provides detailed information on grant-funded exercises.

**M&A Ledger** – Provides information on grant-funded M&A activities.

**Indirect Costs Ledger** – Provides information on indirect costs.

**Financial Management Forms Workbook (cont.)**

**Consultant-Contractor Ledger** – Provides detailed information on grant-funded consultants and contractors.

**Authorized Agent Page** – The AA Page must be submitted with the application, all cash requests, and Grant Subaward Modifications. The AA Page must include the appropriate signature and date.

**Subrecipient Grants Management Assessment**

Per 2 C.F.R. § 200.331, Cal OES is required to evaluate the risk of noncompliance with federal statutes, regulations, and grant terms and conditions posed by each Subrecipient of pass-through funding. The [Subrecipient Grants Management Assessment Form](#) contains questions related to your organization's experience in the management of federal grant awards. It is used to determine and provide an appropriate level of technical assistance, training, and grant oversight to Subrecipients during the subaward. The questionnaire must be completed and returned with your grant application.

**Application Attachments**

**Federal Funding Accountability and Transparency Act (FFATA) Financial Disclosure** – Use the [FFATA Financial Disclosure Form](#) to provide information required by the Federal Funding Accountability and Transparency Act of 2006.

**Certification Regarding Lobbying** – Use the [Certification Regarding Lobbying Form](#) to certify lobbying activities, as stipulated by the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352.

**Intelligence Analysts Certificates** – Pursuant to the Preparedness Grants Manual, Cal OES must have certificates for completion of training for fusion center analytical personnel. Please provide copies of certificates for each intelligence analyst, if applicable.

**UASI Footprint (UASIs Only)** – The Urban Area Working Group establishes the 'footprint' of the Urban Area. A map or list defining the footprint must be included with the application

**Indirect Cost Rate Agreement** – If claiming indirect costs at a federally-approved rate, please provide a copy of your approved indirect cost rate agreement.

## Standard Assurances

The Standard Assurances list the requirements to which the Subrecipients will be held accountable. All Applicants will be required to submit a signed, **original** of the [FY 2019 Standard Assurances](#) as part of their FY 2019 HSGP application. The required Standard Assurances can be found only in PDF format on the Cal OES website.

**NOTE:** Self-created Standard Assurances will not be accepted.

## Operational Areas Only

**Approval Authority Body** – OAs must appoint an Anti-Terrorism Approval Body (Approval Authority) to have final approval of the OA's application for HSGP funds. Each member of the Approval Authority must provide written agreement with the OA's application for HSGP funds. The Approval Authority shall consist of the following representatives, and additional voting members may be added by a simple majority vote of the following standing members:

- County Public Health Officer or designee responsible for Emergency Medical Services
- County Fire Chief or Chief of Fire Authority
- Municipal Fire Chief (selected by the OA Fire Chiefs)
- County Sheriff
- Chief of Police (selected by the OA Police Chiefs)

**Governing Body Resolution** – The Governing Body Resolution (GBR) appoints AAs (identified by the individual's name or by a position title) to act on behalf of the governing body and the Applicant by executing any actions necessary for each application and subaward. All Applicants are required to submit a copy of their FY 2019 GBR with their application.

**Authorized Agent Information** – For each person or position appointed by the governing body, identify the individual in the Authorized Body of 5 ledger of the FMFW.

All changes in AA and contact information must be provided to Cal OES in writing. If the GBR identifies the AA by name, a new Resolution is needed when changes are made. If the GBR identifies the AA by position and/or title, changes may be made by submitting a request on the entity's letterhead, signed by an existing AA. Cal OES will not accept signatures of an AA's designee.

### Urban Areas Only

**Urban Area Working Groups (UAWGs)** – Membership in the UAWG must provide either direct or indirect representation for all relevant jurisdictions and response disciplines (including law enforcement, fire service, EMS, hospitals, public health, and emergency management) that comprise the defined UA. It also must be inclusive of local Citizen Corps Council and tribal representatives. The UAWG should also ensure the integration of local emergency management, public health, and health care systems into a coordinated sustained local capability to respond effectively to a mass casualty incident. Additional group composition criteria is found in the Preparedness Grants Manual.

**THIRA** – By December 31, 2019, FY 2019 Subrecipients are required to submit a THIRA for all 32 core capabilities. Beginning in 2019, UAs are required to submit a THIRA every three years. An annual capability assessment will still be required.

**SPR** – The SPR is an annual grant requirement for all states, territories, and UAs. It is an annual capability assessment, which helps jurisdictions identify capability gaps and prioritize investment requirements to reach the targets set in their THIRA.

**Cybersecurity** – Each UA must have an investment and a project in support of Cybersecurity efforts.

### Fusion Centers Only

All projects included in the fusion center investment (IJ #1) must align to, and reference, specific performance areas of the assessment that the funding is intended to support.

Fusion Centers are also required to follow all Reporting and Administrative Metrics for California Fusion Centers, as set forth in the Governor's Homeland Security Advisor/Cal OES Director's letter dated March 16, 2016. These operational and administrative metrics set forth an integrated and coordinated approach for regular and proactive information and intelligence sharing between all fusion centers in the California State Threat Assessment System.

**State Agencies  
and Tribes Only**

State Agencies, federally recognized tribes, and Indian organizations may submit the Signature Authorization Form in lieu of a Governing Body Resolution, signed by the most senior ranking official, such as the Secretary, Director, President, Chancellor, or Chairperson.

**Application Submission**

Subrecipients must submit an electronic copy of their completed FMFW to their Program Representative for review. After the application is approved, a completed hardcopy of the FMFW, along with all other application components must be mailed, with original signatures, by the application due date. During the application process, if it is determined all allocated funds cannot be expended by the end of the period of performance, inform your Program Representative as soon as possible. The completed application should be received by Cal OES by no later than December 6, 2019. The FY 2019 HSGP Timeline is referenced as Attachment B.

**Late or Incomplete Application**

Late or incomplete applications may be denied. If an application is incomplete, the Program Representative may request additional information. Requests for late submission of applications must be made in writing to the Program Representative prior to the application due date. Cal OES has sole discretion to accept or reject a late or incomplete grant application.

**HSGP Contact Information**

All Subrecipient application materials, questions, comments, and correspondence should be directed to:

California Governor's Office of Emergency Services  
ATTN: Grants Management (Building E)  
Homeland Security Grants Unit  
3650 Schriever Avenue  
Mather, CA 95655

Darlene Arambula	(916) 845-8427
Christopher Camacho	(916) 845-8789
Sally Hencken	(916) 845-8367
Antoinette Johnson	(916) 845-8260
Jim Lane	(916) 845-8428
Olivia Skierka	(916) 845-8744
Abigayle Tirapelle	(916) 845-8400

The [Program Representative Regional Assignments Map](#) is available at the Cal OES website under "Regional Assignments".

**Subrecipient  
Award  
Approval**

Subrecipients will receive a formal notification of award no later than 45 days after Cal OES receives the federal grant award. The award letter must be signed, dated, and returned to Cal OES within 20 calendar days. Once the completed application, along with the signed award letter, is received and approved, reimbursement of eligible subaward expenditures may be requested using the Cal OES FMFW.



**Payment  
Request  
Process**

To request an advance or cash reimbursement of FY 2019 HSGP funds, Subrecipients must first complete a payment request using the Cal OES FMFW, returning it to the appropriate Program Representative. Subrecipients who fail to follow the workbook instructions may experience delays in processing the payment request.

Payments can only be made if the Subrecipient has submitted a completed and approved application.

**Exercise costs will not be reimbursed until an After Action Report (AAR)/Improvement Plan (IP) has been submitted to your Program Representative.**

**Advances  
and Interest  
Earned on  
Advances**

Advance payment means a payment is requested before Subrecipients have disbursed the funds for program purposes. Subrecipients may be paid an advance, provided they maintain a willingness and ability to maintain procedures to minimize the time elapsing between the receipt of funds and their disbursement. The timing and amount of advance payments must be as close as administratively feasible to the actual disbursements by the Subrecipient for project costs.

Federal rules require advances to be deposited in interest-bearing accounts. Interest earned amounts up to \$500 per year may be retained by Subrecipients for administrative expense; any additional interest earned on federal advance payments must be returned annually to Cal OES.

**Semi-Annual  
Drawdown  
Requirements**

All Subrecipients should be reporting expenditures and requesting funds at least semi-annually throughout the period of performance. Semi-annual drawdowns should be occurring by March and October of each calendar year following final approval of the subaward application, with the exception of the final cash request, which must be submitted within 20 calendar days after the end of the period of performance. Subrecipients not in compliance with this requirement will be required to submit all supporting documentation for subsequent cash requests.

**Modifications**

Post award budget, scope, and time modifications must be requested using the Cal OES FMFW V 1.19, signed by the Subrecipient's AA, and submitted to the Program Representative.

**Modifications  
(cont.)**

The Subrecipient may implement grant modification activities, and incur associated expenses, only after receiving written final approval of the modification from Cal OES.

Subrecipients must provide a written justification with all modification requests. The justification may be included in the body of the e-mail transmitting the request, or in a document attached to the transmittal e-mail. Please reference GMM 2018-17 for additional information regarding modification requests.

**Training**

All grant-funded training activities must receive Cal OES approval prior to starting the training event. Cal OES shall afford Subrecipients the opportunity to develop a “placeholder” for future training conferences when an agenda has not been established at the time Subrecipient applications are due. Please work with your Program Representative and the Training Branch to identify a possible “placeholder” for these types of training activities. Subrecipients must complete a [Training Request Form](#) and submit it electronically to Cal OES.

When seeking approval of non-DHS/FEMA developed courses, course materials must be submitted with the approval requests. Conditional approvals are not offered.

For more information on this or other training-related inquiries, contact the [Cal OES Training Branch](#) at (916) 845-8752.

**Exercises,  
Improvement  
Plans, and  
After Action  
Reporting**

Subrecipients should engage stakeholders to identify long-term training and exercise priorities. These priorities should address capability targets and gaps identified through the THIRA and SPR process, real-world events, previous exercises, and national areas for improvement identified in the NPR.

Subrecipients must report on all exercises conducted with HSGP grant funds. An AAR/IP or Summary Report (for Seminars and Workshops) must be completed and submitted to Cal OES within 90 days after exercise/seminars/workshops are conducted. It is acceptable to submit an *Exercise Summary Report for Seminars and Workshops* in lieu of a full AAR/IP.

**Exercises,  
Improvement  
Plans, and  
After Action  
Reporting  
(cont.)**

AAR/IPs and Summary Reports should be e-mailed to:

- [hseep@fema.dhs.gov](mailto:hseep@fema.dhs.gov)
- [exercise@caloes.ca.gov](mailto:exercise@caloes.ca.gov)
- [chris.camacho@caloes.ca.gov](mailto:chris.camacho@caloes.ca.gov)

For exercise-related issues and/or questions, please email the Cal OES Exercise Team at [exercise@caloes.ca.gov](mailto:exercise@caloes.ca.gov).

**Procurement  
Standards and  
Written  
Procedures**

Subrecipients must conduct procurement utilizing their own documented procurement standards and procedures, and have a written conflict of interest policy which reflect applicable federal, state, local, and tribal laws, provided that the procurement conforms to the requirements of 2 C.F.R. Part 200.

**Procurement  
Thresholds**

Effective June 20, 2018, the micro-purchase threshold was increased from \$3,500 to \$10,000 and the simplified acquisition threshold was increased from \$150,000 to \$250,000. These increases apply to all Subrecipient procurements executed on or after June 20, 2018. Refer to [IB 434](#) for additional information.

**Noncompetitive  
Procurement**

To be eligible for reimbursement, noncompetitive procurements exceeding the simplified acquisition threshold require Cal OES **prior** written approval. This method of procurement must be approved by your local Purchasing Agent prior to submitting a request for Cal OES approval. A copy of the Purchasing Agent's approval must be included with submission. Cal OES may request additional documentation that supports the procurement effort.

**Note:** Cal OES will not reimburse for any sole source contracts for any terrorism-related training, regardless of the cost of the training. Exceptions to this policy may be approved in limited circumstances, e.g., related to a procurement effort that has resulted in inadequate competition. The Cal OES [Request for Noncompetitive Procurement Authorization](#) form must be submitted; advance approval is required. Cal OES may request additional documentation that supports the procurement effort.

**Performance  
Bond**

Many Subrecipients were unable to procure large equipment items due to vendor delivery scheduled to occur after the federal reporting period had expired. To assist with this issue, DHS/FEMA allowed Subrecipients to obtain a “performance bond” wherein Subrecipients procured the item(s) in question, paid the money up front, and obtained a performance bond to ensure delivery of the item within the Subrecipient's performance period.

Subrecipients must obtain a performance bond for any equipment item over \$250,000 or any vehicle, aircraft, or watercraft financed with HSGP funds. Subrecipients must provide a copy of all performance bonds to their Program Representative no later than the time of reimbursement.

**Environmental  
Planning and  
Historic  
Preservation**

DHS/FEMA is required to ensure all activities and programs that are funded by the agency comply with Federal Environmental Planning and Historic Preservation (EHP) regulations.

Subrecipients proposing projects or activities (including, but not limited to, training, exercises, the installation of equipment, and construction or renovation projects) which have the potential to impact the environment or a historic structure must participate in the EHP screening process. EHP Screening Memos must include detailed project information and explain the goals and objectives of the proposed project, and include supporting documentation.

DHS/FEMA may also require the Subrecipient provide a confidential California Historical Resources Information System (CHRIS) report in addition to the [EHP Screening Form](#). Determination on the necessity of a CHRIS report is based upon information disclosed on the EHP Screening Form. Your Program Representative will provide you with additional instructions should this report be required. EHP requests should be submitted to Cal OES as early as possible. All projects/activities triggering EHP must receive DHS/FEMA written approval prior to commencement of the funded activity.

Updated information may be referenced in the [FEMA GPD EHP Policy Guidance](#).

**Construction  
and Renovation**

Project construction using SHSP and UASI funds may not exceed the greater of \$1,000,000 or 15 percent of the grant subaward (For the purposes of limitations on funding levels, communications towers are not considered construction). When applying for construction activity at the time of application, including communication towers, Subrecipients must submit evidence of approved zoning ordinances, architectural plans, any other locally required planning permits, and a notice of federal interest. Additionally, Subrecipients are required to submit a SF-424C Budget and Budget Detail that cites project costs. Communication tower construction requests also require evidence that the Federal Communications Commission's Section 106 review process was completed.

Subrecipients using funds for construction projects must comply with the Davis-Bacon Act. Subrecipients must ensure that their contractors or subcontractors for construction projects pay workers no less than the prevailing wages for laborers and mechanics employed on projects of a character like the contract work in the civil subdivision of the state in which the work is to be performed.

***Written approval for construction must be provided by DHS/FEMA prior to the use of any HSGP funds for construction or renovation.***

**Inventory  
Control and  
Property  
Management**

FY 2019 HSGP Subrecipients must use standardized resource management concepts for resource typing and credentialing, in addition to maintaining an inventory by which to facilitate the effective identification, dispatch, deployment, tracking, and recovery of resources.

Subrecipients must have an effective inventory management system, to include:

- Property records that document description, serial/ID number, fund source, title information, acquisition date, cost, federal cost share, location, use, condition, and ultimate disposition;
- Conducting a physical inventory at least every two years;
- A control system to prevent loss, damage, and theft of grant purchased equipment and supplies; and
- Adequate maintenance procedures must be developed to keep the property in good condition.

**Equipment  
Disposition**

When original or replacement equipment acquired under the HSGP is no longer needed for program activities, the Subrecipient must contact the Program Representative to request disposition instructions. See 2 C.F.R. § 200.313(e)

**Performance  
Reporting**

Subrecipients must complete a BSIR each Winter and Summer using the DHS/FEMA [Grants Reporting Tool](#) (GRT) for the duration of the subaward period of performance or until all grant activities are completed and the subaward is formally closed by Cal OES. Failure to submit a BSIR could result in subaward reduction, suspension, or termination.

Access to the BSIR may be obtained through the GRT. To create a new account, please click the link that reads, "Register for an account" and follow the instructions provided. The Subrecipient will be required to ensure up-to-date project information is entered. The Project Ledger in the FMFW may assist with the BSIR data entry process. For additional assistance with the GRT, please contact your Program Representative.

**Extension  
Requests**

Extensions to the initial period of performance identified in the subaward will only be considered through formal, written requests to your Program Representative. Upon receipt of the extension request, Cal OES will:

1. Verify compliance with performance reporting requirements by confirming the Subrecipient has submitted all necessary performance reports;
2. Confirm the Subrecipient has provided sufficient justification for the request; and
3. If applicable, confirm the Subrecipient has demonstrated sufficient progress in past situations where an extension was authorized by Cal OES.

Extension requests will be granted only due to compelling legal, policy, or operational challenges, and will only be considered for the following reasons:

**Extension  
Requests  
(cont.)**

1. Contractual commitments with vendors that prevent completion of the project within the period of performance;
2. The project must undergo a complex environmental review which cannot be completed within this timeframe;
3. Projects are long-term by design and therefore, acceleration would compromise core programmatic goals; and
4. Where other special circumstances exist.

To be considered, extension requests must be received no later than 60 days prior to the end of the Subrecipient's period of performance, and must contain specific and compelling justifications as to why an extension is required. All extension requests must address the following:

1. Grant program, fiscal year, and award number;
2. Reason for delay;
3. Current status of the activity/activities;
4. Approved period of performance termination date and new project completion date;
5. Amount of funds drawn down to date;
6. Remaining available funds, both federal and non-federal;
7. Budget outlining how remaining federal and non-federal funds will be expended;
8. Plan for completion, including milestones and timeframes for each milestone and the position/person responsible for implementing the plan for completion; and
9. Certification the activity/activities will be completed within the extended period of performance without any modification to the original Statement of Work.

General questions regarding extension requirements and the extension request form, should be directed to your Program Representative. For additional information, please see IB 379. Extension requests for personnel and salaries do not meet the requirements of IB 379 and will not be granted. Subrecipients are expected to complete all grant-funded personnel activity by the end of the subaward period of performance.



**Progress  
Reports on  
Grant  
Extensions**

All Subrecipients that receive Cal OES approval to extend their FY 2019 grant subaward period of performance may be required to submit progress reports indicating completed and future project milestones on all extended projects. Progress reports must be submitted electronically to the Program Representative. Deadlines for the submission of progress reports will be established at the time of extension approval.

**Monitoring**

Cal OES Grants Monitoring actively monitors Subrecipients, through day-to-day communications, programmatic site visits, and desk and on-site compliance assessments. The purpose of the compliance assessment is to ensure Subrecipients are in compliance with applicable state and federal regulations, grant guidelines, and programmatic requirements. Monitoring activities may include, but are not limited to:

- Verifying that entries recorded on the FMFW categories are properly supported with source documentation;
- Eligibility of and support for expenditures, typically covering two to three years of data;
- Comparing actual Subrecipient activities to those approved in the grant application and subsequent modifications, including the review of timesheets and invoices as applicable;
- Procurements and contracts;
- Ensuring equipment lists are properly maintained and physical inventories are conducted;
- Ensuring advances have been disbursed in accordance with applicable guidelines; and
- Confirming compliance with:
  - Standard Assurances, and
  - Information provided on performance reports and payment requests

NOTE: It is the responsibility of all Subrecipients that pass down grant funds to other entities, to maintain and utilize a formal process to monitor the grant activities of their subawards. This requirement includes, but is not limited to, on-site verification of grant activities, as required. It is common for Subrecipients to receive findings in a programmatic site visit or compliance assessment, which require a Corrective Action Plan (CAP) to be submitted by Subrecipients. Those Subrecipients who fail to submit a CAP, as required, shall have a “hold” placed on any future reimbursements until the “finding” is resolved.



**Failure to Submit Required Reports**

Periodic reporting is required by the grant. Subrecipients who miss a single reporting deadline may receive a letter addressed to their Board of Supervisors informing them of the failure to report. County OAs and tribes who fail to report twice in a row may have subsequent awards reduced by 10 percent until timely reporting is reestablished; UASIs may have a “hold” placed on any future reimbursements.

**Suspension/ Termination**

Cal OES may suspend or terminate grant funding, in whole or in part, or other measures may be imposed for any of the following reasons:

- Failure to submit required reports.
- Failure to expend funds in a timely manner consistent with the grant milestones, guidance, and assurances.
- Failure to comply with the requirements or statutory progress toward the goals or objectives of federal or state law.
- Failure to make satisfactory progress toward the goals or objectives set forth in the Subrecipient application.
- Failure to follow Grant Subaward requirements or Special Conditions.
- Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected for funding.
- False certification in the application or document.
- Failure to adequately manage, monitor, or direct the grant funding activities of their Subrecipients.
- Before taking action, Cal OES will provide the Subrecipient reasonable notice of intent to impose corrective measures and will make every effort to informally resolve the problem.

**Closeout**

Cal OES will close-out Subrecipient awards when it determines all applicable administrative actions and all required work of the federal award have been completed.

**Closeout  
(cont.)**

Subawards will be closed after:

- All funds have been requested and reimbursed, or disencumbered;
- Receiving all applicable Subrecipient reports indicating all approved work has been completed, and all funds have been distributed;
- Completing a review to confirm the accuracy of reported information;
- Reconciling actual costs to subawards, modifications, and payments; and
- Verifying the Subrecipient has submitted a final BSIR showing all grant funds have been expended.

**Records  
Retention**

The records retention period is three years from the date of the Subrecipient's final BSIR submittal showing all grant funds have been expended, or until any pending litigation, claim, or audit started before the expiration of the three-year retention period has been resolved and final action is taken.

The Cal OES Grant Closeout Letter will notify the Subrecipient of the start of the records retention period for all programmatic and financial grant-related records. If the State Administrative Agency's award remains open after the Subrecipient's submission of the final BSIR, Cal OES will complete any additional BSIR reporting required under the award on behalf of the Subrecipient. Closed grants may still be monitored and audited. Failure to maintain all grant records for the required retention period could result in a reduction of grant funds, and an invoice to return costs associated with the unsupported activities.

If documents are retained longer than the required retention period, FEMA, the DHS Office of Inspector General, Government Accountability Office, and pass-through entity have the right to access these records as well. See 2 C.F.R. §§ 200.333, 200.336.

State Homeland Security Program (SHSP)					
Operational Area	Population	Base Amount	25% LE	SHSP	Total Award (25% LE + SHSP)
ALAMEDA	1,660,202	75,000	445,781	1,337,343	1,783,124
ALPINE	1,154	75,000	19,047	57,140	76,187
AMADOR	38,094	75,000	28,549	85,645	114,194
BUTTE	227,621	75,000	77,298	231,893	309,191
CALAVERAS	45,157	75,000	30,365	91,095	121,460
COLUSA	22,098	75,000	24,434	73,302	97,736
CONTRA COSTA	1,149,363	75,000	314,385	943,155	1,257,540
DEL NORTE	27,221	75,000	25,752	77,254	103,006
EL DORADO	188,399	75,000	67,209	201,628	268,837
FRESNO	1,007,229	75,000	277,826	833,477	1,111,303
GLENN	28,796	75,000	26,157	78,470	104,627
HUMBOLDT	136,002	75,000	53,732	161,196	214,928
IMPERIAL	190,624	75,000	67,782	203,344	271,126
INYO	18,577	75,000	23,529	70,585	94,114
KERN	905,801	75,000	251,737	755,210	1,006,947
KINGS	151,662	75,000	57,760	173,279	231,039
LAKE	65,081	75,000	35,490	106,470	141,960
LASSEN	30,911	75,000	26,701	80,102	106,803
LOS ANGELES	10,283,729	75,000	2,663,892	7,991,677	10,655,569
MADERA	158,894	75,000	59,620	178,860	238,480
MARIN	263,886	75,000	86,626	259,878	346,504
MARIPOSA	18,129	75,000	23,413	70,239	93,652
MENDOCINO	89,299	75,000	41,719	125,157	166,876
MERCED	279,977	75,000	90,765	272,294	363,059
MODOC	9,612	75,000	21,222	63,667	84,889
MONO	13,822	75,000	22,305	66,916	89,221
MONTEREY	443,281	75,000	132,769	398,308	531,077
NAPA	141,294	75,000	55,093	165,279	220,372
NEVADA	99,155	75,000	44,254	132,763	177,017
ORANGE	3,221,103	75,000	847,270	2,541,810	3,389,080
PLACER	389,532	75,000	118,944	356,832	475,776
PLUMAS	19,773	75,000	23,836	71,508	95,344
RIVERSIDE	2,415,955	75,000	640,173	1,920,519	2,560,692
SACRAMENTO	1,529,501	75,000	412,163	1,236,487	1,648,650
SAN BENITO	57,088	75,000	33,434	100,301	133,735
SAN BERNARDINO	2,174,938	75,000	578,180	1,734,538	2,312,718
SAN DIEGO	3,337,456	75,000	877,198	2,631,594	3,508,792

Attachment A – FY 2019 HSGP Allocations | **2019**

Operational Area	Population	Base Amount	25% LE	SHSP	Total Award (25% LE + SHSP)
<b>SAN FRANCISCO</b>	883,963	75,000	246,120	738,358	984,478
<b>SAN JOAQUIN</b>	758,744	75,000	213,912	641,734	855,646
<b>SAN LUIS OBISPO</b>	280,101	75,000	90,797	272,389	363,186
<b>SAN MATEO</b>	774,155	75,000	217,875	653,626	871,501
<b>SANTA BARBARA</b>	453,457	75,000	135,387	406,159	541,546
<b>SANTA CLARA</b>	1,956,598	75,000	522,019	1,566,056	2,088,075
<b>SANTA CRUZ</b>	276,864	75,000	89,964	269,892	359,856
<b>SHASTA</b>	178,271	75,000	64,604	193,812	258,416
<b>SIERRA</b>	3,207	75,000	19,575	58,725	78,300
<b>SISKIYOU</b>	44,612	75,000	30,225	90,675	120,900
<b>SOLANO</b>	439,793	75,000	131,872	395,615	527,487
<b>SONOMA</b>	503,332	75,000	148,215	444,646	592,861
<b>STANISLAUS</b>	555,624	75,000	161,666	484,996	646,662
<b>SUTTER</b>	97,238	75,000	43,761	131,284	175,045
<b>TEHAMA</b>	64,039	75,000	35,222	105,665	140,887
<b>TRINITY</b>	13,635	75,000	22,257	66,772	89,029
<b>TULARE</b>	475,834	75,000	141,142	423,427	564,569
<b>TUOLUMNE</b>	54,740	75,000	32,830	98,490	131,320
<b>VENTURA</b>	859,073	75,000	239,718	719,152	958,870
<b>YOLO</b>	221,270	75,000	75,664	226,993	302,657
<b>YUBA</b>	74,727	75,000	37,971	113,913	151,884
<b>Total</b>	<b>39,809,693</b>	<b>4,350,000</b>	<b>11,327,206</b>	<b>33,981,594</b>	<b>45,308,800</b>

Fusion Centers	
Region	Total Award
<b>SAN FRANCISCO BAY AREA</b>	1,000,000
<b>SACRAMENTO/CENTRAL VALLEY AREA</b>	1,000,000
<b>GREATER LOS ANGELES AREA</b>	1,000,000
<b>SAN DIEGO AREA</b>	1,000,000
<b>ORANGE AREA</b>	300,000
<b>Total</b>	<b>4,300,000</b>

<b>Urban Areas Security Initiative (UASI)</b>			
<b>*A minimum of 25% of UASI funding must be for Law Enforcement Terrorism Prevention</b>			
<b>Urban Area</b>	<b>Federal Allocation to State</b>	<b>Allocation to UASI</b>	<b>State Initiatives</b>
<b>ANAHEIM/SANTA ANA AREA</b>	5,000,000	4,135,000	865,000
<b>BAY AREA</b>	27,500,000	22,742,500	4,757,500
<b>LOS ANGELES/LONG BEACH AREA</b>	68,000,000	56,236,000	11,764,000
<b>RIVERSIDE AREA</b>	3,250,000	2,687,750	562,250
<b>SACRAMENTO AREA</b>	3,250,000	2,687,750	562,250
<b>SAN DIEGO AREA</b>	16,900,000	13,976,300	2,923,700
<b>Total</b>	<b>123,900,000</b>	<b>102,465,300</b>	<b>21,434,700</b>

DHS/FEMA Announcement of 2019 HSGP	April 12, 2019
Cal OES Application Due to DHS	May 29, 2019
DHS Award to California	August 9, 2019*
Subrecipient period of performance begins	September 1, 2019*
2019 HSGP California Supplement release	September 2019*
Subrecipient Workshops	September 2019*
Subrecipient Awards (45 days from DHS award)	September 27, 2019*
Subrecipient Final Applications Due to Cal OES	December 6, 2019*
Subrecipient period of performance ends	May 31, 2022*
Final Cash Requests due to Cal OES	Within twenty (20) calendar days after end of grant
Cal OES's period of performance ends	August 31, 2022*

\* These dates are approximate and based on anticipated date of DHS award to California

Subrecipient: \_\_\_\_\_ FIPS#: \_\_\_\_\_

Program Representative: \_\_\_\_\_

**Financial Management Forms Workbook:**

- ☐ Grant Award Face Sheet
- ☐ Authorized Body of 5
- ☐ Project Ledger
- ☐ Planning Ledger
- ☐ Organization Ledger
- ☐ Equipment Ledger
- ☐ Training Ledger
- ☐ Exercise Ledger
- ☐ Consultant/Contractor Ledger
- ☐ Management & Administration Ledger
- ☐ Indirect Cost Ledger
- ☐ Authorized Agent Sheet

**Attachments:**

- ☐ Original Counter-Signed Award Letter
- ☐ Governing Body Resolution (Certified)
- ☐ Standard Assurances (Signed Originals)
- ☐ FFATA Certification
- ☐ Lobbying Certification
- ☐ Subrecipient Grant Management Assessment Form
- ☐ Indirect Cost Rate Negotiation Agreement
- ☐ Personnel Cap Waiver (If Applicable)
- ☐ Allowability Request (If Applicable)
- ☐ Intelligence Analyst(s) Certificates (If Applicable)

**UASI Only:**

- ☐ UASI Footprint

**State Agencies and Tribes Only:**

- ☐ Signature Authority Form (in lieu of Governing Body Resolution)

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**For Cal OES Use Only**

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

Management Approval: \_\_\_\_\_ Date: \_\_\_\_\_



## Standard Assurances For All Cal OES Federal Grant Programs

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**As the duly authorized representative of the Applicant, I hereby certify** that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

**I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:**

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) Federal Preparedness Grants Manual;
- (d) California Supplement to the NOFO; and
- (e) Federal and State Grant Program Guidelines.

### **Federal Regulations**

Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the [Office of Management and Budget \(OMB\)](#) and can be found at <http://www.whitehouse.gov/omb/>.

**Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. The Applicant hereby agrees to comply with the following:**

### **1. Proof of Authority**

The Applicant will obtain written authorization from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body; and
- (d) The official executing this agreement is, in fact, authorized to do so.





## **Standard Assurances For All Cal OES Federal Grant Programs**

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This Proof of Authority must be maintained on file and readily available upon request.

### **2. Period of Performance**

The Applicant will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

### **3. Lobbying and Political Activities**

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.



## **Standard Assurances For All Cal OES Federal Grant Programs**

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Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

#### **4. Debarment and Suspension**

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.213 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals, recipients, or subrecipients:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

#### **5. Non-Discrimination and Equal Employment Opportunity**

The Applicant will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:



## **Standard Assurances**

### **For All Cal OES Federal Grant Programs**

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- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs (42 U.S.C. §§ 12101-12213);
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)— be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;



## Standard Assurances For All Cal OES Federal Grant Programs

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- (k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
- (l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (m), the Applicant will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

### 6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

### 7. Environmental Standards

The Applicant will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;



## **Standard Assurances For All Cal OES Federal Grant Programs**

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- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
- (e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- (g) Executive Order 11514 which sets forth national environmental standards;
- (h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- (i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (j) The Endangered Species Act of 1973, (P.L. 93-205);
- (k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- (l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- (m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.



## **Standard Assurances For All Cal OES Federal Grant Programs**

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### **8. Audits**

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

### **9. Access to Records**

In accordance with 2 C.F.R. § 200.336, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

### **10. Conflict of Interest**

The Applicant will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

### **11. Financial Management**

False Claims for Payment - The Applicant will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subrecipient, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

### **12. Reporting - Accountability**

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

### **13. Whistleblower Protections**

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.





## Standard Assurances For All Cal OES Federal Grant Programs

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### 14. Human Trafficking

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

### 15. Labor Standards

The Applicant will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

### 16. Worker's Compensation

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

### 17. Property-Related

If applicable to the type of project funded by this federal award, the Applicant will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;



## **Standard Assurances**

### **For All Cal OES Federal Grant Programs**

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- (c) Assist the awarding agency in assuring compliance with Section 106 of the
- (d) National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.); and
- (e) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

#### **18. Certifications Applicable Only to Federally-Funded Construction Projects**

For all construction projects, the Applicant will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

#### **19. Use of Cellular Device While Driving is Prohibited**

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.





## **Standard Assurances For All Cal OES Federal Grant Programs**

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### **20. California Public Records Act and Freedom of Information Act**

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

### **HOMELAND SECURITY GRANT PROGRAM (HSGP) – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS**

### **21. Reporting Accusations and Findings of Discrimination**

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office for Civil Rights and Civil Liberties (CRCL) by e-mail at [CRCL@hq.dhs.gov](mailto:CRCL@hq.dhs.gov) or by mail at U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190, Washington, D.C. 20528.

In the courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or the recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

### **22. Acknowledgment of Federal Funding from DHS**

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.



## **Standard Assurances For All Cal OES Federal Grant Programs**

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### **23. Activities Conducted Abroad**

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

### **24. Best Practices for Collection and Use of Personally Identifiable Information (PII)**

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

### **25. Copyright**

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

### **26. Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

### **27. Energy Policy and Conservation Act**

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

### **28. Federal Debt Status**

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.



## **Standard Assurances**

### **For All Cal OES Federal Grant Programs**

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#### **29. Fly America Act of 1974**

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

#### **30. Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

#### **31. Non-supplanting Requirement**

All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

#### **32. Patents and Intellectual Property Rights**

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

#### **33. SAFECOM**

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.



## **Standard Assurances For All Cal OES Federal Grant Programs**

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### **34. Terrorist Financing**

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

### **35. Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

### **36. USA Patriot Act of 2001**

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

### **37. Use of DHS Seal, Logo, and Flags**

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.



## Standard Assurances For All Cal OES Federal Grant Programs

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### IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the [Department of Homeland Security Standard Terms and Conditions 2018, Version 8.1](https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions), hereby incorporated by reference, which can be found at:  
<https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

**The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.**

Subrecipient: \_\_\_\_\_

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

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

**The Department of Homeland Security (DHS)  
Notice of Funding Opportunity (NOFO)  
Fiscal Year 2019 Homeland Security Grant Program (HSGP)**

**NOTE:** If you are going to apply for this funding opportunity and have not obtained a Data Universal Numbering System (DUNS) number and/or are not currently registered in the System for Award Management (SAM), please take immediate action to obtain a DUNS Number, if applicable, and then to register immediately in SAM. It may take four weeks or more after you submit your SAM registration before your registration is active in SAM, then an additional 24 hours for Grants.gov to recognize your information. Information on obtaining a DUNS number and registering in SAM is available from Grants.gov at: <http://www.grants.gov/web/grants/register.html>.

**A. Program Description**

**Issued By**

Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Grant Programs Directorate (GPD)

**Assistance Listings Number (formerly Catalog of Federal Domestic Assistance Number)**  
97.067

**Assistance Listings Title (formerly CFDA Title)**  
Homeland Security Grant Program

**Notice of Funding Opportunity Title**  
Homeland Security Grant Program

- State Homeland Security Program
- Urban Area Security Initiative
- Operation Stonegarden

**NOFO Number**  
DHS-19-GPD-067-00-02

**Authorizing Authority for Program**  
Section 2002 of the *Homeland Security Act of 2002* (Pub. L. No. 107-296, as amended)  
(6 U.S.C. § 603)

**Appropriation Authority for Program**  
*Department of Homeland Security Appropriations Act, 2019* (Pub. L. No. 116-6)

**Program Type**  
New

**Program Overview, Objectives and Priorities**

## Overview

One of the core missions of DHS/FEMA is to enhance the ability of state, territory, local, and tribal governments to prevent, protect against, respond to, and recover from terrorist attacks and other disasters. DHS/FEMA's comprehensive suite of grant programs are an important part of the Administration's larger, coordinated effort to strengthen homeland security preparedness. The Homeland Security Grant Program (HSGP) is one tool among a comprehensive set of initiatives authorized by Congress and implemented by the Administration to help strengthen the Nation against risks associated with potential terrorist attacks.

The [2018-2022 FEMA Strategic Plan](#) creates a shared vision for the field of emergency management and sets an ambitious, yet achievable, path forward to unify and further professionalize emergency management across the country. The HSGP supports the goal of Ready the Nation for Catastrophic Disasters. We invite all our stakeholders and partners to also adopt these priorities and join us in building a more prepared and resilient Nation.

## Objectives

Within this broader construct, the objective of the FY 2019 HSGP is to provide funds to eligible entities to support state, local, tribal, and territorial efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States.

**State Homeland Security Program (SHSP):** The SHSP supports state, local, tribal, and territorial preparedness activities that address high priority preparedness gaps across all core capabilities that support terrorism preparedness.

**Urban Area Security Initiative (UASI):** The UASI Program assists high-threat, high-density Urban Areas in efforts to build, sustain, and deliver the capabilities necessary to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.

**Operation Stonegarden (OPSG):** OPSG supports enhanced cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, tribal, and territorial law enforcement agencies. OPSG provides funding to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada as well as states and territories with international water borders.

## Performance Metrics

Performance metrics for this program are as follows:

SHSP and UASI:

- Percent improvement in Stakeholder Preparedness Review (SPR) capabilities against Threat and Hazard Identification and Risk Assessment (THIRA) targets; and
- Percent of states and territories with a Threat and Hazard Identification and Risk Assessment (THIRA) and SPR that meet current DHS/FEMA guidance.

OPSG:



- Percent of funding that provides intelligence-based operational support; and
- Percent of funding that provides force multiplier activities across two or more state, local, or tribal law enforcement agencies.

For purposes of the SHSP and UASI program, DHS/FEMA requires states, territories, and high-risk urban areas to complete a THIRA/SPR and to prioritize grant funding to support closing capability gaps or sustaining capabilities identified in this process. Additional information on the THIRA/SPR process, including other National Preparedness System (NPS) tools and resources, can be found at <https://www.fema.gov/national-preparedness-system>.

### **Priorities**

DHS/FEMA continually assesses changes to the threat landscape to further the National Preparedness Goal (the Goal) of a secure and resilient nation. This analysis provides a perspective on critical preparedness trends for whole community partners to use to inform program priorities, allocate resources, and communicate with stakeholders about issues of shared concern. DHS/FEMA have identified the following as national priority areas:

- Emerging Threats, including Cybersecurity
- Lifelines (more information found in this [fact sheet](#) and [toolkit](#))
  - Safety and Security
  - Food, Water, Sheltering
  - Health and Medical
  - Energy
  - Communications
  - Transportation
  - Hazardous Material

In addition to addressing gaps identified by SPRs, recipients should consider funding projects that address the above priorities of DHS/FEMA.

## **B. Federal Award Information**

### **Award Amounts, Important Dates, and Extensions**

**Available Funding for the HSGP NOFO:      \$1,095,000,000**

<b>HSGP Programs</b>	<b>FY 2019 Allocation</b>
State Homeland Security Program	\$415,000,000
Urban Area Security Initiative	\$590,000,000
Operation Stonegarden	\$90,000,000
<b>Total</b>	<b>\$1,095,000,000</b>



## FY 2019 SHSP ALLOCATIONS

State/Territory	FY 2019 Allocation	State/Territory	FY 2019 Allocation
Alabama	\$4,077,500	Montana	\$4,077,500
Alaska	\$4,077,500	Nebraska	\$4,077,500
American Samoa	\$1,000,000	Nevada	\$4,077,500
Arizona	\$4,077,500	New Hampshire	\$4,077,500
Arkansas	\$4,077,500	New Jersey	\$8,000,000
California	\$62,011,000	New Mexico	\$4,077,500
Colorado	\$4,077,500	New York	\$76,930,000
Connecticut	\$4,077,500	North Carolina	\$5,750,000
Delaware	\$4,077,500	North Dakota	\$4,077,500
District of Columbia	\$5,750,000	Northern Mariana	\$1,000,000
Florida	\$10,566,000	Ohio	\$7,000,000
Georgia	\$5,750,000	Oklahoma	\$4,077,500
Guam	\$1,000,000	Oregon	\$4,077,500
Hawaii	\$4,077,500	Pennsylvania	\$9,200,000
Idaho	\$4,077,500	Puerto Rico	\$4,077,500
Illinois	\$15,712,000	Rhode Island	\$4,077,500
Indiana	\$4,077,500	South Carolina	\$4,077,500
Iowa	\$4,077,500	South Dakota	\$4,077,500
Kansas	\$4,077,500	Tennessee	\$4,077,500
Kentucky	\$4,077,500	Texas	\$20,591,000
Louisiana	\$4,077,500	U.S. Virgin Islands	\$1,000,000
Maine	\$4,077,500	Utah	\$4,077,500
Maryland	\$8,000,000	Vermont	\$4,077,500
Massachusetts	\$7,000,000	Virginia	\$9,200,000
Michigan	\$5,750,000	Washington	\$7,000,000
Minnesota	\$4,077,500	West Virginia	\$4,077,500
Mississippi	\$4,077,500	Wisconsin	\$4,077,500
Missouri	\$4,077,500	Wyoming	\$4,077,500
<b>Total</b>			<b>\$415,000,000</b>

## FY 2019 UASI ALLOCATIONS

State/Territory	Funded Urban Area	FY 2019 UASI Allocation
Arizona	Phoenix Area	\$4,000,000
California	Anaheim/Santa Ana Area	\$5,000,000
	Bay Area	\$27,500,000
	Los Angeles/Long Beach Area	\$68,000,000
	Riverside Area	\$3,250,000
	Sacramento Area	\$3,250,000
	San Diego Area	\$16,900,000
Colorado	Denver Area	\$3,250,000
District of Columbia	National Capital Region	\$52,750,000
Florida	Miami/Fort Lauderdale Area	\$7,000,000
	Orlando Area	\$3,250,000
	Tampa Area	\$3,250,000
Georgia	Atlanta Area	\$6,000,000
Hawaii	Honolulu Area	\$3,250,000
Illinois	Chicago Area	\$68,000,000
Maryland	Baltimore Area	\$4,000,000
Massachusetts	Boston Area	\$16,900,000
Michigan	Detroit Area	\$5,000,000
Minnesota	Twin Cities Area	\$5,000,000
Missouri	St. Louis Area	\$3,250,000
Nevada	Las Vegas Area	\$5,000,000
New Jersey	Jersey City/Newark Area	\$20,050,000
New York	New York City Area	\$178,750,000
Oregon	Portland Area	\$3,250,000
Pennsylvania	Philadelphia Area	\$16,900,000
	Pittsburgh Area	\$3,250,000
Texas	Dallas/Fort Worth/Arlington Area	\$16,900,000
	Houston Area	\$24,600,000
	San Antonio Area	\$3,250,000
Virginia	Hampton Roads Area	\$3,250,000
Washington	Seattle Area	\$6,000,000
<b>Total</b>		<b>\$590,000,000</b>

**Period of Performance:** 36 months

Extensions to the Period of Performance (PoP) are allowed. For additional information on PoP extensions, refer to the [Preparedness Grants Manual](#).

**Projected Period of Performance Start Date:** September 1, 2019

**Projected Period of Performance End Date:** August 31, 2022

**Funding Instrument:** Grant

### **C. Eligibility Information**

#### **Eligible Applicants**

The State Administrative Agency (SAA) is the only entity eligible to submit HSGP applications to DHS/FEMA, including those applications submitted on behalf of UASI and OPSG applicants. All 56 states and territories, including any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, are eligible to apply for SHSP funds. Tribal governments may not apply directly for HSGP funding; however, funding may be available to tribes under the SHSP and OPSG through the SAA.

#### **Eligibility Criteria**

Eligible high-risk urban areas for the FY 2019 UASI program have been determined through an analysis of relative risk of terrorism faced by the 100 most populous Metropolitan Statistical Areas (MSAs) in the United States. Subawards will be made by the SAAs to the designated high-risk urban areas.

Eligible subrecipients under FY 2019 OPSG are local units of government at the county level or equivalent level of government and federally-recognized tribal governments in states bordering Canada or Mexico and states and territories with international water borders. All applicants must have active ongoing USBP operations coordinated through a CBP sector office to be eligible for OPSG funding.

Under FY 2019 OPSG, subrecipients eligible to apply for and receive a subaward directly from the SAAs are divided into three Tiers. Tier 1 entities are local units of government at the county level or equivalent and federally recognized tribal governments that are on a physical border in states bordering Canada, states bordering Mexico, and states and territories with international water borders. Tier 2 eligible subrecipients are those not located on the physical border or international water but are contiguous to a Tier 1 county. Tier 3 eligible subrecipients are those not located on the physical border or international water but are contiguous to a Tier 2 eligible subrecipient. Tier 2 and Tier 3 eligible subrecipients may be eligible to receive funding based on border security risk as determined by the USBP.

#### **Other Eligibility Criteria**

##### **National Incident Management System (NIMS) Implementation**

Prior to allocation of any federal preparedness awards in FY 2019, recipients must ensure and maintain adoption and implementation of NIMS. Detailed information on NIMS requirements are in the [Preparedness Grants Manual](#).

##### **Emergency Management Assistance Compact (EMAC) Membership**

In support of the Goal, recipients must belong to, be in, or act as a temporary member of EMAC, except for American Samoa and the Commonwealth of the Northern Mariana Islands, which are not required to belong to EMAC at this time. All assets supported in part or entirely with FY 2019 HSGP funding must be readily deployable and NIMS-typed when possible to support emergency or disaster operations per existing EMAC agreements. In addition, funding may be used for the sustainment of core capabilities that, while they may not be physically deployable, support national response capabilities such as Geographic/Geospatial Information Systems (GIS), interoperable communications systems, capabilities as defined under the mitigation mission area of the Goal, and fusion centers.

### **Law Enforcement Terrorism Prevention Activities (LETPA)**

Per section 2006 of the *Homeland Security Act of 2002*, as amended (6 U.S.C. § 607), DHS/FEMA is required to ensure that at least 25 percent of grant funding appropriated for grants awarded under HSGP's authorizing statute are used for law enforcement terrorism prevention activities. DHS/FEMA meets this requirement, in part, by requiring all recipients allocate at least 25 percent of the combined HSGP funds allocated under SHSP and UASI towards law enforcement terrorism prevention activities, as defined in 6 U.S.C. § 607. The LETPA allocation can be from SHSP, UASI, or both. The 25 percent LETPA allocation is in addition to the 80 percent pass through requirement to local units of government and tribes, referenced below.

### **FY 2019 LETPA Allocations**

State/Territory	Funded Urban Area(s)	UASI Allocation	Total UASI Allocation	SHSP Allocation	Total Allocation by State	LETPA
Alabama				\$4,077,500	\$4,077,500	\$1,019,375
Alaska				\$4,077,500	\$4,077,500	\$1,019,375
American Samoa				\$1,000,000	\$1,000,000	\$250,000
Arizona	Phoenix Area	\$4,000,000	\$4,000,000	\$4,077,500	\$8,077,500	\$2,019,375
Arkansas				\$4,077,500	\$4,077,500	\$1,019,375
California	Anaheim/Santa Ana Area	\$5,000,000	\$123,900,000	\$62,011,000	\$185,911,000	\$46,477,750
	Bay Area	\$27,500,000				
	Los Angeles/Long Beach Area	\$68,000,000				
	Riverside Area	\$3,250,000				
	Sacramento Area	\$3,250,000				
	San Diego Area	\$16,900,000				
Colorado	Denver Area	\$3,250,000	\$3,250,000	\$4,077,500	\$7,327,500	\$1,831,875
Connecticut				\$4,077,500	\$4,077,500	\$1,019,375
Delaware				\$4,077,500	\$4,077,500	\$1,019,375
District of Columbia	National Capital Region	\$52,750,000	\$52,750,000	\$5,750,000	\$58,500,000	\$14,625,000
Florida	Miami/Fort Lauderdale Area	\$7,000,000	\$13,500,000	\$10,566,000	\$24,066,000	\$6,016,500
	Orlando Area	\$3,250,000				
	Tampa Area	\$3,250,000				

State/Territory	Funded Urban Area(s)	UASI Allocation	Total UASI Allocation	SHSP Allocation	Total Allocation by State	LETPA
Georgia	Atlanta Area	\$6,000,000	\$6,000,000	\$5,750,000	\$11,750,000	\$2,937,500
Guam				\$1,000,000	\$1,000,000	\$250,000
Hawaii	Honolulu Area	\$3,250,000	\$3,250,000	\$4,077,500	\$7,327,500	\$1,831,875
Idaho				\$4,077,500	\$4,077,500	\$1,019,375
Illinois	Chicago Area	\$68,000,000	\$68,000,000	\$15,712,000	\$83,712,000	\$20,928,000
Indiana				\$4,077,500	\$4,077,500	\$1,019,375
Iowa				\$4,077,500	\$4,077,500	\$1,019,375
Kansas				\$4,077,500	\$4,077,500	\$1,019,375
Kentucky				\$4,077,500	\$4,077,500	\$1,019,375
Louisiana				\$4,077,500	\$4,077,500	\$1,019,375
Maine				\$4,077,500	\$4,077,500	\$1,019,375
Maryland	Baltimore Area	\$4,000,000	\$4,000,000	\$8,000,000	\$12,000,000	\$3,000,000
Massachusetts	Boston Area	\$16,900,000	\$16,900,000	\$7,000,000	\$23,900,000	\$5,975,000
Michigan	Detroit Area	\$5,000,000	\$5,000,000	\$5,750,000	\$10,750,000	\$2,687,500
Minnesota	Twin Cities Area	\$5,000,000	\$5,000,000	\$4,077,500	\$9,077,500	\$2,269,375
Mississippi				\$4,077,500	\$4,077,500	\$1,019,375
Missouri	St. Louis Area	\$3,250,000	\$3,250,000	\$4,077,500	\$7,327,500	\$1,831,875
Montana				\$4,077,500	\$4,077,500	\$1,019,375
Nebraska				\$4,077,500	\$4,077,500	\$1,019,375
Nevada	Las Vegas Area	\$5,000,000	\$5,000,000	\$4,077,500	\$9,077,500	\$2,269,375
New Hampshire				\$4,077,500	\$4,077,500	\$1,019,375
New Jersey	Jersey City/Newark Area	\$20,050,000	\$20,050,000	\$8,000,000	\$28,050,000	\$7,012,500
New Mexico				\$4,077,500	\$4,077,500	\$1,019,375
New York	New York City Area	\$178,750,000	\$178,750,000	\$76,930,000	\$255,680,000	\$63,920,000
North Carolina				\$5,750,000	\$5,750,000	\$1,437,500
North Dakota				\$4,077,500	\$4,077,500	\$1,019,375
Northern Mariana Islands				\$1,000,000	\$1,000,000	\$250,000
Ohio				\$7,000,000	\$7,000,000	\$1,750,000
Oklahoma				\$4,077,500	\$4,077,500	\$1,019,375
Oregon	Portland Area	\$3,250,000	\$3,250,000	\$4,077,500	\$7,327,500	\$1,831,875
Pennsylvania	Philadelphia Area	\$16,900,000	\$20,150,000	\$9,200,000	\$29,350,000	\$7,337,500
	Pittsburgh Area	\$3,250,000				
Puerto Rico				\$4,077,500	\$4,077,500	\$1,019,375
Rhode Island				\$4,077,500	\$4,077,500	\$1,019,375
South Carolina				\$4,077,500	\$4,077,500	\$1,019,375
South Dakota				\$4,077,500	\$4,077,500	\$1,019,375
Tennessee				\$4,077,500	\$4,077,500	\$1,019,375
Texas	Dallas/Fort Worth/Arlington Area	\$16,900,000	\$44,750,000	\$20,591,000	\$65,341,000	\$16,335,250
	Houston Area	\$24,600,000				

State/Territory	Funded Urban Area(s)	UASI Allocation	Total UASI Allocation	SHSP Allocation	Total Allocation by State	LETPA
	San Antonio Area	\$3,250,000				
U.S. Virgin Islands				\$1,000,000	\$1,000,000	\$250,000
Utah				\$4,077,500	\$4,077,500	\$1,019,375
Vermont				\$4,077,500	\$4,077,500	\$1,019,375
Virginia	Hampton Roads Area	\$3,250,000	\$3,250,000	\$9,200,000	\$12,450,000	\$3,112,500
Washington	Seattle Area	\$6,000,000	\$6,000,000	\$7,000,000	\$13,000,000	\$3,250,000
West Virginia				\$4,077,500	\$4,077,500	\$1,019,375
Wisconsin				\$4,077,500	\$4,077,500	\$1,019,375
Wyoming				\$4,077,500	\$4,077,500	\$1,019,375
<b>Total</b>		<b>\$590,000,000</b>	<b>\$590,000,000</b>	<b>\$415,000,000</b>	<b>\$1,005,000,000</b>	<b>\$251,250,000</b>

The National Prevention Framework describes those activities that should be executed upon the discovery of intelligence or information regarding an imminent threat to the homeland, to thwart an initial or follow-on terrorist attack and provides guidance to ensure the Nation is prepared to prevent, avoid, or stop a threatened or actual act of terrorism. Activities outlined in the National Prevention Framework are eligible for use as LETPA-focused funds. Also, where capabilities are shared with the protection mission area, the National Protection Framework activities are also eligible. Other terrorism prevention activities proposed for funding under LETPA must be approved by the FEMA Administrator.

#### Cost Share or Match

There is no cost share or match requirement for the FY 2019 HSGP.

#### D. Application and Submission Information

##### Key Dates and Times

Date Posted to [Grants.gov](https://www.grants.gov):

April 12, 2019

Application Submission Deadline:

May 29, 2019 at 5:00 p.m. ET

All applications **must** be received by the established deadline. The Non-Disaster (ND) Grants System has a date stamp that indicates when an application is submitted. Applicants will receive an electronic message confirming receipt of the full application. **DHS/FEMA will not review applications that are received after the deadline or consider them for funding.** DHS/FEMA may, however, extend the application deadline on request for an applicant who can demonstrate that good cause exists to justify extending the deadline. Good cause for an extension may include technical problems outside of the applicant's control that prevent submission of the application by the deadline, or other exigent or emergency circumstances.

**Applicants experiencing technical issues must notify the FEMA Headquarters (HQ) Program Analyst prior to the application deadline.** If applicants do not know their FEMA HQ Program Analyst or if there are programmatic questions or concerns, please contact the

Centralized Scheduling and Information Desk (CSID) by phone at (800) 368-6498 or by e-mail at [askcsid@fema.dhs.gov](mailto:askcsid@fema.dhs.gov), Monday through Friday, 9:00 a.m. – 5:00 p.m. ET.

**Anticipated Funding Selection Date:** August 2, 2019

**Anticipated Award Date:** No later than September 30, 2019

#### Other Key Dates

Event	Suggested Deadline For Completion
Obtain DUNS Number	May 1, 2019
Obtain a valid Employer Identification Number (EIN)	May 1, 2019
Update SAM registration	May 1, 2019
Submit the initial application in Grants.gov	May 22, 2019
Submit the final application in ND Grants	May 29, 2019, No later than 5:00 p.m. ET

#### Agreeing to Terms and Conditions of the Award

By submitting an application, applicants agree to comply with the requirements of this NOFO and the terms and conditions of the award, should they receive an award.

#### Address to Request Application Package

See the [Preparedness Grants Manual](#) for information on requesting and submitting an application.

#### Content and Form of Application Submission

See the [Preparedness Grants Manual](#) for information on requesting and submitting an application.

#### Electronic Delivery

DHS/FEMA is participating in the Grants.gov initiative to provide the grant community with a single site to find and apply for grant funding opportunities. DHS/FEMA requires applicants to submit their initial applications online through [Grants.gov](#) and to submit final applications through [ND Grants](#).

#### How to Register to Apply through [Grants.gov](#)

See the [Preparedness Grants Manual](#) for information on requesting and submitting an application.

#### How to Submit an Initial Application to DHS/FEMA via Grants.gov

See the [Preparedness Grants Manual](#) for information on requesting and submitting an application.

#### Timely Receipt Requirements and Proof of Timely Submission

As application submission is a two-step process, the applicant with the Authorized Organizational Representative (AOR) role who submitted the application will also receive an acknowledgement of receipt, a tracking number (GRANTXXXXXXXX) from Grants.gov, and an Agency Tracking

Number (EMX-2019-XX-XXXX) with the successful transmission of the initial application. This notification does **not** serve as proof of timely submission, as the application is not complete until it is submitted in ND Grants. All applications must be received in ND Grants by 5:00 p.m. ET on May 29, 2019. Proof of timely submission is automatically recorded by ND Grants. An electronic date/time stamp is generated within the system when the application is successfully received by ND Grants. Additionally, the applicant(s) listed as contacts on the application will receive a system-generated email to confirm receipt.

### **Submitting the Final Application in Non-Disaster Grants System (ND Grants)**

After submitting the initial application in [Grants.gov](https://www.grants.gov), eligible applicants will be notified by DHS/FEMA and asked to proceed with submitting their complete application package in [ND Grants](https://www.ndgrants.gov). Applicants can register early with ND Grants and are encouraged to begin their ND Grants registration at the time of this announcement but no later than **seven days before the application deadline**. Early registration will allow applicants to have adequate time to start and complete their application.

In [ND Grants](https://www.ndgrants.gov) applicants will be prompted to submit all of the information contained in the following forms. Applicants should review these forms before applying to ensure they have all the information required:

- Standard Form 424A, Budget Information (Non-construction);
- Standard Form 424B, Standard Assurances (Non-construction); and
- Standard Form LLL, Disclosure of Lobbying Activities.

In addition, applicants must submit copies of the following in [ND Grants](https://www.ndgrants.gov):

- Investment Justification (the Investment Justification Template may be found in the Related Documents Tab of the [Grants.gov](https://www.grants.gov) posting and used as a preparation tool; responses to questions in the Template are entered into the GRT);
- List of Urban Area Working Group (UAWG) and Senior Advisory Committee (SAC) members;
- SAC charter;
- UAWG charter; and
- Indirect Cost Agreement, if requesting indirect costs. If there is no current indirect cost agreement, then the applicant must contact the Federal Cognizant Agency to negotiate a rate and notify the relevant HQ Program Analyst or Grants Management Specialist.

Applicants must submit copies of the following in ND Grants if applying for construction projects. The forms may be accessed in the Forms tab under SF-424 Family on [Grants.gov](https://www.grants.gov):

- Standard Form 424C, Budget Information (Construction); and
- Standard Form 424D, Standard Assurances (Construction).

Applicants needing assistance registering for the ND Grants system should contact [ndgrants@fema.gov](mailto:ndgrants@fema.gov) or (800) 865-4076.



## HSGP Specific Application Instructions

### Development of the Investment Justification (SHSP and UASI)

As part of the FY 2019 HSGP application process for SHSP and UASI funds, applicants must develop formal investment justifications (IJs) that address the proposed investments.

Each IJ must *demonstrate* how proposed investments:

- Support terrorism preparedness;
- Support closing capability gaps or sustaining capabilities identified in the community's THIRA/SPR process; and
- Engage and/or impact the whole community, including children, older adults, pregnant women, and individuals with limited English proficiency, individuals with disabilities and others with access and functional needs, and ensure the protection of civil rights in the building, sustainment, and delivery of core capabilities.

Each IJ must *explain* how the proposed investments will support the applicant's efforts to:

- Prevent a threatened or an actual act of terrorism;
- Prepare for all hazards and threats, while explaining the nexus to terrorism preparedness;
- Protect citizens, residents, visitors, and assets against the greatest threats and hazards, relating to acts of terrorism; and/or
- Respond quickly to save lives, protect property and the environment, and meet basic human needs in the aftermath of an act of terrorism or other catastrophic incidents.

### Development of Investments and Projects (SHSP)

- Applicants must propose at least two and may include up to ten investments.
- Within each investment in their IJ, applicants must propose at least one project to describe the activities they plan to implement with SHSP funds. There is no limit to the number of projects that may be submitted.
- Any projects funded with SHSP funds that are not included in the application must subsequently be included in the first Biannual Strategy Implementation Report (BSIR). For further information on the BSIR, see the [Preparedness Grants Manual](#).
- Of the proposed SHSP-funded investments, one single investment must be in support of a designated fusion center. Recipients must coordinate with the fusion center when developing a fusion center investment prior to submission. See additional information on how to develop fusion center investments below.
- Of the proposed SHSP-funded investments, as introduced in FY 2018, at least one investment must be in support of the state or territory's cybersecurity efforts. Consistent with the terms of this NOFO and the Preparedness Grants Manual, Recipients and subrecipients must ensure SHSP funds for cybersecurity projects achieve target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism. Such projects may simultaneously support enhanced preparedness for other hazards unrelated to acts of terrorism. Recipients and subrecipients of FY 2019 grant awards will be required to complete the 2019 [Nationwide Cybersecurity Review](#) (NCSR), enabling agencies to benchmark and measure progress of improving their cybersecurity posture. The Chief Information

Officer (CIO), Chief Information Security Officer (CISO), or equivalent for each recipient and subrecipient should complete the NCSR. If there is no CIO or CISO, the most senior cybersecurity professional should complete the assessment. The NCSR is available at no cost to the user and takes approximately 2-3 hours to complete. The 2019 NCSR will be open from October – December 2019. Although this is only a requirement for recipients and subrecipients of FY 2019 SHSP funds, all SLTT agencies with preparedness responsibilities are highly encouraged to participate and complete the 2019 NCSR to evaluate their cybersecurity posture. For detailed information and background on the NCSR, please see Information Bulletin 439.

- The name of the cybersecurity IJ must include the word “Cybersecurity” to easily identify the required cybersecurity investment.
- All emergency communications investments must describe how such activities align with their Statewide Communication Interoperable Plan (SCIP). Recipients must coordinate with their Statewide Interoperability Coordinator (SWIC) and/or Statewide Interoperability Governance Body (SIGB) when developing an emergency communications investment prior to submission to ensure the project supports the statewide strategy to improve emergency communications and is compatible and interoperable with surrounding systems. The investment name must include the words “emergency communications” to easily identify any emergency communications investments.
- Projects should describe how the proposed investment supports closing capability gaps or sustaining capabilities identified in the THIRA/SPR process.
- All requested funding must be associated with specific projects. For each project, several pieces of information must be provided to submit the project for consideration in the application, including the name of the project, the project description, the name of the subrecipient, if applicable, the recipient type (e.g., state or local), the project location (zip code of the primary location of the project), the primary core capability the project supports, and whether the project activities are shareable and deployable.

#### **Development of Investments and Projects (UASI)**

- Applicants must propose at least two and may include up to ten investments.
- Within each investment in their IJ, Urban Areas must propose at least one project to describe the activities they are planning to implement with UASI funds. There is no limit to the number of projects that may be submitted. Any projects funded with UASI funds that are not included in the application must subsequently be included in the first BSIR. For further information on the BSIR, see the [Preparedness Grants Manual](#).
- Of the proposed 10 investments, Urban Areas are required to propose one single investment in support of a designated fusion center within the Urban Area, if applicable. Recipients must coordinate with the fusion center when developing a fusion center investment prior to submission. See additional information on how to develop fusion center investments below.
- Of the proposed UASI-funded investments, at least one investment must be in support of the urban area’s cybersecurity efforts. Cybersecurity investments must support the security and functioning of critical infrastructure and core capabilities as they relate to

achieving target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism. Recipients and subrecipients of FY 2019 grant awards will be required to complete the 2019 [Nationwide Cybersecurity Review](#) (NCSR), enabling agencies to benchmark and measure progress of improving their cybersecurity posture. The CIO, CISO or equivalent for each recipient should complete the NCSR. If there is no CIO or CISO, the most senior cybersecurity professional should complete the assessment. The NCSR is available at no cost to the user and takes approximately 2-3 hours to complete. The 2019 NCSR will be open from October – December 2019. Although this is only a requirement for recipients and subrecipients of FY 2019 UASI funds, all SLTT agencies with preparedness responsibilities are highly encouraged to participate and complete the 2019 NCSR to evaluate their cybersecurity posture. For detailed information and background on the NCSR, please see Information Bulletin 439.

- If UASI funds are used by the state in support of the Urban Area, the SAA must, as part of the list of proposed investments, describe how those funds will directly support the Urban Area.
- All emergency communications investments must describe how such activities align to the SCIP. Recipients must coordinate with the SWIC and/or SIGB when developing an emergency communications investment prior to submission to ensure the project supports the statewide strategy to improve emergency communications and is compatible and interoperable with surrounding systems. The investment name must include the words “emergency communications” to easily identify any emergency communications investments.
- Projects should describe how the proposed investment supports closing capability gaps or sustaining capabilities identified in the THIRA/SPR process. Applicants that completed the THIRA/SPR in 2018 should refer to that assessment to identify gaps and sustainment needs related to Response, Recovery, and cross-cutting capabilities. They should refer to their 2017 THIRA/SPR for gaps and sustainment needs related to the other core capabilities. Applicants that did not complete the THIRA/SPR in 2018 should refer to their most recent THIRA/SPR.
- All requested funding must be associated with specific projects. For each project, several pieces of information must be provided to submit the project for consideration in the application, including the name of the project, the project description, the name of the subrecipient, if applicable, the recipient type (e.g., state or local), the project location (zip code of the primary location of the project), the primary core capability the project supports, and whether the project activities are shareable and deployable.

#### **Development of Fusion Center Investments (SHSP and UASI)**

If applicable, each IJ must include and identify a fusion center investment that will:

- Indicate alignment to a designated Fusion Center.
- Provide both a brief narrative description and funding itemization of the project activities relating to the proposed resources that directly support the designated Fusion Center. This descriptive narrative should align with both the financial itemization and improvement or sustainment of performance measures because of receiving the proposed funding. If the project description and funding itemization do not directly support the fusion center and the relationship to the fusion center is not identified, then the

investment may be conditionally approved until a Fusion Center Addendum is submitted and approved. Note: A sample project description and funding itemization are below.

- Identify the expected improvement or sustainment of performance measures because of receiving the proposed funding for the itemized projects.
- Effectively address performance measures identified in each fusion center's individual assessment data found in the HSIN-Intel Fusion Center Profile. A list of the 2019 Performance Measures can be found in the [Preparedness Grants Manual](#).

### ***Sample Fusion Center Project Description***

The following is an example of a sample fusion center project description that could be included in a SHSP or UASI investment:

*The X Fusion enhancement project will fund salaries, benefits, and training for X number of Fusion Center intelligence analysts, maintenance and support for the center's enabling systems, travel costs associated with training, and the replacement of X computer monitors within the Fusion Center. The project will directly sustain the Center's achieved abilities and work to close the gap of any current capabilities through the sustained funding of its current analytical staff and enabling systems. This project directly aligns with performance measures 2019.1-2019.23. We anticipate seeing an improvement of the quality and quantity of reporting as a direct result of the funding of this project.*

### ***Sample Fusion Center Funding Itemization***

The funding itemization for a fusion center investment should include the amount and percent of each relevant solution area. As an example:

<b><i>Solution Area and Amount of Proposed Funding</i></b>		<b><i>Percent of Proposed Funding</i></b>
<i>Planning:</i>	<i>\$10,000.00</i>	<i>2%</i>
<i>Organization:</i>	<i>\$200,000</i>	<i>48%</i>
<i>Equipment:</i>	<i>\$200,000</i>	<i>48%</i>
<i>Training:</i>	<i>\$10,000</i>	<i>2%</i>
<i>Exercises:</i>	<i>\$0</i>	<i>0%</i>
<b><i>Total:</i></b>	<b><i>\$420,000</i></b>	<b><i>100%</i></b>

### **Completing IJs in the Grant Reporting Tool (GRT) (SHSP and UASI)**

In the Related Documents section of the [Grants.gov](#) posting, applicants can find the IJ template and instructions for collecting the required information for investments and projects. Additionally, applicants should utilize the Project Worksheet located in [Grants.gov](#) posting to assemble the information required for each project, which will facilitate the input of that information into the GRT.

### **Development of Concept of Operations for OPSG**

As part of the FY 2019 OPSG application process, each eligible local unit of government at the county or federally-recognized tribal government level must develop a strategic plan called a Concept of Operations (CONOP)/Application, which is a formal proposal of action to address a

specific situation and forms the basis for Operations Orders, in coordination with state and federal law enforcement agencies, to include, but not limited to CBP/USBP. CONOPs that are developed at the county level should be inclusive of city, county, tribal, and other local law enforcement agencies that are eligible to participate in OPSG operational activities, and the CONOP/Application should describe participating agencies in the Executive Summary. CONOP/Application details should include the names of the agencies, points of contact, and individual funding requests. All CONOPs/Applications must be developed in collaboration with the local USBP sector office, the SAA and the local unit of government. Requests for funding in CONOPs/Applications must be based on risks and the operational enforcement support requirements of its corresponding USBP Sector. Sector offices will forward the CONOPs to USBP Headquarters for vetting and coordination. Applicants will forward corresponding OPSG Applications to the SAA for submission to FEMA. USBP Headquarters will reconcile all submitted CONOPs with the OPSG Applications.

### **Intergovernmental Review**

An intergovernmental review may be required. Applicants must contact their state's Single Point of Contact (SPOC) to comply with the state's process under Executive Order 12372. See <https://www.archives.gov/federal-register/codification/executive-order/12372.html>; <https://www.whitehouse.gov/wp-content/uploads/2017/11/SPOC-Feb.-2018.pdf>.

### **Funding Restrictions**

Federal funds made available through this award may be used for the purpose set forth in this award and must be consistent with the statutory authority for the award. Award funds may not be used for matching funds for any other federal awards, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, federal funds may not be used to sue the Federal Government or any other government entity. See the [Preparedness Grants Manual](#) for more information on funding restrictions.

### **Environmental Planning and Historic Preservation (EHP) Compliance**

See the [Preparedness Grants Manual](#) for information on EHP Compliance.

### **Emergency Communications Investments**

If an entity uses HSGP funding to support emergency communications investments, the following requirements shall apply to all such grant-funded communications investments in support of the emergency communications priorities and recognized best practices:

- Applicants must describe in the investment how proposed communications investments align to needs identified in their SCIP. Effective project alignment will require advance coordination with the SWIC and consultation with governing bodies such as the SIGB or Statewide Interoperability Executive Committee (SIEC), as they serve as the primary steering group for the statewide interoperability strategy. Additionally, recipients should consult subject matter experts serving on governance bodies such as broadband experts, chief information officers, representatives from utilities, or legal and financial experts when developing proposals.
- The signatory authority for the SAA must certify in writing to DHS/FEMA their compliance with the *SAFECOM Guidance*. The certification letter should be coordinated with the SWIC for each state and must be uploaded to [ND Grants](#) at the

- time of the first Program Performance Report (PPR) submission.
- All states and territories must designate a full-time SWIC who has the authority and resources to actively improve interoperability with emergency management and response agencies across all levels of government, to include establishing statewide plans, policies, and procedures, and coordinating decisions on communications investments funded through federal grants. Note that the designated full-time SWIC may also be the state's or territory's cybersecurity point of contact. SWIC status information will be maintained by the DHS Office of Emergency Communications and will be verified by FEMA GPD through programmatic monitoring activities.
- By the period of performance end date, all states and territories must update their SCIP, with a focus on communications resilience/continuity, to include assessment and mitigation of all potential risks identified in the SCIP: natural disasters, accidental damage (human failures), intentional damage (sabotage, terrorism), cybersecurity, etc. Following the initial update, the SCIP should be updated on an annual basis. SCIP status information will be maintained by the DHS Office of Emergency Communications and will be verified by FEMA GPD through programmatic monitoring activities.

All states and territories must test their emergency communications capabilities and procedures (as outlined in their operational communications plans) in conjunction with regularly planned exercises (separate/addition emergency communications exercises are not required) and must submit an After Action Report/Improvement Plan (AAR/IP) to the Homeland Security Exercise and Evaluation Program's (HSEEP) electronic message inbox at [hseep@fema.gov](mailto:hseep@fema.gov) within 90 days of exercise completion. Exercises should be used to both demonstrate and validate skills learned in training and to identify gaps in capabilities. Resilience and continuity of communications should be tested during training and exercises to the greatest extent possible. Further, exercises should include participants from multiple jurisdictions, disciplines, and levels of government and include emergency management, emergency medical services, law enforcement, interoperability coordinators, public health officials, hospital officials, officials from colleges and universities, and other disciplines and private sector entities, as appropriate. Findings from exercises should be used to update programs to address gaps in emergency communications as well as emerging technologies, policies, and partners. Recipients are encouraged to increase awareness and availability of emergency communications exercise opportunities across all levels of government. States, territories, and other eligible grant recipients are advised that HSGP funding may be used to support communications planning (including the cost of hiring a SWIC, participation in governance bodies and requirements delineated [above](#)), training, exercises, and equipment costs. Costs for transitioning to the FirstNet network may also be eligible. More information regarding FirstNet can be found in the [Preparedness Grants Manual](#).

### **Funds Transfer Restriction**

The recipient is prohibited from transferring funds between programs (includes the SHSP, the UASI, and OPSG). Recipients can submit an investment/project where funds come from multiple funding sources (e.g., the SHSP and UASI), however, recipients are not allowed to divert funding from one program to another due to the risk-based funding allocations, which were made at the



discretion of DHS/FEMA.

### **Pre-Award Costs**

Pre-award costs are allowable only with the prior written approval of DHS/FEMA and as included in the award agreement. To request pre-award costs, a written request must be included with the application, signed by the Authorized Representative of the entity. The letter must outline what the pre-award costs are for, including a detailed budget break-out of pre-award costs from the post-award costs, and a justification for approval.

### **Cost Principles**

Costs charged to this award must be consistent with the Cost Principles for Federal Awards located at 2 C.F.R. Part 200, Subpart E. For more information on 2 C.F.R. Part 200, please refer to FEMA GPD Information Bulletin 400, [FEMA's Implementation of 2 C.F.R. Part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) ("Super Circular" or "Omni Circular").

### **Direct Costs**

#### **Planning**

Planning costs are allowed under this program.

#### **Organization**

Organization costs are allowed under this program.

#### **Equipment**

Equipment costs are allowed under this program.

#### **Training**

Training costs are allowed under this program.

#### **Exercises**

Exercise costs are allowed under this program.

### **Personnel**

Personnel hiring, overtime, and backfill expenses are permitted under this grant to perform allowable HSGP planning, organization, training, exercise, and equipment activities. Under OPSG, overtime costs are allowable only in so far as they meet the intent of the program. All recipients and subrecipients of HSGP funds, including SHSP, UASI, and OPSG allocations, may not use more than 50 percent of their awards to pay for personnel activities unless a waiver is approved by FEMA. For more information on the 50 percent personnel cap, please see FEMA Information Bulletin (IB) 421, *Clarification on the Personnel Reimbursement for Intelligence Cooperation and Enhancement of Homeland Security Act of 2008* (Public Law 110-412) – the PRICE Act.

### **Operational Overtime**

Operational Overtime costs are allowed under this program. Prior to use of funds for operational overtime, recipients must receive approval from DHS/FEMA.

### **Travel**

Domestic travel costs are allowed under this program, as provided for in this NOFO. International travel is not an allowable cost under this program unless approved in advance by DHS/FEMA.

### **Construction and Renovation**

Construction and renovation costs to achieve capability targets related to preventing, preparing for, protecting against, or responding to acts of terrorism are allowed under this program. For construction and renovation costs to be allowed, they must be specifically approved by DHS/FEMA in writing prior to the use of any program funds. Applicants must use the EHP approval process. Limits on the total amount of grant funding that may be used for construction or renovation may apply. Additionally, recipients are required to submit [Standard Form 424C](#).

### **Maintenance and Sustainment**

Maintenance and Sustainment related costs, such as maintenance contracts, warranties, repair or replacement costs, upgrades, and user fees are allowable as described in FP 205-402-125-1, Maintenance Contracts and Warranty Coverage Funded by Preparedness Grants Policy (<http://www.fema.gov/media-library/assets/documents/32474>).

### **Management and Administration (M&A) Costs**

Management and administration (M&A) activities are those directly relating to the management and administration of HSGP funds, such as financial management and monitoring. A maximum of up to five percent of HSGP funds awarded may be retained by the state, and any funds retained are to be used solely for M&A purposes associated with the HSGP award. Subrecipients may also retain a maximum of up to 5 percent of the funding passed through by the state solely for M&A purposes associated with the HSGP award.

A state's HSGP funds for M&A calculation purposes includes the total of its SHSP, UASI, and OPSG awards. While the SAA may retain up to 5 percent of this total for M&A, the state must still ensure that all subrecipient award amounts meet the mandatory minimum pass-through requirements that are applicable to each HSGP program. To meet this requirement, the percentage of SHSP and UASI funds passed through to local or tribal jurisdictions must be based on the state's total HSGP award prior to withholding any M&A.

In retaining these funds, states may retain a maximum of 2.5 percent of the OPSG allocation, which must be withheld from the pass-through to each subrecipient county or tribe in an equal percentage. The SAA may also retain additional funding from its SHSP award to manage and

administer the OPSG award, but that additional amount is also capped at an amount equal to 2.5 percent of the OPSG award. Examples applying this principle:

#### SAA 1:

SHSP: \$1,000,000

OPSG: \$2,500,000

UASI: \$2,500,000

M&A Maximum: \$300,000 (5 percent of \$6,000,000)



Maximum M&A for SHSP = \$50,000

Maximum M&A for OPSG = \$125,000. Of that amount, \$62,500 (2.5 percent) may be retained from the OPSG allocation, and the other \$62,500 would come from the SHSP allocation. Any amount used to manage and administer OPSG that is charged to SHSP may be above and beyond the \$50,000 available to manage the SHSP allocation.

SAA 2:

SHSP: \$3,500,000

OPSG: \$1,000,000

M&A Maximum: \$225,000 (5 percent of \$4,500,000)

Maximum M&A for SHSP: \$175,000

Maximum M&A for OPSG = \$50,000. Of that amount, \$25,000 (2.5 percent) may be retained from the OPSG allocation, and the other \$25,000 would come from the SHSP allocation. Any amount used to manage and administer OPSG that is charged to SHSP may be above and beyond the \$175,000 available to manage the SHSP allocation.

Please note, [Information Bulletin \(IB\) 365: Management and Administration Costs in the Homeland Security](#) and DHS/FEMA Policy 207-087-1, which can be found at <http://www.fema.gov/library/viewRecord.do?id=7837>, **do not apply to awards made in FY 2019 under this NOFO.** The IB and Policy remain in effect for all previous awards.

### **Critical Emergency Supplies**

Critical emergency supplies are allowed under this program.

### **Secure Identification**

Secure Identification costs are allowed under this program.

### **Indirect (Facilities & Administrative [F&A]) Costs**

Indirect costs are allowable under this program as described in 2 C.F.R. § 200.414. Except for recipients who have never received a negotiated indirect cost rate as described in 2 C.F.R. § 200.414(f), recipients must have an approved indirect cost rate agreement with their cognizant federal agency to charge indirect costs to this award. A copy of the approved rate (a fully executed, agreement negotiated with the applicant's cognizant federal agency) is required at the time of application and must be provided to DHS/FEMA before indirect costs are charged to the award.

### **General Purpose Equipment**

HSGP allows expenditures on general purpose equipment if it aligns to and supports one or more core capabilities identified in the Goal and has a nexus to terrorism preparedness. General purpose equipment, like all equipment funded under the HSGP, must be sharable through the Emergency Management Assistance Compact (EMAC)<sup>1</sup> and allowable under 6 U.S.C. § 609, and any other applicable provision of the *Homeland Security Act of 2002*, as amended. Examples of such general purpose equipment may include:

- Law enforcement vehicles;

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<sup>1</sup> Except for American Samoa and the Commonwealth of the Northern Mariana Islands, which are not required to belong to EMAC at this time.

- Emergency medical services (EMS) equipment and vehicles;
- Fire service equipment and vehicles, to include hose, pump accessories, and foam concentrate for specialized chemical, biological, radiological, nuclear, and explosives (CBRNE) response; and
- Office equipment for staff<sup>2</sup> engaged in homeland security program activity.

Equipment allowability is based on the [Authorized Equipment List \(AEL\)](#) but exceptions may be considered on a case-by-case basis if (1) the equipment identified to be purchased directly maps to a core capability contained within the Goal, and (2) the equipment's purpose (when operational) falls under the permitted use of funds in accordance with 6 U.S.C. § 609, and any other applicable provision of the *Homeland Security Act of 2002*, as amended.

### Allowable Cost Matrix

The following matrix provides allowable cost activities that fall under each of the cost categories noted above. Recipients and subrecipients must follow all applicable requirements in 2 C.F.R. Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*).

This list is not exhaustive, therefore, if there are any questions regarding allowable costs, please contact the appropriate HQ GPD Program Analyst. For additional information on allowable costs, see the [Preparedness Grants Manual](#).

Allowable Program Activities	SHSP	UASI	OPSG
<b>Allowable Planning Costs</b>			
Developing hazard/threat-specific annexes	Y	Y	N
Developing and implementing homeland security support programs and adopting ongoing DHS/FEMA national initiatives	Y	Y	N
Developing related terrorism and other catastrophic event prevention activities	Y	Y	N
Developing and enhancing plans and protocols	Y	Y	N
Developing or conducting assessments	Y	Y	N
Hiring of full- or part-time staff or contract/consultants to assist with planning activities	Y	Y	N
Materials required to conduct planning activities	Y	Y	N
Travel/per diem related to planning activities	Y	Y	Y
Overtime and backfill costs (in accordance with operational Cost Guidance)	Y	Y	Y
Issuance of WHTI-compliant Tribal identification cards	Y	N	N
Activities to achieve planning inclusive of people with disabilities and others with access and functional needs and limited English proficiency.	Y	Y	N
Coordination with Citizen Corps Councils for public information/education and development of volunteer programs	Y	Y	N
Update governance structures and processes and plans for emergency communications	Y	Y	N
Development, and review and revision of continuity of operations plans	Y	Y	N
Development, and review and revision of the THIRA/SPR continuity of operations plans	Y	Y	N

<sup>2</sup> This applies to all homeland security personnel and is not limited to management and administration staff, and costs are to be captured outside the cap on management and administration costs.

<b>Allowable Organizational Activities</b>			
<b>Note:</b> Personnel hiring, overtime, and backfill expenses are permitted under this grant only to the extent that such expenses are for the allowable activities within the scope of the grant.			
Program management	Y	Y	N
Development of whole community partnerships	Y	Y	N
Structures and mechanisms for information sharing between the public and private sector	Y	Y	N
Implementing models, programs, and workforce enhancement initiatives	Y	Y	N
Tools, resources, and activities that facilitate shared situational awareness between the public and private sectors	Y	Y	N
Operational support	Y	Y	N
Utilization of standardized resource management concepts	Y	Y	N
Responding to an increase in the threat level under the National Terrorism Advisory System (NTAS), or needs in resulting from a National Special Security Event	Y	Y	N
Reimbursement for select operational expenses associated with increased security measures at critical infrastructure sites incurred (up to 50 percent of the allocation)	Y	Y	Y
Overtime for information, investigative, and intelligence sharing activities (up to 50 percent of the allocation)	Y	Y	Y
Hiring of new staff positions/contractors/consultants for participation in information/intelligence analysis and sharing groups or fusion center activities (up to 50 percent of the allocation).	Y	Y	N
<b>Allowable Equipment Categories</b>			
Personal Protective Equipment	Y	Y	Y
<b>Allowable Equipment Categories</b>			
Explosive Device Mitigation and Remediation Equipment	Y	Y	N
CBRNE Operational Search and Rescue Equipment	Y	Y	N
Information Technology	Y	Y	Y
Cybersecurity Enhancement Equipment	Y	Y	N
Interoperable Communications Equipment	Y	Y	Y
Detection	Y	Y	Y
Decontamination	Y	Y	N
Medical countermeasures	Y	Y	Y
Power (e.g., generators, batteries, power cells)	Y	Y	Y
CBRNE Reference Materials	Y	Y	N
CBRNE Incident Response Vehicles	Y	Y	N
Terrorism Incident Prevention Equipment	Y	Y	Y
Physical Security Enhancement Equipment	Y	Y	Y
Inspection and Screening Systems	Y	Y	Y
Animal Care and Foreign Animal Disease	Y	Y	N
CBRNE Prevention and Response Watercraft	Y	Y	N
CBRNE Prevention and Response Unmanned Aircraft	Y	Y	N
CBRNE Aviation Equipment	Y	Y	N
CBRNE Logistical Support Equipment	Y	Y	N
Intervention Equipment (e.g., tactical entry, crime scene processing)	Y	Y	Y
Critical emergency supplies	Y	Y	N
Vehicle rentals	N	N	Y
Other Authorized Equipment	Y	Y	Y
<b>Allowable Training Costs</b>			
Overtime and backfill for emergency preparedness and response personnel attending DHS/FEMA-sponsored and approved training classes	Y	Y	Y
Overtime and backfill expenses for part-time and volunteer emergency response personnel participating in DHS/FEMA training	Y	Y	Y

Training workshops and conferences	Y	Y	Y
Activities to achieve training inclusive of people with disabilities and others with access and functional needs and limited English proficiency	Y	Y	N
Full- or part-time staff or contractors/consultants	Y	Y	Y
Travel	Y	Y	Y
Supplies	Y	Y	N
Instructor certification/re-certification	Y	Y	N
Coordination with Citizen Corps Councils in conducting training exercises	Y	Y	N
Interoperable communications training	Y	Y	N
Activities to achieve planning inclusive of people with limited English proficiency	Y	Y	N
Immigration enforcement training	Y	Y	Y
<b>Allowable Exercise Related Costs</b>			
Design, Develop, Conduct, and Evaluate an Exercise	Y	Y	N
Full- or part-time staff or contractors/consultants	Y	Y	N
Overtime and backfill costs, including expenses for part-time and volunteer emergency response personnel participating in DHS/FEMA exercises	Y	Y	N
Implementation of HSEEP	Y	Y	N
Activities to achieve exercises inclusive of people with disabilities and others with access and functional needs	Y	Y	N
Travel	Y	Y	N
Supplies	Y	Y	N
Interoperable communications exercises	Y	Y	N
<b>Allowable Exercise Related Costs</b>			
Activities to achieve planning inclusive of people with limited English proficiency	Y	Y	N
<b>Allowable Management &amp; Administrative Costs</b>			
Hiring of full- or part-time staff or contractors/consultants to assist with the management of the respective grant program, application requirements, and compliance with reporting and data collection requirements	Y	Y	Y
Development of operating plans for information collection and processing necessary to respond to DHS/FEMA data calls	Y	Y	Y
Overtime and backfill costs	Y	Y	Y
Travel	Y	Y	Y
Meeting related expenses	Y	Y	Y
Authorized office equipment	Y	Y	N
Recurring expenses such as those associated with cell phones and faxes during the PoP of the grant program	Y	Y	N
Leasing or renting of space for newly hired personnel during the PoP of the grant program	Y	Y	N
<b>Law Enforcement Terrorism Prevention Activities (LETPA) Costs</b>			
Maturation and enhancement of designated state and major Urban Area fusion centers	Y	Y	N
Coordination between fusion centers and other analytical and investigative efforts	Y	Y	N
Implementation and maintenance of the Nationwide SAR Initiative	Y	Y	N
Implementation of the "If You See Something, Say Something®" campaign	Y	Y	N
Increase physical security, through law enforcement personnel and other protective measures, by implementing preventive and protective measures at critical	Y	Y	N
Building and sustaining preventive radiological and nuclear detection capabilities	Y	Y	N

## E. Application Review Information

## **Allocations**

### **Risk Methodology**

The risk methodology determines the relative risk of terrorism faced by a given area considering the potential risk of terrorism to people, critical infrastructure, and economic security. The analysis includes threats from violent domestic extremists, international terrorist groups, and individuals inspired by terrorists abroad. See the [Preparedness Grants Manual](#) for additional information on risk methodology.

NOTE: The THIRA/SPR process is separate from the risk methodology, and its results do not affect grant allocations.

### **SHSP Allocations**

FY 2019 SHSP funds will be allocated based on two factors: minimum amounts as legislatively mandated, and DHS/FEMA's risk methodology. THIRA/SPR results do not impact grant allocation or award.

Each state and territory will receive a minimum allocation under the SHSP using thresholds established in the *Homeland Security Act of 2002*, as amended. All 50 States, the District of Columbia, and the Commonwealth of Puerto Rico will receive 0.35 percent of the total funds allocated for grants under Section 2003 and Section 2004 of the *Homeland Security Act of 2002*, as amended. Each of the four territories (American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands) will receive a minimum allocation of 0.08 percent of the total funds allocated for grants under Section 2003 and 2004 of the *Homeland Security Act of 2002*, as amended.

### **UASI Allocations**

FY 2019 UASI funds will be allocated based on DHS/FEMA's risk methodology. THIRA/SPR results do not impact grant allocation or award.

Eligible candidates for the FY 2019 UASI program have been determined through an analysis of relative risk of terrorism faced by the 100 most populous Metropolitan Statistical Areas (MSAs) in the United States, in accordance with the *Homeland Security Act of 2002*, as amended. Detailed information on MSAs is publicly available from the United States Census Bureau at <https://www.census.gov/programs-surveys/metro-micro.html>.

### **OPSG Allocations**

The FY 2019 OPSG Risk Assessment is designed to identify the risk to border security and to assist with the distribution of funds for the grant program. Funding under OPSG is distributed based on the risk to the security of the border. Entities eligible for funding are the state, local and tribal law enforcement agencies that are located along the border of the United States. The THIRA/SPR process is not required for OPSG.

For the purposes of OPSG, the risk is defined as the potential for an adverse outcome assessed as a function of threats, vulnerabilities, and consequences associated with an incident, event, or occurrence.

Based upon ongoing intelligence analysis and extensive security reviews, DHS/CBP continues to focus the bulk of OPSG funds based upon risk analyses. The risk model used to allocate OPSG funds considers the potential risk that certain threats pose to border security and estimate the relative risk faced by a given area. In evaluating risk, DHS/CBP considers intelligence, situational awareness, criminal trends, and statistical data specific to each of the border sectors, and the potential impacts that these threats pose to the security of the border area. For vulnerability and consequence, DHS/CBP considers the expected impact and consequences of successful border events occurring in specific areas.

Threat and vulnerability are evaluated based on specific operational data from DHS/CBP. Threat components present in each of the sectors are used to determine the overall threat score. These components are terrorism, criminal aliens, drug trafficking organizations, and alien smuggling organizations.

### **Application Evaluation Criteria**

FEMA will evaluate the FY 2019 HSGP applications for completeness, adherence to programmatic guidelines, and anticipated effectiveness of the proposed investments. FEMA's review will include verification that each IJ or project:

- Aligns with at least one core capability identified in the Goal;
- Demonstrates how investments support closing capability gaps or sustaining capabilities identified in the THIRA/SPR process; and
- Supports a NIMS-typed resource and whether those assets are deployable/shareable to support emergency or disaster operations per existing EMAC agreements.

In addition to the above, FEMA will evaluate whether proposed projects are: 1) both feasible and effective at reducing the risks for which the project was designed; and 2) able to be fully completed within the three-year PoP. FEMA will use the information provided in the application and after the submission of the first BSIR to determine the feasibility and effectiveness of a grant project. To that end, IJs should include:

- An explanation of how the proposed project will achieve objectives as identified in the SPR, including expected long-term impact where applicable, and which core capability gap(s) it helps to close and how;
- A summary of the status of planning and design efforts accomplished to date (e.g., included in a capital improvement plan); and
- A project schedule with clear milestones.

Recipients are expected to conform, as applicable, with accepted engineering practices, established codes, standards, modeling techniques, and best practices, and participate in the development of case studies demonstrating the effective use of grant funds, as requested.

### **Review and Selection Process (SHSP and UASI)**

To ensure the effectiveness of proposed investments and projects, all applications will undergo a federal review. The federal review will be conducted by FEMA HQ Program Analysts. FEMA HQ Program Analysts will use a checklist to verify compliance with all administrative and eligibility criteria identified in the NOFO. Recipients must be able to demonstrate how

investments support closing capability gaps or sustaining capabilities identified in the THIRA/SPR process. IJs will be reviewed at both the investment and project level. A program hold may be placed on any investment which is found to be noncompliant.

Fusion center investments will be jointly reviewed by FEMA and the DHS Office of Intelligence and Analysis (I&A) for compliance with HSGP NOFO requirements to prioritize the alignment of requests with results from the annual Fusion Center Assessment Program. If a fusion center investment does not meet the requirements, a Fusion Center Addendum must be completed and submitted for review and approval prior to expending funds allocated to fusion center activities. Emergency communications investments will be jointly reviewed by FEMA and the DHS Office of Emergency Communications (OEC) to verify compliance with SAFECOM guidance. FEMA and OEC will coordinate directly with the recipient on any compliance concerns and will provide technical assistance as necessary to help ensure full compliance.

### **Review and Selection Process (OPSG)**

Applications will be reviewed by the SAA and USBP Sector Headquarters for completeness and adherence to programmatic guidelines and evaluated for anticipated feasibility, need, and impact of the Operations Orders. For more information on Operations Orders and other requirements of OPSG, see the [Preparedness Grants Manual](#).

DHS/FEMA will verify compliance with all administrative and eligibility criteria identified in the NOFO and required submission of Operations Orders and Inventory of Operations Orders by the established due dates. DHS/FEMA and USBP will use the results of both the risk analysis and the federal review by DHS/FEMA to make recommendations for funding to the Secretary of Homeland Security.

FY 2019 OPSG funds will be allocated competitively based on risk-based prioritization using the OPSG Risk Assessment described above. Final funding allocations are determined by the Secretary, who may consider information and input from various law enforcement offices or subject-matter experts within the Department. Factors considered include, but are not limited to threat, vulnerability, miles of the border, and other border-specific law enforcement intelligence, as well as the feasibility of FY 2019 Operations Orders to designated localities within border states and territories.

### **Financial Integrity Criteria**

Prior to making a Federal award, DHS/FEMA is required by 31 U.S.C. § 3321 note, 41 U.S.C. § 2313, and 2 C.F.R. § 200.205 to review information available through any OMB-designated repositories of government-wide eligibility qualification or financial integrity information. Application evaluation criteria may include the following risk-based considerations of the applicant:

1. Financial stability;
2. Quality of management systems and ability to meet management standards;
3. History of performance in managing Federal awards;
4. Reports and findings from audits; and
5. Ability to effectively implement statutory, regulatory, or other requirements.



## **Supplemental Financial Integrity Review**

Prior to making a Federal award where the anticipated Federal share of a Federal award will be greater than the simplified acquisition threshold, currently \$250,000 (*see* Section 805 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 115-91, OMB Memorandum M-18-18 at <https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf>; *see also* [FEMA GPD Information Bulletin No. 434, Increases and Changes to the Micro-Purchase and Simplified Acquisition Thresholds](#)):

- DHS/FEMA is required to review and consider any information about the applicant in the designated integrity and performance system accessible through the System for Award Management (SAM), which is currently the [Federal Awardee Performance and Integrity Information System](#) (FAPIIS) and is also accessible through the [SAM](#) website.
- An applicant, at its option, may review information in FAPIIS and comment on any information about itself that a Federal awarding agency previously entered.
- DHS/FEMA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 2 C.F.R. § 200.205.

## **F. Federal Award Administration Information**

### **Notice of Award**

See the [Preparedness Grants Manual](#) for information on Notice of Award.

### **Administrative and National Policy Requirements**

See the [Preparedness Grants Manual](#) for information on Administrative and National Policy requirements.

### **SHSP and UASI Pass-Through Requirements**

Awards made to the SAA for HSGP carry additional pass-through requirements. Pass-through is defined as an obligation on the part of the SAA to make funds available to local units of government, combinations of local units, tribal governments, or other specific groups or organizations. Four requirements must be met to pass-through grant funds:

- The SAA must make a firm written commitment to passing through grant funds to subrecipients;
- The SAA's commitment must be unconditional (i.e., no contingencies for the availability of SAA funds);
- There must be documentary evidence (i.e., award document, terms, and conditions) of the commitment; and
- The award terms must be communicated to the subrecipient.

### **Timing and Amount**

The SAA must pass-through at least 80 percent of the funds awarded under the SHSP and UASI to local or tribal units of government within 45 calendar days of receipt of the funds.

"Receipt of the funds" occurs either when the SAA accepts the award or 15 calendar days after the SAA receives notice of the award, whichever is earlier.



SAAAs are sent notification of HSGP awards via the GPD's ND Grants system. If an SAA accepts its award within 15 calendar days of receiving notice of the award in the ND Grants system, the 45-calendar days pass-through period will start on the date the SAA accepted the award. Should an SAA not accept the HSGP award within 15 calendar days of receiving notice of the award in the ND Grants system, the 45-calendar days pass-through period will begin 15 calendar days after the award notification is sent to the SAA via the ND Grants system.

It is important to note that the PoP start date does not directly affect the start of the 45-calendar days pass-through period. For example, an SAA may receive notice of the HSGP award on August 20, 2019, while the PoP dates for that award are September 1, 2019, through August 31, 2022. In this example, the 45-day pass-through period will begin on the date the SAA accepts the HSGP award or September 4, 2019 (15 calendar days after the SAA was notified of the award), whichever date occurs first. The PoP start date of September 1, 2019, would not affect the timing of meeting the 45-calendar day pass-through requirement.

### **Other SHSP and UASI Pass-Through Requirements**

The signatory authority of the SAA must certify in writing to DHS/FEMA that pass-through requirements have been met. A letter of intent (or equivalent) to distribute funds is not considered sufficient. The pass-through requirement does not apply to SHSP awards made to the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. The Commonwealth of Puerto Rico is required to comply with the pass-through requirement, and its SAA must also obligate at least 80 percent of the funds to local units of government within 45 calendar days of receipt of the funds.

Under SHSP, the SAA may retain more than 20 percent of funding for expenditures made by the state on behalf of the local unit(s) of government. This may occur only with the written consent of the local unit of government, specifying the amount of funds to be retained and the intended use of funds. States shall review their written consent agreements yearly and ensure that they are still valid. If a written consent agreement is already in place from previous fiscal years, DHS/FEMA will continue to recognize it for FY 2019, unless the written consent review

indicates the local government is no longer in agreement. If modifications to the existing agreement are necessary, the SAA should contact their assigned FEMA HQ Program Analyst.

### **Additional OPSG Requirements**

The recipient is prohibited from obligating or expending funds provided through this award until each unique and specific county-level or equivalent Operational Order/Fragmentary Operations Order budget has been reviewed and approved through an official electronic mail notice issued by DHS/FEMA removing this special programmatic condition.

### **Reporting**

See the [Preparedness Grants Manual](#) for information on reporting requirements.

### **Threat and Hazard Identification and Risk Assessment (THIRA) and Stakeholder Preparedness Review (SPR) Process**

See the [Preparedness Grants Manual](#) for information on the THIRA and SPR process.

### **Supplemental Information Reporting Systems**

In addition to ND Grants, the following information systems are used for the submission of required reports:

#### **Grant Reporting Tool (GRT)**

Information on the GRT can be found in the [Preparedness Grants Manual](#).

#### **Unified Reporting Tool (URT)**

See the [Preparedness Grants Manual](#) for information on the URT.

#### **Closeout Reporting Requirements**

See the [Preparedness Grants Manual](#) for information on closeout reporting requirements.

### **Disclosing Information per 2 C.F.R. § 180.335**

See the [Preparedness Grants Manual](#) for information on disclosing information.

## **G. DHS/FEMA Awarding Agency Contact Information**

### **Contact and Resource Information**

#### **Centralized Scheduling and Information Desk (CSID)**

CSID is a non-emergency comprehensive management and information resource developed by DHS/FEMA for grant stakeholders. CSID provides general information on all DHS/FEMA grant programs and maintains a comprehensive database containing key personnel contact information at the federal, state, and local levels. When necessary, recipients will be directed to a Federal point of contact who can answer specific programmatic questions or concerns. CSID can be reached by phone at (800) 368-6498 or by e-mail at [askcsid@fema.gov](mailto:askcsid@fema.gov), Monday through Friday, 9:00 a.m. – 5:00 p.m. ET.

#### **GPD Grant Operations Division**

GPD's Grant Operations Division Business Office provides support regarding financial matters and budgetary, technical assistance. Additional guidance and information can be obtained by contacting the FEMA Call Center at 866-927-5646 or via e-mail to [ASK-GMD@fema.gov](mailto:ASK-GMD@fema.gov).

#### **FEMA Regional Offices**

FEMA Regional Offices may also provide fiscal support, including pre- and post-award administration and technical assistance such as conducting cash analysis, financial monitoring, and audit resolution for the grant programs included in this solicitation. GPD will provide programmatic support and technical assistance. FEMA Regional Office contact information is available [here](#).

#### **GPD Environmental Planning and Historic Preservation (EHP)**

The DHS/FEMA GPD EHP Team provides guidance and information about the EHP review process to recipients and subrecipients. All inquiries and communications about GPD projects

or the EHP review process, including the submittal of EHP review materials, should be sent to [gpdehpinfo@fema.dhs.gov](mailto:gpdehpinfo@fema.dhs.gov). EHP Technical Assistance, including the EHP Screening Form, can be found online at <https://www.fema.gov/media-library/assets/documents/90195>.

## **Systems Information**

### **Grants.gov**

For technical assistance with [Grants.gov](https://www.grants.gov), call the customer support hotline 24 hours per day, 7 days per week (except Federal holidays) at (800) 518-4726 or e-mail at [support@grants.gov](mailto:support@grants.gov).

### **Non-Disaster (ND) Grants**

For technical assistance with the ND Grants system, please contact the ND Grants Helpdesk at [ndgrants@fema.gov](mailto:ndgrants@fema.gov) or (800) 865-4076, Monday through Friday, 9:00 a.m. – 5:00 p.m. ET.

### **Payment and Reporting System (PARS)**

DHS/FEMA uses the [Payment and Reporting System \(PARS\)](#) for financial reporting, invoicing and tracking payments. DHS/FEMA uses the Direct Deposit/Electronic Funds Transfer (DD/EFT) method of payment to recipients. To enroll in the DD/EFT, recipients must complete a Standard Form 119A, Direct Deposit Form.

## **H. Additional Information**

GPD has developed the [Preparedness Grants Manual](#) to guide applicants and recipients of grant funding on how to manage their grants and other resources. Recipients seeking guidance on policies and procedures for managing preparedness grants should reference the Manual for further information. Examples of information contained in the [Preparedness Grants Manual](#) include:

- Conflicts of Interest in the Administration of Federal Awards and Subawards;
- Extensions;
- Monitoring;
- Procurement Integrity; and
- Other Post-Award Requirements.

In response to recent disasters, FEMA has introduced a new lifelines construct, in order to enable the continuous operation of government functions and critical business essential to human health, safety, or economic security during and after a disaster. To learn more about lifelines, please refer to the [Preparedness Grants Manual](#), or visit <http://www.fema.gov/national-planning-frameworks>.

**Quarterly Performance and Reporting Requirements**

Quarterly performance reports indicating the status of FY 2019 State Homeland Security Grant Program (SHSGP) projects are due to the County Grants Administrator, Michelle Sandoval.

The following dates represent the Grant Performance Period for the SHSGP program:

- Performance Period 1 (September 1, 2019 – December 31, 2019) – quarterly performance report due January 15, 2020
- Performance Period 2 (January 1, 2020 – March 31, 2020) – quarterly performance period report due April 15, 2020
- Performance Period 3 (April 1, 2020 – June 30, 2020) – quarterly performance period report due July 15, 2020
- Performance Period 4 (July 1, 2020 – September 30, 2020) – quarterly performance period report due October 15, 2020
- Performance Period 5 (October 1, 2020 – December 31, 2020) – quarterly performance period report due January 15, 2021
- Performance Period 6 (January 1, 2021 – March 31, 2021) – quarterly performance period report due April 15, 2021
- Performance Period 7 (January 1, 2021 – March 31, 2021) – quarterly performance period report due April 15, 2021
- Performance Period 8 (April 1, 2021 – June 30, 2021) – quarterly performance period report due July 15, 2021
- Performance Period 9 (July 15, 2021 – September 30, 2021) – quarterly performance period report due October 15, 2021
- Performance Period 10 (October 1, 2021 – December 31, 2021) – quarterly performance period report due January 15, 2022
- Performance Period 11 (January 1, 2022 – March 31, 2022) – quarterly performance period report due April 30, 2022

**Performance Report**  
**FISCAL YEAR 2019 Homeland Security Grant Program**

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Reporting Sub-recipient: \_\_\_\_\_

Performance Period: from \_\_\_\_\_ to \_\_\_\_\_  
(see Agreement with County for Performance Period Report due date)

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Mailing Instructions: Please complete the performance report and return it by **the appropriate due date as indicated**: (see Agreement with County for Performance Period Report due dates)

Santa Clara County Office of Emergency Services  
Attention: Michelle Sandoval  
55 West Younger Ave, Suite 450  
San Jose CA, 95110

Questions regarding the completion of this performance report should be directed to Santa Clara County Office of Emergency Services (408) 808-7811. Questions can also be sent via email to [michelle.sandoval@oes.sccgov.org](mailto:michelle.sandoval@oes.sccgov.org). Reports can be faxed to (408)294-4689, with a hard copy of the report mailed to the above address.

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***Part I – Sub-recipient Contact Information***

Authorized person who is responsible for completing this form:

Name \_\_\_\_\_

Title \_\_\_\_\_

Mailing  
Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

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## ***Part II – Project Activities***

Directions: Complete the following items to reflect activities completed on your project during this reporting period.

1. Project Title: \_\_\_\_\_
  
2. Please explain the actions/processes being taken and estimated completion date.

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## ***Part III –Signature of Preparer***

I certify that I have prepared this report with the most timely and accurate information available.

Signature: \_\_\_\_\_

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

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

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



## Agenda Report

20-469

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

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

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

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

#### **DISCUSSION**

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

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

With nine months or 75% of the fiscal year complete, General Fund revenues are trending slightly below budget at 68.6%, largely due to the change in budgeting methodology, moving the City from a cash basis to a modified accrual basis. General Fund departmental expenditures are at 68.1% of budget which is within budgeted expectations. Total revenues for Enterprise Funds (Electric, Water, Sewer, Cemetery, Solid Waste, and Water Recycling) are at 60.3% while total expenses are at 64.4%.

In the month of March, the City received \$2,065 in donations, bringing the year-to-date donations total to \$125,424.

It should be noted that the COVID-19 response and the current economic downturn are expected to significantly impact the City's revenue collections through the remainder of the fiscal year, particularly transient occupancy tax, sales tax, and fees for services and classes. On a national level, economic conditions have worsened in a very short period of time and many economists are now projecting one of the worst recessions in generations. In April, the U.S. unemployment rate jumped to 14.7%, the highest level since the Great Depression, with 20.5 million jobs lost in that month. Significant impacts are also expected on the State and local level. The State of California is now projecting a \$54.3 billion impact as a result of COVID-19, including a \$41.2 billion drop in tax revenues and approximately \$13.1 billion in additional costs. Many local jurisdictions are projecting significant shortfalls as well.

While there is limited actual data available, the decline in revenues could result in a General Fund shortfall of approximately \$10 million in FY 2019/20 and nearly \$23 million in FY 2020/21. In response to this projected drop in revenues, several cost savings/budget balancing measures were implemented April 1, 2020 to generate current year savings as well as savings that will be used in FY 2020/21 and in the development of the FY 2021/22 and FY 2022/23 Biennial Operating Budget. These actions include a hiring freeze and controls around overtime, as-needed staff, marketing, travel, technology and vehicle purchases.

While actions are being taken to reduce the General Fund impact in FY 2019/20, the General Fund may end the year in a negative position and, in that case, would have to draw on the Budget Stabilization Reserve to balance the budget in 2019/20. The City has \$80 million in this reserve to address any negative balance. Further discussion is included in Attachment 1.

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

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

The City's investment strategy for March 2020 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from the date of purchase. This strategy ensures safety of the City's funds, provides liquidity to meet the City's cash needs, and earns a reasonable portfolio return of 1.92%.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

### **FISCAL IMPACT**

Approval of the FY 2019/20 Budget Amendments included in Attachment 3 is recommended in this report. From time to time, adjustments to the FY 2019/20 Adopted Budget are required to correct for budgets based on actual tracking, more appropriately align budgets with actual charges and correct for inadvertent errors. Attachment 3 details amendments reallocating project funding sources from



the regional traffic mitigation fees in the Deposits Fund to unallocated traffic mitigation fees from the traffic mitigation fund to fund a new project in the Streets and Highways Capital Fund.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

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

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Monthly Financial Status Report March 2020
2. Monthly Investment Report March 2020
3. FY 2019/20 Budget Amendments



# **City of Santa Clara**

The Center of What's Possible

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## **MONTHLY FINANCIAL STATUS REPORT**

**March 2020**

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

### General Fund

The General Fund is the major operating fund for the City and includes multiple programs, services, and activities for the residents of the City. The adopted budget for both operating revenues and expenditures for fiscal year 2019/20 was \$263.2 million. The amended budget for both was revised to \$274.4 million to reflect carryover appropriations from fiscal year 2018/19 and various budget amendments approved by the City Council through March 2020.

At the end of fiscal year 2018/19, the City implemented an accounting change that switched from a cash basis to a modified-accrual basis, which is reflected in the tables of this report. As a result of this change, a number of revenues are tracking lower than prior year collections and appear below par through March due to the timing of payments. Factoring out these timing differences, revenues were tracking to slightly exceed the budgeted estimate by year end. Expenditures were also tracking within budgeted expectations through March. While overall departmental expenditures were within expected levels, personnel-related costs for a couple departments were tracking above budgeted levels. Based on performance through mid-March, the General Fund was tracking to end in a positive operating position. However, the General Fund is now expected to be significantly impacted in the last few months of the fiscal year by actions associated with COVID-19.

The virus and associated safety precautions and market reactions will impact revenue collections in areas such as transient occupancy tax, sales tax, fees for services and classes, and interest earnings as well as impact City costs. With the actions residents and businesses have been taking to reduce the spread of the virus and the latest order of the County Health Officer of the County of Santa Clara for residents to shelter in place, it is anticipated that economic activity will experience a significant decline.

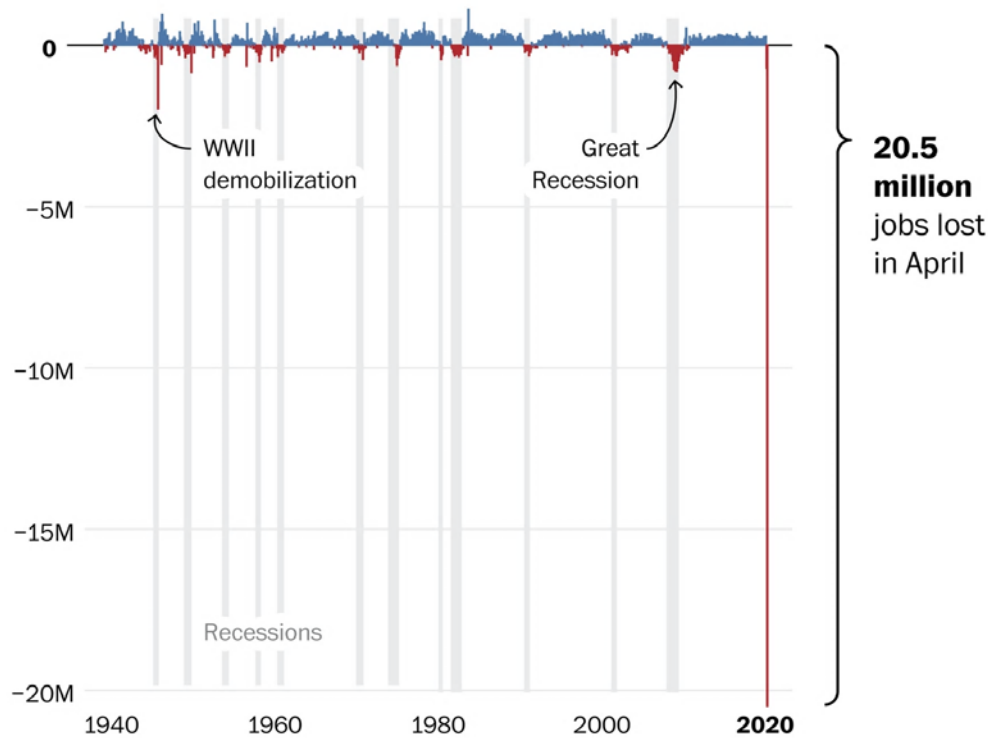
On a national level, economic conditions have worsened in a very short period of time and many economists are now projecting one of the worst recessions in generations. In its Global Economic Outlook – Coronavirus Crisis Update on April 2, 2020, Fitch Ratings now assumes a deep global recession as its baseline forecast. According to Brian Coulton, Fitch's chief economist, "The forecast fall in global GDP for the year as a whole is on par with the global financial crisis but the immediate hit to activity and jobs in the first half of the year will be worse. He also indicated that "Our baseline forecast does not see GDP reverting to its pre-virus levels until late 2021 in the US and Europe".<sup>1</sup>

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<sup>1</sup> <https://www.fitchratings.com/research/sovereigns/deep-global-recession-in-2020-as-coronavirus-crisis-escalates-02-04-2020>

In April, the unemployment rate jumped to 14.7% with 20.5 million jobs lost in that month, according to the Labor Department. This drop in employment wiped out a decade of job gains in a single month and is at the highest level since the Great Depression.<sup>2</sup>

### Monthly job gains or losses in the U.S. since 1939



Note: Nonfarm payrolls, seasonally adjusted  
Source: Labor Department

THE WASHINGTON POST

Significant impacts are also expected on the State and local level. The State of California is now projecting a \$54.3 billion impact as a result of COVID-19, including a \$41.2 billion drop in tax revenues and approximately \$13.1 billion in additional costs. This includes projected drops of 27.2% in sales taxes and 25.5% in personal income taxes. For context, this impact is three and a half times the State's "rainy day" emergency reserves and is almost as much as the \$57.1 billion spent on K-12 schools and community colleges spent last year. The state also projects the 2020 unemployment rate will increase to 18%, up 50% from the Great Recession.<sup>3</sup>

<sup>2</sup> <https://www.washingtonpost.com/business/2020/05/08/april-2020-jobs-report/>

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

Many local jurisdictions are now projecting significant shortfalls. For instance, the City of San José is projecting General Fund shortfalls of \$45 million in FY 2019/20 and an additional \$65 million in FY 2020/21, estimates that could get worse depending on the length of the shelter-in-place mandate.<sup>4</sup> The City of Palo Alto is planning to address a drop in General Fund revenues of at least \$20 million in FY 2020/21.<sup>5</sup>

The City's General Fund revenues will also be significantly impacted immediately and over the longer term based on the declining economic situation. While there is very limited data available, the decline in revenues is projected to result in a General Fund shortfall of approximately \$10 million in FY 2019/20 and almost \$23 million in FY 2020/21.

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

While there is significant uncertainty regarding how the COVID-19 will impact the local economy and the City's budget, the General Fund may end the year in a negative position and, in that case, would have to draw on the Budget Stabilization Reserve to balance the budget in 2019/20. The City has \$80 million in this reserve to address any negative balance. The Budget Stabilization Reserve is also proposed to be used as an interim funding source to balance the FY 2020/21 General Fund budget. A high-level General Fund budget balancing strategy is included in the Proposed FY 2020/21 and FY 2021/22 Biennial Capital Budget, and specific budget actions for FY 2020/21 are planned to be brought forward in September 2020.

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

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<sup>4</sup> <https://www.mercurynews.com/2020/04/07/san-jose-projects-budget-shortfall-of-110-million-due-to-coronavirus/>

<sup>5</sup> <https://www.cityofpaloalto.org/civicax/filebank/documents/76290>

## Financial Status Report as of March 31, 2020

### General Fund Revenues

As of March 31, 2020, \$188.6 million or 68.7% of the General Fund estimated revenue was received. Revenue is currently tracking below par of 75.0% and below the prior year. As mentioned above, the change in budgeting methodology to an accrual basis impacted the timing of revenue receipts when compared to FY 2018/19. Factoring out these timing differences, revenues through March were tracking to slightly exceed the budget. However, the actions associated with COVID-19 are expected to have a significant impact on certain revenue categories as discussed below.

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

Function	FISCAL YEAR 2019/20				PY REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 03/31/2020	Percentage Received	Actual Through 03/31/2019	\$ Change From Prior Year	Percentage Change
<b>TAXES</b>							
Sales Tax	\$ 58,200,400	\$ 58,200,400	\$ 34,762,722	59.73%	\$ 45,050,007	\$ (9,994,845)	-219.23%
Property Tax	64,438,315	64,438,315	37,381,179	58.01%	36,820,060	561,119	1.52%
Transient Occupancy Tax	23,002,500	23,002,500	12,579,593	54.69%	16,815,206	(4,235,613)	-25.19%
Other Taxes	6,080,151	6,080,151	3,172,998	52.19%	4,124,208	(951,210)	-23.06%
<b>Total Taxes</b>	<b>151,721,366</b>	<b>151,721,366</b>	<b>87,896,492</b>	<b>57.93%</b>	<b>102,809,481</b>	<b>(14,620,549)</b>	<b>-14.22%</b>
<b>LICENSES &amp; PERMITS</b>							
Business Licenses	959,500	959,500	652,422	68.00%	695,071	(42,649)	-6.14%
Fire Operation Permits	2,250,000	2,250,000	1,562,285	69.43%	-	1,562,285	100.00%
Building Permits	4,657,500	4,657,500	4,123,200	88.53%	5,916,991	(1,793,791)	-30.32%
Electric Permits	517,500	517,500	467,244	90.29%	536,647	(69,403)	-12.93%
Plumbing Permits	310,500	310,500	411,911	132.66%	464,082	(52,171)	-11.24%
Mechanical Permits	258,750	258,750	339,433	131.18%	437,243	(97,810)	-22.37%
Miscellaneous Permits	46,575	46,575	52,895	113.57%	74,657	(21,762)	0.00%
<b>Total Licenses &amp; Permits</b>	<b>9,000,325</b>	<b>9,000,325</b>	<b>7,609,390</b>	<b>84.55%</b>	<b>8,124,691</b>	<b>(515,301)</b>	<b>-6.34%</b>
<b>FINES &amp; PENALTIES</b>	<b>1,689,225</b>	<b>1,689,225</b>	<b>1,040,257</b>	<b>61.58%</b>	<b>1,481,443</b>	<b>(441,186)</b>	<b>-29.78%</b>
<b>INTERGOVERNMENTAL</b>	<b>168,755</b>	<b>5,239,529</b>	<b>5,645,321</b>	<b>107.74%</b>	<b>1,770,794</b>	<b>3,874,527</b>	<b>218.80%</b>
<b>CHARGES FOR SERVICES</b>	<b>33,144,722</b>	<b>33,180,892</b>	<b>27,973,010</b>	<b>84.30%</b>	<b>31,297,127</b>	<b>(3,324,117)</b>	<b>-10.62%</b>
<b>CONTRIBUTION IN LIEU</b>	<b>24,333,275</b>	<b>24,333,275</b>	<b>18,249,956</b>	<b>75.00%</b>	<b>17,320,942</b>	<b>929,014</b>	<b>5.36%</b>
<b>USE OF MONEY &amp; PROPERTY</b>							
Interest	5,697,500	5,697,500	2,588,568	45.43%	3,280,936	(692,368)	-21.10%
Rent	8,658,991	8,658,991	6,651,250	76.81%	6,426,245	225,005	3.50%
<b>Total Use of Money &amp; Property</b>	<b>14,356,491</b>	<b>14,356,491</b>	<b>9,239,818</b>	<b>64.36%</b>	<b>9,707,181</b>	<b>(467,363)</b>	<b>-4.81%</b>
<b>MISCELLANEOUS REVENUES</b>	<b>100,001</b>	<b>100,001</b>	<b>1,172,328</b>	<b>1172.32%</b>	<b>415,073</b>	<b>757,255</b>	<b>182.44%</b>
<b>LAND PROCEEDS</b>	<b>4,050,000</b>	<b>4,050,000</b>	<b>164,606</b>	<b>4.06%</b>	<b>-</b>	<b>-</b>	<b>0.00%</b>
<b>OTHER FINANCING SOURCES</b>							
Operating Transfer In - Storm Drain	1,398,145	1,398,145	1,398,145	100.00%	1,447,000	(48,855)	-3.38%
Operating Transfer In - Reserves	11,290,582	13,935,582	13,935,582	100.00%	4,116,125	9,819,457	238.56%
Operating Transfer In - Fund Balances <sup>(1)</sup>	-	5,338,670	5,338,670	100.00%	10,459,221	(5,120,551)	-48.96%
Operating Transfer In - Miscellaneous	667,885	1,736,115	1,736,115	100.00%	54,250	1,681,865	3100.21%
<b>Total Other Financing Sources</b>	<b>13,356,612</b>	<b>22,408,512</b>	<b>22,408,512</b>	<b>100.00%</b>	<b>16,076,596</b>	<b>6,331,916</b>	<b>39.39%</b>
<b>STADIUM OPERATION</b>							
Charges for Services	7,988,313	7,988,313	6,535,105	81.81%	5,306,188	1,228,917	23.16%
Rent and Licensing	3,333,185	633,185	639,410	100.98%	571,578	67,832	11.87%
<b>Total Stadium Operation</b>	<b>11,321,498</b>	<b>8,621,498</b>	<b>7,174,515</b>	<b>83.22%</b>	<b>5,877,766</b>	<b>1,296,749</b>	<b>22.06%</b>
<b>TOTAL GENERAL FUND</b>	<b>\$ 263,242,270</b>	<b>\$ 274,701,114</b>	<b>\$ 188,574,205</b>	<b>68.65%</b>	<b>\$ 194,881,094</b>	<b>\$ (6,179,055)</b>	<b>-3.17%</b>

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

### General Fund Revenues

**Sales Tax:** The City of Santa Clara sales tax rate is 9.0%, of which the City receives 1.0%. Through March 31, 2020, sales tax collections were \$34.8 million. These collections represent the sales tax revenue generated for the months of July through January 2020. While last year saw collections of \$45.1 million through the same period, these collections were for the months of May 2018 through January 2019. Based on receipts for the first two quarters and the estimates from the City's Sales Tax consultant, MuniServices, collections were projected to total \$60.0 million in FY 2019/20, exceeding the budgeted estimate of \$58.2 million. Collections in the latter half of the fiscal year, however, are now expected to be impacted by actions associated with COVID-19. Data for the third and fourth quarters will be available in May and August 2020.

**Property Tax:** The majority of property tax revenue is collected in January and April each year. Based on the latest estimates from the County of Santa Clara, it is anticipated that collections in this category will reach \$65.3 million, slightly exceeding the FY 2019/20 budgeted estimate of \$64.4 million. Property tax collections totaled \$37.4 million through March, which is higher than what was collected last year through the same period. COVID-19 is expected to have minimal potential impacts on 2019/20 revenue collections.

**Transient Occupancy Tax (TOT):** TOT is calculated as a percentage of City hotel/motel room charges. The City's current TOT rate is 9.5%. Through March 31, 2020, \$12.6 million has been collected, which is \$4.2 million less than what was collected through March 2019. This variance from last year's collections is attributable to the budget methodology change in which \$4.1 million was accrued to FY 2018/19 at the end of last fiscal year. Due to the timing of payments, the revenue through March does not yet reflect the impact from COVID-19.

Collections through the end of the year are now expected to be significantly impacted by actions associated with the Coronavirus. Receipts would end the year \$5.0 million to \$8.0 million below the budgeted estimate if there is a 50% to 75% decline in receipts from March through June.

**Other Taxes:** Includes franchise tax and documentary transfer tax. The City has collected \$3.2 million, which is 52.3% of the budgeted estimate of \$6.1 million. This decrease in revenue compared to last year's collections through the same period is primarily attributable to the change in budgeting methodology and the timing of payments. Franchise tax collections, budgeted at \$4.4 million, are lower due to prior year accruals and the timing of the receipt of payments; these receipts are expected to end the year close to the budgeted estimate. Documentary transfer tax revenue, budgeted at \$1.7 million, is lower as a result of a drop-off in activity this fiscal year and is currently tracking to end the year below the budgeted estimate by approximately \$250,000 to \$500,000.

**Licenses & Permits:** Includes business licenses, building permits, and other building and planning permits and fees. Overall licenses and permits revenue collections are above par and totaled \$7.6 million, or 84.6% of the budget of \$9.0 million. These collections are 6.3% below the very high collection level experienced through the same period last fiscal year. Even if activity slows through the remainder of the year, this category should meet the budgeted estimate. For the building development

revenues, any excess revenues over expenditures will be placed in the Building Inspection Reserve. This reserve is also available to cover any difference if revenues fall below the expenditure level.

**Fines & Penalties:** Includes vehicle, parking, court fines, and miscellaneous penalty fines. The revenue collected in this category totaled just over \$1.0 million. This revenue category had revenue that was accrued in fiscal year 2018/19, resulting in lower current year collections through March 31, 2020. Collections are tracking close to the budgeted estimate of \$1.7 million, which is below the prior year actual collection level of \$0.4 million. Activity levels in the collection charges and traffic fines accounts are lower compared to last fiscal year. Collections in these accounts have continued to decrease as a result of COVID-19. Given restricted activity levels as a result of COVID-19, collections in this category may continue to decline in the last three months of the fiscal year.

**Intergovernmental:** Includes motor vehicle fees, state homeowner tax relief, state mandated reimbursement and redistribution of land sale proceeds and ground leases from the Successor Agency. Through March 31, 2020, collections totaled approximately \$5.6 million, meeting this year's budgeted estimate and exceeding last fiscal year's collections through the same period. This increase is due to a Santana West settlement payment in the amount of \$5.0 million for the Related project received from the City of San José. These funds are restricted for affordable housing and transportation improvements and have been set aside in a separate reserve.

**Charges for Services:** Includes various plan check and zoning-related fees, engineering fees, administrative fees, and community service revenue from various recreational activities. While collections of \$28.0 million were \$3.3 million lower than collections through the same time last year, revenues in this category are tracking above par at 84.3%. This is mainly attributable to higher plan check and sign fee collections through March. Collections in this category were tracking to exceed the budgeted estimate of \$33.2 million by at least \$2.0 million to \$3.0 million by year-end. However, as a result of the COVID-19 safety precautions, the revenues from various recreational activities are expected to fall well below the budget. Based on an initial estimate from the Parks and Recreation Department, a net loss of approximately \$600,000 is projected as a result of shutting down Spring/Summer registration. This figure may go up depending on the length of the shutdown of these activities. The higher collections in other fee areas may partially or fully offset the loss in the Parks and Recreation fees.

**Contribution in Lieu:** In accordance with the City's charter, Silicon Valley Power pays 5.0% of gross revenues as contribution-in-lieu of taxes. These revenues provide funding for general government services such as public safety, public works, parks and recreation, library, and administration. Through March, \$18.2 million has been received, which is consistent with the budgeted estimate of \$24.3 million. However, these payments were based on the budgeted estimate and will be trued up later in the fiscal year. Based on prior year activity and current estimates, collections in this category may fall below the budgeted estimate by over \$1.0 million.

**Use of Money & Property:** Includes realized investment income and rental income. Interest income and rent revenue collections totaled \$9.2 million, which is below the budgeted estimate of \$14.4 million due to the timing of payments for interest earnings related to the prior year accrual. Receipts in this



category have been tracking to meet the budgeted estimate by year-end. However, with the recent interest rate reductions, interest earnings may fall below the budgeted estimate of \$5.7 million.

**Miscellaneous Revenues:** Includes developer fees, donations, damage recovery, sale of scrap, and one-time miscellaneous revenues. As of March 31, 2020, collections totaled \$1.2 million, which exceeds the budgeted estimate. This is a result of proceeds from the sale the right-of-way related to the vacated land sale on Fremont Street and Sherman Street.

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

**Stadium Operation:** The revenue for Stadium Operations totaled approximately \$7.2 million through March 31, 2020, which is higher than collections through the same period last fiscal year. Charges for services, which includes public safety cost reimbursement for NFL and Non-NFL events, is expected to fall under the budgeted \$8.0 million at \$7.6 million. This is mainly due to a significantly lower than anticipated number of Non-NFL events at the Stadium. Due to the lower number of events, the Non-NFL performance-based rent is not projected to meet the FY 2019/20 Adopted Budget estimate. A separate downward adjustment of \$2.7 million was approved as part of the Budgetary Year-End Report to decrease these revenues, which is reflected in the Amended Budget column in the table above. The lease revenue is projected to end the fiscal year at \$639,000 which slightly exceeds the revised budgeted estimate of \$633,000.

## Financial Status Report as of March 31, 2020

### General Fund Expenditures

As of March 31, 2020, \$193.7 million or 70.5% of the General Fund operating budget had been expended. Overall, expenditures in the General Fund are within budgeted levels at this time of the year. However, there are a few departments that are tracking slightly above estimated levels through March.

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

Function	FISCAL YEAR 2019/20				PY EXPENDITURES COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 03/31/2020	Percentage Used	Actual Through 03/31/2019	\$ Change From Prior Year	Percentage Change
<b>GENERAL GOVERNMENT</b>							
Non-Departmental	\$ 11,909,566	\$ 14,232,673	\$ 2,989,911	21.01%	\$ 2,067,129	\$ 922,782	44.64%
City Council	894,953	894,953	681,986	76.20%	568,805	113,181	19.90%
City Clerk	1,389,880	1,662,880	898,466	54.03%	1,422,506	(524,040)	-36.84%
City Manager	6,554,276	7,659,834	4,019,069	52.47%	4,144,556	(125,487)	-3.03%
City Attorney	2,260,512	2,376,523	1,585,809	66.73%	1,391,917	193,892	13.93%
Human Resources	4,409,195	4,622,757	2,828,792	61.19%	2,220,669	608,123	27.38%
Finance	15,719,734	16,653,861	10,632,707	63.85%	8,832,983	1,799,724	20.38%
Information Technology	-	-	-	0.00%	6,672,018	(6,672,018)	-100.00%
<b>Total General Government</b>	<b>43,138,116</b>	<b>48,103,481</b>	<b>23,636,740</b>	<b>49.14%</b>	<b>27,320,583</b>	<b>(3,683,843)</b>	<b>-13.48%</b>
<b>PUBLIC WORKS</b>	<b>23,579,460</b>	<b>23,919,037</b>	<b>17,597,157</b>	<b>73.57%</b>	<b>18,229,560</b>	<b>(632,403)</b>	<b>-3.47%</b>
<b>COMMUNITY DEVELOPMENT</b>	<b>14,186,780</b>	<b>17,107,752</b>	<b>10,221,941</b>	<b>59.75%</b>	<b>9,154,049</b>	<b>1,067,892</b>	<b>11.67%</b>
<b>PARKS AND RECREATION</b>	<b>22,401,233</b>	<b>23,011,286</b>	<b>15,599,058</b>	<b>67.79%</b>	<b>14,147,197</b>	<b>1,451,861</b>	<b>10.26%</b>
<b>PUBLIC SAFETY</b>							
Fire	52,783,063	54,209,728	41,366,626	76.31%	39,342,841	2,023,785	5.14%
Police	73,397,279	74,009,459	55,325,839	74.76%	48,719,067	6,606,772	13.56%
<b>Total Public Safety</b>	<b>126,180,342</b>	<b>128,219,187</b>	<b>96,692,465</b>	<b>75.41%</b>	<b>88,061,908</b>	<b>8,630,557</b>	<b>9.80%</b>
<b>LIBRARY</b>	<b>11,310,791</b>	<b>11,346,604</b>	<b>7,740,766</b>	<b>68.22%</b>	<b>7,504,317</b>	<b>236,449</b>	<b>3.15%</b>
<b>DEPARTMENTAL SUBTOTAL</b>	<b>240,796,722</b>	<b>251,707,347</b>	<b>171,488,127</b>	<b>68.13%</b>	<b>164,417,614</b>	<b>7,070,513</b>	<b>4.30%</b>
<b>OTHER FINANCING USES</b>							
Operating Transfer Out - Miscellaneous	526,688	526,688	428,445	81.35%	885,578	(457,133)	-51.62%
Operating Transfer Out - Rental Income	-	-	-	0.00%	14,065	(14,065)	-100.00%
Operating Transfer Out - Debt Services	1,710,474	1,710,474	1,710,474	100.00%	2,501,494	(791,020)	-31.62%
Operating Transfer Out - Maintenance Districts	917,331	917,331	917,331	100.00%	-	917,331	N/A
Operating Transfer Out - Cemetery	703,490	703,490	703,490	100.00%	618,081	85,409	13.82%
Operating Transfer Out - SCGTC	-	-	-	0.00%	155,020	(155,020)	-100.00%
Operating Transfer Out - Special Liability	-	-	-	0.00%	2,200,000	(2,200,000)	-100.00%
Operating Transfer Out - CIP	11,643,673	11,643,673	11,643,673	100.00%	50,000	11,593,673	23187.35%
Operating Transfer Out - Reserves	344,360	863,660	863,660	100.00%	-	-	N/A
<b>Total Other Financing Uses</b>	<b>15,846,016</b>	<b>16,365,316</b>	<b>16,267,073</b>	<b>99.40%</b>	<b>6,424,238</b>	<b>8,979,175</b>	<b>139.77%</b>
<b>STADIUM OPERATION</b>	<b>6,599,532</b>	<b>6,621,340</b>	<b>5,911,523</b>	<b>89.28%</b>	<b>5,319,968</b>	<b>591,555</b>	<b>11.12%</b>
<b>TOTAL GENERAL FUND</b>	<b>\$ 263,242,270</b>	<b>\$ 274,694,003</b>	<b>\$ 193,666,723</b>	<b>70.50%</b>	<b>\$ 176,161,820</b>	<b>\$ 16,641,243</b>	<b>9.45%</b>

### General Fund Expenditures

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

**Non-Departmental:** Includes expenditures that are not attributable to a single department, but a function of the City in general. Through March 31, 2020, expenditures were at 21.0% of budget, primarily due to lower expenditures in the salary and benefits and materials, services and supplies categories. The Non-Departmental budget also includes a \$4.0 million loan to fund an affordable housing project that was approved by the City Council on January 29, 2019, which has not yet been expended. It is anticipated that this loan, which will be funded by a property sale, will be processed at the end of the calendar year. A budget action to carry this appropriation over will be brought forward as part of the budgetary year-end report. Additionally, as approved in the FY 2018/19 Budgetary Year-End report, \$1.8 million was added to the Non-Departmental budget to cover costs related to Fair Labor Standards Act (FLSA) requirements for retroactive overtime costs and payouts, which has not yet been fully expended. Then Non-Departmental category is expected to end the year with savings, and a portion of the savings is reallocated to the Small Business Assistance Program (\$250,000 – 4/28/2020 Council Agenda) and the Food Distribution Program (\$550,000 – 5/12/20 Council Agenda).

**City Manager:** The actual expenditures through March 31, 2020 were at 52.5% of the budget. This is primarily due to lower than anticipated spending in the contractual services category. A portion of the year-end savings anticipated in the City Manager's Office is reallocated to the Food Distribution Program (\$70,000 – 5/12/20 Council Agenda).

**Community Development:** This department consists of three divisions: Planning, Building, and Housing and Community Services. Through March, departmental expenditures of \$10.2 million were at 60.0% of the budget, which is below par for this time of year. As part of the November Monthly Financial Report, \$1.5 million was added to the Department's contractual services budget, funded by Building Inspection Reserve. With the recent influx of large-scale development projects, these additional resources were added to address the workload and maintain service levels and turnaround times through the remainder of the year. Contractual services are expected to remain within budget with this adjustment.

**Fire Department:** Actual expenditures totaled \$41.4 million, or 76.3%, which is slightly above the par level of 75.0% of the budget. Overall salary expenditures are tracking above budget, particularly in the overtime category due to minimum staffing requirements and several Fire Captain vacancies. The overtime expenditures are partially offset by salary savings from the vacancies and lower than budgeted expenditures in the materials, services, and supplies category. Funding of \$350,000 was added to the Fire Department budget to account for estimated FLSA-eligible overtime costs. Additionally, \$688,000 was added to the Fire Department's budget as a result of negotiated wage increases approved for Units 1 and 9B. Departmental expenditures are also expected to be impacted by COVID-19. The Department is staffing specialized COVID-19 response units to respond to the Federal Medical Station at the Santa Clara Convention Center and other high-risk locations. All COVID-

19 expenditures are being tracked for potential reimbursement. Any necessary budget amendments will be brought forward by year end as staff continues to monitor Fire Department expenditures.

**Police Department:** Expenditures through March 31, 2020 are tracking at expected levels at \$55.3 million, or 74.8% of the budget. The salary expenditures were above budget primarily in the as-needed and overtime categories, resulting from additional staffing needs for events including Great America's Halloween Haunt and mutual aid provided to the Gilroy Garlic Festival shooting and investigation. The City received a reimbursement related to the staffing costs for the Great America Haunt. There have also been new City events that have required Police staffing such as the Parade of Champions and Comic Con. These higher expenditures are partially offset by lower than budgeted expenses in the materials, services, and supplies category. Staff will continue to closely monitor the salary category and bring forward budget amendments as necessary.

**Stadium Operation:** Stadium operating expenditures are incurred first and billed on a reimbursement basis creating a timing difference in revenue recognition. Stadium expenditures totaled \$5.9 million through March 31, 2020 and are tracking slightly above budgeted levels, however, are anticipated to come in under budget at year end. The higher expenditures are a result of the purchase of a new public safety insurance policy. Additionally, outside agency public safety costs trend higher in the first two quarters of the year during the NFL season. Both the insurance premium and public safety costs are reimbursed by the 49ers.

### Special Revenue Funds

The table below is a summary of revenues and expenditures of select Special Revenue Funds as of March 31, 2020. The amended budget for both reflects carryover appropriations from fiscal year 2018/19 in addition to various budget amendments approved by the City Council through March 2020. The revenues received through the end of March totaled approximately \$3.1 million, while expenditures totaled \$2.8 million.

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

Fund Description	REVENUES - FISCAL YEAR 2019/20				PRIOR YEAR REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 3/31/2020	Percentage received	Actual Through 3/31/2019	\$ Change From Prior Year	Percent Change
Housing Authority Fund	\$ 260,000	\$ 274,831	\$ 271,752	98.88%	\$ 161,610	\$ 110,142	68.15%
City Affordable Housing Fund	696,703	1,084,543	726,872	67.02%	100,681	626,191	621.96%
Housing Successor Fund	12,031,000	12,084,817	813,632	6.73%	1,385,315	(571,683)	-41.27%
Housing and Urban Development	2,626,117	5,238,691	1,286,271	24.55%	1,108,694	177,577	16.02%
<b>TOTAL</b>	<b>\$15,613,820</b>	<b>\$ 18,682,882</b>	<b>\$ 3,098,527</b>	<b>16.58%</b>	<b>\$ 2,756,300</b>	<b>\$ 342,227</b>	<b>12.42%</b>

Fund Description	EXPENDITURES - FISCAL YEAR 2019/20				PRIOR YEAR EXPENDITURE COMPARISON		
	Adopted Budget	Amended Budget	Actual through 3/31/2020	Percentage used	Actual through 3/31/2019	\$ Change From Prior Year	Percent Change
Housing Authority Fund	\$ 546,623	\$ 561,454	\$ 86,784	15.46%	\$ 47,571	\$ 39,213	82.43%
City Affordable Housing Fund	1,520,735	6,908,575	464,232	6.72%	262,479	201,753	76.86%
Housing Successor Fund	12,592,389	18,646,206	368,723	1.98%	438,512	(69,789)	-15.91%
Housing and Urban Development	3,846,296	5,238,691	1,918,951	36.63%	1,094,989	823,962	75.25%
<b>TOTAL</b>	<b>\$18,506,043</b>	<b>\$ 31,354,926</b>	<b>\$ 2,838,690</b>	<b>9.05%</b>	<b>\$ 1,843,551</b>	<b>\$ 995,139</b>	<b>53.98%</b>

The majority of the budget in the housing funds account for two development loans, which would allow for the construction of affordable housing projects, referred to as the Corvin Supportive Housing and the Agrihood Mixed-Use Development projects. Both the revenues and expenditures are expected to increase once the proceeds from the sale of land are received and the loan agreements are executed.

### Governmental Capital Improvement Funds

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

The table below lists the total amended budget amounts for the Capital Improvement Funds, which consist of current year appropriations, prior year carryover balances in Governmental Capital Improvement Funds, and budget amendments approved through March 2020. As of March 31, 2020, these capital fund expenditures totaled \$30.1 million, or 23.4% of the amended budget. Expenditures are anticipated to increase through the remainder of the year as departments continue to make progress on approved capital projects. It is also anticipated that unspent capital funds will be carried over into next fiscal year for those projects that have not yet been completed.

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

EXPENDITURES - FISCAL YEAR 2019/20						
Fund Description	Current Year Appropriation	Prior Year Carryforward	Total Amended Budget	Actual Through 3/31/2020	Percentage Used	
Parks & Recreation	\$ 5,933,561	\$ 27,507,742	\$ 33,441,303	\$ 15,546,395	46.49%	
Streets & Highways	18,925,790	39,407,535	58,333,325	10,740,552	18.41%	
Storm Drain	4,978,229	3,264,959	8,243,188	601,438	7.30%	
Fire	665,049	635,187	1,300,236	312,903	24.07%	
Library	10,633	234,633	245,266	31,049	12.66%	
Public Buildings	4,097,571	8,335,917	12,433,488	1,400,235	11.26%	
General Gov't - Other	1,511,494	13,051,614	14,563,108	1,503,564	10.32%	
<b>TOTAL</b>	<b>\$ 36,122,327</b>	<b>\$ 92,437,587</b>	<b>\$ 128,559,914</b>	<b>\$ 30,136,136</b>	<b>23.44%</b>	

## Financial Status Report as of March 31, 2020

### Enterprise Funds

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

Effective fiscal year 2019/20, the City switched from a cash basis budgetary reporting to an accrual basis, which is reflected in the tables of this report. At the end of March 2020, revenues appear to be lower than prior year collections and below par due to revenue accruals booked in fiscal year 2018/19 and received in fiscal year 2019/20. As a result, the comparison of prior year revenue and expenditure in this report will display variances. For fiscal year 2019/20, the City is still anticipated to maintain a positive operating position for each of its Enterprise Operating Funds.

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

Fund Description	REVENUES - FISCAL YEAR 2019/20				PRIOR YEAR REVENUE COMPARISON		
	Adopted Budget	Amended Budget	Actual Through 3/31/2020	Percentage received	Actual Through 3/31/2019	\$ Change From Prior Year	Percent Change
Electric Utility Fund	\$ 516,210,630	\$ 517,210,920	\$ 337,164,756	65.19%	\$ 379,111,814	\$ (41,947,058)	-11.06%
Water Utility Fund	53,411,144	56,080,779	35,820,481	63.87%	35,959,202	(138,721)	-0.39%
Sewer Utility Fund	94,169,500	94,259,046	28,678,131	30.42%	30,048,821	(1,370,690)	-4.56%
Cemetery Fund	645,150	645,150	356,644	55.28%	427,599	(70,955)	-16.59%
Solid Waste Utility Fund	28,033,703	28,760,383	18,879,908	65.65%	18,995,623	(115,715)	-0.61%
Water Recycling Fund	6,769,200	7,779,200	4,214,145	54.17%	4,943,370	(729,225)	-14.75%
<b>TOTAL REVENUE</b>	<b>\$ 699,239,327</b>	<b>\$ 704,735,478</b>	<b>\$ 425,114,065</b>	<b>60.32%</b>	<b>\$ 469,486,429</b>	<b>\$ (44,372,364)</b>	<b>-9.45%</b>

Fund Description	EXPENSES - FISCAL YEAR 2019/20				PRIOR YEAR EXPENSE COMPARISON		
	Adopted Budget	Amended Budget	Actual through 3/31/2020	Percentage Used	Actual through 3/31/2019	\$ Change From Prior Year	Percent Change
Electric Utility Fund	\$ 486,468,491	\$ 487,657,222	\$ 313,636,854	64.32%	\$ 340,910,571	\$ (27,273,717)	-8.00%
Water Utility Fund	46,449,085	49,118,720	31,474,938	64.08%	32,011,555	(536,617)	-1.68%
Sewer Utility Fund	28,451,451	28,540,997	19,443,858	68.13%	18,835,153	608,705	3.23%
Cemetery Fund	1,399,333	1,399,333	899,506	64.28%	922,989	(23,483)	-2.54%
Solid Waste Utility Fund	27,470,657	28,197,337	16,944,444	60.09%	16,608,440	336,004	2.02%
Water Recycling Fund	5,349,013	6,359,013	4,761,922	74.88%	4,961,069	(199,147)	-4.01%
<b>TOTAL - Operating Appropriations</b>	<b>\$ 595,588,030</b>	<b>\$ 601,272,622</b>	<b>\$ 387,161,522</b>	<b>64.39%</b>	<b>\$ 414,249,777</b>	<b>\$ (27,088,255)</b>	<b>-6.54%</b>

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

Council approval in May 2020; however, with the current environment resulting from the COVID-19 outbreak, this issuance could also be delayed. In the Electric Utility Fund, the revenue received in this fund dictates the contribution in-lieu expenditure.

A summary of expenses in the Enterprise Capital Improvement Funds is detailed in the table below. Actuals through March totaled \$66.6 million, or 25.1% of the amended budget. Similar to the general government capital funds, expenditures are anticipated to increase through the remainder of the year as departments continue to make progress on approved capital projects. It is also anticipated that unspent capital funds will be carried over into next fiscal year for those projects that have not yet been completed.

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

Fund Description	EXPENSES - FISCAL YEAR 2019/20					Prior Year
	Current Year Appropriation	Prior Year Carryforward	Total Amended Budget	Actual Through 3/31/2020	Percentage Used	Actual Through 3/31/2019
Electric Utility Fund	\$ 42,561,365	\$ 107,739,473	\$ 150,300,838	\$ 21,380,185	14.22%	\$ 16,291,759
Street Lighting <sup>(1)</sup>	50,000	5,925,185	5,975,185	62,028	1.04%	67,715
Water Utility Fund	13,449,374	12,853,124	26,302,498	1,371,253	5.21%	2,557,832
Sewer Utility Fund	57,446,012	24,614,662	82,060,674	43,429,606	52.92%	12,373,054
Cemetery Fund	-	-	-	-	0.00%	-
Solid Waste Utility Fund	496,389	168,480	664,869	315,241	47.41%	493,229
Water Recycling Fund	50,000	-	50,000	-	0.00%	-
<b>TOTAL - CIP Appropriations</b>	<b>\$ 114,053,140</b>	<b>\$ 151,300,924</b>	<b>\$ 265,354,064</b>	<b>\$ 66,558,313</b>	<b>25.08%</b>	<b>\$ 31,783,589</b>

(1) Street Lighting fund is part of Electric Capital Improvement Funds



### Fund Reserves

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

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

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

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

The table below summarizes select reserve balances.

# City of Santa Clara

## Financial Status Report as of March 31, 2020

### DETAIL OF SELECTED FUND RESERVE BALANCES:

	GENERAL FUND	ELECTRIC	WATER	SEWER
Budget Stabilization Reserve	\$ 80,170,318			
Capital Projects Reserve	28,186,138			
Land Sale Reserve	21,531,838			
Building Inspection Reserve	14,105,480			
Technology Fee Reserve	284,129			
Rate Stabilization Fund Reserve		\$ 25,000,000		
Cost Reduction Fund Reserve		98,947,182		
DVR Power Plant Contracts Reserve		78,163		
Replacement & Improvement			\$ 303,090	\$ 1,507,553
<b>TOTALS</b>	<b>\$ 144,277,903</b>	<b>\$ 124,025,345</b>	<b>\$ 303,090</b>	<b>\$ 1,507,553</b>

# City of Santa Clara

## Financial Status Report as of March 31, 2020

### Long-Term Interfund Advances

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

DETAIL OF LONG TERM INTERFUND ADVANCE BALANCES:			
Fund Receiving Advance/Loan	Fund Making Advance/Loan	Type	Amount of Advance / Commitment
Cemetery	General Fund	Advance	\$ 6,339,380
Santa Clara Golf & Tennis Club	General Fund	Advance	4,224,134
Parks and Recreation Facilities	General Fund	Loan	10,130,273
<b>TOTALS</b>			<b>\$ 20,693,787</b>

### Donations to the City of Santa Clara

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

Department	Mar-20	Fiscal Year 2019/20 Year To Date	Donor	Designated Use
City Manager's Office	\$ 55	\$ 330	Various	Help Your Neighbor
City Manager's Office	-	100	Various	Various Programs
Parks and Recreation	2,010	34,830	Various	Various Parks and Recreation Programs
Parks and Recreation	-	89,834	Various	Arts, Crafts and Wine Festival
Fire	-	330	Various	Emergency Supplies
<b>TOTALS</b>	<b>\$ 2,065</b>	<b>\$ 125,424</b>		



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

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## **MONTHLY INVESTMENT REPORT**

**March 2020**

# **City of Santa Clara**

## **Monthly Investment Report**

### **TABLE OF CONTENTS**

		<b>Page #</b>
1	Summary of Investment Portfolio	1
2	Summary of Investments	2
3	Investment Maturity Distribution Schedule	3
4	List of Securities Brokers and Primary Dealers	4
5	Attachment A: Investment Inventory With Market Value	5

**CITY OF SANTA CLARA  
SUMMARY OF INVESTMENT PORTFOLIO**

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

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

	<b><u>BOOK VALUE</u></b>	<b><u>PERCENTAGE</u></b>
City	\$721,927,833	99.54%
SOSA	(128,657)	-0.02%
HA	<u>3,486,726</u>	<u>0.48%</u>
Unrestricted	\$725,285,902	<u>100.00%</u>
Restricted Bond Proceeds	<u>2,144,981</u>	
Total Investments	<u>\$727,430,883</u>	

On March 31, 2020 the book value and market value of the City's unrestricted pooled investment portfolio were \$725,285,902 and \$750,121,147, respectively.

**Investment Strategy and Market Update**

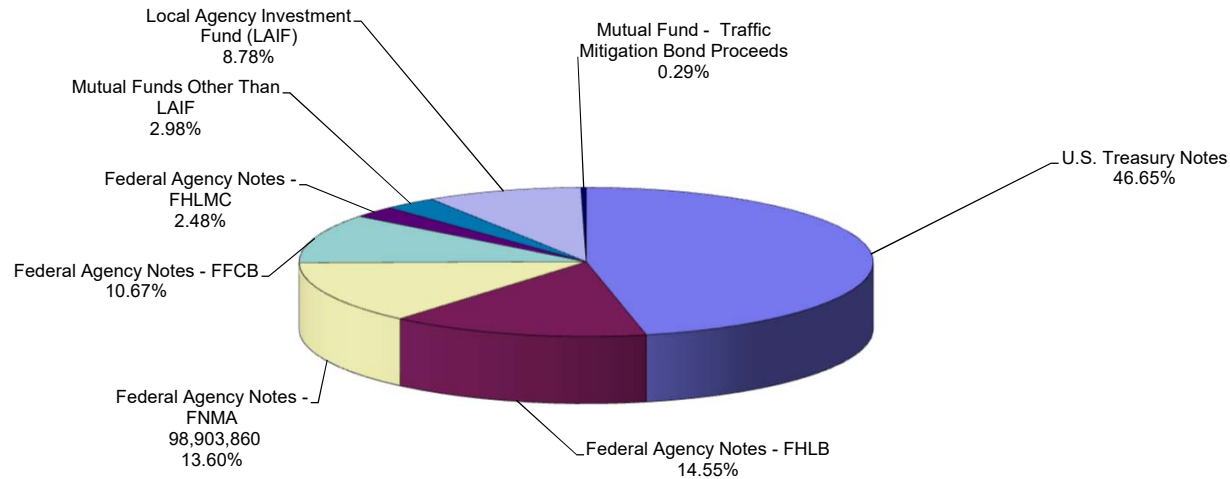
The City's investment strategy for March 2020 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from date of purchase. This strategy ensures safety of the City's funds, provides liquidity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

As of March 31, 2020, 41.30% of the City's portfolio consists of securities issued by four different Federal Agencies. In addition, City bond proceeds are invested in separate funds and are not included in the calculation of the City's portfolio yield. The average maturity of the City's portfolio was 2.31 years and the City's portfolio yield vs. the 24-month moving average yield of two-year Treasury Notes (Benchmark Yield\*) was as follows:

<b><u>PERIOD</u></b>	<b><u>CITY'S PORTFOLIO YIELD</u></b>	<b><u>BENCHMARK YIELD</u></b>	<b><u>AVERAGE MATURITY (YEARS)</u></b>
March 2020	1.92%	2.04%	2.31
February 2020	1.97%	2.13%	2.14
March 2019	1.99%	2.12%	2.12

**CITY OF SANTA CLARA  
SUMMARY OF INVESTMENTS MARCH 31, 2020**

<b><u>INVESTMENT TYPE</u></b>	<b><u>BOOK VALUE</u></b>	<b><u>% OF PORTFOLIO</u></b>	<b><u>PER INVESTMENT POLICY</u></b>
U.S. Treasury Notes	339,336,203	46.65%	No Limit
Federal Agency Notes - FHLB	105,821,484	14.55%	40%
Federal Agency Notes - FNMA	98,903,860	13.60%	40%
Federal Agency Notes - FFCB	77,636,505	10.67%	40%
Federal Agency Notes - FHLMC	18,037,374	2.48%	40%
Mutual Funds Other Than LAIF	21,669,723	2.98%	10% Per Fund
Local Agency Investment Fund (LAIF)	63,880,753	8.78%	\$65 M
Mutual Fund - Traffic Mitigation Bond Proceeds	2,144,981	0.29%	10% Per Fund
<b>TOTAL INVESTMENTS</b>	<b><u>\$ 727,430,883</u></b>	<b><u>100.00%</u></b>	

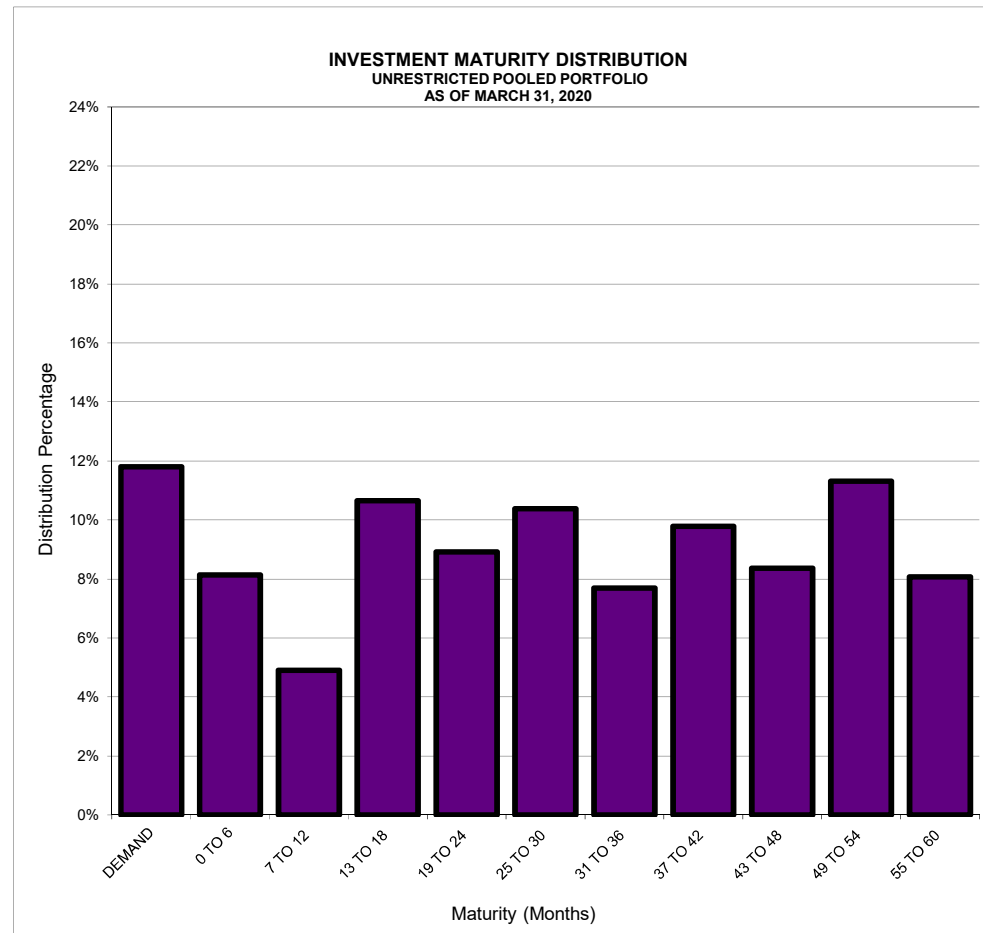


**INVESTMENT MATURITY DISTRIBUTION  
AS OF MARCH 31, 2020  
UNRESTRICTED POOLED PORTFOLIO**

<b>MATURITY (IN MONTHS)</b>	<b>BOOK VALUE</b>	<b>NUMBER OF INVESTMENTS</b>	<b>DISTRIBUTION</b>
DEMAND	\$ 85,550,476 (a)	2	11.80%
0 TO 6	59,061,805	8	8.14%
7 TO 12	35,506,789	5	4.90%
13 TO 18	77,229,379	14	10.65%
19 TO 24	64,703,177	12	8.92%
25 TO 30	75,320,868	13	10.38%
31 TO 36	55,766,088	9	7.69%
37 TO 42	70,909,886	12	9.78%
43 TO 48	60,613,144	12	8.36%
49 TO 54	82,025,410	16	11.31%
55 TO 60	58,598,880	8	8.07%
<b>TOTAL</b>	<b>\$ 725,285,902</b>	<b>111</b>	<b>100.00%</b>

Average Maturity of Unrestricted Pool: 2.31 Years

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





**CITY OF SANTA CLARA**

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

Raymond James

Higgins Capital, Inc.

Wedbush Securities

Mutual Securities, Inc.

UnionBanc Investment Services, LLC.

Ladenburg Thalmann & Co. Inc.

UBS Financial Services

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



# Market Inventory

Attachment A

As Of Date: 03/31/2020

Date Basis: Settlement

Run: 04/02/2020 11:16:39 AM

Reporting Currency: Local

## City of Santa Clara

INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
<b>Inv Type: 12 TREASURY NOTES</b>												
17383	912828XH8	TREASURY NOTES	01/29/2020	06/30/2020	1.625000	1.529489	10,000,000.00	10,016,852.68	10,037,900.00	100.379000	33,993.75	IDC-FIS
17356	912828J8	TREASURY NOTES	07/09/2019	07/15/2020	1.500000	1.999197	5,000,000.00	4,987,836.02	5,021,100.00	100.422000	33,263.98	IDC-FIS
17296	912828Q37	TREASURY NOTES	02/14/2017	03/31/2021	1.250000	1.803695	5,000,000.00	4,973,516.87	5,056,050.00	101.121000	82,533.13	IDC-FIS
17322	9128284G2	TREASURY NOTES	06/19/2018	04/15/2021	2.375000	2.662058	5,000,000.00	4,979,378.90	5,115,800.00	102.316000	136,421.10	IDC-FIS
17343	912828WR7	TREASURY NOTES	02/19/2019	06/30/2021	2.125000	2.496231	5,000,000.00	4,973,154.28	5,125,200.00	102.504000	152,045.72	IDC-FIS
17369	912828WY2	TREASURY NOTES	10/24/2019	07/31/2021	2.250000	1.621904	10,000,000.00	10,092,113.73	10,275,800.00	102.758000	183,686.27	IDC-FIS
17338	9128285F3	TREASURY NOTES	01/17/2019	10/15/2021	2.875000	2.543204	5,000,000.00	5,031,731.46	5,205,300.00	104.106000	173,568.54	IDC-FIS
17321	912828U65	TREASURY NOTES	05/22/2018	11/30/2021	1.750000	2.805608	10,000,000.00	9,800,523.46	10,257,400.00	102.574000	456,876.54	IDC-FIS
17306	912828U81	TREASURY NOTES	11/09/2017	12/31/2021	2.000000	1.914991	5,000,000.00	5,008,104.24	5,155,450.00	103.109000	147,345.76	IDC-FIS
17312	912828V72	TREASURY NOTES	02/26/2018	01/31/2022	1.875000	2.530589	5,000,000.00	4,938,000.87	5,151,750.00	103.035000	213,749.13	IDC-FIS
17297	912828J43	TREASURY NOTES	03/03/2017	02/28/2022	1.750000	2.067799	5,000,000.00	4,970,008.23	5,146,100.00	102.922000	176,091.77	IDC-FIS
17334	912828J43	TREASURY NOTES	12/14/2018	02/28/2022	1.750000	2.763338	5,000,000.00	4,903,782.26	5,146,100.00	102.922000	242,317.74	IDC-FIS
17309	912828W89	TREASURY NOTES	01/25/2018	03/31/2022	1.875000	2.368364	5,000,000.00	4,953,347.70	5,165,450.00	103.309000	212,102.30	IDC-FIS
17308	912828X47	TREASURY NOTES	01/22/2018	04/30/2022	1.875000	2.361028	5,000,000.00	4,942,592.28	5,171,100.00	103.422000	228,507.72	IDC-FIS
17300	912828XD7	TREASURY NOTES	06/09/2017	05/31/2022	1.875000	1.772818	5,000,000.00	5,012,156.03	5,178,300.00	103.566000	166,143.97	IDC-FIS
17335	912828XG0	TREASURY NOTES	12/21/2018	06/30/2022	2.125000	2.638411	5,000,000.00	4,939,169.34	5,215,250.00	104.305000	276,080.66	IDC-FIS
17375	912828XG0	TREASURY NOTES	11/25/2019	06/30/2022	2.125000	1.596160	10,000,000.00	10,128,755.03	10,430,500.00	104.305000	301,744.97	IDC-FIS
17394	912828XG0	TREASURY NOTES	03/25/2020	06/30/2022	2.125000	.351460	10,000,000.00	10,449,622.25	10,430,500.00	104.305000	30,500.00	IDC-FIS
17315	9128282P4	TREASURY NOTES	03/27/2018	07/31/2022	1.875000	2.591504	5,000,000.00	4,915,912.25	5,191,200.00	103.824000	275,287.75	IDC-FIS
17303	912828L24	TREASURY NOTES	09/29/2017	08/31/2022	1.875000	1.913317	5,000,000.00	4,995,435.00	5,195,900.00	103.918000	200,465.00	IDC-FIS
17304	912828L57	TREASURY NOTES	10/06/2017	09/30/2022	1.750000	1.958257	5,000,000.00	4,975,336.54	5,186,150.00	103.723000	210,813.46	IDC-FIS
17318	9128282W9	TREASURY NOTES	04/20/2018	09/30/2022	1.875000	2.739970	5,000,000.00	4,898,982.07	5,202,750.00	104.055000	303,767.93	IDC-FIS
17305	912828M49	TREASURY NOTES	10/31/2017	10/31/2022	1.875000	2.071694	5,000,000.00	4,972,124.65	5,207,250.00	104.145000	235,125.35	IDC-FIS
17307	912828M80	TREASURY NOTES	12/18/2017	11/30/2022	2.000000	2.168858	5,000,000.00	4,976,105.55	5,228,300.00	104.566000	252,194.45	IDC-FIS
17320	912828N30	TREASURY NOTES	05/15/2018	12/31/2022	2.125000	2.835579	10,000,000.00	9,801,689.09	10,507,000.00	105.070000	705,310.91	IDC-FIS
17311	912828P38	TREASURY NOTES	02/14/2018	01/31/2023	1.750000	2.566484	5,000,000.00	4,885,748.65	5,207,400.00	104.148000	321,651.35	IDC-FIS
17314	912828P79	TREASURY NOTES	02/28/2018	02/28/2023	1.500000	2.682776	10,000,000.00	9,670,481.93	10,356,300.00	103.563000	685,818.07	IDC-FIS
17317	912828Q29	TREASURY NOTES	04/11/2018	03/31/2023	1.500000	2.624318	10,000,000.00	9,686,139.54	10,362,500.00	103.625000	676,360.46	IDC-FIS
17319	912828R28	TREASURY NOTES	05/09/2018	04/30/2023	1.625000	2.824390	10,000,000.00	9,611,564.39	10,408,200.00	104.082000	796,635.61	IDC-FIS
17323	912828R69	TREASURY NOTES	07/17/2018	05/31/2023	1.625000	2.763323	10,000,000.00	9,629,874.58	10,416,400.00	104.164000	786,525.42	IDC-FIS
17339	912828S35	TREASURY NOTES	01/17/2019	06/30/2023	1.375000	2.549274	5,000,000.00	4,807,066.35	5,172,250.00	103.445000	365,183.65	IDC-FIS
17378	912828S35	TREASURY NOTES	12/18/2019	06/30/2023	1.375000	1.682342	5,000,000.00	4,948,031.13	5,172,250.00	103.445000	224,218.87	IDC-FIS
17326	912828Y61	TREASURY NOTES	09/18/2018	07/31/2023	2.750000	2.899455	5,000,000.00	4,975,737.29	5,405,100.00	108.102000	429,362.71	IDC-FIS
17328	912828Y61	TREASURY NOTES	09/28/2018	07/31/2023	2.750000	2.961654	5,000,000.00	4,965,698.92	5,405,100.00	108.102000	439,401.08	IDC-FIS
17324	9128282D1	TREASURY NOTES	09/13/2018	08/31/2023	1.375000	2.867264	5,000,000.00	4,758,238.24	5,182,400.00	103.648000	424,161.76	IDC-FIS
17330	912828T26	TREASURY NOTES	11/14/2018	09/30/2023	1.375000	3.011415	7,500,000.00	7,103,612.30	7,778,325.00	103.711000	674,712.70	IDC-FIS



# Market Inventory

Attachment A

As Of Date: 03/31/2020

Date Basis: Settlement

Run: 04/02/2020 11:16:39 AM

Reporting Currency: Local

## City of Santa Clara

INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
17340	912828T91	TREASURY NOTES	01/28/2019	10/31/2023	1.625000	2.579465	5,000,000.00	4,821,551.61	5,234,550.00	104.691000	412,998.39	IDC-FIS
17345	912828U57	TREASURY NOTES	02/28/2019	11/30/2023	2.125000	2.496362	5,000,000.00	4,930,353.54	5,329,500.00	106.590000	399,146.46	IDC-FIS
17346	912828V23	TREASURY NOTES	03/14/2019	12/31/2023	2.250000	2.437027	5,000,000.00	4,964,863.80	5,358,600.00	107.172000	393,736.20	IDC-FIS
17342	912828V80	TREASURY NOTES	02/14/2019	01/31/2024	2.250000	2.524589	5,000,000.00	4,948,697.06	5,366,600.00	107.332000	417,902.94	IDC-FIS
17347	912828W48	TREASURY NOTES	03/20/2019	02/29/2024	2.125000	2.440257	5,000,000.00	4,940,977.86	5,348,050.00	106.961000	407,072.14	IDC-FIS
17352	912828W71	TREASURY NOTES	04/30/2019	03/31/2024	2.125000	2.319173	5,000,000.00	4,963,502.54	5,354,500.00	107.090000	390,997.46	IDC-FIS
17353	912828X70	TREASURY NOTES	05/17/2019	04/30/2024	2.000000	2.202374	5,000,000.00	4,957,121.47	5,334,400.00	106.688000	377,278.53	IDC-FIS
17359	912828WJ5	TREASURY NOTES	08/16/2019	05/15/2024	2.500000	1.428853	5,000,000.00	5,231,925.40	5,440,250.00	108.805000	208,324.60	IDC-FIS
17367	912828WJ5	TREASURY NOTES	10/11/2019	05/15/2024	2.500000	1.498657	5,000,000.00	5,216,732.63	5,440,250.00	108.805000	223,517.37	IDC-FIS
17361	912828XX3	TREASURY NOTES	08/30/2019	06/30/2024	2.000000	1.414330	5,000,000.00	5,126,755.83	5,345,900.00	106.918000	219,144.17	IDC-FIS
17376	9128286Z8	TREASURY NOTES	12/13/2019	06/30/2024	1.750000	1.739161	7,250,000.00	7,253,359.57	7,677,605.00	105.898000	424,245.43	IDC-FIS
17364	9128282N9	TREASURY NOTES	09/11/2019	07/31/2024	2.125000	1.556000	5,000,000.00	5,122,635.55	5,377,750.00	107.555000	255,114.45	IDC-FIS
17390	9128282U3	TREASURY NOTES	03/11/2020	08/31/2024	1.875000	.621947	5,000,000.00	5,278,582.31	5,329,900.00	106.598000	54,120.00	IDC-FIS
17370	9128282Y5	TREASURY NOTES	10/28/2019	09/30/2024	2.125000	1.630859	5,000,000.00	5,106,312.10	5,393,350.00	107.867000	287,037.90	IDC-FIS
17373	9128283D0	TREASURY NOTES	11/19/2019	10/31/2024	2.250000	1.636035	10,000,000.00	10,302,369.51	10,853,100.00	108.531000	562,475.00	IDC-FIS
17379	9128283J7	TREASURY NOTES	01/07/2020	11/30/2024	2.125000	1.617525	5,000,000.00	5,129,976.73	5,405,100.00	108.102000	286,154.69	IDC-FIS
17380	9128283P3	TREASURY NOTES	01/08/2020	12/31/2024	2.250000	1.618632	10,000,000.00	10,305,726.30	10,879,300.00	108.793000	578,518.75	IDC-FIS
17389	9128283Z1	TREASURY NOTES	03/09/2020	02/28/2025	2.750000	.605325	10,000,000.00	11,056,334.92	11,147,300.00	111.473000	97,690.62	IDC-FIS
Subtotal					1.968183	2.096785	339,750,000.00	339,336,202.83	356,485,830.00	104.925925	17,249,444.68	

### Inv Type: 21 FHLB MEDIUM TERM NOTES

17256	313370US5	FHLB MEDIUM TERM NO	07/22/2016	09/11/2020	2.875000	1.175915	5,000,000.00	5,041,386.81	5,058,100.00	101.162000	16,713.19	IDC-FIS
17282	3130A1W95	FHLB MEDIUM TERM NO	11/18/2016	06/11/2021	2.250000	1.696591	5,000,000.00	5,039,728.09	5,110,150.00	102.203000	70,421.91	IDC-FIS
17387	3130A1W95	FHLB MEDIUM TERM NO	02/26/2020	06/11/2021	2.250000	1.258135	5,000,000.00	5,086,737.50	5,110,150.00	102.203000	46,850.00	IDC-FIS
17286	3130A8QS5	FHLB MEDIUM TERM NO	11/29/2016	07/14/2021	1.125000	1.814259	5,000,000.00	4,950,753.26	5,050,600.00	101.012000	99,846.74	IDC-FIS
17277	313378JP7	FHLB MEDIUM TERM NO	11/01/2016	09/10/2021	2.375000	1.428993	5,000,000.00	5,068,330.10	5,136,750.00	102.735000	68,419.90	IDC-FIS
17341	3130AFFN2	FHLB MEDIUM TERM NO	02/11/2019	12/10/2021	3.000000	2.497201	5,000,000.00	5,048,124.88	5,219,200.00	104.384000	171,075.12	IDC-FIS
17393	313378CR0	FHLB MEDIUM TERM NO	03/16/2020	03/11/2022	2.250000	.716855	5,000,000.00	5,152,462.50	5,181,850.00	103.637000	30,950.00	IDC-FIS
17333	313383WD9	FHLB MEDIUM TERM NO	12/13/2018	09/09/2022	3.125000	2.898026	5,000,000.00	5,026,601.32	5,331,700.00	106.634000	305,098.68	IDC-FIS
17363	3130A3DL5	FHLB MEDIUM TERM NO	09/06/2019	09/08/2023	2.375000	1.527008	5,000,000.00	5,143,379.72	5,319,700.00	106.394000	176,320.28	IDC-FIS
17336	3130A0F70	FHLB MEDIUM TERM NO	01/09/2019	12/08/2023	3.375000	2.727479	5,000,000.00	5,120,340.13	5,557,150.00	111.143000	436,809.87	IDC-FIS
17392	3130A3VC5	FHLB MEDIUM TERM NO	03/13/2020	12/08/2023	2.250000	.715013	5,000,000.00	5,312,112.50	5,345,700.00	106.914000	63,275.00	IDC-FIS
17350	3130AB3H7	FHLB MEDIUM TERM NO	04/12/2019	03/08/2024	2.375000	2.380001	5,000,000.00	4,999,018.25	5,351,300.00	107.026000	352,281.75	IDC-FIS
17374	3130A1XJ2	FHLB MEDIUM TERM NO	11/21/2019	06/14/2024	2.875000	1.641007	5,000,000.00	5,266,314.83	5,523,350.00	110.467000	257,035.17	IDC-FIS
17365	3130AGWK7	FHLB MEDIUM TERM NO	09/19/2019	08/15/2024	1.500000	1.644760	5,000,000.00	4,968,845.98	5,211,850.00	104.237000	243,004.02	IDC-FIS
17368	3130A2UW4	FHLB MEDIUM TERM NO	10/17/2019	09/13/2024	2.875000	1.656994	5,000,000.00	5,262,003.90	5,495,450.00	109.909000	233,446.10	IDC-FIS
17391	3130A3GE8	FHLB MEDIUM TERM NO	03/13/2020	12/13/2024	2.750000	.768165	5,000,000.00	5,495,675.00	5,491,450.00	109.829000	30,150.00	IDC-FIS
Subtotal					2.482110	1.649643	80,000,000.00	81,981,814.77	84,494,450.00	105.618063	2,601,697.73	



# Market Inventory

Attachment A

As Of Date: 03/31/2020

Date Basis: Settlement

Run: 04/02/2020 11:16:39 AM

Reporting Currency: Local

## City of Santa Clara

INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
<b><u>Inv Type: 22 FHLB COUPON NOTES</u></b>												
17235	3130A7CT0	FHLB COUPON NOTES	02/26/2016	08/26/2020	1.560000	1.566931	10,000,000.00	9,999,669.51	10,023,100.00	100.231000	23,430.49	IDC-FIS
17354	3130AGMK8	FHLB COUPON NOTES	06/28/2019	06/28/2024	2.220000	2.220000	5,000,000.00	5,000,000.00	5,089,900.00	101.798000	89,900.00	IDC-FIS
17360	3130AGXF7	FHLB COUPON NOTES	08/26/2019	08/26/2024	1.650000	1.650000	5,000,000.00	5,000,000.00	5,076,000.00	101.520000	76,000.00	IDC-FIS
17371	3130AHGL1	FHLB COUPON NOTES	11/04/2019	11/04/2024	1.875000	1.875000	3,840,000.00	3,840,000.00	3,910,617.60	101.839000	70,617.60	IDC-FIS
Subtotal					1.768040	1.770947	23,840,000.00	23,839,669.51	24,099,617.60	101.089000	259,948.09	
<b><u>Inv Type: 23 FNMA COUPON NOTE</u></b>												
17258	3136G3S89	FNMA COUPON NOTE	07/27/2016	07/27/2020	1.420000	1.420000	4,025,000.00	4,025,000.00	4,029,950.75	100.123000	4,950.75	IDC-FIS
17259	3136G3T39	FNMA COUPON NOTE	07/28/2016	07/28/2020	1.350000	1.350000	5,000,000.00	5,000,000.00	5,005,600.00	100.112000	5,600.00	IDC-FIS
17270	3136G4BD4	FNMA COUPON NOTE	09/29/2016	03/29/2021	1.350000	1.350000	5,540,000.00	5,540,000.00	5,587,865.60	100.864000	47,865.60	IDC-FIS
17266	3136G33W3	FNMA COUPON NOTE	08/30/2016	05/28/2021	1.500000	1.500000	5,800,000.00	5,800,000.00	5,809,164.00	100.158000	9,164.00	IDC-FIS
17267	3136G33W3	FNMA COUPON NOTE	08/30/2016	05/28/2021	1.500000	1.500000	4,200,000.00	4,200,000.00	4,206,636.00	100.158000	6,636.00	IDC-FIS
17262	3136G3T21	FNMA COUPON NOTE	07/27/2016	07/27/2021	1.600000	1.600000	5,000,000.00	5,000,000.00	5,004,500.00	100.090000	4,500.00	IDC-FIS
17272	3136G4EV1	FNMA COUPON NOTE	10/28/2016	10/28/2021	1.625000	1.625000	5,000,000.00	5,000,000.00	5,004,450.00	100.089000	4,450.00	IDC-FIS
Subtotal					1.477492	1.477492	34,565,000.00	34,565,000.00	34,648,166.35	100.240609	83,166.35	
<b><u>Inv Type: 24 FNMA MEDIUM TERM NOTE</u></b>												
17226	3135G0D75	FNMA MEDIUM TERM NO	10/23/2015	06/22/2020	1.500000	1.428035	10,000,000.00	10,003,449.88	10,028,100.00	100.281000	24,650.12	IDC-FIS
17238	3135G0F73	FNMA MEDIUM TERM NO	03/17/2016	11/30/2020	1.500000	1.601110	10,000,000.00	9,990,296.39	10,067,400.00	100.674000	77,103.61	IDC-FIS
17279	3135G0H55	FNMA MEDIUM TERM NO	11/16/2016	12/28/2020	1.875000	1.584161	5,000,000.00	5,014,012.31	5,054,050.00	101.081000	40,037.69	IDC-FIS
17248	3136G02F7	FNMA MEDIUM TERM NO	06/03/2016	05/07/2021	1.600000	1.474085	2,000,000.00	2,003,617.74	2,025,920.00	101.296000	22,302.26	IDC-FIS
17268	3135G0N82	FNMA MEDIUM TERM NO	08/25/2016	08/17/2021	1.250000	1.298063	10,000,000.00	9,993,062.38	10,114,700.00	101.147000	121,637.62	IDC-FIS
17271	3135G0Q89	FNMA MEDIUM TERM NO	10/11/2016	10/07/2021	1.375000	1.450052	5,000,000.00	4,992,788.14	5,072,750.00	101.455000	79,961.86	IDC-FIS
17329	3135G0S38	FNMA MEDIUM TERM NO	10/11/2018	01/05/2022	2.000000	3.012476	5,000,000.00	4,904,303.30	5,143,250.00	102.865000	238,946.70	IDC-FIS
17310	3135G0T78	FNMA MEDIUM TERM NO	01/29/2018	10/05/2022	2.000000	2.496939	5,000,000.00	4,930,041.67	5,180,600.00	103.612000	250,558.33	IDC-FIS
17377	3135G0V75	FNMA MEDIUM TERM NO	12/18/2019	07/02/2024	1.750000	1.732000	5,000,000.00	5,003,862.12	5,229,700.00	104.594000	225,837.88	IDC-FIS
17382	3135G0X24	FNMA MEDIUM TERM NO	01/23/2020	01/07/2025	1.625000	1.627706	7,500,000.00	7,503,426.04	7,872,675.00	104.969000	373,650.00	IDC-FIS
Subtotal					1.594256	1.699641	64,500,000.00	64,338,859.97	65,789,145.00	101.998674	1,454,686.07	
<b><u>Inv Type: 26 FFCB MEDIUM TERM NOTES</u></b>												
17234	3133EFY24	FFCB MEDIUM TERM NO	02/18/2016	02/10/2021	1.375000	1.490028	10,000,000.00	9,988,963.72	10,101,000.00	101.010000	112,036.28	IDC-FIS
17386	3133EGYS8	FFCB MEDIUM TERM NO	02/05/2020	04/14/2022	1.400000	1.451035	5,000,000.00	5,016,068.33	5,084,450.00	101.689000	89,965.00	IDC-FIS
17357	3133EKVE3	FFCB MEDIUM TERM NO	07/19/2019	07/19/2022	1.850000	1.889266	5,000,000.00	4,995,262.14	5,143,900.00	102.878000	148,637.86	IDC-FIS
17358	3133EKYJ9	FFCB MEDIUM TERM NO	08/14/2019	08/05/2022	1.850000	1.643841	5,000,000.00	5,024,974.98	5,146,150.00	102.923000	121,175.02	IDC-FIS
17366	3133EHM91	FFCB MEDIUM TERM NO	10/08/2019	11/01/2022	2.080000	1.440040	1,800,000.00	1,833,630.19	1,874,664.00	104.148000	41,033.81	IDC-FIS



## Market Inventory

Attachment A

As Of Date: 03/31/2020

Date Basis: Settlement

Run: 04/02/2020 11:16:39 AM

Reporting Currency: Local

## City of Santa Clara

INV	CUSIP	Description	Purchase	Maturity	Coupon	Yield TM	Current Par	Current Book	Market Value	Market Price	Unrealized G/L	PRC Source
17316	3133EJGU7	FFCB MEDIUM TERM NO	03/29/2018	12/16/2022	2.710000	2.638022	5,000,000.00	5,010,127.00	5,251,300.00	105.026000	241,173.00	IDC-FIS
17332	3133EJSD2	FFCB MEDIUM TERM NO	11/29/2018	06/19/2023	2.890000	2.983126	5,000,000.00	4,984,834.19	5,367,650.00	107.353000	382,815.81	IDC-FIS
17381	3133ELHZ0	FFCB MEDIUM TERM NO	01/17/2020	07/17/2023	1.600000	1.610620	5,000,000.00	4,998,200.00	5,165,150.00	103.303000	166,950.00	IDC-FIS
17327	3133EJWV7	FFCB MEDIUM TERM NO	09/18/2018	08/14/2023	2.900000	3.000958	5,000,000.00	4,983,649.25	5,384,200.00	107.684000	400,550.75	IDC-FIS
17331	3133EJD48	FFCB MEDIUM TERM NO	11/28/2018	10/02/2023	3.050000	3.024022	7,575,000.00	7,582,114.59	8,229,328.50	108.638000	647,213.91	IDC-FIS
17355	3133EHN25	FFCB MEDIUM TERM NO	06/27/2019	11/01/2023	2.200000	1.866116	2,965,000.00	3,002,782.46	3,131,514.40	105.616000	128,731.94	IDC-FIS
17348	3133EKBW5	FFCB MEDIUM TERM NO	03/21/2019	02/27/2024	2.610000	2.466241	5,000,000.00	5,026,828.71	5,385,550.00	107.711000	358,721.29	IDC-FIS
17362	3133EKHV1	FFCB MEDIUM TERM NO	09/05/2019	07/22/2024	2.450000	1.384069	5,000,000.00	5,230,958.08	5,387,850.00	107.757000	156,891.92	IDC-FIS
17372	3133EK4Y9	FFCB MEDIUM TERM NO	11/12/2019	11/01/2024	1.650000	1.806956	5,000,000.00	4,965,370.83	5,231,050.00	104.621000	268,200.00	IDC-FIS
Subtotal					2.166770	2.074992	72,340,000.00	72,643,764.47	75,883,756.90	104.898752	3,264,096.59	

**Inv Type: 27 FFCB COUPON NOTES**

17283	3133EGEV3	FFCB COUPON NOTES	11/18/2016	06/14/2021	1.620000	1.721070	5,000,000.00	4,992,740.53	5,000,600.00	100.012000	7,859.47	IDC-FIS
Subtotal					1.620000	1.721070	5,000,000.00	4,992,740.53	5,000,600.00	100.012000	7,859.47	

**Inv Type: 28 FHLMC MEDIUM TERM NOTES**

17233	3137EADR7	FHLMC MEDIUM TERM N	12/07/2015	05/01/2020	1.375000	1.635015	10,000,000.00	9,987,610.45	10,009,100.00	100.091000	21,489.55	IDC-FIS
17388	3134G9M20	FHLMC MEDIUM TERM N	02/26/2020	07/26/2021	1.875000	1.275218	5,000,000.00	5,049,762.50	5,100,750.00	102.015000	58,800.00	IDC-FIS
Subtotal					1.542907	1.514190	15,000,000.00	15,037,372.95	15,109,850.00	100.732333	80,289.55	

**Inv Type: 29 FHLMC COUPON NOTES**

17351	3134GTKG7	FHLMC COUPON NOTES	05/03/2019	05/03/2024	2.600000	2.600000	3,000,000.00	3,000,000.00	3,063,600.00	102.120000	63,600.00	IDC-FIS
Subtotal					2.600000	2.600000	3,000,000.00	3,000,000.00	3,063,600.00	102.120000	63,600.00	

**Inv Type: 99 LOCAL AGENCY INVESTMENT FUND**

16059		STATE OF CA DEMAND	09/30/1997	04/01/2020	2.250031	2.250031	63,880,753.40	63,880,753.40	63,880,753.40	100.000000	0.00	BOOK
Subtotal					2.250031	2.250031	63,880,753.40	63,880,753.40	63,880,753.40	100.000000	0.00	

**Inv Type: 305 MUTUAL FUNDS-FIDELITY**

17385		FIDELITY PRIME MMKT	12/13/2019	04/01/2020	1.067622	1.063388	21,663,211.42	21,669,723.04	21,665,377.74	100.010000	-4,345.30	USERPR
Subtotal					1.067622	1.063388	21,663,211.42	21,669,723.04	21,665,377.74	100.010000	-4,345.30	

**Inv Type: 315 MUTUAL FUNDS-DREYFUS**

16064		DREYFUS TREASURY CA	10/31/1997	04/01/2020	.649505	.649505	2,144,981.05	2,144,981.05	2,144,981.05	100.000000	0.00	BOOK
Subtotal					.649505	.649505	2,144,981.05	2,144,981.05	2,144,981.05	100.000000	0.00	

Grand Total					Count 112	1.968447	1.934843	725,683,945.87	727,430,882.52	752,266,128.04	103.663052	25,060,443.23
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## FY 2019/20 Budget Amendments

### Deposit Fund (071)

Department	Source of Funds	Use of Funds	Explanation
Transfer to the Streets and Highways Capital Fund		(544,000)	Decreases the transfer to the Streets and Highways Fund by \$544,000 to reflect a reduction in the Regional Traffic Mitigation Fees used for the High Intensity Activated Crosswalk Beacon on Scott Boulevard at Harrison Street project. A total transfer of \$750,000 of Regional Traffic Mitigation Fees was approved by the City Council on April 28, 2020; however, the available balance for the Regional Traffic Mitigation Fees in the Deposits Fund is \$206,000. The remaining funding needed of \$544,000 will be from the Traffic Mitigation Fund.
Ending Fund Balance		544,000	Increases the ending fund balance to offset the action recommended above.
<b>Total Deposits Fund</b>	-	-	

### Traffic Mitigation Fund (123)

Department	Source of Funds	Use of Funds	Explanation
Transfer to the Streets and Highways Capital Fund		544,000	Establishes a transfer to the Streets and Highways Capital Fund for the High Intensity Activated Crosswalk Beacon on Scott Boulevard at Harrison Street project. A total transfer of \$750,000 of Regional Traffic Mitigation Fees was approved by the City Council on April 28, 2020; however, the available balance for the Regional Traffic Mitigation Fees in the Deposits Fund is \$206,000. Unallocated traffic mitigation fees will be used to fund the remaining \$544,000 needed for the project.
Ending Fund Balance		(544,000)	Decreases the ending fund balance to offset the action recommended above.
<b>Total Traffic Mitigation Fund</b>	-	-	

### Streets and Highways Capital Fund (533)

Project	Source of Funds	Use of Funds	Explanation
Transfer From the Deposits Fund / High Intensity Activated Crosswalk Beacon Project	(544,000)		Decreases the transfer from the Deposits Fund by \$544,000 to reflect a reduction in the Regional Traffic Mitigation Fees used for the High Intensity Activated Crosswalk Beacon on Scott Boulevard at Harrison Street project. A total transfer of \$750,000 of Regional Traffic Mitigation Fees was approved by the City Council on April 28, 2020; however, the available balance for the Regional Traffic Mitigation Fees in the Deposits Fund is \$206,000. The remaining funding requirement of \$544,000 will be from the Traffic Mitigation Fund.
Transfer From the Traffic Mitigation Fund / High Intensity Activated Crosswalk Beacon Project	544,000		Establishes a transfer from the Traffic Mitigation Fund to the Streets and Highways Fund. A total transfer of \$750,000 of Regional Traffic Mitigation Fees was approved by the City Council on April 28, 2020; however, \$206,000 is the available balance for the Regional Traffic Mitigation Fees in the Deposits Fund. Unallocated traffic mitigation fees will be used to fund the remaining \$544,000 needed for the project.
<b>Total Streets and Highways Capital Fund</b>	-	-	



## Agenda Report

20-496

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

CoreSite Real Estate SV9, L.P., (CoreSite) proposes to construct a four-story, 246,660 square-foot data center at 2905 Stender Way (SV9) that would replace the existing uses on the site. The SV9 data center would be approximately 85 feet in height and would house computer servers and supporting equipment for private clients. The SV9 data center facility is proposed to be served by a new single customer electric substation and a related 60kV transmission line extension to the substation.

CoreSite has requested the City to perform predesign engineering activities in parallel with CoreSite's development and construction approval process which is presently under California Environmental Quality Act (CEQA) review.

#### **DISCUSSION**

Under this Funding Agreement, Coresite will fund the City's preparation of system impact studies and predesign activities on the substation, the substation's control building and the off-site 60kV transmission line interconnection, in a parallel path with CoreSite's CEQA review process.

This Funding Agreement does not provide CoreSite with any vested right to electric service, any assurance of approval of CoreSite's project, any budget approvals relating thereto, permit application approvals, the environmental review or any other item relating or arising out of its project or any portion thereof. The City shall not be liable to CoreSite for failure to approve any such items.

#### **ENVIRONMENTAL REVIEW**

The action being considered is not subject to review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Article 20, Section 15378(b)(4), which provides that "[t]he creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment" does not constitute a Project that requires environmental review. If the data center and substation project moves forward with its application, appropriate CEQA review will be completed prior to project approval.

**FISCAL IMPACT**

Under the terms of the Funding Agreement, CoreSite shall fully fund the City's system impact study and predesign of the substation, substation control building and related off-site 60kV transmission line, estimated at \$700,000. Coresite will be responsible to provide developer contributions prior to City incurring actual costs associated with these activities. The developer contribution will be included as a new Stender Way Junction Substation Capital Improvement Project in the Electric Utility Capital Fund. A budget amendment to receive this revenue and appropriate project costs is detailed below.

**Budget Amendment  
FY 2019/2020**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>Electric Utility Capital Fund</b>			
<u>Revenues</u>			
Developer Contributions for new Stender Way Junction Substation project	\$0	\$700,000	\$700,000
<u>Expenditures</u>			
Project Costs for new Stender Way Junction Substation project	\$0	\$700,000	\$700,000

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

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

Reviewed by: Manuel Pineda, Chief Electric Utility Officer



Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Funding Agreement

**FUNDING AGREEMENT  
BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
CORESITE REAL ESTATE SV9, L.P.**

**PREAMBLE**

This agreement ("Agreement"), regarding Engineering Funding, is by and between CoreSite Real Estate SV9, L.P., a Delaware limited partnership, with its principal place of business located at 1001 17<sup>th</sup> Street, Suite 500 Denver, Colorado 80202 ("Applicant"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050, doing business as Silicon Valley Power (the "City" or "SVP"). SVP and Applicant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

The City and Applicant agree as follows:

- A. Applicant is proposing to develop and construct a data center in the City of Santa Clara, which will require additional electrical service through a substation.
- B. Applicant has requested SVP to perform the predesign of the substation, the substation's control building and off-site transmission facilities ("Engineering") on Applicant's property located at 2905 Stender Way, Santa Clara, CA ("Project"). The Project is intended to be performed in parallel with the Applicant's data center development and construction approval process, including but not limited to review under the California Environmental Quality Act (CEQA). The performance of the Engineering by SVP does not constitute conditional approval by the City of the Applicant's project.
- C. Applicant has agreed to pay SVP \$700,000.00 for the Engineering Funding for the Project, which must be paid in full to SVP prior to the start of the Project.
- D. If the Applicant gives thirty (30) days written notice to the City that it will not require the Project, SVP will stop all work associated with the Project. All payments made by Applicant under this Agreement shall be reconciled against the actual costs incurred by SVP up to the effective date of termination. Applicant shall have reasonable access to the books and records of SVP to confirm the accuracy of the reconciliation. Any overpayment above actual costs shall be refunded promptly to Applicant.

- E. If SVP anticipates that additional funds are required, SVP will provide the Applicant with a minimum of thirty (30) days written notice requesting additional funds. If Applicant does not provide SVP with the additional funds within fifteen (15) days of SVP's written notice, SVP shall stop all work on the Project until such payment is made.
- F. Nothing in this Agreement shall be construed as a commitment by City to grant or issue any preliminary or final approvals in connection with Project planning, construction, including for General Plan Amendments, Rezoning, Development Plans, Subdivision Maps, Development Agreements, Environmental Impact Reports, and building permits. Developer acknowledges and agrees that nothing in this Agreement limits City's discretion. Developer agrees that it shall remain obligated to pay all costs for all work performed by SVP, regardless of whether any aspect of the Project is ultimately approved.

G. Hold Harmless/Indemnification

- a. To the extent permitted by law, Applicant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with this Agreement – including claims of any kind by Applicant's employees or persons contracting with Contractor to perform any portion of this Agreement– and shall expressly include passive or active negligence by City connected with the Agreement. 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.

Applicant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Applicant, against City (either alone, or jointly with Applicant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

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

City of Santa Clara  
Attention: Silicon Valley Power  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [svpcontracts@santaclaraca.gov](mailto:svpcontracts@santaclaraca.gov)

And to Applicant addressed as follows:

CoreSite Real Estate SV9, L.P.  
1001 17<sup>th</sup> Street, Suite 500  
Denver, Colorado 80202  
Attention: General Counsel  
and by e-mail at [general.counsel@coresite.com](mailto:general.counsel@coresite.com)

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

APPROVED AS TO FORM:

Approved as to Form:

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

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

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

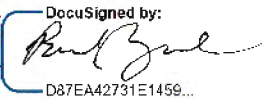
"CITY"

**CORESITEL REAL ESTATE SV9, L.P.**  
a Delaware limited partnership

**BY: CORESITE REAL ESTATE SV9 GP, L.L.C., A DELAWARE  
LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER**

Dated: \_\_\_\_\_ 4/14/2020 | 13:00 PM MDT

By (Signature): \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Principal Place of Business Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

  
D87EA42731E1459...  
Paul Szurek  
CEO

1001 17<sup>th</sup> Street, Suite 500 Denver, Colorado  
303-405-1000

"APPLICANT"



## Agenda Report

20-511

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### SUBJECT

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

#### BACKGROUND

In 2016, the City entered into a three-year agreement with the Healthier Kids Foundation (HKF) to provide underserved children in Santa Clara with supplemental vision, dental and hearing screenings, as well as health education programs at a cost of \$70,000 per year. In June 2019, the City extended the term of the agreement with no additional funding for six months to explore other service delivery options. On December 17, 2019, the City Council authorized the City Manager to negotiate an amendment with HKF for an additional six-month period through June 30, 2020 to continue its work to transition the program to another funder. The agreement with HKF provides for a quarterly progress report to the City. The purpose of this report is to transmit the FY2019/20 Third Quarter Report and to provide a status update on the City's efforts to transition the Healthier Kids Foundation program.

#### DISCUSSION

##### *Third Quarter Performance*

As reported by HFK, the following measurable objectives were achieved:

- Vision First screened 1,039 children, ages 2-18, of the goal of 1,100 children (94%);
- Hearing First screened 458 children of the goal of 500 children (92%);
- Dental First screened 639 children of the goal of 500 children (128%); and,
- 10 Steps for Parents Program reached 167 parents of the goal of 150 parents (111%).

Due to the COVID19 County Health Order to Shelter in Place (SIP) issued in March and renewed in April 2020, non-essential activities and elective services such as health screenings and educational sessions were suspended. Many scheduled events and screenings had to be cancelled through the end of the fiscal year. However, HKF was able to develop and transition the Ten Steps program to an on-line format assuring remote participation. Therefore, based on the continued County Health SIP, this will be the final HKF report under the agreement.

##### *Status of Contract*

The existing agreement between the City of Santa Clara and HKF is set to expire on June 30, 2020. As noted in previous Council discussions, City staff and HKF have explored options to transition the

program to another funder. At a meeting of the City/School Task Force in the fall of 2019, the new Superintendent of the Santa Clara Unified School District (SCUSD) expressed interest in possibly transitioning the supplemental program to the District as she was familiar with the agency from her prior work experience. While discussions were initiated and there was a mutual interest, at this time it is uncertain whether a transition will ultimately be viable due to COVID-19 related budget impacts. Consequently, the Council must either continue funding the program or allow the program to sunset. However, given the current environment of shelter in place orders, this is a good time for the SCUSD and Healthy Kids Foundation to use this time to determine if there is an opportunity to reach an agreement. It is important to note that Santa Clara youth will continue to have access to vision, dental and hearing screening courtesy of the School Site Nurses in the Santa Clara Unified School District. As such, should the Council allow the program to sunset on June 30, 2020, Santa Clara youth will have access to basic services through the School District.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

The current annual level of funding is \$70,000. Should the program be allowed to sunset, these funds would be available in the City’s General Fund to support other program priorities.

### **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 report to council may be requested by contacting the City Clerk’s Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov).

### **RECOMMENDATION**

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

Reviewed by: James Teixeira, Director, Parks & Recreation

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Healthier Kids Foundation FY2019/20 Third Quarter (FINAL) Report





## Healthier Kids Foundation

### Healthier Kids Foundation

4040 Moorpark Avenue, Suite 100

San Jose, CA 95117

Phone: 408.564.5114

Fax: 408.326.2711

[www.hkidsf.org](http://www.hkidsf.org)

### FY 19-20 Q3 Report to City of Santa Clara

Contact: Laura Clendaniel  
[laura@hkidsf.org](mailto:laura@hkidsf.org)  
408.564.5114 x220

Report Date: 4.30.2020

Healthier Kids Foundation's three-year MOU with the City of Santa Clara came to a close on June 30, 2019. Over the three year partnership, Healthier Kids Foundation has exceeded the cumulative goal of services provided to City of Santa Clara residents. For this year, the City of Santa Clara and Healthier Kids Foundation agreed to two 6-month extensions of said MOU; the first being July – December 2019 and the second being January – June 2020.

Healthier Kids Foundation's mission is to remove health barriers impacting the learning and life success of Silicon Valley youth. We have been honored to work with the City of Santa Clara in an effort to improve health care access and utilization, change health behavior through education, and advocate for health policy and systems change. Together, we can ensure all City of Santa Clara youth achieve good health, educational equity, and success in life as productive community members.

Due to the Covid 19 "Shelter in Place" of students and closure of schools, Healthier Kids Foundation is supplying results for the full fiscal year 2019-2020:

	Vision Screenings	Dental Screenings	Hearing Screenings	10 Steps Participants	Total
<b>FY 19-20 Program Goal</b>	1,100	500	500	150*	2,250
<b>FY 19-20 Program Actual</b>	1,039	639	458	167	2,303
<b>% of Goal Completed</b>	94%	128%	92%	111%	<b><u>102%</u></b>

\*Contractual 10 Steps goal for first and second 6-months was 75 and 20, respectively. Goal reflected above is as if the goal had not been lowered for the second 6-month period.

### Activities and Progress Q3

In the City of Santa Clara, Healthier Kids Foundation screens children for untreated vision, dental, and hearing issues; case managers follow-up with the parents of all children who receive a screening result that identifies an issue. This ensures that each child gets the care they need so that they are able to learn in the classroom. Healthier Kids Foundation also delivers 10 Steps to a Healthier You! workshops to parents and caregivers in the City of Santa Clara, providing strategies to implement healthy habits in the home.

Of those who attended a 10 Steps workshop:

- 97% felt that they had learned new things that they would go home and try



- 90% felt that the class was very or extremely valuable

At the end of quarter three, Healthier Kids Foundation has identified the following in the City of Santa Clara:

- 114 children with untreated vision problems (11% referral rate)
- 160 children with urgent or emergency dental needs (25% referral rate)
- 49 children with an untreated hearing problems (10% referral rate)

Healthier Kids Foundation case managers work with these families to ensure that the children receive appropriate treatment through their insurance. If uninsured, the case manager assists the family in enrolling into subsidized health insurance.

Without our partnership with the city, these kids' needs could have remained unidentified, unaddressed and might have been barriers to learning.

"Children are the foundation to our society's future. They need to have a foundation of good health in order to contribute their talents to our community and country."

- parent helped by Healthier Kids Foundation

#### City of Santa Clara Q3 Screening Schedule

Screening Date	Screening Type	Account Name	Contact Name
1/8/2020	VisionFirst	SCUSD Bowers State Preschool	Frances O'Brien
1/8/2020	DentalFirst	SCUSD Bowers State Preschool	Frances O'Brien
1/10/2020	HearingFirst Re-Screening	Building Blocks Day Care	Velma Seliovic
1/15/2020	VisionFirst	SCUSD Bracher	Ruth Werner
1/15/2020	VisionFirst	Bowers Infant and Toddler	Rosie Flores
1/15/2020	VisionFirst	Bracher Children's Center	Silvia Bejarano
1/15/2020	DentalFirst	SCUSD Bracher	Ruth Werner
1/15/2020	DentalFirst	Bowers Infant and Toddler	Rosie Flores
1/15/2020	DentalFirst	Bracher Children's Center	Silvia Bejarano
1/16/2020	DentalFirst	Briarwood Children's Center	Keely Nguyen
1/16/2020	VisionFirst	SCUSD Briarwood	Liz Aguilar
1/16/2020	VisionFirst	Briarwood Children's Center	Keely Nguyen
1/16/2020	DentalFirst	SCUSD Briarwood	Liz Aguilar
1/21/2020	DentalFirst	SCUSD Kathryn Hughes State Preschool	Joanie Nellis
1/21/2020	VisionFirst	SCUSD Kathryn Hughes State Preschool	Joanie Nellis
1/21/2020	VisionFirst	Hughes District Preschool	Jamie Valdez
1/21/2020	DentalFirst	Hughes District Preschool	Jamie Valdez

1/21/2020	HearingFirst Re-Screening	Hughes District Preschool	Jamie Valdez
1/21/2020	HearingFirst Re-Screening	SCUSD Kathryn Hughes State Preschool	Joanie Nellis
1/22/2020	DentalFirst	Montague District Preschool	Gina Perez
1/22/2020	DentalFirst	SCUSD Montague - Montague State Preschool	Vidya Rao
1/22/2020	VisionFirst	Montague District Preschool	Gina Perez
1/22/2020	VisionFirst	SCUSD Montague - Montague State Preschool	Vidya Rao
1/22/2020	VisionFirst	SCUSD Sutter District Preschool	Judie Stevens
1/22/2020	DentalFirst	SCUSD Sutter District Preschool	Judie Stevens
1/22/2020	HearingFirst Re-Screening	SCUSD Montague - Montague State Preschool	Vidya Rao
1/22/2020	HearingFirst	SCUSD Montague - Montague State Preschool	Vidya Rao
1/22/2020	HearingFirst Re-Screening	Montague District Preschool	Gina Perez
1/23/2020	HearingFirst Re-Screening	SCUSD Briarwood	Keely Nguyen
1/23/2020	HearingFirst Re-Screening	SCUSD Bracher	Ruth Werner
1/27/2020	DentalFirst	SCUSD Scott Lane	Larrissa Patel
1/27/2020	VisionFirst	SCUSD Scott Lane	Larrissa Patel
1/27/2020	HearingFirst Re-Screening	SCUSD Bowers State Preschool	Frances O'Brien
1/27/2020	HearingFirst Re-Screening	SCUSD Scott Lane	Larrissa Patel
1/30/2020	HearingFirst Re-Screening	Bracher Children's Center	Silvia Bejarano
2/6/2020	VisionFirst	Santa Clara Christian School	Judy Higa
2/6/2020	HearingFirst	Santa Clara Christian School	Judy Higa

#### City of Santa Clara Q3 10 Steps Schedule

Class Date	Class Type	Account Name	Class Language	Contact
2/25/2020	10 Steps	Scott Lane Elementary	English	Adriana T. Reyes
2/25/2020	S&R	Scott Lane Elementary	English	Adriana T. Reyes
Cancelled due to COVID-19 3/3/2020	5 Keys	Scott Lane Elementary	English	Adriana T. Reyes

### Next Steps: Q4 and the Impact of COVID-19

With the close of all non-essential operations, Healthier Kids Foundation had to cancel the following screenings and 10 Steps classes that were expected to take place.

Program Type	Site	# Expected	Status
Hearing and Vision	Santa Clara Christian Preschool	100	Scheduled → Cancelled
Vision	Easter Egg Hunt	150	Scheduled → Cancelled
Hearing and Vision	Mission College CDC	15	Scheduled → Cancelled
Hearing and Vision	Adventures in Learning	120	About to Schedule
10 Steps – 5 Keys	Scott Lane Elementary	10	Scheduled → Cancelled
10 Steps – 3 Class Series	Santa Clara Adult Education	30	About to Schedule
	Total	~ 235 Hearing ~ 385 Vision ~ 40 10 Steps	

In FY 2019-2020, Healthier Kids Foundation planned and completed much of their programming early in the year. Programs were very successful in the Santa Clara community up until the spread of COVID-19. Without the pandemic and order to shelter in place, Healthier Kids Foundation would have completed the following in the City of Santa Clara:

	Vision Screenings	Dental Screenings	Hearing Screenings	10 Steps Participants	Total
<b>FY 19-20 Program Goal</b>	1,100	500	500	150	2,250
<b>Program Actual without COVID-19</b>	1,424	639	493	207	2,963



## Agenda Report

20-526

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

On February 10, 2015, City Council approved an agreement with LPA, Inc. for community outreach, site feasibility analysis, engineering plans, specifications and cost estimate for a new youth soccer and athletic facility. Since then, five (5) amendments to the agreement have addressed various changes and additions to the original contract scope as well as the evolution of the Reed & Grant Street Sports Park Project including the site selection, procurement of synthetic turf, changes to electrical plans, inclusion of Raymond G. Gamma Dog Park restroom and paved parking lot, the improvement of an additional parcel purchased by City, street frontage improvements, added pedestrian, signage and traffic improvements at Lafayette Boulevard and Reed Street, and safety and security improvements along the railroad side of the Project. The Project was moving toward substantial completion in early 2020, with additional Dog Park rehabilitation to closely follow. Unfortunately, due to the County Health Department COVID19 Shelter In Place Order, non-essential business and construction was stopped in March 2020 resulting in further delays in completion of the Project. The latest County Health Order issued on April 29, 2020 allows construction projects that adhere to the COVID19 Health protocols to resume.

#### **DISCUSSION**

O.C. Jones and Sons, Inc. (O.C. Jones), the contractor for the Sports Park Project, and its subcontractors have re-mobilized at the project site in conformance with the April 29, 2020 County Health Department Order, and construction has resumed to finish the Sports Park and soon initiate the remaining Dog Park improvements. However, the LPA agreement did not include funding for additional construction support services (such as review of contractor requests for information and final punch-list reviews of the construction work) over the extended timeframe now needed due to the COVID19 suspension of construction. In addition, the agreement did not include funding for development of record drawings to incorporate all construction changes into CADD drawings to produce a final as-built Sports Park plan set.

The Project budget amendment in the amount of \$95,000 will provide funding for the LPA, Inc. Amendment No.6 construction support services (\$50,000), and for final project record drawing documentation (CADD as-built drawings) (\$45,000). The requested actions will provide the City Manager with authorization to execute Amendment No. 6 with LPA, Inc. in an amount of \$50,000 for additional construction support services (which will bring the total agreement as amended amount to

\$2,045,000), and to negotiate and execute an agreement in the amount of up to \$45,000 to complete the necessary record drawing documentation (with LPA Inc. or another professional firm to be determined).

For clarity, the more extensive Dog Park rehabilitation work has been designed under separate contract with Dillingham Associates and Council has delegated authority to the City Manager (at its July 16, 2019 City Council meeting) to negotiate and execute Project change orders with O.C. Jones to complete the Dog Park rehabilitation. Upon successful completion of negotiations, the Dog Park improvements are anticipated to start upon completion of the Sports Park construction and be completed by Winter 2020.

### **ENVIRONMENTAL REVIEW**

The action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15301 "Existing Facilities", 15302 "replacement or reconstruction", and 15303 "new construction or conversion of small structures" as the activity consists of the operation, repair, maintenance, permitting or minor alteration of existing public facilities or topographical features involving negligible expansion of use beyond that existing at the time of the lead agencies determination.

### **FISCAL IMPACT**

Staff recommends a budget amendment transferring \$95,000 from the Unallocated Mitigation Fee Act (MFA) Fees account to the Reed & Grant Streets Sports Park Project in the Parks and Recreation Capital Fund. Funds from the MFA are collected from new housing development for the acquisition and development of parkland and facilities. The Reed & Grant Streets Sports Park will serve the entire Santa Clara Community and the residents of the projects from which funds were collected.

#### **Budget Amendment FY 2019/20**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>Parks and Recreation Capital Fund</b>			
<u>Ending Fund Balance</u>			
Unallocated Mitigation Fee Act	\$651,847	(95,000)	\$556,847
<u>Expenditures</u>			
Youth Soccer Fields & Athletic Facilities -	*\$2,370,310	95,000	**\$2,465,310
Reed & Grant Street			
* Final Budget **Revised Budget			
contingent on the approval of RTC 20-			
516.			

### **COORDINATION**

This report has been coordinated with the Finance Department, Parks & Recreation Department,

Public Works 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)

**RECOMMENDATION**

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

Reviewed by: Craig Mobeck, Director of Public Works

Reviewed by: James Teixeira, Director of Parks & Recreation

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Amendment No. 6

**AMENDMENT NO. 6  
TO THE AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
LPA, INC.**

**PREAMBLE**

This agreement ("Amendment No. 6") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and LPA, Inc., a California corporation, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. The Parties previously entered into an agreement entitled "Agreement for Design Professional Services by and between City of Santa Clara, California and LPA, Inc.", dated February 10, 2015 (Agreement);
- B. The Agreement was previously amended by Amendment No. 1, dated October 27, 2015, Amendment No. 2, dated October 12, 2016, Amendment No. 3, dated December 16, 2016, Amendment No. 4, dated June 6, 2017, Amendment No. 5, dated December 21, 2017, and is again amended by this Amendment No. 6. The Agreement and all previous amendments are collectively referred to herein as the "Agreement as Amended"; and
- C. The Parties entered into the Agreement as Amended for the purpose of having Contractor provide community outreach, feasibility analysis of three sites, the development of architectural and landscape plans, specifications and cost estimate, bid and construction services for the Capital Improvement Project #3177 "Additional Youth Soccer and Athletic Facilities Project (Project), as well as expansion of the initial Project scope of work to include a Youth Soccer Park Field #2 rehabilitation, changes to the procurement of synthetic turf, changes to electrical plans, addition of a dog park restroom and paved parking lot, the improvement of an additional parcel purchased by City, improvements along the Project's street frontage, added pedestrian, signage and traffic improvements at Lafayette Blvd. and Reed Street, and safety and security improvements along the railroad side of the Project. The Parties now wish to amend the Agreement as Amended to include additional construction and post construction services.

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NOW, THEREFORE, the Parties agree as follows:

### AMENDMENT TERMS AND CONDITIONS

1. Section "Exhibit A-4" of the Agreement as Amended, entitled "Scope of Services" is amended to read as follows by adding:

"23. a) Additional Construction Support Services through the end of July 2020. Includes answering additional requests for information (RFI), review of submittals from contractor, providing responses and recommendations on behalf of and in consultation with the Public Works Department of the City, developing punch lists to substantial completion, re-check of building work of multiple engineering disciplines.

23. b) Contingency for Construction Support Services.

23. c) Optional services at City's sole discretion: Allowance for "As-Built" drawings (i.e. CADD record drawings).

2. Section "Exhibit B-4" of the Agreement as Amended, entitled "Fee Schedule," is amended to read as follows:

"Task 23. a) Additional Construction Support Services \$34,000;

Task 23. b) Contingency for Construction Support Services \$16,000;

Task 23. c) Allowance for optional services \$45,000."

3. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 6, the provisions of this Amendment No. 6 shall control.

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The Parties acknowledge and accept the terms and conditions of this Amendment No. 6 as evidenced by the following signatures of their duly authorized representatives.

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

Approved as to Form:


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

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

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

"CITY"

**LPA, INC.**  
a California corporation

Dated: 5.19.2019  
By (Signature):   
Name: James Kelly  
Title: Executive Vice President  
Principal Place of  
Business Address: 60 South Market Street, Suite 150; San Jose CA 95113  
Email Address: jkelly@lpainc.com  
Telephone: (408) 780-7200  
Fax: (408) 780-7201

"CONTRACTOR"

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## Agenda Report

20-536

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### SUBJECT

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

#### BACKGROUND

On April 7, 2020, the City Council approved a Resolution of Intention (No. 20-8829) to order that the alternative method for the levy of benefit assessment be made applicable to City of Santa Clara Parking Maintenance District No. 122, providing for notice of hearing thereon, and approving for distribution the Director's Report for Fiscal Year 2020/21. The Resolution set June 2, 2020 as the date of the Public Hearing. The June 2, 2020, City Council meeting has subsequently been canceled, and so there is a need to issue a new Resolution of Intention setting the public hearing for the June 9, 2020 Council meeting.

#### DISCUSSION

As detailed in the April 7, 2020 Report to Council, adoption of the proposed resolution is the initial step necessary to set the annual budget for Parking Maintenance District No. 122. The approval process requires the preparation of a Director's Report (Attachment 3) explaining the preparation and basis of assessments; publication and posting of a Notice of Public Hearing (Attachment 4); and holding a public hearing on the annual assessments.

Due to the extension of the countywide Shelter-in-Place Order for COVID-19, it was no longer feasible to conduct a May 5, 2020 face-to-face meeting with property owners to discuss questions regarding the Director's Report. The property owners meeting was subsequently rescheduled as a teleconference meeting on May 12, 2020.

Staff is requesting that the Council now set a hearing date of June 9, 2020 at 2:00 p.m. to complete processing of the April 7 Council agenda report, and adopt the revised Resolution of Intention for Parking Maintenance District No. 122 - Franklin Square, which reflect the changes made to the meeting date(s), time(s) and location(s). The Public Hearing notice with the updated June 9, 2020 Council date was also published in the May 20, 2020 edition of The Weekly.

#### 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**

This is a procedural item only and as such, there is no fiscal impact other than the City Staff time.

**COORDINATION**

This report has been coordinated with the Finance Department, City Clerk's Office 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) .

On May 20, 2020, the Notice of Public Hearing for the June 9, 2020 City Council meeting was published in the Weekly. In addition, the notice will be posted at the City Clerk's Office and mailed to all property owners within the District.

**RECOMMENDATION**

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

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Original Resolution of Intention
2. Revised Resolution of Intention
3. Director's Report for June 9 Council Meeting
4. Notice of Public Hearing

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

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, OF INTENTION TO ORDER THAT THE ALTERNATIVE METHOD FOR THE LEVY OF BENEFIT ASSESSMENT BE MADE APPLICABLE TO CITY OF SANTA CLARA PARKING MAINTENANCE DISTRICT NO. 122, PROVIDING FOR NOTICE OF HEARING THEREON, APPROVING THE DIRECTOR'S REPORT FOR DISTRIBUTION, AND PROVIDING FOR NOTICE OF HEARING ON DIRECTOR'S REPORT FOR FISCAL YEAR 2020/21**

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

**WHEREAS**, pursuant to Sections 10107 and 10108 of Chapter 2, Division 12 of the Streets and Highways Code of the State of California, and Chapter 26 of Part 3 of Division 7 of said Code, all as provided in Chapter 16.10 of the Code of the City of Santa Clara, on the 30th day of March, 1965, this Council adopted its Resolution No. 1581, a Resolution creating "City of Santa Clara Parking Maintenance District No. 122" ("Parking Maintenance District") in the City for the purpose of paying the costs and expenses of acquiring, constructing, reconstructing, installing, extending, enlarging, repairing, improving, maintaining and operating public automobile parking places, covered pedestrian lanes and walkways, fountains, and landscaping therein then existing or thereafter to be constructed in and for the Parking Maintenance District, and of benefit to said maintenance district, but not of benefit to the City of Santa Clara as a whole, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation thereof, and all additions, improvements and enlargements thereto which may thereafter be made;

**WHEREAS**, said proceedings provided that this Council shall, in addition to all other

taxes, annually fix and levy a special assessment tax upon the real property (land and improvements) within the Parking Maintenance District as therein provided, sufficient to raise a determined amount of money to pay all or part of said costs of maintenance and operation;

**WHEREAS**, the Council shall decide whether or not the costs of maintenance and operation of said public improvements shall be borne wholly or partially by the property owners within said Parking Maintenance District;

**WHEREAS**, on the 8th day of April, 1980, this Council adopted its Ordinance No. 1401 providing for an alternative method for annually fixing and levying a special benefit assessment within maintenance districts within the City for said purpose;

**WHEREAS**, on the 16th day of January, 1996, this Council adopted its Resolution No. 6105 ordering that seventy-five (75%) percent of the costs and expenses of maintaining and operating said public improvements beginning with fiscal year 1996-97, within the Parking Maintenance District, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation thereof shall annually be assessed either partly or wholly upon the lots and parcels of property within the Parking Maintenance District benefited thereby in accordance with the formula set forth, and that the City shall be responsible for the balance of the costs and expenses;

**WHEREAS**, on June 26, 1996, sufficient Ballots were received to approve the continuation of the Parking Maintenance District;

**WHEREAS**, on the 9th day of July, 2002, this Council, after a public hearing on the determination of the allocation of maintenance and operation costs and annual

assessments, passed a motion wherein, due to the benefit to the public and the City of the improvements, the City assumed all future costs for operation and maintenance of Parking Maintenance District No. 122 and the property owners would contribute \$14,200 annually, less earned interest on the accumulating balance, to pay for capital repairs of the parking lots and associated walkways;

**WHEREAS**, procedures of approval require the preparation of a Report on how the assessments were prepared and based, notice of hearing, and public hearing on the annual assessments;

**WHEREAS**, this Council intends to order an alternative method by which annual assessment levies for the payment of said costs and expenses will be apportioned according to special benefits among the several lots or parcels of property within the Parking Maintenance District pursuant to Section 16.10.490 and 16.10.500 of the Code of the City of Santa Clara;

**WHEREAS**, the City's Director of Public Works has made and filed with the City Clerk a written report ("Report") setting forth the budget, the formula for the annual assessment levy, a description of each lot or parcel of property to be assessed and the amount of the assessment to be levied against each lot or parcel of property in accordance with said formula; and

**WHEREAS**, said Council has duly considered said report and each and every part thereof, and finds that each and every part of said report is sufficient, and that neither said report, nor any part thereof requires or should be modified in any respect.

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

1. That this Council hereby determines that the costs and expenses of the maintenance and operation of the public automobile parking places, covered pedestrian lanes and walkways, fountains and landscaping within the City of Santa Clara Parking Maintenance District No. 122 cannot be appropriately financed pursuant to Sections 10107 and 10108 of Chapter 2, Division 12 of said Streets and Highways Code, and Chapter 26 of Part 3 of Division 7 of said Code, all as provided in Section 16.05.050 of the Code of the City of Santa Clara. This Resolution is therefore adopted and proceedings are being taken pursuant to Section 16.10.490 and Section 16.10.500 of said Code of the City of Santa Clara to provide for an alternative method for the levy of benefit assessments for said purposes.

2. That it is the intent of this Council to order that an amount of \$14,200 less any earned interest on accumulated balance, is needed annually to be assessed towards the costs of capital repairs of the parking lots and associated walkways and thereof shall annually be assessed either partly or wholly upon the lots and parcels of property within said maintenance district benefited thereby in accordance with the formula set forth, and that the City shall be responsible for the costs and expenses of maintaining and operating said public improvements within the Parking Maintenance District, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation.

3. That a statement of the formula upon and by which annual assessment levies for the payment of said costs and expenses will be apportioned according to benefits among the several lots or parcels of property within said maintenance district is as

follows:

Each assessment shall be determined on the basis of the gross floor area of the building located upon the lot or parcel of property assessed.

For the purposes of the formula herein, gross floor area shall mean that area computed from the outside dimensions of the building and not excluding corridors and other design features and aggregated for each additional story or mezzanine floor and any basement area.

4. That the City's Director of Public Works has caused to be prepared and filed with the City Clerk a written report, which provides the basis for the levy of benefit assessments for said capital repairs of the parking lots and associated walkways, and the cost of maintenance and operation on all lots or parcels or property within the Parking Maintenance District. Said report sets forth the amounts to be provided in the budget for maintenance and operation, a description of each lot or parcel of property in the maintenance district, by a legal description, assessor's parcel number or other description sufficient to identify the same, and the amount of assessment to be levied for the fiscal year 2020/21 against each lot or parcel of property. The City Council directs the City Clerk to make the report open to public inspection.

5. NOTICE IS HEREBY GIVEN that Tuesday the 2nd day of June, 2020 at the hour of 5:00 p.m. at the regular meeting place of the City Council in the Council Chambers at City Hall, 1500 Warburton Avenue, Santa Clara, California, be fixed as the time and place when and where this Council will hear any and all objections in relation to said alternative method for the levy of benefit assessments and said formula and when and where this Council will examine said report and hear all persons' interest therein. Any



interested owner objecting to said alternative method for the levy of benefit assessments or to said formula or to the amount of the assessment on any lot or parcel of property owned may file with the City Clerk at or before the hour fixed for hearing an objection, describing the lot or parcel of property owned so that it may be identified, and stating the grounds of objection, and may appear at said hearing and be heard with regard thereto.

6. NOTICE IS HEREBY GIVEN that Tuesday, the 5<sup>th</sup> day of May, 2020 at the hour of 4:00 p.m., in the Conference Room at Street Corporation Yard, 1700 Warburton Avenue, Santa Clara, California, City staff will present and discuss the Director's Report.

7. No written ballots are required to be completed and returned.

8. The Assistant City Clerk is hereby authorized and directed to a) post a copy of notice of hearing on or near the Council Chamber door or any bulletin board in or adjacent to the City Hall, and b) publish once in a newspaper of general circulation, and c) mail notice to all property owners located within the District.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:  
None

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

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, OF INTENTION TO ORDER THAT THE ALTERNATIVE METHOD FOR THE LEVY OF BENEFIT ASSESSMENT BE MADE APPLICABLE TO CITY OF SANTA CLARA PARKING MAINTENANCE DISTRICT NO. 122, PROVIDING FOR NOTICE OF HEARING THEREON, APPROVING THE DIRECTOR'S REPORT FOR DISTRIBUTION, AND PROVIDING FOR NOTICE OF HEARING ON DIRECTOR'S REPORT FOR FISCAL YEAR 2020/21**

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

**WHEREAS**, pursuant to Sections 10107 and 10108 of Chapter 2, Division 12 of the Streets and Highways Code of the State of California, and Chapter 26 of Part 3 of Division 7 of said Code, all as provided in Chapter 16.10 of the Code of the City of Santa Clara, on the 30th day of March, 1965, this Council adopted its Resolution No. 1581, a Resolution creating "City of Santa Clara Parking Maintenance District No. 122" ("Parking Maintenance District") in the City for the purpose of paying the costs and expenses of acquiring, constructing, reconstructing, installing, extending, enlarging, repairing, improving, maintaining and operating public automobile parking places, covered pedestrian lanes and walkways, fountains, and landscaping therein then existing or thereafter to be constructed in and for the Parking Maintenance District, and of benefit to said maintenance district, but not of benefit to the City of Santa Clara as a whole, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation thereof, and all additions, improvements and enlargements thereto which may thereafter be made;

**WHEREAS**, said proceedings provided that this Council shall, in addition to all other

taxes, annually fix and levy a special assessment tax upon the real property (land and improvements) within the Parking Maintenance District as therein provided, sufficient to raise a determined amount of money to pay all or part of said costs of maintenance and operation;

**WHEREAS**, the Council shall decide whether or not the costs of maintenance and operation of said public improvements shall be borne wholly or partially by the property owners within said Parking Maintenance District;

**WHEREAS**, on the 8th day of April, 1980, this Council adopted its Ordinance No. 1401 providing for an alternative method for annually fixing and levying a special benefit assessment within maintenance districts within the City for said purpose;

**WHEREAS**, on the 16th day of January, 1996, this Council adopted its Resolution No. 6105 ordering that seventy-five (75%) percent of the costs and expenses of maintaining and operating said public improvements beginning with fiscal year 1996-97, within the Parking Maintenance District, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation thereof shall annually be assessed either partly or wholly upon the lots and parcels of property within the Parking Maintenance District benefited thereby in accordance with the formula set forth, and that the City shall be responsible for the balance of the costs and expenses;

**WHEREAS**, on June 26, 1996, sufficient Ballots were received to approve the continuation of the Parking Maintenance District;

**WHEREAS**, on the 9th day of July, 2002, this Council, after a public hearing on the determination of the allocation of maintenance and operation costs and annual

assessments, passed a motion wherein, due to the benefit to the public and the City of the improvements, the City assumed all future costs for operation and maintenance of Parking Maintenance District No. 122 and the property owners would contribute \$14,200 annually, less earned interest on the accumulating balance, to pay for capital repairs of the parking lots and associated walkways;

**WHEREAS**, procedures of approval require the preparation of a Report on how the assessments were prepared and based, notice of hearing, and public hearing on the annual assessments;

**WHEREAS**, this Council intends to order an alternative method by which annual assessment levies for the payment of said costs and expenses will be apportioned according to special benefits among the several lots or parcels of property within the Parking Maintenance District pursuant to Section 16.10.490 and 16.10.500 of the Code of the City of Santa Clara;

**WHEREAS**, the City's Director of Public Works has made and filed with the City Clerk a written report ("Report") setting forth the budget, the formula for the annual assessment levy, a description of each lot or parcel of property to be assessed and the amount of the assessment to be levied against each lot or parcel of property in accordance with said formula;

**WHEREAS**, on May 12, 2020, from 4:00 p.m. to 4:30 p.m., a teleconference meeting was hosted by Dave Staub, Department of Public Works Deputy Director, to present and discuss the Report to interested parties; and

**WHEREAS**, the Council has duly considered said Report and each and every part thereof, and finds that each and every part of said Report is sufficient, and that neither

said Report, nor any part thereof requires or should be modified in any respect.

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

1. That this Council hereby determines that the costs and expenses of the maintenance and operation of the public automobile parking places, covered pedestrian lanes and walkways, fountains and landscaping within the City of Santa Clara Parking Maintenance District No. 122 cannot be appropriately financed pursuant to Sections 10107 and 10108 of Chapter 2, Division 12 of said Streets and Highways Code, and Chapter 26 of Part 3 of Division 7 of said Code, all as provided in Section 16.05.050 of the Code of the City of Santa Clara. This Resolution is therefore adopted and proceedings are being taken pursuant to Section 16.10.490 and Section 16.10.500 of said Code of the City of Santa Clara to provide for an alternative method for the levy of benefit assessments for said purposes.

2. That it is the intent of this Council to order that an amount of \$14,200 less any earned interest on accumulated balance, is needed annually to be assessed towards the costs of capital repairs of the parking lots and associated walkways and thereof shall annually be assessed either partly or wholly upon the lots and parcels of property within said maintenance district benefited thereby in accordance with the formula set forth, and that the City shall be responsible for the costs and expenses of maintaining and operating said public improvements within the Parking Maintenance District, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation.

3. That a statement of the formula upon and by which annual assessment levies for the payment of said costs and expenses will be apportioned according to benefits among the several lots or parcels of property within said maintenance district is as follows:

Each assessment shall be determined on the basis of the gross floor area of the building located upon the lot or parcel of property assessed.

For the purposes of the formula herein, gross floor area shall mean that area computed from the outside dimensions of the building and not excluding corridors and other design features and aggregated for each additional story or mezzanine floor and any basement area.

4. That the City's Director of Public Works has caused to be prepared and filed with the City Clerk a written report, which provides the basis for the levy of benefit assessments for said capital repairs of the parking lots and associated walkways, and the cost of maintenance and operation on all lots or parcels or property within the Parking Maintenance District. Said report sets forth the amounts to be provided in the budget for maintenance and operation, a description of each lot or parcel of property in the maintenance district, by a legal description, assessor's parcel number or other description sufficient to identify the same, and the amount of assessment to be levied for the fiscal year 2020/21 against each lot or parcel of property. The City Council directs the City Clerk to make the report open to public inspection.

5. NOTICE IS HEREBY GIVEN that Tuesday the 9th day of June, 2020 at the hour of 2:00 p.m. at the regular meeting place of the City Council in the Council Chambers at City Hall, 1500 Warburton Avenue, Santa Clara, California, be fixed as the time and

place when and where this Council will hear any and all objections in relation to said alternative method for the levy of benefit assessments and said formula and when and where this Council will examine said report and hear all persons' interest therein. Any interested owner objecting to said alternative method for the levy of benefit assessments or to said formula or to the amount of the assessment on any lot or parcel of property owned may file with the City Clerk at or before the hour fixed for hearing an objection, describing the lot or parcel of property owned so that it may be identified, and stating the grounds of objection, and may appear at said hearing and be heard with regard thereto.

6. No written ballots are required to be completed and returned.

7. The City Clerk is hereby authorized and directed to a) post a copy of notice of hearing on or near the Council Chamber door or any bulletin board in or adjacent to the City Hall, and b) publish once in a newspaper of general circulation, and c) mail notice to all property owners located within the District.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:  
None

**DIRECTOR'S REPORT**  
**CITY OF SANTA CLARA**  
**PARKING DISTRICT NO. 122 MAINTENANCE DISTRICT**  
**FISCAL YEAR 2020/21**

**June 9, 2020**

## **ASSESSMENT FORMULA**

Fiscal Year 2020/21  
City of Santa Clara, California

### **Parking District No. 122 Maintenance District**

The formula upon which the annual assessment levy, for the payment of the costs and expenses of maintaining and operating the improvements, and providing funds for future parking lots and associated walkways, exceptional maintenance and improvements, within Parking District No. 122 Maintenance District, including the costs and expenses incidental thereto, will be apportioned according to benefits among the several lots or parcels of property within the Maintenance District for the Fiscal Year 2020/21 is as follows:

- Costs and expenses are to be shared between the City and property owners as below:
  - a. City shall pay for the operation and maintenance cost on a 100% basis.
  - b. Property owners shall pay \$14,200 annually, less interest from prior years' property owners operation and maintenance assessments as of June 30, 2002, to be kept in a fund to be used towards future exceptional maintenance and improvements of parking lots and associated walkways and appurtenances.
- Each assessment shall be determined on the basis of the gross floor area of the building located upon the lot or parcel of property assessed.
- For the purposes of the formula herein, gross floor area shall mean that area computed from the outside dimensions of the building and not excluding corridors and other design features and aggregated for each additional story or mezzanine floor and any basement area.

## **DIRECTOR'S REPORT**

ASSESSMENT for Fiscal Year 2020/21 City of Santa Clara, California

### **Parking District No. 122 Maintenance District**

I, Craig Mobeck, Director of Public Works for the City of Santa Clara, California, pursuant to the provisions of Section 16.10.490 of the Code of the City of Santa Clara, hereby make this report and following benefit assessment to cover the costs and expenses of maintaining and operating the improvement within Parking District No. 122 Maintenance District of said City, including the costs and expenses incidental thereto, to be paid by said Maintenance District.

The amount to be paid therefor by said Maintenance District for the Fiscal Year 2020/21 is as follows:

<b><u>Expenditures</u></b>	<b><u>As Preliminarily Approved</u></b>	<b><u>As Finally Approved</u></b>
Routine Maintenance & Operation	\$ 155,571.00	\$152,762.00
Exceptional Maintenance and Repairs	\$ 0.00	\$0.00
<b>TOTAL COST</b>	<b>\$ 155,571.00</b>	<b>\$152,762.00</b>

### **Funding for FY 2020/21 Expenditures**

Exceptional Maintenance & Improvement From Fund Balance Reserve	\$0.00	\$0.00
Contribution from City General Fund (001)	\$ 155,571.00	\$152,762.00
<b>TOTAL</b>	<b>\$ 155,571.00</b>	<b>\$152,762.00</b>

### **Property Owner Assessment**

Owner's Annual Assessment	\$14,200.00	\$14,200.00
Less Accrued Interest of Owner's Fund Balance	[\$3,826.00]	[\$3,826.00]
<b>TOTAL NET ASSESSMENT</b>	<b>\$10,374.00</b>	<b>\$10,374.00</b>

*(Goes to Fund Balance Reserve)*

And I do hereby assess and apportion the amount said costs and expenses, including the costs and expenses incidental thereto, upon the several lots or parcels of property liable therefor and benefited thereby, in proportion to the benefits to be received by such lots or parcels of property, from the maintenance and operation thereof and more particularly set forth in the list hereto attached and by reference made a part hereof.

Each lot or parcel of land is described in the assessment list by reference to its parcel number as shown on the assessor's maps of the County of Santa Clara for the Fiscal Year 2020/21 to the right of the parcel numbers and include all of such parcel.

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

\_\_\_\_\_  
Craig Mobeck, Director of Public Works

## **BUDGET**

Fiscal Year 2020/21  
City of Santa Clara, California

### **Parking District No. 122 Maintenance District**

<b><u>Expenditures</u></b>	<b><u>As Preliminarily Approved</u></b>	<b><u>As Finally Approved</u></b>	
Maintenance & Operation:	\$ 155,571.00	\$152,762.00	Labor, materials, supplies, and equipment to maintain Parking Maintenance District No. 122 including, but not limited to water, sewer, and electrical costs, sweeping of parking lots and mall area, maintenance of pavement, striping, landscaping, mall fountains, City supervision (50% of labor and fringe benefits of Street Maintenance Worker III).
Exceptional Maintenance and Improvements of Parking Lots and Associated Walkways	\$ 0.00	\$0.00	
<b>TOTAL COST</b>	<b>\$ 155,571.00</b>		
<b><u>Funding for FY 2020/21 Expenditure</u></b>			
Owner's Reserve for Exceptional Maintenance & Improvement Fund Balance:	[\$ 0.00]	[\$0.00]	
Contribution from City General Fund (001):	<u>[\$ 155,571.00]</u>	[\$152,762.00]	
<b>Owner's Annual Assessment</b>	<b>\$14,200.00</b>	<b>\$14,200.00</b>	
Less Accrued Interest on Owners' Fund Balance:	<u>[\$3,826.00]</u>	[\$3,826.00]	
<b>Total Net Assessment:</b>	<b>\$10,374.00</b>	<b>\$10,374.00</b>	

**ASSESSMENT**

Fiscal Year 2020/21  
City of Santa Clara, California

**Parking District No. 122 Maintenance District**

<b>Name &amp; Address of Owner</b>	<b>Assessor's Parcel Number</b>	<b>(2) As Finally Confirmed</b>	<b>(1) As Preliminarily Approved</b>	<b>Gross Floor Area (sq. ft.)</b>	<b>% of Total Floor Area</b>
Green Valley Corporation 777 N. First Street, Unit 500 San Jose, CA 95112	269-22-111	\$2,168.89	\$2,168.89	13,305.22	20.907
Ramiro Hermosillo Trust 3121 Riddle Rd. San Jose, CA 95117	269-22-110	\$1,146.64	\$1,146.64	7,034.13	11.053
John C. & Catherine E. De Martini, Trustee 477 9 <sup>th</sup> Avenue Ste 107 San Mateo, CA 94402	269-22-108	\$1,387.83	\$1,387.83	8,513.76	13.378
David DeLozier Trustee & Et al. 1162 Carmel Way Santa Clara, CA 95050	269-22-098	\$1,213.76	\$1,213.76	7,445.88	11.700
John Frey Trustee & Et al. 4221 Five Mile Drive San Jose, CA 95132	269-22-103	\$ 226.15	\$ 226.15	1,387.35	2.180
Celine Yuen-Wan Chan Trustee 3557 Chablis Circle San Jose, CA 95127	269-22-102	\$ 130.51	\$ 130.51	800.59	1.258
Ross L. Peterson Et al. 1365 Main St Santa Clara, CA 95050	269-22-105	\$ 326.68	\$ 326.68	2,004.02	3.149

**ASSESSMENT**

Fiscal Year 2020/21  
City of Santa Clara, California

**Parking District No. 122 Maintenance District**

<b>Name &amp; Address of Owner</b>	<b>Assessor's Parcel Number</b>	<b>(2) As Finally Confirmed</b>	<b>(1) As Preliminarily Approved</b>	<b>Gross Floor Area (sq. ft.)</b>	<b>% of Total Floor Area</b>
Robert Freitas Et al. 255 Washington Street Milpitas, CA 95035	269-22-104	\$ 271.38	\$ 271.38	1,664.82	2.616
Gillmor Properties LLC 1201 Franklin Mall Santa Clara, CA 95050	269-22-113	\$ 350.74	\$ 350.74	2,151.67	3.381
Warren Mitchell Et al. 16200 Greenwood Ln Monte Sereno, CA 95030	269-22-106	\$1,300.18	\$1,300.18	7,976.00	12.533
Vitarelli Family LP 925 Circle Drive Santa Clara, CA 95050	269-22-101	\$ 359.46	\$ 359.46	2,205.13	3.465
Vitarelli Family LP 925 Circle Drive Santa Clara, CA 95050	269-22-100	\$ 201.05	\$ 201.05	1,233.34	1.938
Gillmor Properties LLC 1201 Franklin Mall Santa Clara, CA 95050	269-22-115	\$ 982.31	\$ 982.31	6,026.07	9.469
Gillmor Properties LLC 1201 Franklin Mall Santa Clara, CA 95050	269-22-114	\$ 308.42	\$ 308.42	1,892.02	2.973
<b>TOTAL</b>			<b>\$10,374.00</b>	<b>63,640.00</b>	<b>100%</b>

I, the Assistant City Clerk of the City of Santa Clara, hereby certify that the foregoing assessment in the amounts set forth in Column (2) unless Column (2) is blank, in which event the amounts in Column (1) apply, was approved and confirmed by the City Council of said City on \_\_\_\_\_, 2020.

\_\_\_\_\_  
Nora Pimentel, MMC  
Assistant City Clerk  
City of Santa Clara

I, the County Auditor of the County of Santa Clara, hereby certify that the foregoing assessment was filed in my office on \_\_\_\_\_, 2020.

\_\_\_\_\_  
County Auditor, County of Santa Clara



# City of Santa Clara

## Notice of Public Hearing

### **Regarding the Levy of Benefit Assessment Applicable to the Santa Clara Parking Maintenance District No. 122, and Approval of Distribution of Director's Report Fiscal Year 2020/21**

Notice is hereby given that the Director of Public Works has requested a report, in writing, to be prepared and filed with the City Clerk, which provides the basis for the levy of benefit assessments for the costs of maintenance and operation on all lots or parcels of property within said maintenance district. Said report sets forth the amounts to be provided in the budget for maintenance and operation; a description of each lot or parcel of property in the maintenance district, by a legal description, assessor's parcel number or other description sufficient to identify the same; and the amount of assessment to be levied for the fiscal year 2020/2021 against each lot or parcel of property. Said report is open to public inspection.

Said report will be heard by the Council at its meeting to be held on Tuesday, June 9, 2020, at 2:00 p.m. or as soon as thereafter as the matter may be heard in the regular meeting place of said Council, in the City Hall Council Chambers (east Wing of City Hall), 1500 Warburton Avenue, Santa Clara, California, at which time said Council will examine said report and hear all persons interested therein.

Any interested owner, objecting to the amount of the assessment on any lot or parcel of property owned by him, may file with the City Clerk at or before the hour fixed for hearing a protest, in writing, signed by him, describing the lot or parcel of property so that it may be identified, and stating the grounds of his/her protest, and may appear at said hearing and be heard in regard thereto.

**AMERICANS WITH DISABILITIES ACT (ADA)** The public hearing location is accessible by wheelchair and public transportation. People with impaired speech or hearing may call (408) 615-2490 through 711 the nationwide Telecommunications Relay Service. The California Relay Service can also be reached in Spanish for both TDD and voice at 1-866-833-4703. If you need sign or other interpretation, please call (408) 615-2490 at least one week in advance of the hearing. Reasonable modifications in policies, procedures and/or practices will be made as necessary to ensure access for all individuals with a disability or with limited English proficiency. For more information, contact the City's ADA Coordinator in the Department of Public Works at (408) 615-3000.

Citizens are encouraged to attend the hearing and may submit written and/or oral comments directly to the City Clerk, 1500 Warburton Avenue, Santa Clara, California, 95050; telephone (408) 615-2220.

Nora Pimentel, MMC, Assistant City Clerk



## Agenda Report

20-539

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### SUBJECT

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

#### BACKGROUND

On April 7, 2020 the City Council approved a Resolution of Intention (No. 20-8828) to order that the alternative method for the levy of benefit assessment be made applicable to Maintenance District No. 183 - Santa Clara Convention Center Complex, providing for notice of hearing thereon, and approving for distribution the Director's Report for Fiscal Year 2020/21. The Resolution set June 2, 2020 as the date of the Public Hearing. The June 2, 2020 City Council meeting has subsequently been canceled, and so there is a need to issue a new Resolution of Intention setting the public hearing for the June 9, 2020 Council meeting.

#### DISCUSSION

Adoption of the proposed resolution is the initial step necessary to set the annual budget for Maintenance District No. 183. The approval process requires the preparation of a Director's Report (Attachment 3) explaining the preparation and basis of assessments; publication and posting of a Notice of Public Hearing (Attachment 4); and holding a public hearing on the annual assessments

Staff is requesting that the Council now set a hearing date of June 9, 2020 at 2:00 p.m. to complete processing of the April 7 Council agenda report and adopt the revised Resolution of Intention for Maintenance District No. 183 - Santa Clara Convention Center Complex, which reflects the changes made to the meeting date(s), time(s) and location(s). The Public Hearing notice with the updated June 9, 2020 Council date will be published in the May 27, 2020 edition of The Weekly.

#### 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

This is a procedural item only and as such, there is no fiscal impact other than the City Staff time.

#### COORDINATION

This report has been coordinated with the Finance Department, City Clerk's Office 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>>.

The Public Hearing notice with the updated June 9, 2020 Council date will be published in the May 27, 2020 edition of The Weekly.

**RECOMMENDATION**

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

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Original Resolution of Intention
2. Revised Resolution of Intention
3. Director's Report 2020-21
4. Notice of Public Hearing

## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA OF INTENTION TO ORDER THAT THE ALTERNATIVE METHOD FOR THE LEVY OF BENEFIT ASSESSMENT BE MADE APPLICABLE TO CITY OF SANTA CLARA CONVENTION CENTER COMPLEX MAINTENANCE DISTRICT NO. 183, PROVIDING FOR NOTICE OF HEARING THEREON, APPROVING THE DISTRIBUTION OF THE DIRECTOR'S REPORT, AND PROVIDING FOR NOTICE OF HEARING ON DIRECTOR'S REPORT FOR FISCAL YEAR 2020-21**

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

**WHEREAS**, pursuant to Chapter 16.10 of "The Code of the City of Santa Clara, California" ("City Code"), the City Council of the City of Santa Clara, California ("Council") adopted Resolution No. 5081 on June 3, 1986, creating "City of Santa Clara Convention Center Complex Maintenance District No. 183" ("District") in the City of Santa Clara, California ("City"). Resolution No. 5081 also ordered that the costs and expenses of maintaining and operating the on-site public improvements ("Public Improvements") on the property within the District, including the cost of necessary repairs, replacements, fuel, power, electrical current, care, supervision and any and all other items necessary for the proper maintenance and operation of the Public Improvements be raised by the levy of an annual special benefit assessment apportioned according to special benefits conferred among the parcels of property within the District in accordance with a formula set forth in Resolution No. 5081, and in accordance with and pursuant to the provisions for the alternative method for the levy of benefit assessments in maintenance districts in the City as provided in the City Code;

**WHEREAS**, Resolution No. 5081 provided that the Council shall, in addition to all other taxes, annually fix and levy a special assessment tax upon the real property (land and improvements) within the District as therein provided, sufficient to raise the amount of money necessary to pay the annual costs of maintenance and operation;

**WHEREAS**, the Council adopted Ordinance No. 1401 on April 8, 1980, which provided for an alternative method for annually fixing and levying a special benefit assessment within maintenance districts located in the City for said purpose;

**WHEREAS**, in the opinion of this Council, the annual costs of maintenance and operation of the Public Improvements shall be appropriately financed pursuant to the provisions of Ordinance No. 1401 and Resolution No. 5081 and related provisions of the City Code;

**WHEREAS**, pursuant to the provisions of Resolution No. 5081, the City's Director of Public Works has made and filed with the City Clerk a written report ("Director's Report") setting forth the budget, the formula for the annual assessment levy, a description of each lot or parcel of property to be assessed and the amount of the assessment to be levied against each lot or parcel of property in accordance with said formula. The costs of operation, maintenance, and servicing of improvements to be funded by the District are apportioned to each parcel in proportion to the special benefit it receives;

**WHEREAS**, City Staff met with the affected property owners on April 2, 2020 to discuss the Director's Report;

**WHEREAS**, Proposition 218 passed by the voters in the general election on November 5, 1996, added Articles XIIC and XIID to the State of California Constitution which require the property owners within the District to annually approve any assessment increase that is more than any previous assessment;

**WHEREAS**, in the event of an assessment that is greater than any previous assessment, the procedures of approval under Proposition 218 not only require the preparation of a Director's Report on how the assessments were prepared and based, but further necessitate a written ballot ("Ballot") to be returned in order to determine approval of any assessment increases for the District;

**WHEREAS**, the Director's Report, Ballot, and public hearing notice are to be sent out at least 45 days in advance of the public hearing to all property owners, and any tenants within the District

who are responsible for paying each assessment;

**WHEREAS**, in the event of an assessment that is greater than any previous assessment, a majority weighted vote of the Ballots (weighting determined by an amount of assessment paid), must be received in order to approve any proposed increase in assessment;

**WHEREAS**, for Fiscal Year 2020-21, the assessments are increasing and therefore, Proposition 218 requirements do apply; and

**WHEREAS**, the Council has duly considered the Director's Report and finds that it is sufficient and does not require modification.

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

1. That the recitals set forth above are true and correct and by this reference, the Council makes them a part hereof.
2. That the public interest and convenience require and this Council hereby orders that the costs and expenses of acquiring, constructing, reconstructing, installing, extending, enlarging, repairing, improving, maintaining and operating the Public Improvements now existing or hereafter to be constructed in and for the District which benefit the District as a whole, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation thereof, and of all additions, improvements and enlargements thereto which may hereafter be made, be raised by an annual special benefit assessment in accordance with and pursuant to the provisions for the alternative method for the levy of benefit assessments in maintenance districts in the City, as provided in Section 16.10.490 and Section 16.10.500 of the City Code, on all lots or parcels of property within the District.
3. That the costs and expenses of maintaining and operating the Public Improvements within the District shall annually be assessed, either partly or wholly, upon the benefited lots and parcels of property within the District by apportioning the costs and expenses according to

benefits in proportion to the special benefits received by each lot or parcel of property within the District in accordance with the formula set forth in EXHIBIT "B" of Resolution No. 5081.

4. That the City Manager caused a budget to be prepared for the costs of the expenses of maintaining and operating the Public Improvements during fiscal year 2020-21 and the Director of Public Works prepared and filed a Director's Report with the City Clerk which provides the basis for the levy of benefit assessments for the cost of maintenance and operation on all lots or parcels of property within the District.

5. NOTICE IS HEREBY GIVEN that on Tuesday, June 2, 2020, at 2:00 p.m., at its regular meeting place in the Council Chambers at City Hall, 1500 Warburton Avenue, Santa Clara, California, the Council will hold a public hearing during which it will hear any and all evidence and protests relating to said alternative method for the levy of benefit assessments and said formula for the District, and if the assessment is greater than any previous assessment, certify any ballots received and determine any weighted vote necessary, examine said Director's Report and hear all persons interested therein. Any interested property owner, who objects to the alternative method for the levy of benefit assessments, the formula, or to the amount of the assessment on any lot or parcel of property owned by him/her, may file a signed written protest with the City Clerk before the commencement of the Council meeting during which the public hearing will be held, describing the lot or parcel of property owned by him/her so that it may be identified and stating the grounds of his/her protest. The property owner may appear at the hearing and be heard with regard to his/her protest.

6. Written ballots are to be completed and returned to the City Clerk's office not later than Tuesday, June 2, 2020, at 2:00 p.m., or at the time this matter is heard.

7. The City Clerk is hereby authorized and directed to a) post a copy of notice of hearing on or near the Council Chamber door or any bulletin board in or adjacent to the City Hall and b) publish a copy of notice of hearing at least once in a newspaper of general circulation, pursuant to City Code Section 16.10.490(p).

8. The Director of Public Works is hereby authorized and directed to give notice of said hearing by mailing a copy of this Resolution of Intention and Director's Report, postage prepaid to record owners of any lot or parcel of property subject to a benefit assessment to pay said costs of maintenance and operation, as determined by the last assessment roll. This Resolution will be available for public inspection in the City Clerk's office; and said mailing shall be done at least forty-five (45) days, and posting and publication shall be completed not less than ten (10) days, prior to the date fixed (June 2, 2020) for the hearing.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

\_\_\_\_\_  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Director's Report



## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA OF INTENTION TO ORDER THAT THE ALTERNATIVE METHOD FOR THE LEVY OF BENEFIT ASSESSMENT BE MADE APPLICABLE TO CITY OF SANTA CLARA CONVENTION CENTER COMPLEX MAINTENANCE DISTRICT NO. 183, PROVIDING FOR NOTICE OF HEARING THEREON, APPROVING THE DISTRIBUTION OF THE DIRECTOR'S REPORT, AND PROVIDING FOR NOTICE OF HEARING ON DIRECTOR'S REPORT FOR FISCAL YEAR 2020-21**

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

**WHEREAS**, pursuant to Chapter 16.10 of "The Code of the City of Santa Clara, California" ("City Code"), the City Council of the City of Santa Clara, California ("Council") adopted Resolution No. 5081 on June 3, 1986, creating "City of Santa Clara Convention Center Complex Maintenance District No. 183" ("District") in the City of Santa Clara, California ("City"). Resolution No. 5081 also ordered that the costs and expenses of maintaining and operating the on-site public improvements ("Public Improvements") on the property within the District, including the cost of necessary repairs, replacements, fuel, power, electrical current, care, supervision and any and all other items necessary for the proper maintenance and operation of the Public Improvements be raised by the levy of an annual special benefit assessment apportioned according to special benefits conferred among the parcels of property within the District in accordance with a formula set forth in Resolution No. 5081, and in accordance with and pursuant to the provisions for the alternative method for the levy of benefit assessments in maintenance districts in the City as provided in the City Code;

**WHEREAS**, Resolution No. 5081 provided that the Council shall, in addition to all other taxes, annually fix and levy a special assessment tax upon the real property (land and improvements) within the District as therein provided, sufficient to raise the amount of money necessary to pay the annual costs of maintenance and operation;

**WHEREAS**, the Council adopted Ordinance No. 1401 on April 8, 1980, which provided for an alternative method for annually fixing and levying a special benefit assessment within maintenance districts located in the City for said purpose;

**WHEREAS**, in the opinion of this Council, the annual costs of maintenance and operation of the Public Improvements shall be appropriately financed pursuant to the provisions of Ordinance No. 1401 and Resolution No. 5081 and related provisions of the City Code;

**WHEREAS**, pursuant to the provisions of Resolution No. 5081, the City's Director of Public Works has made and filed with the City Clerk a written report ("Director's Report") setting forth the budget, the formula for the annual assessment levy, a description of each lot or parcel of property to be assessed and the amount of the assessment to be levied against each lot or parcel of property in accordance with said formula. The costs of operation, maintenance, and servicing of improvements to be funded by the District are apportioned to each parcel in proportion to the special benefit it receives;

**WHEREAS**, City Staff met with the affected property owners on April 2, 2020 to discuss the Director's Report;

**WHEREAS**, Proposition 218 passed by the voters in the general election on November 5, 1996, added Articles XIIC and XIID to the State of California Constitution which require the property owners within the District to annually approve any assessment increase that is more than any previous assessment;

**WHEREAS**, in the event of an assessment that is greater than any previous assessment, the procedures of approval under Proposition 218 not only require the preparation of a Director's Report on how the assessments were prepared and based, but further necessitate a written ballot ("Ballot") to be returned in order to determine approval of any assessment increases for the District;

**WHEREAS**, the Director's Report, Ballot, and public hearing notice are to be sent out at least 45 days in advance of the public hearing to all property owners, and any tenants within the District

who are responsible for paying each assessment;

**WHEREAS**, in the event of an assessment that is greater than any previous assessment, a majority weighted vote of the Ballots (weighting determined by an amount of assessment paid), must be received in order to approve any proposed increase in assessment;

**WHEREAS**, for Fiscal Year 2020-21, the assessments are increasing and therefore, Proposition 218 requirements do apply; and

**WHEREAS**, the Council has duly considered the Director's Report and finds that it is sufficient and does not require modification.

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

1. That the recitals set forth above are true and correct and by this reference, the Council makes them a part hereof.
2. That the public interest and convenience require and this Council hereby orders that the costs and expenses of acquiring, constructing, reconstructing, installing, extending, enlarging, repairing, improving, maintaining and operating the Public Improvements now existing or hereafter to be constructed in and for the District which benefit the District as a whole, including the cost of necessary repairs, replacements, water, fuel, power, gas, electric current, care, supervision and any and all other items necessary for the proper maintenance and operation thereof, and of all additions, improvements and enlargements thereto which may hereafter be made, be raised by an annual special benefit assessment in accordance with and pursuant to the provisions for the alternative method for the levy of benefit assessments in maintenance districts in the City, as provided in Section 16.10.490 and Section 16.10.500 of the City Code, on all lots or parcels of property within the District.
3. That the costs and expenses of maintaining and operating the Public Improvements within the District shall annually be assessed, either partly or wholly, upon the benefited lots and parcels of property within the District by apportioning the costs and expenses according to

benefits in proportion to the special benefits received by each lot or parcel of property within the District in accordance with the formula set forth in EXHIBIT "B" of Resolution No. 5081.

4. That the City Manager caused a budget to be prepared for the costs of the expenses of maintaining and operating the Public Improvements during fiscal year 2020-21 and the Director of Public Works prepared and filed a Director's Report with the City Clerk which provides the basis for the levy of benefit assessments for the cost of maintenance and operation on all lots or parcels of property within the District.

5. NOTICE IS HEREBY GIVEN that on Tuesday, June 9, 2020, at 2:00 p.m., at its regular meeting place in the Council Chambers at City Hall, 1500 Warburton Avenue, Santa Clara, California, the Council will hold a public hearing during which it will hear any and all evidence and protests relating to said alternative method for the levy of benefit assessments and said formula for the District, and if the assessment is greater than any previous assessment, certify any ballots received and determine any weighted vote necessary, examine said Director's Report and hear all persons interested therein. Any interested property owner, who objects to the alternative method for the levy of benefit assessments, the formula, or to the amount of the assessment on any lot or parcel of property owned by him/her, may file a signed written protest with the City Clerk before the commencement of the Council meeting during which the public hearing will be held, describing the lot or parcel of property owned by him/her so that it may be identified and stating the grounds of his/her protest. The property owner may appear at the hearing and be heard with regard to his/her protest.

6. Written ballots are to be completed and returned to the City Clerk's office not later than Tuesday, June 9, 2020, at 2:00 p.m., or at the time this matter is heard.

7. The City Clerk is hereby authorized and directed to a) post a copy of notice of hearing on or near the Council Chamber door or any bulletin board in or adjacent to the City Hall and b) publish a copy of notice of hearing at least once in a newspaper of general circulation, pursuant to City Code Section 16.10.490(p).

8. The Director of Public Works is hereby authorized and directed to give notice of said hearing by mailing a copy of this Resolution of Intention and Director's Report, postage prepaid to record owners of any lot or parcel of property subject to a benefit assessment to pay said costs of maintenance and operation, as determined by the last assessment roll. This Resolution will be available for public inspection in the City Clerk's office; and said mailing shall be done at least forty-five (45) days, and posting and publication shall be completed not less than ten (10) days, prior to the date fixed (June 9, 2020) for the hearing.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

\_\_\_\_\_  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Director's Report

**DIRECTOR'S REPORT**  
**CITY OF SANTA CLARA**  
**SANTA CLARA CONVENTION CENTER COMPLEX**  
**MAINTENANCE DISTRICT NO. 183**  
**FISCAL YEAR 2020-2021**

**4/14/2020**

COUNCIL APPROVED: (proposed June 9, 2020)

Director of Public Works/City Engineer

**SANTA CLARA CONVENTION CENTER COMPLEX  
MAINTENANCE DISTRICT NO. 183  
City of Santa Clara, California**

**SPECIAL BENEFIT ASSESSMENT for Fiscal Year 2020-2021**

**DIRECTOR'S REPORT**

The Director of Public Works/City Engineer of the City of Santa Clara, California, pursuant to the provisions of Section 16.10.490 of the Code of the City of Santa Clara, hereby makes this report and the following special benefit assessment to cover the costs and expenses of maintaining and operating the improvements within Santa Clara Convention Center Complex Maintenance District No. 183 of said City, including the costs and expenses incidental thereto, to be paid by said Maintenance District.

The amount to be paid therefore by said Maintenance District for the Fiscal Year 2020-21 is as follows:

	<u>As Finally Confirmed</u>
Maintenance and Operations	\$1,565,949
Permanent Parking Controls	\$20,000
Reserve for Dynamic Parking Controls	\$265,000
Exceptional Improvements	\$0
Funds Advanced by and to be Repaid to City	\$0
<b>TOTAL COST</b>	<b>\$1,850,949</b>
Less Amount of Surplus From Prior Years:	
Convention Center	\$0
Hyatt Corporation - A Delaware Limited Liability Corporation	\$0
Hudson Techmart Commerce Center L.L.C	\$0
Amount of Reserves:	\$0
Amount of Contribution:	\$0
<b>BALANCE OF ASSESSMENT</b>	<b>\$1,850,949</b>

And I do thereby assess and apportion the amount of said costs and expenses, including the costs and expenses incidental thereto, upon the several lots or parcels of property liable therefore and specially benefited thereby, in proportion to the benefits to be received by each lot or parcel of property, from the maintenance and operation thereof and more particularly set forth in the list hereto attached and by reference made a part hereof.

Each lot or parcel of land is described in the assessment list by reference to its parcel number as shown on the assessor's maps of the County of Santa Clara for Effective Roll Year 2019-2020 to the right of the parcel numbers and include all of such parcel.

I hereby certify to the best of my professional knowledge and experience that each of the identified benefiting properties located within the District receives a special benefit over and above the benefits conferred to the public at large and that the amount of the assessment is proportional to the benefits specially received or enjoyed by each parcel or property within the District.

Date: \_\_\_\_\_  
Director of Public Works  
City of Santa Clara

**SANTA CLARA CONVENTION CENTER COMPLEX  
MAINTENANCE DISTRICT NO. 183**  
City of Santa Clara, California  
**SPECIAL BENEFIT ASSESSMENT for Fiscal Year 2020-2021**

**DIRECTOR'S REPORT**

**TABLE 1. BUDGET**

Category	Estimated Cost	Description Of Category
Maintenance and Operation	\$1,565,949	Labor, materials, supplies and equipment to maintain and operate Maintenance District No. 183 including, but not limited to water, sewer, electrical and other utility costs, sweeping of parking lots, maintenance of pavement and sidewalks, pavement striping, signs, fountains, landscaping, storm drains, lighting, space frames, parking structure, bridges, other common improvements, City supervision and management of maintenance district, insurance, contingencies, and incidental expenses.
Permanent Parking Controls	\$20,000	Labor, materials, supplies and equipment to maintain and operate fixed directional signs, electronic signs, automatic vehicle counting devices, cashiering stations, ticket printer, dispensers, card readers, cashier booths, including regularly scheduled parking attendants and guards.
Dynamic Parking Controls	\$265,000	Labor, materials, supplies and equipment to maintain and operate movable barriers and barrier placement, special parking attendants and guards, implementation of adjustable gates, special directional signs, and implementation of electronic signs.
Exceptional Improvements	\$0	Special improvement project benefiting special parcel.
Funds Advanced by and to be Repaid to City	\$0	For deficits which occurred in prior years
<b>TOTAL COST</b>	<b>\$1,850,949</b>	

Less	Amount of Surplus From Prior Years:	
	City of Santa Clara	\$0
	Hyatt Regency Hotel Santa Clara	\$0
	Hudson Techmart Commerce Center L.L.C	\$0
	Amount of Reserves:	\$0
	Amount of Contribution:	\$0
	<b>BALANCE OF ASSESSMENT</b>	<b>\$1,850,949</b>



**SANTA CLARA CONVENTION CENTER COMPLEX  
MAINTENANCE DISTRICT NO. 183  
City of Santa Clara, California**

**SPECIAL BENEFIT ASSESSMENT for Fiscal Year 2020-2021**

**DIRECTOR'S REPORT**

**TABLE 2. PROPERTY OWNERS TO BE ASSESSED**

Name & Address of Owner	Assessor's Parcel Number	As Preliminarily Approved	As Finally Confirmed
City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Santa Clara Convention Center (Convention Center)	104-55-017	\$835,358	\$835,358
Hyatt Corporation as agent of IA Lodging Santa Clara TRS, L.L.C dba Hyatt Regency Santa Clara Eron Hodges – General Manager 5101 Great America Parkway Santa Clara, CA 95054 (Hotel)	104-55-005 104-55-012	\$391,849	\$391,849
Hudson Techmart Commerce Center L.L.C Rebecca Agbuya, Portfolio Manager 2055 Gateway Place, Suite 200 San Jose, CA 95110 (Techmart)	104-55-013	\$623,742	\$623,742
<b>TOTAL</b>		<b>\$1,850,949</b>	<b>\$1,850,949</b>
<p>Also Send Copy of Director's Report To:</p> <p>Hyatt Regency Santa Clara Eron Hodges – General Manager 5101 Great America Parkway Santa Clara, CA 95054</p> <p>Hudson Techmart Commerce Center L.L.C Rebecca Agbuya, Portfolio Manager 2055 Gateway Place, Suite 200 San Jose, CA 95110</p>			

**SANTA CLARA CONVENTION CENTER COMPLEX  
MAINTENANCE DISTRICT NO. 183**  
City of Santa Clara, California

**SPECIAL BENEFIT ASSESSMENT for Fiscal Year 2020-2021**

**DIRECTOR'S REPORT**

**TABLE 3. BUDGET/ASSESSMENT COMPARISON**

	Budget for Fiscal Year 2019-2020			Budget for Fiscal Year 2020-2021		
	Total Assessment	Reduced by Proportion From Prior Year's Surplus	Net Assessment	Total Assessment	Reduced by Proportion From Prior Year's Surplus	Net Assessment
City of Santa Clara (Convention Center)	\$771,349	\$0	\$771,349	\$835,358	\$0	\$835,358
Hyatt Regency Hotel Santa Clara	\$358,060	\$0	\$358,060	\$391,849	\$0	\$391,849
Hudson Techmart Commerce Center L.L.C	\$568,710	\$0	\$568,710	\$623,742	\$0	\$623,742
<b>TOTAL</b>	<b>\$1,698,119</b>	<b>\$0</b>	<b>\$1,698,119</b>	<b>\$1,850,949</b>	<b>\$0</b>	<b>\$1,850,949</b>

**SANTA CLARA CONVENTION CENTER COMPLEX  
MAINTENANCE DISTRICT NO. 183  
City of Santa Clara, California**

**SPECIAL BENEFIT ASSESSMENT for Fiscal Year 2020-2021  
DIRECTOR'S REPORT**

**TABLE 4. FORMULA FOR ASSESSMENT LEVY**

	Category	Estimated Expenditure	City of Santa Clara (Conv. Center)	Hyatt Regency Hotel Santa Clara	Hudson Techmart Commerce Center
			39.64%	22.94%	37.42%
I.	Maintenance and Operations	\$1,565,949	\$620,742	\$359,229	\$585,978
			30.04%	22.12%	47.84%
II.	Permanent Parking Controls	\$20,000	\$6,008	\$4,424	\$9,568
			78.72%	10.64%	10.64%
III.	Dynamic Parking Controls	\$265,000	\$208,608	\$28,196	\$28,196
IV.	Exceptional Improvements	\$0	\$0	\$0	\$0
V.	Funds Advanced by/to be Repaid to City	\$0	\$0	\$0	\$0
VI.	Surplus Funds from Prior Year	\$0	\$0	\$0	\$0
	<b>TOTAL ASSESSMENT</b>	<b>\$1,850,949</b>	<b>\$835,358</b>	<b>\$391,849</b>	<b>\$623,742</b>

**CITY OF SANTA CLARA**  
**NOTICE OF PUBLIC HEARING REGARDING A RESOLUTION ON THE LEVY OF**  
**BENEFIT ASSESSMENTS APPLICABLE TO THE SANTA CLARA CONVENTION**  
**CENTER MAINTENANCE DISTRICT NO. 183, AND APPROVING DISTRIBUTION OF**  
**DIRECTOR'S REPORT FOR SAME FOR FISCAL YEAR 2020-21**

**NOTICE IS HEREBY GIVEN** that the Director of Public Works caused to be prepared and filed with the City Clerk a report, in writing, which provides the basis for the levy of benefit assessments for the costs of maintenance and operation on all lots or parcels of property within said maintenance district. Said report sets forth the amounts to be provided in the budget for maintenance and operation, a description of each lot or parcel of property in the maintenance district, by a legal description, assessor's parcel number or other description sufficient to identify the same, and the amount of assessment to be levied for the fiscal year 2020-2021 against each lot or parcel of property.

“A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA OF INTENTION  
TO ORDER THAT THE ALTERNATIVE METHOD FOR THE LEVY OF BENEFIT  
ASSESSMENT BE MADE APPLICABLE TO CITY OF SANTA CLARA CONVENTION  
CENTER COMPLEX MAINTENANCE DISTRICT NO. 183, PROVIDING FOR NOTICE  
OF HEARING THERON, APPROVING THE DISTRIBUTION OF THE DIRECTOR’S  
REPORT AND PROVIDING FOR NOTICE OF HEARING ON DIRECTORS REPORT  
FOR FISCAL YEAR 2020-21.”

The purpose of the public hearing is to provide City staff with an opportunity to present the City Council and the public with information concerning the proposed assessments (\$923,770 total) to the property operators, to pay towards maintenance repairs of the Santa Clara Convention Maintenance District #183 and the proposed determination of the City to pay all of the remaining costs (\$771,349) for routine maintenance and operation of the property and improvements of the Santa Clara Maintenance District No. 183. A total of 3 operators pay for the assessments. The public may submit written comments prior to, or make oral presentations, at the public meeting.

Said report will be heard by the Council at its meeting to be held on the 9th day of June, 2020, at the hour of 2 o'clock P.M. in the regular meeting place of said Council, Council Chambers, City Hall, Santa Clara, California, at which time said Council will examine said report and hear all persons interested therein. Any interested owner, objecting to the amount of the assessment on any lot or parcel of property owned by him, may file with the City Clerk at or before the hour fixed for hearing a protest, in writing, signed by him, describing the lot or parcel of property so that it may be identified, and stating the grounds of his/her protest, and may appear at said hearing and be heard in regard thereto.

A copy of the above Resolution and Director's Report will be made available for public inspection in the City Clerk's Office, City Hall, 1500 Warburton Avenue, Santa Clara, California and at the Central Park Library, 2635 Homestead Road, Santa Clara, California.

The public hearing location is accessible by wheelchair and public transportation. People with impaired speech or hearing may call (408) 615-2490 through 711 the nationwide Telecommunications Relay Service. The California Relay Service can also be reached in Spanish for both TDD and voice at 1-800-955-3000. Sign language interpretation, translation into languages other than English, and interpretation for persons with visual impairments are available. If you need sign or other interpretation, please call (408) 615-2490 at least one week in advance of the hearing. Reasonable modifications in policies, procedures and/or practices will be made as necessary to ensure access for all individuals with a disability or with limited English proficiency.



## Agenda Report

20-571

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on Landfill Post-Closure Operation and Management Agreement for Related Santa Clara project [Council Pillar: Promote and Enhance Economic and Housing Development]

#### BACKGROUND

On April 8, 2020, City staff presented Council with the Landfill Post-Closure Operation and Management Agreement for the Related Santa Clara Project (Project). (RTC 20-464). Development of the Project generally located at 5155 Stars and Stripes Drive involves repurposing a closed municipal golf course located on a former municipal landfill property (the Landfill). The City will continue to own the subsurface portion of the Landfill and the Developer will ground lease “airspace parcels” for development of the Project. While the first phase of the Project (involving about 14 acres along Tasman Drive) is not above the Landfill, all other phases of the Project involve the Landfill area. California state laws and regulatory agencies impose long-term maintenance and monitoring obligations on the owner and operator of closed landfill facilities.

The Disposition and Development Agreement between the City of Santa Clara (City) and Developer dated as of August 12, 2016 (DDA) requires City and Developer to execute an agreement that is consistent with the term sheet attached to the DDA as Exhibit M and that contains other mutually acceptable provisions to allocate responsibility for Landfill operation and maintenance activities required by the landfill regulatory agency approvals and related risk mitigation measures during and after construction. Accordingly, City and Developer have prepared a Landfill Post-Closure Operation and Maintenance Agreement (Landfill O&M Agreement) that is consistent with Exhibit M of the DDA and reflects approvals and requirements issued by the Regional Water Quality Control Board after the DDA was executed. Specifically, the Landfill O&M Agreement:

- (i) Allocates responsibility between City and Developer for ownership, operation, maintenance and management of the Landfill and the “Project Landfill Systems”, including the Landfill gas extraction system, leachate control system, the clay cap and the fill above it, groundwater monitoring wells, and perimeter air monitoring stations;
- (ii) Allocates responsibility between City and Developer for the design and construction of certain Project Landfill Systems; and
- (iii) Defines the minimum insurance programs and coverage terms to protect City’s interest in the Project and provide a primary framework for recovery of losses related to the Project development.

**DISCUSSION**

Subsequent to the April 8, 2020 Council approval of the Landfill Post-Closure Operation and Management Agreement (“O&M Agreement” or “Agreement”) for the Related Santa Clara Project (“Project”), the Developer requested additional changes to the Agreement before its execution. The City and Developer have negotiated and prepared revisions addressing the following:

- Protections for mortgagees (lenders) modeled after those in the Disposition and Development Agreement (“DDA”), except that the City has the right at Developer’s cost to step in and cure a Developer default without waiting for the mortgagee cure period to expire if needed to protect health or comply with environmental landfill laws and regulations.
- Developer may assign its responsibilities to design and construct landfill systems on Parcels 1 or 2 (expected to be Phases 5-7 of the Project) to a Phase Developer of such land.
- In each phase of development, the Developer’s obligation to design and construct landfill systems to be dedicated to the City will be secured by performance and payment bonds or a completion guaranty.
- Phase Developers and lenders may be added as named insureds to the joint pollution legal liability insurance policy upon Developer’s permitted assignment to such Phase Developer or a lender exercising its foreclosure rights under the DDA.
- Arbitration proceedings will be confidential unless disclosure is required by law.

The Landfill O&M Agreement is in final form and requires approval through Council action.

**ENVIRONMENTAL REVIEW**

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

In addition, the Related Santa Clara Project, including all work on and impacts to the Landfill, was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA) in the CityPlace Santa Clara EIR [SCH#2014072078] as certified and adopted by Council on June 28, 2016 by Resolution No. 16-8337.

**FISCAL IMPACT**

The City expects to pay up to \$450,000 in fiscal year 2020/21 for its share of the CPL and PLL policy, which payment will be subject to reimbursement from Developer on an amortized basis over the term of such policies. Pending the finalized cost of the insurance premiums, staff will bring forward a budget amendment recommendation to the Council at a later date to appropriate funding to cover the City’s upfront share. As part of the FY 2019/20 and FY 2020/21 Adopted Operating Budget, approximately \$450,000 and \$550,000, respectively, were allocated in the General Fund Non-Departmental to cover the golf and tennis closure and transition costs. Staff anticipates using the majority of that allocation to fund the upfront cost of City’s contribution to the insurance premiums.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

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

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. RTC 20-464: Action on Landfill Post-Closure Operation and Management Agreement
2. Final form of Landfill Post-Closure Operations and Management Agreement



## Agenda Report

20-464

Agenda Date: 4/8/2020

### REPORT TO COUNCIL

#### SUBJECT

Action on Landfill Post-Closure Operation and Management Agreement for Related Santa Clara project [Council Pillar: Promote and Enhance Economic and Housing Development]

#### BACKGROUND

On June 28, 2016 Council took action on a series of project entitlement approvals including certifying an Environmental Impact Report (EIR) and approving a Disposition and Development Agreement (DDA) and a Development Agreement (DA) with Related Santa Clara, LLC (Developer) for the development of the Related Santa Clara Project (Project) located on an approximately 240-acre site north of Tasman Drive.

The entire Project includes the development of up to 9.16 million gross square feet of office buildings; retail, food and beverage, and entertainment facilities; residential units; hotel rooms; surface and structured parking facilities; new open space and roads, landscaping and tree replacement; and new/upgraded/expanded infrastructure and utilities.

Development of the Project generally located at 5155 Stars and Stripes Drive involves repurposing a closed municipal golf course located on a former municipal landfill property (the Landfill). The City will continue to own the subsurface portion of the Landfill and the Developer will ground lease "airspace parcels" for development of the Project. While the first phase of the Project (involving about 14 acres along Tasman Drive) is not above the Landfill, all other phases of the Project involve the Landfill area. California state laws and regulatory agencies impose long-term maintenance and monitoring obligations on the owner and operator of closed landfill facilities.

The Disposition and Development Agreement between the City of Santa Clara (City) and Developer dated as of August 12, 2016 (DDA) requires City and Developer to execute an agreement that is consistent with the term sheet attached to the DDA as Exhibit M and that contains other mutually acceptable provisions to allocate responsibility for Landfill operation and maintenance activities required by the landfill regulatory agency approvals and related risk mitigation measures during and after construction. Accordingly, City and Developer have prepared a Landfill Post-Closure Operation and Management Agreement (Landfill O&M Agreement) that is consistent with Exhibit M of the DDA and reflects approvals and requirements issued by the Regional Water Quality Control Board after the DDA was executed. Specifically, the Landfill O&M Agreement:

- (i) Allocates responsibility between City and Developer for ownership, operation, maintenance and management of the Landfill and the "Project Landfill Systems", including the Landfill gas extraction system, leachate control system, the clay cap and the fill above it, groundwater monitoring wells, and perimeter air monitoring stations;



- (ii) Allocates responsibility between City and Developer for the design and construction of certain “Project Landfill Systems”; and
- (iii) Defines the minimum insurance programs and coverage terms to protect City’s interest in the Project and provide a primary framework for recovery of losses related to the Project development.

The Landfill O&M Agreement is in final form and requires approval through Council action.

## **DISCUSSION**

Development of a project on a closed landfill is significantly more challenging and inherently carries with it significantly more risk than developing on non-landfill property. The Landfill O&M Agreement addresses responsibilities associated with the Landfill and Landfill systems and the insurance programs to be procured to manage the risk and protect the long-term interests of both the City and Developer.

There are three principal topics discussed and documented in the Landfill O&M Agreement:

- Design, Construction, Ownership, Operation and Management of Project Landfill Systems.
- Contractual Indemnifications
- Project Insurance Programs

### ***A. Design, Construction, Ownership, Operation and Management of Project Landfill Systems.***

The Landfill is subject to regulatory orders, directives and closure plans that obligate City (as the owner of the Landfill) to implement operation, maintenance and management activities for the Project Landfill Systems in perpetuity. Although Developer will not own any portion of the physical Landfill itself, the development of the Project involves the penetration of the Landfill with piles and includes upgrading and reconfiguring certain components of the existing Project Landfill Systems, which will be undertaken by Developer. Since the development of the Project and the ongoing Landfill operations are so closely inter-related, it is important for the respective obligations of the city and Developer to be clearly defined.

***Developer Responsibilities:*** Developer will design and construct certain upgrades, modifications and replacements to the existing Project Landfill Systems in those portions of the Landfill ground leased by Developer, at Developer’s sole cost and expense. Developer will also build, own, operate and maintain the Landfill Gas Mitigation Systems under buildings and private streets.

***City Responsibilities:*** City will continue to own and be responsible for operation and maintenance of all Project Landfill Systems (new and old) except for the Landfill Gas Mitigation Systems. City will operate the existing Project Landfill Systems during construction and obtain ownership of the upgraded Project Landfill Systems on a rolling basis as portions of the systems are upgraded and conveyed back to City.

By law, City is obligated to maintain the Project Landfill Systems regardless of the development of the Project, but under the Landfill O&M Agreement, City will obtain certain upgrades, replacements and

modifications to the Project Landfill System components at Developer's expense. Developer is also required to reimburse City for the increased cost of operating the Project Landfill Systems as a result of the development of the Project up to a maximum annual reimbursement of \$550,000 (the Cap Amount). This reimbursement is applied after City's expenditure of a pre-determined "baseline cost" of \$450,000, which was City's estimate of its annual Landfill operation and maintenance expenditures when the DDA was approved. At this time, City anticipates that its Landfill operation and maintenance costs upon full Project buildout will be approximately \$820,000 per year. The Landfill O&M Agreement also allows City to amortize the costs of insurance premiums paid by City pursuant to the Landfill O&M Agreement and the costs of certain capital repairs and replacements over longer periods of time, thereby facilitating reimbursement by Developer on an annual basis without City reaching the Cap Amount in any given year.

### ***B. Contractual Indemnifications***

Under the Landfill O&M Agreement, City provides a narrow indemnity to Developer for losses directly related to City's negligence or willful misconduct, but only to the extent such negligence or willful misconduct results in City's failure to perform its obligations under the Landfill O&M Agreement. There are express carve-outs from City's indemnity for: (i) Developer's negligence or breach of the Landfill O&M Agreement; and (ii) cleanup costs for on-site ground water contamination where Developer has obtained insurance for such risk, which Developer has an affirmative obligation to pursue. By carving out cleanup costs for on-site groundwater contamination (which is City's responsibility under existing law), City anticipates that it will be able to obtain insurance for most, if not all, of the risks associated with its indemnification obligations under the Landfill O&M Agreement.

Developer provides a broad indemnity to City for losses arising out of Developer's breach of the Agreement, violation of environmental laws and any release or exacerbation of a pollution condition (unless such condition was created or caused by the negligence of City). Of particular note is that liabilities arising out of the exacerbation of existing environmental conditions through the development of the Project will be a Developer risk, and as further detailed below, will be ultimately backstopped by insurance running to the benefit of both City and Developer.

The Landfill O&M Agreement is structured so that City and Developer will both look first to the broad joint insurance programs carried under the Landfill O&M Agreement for recovery of any losses. If the insurance does not provide coverage or the indemnified loss exceeds the limits of liability under the applicable insurance policy, the indemnifying party will be responsible pursuant to the terms of the indemnification. Submission and management of claims under joint insurance programs will be governed by an Insurance Administration Agreement to be executed prior to Developer commencing intrusive work on the Landfill. The Insurance Administration Agreement will establish criteria and procedures for allocating and paying self-insured retentions and establish protocols for notification and cooperation between Developer and City in making claims to the applicable insurers. This "primacy of insurance" approach is designed to reduce prolonged disputes between City, Developer and multiple insurers relating to causation and liability for specific losses by establishing centralized primary insurance programs that insure the broadest possible spectrum of project risks and directly benefit both City and Developer. Note that the insurance provisions addressed in the Landfill O&M Agreement cover all insurance requirements for the Project and will be folded into the Project ground leases as they are executed.

### ***C. Project Insurance Programs***

Developer is obligated to obtain and maintain comprehensive and robust insurance programs throughout the development of the Project and after completion of construction. The insurance terms were carefully negotiated so that City's interest in the Landfill would be sufficiently protected, even for risks that are unrelated to the development of the Project, and so that the broadest possible range of Developer's indemnification obligations would be backstopped with insurance running to both City and Developer. Developer must therefore maintain standard construction insurance programs as well as several manuscripted specialty lines programs tailored to the unique risks associated with development on the Landfill.

(i) *Construction Policies.* The construction policies include: (1) builder's risk insurance, (2) terrorism coverage, and (3) several general liability programs and "owner/contractor-controlled insurance" programs that will provide coverage for all tiers of horizontal and vertical contractors and subcontractors working on the Project. Developer is also obligated to seek specific modifications to the general liability insurance terms so that the unique concussive risk exposures associated with the penetration of the Landfill during development will be insured. The limits of liability will be increased based on the number of Project phases covered by each program (for example, \$200,000,000 limits of liability for a single program encompassing Phase 1, Phase 2 and Phase 3. Developer also has an affirmative obligation to require design professionals to maintain professional liability insurance/errors and omissions insurance on a primary basis with appropriate limits of liability depending on the scope of such designer's work (for example, \$10,000,000 per incident limits of liability for designers of record and \$5,000,000 limits of liability for designers of record for any portion of the Project Landfill Systems).

(ii) *Specialty Surplus Lines Policies.* Developer must also obtain several specialty lines insurance programs and provide City with direct access to such policies. These include:

- *Owner's Protective Professional Indemnity (OPPI).* OPPI programs will be obtained with at least \$20,000,000 per incident limits of liability and at least \$40,000,000 limits of liability for development all of Phase 1, 2 and 3 of the Project (*i.e.* the Landfill platform and immediately surrounding lands). OPPI coverage provides coverage to owners (*i.e.* Developer and City) excess of the coverage obtained by design professionals. Under this program, City will have affirmative coverage for defense and payment of loss for third-party claims relating to design errors and omissions on the Project Landfill Systems.

- *Contractor's Pollution Liability (CPL).* Developer will obtain CPL insurance that provides bodily injury, property damage and cleanup cost coverage as a result of pollution conditions arising from Developer's construction of the Project and City's Landfill operation and maintenance activities. The CPL program will cover the entire Landfill, including those areas that are not yet subject to a ground lease with Developer. All contractors performing construction or operation and maintenance activities at the Landfill will be enrolled in the program. The CPL program will contain \$50,000,000 limits of liability per incident and in the aggregate with a \$5,000,000 sublimit for City Landfill activities that are performed on those portions of the Landfill not yet subject to a ground lease.

City will reimburse Developer for ten percent (10%) of the total cost of the CPL up to a maximum reimbursement of \$200,000, which reimbursement may be amortized over the policy period for purposes of calculating Developer's annual reimbursement and to minimize the likelihood of

exceeding the Cap Amount in any given year. City's reimbursement represents a significant cost savings to City compared to City obtaining its own CPL coverage on portions of the Landfill that are not yet part of the Project. Moreover, any stand-alone CPL program City would obtain would be very difficult to underwrite in light of the difficulty of allocating the precise cause of any specific loss between City's Landfill operation and maintenance activities and Developer's construction activities. City will have the right to review and comment on underwriting submissions, quotes, policy forms and endorsements, thereby ensuring that City's interests are adequately addressed in the manuscripted CPL program.

- **Pollution Legal Liability (PLL).** Developer will obtain PLL insurance that provides coverage for cleanup costs and third-party bodily injury and property damage claims for pre-existing and new pollution conditions for both City and Developer. Developer will seek to obtain coverage for groundwater cleanup costs imposed on Developer (which are already a direct legal obligation of City) and Developer must also use commercially reasonable efforts to obtain coverage for City's groundwater cleanup costs. Similar to the CPL program, the PLL will provide coverage to the entire Landfill, including portions that are not yet subject to ground leases with Developer. The PLL will contain a limit of liability of \$75,000,000 per incident and in the aggregate and will be maintained by Developer for 15 years.

City will reimburse Developer for twenty percent (20%) of the total cost of the PLL with a maximum reimbursement of \$250,000, which reimbursement may (similar to the CPL) be amortized over the policy period for purposes of calculating Developer's annual reimbursement. Like the CPL, the PLL will provide affirmative coverage to City on the entire Landfill and insures City's pollution related risks that exist as the owner and operator of the Landfill. City's reimbursement represents a significant cost savings to City compared to obtaining the same coverage independent of Developer. Similar to the CPL, obtaining broad PLL coverage independent of Developer would be difficult and challenging in light of the many concurrent activities occurring on the Landfill by both City and Developer and accurately determining causation of any particular loss event. City will have the right to review and comment on underwriting submissions, quotes, policy forms and endorsements, thereby ensuring that City's interests are adequately addressed in the PLL program.

## **Conclusion**

Substantial time and effort were spent negotiating the insurance coverages terms and parameters with Developer. The multi-disciplinary and cross-departmental team involved in the proposed Landfill O&M Agreement and the insurance coverages included legal and technical expertise from outside legal counsel and environmental consultants, together with significant effort from City Attorney's office, City Risk Manager, City Manager's office, and Public Works.

The coverage parameters and the allocation of risks outlined in the Landfill O&M Agreement are "state-of-the-art" and should be sufficiently protective of City's interests for the Project and the Landfill generally. However, City may, at the City Manager's discretion, elect to consider excess coverage or independent coverage in addition to the coverage provided in the Landfill O&M Agreement for certain coverage elements.

## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California

Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

In addition, the Related Santa Clara Project, including all work on and impacts to the Landfill, was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA) in the CityPlace Santa Clara EIR [SCH#2014072078] as certified and adopted by Council on June 28, 2016 by Resolution No. 16-8337.

### **FISCAL IMPACT**

The City expects to pay up to \$450,000, starting in fiscal year 2020/21 for its share of the CPL and PLL policy, which payment will be subject to reimbursement from Developer on an amortized basis over the term of such policies. Pending the finalized cost of the insurance premiums, staff will bring forward a budget amendment recommendation to the Council at a later date to appropriate funding to cover the City's upfront share, if necessary. As part of the FY 2020/21 Adopted Operating Budget, approximately \$550,000 was allocated in the General Fund Non-Departmental to cover the costs of the closure of the golf and tennis facility and other potential costs related to the development of the landfill. Staff anticipates using the majority of that allocation to fund the City's contribution to the insurance premiums.

### **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>> .

### **ALTERNATIVES**

1. Approve and authorize the City Manager to execute the Landfill Post-Closure Operations and Management Agreement with Related Santa Clara, LLC for the Related Santa Clara development project and authorize the City Manager to obtain additional insurance programs to bolster the limits of liability available to City under the Project insurance programs.
2. Do not approve the Landfill Post-Closure Operations and Management Agreement with Related Santa Clara for the Related Santa Clara development project

### **RECOMMENDATION**

Alternative 1:

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

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Final form of Landfill Post-Closure Operations and Management Agreement

## **LANDFILL POST-CLOSURE OPERATION AND MANAGEMENT AGREEMENT**

This **LANDFILL POST-CLOSURE OPERATION AND MANAGEMENT AGREEMENT** (the “**Agreement**”) is made as of \_\_\_\_\_, 2020 (the “Effective Date”), by and between the City of Santa Clara, California, a chartered California municipal corporation (the “**City**”), and Related Santa Clara, LLC, a Delaware limited liability company (the “**Master Developer**”). The City and Master Developer are sometimes each individually referred to as a “**Party**” and collectively referred to as the “**Parties.**”

### **RECITALS**

A. The City is the owner of the former Santa Clara All-Purpose Landfill (the “**Landfill**”) and has been and currently is responsible for all post-closure regulatory obligations of the landfill under Title 27 of the California Code of Regulations (“**Title 27**”). The Landfill is generally located in the North of Bayshore Area in Santa Clara, California, and consists of approximately two hundred thirty acres located between Great America Parkway and Lafayette Street (APNs 097-01-073 and -039, 104-03-037, and 104-01-102) (the “**City Landfill Parcels**”), as more particularly described in Exhibit A hereto. The City Landfill Parcels will later be subdivided into two sets of vertical parcels: (1) the “**Landfill Parcel**” which, in general, constitutes City’s fee interest in the Landfill; and (2) multiple parcels immediately above the top of the fill above the clay cap over the Landfill that comprise the “**Airspace Parcels**,” which constitute City’s fee interest in the airspace above the Landfill Parcel. In this Agreement, “**Developer Airspace Parcels**” shall mean any Airspace Parcels that are subject to a Ground Lease. For purposes of this Agreement, the term Landfill Parcel shall include any airspace above the Landfill that is not the subject of a Ground Lease. A Developer Airspace Parcel, together with any other portion of the Landfill Parcel in the same Phase as the Developer Airspace Parcel, is collectively referred to herein as a “**Project Parcel.**”

B. The Landfill has been closed since 1994. The City’s post-closure use of the Landfill has been as a golf and tennis club, a restaurant and banquet facility, a fire station, City maintenance operations, the Eastside Retention Basin, a City vehicle washing station, event parking for Levi’s Stadium, a BMX racing course, and a methane-to-energy facility (i.e., the Ameresco methane plant).

C. The Parties entered into a Disposition and Development Agreement, dated August 12, 2016 (as amended, amended and restated, modified, supplemented and/or assigned from time to time, the “**DDA**”), by which the City will enter into ground leases (each, as amended, amended and restated, modified, supplemented and/or assigned from time to time, a “**Ground Lease**”) for the Developer Airspace Parcels with the Master Developer or its assignee(s) for the purpose of developing and operating a mixed use development described in the DDA, and referred to in this Agreement, as the “**Project.**”

D. Section 14.1 of the DDA requires the Parties to execute a “Landfill Operation and Management Agreement” consistent with the Landfill O&M Term Sheet attached as Exhibit M to the DDA to specify the allocation of responsibilities between the City and the Master Developer for operation, maintenance and management of Landfill-related systems and features

(including but not limited to (i) the landfill leachate collection system, (ii) the landfill gas extraction system, (iii) the clay cap and the fill above it, (iv) groundwater monitoring wells installed by the City to conduct required quarterly groundwater monitoring; (v) perimeter air monitoring stations installed by the City to conduct required regular air monitoring; (vi) other improvements within the Landfill Parcels that are required due to the presence of the Landfill; and (vii) the Developer Landfill Systems (collectively, the “**Project Landfill Systems**”)), all as required by: (i) the Post-Closure Land Use Plan (the “**PCLUP**”) for the Landfill, which was approved on December 22, 2016, by the Santa Clara County Department of Public Health, acting as the Local Enforcement Agency for the state’s solid waste management laws, the future Revised Corrective Action Plan and Revised Post-Closure Maintenance Plan, and the future revised Closure Plan, as required of Landfill owners and operators under Sections 21769, 21810, and 22100 et seq. of Title 27 of the California Code of Regulations; (ii) revised Waste Discharge Requirements (the “**WDRs**”) for the changed Landfill use contemplated by the Project, issued on May 10, 2017, by the California Regional Water Quality Control Board for the San Francisco Bay Region (the “**Regional Water Board**”); and (iii) five Mitigation Measures that were contained in the final approved Environmental Impact Report and Mitigation Monitoring and Reporting Plan for the Project, for which responsibility is allocated between the City and the Master Developer (the “**Landfill O&M Mitigation Measures**”). The obligations related to operation and management of Project Landfill Systems that are contained in the documents listed in this section are collectively referred to as the “**Landfill O&M Obligations.**”

E. The Parties now wish to enter into this Agreement to effectuate the DDA requirement, and also to allocate responsibilities between the Parties as to design, construction, operations and maintenance requirements set forth in the Landfill O&M Obligations, and to establish insurance requirements for the Project.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Defined terms used herein and not elsewhere defined shall have the meanings set forth below.

“**Affiliate**” means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition, the term “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. The possession, directly or indirectly, by another Person of a right to approve or consent to (or otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate “control”, nor shall a Person be deemed not to have “control” solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.



**“Building”** means each physical structure located within a Phase that is intended for human occupancy or the conduct of a business, including hotels, retail and office space and apartments.

**“City Landfill Parcels”** shall have the meaning set forth in Recital A.

**“City Landfill Systems”** shall have the definition given in Section 5(a)(ii), below.

**“City Party”** is defined as City and the commissioners, supervisors, elected and appointed officials, officers, employees, attorneys, contractors and agents of City and, as applicable, the partners, Affiliates, members and owners, and the officers, partners, agents, employees and members of each of them (or of its successors or assigns).

**“City Place Park”** has the definition given in the Master Community Plan.

**“DAP Procedures”** means the City Place Santa Clara Development Area Plans and Architectural Review Submittal and Approval Procedures attached as Appendix C to the Master Community Plan.

**“DDA”** shall have the meaning set forth in Recital C.

**“Developer Airspace Parcel”** shall have the meaning set forth in Recital A.

**“Developer Landfill Systems”** shall have the definition given in Section 5(a)(i), below.

**“Development Agreement”** means that certain development agreement dated for reference purposes as of August 12, 2016 by and between City and Developer, as the same may be amended from time to time.

**“Environmental Laws”** means and includes all applicable present and future federal, State and local laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, license approvals or other entitlements, or rules of common law pertaining to Hazardous Substances, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed pursuant to this Agreement, the DDA, or a Ground Lease.

**“Ground Lease”** shall have the meaning set forth in Recital C.

**“Hazardous Substance”** means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a “hazardous constituent”, “hazardous substance”, “hazardous waste constituent”, “infectious waste”, “medical waste”, “biohazardous waste”, “extremely hazardous waste”, “pollutant”, “toxic pollutant”, or “contaminant”, or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Substance includes, without limitation, any form of natural gas,

petroleum products or any fraction thereof, asbestos, asbestos-containing materials, PCBs, PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

**“Indemnify”** means reimburse, indemnify, defend and hold harmless. **“Indemnification”** has a correlative meaning.

**“Infrastructure”** means those items identified in the Infrastructure Master Plan including open space improvements (including park improvements and restrooms), streets, rails, sewer and storm drainage systems, water systems, street improvements (including freeway ramps or other demolition), landfill “podium” (also referred to as a “structural slab” in the IMP), traffic signal systems, dry utilities and other improvements, any of which are to be constructed in or for the benefit of the applicable real property or any other matters described in the Infrastructure Master Plan. “Infrastructure” also includes any improvements required to serve the Project that have been imposed as conditions of approval through the Project Approvals. “Infrastructure” does not include Buildings.

**“Infrastructure Master Plan”** or **“IMP”** is a component of the adopted Master Community Plan for the Project, as such document may be amended from time to time.

**“Landfill”** shall have the meaning set forth in Recital A.

**“Landfill O&M Mitigation Measures”** shall have the meaning set forth in Recital D.

**“Landfill O&M Obligations”** shall have the meaning set forth in Recital D.

**“Landfill Parcel”** shall have the meaning set forth in Recital A.

**“Losses”** means all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys’ fees and costs, consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to the applicable Party of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires such Party to take any action.

**“Master Community Plan”** or **“MCP”** is the adopted Master Community Plan for the Project, as such document may be amended from time to time.

**“Master Developer Party”** means Master Developer, the Phase Developers, their partners, Affiliates and owners, and the officers, partners, agents, employees and members of each of them.

**“Mitigation Measures”** means the mitigation measures identified in the Project EIR that are applicable to the Project and adopted by the City in connection with its approval of the Project, to be implemented as provided in the Project MMRP.

**“Party”** and **“Parties”** shall have the meanings set forth in the Agreement preamble.

**“PCLUP”** shall have the meaning set forth in Recital D.

**“Person”** means any natural person or a corporation, partnership, trust, limited liability company, limited liability partnership or other entity.

**“Phase”** means, individually or collectively as the context requires, each Developer Airspace Parcel or Parcels designated as a Phase of development by Master Developer from time to time under this Agreement or a Partial Phase thereof as described in Section 4.2 of the DDA.

**“Phase 2A Site”** means the parcel specified to be developed as “Phase 2A” as shown on the Phasing Plan attached as Exhibit E to the DDA. The City Place Park will be located on the Phase 2A Site.

**“Phase Developer”** means, with respect to a Phase (or Partial Phase), the developer thereof (which may include Master Developer) and the tenant under the Ground Lease for such Phase, as such Person is designated pursuant to the terms of the DDA or applicable Ground Lease.

**“Post-Closure O&M Obligations”** means those obligations imposed upon the Project Site pursuant to the PCLUP, the future Revised Corrective Action Plan and Revised Post-Closure Maintenance Plan, and the future revised Closure Plan.

**“Project”** shall have the meaning set forth in Recital C.

**“Project Approvals”** include all discretionary approvals for the Project that have been or are issued by the City, including but not limited to the DDA, the Development Agreement, the MCP, and Development Area Plans approved under the DAP Procedures, all as may be amended from time to time.

**“Project Landfill Systems”** shall have the meaning set forth in Recital D.

**“Project Parcel”** shall have the meaning set forth in Recital A.

**“Project Site”** has the definition given in Recital C to the DDA.

**“Public Improvements”** means Infrastructure that is required under Article VII of City’s Subdivision Code, plus any other Infrastructure that is required to be dedicated to the City pursuant to the Project Approvals.

**“Regional Water Board”** has the definition given in Recital D.

**“Release”** means any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance). The term includes a threatened “Release” but does not include any passive migration

of a Hazardous Substance through the air, soil gas, land, surface water or ground water after the Hazardous Substance has been previously spilled, leaked, pumped, poured, emitted, discharged, injected, escaped, leached, dumped or disposed into the air, soil, gas, land, surface water or groundwater.

“**Title 27**” shall have the meaning set forth in Recital A.

“**WDRs**” shall have the meaning set forth in Recital D.

2. Apportionment of Costs. The City’s obligations as specified in this Agreement are subject to reimbursement by the Master Developer for certain costs as set forth in: (a) Sections 14.2, 15.2.2(a) and 26 of the DDA, which is not modified by this Agreement; and (b) Section 5.1 of the Development Agreement, which is not modified by this Agreement. Notwithstanding anything in the DDA or this Agreement to the contrary, for purposes of calculating the Annual Landfill Costs (as defined in the DDA), the City may, at its election, amortize: (i) the total or any portion of the premium, surplus line taxes and broker commissions contributed by the City hereunder for any Project Insurance Program (as defined in Exhibit D) over the applicable term of such Project Insurance Program, notwithstanding that the entire premium, surplus line taxes and broker commission will be actually paid at binding of the applicable Project Insurance Program; and (ii) capital repairs or replacements of new equipment that cost in excess of \$50,000 and are made or purchased by or on behalf of the City after the effective date of this Agreement in connection with the City’s operation and maintenance obligations on any Landfill Parcel, which may, at the election of the City, be amortized over the shorter of (x) the useful life of such capital repair or replacement on a straight-line basis or (y) a fifteen (15) year period.

3. Scope of Agreement.

(a) Term. This Agreement shall commence upon the Effective Date. This Agreement shall terminate upon the fifth (5<sup>th</sup>) anniversary of the termination date for the last Ground Lease to terminate.

(b) Topics Addressed. This Agreement allocates responsibilities between the City and the Master Developer for: (1) the operation, maintenance, and management responsibilities imposed on the Parties in the Landfill O&M Obligations; and (2) the design and construction of the Project Landfill Systems.

(c) Future Application. To the extent that the requirements included in the existing Landfill O&M Obligations are modified by a regulatory agency or included in future Landfill O&M Obligations (for example, the future Revised Corrective Action Plan), it is the intent of the Parties that responsibilities shall be allocated between the City and the Master Developer in the same manner as set forth in this Agreement for the existing Landfill O&M Obligations. To the extent that future Landfill O&M Obligations include new requirements not contemplated by the existing Landfill O&M Obligations, the allocation of responsibility for such requirements shall be guided by the general principle that requirements associated with the Developer Landfill Systems shall be the responsibility of the Master Developer, and requirements associated with the City Landfill Systems shall be the responsibility of the City.

(d) Cooperation and Coordination. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement, and shall undertake such actions as may be reasonably necessary to minimize the cost and effort required to comply with their responsibilities of this Agreement. Each Party also shall undertake such actions as may be reasonably necessary in order to grant physical access to the other Party for the purposes of undertaking such Party's obligations under this Agreement. The Parties shall respond to each other Party's reasonable inquiries and requests in a timely manner (taking into account the nature of the inquiry/request) in the performance of such Party's obligations under this Agreement.

(e) Providing Timely Data. Upon the other Party's written request, each Party shall promptly provide or cause to be provided all final: engineering reports, environmental reports, and testing results prepared for that Party by third parties, and all formal written correspondence and required notifications to and from regulatory agencies, to the extent such reports, results, correspondence and notifications are: related to the performance of its obligations under this Agreement; in the possession and control of the Party; and are not privileged or attorney work product.

(f) Preparation of Plans and Reports. Notwithstanding anything to the contrary in this Agreement, to the extent that any provision in this Agreement obligates the Master Developer to prepare memoranda, plans, reports, or any other type of documentation that is (1) subject to City review and (2) required to be submitted to a public agency, and the Master Developer fails to timely prepare such document in accordance with this Agreement, the City, after providing the Master Developer with reasonable notice and an opportunity to cure, may, at its reasonable discretion, elect to prepare such documentation itself, provided that the document prepared by the City shall not propose actions or requirements that unreasonably and adversely affect the Master Developer's ability to implement the Project. Any City costs or expenses incurred during the preparation of such documentation shall be reimbursed by the Master Developer as "City Costs," as provided in (a) Section 26 of the DDA, which is not modified by this Agreement, and (b) Section 5.1 of the Development Agreement, which is not modified by this Agreement.

(g) Conflicts with DDA. Except as otherwise expressly set forth in this Agreement, to the extent that the provisions of this Agreement conflict with any provisions in the DDA (including the form of Ground Lease attached thereto as Exhibit B-2), the provisions of this Agreement shall control.

4. Design and Construction of Project Landfill Systems in Project Parcels. The Master Developer has the responsibility to design and construct certain components of the Project Landfill Systems in Project Parcels consistent with the Project Approvals. Notwithstanding anything to the contrary contained herein or in the DDA, it is acknowledged and agreed that if any component of the Project Landfill Systems that Developer is obligated to construct pursuant to the Project Approvals (which components comprise Infrastructure) is not a "Secured Public Improvement" under the DDA, then such component shall be deemed to be a "Secured Phase Improvement" and shall be subject to the requirements for "Adequate Security" applicable thereto under Section 28 of the DDA, except that Developer shall have the option to deliver "Adequate Security" satisfying the "SMA Security Requirements" in lieu of a "Completion Guaranty" (as each such term is defined in the DDA).

5. Ownership, Operation, and Maintenance of Landfill System Components.

(a) Developer Landfill Systems and City Landfill Systems. Once the Project (or applicable phases of it) is built, subject to the terms herein, the Master Developer and the City will own, operate and maintain discrete separate structures and other features beneath and above the Landfill, referred to as the “Developer Landfill Systems” and the “City Landfill Systems,” as follows:

(i) Developer Landfill Systems. The Master Developer will own, operate, and maintain all landfill gas mitigation systems built by or on behalf of Master Developer beneath each building, street segment, roadway and common area in the Developer Airspace Parcels, except with respect to any street or other area owned or controlled (e.g., pursuant to an easement) by City, including streets or areas that are initially privately owned or controlled but are later transferred to City, including, without limitation, pursuant to an easement (collectively, the “**Developer Landfill Systems**”).

(ii) City Landfill Systems. The City will own, operate, and maintain all of the Project Landfill Systems other than the Developer Landfill Systems (“**City Landfill Systems**”).

(b) Visual Depiction of Responsibilities. The cross-section drawings attached hereto as Exhibit B are intended illustratively to show the division of responsibilities for Landfill O&M Obligations between the Master Developer and the City. The Parties recognize that there may be changes in the configuration and location of the City Landfill Systems and the Developer Landfill Systems prior to construction as the design as the Project evolves. For example, the Parties recognize that although there are no current plans for landfill gas mitigation systems beneath public streets or areas retained by or dedicated to the City, it is possible that such systems could be required and this Agreement has therefore allocated responsibility to the City for operation and maintenance of any such systems that are ultimately required. Accordingly, to the extent that there are any conflicts between the terms of this Agreement and the depictions in Exhibit B, the express terms of this Agreement shall control. Neither the Developer Landfill Systems nor the City Landfill Systems include any structures or features that are designated as “public/franchise utility responsibility” on Exhibit B.

6. Allocation of Responsibilities in PCLUP and WDRs.

(a) Post-Closure Land Use Plan. The division of the Post-Closure O&M Obligations between the City and the Master Developer pursuant to the PCLUP (including all costs of compliance) is set forth in Section I of the “**Landfill Responsibility Matrix**” attached hereto as Exhibit C.

(b) WDRs.

(i) Notwithstanding whether the City alone, or instead both Parties, are named as Dischargers for performance of particular tasks or requirements under the WDRs, the



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Parties agree the responsibility for performance of such tasks or requirements (including all costs of compliance) shall be as set forth in this Agreement.

(ii) Where Section B (Specifications) in the WDRs or Section C (Provisions) in the WDRs concern requirements or obligations related to operation, maintenance and management of Project Landfill Systems (as opposed to design and/or construction requirements) and both the City and the Master Developer are named as “Dischargers” on the WDRs for such specification or provision, the entity responsible for performance of such specification or provision (including all costs of compliance) is set forth in Section II of the attached Landfill Responsibility Matrix (Exhibit C).

(iii) With respect to the baseline monitoring contemplated in WDR Section C.4, at least four rounds of the baseline monitoring of the completed ground water network that is included as part of the work plan shall be conducted by Master Developer before placement of pilings commences. Such four rounds of monitoring shall be conducted at intervals roughly evenly spaced, at least one month apart, but Master Developer shall endeavor to space the rounds six (6) to eight (8) weeks apart. Potential effects of local dewatering must also be evaluated prior to development to establish baseline (pre-development) hydrological conditions.

(c) Inconsistencies. Where there is an inconsistency in the assignment of responsibilities as between PCLUP requirements and WDR requirements and the terms set forth on Exhibit C (the Landfill Responsibility Matrix), the requirements and allocation of Exhibit C shall govern. Where there is an inconsistency or conflict between the assignment of responsibilities in this Agreement and Exhibit C, the assignment of responsibilities in this Agreement shall govern.

(d) Summary of Requirements. The descriptions of the Landfill O&M Obligations that are included in the Landfill Responsibility Matrix merely summarize the Landfill O&M Obligations specified in each provision of these documents. The Parties shall refer to the specific provision of the WDRs and PCLUP to determine the full scope of the responsibilities under the applicable legal documents.

7. Allocation of Responsibilities in Other Title 27 Regulatory Documents. As various phases of construction are completed, the Landfill owner will be required by the Title 27 regulations to submit and obtain regulatory approval of updated revised Corrective Action Plans, Post-Closure Maintenance Plans, and Closure Plans. Regarding any requirements in such plans (including all costs of compliance), the obligation to prepare, submit and implement such plans shall be the responsibility of the City to the extent they apply to or arise from City Landfill Systems, and shall be the responsibility of the Master Developer to the extent they apply to or arise from Developer Landfill Systems.

8. Allocation of Responsibilities in Landfill O&M Mitigation Measures. The obligations of the City and the Master Developer to comply with the Landfill O&M Mitigation Measures (including all costs of compliance) are assigned as follows:

(a) Mitigation Measure HAZ. 2.1. The Master Developer shall provide to the City a final Waste Management Plan approved by the landfill regulatory agencies. The City will

verify that the final Waste Management Plan includes all required components and all necessary approvals.

(b) Mitigation Measure HAZ-4.1. The Master Developer shall prepare the plans and reports required by Mitigation Measure HAZ-4.1. The plans and reports are subject to review and approval by the City, which subsequently shall submit them to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for any design work and construction required by such plans and reports. Responsibility for any operation and maintenance measures outlined in such plans and reports is assigned to the City for City Landfill Systems and to the Master Developer for Developer Landfill Systems.

(c) Mitigation Measure HAZ-4.2. The Master Developer shall provide to the City a design for the replacement landfill gas collection, control and extraction system as set forth in Mitigation Measure HAZ-4.2. The specifications are subject to review and approval by the City, which subsequently shall submit them to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for the construction of the replacement landfill gas collection, control and extraction system. City shall be responsible for the operation and maintenance of such system.

(d) Mitigation Measure HAZ-4.4. The Master Developer shall prepare a landfill gas monitoring and control program as specified in Mitigation Measure HAZ-4.4 with respect to the migration of landfill gas beyond the boundaries of the Landfill, and shall submit the same to the City. The program is subject to review and approval by the City, which subsequently shall submit it to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for the construction of all gas monitoring and control features and systems. Responsibility for operation and maintenance of the approved program is assigned to the Master Developer except that the City shall be responsible for operation and maintenance of the approved program for any public street that is located on the 40-acre platform to be constructed above Parcel 4 of the Landfill.

(e) Mitigation Measure HAZ-6.1. The Master Developer shall prepare the Leachate Collection and Removal System Technical Memorandum as specified in this measure and submit it to the City. The Technical Memorandum shall be subject to review and approval by the City, which subsequently shall submit it to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for the construction of any required new components of the leachate collection and removal system. The City shall operate and maintain the leachate collection and removal system in accordance with the approved Technical Memorandum.

9. Phase 2A Site Landfill Protection Measures. The Parties acknowledge that the Ground Lease for the Phase 2A Site must incorporate protections in order to accommodate the City's current and intended uses of the Phase 2A Site (including but not limited to the ultimate use of most or all of the Phase 2A Site as a public park). Therefore, in addition to the modifications to the form of Ground Lease for Phase 2A that are contemplated by Section 4.8.1(b) of the DDA, the Ground Lease for Phase 2A also shall ensure that the Landfill is adequately protected during the lease term so that the Phase 2A Site is returned to the City at the end of the lease term in a condition



that is safe and suitable for the City's purposes. Such modifications may include, but shall not be limited to, additional requirements regarding the amount and location of dirt that can be taken from the Phase 2A Site for use elsewhere in the Project, as well as permitted uses of the Phase 2A Site and operational best practices for activity on the Phase 2A Site during the term of the Ground Lease.

10. Substitution of Master Owners' Association for Master Developer in Waste Discharge Requirements. Upon formation of a Masters Owners' Association under Conditions, Covenants and Restrictions applicable to the Landfill Parcel and Airspace Parcels and consistent with the DDA (the "**Master Owners' Association**"), and subject to the following requirements, the City shall make good faith efforts to support the substitution, in whole or in part, of the Master Owners' Association for the Master Developer in the WDRs:

(a) The Master Owners' Association shall enter into an Assignment, Assumption and Release Agreement in a form reasonably acceptable to the City, pursuant to which the Master Owners' Association assumes the applicable rights and obligations under this Agreement from the Master Developer; and

(b) The Master Owners' Association shall provide to the City financial assurance (including but not limited to annual evidence of the insurance required pursuant to Section 12 of this Agreement, as well as assurance that the Master Owners' Association shall remain in existence, and sufficiently capitalized, until the end of the term of this Agreement as set forth in Section 3(a) hereof, or its earlier termination) that the City reasonably agrees is sufficient to prove that the Master Owners' Association is capable of assuming all of Master Developer's obligations under this Agreement.

Upon the later to occur of (i) approval by the Regional Water Board of a substitution of the Master Owners' Association for the Master Developer in the WDRs and (ii) fulfillment of all conditions set forth in Sections 10(a) and 10(b), above, each task assigned to the Master Developer in this Agreement, including without limitation, Exhibit C attached hereto, shall instead be the responsibility of the Master Owners' Association.

11. Indemnity Obligations. The parties agree that the terms of this Section 11 shall survive the expiration or earlier termination of this Agreement.

(a) City Obligations. City agrees to Indemnify, defend, and hold harmless the Master Developer Parties from and against any and all Losses asserted against or incurred by any Master Developer Party to the extent such Losses are directly related to City's negligence or willful misconduct that results in a failure to perform its obligations under this Agreement, except to the extent that such failure is caused by the breach of this Agreement by Master Developer, any Phase Developer, or any tenant or occupant of a Phase, or any negligence or misconduct by Master Developer, any Phase Developer, or any tenant or occupant of a Phase, and except to the extent that (i) such Loss relates to on-site ground water contamination and (ii) Master Developer has obtained insurance which covers such Loss.

(b) Master Developer's Obligations. Master Developer agrees to Indemnify, defend, and hold harmless the City Parties from and against any and all Losses incurred by or

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asserted against any City Party in connection with, arising out of, or in response to, or in any manner relating to:

(i) Master Developer's breach of any obligation of Master Developer under this Agreement;

(ii) Master Developer's violation of any obligation under this Agreement with respect to its compliance with Environmental Laws on or relative to the Project Site by Master Developer; and

(iii) Any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from real property at the Project Site (including any Public Improvements) to the extent the Release, threatened Release, condition, contamination or nuisance was caused, contributed to, or exacerbated by the negligence of the Master Developer or others for whom Master Developer is responsible (including its contractors and servants) on any portion of the Project Site; provided, that this clause (iii) shall not apply as to a City Party to the extent such violation, Release, threatened Release, condition, contamination or nuisance commenced or was created by or caused by the negligence of a City Party.

In each of (i), (ii), and (iii), above, the term "Master Developer" includes the Master Developer Parties and their agents, servants, employees or contractors, or any other party for which Developer is responsible or which is acting pursuant to the authority of Master Developer with respect to this Agreement or the Project.

(c) The obligations of Master Developer and City under this Section 11 shall: (1) apply regardless of the extent or availability of insurance proceeds; and (2) survive the expiration or other termination of this Agreement. However, if any indemnified matter under this Section 11 is covered by or subject to being defended by a policy of insurance obtained by Master Developer under Exhibit D attached hereto and made a part hereof, then the Indemnified Party shall reasonably cooperate with the Indemnifying Party in asserting a claim or claims under such insurance policy or Indemnity but without waiving any of its rights under this Section 11. The submission and management of claims under such joint insurance programs shall be governed by an insurance administration agreement to be executed by Master Developer and the City on or before the commencement of intrusive work on the Landfill under "Phase 2" of the Project (the **"Insurance Administration Agreement"**). The Insurance Administration Agreement shall, among other things, establish criteria and procedures for allocating and paying self-insured retentions and establish protocols for notification and cooperation in the process of making claims to the insurer. Master Developer and City specifically acknowledge and agree that each has an immediate and independent obligation to defend the Indemnified Parties from any claim that may reasonably fall or is otherwise determined to fall within the Indemnification provision of this Section 11, even if the allegations are or may be groundless, false or fraudulent. The obligation of Master Developer or City to defend under this Section 11 shall arise at the time a claim is tendered to the Master Developer or City and shall continue at all times thereafter. Notwithstanding the foregoing, if the Master Developer and City are both named insureds on an insurance policy neither party will seek Indemnification from the other under this Section 11 for a condition or claim that is being covered or defended under such policy (including, without

limitation, pursuant to a reservation of rights) unless it has asserted and used commercially reasonable efforts to pursue a claim for insurance under such policy and pursuant to the terms of the Insurance Administration Agreement and (if successful in the pursuit of such claim) until any limits from the policy are exhausted, provided that nothing in this sentence requires either Master Developer or City to pursue a claim for insurance through litigation prior to seeking Indemnification from the party with the obligation to indemnify. Master Developer and City each agree to a tolling of any and all statutes of limitation relating to the Indemnified Party's right to seek Indemnification under this Section 11 during the pendency of any claim under the applicable joint insurance programs.

(d) Subject to the provisions of subparagraph (c) of Paragraph 11, each Party (as applicable, the **"Indemnified Party"**) agrees to give prompt notice to the other Party (as applicable, the **"Indemnifying Party"**) with respect to any suit filed or claim made against the Indemnified Party (or, upon Indemnified Party's discovery thereof, against any party that the Indemnified Party believes in good faith is covered by any Indemnification given by the Indemnifying Party under this Agreement) no later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the assertion of such claim, which the Indemnified Party has good reason to believe is likely to give rise to a claim for Indemnification hereunder by the Indemnifying Party. The failure of the Indemnified Party to give such notice within such timeframes shall not affect the rights of the Indemnified Party or obligations of the Indemnifying Party under this Agreement except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnifying Party shall, at its option but subject to Approval by the Indemnified Party, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Indemnifying Party's choice; provided, that in all cases the Indemnified Party shall be entitled to participate in such defense, compromise or settlement (either at the Indemnified Party's own expense or, if there is a challenge to implementation of this Agreement itself, at the Indemnifying Party's own expense). If the Indemnifying Party shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Party alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party shall have the right promptly to hire counsel to carry out such defense, compromise or settlement, and the reasonable expense of the Indemnified Party in so doing shall be due and payable to the Indemnified Party within fifteen (15) days after receipt by the Indemnifying Party of a properly detailed invoice for such expense.

12. Insurance Obligations. The Master Developer shall obtain and maintain the insurance policies and programs set forth on Exhibit D attached hereto and made a part hereof. Except as otherwise provided in Exhibit D, such policies and programs shall be obtained and maintained at Master Developer's sole cost and expense. Exhibit D sets forth the insurance program for all phases of the Project (including Phase 1, which is not located on the Landfill). The requirements of Exhibit D shall notwithstanding anything to the contrary in the DDA (including the Ground Lease forms in Exhibits G-1 and G-2). Each Ground Lease shall reference and include the requirements of Exhibit D as appropriate.

13. Submittals to Regional Water Board and/or Local Enforcement Agency. All reports, designs, and other documentation related to the Landfill O&M Requirements to be submitted to the Regional Water Board or Local Enforcement Agency by either Party pursuant to its

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responsibilities under this Agreement (including without limitation, the Landfill Responsibility Matrix) shall be subject to prior review and approval by the other Party, which approval shall not be unreasonably delayed or withheld, except no prior approval shall be required for reports that summarize data without making recommendations. Wherever either Party's obligation to submit documentation to the Regional Water Board or Local Enforcement Agency pursuant to this Agreement (including without limitation, the Landfill Responsibility Matrix) is predicated upon one Party's submittal of documentation to the other Party, such documentation shall be provided in a timely manner. For the purposes of this Agreement (including the Exhibits and Appendices), "in a timely manner" means, for a first draft (or any subsequent drafts that substantially revise prior drafts), no later than the date that is thirty (30) days prior to the due date of the submittal to the Regional Water Board or Local Enforcement Agency, and for a subsequent draft that does not substantially revise prior drafts, no later than the date that is fifteen (15) days prior to the due date of the submittal. If no comments from the reviewing Party are received in a timely manner, the documentation may be submitted, provided the submitting Party has made reasonable efforts to alert the reviewing Party that it has been provided the document for review, and of the deadline for submitting the document to the Regional Water Board or Local Enforcement Agency. In no event shall the requirements of this provision be construed to prevent either Party from meeting a legal deadline for submittal of documentation to the Regional Water Board or Local Enforcement Agency.

14. Memorandum of Agreement. The Parties shall execute, acknowledge, deliver and record a "short form" memorandum of this Agreement against the City Landfill Parcels in the Official Records of Santa Clara County within ten (10) days after execution here or any amendment thereto, with any costs to be borne by Master Developer, to put such memorandum of record and put third parties on notice of this Agreement.

15. Recitals and Exhibits. The Recitals, as well as the following Exhibits, are hereby incorporated into and made a part of this Agreement:

<u>Exhibit A</u>	Legal Description of City Landfill Parcels
<u>Exhibit B</u>	Project Cross-Section Drawings
<u>Exhibit C</u>	Landfill Responsibility Matrix
<u>Exhibit D</u>	Insurance Obligations
<u>Exhibit E</u>	Miscellaneous Provisions

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**IN WITNESS WHEREOF**, the parties have executed this Landfill Post-Closure Operation and Management Agreement as of the date(s) set forth below.

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

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

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

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

Its: \_\_\_\_\_

Dated: May 18, 2020

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

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

Name: Steve Eimer

Its: Executive Vice President

Exhibit A

City Landfill Parcels



EXHIBIT A  
CITY LANDFILL PARCELS

All that real property situate in the City of Santa Clara, County of Santa Clara, State of California, described as follows

BEGINNING at the Southwest corner of that certain parcel designated as, "Remainder 1", on that certain Parcel Map recorded in Book 737 of Maps, at Pages 1 through 4, Santa Clara County Records; thence along the Southeasterly boundary of said Remainder 1, and Parcel 2 as shown on said map

1. North 70° 48' 54" East, 800.92 feet, to the common Southerly corner of Parcels 2 and 4 as shown on said map; thence along the Westerly and Northerly boundaries of said Parcel 4 the following eight courses
2. North 8° 10' 00" West, 1070.36 feet, to an angle point; thence
3. North 5° 35' 14" West, 191.73 feet, to the beginning of a tangent curve to the right; thence
4. Along said curve to the right, having a radius of 109.99 feet, through a central angle of 73° 36' 48", and an arc length of 141.32 feet to the end of said curve; thence
5. North 68° 01' 34" East, 247.17 feet, to the beginning of a tangent curve to the right; thence
6. Along said curve to the right, having a radius of 159.99 feet, through a central angle of 63° 38' 58", and an arc length of 177.73 feet to the end of said curve; thence
7. South 48° 19' 28" East, 120.04 feet, to the beginning of a tangent curve to the left; thence
8. Along said curve to the left, having a radius of 16.00 feet, through a central angle of 65° 46' 18", and an arc length of 18.37 feet to the end of said curve; thence
9. North 65° 54' 14" East, 452.69 feet, to the Northeast corner of said Parcel 4, at a point on the Westerly boundary of the lands of the Union Pacific Railroad Company (UPRR); thence
10. North 62° 36' 04" East, 50.00 feet, to the Easterly boundary of the lands of the UPRR, also being the Southwesterly sideline of Lafayette Street; thence along said common boundary
11. North 27° 23' 56" West, 383.89 feet, to the Southeasterly boundary of an abandoned portion of the former Santa Clara Alviso Road as said abandonment is shown on the Record of Survey filed in Book 613 of Maps, at Pages 16 through 19, Santa Clara County Records; thence along said Southeasterly boundary
12. North 62° 36' 04" East, 60.00 feet, to the Southeast corner of said abandonment as shown on said map, also being a Southerly corner of the lands of the State of California as shown in Parcel 6-First of the Final Order of Condemnation recorded in Book 4820, at Page 641, Santa Clara County Records; thence along the Southerly boundary of said Parcel 6-First the following five courses



13. North 18° 41' 34" West, 324.57 feet to an angle point; thence
14. North 4° 49' 01" West, 291.65 feet to an angle point; thence
15. North 76° 46' 00" East, 367.73 feet to the beginning of a tangent curve to the left; thence
16. Along said curve to the left, having a radius of 300.00 feet, through a central angle of 47° 19' 56", and an arc length of 247.83 feet to the end of said curve; thence
17. North 29° 26' 04" East, 115.92 feet to the Westerly most corner of the land granted to the State of California by Grant Deed recorded in Document No. 13607857, Official Records of Santa Clara County; thence along the Southerly boundary of said lands, along a non-tangent curve to the right, from a tangent that bears North 66° 06' 21" East
18. Along said curve to the right, having a radius of 987.00 feet, through a central angle of 0° 21' 48", and an arc length of 6.26 feet to a tangent compound curve to the right; thence
19. Along said curve to the right, having a radius of 1987.00 feet, through a central angle of 7° 36' 13", and an arc length of 263.69 feet to the end of said curve; thence
20. North 82° 36' 47" East, 359.94 feet to an angle point; thence
21. North 79° 54' 20" East, 63.77 feet to a point on the Southwesterly boundary of Parcel 1 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Book 0346, at Page 667, Santa Clara County Records; thence along the Southwesterly boundary of said lands
22. South 12° 32' 21" East, 124.61 feet, to the beginning of a tangent curve to the left; thence
23. Along said curve to the left, having a radius of 1204.94 feet, through a central angle of 22° 10' 15", and an arc length of 466.25 feet to the end of said curve; thence
24. South 34° 42' 36" East, 627.28 feet, more or less, to a Northwesterly boundary of the lands conveyed to Jules Eshner and Margaret Harkins Eshner by Grant Deed recorded in Book 3804, at Page 23 of the Official Records of Santa Clara County; thence along the Northwesterly and Westerly boundaries of said lands the following three courses
25. South 38° 48' 48" West, 2.93 feet, more or less, to an angle point; thence
26. South 22° 11' 12" East, 158.39 feet, to an angle point; thence
27. South 54° 41' 12" East, 108.85 feet, more or less, to the Northerly most corner of Parcel 2 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Book 0346, at Page 667, Official Records of Santa Clara County; thence along the Southwesterly boundary of said Parcel 2
28. South 34° 42' 36" East, 1676.65 feet, more or less, to the Southwest corner of said Parcel 2, also being the Northeast corner of Lot 19 of that certain Parcel Map recorded in Book 368 of Maps, at Pages 14 and 15, Santa Clara County Records; thence along the Northwesterly boundary of said Lot 19 and said Parcel Map the following four courses
29. North 84° 23' 47" West, 47.65 feet to an angle point; thence
30. South 23° 19' 21" East, 7.40 feet to an angle point; thence
31. North 84° 25' 47" West, 139.94 feet to an angle point; thence



32. South 68° 35' 42" West, 1603.17 feet to the Westerly most corner of said Parcel Map, at the Northeasterly sideline of Lafayette Street; thence perpendicularly across the Right of Way of Lafayette Street and the Union Pacific Railroad (UPRR)
33. South 62° 36' 04" West, 139.99 feet to the Westerly sideline of the UPRR; thence along said Westerly sideline
34. South 27° 23' 56" East, 861.77' feet to a point on an Easterly prolongation of a Northerly sideline of Stars and Stripes Drive; thence leaving the Westerly sideline of the UPRR, and along said Easterly prolongation
35. South 63° 57' 01" West, 365.15 feet to a point on said Northerly sideline at a point of tangency of said sideline, at the end of a curve, concave to the Southwest, having a radius of 334.28 feet; thence along said sideline
36. South 63° 57' 01" West, 1053.06 feet to a point on a Northeasterly boundary of Parcel Three as shown in the Lease Agreement recorded in Document No. 18721549, Santa Clara County Records ; thence leaving said Northerly sideline, and along said Northeasterly boundary
37. North 26° 03' 52" West, 50.19 feet to the Northerly most corner of said Parcel Three; thence along the Northwesterly line of said Parcel Three
38. South 63° 56' 08" West, 382.83 feet to the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book I 288, at Page 241, Santa Clara County Records; thence along said Northeasterly boundary and along the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book B 811, at Page 392, Santa Clara County Records
39. North 30° 38' 56" West, 530.37 feet to the beginning of a tangent curve to the left; thence
40. Along said curve to the left, having a radius of 686.06 feet, through a central angle of 26° 15' 54", and an arc length of 314.50 feet to the end of said curve; thence
41. North 56° 54' 50" West, 950.10 feet, to the Easterly sideline of Great America Parkway, as shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records; thence along said Easterly sideline
42. North 1° 58' 31" East, 340.86 feet to the POINT OF BEGINNING.

EXCEPTING therefrom any portion of the above-described lands that are within the Right of Ways of Lafayette Street, Great America Way or the Union Pacific Railroad.

Containing 227.28 acres, more or less.

The distances as shown in this description are Grid distances. To obtain ground level distances multiply any distance shown above by the factor 1.00005310.

Description prepared by BKF Engineers, in June, 2016.

Signed David Darling 6/16/2016  
Date



# Exhibit B

## Project Cross Section Drawings

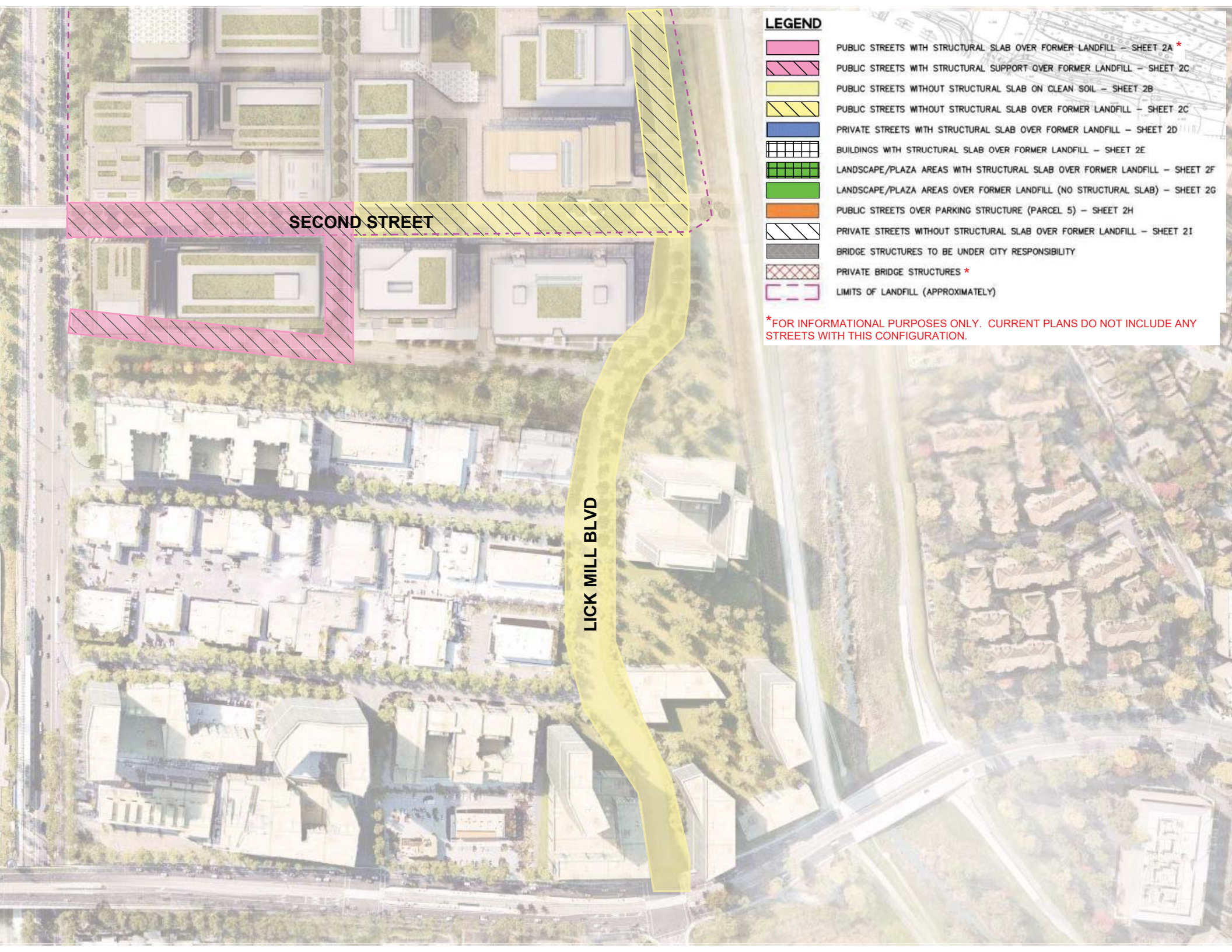

























SECOND STREET

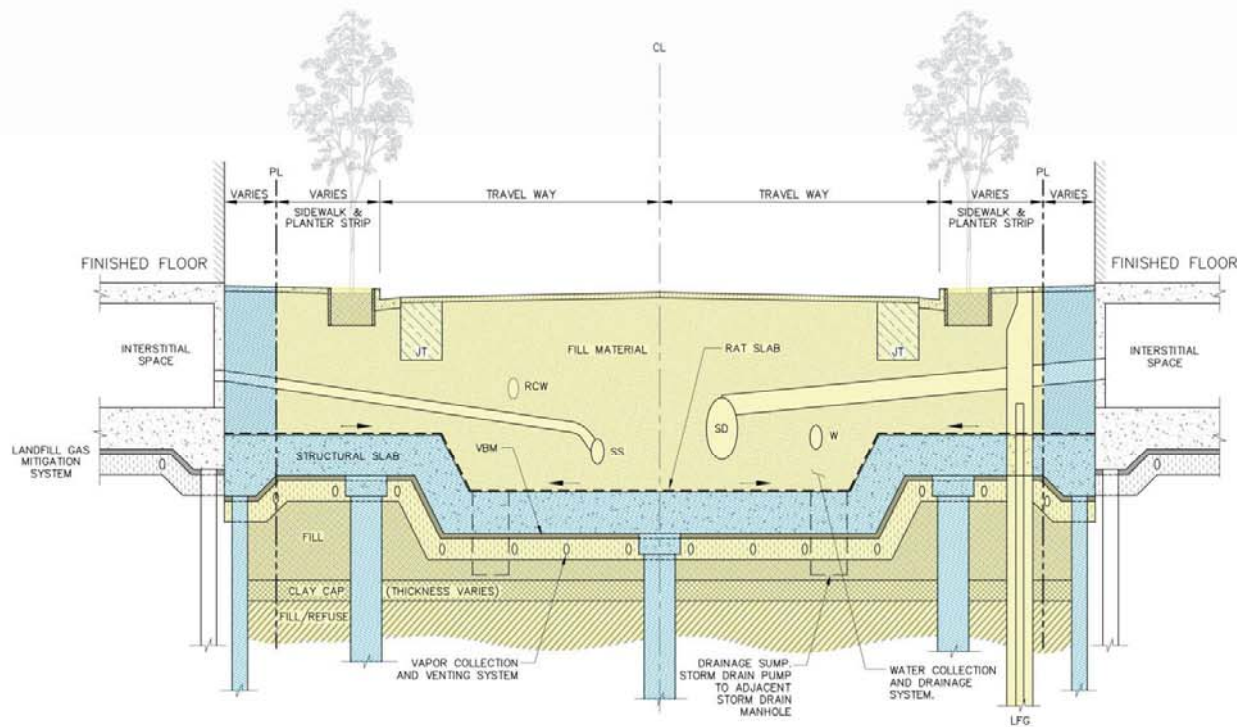
LICK MILL BLVD

**LEGEND**

-  PUBLIC STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2A \*
-  PUBLIC STREETS WITH STRUCTURAL SUPPORT OVER FORMER LANDFILL – SHEET 2C
-  PUBLIC STREETS WITHOUT STRUCTURAL SLAB ON CLEAN SOIL – SHEET 2B
-  PUBLIC STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2C
-  PRIVATE STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2D
-  BUILDINGS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2E
-  LANDSCAPE/PLAZA AREAS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2F
-  LANDSCAPE/PLAZA AREAS OVER FORMER LANDFILL (NO STRUCTURAL SLAB) – SHEET 2G
-  PUBLIC STREETS OVER PARKING STRUCTURE (PARCEL 5) – SHEET 2H
-  PRIVATE STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2I
-  BRIDGE STRUCTURES TO BE UNDER CITY RESPONSIBILITY
-  PRIVATE BRIDGE STRUCTURES \*
-  LIMITS OF LANDFILL (APPROXIMATELY)

\*FOR INFORMATIONAL PURPOSES ONLY. CURRENT PLANS DO NOT INCLUDE ANY STREETS WITH THIS CONFIGURATION.





## LEGEND



### CITY RESPONSIBILITY:

- CITY UTILITY MAINS
- SILICON VALLEY POWER (SVP)
- SIDEWALK
- CURB & GUTTER
- ROADWAY PAVEMENT
- STREET TREES/LANDSCAPING
- FILL MATERIAL
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
- CLAY CAP & REFUSE
- VAPOR BARRIER MEMBRANE (VBM)
- VAPOR COLLECTION AND VENTING SYSTEM
- DRAINAGE SUMP
- WATER COLLECTION AND DRAINAGE SYSTEM



### LEASSEE RESPONSIBILITY:

- UTILITY SERVICE LATERALS
- SIDEWALK
- FILL MATERIAL
- STRUCTURAL SLAB & PILES



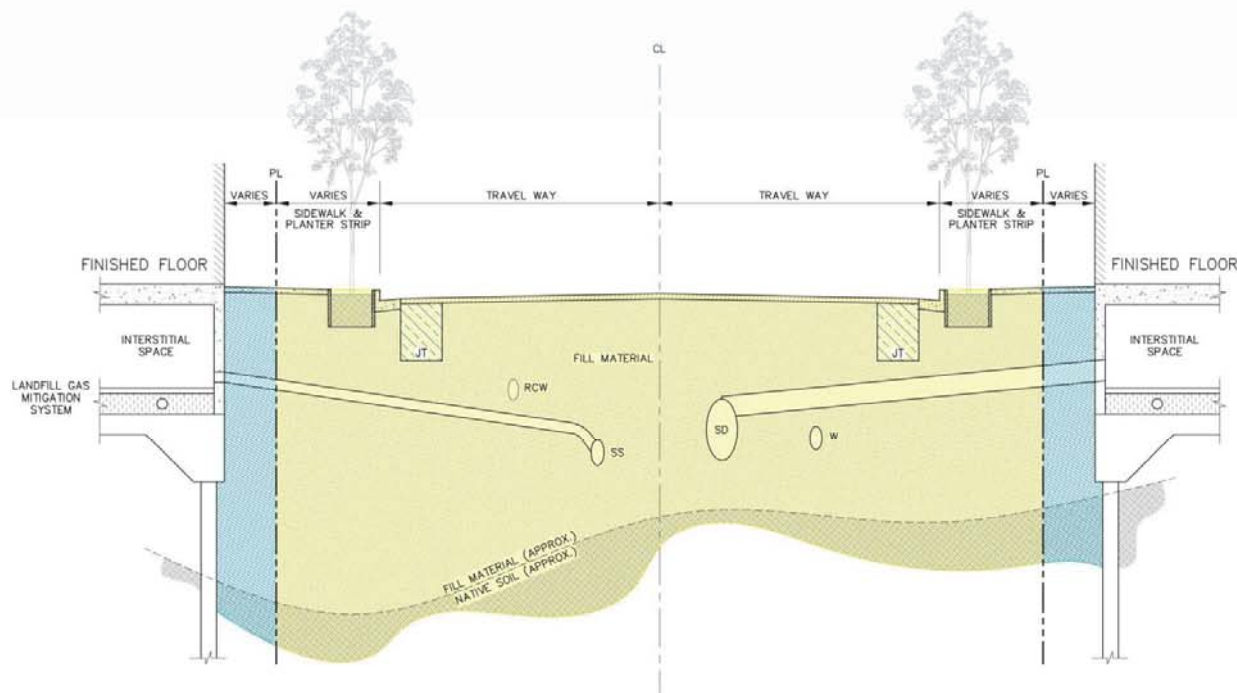
### PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:

- GAS
- TELECOMMUNICATIONS
- FIBER OPTIC
- CABLE TV

## PUBLIC STREETS W/ STRUCTURAL SLAB OVER FORMER LANDFILL TYPICAL SECTION

N.T.S.

FOR INFORMATIONAL PURPOSES ONLY. CURRENT PLANS  
DO NOT INCLUDE ANY STREETS WITH THIS CONFIGURATION.



### LEGEND



**CITY RESPONSIBILITY:**  
 - CITY UTILITY MAINS  
 - SIDEWALK  
 - CURB & GUTTER  
 - ROADWAY PAVEMENT  
 - STREET TREES/LANDSCAPING  
 - FILL/NATIVE MATERIAL



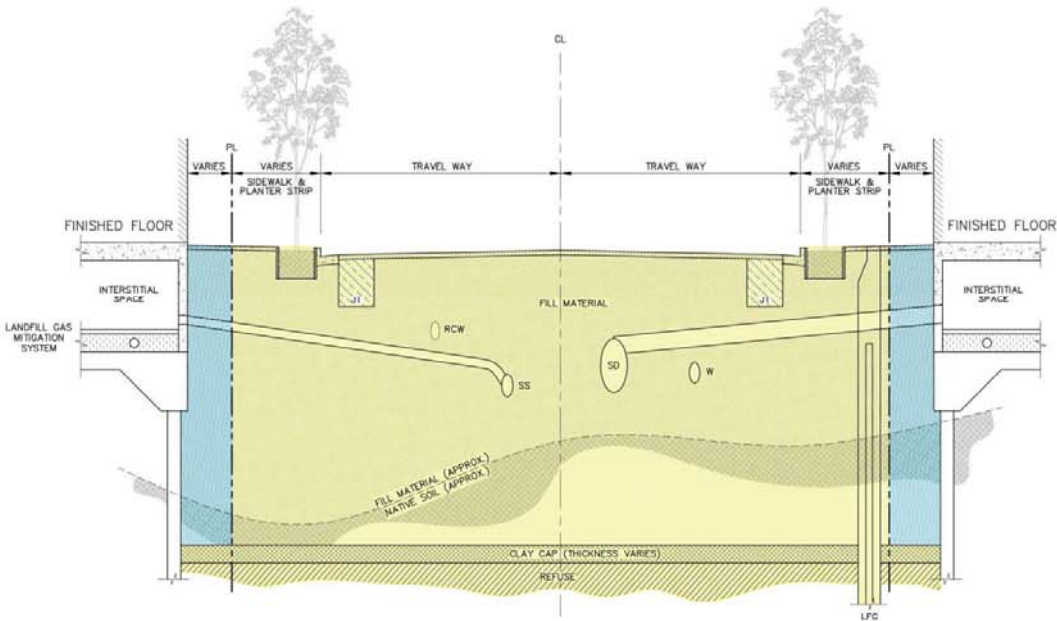
**LEASEE RESPONSIBILITY:**  
 - UTILITY SERVICE LATERALS  
 - SIDEWALK  
 - FILL/NATIVE MATERIAL



**PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:**  
 - GAS  
 - TELECOMMUNICATIONS  
 - FIBER OPTIC  
 - CABLE TV  
 - SILICON VALLEY POWER (SVP)

## PUBLIC STREETS W/O STRUCTURAL SLAB ON "CLEAN SOIL" TYPICAL SECTION

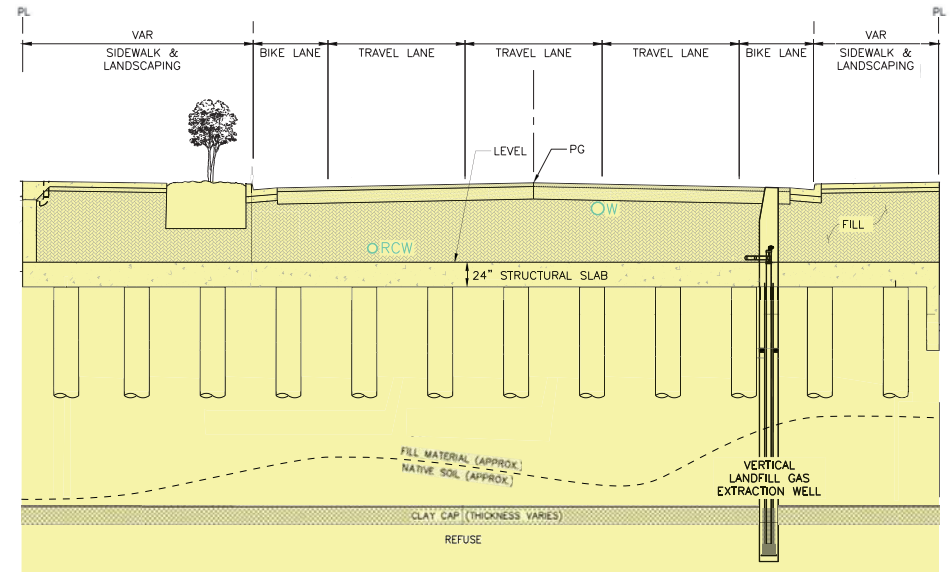
N.T.S.



**2C-A PUBLIC STREETS W/O STRUCTURAL SLAB OVER FORMER LANDFILL**  
TYPICAL SECTION  
N.T.S.

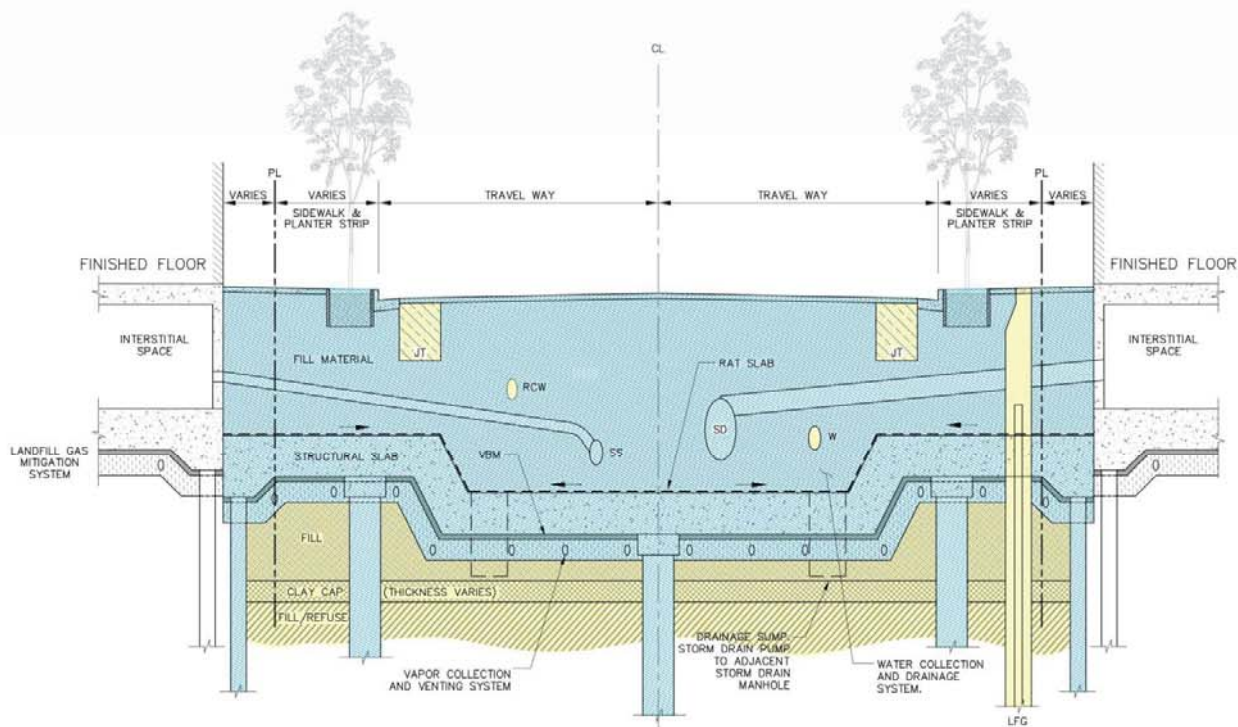
### LEGEND

- CITY RESPONSIBILITY:
  - CITY UTILITY MAINS
  - SIDEWALK
  - CURB & GUTTER
  - ROADWAY PAVEMENT
  - STREET TREES/LANDSCAPING
  - FILL/NATIVE MATERIAL
  - LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
  - CLAY CAP & REFUSE
- LEASEE RESPONSIBILITY:
  - UTILITY SERVICE LATERALS
  - SIDEWALK
  - FILL MATERIAL
  - STRUCTURAL SUPPORT (IF APPLICABLE)
- PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:
  - GAS
  - TELECOMMUNICATIONS
  - FIBER OPTIC
  - CABLE TV
  - SILICON VALLEY POWER (SVP)



**2C-B PUBLIC STREETS W/ STRUCTURAL SUPPORT OVER FORMER LANDFILL**  
TYPICAL SECTION  
N.T.S.





## LEGEND



- CITY RESPONSIBILITY:**
- CITY UTILITY MAINS WITHIN EASEMENTS
  - FILL MATERIAL BELOW STRUCTURAL SLAB AND ABOVE CLAY CAP
  - LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
  - CLAY CAP & REFUSE



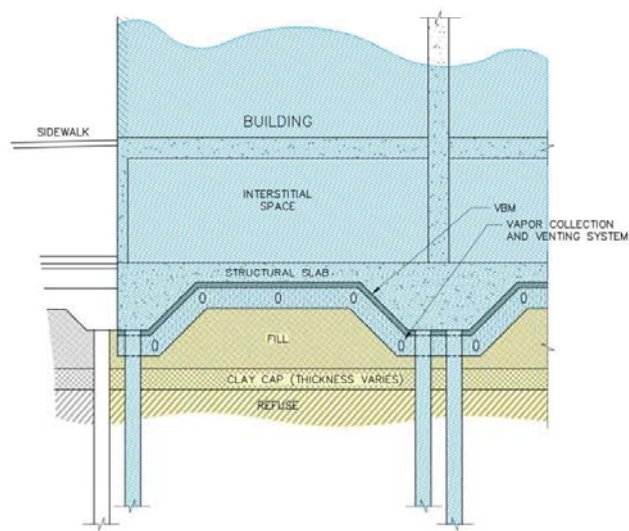
- LEASEE RESPONSIBILITY:**
- PRIVATE UTILITY MAINS
  - SIDEWALK
  - CURB & GUTTER
  - ROADWAY PAVEMENT
  - STREET TREES/LANDSCAPING
  - FILL MATERIAL ABOVE VDM
  - UTILITY SERVICE LATERALS
  - VAPOR BARRIER MEMBRANE (VBM)
  - VAPOR COLLECTION AND VENTING SYSTEM
  - STRUCTURAL SLAB & PILES
  - DRAINAGE SUMP
  - WATER COLLECTION AND DRAINAGE SYSTEM



- PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:**
- GAS
  - TELECOMMUNICATIONS
  - FIBER OPTIC
  - CABLE TV
  - SILICON VALLEY POWER (SVP)

## PRIVATE STREETS W/ STRUCTURAL SLAB OVER FORMER LANDFILL TYPICAL SECTION

N.T.S.



# LEGEND

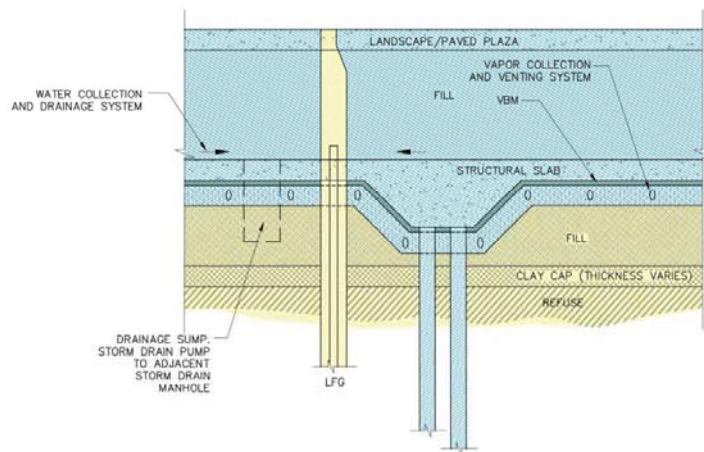


CITY RESPONSIBILITY:  
 - FILL MATERIAL BELOW STRUCTURAL SLAB  
 AND ABOVE CLAY CAP  
 - CLAY CAP & REFUSE



LEASEE RESPONSIBILITY:  
 - VAPOR BARRIER MEMBRANE (VBM)  
 - VAPOR COLLECTION AND VENTING SYSTEM  
 - STRUCTURAL SLAB & PILES

**BUILDINGS W/ STRUCTURAL SLAB OVER FORMER LANDFILL**  
**TYPICAL SECTION**  
 N.T.S.



## LEGEND



**CITY RESPONSIBILITY:**

- FILL MATERIAL ABOVE CLAY CAP AND BELOW STRUCTURAL SLAB
- CLAY CAP & REFUSE
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)

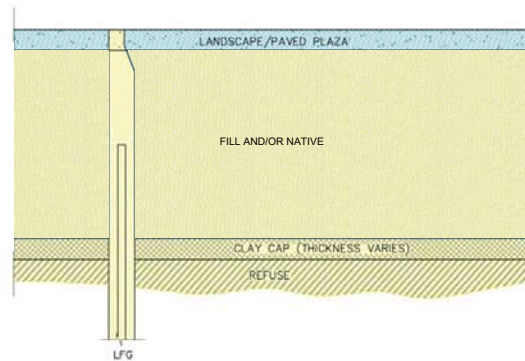


**LEASEE RESPONSIBILITY:**

- LANDSCAPE AND/OR PAVED PLAZA AREAS
- FILL MATERIAL ABOVE VBM
- PRIVATE UTILITIES IN FILL (IF APPLICABLE)
- VAPOR BARRIER MEMBRANE (VBM)
- VAPOR COLLECTION AND VENTING SYSTEM
- STRUCTURAL SLAB & PILES
- DRAINAGE SUMP
- WATER COLLECTION AND DRAINAGE SYSTEM

## LANDSCAPE/PLAZA AREAS W/ STRUCTURAL SLAB OVER FORMER LANDFILL TYPICAL SECTION

N.T.S.



### LEGEND



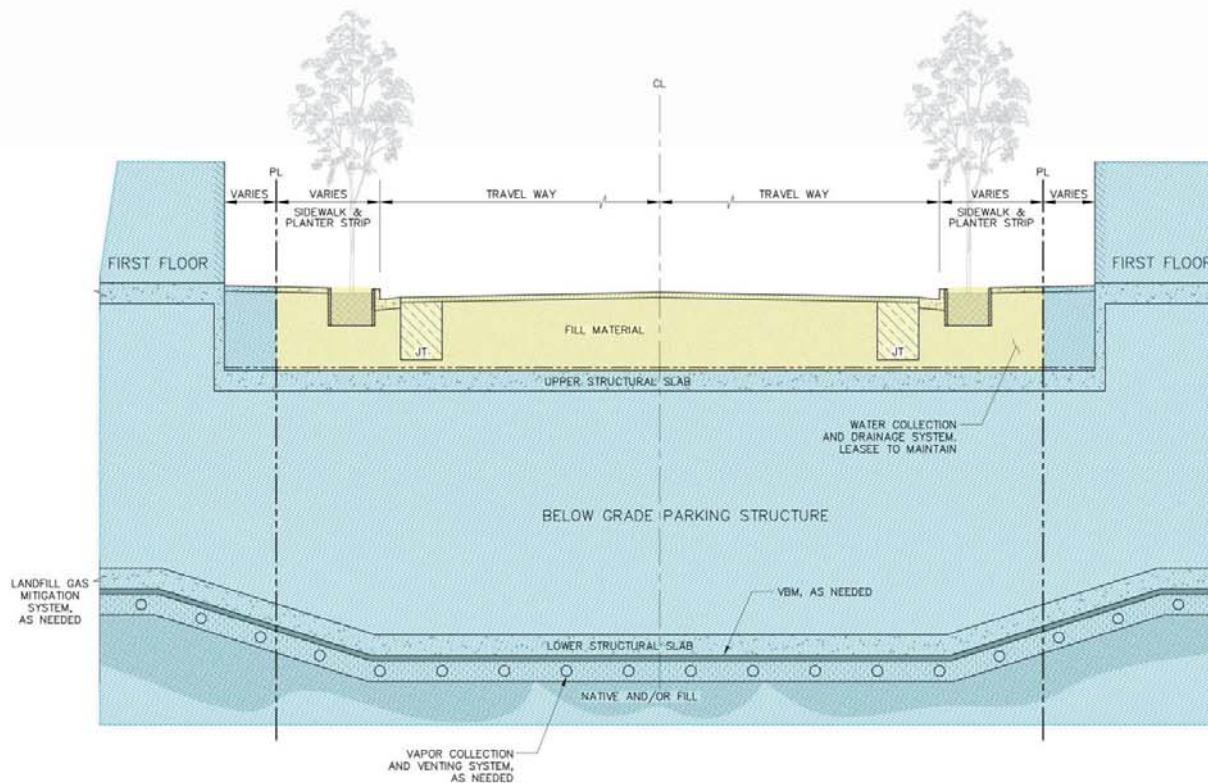
- CITY RESPONSIBILITY:
- CLAY CAP & REFUSE
  - LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
  - FILL/NATIVE MATERIAL ABOVE CLAY CAP



- LEASEE RESPONSIBILITY:
- LANDSCAPE/PAVED PLAZA AREAS
  - PRIVATE UTILITIES IN FILL (IF APPLICABLE)




**LANDSCAPE/PLAZA AREAS OVER FORMER LANDFILL (NO STRUCTURAL SLAB)**  
**TYPICAL SECTION**  
 N.T.S.

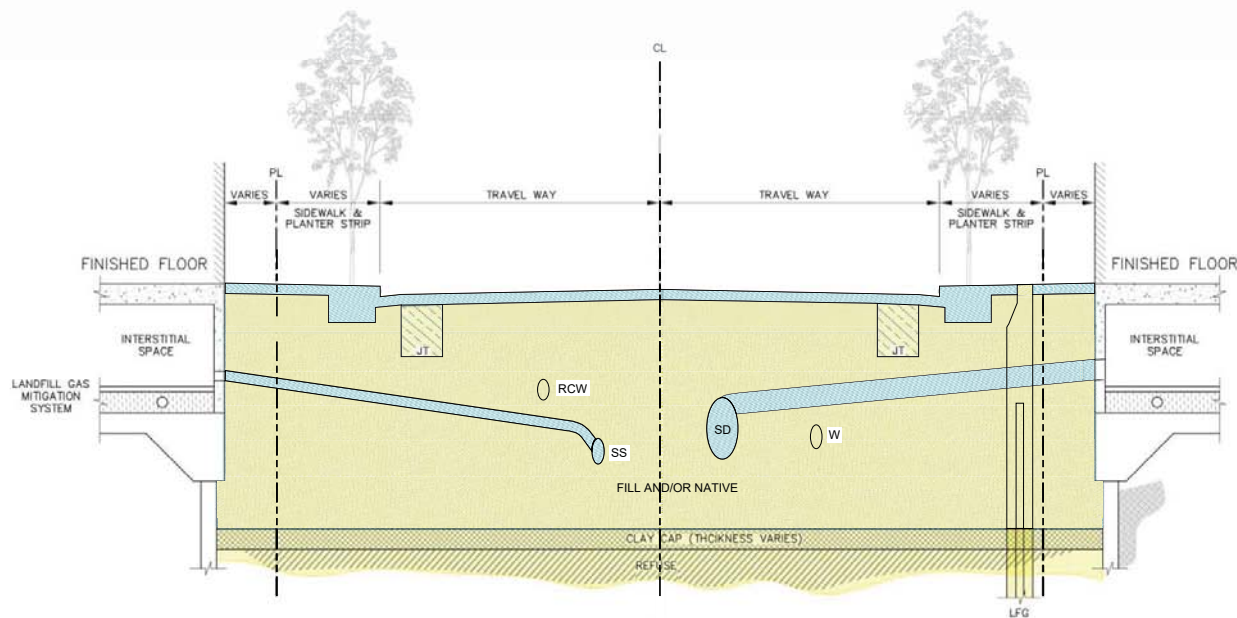







**PUBLIC STREETS OVER PARKING STRUCTURE (PARCEL 5)**  
**TYPICAL SECTION**  
 N.T.S.

### LEGEND

- |   |  |
|---|--|
| <br><br><br><br> | <b>CITY RESPONSIBILITY:</b> <ul style="list-style-type: none"> <li>- CITY UTILITY MAINS</li> <li>- SILICON VALLEY POWER (SVP)</li> <li>- CURB &amp; GUTTER</li> <li>- ROADWAY PAVEMENT</li> <li>- STREET TREES/LANDSCAPING</li> <li>- FILL MATERIAL ABOVE UPPER STRUCTURAL SLAB</li> </ul><br><b>LEASEE RESPONSIBILITY:</b> <ul style="list-style-type: none"> <li>- SIDEWALK</li> <li>- FILL MATERIAL</li> <li>- PARKING STRUCTURE</li> <li>- LOWER STRUCTURAL SLAB</li> <li>- UPPER STRUCTURAL SLAB</li> <li>- VAPOR BARRIER MEMBRANE (VBM)</li> <li>- VAPOR COLLECTION AND VENTING SYSTEM</li> <li>- NATIVE AND/OR FILL SOIL BELOW LOWER STRUCTURAL SLAB</li> </ul><br><b>PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:</b> <ul style="list-style-type: none"> <li>- GAS</li> <li>- TELECOMMUNICATIONS</li> <li>- FIBER OPTIC</li> <li>- CABLE TV</li> </ul> |
|---|--|



### LEGEND

- |   |   |
|---|---|
| <br><br> | <p><b>CITY RESPONSIBILITY:</b></p> <ul style="list-style-type: none"> <li>- CITY UTILITY MAINS</li> <li>- SILICON VALLEY POWER (SVP)</li> <li>- LANDFILL GAS EXTRACTION WELL &amp; COLLECTION SYSTEM (LFG)</li> <li>- CLAY CAP &amp; REFUSE</li> <li>- FILL/NATIVE MATERIAL ABOVE CLAY CAP</li> </ul> <p><b>LEASEE RESPONSIBILITY:</b></p> <ul style="list-style-type: none"> <li>- PRIVATE UTILITY MAINS</li> <li>- SIDEWALK</li> <li>- CURB &amp; GUTTER</li> <li>- ROADWAY PAVEMENT</li> <li>- STREET TREES/LANDSCAPING</li> <li>- UTILITY SERVICE LATERALS</li> <li>- STRUCTURAL SUPPORT (IF APPLICABLE)</li> </ul> <p><b>PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:</b></p> <ul style="list-style-type: none"> <li>- GAS</li> <li>- TELECOMMUNICATIONS</li> <li>- FIBER OPTIC</li> <li>- CABLE TV</li> </ul> |
|---|---|

**PRIVATE STREETS W/O STRUCTURAL SLAB OVER FORMER LANDFILL**  
**TYPICAL SECTION**  
 N.T.S.

## Exhibit C

### Landfill O&M Responsibility Matrix

## EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

### EXHIBIT C LANDFILL RESPONSIBILITY MATRIX

**NOTE 1:** All requirements below are summarized for reference purposes only. The complete, detailed requirements applicable to each row in this matrix are as set forth in the PCLUP and WDRs, as applicable.

**NOTE 2:** Nothing in this Responsibility Matrix or the Agreement shall be construed to allocate any responsibility to Master Developer for a task related to any portion of the Landfill Parcel which is not a Project Parcel, except in the case of documents related to a particular Project Parcel required to be submitted in advance of the commencement of development activity on that Project Parcel.

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Conduct periodic monitoring and testing activities in as required by BAAQMD Regulation 8, Rule 34, CCR Title 27, and Synthetic Minor Operating Permit (SMOP) condition 2935, Part 14. Compile results and include in an annual report along with system and individual wellhead operation and downtime.	PCLUP	Sec. 9.7.4	City, except with respect to the MD's obligations to prepare the O&M plan for the construction period, the pre-startup inspection and the system shakedown and start-up. (PCLUP Sec 9.7.1, 9.7.2)
Develop detailed OM&M plan with required maintenance and monitoring details during the Design Document Phase for review and authorization by the regulatory agencies prior to implementation.	PCLUP	Sec. 9.7.	Master Developer



**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Conduct system pre-startup inspection after completion of the placement of new LFG system process equipment and installation of the new LFG extraction wells prior to the LFG collection system operation.	PCLUP	Sec 9.7.1	Master Developer
Perform equipment shakedown and dry run testing following completion of the system construction and pre-startup inspection to ensure proper rotation of the motors, and individual automation and safety controls are functional.	PCLUP	Sec. 9.7.2	Master Developer
Check LCR system as scheduled or required for potential damages from seismic activities, corrosion, etc. Extract leachate and discharge to the sanitary sewer (pending permit approval).	PCLUP	Sec. 11.5	City
Monitor groundwater and surface waters at and adjacent to the Project Site on a semi-annual basis. Compile sampling results and include in semi-annual report.	PCLUP	Sec. 12.0	City
Maintain automatic methane monitoring system within the first floor of the buildings, set within certain alarm levels. In the event of an emergency, Building Engineering Manager to coordinate with the City's Fire Department appropriate actions and steps necessary to protect public health and safety and the environment, and immediately notify the LEA. Verify validity and record description of LFG sensor alarm for submission to LEA. During an evacuation, reoccupation prohibited until confirmed and approved by the City's Fire Department that: (1) concentrations of methane meet the applicable compliance requirements and that (2) the landfill gas mitigation system ("LFGMS") is operating in a manner that ensures adequate control of methane/vapor intrusion.	PCLUP	Sec. 13.1	Master Developer

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
<p>Contact emergency services in the event of an emergency such as a fire or earthquake. During an evacuation, reoccupation prohibited until confirmed and approved by the City's Fire Department that: (1) concentrations of methane meet the applicable compliance requirements; and that (2) the LFGMS systems are operating in a manner that ensures adequate control of methane/vapor intrusion.</p> <p>After risk of immediate danger has subsided, inspect Project Site-wide systems for damage and evaluate for necessary repair, and notify LEA accordingly. After damages assessed, record a description of damages, steps to protect public health and safety and environment, and description of further corrective actions and submit to LEA.</p>	PCLUP	Sec. 13.3	Master Developer as to emergencies within Project Parcels. City as to emergencies on portions of the Landfill Parcel outside any Project Parcel.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
<p>Conduct post-construction maintenance activities to maintain site features (pavement, foundation, landscaping) which compose the landfill cap, including inspection of landfill cover integrity and repair of landfill cover as needed. In landscaped areas, monitor condition of vegetation quarterly and monthly during wet-weather season; identify areas of irregular color or growth deficiency and note spread of conditions during future inspections.</p> <p>Fill and then reseed areas that have ponded water or have settled to reestablish the proper grade. Close off areas where slope failures have occurred to prevent damage to equipment or harm to individuals, and implement specific corrective action depending on the extent, nature, and location of the failure. Maintain record of final cover maintenance activities. Notify regulatory agencies if required.</p>	PCLUP	Sec. 14.1	Master Developer as to site features within a Project Parcel during construction, and within Airspace Parcels after completion of construction. City as to City Landfill Systems and Landfill Parcels after completion of construction.
Inspect Project Site quarterly and monthly during the wet-weather season for evidence of ponding or degradation of the Project Site's drainage control system. Remedy ponding on the lower portions of the Project Site by either backfilling the area to provide positive drainage, or providing an acceptable downstream slope to an appropriate discharge point. Inspect property perimeter for failure and make temporary repairs if necessary.	PCLUP	Sec. 14.2	Master Developer

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Examine accessible portions of LFG system piping for potential system failures on a monthly basis. Address system failures which would reduce system efficiency and/or effectiveness within 24 hours of detection. Perform preventative maintenance will be performed at manufacturer recommended intervals. Prepare LFG system operation and maintenance (O&M) manual following construction of the system and completion of record drawings.	PCLUP	Sec. 14.3	City
Ongoing operation and maintenance of the LFGMS. Repair or replace system components for operational reliability as needed during routine maintenance periods. If building improvement plans (e.g., tenant improvements) impact LFGMS components, portions of the LFGMS will be properly repaired. Prepare LFGMS O&M manual following construction of the LFGMS and completion of record drawings.	PCLUP	Sec. 14.4	Master Developer; City for LFGMS under any public street or other public area (although none are currently anticipated)
Ongoing operation and maintenance of the LCR system. Conduct system inspections whenever leachate is sampled. Prepare LCR system O&M manual following construction of the LCR system and completion of record drawings.	PCLUP	Sec. 14.5	City
Inspect groundwater monitoring wells for signs of failure or deterioration during each sampling event. If damage discovered, replace or repair well. If replaced, decommission existing, damaged well according to the California Well Standards guidelines for well destruction. Install new wells in accordance with California Well Standards guidelines.	PCLUP	Sec. 14.6	City

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Compile results of periodic inspections and a summary of maintenance performed to the systems discussed in PCLUP Sections 14.1 through 14.6 and include in quarterly monitoring reports.	PCLUP	Sec. 14.7	City as to City responsibilities identified herein related to PCLUP Sections 14.1-14.6; Master Developer as to Master Developer responsibilities identified herein related to PCLUP Sections 14.1-14.6.
Waste management for future, planned or emergency, subsurface activities. Inspect and maintain the integrity of the cap and provide notification of activities that disturb the cap and measures performed to mitigate the disturbance.	PCLUP	Sec. 14.8	Master Developer as to Project Parcels. City as to portions of the Landfill Parcel outside of Project Parcels.
Implement a Detection Monitoring Plan (DMP) designed to demonstrate compliance with the Water Quality Protection Standard (WQPS).  The WQPS must include: (i) Constituents of Concern (COCs); (ii) Monitoring Parameters for certain COCs; (iii) Concentration Limits; and (iv) Monitoring Points. Conduct monitoring activities in accordance with the SMP to verify effectiveness of the Landfill's systems for monitoring, containment, collection, treatment, and removal of groundwater, surface water, leachate, and landfill gas.	WDRs	Sec. B.1	City

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Monitoring wells must be constructed in a manner that maintains the integrity of the drill hole, prevents cross-contamination of saturated zones, and produces representative groundwater samples from discrete zones within the aquifer unit each well is intended to monitor. All wells and borings at the Site that are no longer being used must be destroyed.	WDRs	Sec. B.2	City as to wells and borings it installs; Master Developer as to wells and borings it installs
Install additional groundwater and leachate monitoring devices as required pursuant to the operative SMP.	WDRs	Sec. B.3	City to install additional groundwater and leachate monitoring devices required as part of the Detection Monitoring Program; however, any additional groundwater or leachate monitoring devices required by or as a result of an investigation required by the WDRs which is performed by Master Developer, or as a result of Master Developer's activities to be the responsibility of Master Developer

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
All analyses must be conducted at a laboratory certified for such analyses by the California Department of Public Health, unless analyses can only be reasonably performed onsite (e.g., pH). Samples must be analyzed using approved U.S. EPA methods for the type of analysis to be performed. All laboratories must maintain quality assurance/quality control records for Regional Water Board review.	WDRs	Sec. B.4	City as to analyses performed by or on behalf of the City; Master Developer as to analyses performed by or on behalf of Master Developer
When necessary, file a written request with the Executive Officer proposing modifications to the SMP.	WDRs	Sec. B.5	City
Maintain the Landfill so as to prevent a measurably significant increase in water quality parameters at points of compliance.	WDRs	Sec. B.6	City as to monitoring for increases in water quality parameters at the “points of compliance”. City for maintenance of City Landfill Systems and any portion of the Landfill Parcel outside the Project Parcels; Master Developer for all project features in the Developer Airspace Parcels or owned by Master Developer in the Project Parcels.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Whenever there is “measurably significant” geochemical evidence of an exceedance of concentration limits or significant physical evidence of a release, an Evaluation Monitoring Program (EMP) must be implemented at the direction of the Executive Officer.	WDRs	Sec. B.7	City to implement the Evaluation Monitoring Program; however, if it is determined that the source of the impact is caused or exacerbated from Master Developer’s activities, then Master Developer to be responsible for (1) the cost of determining the source of the impact and (2) the cost of the Evaluation Monitoring Program.
All reports submitted pursuant to the WDRs must be prepared under the supervision of and signed by appropriately licensed professionals, as acceptable to the Executive Officer.	WDRs	Sec. B.8	City as to reports prepared by the City; Master Developer as to reports prepared by Master Developer.
Landfill piles or piers must be constructed so as not to impact water quality, serve as conduits for leachate or landfill gas/VOC, and be able to withstand stresses caused by settlement and seismic activity. Monitoring ports must be installed through the platform structure to observe and measure settlement around the piles or columns.	WDRs	Sec. B.9	Master Developer



**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Incorporate a contingency plan into all work plans for drilling through the refuse, whether for investigation purposes or for installation of wells, structural piles, or any excavation that may encounter waste.	WDRs	Sec. B.10	Master Developer as to any activity performed by or on behalf of Master Developer on the Project Parcels. City as to any drilling or well installation conducted by City.
Operate the landfill gas collection system and landfill gas mitigation system uninterrupted, except as required and permitted for maintenance and/or repairs.	WDRs	Sec. B.11	City for City Landfill Systems; Master Developer for Developer Landfill Systems
Prevent downwater migration of water and upward migration of landfill gas through cracks in the landfill cap that cannot be fully captured in the landfill gas mitigation systems.	WDRs	Sec. B.12	Master Developer as to Developer Airspace Parcels, and pilings and any Developer-maintained parks in a Project Parcel. City as to other portions of the Landfill Parcel outside the Developer Airspace Parcels.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Design and construct project features above the waste and within the development that are critical to the protection of all occupants and/or water quality to withstand stresses caused by landfill settlement and seismic activity.	WDRs	Sec. B.13	Master Developer for project features Master Developer designs and constructs. City for project features City designs and constructs (i.e. certain features in Parcel 3).
Ensure that access is available for inspection and repair of critical features within the development that are related to the protection of occupants, water quality and the structural features of the development.	WDRs	Sec. B.14	City for City Landfill Systems; Master Developer for all other project features.
Prior to the construction of each phase of development on top of the Landfill cap, certify that there is a continuous clay liner/cap at least one foot thick with permeability of less than 10 <sup>-6</sup> cm/sec above the Landfill in the parcel included in the area of phased construction.	WDRs	Sec. B.15	Master Developer
Design and maintain podium structures constructed over or adjacent to refuse to prevent infiltration of any fluids from migrating into the final cover of the Landfill.	WDRs	Sec. B.16	Master Developer

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Notify the Regional Water Board of any failure occurring in the Landfill that threatens the integrity of containment or control features or structures at the Landfill.	WDRs	Sec. B.17	City to notify Regional Water Board of any failure; Master Developer must notify City of the failure of any project feature except for City Landfill Systems as soon as feasible but in no case later than twelve (12) hours after discovery of any such failure.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Grade and construct final cover systems for waste management units to promote lateral runoff and prevent ponding and infiltration of water.	WDRs	Sec. B.18	Master Developer as to grading and construction of final cover systems; City as to ordinary maintenance of public streets. Master Developer to be responsible for addressing any settlement/grading issues that arise on the Project Parcels.
Protect the Landfill from washout or erosion of wastes from inundation, which could occur as a result of a 100-year, 24-hour storm event or as the result of flooding with a return frequency of 100 years.	WDRs	Sec. B.19	City as to City Landfill Systems; Master Developer for all other project features.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Review of SMP after each phase of development and proposal of any improvements that may be necessary to identify water quality impacts from the Landfill that may be caused by development.	WDRs	Sec. B.20	City to review SMP; Master Developer to install any such improvements necessary
Install new monitoring stations to replace any monitoring wells designated as monitoring stations that are destroyed or lost during Landfill development or maintenances, so as to provide equivalent or better monitoring capacity.	WDRs	Sec. B.21	Master Developer to be responsible for replacement of monitoring wells/stations that are required due to Master Developer's activities; City to be responsible for replacement of monitoring wells/systems destroyed or lost during maintenance.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Maintain devices or designed features installed pursuant to the WDRs, such that they continue to operate as intended without interruption, except as required or permitted for scheduled maintenance or repairs.	WDRs	Sec. B.22	Master Developer for devices or features in Project Parcels during construction. After completion of construction, City for City Landfill Systems, Master Developer for Developer Landfill Systems.
Provide and maintain a sufficient number of permanent survey monuments near the landfill from which the location and change in elevation of wastes, structures placed above the waste, waste containment features, and monitoring facilities can be evaluated for settlement throughout landfill redevelopment, landfill closure, and landfill post-closure maintenance period.	WDRs	Sec B.23	City

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
<p>Maintain and operate containment, collection, drainage, and monitoring systems for surface water, irrigation water, and stormwater.</p> <p>Maintain and operate containment, collection, drainage, and monitoring systems for groundwater and leachate.</p>	WDRs	Sec. B.24	City with respect to LCR system, groundwater, and portions of the Landfill Parcel outside Project Parcels. Master Developer shall maintain and operate all other containment, collection, drainage, and monitoring systems in Project Parcels.
<p>Monitor, vent, extract, and control landfill gases from the Landfill to prevent gas buildup in the Landfill or structures to minimize the danger of explosion, adverse health effects, nuisance conditions, or the impairment of beneficial uses of water.</p>	WDRs	Sec. B.25	Master Developer as to LFGMS (except for any LFGMS on public streets or other public areas (although none are currently anticipated)); City as to City Landfill Systems.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Construct and maintain structures that control leachate, surface drainage, erosion and landfill gases to assure they can withstand conditions generated during the maximum probable earthquake (MPE) and are accessible for inspection and repair of damage caused by a seismic event.	WDRs	Sec. B.26	Master Developer as to construction of systems. Master Developer as to operation and maintenance obligations for Developer Landfill Systems; City for operation and maintenance of City Landfill Systems
Provide reasonable access to any property owned or leased at the Landfill to allow for installation, sampling, monitoring, inspection, etc., of all devices and equipment necessary for compliance with the requirements of the WDRs.	WDRs	Sec. B.27	City as to City Landfill Systems and City Landfill Parcels; Master Developer as to Developer Landfill Systems and Developer Airspace Parcels.
When there are multiple landowners or lease holders involved, ensure continued reasonable access to any property owned or leased at the Landfill to allow for inspection, sampling, monitoring, inspection of all devices and equipment necessary for compliance with the WDRs.	WDRs	Sec. B.28	City as to City Landfill Systems and City Landfill Parcels; Master Developer as to Developer Landfill Systems and Developer Airspace Parcels.
Comply with any other applicable provisions of Title 27 that are not specifically referenced in the WDRs.	WDRs	Sec. B.29	City and Master Developer, as applicable



**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Applicability of WDR Specifications (Section B)	WDRs	Sec. B.30	Applicability shall be as set forth in this Agreement
Comply with all conditions, Prohibitions, Specifications, and Provisions of the WDRs.	WDRs	Sec. C.1	City for its activities; Master Developer for its activities
Failure to submit reports in accordance with schedules established in the WDRs or failure to submit a report of sufficient quality may subject the Parties to enforcement action pursuant to Water Code § 13268.	WDRs	Sec. C.2	City as to reports to be submitted by the City; Master Developer as to reports to be submitted by Master Developer
<p>Complete a Jurisdictional Delineation; obtain Water Quality Certification and WDRs.</p> <p>Water Quality Certification/WDRs must include specific mitigation measures. The mitigation plan must include a Monitoring and Maintenance Plan (MMP) sufficient to confirm the success of wetland mitigation projects. WDRs specify minimum components of MMP. Complete a jurisdictional delineation of wetlands and other water of the State that may be impacted by the project implementation before any development takes place. Obtain a Water Quality Certification pursuant to Clean Water Act § 401 and Waste Discharge Requirements pursuant to the California Water Code prior to impacting wetlands or other waters of the State. Any mitigation plan must include a monitoring and maintenance plan (MMP). Submit a cost estimate for funding the mitigation program.</p> <p>COMPLIANCE DEADLINE: 180 days prior to commencement of</p>	WDRs	Sec. C.3	Master Developer. Any documentation submitted to a governmental agency pursuant to this requirement must first be reviewed and approved by City.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
development activities on any portion of the property above the Landfill identified as a potential water of the State.			

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit a Work Plan and Technical Report evaluating remaining data gaps for leachate/groundwater and select suitable locations for addition of monitoring wells to the SMP. Executive Officer may require a Corrective Action Plan if ongoing leachate monitoring indicates a buildup of leachate or a release of CVOCs or other monitoring parameters that may negatively impact beneficial uses of groundwater.	WDRs	Sec. C.4	Master Developer to submit work plan and technical report (after review and approval by City); City to conduct monitoring of wells that are added to the SMP; City to conduct any corrective action resulting from buildup of leachate or a release of CVOCs or other monitoring parameters that may negatively impact beneficial uses of groundwater provided that any corrective action required as a result of Master Developer activities shall be at the cost of Master Developer.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
<p>Monitor groundwater and landfill gas at test pile locations and possibly other locations where test piles are installed prior to the commencement of development, to evaluate the potential for the migration of landfill leachate into underlying groundwater, migration of landfill gases upward through the cap, and migration of atmospheric oxygen downward through the cap into the refuse.</p> <p>Submit Work Plan proposing methodology to be used and Technical Report summarizing the results of the evaluation.</p>	WDRs	Sec. C.5	Master Developer to conduct monitoring and submit work plan and technical report (after review and approval by City).
<p>Submit Post-Closure Maintenance Plan.</p>	WDRs	Sec. C.6	Master Developer to prepare Post-Closure Maintenance Plan for each Phase, subject to City review and approval.
<p>Prior to each phase of development over the Landfill, evaluate need for changes to ensure adequacy of Landfill's Detection Monitoring Plan (DMP) to promptly detect releases to groundwater or surface water from the Landfill or any changes in water quality that may have been caused by post-closure development activities. Propose to the Executive Officer any improvements needed to identify water quality impacts and demonstrate compliance.</p>	WDRs	Sec. C.7	City; however, Master Developer shall be responsible for any additional improvements that may be necessary due to changes to the Detection Monitoring Program resulting from a phase of Project construction.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit a Technical Report that provides well construction details, geologic boring logs, and well development logs for all new wells installed or destroyed as part of the Detection Monitoring Plan (DMP) or other provisions of the WDRs.	WDRs	Sec. C.8	City to submit well construction reports for all new wells; however, Master Developer must submit to City well construction reports for wells required by or as a result of an investigation required by the WDRs which is performed by Master Developer, or as a result of Master Developer's activities
Prior to each phase of development over the Landfill, submit technical documents that include: (i) Landfill Cap Certification; (ii) Geotechnical Investigation Report and soil interaction evaluation; (iii) design details showing critical project features in accordance with WDR Section C.9.c; (iv) certification that all other required agency permits and approvals have been obtained; (v) certification that the proposed development is consistent with the April 2016 final EIR and November 17, 2016 final PCLUP.	WDRs	Sec. C.9	Master Developer

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Prior to proposed grading or development greater than 1 acre in size, submit a Notice of Intent (NOI) to the State Water Board, submit a Stormwater Pollution Prevention Plan (SWPPP), and implement Best Management Practices (BMPs) for the control of stormwater in accordance with the State Water Board's General Permit for Stormwater Discharges Associated with Construction Activities (Order No. 2010-0014-DWQ, NPDES Permit No. CAS000002). Specifically, comply with the following requirements: (i) Prior to the start of the rainy season, ensure effective erosion control measures have been implemented; and (ii) Use appropriate sediment and silt control measures where areas of bare soil are exposed during the rainy season.	WDRs	Sec. C.10	Master Developer
Submit treatment plans for runoff generated from impervious surfaces to the Executive Officer for review; these treatment plans shall include the operation and maintenance manual for the treatment measures, identify the responsible party for implementing operation and maintenance of the treatment measures, and identify the funding source for operation and maintenance of the treatment measures.	WDRs	Sec. C.11	Master Developer as to stormwater runoff from Project Parcels, both during construction and after completion of construction. City responsible for NPDES related to groundwater and LCR system and for monitoring off-site water bodies.
Submit technical reports that describe design features and methods to access, inspect, and repair critical features above the landfill clay cap and within the development that are related to the protection of occupants, water quality, and the structural integrity of development features.	WDRs	Sec. C.12	Master Developer subject to City review and approval.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit semi-annual summary reports that certify that the landfill gas vapor system has operated uninterrupted during the reporting period and remains protective of human health and the environment.	WDRs	Sec. C.13	City for City Landfill Systems; Master Developer for Developer Landfill Systems.
Submit a technical report to the Regional Water Board detailing repair and maintenance activities that need to be completed prior to the commencement of the next rainy season, along with a schedule for repair, maintenance, and monitoring during the next 12 months.	WDRs	Sec. C.14	City; Master Developer to provide in a timely manner information regarding repair and maintenance activities to City for inclusion in report.
Submit an Emergency Response Contingency Plan acceptable to the Executive Officer outlining measures necessary in order to stop and contain the migration of pollutants to receiving waters as the result of any earthquake generating ground shaking, excessive rainfall, damaging tidal action, or other significant events. An Evacuation Plan must be implemented in the event that hazardous conditions pose a risk to the health and safety of occupants, visitor, or workers at the site.	WDRs	Sec. C.15	City responsible for Emergency Response Contingency Plan; Master Developer to provide to City in a timely manner all information necessary for the plan as it relates to the Developer Project features. Master Developer also to submit any evacuation plan needed.

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit a Post-Earthquake Inspection Report acceptable to the Executive Officer in the event of an earthquake generating ground shaking of Moment Magnitude 5.5 or greater, at or within 30 miles of the Landfill, or any other earthquake that results in potentially damaging effects.	WDRs	Sec. C.16	City; Master Developer to provide to City in a timely manner all information necessary for the report as it relates to the Developer Project features
Upon discovery of water quality impacts or damage to the landfill cap or to structures that contain waste or control leachate, surface drainage, and landfill gases, submit a Corrective Action Plan.	WDRs	Sec. C.17	City. Master Developer will be responsible for the cost of investigating/remediating conditions caused or exacerbated by the Master Developer or tenants or occupants of the Airspace Parcels.
Provide financial assurance for post-closure maintenance in accordance with Title 27. Provide evidence to the Executive Officer that the financial assurance mechanism is acceptable to CalRecycle.	WDRs	Sec. C.18	City
Provide financial assurance for corrective action in accordance with Title 27. Provide evidence to the Executive Officer that the financial assurance mechanism is acceptable to CalRecycle.	WDRs	Sec. C.19	City. Master Developer will be responsible for reimbursing the City for financial assurance required as a result of a corrective action required as a result of Master Developer activities.



**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Immediately notify the Regional Board of any flooding, ponding, settlement, equipment failure, or other change in landfill conditions that could impair the integrity of the landfill cap, building protection system, waste or leachate containment facilities, and/or drainage control structures and immediately make repairs. Submit a technical report documenting corrective measures taken.	WDRs	Sec. C.20	City to notify Regional Water Board of any such change in Landfill conditions; Master Developer must notify City of the failure of any change resulting on the Project Parcels as soon as feasible but in no case later than twelve (12) hours after discovery of any such failure.
Submit a report for long-term flood protection of the Landfill. Update the report every 5 years throughout the post-closure maintenance period of the Landfill.	WDRs	Sec. C.21	City
Maintain a copy of the WDRs and make available to all employees or contractors performing work at the Landfill.	WDRs	Sec. C.22	City and Master Developer
Provide notification of any proposed transfer of responsibility under the WDRs to a new discharger.	WDRs	Sec. C.23	City to notify the Executive Officer; however, Master Developer to notify City at least 90 days prior to any such proposed transfer of the WDR responsibilities, and include the required written agreement.
Correct Report of Waste Discharge if missing facts or includes incorrect information.	WDRs	Sec. C.24	City to submit any corrections; Master

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
			Developer to provide to City in a timely manner all facts or information necessary to submit such corrections as they relate to the Project Parcels.
Order subject to revision by RWQCB	WDRs	Sec. C.25	N/A
Order does not convey any property rights or exclusive privileges.	WDRs	Sec. C.26	N/A
Provisions of the Order are severable.	WDRs	Sec. C.27	N/A
Properly operate and maintain all facilities and systems of treatment and control installed or used to achieve compliance with the conditions of the WDRs.	WDRs	Sec. C.28	City for City Landfill Systems; Master Developer for Developer Landfill Systems
Report discharge of hazardous substance in or on any water of the State. Submit written report describing discharge and corrective actions taken or planned.	WDRs	Sec. C.29	City to report any discharge to the Regional Water Board; Master Developer to provide to City in a timely manner all any facts or information necessary for such a report to the extent that such discharge is caused by Developer, or emanates from the

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
			Project Parcels.
Allow the Regional Water Board access to premises for inspection.	WDRs	Sec. C.30	City as to the City Landfill Parcels; Master Developer as to the Developer Airspace Parcels
All analyses shall be conducted at a laboratory-certified for such analyses by the California Department of Public Health.	WDRs	Sec. C.31	City as to analyses performed by or on behalf of City; Master Developer as to analyses performed by or on behalf of Master Developer

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Apply for NPDES permit for any point source discharges.	WDRs	Sec. C.32	Master Developer to prepare NPDES application for any new point source discharges; City to file the NPDES permit application; prior to issuance of a certificate of occupancy for any part of the Project, City and Master Developer to execute Project-specific agreement to ensure allocation of responsibilities under NPDES permit (including inspection and maintenance) consistent with the terms of this Agreement.
Report any event of noncompliance within 24 hours of being made aware of the circumstances. Submit a written report describing noncompliance and steps taken.	WDRs	Sec. C.33	City as to noncompliance it causes or which arises from City Landfill Systems; Master Developer for noncompliance it causes or which arises from Master Developer or tenants or occupants of the Airspace Parcels

**EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX**

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Provide copies of all correspondence, technical reports, and other documents pertaining to compliance with the WDRs to (i) Regional Water Board; (ii) Santa Clara County Department of Environmental Health; (iii) CalRecycle; (iv) Santa Clara Valley Water District; and (v) City of Santa Clara, Water and Utilities.	WDRs	Sec. C.34	City as to technical reports submitted by City and City correspondence; Master Developer as to technical reports submitted by Master Developer and Developer correspondence
Hard copies of technical reports and plans should include: (i) Identification of any obstacles that may threaten compliance with the schedule; (ii) in the event of noncompliance with any Prohibition, Specification, or Provision of the WDRs, written notification that clarifies the reasons for non-compliance and proposes specific measures to achieve compliance; (iii) in the SMP, an evaluation of the current groundwater, surface water, and leachate monitoring systems and a proposal for modifications as appropriate; (iv) a signed transmittal letter and professional certification by a California-licensed civil engineer or a professional geologist.	WDRs	Sec. C.35.a.i	City as to technical reports submitted by the City; Master Developer as to technical reports submitted by Master Developer
The following information must be submitted electronically: (i) Groundwater, surface water, and leachate analytical data; (ii) Surveyed locations of monitoring wells; (iii) Boring logs describing monitoring well construction; (iv) PDF copies of all reports; and (v) any additional submittal to GeoTracker the Executive Officer requires.	WDRs	Sec. C.35.b	City as to technical reports submitted by the City; Master Developer as to technical reports submitted by Master Developer

# Exhibit D

## Insurance Requirements

## EXHIBIT D

### INSURANCE REQUIREMENTS

Master Developer shall maintain, with unaffiliated insurers, the policies of insurance described in this Exhibit D in form and substance reasonably satisfactory to the City (collectively, the “**Project Insurance Programs**”). Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the intent of this Exhibit D is to provide anticipated minimum limits, baseline coverage parameters and material terms for the Project Insurance Programs based on information available at the time of execution of the O&M Agreement about what is reasonably commercially available and appropriate in light of the risks associated with the Parties’ obligations under the Agreement. If coverage meeting the limits, parameters and terms set forth in this Agreement is not reasonably commercially available for any particular Project Insurance Program at the time such policy is required to be in place under this Exhibit, Master Developer and City shall meet and confer in good faith to determine what alternative coverage is reasonably commercially available and Master Developer shall be required to obtain and maintain policies providing such coverage.

**Section I** describes the Project Insurance Programs required during the performance of Pre-Phase Approved Activities (as defined on Schedule 1 attached hereto). **Section II** describes the Project Insurance Programs required upon execution of the Ground Lease for the Tasman Parcels (as defined in the DDA) (the “**Phase 1 Activities**”). **Section III** describes the Project Insurance Programs required upon the earlier of (i) execution of a Ground Lease for any real property that includes any portion of any Landfill Parcel; or (ii) commencement of physical work on, at, above or under any portion of any Landfill Parcel (except in connection with Pre-Phase Approved Activities) (“**Landfill Phase Activities**”). **Section IV** describes the operational Project Insurance Programs required after completion of Infrastructure, Developer Improvements (including Developer Landfill Systems), City Landfill Systems and/or Buildings (collectively, “**Improvements**”), as applicable, as evidenced by either (i) a temporary or permanent Certificate of Occupancy for such Developer Improvement and/or Building (or portion thereof); or (ii) the placement of any Infrastructure, Developer Improvement (including Developer Landfill Systems), City Landfill System and/or Building (or portion thereof) into its intended use in accordance with the terms of the Project Insurance Programs (“**Substantial Completion**”)<sup>1</sup>.

Capitalized terms used in this Exhibit D not otherwise defined herein shall have the same meaning as such terms in the Landfill Post-Closure Operation and Management Agreement (the “**O&M Agreement**”) or as are commonly and presently defined in the insurance industry. For purposes of this Exhibit G, the term “**Project Parcel**” shall include the Tasman Parcels that will be ground leased to Master Developer in accordance with the terms of the DDA.

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<sup>1</sup> Master Developer shall prepare and maintain a matrix detailing the specific coverages applicable to specific Improvements (the “Improvements Coverage Summary”) including, without limitation, the status of Substantial Completion on the Improvements within any Phase or Partial Phase. The Improvements Coverage Summary shall be updated regularly during the term of the Project and Master Developer shall work in good faith with the City to maintain monthly status calls to discuss the Improvements Coverage Summary (or at such other reasonable intervals as requested by the City).

**I. PRE-PHASE APPROVED ACTIVITIES.** The Project Insurance Programs for any Pre-Phase Approved Activities shall be governed by the insurance terms set forth on the applicable Permit to Enter or other document authorizing such Pre-Phase Approved Activity as approved in writing by the City.

**II. PHASE 1 ACTIVITIES.** Prior to execution of the Ground Lease for the Tasman Parcels and at all times during Phase 1 Activities, the Master Developer shall obtain and maintain, or cause to be maintained, the following Project Insurance Programs until Substantial Completion has been achieved for the applicable Improvements on the Tasman Parcels or until commencement of Landfill Phase Activities, as specified herein.

(a) Builder's Risk Insurance. Master Developer shall obtain and maintain site-specific<sup>2</sup> builder's risk insurance with respect to Phase 1 Activities and otherwise consistent with the Builder's Risk Program described in Section III(a) below.

(b) Terrorism Insurance. The insurance required in this Section II, subsections (a), (d), (g) and (h) shall include, or the Master Developer shall obtain on a stand-alone basis, terrorism coverage for the Tasman Parcels on terms (including amounts) consistent with those required under those subsections.

(c) Flood Insurance. Master Developer shall obtain and maintain flood insurance on the Tasman Parcels consistent with the flood insurance requirements described in Section III(c) below.

(d) Owner's Interest Liability Insurance. Master Developer shall obtain and maintain commercial general liability insurance and umbrella and/or excess liability insurance (the "**Owner's Interest GL Program**"), including coverage for personal injury, bodily injury, death, accident and property damage, which insurance shall: (1) be on a site-specific "occurrence" form; (2) be the primary insurance for third-party bodily injury and property damage at, on or under the Tasman Parcels; and (3) collectively provide minimum coverage limits of at least (A) \$25,000,000 per occurrence, (B) \$25,000,000 general aggregate, and (C) \$25,000,000 products completed operations aggregate over the term of the policy; provided, however, that upon commencement of vertical construction on the Tasman Parcels, Master Developer shall satisfy the foregoing requirements by obtaining and maintaining (including reinstatement of limits as set forth in Section III(d) below) an Owner or Contractor Controlled Insurance Program ("**OCIP/CCIP**") with limits of liability of at least \$100,000,000 per occurrence and in the aggregate. The products and completed operations coverage shall be maintained for the entire statute of repose for construction defect claims in California. Master Developer shall exercise commercially reasonable efforts to avoid an exclusion for earth movement or subsidence under the Owner's Interest GL Program. The City will be scheduled as an additional insured under the Owner's Interest GL Program.

(e) Commercial Auto Liability Insurance. Master Developer shall obtain and maintain commercial auto liability insurance covering liability arising out of the ownership,

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<sup>2</sup> Except as otherwise expressly provided hereunder the term "site-specific" shall refer to a policy specifying that the covered location is the Project Parcel for which the coverage is required and for no other property, *i.e.*, for the insurance required by this Section II, the term "site specific" means the covered location must be only the Tasman Parcels.



maintenance or use of any owned, hired, borrowed and non-owned vehicle, if any, with minimum limits of not less than \$1,000,000 combined single limit for bodily injury and property damage, together with umbrella and/or excess liability insurance which is at least as broad as the commercial automobile liability insurance, with limits of not less than \$25,000,000.

(f) Professional Liability Insurance. Master Developer shall cause any party involved in the design of Improvements on the Tasman Parcels to obtain and maintain Professional Liability Insurance consistent with the requirements described in Section III(f) below.

(g) Contractor's Pollution Liability. Master Developer shall continue to maintain the Contractor's Environmental Legal Liability Policy, No. 004130100 delivered to the City for the Pre-Phase Approved Activities provided that the insured "contracted operations" thereunder will be expanded to include all construction related activities on, at or under the Tasman Parcels.

(h) Pollution Legal Liability Insurance. Master Developer shall maintain site-specific Pollution Legal Liability insurance with respect to the Tasman Parcels with limits of liability equal to at least \$10,000,000 per incident and in the aggregate and a self-insured retention of no more than \$250,000 per incident, until the Pollution Legal Liability Insurance required under Section III(i) below is obtained. The City and the Master Developer (and their respective affiliates) will be named insureds thereunder. The City shall have the right to review quotes, policy forms and endorsements for the Pollution Legal Liability insurance.

**III. LANDFILL PHASE ACTIVITIES.** Upon the earlier of (i) execution of a Ground Lease for any real property that includes any portion of any Landfill Parcel; or (ii) commencement of Landfill Phase Activities and at all times during Landfill Phase Activities, the Master Developer shall obtain and maintain the following Project Insurance Programs until Substantial Completion has been achieved for the applicable Improvements in that particular Project Parcel (except as otherwise expressly provided hereunder):

(a) Builder's Risk Insurance. Master Developer shall maintain site-specific<sup>3</sup> builder's risk insurance (the "**Builder's Risk Program**") for each Project Parcel that includes a Landfill Parcel for not less than 100% of the completed project insurable replacement cost value of the Improvements and Earth Movement with a sublimit no less than the Probable Maximum Loss ("**PML**") as determined by an independent third-party professional (inclusive of property damage and soft costs/business interruption), which PML is reasonably acceptable to the City. In no event shall the earthquake coverage under the Builder's Risk Program have a limit of liability of less than the 250-year return period of the PML. The Builder's Risk Program shall include endorsements providing replacement cost coverage, agreed amount and/or coinsurance waiver. The Builder's Risk Program shall grant permission to occupy prior to any occupancy of a given building and the Builder's Risk Program shall cover:

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<sup>3</sup> Consistent with footnote 2 and except as expressly provided hereunder, for the insurance required by this Section III, the term "site specific" means the covered location must include the specific Project Parcel that encompasses some or all of the applicable Landfill Parcel until such time that Substantial Completion has been achieved for such specific Project Parcel, and no other property.

(i) any Improvements on the property, including 100% of the insurable replacement cost value of all tenant improvements and City Landfill Systems and betterments that any agreement requires Master Developer to insure, against risks of loss to the Improvements customarily covered by “Cause of Loss - Special Form” policies as available in the insurance market on the date hereof (and against such additional risks of loss as may be customarily covered by such policies after the date hereof);

(ii) loss of materials, furniture, fixtures and equipment, machinery, and supplies which become part of the completed project whether on-site, as part of the City Landfill Systems, in transit, or stored off-site, or loss of any temporary structures, sidewalks, retaining walls, and underground property (including the systems comprising the City Landfill Systems);

(iii) soft costs, including coverage for interest expense during the period of the construction, and coverage for recurring expenses and delayed completion business income/rental interruption (if any) on an actual loss sustained basis subject to policy limits; and

(iv) loss of the value of the undamaged portion of the Improvements, additional expense of demolition, and increased cost of construction arising from operation of building laws or other legal requirements at the time of restoration, subject to a limit reasonably satisfactory to the City.

The Builder’s Risk Program shall automatically reinstate limits upon the occurrence of any loss thereunder. The Builder’s Risk Program shall be primary with respect to all property damage at, on or under the property at each applicable Project Parcel until Substantial Completion for the applicable Improvements in that Project Parcel occurs. The Builder’s Risk Program shall also include affirmative LEG-3 coverage with respect to repair of physical damage to City Landfill Systems arising out of a loss. The City will be named as a “loss payee” on the Builder’s Risk Program and the Master Developer shall have an affirmative obligation to promptly elect whether to commence and diligently pursue re-construction of the City Landfill Systems in the event of any loss thereunder, the terms of which election shall be described in the Insurance Administration Agreement.

(b) Terrorism Insurance. The insurance required in this Section III, subsections (a), (d), (g) and (h) shall include, or the Master Developer shall obtain on a stand-alone basis, terrorism coverage on terms (including amounts) consistent with those required under those subsections. For so long as the Terrorism Risk Insurance Program Reauthorization Act 2019 or any replacement, reauthorization or extension thereof (“TRIPRA”) is in effect, coverage against acts which are “certified” within the meaning of TRIPRA shall satisfy this requirement. In the event TRIPRA is no longer in effect, Master Developer shall obtain and maintain such terrorism insurance to the extent such coverage is commercially available and reasonable cost.

(c) Flood Insurance. Flood insurance if any portion of the Project Site or personal property is currently or at any time in the future located in an area designated by the Federal Emergency Management Agency as a special flood hazard area (“SFHA”) and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto), but in no event no less than the amount sufficient to meet the

requirements of applicable law and governmental regulation. Flood insurance may be included in the Builder's Risk Program prior to Substantial Completion as an alternative to NFIP.

(d) Liability Insurance. Master Developer shall sponsor, administer and maintain a commercial general liability insurance and umbrella and/or excess liability insurance (the "**GL Insurance**") including coverage for personal injury, bodily injury, death, accident and property damage. The GL Insurance shall: (1) be on a site-specific "occurrence" form for each Project Parcel (except as otherwise provided herein); (2) be the primary insurance for third-party bodily injury and property damage at or on any Project Parcel at all times during Landfill Phase Activities at that Project Parcel; and (3) collectively provide minimum coverage limits of at least (A) \$50,000,000 per occurrence, (B) \$50,000,000 general aggregate, and (C) \$50,000,000 products completed operations aggregate over the term of the policy for each Project Parcel. The products and completed operations coverage shall be maintained for the entire statute of repose for construction defect claims in California. Master Developer shall exercise commercially reasonable efforts: (i) to avoid an exclusion for earth movement or subsidence under the GL Insurance; and (ii) to include manuscript changes to the "pollution exclusion endorsement" providing affirmative coverage for concussive risk associated with the installation of piles and the other Landfill Phase Activities. Notwithstanding the foregoing, during the period of construction of improvements on Phase 2 and Phase 3 (each as defined in the DDA), Master Developer shall (and for subsequent phases, Master Developer may), satisfy these coverage requirements by implementing an OCIP/CCIP with limits of liability of at least \$100,000,000 per occurrence and in the aggregate for each of Phase 2 and Phase 3. Master Developer may elect to obtain a single OCIP/CCIP for Phase 1 (as defined in the DDA), Phase 2 and Phase 3, in which event the limits of liability for such OCIP/CCIP program shall be at least \$200,000,000 per occurrence and in the aggregate. The GL Insurance shall schedule the City as an additional insured, including with respect to both ongoing and completed operations, by endorsements satisfactory to the City. Such insurance shall be primary and any other insurance maintained by the City shall be excess only and not contributing with this insurance. Except for completed operations (which shall be an aggregate limit over the term of the general liability program), the Master Developer shall purchase additional limits of an amount equal to at least forty percent (40%) of the applicable per occurrence and aggregate limits of the GL Insurance for any Phase (or series of Phases to the extent covered under a single OCIP/CCIP) at any time that the applicable aggregate GL Insurance limit for such Phase (or series of Phases, as applicable) has been eroded by eighty percent (80%) or greater.

(e) Commercial Auto Liability Insurance. Commercial auto liability insurance covering liability arising out of the ownership, maintenance or use of any owned, hired, borrowed and non-owned vehicle, if any, with minimum limits of not less than \$1,000,000 combined single limit for bodily injury and property damage, together with umbrella and/or excess liability insurance which is at least as broad as the commercial automobile liability insurance, with limits of not less than the applicable GL Insurance limits for such Project Parcel.

(f) Professional Liability Insurance. Master Developer shall cause any party involved in the design of Improvements to obtain and maintain Professional Liability Insurance during the period commencing on the date of such party's agreement and continuously renewing for or having an extended reporting period of not less than the statute of repose for design defects in California, with limits of insurance not less than: (1) \$10,000,000 per claim and \$20,000,000

in the aggregate for designers of record (which shall include any designer of piles penetrating any Landfill Parcel); (2) \$5,000,000 per claim and in the aggregate for any designers of record for any components of the City Landfill Systems; (3) \$2,000,000 per claim and in the aggregate for any other design professionals for any components of the City Landfill Systems; and (4) \$1,000,000 per claim and in the aggregate for all other design professionals. Master Developer shall provide the City with certificates evidencing such insurance as each designer is contracted and thereafter, annually on a going forward basis or as otherwise requested by the City. The parties agree that the Insurance Administration Agreement shall describe the process of claims administration against design professionals between the City and Master Developer.

(g) Owner's Protective Professional Indemnity Insurance. At all times that any Landfill Phase Activity is ongoing in a particular Project Parcel, Master Developer shall obtain and maintain an Owner's Protective Professional Indemnity (Design Team Errors and Omissions) Policy ("**OPPI**") having a limit of liability of not less than \$20,000,000 per claim and in the annual aggregate for Phases 1, Phase 2 and Phase 3; provided, however, Master Developer may, at its discretion, elect to implement a single OPPI program for Phase 1, Phase 2 and Phase 3 collectively, in which event the limits of liability for such OPPI program shall be at least \$40,000,000 per occurrence and in the aggregate. City reserves the right to establish minimum OPPI limits for any real property that is not part of Phase 1, Phase 2 or Phase 3 prior to the execution of any Ground Lease on such real property. The OPPI shall provide the City (as owner of the City Landfill Systems) with affirmative coverage for defense and payment of loss for third-party claims resulting from design errors and omissions relating to the City Landfill Systems. Each OPPI program shall have a retro-active date coinciding with the execution of the earliest design agreement with respect to such Project Parcel and shall extend to cover the statute of repose for design defects in California for all Improvements on such Project Parcel. The parties agree that the Insurance Administration Agreement shall describe the process of claims administration for any professional liability losses at the Project Site. The City shall have the right to review, quotes, policy forms and endorsements (but not underwriting submissions) for the OPPI.

(h) Contractor's Pollution Liability Insurance. Master Developer shall maintain a Contractor's Pollution Liability ("**CPL**") insurance program covering cleanup costs and bodily injury and property damage claims through and including Substantial Completion for the applicable Improvements in that particular Project Parcel. The City shall have the right to review underwriting submissions, quotes, policy forms and endorsements for the CPL.

(i) The CPL shall have a limit of liability of at least \$50,000,000 per incident and in the aggregate and coverage under the CPL shall be extended to third-party contractors performing work at the Project, including, without limitation, contractors performing operation and maintenance of the City Landfill Systems until Substantial Completion of all City Landfill Systems being constructed by Master Developer on any Project Parcel. The City will be a named insured under the CPL.

(ii) *Coverage Parameters.* The CPL shall: (a) provide site specific coverage for pollution conditions resulting from any contracted operations at any Project Parcel (whether on, at, under or above any Landfill Parcel), the definition(s) for which contracted operations shall include the realignment and reconstruction of City Landfill Systems by Master

Developer, the construction of foundation systems and building protection systems/vapor mitigation systems, and operation and maintenance activities associated with the City Landfill Systems to be performed by the City on such Project Parcel; (b) provide site specific coverage<sup>4</sup> for operation and maintenance activities associated with City Landfill Systems to be performed by the City on any portion of a Landfill Parcel that is not part of a Project Parcel (the “**City Non-Project Parcel O&M**”) until Substantial Completion of all of the City Landfill Systems being constructed by Master Developer on all Landfill Parcels, subject to Section III (h)(iii) below; (c) provide coverage for cleanup of groundwater pollution conditions existing as of the date hereof to the extent such pollution conditions are exacerbated by Project contractors, Master Developer activities or City Non-Project Parcel O&M; (d) have no retroactive or reverse retroactive date; (e) have ten (10) years of “completed operations” coverage; and (f) be subject to a maximum self-insured retention of no more than \$250,000 per incident. There shall be no exclusion or limitation of coverage to the City or Master Developer with respect to claims made against each other, notwithstanding the insured status of the parties. Issues related to the primacy of the CPL shall be addressed in the Insurance Administration Agreement.

(iii) *City Non-Phase O&M Sublimit.* The parties agree that the CPL shall be subject to a sublimit of \$5,000,000 with respect to all losses arising out of the City Non-Phase O&M. Issues related to the implementation of such sublimit will be addressed in the Insurance Administration Agreement.

(iv) *City Reimbursement Obligation.* Within sixty (60) days of the binding of the CPL and any endorsements thereafter, the City shall reimburse Master Developer for ten percent (10%) of the total premium, surplus lines taxes and applicable brokerage fees required to purchase the CPL up to a maximum reimbursement amount of \$200,000.

(i) Pollution Legal Liability Insurance. Master Developer shall maintain site-specific<sup>5</sup> Pollution Legal Liability insurance (“**PLL**”) for the entire Project Site (including all Landfill Parcels and the Tasman Parcels) with limits of liability equal to at least \$75,000,000 per incident and in the aggregate, a self-insured retention of no more than \$250,000 per incident and an initial term of at least ten (10) years. Upon the expiration of the term of the PLL or such earlier date as Master Developer may elect, Master Developer shall exercise commercially reasonable efforts to obtain (subject to pollution insurance market conditions), a new policy of pollution legal liability insurance (the “**PLL Renewal**”) having substantially the same coverage terms as the PLL with limits of liability of at least \$75,000,000 per incident and in the aggregate, a self-insured retention no greater than \$250,000 and a term of five (5) years or such longer term as would be necessary to ensure that the PLL Renewal remains in place until a date that is fifteen (15) years from the inception date of the initial PLL policy. The City shall have the right to review underwriting submissions, quotes, policy forms and endorsements for the PLL and the PLL Renewal programs.

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<sup>4</sup> Notwithstanding footnotes 2 and 3, for this portion of the CPL coverage, “site specific” shall mean the entire Project Site except for the Tasman Parcels, including all Project Parcels and Landfill Parcels that are not yet a Project Parcel except for the Tasman Parcels.

<sup>5</sup> Notwithstanding footnotes 2 and 3, “site specific” for the PLL coverage required by this Section III(h) shall mean the entire Project Site is the covered location, including each Project Parcel, any Landfill Parcel that is not yet subject to a Ground Lease and the Tasman Parcels.



(i) *No Cancellation.* No insured may cancel or terminate the PLL or the PLL Renewal before the expiration of its term without the consent of both Master Developer and the City; provided, however, that the Master Developer may cancel and re-write the PLL and/or the PLL Renewal at Master Developer's discretion with materially the same terms upon commencement of any new Phase or Partial Phase.

(ii) *Coverage Parameters.* Subject to market availability and Project Site conditions, the PLL and the PLL Renewal shall include affirmative coverage for known and unknown pre-existing conditions regulatory re-openers and new pollution conditions. The PLL and the PLL Renewal shall provide affirmative coverage for third-party bodily injury and property damage claims (including natural resource damages). The Master Developer shall use commercially reasonable efforts to obtain coverage under the PLL and the PLL Renewal for: (x) off-site cleanup costs related to the known groundwater plume; (y) losses and on-site cleanup costs relating to a governmental order or directive requiring the City or Master Developer to perform active remedial measures for pollution conditions which have migrated into groundwater from the landfill including, without limitation, related site investigations, which coverage may contain a higher self-insured retention than \$250,000 per incident. The PLL and the PLL Renewal shall be primary and non-contributory to any other insurance carried by the City and the "insured vs. insured" exclusion shall not be applicable to claims between the Master Developer and the City. Issues related to the primacy of the PLL shall be addressed in the Insurance Administration Agreement. The City and Master Developer (and their respective affiliates) shall be included as named insureds on the PLL and the PLL Renewal with the ability to directly make claims to the insurance carrier thereunder and no third-parties other than affiliates of the City and Master Developer, or a Master Association which has executed an Assignment, Assumption and Release Agreement pursuant to Section 10 of the O&M Agreement or a Successor Entity or Mortgagee deemed to be a Successor Entity for purposes of Section 3 of Exhibit E of this Agreement, shall be a named insured under the PLL.

(iii) *City Reimbursement Obligation.* Within sixty (60) days of the binding of the PLL and PLL Renewal, as applicable, the City shall reimburse Master Developer for twenty percent (20%) of the total premium, surplus lines taxes and applicable brokerage fees for the PLL and PLL Renewal, as applicable, up to a maximum reimbursement of \$250,000 for each of the PLL and PLL Renewal.

**IV. FOLLOWING SUBSTANTIAL COMPLETION.** Following Substantial Completion for any Improvement, Partial Phase or Phase, as applicable, and, except as expressly provided to the contrary, while any Ground Lease remains in effect, Master Developer shall maintain, or cause to be maintained:

(a) Property Insurance. Property insurance covering against risks of loss customarily covered by "Cause of Loss – Special Form" policies together with coverage for earthquake as may be commercially available in the insurance market at the completion date (and against such additional risks of loss as may be customarily covered by such policies after the completion date) ("**Property Insurance**"). Such insurance shall include:

(i) 100% of the insurable replacement cost value of the Improvements which for purposes of this Exhibit shall mean actual replacement value (exclusive of costs of

excavations, foundations, underground utilities and footings) with an agreed amount endorsement without margin clause except as may be reasonably agreed by the City, and/or a coinsurance waiver endorsement and a replacement cost value endorsement without reduction for depreciation;

(ii) 100% of the insurable replacement cost value of all tenant improvements and betterments that any agreement requires Master Developer to insure;

(iii) loss of the value of the undamaged portion of the Improvements, additional expense of demolition, and increased cost of construction arising from operation of building laws or other legal requirements at the time of restoration; and

(iv) “Cause of Loss – Special Form” insurance policy which shall cover at least the following perils: building collapse; fire; flood; back-up of sewers and drains; water damage; windstorm, earthquake, landslide, mudslide and subsidence, inclusive of property damage and soft costs/business interruption with a maximum deductible of 5% of the loss and flood may have a sublimit of such amount not less than the replacement cost of the replacement value of the improvements and contents of the two floors above grade. Such insurance policy(ies) shall name Master Developer as the Insured and shall also name the City as an additional named insured with the unrestricted ability to make a claim thereunder.

(b) Terrorism Insurance. The insurance required in this Section IV, subsections (a), (f) and (j) shall include, or the Master Developer shall obtain on a stand-alone basis, terrorism coverage on terms (including amounts) consistent with those required under those subsections. For so long as TRIPRA is in effect, coverage against acts which are “certified” within the meaning of TRIPRA shall satisfy this requirement. In the event TRIPRA is no longer in effect, Master Developer shall obtain and maintain such terrorism insurance to the extent such coverage is commercially available and reasonable cost.

(c) Flood Insurance. Flood insurance if any portion of the Property or personal property is currently or at any time in the future located in an area designated by the Federal Emergency Management Agency as a SFHA and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount no less than the amount sufficient to meet the requirements of applicable law and governmental regulation.

(d) Equipment Breakdown Insurance. If not included in the Property Insurance policy retained in accordance with Section IV (a), Master Developer shall maintain equipment breakdown insurance covering all mechanical and electrical equipment, including pressure vessels and piping, against physical damage, and loss of income or rents (if any), extra expense, and expediting expense. Master Developer shall provide Equipment Breakdown Insurance on a replacement cost value basis in an amount consistent with insurance maintained by owners of similarly situated commercial real estate.

(e) Business Income and Rent Loss Insurance. As an extension to its Property Insurance, Earth Movement Insurance, Flood Insurance, Terrorism Insurance, Boiler and Machinery Insurance, and any other required property insurance policy, Master Developer shall

maintain, or cause to be maintained, business income and rent loss insurance in an amount equal to one hundred percent (100%) of the net rental income together with continuing expenses and containing an unlimited indemnity period pertaining to the time to repair or rebuild (subject to the policy limit). In addition, Business Income and Rent Loss Insurance shall be endorsed to include an extended period of indemnity of three hundred sixty five (365) days.

(f) Commercial General Liability Insurance. Commercial general liability insurance on an “occurrence” form including coverage for personal injury, bodily injury, death, and property damage on a per location basis, if available, with limits of not less than \$1,000,000 per occurrence and in the aggregate.

(g) Commercial Auto Liability Insurance. Commercial auto liability insurance covering liability arising out of the ownership, maintenance or use of any owned, hired, borrowed and non-owned vehicle, if any, with minimum limits of not less than \$1,000,000 combined single limit for bodily injury and property damage.

(h) Workers’ Compensation Insurance. Workers’ compensation as required by applicable law and employer’s liability insurance.

(i) Umbrella/Excess Liability Insurance. Umbrella/excess liability insurance with limits of at least \$200,000,000 per occurrence and in the annual aggregate sitting excess of the commercial general liability, commercial auto liability and employer’s liability insurance. The commercial general liability, commercial auto liability and umbrella/excess liability insurance shall name the City as an additional insured. Such insurance shall be primary and any other insurance maintained by the City shall be excess only and not contributing with this insurance.

(j) Pollution Legal Liability Insurance. City and Master Developer agree to meet in good faith at the expiration of the PLL Renewal to discuss obtaining additional pollution legal liability programs.

## **V. GENERAL.**

(a) Insurer Ratings. Master Developer shall obtain all required insurance (and reinsurance) from insurers authorized to do business in the State where the Property is located with an “A-: VIII” rating by A.M. Best or an alternative insurance company rating bureau acceptable to the City. The City may in its discretion permit Master Developer to maintain required insurance policies with insurance companies which do not meet the foregoing requirements.

(b) Documentation. For the types of insurance where this Exhibit provides the City with a right to review quotes, policy forms or endorsements, Master Developer agrees to provide the City with a reasonable opportunity to review and to consider in good faith the City’s comments. Master Developer shall provide certificates of insurance as may be requested by the City, in a form reasonably acceptable to the City for all required insurance, certified as true and complete by the carrier or its authorized representative.



(c) Site-Specific Programs. Except where this Exhibit expressly provides that a type of insurance must be site-specific, as defined in footnotes 2, 3, 4 and 5 above, the requirements of this Exhibit (including without limitation the requirements for first-party terrorism, commercial auto liability insurance, worker's compensation insurance and all of the Project Insurance Programs described in Section IV hereof) may be satisfied through coverage applicable to both the Project Site and other properties insured by Master Developer.

(d) Captive. Master Developer shall have the right to satisfy all or part of its insurance obligations with respect to first-party terrorism and any self-insured retention for the GL OCIP by means of a policy or policies placed with its captive insurance company Relsure Vermont Inc. (the "**Captive**") provided that the use of the Captive is in compliance with all laws and regulations applicable to the Project.

(e) Severability. All Project Insurance Programs shall provide that coverage under each Project Insurance Program shall apply as if each insured were the only insured and separately to each insured so that any misrepresentation, act or omission that is in violation of a term, duty or condition or results in the application of an exclusion under any program by or on behalf of one insured shall not prejudice the coverage rights of another insured under such program.

(f) Waiver of Subrogation. The CPL, PLL and PLL Renewal shall each include a waiver of subrogation in favor of the City so that the insurance company waives its rights of subrogation with regard to all claims covered by such programs.

(g) Minimum Limits. Notwithstanding anything to the contrary herein, the limits of coverage for all types of Project Insurance Programs required under this Exhibit D shall be the greater of (i) the minimum limits set forth in this Exhibit D or (ii) the limits provided to Master Developer under all primary, excess, umbrella and blanket policies covering operations under the O&M Agreement on a site-specific basis.

(h) Audit. The City shall have the right: (i) at least once per year; (ii) at any time that the City has a reasonable basis of actual or suspected non-compliance by Master Developer of the O&M Agreement; or (iii) during the pendency or administration of any claim under the Project Insurance Programs, to conduct an audit of some or all policies and certificates of insurance to confirm the Master Developer's compliance with the terms hereof. If any audit reveals discrepancies or non-compliance with the terms hereof, the cost of such audit shall be at Master Developer's expense.

## **Schedule 1**

### **Pre-Phase Approved Activities**

“Pre-Phase Approved Activities” shall mean the following:

1. Construction of the “Public Improvements” as approved by the City under that Permit to Enter between the City and Master Developer dated July 5, 2019, effective July 8, 2019 to May 31, 2020.
2. Construction of the “Fire Station Improvements” as approved by the City under that Permit to Enter between the City and Master Developer dated July 5, 2019, effective July 8, 2019 to March 1, 2020.
3. Any other activities expressly approved by the City in writing and evidenced by one or more Permits to Enter.

Exhibit E

Miscellaneous Provisions

## EXHIBIT E

### MISCELLANEOUS PROVISIONS

Reference is made to that certain Disposition and Development Agreement dated for reference purposes as of August 12, 2016, and recorded October 7, 2016, as Document No. 23456796 in the Official Records of Santa Clara County, California, as it may be amended from time to time (the “**DDA**”).

The term “**this Agreement**” as used in this Exhibit, shall mean the Landfill Post-Closure Operation and Management Agreement, to which this Exhibit is attached. The use of the term “**Developer**,” as used in this Exhibit, shall have the same meaning as the “Master Developer,” as defined in the introductory paragraph of this Agreement. Defined terms not otherwise set forth in this Agreement shall have the meanings set forth in Exhibit A to the DDA.

#### 1. Arbitration.

1.1 Arbitration Matters. All disputes arising from, or related to the subject matter of, this Agreement (each, an “**Arbitration Matter**”) shall be resolved by binding arbitration in accordance with the binding arbitration procedures provided herein. The Parties agree that, to the extent there are disputes under this Agreement, such disputes are likely to relate to matters of an urgent nature; therefore, the Parties have agreed that such disputes should be resolved in an expedited matter as set forth in Section 1.3 below.

#### 1.2 Good Faith Meet and Confer Requirement.

1.2.1 The Parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this Agreement. The Parties agree to attempt to identify and discuss in advance in good faith any areas of potential misunderstanding that could lead to a dispute. If either Party identifies an issue of disagreement, the Parties agree to engage in a face-to-face or immediate telephonic discussion of the matter within five (5) days of the initial request. Notwithstanding the foregoing, the failure of any Party to meet and confer as provided herein shall not impair the exercise of remedies available for any Event of Default.

1.2.2 With respect to any dispute regarding an Arbitration Matter, the Parties shall attempt in good faith to resolve the dispute for a period of ten (10) days after this Article 1 is invoked. If the dispute remains unresolved at the end of the ten (10) day period, then the Parties shall have the right to pursue the dispute resolution process set forth in Section 1.3.2 (the date on which one Party notifies another of its intent to pursue the dispute resolution process shall be referred to herein as the “**Arbitration Initiation Date**”). Nothing in this Section 1.2 shall require a Party to postpone instituting

any injunctive proceeding or to pursue resolution under this Section 1.2 if it believes in good faith that such postponement will cause irreparable harm to such Party.

### 1.3 Dispute Resolution Procedures.

1.3.1 Arbiters. The arbitrator (“**Arbiter**”) of Arbitration Matters will be selected by mutual agreement of the Parties. The Arbiter will hear all disputes under this Agreement. The Arbiter appointed must meet the Arbiters’ Qualifications. The “**Arbiter’s Qualifications**” shall be defined as a retired judge or an attorney with at least ten (10) years’ experience in complex real estate transactions, including without limitation, projects involving matters related to environmental remediation and the operation of remedial systems similar to the Project Landfill Systems in the California area. If the Parties cannot mutually agree on an Arbiter within seven (7) days after the Arbitration Initiation Date, then an Arbiter meeting the Arbiter’s Qualifications shall be appointed by the Presiding Judge of the Superior Court of Santa Clara County.

1.3.2 Arbitration Process. The Party(ies) disputing any Arbitration Matter shall submit a brief with all supporting evidence to the Arbiter with copies to all Parties no later than the date (the “**Arbitration Briefing Date**”) that is the later to occur of (a) the fifteenth (15th) Business Day after the Arbitration Initiation Date or (b) the fifth (5th) Business Day after the Arbiter is selected by the Parties or appointed by the Presiding Judge of the Superior Court of Santa Clara County. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within five (5) Business Days after distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within ten (10) Business Days after the Arbitration Briefing Date, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter shall be submitted to the Arbiter (with copies to all Parties) within ten (10) Business Days after the Arbiter’s request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly, but in any event within ten (10) Business Days after submission of such additional briefs, and no later than thirty (30) Business Days after the Arbitration Briefing Date. The decision of the Arbiter will be final, binding on the Parties and non-appealable. Nothing in this Section 1.3 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

(a) Time Period to Complete Arbitration. The arbitration shall be completed within sixty (60) calendar days of the preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbiter extends the date.

1.3.3 Additional Provisions Governing Arbitration of Disputes.

(a) Disputes Involving Arbitrability of Disputes. The Arbiter shall decide any dispute involving the right to have a disputed matter submitted to binding arbitration pursuant to Section 1.3 in accordance with this Section 1.3. The Parties to such dispute shall provide notice of the dispute and submit in writing their respective positions regarding the dispute to the Arbiter. No such submission shall exceed ten (10) double-spaced pages. The Arbiter shall make his or her decision within five (5) days of the last submission.

(b) No Ex Parte Communications. No Party or anyone acting on its behalf shall have any ex parte communication with the Arbiter with regard to any matters in issue. Communications concerning procedural matters such as scheduling shall not be included in this prohibition.

(c) Submission. Unless otherwise directed by the Arbiter or agreed by the Parties to a given dispute, the Parties involved in the dispute shall strive to make joint submissions to the Arbiter. The Arbiter shall determine the schedule for the Parties' submissions, the page and form limitations for the submissions, and the schedule and form of any hearing(s).

(d) Rules and Procedures. The Arbitration shall be conducted by JAMS pursuant to the JAMS Rules & Procedures, except as modified herein.

(e) Confidentiality. The entire Arbitration proceedings, including any filings in the Arbitration; documents exchanged by the parties and/or their counsel in connection with the Arbitration; testimony or evidence produced therein; and any decision and award, shall be confidential and not disclosed to any third party (other than a party's professional consultants only to the extent necessary for them to perform their services) unless under compulsory process of law or state or federal law or regulation.

2. Event of Default; Remedies.

2.1 General. If a Party breaches any of its obligations under this Agreement (the "**Breaching Party**"), the Party to whom the obligation was owed (the "**Notifying Party**") may notify the Breaching Party of such breach. The notice shall state with reasonable specificity the nature of the alleged breach, the particular provision of Section 2.2 under which the breach is claimed to arise and the manner in which the failure of performance may be satisfactorily cured. Failure to cure such breach within the time period specified in Section 2.2 shall be an "**Event of Default**" by the Breaching Party under this Agreement.

2.1.1 Upon delivery of a notice of breach, the Notifying Party and the Breaching Party shall promptly meet to discuss the breach and the manner in which the Breaching Party can cure the same. If before the end of the applicable cure period the breach has been cured to the reasonable satisfaction of the Notifying Party, the Notifying Party shall issue a written acknowledgement of the Breaching Party's cure of the matter which was the subject of the notice of breach.

2.1.2 If the alleged breach has not been cured or waived within the time permitted for cure in accordance with Section 2.2 hereof, the Notifying Party may (i) extend the applicable cure period or (ii) institute such proceedings and/or take such action as is permitted in this Agreement with reference to such breach.

## 2.2 Particular Breaches by the Parties.

2.2.1 Event of Default by Developer. The Parties agree that each of the following shall be deemed to be an Event of Default by Developer under this Agreement:

(a) Developer causes or allows to occur, as to itself, an Assignment not permitted under this Agreement, and the Assignment is not reversed or voided within thirty (30) days following Developer's receipt of notice thereof from City; or

(b) Developer fails to perform any obligation under this Agreement, and such failure continues past ten (10) days after receipt of written notice thereof from City, provided that (i) if such default or breach relates to a non-monetary obligation and reasonably requires longer than ten (10) days to cure, Developer shall be permitted additional time to cure such default so long as Developer commences the cure within such ten (10) day period and diligently and continuously pursues the same to completion within ninety (90) days of the date that the cure first commenced, unless otherwise extended in writing by the City; and (ii) such ten (10) day cure period shall be extended at all times during which Developer is pursuing recovery for such default or breach under the Project Insurance Programs as provided in the Insurance Administration Agreement.

2.2.2 Event of Default by City. The Parties agree that if City fails to perform any obligation under this Agreement, and such failure continues past ten (10) days after receipt of written notice thereof from Developer (or, if such default is not reasonably susceptible of cure within ten (10) days, and City fails to commence the cure within such ten (10) day period and diligently pursue the same to completion), then such failure shall be deemed to be an Event of Default by City under this Agreement.

## 2.3 Remedies.

2.3.1 General. If an Event of Default occurs and is not waived in writing by the non-breaching Party, then the non-breaching Party shall have the

following remedies, which are not exclusive but cumulative, in addition to any other remedies now or later allowed by law or in equity:

(a) The right to cure, at the Breaching Party's cost and expense, any Event of Default and recover such costs, together with interest thereon and reasonable attorneys' fees and costs of court, in which case the defaulting Party shall reimburse the non-defaulting Party for the costs incurred by the non-defaulting Party in curing the default within fifteen (15) days after receipt of an invoice therefor from the non-defaulting Party;

(b) The right to sue to collect any sums not paid when due, together with interest accrued thereon and reasonable attorneys' fees and costs of court incurred in collecting the same;

(c) The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of an Event of Default other than breach in the payment of money, together with reasonable attorneys' fees and costs of court incurred in such proceedings; or

(d) The right to injunctive relief including seeking specific performance of the breached obligation, together with reasonable attorneys' fees and costs of court incurred in such proceedings.

2.3.2 Specific Performance. Upon an Event of Default, the aggrieved Party may institute proceedings in a court of proper jurisdiction to compel injunctive relief or specific performance to the extent permitted by law (except as otherwise limited by or provided in this Agreement) by the Party in breach of its obligations. Nothing in this Section 2.3.2 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

2.4 Rights and Remedies Cumulative; No Consequential, Punitive, or Special Damages. The rights and remedies of the Parties contained in this Agreement shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies contained in this Agreement for the same breach by the applicable Party. In addition, the remedies provided in this Agreement do not limit the remedies provided in other agreements and documents. Notwithstanding anything to the contrary herein, to the fullest extent permitted by law, neither Party shall be liable for any indirect, consequential, punitive, or special damages in any way from or associated with this Agreement, and each Party expressly waives any claims against the other Party, and covenants not to sue the other, for indirect, consequential, punitive, or special damages under this Agreement.

2.5 No Implied Waiver. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any



obligations of the other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing

3. Assignment.

3.1 Assignment Defined. Except as otherwise specifically provided in this Article 3 or Article 7, Developer shall not without the approval of City (each, subject to the exclusions set forth herein, an “**Assignment**”):

3.1.1 sell, assign, pledge, mortgage or otherwise encumber its interest in this Agreement; or

3.1.2 sell, assign, transfer, pledge, mortgage or otherwise grant a security interest in any interest of Developer in this Agreement, whether by operation of law or otherwise, nor shall any sale, Assignment, transfer, pledge, mortgage, or grant of a security interest be effected of all or any part of the issued or outstanding capital stock of a corporation that is Developer or of its Controlling Owner, whether held directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same shall result in a Change of Control of Developer, nor shall there be any merger or consolidation of Developer or of such Controlling Owner into or with another corporation, nor shall any of the same be effected with respect to any interest in a partnership that is Developer or in a partnership that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Developer, nor shall any of the same be effected with respect to any managing member’s interest in a limited liability company that is Developer or in a limited liability company that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Developer.

3.1.3 For the avoidance of doubt, the delegation of rights and obligations under this Agreement to an Affiliate of Developer shall not require the approval of City so long as Developer remains primarily obligated under this Agreement.

Notwithstanding any provision of this Agreement to the contrary, nothing contained in this Article 3 shall restrict in any manner, prohibit, require notice to, or require the Approval of City for (a) any Assignment or any form of transfer in or of the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or any form of other transfer of any equity interests in Developer or any other Person that does not, directly or indirectly, result in a Change of Control of Developer or such other Person.

3.2 Assignment to Master Owners’ Association. Notwithstanding anything to the contrary in this Article 3, Developer shall have the right to transfer its rights

and obligations under this Agreement to a Master Owners' Association in accordance with Section 10 of this Agreement.

3.3 Assignment to Successor Entity. Notwithstanding anything to the contrary in this Article 3, so long as Developer is not in default of this Agreement pursuant to Article 2 hereof, Developer shall have the right at any time to effect an Assignment (x) of this Agreement to any entity to which Developer has assigned its interest in the DDA or (y) of the obligations under this Agreement to design and/or construct the Project Landfill Systems on all or any portion of Parcel 1 or Parcel 2 (as more particularly identified on Exhibit B-4 (Map of Project Site) to the DDA) to a Phase Developer of the subject portion of such Project Parcels (each, a "Successor Entity"). Such Assignment shall become effective only upon full execution of an Assignment, Assumption and Release Agreement in a form reasonably acceptable to the City, pursuant to which the Successor Entity assumes all applicable rights and obligations under this Agreement from the Developer and Developer is released of all such obligations and liabilities hereunder. In connection with any such Assignment, the City shall make good faith efforts to support the substitution, in whole or in part, of a Successor Entity for the Developer in the WDRs.

3.4 Other Assignments. Any other Assignment of this Agreement shall be subject to the approval of City, which approval shall be given or withheld in City's sole discretion.

3.5 Release. If, as and when Developer assigns and the transferee assumes all or any of Developer's obligations under this Agreement as set forth above, then from and after the date of such assignment, the Developer assigning this Agreement (and all prior Developers) shall automatically and conclusively be released from the assigned obligations under this Agreement, other than (i) any obligations that arose and were to be performed prior to the effective date of such assignment (unless also assumed in writing by the transferee) and (ii) any obligations retained by Developer in accordance with the applicable Assignment, Assumption and Release Agreement. Promptly after request by Developer, City shall confirm the foregoing release by a writing in form and substance reasonably satisfactory to City and Developer.

3.6 Liability for Default. No transferee shall be liable for any default by Developer or another transferee in the performance of its respective obligations under this Agreement, and Developer shall not be liable for the default by any transferee in the performance of its respective obligations; provided, that the foregoing provision shall not be applicable to either a transferee or Developer to the extent either has expressly assumed or expressly remains liable for such obligation under the terms of the applicable Assignment, Assumption and Release Agreement. Except as provided in this Section 3.7, an Event of Default by Developer or a transferee shall not entitle City to exercise any remedy, or otherwise affect any rights, under this Agreement against any Person other than the Person that is in default.

4. Representations and Warranties.

4.1 Developer's Representations. Developer hereby represents and warrants to City as of the date of full execution of this Agreement that:

4.1.1 Developer is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, and qualified to do business in the State of California;

4.1.2 Developer has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

4.1.3 All actions and consents required by Developer to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

4.1.4 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of Developer will be duly authorized and empowered on behalf of Developer to do so and to enter into all transactions contemplated by this Agreement, and by such instruments; and

4.1.5 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which Developer is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Developer is a party or by which Developer or its assets may be bound or affected.

4.2 City's Representations. City hereby represents and warrants to Developer as of the date of full execution of this Agreement that:

4.2.1 City is a municipal corporation duly organized and validly existing under the laws of the State of California and has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

4.2.2 All actions and consents required by City to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

4.2.3 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of City will be duly authorized and

empowered on behalf of City to do so and to enter into all transactions contemplated by this Agreement, and by such instruments; and

4.2.4 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which City is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which City is a party or by which City or its assets may be bound or affected.

5. Limitations on Liability. It is understood and agreed that no City Party shall be personally liable to Developer, nor shall any direct or indirect partners, members or shareholders of Developer or its or their respective officers, directors, agents or employees (or their successors or assigns) be personally liable to City, in the event of any default or breach of this Agreement by City or Developer or for any amount that may become due to Developer or City or any obligations under the terms of this Agreement; provided, that the foregoing shall not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any security covering such obligation.

6. Additional Provisions.

6.1 Entire Agreement; Amendment. This Agreement, and its attachments, terms, and conditions, embodies the entire agreement between the Parties relative to the matters set forth herein. 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.

6.2 Waiver. Any waiver of any provision of this Agreement by a Party must be in writing and signed by a Person having authority to do so on behalf of such Party. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of any other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing.

6.3 Captions and Table of Contents. The captions of and names of defined terms in this Agreement are for convenience of reference only and are not intended to define, limit or describe the scope or intent of this Agreement or otherwise affect the interpretation of this Agreement. The Table of Contents (if any) is for the purpose of convenience of reference only and is not intended to be a part of this Agreement or to be used in interpreting this Agreement.

#### 6.4 Extensions of Time.

6.4.1 Any Party may in its sole discretion extend the time for the performance of any term, covenant or condition of this Agreement by a Party owing performance to the extending Party, or permit the curing of any related default, upon such terms and conditions as it determines appropriate; provided, however, any such extension or permissive curing of any particular default shall not operate to release any of the obligations of the Party receiving the extension or cure rights or constitute a waiver of the granting Party's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

6.4.2 In addition to matters set forth in Section 6.4.1, the Parties may in their sole discretion extend the time for performance by any of them of any term, covenant or condition of this Agreement by a written instrument signed by authorized representatives of such Parties without the execution of a formal recorded amendment to this Agreement, and any such written instrument shall have the same force and effect and (once recorded) impart the same notice to third parties as a formal recorded amendment to this Agreement. For the purposes of this Section 6.4, City's authorized representative shall be the City Manager.

6.5 Interpretation. Wherever in this Agreement the context requires, the use of a verb in any tense shall be construed as the use of the verb in all other tenses, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Agreement, including its attachments, reference is made to the Table of Contents (if any), any Section, Exhibit or any defined term, the reference shall be deemed to refer to the Table of Contents (if any), Section, Exhibit or defined term of this Agreement. Any reference to a Section includes all subsections and subparagraphs of that Section. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail, except as to definitions provided in the Recitals.

6.6 More than One Person. If Developer's obligations under this Agreement are assumed by more than one Person (including but not limited to a new Developer), City may require the signatures of each such Person on any notice given by Developer, except to the extent that any such Person shall designate to any other such Person the right to act as such Person's attorney in fact to act on its behalf, which designation shall be effective until receipt by City of notice of its revocation. Nothing herein shall be construed as conferring on any such Person any rights or obligations to or

against any other such Person. Without limiting the other provisions of this Agreement, each Person named as or that becomes Developer under this Agreement shall be fully, and jointly and severally, liable for all of Developer's obligations hereunder.

6.7 Time of Performance.

6.7.1 All performance (including cure) dates expire at 5:00 p.m. Pacific Time on the applicable date for performance (including cure), as such date may be extended pursuant to the effect of any extension of time permitted in this Agreement.

6.7.2 Where a date set forth in this Agreement is a calendar month without reference to a specific day in such month, or a year without reference to a specific month in such year, the date in question shall be the last day in such month or year, as applicable.

6.7.3 If the last day of any period to give notice, reply to a notice, meet a deadline, or undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

6.7.4 Time is of the essence in the performance of all the terms and conditions of this Agreement for which a time for performance is specified.

6.8 No Third Party Beneficiaries. This Agreement is made and entered into only for the protection and benefit of the Parties and their successors and assigns. No other Person shall have or acquire any right or action of any kind based upon the provisions of this Agreement except as explicitly provided to the contrary in this Agreement.

6.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All references in this Agreement to California or federal laws and statutes shall mean such laws, regulations and statutes as they may be amended from time to time, except to the extent a contrary intent is stated.

6.10 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and (to the extent permitted hereunder) assigns.

6.11 Relationship of the Parties. None of the provisions in this Agreement shall be deemed to render any of the Parties a partner in any other Party's business, or a joint venturer or member in any joint enterprise with any other Party. No Party shall have the right to act as the agent of any other Party in any respect hereunder.

6.12 Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Agreement, no weight shall be given to any deletions or striking out of any of the terms of this Agreement contained in any draft of this Agreement and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

6.13 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary or desirable to achieve the Parties' intent in entering into this Agreement.

6.14 Numbers.

6.14.1 Generally. For purposes of calculating a number under this Agreement where a whole number is required, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

6.14.2 Number of Days. References in this Agreement to days shall be to calendar days unless otherwise specified.

6.15 No Gift or Dedication. Except as otherwise specified in this Agreement, this Agreement shall not be deemed to be a gift or dedication of any portion of the Project to the general public, for the general public, or for any public use or purpose whatsoever.

6.16 Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of Developer and City, errors are made in this Agreement in a legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel (provided such boundary adjustments are relatively minor and do not result in a material change), in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its Exhibits, Developer and City by mutual agreement may correct such error by memorandum executed by both of them and replacing the appropriate pages of this Agreement, and no such memorandum or page replacement shall be deemed an amendment of this Agreement. The memorandum may be signed by the City Manager on behalf of the City, without formal approval by the City Council and, if required, the memorandum shall be recorded in the Official Records of Santa Clara County to provide notice of such correction to third parties.

6.17 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable (an "**Excluded Term**"), the remainder of this Agreement, or the application of such Excluded Term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this



Agreement shall be valid and be enforced to the fullest extent permitted by law. Notwithstanding the foregoing, if either Party considers an Excluded Term material to this Agreement, the Parties shall negotiate in good faith to adopt alternative terms or provisions that will achieve the objectives of the Excluded Term as closely as possible while avoiding the problem causing the Excluded Term to be invalid or unenforceable, and if unable to agree the matter shall be resolved through Arbitration.

6.18 Legal Representation. Each Party acknowledges, warrants and represents to each other Party that it has been fully informed with respect to, and represented by counsel of its choice in connection with, the rights and remedies of and waivers by it contained in this Agreement and after such advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any breach of this Agreement by any other Party.

6.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall become effective when the Parties have duly executed and delivered signature pages to this Agreement to each other. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

6.20 Survival. Termination of this Agreement shall not affect (i) the right of any Party to enforce any and all rights and obligations under this Agreement to the extent they relate to the period before termination, or (ii) any provision of this Agreement that, by its express terms, is intended to survive the expiration or termination of this Agreement.

6.21 Estoppel Certificates.

6.21.1 Developer Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by City, Developer shall execute, acknowledge and deliver to City and to any other Person reasonably requested by City a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any amounts due and owing by Developer to City under this Agreement have been paid, (c) whether or not, to Developer's actual knowledge, City is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which Developer has actual knowledge, and (d) as to any other matter with respect to this Agreement as City may reasonably request.



6.21.2 City Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by Developer, City shall execute, acknowledge and deliver to Developer and to any other Person reasonably requested by Developer a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any amounts due and owing by Developer to City under this Agreement have been paid, (c) whether or not, to City's actual knowledge, Developer is in default in performance of any covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of which City has actual knowledge, and (d) as to any other matter with respect to this Agreement as Developer may reasonably request.

## 6.22 Approvals.

6.22.1 As used herein, "Approval" and any variation thereof (such as "Approved" or "Approve") refer to the prior written consent of the applicable Party or other Person. When used with reference to a Governmental Authority, such terms are intended to refer to the particular form of consent or approval required from such Governmental Authority in order to obtain the Authorization being sought.

6.22.2 Whenever Approval is required or permitted to be given by any Party under this Agreement, it shall not be unreasonably withheld, conditioned or delayed unless the Approval is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. A Party that denies an Approval under this Agreement, or that gives a conditional Approval, shall in giving such denial or conditional Approval state the reasons therefor in reasonable detail, unless such Approval is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. It is understood and agreed that the granting of any consent or approval by a Party to another Party under this Agreement to perform any act of requiring such Party's consent or approval under this Agreement, or the failure by a Party to object to any such action taken by any other Party without the former Party's consent or approval, shall not be deemed a waiver by the former Party of its right to require such consent or approval for any further similar act by any other Party. In determining whether to give an Approval, City shall not require changes from or impose conditions inconsistent with the Project Documents, except to the extent that City reasonably determines that such changes or conditions are necessary for important reasons of public health or safety.

6.22.3 Notwithstanding the foregoing, it is specifically acknowledged by all Parties that Section 6.22.2 shall not apply to any Approval given by a public entity in its regulatory capacity. Such Approvals shall be governed by the standards of review generally accorded by the state courts of California.

## 6.23 Nondiscrimination.

6.23.1 There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of section 12955 of the California Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the California Government Code, or on the basis of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Project in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any portion thereof. Neither Developer itself (nor any person or entity claiming under or through it), nor any occupant or user of the Project or any transferee, successor, assign or holder of any interest in the Project or any person or entity claiming under or through such transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Project, including with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. Notwithstanding the foregoing, no Person shall be in default of its obligations under this Section 6.23 where there is a judicial action or arbitration involving a bona fide dispute over whether such person is engaged in discriminatory practices and such person promptly acts to satisfy any judgment or award against such person.

Any transferee, successor, assign, or holder of any interest in the Project, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound by, and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above. The covenants in this Section 6.23 shall be covenants running with the land and they shall be: (i) binding for the benefit and in favor of City, as beneficiary and the owner of any other land or of any interest in any land in the Project, as beneficiary, and their respective successors and assigns; and (ii) binding against Developer, its successors and assigns to or of the Project and any improvements thereon or any portion thereof or any interest therein, and any party in possession or occupancy of the Project or the improvements thereon or any portion thereof.

6.24 Notice of Termination. In the event of any termination of this Agreement in whole or in part in accordance with the terms of this Agreement, the terminating Party shall provide the other Parties with a copy of any proposed Notice of Termination at least fifteen (15) days before recording the same. After the expiration of such fifteen days, the terminating Party may cause the Title Company to record such Notice of Termination in the Official Records. Any such "Notice of Termination" shall be in recordable form and describe the portion of the Project Site to which such termination pertains. Following the recordation of any Notice of Termination, the terminating Party shall promptly provide a conformed copy of such recorded Notice of Termination to City, Developer, and any applicable Mortgagee. The recordation of a Notice of Termination

shall not affect in any manner the rights of City, Developer, or any applicable Mortgagee to contest the terminating Party's right to cause such recordation.

6.25 Attorneys' Fees.

6.25.1 Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Agreement, the prevailing party shall be entitled to receive from the losing party the prevailing party's reasonable costs and expenses incurred including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys' fees and costs for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 6.25 shall include attorneys' fees on any appeal.

6.25.2 For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel shall be based on the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City.

6.26 Notices.

6.26.1 Notice Addresses. Whenever this Agreement permits or requires that a notice, demand, request, consent, approval or other communication to be given by a Party (each, a "Notice"), and whenever either Party desires to give or serve a Notice, such Notice must be in writing and shall not be effective for any purpose unless it is in writing and given or served as follows: (a) by personal delivery (including by same day commercial courier or messenger service) with receipt acknowledged; (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified; or (c) sent by an electronic mail with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with either clause (a) or (b) of this Section 6.26); in each case to the Parties at the following addresses:

If to Developer:

Related Santa Clara, LLC  
c/o the Related Companies  
60 Columbus Circle  
New York, NY 10023  
Attn: Joshua Young

and

Related Santa Clara  
5201 Great America Parkway, Suite 532  
Santa Clara, California 95054  
Attn: Chief Legal Officer

With a copy to:

Paul Hastings LLP  
101 California Street, 48<sup>th</sup> Floor  
San Francisco, CA 94111  
Attn: Gordon Hart, Esq.

If to City:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Manager

With a copy to:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Attorney

A Party may change the address(es) to which any Notice is to be delivered to such Party by furnishing ten (10) days' written notice of such change(s) to the other Parties in accordance with the provisions of this Section 6.26. The attorney for any Party may send Notices on that Party's behalf.

To be effective, every notice given to a Party under the terms of this Agreement must be in writing and must state (or must be accompanied by a cover letter that states) substantially the following: (a) the Section of this Agreement under which the notice is given; (b) if applicable, the action or response required; (c) if applicable, the period of time within which the recipient of the notice must respond thereto; (d) if applicable, the period of time within which the recipient of the notice must cure an alleged breach; (e) if Approval is being requested, shall be clearly marked "Request for Approval"; and (f) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons for the disapproval or objection.

6.26.2 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, or (b) if given by electronic mail, upon delivery by such means to

the addressee if delivered before 5:00 pm (in the recipient's time zone) on a Business Day, otherwise on the next Business Day, regardless of the timing of receipt of any confirmatory copy, in each case with failure to accept delivery to constitute delivery for such purpose and with inability to deliver because of changed address of which no Notice was given under this Section 6.26 to constitute delivery for such purpose (provided, that, the sending Party shall use good faith efforts to deliver to any other address of the intended recipient known to the sending Party).

6.27 Hiring Efforts. Developer and its Contractors and Consultants shall make good faith efforts to (i) recruit, employ, and contract with qualified individuals and businesses that are part of the work force and business community in the City of Santa Clara, and (ii) provide employment, contracting, and business participation opportunities to residents of the City of Santa Clara, including women, minorities, and economically disadvantaged Individuals.

6.27.1 For the purposes of this Section 6.27.1, "good faith efforts" shall be deemed to be satisfied if written notification is provided to community-based organizations with experience in the administration of diversity programs and any other organizations identified for the Developer, Contractor, or Consultant (as applicable) by City when employment opportunities are available, and a record is maintained of each such written notification and the organizations' responses thereto.

6.27.2 Developer, its Contractors, and its Consultants may participate in voluntary associations which assist in fulfilling their diversity obligations under this Section 6.27.2. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Developer, Contractor, or Consultant (as relevant) is a member and participant, may be asserted as fulfilling this obligation provided that the Developer, Contractor, or Consultant (as relevant) actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the work force composition of Developer, Contractor, or Consultant (as relevant). The obligation to comply, however, is that of Developer, Contractor, or Consultant (as relevant) and failure of such a group to fulfill an obligation shall not be a defense for the noncompliance of Developer, Contractor, or Consultant (as relevant).

## 7. Financing; Rights of Mortgagees.

7.1 Right to Mortgage; Conditions. Notwithstanding any provision of this Agreement to the contrary, Developer shall have the right to mortgage or pledge its interest in the Development Parcels to one or more Mortgagees and/or to permit the direct or indirect interest in Developer to be pledged to a Mezzanine Lender and/or to collaterally assign this Agreement to a Mortgagee or Mezzanine Lender (and, in such event, any reference herein to a "Mortgage" or "Mezzanine Loan" shall include such collateral

assignment), in each case without City's consent, at any time and from time to time during the Term; provided, that no holder of any Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Developer has, except the right to cure or remedy Developer's defaults as more fully set forth below in this Section 7 and such other rights as are expressly granted to Mortgagees or Mezzanine Lenders hereunder. Notwithstanding the foregoing, however, no Mortgage or Mezzanine Loan shall be effective, unless:

7.1.1 At the time such Mortgage or Mezzanine Loan becomes effective, there are no existing Events of Default on the part of Developer; and provided that, unless otherwise notified in writing by City that there is an existing Event of Default, any actual or prospective Mortgagee and Mezzanine Lender may conclusively rely on a statement to the effect that there is no existing Event of Default on the part of Developer given by City with respect to Developer under this Agreement for a period of thirty (30) days after the delivery thereof;

7.1.2 Such Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Agreement;

7.1.3 Such Mortgage shall contain in substance the following provision (and no provisions inconsistent therewith in any material respect): "This instrument and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of City under the Agreement hereby mortgaged or collaterally assigned, as said Agreement may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by City to evidence the foregoing subordination."

7.2 Notice of Mortgages. Developer or the Mortgagee or Mezzanine Lender shall give to City written notice of the making of any Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Mortgagee or Mezzanine Lender and shall contain information in reasonable detail demonstrating that the Mortgagee or Mezzanine Lender is a Mortgagee or Mezzanine Lender as defined in this Agreement) no later than ten (10) days after the execution and delivery of such Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof after the recording of any Mortgage executed by Developer and upon the written request of City, Developer shall, at Developer's own cost and expense, record in the Official Records a written request, executed and acknowledged by City, for a copy of any notice of default and a copy of any notice of sale under such Mortgage to be mailed to City at the address specified in the request by City.

7.3 Mortgagee Right to Notices. City shall give to each Mortgagee or



Mezzanine Lender, at the address of such Mortgagee or Mezzanine Lender set forth in a written notice from such Mortgagee or Mezzanine Lender or from Developer delivered in the manner provided by Section 6.26 of this Agreement, a copy of each notice given by City to Developer under Section 2 of this Exhibit E at the same time as and whenever any such notice shall thereafter be given by City to Developer, and, without affecting or extending the commencement of any grace or cure period available to Developer as provided in this Agreement, no such notice by City shall be deemed to have been duly given to such Mortgagee or Mezzanine Lender (and no grace or cure period in favor of such Mortgagee or Mezzanine Lender shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Mortgagee and Mezzanine Lender. Subject to City's simultaneous right to cure any Major Event of Default as more particularly set forth in Section 7.13, each Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a default by Developer in the payment of any fees due under this Agreement (a "**Monetary Event of Default**") and thirty (30) days more in the case of any other default by Developer (each, a "**Non-Monetary Event of Default**"), after the applicable period afforded Developer for remedying the default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such default or cause the same to be remedied. City shall accept performance by or on behalf of a Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer, so long as such performance is made in accordance with the terms and provisions of this Agreement. City shall not object to and shall cooperate with any entry onto the Project Site by or on behalf of a Mortgagee or a Mezzanine Lender to the extent necessary to effect such Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with Applicable Law.

7.4 Mortgagee Right to Cure. No Non-Monetary Event of Default shall be deemed to exist as long as a Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Non-Monetary Event of Default within thirty (30) days after the expiration of the applicable period afforded to Developer for remedying such Non-Monetary Event of Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of Developer's interest in the Project Site or any part thereof (collectively, "**Developer's Interests**") is required in order to cure such Non-Monetary Event of Default, and Mortgagee or Mezzanine Lender shall have notified City within thirty (30) days after the expiration of the applicable period afforded to Developer for remedying the Non-Monetary Event of Default of its intention to institute foreclosure proceedings to obtain possession or control directly or through a receiver, and thereafter promptly commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession, ownership and/or control of Developer's Interest, commences or causes its designee to commence promptly to cure the Non-Monetary Event of Default and prosecutes the same to completion with all reasonable diligence and

continuity (subject to Force Majeure); provided that the Mortgagee or Mezzanine Lender or its designee shall have delivered to City, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement, subject to the last sentence of this Section 7.4, to cause the party obtaining possession, ownership and/or control of Developer's Interest to agree to take the action described in subclause (i) or (ii) herein (the "**Lender Notice of Cure**"); and provided, further, that during the period in which the actions comprising the Lender Notice of Cure are being performed, all of the other obligations of Developer under this Agreement (other than those that require possession or control of Developer's Interests in order to cure) are being duly performed within any applicable notice and cure periods (including any applicable notice and cure rights of Mortgagees and Mezzanine Lenders hereunder); and provided, further, that nothing in this Section 7.4 shall be deemed to prohibit City from exercising its simultaneous right to cure any Major Event of Default as more particularly set forth in Section 7.13. In the event that at any time after the delivery of the Lender Notice of Cure, the Mortgagee or Mezzanine Lender notifies City, in writing, that it has relinquished possession or control of the Developer's Interests or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon, City shall have the unrestricted right to pursue its remedies under this Agreement by reason of any Event of Default by Developer (and to take any other action it deems appropriate by reason of any Event of Default by Developer).

7.5 Obligation to Construct After Foreclosure. A Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of Developer's Interests under a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Developer under this Agreement; provided, however, that such Person gaining possession, ownership, and/or control of Developer's Interests pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same. Notwithstanding anything in this Section 7.5 to the contrary, a Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of Developer's Interests pursuant to a foreclosure or transfer in lieu of foreclosure shall not be required to cure any Events of Default arising from obligations of Developer that are not capable of being cured (e.g., an Event of Default that is personal to Developer), and if any Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Developer's Interests pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Events of Default arising from an obligation by Developer that is not capable of being cured shall no longer be deemed an Event of Default or Non-Monetary Event of Default.

7.6 Restrictions on City During Mortgagee or Mezzanine Lender Cure Period. With respect to an Event of Default by Developer, so long as a Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Agreement, City shall not exercise its remedies hereunder except as and to the extent set forth in Section 7.13. Nothing in the protections to Mortgagees or Mezzanine Lenders provided in this Agreement shall be construed to require such Mortgagee or Mezzanine Lender to cure any



Event of Default by Developer that is not capable of being cured as a condition to preserving this Agreement.

7.7 Foreclosure Not a Default; Successor Entity. The exercise of any rights or remedies of a Mortgagee under a Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a default under this Agreement or require the consent of City. In the event of any such foreclosure or transfer in lieu of foreclosure, the Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of Developer's Interests shall be deemed to be a Successor Entity for purposes of Section 3.3 of this Exhibit E and, upon request of City, shall execute an Assignment, Assumption and Release Agreement in form acceptable to City and such Successor Entity pursuant to which such Successor Entity assumes all applicable rights and obligations under this Agreement from Developer and City releases Developer from all such obligations and liabilities accruing after the date thereof, and shall be endorsed as a Named Insured on the insurance policies obtained pursuant to Exhibit D. In connection with the foregoing, City shall make good faith efforts to support the substitution, in whole or in part, of such Successor Entity for Developer in the WDRs.

7.8 Limitation on Liability of Mortgagee. No Mortgagee or Mezzanine Lender shall become liable under this Agreement unless and until such time as it becomes, and then only for so long as it remains, the owner of, or has control over, the Developer's Interests, and no performance by or on behalf of a Mortgagee or Mezzanine Lender of Developer's obligations hereunder shall cause such Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take possession, ownership and/or control of the Project Site, or such Mezzanine Lender shall take possession or control of Developer, as applicable.

7.9 More Than One Mortgagee. If there is more than one Mortgagee, the rights and obligations afforded by this Section 7 to a Mortgagee shall be exercisable only by the party whose collateral interest in the Developer's Interests is senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee).

7.10 Bankruptcy. This section shall apply in the event of any proceeding by Developer under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect. If this Agreement is rejected or deemed rejected by Developer or its trustee in bankruptcy, and provided, that, the Mortgagee or Mezzanine Lender cures or causes to be cured all outstanding Developer defaults in accordance herewith, Mortgagee or Mezzanine Lender shall have thirty (30) days following such rejection or deemed rejection to, at Mortgagee or Mezzanine Lender's discretion and to the extent permitted by Applicable Law, enter into an assignment and assumption instrument in form and substance reasonably satisfactory to City and such Mortgagee or Mezzanine Lender pursuant to which Developer shall assign to the Mortgagee or Mezzanine Lender, and the

Mortgagee or Mezzanine Lender shall assume, all of Developer's interest and obligations under this Agreement whether arising or accruing before or after the date of such assignment and assumption, and this Agreement shall not terminate and the Mortgagee or Mezzanine Lender shall have all rights of the Mortgagee or Mezzanine Lender under this Section 7 as if such bankruptcy proceeding had not occurred. If any court of competent jurisdiction shall determine that this Agreement shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Developer or the trustee in connection with any such proceeding, the rights of Mortgagee or Mezzanine Lender to a New Agreement from City pursuant to the applicable provisions of Section 7.11 shall not be affected thereby.

7.11 New Agreement. In the event of the termination of this Agreement, including, without limitation, the rejection of this Agreement by a trustee of Developer in bankruptcy, City shall serve upon the Mortgagee or Mezzanine Lender written notice that this Agreement has been terminated, together with a statement of any and all sums which would at that time be due under this Agreement but for such termination, and of all other defaults, if any, under this Agreement then known to City. The Mortgagee or Mezzanine Lender shall thereupon have the option to accept the assignment of all of Developer's rights and obligations hereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee or Mezzanine Lender, within thirty (30) days after service of such notice that this Agreement has been terminated, City shall enter into a new Agreement with the most senior Mortgagee or Mezzanine Lender giving notice within such period or its designee; and

(ii) Such new Agreement shall be entered into at the reasonable cost of the Mortgagee or Mezzanine Lender thereunder, shall be effective as of the date of termination of this Agreement, and shall be for the remainder of the term hereof and upon all the agreements, terms, covenants and conditions hereof. Such new Agreement shall have the same priority as this Agreement, including priority over any mortgage or other lien, charge or encumbrance on the title to the Project Site. Such new agreement shall require the Mortgagee or Mezzanine Lender to perform any unfulfilled monetary obligation of Developer under this Agreement that would, at the time of the execution of the new Agreement, be due under this Agreement if this Agreement had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee or Mezzanine Lender other than the obligations of Developer under this Agreement with respect to construction of the Initial Improvements that constitute Project Landfill Systems, which obligations shall be performed by the Mortgagee or Mezzanine Lender in accordance with Section 13.1 (Initial Improvements) and Section 11.7.5 (Leasehold Mortgages and Mezzanine Loans) of the applicable Ground Lease. Upon the execution of such new agreement, the Mortgagee or Mezzanine Lender shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for such termination, and shall pay all

expenses incurred by City in connection with such defaults and termination and the preparation, execution and delivery of such new agreement. The provisions of this Section 7.11 shall survive any termination of this Agreement, and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee or Mezzanine Lender.

7.12 Additional Mortgagee Protections. In addition to the other rights, notices and cure periods afforded to Mortgagees, City further agrees that:

7.12.1 without the prior consent of each Mortgagee (which consent is not to be unreasonably withheld, conditioned or delayed), to the extent required in the Mortgage, City will neither agree to any modification or amendment of this Agreement (other than an immaterial modification or amendment), nor accept a surrender or cancellation of this Agreement;

7.12.2 City shall consider in good faith any modification to this Agreement requested by a Mortgagee as a condition or term of granting financing to Developer, so long as the same does not materially increase City's obligations, diminish Developer's obligations, or diminish City's rights and immunities hereunder;

7.12.3 the Mortgagee whose Mortgage is most senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee) shall have the right to participate in any arbitration proceedings under Section 1 of this Exhibit E, although only one Mortgagee shall have such participation rights at any given time;

7.12.4 at the request of Developer from time to time, City shall execute and deliver an instrument addressed to the holder of any Mortgage or Mezzanine Loan confirming that such holder is a Mortgagee or Mezzanine Lender (provided, that City may require such Mortgagee or Mezzanine Lender to provide such reasonably detailed information as is necessary for City to make such determination) and entitled to the benefit of all provisions contained in this Agreement which are expressly stated to be for the benefit of Mortgagees or Mezzanine Lenders.

7.13 City Right to Cure. Notwithstanding anything herein to the contrary, if a Non-Monetary Event of Default by Developer is reasonably likely to result in imminent harm to human health or the environment and/or a violation of the WDRs, PCLUP or other legal requirement applicable to design, construction, or operation and maintenance of the Project Landfill Systems (a "**Major Event of Default**"), then City may (but shall have no obligation to) exercise its right to cure such Major Event of Default at Developer's cost as set forth in Section 2.3.1(a) of this Exhibit E notwithstanding the pendency of any cure period afforded to Mortgagee and Mezzanine Lender hereunder. For the avoidance of doubt, any failure by Developer to pay such costs to City within the time periods set forth in Section 2.3.1(a) shall constitute a Monetary Event of Default subject to the provisions of this Section 7.



## Agenda Report

20-572

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

Since March 16, 2020, the City and its residents have been sheltering in place in accordance with the public health declarations issued by the State of California and County of Santa Clara. As a result of the COVID-19 emergency, it has caused financial challenges and housing instability for the community. While the shelter in place restrictions are being gradually lifted through the Governor's phased reopening of the economy and the County of Santa Clara's new health order, the economic recovery will take time and the financial uncertainty for the City and its residents remains.

On March 24, 2020, the City Council adopted an Urgency Ordinance, setting in place a moratorium on evictions in the City of Santa Clara for the non-payment of rent and no-fault evictions for tenants affected by COVID-19. The Moratorium went into effect March 24, 2020 for a period of 45 days until May 8, 2020. The ordinance applies to all residential tenants renting in a building or portion of a building that is used as a home, residence or sleeping place in Santa Clara for periods in excess of seven days. On April 28, 2020 the City Council authorized the extension of the Urgency Ordinance regarding the Moratorium by resolution through May 31, 2020. Also, on April 28, 2020, the City Council adopted the Emergency Evictions Protection Ordinance allowing the moratorium on evictions to be extended by resolution for 30-day periods.

If the City would like to continue to provide eviction protection for tenants affected by the COVID-19 emergency beyond May 31, 2020, the City Council will need to adopt a resolution to extend the ordinance.

#### **DISCUSSION**

The extension of the moratorium on evictions will provide needed relief for residents who have applied for, but have not yet received financial assistance, by stabilizing their housing. The extension eliminates some of the uncertainty caused by the delay in processing unemployment benefits and other local, state and federal assistance programs residents are waiting to receive. By providing tenants with this measure of security, residents across the City can focus on obtaining financial, food and health services. The extension also aligns with the City's ongoing commitment to mitigate homelessness and preserve housing.

The eviction moratorium under the City's Urgency Ordinance is set to expire on May 31, 2020 consistent with the expiration date of the County of Santa Clara's Eviction Moratorium. The County of Santa Clara will be considering an extension of their moratorium at the May 26, 2020 meeting of

the Board of Supervisors. The City Council may determine to extend the moratorium on evictions beyond May 31, 2020 by adopting the proposed resolution extending the moratorium to June 30, 2020. The approval of an extension of the eviction moratorium for thirty additional days will result in eviction protections for residents until June 30, 2020.

### **ENVIRONMENTAL REVIEW**

The ordinance regulates eviction of tenants from existing rental units and its adoption is an administrative activity that does not result in a direct or indirect physical change to the environment. Therefore, this action is exempt from environmental review under CEQA per the CEQA Guidelines section 15378(b)(5).

### **FISCAL IMPACT**

There is no fiscal impact with the moratorium.

### **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 report to council may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov).

### **RECOMMENDATION**

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

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Resolution

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

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
EXTENDING THE TEMPORARY MORATORIUM TO JUNE 30, 2020  
ON EVICTIONS DUE TO NONPAYMENT OF RENT AND NO-  
FAULT EVICTIONS FOR RESIDENTIAL TENANTS WHERE THE  
FAILURE TO PAY RENT RESULTS FROM INCOME LOSS  
RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19)**

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

**WHEREAS**, pursuant to Article XI, Section 7 of the California Constitution, the City of Santa Clara ("City") may make and enforce all regulations and ordinances using its police powers;

**WHEREAS**, international, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19;

**WHEREAS**, on March 4, 2020, California Governor Gavin Newsom ("Governor") declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death;

**WHEREAS**, on March 11, 2020, pursuant to "The Code of the City of Santa Clara, California" ("SCCC") section 2.140.060, City Manager Deanna Santana, as the City's Director of Emergency Services, signed a Proclamation of Local Emergency to help ensure the City's continuity of essential operations and services available for the City of Santa Clara to respond to the COVID-19 emergency;

**WHEREAS**, on March 13, 2020, the County issued a new Order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons. California Governor Gavin Newsom also called for bars, wineries, and brew pubs to close. These restrictions will impact how businesses operate

that rely on customer patronage and will result in lost revenue for those that cannot continue to operate their businesses during this time;

**WHEREAS**, both large and smaller events across the Bay Area and in Santa Clara are cancelling or being postponed due to the County's Order and recommendations at all levels of government to cancel large gatherings amid concerns over spread of the virus. These cancellations and postponements cause loss in revenue for the event, as well as surrounding local businesses that rely on such events to bring in patrons to their businesses;

**WHEREAS**, the County Superintendent of Schools and all district superintendents in the County have decided to close schools to students for three weeks beginning Monday, March 16, 2020. These school closures will cause children to remain at home, leading to many parents adjusting their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot afford to take off time from work to stay at home;

**WHEREAS**, On March 16, 2020, the Health Officer of the County of Santa Clara directed all individuals living in the County to shelter at their place of residence except to provide or receive essential services. The Health Officer further directed that all business and governmental agencies cease non-essential operations at physical locations in the County;

**WHEREAS**, the Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs;

**WHEREAS**, on Monday March 16, 2020, Governor Gavin Newsom issued an executive order that allows cities to suspend evictions for renters and homeowners, citing the ongoing novel coronavirus outbreak and the related economic fallout. State government cannot suspend evictions itself, so individual municipalities must implement moratoriums themselves;

**WHEREAS**, on March 24, 2020, the County of Santa Clara Board of Supervisors adopted an uncodified urgency ordinance imposing a temporary moratorium through May 31, 2020 on evictions in Santa Clara County for non-payment of rent by residential and commercial real property tenants directly impacted by the COVID-19 pandemic;

**WHEREAS**, on March 31, 2020, the County issued a new, more restrictive Order than the one previously issued on March 16, 2020, tightening social distancing requirements by prohibiting attendance of certain outdoor and recreational facilities, placing restrictions on certain gatherings, and adding requirements of essential businesses. This Order also clarifies what is an essential business and extends the shelter in place requirements through May 3, 2020;

**WHEREAS**, due to recommendations of the Governor and state superintendent of schools, Santa Clara County has decided to close schools to students for remainder of the academic school year. These school closures have caused parents with school-age children to stay at home to care for their school-age children thereby making it more challenging, and in some cases impossible, to earn income;

**WHEREAS**, during the COVID-19 emergency, affected tenants who have lost income due to the impact on the economy or their employment may be at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted, and an eviction on their record can have long lasting effects on their ability to rent in the future;

**WHEREAS**, as of April 16, 2020, approximately 2.7 million California residents have filed for unemployment insurance since March 15, 2020;

**WHEREAS**, displacement through eviction destabilizes the living situation of tenants and impacts the health of Santa Clara's residents by uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City;

**WHEREAS**, on March 24, 2020, the City Council adopted a COVID-19 Urgency Ordinance to



provide a temporary moratorium on evictions in the City of Santa Clara for renters on the basis of nonpayment of rent and no-fault evictions where the failure to pay rent results from income loss resulting from the novel coronavirus (COVID-19) pandemic. Under the provisions of the Urgency Ordinance, the Council extended the moratorium by resolution which is set to expire by May 31, 2020;

**WHEREAS**, on April 28, 2020, the City Council adopted Chapter 8.65, the Emergency Evictions Protection Ordinance, that may be activated by adoption of a resolution by the City Council for a period of thirty (30) days and may be further extended by subsequent resolution of the City Council.

**WHEREAS**, during this local emergency, the Emergency Evictions Protection Ordinance is a temporary moratorium intended to protect the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness;

**WHEREAS**, the Emergency Evictions Protection Ordinance is a temporary moratorium intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes; and,

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

1. That the moratorium on residential evictions for the nonpayment of rent, as set forth in the provisions under Chapter 8.65 of Title 8 of the Code of the City of Santa Clara, passed by Santa Clara City Council on April 28, 2020, shall hereby be in effect from June 1, 2020 to June 30, 2020.
2. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED

AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING  
THEREOF HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. None



## Agenda Report

20-169

Agenda Date: 5/26/2020

### REPORT COUNCIL

#### SUBJECT

Action on the Annual Report and Resolution of Intention for Levy of Annual Assessment for the Santa Clara Tourism Improvement District [Council Pillar: Promote and Enhance Economic and Housing Development]

#### BACKGROUND

In 1989, the State Legislature passed the Parking and Business Improvement Area Law, which added Sections 36500, et seq., to the California Streets and Highways Code ("Code"). The Code was created to "promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent erosion of the business districts." The Code had the further goal of promoting tourism. To achieve this goal, the Code allowed cities to fund property related improvements and activities through the levy of assessments upon the businesses which benefit from those improvements and activities.

Pursuant to the authority granted under the Code, on January 11, 2005, City Council adopted Ordinance No. 1797 (the "Ordinance") amending the Santa Clara Municipal Code to add Article IX entitled "Santa Clara Tourism Improvement District" to Chapter 16.10 ("Local Improvements - Acquisition and Improvement Procedure"), establishing the Tourism Improvement District ("TID") and its boundaries. The TID currently includes the following eleven hotels near the Santa Clara Convention Center: AC Santa Clara, Avatar Hotel, Biltmore Hotel & Suites, Element, Embassy Suites, Hilton Santa Clara, Hyatt House, Hyatt Regency, Marriott Santa Clara, The Plaza Suites, and TownePlace Suites by Marriott. The Ordinance also established a District Advisory Board (the "Advisory Board") to administer the affairs of the TID. The Advisory Board is constituted of representatives of businesses within the TID. All hotel properties located within the District boundaries currently collect a \$1.00 fee from hotel guests on each occupied hotel/motel room night.

In 1994, the State Legislature passed the Property and Business Improvement Law (1994 Law), adding Sections 36600 et seq. to the California Streets and Highways Code. The 1994 Law is based upon the belief that there is a local benefit to be derived from allowing business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements. The 1994 Law includes procedural differences for the district, as compared with the 1989 Law.

Lodging businesses in the TID decided to pursue the formation of the district under the 1994 Law and on November 12, 2019, Council consented to the TID's request (RTC 19-920). On February 11, 2020, City staff returned to Council with additional information on the potential assessment rate and for the purposes of preparing the necessary documents and Resolutions for future Council consideration as to the formation of the district, Council provided direction to proceed with a change to the TID assessment method from \$1.00 per occupied room night to 1.5% of gross short-term room

rentals, with the future option to increase the assessment to no more than 2% (RTC 20-1394).

On March 24, 2020, staff presented signed petitions submitted by the lodging businesses to initiate the formation process of the new district (RTC 20-416). In light of the COVID-19 pandemic already resulting in the closure of several businesses and hotels in the community and the unknown extent of the economic impacts to the City, Council reconsidered the percent assessment and directed staff to return with a flat rate assessment option for Council's consideration.

On April 8, 2020, staff presented flat rate assessment options to Council (RTC 20-452) and Council voted to temporarily postpone the formation of a new district under the 1994 Law and to renew the current TID under the 1989 Law.

Pursuant to Section 36533 of the Code of the 1989 Law and Santa Clara City Code ("SCCC") 16.10.1220, the Advisory Board is required to file with the City Clerk and submit to the City by April 1<sup>st</sup> of each year an Annual Report that includes improvements and activities during the current fiscal year, the amount of any surplus or deficit to be carried over from a previous fiscal year, and a TID budget for the following fiscal year. After the approval of the Annual Report, to levy the annual assessment for the upcoming fiscal year, Council must consider a Resolution of Intention followed by a notice and hearing process as outlined in Sections 36534-36535 of the Code.

## **DISCUSSION**

The TID has been in effect for 15 years and was established to fund activities such as marketing campaigns to attract additional travelers, tourists, cultural groups, and conventions; print ads in travel publications; outdoor advertising campaign; and fund administrative costs of the program.

As mentioned previously, the City's Municipal Code requires that the TID Annual Report be submitted by April 1<sup>st</sup> of each year. As direction was provided by Council on April 8<sup>th</sup> to proceed with the renewal of the current district, the TID Advisory Board prepared and submitted to staff the Annual Report dated May 5, 2020.

The two-step process for levying the assessment includes Council's consideration of the Annual Report and a Resolution of Intention to levy and collect assessments within the district during the upcoming fiscal year and setting a date for the Public Hearing and then holding the Public Hearing itself. Following approval of the TID Annual Report and adoption of the Resolution of Intention, a Public Hearing will be noticed for June 23, 2020 and if the levy is approved by Council at the June 23<sup>rd</sup> meeting, the levy will become effective July 1, 2020.

In accordance with Sections 36524-36525 of the Code, the Public Hearing will allow businesses subject to the assessment to submit comments, voice concerns, and protest the assessment. Council can approve the continuation of the TID assessment (\$1.00 per occupied room night) at the Public Hearing; unless oral or written protests are received from the businesses located within the TID that pay 50% or more of the proposed assessments. In that event, the Council cannot consider continuation of the TID assessment for a period of at least one year from the date of the finding of the majority written protest.

With the absence of an active destination marketing organization (DMO), the TID Annual Report notes the TID's efforts and accomplishments including, but not limited to, providing resources to support the formation of the new DMO including the CEO recruitment, participating in the

development of a new booking strategy with industry partners, and leading efforts and activities to identify a long-term funding strategy for the DMO.

The TID's FY 2020/21 Proposed Budget was developed in collaboration with the TID lodging businesses and the DMO Board of Directors. The Proposed Budget includes an Operating Budget of \$1,244,060 and additional funds to support identified one-time costs. The FY 2020/21 Proposed Budget supports the implementation of the "phase one" approach previously presented to Council and includes funding for continued DMO organizational development, the purchase of start-up equipment and supplies, and four sales and marketing positions including the CEO for which recruitment efforts are underway. The TID Advisory Board also includes a proposed budget for FY 2021/22 which considers a reduction in TID assessment collection for that fiscal year. Based on the TID's projections, maintaining the current TID assessment would not be sustainable after two years.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental 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**

If the increased TID assessment is approved at the June 23<sup>rd</sup> Public Hearing, the projected TID assessment for FY 2020/21 will be \$600,000. This reduced estimate takes into consideration continued lodging businesses and Convention Center closures into the first quarter of FY 2020/21. The total projected budget for the TID is \$1,321,060 which includes use of \$721,060 from the \$1.66 million Reserve Balance.

Of the projected revenue, \$3,000 is budgeted to cover the City's administrative costs associated with collecting and disbursing the assessment.

### **COORDINATION**

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

### **PUBLIC CONTACT**

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

### **ALTERNATIVES**

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

**RECOMMENDATION**

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

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. TID Annual Report
2. DMO FY 2020/21 Proposed Budget
3. Resolution of Intention for Levy of Annual Assessment for the Santa Clara Tourism Improvement District

## EXECUTIVE SUMMARY

May 5, 2020

This is the annual report by the participating hotel properties in Santa Clara's Tourism Improvement District (TID) and in collaboration with the newly formed Destination Marketing Organization (DMO) on the use of the revenues collected from the TID.

- In December 2004, the City Council approved the TID to collect a \$1.00 fee on each occupied hotel/motel room in the now 11 hotels near the Santa Clara Convention Center: AC Santa Clara (joined 2019), Avatar Hotel, Biltmore Hotel & Suites, Element (joined 2019), Embassy Suites, Hilton Santa Clara, Hyatt House, Hyatt Regency, Marriott Santa Clara, The Plaza Suites, and TownePlace Suites by Marriott.
- The intent of the TID is to serve as a vehicle of subsidy with the participating hotels self-assessing a fee in order to properly market the City of Santa Clara as a convention and visitors' destination.
- The hotels began to collect the TID assessment on February 14, 2005.
- Forecasted Collection FY 2019/2020 - \$709,977
- Forecasted Collection FY 2020/2021 - \$600,000
- Current Reserve Funds - \$1.6 million

Actual 2017-18	Actual 2018-19	Estimated 2019-20*	Forecasted 2020-21
\$780,451	\$660,711	\$709,977	\$600,000

\*FY2019-20 collections are estimated based collection through May 5, 2020 assuming current funding levels due to COVID-19 occupancy projections.

- The TID Board directs the spending of the TID funds through the newly created DMO "Visit Santa Clara". The attached report outlines the results for fiscal year 2019-20.

The Honorable Mayor and City Council  
City of Santa Clara  
1500 Warburton Ave  
Santa Clara, CA 95050

May, 5, 2020

CC:

Deanna J. Santana, City Manager  
Ruth Mizobe Shikada, Assistant City Manager  
Nancy Thome, Assistant to the City Manager  
Kenn Lee, Director of Finance  
City Clerks' Office

The following is a report on the Santa Clara Tourism Improvement Districts (TID) FY 2019/2020 activities and FY 2020-21 goals.

To assist the newly formed Destination Marketing Organization (DMO) with selling and marketing the City of Santa Clara to hotel and convention center groups and visitors, the TID, which was established in 2004 as a marketing revenue supplement, is now the entire funding source for citywide sales and marketing efforts.

Each participating hotel is assessed \$1.00 per occupied room night. This assessment funds the TID's efforts to successfully market and sell the City of Santa Clara and convention center. The TID is composed of 11 Santa Clara hotels that surround the Santa Clara Convention Center. They include the AC Santa Clara, Avatar Hotel, Biltmore Hotel & Suites, Element, Embassy Suites, Hilton Santa Clara, Hyatt House, Hyatt Regency, Marriott Santa Clara, The Plaza Suites, and TownePlace Suites by Marriott.

Since the inception of the TID on February 14, 2005, the District has provided over \$8.37 million in additional funding to the former CVB, which further supported the marketing of the hotels and Santa Clara Convention Center. As determined by Council on September 18, 2018 to terminate the Santa Clara Chamber of Commerce's contract to manage the CVB and SCCC, the TID funds have since been collected by the City with minimal expenditures. The TID, knowing how critical future marketing efforts were to future groups, events, visitors and the economy, stepped up to be the sole funding source for a new DMO following the Council decision to terminate the Chamber's agreement for these services. This insertion of the TID as the sole funder of sales and marketing efforts saves the City about \$1.6 annually and enables the hotels to fund the DMO entirely based on the TID funding mechanism, which the TID is interested in evolving to a percent model of room rate in order to sustain DMO operations.

The goal of the TID is to review annual work programs and budget for the DMO. Each TID hotel holds a seat on the Board as a voting member. Below is a recap of FY 2019-2020 YTD through April 17, 2020.

### **Key Accomplishments**



The current year has been dedicated to preparing for the future with the development of the newly formed DMO “Visit Santa Clara” including establishing new strategic selling efforts, systems of governance, a new staffing model and supporting a new budget for the upcoming fiscal year.

The following are key accomplishments of the 2019/2020 fiscal year:

1. Funded administrative expenses for the formation of the new DMO including legal, district formation and insurance.
2. Formation of the new DMO Board of Directors with guidance from Council.
3. Identified and solicited bids for insurance coverage of the DMO operation.
4. Execution of a hotel room block survey to guide sales strategies as it relates to booking group business into the SCCC and Santa Clara hotels.
5. Development of a new Booking Strategy for the DMO and SCCC to follow jointly. This strategy sets the course for the DMO to sell the space to regional and national markets into the years ahead while the SCCC sales efforts focus on the short-term windows for local uses.
6. Development of budget to function under multiple scenarios, including forecasting the situation related to COVID-19 recovery.
7. Development of a year-1 budget for the DMO.
8. Gathered support to allow the TID hotels devise a future solution to properly fund the future marketing efforts of the newly formed DMO in support of the City of Santa Clara and Santa Clara Convention Center. The percent solution will remove any previous financial obligations by the City that were \$1.6M annually with the previous management agreement.
9. Development of the recruitment materials and approval for the executive search to begin for a new industry professional to be the CEO of the DMO. The DMO has finalized candidates.
10. Development of an organizational chart with position by position descriptions to support a sustainable DMO operation into the future.
11. Identified sales and marketing programs to be vetted by the incoming CEO.
12. Solidified a website maintenance agreement to maintain the Visit Santa Clara website.
13. Completed a framework for future success in marketing the destination with direct benefits to the City of Santa Clara, the Santa Clara Convention Center, the Tourism Improvement District and Visit Santa Clara.

This is the 15<sup>th</sup> year of operation for the TID and it has been successful in supporting the development and direction of the newly formed DMO. Much groundwork has been laid over the past nearly two years to get to this stage. Future years will be dependent on modifying and enhancing the existing funding structure as stated by Council in recent meetings. However, in the interim, the TID is committed to achieving success of the goals laid out for the TID and City with this effort and the TID is utilizing a portion of its reserve funding to jump start the operation at this level. With two prior years of no marketing efforts in place,

the TID hotels believe this utilization of the reserve funds will set up the organization and the City for joint success for sales and marketing at the Santa Clara Convention Center. Once the temporary \$1.00/room funding is converted to a percentage operations will be sustainable. The TID hotels remain as committed as ever to building a successful future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eron Hodges', with a long horizontal flourish extending to the right.

Eron Hodges  
TID Board Chair

DMO PROPOSED FY 2020/21 Budget			
Budget Item	FY 2020/21	% of Budget	FY 2021/22
<b><u>SALES &amp; SERVICES</u></b>			
Personnel	\$ 325,000		\$ 325,000
Salary	\$ 152,500		\$ 152,500
Incentive	\$ 97,500		\$ 97,500
Benefits	\$ 75,000		\$ 75,000
Conferences & Events	\$ 25,000		\$ 25,000
Support Services	\$ 60,000		\$ 60,000
Site Tours	\$ 19,000		\$ 19,000
Familiarization Trips	\$ 19,500		\$ 19,500
Client Events	\$ 19,000		\$ 19,000
Subscriptions & Dues	\$ 2,500		\$ 2,500
Travel & Entertainment	\$ 15,000		\$ 15,000
Incentives	\$ 64,160		\$ 64,160
<b>SUBTOTAL</b>	<b>\$ 489,160</b>	<b>39.32%</b>	<b>\$ 489,160</b>
<b><u>MARKETING &amp; COMMUNICATION</u></b>			
Personnel	\$ 90,000		\$ 90,000
Salary	\$ 63,000		\$ 63,000
Benefits	\$ 27,000		\$ 27,000
Contract Services	\$ 60,000		\$ 60,000
Website	\$ 50,000		\$ 50,000
Website maintenance	\$ 24,000		\$ 24,000
Development	\$ 26,000		\$ 26,000
<b>SUBTOTAL</b>	<b>\$ 200,000</b>	<b>16.08%</b>	<b>\$ 200,000</b>
<b><u>ADMINISTRATION</u></b>			
Personnel	\$ 354,900		\$ 354,900
Salary	\$ 210,000		\$ 210,000
Incentive	\$ 63,000		\$ 63,000
Benefits	\$ 81,900		\$ 81,900
Contract Services	\$ 80,000		\$ 80,000
Human Resources	\$ 30,000		\$ 30,000
Finance	\$ 15,000		\$ 15,000
Legal	\$ 20,000		\$ 20,000
Payroll	\$ 15,000		\$ 15,000
Miscellaneous	\$ 70,000		\$ 70,000
Audit	\$ 10,000		\$ 10,000
Insurance	\$ 50,000		\$ 50,000
Network Support	\$ 5,000		\$ 5,000
Purchased Goods & Services	\$ 5,000		\$ 5,000
<b>SUBTOTAL</b>	<b>\$ 504,900</b>	<b>40.58%</b>	<b>\$ 504,900</b>
Contingency/Reserves	\$ 50,000		\$ 53,000
<b>SUBTOTAL</b>	<b>\$ 50,000</b>	<b>4.02%</b>	<b>\$ 53,000</b>
<b>OPERATING BUDGET TOTAL</b>	<b>\$1,244,060</b>	<b>100.00%</b>	<b>\$1,247,060</b>

<b>DMO PROPOSED FY 2020/21 Budget</b>			
<b>Budget Item</b>	<b>FY 2020/21</b>	<b>% of Budget</b>	<b>FY 2021/22</b>
<b>City Administration Fee</b>	<b>\$ 3,000</b>		<b>\$ 3,000</b>
<b>Hotel Reimbursement</b>	<b>\$ 4,000</b>		<b>-</b>
<b>TOTAL</b>	<b>\$1,251,060</b>		<b>\$1,250,060</b>
<b>Start Up Costs</b>			
Computers, Hardware, Supplies	\$ 20,000		
Contract Services	\$ 50,000		
<b>Total Start Up Costs</b>	<b>\$ 70,000</b>		
<b>YEAR-1 TOTAL</b>	<b>\$ 1,321,060</b>		
<b>FY 2020/21 Revenue Collected</b>	<b>\$ 600,000</b>		
<b>Reserves Needed</b>	<b>\$ 721,060</b>		
 <b>Reserves Beginning Year-2</b>	 <b>\$ 945,307</b>		
<b>FY 2021/22 Revenue Collected Year-2</b>	<b>\$ 600,000</b>		
<b>Budget Year-2 (See column for breakdown)</b>	<b>\$ 1,250,060</b>		
<b>Reserves Balance Year-2</b>	<b>\$ 295,247</b>		

DMO Proposed FY 2020/21 Budget - DETAILS				
Budget Item	FY 2020/21	% of Budget	FY 2021/22	Notes
<b><u>SALES &amp; SERVICES</u></b>				
Personnel	\$ 325,000		\$ 325,000	2 FTE - Director of Sales and National Sales Manager
Salary	\$ 152,500		\$ 152,500	
Incentive	\$ 97,500		\$ 97,500	
Benefits	\$ 75,000		\$ 75,000	
Conferences & Events	\$ 25,000		\$ 25,000	Travel/accomodation costs associated with staff as registered attendees - not hosting booth or providing sponsorships. DMO to determine.
Support Services	\$ 60,000		\$ 60,000	Costs associated with sales client engagement activities
Site Tours	\$ 19,000		\$ 19,000	Costs to bring in clients to tour the Center
Familiarization Trips	\$ 19,500		\$ 19,500	Prospective client trips into Santa Clara to visit the Center and relevant sites
Client Events	\$ 19,000		\$ 19,000	Hosting and facilitating client events on or offsite
Subscriptions & Dues	\$ 2,500		\$ 2,500	DMO will determine which organizations to join based on need
Travel & Entertainment	\$ 15,000		\$ 15,000	Sales employee travel and client entertainment
Incentives	\$ 64,160		\$ 64,160	Any incentive funds are approved by TID in advance - will provide TID approval process
<b>SUBTOTAL</b>	<b>\$ 489,160</b>	<b>39.32%</b>	<b>\$ 489,160</b>	
<b><u>MARKETING &amp; COMMUNICATION</u></b>				
Personnel	\$ 90,000		\$ 90,000	1 FTE - Marketing Manager
Salary	\$ 63,000		\$ 63,000	
Benefits	\$ 27,000		\$ 27,000	
Contract Services	\$ 60,000		\$ 60,000	Design and/or consultant work to develop marketing materials to support sales initiatives
Website	\$ 50,000		\$ 50,000	
Website maintenance	\$ 24,000		\$ 24,000	Funds for current agreement with Destination Advantage (\$2,000/month)
Development	\$ 26,000		\$ 26,000	Fees associated with freelance development work
<b>SUBTOTAL</b>	<b>\$ 200,000</b>	<b>16.08%</b>	<b>\$ 200,000</b>	
<b><u>ADMINISTRATION</u></b>				
Personnel	\$ 354,900		\$ 354,900	1 FTE - President/CEO
Salary	\$ 210,000		\$ 210,000	This is a negotiable up to amount
Incentive	\$ 63,000		\$ 63,000	
Benefits	\$ 81,900		\$ 81,900	
Contract Services	\$ 80,000		\$ 80,000	
Human Resources	\$ 30,000		\$ 30,000	Contract HR services
Finance	\$ 15,000		\$ 15,000	Contract finance (CPA, taxes, etc) services
Legal	\$ 20,000		\$ 20,000	Contract legal services as needed - Current agreement with Thoits Law
Payroll	\$ 15,000		\$ 15,000	Payroll costs across all departments
Miscellaneous	\$ 70,000		\$ 70,000	
Audit	\$ 10,000		\$ 10,000	Annual financial audit
Insurance	\$ 50,000		\$ 50,000	D&O, General Liability, Workers Comp
Network Support	\$ 5,000		\$ 5,000	Drive/Cloud storage costs, networks, etc.
Purchased Goods & Services	\$ 5,000		\$ 5,000	Line items to be determined - office supplies, postage, rent, cell phone service, utilities, bank fees, etc.
<b>SUBTOTAL</b>	<b>\$ 504,900</b>	<b>40.58%</b>	<b>\$ 504,900</b>	
Contingency/Reserves	\$ 50,000		\$ 53,000	Held in a reserve, or used to account for uncollected assessments, for another program, administration or renewal cost (DMO Board discretion)
<b>SUBTOTAL</b>	<b>\$ 50,000</b>	<b>4.02%</b>	<b>\$ 53,000</b>	Reflects 6% increase
<b>OPERATING BUDGET TOTAL</b>	<b>\$1,244,060</b>	<b>100.00%</b>	<b>\$1,247,060</b>	

DMO Proposed FY 2020/21 Budget - DETAILS				
Budget Item	FY 2020/21	% of Budget	FY 2021/22	Notes
City Administration Fee	\$ 3,000		\$ 3,000	For City costs associated with the administration and collection of TID funds (reduced from total collection amount passed onto TID/DMO)
Hotel Reimbursement	\$ 4,000		-	Hotel reimbursement request for previous TID work with Civitas (estimated \$500 x 8 hotels)
<b>TOTAL</b>	<b>\$1,251,060</b>		<b>\$1,250,060</b>	
<b>Start Up Costs</b>				Costs associated with standing up the organization
Computers, Hardware, Supplies	\$ 20,000			For 4 staff
Contract Services	\$ 50,000			Related to continued DMO formation costs: legal, policy and organizational development, other
<b>Total Start Up Costs</b>	<b>\$ 70,000</b>			
<b>YEAR-1 TOTAL</b>	<b>\$ 1,321,060</b>			
<b>FY 2020/21 Revenue Collected</b>	<b>\$ 600,000</b>			Projected revenues for FY 2020/21
<b>Reserves Needed</b>	<b>\$ 721,060</b>			
<b>Reserves Beginning Year-2</b>	<b>\$ 945,307</b>			Beginning July 1, 2020 \$ 1,666,367 Current reserve balance as of May 3, 2020 . Will fluctuate as there are charges pending.
<b>FY 2021/22 Revenue Collected Year-2</b>	<b>\$ 600,000</b>			Projected revenues for FY 2021/22
<b>Budget Year-2 (See column for breakdown)</b>	<b>\$ 1,250,060</b>			
<b>Reserves Balance Year-2</b>	<b>\$ 295,247</b>			

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

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
APPROVING THE ANNUAL REPORT OF THE ADVISORY BOARD  
OF THE SANTA CLARA TOURISM IMPROVEMENT DISTRICT  
AND DECLARING ITS INTENTION TO LEVY AND COLLECT  
ASSESSMENTS WITHIN THE DISTRICT, AND TO FIX A TIME AND  
PLACE FOR A PUBLIC HEARING ON THE LEVY OF THE  
PROPOSED ASSESSMENT FOR THE 2020/2021 FISCAL YEAR**

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

**WHEREAS**, tourism is a large contributor to the City's economy, and promotion of the City's scenic, recreational, cultural, and other attractions as a tourist destination is an important public purpose; and

**WHEREAS**, the Parking and Business Improvement Area Law of 1989 ("PBIAL"), sections 36500 et seq. of the Streets and Highways Code, authorizes cities to establish business improvement districts for several purposes, one of which is promotion of tourism; and

**WHEREAS**, the Santa Clara Tourism Improvement District ("TID") was established in January 2005, by adoption of Article IX entitled "Santa Clara Tourism Improvement District" of Chapter 16.10 of the Santa Clara Municipal Code ("SCCC"), and is generally located in the northern portion of the city, as more particularly described in Resolution No. 7176; and

**WHEREAS**, in accordance with the requirements of Streets and Highways Code Section 36530, an Advisory Board was established to make recommendations to the City Council regarding the expenditure of revenues derived from the levy of assessments, on the classification of businesses, as applicable, and on the method and basis of levying the assessments; and

**WHEREAS**, the SCCC and the PBIAL require the Advisory Board to prepare and submit an annual report ("Annual Report") stating proposed changes, improvements and activities for the fiscal year, an estimate of the cost of providing the improvements and the activities for the year, the method and basis of levying the assessment, the amount of any surplus or deficit revenues to be carried over from the previous fiscal year, and the amount of any contributions to be made from sources other than assessments; and

**WHEREAS**, the Advisory Board proposes to keep at \$1.00 per room per occupied night; and

**WHEREAS**, on May 19, 2020, the Advisory Board approved the Annual Report, which has been filed with the City Clerk, and provides a full and detailed description of the improvements and activities to be provided for fiscal year 2020/21, the boundaries of the area and any benefit zones within the area, and the proposed assessments to be levied upon the businesses within the area for the fiscal year.

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

1. That the City Council hereby declares its intention to continue the TID without any change to the boundaries, or in any benefit zone within the area, in accordance with the Annual Report approved by the Advisory Board.
2. That the City Council hereby declares its intention to levy and collect assessments within the TID for fiscal year 2020/21.
3. That, generally, the types of activities proposed to be funded by the continued levy of assessments on businesses in the TID are marketing and advertising activities that will promote tourism, as set forth in SCCC 16.10.1160.
4. That the assessment is to remain the same at \$1.00 per occupied room per night for all transient occupancies.
5. That a public hearing to renew the annual levy for the TID is hereby set for June 23, 2020 at 2:00 p.m. before the City Council of the City of Santa Clara at the Santa Clara Council Chambers, 1500 Warburton Street, Santa Clara, California.
6. That at the public hearing, the testimony of all interested persons, for or against the continuation of the District, the boundaries of the District, the area of benefit within the District, the assessments to be levied, or the furnishing of specified types of improvements or activities, will be heard. A protest may be made orally or in writing by any interested person. Any written protest as to the regularity or evidence of the



proceedings shall be in writing and clearly state the irregularity or defect to which the objection is made. Written protests must be received by the City Clerk at or before the time set for the public hearing. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a written description of the business in which the person subscribing the protest is interested sufficient to identify the business. If the person subscribing is not shown on the official records of the City as the owner of the business, then the protest shall contain or be accompanied by written evidence that the person is the owner of the business.

7. That if at the conclusion of the public hearing, there are of record, written protests by the owners of the tourist lodging establishments within the TID that would pay fifty percent (50%) or more of the total assessments of the entire TID, no further proceedings to renew the annual levy for the TID shall occur. New proceedings to form the TID shall not be undertaken again for a period of at least one (1) year from the date of the finding of the majority written protests by the City Council. If the majority of written protests are only as to an improvement or activity proposed, then that type of improvement or activity shall not be included in the TID.
8. Effective date. This Resolution is effective on its adoption.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 26<sup>th</sup> DAY OF MAY, 2020, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

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

Attachments incorporated by reference: None



## Agenda Report

20-472

Agenda Date: 5/26/2020

### REPORT TO COUNCIL & PUBLIC FACILITIES FINANCING CORPORATION

#### **SUBJECT**

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

#### **BACKGROUND**

The City is a co-owner of the San José-Santa Clara Regional Wastewater Facility ("RWF"), which is undergoing over \$1 billion of capital improvements in the next five years. Under the Sewage Treatment Plant Agreement between San José and Santa Clara dated March 30, 1959, as amended, the City is obligated to contribute its share of the capital costs of improvements to the RWF. The City's 10-year financial plan utilized for budget and rate setting purposes assumes that a portion of the City's contribution (currently projected to total \$145.4 million in 2019-20 through 2023-24) will be paid from debt financing proceeds. Debt service on the financing would be repaid over time from net revenues of the sewer system that distributes the project costs across current and future sewer ratepayers.

To provide the City maximum flexibility to fund unpredictable construction drawdown requirements, staff determined that an interim credit facility financing instrument would be financially advantageous for the RWF project. Similar to a commercial line of credit, this form of financing allows the City to draw funds as needed over time, with the expectation that long-term, fixed rate financing would be secured within approximately four years, when project cash flows are better defined.

The enclosed Resolutions authorize documents and actions related to the execution of the interim financing outlined above in an amount not to exceed \$50,000,000.

#### **DISCUSSION**

The Finance Department entered into an agreement with Brandis Tallman LLC to assist with the solicitation of offers for tax-exempt private placement interim financing for the Project. Brandis Tallman sent a request for proposals to 22 banks on March 5, 2020. During the intervening period, the capital markets were disrupted by the COVID-19 pandemic and the due date for proposals was extended for an additional week. On March 27, 2020, the City received proposals from two financial institutions to finance the Project.

Although the City only received two proposals from JPMorgan Chase and Wells Fargo, respectively, they are considered very desirable by the Finance Department and the City's financial advisors. Currently, interest rates have dropped substantially due to the Federal Reserve reducing interest rates in reaction to the negative economic effects of the COVID-19 pandemic. Each bank proposed rates for terms of 2 - 4 years, as requested by the City. Following an analysis of the proposals, the Finance Department entered into contract negotiations with JPMorgan Chase (the "Lender"), as the

proposer with the lowest financing cost and most advantageous financing terms.

Presented for your review and adoption are two Resolutions authorizing and approving the following documents and actions relating to the financing of the Project:

**A Resolution of the City Council of the City of Santa Clara:**

1. Approving entering into an installment sale financing arrangement in the aggregate principal amount of not to exceed \$50,000,000 with the City of Santa Clara Public Facilities Financing Corporation (the "Financing Corporation"), whereby the Financing Corporation proposes to assign installment debt service payments received from the City to the Lender;
2. Authorization to execute associated "Financing Documents" including a) an Installment Sale Agreement between the City and the Financing Corporation; b) an Assignment Agreement among the City, the Financing Corporation and the Lender; and c) a Rate Lock Agreement in the event it is in the best interests of the City and the Lender to fix the interest rate on the financing more than two business days prior to the closing of the transaction;
3. Approving the engagement of professional services in connection with the financing;
4. Authorizing various officers of the City to execute all documents that may be necessary to close the transaction, make any minor non-substantive or routine changes, and certain other related actions.

**A Resolution of the City of Santa Clara Public Facilities Financing Corporation:**

1. Approving entering into an installment sale financing arrangement in the aggregate principal amount of not to exceed \$50,000,000 with the City of Santa Clara, whereby the Financing Corporation proposes to assign the installment debt service payments received from the City to the Lender;
2. Authorization to execute associated "Financing Documents" including a) an Installment Sale Agreement between the City and the Financing Corporation; and b) an Assignment Agreement among the City, the Financing Corporation and the Lender;
3. Authorizing various officers of the Financing Corporation to execute all documents that may be necessary to close the transaction, make any minor non-substantive or routine changes, and certain other related actions.

The Installment Sale Agreement was created with input from the City, its outside legal counsel and consultants, as well as JP Morgan. Section 8.12 of the Agreement ("Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity") was added by JP Morgan as a standard non-negotiable clause that they include in all similar agreements; however, this clause is not a standard one for general City contracts. In the event of a litigated dispute between the City and JP Morgan regarding this Agreement, the case would be referred to an arbitration-like process rather than Superior Court. This clause was included in a prior 2015 City financing agreement with JP Morgan. The City Attorney's Office believes that any additional risks associated with including this clause in the Agreement to be fairly low, and therefore concurs with the recommendation. However, in the interest of clarity and transparency, the City Attorney's Office believes that nonstandard contract provisions should be brought to the Council's attention.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT**

The credit facility financing will bear a variable rate of interest. Based on current market conditions, initial annual debt service in FY 2021 is expected to be approximately \$600,000. It is expected that amounts borrowed under the credit facility would ultimately be refinanced with proceeds of a future long-term, fixed rate issuance of sewer revenue certificates of participation (subject to future approval by Council). Based on a conservative estimate of future long-term borrowing costs (5%) and assuming a 30-year repayment period, annual debt service for such a fixed rate financing would be approximately \$3.25 million. The anticipated repayment amount for FY 2020/21 has been factored into the Proposed Budget, and the payments for future years will be incorporated into the Sewer Utility funds as part of the next budget cycle.

Debt service payments would be made from net operating revenues of the Sewer Utility and have been contemplated in the Sewer Utility's long-range financial plan and rate structure.

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

That the Council:

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

That the Financing Corporation:

1. Adopt the Resolution authorizing the Installment Sale Financing in an amount not to exceed \$50,000,000 to provide interim financing for capital costs of the Regional Wastewater Facility, approving the final form and execution of financing documents and authorizing certain other related actions consistent with the financing; and
2. Authorize the Executive Director, Director of Finance and other officers to execute all required

agreements necessary to consummate any of the transactions contemplated by the agreements and documents approved under the Resolution and to make any minor non-substantive or routine changes to complete the financing transaction.

Reviewed by: Gary Welling, Director, Water and Sewer Utilities

Reviewed by: Kenn Lee, Director, Department of Finance

Approved by: Deanna J. Santana, City Manager & Executive Director of the Financing Corporation

**ATTACHMENTS**

1. City Resolution
2. Public Facilities Financing Corporation Resolution
3. Installment Sale Agreement
4. Assignment Agreement

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

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
APPROVING INSTALLMENT SALE FINANCING IN THE  
PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 TO PROVIDE  
INTERIM FINANCING FOR CAPITAL COSTS OF THE SAN JOSÉ-  
SANTA CLARA REGIONAL WASTEWATER FACILITY, AND  
APPROVING FINAL FORM OF FINANCING DOCUMENTS AND  
OFFICIAL ACTIONS**

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

**WHEREAS**, the City of Santa Clara (the “City”) owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the “Wastewater System”), and wastewater which is collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the “Wastewater Treatment Facility”) which is co-owned by the City and the City of San José pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended (the “Wastewater Treatment Agreement”);

**WHEREAS**, under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute funds towards the cost of constructing certain improvements to the Wastewater Treatment Facility (the “Project”);

**WHEREAS**, the City has determined that it is in its best interests to provide interim financing for the Project and in order to implement such financing the City has proposed to enter into an Installment Sale Agreement (the “Installment Sale Agreement”) with the City of Santa Clara Public Facilities Financing Corporation (the “Financing Corporation”) pursuant to which the Financing Corporation agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the payment by the City of periodic installment payments (the “Installment Payments”), which are payable from and secured by a pledge of and lien on the net revenues of the Wastewater System;

**WHEREAS**, in order to provide the funds needed to finance the Project in an amount not

exceeding \$50,000,000, the Financing Corporation proposes to assign the Installment Payments to JPMorgan Chase Bank, N.A., as lender (the “Lender”);

**WHEREAS**, pursuant to Government Code Section 5852.1 which became effective on January 1, 2018 by the enactment of Senate Bill 450, certain information relating to the proposed financing is set forth in Exhibit A attached to this Resolution, and such information is hereby disclosed and made public;

**WHEREAS**, the City Council has previously approved a Debt Management Policy which complies with Government Code Section 8855, and the proposed financing will be in compliance with said policy; and

**WHEREAS**, the City Council approves all of said transactions in furtherance of the public purposes of the City, and the City Council wishes at this time to authorize all proceedings and documents relating to the interim financing of the Project as described herein;

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

1. That ...

A. Approval of Financing Proposal. The City Council hereby approves the financing plan for the Project as described above, and in accordance with the proposal submitted to the City by the Lender, in the form on file with the City Clerk. The City Manager or the Director of Finance (each, an “Authorized Officer”) are each hereby authorized and directed for and in the name and on behalf of the City to execute any and all documents which are required to accept said proposal of the Lender.

B. Installment Sale Agreement. The City Council hereby approves the Installment Sale Agreement relating to the financing of the Project, between the City and the Financing Corporation, in the form thereof on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager, whose execution thereof shall be

conclusive evidence of such approval. The City Manager is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest to, the final form of the Installment Agreement on behalf of the City.

C. Assignment by Financing Corporation. The City Council hereby approves the assignment to the Lender of certain rights of the Financing Corporation under the Installment Sale Agreement, including the right to receive the Installment Payments. Such assignment shall be made pursuant to an Assignment Agreement among the City, the Financing Corporation and the Lender in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by the City Manager, whose execution thereof shall be conclusive evidence of such approval. The City Manager is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest to, the final form of the Assignment Agreement on behalf of the City.

D. Official Actions. The Mayor, the City Manager, the Assistant City Manager, the Director of Finance, the Assistant Director of Finance, the Director of Water & Sewer Utilities, the Assistant Director of Water & Sewer Utilities, the City Attorney, the City Clerk and the Assistant City Clerk are each authorized and directed in the name and on behalf of the City to make any and all certificates, requisitions, agreements, notices, consents and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

2. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the



remaining portions of the Resolution. The City of Santa Clara, California, hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. Installment Sale Agreement

2. Assignment Agreement

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## EXHIBIT A

**REQUIRED GOOD FAITH ESTIMATES PURSUANT TO  
GOVERNMENT CODE SECTION 5852.1**

1. True Interest Cost of the financing: approximately 2.00%.
2. Issuance costs and other finance charges payable to third parties: \$195,700.
3. Amount of proceeds of the financing expected to be received by the City, net of proceeds for issuance costs in (2) above and net of capitalized interest (if any) and reserves (if any) paid or funded with the proceeds of the financing: \$50,000,000.
4. Total payment amount for the financing, being the sum of (a) debt service to be paid on the financing to final maturity, plus (b) any financing costs not paid from proceeds: \$54,418,450.

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*\*All amounts and percentages are estimates, and are made in good faith by the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding tax-exempt rates available in the bond market.*

**RESOLUTION NO. \_\_\_\_\_ (PFFC)**

**A RESOLUTION OF THE CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION APPROVING INSTALLMENT SALE FINANCING IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 TO PROVIDE INTERIM FINANCING FOR CAPITAL COSTS OF THE SAN JOSÉ-SANTA CLARA REGIONAL WASTEWATER FACILITY, AND APPROVING FINAL FORM OF FINANCING DOCUMENTS AND OFFICIAL ACTIONS**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION AS FOLLOWS:**

**WHEREAS**, the City of Santa Clara (the “City”) owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the “Wastewater System”), and wastewater which is collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the “Wastewater Treatment Facility”) which is co-owned by the City and the City of San José pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended (the “Wastewater Treatment Agreement”);

**WHEREAS**, under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute funds towards the cost of constructing certain improvements to the Wastewater Treatment Facility (“Project”);

**WHEREAS**, the City has determined that it is in its best interests to provide interim financing for the Project and in order to implement such financing the City has proposed to enter into an Installment Sale Agreement (the “Installment Sale Agreement”) with the City of Santa Clara Public Facilities Financing Corporation (the “Financing Corporation”) pursuant to which the Financing Corporation agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the payment by the City of periodic installment payments (the “Installment Payments”), which are payable from and secured by a pledge of and lien on the net revenues of the Wastewater System;

**WHEREAS**, in order to provide the funds needed to finance the Project in an amount not exceeding

\$50,000,000, the Financing Corporation proposes to assign the Installment Payments to JPMorgan Chase Bank, N.A., as lender (the “Lender”); and

**WHEREAS**, the Board of Directors of the Financing Corporation approves all of said transactions in furtherance of the public purposes of the Financing Corporation, and the Board of Directors wishes at this time to authorize all proceedings and documents relating to the financing for the Project as described herein;

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

1. That ...

A. Approval of Financing Plan and Related Documents. The Board of Directors hereby approves the financing plan outlined above, and in accordance with the proposal submitted to the City by the Lender in the form on file with the Secretary.

B. Installment Sale Agreement. The Board of Directors hereby approves the Installment Sale Agreement relating to the financing of the Project, between the City and the Financing Corporation, in the form thereof on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Executive Director, whose execution thereof shall be conclusive evidence of such approval. The Executive Director is hereby authorized and directed for and in the name and on behalf of the Financing Corporation to execute, and the Secretary is hereby authorized and directed to attest to, the final form of the Installment Sale Agreement on behalf of the Financing Corporation.

C. Assignment to Lender. The hereby approves the assignment to the Lender of certain rights of the Financing Corporation under the Installment Sale Agreement, including the right to receive the Installment Payments. Such assignment shall be made pursuant to an Assignment Agreement among the City, the Financing Corporation and the Lender in substantially the form on file with the Secretary, together with any changes therein or additions thereto deemed advisable by

the Executive Director, whose execution thereof shall be conclusive evidence of such approval. The Executive Director is hereby authorized and directed for and in the name and on behalf of the Financing Corporation to execute, and the Secretary is hereby authorized and directed to attest to, the final form of the Assignment Agreement on behalf of the Financing Corporation.

D. Official Actions. The President, the Executive Director, the Director of Finance, the Secretary and all other officers of the Financing Corporation are each authorized and directed in the name and on behalf of the Financing Corporation to make any and all assignments, certificates, requisitions, agreements, notices, consents and other instruments of conveyance and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the Financing Corporation is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

2. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution. The hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020, BY THE FOLLOWING VOTE:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAINED: DIRECTORS:

ATTEST:

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NORA PIMENTEL, MMC  
SECRETARY OF THE SANTA CLARA PUBLIC  
FACILITIES FINANCING CORPORATION

Attachments incorporated by reference:

1. Installment Sale Agreement
2. Assignment Agreement

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## **INSTALLMENT SALE AGREEMENT**

This INSTALLMENT SALE AGREEMENT (together with any amendments hereof and supplements hereto, this "Agreement"), dated as of June 1, 2020, is between the CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), as seller, and the CITY OF SANTA CLARA, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), as purchaser.

### ***B A C K G R O U N D :***

1. The City owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the "Wastewater System"), and wastewater which is collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the "Wastewater Treatment Facility") which is co-owned by the City and the city of San José, pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended, between the City and the city of San José (the "Wastewater Treatment Agreement").

2. Under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute funds for the capital costs of improving the Wastewater Treatment Facility (the "Project").

3. The Corporation has been formed for the purpose of assisting the City in the financing of public capital improvements, and in order to provide funds to finance the Project the Corporation has proposed to enter into this Agreement with the City under which the Corporation agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").

4. For the purpose of obtaining the moneys required to finance the construction of the Project in accordance with the terms hereof, the Corporation has assigned and transferred certain of its rights under this Agreement to JPMorgan Chase Bank, N.A. (the "Assignee"), under an Assignment Agreement dated as of June 1, 2020, among the City, the Corporation and the Assignee.

5. The City and the Corporation have previously entered into an Installment Sale Agreement dated November 8, 2016 (the "Trimble Road ISA"), for the purpose of providing financing for the rehabilitation and replacement of the Trimble Road trunk sanitary sewer pipelines, under which the City is obligated to pay semiannual installment payments in the aggregate principal amount of \$12,000,000 (the "Trimble Road Installment Payments").

5. The Installment Payments will be payable from and secured by a pledge of and lien on the net revenues of the Wastewater System on a subordinate basis to the Trimble Road Installment Payments.

## **A G R E E M E N T :**

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Corporation formally covenant, agree and bind themselves as follows:

### **ARTICLE I**

#### **DEFINITIONS; RULES OF INTERPRETATION**

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the following respective meanings given to them in this Section.

“Additional Revenues” means, with respect to the issuance of any Parity Debt, any or all of the following amounts:

- (a) An allowance for Net Revenues from any additions or improvements to or extensions of the Wastewater System to be financed from the proceeds of such Parity Debt or from any other source but in any case which, during all or any part of the most recent completed Fiscal Year for which audited financial statements are available or for any other 12-month period selected by the City under Section 5.7(b), were not in service, all in an amount equal to 100% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is to be in operation, all as shown by the certificate or opinion of a Financial Consultant.
- (b) An allowance for Net Revenues arising from any increase in the charges made for service from the Wastewater System which has been adopted prior to the incurring of such Parity Debt but which, during all or any part of such Fiscal Year or such 12-month period, was not in effect, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or such 12-month period, all as shown by the certificate or opinion of a Financial Consultant.

“Advances” means amounts funded by the Assignee to the City pursuant to a Funding Request.

“Applicable Law” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement,



interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case, whether or not having the force of law.

“Assignee” means JPMorgan Chase Bank, N.A., as assignee of certain rights of the Corporation hereunder, its successors and assigns.

“Assignment Agreement” means the Assignment Agreement dated as of June 1, 2020, between the Corporation and the Assignee, including any authorized amendments thereto.

“Authorized Amount” means the amount of \$50,000,000, being the maximum amount of funding to be provided by the Assignee for the payment of Project Costs.

“Authorized Representative” means: (a) with respect to the Corporation, its Executive Director, Chief Financial Officer, Secretary or any other person designated as an Authorized Representative of the Corporation by a Written Certificate of the Corporation signed by its Executive Director and filed with the City and the Assignee; and (b) with respect to the City, its City Manager, Director of Finance, Director of Water and Sewer Utilities, City Attorney, Assistant City Clerk, or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its City Manager and filed with the Corporation and the Assignee.

“Availability” means the Commitment minus the sum of the outstanding principal amount of all Advances at such time.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income for purposes of federal income taxation under Section 103 of the Tax Code.

“Business Day” means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California are closed.

“City” means the City of Santa Clara, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California.

“Closing Date” means June 11, 2020, being the date of execution and delivery of this Agreement.

“Commitment” means, on the Closing Date, an initial amount equal to \$50,000,000 and thereafter such initial amount adjusted from time to time, including downward to zero upon the expiration or termination of the Commitment in accordance with the terms hereof, including, but not limited to, upon the occurrence of an Event of Default hereunder; *provided, that*, after giving effect to any of the foregoing adjustments the Commitment shall never exceed the Authorized Amount at any one time. Advances under the Commitment are non-revolving.

“Connection Charges” means all amounts levied by the City as a fee for connecting to the Wastewater System, as such fee is established from time to time under Section 66013 of the Government Code of the State of California.

“Corporation” means the City of Santa Clara Public Facilities Financing Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City or the Corporation relating to the execution and delivery of this Agreement, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of Bond Counsel, the City’s municipal advisor and legal counsel to the Assignee, financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, and any charges and fees in connection with the foregoing.

“Date of Taxability” means the date from and for the interest component of the Installment Payments is subject to federal or State income taxation as a result of a Determination of Taxability.

“Default Rate” means, as of any date, the rate at which the interest components of the Installment Payments are calculated, plus 400 basis points.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

- (i) on that date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have occurred;
- (ii) on the date when the Assignee notifies the City that it has received a written opinion from Bond Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Bond Counsel, unless, within 180 days after receipt by the City of such notification and copy of such opinion from the Assignee, the City shall deliver to the Assignee a ruling or determination letter issued to or on behalf of the City by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;
- (iii) on the date when the City shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or
- (iv) on that date when the City shall receive notice from the Assignee that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as

includable in the gross income of the Assignee due to the occurrence of an Event of Taxability;

*provided*, however, that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Assignee, the City shall reimburse the Assignee for any payments, including any taxes, interest, penalties or other charges, such Assignee shall be obligated to make as a result of the Determination of Taxability.

“Environmental Laws” means any federal, state, or local law, rule or regulation now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, relating to health, safety, or the environment.

“Event of Default” means an event of default as described in Section 6.1.

“Event of Taxability” means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation in this Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the City in connection with this Agreement) which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Assignee for federal income tax purposes.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Installment Payments at a yield in excess of the yield on the Installment Payments.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Financial Consultant” means any consultant or firm of consultants appointed by the City and who, or each of whom: (a) is judged by the City to have experience in matters relating to the financing of Wastewater System enterprises; (b) is in fact independent and not under domination of the City; and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Fiscal Year” means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

“Funding Request” means a written request in the form of Appendix C submitted by the City to Assignee under Section 3.5 for the purpose of providing funds for the payment of Project Costs.

“Governmental Authority” means the government of the United States or any state or political subdivision thereof or any other nation or political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“Gross Revenues” means all gross charges received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Wastewater System or otherwise arising from the Wastewater System, including but not limited to investment earnings thereon and including Connection Charges; but excluding (a) the proceeds of any *ad valorem* property taxes levied for the purpose of paying general obligation bonds of the City relating to the Wastewater System, (b) the proceeds of any special assessments or special taxes levied upon real property within any improvement district for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Wastewater System; and (c) customers' deposits or any other deposits subject to refund until such deposits have become the property of the City, or contributions in aid of construction.

“Independent Accountant” means any independent certified public accountant or firm of independent certified public accountants appointed and paid by the City, and who, or each of whom: (a) is in fact independent and not under domination of the City; (b) does not have any substantial interest, direct or indirect, with the City; and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

“Installment Payment Date” means January 1 and July 1 in each year, commencing January 1, 2021.

“Installment Payments” means all payments required to be paid by the City on any date under Section 4.4, including any amounts payable upon delinquent installments and including any prepayment thereof under Section 7.2.

“Joint Powers Agreement” means, collectively:

- (a) that certain agreement entitled “Master Agreement for Wastewater Treatment” dated as of March 1, 1983, between the City, the city of San José and the Cupertino Sanitary District, including all amendments and supplements thereto which are heretofore or hereafter executed and delivered by the parties to such agreement, their successors and assigns;
- (b) that certain agreement entitled “Master Agreement for Wastewater Treatment” dated as of March 1, 1983, between the City, the city of San José and County Sanitation District #4, including all amendments

and supplements thereto which are heretofore or hereafter executed and delivered by the parties to such agreement, their successors and assigns; and

- (c) that certain agreement entitled "Master Agreement for Wastewater Treatment" dated as of March 1, 1983, between the City, the City of San José and the city of Milpitas, including all amendments and supplements thereto which are heretofore or hereafter executed and delivered by the parties to such agreement, their successors and assigns.

"Maturity Date" means July 1, 2024.

"Maximum Annual Debt Service" means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year during the Term of this Agreement by totaling the following amounts for such Fiscal Year:

- (a) the aggregate amount of the Trimble Road Installment Payments coming due and payable in such Fiscal Year;
- (b) the principal amount of all outstanding Parity Debt, if any, coming due and payable by their terms in such Fiscal Year; and
- (c) the amount of interest which would be due during such Fiscal Year on the aggregate principal amount of all outstanding Parity Debt, if any, which would be outstanding in such Fiscal Year if such Parity Debt is retired as scheduled.

With respect to the Installment Payments and any Parity Debt, debt service with respect thereto shall be calculated as follows:

- (i) For the Installment Payments and for any issue of Parity Debt the interest on which is computed at a variable rate, interest with respect thereto shall be calculated at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least 12 months, the average rate over the 12 months immediately preceding the date of calculation, or if no debt is outstanding for the 12 months under the authorizing document, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the debt to be issued, and (iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published), or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury obligations having comparable maturities.
- (ii) For the Installment Payments and for any issue of Parity Debt having more than 25% of the aggregate principal amount thereof coming due in any Fiscal Year, the amount of debt service shall be calculated on

the assumption that the amount of principal of and interest on such Parity Debt were payable over a 30-year term on a level debt service basis.

“Maximum Rate” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“Net Revenues” means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

“Operation and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the Wastewater System, determined in accordance with generally accepted accounting principles, including but not limited to the following:

- (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order;
- (b) all administrative costs of the City that are charged directly or apportioned to the operation of the Wastewater System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums; and
- (c) amounts paid by the City under the Joint Powers Agreement as operation and maintenance costs of the San José / Santa Clara Water Pollution Control Plant.

“Operation and Maintenance Costs” do not include (i) the Trimble Road Installment Payments, the Installment Payments or payments of debt service on any Parity Debt, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature; and (iv) amounts paid by the City under the Joint Powers Agreement as capital costs of the San José / Santa Clara Water Pollution Control Plant.

“Parity Debt” means any bonds, notes, loans, leases, installment sale agreements or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued under and in accordance with Section 5.7.

“Parity Debt Documents” means, collectively, the indenture of trust, trust agreement or other document authorizing the issuance of any Parity Debt or any securities which evidence Parity Debt.

“Project” means the facilities, improvements and other property described more fully in Appendix B attached to this Agreement, as may be amended from time to time.

"Project Costs" means all costs of the acquisition, construction and installation of the Project which are paid from moneys on deposit in the Project Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition, construction and installation of the Project;
- (b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the Project;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition, construction and installation of the Project;
- (d) all preliminary costs of the Project, including but not limited to design, environmental, engineering and architectural services, costs for testing, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees and costs for supervising construction, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction and installation of the Project;
- (e) any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the acquisition, construction and installation of the Project;
- (f) Costs of Issuance and other financing costs incurred in connection with the acquisition, construction and installation of the Project; and
- (g) the interest components of the Installment Payments during the period of acquisition, construction and installation of the Project.

"Project Fund" means the fund or account by that name established and held by the City under Section 3.6.

"Rate Stabilization Fund" means any fund established and held by the City as a fund for the stabilization of rates and charges imposed by the City with respect to the Wastewater System, which fund is established, held and maintained in accordance with Section 4.7.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official guidance published, under the Tax Code.

"Taxable Date" means the date as of which the interest components of the Installment Payments are first includable in gross income of the recipient thereof as a

result of the occurrence of an Event of Taxability, as such date is established pursuant to either (a) a Determination of Taxability, or (b) an opinion of Bond Counsel.

"Taxable Period" means the period for which the interest components of the Installment Payments become includable in the gross income of the recipient thereof, commencing on the Taxable Date.

"Term" means the time during which this Agreement is in effect, as provided in Section 4.3.

"Trimble Road Installment Payments" means the installment payments which the City is obligated to pay under Section 4.4 of the Trimble Road ISA.

"Trimble Road ISA" means the Installment Sale Agreement dated November 8, 2016, between the Corporation and the City, as amended from time to time in accordance with the terms thereof.

"Undrawn Fees" has the meaning given that term in Section 4.5.

"Unutilized Commitment" means the Commitment less outstanding Advances and less an amount equal to any reduction thereof effected pursuant to Article IV.

"Wastewater Fund" means the fund or funds established and held by the City with respect to the Wastewater System for the receipt and deposit of Gross Revenues.

"Wastewater System" means the entire system of the City for the collection and transmission of wastewater, including but not limited to all facilities, properties and improvements at any time owned, controlled or operated by the City for the collection and transmission of wastewater within the service area of the City, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City.

"Written Certificate" of the Corporation or the City means, respectively, a written certificate, request or requisition signed in the name of the Corporation or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

#### SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.



(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. *Representations, Covenants and Warranties of the City.* The City represents, covenants and warrants to the Corporation as follows:

- (a) Due Organization and Existence. The City is a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, and is empowered, among other things, to maintain and operate the Wastewater System and to acquire in the name of the City any interest in real or personal property necessary or convenient for the operation of the Wastewater System.
- (b) Due Authorization. The laws of the State authorize the City to enter into this Agreement, and to enter into the transactions contemplated hereby and to carry out its obligations hereunder.
- (c) No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City’s obligations under this Agreement.
- (d) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreements of the City enforceable against the City in accordance with its terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’

rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement.
- (g) No Prior Defaults. No lease, rental agreement, installment sale agreement, lease-purchase agreement, loan, note, payment agreement or contract for purchase to which the City has been a party at any time during the past ten years has been terminated by the City as a result of either insufficient funds available in any Fiscal Year, or due to the non-payment of required payments. No event has occurred which would constitute a payment-related event of default under any debt, note, revenue bond or obligation which the City has issued during the past ten years.
- (g) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (h) Financial Information. The financial information concerning the City heretofore delivered to the Assignee is complete and correct and fairly presents the financial condition of the City for the period(s) referred to and has been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period(s) involved. There are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the City as of the date of such financial information which are not reflected therein. There has been no material adverse change in the financial condition or operations of the City since the

date of such information (and to the City's knowledge no such material adverse change is pending or threatened), and the City has not guaranteed the obligations of, or made any investment in or loans to, any person except as disclosed in such information. The City has good and marketable title to all of its properties and assets related to the Project, and all of such properties and assets are free and clear of encumbrances, except as reflected in such financial information. To the best of the City's knowledge, no document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Agreement contains any untrue or misleading statement of a material fact.

- (i) Adequacy of Net Revenues. The City has structured fees, estimated revenues and/or taken other lawful actions necessary to ensure that the pledge of and lien on Net Revenues are sufficient to pay the Installment Payments when due and payable, and such moneys have been and will continue to be applied in the funds and accounts as required herein and towards payment of the Installment Payments when due and payable.
- (j) Completion of Project. The City has an immediate need for, and expects to make immediate use of, the Project, which need is not temporary or expected to diminish during the Term of this Agreement. To the extent the City is or may be required to use additional revenues or spend additional money to complete the Project or make the Project useable, the City represents, warrants and covenants to take all required actions to complete the Project and make the Project useable. The City presently intends to continue this Agreement and make all Installment Payments required hereunder for the entire Term of this Agreement.
- (k) Compliance with Trimble Road ISA. The City is in full compliance with the terms and provisions of the Trimble Road ISA. No event has occurred which constitutes an event of default under the Trimble Road ISA or which, with the passage of time, if not cured, would constitute an event of default under the Trimble Road ISA.
- (l) Environmental. The Project and the Wastewater System is in full compliance with all applicable Environmental Laws.
- (m) Sufficient Funds. The City reasonably believes that sufficient funds can be obtained to make all Installment Payments, the Undrawn Fees and all other amounts required to be paid pursuant to this Agreement.
- (n) Tax-Exempt Status. The City has not taken any action or omitted to take any action, and has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Installment Payments from gross income for federal income tax purposes.

- (o) Role of Assignee. The City acknowledges that (i) the Assignee, as the assignee of the Corporation under the Assignment Agreement, is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) the Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City or with respect to this Agreement and the financing related thereto, and (iii) the Assignee has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.

SECTION 2.2. *Representations, Covenants and Warranties of Corporation.* The Corporation represents, covenants and warrants to the City as follows:

- (a) Due Organization and Existence. The Corporation is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, and has power to enter into this Agreement and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Corporation has duly authorized the execution and delivery of this Agreement.
- (b) Due Execution. The representatives of the Corporation executing this Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the Corporation and constitutes the legal, valid and binding agreement of the Corporation with the City, enforceable against the Corporation in accordance with the respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery hereof and of the Assignment Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default,

lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated hereby and by the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation, including but not limited to the performance of the Corporation's obligations under this Agreement.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery hereof or of the Assignment Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial conditions, assets, properties or operations of the Corporation, including but not limited to the performance of the Corporation's obligations hereunder and under the Assignment Agreement.

### **ARTICLE III**

#### **ACQUISITION AND CONSTRUCTION OF THE PROJECT**

SECTION 3.1. *Deposit of Moneys.* The Corporation hereby agrees to cause the Project to be acquired, constructed and improved as provided in Section 3.2, and to sell the completed Project to the City as provided in Section 4.1. In order to provide funds for the construction of the Project, the Corporation shall assign certain of its rights under this Agreement, including the right to receive the Installment Payments from the City, to the Assignee under the Assignment Agreement, and to cause the proceeds of such assignment to be deposited into the Project Fund as provided in Section 3.5.

SECTION 3.2. *Acquisition and Construction of the Project.* The Corporation hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the Project in accordance with

the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law. All contracts for, and all work relating to, the acquisition, construction and installation of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The failure of the Corporation to complete the Project by its expected completion date does not constitute an Event of Default hereunder or a grounds for termination hereof, nor does any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due hereunder.

SECTION 3.3. *Appointment of City as Agent.* The Corporation hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Corporation regarding the acquisition, construction and installation of the Project. As agent of the Corporation hereunder, the City shall execute all duties under this Agreement, including, but not limited to, entering into, administer and enforce all purchase orders or other contracts relating to the Project. Payment of Project Costs will be made by the City from amounts held by it in the Project Fund in accordance with the provisions of this Agreement.

SECTION 3.4. *Project Description.* The City has the right to specify the exact scope, nature and identification of the Project and the respective components thereof. The City may from time to time change or modify the description of the Project or any component thereof.

SECTION 3.5. *Funding of Project Costs.*

(a) Initial Funding on Closing Date. On the Closing Date, Assignee shall advance funds in the amount of \$20,000,000 for payment of Costs of Issuance and other Project Costs. Thereafter, the City may cause an increase in the funded amount and a corresponding deposit into the Project Fund in an amount that does not result in the aggregate amount of deposits into the Project Fund by the Assignee to exceed the Authorized Amount.

(b) Subsequent Funding Requests. The City may request the Assignee to provide additional funds for the payment of Project Costs and deposit such funds into the Project Fund once each month over a 36-month period, commencing July 1, 2020, by submitting to Assignee a Funding Request, substantially in the form attached hereto as Appendix C. Provided that all conditions are met as set forth therein, the Assignee shall approve all such Funding Requests submitted by the City. Any such funded amounts shall be deposited into the Project Fund as set forth in the Funding Request. The Assignee shall fund the draws within three Business Days following receipt of a Funding Request. Following each advance of funds, the funded amount shall be added to the outstanding principal amount of the Installment Payments and shall begin to accrue interest in accordance with Section 4.4. All amounts advanced to the City by the Assignee hereunder shall be deposited in the Project Fund and applied for the purposes thereof.

(c) Election to Reduce Commitment. The City shall have the right to reduce the Commitment at any time upon not less than 30 days' written notification to the Assignee. Such written notification shall be executed by an Authorized Representative and shall (a)

request that the Commitment be reduced, and (b) state that the remaining Commitment is sufficient in the judgment of the City to provide funding for all remaining Project Costs which are intended to be paid by the City.

(d) Final Funding Request. The City may submit written notification at any time that the City does not intend to submit any further Funding Requests and desires to relinquish all or a portion of any unfunded Commitment as specified in such notification.

On the date the City submits written notification to the Assignee that the City does not intend to submit any additional Funding Requests and desires to relinquish all or a portion of any unfunded Commitment, the amount not so advanced shall lapse and the Authorized Amount shall be irrevocably reduced.

SECTION 3.6. *Project Fund.* The City shall establish and maintain a special fund or account designated as the "Project Fund" to be held by the City and which shall be accounted for as a separate fund or account. The City shall deposit all amounts advanced to it by the Assignee under the Assignment Agreement in the Project Fund promptly upon receipt of such amounts. Except as otherwise provided herein, moneys in the Project Fund shall be used solely for the payment of the Project Costs. The City shall disburse moneys in the Project Fund from time to time to pay Project Costs (or to reimburse the City for payment of Project Costs). The City shall maintain accurate records showing all disbursements from the Project Fund. The City shall invest proceeds in the Project Fund in investments authorized by California law and the City's investment policy.

SECTION 3.7. *Certificate of Completion.* Upon the completion of the Project, but in any event not later than 30 days following such completion, an Authorized Representative of the City shall execute and deliver to the Corporation and the Assignee a Written Certificate of the City which (a) states that the construction of the Project has been substantially completed, (b) identifies the total Project Costs thereof, and (c) identifies the amounts, if any, to be reserved in the Project Fund for payment of future Project Costs.

## **ARTICLE IV**

### **INSTALLMENT SALE OF PROJECT; INSTALLMENT PAYMENTS**

SECTION 4.1. *Sale of Project.* The Corporation hereby sells the Project to the City, and the City hereby purchases the Project from the Corporation, upon the terms and conditions set forth in this Agreement.

SECTION 4.2. *Title.* Title to the Project, and each component thereof, will be deemed conveyed by the Corporation to and vested in the City upon the completion of the acquisition, construction and installation thereof. The Corporation and the City will execute, deliver and cause to be recorded any and all documents reasonably required by the City to consummate the transfer of title to the Project.

SECTION 4.3. *Term of this Agreement.* The Term of this Agreement commences on the Closing Date and ends on the Maturity Date (provided the City has paid all

Installment Payments and other amounts due hereunder through such date), unless such term is extended or sooner terminated as provided herein.

#### SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City agrees to pay to the Corporation, its successors and assigns, as the purchase price of the Project, the Installment Payments consisting of components of principal and interest payable on the Installment Payment Dates. The Installment Payments shall be secured by and payable from Net Revenues as hereinafter provided. The interest components of the Installment Payments shall be calculated in accordance with the provisions set forth in Appendix A which is attached hereto and incorporated herein by this reference.

The principal components of the Installment Payments as of any date shall be equal to the aggregate amounts advanced by the Assignee pursuant to Funding Requests under Section 3.5, less any amount of such principal which has previously been prepaid by the City. The unpaid principal components of the Installment Payments shall be due and payable in full on the Maturity Date.

The amount of each Installment Payment shall be specified by Assignee in a written invoice to City at least fifteen Business Days prior to each Installment Payment Date, which invoice shall include sufficient detail for City to verify the calculated amount of the Installment Payment.

It is understood and agreed by the City and the Assignee that this Agreement shall not be (i) assigned a rating by any rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document or official statement, or (iv) assigned CUSIP numbers by Standard & Poor's CUSIP Service Bureau.

(b) Reduction Upon Partial Prepayment. If the City prepays less than all of the remaining principal components of the Installment Payments under Article VII, the amount of such prepayment shall be applied to reduce the principal components of the Installment Payments in inverse order of payment date, as set forth in a revised schedule of Installment Payments which is provided to the City by the Assignee; *provided, however*, that if the amount set forth in such invoice is understated or overstated due to interest rate fluctuations or otherwise, adjustment shall be made on the following invoice.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the due date thereof at the Default Rate, or, if lower, the maximum rate then permitted by law.

(d) Gross Up of Interest Rate Upon Determination of Taxability. Notwithstanding the foregoing provisions of this Section, in the event a Determination of Taxability occurs, the City shall pay, as interest components of the Installment Payments, to the Assignee on demand therefor:



- (i) an amount equal to the difference between (A) the amount of interest that would have been paid to the Assignee during the Taxable Period, if the interest rate on the unpaid principal components of the Installment Payments had been calculated at a rate sufficient such that the total interest to be paid on the applicable Installment Payment Dates would, after such interest was reduced by the amount of any U.S. federal, state and local income tax actually imposed thereon, equal the amount of interest due with respect to such Installment Payments beginning on the Taxable Date, and (B) the amount of interest actually paid to the Assignee during the Taxable Period, and
- (ii) an amount equal to any interest, penalties or charges owed by the Assignee as a result of the interest components of the Installment Payments becoming includable in the gross income of the Assignee, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by the Assignee in connection therewith.

The obligation of the City to pay the Assignee an amount equal to the difference between the amount of interest that would have been paid to the Assignee during the Taxable Period, and the amount actually paid to the Assignee during the Taxable Period, shall survive the payment of the Installment Payments and the termination of this Agreement. The Assignee shall notify the City of the amounts due under this subsection.

(e) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section and all amounts payable by the City under Article VII.

(f) Maximum Rate. Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any Interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Assignee of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Advance is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the City shall pay to the Assignee a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section that has not previously been paid to the Assignee in accordance with the immediately preceding sentence.

SECTION 4.5. *Undrawn Fees*. In addition to the Installment Payments, the City hereby agrees to pay to the Assignee, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the "*Commitment End Date*"), and in arrears on each Installment Payment Date occurring thereafter to the Commitment End Date, and on the Commitment End Date (each, an "*Undrawn Fee Payment Date*"), a non-refundable undrawn fee (the "*Undrawn Fee*") in an amount equal for each day during such calculation

period to the product of (x) thirty-two and a half basis points (32.5 bps ) per annum (the “Undrawn Fee Rate”), (y) the Unutilized Commitment for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360. The Unutilized Commitment shall be determined for any day as of 5:00 p.m. Pacific time

The Undrawn Fee shall be calculated from and including one Undrawn Fee Payment Date (or, in the case of the first Undrawn Fee payment, the Closing Date) to but excluding the next Undrawn Fee Payment Date (each, a “*Payment Period*”), and the Assignee shall provide the City with an invoice for each Undrawn Fee. In the event the Assignee fails for any reason to provide the City with an invoice for any Undrawn Fee by the related Undrawn Fee Payment Date, the City shall not be relieved of its obligation to pay such Undrawn Fee, but the City shall not be required to make such payment prior to the receipt of such invoice.

#### SECTION 4.6. *Pledge and Application of Net Revenues.*

(a) Pledge. The Net Revenues shall be irrevocably pledged to the punctual payment of the Installment Payments. Such pledge constitutes a lien on the Net Revenues for the payment of the Installment Payments in accordance with the terms hereof, which lien shall be (a) subordinate to the pledge and lien which secures the payment of the Trimble Road Installment Payments, and (b) on a parity with the pledge and lien which secures any Parity Debt. Pursuant to Section 5451 of the Government Code of the State of California, the pledge of the Net Revenues by the City for the payment of the Installment Payments constitutes a lien and security interest which immediately attaches to such Net Revenues, and which shall be effective and binding against the City, its successors, creditors and all others asserting rights therein irrespective of whether those parties have notice of the pledge, irrespective of whether such amounts are or may be deemed to be a fixture and without the need for physical delivery, recordation, filing or further act.

(b) Deposit of Net Revenues Into Wastewater Fund; Transfers to Make Payments. The City has previously established the Wastewater Fund, which the City shall continue to hold and maintain for the purposes and uses set forth herein. The City shall deposit all Gross Revenues in the Wastewater Fund immediately on receipt. The City shall apply amounts in the Wastewater Fund as set forth in this Agreement, the Trimble Road ISA and any Parity Debt Documents. The City shall apply amounts on deposit in the Wastewater Fund to pay when due the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs;
- (ii) the payment when due of the Trimble Road Installment Payments;
- (iii) the payment when due of the Installment Payments and all payments of principal of and interest on any Parity Debt;
- (iv) any deficiency in any reserve fund established for Parity Debt, the notice of which deficiency has been sent to the City in accordance with the related Parity Debt Documents;

- (v) any other payments required to comply with the provisions of this Agreement, the Joint Powers Agreement, the Trimble Road ISA and any Parity Debt Documents; and
- (vi) any other purposes authorized under subsection (c) of this Section.

(c) Other Uses of Net Revenues Permitted. The City shall manage, conserve and apply the Net Revenues on deposit in the Wastewater Fund in such a manner that all deposits required to be made under the preceding subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing, the City may use and apply moneys in the Wastewater Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the Wastewater System, (iii) the prepayment of any other obligations of the City relating to the Wastewater System, or (iv) any other lawful purposes of the City.

(d) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City will adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the Net Revenues. If any Installment Payment requires the adoption by the City of a supplemental budget or appropriation, the City will promptly adopt the same. The covenants on the part of the City contained in this subsection are duties imposed by law and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection.

SECTION 4.7. *Establishment of Rate Stabilization Fund.* The City has the right at any time to establish a fund to be held by it and administered in accordance with this Section for the purpose of stabilizing the rates and charges imposed by the City with respect to the Wastewater System. From time to time the City may deposit amounts in the Rate Stabilization Fund from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Installment Payments, the Trimble Road Installment Payments, and any Parity Debt, as the City may determine.

The City may, but is not be required to, withdraw amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Wastewater Fund in any Fiscal Year for the purpose of paying the Installment Payments, the Trimble Road Installment Payments or the principal of and interest on any Parity Debt coming due and payable in such Fiscal Year. Amounts so transferred from the Rate Stabilization Fund to the Wastewater Fund in any Fiscal Year constitute Gross Revenues for that Fiscal Year (except for purposes of Section 5.7(b) relating to the issuance of Parity Debt), and will be applied for the purposes of the Wastewater Fund. Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments, the Trimble Road Installment Payments or any Parity Debt. All interest or other earnings on deposits in the Rate Stabilization Fund will be retained therein or, at the option of the City, be applied for any other lawful purposes. The City has the right at any time to withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any other lawful purposes of the City.

SECTION 4.8. *Special Obligation of the City; Obligations Absolute.* The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder will be a special obligation of the City limited solely to the Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts, and no other funds or property of the City are liable for the payment of the Installment Payments.

The obligation of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained herein is absolute and unconditional and is not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Corporation or the Assignee of any obligation to the City or otherwise with respect to the Wastewater System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Corporation or the Assignee. Until all of the Installment Payments, Additional Payments and other amounts coming due and payable hereunder have been fully paid or prepaid, the City:

- (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts,
- (b) will perform and observe all other agreements contained in this Agreement, and
- (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Wastewater System, failure to complete the acquisition and construction of the Project by the estimated completion date thereof, sale of the Wastewater System, the taking by eminent domain of title to or temporary use of any component of the Wastewater System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Corporation or the Assignee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

SECTION 4.9. *Additional Payments.* In addition to the Trimble Road Installment Payments, Installment Payments and any Parity Debt, the City will pay when due the following amounts to the following parties:

- (a) to the Corporation, all costs and expenses incurred by the Corporation to comply with the provisions of this Agreement; and
- (b) all costs and expenses of auditors, engineers and accountants and other professional services relating to the Wastewater System; and
- (c) all Excess Investment Earnings payable under Section 5.10(e).

The Additional Payments shall be payable from, but shall not be secured by, a pledge or lien upon any of the Net Revenues. The rights of the Corporation under this Section, and the obligations of the City under this Section, shall survive the termination of this Agreement.

## **ARTICLE V**

### **COVENANTS OF THE CITY**

SECTION 5.1. *Disclaimer of Warranties.* The Assignee makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Project or any component thereof, or any other representation or warranty with respect to any of the Project or any component thereof. In no event shall the Corporation or the Assignee be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement for the existence, furnishing, functioning or use of the Project.

SECTION 5.2. *Sale or Eminent Domain of Wastewater System.* Except as provided herein, the City covenants that the Wastewater System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments, the Trimble Road Installment Payments or the principal of or interest on any Parity Debt, or would materially adversely affect its ability to comply with the terms of this Agreement, the Trimble Road ISA or any Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Wastewater System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, the Trimble Road Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Assignee with respect to the Net Revenues. If any substantial part of the Wastewater System is sold, the payment therefor must either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied on a pro rata basis to prepay the Installment Payments, the Trimble Road Installment Payments and any Parity Debt on the next available prepayment date.

Any amounts received as awards as a result of the taking of all or any part of the Wastewater System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, will either (a) be used for the acquisition or construction of improvements and extension of the Wastewater System, or (b) be applied to prepay on a pro rata basis the Installment Payments, the Trimble Road Installment Payments and any Parity Debt on the next available prepayment date.

SECTION 5.3. *Insurance.* The City will at all times maintain with responsible insurers all such insurance on the Wastewater System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Wastewater System. All amounts collected from insurance against accident to or destruction of any portion of the Wastewater System will be used, at the option of the City, either (a) to repair or rebuild such damaged or destroyed portion of the Wastewater

System, or (b) to prepay on a pro rata basis the Installment Payments, the Trimble Road Installment Payments and any Parity Debt on the next available prepayment date.

The City will also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Corporation and the Assignee.

Any policy of insurance required under this Section may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

**SECTION 5.4. *Records and Accounts.*** The City shall keep proper books of record and accounts of the Wastewater System in which complete and correct entries shall be made of all transactions relating to the Wastewater System. Said books shall, upon prior request, be subject to the reasonable inspection of the Corporation upon not less than two Business Days' prior notice to the City.

The City shall cause the books and accounts of the Wastewater System to be audited annually by an Independent Accountant not more than 270 days after the close of each Fiscal Year and shall file a copy of such report with the Assignee. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

**SECTION 5.5. *Rates and Charges.***

(a) Gross Revenues Covenant. The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year, which are at least sufficient, together with amounts held in a Rate Stabilization Fund as provided in Section 4.7, and taking into account allowances for contingencies, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

- (i) All Operation and Maintenance Costs estimated by the City to become due and payable in the Fiscal Year.
- (ii) All Trimble Road Installment Payments as they become due and payable during the Fiscal Year.
- (iii) All Installment Payments and payments of principal of and interest on any Parity Debt as they become due and payable during the Fiscal Year.
- (iv) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

(b) Net Revenues Covenant. In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year which (together with amounts held in a Rate Stabilization

Fund as provided in Section 4.7, and taking into account allowances for contingencies), are sufficient to yield Net Revenues which are at least equal to 110% of the aggregate amount of the Installment Payments, the Trimble Road Installment Payments and all payments of principal of and interest on any Parity Debt coming due and payable during the Fiscal Year.

SECTION 5.6. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Debt under Section 5.7, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder; *provided, however,* that the City shall not issue any such junior and subordinate obligations unless the amount of Net Revenues (excluding any amounts derived from a Rate Stabilization Fund), calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City, in either case verified by an Independent Accountant or a Financial Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, are at least equal to 110% of Maximum Annual Debt Service (taking into account such junior and subordinate obligations then proposed to be issued).

SECTION 5.7. *Issuance of Parity Debt.* The City may issue or incur any Parity Debt during the Term hereof upon satisfaction of all of the following conditions:

- (a) no Event of Default (or no event with respect to which notice has been given and which, once all notice of grace periods have passed, would constitute an Event of Default) has occurred and is continuing.
- (b) the Net Revenues (excluding any amounts derived from a Rate Stabilization Fund), calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City, in either case verified by an Independent Accountant or a Financial Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, are at least equal to 125% of Maximum Annual Debt Service (taking into account the Parity Debt then proposed to be issued).
- (c) The City will deliver to the Assignee a written certificate of a City Representative certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a) and (b) of this Section have been satisfied.

SECTION 5.8. *Operation of Wastewater System in Efficient and Economical Manner.* The City will operate the Wastewater System in an efficient and economical

manner and to operate, maintain and preserve the Wastewater System in good repair and working order.

SECTION 5.9. *Assignment and Amendment Hereof.* This Agreement may not be assigned by the City in whole or in part. This Agreement may be amended by the City and the Corporation, but only with the prior written consent of the Assignee.

SECTION 5.10. *Tax Covenants.*

(a) Generally. The City shall not take any action, or permit to be taken any action or omission within its control, which would cause or which, with the passage of time if not cured would cause, the interest components of the Installment Payments to become includable in gross income of the Corporation or its Assignee for federal income tax purposes.

(b) Private Activity Bond Limitation. The City shall assure that the proceeds of the Installment Payments are not so used as to cause the Installment Payments to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The City shall not take any action, or permit to be taken any action or omission within its control, if the result of the same would be to cause the Installment Payments to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City shall not take any action, or permit or suffer to be taken any action or omission within its control, with respect to the proceeds of the Installment Payments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Installment Payments to constitute “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Arbitrage Rebate. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of Excess Investment Earnings, if any, to the federal government, to the extent that such section is applicable to this Agreement.

(f) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to this Agreement for at least three years after the payment or prepayment in full of the Installment Payments, whichever is earlier, or for such lesser period of time as may be permitted under the Tax Code.

(g) Acquisition, Disposition and Valuation of Investments. Except as otherwise provided in the following sentence, the City covenants that all investments of amounts deposited in any fund or account created by or under this Agreement, or otherwise containing gross proceeds of this Agreement (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of Section 148 of the Tax Code).



For purposes of this subsection, the term “Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

## **ARTICLE VI**

### **EVENTS OF DEFAULT**

SECTION 6.1. *Events of Default Defined.* The following events constitute Events of Default hereunder:

- (a) Failure by the City to pay any Installment Payment by the Installment Payment Date or failure to make any other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Agreement other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Assignee or the Corporation; *provided, however*, that if the failure stated in the notice cannot be corrected within such 30-day period, the Corporation shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.
- (c) The filing by the City of a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or the approval by a court of competent jurisdiction of a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or, under the provisions of any other law for the relief or aid of debtors,

any court of competent jurisdiction assumes custody or control of the City or of the whole or any substantial part of its property.

- (d) Any statement, representation or warranty made by the City in or pursuant to this Agreement or its execution, delivery or performance shall prove to have knowingly been false, incorrect, misleading or breached in any material respect on the date when made.
- (e) The occurrence of any event defined to be an event of default under the Trimble Road ISA or any Parity Debt Documents.

SECTION 6.2. *Remedies on Default.* If an Event of Default occurs and is continuing, the interest rate shall increase to the Default Rate, and the Assignee has the right, at its option and without any further demand or notice, to take any one or more of the following actions:

- (a) Apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the Wastewater System sufficient to meet all requirements of this Agreement.
- (b) Take whatever action at law or in equity, including specific enforcement, mandamus, or any equitable remedies available, as may be desirable and permitted by law to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.
- (c) By written notice to the City, reduce the Commitment to zero and, thereafter, the Assignee will have no further obligation to make Advances hereunder and may terminate the Commitment.

SECTION 6.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article, it is not necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 6.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Agreement defaults under any of the provisions hereof and the nondefaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees and expenses of such attorneys and such other expenses so incurred. The provisions of this Section will survive the expiration of the Term of this Agreement.

SECTION 6.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Agreement is breached by either party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

SECTION 6.6. *Liability Limited to Net Revenues.* Notwithstanding any provision of this Agreement, the City's liability to pay the Installment Payments and other amounts hereunder is limited solely to Net Revenues as provided in Article IV. If the Net Revenues are insufficient at any time to pay an Installment Payment in full, the City is not liable to pay or prepay such Installment Payment other than from Net Revenues.

SECTION 6.7. *Rights of Assignee.* Such rights and remedies as are granted to the Corporation under this Article or under this Agreement shall be exercised by the Assignee, as assignee of the rights of the Corporation hereunder, in accordance with the provisions of the Assignment Agreement.

## **ARTICLE VII**

### **PREPAYMENT OF INSTALLMENT PAYMENTS**

SECTION 7.1. *Prepayment.* The City has the right to prepay the Installment Payments, but only in the manner, at the times and in all respects in accordance with the provisions of this Article.

SECTION 7.2. *Optional Prepayment.* Subject to the provisions set forth in Appendix A hereto, the City has the right at its option to prepay the Installment Payments in whole or in part, on any date at a prepayment price equal to 100% of the principal balance outstanding as of the date of prepayment, plus any accrued but unpaid interest.

Notice of prepayment shall be given by the City not less than 30 calendar days prior to the prepayment date, to the Corporation and the Assignee at their respective addresses set forth in Section 8.2 or at such other address as is furnished to the City in writing by the Corporation or the Assignee. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Corporation or the Assignee receives such notice.

If notice of prepayment is given as aforesaid, the Installment Payments shall become due and payable at the prepayment price and on the prepayment date therein designated and if, on the designated prepayment date, money for the payment of the prepayment price have been paid, then from and after the prepayment date, interest on the principal amount of the prepaid Installment Payments shall cease to accrue and become payable.

SECTION 7.3. *No Surrender of Agreement Required.* No surrender of this Agreement shall ever be required as a condition for payment or otherwise. The Corporation, the City, and the Assignee agree that this Agreement shall terminate, excepting those provisions expressly surviving termination of this Agreement.

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.1. *Further Assurances.* The City agrees that it will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Corporation, the Assignee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

SECTION 8.2. *Notices.* All notices, certificates or other communications hereunder shall be in writing and shall be deemed to have been properly given on the earlier of (i) when delivered in person, (ii) the third Business Day following deposit in the United States Mail, with adequate postage, and sent by registered or certified mail, with return receipt requested to the appropriate party at the address set forth below, or (iii) the first Business Day following deposit with Federal Express, Express Mail or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set out below.

*If to the City  
or the Corporation:*

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attention: Director of Finance  
finance@santalaraca.gov  
Fax: (408) 243-8687

*If to the Assignee:*

JPMorgan Chase Bank, N.A.  
560 Mission Street, 4<sup>th</sup> Floor  
San Francisco, California 94105  
Attention: Bev Correa

The Corporation, the City and the Assignee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 8.3. *Third Party Beneficiary.* The Assignee is hereby made a third-party beneficiary under this Agreement with all rights of a third party beneficiary.

SECTION 8.4. *Governing Law.* This Agreement will be construed in accordance with and governed by the laws of the State of California.

SECTION 8.5. *Binding Effect.* This Agreement inures to the benefit of and is binding upon the Corporation, the City and the Assignee, and their respective successors and assigns.

SECTION 8.6. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Agreement are for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement

will be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Corporation and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 8.7. *Article and Section Headings and References.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, will be solely for convenience of reference and do not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender mean and include words of the feminine and neuter genders.

SECTION 8.8. *Payment on Non-Business Days.* Whenever any payment is required to be made hereunder on a day which is not a Business Day, such payment will be made on the immediately preceding Business Day.

SECTION 8.9. *Execution of Counterparts.* This Agreement may be executed in any number of counterparts, each of which for all purposes is deemed to be an original and all of which together constitutes but one and the same instrument.

SECTION 8.10. *Waiver of Personal Liability.* No member of the City Council, officer, agent or employee of the City has any individual or personal liability for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this Agreement; but nothing herein contained shall relieve any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

SECTION 8.11. *Defeasance.* If and when all of the Installment Payments shall be paid in any one or more of the following ways:

- (a) by paying or causing to be paid the principal and interest with respect to the Installment Payments as and when the same become due and payable in good and indefeasible funds via check or wire transfer as may from time to time be directed by the Assignee;
- (b) with the prior written consent of the Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, in trust, at or before the final stated Installment Payment Date, money which is fully sufficient to pay and discharge the Installment Payments, including all principal and interest and prepayment premium, (if any) at or before their respective Installment Payment Dates;
- (c) with the prior written consent of the Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, in trust, Federal Securities in such amount as an

independent certified public accountant shall determine in writing will, together with the interest to accrue thereon and without reinvestment, be fully sufficient to pay and discharge the Installment Payments, including all principal and interest and prepayment premium, (if any), at or before their respective Installment Payment Dates; or

- (d) with the prior written consent of the Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, under an escrow deposit and trust agreement, security for the payment and discharge of the Installment Payments, including all principal and interest and prepayment premium (if any) in form and substance acceptable to the Corporation, or its assign, in its sole discretion, said security to be applied to pay the Installment Payments, including all principal and interest and prepayment premium (if any) in full on the earliest possible date;

all obligations of the City with respect to this Agreement shall cease and terminate and this Agreement shall be discharged, except for any provision herein which expressly states that it survives termination. The City shall provide to the Corporation and the Assignee at least 30 calendar days prior written notice of its intent to discharge its obligations with respect to this Agreement by satisfying the conditions of this Section, and shall provide the Corporation and the Assignee with an opinion of Bond Counsel stating that (i) the deposit and application of funds under this Section does not, of itself, cause the interest components of the Installment Payments to be includable in gross income for federal tax purposes, and (ii) as a result of the deposit and application of funds under this Section, all obligations of the City with respect to this Agreement have ceased and terminated and this Agreement has been discharged.

SECTION 8.12. *Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity.* To the fullest extent permitted by law, the City hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement or any related documents, or the enforcement of any remedy under any law, statute, or regulation. To the extent such waiver is not enforceable, the City hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Judicial Reference whether fact or law.

To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, the City agrees to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The City and the Assignee shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters;

provided that the event the City and the Assignee cannot agree upon a referee, the referee will be appointed by the court.

The City hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to this Agreement. To the extent the City has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the City hereby waives and agrees not to claim, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement.

SECTION 8.13. *Compliance with Anti-Corruption Laws, Sanctions Laws and Regulations.* The City has implemented and maintains in effect policies and procedures designed to ensure compliance by the City, its subsidiaries, affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the City, its subsidiaries, affiliates and their respective officers and employees and to the knowledge of the City its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the City, any subsidiary, affiliate or any of their respective directors, officers or employees, or (b) to the knowledge of the City, any agent of the City, any subsidiary or affiliate that will act in any capacity in connection with or benefit from the issuance of this Agreement, is a Sanctioned Person. No use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

The City (a) will comply with all foreign and domestic laws, rules and regulations (including the USA Patriot Act, foreign exchange control regulations, foreign asset control regulations and other trade-related regulations) now or hereafter applicable to this Agreement, the transactions underlying this Agreement or the City's execution, delivery and performance of this Agreement; (b) will maintain in effect and enforce policies and procedures designed to ensure compliance by the City, its subsidiaries, affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions; and (c) shall issue this Agreement, and shall not use, and shall procure that its subsidiaries, affiliates and its or their respective directors, officers, employees and agents not use, proceeds of this Agreement (1) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (2) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (3) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

For purposes of this Section, the following terms have the following meanings:

*"Anti-Corruption Laws"* means all laws, rules, and regulations of any jurisdiction applicable to the City, its subsidiaries or affiliates from time to time concerning or relating to bribery or corruption.

*"Patriot Act" or "USA Patriot Act"* means the USA Patriot Act signed into law on October 26, 2001 (U.S.C. Section 5318), as the same may be amended, supplemented or modified from time to time.

*"Person"* means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a

government or political subdivision or any agency or instrumentality thereof.

*“Sanctioned Country”* means, at any time, a country or territory which is the subject or target of any Sanctions.

*“Sanctioned Person”* means, at any time, (a) any person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any person operating, organized or resident in a Sanctioned Country or (c) any person controlled by any such person.

*“Sanctions”* means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.



IN WITNESS WHEREOF, the Corporation and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**CITY OF SANTA CLARA PUBLIC  
FACILITIES FINANCING CORPORATION**

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:

By \_\_\_\_\_  
General Counsel

ATTEST:

By \_\_\_\_\_  
Secretary

**CITY OF SANTA CLARA**

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

ATTEST:

By \_\_\_\_\_  
City Clerk

## APPENDIX A

### CALCULATION OF INTEREST COMPONENTS

The interest components of the Installment Payments shall be calculated in accordance with the following provisions set forth in this Appendix A.

**Basis of Calculation.** Advances hereunder shall be LIBOR Rate Advances, subject to provisions below on Illegality/Temporary Unavailability and Alternate Rate of Interest. The interest components of the Installment Payments shall be calculated on the unpaid principal components of the Installment Payments, on the basis of the actual number of days elapsed in a year of 360 days, at the Adjusted LIBOR Rate and at the rate of 4.00% Per Annum above the Adjusted LIBOR Rate, at the Assignee's option, upon the occurrence of any Event of Default, whether or not the Assignee elects to accelerate the maturity of the Installment Payments, from the date such increased rate is imposed by the Assignee.

**Definitions.** As used in this Appendix A, the following terms have the following respective meanings:

*"Adjusted LIBOR Rate"* means, with respect to the relevant Interest Period, the sum of (i) the Applicable Margin plus (ii) (a) 80% of the LIBOR Rate applicable to such Interest Period multiplied by (b) the Statutory Reserve Rate.

*"Adjusted One Month LIBOR Rate"* means, with respect to a CB Floating Rate Advance for any day, an interest rate Per Annum equal to the sum of (i) 2.50% plus (ii) the Adjusted LIBOR Rate for a one-month interest period on such day (or if such day is not a Business Day, then the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBOR Rate for any day shall be based on the LIBOR Screen Rate at approximately 11:00 a.m. London time on such day.

*"Advance"* means a LIBOR Rate Advance or a CB Floating Rate Advance and *"Advances"* means all LIBOR Rate Advances and all CB Floating Rate Advances which are made by the Assignee to the City to finance the payment of Project Costs.

*"Applicable Margin"* means 0.95% Per Annum.

*"Benchmark Transition Event"* means the occurrence of one or more of the following events with respect to the LIBOR Rate:

- (a) a public statement or publication of information by or on behalf of the administrator of the LIBOR Screen Rate announcing that such administrator has ceased or will cease to provide the LIBOR Screen Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Screen Rate;
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Screen Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBOR Screen Rate, a resolution authority

with jurisdiction over the administrator for the LIBOR Screen Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBOR Screen Rate, which states that the administrator of the LIBOR Screen Rate has ceased or will cease to provide the LIBOR Screen Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Screen Rate; or

- (c) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Screen Rate announcing that the LIBOR Screen Rate is no longer representative.

*"Business Day"* means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that when used in connection with a LIBOR Rate Advance or the Adjusted One Month LIBOR Rate, the term "Business Day" shall also exclude any day on which banks are not open for general business in London.

*"CB Floating Rate"* means the Prime Rate; provided that the CB Floating Rate shall, on any day, not be less than the Adjusted One Month LIBOR Rate. The CB Floating Rate is a variable rate and any change in the CB Floating Rate due to any change in the Prime Rate or the Adjusted One Month LIBOR Rate is effective from and including the effective date of such change in the Prime Rate or the Adjusted One Month LIBOR Rate, respectively.

*"CB Floating Rate Advance"* means any borrowing under the Installment Payments when and to the extent that its interest rate is determined by reference to the CB Floating Rate.

*"Federal Reserve Board"* means the Board of Governors of the Federal Reserve System of the United States of America.

*"Governmental Authority"* means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

*"Interest Period"* means, with respect to a LIBOR Rate Advance, a period of one month (reset daily), one (1), two (2), and three (3) month(s) commencing on a Business Day selected by the City pursuant to the Installment Payments. Such Interest Period shall end on the day which corresponds numerically to such date one (1), two (2), or three (3) month(s) thereafter, as applicable, *provided, however*, that if there is no such numerically corresponding day in such first, second, or third succeeding month(s), as applicable, such Interest Period shall end on the last Business Day of such first, second, or third succeeding month(s), as applicable.

*"LIBOR Rate"* means with respect to any LIBOR advance for any Interest Period, the London interbank offered rate ("LIBOR") as administered by ICE Benchmark Administration (or any other person that takes over the administration of such rate for

Dollars, the “IBA”) for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as shall be selected by the Assignee in its reasonable discretion; in each case, the “LIBOR Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; *provided that*, if any LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of the Installment Payments. If no LIBOR Screen Rate is available to the Assignee, the applicable LIBOR Rate for the relevant Interest Period shall instead be the rate determined by the Assignee to be the rate at which the Assignee offers to place U.S. dollar deposits having a maturity equal to such Interest Period with first-class banks in the London interbank market at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period.

“*LIBOR Rate Advance*” means any borrowing under the Installment Sales Agreement when and to the extent that its interest rate is determined by reference to the Adjusted LIBOR Rate.

“*Per Annum*” means for a year deemed to be comprised of 360 days.

“*Prime Rate*” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Assignee) or any similar release by the Federal Reserve Board (as determined by the Assignee). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“*Statutory Reserve Rate*” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Federal Reserve Board to which the Assignee is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Federal Reserve Board). Such reserve percentages shall include those imposed pursuant to such Regulation D of the Federal Reserve Board. LIBOR Rate advances shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Assignee under such Regulation D of the Federal Reserve Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

### **Prepayment/Funding Loss Indemnification**

The City may prepay all or any part of any CB Floating Rate Advance or LIBOR Rate Advance with Interest Period of One Month LIBOR, reset daily, at any time without premium or penalty.

The City shall pay the Assignee amounts sufficient (in the Assignee's reasonable opinion) to compensate the Assignee for any loss, cost, or expense incurred as a result of:

- (a) Any payment of a LIBOR Rate Advance on a date other than the last day of the Interest Period for the Advance (other than One Month LIBOR reset daily), including, without limitation, acceleration of the Advances by the Assignee pursuant to the Installment Payments or the other Related Documents; or
- (b) Any failure by the City to borrow or renew a LIBOR Rate Advance on the date specified in the relevant notice from the City to the Assignee.

### **Funding Loss Indemnification**

If the City pays all or any portion of the principal components of the Installment Payments on a date other than the last day of the Interest Period or the Maturity Date (whether by acceleration, prepayment or otherwise) the City shall pay the Assignee an amount sufficient (in the Assignee's reasonable opinion) to compensate the Assignee for any loss, cost, or expense incurred as a result thereof.

### **Interest Rates; Libor Notification**

LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting LIBOR. As a result, it is possible that commencing in 2022, LIBOR may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. In the event a Benchmark Transition Event occurs, the following provisions of this Agreement provides a mechanism for determining an alternative rate of interest. The Assignee will notify the City, pursuant to clause (c) of the following paragraph, in advance of any change to the reference rate upon which LIBOR Rate is based. However, the Assignee does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of "LIBOR Rate" or with respect to any alternative, successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of the LIBOR Rate or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

### **Illegality/Temporary Unavailability**

If:

- (i) any applicable domestic or foreign law, treaty, rule or regulation now or later in effect (whether or not it now applies to the Assignee) or the

interpretation or administration thereof by a Governmental Authority charged with such interpretation or administration, or compliance by the Assignee with any guideline, request or directive of such a Governmental Authority (whether or not having the force of law), shall make it unlawful or impossible for the Assignee to maintain or fund the advances made under this Agreement, or

- (ii) the Assignee determines that quotations of interest rates for the relevant deposits referred to in the definition of Adjusted LIBOR Rate are not being provided for purposes of determining the interest rate on the advances made under this Agreement, or
- (iii) the Assignee determines that the relevant interest rates referred to in the definition of Adjusted LIBOR Rate do not accurately cover the cost to the Assignee of making funding or maintaining the advances made under this Agreement,

then, upon notice of such circumstances from the Assignee to the City: (a) the obligation of the Assignee to make LIBOR Rate Advances shall be suspended until the Assignee notifies the City that the circumstances giving rise to the suspension no longer exists, and (b) subject to the terms and conditions of this Agreement and the other Related Documents, the entire outstanding balance of any advance shall be replaced with an advance bearing interest at the CB Floating Rate and the City may request advances under this Agreement bearing interest at the CB Floating Rate. When the suspension no longer exists, the Advances shall revert back to LIBOR Rate Advances.

In no event shall the interest rate exceed the maximum rate allowed by law. Any interest payment that would for any reason be unlawful under applicable law shall be applied to principal.

### **Alternate Rate of Interest**

If a Benchmark Transition Event occurs, the Assignee may, by notice to the City, select an alternate rate of interest for LIBOR that gives due consideration to the then-evolving or prevailing market convention for determining a rate of interest for loans in US Dollars at such time (the "**Alternate Rate**"); the City acknowledges that the Alternate Rate may include a mathematical adjustment using any then-evolving or prevailing market convention or method for determining a spread adjustment for the replacement of LIBOR. For avoidance of doubt, all references to LIBOR shall be deemed to be references to the Alternate Rate when the Alternate Rate becomes effective in accordance with this section. In addition, the Assignee will have the right, from time to time by notice to City to make technical, administrative or operational changes (including, without limitation, changes to the definition of "CB Floating Rate", the definition of "Interest Period", timing and frequency of determining rates and making payments of interest and other administrative matters) that the Assignee decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of the Alternate Rate. The Alternate Rate, together with all such technical, administrative and operational changes as specified in any notice, shall become effective at the later of (i) the fifth Business Day after the Assignee has provided notice (including without limitation for this purpose, by electronic means) to the City (the "**Notice Date**") and (ii) a date specified by the Assignee in the notice, without any further

action or consent of the City, so long as Assignee has not received, by 5:00 pm Eastern time on the Notice Date, written notice of objection to the Alternate Rate from the City. Any determination, decision, or election that may be made by the Assignee pursuant to this section, including any determination with respect to a rate or adjustment or the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the City. Until an Alternate Rate shall be determined in accordance with this section, the interest rate shall be the CB Floating Rate. In no event shall the Alternate Rate be less than zero.

### **Default Rate of Interest**

After a default has occurred under the Installment Sale Agreement, whether or not the Assignee elects to accelerate the maturity of the Installment Sales Agreement because of such default, all Advances outstanding under the Installment Sales Agreement, shall bear interest at a Per Annum rate equal to the interest rate being charged on each such Advance plus four percent (4.00%) from the date the Assignee elects to impose such rate. Imposition of this rate shall not affect any limitations contained in the Installment Sales Agreement on the City right to repay principal on any LIBOR Rate Advance before the expiration of the Interest Period for each such Advance.

### **Notice and Manner of Electing Interest Rates on Advances**

The City shall give the Assignee written notice via Appendix C in accordance with established procedures (effective upon receipt) of the City's intent to draw down funds for payment of Project Costs no later than 1:00 p.m. Pacific time, on the date of disbursement, if the full amount of the drawn Advance is to be disbursed as a CB Floating Rate Advance and no later than 1:00 p.m. Pacific time three Business Days before disbursement, if any part of such Advance is to be disbursed as a LIBOR Rate Advance. The City's notice must specify: (a) the disbursement date, (b) the amount of each Advance, and (c) for each LIBOR Rate Advance, the duration of the applicable Interest Period; *provided, however*, that the City may not elect an Interest Period ending after the Maturity Date. Each LIBOR Rate Advance shall be in a minimum amount of \$1,000,000. All notices under this paragraph are irrevocable. By the Assignee's close of business on the disbursement date and upon fulfillment of the conditions set forth herein and in any other of the Related Documents, the Assignee shall disburse the requested Advances in immediately available funds by crediting the amount of such Advances to the City's account with the Assignee.

### **Conversion and Renewals**

The City may elect from time to time to convert one type of Advance into another or to renew any Advance by giving the Assignee written notice via Appendix D no later than 1:00 p.m. Pacific time, on the date of the conversion into or renewal of a CB Floating Rate Advance and 1 p.m. Pacific time three Business Days before conversion into or renewal of a LIBOR Rate Advance, specifying: (a) the renewal or conversion date, (b) the amount of the Advance to be converted or renewed, (c) in the case of conversion, the type of Advance to be converted into (CB Floating Rate Advance or LIBOR Rate Advance), and (d) in the case of renewals of or conversion into a LIBOR Rate Advance, the applicable Interest Period, provided that (i) the minimum principal amount of each LIBOR Rate Advance outstanding after a renewal or conversion shall be \$1,000,000; (ii) a LIBOR Rate

Advance can only be converted on the last day of the Interest Period for the Advance; and (iii) the City may not elect an Interest Period ending after the Maturity Date. All notices given under this paragraph are irrevocable. If the City fails to give the Assignee the notice specified above for the renewal or conversion of a LIBOR Rate Advance by 1:00 p.m. Pacific time three Business Days before the end of the Interest Period for that Advance, the Advance shall automatically be converted to a CB Floating Rate Advance on the last day of the Interest Period for the Advance.



## APPENDIX B

### DESCRIPTION OF PROJECT

The Project consists of the City's co-ownership interest in the following improvements to the San José-Santa Clara Regional Wastewater Facility:

#### **Treatment Plant Capital Improvement Program**

Based on information provided by San Jose, a five-year capital improvement plan is updated annually for the Treatment Plant. The current five-year capital improvement plan for the Treatment Plant totals approximately \$1 billion. The City's share of capital expenditures for the Treatment Plant, which is approximately 23% for 2019-20 and is used as an estimate in forecasts for the next five years, totals approximately \$145 million.

The City has budgeted \$49.8 million in the Wastewater CIP for fiscal year 2019-20 for its share of Treatment Plant capital costs.

The capital improvement projects will repair, replace, and/or upgrade the facilities and treatment processes at the Treatment Plant. The process areas include, but are not limited to, liquids treatment, solids treatment, energy and automation, and support facilities process areas. Projects under the capital improvement plan include repairing, replacing, and/or upgrading the Treatment Plant's electrical system, digester rehabilitation, digester gas line replacement, and plant infrastructure improvements.

<b>City Share of Treatment Plant Capital Improvement Program</b>			
<b>Fiscal Year*</b>	<b>City Share</b>	<b>City Share Amount</b>	<b>Total Expenditures</b>
2015-16	14.03%	\$17,454,796	\$124,446,000
2016-17	11.48%	14,153,869	123,189,000
2017-18	11.98%	25,536,837	213,078,000
2018-19	9.48%	15,665,125	165,105,000
2019-20	23.42%	49,831,212	212,725,421
2020-21	7.25%	31,999,376	441,283,609
2021-22	18.86%	25,604,818	134,523,723
2022-23	19.03%	31,829,013	156,930,678
2023-24	11.45%	6,130,941	53,502,035

\* Fiscal years 2019-20 through 2023-24 are projected and subject to change.

Source: City of San Jose.

## APPENDIX C

### FUNDING REQUEST NO. \_\_\_\_\_

The undersigned hereby states and certifies that:

(i) I am an "Authorized Representative," as such term is defined in that certain Installment Sale Agreement, dated as of June 1, 2020 (the "Installment Sale Agreement"), between the City and the City of Santa Clara Public Facilities Financing Corporation (the "Corporation"). Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Installment Sale Agreement.

(ii) Under Section 3.5 of the Installment Sale Agreement, the undersigned hereby requests that the Assignee advance the amount of \$\_\_\_\_\_ to the City, for deposit into the Project Fund which has been established under the Installment Sale Agreement.

(iii) The City has selected a [one month (reset daily), one (1), two (2), and three (3) month(s)] Interest Period.

(iv) The amount requested for funding shall be spent on Project Costs or used to reimburse the City for Project Costs previously paid for by the City. No portion of the amount herein requested to be disbursed was set forth in any Funding Request previously submitted to Assignee by City.

(v) \_\_\_\_\_ *[if checked]* This Funding Request constitutes the final Funding Request. Under Section 3.5(c) of the Installment Sale Agreement, the City hereby relinquishes the remaining Commitment.

(vi) Following the funding of this Funding Request by the Assignee, the total amount funded by the Assignee will be \$\_\_\_\_\_.

(vii) No Event of Default has occurred or is continuing under the Installment Sale Agreement and each representation and warranty set forth in the Installment Sale Agreement remains true and correct except for such representations and warranties that are no longer true due to the passage of time.

(viii) The City has completed the information set forth in Appendix D attached to the Installment Sale Agreement.

\* The City and the Assignee hereby acknowledge and agree that all Advances made hereunder shall be a LIBOR Rate Advance unless and until a Benchmark Transition Event has occurred.

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

**CITY OF SANTA CLARA**, as  
Agent of the Corporation

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Accepted:

**JPMORGAN CHASE BANK, N.A.**

By: \_\_\_\_\_  
Name:  
Title:

## **APPENDIX D**

### **JPMORGAN COMMERCIAL LENDING FORMS**

Thank you for selecting us as your lender. This information provides you with instructions to perform various loan activities and with key contacts to assist in the service of your loan.

- For your convenience, we have included copies of the forms that you may need to use. The completed forms should be sent to:
  - Email: [Chase.Borrower.Request@jpmchase.com](mailto:Chase.Borrower.Request@jpmchase.com)
  - Fax: (844) 490-5662
- When completing the forms, please include the **Borrower Name**, **Customer ID**, and **Loan #** as listed on your statement:



IL1-1650  
10 SOUTH DEARBORN, FLOOR L2  
CHICAGO, IL 60603-2300

## LOAN STATEMENT

Page 001 of 003

Please note that the amounts set forth in this billing statement may be subject to adjustment as described in more detail below.

Customer ID:	12345678
Statement Date:	02/01/19
Statement Period:	01/01/19 to 01/31/19
Payment Due Date:	01/31/19
Amount Due:	45,865.12
Currency:	USD

00002 LI1 001 001 31618 - YNNNNNNNNNNN MM 01 7

### BORROWER NAME

Address Line 1  
Address Line 2

### Activity Details

Statement # 1111112

Effective Date	Transaction Amount	Description	Principal Balance	Interest/ Fees
Loan # 909123896 LOAN INTEREST TYPE LIBOR				

- For any questions regarding your loan or how to fill out the forms please contact Commercial Lending Services:
  - Phone Number: (800) 472-9029
  - Email: [Commercial.Lending.Services@jpmchase.com](mailto:Commercial.Lending.Services@jpmchase.com)

**Requesting New Loan Renewals, Conversions, and Payments (Pages 3-5)**

Complete the [Loan Request](#) for all loan advances, renewals, conversions, and payments.

- Please submit your LIBOR advance request and same-day Money Market request by **3:00 p.m. CT**, and CB Floating or Prime same-day processing request by **3:00 p.m. local time**.
- Please address all LIBOR advances three (3) business days before the end of the interest period. If you don't renew and elect a LIBOR option, the interest rate for the loan will convert to another rate (typically a non-LIBOR), based on the terms of your loan documents.

**Requesting Libor Advance Auto-Renewal (Page 6)**

Complete the [Libor Advance Auto-Renewal Request](#) to auto-renew the interest rate and interest period on your LIBOR loans. Auto-Renewal eliminate the manual renewal process by streamlining interest rate and interest period renewals on LIBOR loans.

**Establishing an Automatic Payment (Page 7)**

The [Auto-Debit Authorization](#) form provides the ability to remove the manual payment process by streamlining payments.

**Loan Payment by Wire Instructions**

Use the following wire instructions to make payments to your loan via wire transfer

**To:** JPMorgan Chase Bank  
ABA# 021000021

**Attention:** Commercial Bank Servicing  
10 South Dearborn, Floor L2  
Chicago, IL 60603-2300

**Credit:** Credit account # 323522211

**Further Credit**

**To (Client Name):**

**Reference (Customer ID and Loan Number):**

**LOAN REQUEST - For all loans (single and multiple interest rate options)**



**IMPORTANT:** Please submit your LIBOR advance request and same-day Money Market request by **3:00 p.m. CT**, and CB Floating or Prime same-day processing request by **3:00 p.m. local time**.

You may complete this form by hand or electronically. Use the Tab key to move from field to field and fill a check box by double clicking in the box. Please complete, print to sign, and return a copy via fax or email.

**SECTION A – Borrower Information**

Borrower		Today's date	
Customer ID (from loan statement)		Proposed effective date for this request	

**SECTION B – Request Details<sup>1</sup>** (For footnoted items, please refer to Disclosures at the end of this form.)

Select one of the following three options and provide information as requested:

<b>1</b>	<input type="checkbox"/> <b>Advance</b>	Amount: \$
Select one of the four advance types below and to the right of the selected type, provide information as requested:		
<input type="checkbox"/>	New LIBOR <sup>2, 3</sup>	Interest period: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 month(s) <input type="checkbox"/> Other:
<input type="checkbox"/>	New Money Market	Interest period:
<input type="checkbox"/>	CB Floating or Prime whichever applies per your loan documents	Loan number: The new CB Floating, Prime or Other advance will be added to your outstanding loan with the same rate.
<input type="checkbox"/>	Other	
Apply proceeds, select one: <input type="checkbox"/> Per instructions in Section C <input type="checkbox"/> To outstanding principal on loan number:		
<b>2</b>	<input type="checkbox"/> <b>Renew or apply changes in principal to an existing LIBOR or Money Market advance</b>	Loan number:
Select one of the four options below and provide the information as requested. If renewing, select the interest period.		
<input type="checkbox"/>	Renew <sup>2</sup> for same amount (no change to principal):	\$
<input type="checkbox"/>	Renew <sup>2</sup> and change the principal. Specify type and amount. Provide settlement instructions in <b>Section C</b> . <input type="checkbox"/> Increase <input type="checkbox"/> Decrease	Amount: \$
Indicate the requested interest period for the renewal: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 month(s) <input type="checkbox"/> Other:		
If applicable, apply difference by selecting "Convert ..." or "Combine ...":		
<input type="checkbox"/>	Convert to principal on CB Floating or Prime	
<input type="checkbox"/>	Combine multiple obligations and provide loan numbers to be closed:	
<b>3</b>	<input type="checkbox"/> <b>Payments<sup>4</sup> (In full for LIBOR, and full or partial for any other types of advance)</b>	
	Principal: \$	Interest: \$ Loan number:
	Principal: \$	Interest: \$ Loan number:
	Principal: \$	Interest: \$ Loan number:
<input type="checkbox"/>	Apply payment – Complete <b>Section C – Settlement Instructions</b>	
<input type="checkbox"/>	Fee payment	Facility ID: Fee amount: \$

**SECTION C – Settlement Instructions** Indicate "Debit ..." or "Credit ..." and provide the account number and amount:

<input type="checkbox"/>	<b>Debit for payments<sup>5</sup></b>	
<input type="checkbox"/>	Chase checking or savings	Account number: Amount: \$
<input type="checkbox"/>	<b>Credit for advance or draw</b>	
<input type="checkbox"/>	Chase checking or savings	Account number: Amount: \$
<input type="checkbox"/>	Check – Complete <b>Section D – Special Instructions</b>	Amount: \$
<input type="checkbox"/>	Wire instructions – Complete <b>Section D – Special Instructions</b>	Amount: \$

**LOAN REQUEST** - For all loans (single and multiple interest rate options)**SECTION D – Special Instructions:** Use this space to provide specific information for checks or wire instructions:*If requesting a check advance in **Section C**, provide this information:*

Addressee name			
Street address		City, State	ZIP

*If requesting a wire advance in **Section C**, provide this information.*

Name of financial institution			
Bank routing number		Deposit account number:	

*Use this space for other instructions as needed. Please note when payments are being made to third parties.*

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**SECTION E – Confirmation of Request**

Upon completion of my request, I would like a confirmation:	<input type="checkbox"/>	Faxed to	
	<input type="checkbox"/>	Emailed to	

**SECTION F – Borrower Certification**

By making a Loan Request and by signing below, the undersigned certifies that:

1. The representations and warranties made by the Borrower in the loan documents are true and correct on and as of the dates above as though made on each of those dates.
2. The proposed request complies with all provisions of the loan documents.
3. No default, event of default or event that would constitute a default or event of default but for the giving of notice, the lapse of time or both, has occurred in any provision of the loan documents and is continuing or would result from the request.
4. I have read and understand this Loan Request, including the Disclosures on next page.

By requesting the bank to debit the account number above, as the signer, you represent and warrant that you are authorized to give the bank instructions to debit the account.

Name (Type or print name)		Date:
Signature (Authorized signer per borrowing resolution or authorized designee)		

**Please complete, print to sign, and return a copy via fax or email.**



**LOAN REQUEST - For all loans (single and multiple interest rate options)****Disclosures****1. Section B - Request Details**

Please consult your loan documents to locate your interest rate and interest period options and elect your interest rate and interest period accordingly. In the event of a default, your loan documents may prohibit conversion to a LIBOR loan or the making of any new advance(s). Your loan documents may also restrict the number of loans that may be outstanding at any one time.

**2. Section B - Advance**

LIBOR advance requests require a three (3) business day pre-notification period. If the LIBOR interest period you would like to elect ends after the maturity date of the note, please refer to your promissory note for other available options.

**3. Section B - Advance**

Clients that have established auto-renewal for their LIBOR advances will have all new loan advances for the same line of credit facility put on auto-renew, at the same interest period initially elected.

**4. Section B - Payments**

Paying down LIBOR or Money Market loan(s) prior to the end of the applicable interest rate period may incur break funding charges and/or prepayment premiums.

**5. Section C - Debit for payments**

If your loan is set up for auto-debit, all payments billed may be debited automatically from the designated account. Final payments are not auto-debited. To establish or change any standing auto-debit instructions, please complete the Auto-Debit Authorization form.

## LIBOR ADVANCE AUTO-RENEWAL REQUEST

You may complete this form by hand or electronically. Use the Tab key to move from field to field and fill a check box by double clicking in the box. Please complete, print to sign and return via fax or email.

<b>Borrower</b>		<b>Customer ID</b>	
<b>Street address</b>		<b>City, State ZIP</b>	

**Confirmation Type**

<input type="checkbox"/>	<b>Automatic Renewal</b>	<b>Effective Date</b>	
<i>Provide a loan number from each facility <u>or</u> the principal amount and if it is a line of credit or a term loan.</i>			
	<b>Facility Description(s)</b>		
<p>The borrower requests that JPMorgan Chase Bank, N.A. renew all existing and future LIBOR advances at the same interest period initially elected for each such advance, without further notice to or from the borrower. This auto-renewal election will apply to all existing and future LIBOR advances under the facility(ies) specified in this request, subject to the terms of the loan documents. Any existing advance will auto-renew at the interest period currently established for that advance. All new advances will auto-renew at the interest period requested at the time the advance is made. Your election to automatically renew LIBOR advances will continue until you notify us as specified in the loan documents, including at least three (3) business days before the end of any applicable interest period. By setting up this automatic renewal for your convenience, we do not waive any conditions or requirements for making advances, or defaults that may exist at the time of renewal. The Credit Agreement(s) and the other related documents remain the same. This includes your obligations related to conditions precedent for advances and prepayment/funding loss indemnification amounts for payment of a LIBOR advance on a date other than the last day of any interest period.</p>			

<b>Date</b>	
<b>Signature</b>	
	(Authorized signer per borrowing resolutions or authorized designee, such as a Designated Loan Contact)
<b>Name</b>	
<b>Title</b>	
<b>Telephone</b>	
<b>Email address</b>	

Please complete, print to sign and return via fax or email.

**AUTO-DEBIT AUTHORIZATION**

This information provides you with instructions to enable Auto-Debit functionality to streamline the activities associated with the service of your loan.

**Instructions:** You may complete this form by hand or electronically. Use the Tab key to move from field to field and fill a check box by double clicking in the box. Please complete, print to sign and return a copy via fax or email. **Please note, establishing auto-debit takes at least three (3) business days for a JPMorgan Chase Bank, N.A. (JPMC) account and at least seven (7) business days for a non-JPMC account.**

The borrower named below:

- Authorizes JPMC to:
  - Initiate debit entries to its deposit account at the depository bank named below.
  - Debit all amounts (including fees) due on the borrower's existing and future loans with JPMC.
- Represents and warrants that it owns all funds in the account listed below.
- Acknowledges that:
  - Debit entries may cause an overdraft and result in depository's refusal to honor items drawn on account.
  - The borrower will continue to be liable for any amounts (including fees) not debited or otherwise paid.
  - JPMC may, in its sole discretion, choose not to debit the account. JPMC is not responsible for any loss or delay with respect to any debit entry or if it chooses not to debit the account.
  - **Final payments are not auto-debited.** Borrower will refer to final invoice for final payment instructions.
  - JPMC may rely on this document until it has received written notification of its revocation from the borrower and JPMC has a reasonable opportunity to act on such revocation.

As the signer, you represent and warrant that you are authorized to provide the instructions and authorizations above on the borrower's behalf and to bind the borrower to this document. JPMC may rely on your authority without further inquiry.

<b>Borrower</b>		<b>Customer ID</b> <i>(from loan statement)</i>	
<b>Depository bank</b>		<b>Deposit account number</b>	
<b>Bank routing number</b> <i>(not required for JPMC accounts)</i>		<b>Deposit account title</b>	
<b>Date</b>		<b>Signature</b> <i>(Authorized signer per borrowing resolution)</i>	
<b>Name</b>		<b>Title</b>	
<b>Telephone</b>		<b>Email address</b>	

**Please complete, print to sign and return via fax or email.**

## ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this "Agreement"), dated as of June 1, 2020, is among the CITY OF SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), JPMORGAN CHASE BANK, N.A., as assignee (including its successors and assigns, the "Assignee"), a national banking association and existing under the laws of the United States of America, as assignee (the "Assignee"), and the CITY OF SANTA CLARA, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City").

### BACKGROUND:

1. The City owns and operates facilities and property for the collection and transmission of wastewater within the service area of the City (the "Wastewater System"), and wastewater which is collected by the City is transmitted for treatment to the San José-Santa Clara Regional Wastewater Facility (the "Wastewater Treatment Facility") which is co-owned by the City and the city of San José, pursuant to that certain Sewage Plant Agreement dated March 30, 1959, as amended, between the City and the city of San José (the "Wastewater Treatment Agreement").

2. Under the Wastewater Treatment Agreement, the City is obligated to contribute its share of the capital costs of improvements to the Wastewater Treatment Facility, and the City is currently obligated to contribute funds for the capital costs of improving the Wastewater Treatment Facility (the "Project").

3. The Corporation has been formed for the purpose of assisting the City in the financing of public capital improvements, and in order to provide funds to finance the Project the Corporation has entered into an Installment Sale Agreement dated as of June 1, 2020 (the "Installment Sale Agreement") with the City under which the Corporation agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").

4. For the purpose of obtaining the moneys required to finance the construction of the Project in accordance with the terms of the Installment Sale Agreement, the Corporation has agreed to assign and transfer certain of its rights under the Installment Sale Agreement to the Assignee, including but not limited to its right to receive and enforce the payment of the Installment Payments, under this Agreement.

### AGREEMENT:

In consideration of the material covenants contained in this Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Installment Sale Agreement.

SECTION 2. *Assignment.* The Corporation hereby assigns to the Assignee all of the Corporation's rights, title and interest under the Installment Sale Agreement, including but not limited to:

- (a) the right to receive and collect all of the Installment Payments and all of the Undrawn Fees from the City under the Installment Sale Agreement;
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project; and
- (c) the right to exercise such rights and remedies conferred on the Corporation under the Installment Sale Agreement as may be necessary or convenient (i) to enforce payment of the Installment Payments, the Undrawn Fees and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Corporation in the event of a default by the City under the Installment Sale Agreement.

The assignment made under this Section is absolute and irrevocable, and without recourse to the Corporation.

SECTION 3. *Acceptance.* The Assignee hereby accepts the assignments made herein.

SECTION 4. *Representations and Warranties of the Corporation.* The Corporation hereby represents, warrants and covenants to and with the City and the Assignee as follows:

- (a) The Installment Sale Agreement is free and clear of all claims, liens, security interests, encumbrances of any kind or character created by, through or under the Corporation, except the rights of the City thereunder, and except as contemplated in the Installment Sale Agreement. The Installment Sale Agreement is and shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of the Corporation.
- (b) The Corporation has complied with and performed all of its obligations under the Installment Sale Agreement and all related documents and instruments.
- (c) The Installment Sale Agreement delivered to the Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Corporation and City respecting the Installment Payments and the Undrawn Fees due thereunder.

SECTION 5. *Representations and Warranties of the Assignee.* The Assignee hereby certifies, represents, warrants, acknowledges, and covenants to and with the City and the Corporation as follows:

- (a) The Assignee acknowledges that the City will rely on the certifications, representations, warranties, acknowledgements, and covenants contained in this Agreement.
- (b) The Assignee is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was incorporated or formed and is authorized to acquire an assignment of the Installment Sale Agreement as set forth herein.
- (c) The Assignee is a “qualified institutional buyer” (a “Qualified Institutional Buyer”) within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (the “Securities Act”), or is an “accredited investor” as described in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act (an “Institutional Accredited Investor”).
- (d) The Assignee is not acquiring an assignment of the Installment Sale Agreement for more than one account, has no present intention to re-assign the Installment Sale Agreement, and is not acquiring an assignment of the Installment Sale Agreement with a view to distributing the Installment Sale Agreement.
- (e) The Assignee has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of municipal bonds and other obligations similar to the Installment Sale Agreement, to be capable of evaluating the merits and risks of an investment in the Installment Sale Agreement, and the Assignee is able to bear the economic risks of the Installment Sale Agreement,.
- (f) The Assignee recognizes that the Installment Sale Agreement involves significant risks, that there is no established market for the Installment Sale Agreement and that none is likely to develop and, accordingly, that the Assignee must bear the economic risk of the Installment Sale Agreement for an indefinite period of time.
- (g) The Assignee is not relying upon the City or any of its employees or agents for advice as to the merits and risks of investment in the Installment Sale Agreement. The Assignee has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision.
- (h) The Assignee has conducted its own independent examination of, and has had an opportunity to ask questions and receive answers concerning the City, the Project, the Wastewater System, the Gross Revenues and the Net Revenues, the Installment Sale Agreement, and the security therefor, and the transactions and documents related to or contemplated by the foregoing.
- (i) The Assignee has been furnished with all documents and information regarding the City, the Project, the Wastewater System, the Gross

Revenues and the Net Revenues, the Installment Sale Agreement, and the security therefor, and the transactions and documents related to or contemplated by the foregoing, and all matters related thereto, that it has requested.

- (j) The Assignee understands that the offering and sale of the Installment Sale Agreement by the City were exempt from Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, pursuant to Section (d)(1)(i) of said Rule.
- (k) The Assignee understands that the Installment Sale Agreement carries no rating from any rating service.
- (l) The Assignee understands that the Installment Sale Agreement is not registered under the Securities Act and is not registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state.
- (m) The person executing this Agreement on behalf of the Assignee is duly authorized to do so on the Assignee's behalf.

SECTION 6. *Limitations on Further Assignments.* The Assignee may resell or otherwise transfer all (but not less than all) of its interest in the Installment Sale Agreement, but only to an institution that (i) the Assignee reasonably believes is either (x) a Qualified Institutional Buyer, (y) an Institutional Accredited Investor and is purchasing the Installment Sale Agreement for its own account, (z) the Federal Reserve Bank, (ii) delivers to the City and the Corporation an executed Investor Letter containing substantially the representations and warranties set forth in Section 5, and (iii) otherwise complies in all respects with the provisions of the Installment Sale Agreement regarding such sale or transfer.

SECTION 7. *Conditions to Closing.* At or prior to the Closing Date, the Assignee shall have received the following documents, in each case satisfactory in form and substance to the Assignee:

- (a) Bond Opinion. The unqualified approving opinion of Bond Counsel, dated the Closing Date, addressed to the City, as to the validity of the Installment Sale Agreement and tax-exempt status of the Installment Payments.
- (b) Reliance Letter. A reliance letter from Bond Counsel permitting the Assignee to rely upon the approving opinion referred to in subparagraph (a), above.
- (c) Supplemental Opinion. A supplemental opinion of Bond Counsel, dated the Closing Date and addressed to the Assignee, to the effect that:
  - (i) the Installment Sale Agreement is exempt from registration under the Securities Act of 1933, as amended; and

- (ii) the Assignment Agreement and the Installment Sale Agreement have been duly authorized, executed and delivered by the City and the Corporation and constitute the legal, valid and binding agreements of the City and the Corporation, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), and to the exercise of judicial discretion in appropriate cases.
- (d) Certificates of the Corporation and the City. A certificate signed by a duly authorized official of the Corporation and the City to the effect that (i) the Installment Sale Agreement and this Agreement have been duly executed and delivered, (ii) the representations, warranties and covenants of the City and the Corporation in the Installment Sale Agreement, and of the Corporation and the City in this Agreement, are true and correct in all material respects as of the Closing Date, and (iii) the Corporation and the City have complied with all the terms of the Installment Sale Agreement and this Agreement to be complied with by such party prior to or concurrently with the Closing Date and such documents are in full force and effect.
- (e) Resolutions. Certificates of the authorized official of the Corporation and the City or, in each case, his or her designee, together with a fully executed copy of the Corporation and City resolutions, respectively, to the effect that, (i) such copy is a true and correct copy of such resolution; and (ii) such resolution is duly adopted and has not been modified, amended, rescinded or revoked except as provided herein, and is in full force and effect on the date of the Closing.
- (f) City Attorney Opinion. An opinion of the City Attorney of the City, dated the Closing Date, addressed to the City, the Corporation and the Assignee, as to (i) the due organization and existence of the City and the Corporation, (ii) the due adoption of the Corporation and City resolutions approving the Installment Sale Agreement, (iii) the absence of material litigation affecting the ability of the City and the Corporation to undertake and complete the transactions contemplated by the Installment Sale Agreement, and (iv) the non-existence of any agreement or other instrument to which the City or the Corporation is a party or by which it is bound or any law, regulation, court order or consent decree to which the City or the Corporation is subject, the breach of which or the default under which has or may have a material adverse effect on the ability of the City and the Corporation to perform their respective obligations under the Installment Sale Agreement.
- (g) Tax Certifications. Tax certifications by the City in form and substance acceptable to Bond Counsel.



- (h) CDIAC. Copies of preliminary filings with the California Debt and Investment Advisory Commission ("CDIAC").
- (i) Executed Documents. Executed copies of the Installment Sale Agreement and this Agreement.
- (j) Certificates of Insurance. Certificates of Insurance referenced in Section 5.4 of the Installment Sale Agreement.
- (k) Additional Documents. Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel or the Assignee may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the representations contained herein and the due performance or satisfaction by the Corporation at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

SECTION 8. *Expenses*. The fees and disbursements of Bond Counsel, the fees and disbursements of the financial advisor to the City or the Corporation, CDIAC fees, fees of Assignee's Counsel, Nixon Peabody LLP, and other miscellaneous expenses of the City or the Corporation incurred in connection with the offering and delivery of the Installment Sale Agreement shall all be the obligation of the Corporation. The Assignee shall have no responsibility for any expenses associated with the Installment Sale Agreement, including, but not limited to, the expenses identified above as the obligation of the City or the Corporation.

SECTION 9. *Execution in Counterparts*. This Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Agreement may be separately executed by the Assignee and the Corporation, both with the same force and effect as though the same counterpart had been executed by the Assignee and the Corporation.

SECTION 10. *Binding Effect*. This Agreement inures to the benefit of and binds the Corporation and the Assignee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 11. *Governing Law*. This Agreement is governed by the Constitution and laws of the State of California.

SECTION 12. *Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity*. To the fullest extent permitted by law, the Corporation hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement or any related documents, or the enforcement of any remedy under any law, statute, or regulation. To the extent such waiver is not enforceable, the Corporation hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Judicial Reference whether fact or law.

To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, the Corporation agrees to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The Corporation and the Assignee shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters; provided that the event the Corporation and the Assignee cannot agree upon a referee, the referee will be appointed by the court.

The Corporation hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to this Agreement. To the extent the Corporation has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the Corporation hereby waives and agrees not to claim, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement.

**SECTION 12. *Arm's Length Transaction.*** The transaction described in this Agreement is an arm's length, commercial transaction between the Borrower and the Assignee in which: (i) the Assignee is acting solely as a principal (i.e., as a Assignee) and for its own interest; (ii) the Assignee is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the City or the Corporation with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Assignee or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Assignee has to the Borrower with respect to this transaction are set forth in this Agreement or the Installment Purchase Agreement; and (v) the Assignee is not recommending that the City or the Corporation take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the City or the Corporation should discuss the information contained herein with the City's or the Corporation's own legal, accounting, tax, financial and other advisors, as the City's or the Corporation's deems appropriate.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the day and year first written above.

**CITY OF SANTA CLARA PUBLIC  
FACILITIES FINANCING CORPORATION,**  
*as Assignor*

By \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:

By \_\_\_\_\_  
General Counsel

ATTEST:

By \_\_\_\_\_  
Secretary

**CITY OF SANTA CLARA**

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

ATTEST:

By \_\_\_\_\_  
City Clerk

**JPMORGAN CHASE BANK N.A.,**  
*as Assignee*

By \_\_\_\_\_  
Name  
Title



## Agenda Report

20-566

Agenda Date: 5/26/2020

### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

At its April 8, 2020 meeting, the City Council approved the Small Business Assistance Grant Program (Grant Program) with an initial allocation of \$500,000 in funds for the effort.

The Grant Program provides one-time grants to small businesses and non-profits with at least one but no more than 25 full-time employees who demonstrate a loss of income due to COVID-19. Grants of \$10,000 are available for qualified small businesses and non-profits that have been deemed non-essential under the County of Santa Clara Public Health Department order dated March 16, 2020. Grants of \$5,000 are available for qualified small businesses and non-profits that have been deemed essential under the same order.

Applicants must meet specific eligibility requirements (Attachment 1), complete the Small Business Assistance Grant Program application (Attachment 2) and demonstrate loss of income due to COVID-19 by completing the Estimated Disaster Economic Injury Worksheet (Attachment 3).

At the April 28, 2020 City Council meeting, staff presented an update on the Grant Program and City Council approved the allocation of an additional \$300,000 in funding bringing the total funds for the Grant Program to \$800,000.

#### **DISCUSSION**

##### **Program Status**

To date, 150 applications out of approximately 700 applications have been reviewed. A total of 110 have been approved for grant funding totaling \$795,000. Attachment 4 is a list of businesses that have been approved for grant funding as of May 19, 2020. An additional application has been tentatively approved which will exhaust the remaining grant funds.

The City continues to receive applications daily, but as of the date of this report, grant funds have been exhausted. The Silicon Valley Central Chamber of Commerce recently launched a GoFundMe campaign to help raise additional funding for the Grant Program. As of the date of this report, the campaign has raised a total of \$1,500.

##### **Program Funding**

At the April 28, 2020 City Council meeting, Council expressed interest in allocating additional

resources to the Grant Program.

In reaction to the significant financial impacts and the food insecurity issues caused by COVID-19, the City launched the Healthy Meals Santa Clara program on March 26, 2020 to supplement the existing weekday meal programs being provided by the Santa Clara Unified School District (SCUSD) for the City's school-aged children and the Senior Center for seniors. In partnership with Levy Premium Food Service, Spectra Management Services, California's Great America, SCUSD, Silicon Valley Power, Mission City Community Fund and Intel, Healthy Meals Santa Clara provides weekend meals (two breakfasts and two lunches) to school-aged children and seniors, with additional delivery service for homebound seniors. As of the preparation of this report, the program has provided more than 100,000 meals to Santa Clara youth and seniors since its launch.

Staff was recently able to identify savings from the Healthy Meals Santa Clara program. Changes to the USDA reimbursement process will now enable SCUSD to procure weekend meal packages for school age children at no cost to the City. In addition, Silicon Valley Power (SVP) has been identified as a funding source for the weekend senior meals. With funding sources identified for the Healthy Meals Santa Clara program, funds previously allocated for the continued implementation of the Healthy Meals Santa Clara program are now available to be reallocated to the Small Business Assistance Grant program.

Given the demonstrated need for assistance to Santa Clara's small business community, an additional \$300,000 authorization is recommended (for a total of \$1,100,000). These funds would allow for the funding of an additional 30-60 small businesses depending on the mix of essential and non-essential businesses funded.

### **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**

As approved by the City Council during the March 24<sup>th</sup> and April 28<sup>th</sup> meetings, a total of \$800,000 has been allocated for the Small Business Assistance Program. Of this amount, \$234,460 was added from the Budget Stabilization Reserve, \$250,000 was allocated from savings identified in the Non-Departmental operating budget, with the remaining \$315,540 funded by savings identified in the City Manager's Office operating budget.

During the May 12<sup>th</sup> meeting, City Council approved a budget amendment, appropriating \$726,500 for the Food Distribution Program. Of this amount, \$106,500 was anticipated revenue from the Mission City Community Fund, while \$620,000 was allocated from the City Manager's Office and Non-Departmental operating budgets for the Food Distribution Program. With the SCUSD being able to procure weekend meal packages and having SVP as an additional funding source, it is projected that the Food Distribution Program will have approximately \$300,000 in savings. It is recommended that these savings be reallocated to the City Manager's Office for additional resources for the Small Business Assistance Program.

**Budget Amendment  
FY 2019/20**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>General Fund</b>			
<u>Transfers From</u>			
Transfer from the Other City Departments Operating Grant Trust Fund	\$0	\$300,000	\$300,000
<u>Expenditures</u>			
City Manager's Office - Materials/Services/Supplies	\$3,064,511	\$300,000	\$3,364,511
<b>Other City Departments Operating Grant Trust Fund</b>			
<u>Expenditures</u>			
Food Distribution Program	\$726,500	(\$300,000)	\$426,500
<u>Transfers To</u>			
Transfer to the General Fund - City Manager's Office	\$0	\$300,000	\$300,000

**COORDINATION**

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

**PUBLIC CONTACT**

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

**RECOMMENDATION**

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

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Final Program Overview & Eligibility
2. Final Application
3. Final Estimated Disaster Economic Worksheet
4. List of Grant Approvals as of May 19, 2020



## **Overview & Objectives**

To mitigate the impact of COVID-19 on Santa Clara small businesses and their employees, the City of Santa Clara has committed up to \$500,000 in one-time funds to create a Small Business Assistance Grant Program.

The objective of this program is to offer immediate financial assistance to nonprofits and small businesses located in the City of Santa Clara to aid in maintaining their business and workforce.

## **Program Overview**

1. Grants of \$10,000 for qualified small businesses with at least one and no more than 25 full-time employees that have been deemed non-essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
2. Grants of \$5,000 for qualified small businesses with at least one and no more than 25 full-time employees that have been deemed essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
3. Grant funds may only be used to cover the following items: payroll or lease payments for business premises.
4. Grants will be awarded on a first-come, first-serve basis for qualified applicants.

## **Eligibility Requirements**

- For a \$10,000 grant award, applicants must be a small business with at least one and no more than 25 full-time employees that has been deemed non-essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
- For a \$5,000 grant award, applicants must be a small business with at least one and no more than 25 full-time employees that has been deemed essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
- Applicants must verify the business has experienced a loss of income due to COVID-19 by completing the Estimated Disaster Economic Injury Worksheet.
- Applicants must submit a current copy of its W-9 form.
- Applicants must operate out of a physical commercial storefront within the city limits of Santa Clara.
- Applicants must have an active City of Santa Clara Business License.
- Applicants must be in good standing with the City.
- Applicants who are involved or have been involved in legal or financial issues may not qualify.





- Applicants must have been in operation in the City of Santa Clara for at least one year as of March 1, 2020.
- **PLEASE NOTE:** Chains (national or local with 3 or more locations) will not be eligible for award.

**Application and Funding Process:**

1. Grant applications can be accessed and filled out online but must be emailed directly to [SmallBusiness@SantaClaraCa.gov](mailto:SmallBusiness@SantaClaraCa.gov).
  - a. Businesses will be required to complete the “Estimated Disaster Economic Injury Worksheet” that documents current or forecasted estimates of economic impact.
  - b. Businesses will be required to provide a current copy of a W-9.
  - c. Non-profits will be required to submit proof of non-profit status.
2. If application is found complete, application will be reviewed for eligibility and applicants will receive a notice of award within a target of one to two weeks following submission.
  - a. In all cases, the City reserves the right to reject any and all applications in the event the City identifies a potential conflict of interest or the appearance of a conflict of interest.
  - b. Submission of an application in no way obligates the City to award a grant and the City reserves the right to reject any or all applications, wholly or in part, at any time, without penalty.
3. Awards will be made on a first come, first served basis.
4. If awarded, the application becomes a binding contract between the applicant and the City of Santa Clara.
5. If awarded, funds may only be used for applicant's payroll expenses or lease payments.
6. Businesses receiving funding are required to:
  - a. Certify via a written statement how many jobs were retained or how many months of lease payments for the business premises were paid allowing the business to continue operations.
  - b. Submit evidence that the grant funds have been spent in the manner and for the purposes stated in the application within thirty (30) days of the payment date. Evidence provided must be to the satisfaction of the City.
  - c. The City reserves the right to audit the applicant's books and records for compliance with terms in the agreement.



7. Businesses receiving funding are encouraged to:
  - a. If applicable, adopt Federal and State guidance for operating their businesses (social distancing, clean down procedures, limiting in-store occupancy, etc.).
  - b. If applicable, prioritize delivery of food and services to seniors and economically vulnerable populations.
8. Grant funds will be issued upon execution of the agreement.
9. The program will remain in effect during the City of Santa Clara's declared state of local emergency and while funds are available.



## INTRODUCTION

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To mitigate the impact of COVID-19 on Santa Clara small businesses and their employees, the City of Santa Clara has committed up to \$500,000 in one-time funds to create a Small Business Assistance Grant Program.

The objective of this program is to offer immediate financial assistance to nonprofits and small businesses located in the City of Santa Clara to aid in maintaining their business and workforce.

## OVERVIEW

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1. Grants of \$10,000 for qualified small businesses with at least one and no more than 25 full-time employees that have been deemed non-essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
2. Grants of \$5,000 for qualified small businesses with at least one and no more than 25 full-time employees that have been deemed essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
3. Grant funds may only be used to cover the following items: payroll or lease payments for business premises.
4. Grants will be awarded on a first-come, first-serve basis for qualified applicants.

## ELIGIBILITY

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Please carefully review the eligibility requirements below.

- For a \$10,000 grant award, applicants must be a small business with at least one and no more than 25 full-time employees that has been deemed non-essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
- For a \$5,000 grant award, applicants must be a small business with at least one and no more than 25 full-time employees that has been deemed essential under the County of Santa Clara Public Health Department order dated March 16, 2020.
- Applicants must verify the business has experienced a loss of income due to COVID-19 by completing the Estimated Disaster Economic Injury Worksheet.
- Applicants must submit a current copy of its W-9 form.
- Applicants must operate out of a physical commercial storefront within the city limits of Santa Clara.
- Applicants must have an active City of Santa Clara Business License.
- Applicants must be in good standing with the City.
- Applicants who are involved or have been involved in legal or financial issues may not qualify.
- Applicants must have been in operation in the City of Santa Clara for at least one year as of March 1, 2020.
- **PLEASE NOTE:** Chains (national or local with 3 or more locations) will not be eligible for award.



**TO BE COMPLETED BY APPLICANT**

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**Name of Business:** \_\_\_\_\_

**Name of Business Owner(s):** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Contact Person Name and Title:** \_\_\_\_\_

**Contact Person E-mail:** \_\_\_\_\_

**Contact Person Phone:** \_\_\_\_\_

**Business Type (select one):**

☐ Sole Proprietorship

☐ Limited Liability Entity

☐ Partnership

☐ Nonprofit Corporation

☐ Limited Partnership

☐ Cooperative Corporation

☐ Corporation

*If the business is a non-profit, please attach proof of non-profit status to this application.*

**Please mark what type of assistance you are seeking grant funding for:**

**Payroll** ☐ **Lease Payment** ☐ **Both** ☐

**If selected for award, would you like to receive the funds electronically?**

**Yes** ☐ **No** ☐

**If not, please list the address where the grant funds should be mailed below:**

\_\_\_\_\_  
\_\_\_\_\_

**ELIGIBILITY VERIFICATION**

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1. What type of business do you operate? \_\_\_\_\_

2. Is your business a small business with at least one and no more than 25 full-time employees that has been deemed non-essential under the County of Santa Clara Public Health Department order dated March 16, 2020?

**Yes** ☐ **No** ☐



3. Is your business a small business with at least one and no more than 25 full-time employees that has been deemed essential under the County of Santa Clara Public Health Department order dated March 16, 2020?

Yes ☐ No ☐

4. Have you enclosed a completed copy of the Estimated Disaster Economic Injury Worksheet and certify that the business has experienced a loss of income as a result of COVID-19?

Yes ☐ No ☐

5. Have you enclosed a current copy of the W-9?

Yes ☐ No ☐

6. Do you operate out of a physical commercial storefront within the city limits of Santa Clara?

Yes ☐ No ☐

Please list the address of the location:

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7. Do you have an active City of Santa Clara Business License?

Yes ☐ No ☐ Business License No. \_\_\_\_\_

8. Has the business been in operation in the city of Santa Clara for at least one year as of March 1, 2020?

Yes ☐ No ☐ Business Start Date: \_\_\_\_\_

9. Does the business or applicant own a chain with three or more locations (national or local)?

Yes ☐ No ☐

10. Is the business or the applicant in good standing with the City of Santa Clara?

Yes ☐ No ☐

11. Has the business or the applicant ever been involved in a bankruptcy or insolvency proceeding?

Yes ☐ No ☐



12. Does the business or the applicant have any outstanding judgments, tax liens, or pending lawsuits against them?

Yes ☐ No ☐

13. In the past year, has the business or the applicant been convicted of a criminal offense committed during and in connection with a riot or civil disorder or other declared disaster, or ever been engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction?

Yes ☐ No ☐

14. Is the business or the applicant delinquent on any federal taxes, direct or guaranteed federal loans (SBA, FHA, VA, student, etc.), federal contracts or federal grants?

Yes ☐ No ☐

15. Is the applicant currently suspended or debarred from contracting with the federal government or receiving federal grants or loans?

Yes ☐ No ☐

16. Is the applicant presently a) subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; b) been arrested in the past six months for any criminal offense; c) or for any criminal offense - other than a minor vehicle violation - 1) been convicted, 2) plead guilty, 3) plead nolo contendere, 4) been placed on pretrial diversion, or 5) been placed on any form of parole or probation (including probation before judgment)?

Yes ☐ No ☐

**DESCRIPTION OF HOW GRANT FUNDS WILL BE USED**

**Describe in detail what the grant funds will be used for and how it will help sustain your business. For example, how many months of lease payments will the grant award allow you to pay and/or how many full-time employees will the grant award allow you to retain.**

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**Describe what other forms of assistance you have sought or are seeking.**

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**Have you received grant funding from the City of Santa Clara in the past?  
If yes, please describe when, how much was received, and how the funds were used.**

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### **GRANT APPLICATION PROCESS AND TERMS**

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1. Grant applications must be emailed directly to [SmallBusiness@SantaClaraCa.gov](mailto:SmallBusiness@SantaClaraCa.gov) **NO EARLIER THAN APRIL 17, 2020 AT 10:00 AM PST.**  
Businesses must complete and include the following with this application:
  - ☐ Estimated Disaster Economic Injury Worksheet
  - ☐ Current copy of a W-9
  - ☐ Proof of non-profit status (if applicable)
2. If application is found complete, application will be reviewed for eligibility and applicants will receive a notice of award within a target of one to two weeks following submission.
  - a. In all cases, the City reserves the right to reject any and all applications in the event the City identifies a potential conflict of interest or the appearance of a conflict of interest.
  - b. Submission of an application in no way obligates the City to award a grant and the City reserves the right to reject any or all applications, wholly or in part, at any time, without penalty.
3. Awards will be made on a first come, first served basis.
4. If awarded, this application becomes a binding contract between the entity named above and the City of Santa Clara.
5. If awarded, funds may only be used for applicant's payroll expenses or lease payments.
6. Businesses receiving funding are required to:
  - a. Certify via a written statement how many jobs were retained or how many months of lease payments for the business premises were paid allowing the business to continue operations.
  - b. Submit evidence that the grant funds have been spent in the manner and for the purposes stated in this application within thirty (30) days of the payment date. Evidence provided must be to the satisfaction of the City.
  - c. The City reserves the right to audit the applicant's books and records for compliance with terms in this Agreement.
7. Businesses receiving funding are encouraged to:
  - a. If applicable, adopt Federal and State guidance for operating their businesses (social distancing, clean down procedures, limiting in-store occupancy, etc.).
  - b. If applicable, prioritize delivery of food and services to seniors and economically vulnerable populations.



8. Grant funds will be issued upon execution of this application.
9. The program will remain in effect during the City of Santa Clara's declared state of local emergency and while funds are available.

Please direct any questions to [SmallBusiness@santaclaraca.gov](mailto:SmallBusiness@santaclaraca.gov) or call (408) 615-2210.

**By my signature below, I have read and understand the Small Business Assistance Grant Program. I make the following representations and acknowledge agreement to the following terms and conditions:**

- Upon approval of this application, as evidenced by the signature of the City Manager below, this application becomes a binding contract between the entity named above and the City of Santa Clara (Agreement).
- I am the duly authorized representative of the entity named above and can bind the entity to the terms of this Agreement.
- If funds are provided by the City, the funds will be used for the purposes set forth above.
- In no event shall the City's financial responsibility exceed the approved amount, set forth below.
- I bear full responsibility for any and all tax consequences of receiving grant funds including, but not limited to, issuance of a 1099 by the City.
- There is no agency, employment, joint venture or other such relationship created by virtue of award of the grant. The City does not endorse the specific business.
- Applicant shall defend and indemnify the City and its employees from and against any claim, injury, liability, loss, cost and/or expense or damage including all costs and reasonable attorney's fees, arising from or alleged to arise from the activity or event.
- The representations made by applicant in this Application are material terms of the Agreement, as is compliance with Small Business Assistance Grant Program. The City may cancel this Agreement at any time upon discovery that any of the information set forth above is inaccurate, that these terms have been violated, or any provision of the Small Business Assistance Grant Program has been violated.

**Applicant Signature:** \_\_\_\_\_

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

**TO BE COMPLETED BY CITY STAFF**

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**Grant Application Granted?**                      Yes ☐                      No ☐

**If yes, list amount of grant:** \_\_\_\_\_

**If no, provide reason for denial:** \_\_\_\_\_





**SMALL BUSINESS ASSISTANCE  
GRANT APPLICATION**

**Grant Payment Date:** \_\_\_\_\_

**If no, has notification been sent to applicant?** Yes ☐ No ☐

**City Manager Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post-award Audit Completion Date:** \_\_\_\_\_

**Signature of Staff Person Completing the Post-award Audit:** \_\_\_\_\_



## ESTIMATED DISASTER ECONOMIC INJURY WORKSHEET FOR BUSINESSES

Please complete and include this form along with the Small Business Assistance Grant Program Application. For non-applicable items, please indicate N/A.

Name of Business: \_\_\_\_\_

Type of Business (i.e., retail, personal service, restaurant): \_\_\_\_\_

### Owner Details

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_

Work Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### Business Owner Mailing Address

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

### Business Street Address

Address: \_\_\_\_\_ Same as Above

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

### Estimated Adverse Economic Impact

When did the impact start and what is the estimated end date?

(If damages are ongoing, enter date of application)

From:

To:

What were your businesses' revenues during the affected damage period?

\_\_\_\_\_

What were your businesses' revenues during that **SAME** period of the prior year?

\_\_\_\_\_

Amount of business interruption insurance received or anticipated, if any:

\_\_\_\_\_

Please provide a brief explanation of what adverse economic effects the disaster had on your business:

How many people did you employ prior to disaster? \_\_\_\_\_ How many do you currently employ (at time of application): \_\_\_\_\_

Number of employees forecasted to lose: \_\_\_\_\_



**Landlord and Lease Details (if applicable)**

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Monthly Rent Amount: \$ \_\_\_\_\_

Date Form  
Completed: \_\_\_\_\_

Form Completed By: \_\_\_\_\_ Title: \_\_\_\_\_

	<b>Application No.</b>	<b>Business Name</b>	<b>Grant Amount</b>
1	01	Hungry Hound	\$5,000
2	04	Makaboom, LLC	\$10,000
3	05	Just Breathe Yoga	\$10,000
4	06	Joe Grasso Elite Training	\$10,000
5	08	Grace Acquisition Corp. LLC dba Athena Grill	\$5,000
6	12	Mio Vicino Santa Clara	\$5,000
7	14	Gogo Pho Inc	\$5,000
8	15	Alta Eye Care	\$5,000
9	21	Holder Inc. dba Able Glass Company	\$10,000
10	22	Arena Soccer Centers, Inc. dba Off the Wall Soccer	\$10,000
11	23	A Slice of New York	\$5,000
12	25	Calculi Corporation	\$10,000
13	27	International Gurukul	\$10,000
14	30	SHAQ D.B.A SHAWARMA FALAFEL	\$5,000
15	31	LNT Enterprise Inc c/o Beijing restaurant	\$5,000
16	34	Korean Spring Barbeque	\$5,000
17	36	ACSATM, Inc. - Armed Courier Service	\$10,000
18	38	Sumiya Inc.	\$5,000
19	39	San Jose Art Academy	\$10,000
20	40	Applied Tactics & Fitness LLC dba Tactica Krav Maga Institute	\$10,000
21	41	Best Chiropractic Center	\$5,000
22	44	Mirandus Consulting, LLC	\$10,000
23	48	Kabab & Curry's	\$5,000
24	49	Amazing Stars Montessori, Inc.	\$10,000
25	51	Vrushali Sharma, D.D.S., Inc.	\$5,000
26	52	Woodhams Sports Lounge	\$10,000
27	55	Chicken and More dba ChiMek	\$5,000
28	60	Eyers Hitch Center Inc	\$5,000
29	64	Create with Context, Inc.	\$10,000
30	65	Blinky's Lounge Inc.	\$10,000
31	66	S&J Cosmos Inc	\$10,000
32	67	John Burgoon Electronics, Inc. DBA Anchor Electronics	\$5,000
33	69	Cedar Tree Cleaners	\$5,000
34	02	The Crittenden Co., Inc (JB Trophies)	\$10,000
35	09	Fiorillos Restaurant	\$5,000
36	10	Cal Micro Inc.	\$10,000
37	11	Bourget Body & Chiropractic at Mission City Chiropractic	\$5,000
38	17	Eyetopia Optometry / LILY H KIM, OD pc	\$5,000
39	18	Aarna Threading Salon	\$10,000
40	20	HoneyBerry	\$5,000
41	29	Poorboy's Kitchen	\$5,000
42	37	Motorspeed West	\$5,000
43	45	The Mlnarik Law Group, Inc.	\$5,000

44	53	De Anza Appliance Parts & Service, Inc.	\$5,000
45	56	The Sportsmen's Lounge	\$10,000
46	57	EA Machining Inc	\$5,000
47	58	SMK Association Inc. DBA Taichi Pot	\$5,000
48	59	American Legion Post 419	\$10,000
49	61	Nasseri Auto Tech	\$5,000
50	62	FocusKPI, Inc	\$10,000
51	68	Zen JP Corporation DBA Leichi	\$5,000
52	71	Noramdy Bar Inc. aka Normandy House Lounge	\$10,000
53	72	Alan L. Frame D.D.S. Inc.	\$5,000
54	74	ScottHyvar Visioncare Inc.	\$5,000
55	75	Vanguard Music and Performing Arts	\$10,000
56	76	Veridian Mortgage, LLC	\$5,000
57	78	Copacabana Design USA, Inc.	\$10,000
58	79	Bumblebee Linens LLC	\$10,000
59	80	Platinum FNB, Inc. dba Chikara	\$5,000
60	83	Kettlee	\$5,000
61	84	Pono Hair Salon	\$10,000
62	85	Silicon Valley Eyecare Optometry and Contact Lenses	\$5,000
63	86	International Auto Center	\$5,000
64	89	Shiloh Event Management, Inc.	\$10,000
65	90	E Sharp Hair	\$10,000
66	94	Manesh LLC	\$5,000
67	33	CTO Forum, Inc.	\$10,000
68	42	U Channel Foundation	\$5,000
69	50	Santa Clara Swim Club	\$10,000
70	70	Mimi Hair and Nails	\$10,000
71	77	Frederick Accountancy for Small Business, Inc	\$5,000
72	87	Golden State Brewery	\$10,000
73	88	Sky Dental Lab Solution Inc.	\$5,000
74	96	Msquare System Corp.	\$10,000
75	98	JC Motor's Goup Inc.	\$10,000
76	99	Best Western Inn Santa Clara	\$5,000
77	102	Chuntian Accupuncture Clinic Inc.	\$10,000
78	104	Biota Tech Services, Inc.	\$5,000
79	105	Playground Pictures, LLC	\$10,000
80	106	Laser Printer Technology, Inc.	\$10,000
81	107	Airborne Gymnastics	\$10,000
82	108	US Auto Repair and Car Wash Inc.	\$5,000
83	109	World Champions Table Tennis Academy	\$10,000
84	110	Fineline Graphics & Design, Inc	\$10,000
85	111	Rita's of Santa Clara	\$5,000
86	112	Yeong-Sae Kim, Attorney at Law	\$5,000
87	113	Kansai Gourmet Services, Inc. (DBA Fugetsu USA)	\$5,000
88	114	Isajan Platinum Chiropractic, Inc	\$5,000
89	115	Seoul Gom Tang	\$5,000
90	117	En Japanese Tapas	\$5,000

91	118	The Train Shop	\$10,000
92	119	Family Advantage Chiropractic	\$5,000
93	120	Best Print Graphics	\$10,000
94	121	Santa Clara Diving Club	\$10,000
95	122	A & A Computers, Inc.	\$5,000
96	124	The Yellow Chili by Sanjeev Kapoor	\$5,000
97	128	Angel Yoga Inc.	\$10,000
98	129	Lejjbelle Pedicure	\$10,000
99	130	R&R Management Services Inc DBA Granada Inn	\$5,000
100	133	Muslim Community Association of San Francisco Bay Area	\$10,000
101	139	El Camino Smog Test Only	\$5,000
102	140	Questivity Inc	\$5,000
103	141	Blooms Autos Inc.	\$5,000
104	116	Silicon Valley Jiaren Association	\$10,000
105	131	Art Sacman Agency	\$5,000
106	142	Creative Dental Studio	\$10,000
107	143	Victory Automotive Services	\$5,000
108	144	Jigna Khetani DDS Inc / Ark Dental Care	\$5,000
109	147	Cramer's Bagels, LLC	\$5,000
110	148	Valero of Santa Clara	\$5,000
Total			\$795,000



# City of Santa Clara

1500 Warburton Avenue  
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## Agenda Report

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20-528

Agenda Date: 5/26/2020

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### REPORT TO COUNCIL

#### **SUBJECT**

Update on City Council and Stadium Authority Staff Referrals [Council Pillar: Enhance Community Engagement and Transparency]

#### **BACKGROUND AND DISCUSSION**

During Council and Stadium Authority meetings, the City Council or Stadium Authority Board provide direction on policy issues or refer information requests to staff for follow-up.

The purpose of the City Council and Stadium Authority Referrals Update is to provide the City Council/Stadium Authority Board and the public a current status report. Completion of the referrals may be communicated by various means such as: Report to Council, Information Memorandum provided through a Council Agenda, City Manager Biweekly Report/Blog, or a City Manager/Executive report out during a future Council meeting.

The Referrals list will be published in the Council agenda packet under the "City Manager/Executive Director Report" section of the Council Agenda. Reports will include both open and closed referrals.



**City of  
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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS  
FOR FOLLOW-UP/ACTION**  
Updated 5/20/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
1.	4/28/20	Council Meeting	Invite Supervisor Susan Ellenberg to provide a COVID-19 update at the 5/12 City Council Meeting	City Manager	6/9/20	
2.	4/28/20	Council Meeting	Nonprofits may apply for the City's Small Business Assistance Grant and business license simultaneously	City Manager	5/12/20	<b>5/12/20</b>
3.	4/7/20	Council Meeting	Regarding Pruneridge Avenue Complete Streets Plan Project – postpone contract and staff to return with a revised timeline due to the COVID-19 shelter in place	Public Works	TBD	
4.	4/7/20	Council Meeting	Legislative Advocacy Positions - staff to return with information regarding the City's position on: Redistricting after census, public records and campaign reform (Council to provide questions in advance)	City Manager	TBD	
5.	2/11/20	Council Meeting	Written Petition Received from Alan Todd Bevis Regarding Calming	Public Works	June 2020	
6.	2/11/20	Council Meeting	Discussion and Direction on the Santa Clara Tourism Improvement District (TID) Assessment Formula and Transient Occupancy Tax – staff to return with a district management plan reflecting a 1.5% TID assessment with option to increase to 2% as more information about alternate funding is received	City Manager/ Finance	May 2020	<b>4/8/20</b>
7.	1/28/20	Council Meeting	Return in March with a Resolution in support of 2020 Census (due to the impact of COVID-19 the U.S. Census has been extended through 10/31/20)	City Manager	TBD	
8.	1/28/20	Council Meeting	Respond via City Manager's Biweekly Report when information on alternate leasing plan for department stores at Related Santa Clara Project will return to Council	City Manager	TBD	
9.	1/28/20	Council Meeting	VTa Transit Oriented Communities referred to Council Priority Setting Session on 1/30 and 1/31 to provide information on staff impact. (At the Priority Setting Session, Council requested that staff schedule a study session.)	City Manager/ Public Works	TBD	
10.	12/17/19	Council Meeting	Initiate discussions with Santa Clara Unified School District regarding Healthier Kids Foundation services (staff met with SCUSD on 2/5/20 to initiate discussions; will return to Council in June with a transition plan)	Parks & Rec/ City Manager	Summer 2020	
11.	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	
12.	10/29/19	Council Meeting	Regarding GIS system, provide biannual updates via the City Manager/Executive Director Report at Council meeting	IT	Spring 2020	
13.	10/29/19	Council Meeting	Provide options for the \$750,000 commitment from Levy for community enrichment	City Manager	Fall 2020	
14.	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	Spring 2020	
15.	10/8/19	Council Meeting	Staff to review the expenditure limits for November 2020 – to designate appropriately the expenditure limit for Districts vs. At-Large seats	City Clerk/ City Manager	Spring 2020	





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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS  
FOR FOLLOW-UP/ACTION**  
Updated 5/20/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
16.	9/24/19	Council Meeting	Staff to review the potential for rebates for the purchase of electric bicycles	SVP	Spring 2020	
17.	9/24/19	Council Meeting	Staff to review the Ordinance and enforcement of illegal street food vendors	Police	Spring 2020	
18.	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	Summer 2020	
19.	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	Spring 2020	
20.	7/9/19	Council Meeting	Update on age-friendly activities per commission annual Work Plan	Parks & Rec	TBD	
21.	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	
22.	4/30/19	Council Meeting	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
23.	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	
24.	11/27/18	Council Meeting	TID: Reconciliation of reserve fund; disclosure of legal fees as determined by the performance auditor; and develop a subsidy policy	City Manager	Spring 2020	
25.	10/9/18	Council Meeting	Dedicate Jerry Marsalli Community Center at grand opening of the facility	Parks & Rec	Spring 2020	
26.	10/2/18	Council Meeting	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	Spring 2020	
27.	7/10/18	Council Meeting	Annual update on PD community engagement efforts	Police	Spring 2020	
28.	3/13/18	Council Meeting	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	August 2020	



**City of  
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**COMPLETED 2020**  
**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS**  
**FOR FOLLOW-UP/ACTION**  
Updated 5/20/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
1.	2/11/20	Council Meeting	Update and Direction on Commercial Cannabis-Related Items – staff to return with an Ordinance to ban commercial cannabis	City Manager/ City Attorney	4/28/20	4/28/20	Reported at Council Meeting
2.	12/10/19	Council Meeting	Add labor peace provision to GreenWaste Agreement	Public Works	Spring 2020	4/16/20	Email sent to Council on 4/16/20 re: labor peace
3.	3/17/20	Council Meeting	Staff to review/return with options for temporary moratorium on evictions for renters as well as information to landlords on evictions during the COVID-19 emergency	Community Development/ City Attorney	3/24/20	4/7/20	Reported at Council Meeting
4.	11/19/19	Council Meeting	Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street – return to Council in 120 days with a term sheet, a drinking well study and discussion on the preservation of historical railroad property	City Manager	3/31/20	4/7/20	Reported at Council Meeting
5.	3/5/20	Stadium Authority	Stadium Budget – City Attorney to return with legal opinion regarding options on approving the Stadium Budget	City Attorney	March 2020	3/24/20	Reported at Council Meeting
6.	3/17/20	Council Meeting	Review food options for at-risk children and families	City Manager	TBD	3/19/20	Email sent to Council from City Manager on 3/19/20
7.	4/9/19	Council Meeting	Street Racing and Sideshows: take steps to make the 2004 ordinance operative and increase enforcement within existing resources	Police	2/25/20	2/25/20	Reported at Council Meeting
8.	1/31/20	Council Priority Setting Session	Public Works to prepare a letter for Mayor to send to Chappie Jones (a positive letter requesting San Jose to keep the City informed if they have specifics on an Innovation Zone project for Santa Clara to consider that does not impact residents)	Public Works	TBD	2/12/20	Staff prepared letter for Mayor's signature; signed letter mailed on 2/12/20
9.	12/3/19	Council Meeting	Council Policy 030 – Adding an Item on the Agenda – return to Council with amended policy replacing the word consensus with Council action	City Attorney/ City Manager	2/11/20	2/11/20	Reported at Council Meeting
10.	11/12/19	Council Meeting	Provide a comparison of the district assessment/TOT with other cities – are there other cities that also have the same type of district assessment? What are the Pros and Cons of the TID assessment change taking into	City Manager	2/11/20	2/11/20	Reported at Council Meeting



**City of  
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**COMPLETED 2020**  
**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS**  
**FOR FOLLOW-UP/ACTION**  
Updated 5/20/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
			consideration overall TOT? How do the TID Hotels feel about an increase in TOT (potentially 3%)				
11.	11/12/19	Council Meeting	Destination Marketing Organization – Report back to Council in 90 days regarding CEO search; include detailed timeline for hiring of CEO	City Manager	2/11/20	2/11/20	Reported at Council Meeting
12.	11/5/19	Council Meeting	Schedule a Study Session regarding the pros and cons of General Obligation (GO) bonds and parcel tax	Finance	2/11/20	2/11/20	Reported at Council Meeting
13.	4/25/19	Council Meeting	City Clerk Haggag to work with City Attorney's Office on next steps for enforcing the Dark Money Ordinance and the Lobbyist Ordinance	City Attorney/ City Clerk	2/10/20	2/10/20	
14.	1/14/20	Council Meeting	Michael Fisher spoke during Public Comment about a small development project he undertook at his residence on Civic Center Drive. He had complaints about the process and the requirements that were placed on the project. (Assistant City Manager Manuel Pineda and Public Works Director Craig Mobeck met with Mr. Fisher on 1/24/20; City Manager provided a verbal report at the 1/28/20 Council Meeting; Assistant City Manager Manuel Pineda will follow up with a letter to Mr. Fisher.)	City Manager/ Public Works	February 2020	2/4/20	2/4/20 a letter was sent to Mr. Fisher; he continues to correspond with staff via email
15.	6/4/19	Council Meeting	Councilmember O'Neill to provide more clarity on Innovation Zone referral (on 11/19/19 Council deferred this item to the January Council Priorities and Goal Setting Sessions).	City Manager	1/30 – 1/31/20	1/31/20	Discussed at Council Priority Setting Session
16.	1/14/20	Council Meeting	Communications Consultant Agreements – Staff to add language to agreements to have agreements reviewed annually	City Manager	TBD	1/29/20	Language has been added to agreements re: annual review
17.	1/14/20	Council Meeting	Architectural Review Ordinance – Continued to add new language to Ordinance for certain projects that would trigger Public Hearing	City Attorney/ Community Development	1/28/20	1/28/20	Reported at Council Meeting
18.	7/9/19	Economic Development, Communications and Marketing Committee	Procure additional resources to support communications and marketing of local activities to enhance community's awareness of municipal services and activities	City Manager	January 2020	1/14/20	Reported at Council Meeting



**City of  
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**COMPLETED 2020**  
**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS**  
**FOR FOLLOW-UP/ACTION**  
Updated 5/20/20



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
19.	12/10/19	Council Meeting	False Alarm Ordinance – Continue item to 1/14/20 for staff to conduct broader public outreach and gather public input	Police/ City Attorney	1/14/20	1/14/20	Reported at Council Meeting
20.	12/10/19	Council Meeting	False Alarm Ordinance – Police Department to follow up with resident regarding financial assistance for fees	Police	1/14/20	1/14/20	Reported at Council Meeting
21.	12/17/19	Council Meeting	Community Room Study Session – Continue item to 1/14/20 and return with responses to Suds Jain’s questions regarding reservation process, rates for facilities at Oracle and houses across the street behind Triton, and provide a master list of facilities and who to contact for reservation	Parks & Rec/ City Manager	1/14/20	1/14/20	Reported at Council Meeting
22.	9/18/19	Economic Development, Communications and Marketing Committee	The Committee referred for Council consideration a request to the City Council to terminate the billboard agreement with All Vision, LLC (staff in process of analyzing further)	City Manager	January 2020	1/9/20	Letter sent from City Manager to All Vision on 1/9/20; Memo to Council from City Attorney on 1/9/20



# City of Santa Clara

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## Agenda Report

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20-212

Agenda Date: 5/26/2020

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### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND AND DISCUSSION**

The purpose of the TMAC is to provide the public advanced notifications of tentative dates of Council Study Sessions, Joint Council/Commission meetings, as well as Council Public Hearing and General Business agenda items. It is important to note that the TMAC is a Tentative Calendar planning tool and reports listed are subject to change due to Public Hearing publication requirements and agenda management.

The TMAC will be published weekly no later than Friday on the City's website.



# City of Santa Clara

## Tentative Meeting Agenda Calendar

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### **Tuesday, June 9, 2020 Council and Authorities Concurrent Meeting**

#### **Special Order of Business**

- 20-527** Santa Clara County COVID-19 Update
- 20-125** Verbal Report from City Manager regarding COVID-19 Pandemic
- 20-166** Proclamation of June 2020 as Lesbian, Gay, Bisexual, Transgender, and Queer (LGBT) Pride Month

#### **Study Session**

- 20-174** Review Proposed FY 2020/21 and 2021/22 Biennial Capital Improvement Program Budget and Review Changes from Council Policy Submittals

#### **Public Hearing/General Business**

- 20-78** **Public Hearing:** Adoption of a Resolution Overruling Protests and Ordering that the Alternative Method for the Levy of Benefit Assessment be made Applicable to the City of Santa Clara Parking Maintenance District No. 122 – Franklin Square
- 20-77** **Public Hearing:** Adoption of a Resolution Overruling Protests and Ordering that the Alternative Methods for the Levy of Benefit Assessment be Made Available to the Santa Clara Convention Center Maintenance District No. 183

### **Tuesday, June 23, 2020 Council and Authorities Concurrent Meeting**

#### **Consent Calendar**

- 20-496** Calling a General Municipal Election to be held on Tuesday, November 3, 2020, for the Election of Councilmembers for District 1, 4, 5, and 6; one City Clerk and one Police Chief

#### **Special Order of Business**

- 20-496** Literacy Program & the Career Online High School Graduates

## **Public Hearing/General Business**

### **Fiscal Year 2020/21 and 2021/22 Budget Items**

- 20-175**      **A) Public Hearing:** Adoption of the Proposed FY 2020/21 and 2021/22 Biennial Capital Improvement Program (CIP) Budget and Operating Budget Changes
- 20-478**      **B) Action on a Resolution Establishing the Fiscal Year 2020/21 Appropriation Limit**
- 20-227**      **Public Hearing:** Annual Report and the Levying of a Proposed Assessment within the Santa Clara Tourism Improvement District
- 20-380**      **Public Hearing:** Action on a Rezone of the Property Located at 2200 Lawson Lane
- 20-127**      **Public Hearing:** Action on Resolutions Approving Water, Sewer and Recycled Water Rates to be Effective July 1, 2020
- 20-134**      **Public Hearing:** Adoption of a Resolution Setting Rates for Overall Solid Waste Services, Annual Clean-up Campaign, and Household Hazardous Waste in the Exclusive Franchise Area

### **Tuesday, July 7, 2020 Council and Authorities Concurrent Meeting**

## **Public Hearing/General Business**

- 20-535**      **Public Hearing:** Action on a Tentative Parcel Map for the property located at 2305 Mission College Boulevard
- 20-82**      Action on Petition to Place an Item on Council Agenda to Proclaim Section of El Camino Real as Korea Town
- 20-241**      Action on a Written Petition for Traffic Calming Measures along Briarwood Drive
- 20-521**      Request to Amend Development Agreement for 1205 Coleman Avenue
- 20-496**      Quarterly LAP Update

**Tuesday, July 14, 2020 Joint Council and Authorities Concurrent and Stadium Authority Meeting**

**Public Hearing/General Business**

- 20-496      Related Santa Clara Quarterly Update
- 20-496      Action on a Resolution to Place a General Obligation Bond Measure on the November 2020 ballot
- 20-359      Action on the overview of the new Sustainability Program and Provide Feedback on Program Priorities
- 20-496      Related - Development Area Plan 2
- 20-496      Award of Contract for network equipment replacement and installation vendor

**Council Recess July 15 – August 17, 2020**

**Tuesday, August 18, 2020 Council and Authorities Concurrent and Stadium Authority Meeting**

**Special Order of Business**

- 20-277      Neighborhood Watch Program

**Public Hearing/General Business**

- 20-496      Potential CFD Action
- 20-496      SVP Quarterly Update

**Tuesday, August 25, 2020 Council and Authorities Concurrent and Stadium Authority Meeting**

**Study Session**

- 20-188      Update on El Camino Real Specific Plan

**Public Hearing/General Business**

- 20-496      Agenda Items Pending – To Be Scheduled

**Tuesday, September 1, 2020 Council and Authorities Concurrent and Stadium Authority Meeting**



**Public Hearing/General Business**

**20-496** Agenda Items Pending – To Be Scheduled

**Tuesday, September 29, 2020 Council and Authorities Concurrent Meeting**

**Public Hearing/General Business**

**20-496** Adopt a Resolution of Intent to Form CFD

**Tuesday, November 17, 2020 Council and Authorities Concurrent and Stadium Authority Meeting**

**Public Hearing/General Business**

**20-496** Adopt a Resolution of Intent to Incur Debt

**AGENDA ITEMS TO BE SCHEDULED TO A FUTURE DATE**

**20-496** Action to Authorize the City Manager to enter into an agreement to conduct an organizational assessment of information technology services

**20-496** Action to Authorize the City Manager to enter into an agreement to exceed \$200,000 to conduct a review and update of the City's Administrative Policies

**20-1335** Action on the Central Park Master Plan Update and Introduction of an Ordinance in accordance with City Charter section 714.1

**20-496** Comprehensive Signage Program

**20-496** CFD Petition

**20-496** Park rules update ordinance- two readings [signs]

**20-1216** Joint Dinner Meeting with Planning Commission

**20-1311** Joint Dinner Meeting with Parks and Recreation Commission

**20-278** Recognition of Juneteenth Festival

**20-338** Recognition of the Santa Clara Women's League donation of \$15,000 to support the Senior Center Health & Wellness Case Management Program and the "Be Strong, Live Long" Health & Wellness Fair

**20-187** Update on the Downtown Precise Plan