

City of Santa Clara

Meeting Agenda

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



Tuesday, February 9, 2021

4:00 PM

Virtual Meeting

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

- Via Zoom:

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

Meeting ID: 997-0675-9306 or

- o Phone: 1(669) 900-6833

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

- Via email to PublicComment@santaclaraca.gov

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

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Chair calls for a Special Meeting of the Governing Board of the Stadium Authority to commence and convene on February 9, 2021, at 4:00 PM for a Special Meeting held virtually via Zoom, to consider the following matter(s) and to potentially take action with respect to them.

4:00 PM COUNCIL REGULAR/SPECIAL STADIUM AUTHORITY MEETING

Call to Order

Pledge of Allegiance and Statement of Values

Roll Call

CONTINUANCES/EXCEPTIONS/RECONSIDERATIONS

STUDY SESSION

1. 21-47 [Presentation and Discussion on City Retirement Costs by Bartel & Associates LLC](#)

SPECIAL ORDER OF BUSINESS

- 2.A 21-93 [Proclaim February 2021 as Black History Month](#)
- 2.B 21-175 [Verbal Report from City Manager regarding COVID-19 Pandemic](#)

CONSENT CALENDAR

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

- 3.A 21-04 [Board, Commissions and Committee Minutes](#)

Recommendation: Note and file the Minutes of:

Santa Clara Tourism Improvement District Advisory Board - October 10, 2019
Santa Clara Tourism Improvement District Advisory Board - October 18, 2019
Santa Clara Tourism Improvement District Advisory Board - November 18, 2019
Santa Clara Tourism Improvement District Advisory Board - December 10, 2019
Parks & Recreation Commission - November 17, 2020
Senior Advisory Commission - November 23, 2020
Planning Commission - October 14, 2020
Planning Commission - December 9, 2020

- 3.B 21-1200 [Action on the Adoption of a Resolution Accepting the AB1600 Report on Development Impact Fees for Fiscal Year Ended June 30, 2020](#)

Recommendation: Adopt a Resolution accepting the status report on the receipt and use of AB1600 Development Impact Fees during fiscal year ending June 30, 2020.

3.C 21-1055 [Action on a Resolution Ordering the Vacation of the Sanitary Sewer Easement, Underground Electric Easements, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement at 2880 Northwestern Parkway](#)

- Recommendation:**
1. Adopt a Resolution Ordering the Vacation of the Sanitary Sewer Easement, Underground Electric Easements, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement at 2880 Northwestern Parkway [APN 216-28-132 and 216-28-133 (2020-21); SC 18,955]; and
 2. Authorize the recordation of the Resolution.

3.D 21-1182 [Action on a Resolution Ordering the Vacation of an Underground Electric Easement at 2950-2970 Lakeside Drive](#)

- Recommendation:**
1. Adopt a Resolution Ordering the Vacation of an Underground Electric Easement at 2950-2970 Lakeside Drive [APN 216-30-047 (2020-21); SC 19,353]; and
 2. Authorize the recordation of the Resolution.

3.E 21-1183 [Action on an Agreement with Lee + Ro, Inc. for Design Professional Services for the Citywide Emergency Generator Replacement - Phase 2 Project \(CE 20-21-10\) and Related Budget Amendment](#)

- Recommendation:**
1. Approve and authorize the City Manager to execute an Agreement with Lee + Ro, Inc. for the Citywide Emergency Generator Replacement - Phase 2 Project (CE 20-21-10) in the amount not-to-exceed \$294,000;
 2. Authorize the City Manager make minor, non-substantive modifications, including time extensions, to the Agreement, if needed; and
 3. Approve the related FY 2020/21 Budget Amendment in the Water Utility Capital Fund to reduce the Unrestricted Ending Fund Balance and establish a Transfer to the Public Buildings Capital Fund in the amount of \$231,050; in the Public Buildings Capital Fund, establish a Transfer from the Water Utility Capital Fund and increase the Standby Stationary Generators project in the amount of \$231,050.

3.F 21-1286 [Adopt a Resolution Authorizing the City Manager to Execute the United States Department of Energy Western Area Power Administration Sierra Nevada Region Contract for Electric Service Base Resource Contract 20-SNR-02364 for Calendar Years 2025 through 2054](#)

- Recommendation:** Adopt a Resolution authorizing the City Manager to execute the United States Department of Energy Western Area Power Administration Sierra Nevada Region Contract for Electric Service Base Resource Contract 20-SNR-02364 for Calendar Years 2025 through 2054.

3.G 21-1409 [Action on a Resolution Approving Purchase and Sale Agreements for Electric Utility Easements on the South Loop Reconfigure Project; 2755 Lafayette Street and 630 Martin Avenue](#)

- Recommendation:**
1. Adopt the Resolution approving the purchases of overhead electric easements at 2755 Lafayette Street [224-04-062], and 630 Martin Avenue [224-35-014]; and
 2. Authorize the recordation thereof.

3.H 21-95 [Action on Removal of Trustee Joshua Briefman from the Board of Library Trustees and Declaring a Vacancy](#)

- Recommendation:** Remove Trustee Joshua Briefman from Board of Library Trustees and declare a vacancy on the Board.

3.I 21-99 [Action on the Introduction of an Ordinance Repealing Section 8.35.130 \("Possession of Tobacco by Persons Under 21 Years of Age"\)](#)

- Recommendation:** Approve the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age").

3.J 21-204 [Action on a Resolution Approving the 2021 Salary Setting Commission Calendar of Meetings, and Setting the Number and Start Time of Regular Meetings of the Salary Setting Commission](#)

- Recommendation:** Adopt a Resolution approving the 2021 Salary Setting Commission Calendar of Meetings, and setting the number and start time of regular Salary Setting Commission meetings.

3.K 21-218 [Adopt the following City of Santa Clara and related agencies' Resolutions Amending the Conflict of Interest Codes for Designated Positions as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission:](#)

- [1. City of Santa Clara](#)
- [2. Bayshore North Project Enhancement](#)
- [3. Public Facilities Financing Corporation](#)
- [4. Sports and Open Space Authority](#)
- [5. Housing Authority](#)

Recommendation: Adopt the Resolutions amending the Conflict of Interest Code required by the Political Reform Act and Regulations of the Fair Political Practices Commission:

1. City of Santa Clara
2. Bayshore North Project Enhancement
3. Public Facilities Financing Corporation
4. Sports and Open Space Authority
5. Housing Authority

3.L 21-250 [Action on Request to Set March 9, 2021 for a Public Hearing to Consider the Appeal Submitted by Santa Clara Citizens for Sensible Industry c/o Legal Counsel for 1111 Comstock Street \(PLN2019-13941; CEQ2020-01079\)](#)

Recommendation: Set March 9, 2021 for a Public Hearing to consider the Appeal submitted by Santa Clara Citizens for Sensible Industry c/o Legal Counsel of the Development Review Officer's November 4, 2020 adoption of the Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program and approval of the Architectural Review and Minor Modifications to increase the building height to 87 feet and reduce parking space requirements for the Comstock Data Center Project at 1111 Comstock Street.

STADIUM AUTHORITY CONSENT CALENDAR ITEM

3.M 21-169 [Action on Agreement with Contractor Compliance and Monitoring, Inc. for Labor Compliance Consulting Services](#)

- Recommendation:**
1. Authorize the Executive Director to execute an agreement with Contractor Compliance and Monitoring, Inc. in an amount not-to-exceed \$20,000 for labor compliance consulting services; and
 2. Authorize the Executive Director to amend the agreement to increase maximum compensation by up to \$20,000 in the event additional services are required, not to exceed \$40,000 during the one-year term of the agreement, subject to the appropriation of funds.

PUBLIC PRESENTATIONS

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

CONSENT ITEMS PULLED FOR DISCUSSION

PUBLIC HEARING/GENERAL BUSINESS

4. 21-1304 [Public Hearing: Action on the Comprehensive Sign Program for Parcels 4 and 5 for the Related Santa Clara Project](#)

- Recommendation:** Alternative 1: Adopt a resolution approving the Comprehensive Signage Program for Parcels 4 & 5.

5. 21-110 [Public Hearing: Adoption of a Resolution Ordering the Abatement of a Nuisance Consisting of Growing Weeds in Association with the County Weed Abatement Program for 2020-2021](#)

- Recommendation:** Adopt a Resolution ordering the abatement of a nuisance consisting of growing weeds in the City.

6. 21-1315 [Action on 2021 Legislative Advocacy Positions](#)

Recommendation: Alternative 1: Adopt the 2021 Legislative Advocacy Positions on COVID-19 Legislation; Energy Legislation, Regulations and Issues; Engagement with the Federal Aviation Administration Regarding Airplane Noise; Housing; Human Resources and Public Sector Employment; Local Authority over Wireless Telecommunications Facilities and Cable Services; Public Safety; Regional and State-wide Water Supply and Conservation; Regional Issues and Collaboration; Regional Transportation Issues; School Mitigation Fees; and Sustainability and Environmental Legislation, Regulations and Issues.

7. 21-152 [Action on an Agreement with Jones Lang LaSalle Americas, Inc. \(JLL\) for Consulting Services for the Development, Implementation and Operation of Comprehensive Tourism Strategy and Response to Council Questions](#)

Recommendation:

1. Approve and authorize the City Manager to execute an agreement with Jones Lang LaSalle Americas, Inc. to provide consulting services for the development, implementation and operation of a comprehensive tourism strategy retroactive to January 1, 2021 and ending on or about December 31, 2023 for a total maximum amount not-to-exceed \$300,000 subject to the appropriation of funds;
2. Authorize the City Manager to execute any minor or administrative amendments to the Agreement which do not increase the compensation for the Agreement; and
3. Authorize the City Manager to execute up to three one-year options to extend the term of the agreement after the initial term through December 31, 2026 for ongoing consulting services, subject to the appropriation of funds.

STADIUM AUTHORITY GENERAL BUSINESS ITEM

8. 21-219 [Adopt the Stadium Authority's Resolution Amending the Conflict of Interest Codes for Designated Positions as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission](#)

Recommendation: Adopt the Resolution amending the Stadium Authority Conflict of Interest Code required by the Political Reform Act and Regulations of the Fair Political Practices Commission.

REPORTS OF MEMBERS AND SPECIAL COMMITTEES

CITY MANAGER/EXECUTIVE DIRECTOR REPORT

- 21-170 [Update on City Council and Stadium Authority Staff Referrals](#)
- 21-255 [Tentative Meeting Agenda Calendar \(TMAC\)](#)

ADJOURNMENT

The next regular scheduled meeting is on Tuesday evening, February 23, 2021.

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@santacalaraca.gov <<mailto:clerk@santacalaraca.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."

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the City of Santa Clara will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities, and will ensure that all existing facilities will be made accessible to the maximum extent feasible. The City of Santa Clara will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities including those with speech, hearing, or vision impairments so they can participate equally in the City's programs, services, and activities. The City of Santa Clara will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities.

Agendas and other written materials distributed during a public meeting that are public record will be made available by the City in an appropriate alternative format. Contact the City Clerk's Office at 1 408-615-2220 with your request for an alternative format copy of the agenda or other written materials.

Individuals who require an auxiliary aid or service for effective communication, or any other disability-related modification of policies or procedures, or other accommodation, in order to participate in a program, service, or activity of the City of Santa Clara, should contact the City's ADA Coordinator at 408-615-3000 as soon as possible but no later than 48 hours before the scheduled event.



Agenda Report

21-47

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Presentation and Discussion on City Retirement Costs by Bartel & Associates LLC

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

In December 2020, the City of Santa Clara contracted with Bartel Associates, LLC (Bartel), to conduct an actuary study on the City's CalPERS pension costs and determine future contribution rates. The City has worked with Bartel for over ten years during which time the firm has provided valuable information for projecting retirement costs including those used for our 10-year forecast. Bartel has over 300 clients, primarily in California, and specializes in providing states, counties, cities, and other public agencies with actuarial analysis including retiree medical and pension consulting services. Bartel is highly regarded across the region with municipal finance professionals and regularly presents on retirement and pensions at conferences and events.

DISCUSSION

Across all CalPERS cities in the State, pension costs continue to be a concern. Bartel will present and discuss the City's retirement costs with the City Council as part of a Study Session. The Study Session is designed to inform and engage the Council about the rising cost of pensions, the trends and actions that have led to where we are today, and what is forecasted ahead. The impact of some of the key data elements that will be discussed include:

- Pension costs forecast, and the projected rate of increase over the next 10 years;
- CalPERS discount rate assumption decreasing from 7.5% to 7.0% over three years (full impact to be realized in FY 2024/25) and the likelihood of future discount rate reductions as part of a risk mitigation strategy; and
- Unfunded liability increases for both pension plans from the previous year.

The update to the 10-Year General Fund Forecast incorporated these updated projections and the latest pension costs will also be factored into the upcoming FY 2021/22 and FY 2022/23 Biennial Operating Budget. Planning for these increasing costs as part of the Forecast provides the City Council the tool to make strategic decisions for the long term in order to continue delivering the high level of service to our residents.

COORDINATION

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

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

Costs associated with Bartel Associates, LLC presentation to the City Council are included in the FY 2020/21 Adopted Operating Budget.

PUBLIC CONTACT

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Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Bartel Associates, LLC Report



CITY OF SANTA CLARA
MISCELLANEOUS AND SAFETY PLANS

CalPERS Actuarial Analysis – 6/30/19 Valuation

Doug Pryor, Vice President
Bianca Lin, Assistant Vice President
Matthew Childs, Actuarial Analyst
Bartel Associates, LLC

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BACKGROUND

- Investment Losses
- CalPERS Contribution Policy
- Enhanced Benefits
- Demographics



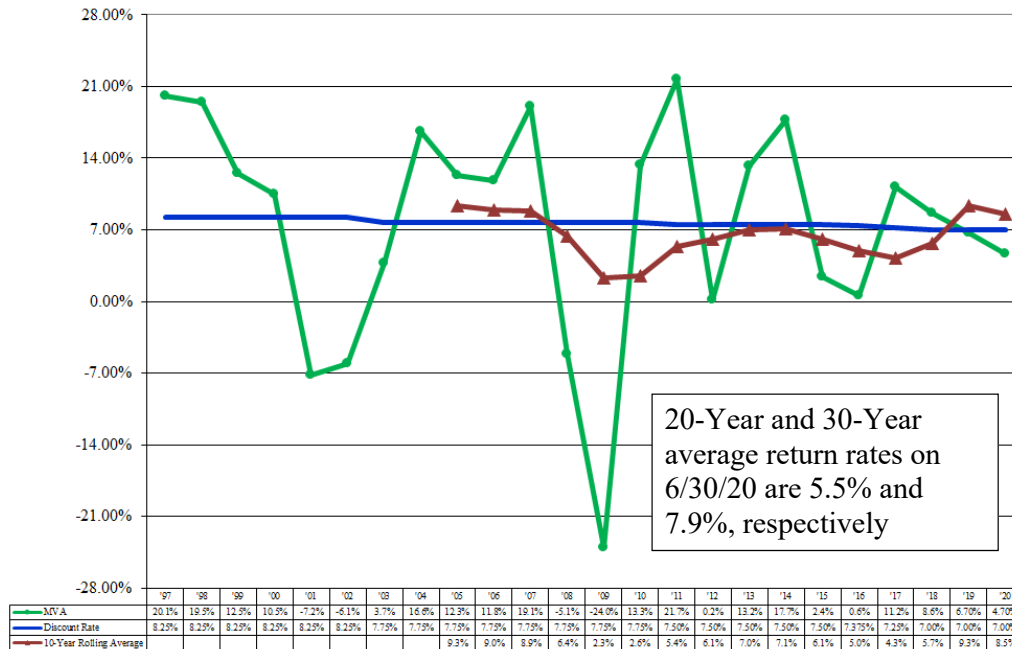
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BACKGROUND – INVESTMENT RETURN

Annual Return on Market Value of Assets



Returns (after 2001) shown are gross returns, unreduced for administrative expenses. The discount rate is based on expected returns net of administrative expenses.



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BACKGROUND – OLD CONTRIBUTION POLICY

- Effective with 2003 valuations:
 - Slow (15 year) recognition of investment losses into funded status
 - Rolling 30 year amortization of all (primarily investment) losses
- Designed to:
 - First smooth rates and
 - Second pay off UAL
- Mitigated contribution volatility



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BACKGROUND – ENHANCED BENEFITS

- At CalPERS, Enhanced Benefits implemented using all (future & prior) service
- Typically not negotiated with cost sharing
- City of Santa Clara

	Tier 1	PEPRA
● Miscellaneous	2.7%@55 FAE1	2%@62 FAE3
● Safety Police	3%@50 FAE1	2.7%@57 FAE3
● Safety Fire	3%@50 FAE3	2.7%@57 FAE3

- Note:
 - ☐ FAE1 is highest one year (typically final) average earnings
 - ☐ FAE3 is highest three years (typically final three) average earnings
- PEPRA tier implemented for new employees hired after 1/1/13
 - Employee pays half of total normal cost
 - 2020 Compensation limit
 - ☐ Social Security participants: \$126,291
 - ☐ Non-Social Security participants: \$151,549

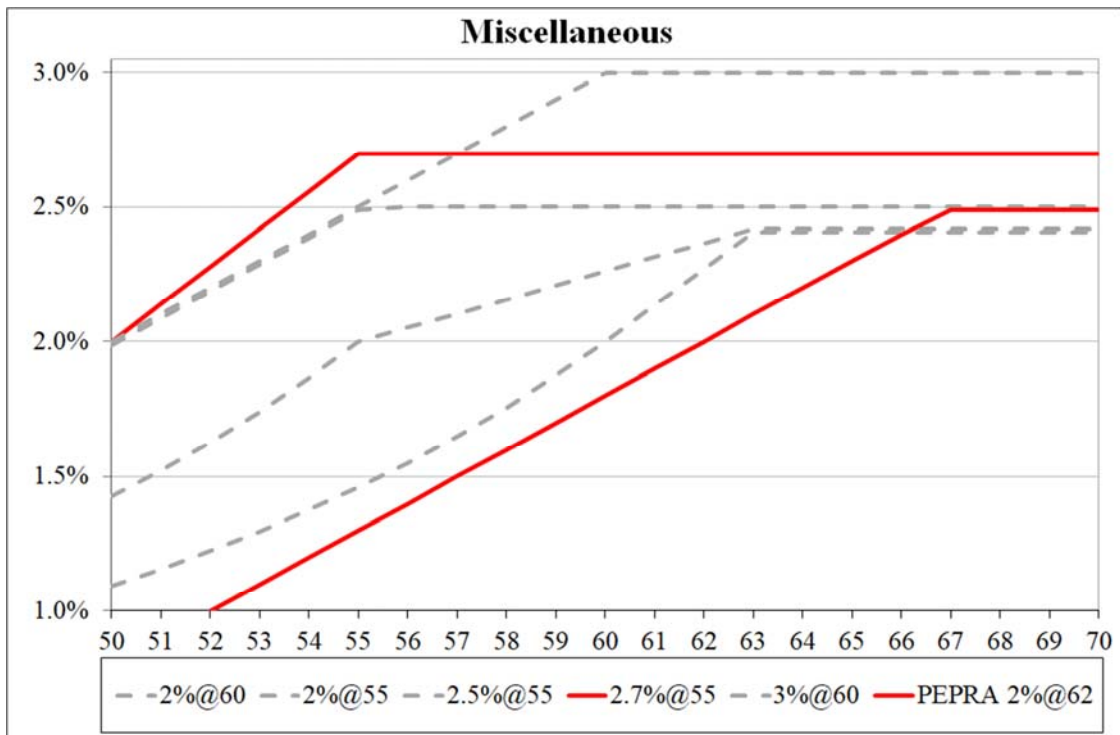


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BACKGROUND – ENHANCED BENEFITS

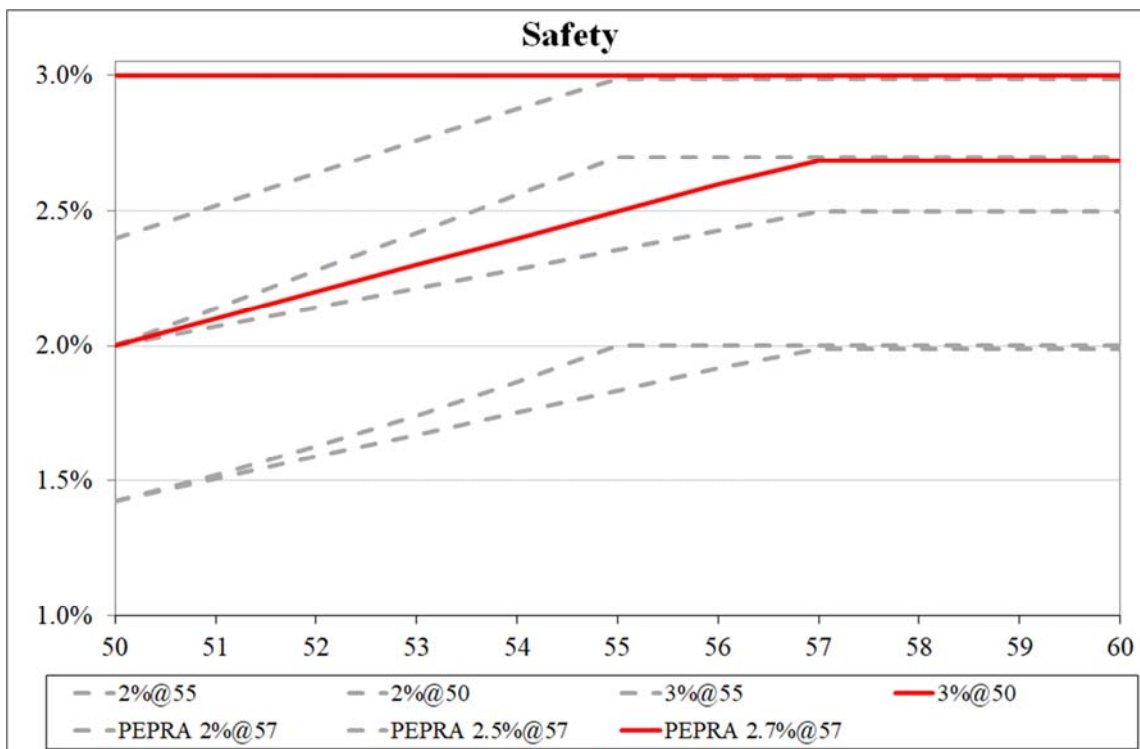


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BACKGROUND – ENHANCED BENEFITS



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BACKGROUND – DEMOGRAPHIC

- Around the State
 - Large retiree liability compared to actives
 - State average: 56% for Miscellaneous, 65% for Safety
 - Declining active population and increasing number of retirees
 - Higher percentage of retiree liability increases contribution volatility
- City of Santa Clara percentage of liability belonging to retirees:
 - Miscellaneous 66%
 - Safety 72%



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BACKGROUND - CALPERS CHANGES

- Recent contribution policy changes:
 - No asset smoothing
 - No rolling amortization
 - 5-year ramp up
- February 2018: CalPERS adopted new amortization policy
 - Applies only to newly established amortization bases
 - Fixed dollar amortization rather than % pay
 - Amortize gains/losses over 20 rather than 30 years
 - 5-year ramp up (not down) for investment gains and losses
 - No ramp up/down for other amortization bases
 - Minimizes total interest paid over time and pays off UAL faster
 - Effective June 30, 2019 valuation for 2021/22 contributions
- CalPERS Board changed the discount rate:

	<u>Rate</u>	<u>Initial Impact</u>	<u>Full Impact</u>
● 6/30/16 valuation	7.375%	18/19	22/23
● 6/30/17 valuation	7.25%	19/20	23/24
● 6/30/18 valuation	7.00%	20/21	24/25



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BACKGROUND - CALPERS CHANGES

■ Risk Mitigation Strategy

- Move to more conservative investments over time to reduce volatility
- Only when investment return is better than expected
- Lower discount rate in concert
- Essentially use $\approx 50\%$ of investment gains to pay for cost increases
- Likely get to 6.0% discount rate over 20+ years
- Risk mitigation suspended from 6/30/16 to 6/30/18 valuation
- Did not trigger for 6/30/19 valuation

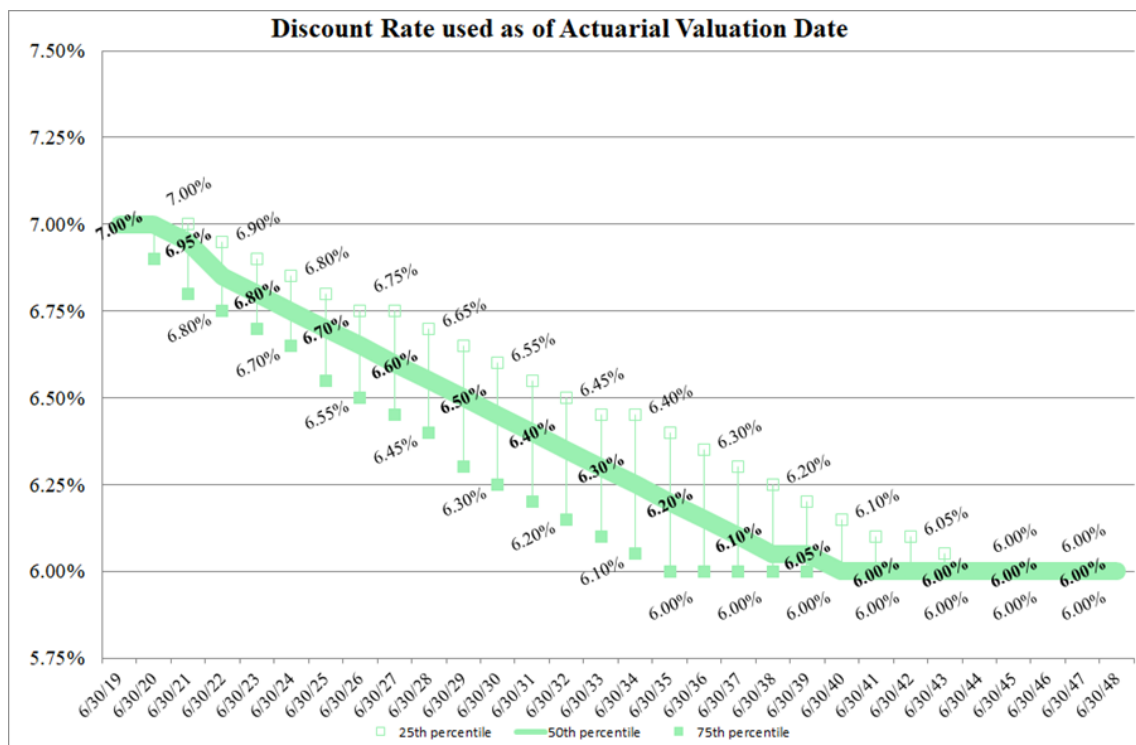


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BACKGROUND - CALPERS CHANGES



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SUMMARY OF DEMOGRAPHIC INFORMATION - MISCELLANEOUS

	1999	2009	2018	2019
Actives				
■ Counts	664	663	713	745
■ Average				
• Age	46	46	45	45
• City Service	12	12	9	9
• PERSable Wages	\$ 61,200	\$ 85,100	\$ 107,600	\$ 109,500
■ Total PERSable Wages	40,700,000	56,400,000	76,700,000	81,600,000
Inactive Members				
■ Counts				
• Transferred	147	224	245	253
• Separated	86	148	217	229
• Retired				
□ Service		553	785	820
□ Disability		62	65	66
□ Beneficiaries		107	108	116
□ Total	492	722	958	1,002
■ Average Annual City Provided Benefit for Service Retirees ¹		30,400	44,800	46,500

¹ Average City-provided pensions are based on City service & City benefit formula, and are not representative of benefits for long-service employees.

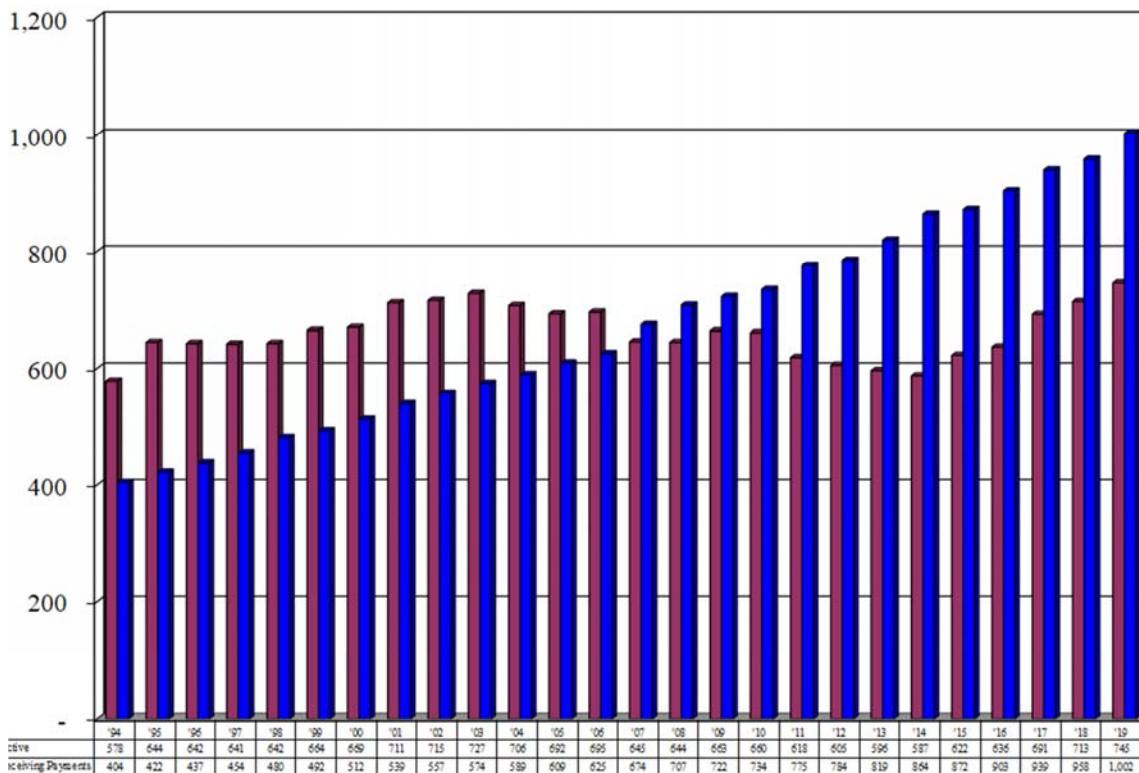


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SUMMARY OF DEMOGRAPHIC INFORMATION - MISCELLANEOUS



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PLAN FUNDED STATUS - MISCELLANEOUS

	<u>June 30, 2018</u>	<u>June 30, 2019</u>
■ Actuarial Accrued Liability		
● Active	\$234,900,000	\$230,200,000
● Retiree	484,800,000	521,900,000
● Inactive	<u>31,600,000</u>	<u>34,200,000</u>
● Total	751,300,000	786,300,000
■ Assets	<u>458,600,000</u>	<u>479,300,000</u>
■ Unfunded Liability	292,700,000	307,000,000
■ Funded Ratio	61.0%	60.9%
■ Average funded ratio for CalPERS Public Agency Miscellaneous Plans	71.8%	72.2%



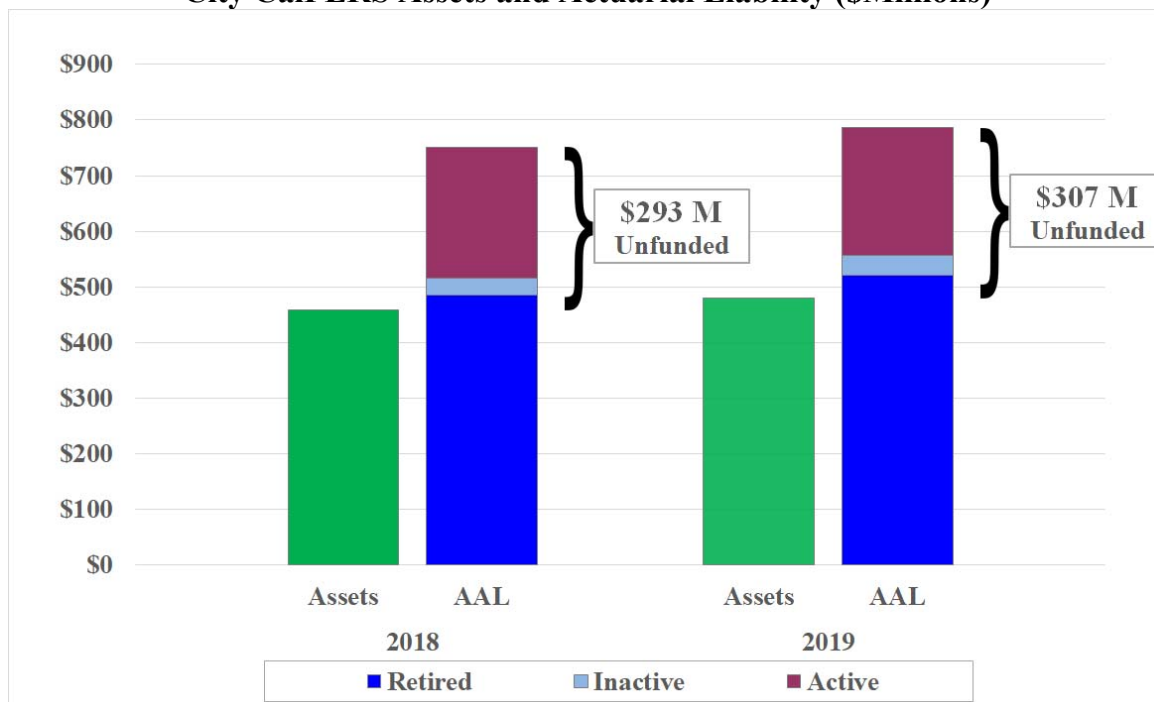
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PLAN FUNDED STATUS - MISCELLANEOUS

City CalPERS Assets and Actuarial Liability (\$Millions)



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PLAN FUNDED STATUS - MISCELLANEOUS

Discount Rate Sensitivity

June 30, 2019

	<u>Discount Rate</u>		
	<u>7.00%</u>	<u>6.50%²</u>	<u>6.00%</u>
AAL	\$ 786,300,000	\$ 835,500,000	\$ 884,600,000
Assets	<u>479,300,000</u>	<u>479,300,000</u>	<u>479,300,000</u>
Unfunded Liability	307,000,000	356,200,000	405,300,000
Funded Ratio	60.9%	57.4%	54.2%

² Estimated by Bartel Associates.



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PLAN FUNDED STATUS - MISCELLANEOUS

Unfunded Accrued Liability Changes

■ Unfunded Accrued Liability on 6/30/18	\$292,700,000
■ Expected 6/30/19 Unfunded Accrued Liability	296,400,000
■ Other Changes	
• Asset Loss (Gain) (6.6% return for FY 2019)	1,900,000
• Contribution & Experience Loss (Gain)	<u>8,700,000</u>
• Total	<u>10,600,000</u>
■ Unfunded Accrued Liability on 6/30/19	307,000,000
■ Projected Unfunded Accrued Liability on 6/30/20	319,400,000

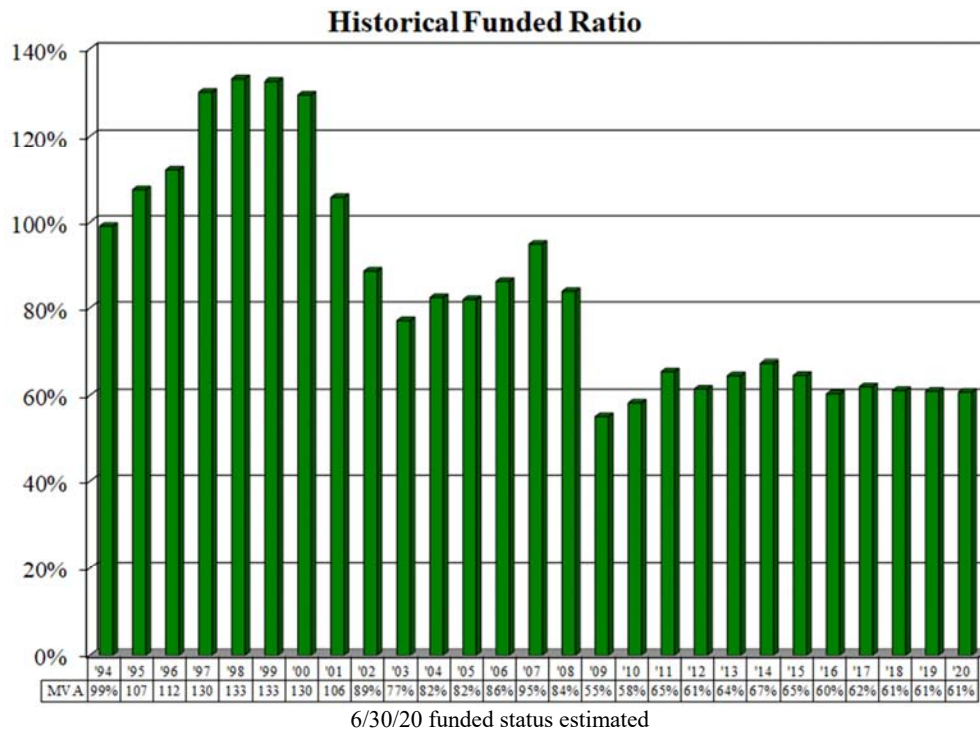


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FUNDED RATIO - MISCELLANEOUS

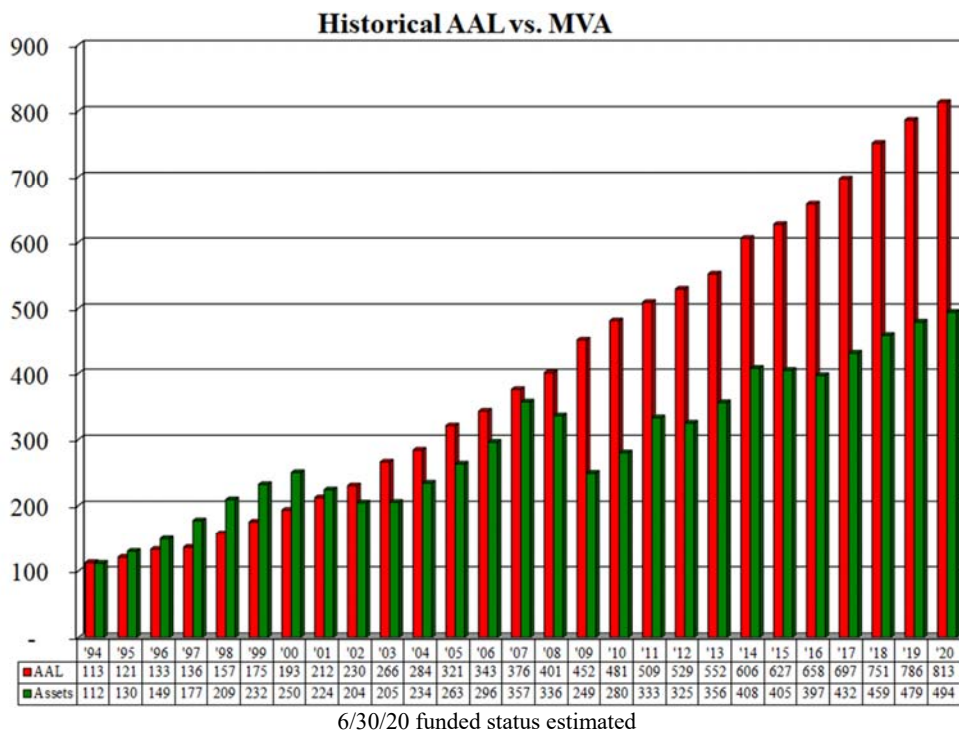


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FUNDED STATUS (MILLIONS) - MISCELLANEOUS

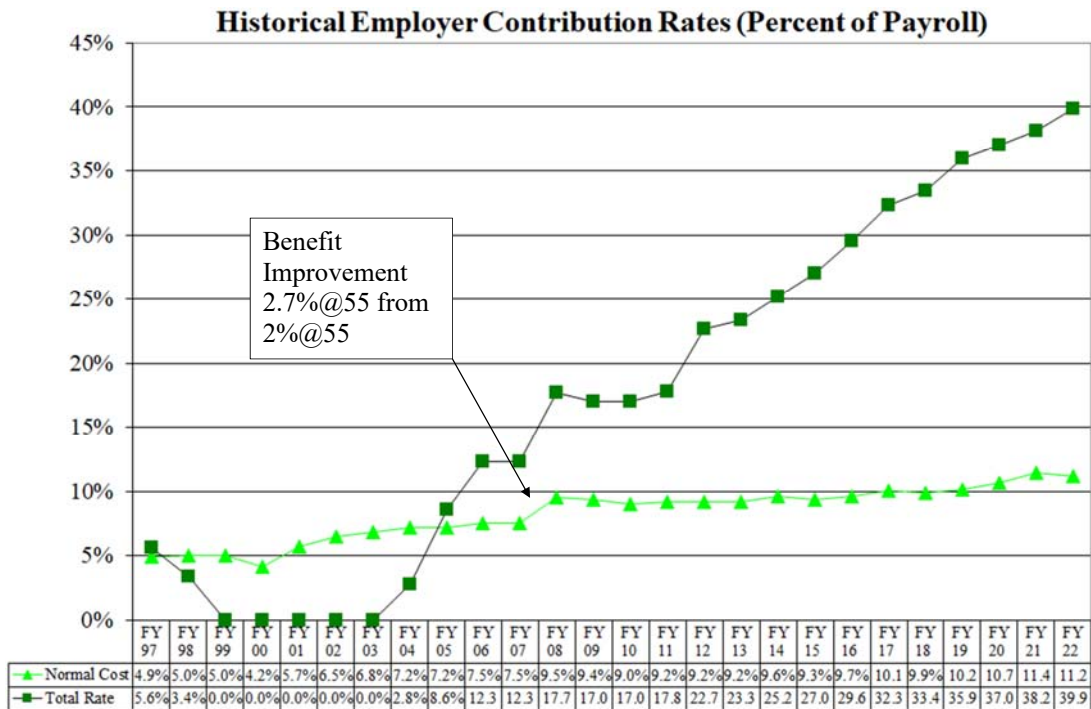


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CONTRIBUTION RATES - MISCELLANEOUS



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CONTRIBUTION RATES - MISCELLANEOUS

	6/30/18 2020/2021	6/30/19 2021/2022
■ Total Normal Cost	18.9%	18.6%
■ Employee Normal Cost	<u>7.5%</u>	<u>7.4%</u>
■ Employer Normal Cost	11.4%	11.2%
■ Amortization Payments	<u>26.7%</u>	<u>28.7%</u> ³
■ Total Employer Contribution Rate	38.2%	39.9%
■ 2020/21 Employer Contribution Rate		38.2%
● Payroll > Expected		(0.9%)
● 6/30/16 Discount Rate Change (4 th Year)		0.3%
● 6/30/17 Discount Rate & Inflation (3 rd Year)		0.3%
● 6/30/18 Discount Rate change (2 nd Year)		0.5%
● Other (Gains)/Losses		<u>1.5%</u>
■ 2021/22 Employer Contribution Rate		39.9%

³ Equivalent to 8.3% of UAL. One year, 7% interest on the UAL is 24.3% of payroll.



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CONTRIBUTION PROJECTIONS - MISCELLANEOUS

- Market Value Investment Return:
 - June 30, 2020 4.7%⁴
 - Future returns based on stochastic analysis using 1,000 trials
- | <u>Single Year Returns at⁵</u> | <u>25th Percentile</u> | <u>50th Percentile</u> | <u>75th Percentile</u> |
|-------------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Current Investment Mix | 0.1% | 7.0% | 14.8% |
| Ultimate Investment Mix | 0.8% | 6.0% | 11.4% |
- Assumes investment returns will, generally be 6.5% (as compared to 7.0%) over the next 8 years and higher beyond that.
- Discount Rate decreases due to Risk Mitigation policy
 - No Other: Gains/Losses, Method/Assumption Changes, Benefit Improvements
 - Different from CalPERS projection

⁴ Gross return based on July 2020 CalPERS press release

⁵ Nth percentile means N percentage of our trials result in returns lower than the indicated rates.



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CONTRIBUTION PROJECTIONS - MISCELLANEOUS

- New hire assumptions:
 - 95.0% of 2020/21 new hires are PEPRAs members and 5.0% are Classic members
 - Percentage of PEPRAs member future hires to increase from 95.0% to 100% over 2 years
- 6/30/19 employee distribution:

Benefit Tier	Count	6/30/19 Payroll
● 2.7%@55 FAE1	433	\$53,772,200
● 2%@62 FAE3 (PEPRA)	312	27,805,100

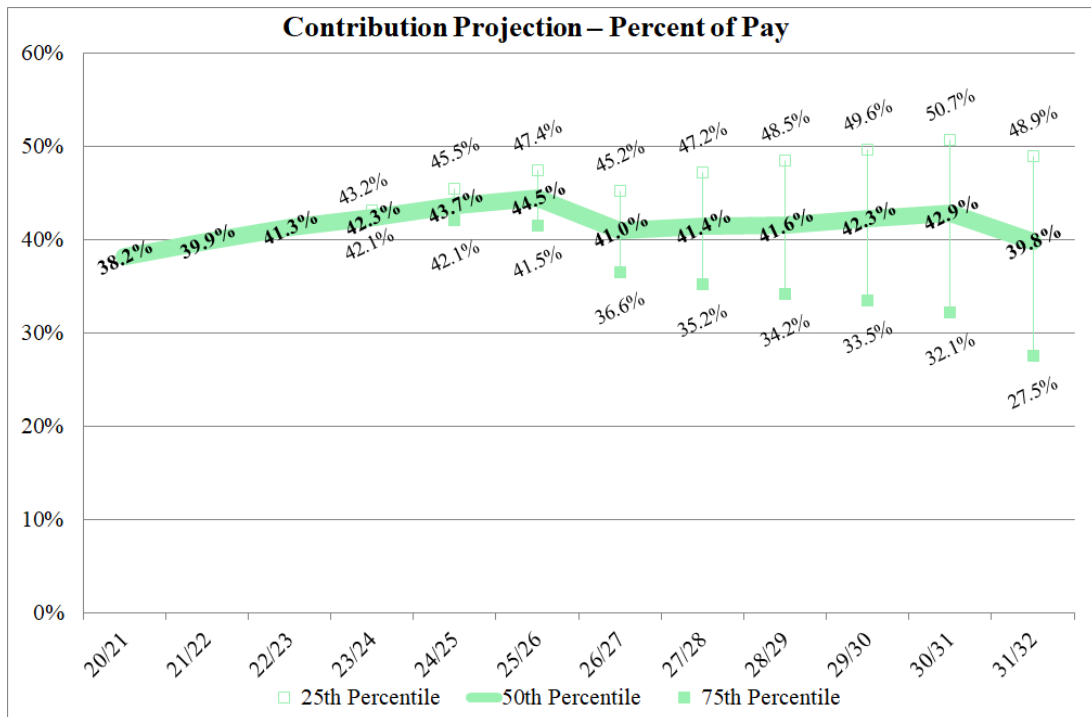


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CONTRIBUTION PROJECTIONS - MISCELLANEOUS

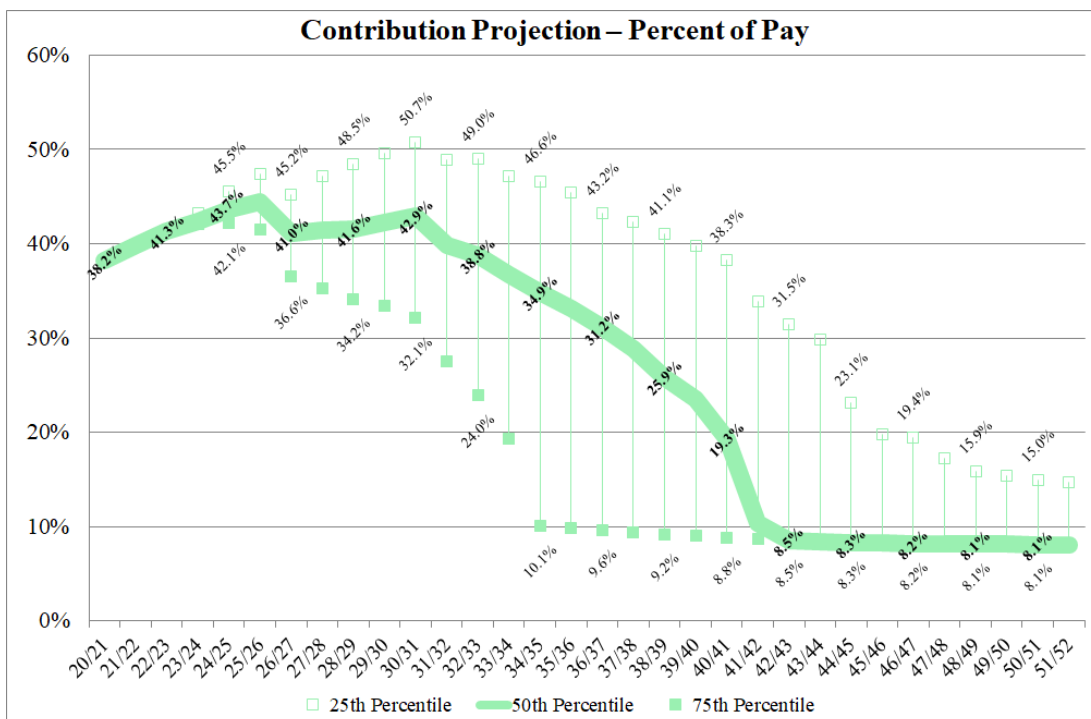


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CONTRIBUTION PROJECTIONS - MISCELLANEOUS

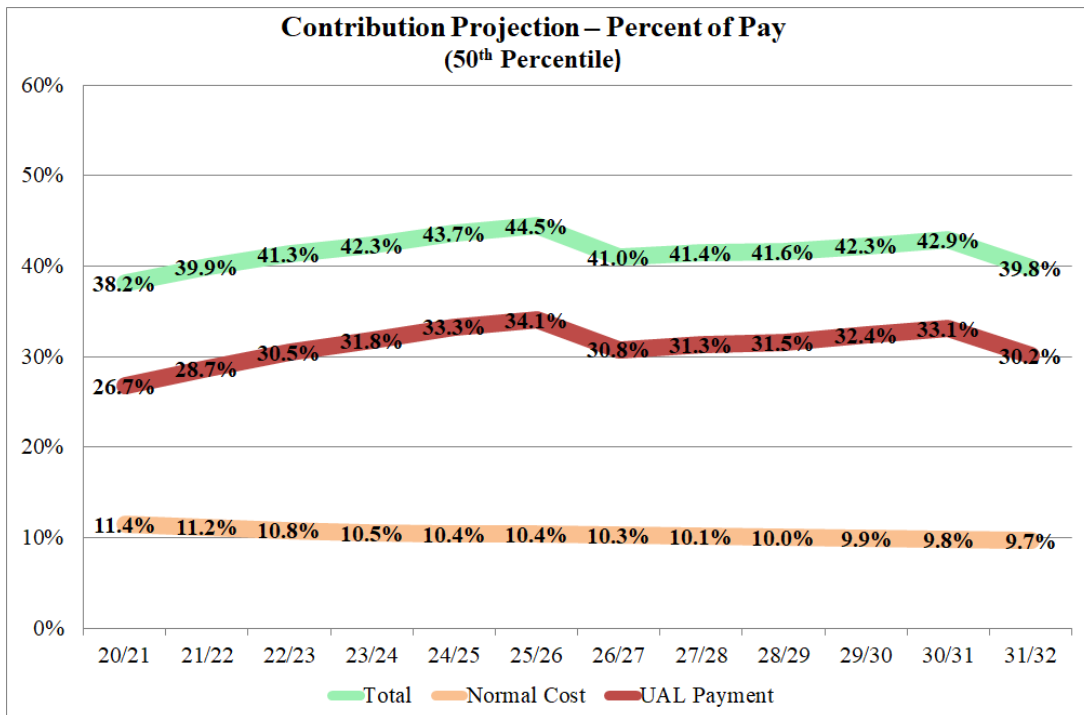


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CONTRIBUTION PROJECTIONS - MISCELLANEOUS

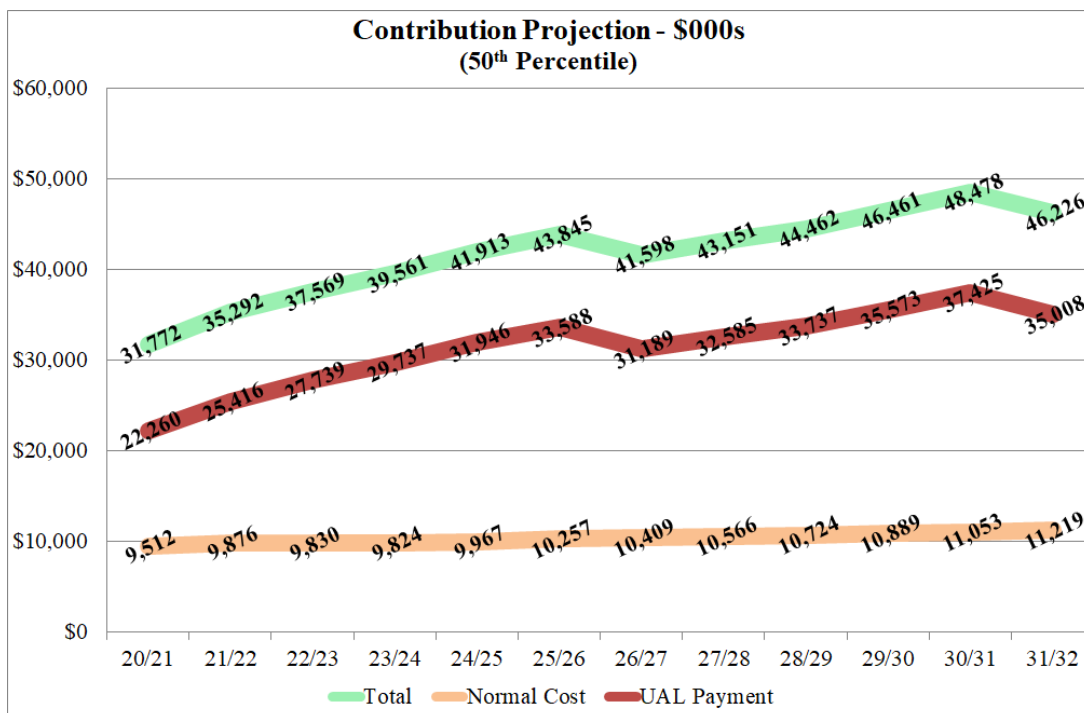


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CONTRIBUTION PROJECTIONS - MISCELLANEOUS



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SUMMARY OF DEMOGRAPHIC INFORMATION - SAFETY

	1999	2009	2018	2019
Actives				
■ Counts	300	288	297	296
■ Average				
• Age	42	41	41	41
• City Service	14	13	11	11
• PERSable Wages	\$ 88,700	\$ 135,400	\$ 161,400	\$ 171,600
■ Total PERSable Wages	26,600,000	39,000,000	47,900,000	50,800,000
Inactive Members				
■ Counts				
• Transferred	17	28	29	33
• Separated	7	20	34	38
• Retired				
□ Service		200	261	274
□ Disability		127	146	148
□ Beneficiaries		50	61	59
□ Total	223	377	468	481
■ Average Annual City Provided Benefit for Service Retirees ⁶		74,900	99,000	101,600

⁶ Average City-provided pensions are based on City service & City benefit formula, and are not representative of benefits for long-service employees.

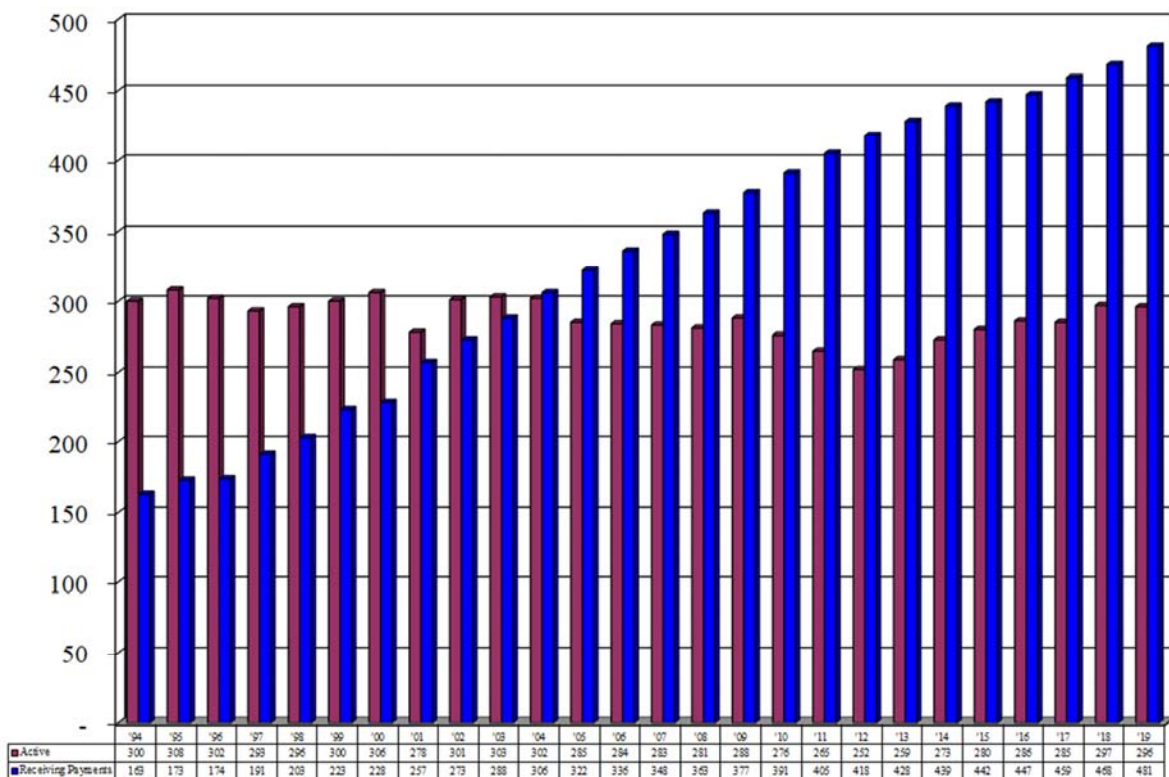


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SUMMARY OF DEMOGRAPHIC INFORMATION - SAFETY



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PLAN FUNDED STATUS - SAFETY

	<u>June 30, 2018</u>	<u>June 30, 2019</u>
■ Actuarial Accrued Liability		
● Active	\$ 221,500,000	\$ 226,800,000
● Retiree	556,600,000	588,700,000
● Inactive	<u>6,900,000</u>	<u>7,300,000</u>
● Total	785,000,000	822,800,000
■ Assets	<u>508,200,000</u>	<u>528,200,000</u>
■ Unfunded Liability	276,800,000	294,600,000
■ Funded Ratio	64.7%	64.2%
■ Average funded ratio for CalPERS Public Agency Safety Plans	68.3%	68.6%



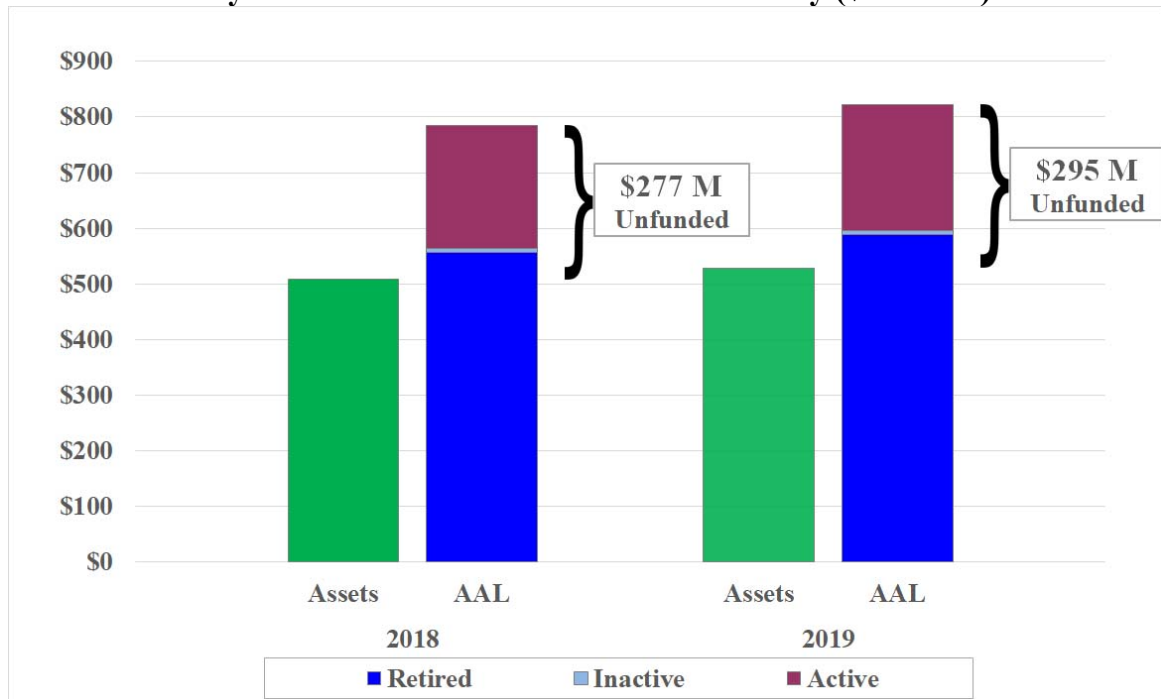
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PLAN FUNDED STATUS - SAFETY

City CalPERS Assets and Actuarial Liability (\$Millions)



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PLAN FUNDED STATUS - SAFETY

Discount Rate Sensitivity

June 30, 2019

	<u>Discount Rate</u>		
	<u>7.00%</u>	<u>6.50%⁷</u>	<u>6.00%</u>
AAL	\$ 822,800,000	\$ 877,600,000	\$ 932,300,000
Assets	<u>528,200,000</u>	<u>528,200,000</u>	<u>528,200,000</u>
Unfunded Liability	294,600,000	349,400,000	404,100,000
Funded Ratio	64.2%	60.2%	56.7%

⁷ Estimated by Bartel Associates.



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PLAN FUNDED STATUS - SAFETY

Unfunded Accrued Liability Changes

■ Unfunded Accrued Liability on 6/30/18	\$276,800,000
■ Expected 6/30/19 Unfunded Accrued Liability	282,900,000
■ Other Changes	
• Asset Loss (Gain) (6.6% return for FY 2019)	2,300,000
• Contribution & Experience Loss (Gain)	<u>9,400,000</u>
• Total	<u>11,700,000</u>
■ Unfunded Accrued Liability on 6/30/19	294,600,000
■ Projected Unfunded Accrued Liability on 6/30/20	310,700,000

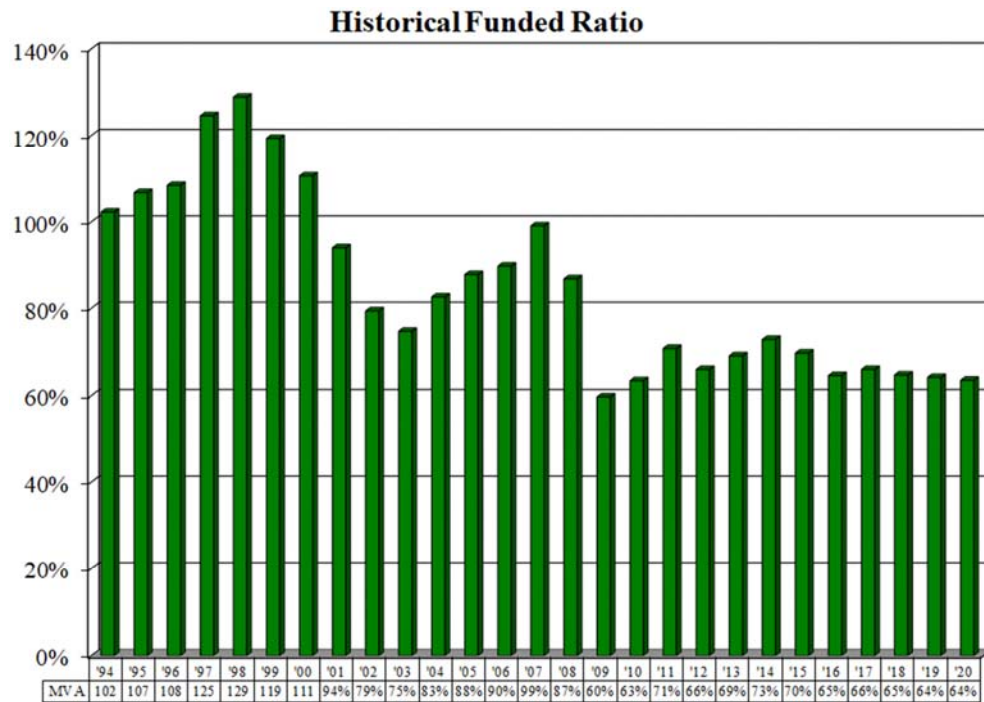


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FUNDED RATIO - SAFETY



6/30/20 funded status estimated

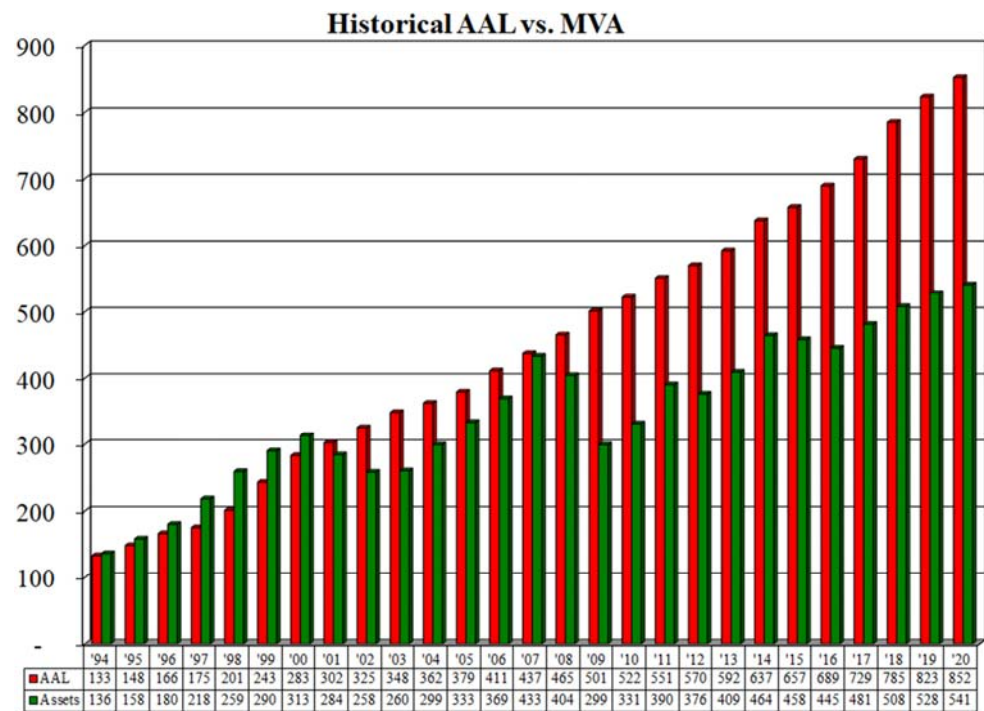


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FUNDED STATUS (MILLIONS) - SAFETY



6/30/20 funded status estimated



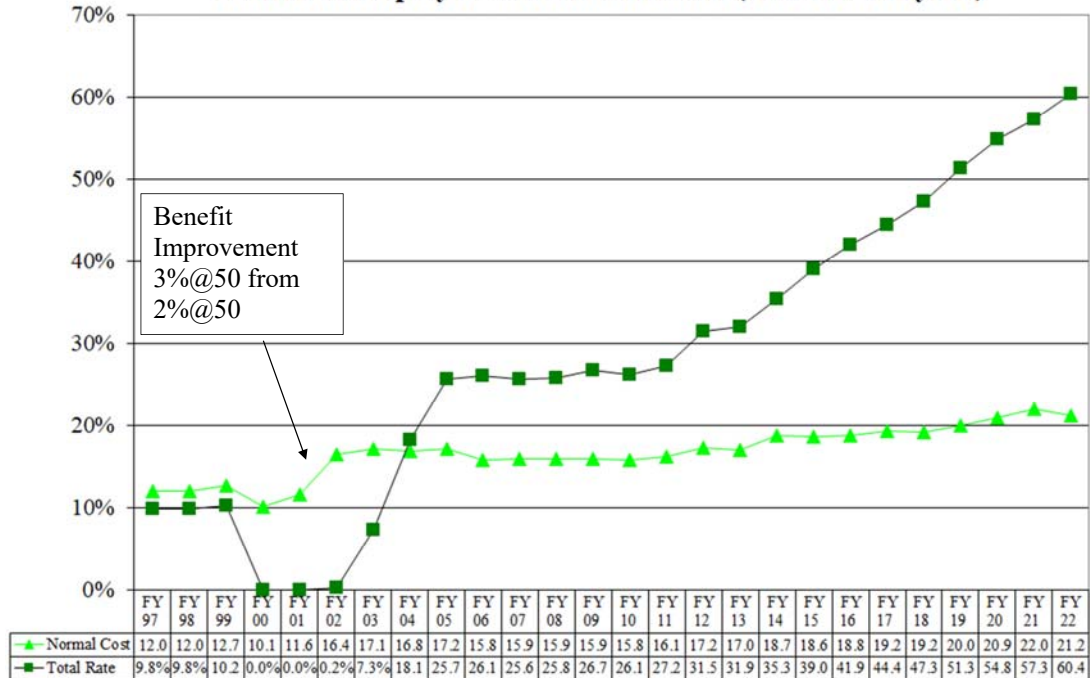
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CONTRIBUTION RATES - SAFETY

Historical Employer Contribution Rates (Percent of Payroll)



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CONTRIBUTION RATES - SAFETY

	6/30/18 2020/2021	6/30/19 2021/2022
■ Total Normal Cost	31.2%	30.8%
■ Employee Normal Cost	<u>9.2%</u>	<u>9.5%</u>
■ Employer Normal Cost	22.0%	21.2%
■ Amortization Payments	<u>35.3%</u>	<u>39.2%</u> ⁸
■ Total Employer Contribution Rate	57.3%	60.4%
■ 2020/21 Employer Contribution Rate		57.3%
● Payroll > Expected		(1.1%)
● 6/30/16 Discount Rate Change (4 th Year)		0.5%
● 6/30/17 Discount Rate & Inflation (3 rd Year)		0.5%
● 6/30/18 Discount Rate change (2 nd Year)		0.9%
● Other (Gains)/Losses		<u>2.3%</u>
■ 2021/22 Employer Contribution Rate		60.4%

⁸ Equivalent to 7.2% of UAL. One year, 7% interest on the UAL is 38.2% of payroll.



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CONTRIBUTION PROJECTIONS - SAFETY

- Market Value Investment Return:
 - June 30, 2020 4.7%⁹
 - Future returns based on stochastic analysis using 1,000 trials
- | <u>Single Year Returns at¹⁰</u> | <u>25th Percentile</u> | <u>50th Percentile</u> | <u>75th Percentile</u> |
|--------------------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Current Investment Mix | 0.1% | 7.0% | 14.8% |
| Ultimate Investment Mix | 0.8% | 6.0% | 11.4% |
- Assumes investment returns will, generally be 6.5% (as compared to 7.0%) over the next 8 years and higher beyond that.
- Discount Rate decreases due to Risk Mitigation policy
 - No Other: Gains/Losses, Method/Assumption Changes, Benefit Improvements
 - Different from CalPERS projection

⁹ Gross return based on July 2020 CalPERS press release

¹⁰ Nth percentile means N percentage of our trials result in returns lower than the indicated rates.



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CONTRIBUTION PROJECTIONS - SAFETY

- New hire assumptions:
 - 95.0% of 2020/21 new hires are PEPRAs members and 5.0% are Classic members
 - Percentage of PEPRAs member future hires to increase from 95.0% to 100% over 2 years
 - 6/30/19 employee distribution:
- | Benefit Tier | Count | 6/30/19 Payroll |
|--------------------------------|--------------|------------------------|
| ● 3%@50 FAE1 Police | 118 | \$22,108,300 |
| ● 3%@50 FAE3 Fire | 103 | 19,017,000 |
| ● 2.7%@57 FAE3 (PEPRAs) Police | 35 | 4,624,200 |
| ● 2.7%@57 FAE3 (PEPRAs) Fire | 40 | 5,051,400 |
- EE Cost Sharing:
 - Police Safety Classic employees pay 2.25% toward employer rates

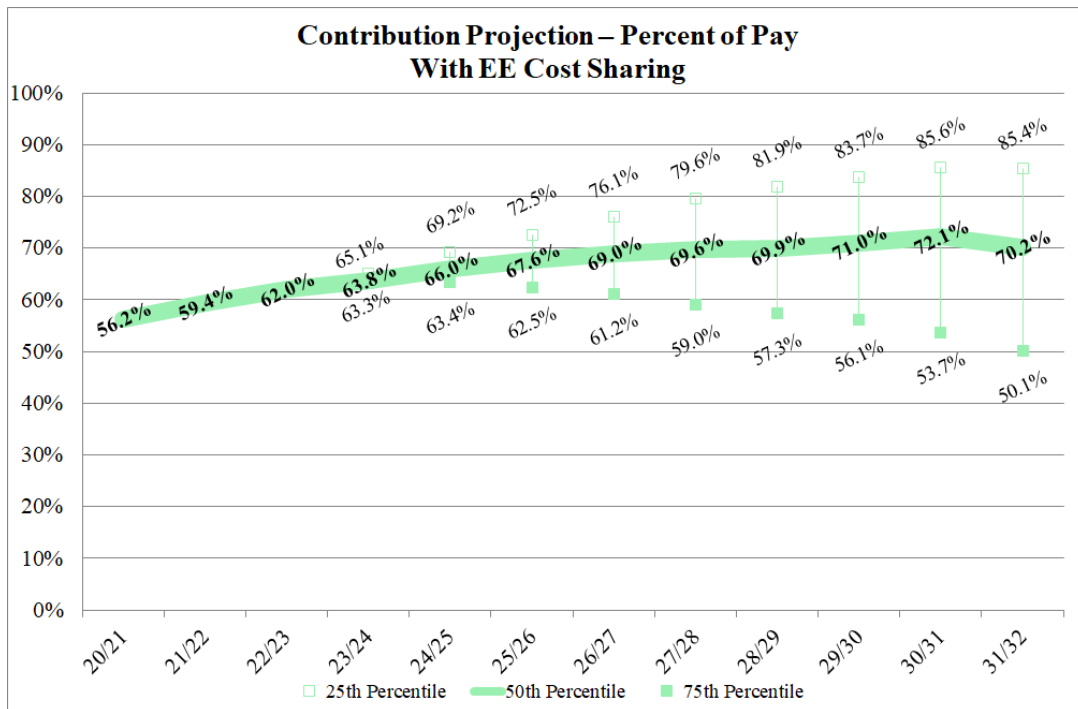


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CONTRIBUTION PROJECTIONS - SAFETY

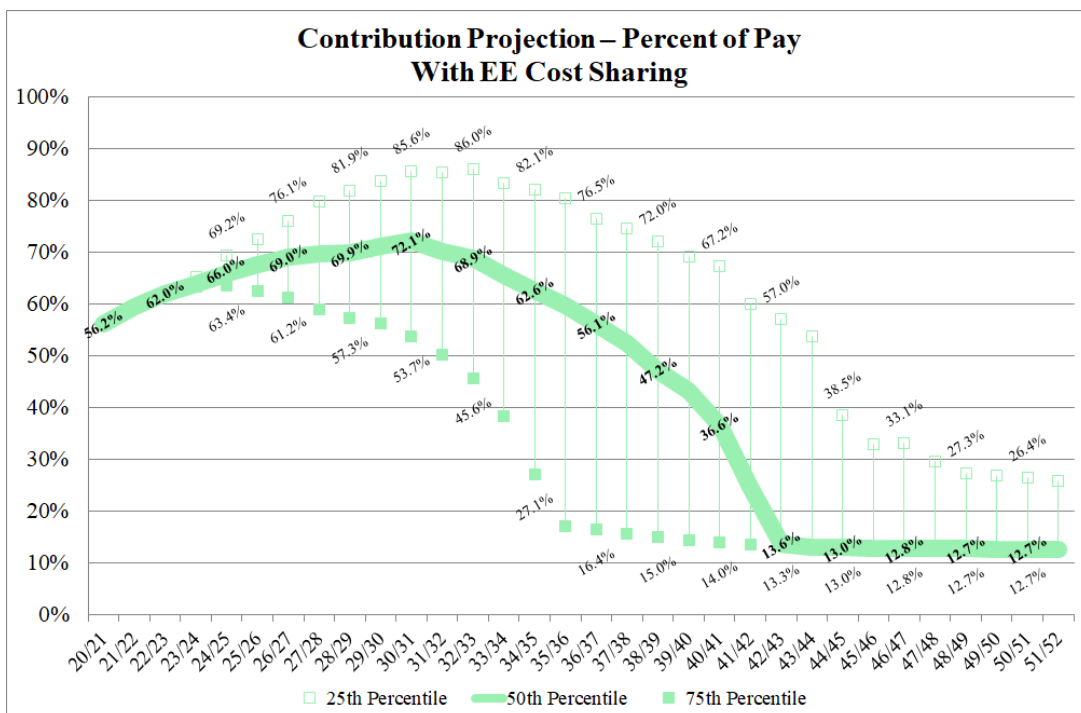


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CONTRIBUTION PROJECTIONS - SAFETY

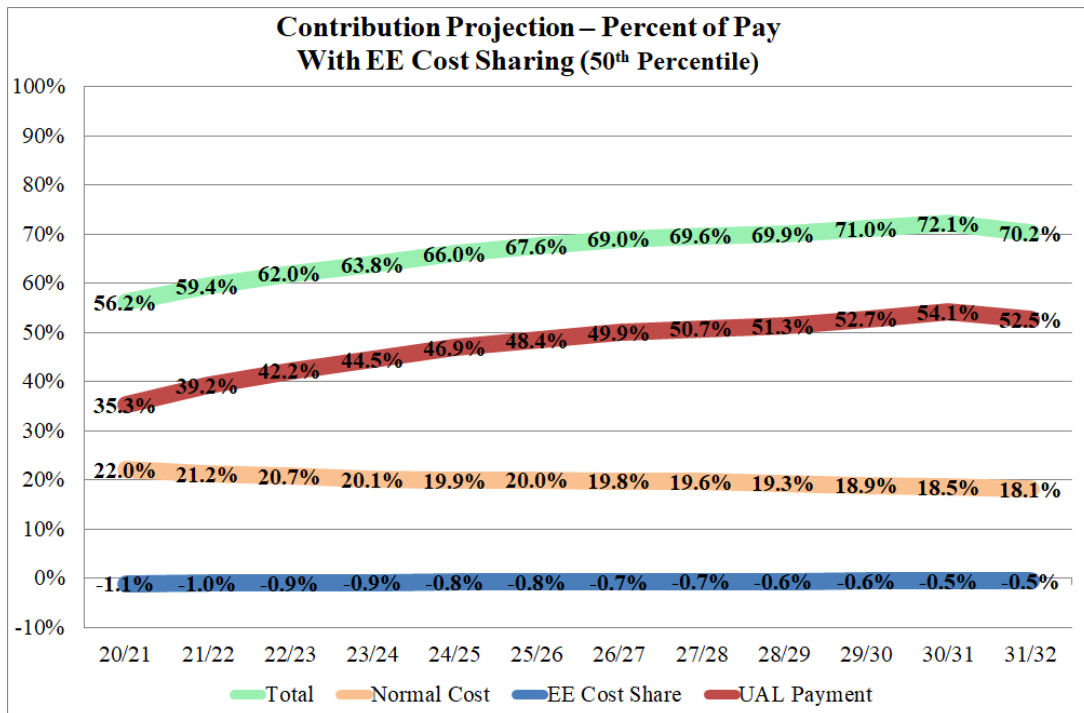


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CONTRIBUTION PROJECTIONS - SAFETY

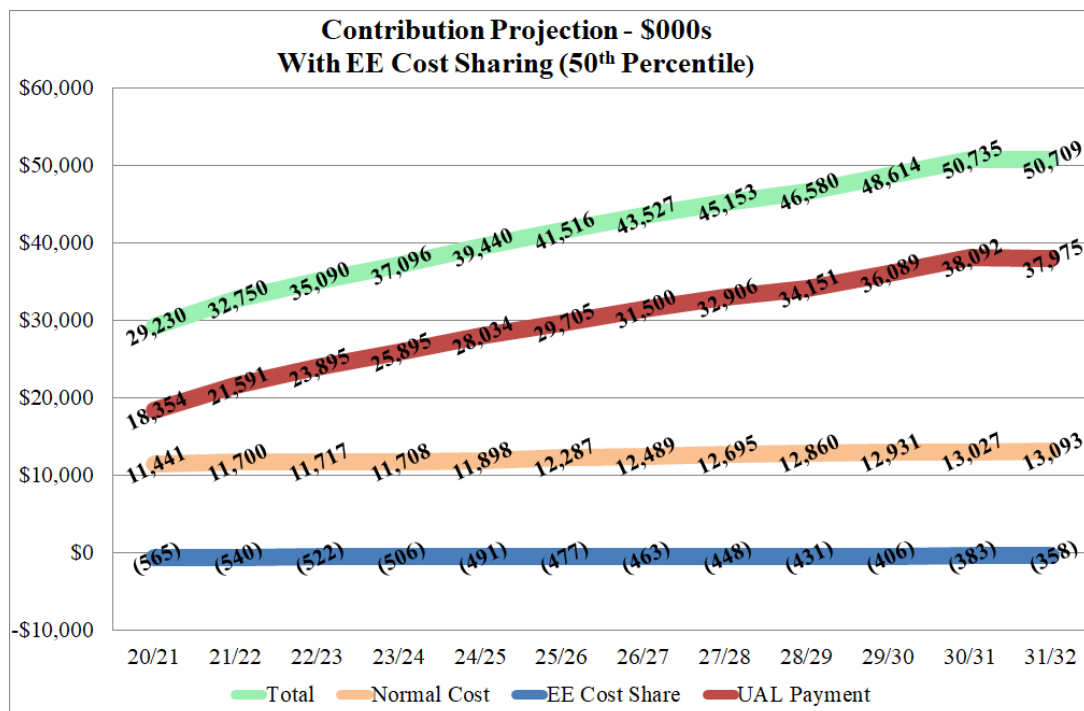


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CONTRIBUTION PROJECTIONS - SAFETY

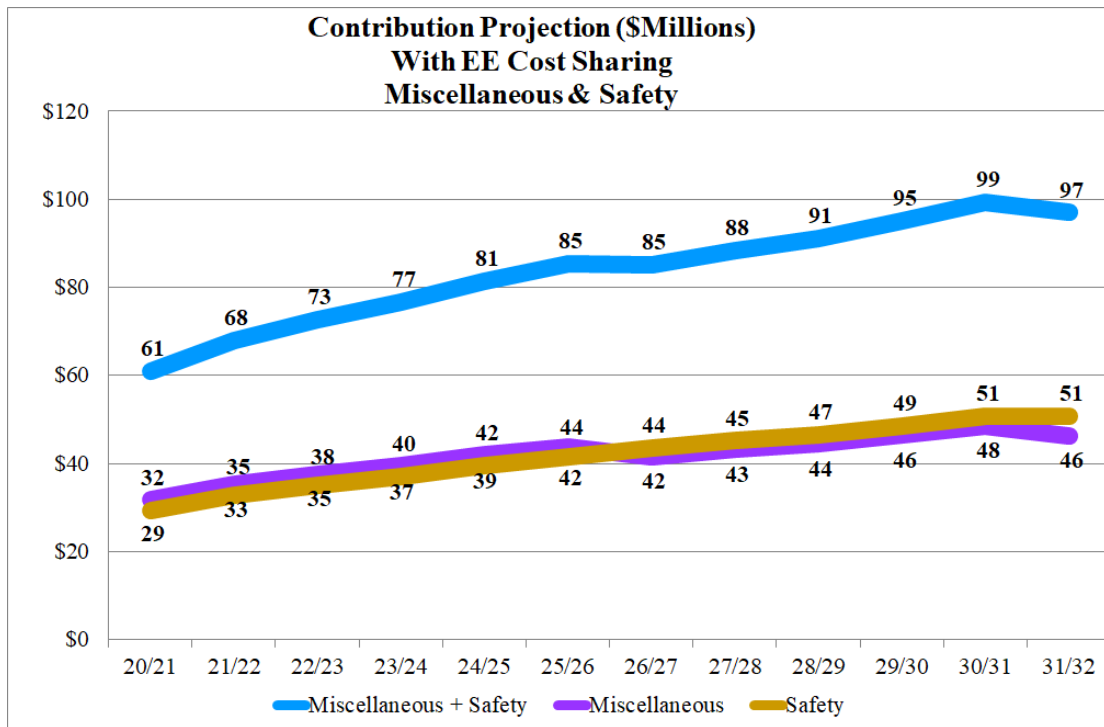


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COMBINED MISCELLANEOUS AND SAFETY



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COMBINED MISCELLANEOUS AND SAFETY

Funded Status Summary on June 30, 2019 (Amounts in \$Millions)

	Miscellaneous	Safety	Total
■ AAL	\$ 786	\$ 823	\$ 1,609
■ Assets	<u>479</u>	<u>528</u>	<u>1,007</u>
■ Unfunded AAL	307	295	602
■ Funded Ratio	60.9%	64.2%	62.6%



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LEAVING CALPERS

- Participation in CalPERS is governed by State law and CalPERS rules
- The following are considered “withdrawing” from CalPERS:
 - Exclude new hires from CalPERS & giving them a different pension
 - Stop accruing benefits for current employees
- “Withdrawal” from CalPERS:
 - Treated as plan termination
 - Liability increased for conservative investments
 - Liability increased for future demographic fluctuations
 - Liability must be funded immediately by withdrawing agency
 - Otherwise, retiree benefits are cut



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LEAVING CALPERS

CalPERS Termination Estimates on June 30, 2019 (Amounts in Millions)

Discount Rate	Ongoing Plan	Termination Basis	
	7.00%	1.75%	3.25%
Miscellaneous			
Actuarial Accrued Liability	\$ 786	\$ 1,514	\$ 1,230
Assets	<u>479</u>	<u>479</u>	<u>479</u>
Unfunded AAL (UAAL)	307	1,035	751
Safety			
Actuarial Accrued Liability	\$ 823	\$ 1,704	\$ 1,358
Assets	<u>528</u>	<u>528</u>	<u>528</u>
Unfunded AAL (UAAL)	295	1,176	830
Total			
Unfunded AAL (UAAL)	602	2,211	1,581
Funded Ratio	62.6%	31.3%	38.9%



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IRREVOCABLE SUPPLEMENTAL (§115) PENSION TRUST

- Can only be used to:
 - Reimburse City for CalPERS contributions
 - Make payments directly to CalPERS
- Investments significantly less restricted than City investment funds
 - Fiduciary rules govern Trust investments
 - Usually, designed for long term returns
- Assets don't count for GASB accounting
 - Are considered Employer assets
- Over 100 trusts established, mostly since 2015
 - Trust providers: PARS, PFM, Keenan
 - California Employers' Pension Prefunding Trust (CEPPT) effective July 2019
 - ☐ Strategy 1: 48% stocks / 52% bonds
 - ☐ Strategy 2: 22% stocks / 78% bonds



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IRREVOCABLE SUPPLEMENTAL (§115) PENSION TRUST

- More flexibility than paying CalPERS directly
 - City decides if and when and how much money to put into Trust
 - City decides if and when and how much to withdraw to pay CalPERS or reimburse Agency
- Funding strategies typically focus on
 - Reducing the unfunded liability
 - ☐ Fund enough to make total CalPERS UAL = 0
 - ☐ Make PEPPRA required payments from Trust when overfunded
 - Stabilizing contribution rates
 - ☐ Mitigate expected contribution rates to better manage budget
 - Combination
 - ☐ Use funds for rate stabilization/budget predictability
 - ☐ Target increasing fund balance to pay off UAL sooner



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IRREVOCABLE SUPPLEMENTAL (§115) PENSION TRUST

- Consider:
 - How much can you put into Trust?
 - ☐ Initial seed money?
 - ☐ Additional amounts in future years?
 - When do you take money out?
 - ☐ Target budget rate?
 - ☐ Year target budget rate kicks in?
 - Before or after CalPERS rate exceeds budgeted rate?



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COMPARISON OF OPTIONS

■ Supplemental Trust

- Flexible
- Likely lower long-term return
- Investment strategy choice
- Does not reduce net pension liability for GASB reporting
- More visible

■ CalPERS

- Locked In
- Likely higher long-term return
- No investment choice
- Reduces net pension liability for GASB reporting
- More restricted

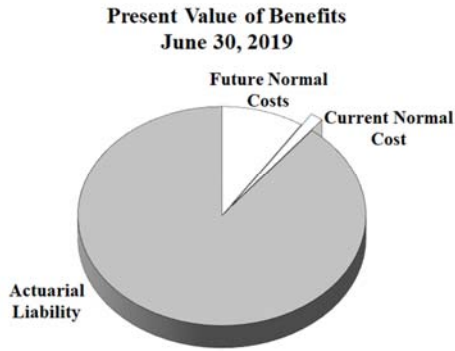


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DEFINITIONS



■ **PVB - Present Value of all Projected Benefits:**

- The value now of amounts due to be paid in the future
- Discounted value (at valuation date - 6/30/19), of all future expected benefit payments based on various (actuarial) assumptions

■ **Current Normal Cost (NC):**

- Portion of PVB allocated to (or “earned” during) current year
- Value of employee and employer current service benefit

■ **Actuarial Liability (AAL):**

- Discounted value (at valuation date) of benefits earned through valuation date [value of past service benefit]
- Portion of PVB “earned” at measurement

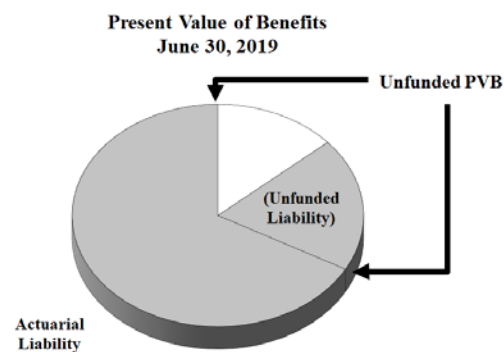
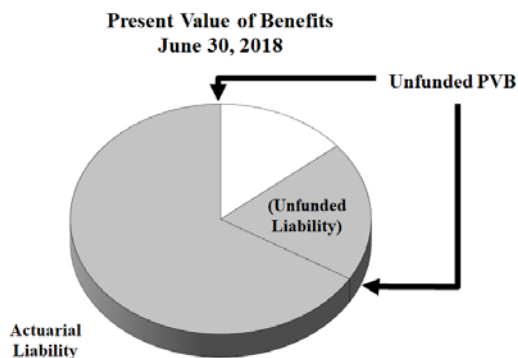


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DEFINITIONS



■ **Target-** Have money in the bank to cover Actuarial Liability (past service)

■ **Unfunded Liability (UAAL or UAL) - Money short of target at valuation date**

- If all actuarial assumptions were always exactly met, then the plan assets would always equal AAL
- Any difference is the unfunded (or overfunded) AAL
- Every year, the actuary calculates the difference between the expected UAAL and Actual UAAL. This is a new layer or amortization base
- Each new layer gets amortized (paid off) over a period of time as part of the contribution [rate]



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ACTUARIAL CERTIFICATION

This report presents analysis of the City of Santa Clara's CalPERS pension plans. The purpose of this report is to provide the City:

- Historical perspective on the plan investment returns, assets, funded status and contributions.
- Projections of likely future contributions and the impact of investment volatility

The calculations and projections in this report are based on information contained in the City's June 30, 2019 and earlier CalPERS actuarial valuation reports. We reviewed this information for reasonableness, but do not make any representation on the accuracy of the CalPERS reports.

Future investment returns and volatility are based on Bartel Associates Capital Market model which results in long term returns summarized on pages 23 and 41.

Future results may differ from our projections due to differences in actual experience as well as changes in plan provisions, CalPERS actuarial assumptions or methodology. Other than variations in investment return, this study does not analyze these.

To the best of our knowledge, this report is complete and accurate and has been conducted using generally accepted actuarial principles and practices. As members of the American Academy of Actuaries meeting the Academy Qualification Standards, we certify the actuarial results and opinions herein.

Respectfully submitted,



Doug Pryor, ASA, EA, MAAA
Vice President
Bartel Associates, LLC
February 9, 2021



Bianca Lin, FSA, EA, MAAA
Assistant Vice President
Bartel Associates, LLC
February 9, 2021



February 9, 2021





Agenda Report

21-93

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Proclaim February 2021 as Black History Month

BACKGROUND

As a Special Order of Business, the City Council would like to recognize the month of February 2021 as Black History Month.

The month of February was officially recognized as Black History Month by the United States Government in 1975, and since then, February has been designated as Black History Month.

Black History Month is an annual celebration that recognizes the important contributions made by African Americans throughout our nation's history. Black History Month honors the historic leaders of the African American Community who have fought for civil liberties and serves as a reminder to remember those who have sacrificed and suffered in their pursuit for equality and to honor those achievements that have shaped the United States.

DISCUSSION

In honor of Black History Month, the Mayor has signed a City Proclamation proclaiming the month of February 2021 as Black History Month in the City of Santa Clara, which will be accepted by Milan Balinton, Executive Director of the African American Community Service Agency.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

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

PUBLIC CONTACT

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

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

Approved by: Deanna J. Santana, City Manager



City of Santa Clara

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

Agenda Report

21-175

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Verbal Report from City Manager regarding COVID-19 Pandemic

COUNCIL PILLAR

Enhance Community Engagement and Transparency



City of Santa Clara

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

Agenda Report

21-04

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Board, Commissions and Committee Minutes

COUNCIL PILLAR

Enhance Community Engagement and Transparency

RECOMMENDATION

Note and file the Minutes of:

Santa Clara Tourism Improvement District Advisory Board - October 10, 2019
Santa Clara Tourism Improvement District Advisory Board - October 18, 2019
Santa Clara Tourism Improvement District Advisory Board - November 18, 2019
Santa Clara Tourism Improvement District Advisory Board - December 10, 2019
Parks & Recreation Commission - November 17, 2020
Senior Advisory Commission - November 23, 2020
Planning Commission - October 14, 2020
Planning Commission - December 9, 2020

Santa Clara Tourism Improvement District
Advisory Board Meeting – MINUTES
Hyatt Regency Santa Clara
5101 Great America Parkway
Santa Clara, CA 95057

Thursday, October 10, 2019, 9:00 a.m.

Call to Order

Eron Hodges, Chair, called the meeting to order at 9:14 a.m.

Roll Call and Introductions

Present: 5 Joe Eustice, General Manager, Hilton Santa Clara
Eron Hodges, General Manager, Hyatt Regency Santa Clara
Peter Hart, General Manager, Embassy Suites
Mark Salquist, General Manager, Avatar Hotel (9:18 a.m. arrival)
Callette Nielsen, General Manager, Marriott Santa Clara

Absent: 6 Alan Mass, General Manager, Hyatt House
Virginia Scimeca, General Manager, TownePlace Suites by Marriott
Jon Siebring, General Manager, Biltmore Hotel
Jean-Phillippe Rollet, General Manager, The Plaza Suites
Mike Lerman, General Manager, AC Hotel Santa Clara
Jordan Austin, General Manager, Element Santa Clara

A quorum was not met.

In Attendance

Deanna Santana, City Manager, City of Santa Clara
Ruth Shikada, Assistant City Manager, City of Santa Clara
Nancy Thome, Asst. to the City Manager, City of Santa Clara
Dan Fenton, Executive Vice President, JLL (call-in)
Michelle Knipe, Director of Sales & Marketing, Hilton Santa Clara
Bill Benaderet, Assistant General Manager, Santa Clara Convention Center
Kelly Carr, General Manager, Santa Clara Convention Center
Melissa Belluomini, Director of Sales, Hyatt Regency Santa Clara
Mark Evans, Director of Sales & Marketing, Marriott Santa Clara

Public Comments

There were no public comments.

Consent Calendar

Matters listed in the Consent Calendar section will be considered routine by the Advisory Board and will be enacted by one motion. If discussion is requested, that item will be removed from the section entitled Consent Calendar and will be considered separately.

1. Action on the Minutes of the August 9, 2019 of the Santa Clara Tourism Improvement District Advisory Board Meeting.
2. Action on the Minutes of the September 10, 2019 of the Santa Clara Tourism Improvement District Advisory Board Meeting.
3. Action on the Santa Clara Convention Center request for subsidy payment in the amount of \$33,940 for the Christian Congregations of Jehovah's Witness Events July 4-7, 2019 and July 11-14, 2019.

There was no motion for the items on the Consent Calendar as a quorum was not met.

General Business – Items for Discussion

4. Spectra update on the Santa Clara Convention Center and Visit Santa Clara websites.

Kelly Carr, general manager of the Convention Center provided an update on the websites. Spectra created a new website and will be managing the Santa Clara Convention Center website at www.santaclaraconvention.com. Over the past several months, the City, JLL and Spectra have been trying to establish an agreement with Destination Advantage to maintain the CVB website and a consensus on the terms has not been established. There were concerns over Destination Advantage offering to sell the SCCC website to Spectra for \$130K, taking control of related social media accounts and shutting down the websites completely. The City has since regained control of the Facebook page and Spectra has offered to create and maintain CVB website for the interim period. There are also concerns that Destination Advantage continues to manage the website without a formal contract in place. The hoteliers would like to discuss further and propose to engage Destination Advantage to see if they are able to establish an agreement. The Board agreed to call a special meeting to discuss.

5. Review of the TID FY 18/19 Year-End Financial Report and the TID FY 19/20, Q1 Financial Report.

The Year-End Financial Report for FY 18/9 and Quarter 1 report for FY 19/20 was reviewed. The City confirmed the FY 19/20 TID fund balance is approximately \$1.2M. The Advisory Board was reminded that TID funds, as approved by City Council, will be used to support the agreement with Civitas as well as any legal costs associated to the establishment of the DMO.

6. Development of Santa Clara Tourism Improvement District subsidy policy and/or program.

The Advisory Board was reminded of the need to establish a subsidy policy and/or program as recommended by the auditor TAP International and the City's internal auditor. There are concerns regarding providing convention center subsidies for the specific groups repeatedly that can be perceived as preferential treatment. While TID

funds are public funds, a process must be established to provide equal opportunity for all community groups to apply for the same benefit. Joe Eustice proposed that the TID Advisory Board create a subcommittee to research, develop and make recommendations to the TID Advisory Board. This item will be place on the next meeting agenda for further discussion.

7. City of Santa Clara Updates:

- a. Report to the Economic Development, Marketing & Communications Committee on September 18, 2019.
- b. TID Conversion process.
- c. Silicon Valley/Santa Clara Destination Marketing Organization.

The City provided an update on the progress of the DMO to the Economic Development, Marketing & Communications Committee on September 18, 2019 and was asked by the committee members to make a presentation to the full Council on the TID conversion process. The item is schedule to go to Council on November 12.

8. Establish TID Advisory Board Meeting schedule for the new calendar year.

Starting January 1, 2020, TID Advisory Board meetings will take place at 9:00 a.m. on the second Thursday of the month.

General Updates

- The first meeting to discuss the booking strategy went well and a follow-up meeting will be scheduled to complete the work.
- It was proposed for consideration that moving forward, the CVB, as an objective party, manage the event calendar. Historically, it was controlled by the SCCC.
- Hoteliers requested a calendar of events, for 12 -16 months out, be provided monthly by the Center.

Adjournment

The meeting adjourned at 10:11 a.m.

The next regular scheduled meeting is on Monday, November 11, 2019, 9:00 a.m. at the Hyatt Regency Santa Clara.

**Santa Clara Tourism Improvement District
Advisory Board Special Meeting – AGENDA**

Hilton Santa Clara
4949 Great America Parkway
Santa Clara, CA 95054

Friday, October 18, 2019, 9:00 a.m.

Call to Order

Roll Call

Eron Hodges, Chair, called the meeting to order at 9:14 a.m.

Present: 7

Jordan Austin, General Manager, Element Santa Clara
Joe Eustice, General Manager, Hilton Santa Clara
Peter Hart, General Manager, Embassy Suites (by phone)
Eron Hodges, General Manager, Hyatt Regency Santa Clara
Jean-Phillippe Rollet, General Manager, The Plaza Suites (late arrival)
Jon Siebring, General Manager, Biltmore Hotel
Mike Lerman, General Manager, AC Hotel Santa Clara

Absent: 4

Callette Nielson, General Manager, Marriott Santa Clara
Alan Mass, General Manager, Hyatt House
Mark Salquist, General Manager, Avatar Hotel
Virginia Scimeca, General Manager, TownePlace Suites by Marriott

In Attendance

Melissa Belluomini, Director of Sales, Hyatt Regency Santa Clara
Ruth Shikada, Assistant City Manager, City of Santa Clara

Public Comments

There were no public comments.

Consent Calendar

Matters listed in the Consent Calendar section will be considered routine by the Advisory Board and will be enacted by one motion. If discussion is requested, that item will be removed from the section entitled Consent Calendar and will be considered separately.

General Business – Items for Discussion

1. Discuss history and current state of the Visit Santa Clara website and relationship with the internet marketing and sales company, Destination Advantage.

There was a general discussion on the history and current state of the Visit Santa Clara website and relationship with the internet marketing and sales company, Destination Advantage.

A motion was made by Joe Eustice, seconded by Jon Siebring, that a subcommittee comprised of Eron Hodges and Joe Eustice reach out to Destination Advantage to: 1) negotiate terms to keep the Visit Santa Clara website; 2) to keep the website active; and 3) develop a process/procedure to distribute leads from the website. Motion passed (unanimously 7-0).

It was also discussed that the TID Advisory Board members would contact the Chamber of Commerce to discuss release of all rights the Chamber may have to Visit Santa Clara name, and associated material and content.

General Updates

Adjournment

The next regular scheduled meeting is on Monday, November 11, 2019, 9:00 a.m. at the Hyatt Regency Santa Clara.

**Santa Clara Tourism Improvement District
Advisory Board Special Meeting – MINUTES**

Hyatt Regency
5101 Great America Parkway
Santa Clara, CA 95054

November 18, 2019, 9:00 a.m.

Call to Order

Eron Hodges, Chair, called the meeting to order at 9:07 a.m.

Roll Call

Present: 9 Jordan Austin, General Manager, Element Santa Clara
Joe Eustice, General Manager, Hilton Santa Clara
Peter Hart, General Manager, Embassy Suites
Eron Hodges, General Manager, Hyatt Regency Santa Clara
Mike Lerman, General Manager, AC Hotel Santa Clara
Alan Mass, General Manager, Hyatt House (call-in)
Jean-Phillippe Rollet, General Manager, The Plaza Suites
Mark Salquist, General Manager, Avatar Hotel
Jon Siebring, General Manager, Biltmore Hotel

Absent: 2 Callette Nielsen, General Manager, Marriott Santa Clara
Virginia Scimeca, General Manager, TownePlace Suites by Marriott

A quorum was met.

In Attendance

Dan Fenton, Executive Vice President, JLL
Kelly Carr, General Manager, Santa Clara Convention Center
Nancy Thome, Assistant to the City Manager, City of Santa Clara
Mark Evans, Director of Sales, Marriott Santa Clara
Ruth Shikada, Assistant City Manager, City of Santa Clara
Tina Walters, Director of Sales, AC Hotel Santa Clara
Mary Lynn Brubaker, Director of Sales, Hyatt House
Michelle Knipe, Director of Sales, Hilton Santa Clara

Public Comments

Jon Siebring announced the Biltmore will be starting renovations in March 2020 to convert to a Marriott. It is anticipated the renovations will take one year.

Consent Calendar

Matters listed in the Consent Calendar section will be considered routine by the Advisory Board and will be enacted by one motion. If discussion is requested, that item will be removed from the section entitled Consent Calendar and will be considered separately.

1. Action on the Minutes of the August 9, 2019, September 10, 2019 and October 10, 2019 Santa Clara Tourism Improvement District Advisory Board Regular Meetings and the Minutes of the October 18, 2019 Santa Clara Tourism Improve District Advisory Board Special Meeting.
2. Action on the Santa Clara Convention Center request for subsidy payment in the amount of \$33,900 for the Christian Congregations of Jehovah's Witness Events July 4-7, 2019 and July 11-14, 2019.

A motion was made by Mike Lerman, seconded by Mark Salquist to approve the Consent Calendar. Motion passed unanimously (9-0).

Consent Items Pulled for Discussion

General Business – Items for Discussion

3. Discussion on the Development of a Funding Agreement to Allow for the Transfer of TID Funds from the City TID Account to the DMO When Needed.

City staff is working with the City Attorney's Office to develop a funding agreement so that the City can serve as the fiduciary agent for the DMO. TID funds are currently held in City account and a mechanism needs to be put in place so that the City can release TID funds as needed on behalf of the DMO.

4. Action on the One-year Destinations International Event Impact Calculator License to be purchased by the Santa Clara Convention Center; and To Reimburse the Santa Clara Convention Center up to \$11,100 upon Completion of Purchase and Submission of Reimbursement Request to the City.

The Destinations International Event Impact Calculator is typically used by about 80% of convention bureaus and is the industry used platform to measure economic impact. This item was included in the TID's FY 19/20 budget and was used by the CVB. This request is for the Convention Center to purchase the license so that they can begin tracking economic impact for events and meetings. The purchase of this license directly relates to a KPI for the Center and Levy and is localized by entering information specific to the Santa Clara area.

A motion was made by Jean-Phillipe Rollet, seconded by Mike Lerman, to approve the purchase of a one-year Destinations International Event Impact Calendar License by the Santa Clara Convention Center and to reimburse the Santa Clara Convention Center up to \$11,100 upon completion of the purchase and submission of reimbursement request to the City. Motion passed unanimously (9-0).

5. Discussion on the Establishment of a Santa Clara Tourism Improvement District Subsidy Policy and Subcommittee.

This was a follow-up item from the TID Advisory Board meeting that took place on October 10. The Board will work to establish criteria so that any subsidy requests (TID funds) would

be evaluated based on the criteria. There could also be some room for flexibility to allow for the evaluation of exemptions from the established criteria. It was recommended that a subcommittee be established to develop guidelines in conjunction to the booking policy, for the subcommittee to be comprised of representatives of different sized hotels, and for the subcommittee to have a draft ready to present at the first TID Advisory Board meeting in January.

A motion was made by Jean-Phillipe Rollet, seconded by Jordan Austin, to establish a TID subcommittee to develop funding subsidy guidelines in conjunction with the development of the booking policy and to assign Mike Lerman, Callette Nielson and Joe Eustice to the subcommittee. Motion passed unanimously (9-0).

6. Review of Convention Center Calendar of Events for the Period 11/01/2019 – 12/31/2021.

The report provided by the Center includes a list of all confirmed events. The report is updated monthly and as the event date gets closer; the number of attendees may fluctuate as the event gets closer. The booking policy is still in progress and the goal is to have the policy applied to booking in the future. Kelly Carr indicated that he is currently looking at business and booking events within 6 months and without room nights. Hotels liked the report, would eventually like to see a pace report and would like to receive an updated report monthly.

7. Update on Website Management Agreement with Destination Advantage.

Eron Hodges and Joe Eustice met with Destination Advantage over the phone. Mike Lerman was unable to make the call due to preparations for the AC hotel's grand opening event. Eron and Joe reviewed the City's criteria with Destination Advantage who was mostly agreeable except for the rights of the website. Destination Advantage is still retaining ownership of the rights as outlined in the proposed agreement. The proposed term is 12 months with monthly invoicing. Eron will request updated agreement language regarding strategic partnerships with the goal for all partners to promote each other and the destination. The contract will be between Destination Advantage and the DMO should be focused on maintaining and keeping content current and accurate; not for Destination Advantage to do anything proactive. The City is also reviewing the proposed agreement and recommends the DMO and their legal counsel to review.

Kelly made the request for the RFP link to go directly to the Center as having two different pages/links is creating confusion. In a few instances, the Center did not receive any information that was submitted to the Destination Advantage managed site.

8. Update on the TID Conversion Process.

City staff presented the TID Conversion to Council at the meeting on November 12. Joe Eustice attended the meeting to represent the hotels. City Council approved the establishment of a new district however would like more information on the potential effect of changing to a percentage assessment formula. City Council is currently in the process of evaluating overall General Fund revenue opportunities in which an increase in the TOT was identified as a potential strategy. If the TID percentage changed to 2% and the City

increased the TOT percentage, the total percentage collected in the TID could potentially become one of the highest in the area. Currently, in the TID, the General Fund TOT is 9.5% and the Community Facility District Assessment is 2%. City staff will advise the Board of the next Council date once confirmed.

9. JLL Presentation on the Results of the Hotel Room Block Survey.

General Updates

Adjournment

The meeting adjourned at 10:14 a.m.

The next regular scheduled meeting is on Tuesday, December 10, 2019, 9:00 a.m. at the Hyatt Regency Santa Clara.

**Santa Clara Tourism Improvement District
Advisory Board Special Meeting – MINUTES**

Hyatt Regency
5101 Great America Parkway
Santa Clara, CA 95054

December 10, 2019, 9:00 a.m.

Call to Order

Eron Hodges, Chair, called the meeting to order at 9:12 a.m.

Roll Call

Present: 6 Jordan Austin, General Manager, Element Santa Clara
Joe Eustice, General Manager, Hilton Santa Clara
Peter Hart, General Manager, Embassy Suites
Eron Hodges, General Manager, Hyatt Regency Santa Clara
Mike Lerman, General Manager, AC Hotel Santa Clara
Jean-Phillippe Rollet, General Manager, The Plaza Suites

Absent: 5 Alan Mass, General Manager, Hyatt House (call-in)
Callette Nielsen, General Manager, Marriott Santa Clara
Mark Salquist, General Manager, Avatar Hotel
Virginia Scimeca, General Manager, TownePlace Suites by Marriott
Jon Siebring, General Manager, Biltmore Hotel

A quorum was met.

In Attendance

Dan Fenton, Executive Vice President, JLL
Kelly Carr, General Manager, Santa Clara Convention Center
Nancy Thome, Assistant to the City Manager, City of Santa Clara
Mark Evans, Director of Sales, Marriott Santa Clara
Michelle Knipe, Director of Sales, Hilton Santa Clara
Melissa Belluomini, Director of Sales, Hyatt Regency Santa Clara

Public Comments

Public comment for items not on the Agenda.

Consent Calendar

Matters listed in the Consent Calendar section will be considered routine by the Advisory Board and will be enacted by one motion. If discussion is requested, that item will be removed from the section entitled Consent Calendar and will be considered separately.

1. Action on the Minutes of the November 18, 2019 Santa Clara Tourism Improvement District Advisory Board Regular Meeting.

A motion was made by Jean-Phillippe Rollet, seconded by Peter Hart to approve the Consent Calendar. Motion passed unanimously (6-0).

Consent Items Pulled for Discussion

General Business – Items for Discussion

2. Update on Website Management Agreement with Destination Advantage.

The City and JLL proposed edits to the agreement that was submitted by Destination Advantage. The agreement with the proposed changes is currently with Destination Advantage for review.

3. Review of Convention Center Calendar of Events for the Period 11/29/2019 – 11/18/2021.

The calendar with the full listing of clients will be sent to meeting attendees. The Convention Center received an inquiry from a hotel outside of the TID requesting a copy of the calendar of events. It was suggested that this hotel wanted to be aware of potential room night impacts. The group agreed that it would be okay for the Convention Center to provide them a copy of the types, dates and estimated numbers; client names would be redacted.

4. Review and discussion on the Proposed Santa Clara Convention Center Booking Strategy.

Dan Fenton provided an update on the Santa Clara Convention Center Booking Strategy. The survey indicated hotels could commit to 1,100 room nights for P1 events. The presented strategy (graphic chart) is intended to serve as a guideline for sales staff with the understanding that there would be some flexibility allowed depending on other considerations such as time of year, combined building spend, etc. Future goals for the DMO would include pursuing P1 and P2 new business and not allowing the “grandfathering” of business.

5. Review and discussion on potential Santa Clara Tourism Improvement District (TID) Assessment Formulas.

The group reviewed the various percentage options presented in the handout and strongly support a 2% assessment. Joe Eustice provided a draft document to the group of the key discussion points so that all members would be consistent in their messaging. TID Advisory Board Members will be working to meet individually with Council members in efforts to gain support for 2% prior to the next meeting in late January.

General Updates

The TID Advisory Board was reminded of posting requirements for meetings. Regular meetings must be posted 72 in advance and special meetings require 24 hours advance. Any agenda items should be forward to the Chair well in advance of the posting date.

Eron Hodges announced that Jean-Phillippe Rollet will be stepping down as Treasurer effective December 31. The Board will look to identify a new Treasurer at the next TID Meeting. Appreciation was provided to Jean-Phillippe Rollet for his contributions as the Treasurer.

Adjournment

The meeting adjourned at 10:17 a.m. The next regular scheduled meeting is on Thursday, January 9, 2019, 9:00 a.m. at the Hyatt Regency Santa Clara.



City of Santa Clara

Meeting Minutes

Parks & Recreation Commission

11/17/2020

7:00 PM

Virtual Meeting

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

Via Zoom:

<https://santaclaraca.zoom.us/j/91316665755>

Meeting ID: 913 1666 5755 or

Phone: (669) 900-6833

The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than ten (10) people gathering.

CALL TO ORDER AND ROLL CALL

Chair Martinez called the meeting to order at 7:01 PM.

Present 7 - Commissioner Andrew Knaack, Chair Joe Martinez, Commissioner George Guerra, Commissioner Burt Field, Vice Chair Eversley Forte, Commissioner Derreck Carter-House, and Commissioner Kelly Gonzalez

CONSENT CALENDAR

Commissioner Carter-House made a motion, seconded by Commissioner Forte to approve the consent calendar.

Aye: 7 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field, Vice Chair Forte, Commissioner Carter-House, and Commissioner Gonzalez

1.A [20-1086](#) Action on the Parks & Recreation Commission Minutes of the October 20, 2020 Meeting

Recommendation: Approve the Parks & Recreation Commission Minutes of the October 20, 2020 Meeting.

PUBLIC PRESENTATIONS

GENERAL BUSINESS

2. [20-1172](#) Consideration of the Proposed Schematic Design for the Fairway Glen Park Restroom Project

Recommendation: Recommend City Council Approval of the Fairway Glen Park Restroom Project Schematic Design (Option One, or Option Two) and a Park Master Plan Update to include the proposed restroom building.

Commissioner Guerra made a motion, seconded by Commissioner Field to recommend City Council approval of the Fairway Glen Park Restroom Project with Option One (green color), and a Park Master Plan Update to include the proposed restroom.

Aye: 5 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field , and Commissioner Carter-House

Nay: 2 - Vice Chair Forte, and Commissioner Gonzalez

3. [20-1087](#) Introduction of an Integrated Goose Management Plan for Central Park and Recommendation

Recommendation: Recommend Council approval of an Integrated Goose Management Plan for Central Park.

Commissioner Gonzalez made a motion, seconded Commissioner Carter-House to recommend Council approval of an integrated Goose Management Plan for Central Park.

Aye: 7 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field , Vice Chair Forte, Commissioner Carter-House, and Commissioner Gonzalez

4. [20-1079](#) Recommend Eligibility Criteria for the Community Garden Program at the Mini Park Located at 3450 Copper Place

Recommendation: Recommend community garden eligibility criteria (geographic proximity, income, age, and residency) in the following priority order: (1) Santa Clara residents living within the Community Facilities District No. 2019-1 (Lawrence Station) boundaries, (2) Santa Clara residents who are Low Income, (3) Santa Clara residents 55 years and older, and/or families with children under age 18, (4) Other City of Santa Clara residents.

Commissioner Carter-House made a motion, seconded by Commissioner Knaack to recommend approval of community garden eligibility criteria in the order presented in the report.

Aye: 7 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field , Vice Chair Forte, Commissioner Carter-House, and Commissioner Gonzalez

5. [20-1081](#) Recommend Approval of Proposed Community Garden Guiding Principles & Rules for the Mini Park Located at 3450 Copper Road

Recommendation: Recommend that Council approve the Community Garden Guiding Principles & Rules for the Mini Park Located at 3450 Copper Road.

Commissioner Carter-House made a recommendation, seconded by Commissioner Guerra to recommend that Council approve the Community Garden Guiding Principles & Rules for the Mini Park located at 3450 Copper Road.

Aye: 7 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field, Vice Chair Forte, Commissioner Carter-House, and Commissioner Gonzalez

6. [20-1090](#) Recommendation to the Governance and Ethics Committee to Name the New Public Parks located at 5123 Calle Del Sol.

Recommendation: Recommend a name for the Governance and Ethics Committee consideration for the New Public Park and/or the New Public Park Plaza located at 5123 Calle Del Sol (Ensemble Residential Project).

Commissioner Carter-House made a motion, seconded by Commissioner Guerra to recommend the Governance and Ethics Committee consider naming the new public park and new public plaza located at 5123 Calle Del Sol, the Calle Del Sol Micro Plaza.

Aye: 7 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field, Vice Chair Forte, Commissioner Carter-House, and Commissioner Gonzalez

STAFF REPORT

Deputy Director Seale provided an update to the Commission on numerous park projects. The Agnew Park playground rehabilitation project is complete including the newly renovated asphalt pathway. The engineering firm for the Bowers Park Roof Project has been tentatively selected. The Commission has recommended approval of the Fairway Glen Park Restroom Project schematic design with Option 1. Fuller Street Park Phase II (sports courts) is now complete and the Department is working on adding fencing along two sides of the sports courts. The Homeridge Park Playground Rehabilitation Project is now expected to be completed in the couple of weeks. The construction at Lawrence Station Area Plan (LSAP) park playgrounds is near completion with poured in place surfacing installation this week. Weekly construction meeting at LSAP are ongoing. Creekside Park in the Santa Clara Square area will be completed in early 2021. The Montague Park Rehabilitation Project is at the 100% plan phase, with staff focusing on making corrections to the plans based on lessons learned from recent park rehabilitation projects. Construction on the Raymond G. Gamma Dog Park Rehabilitation Project is continuing on schedule. The Reed & Grant Street Sports Park fields are complete, along with the Marsalli Building which will have a final inspection followed by the issuance of a certificate of occupancy in early December.

Director Teixeira informed the Commission about election results, with particular focus on the passage of City of Santa Clara Measure E (Transient Occupancy Tax) that will increase Santa Clara's hotel tax by up to 4% over time to support essential City services, paid by guests staying in hotels. Currently hotels are closed, so it will not have an immediate effect. Long term however, Measure E will provide additional revenue for the City's programming, services, and infrastructure improvements. The Department will be working with partners such as Our City Forest to plant trees and complete volunteer projects in various parks in the future. Director Teixeira described how the rate of spread of COVID-19 in the nation and state has dramatically increased recently. Health and safety protocols are essential for all to practice in order not to jeopardize the community's access to recreation activities and to stay healthy and safe.

Recreation Manager Castro provided the update on recreation programs including the City's Virtual Holiday Tree Lighting with the Kaiser Permanente Intensive Care Unit Team as the honorary tree lighters for the Annual Tree Lighting Ceremony 2020. The virtual event will be broadcast on social media channels on Friday December 4, 2020. The City's holiday programs registration starts on November 18, 2020 with a virtual visit from Santa, gingerbread house making, etc. The Recreation Division is continuing winter programming activities taking into consideration Santa

Clara County is now in the most restrictive purple tier. All programming is done in accordance with CDC, California State, and County guidelines and protocols. The Department continues to provide essential services as Disaster Service Workers, such as the daily distribution of meals at the Senior Center CPOD and the weekly activation of the Food for Families Salvation Army CPOD on Wednesdays starting on November 18, 2020 until the end of the year.

COMMISSIONERS REPORT

Commissioner Carter-House: Visited Lick Mill Park, and Thamien Park, and noticed the increased number of Canada Geese in parks.

Commissioner Field: Visited Reed & Grant Sports Park.

Commssioner Forte: Visited Mary Gomez Park and received feedback from park patrons about adding one barbecue grill to the picnic area. There was also a request for more public swim time at pool facilities.

Commssioner Gonzalez: Visited Santa Clara Youth Soccer Park, and Henry Schmidt Park. She has not noticed signage along the San Tomas Aquino Trail addressing health and safety protocols including social distancing while we cope with the COVID-19 pandemic.

Commissioner Guerra: Visited Mary Gomez Park, and Central Park. The services at the International Swim Center are continuing, which is appreciated.

Commissioner Knaack: Visited Reed & Grant Sports Park, enjoyed the First Kickoff event and thanked staff and everyone involved for bringing the project to completion.

Commissioner Guerra made a motion, seconded by Commissioner Forte to cancel the December 15, Parks & Recreation Commission Meeting.

Aye: 6 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field, Vice Chair Forte, and Commissioner Gonzalez

Nay: 1 - Commissioner Carter-House

ADJOURNMENT

Commissioner Carter-House made a motion, seconded by Commissioner Gonzalez to adjourn the meeting at 9:12 PM until the next regularly scheduled meeting at 7:00 PM on January 19, 2021.

Aye: 7 - Commissioner Knaack, Chair Martinez, Commissioner Guerra, Commissioner Field, Vice Chair Forte, Commissioner Carter-House, and Commissioner Gonzalez



City of Santa Clara

Meeting Minutes

Senior Advisory Commission

11/23/2020

10:00 AM

Virtual Meeting

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.

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join: <https://santaclaraca.zoom.us/j/97590069803>

Or join by phone:

Dial 1-669-900-6833

Webinar ID: 975 9006 9803

International numbers available: <https://santaclaraca.zoom.us/j/97590069803>

The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than ten (10) people gathering. The Chair will be present for the meeting with the staff liaison and commissioners participating remotely.

CALL TO ORDER AND ROLL CALL

The regular meeting was called to order by Chair Grant McCauley at 10:01 am, in memory of Senior Advisory Commissioner Carolyn Seeger who passed away in October.

Present 6 - Commissioner Wanda Buck, Commissioner Judy Hubbard, Chair Grant L. McCauley, Vice Chair Nancy Toledo, Commissioner Helen Narciso, and Commissioner Ana Segovia

CONSENT CALENDAR

1.A [20-1142](#) Senior Advisory Commission Minutes of October 26, 2020

Recommendation: Approve the Senior Advisory Commission Minutes of October 26, 2020.

A motion was made by Vice-Chair Toledo, seconded by Commissioner Narciso, to approve the Senior Advisory Commission minutes of October 26, 2020.

Aye: 6 - Commissioner Buck, Commissioner Hubbard, Chair McCauley, Vice Chair Toledo, Commissioner Narciso, and Commissioner Segovia

PUBLIC PRESENTATIONS

None

GENERAL BUSINESS**2. [20-1143](#) Senior Advisory Commission FY2020/21 Work Plan and Goals**

Relating to goal A.1. - The Commission asked **Supervisor Herb** to reach out to the Parks & Recreation Department Marketing Team for outreach assistance with Nexdoor and the Parks & Recreation Facebook page.

Relating to goal A.2. - **Supervisor Herb** shared the "How to Zoom" article that was placed in the November Senior Center Newsletter.

Relating to goal B.1. - **Commissioners Hubbard and Segovia** shared that they will continue to gather data on transportation options in Santa Clara.

Relating to goal C.1. - **Commissioners Narciso and Buck** shared some potential topics for the Zoom Education Presentations, such as:

- COVID-19 Testing
- COVID-19 Vaccines
- Geriatric Doctors

Relating to goal D.1. - **Chair McCauley and Vice-Chair Toledo** asked the Commission to "save the date" for May 21, 2021 for the Health & Wellness Virtual Fair

Relating to goal D.2. - **Commissioners Hubbard and Segovia** informed the Commission that they will aim to have Elder Fraud Prevention workshops at the end of January, March, and May.

Relating to goal D.3. - **Vice-Chair Toledo** did not have an update as the ADA Committee has not met.

STAFF REPORT

Supervisor Herb shared with the Commission that the Virtual Holiday Tree Lighting event will take place on Friday, December 4 at 6:00 pm.

Recreation Manager Castro informed the Commission about the Food For Families Program in collaboration with the Salvation Army.

Recreation Manager Castro provided an update on the Homeridge Park Project and talked about the Play It Safe message and campaign.

Recreation Manager Castro shared with the Commission that the Parks & Recreation Department will be offering virtual Holiday Programs in December.

COMMISSIONERS REPORT

Chair McCauley inquired about the Magical Bridge Playground project. **Parks & Recreation Director Teixeira** shared with the Commission that the project was moving forward with the design phase.

Chair McCauley asked the Commission if anyone wanted to say anything in memory of Commissioner Seeger.

- **Commissioner Buck** shared that she was a lovely friend.
- **Commissioner Hubbard** shared that she was a sweetheart.
- **Commissioner Narciso** shared that she was warm and welcoming, with a positive attitude.

ADJOURNMENT

A motion was made by Commissioner Hubbard, seconded by Commissioner Narciso, that the meeting be adjourned at 11:49 am.

Aye: 6 - Commissioner Buck, Commissioner Hubbard, Chair McCauley, Vice Chair Toledo, Commissioner Narciso, and Commissioner Segovia

The next scheduled meeting is on January 25, 2021 and will be a virtual meeting



City of Santa Clara

Meeting Minutes

Planning Commission

10/14/2020

5:00 PM

City Hall Council Chambers

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/961068578>
 - Meeting ID: 961 068 578 or
 - o Phone: 1(669) 900-6833
- Via the City's eComment (now available during the meeting)

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.

Public Comments prior to meeting may be submitted via email to planningcommission@santaclaraca.gov no later than noon on the day of the meeting; and also before and during the meeting via eComment. To utilize eComment, please visit the following website: <https://santaclara.legistar.com/Calendar.aspx>, and select the "eComment" link next to the Planning Commission meeting for October 14.

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. Planning Commissioners will be participating remotely. A limited number of staff will also be present.

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

PUBLIC PARTICIPATION IN ZOOM WEBINAR: Please follow the guidelines below when participating in a Zoom Webinar:

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

5:00 PM STUDY SESSION

Call to Order

Due to technical difficulties the meeting start time was delayed. **Chair Saleme** called the meeting to order at 5:18 p.m.

Pledge of Allegiance and Statement of Values

Roll Call

Present 7 - Commissioner Yuki Ikezi, Commissioner Suds Jain, Chair Lance Saleme, Commissioner Anthony Becker, Vice Chair Nancy A. Biagini, Commissioner Priya Cherukuru, and Commissioner Ricci Herro

[20-833](#)**STUDY SESSION: Climate Action Plan (CAP) Update**

Associate Planner Nimisha Agrawal provided an update on the Climate Action Plan. She informed the Commission that the initial actions list had new additions, greenhouse gas targets, considerations for the integrated resources plan, and feedback from the survey. **Walker Wells, Raimi and Associates**, shared the results of the analysis. **Ann Hatcher, Assistant Director of Silicon Valley Power**, answered questions from the Commission regarding SVP's involvement. **John Davidson, Principal Planner**, clarified the term of the IRP. **Sami Taylor, Raimi and Associates**, shared the number of EV chargers expected by 2030 and percentage of electric vehicles by 2045.

Commissioners expressed support in the reduction of vehicle miles traveled and in going beyond the state's requirements and asked questions regarding the timeline.

An ecomment received from a member of the public, **Janelle London**, was read aloud during the meeting urging the Commission to include a CAP goal to reduce annual gasoline sales in Santa Clara.

Public Speakers:

Kristel Wickham, Sunnyvale resident, expressed support to the complete transition to greenhouse gas-free electricity and voiced concern for the reduced EV infrastructure for affordable housing.

Jenny Green, Mothers Out Front Silicon Valley member, expressed support for the City's all-electric reach code with strong EV charging requirements.

The meeting went into recess at 6:24 p.m. and reconvened at 6:32 p.m.

6:30 PM REGULAR MEETING**DECLARATION OF COMMISSION PROCEDURES**

Secretary Cherukuru and **Chair Saleme** read the Declaration of Commission Procedures.

CONTINUANCES/EXCEPTIONS

None.

CONSENT CALENDAR

1.A [20-985](#) Planning Commission Meeting Minutes of May 27, 2020 Meeting

Recommendation: Approve the Planning Commission Minutes of the May 27, 2020 Meeting.

Commissioner Jain pulled Item 1.A to propose amended language for the minutes.

Commissioner Jain expressed support for the inclusion of comments made by Commissioners and stated that he would like to see the discussion of parking and the expansion of the project size reflected in the minutes.

A motion was made by Commissioner Cherukuru, seconded by Commissioner Becker to approve staff recommendation with amended language proposed by Commissioner Jain.

Aye: 5 - Commissioner Ikezi, Commissioner Jain, Chair Saleme, Commissioner Becker, and Commissioner Cherukuru

Abstained: 1 - Commissioner Herro

Recused: 1 - Vice Chair Biagini

PUBLIC PRESENTATIONS

There were no public presentations.

PUBLIC HEARING

2. [20-842](#) Public Hearing: Action on Appeal of Architectural Review Approval by the Community Development Director for the property at 2847 Sycamore Way

Recommendation: 1. Adopt a resolution to deny the appeal and uphold the Community Development Director's approval of the proposed addition at 2847 Sycamore Way.

Commissioner Ikezi recused for Item 2 due to the proximity of her residence to the property.

Associate Planner Nimisha Agrawal provided a PowerPoint presentation.

Chair Saleme and Commissioner Becker inquired if they could participate in voting on this item, as they were members of the Architectural Committee in 2018 when a different application for the same property was heard at an Architectural Committee meeting. **Assistant City Attorney Alexander Abbe** clarified that this was a new application, with different design parameters from the 2018 application, and so they could participate on this item.

Commissioners inquired about the neighbors' comments, if there was a historical significance request for this neighborhood, and the bedroom count for the residence. **Development Review Officer Gloria Sciara** clarified that the proposed changes are allowed to be made in this neighborhood under the current code. **Planning Manager Reena Brilliot** clarified the code change for the administrative approvals based on the bedroom count in residences.

The appellants, **Dan and Debbie Smith**, provided a presentation. Neighbor **Suhas Sheshadri** also made a presentation and voiced his comments supporting the appeal.

The applicant, **Edna Jeon**, provided a presentation supporting the remodel.

Public Speakers:

Judith Blanco, neighbor, provided a presentation supporting the appeal. **Chair Saleme** granted two extra minutes to complete the presentation. **Alan Dillon**, neighbor, stated that no house in the neighborhood has been allowed to relocate the garage previously.

Applicant **Edna Jeon** provided a rebuttal followed by a rebuttal from neighbor **Suhas Sheshadri** and appellant **Dan Smith**.

Commissioners expressed support for the remodel and stated that the proposal is in compliance with the codes.

A motion was made by Commissioner Cherukuru, seconded by Commissioner Becker to close public hearing.

Aye: 6 - Commissioner Jain, Chair Saleme, Commissioner Becker, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro

Recused: 1 - Commissioner Ikezi

A motion was made by Commissioner Cherukuru, seconded by Commissioner Biagini to approve the staff recommendation.

Aye: 5 - Commissioner Jain, Chair Saleme, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro

Nay: 1 - Commissioner Becker

Recused: 1 - Commissioner Ikezi

REPORTS OF COMMISSION/BOARD LIAISON AND COMMITTEE:

1. Announcements/Other Items

Planning Manager Reena Brilliot provided updates.

2. Commissioner Travel and Training Reports, Requests to attend Trainings

Planning Manager Reena Brilliot requested that Commissioners inform staff in advance if there are trainings and speakers they would like to make presentations at an upcoming meeting. **Commissioner Biagini** expressed interest in attending the Planning Commission Academy in Spring if held virtually.

DIRECTOR OF COMMUNITY DEVELOPMENT REPORTS:

1. Planning Commission Budget Update

Development Review Officer Gloria Sciara provided updates.

2. Upcoming Agenda Items

Planning Manager Reena Brilliot provided updates.

3. City Council Actions

Development Review Officer Gloria Sciara provided updates.

ADJOURNMENT:

A motion was made by Commissioner Becker, seconded by Commissioner Biagini to adjourn the meeting.

The meeting adjourned at 8:41 p.m.

The next regularly scheduled meeting is Wednesday, October 28, 2020.

Aye: 7 - Commissioner Ikezi, Commissioner Jain, Chair Saleme, Commissioner Becker, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro



City of Santa Clara

Meeting Minutes

Planning Commission

12/09/2020

6:00 PM

City Hall Council Chambers

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/91729202898>
Webinar ID: 917 2920 2898 or
 - o Phone: 1(669) 900-6833
- Via the City's eComment (now available during the meeting)

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.

Public Comments prior to meeting may be submitted via email to PlanningPublicComment@SantaClaraCA.gov no later than noon on the day of the meeting; and also before and during the meeting via eComment. To utilize eComment, please visit the following website: <https://santaclara.legistar.com/Calendar.aspx>, and select the "eComment" link next to the Planning Commission meeting date.

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. Planning Commissioners will be participating remotely. A limited number of staff will also be present.

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

PUBLIC PARTICIPATION IN ZOOM WEBINAR: Please follow the guidelines below when participating in a Zoom Webinar:

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

6:00 PM REGULAR MEETING

Call to Order

Chair Saleme called the meeting to order at 6:01 p.m.

Pledge of Allegiance and Statement of Values

Roll Call

Present 5 - Commissioner Yuki Ikezi, Chair Lance Saleme, Vice Chair Nancy A. Biagini, Commissioner Priya Cherukuru, and Commissioner Ricci Herro

DECLARATION OF COMMISSION PROCEDURES

Secretary Cherukuru read the Declaration of Commission Procedures.

CONTINUANCES/EXCEPTIONS

None.

CONSENT CALENDAR

Chair Saleme inquired if voting could take place with only five Planning Commissioners present; **Assistant City Attorney Alexander Abbe** confirmed this would constitute valid voting.

1.A [20-1083](#) Planning Commission Meeting Minutes of July 15, 2020 Meeting

Recommendation: Approve the Planning Commission Minutes of the July 15, 2020 Meeting

Commissioner Herro abstained from voting on Item 1.A since he was not a Planning Commissioner at the time of the meeting.

A motion was made by Commissioner Biagini, seconded by Commissioner Ikezi to approve the consent calendar.

Aye: 4 - Commissioner Ikezi, Chair Saleme, Vice Chair Biagini, and Commissioner Cherukuru

Abstained: 1 - Commissioner Herro

1.B [20-1225](#) Planning Commission Meeting Minutes of November 18, 2020 Meeting

Recommendation: Approve the Planning Commission Minutes of the November 18, 2020 Meeting

A motion was made that this item be Approved.

Aye: 5 - Commissioner Ikezi, Chair Saleme, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro

PUBLIC PRESENTATIONS

None.

PUBLIC HEARING

A motion was made by Commissioner Ikezi, seconded by Commissioner Cherukuru to move Public Hearing Item 2 to be heard before Item 3.

Aye: 5 - Commissioner Ikezi, Chair Saleme, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro

3. [20-1207](#) Public Hearing: Action on a Use Permit for allow retail use (nail salon) at 3194 De La Cruz Boulevard (Unit #10)

Recommendation: Adopt a Resolution to Approve a Use Permit to allow a retail use (nail salon) at 3194 De La Cruz Boulevard, subject to conditions of approval.

Senior Planner Rebecca Bustos provide a PowerPoint presentation.

Juliana Sommer spoke on behalf of the Applicant, Elite Nail Spa.

Commissioners asked if there were commercial businesses in the vicinity of this retail application; **Development Review Officer Gloria Sciara** replied there are.

Commissioners commented they are in support of local businesses. **Commissioner Cherukuru** inquired on how parking ratios are determined by the City. **Senior Planner Rebecca Bustos and Assistant City Attorney Alexander Abbe** provided clarification.

A motion was made by Commissioner Cherukuru, seconded by Vice Chair Biagini, to close public hearing.

Aye: 5 - Commissioner Ikezi, Chair Saleme, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro

Commissioner Ikezi thanked the applicant for choosing to open their business in the City of Santa Clara.

A motion was made by Commissioner Cherukuru, seconded by Chair Saleme to approve this item.

Aye: 5 - Commissioner Ikezi, Chair Saleme, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro

2. [20-534](#) Planning Commission Study Session: Freedom Circle Focus Area

Principal Planner John Davidson provided a PowerPoint presentation.

Commissioners asked clarifying questions regarding the location of the specific area and about affordable housing, and sustainability goals.

Principal Planner John Davidson said the focus area is not a specific plan and if Developers want to build housing in this area later they can, subject to the creation of a Specific Plan, and that the EIR will be available in May 2021 and expectations are that this will be heard at a Council meeting in the Fall of 2021; the plan and EIR will be available to the Commission for review in May.

Commissioner Herro had questions on the limited amount of retail spaces; **Principal Planner John Davidson** replied that Greystar's plan is to have limited retail at this time. Commissioners inquired if there was a plan for buildings to be demolished; it is expected that some existing buildings will remain. In reply to a question from Commissioners asking if Great America wanted to expand in this area **Principal Planner John Davidson** commented that most likely not, but he will reach out to them to get an answer.

Chair Saleme inquired regarding transit issues considering the high density of this development. VTA has received the plans and they are aware of the proposed development in that area and they will be asked again about the plans as the project moves forward. **Principal Planner John Davidson** clarified the outreach that has taken place thus far on the proposed project to the surrounding areas.

REPORTS OF COMMISSION/BOARD LIAISON AND COMMITTEE:

1. Announcements/Other Items

Development Review Officer Gloria Sciara provided updates that appointment of a Planning Commissioner will take place in January 2021 at an upcoming Council meeting. **Development Review Officer Gloria Sciara** provided an update on the Essex Property project at 2700 El Camino Real and announced that the retail has spun off to another developer; the new developer is drafting plans now for the commercial development.

2. Commissioner Travel and Training Reports, Requests to attend Trainings

Chair Saleme announced he attended the SVP EV remote presentation and would like to suggest that this be brought to the Planning Commission as a Study Session.

Staff announced that once the LCC website has updates on the Planning Commissioner Academy, taking place March 24 - 26, 2021, details will be provided to the Commission.

DIRECTOR OF COMMUNITY DEVELOPMENT REPORTS:

1. Planning Commission Budget Update

Planning Manager Reena Brilliot and Office Specialist IV Elizabeth Elliott provided updates.

2. Upcoming Agenda Items

Planning Manager Reena Brilliot provided updates and requested that Commissioners provide information to staff if there are any speakers they would like to make presentations at upcoming meeting.

Assistant City Attorney Alexander Abbe announced he will provide an update to the Commission on Housing Legislation in the near future.

3. City Council Actions

Development Review Officer Gloria Sciara provided updates.

ADJOURNMENT:

A motion was made by Commissioner Cherukuru, seconded by Commissioner Ikezi to adjourn the meeting.

The meeting adjourned at 7:34 p.m.

The next regular meeting is scheduled for January 27, 2021, at 6 p.m.

Aye: 5 - Commissioner Ikezi, Chair Saleme, Vice Chair Biagini, Commissioner Cherukuru, and Commissioner Herro



Agenda Report

21-1200

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on the Adoption of a Resolution Accepting the AB1600 Report on Development Impact Fees for Fiscal Year Ended June 30, 2020

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

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

DISCUSSION

Attached is the AB1600 Report on Development Impact Fees for the fiscal year ended June 30, 2020. This report is supplied pursuant to Government Code Section 66006(b). Staff has also determined that the City has Traffic Mitigation funds of \$3,912,522, Sanitary Sewer Conveyance Fees of \$1,298,366, and Storm Drain Impact funds of \$226,974 exceeding the five-year limit. However, as these funds have been budgeted to fund future projects, the City does not have any refund exposure. Therefore, Staff is submitting the attached Resolution to accept the AB1600 Report and make findings that there is a continuing need for these unexpended balances of impact fees.

On January 21, 2021, the City posted notice and made copies of the report available for public review in the City Clerk's Office, the Finance Department, and online at www.Santaclaraca.gov/Finance. In addition, written notice of the time and place of the regularly scheduled City Council meeting on February 9, 2021, along with a copy of the AB1600 Report, were sent to interested parties as requested.

Staff has scheduled a review of this report for the regularly scheduled City Council meeting on February 9, 2021. More than 15 days will have elapsed as of the date of Council review since the report was made available to the public, as required by applicable state law.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a

fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

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

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Adopt a Resolution accepting the status report on the receipt and use of AB1600 Development Impact Fees during fiscal year ending June 30, 2020.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

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

AB1600 REPORT ON DEVELOPMENT IMPACT FEES

For Fiscal Year ended June 30, 2020

BACKGROUND

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

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

The Traffic Mitigation Fee, Sanitary Sewer Outlet Fee, Sanitary Sewer Connection Fee, Sanitary Sewer Conveyance Fee, Storm Drain Fee, and Parks Mitigation Fee that the City of Santa Clara (City) collects qualify as Development Impact Fees and therefore must comply with the above referenced Government Code Sections. The amount of each of these development impact fees for fiscal year 2019-20 is reflected in the City's Municipal Fee Schedule, previously adopted by the City Council. The schedule is available at <https://www.santaclaraca.gov/home/showpublisheddocument?id=67280>. As required by law, these fees are segregated and accounted for as Special Revenue Funds. Government Code Section 66001 requires the City to make available to the public certain information regarding these fees for each fund within 180 days after the end of each fiscal year. Accordingly, the following report is presented to the City Council for review.

ANALYSIS

Using the accounting method known as first in, first out (FIFO), which means the first revenue received is assumed to be the first spent, staff analyzed the annual balances at the end of fiscal year 2019-20 to determine what portion, if any, of the balance was five or more years old. If a balance is more than five years old, a review of previously identified projects is undertaken to determine if any developer fees collected need to be refunded.

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

Traffic Mitigation Fee

The Traffic Mitigation Fee is levied to fund improvements or programs to mitigate City traffic problems that result either directly or indirectly from development projects. To determine the traffic mitigation fees the City conducts a Traffic Impact Fee Nexus study. The most recent report was approved by Council August 21, 2018. The basis of Santa Clara's traffic impact fee is the number of net new PM peak hour vehicle trips generated by new development. Those additional trips result in the traffic impacts the fee is intended to mitigate. The fee is calculated by dividing the total cost of the projects in the Traffic Mitigation Program by the number of additional PM peak hour trips generated by new development, which results in a "per PM peak hour trip" fee amount. For simplicity of application, this fee is then converted to a fee per square foot, per hotel room, or per dwelling unit, based on the trip generation rates in the latest ITE Trip Generation Manual. The fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

The following table summarizes the activity for the Traffic Mitigation Fund from 2015-16 through 2019-20.

Fund 123 & 533	2015-16	2016-17	2017-18	2018-19	2019-20
Beginning Balance	\$ 9,359,921	\$ 7,852,470	\$ 8,711,428	\$ 8,448,382	\$ 10,353,046
Developer Fees	1,242,270	1,370,084	855,324	1,958,563	182,518
Interest Income	50,840	81,481	115,449	196,524	200,204
Expenditures	(2,800,561)	(592,607)	(1,233,819)	(250,423)	(286,796)
Ending Balance	<u>\$ 7,852,470</u>	<u>\$ 8,711,428</u>	<u>\$ 8,448,382</u>	<u>\$ 10,353,046</u>	<u>\$ 10,448,972</u>

During 2019-20, the City collected \$182,518 of traffic mitigation fees, earned \$200,204 from interest and incurred \$286,796 of project expenditures. The grand total of the Traffic Impact Fee fund balance that is available at the end of 2019-20 is \$10,448,972 of which \$3,912,522 has been held for over five years. Exhibit A identifies the projects that will make use of all unspent fees held over five years.

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

Sanitary Sewer Outlet Fee

The Sanitary Sewer Outlet Fee is collected from developers to construct public sanitary sewer facilities. City Council passed Ordinance 1778 on December 3, 2002 which created the sanitary sewer outlet charge which is used for the acquisition, construction, reconstruction, maintenance, and operation of off-site sewerage facilities, and to repay principal and interest on bonds issued for the construction and reconstruction of such sewerage facilities. The fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

The following table summarizes the activity for the Sanitary Sewer Outlet Fees from 2015-16 through 2019-20.

Fund 594	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Beginning Balance	\$ (2,568,007)	\$ (2,547,612)	\$ (2,075,945)	\$ (1,831,352)	\$ (1,588,864)
Developer Fees	20,395	471,667	244,593	242,488	299,980
Expenditures	-	-	-	-	-
Ending Balance	<u>\$ (2,547,612)</u>	<u>\$ (2,075,945)</u>	<u>\$ (1,831,352)</u>	<u>\$ (1,588,864)</u>	<u>\$ (1,288,884)</u>

The amount of developer fees collected in 2019-20 was \$299,980. The outstanding balance in the Sanitary Sewer Outlet Fee Fund at the end of 2019-20 is (\$1,288,884). Amounts have been transferred within the Sewer Enterprise Fund to make up the negative balance for Capital Projects financed with AB1600 development fees.

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

Sanitary Sewer Connection Fee

The Sanitary Sewer Connection Fee was adopted to improve and expand the sewer collection system. City Council passed Ordinance 1428 on August 25, 1981 which created the sanitary sewer connection charge which is charged whenever a property is initially connected or requires an addition of a new connection to the sanitary sewer system. The fee is charged based on type of dwelling unit for residential (single family, duplex, condominium, etc.) and non-residential which charges based on connection size. The fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

The following table summarizes activity for the Sanitary Sewer Connection Fee from 2015-16 through 2019-20.

Fund 594	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Beginning Balance	\$ (26,936,382)	\$ (38,526,561)	\$ (50,329,856)	\$ (74,240,874)	\$ (87,737,999)
Developer Fees	1,338,418	2,350,574	1,625,820	2,303,752	1,124,123
Expenditures	(12,928,597)	(14,153,869)	(25,536,838)	(15,800,877)	(30,027,721)
Ending Balance	<u>\$ (38,526,561)</u>	<u>\$ (50,329,856)</u>	<u>\$ (74,240,874)</u>	<u>\$ (87,737,999)</u>	<u>\$ (116,641,597)</u>

During 2019-20, the City collected \$1,124,123 from developer fees and spent \$30,027,721. The current year deficit along with prior cumulative deficits brought the impact fee balance to (\$116,641,597) as of 2019-20. Amounts have been transferred within the Sewer Enterprise Fund to make up the negative balance for Capital Projects financed with AB1600 development fees.

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

Sanitary Sewer Conveyance Fee

The Sewer Conveyance Fee was approved by City Council in June 2007 and is intended to mitigate development impacts to the City's sanitary sewer conveyance system resulting from increases in the sanitary sewer discharges. The amount of Sanitary Sewer Conveyance Fee is based directly on the potential sewer discharge volumes of the proposed land uses. The fee was based on a Sanitary Sewer Capacity Assessment Report 2006, and subsequent update in 2016. The basis of Santa Clara's sewer conveyance fee is sewer flow rate generated by the new development. The fee is calculated by dividing the total cost of the capacity improvement projects in the Sanitary Sewer Master Plan or its predecessor reports by the total projected sanitary sewer flow rate generated by future developments, which results in a "per gallon per day (GPD)" fee amount. The per GPD fee multiplied by the estimated sanitary sewer flow rate (GPD) generated by a new development is the sanitary sewer conveyance fee for that new development.

The following table summarizes the activity for the Sanitary Sewer Conveyance Fees from 2015-16 through 2019-20.

Fund 594	2015-16	2016-17	2017-18	2018-19	2019-20
Beginning Balance	\$ 11,504,407	\$ 13,737,225	\$ 22,504,850	\$ 26,847,028	\$ 34,179,296
Developer Fees	2,851,396	8,630,774	4,136,935	6,916,161	4,079,586
Interest Income	103,444	211,354	307,104	515,362	705,177
Expenditures	(722,022)	(74,503)	(101,861)	(99,255)	(731,873)
Ending Balance	\$ 13,737,225	\$ 22,504,850	\$ 26,847,028	\$ 34,179,296	\$ 38,232,186

The current year's developer fees and interest income of \$4,079,586 and \$705,177 respectively, were partially offset by expenditures of \$731,873. The net change resulted in a current balance of \$38,232,186 of which \$1,298,366 has been held for over five years. Exhibit A identifies the project that will make use of all unspent fees held over five years.

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

Storm Drain Fee

The Storm Drain Fee is levied to mitigate City storm drainage that results either directly or indirectly from development projects. The Storm Drain Outlet Fee is codified in the Santa Clara City Code Section 17.15.220 Sanitary Sewer and Storm Drains and was created for the purpose of defraying the estimated costs of constructing planned drainage facilities for removal of surface and storm waters from local drainage areas. The fee is charged based on the amount of acreage being developed with a project. The fee shall automatically adjust for inflation annually at the start of each fiscal year, based on the latest Engineering News Record Construction Cost Index.

The following table summarizes the activity for the Storm Drain Fees from 2015-16 through 2019-20.

Fund 535	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Beginning Balance	\$ 467,327	\$ 552,889	\$ 555,070	\$ 626,783	\$ 586,578
Developer Fees	239,376	10,375	67,194	5,749	15,409
Interest Income	4,163	5,213	4,760	8,845	11,312
Expenditures	(157,977)	(13,407)	(241)	(54,799)	-
Ending Balance	<u>\$ 552,889</u>	<u>\$ 555,070</u>	<u>\$ 626,783</u>	<u>\$ 586,578</u>	<u>\$ 613,299</u>

During 2019-20, the City collected \$15,409 from developer fees and earned \$11,312 from interest. The grand total of the Storm Drain Fees that is available at the end of 2019-20 is \$613,299 of which \$226,974 has been held for over five years. Exhibit A identifies the projects that will make use of all unspent fees held over five years.

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

Parks Mitigation Fee

The Parks Mitigation Fee was adopted in fiscal year 2014-15 and went into effect for the 2016-17 fiscal year. Fees received can be used to provide (acquire) public parkland and/or make necessary park improvements according to the restrictions of the Mitigation Fee Act and help the City to address its park, recreation and open space needs. The City of Santa Clara completed a Parks & Recreation Facilities Development Impact Fee Study in 2014 and in 2019 that were reviewed and approved by the City Council after community and stakeholder public comment hearings. These reports provide the necessary findings required by the Mitigation Fee Act and Quimby Act for the adoption of the fees by Council resolution contained in the Municipal Fee Schedule. These reports provide the facility cost and land acquisition cost data and analysis and describe the methodology for calculation of the fees.

The parks and recreation facilities fees use an existing inventory demand standard translated into facility costs per capita to determine new development's fair share of planned facility costs. A cost standard provides a reasonable method for converting disparate types of facilities, in this case parkland and special use recreational facilities, into a single measure of demand (capital cost per capita). The cost standard is based on the existing inventory of parks and recreation facilities. New residential development would fund the expansion of facilities at the same rate that existing residential development has provided facilities to date. The City uses the existing ratio of developed parkland per 1,000 residents. In 2010 the standard was 2.45. The current standard is 2.60. (Quimby Act allows 3.0 acres/1,000 resident Standard).

The formula to calculate the cost per capita of providing new park facilities involves the following variables: (A) the value per acre of parkland by Zip Code Area of the City (95050, 90551, and 95054) as established by annual appraisal; (B) the Level of Service standard (parkland acres per 1,000 residents); (C) Cost per 1,000 Capita; (D) cost per capita; (F) Development land use type density per household (Single Family = 2.98, Multifamily = 2.40); (G) the per capita value of parkland improvements, and (H) a 2% in lieu fee program administrative charge. The formula used is $C = A \times B$, $D = C/1,000$. This cost per capita for parkland (D), and the cost per capita for improvements (G), are each multiplied by the density of development type (F): $D \times F + G \times F = \text{Base Fee (E)}$. The administrative fee (H) is then added to the Base Fee (E) for the "Total Fee" (I) for each Zip Code Area: $H + E = I$.

The calculation tables are provided in the in-Lieu Fee Resolution adopted by Council and posted on the City website and incorporated into the Municipal Fee Schedule. Based on the date the resident developer's Project application is deemed complete, the total parkland due can be calculated, the developed parkland dedicated, and credits deducted for eligible on-site recreational amenities.

The following table summarizes the activity for the Parks Mitigation Fee from 2015-16 through 2019-20.

Fund 532	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Beginning Balance	\$ -	\$ -	\$ 13,505,806	\$ 10,545,074	\$ 5,261,415
Developer Fees	-	14,780,447	-	268,091	7,159,545
Interest Income	-	90,301	147,253	111,431	176,942
Expenditures	-	(1,364,942)	(3,107,985)	(5,663,181)	(1,826,379)
Ending Balance	<u>\$ -</u>	<u>\$ 13,505,806</u>	<u>\$ 10,545,074</u>	<u>\$ 5,261,415</u>	<u>\$ 10,771,523</u>

During 2019-20, the City collected \$7,159,545 for Park Mitigation fees, earned \$176,942 from interest, and incurred \$1,826,379 of project expenditures. The grand total of the Parks Mitigation Fee that is available at the end of 2019-20 is \$10,771,523. There are no fees that have been held over five years.

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

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

Attachments:

Exhibit A: Summary of Development Impact Fees

Exhibit A

City of Santa Clara Summary of Local Agency Improvement Fees (AB 1600 Development Impact Fees) Report for Fiscal Year Ended June 30, 2020

Streets and Highways (Fund 123 & 533)

Traffic Mitigation Fee (Fund 123 and 533)	
FY 2018-19 Ending Fund Balance	\$ 10,353,046
Fees Collected	182,518
Interest Earned	200,204
Expenditures	(286,796)
FY 2019-20 Ending Fund Balance	\$ 10,448,972
Funds Accumulated in Current and Last 5 Years	\$ 6,536,450
Funds Held Longer than 5 Years	\$ 3,912,522
Projects Programmed for Impact Fees	\$ 7,814,973

					Traffic Mitigation Fee Since Inception Date Through June 30, 2020				FY 2019-20 Impact Fee Expenditure
Project #	Description	Project Status/ Estimated Completion Year	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	
1209	Agnew Road/De La Cruz Blvd Signal Timing	2020	\$ 1,108,258	100%	51%	\$ 560,000	\$ 560,000	\$ -	\$ -
1210	Mission College Bike Lanes	2020	476,355	100%	77%	366,855	366,855	-	13,989
1214	Coleman Avenue Widening	2023	190,000	100%	39%	74,332	79	74,253	-
1215	Sidewalk Installation Program	Ongoing	189,579	100%	40%	75,832	30,208	45,624	-
1216	Traffic Studies and Signal Needs Assessment/Upgrade	Ongoing	500,000	100%	64%	320,000	154,350	165,650	-
1217	Central Control Traffic Signal Upgrade	2022	2,494,800	100%	85%	2,122,871	1,532,741	590,130	44,292
1218	Traffic Pre-Emptors	2022	1,145,259	100%	92%	1,058,104	505,602	552,502	-
1219	Traffic Signal Enhancements	Ongoing	734,141	100%	100%	734,141	530,004	204,137	-
1220	Pedestrian and Bicycle Enhancement Facilities	Ongoing	1,765,224	100%	100%	1,765,224	1,378,452	386,772	44,896
1221	Traffic Monitoring at Various Locations- Phase "C"	2026	362,000	100%	100%	362,000	123,783	238,217	-
1222	Citywide Accessible Pedestrian Signal Installation	Ongoing	200,000	100%	100%	200,000	11,232	188,768	-
1224	Traffic Signal Replacement - ECR-Lafayette, Homestead, Scott Area	2023	2,149,000	100%	35%	757,500	2,510	754,990	-
1229	Traffic Signal Installation Pruneridge at Cronin	2020	729,812	100%	11%	80,859	80,859	-	-
1233	Pedestrian Master Plan	2020	307,135	100%	9%	27,921	-	27,921	-
1236	Traffic Signal Modification	2025	1,330,000	100%	94%	1,250,000	7,100	1,242,900	-
1237	MCB/GAP Intersection Improvement	2021	8,368,124	100%	40%	3,330,400	1,240,071	2,090,329	85,619
1238	Pedestrian Crosswalk Sensors	2021	300,000	100%	100%	300,000	-	300,000	-
1243	Install Sidewalks on San Tomas Expressway	2020	182,982	100%	100%	182,982	182,982	-	-
1245	Benton Bike Lane	2021	150,000	100%	49%	73,000	-	73,000	-
1249	Multimodal Improvement Plan	2021	740,000	100%	32%	238,280	-	238,280	-
1351	HAWK Beacon Scott and Harrison	2020	750,000	100%	73%	544,000	-	544,000	-
1353	Saratoga Bike Lane	2021	71,000	100%	46%	32,500	-	32,500	-
1376	Vehicle Emission Reduction	Ongoing	65,000	100%	100%	65,000	-	65,000	-
1391	Bowers Ave Signal Timing	2020	948,000	100%	10%	98,000	98,000	-	98,000
Totals			\$ 25,256,669			\$ 14,619,801	\$ 6,804,828	\$ 7,814,973	\$ 286,796

Exhibit A

City of Santa Clara Summary of Local Agency Improvement Fees (AB 1600 Development Impact Fees) Report for Fiscal Year Ended June 30, 2020

Sanitary Sewer Outlet Fee (Fund 594)

Sanitary Sewer Outlet Fee (Fund 594)	
FY 2018-19 Ending Fund Balance	\$ (1,588,864)
Fees Collected	299,980
Interest Earned	-
Expenditures	-
FY 2019-20 Ending Fund Balance	\$ (1,288,884)
Funds Accumulated in Current and Last 5 Years	\$ 1,348,742
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ -

					Sanitary Sewer Outlet Fee Since Inception Date Through June 30, 2020				FY 2019-20 Impact Fee Expenditure
Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining ⁽¹⁾	
1907	Development Extensions	Ongoing	\$ 220,445	100%	100%	220,445	1,509,329	\$ (1,288,884)	\$ -

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

Exhibit A

City of Santa Clara
Summary of Local Agency Improvement Fees
(AB 1600 Development Impact Fees)
Report for Fiscal Year Ended June 30, 2020

Sanitary Sewer Connection Fee (Fund 594)

Sanitary Sewer Connection Fee (Fund 594)	
FY 2018-19 Ending Fund Balance	\$ (87,737,999)
Fees Collected	1,124,123
Interest Earned	-
Expenditures	(30,027,721)
FY 2019-20 Ending Fund Balance	\$ (116,641,597)
Funds Accumulated in Current and Last 5 Years	\$ 10,815,048
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ -

					Sanitary Sewer Connection Fee				
					Since Inception Date Through June 30, 2020				
Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining ⁽¹⁾	FY 2019-20 Impact Fee Expenditure
1908	S.J.- S.C. Regional Wastewater Facility	Ongoing	\$ 153,797,577	100%	8%	12,172,057	128,813,654	\$ (116,641,597)	\$ 30,027,721

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

Exhibit A

City of Santa Clara
Summary of Local Agency Improvement Fees
(AB 1600 Development Impact Fees)
Report for Fiscal Year Ended June 30, 2020

Sanitary Sewer Conveyance Fee (Fund 594)

Sanitary Sewer Conveyance Fee (Fund 594)	
FY 2018-19 Ending Fund Balance	\$ 34,179,296
Fees Collected	4,079,586
Interest Earned	705,177
Expenditures	(731,873)
FY 2019-20 Ending Fund Balance	\$ 38,232,186
Funds Accumulated in Current and Last 5 Years	\$ 36,933,820
Funds Held Longer than 5 Years	\$ 1,298,366
Projects Programmed for Impact Fees	\$ 18,350,408

					Sanitary Sewer Conveyance Fee				
					Since Inception Date Through June 30, 2020				
Project #	Description	Project Status	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	FY 2019-20 Impact Fee Expenditure
1909	Sanitary Sewer Capacity Improvements	Ongoing	\$ 28,275,703	100%	100%	28,275,703	9,925,295	\$ 18,350,408	\$ 731,873

Exhibit A

City of Santa Clara Summary of Local Agency Improvement Fees (AB 1600 Development Impact Fees) Report for Fiscal Year Ended June 30, 2020

Storm Drain Fee (Fund 535)

Storm Drain Fee (Fund 535)		
FY 2018-19 Ending Fund Balance	\$	586,578
Fees Collected		15,409
Interest Earned		11,312
Expenditures		-
FY 2019-20 Ending Fund Balance	\$	613,299
Funds Accumulated in Current and Last 5 Years	\$	386,325
Funds Held Longer than 5 Years	\$	226,974
Projects Programmed for Impact Fees	\$	278,469

					Storm Drain Fee					
					Since Inception Date Through June 30, 2020					
Project		Project Status	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	FY 2019-20 Impact Fee Expenditure	
#	Description									
1831	Miscellaneous Storm Drain Improvements	Ongoing	\$ 316,577	100%	32%	100,000	-	100,000	\$	-
1834*	Storm Drain System Improvement	Ongoing	425,374	100%	100%	425,374	392,106	33,268		
1835	Storm Drain Outfall Reconstruction Program	Ongoing	1,673,000	100%	39%	650,000	504,799	145,201		-
Totals			\$ 2,414,951			\$ 1,175,374	\$ 896,905	\$ 278,469	\$	-

* Impact fee appropriations were reduced by \$100,000 in fiscal year 2019-20

City of Santa Clara
Summary of Local Agency Improvement Fees
(AB 1600 Development Impact Fees)
Report for Fiscal Year Ended June 30, 2020

Parks Mitigation Fee (Fund 532)

Parks Mitigation Fee (Fund 532)	
FY 2018-19 Ending Fund Balance	\$ 5,261,415
Fees Collected	7,159,545
Interest Earned	176,942
Expenditures	(1,826,379)
FY 2019-20 Ending Fund Balance	\$ 10,771,523
Funds Accumulated in Current and Last 5 Years	\$ 22,734,010
Funds Held Longer than 5 Years	\$ -
Projects Programmed for Impact Fees	\$ 4,128,858

					Parks Mitigation Fee				
					Since Inception Date Through June 30, 2020				
Project #	Description	Project Status/ Estimated Completion Year	Total Project Appropriation All Funding Sources	Funding Status	% Impact Fee Funded	Total Impact Fee Appropriation	Total Impact Fee Expenditures	Impact Fee Appropriation Remaining	FY 2019-20 Impact Fee Expenditure
3001	Misc. Park Improvements	Ongoing	\$ 2,265,374	100%	26%	\$ 591,400	200,000	\$ 391,400	\$ -
3177	Youth Soccer Fields & Athletic Facilities	2021	42,726,114	100%	18%	7,507,271	7,419,998	87,273	1,533,534
3178	Playground Construction	2022	4,335,275	100%	21%	920,121	580,235	339,886	54,852
3181	Park Impact Fees Monitoring Project	Ongoing	1,010,381	100%	69%	695,609	293,881	401,728	39,601
3184	Montague Park Enhancement	2022	3,190,000	100%	100%	3,190,000	281,429	2,908,571	198,392
Totals			\$ 53,527,144			\$ 12,904,401	\$ 8,775,543	\$ 4,128,858	\$ 1,826,379

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,
ACCEPTING THE AB1600 REPORT ON DEVELOPMENT IMPACT
FEES FOR FISCAL YEAR ENDED JUNE 30, 2019 AND MAKING
FINDINGS REGARDING THE CONTINUING NEED FOR
UNEXPENDED BALANCES OF IMPACT FEES AS OF JUNE 30,
2020**

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

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

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

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

WHEREAS, the City has prepared an annual report for fiscal year 2019-20 in accordance with AB1600, "AB1600 Report on Development Impact Fees For Fiscal Year ended June 30, 2020," reflecting the beginning and ending balances of each separate fund containing impact fees; the amount of fees collected and the interest earned for the year; the amount of expenditures and refunds made in the year; the percentage of expenditures paid for by fees; and a description of the type of fees. The amount of each of these development impact fees for FY 2019-20 is reflected in the City's Municipal Fee Schedule, previously adopted by this Council;

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

Clerk's Office and the Finance Department at Santa Clara City Hall, and online at Santacruz.claraca.gov/Finance since January 21, 2021;

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

WHEREAS, the Traffic Mitigation Impact Fee, which was established for the purpose of providing a source of funding for traffic improvements, contains some fee revenues which were received more than five (5) years ago. The sum of \$3,912,522 representing fees and accrued interest collected for traffic mitigation remains unexpended five (5) or more years after deposit of the fees;

WHEREAS, the Storm Drain Fee, which was established for the purpose of mitigating storm drainage that results directly or indirectly from development projects, contains some fee revenues which were received more than five (5) years ago. The sum of \$226,974 representing fees and accrued interest collected for storm drainage mitigation remains unexpended five (5) or more years after deposit of the fees;

WHEREAS, the Sanitary Sewer Conveyance Fee, which was established for the purpose of mitigating sanitary sewer conveyance load that results directly or indirectly from development projects, contains some fee revenues which were received more than five (5) years ago. The sum of \$1,298,366 representing fees and accrued interest collected for sewer conveyance mitigation remains unexpended five (5) or more years after deposit of the fees;

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

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

FOLLOWS:

1. That the City Council hereby accepts the attached AB1600 Report on Development Impact Fees for Fiscal Year ended June 30, 2020 ("Report"), and makes the following findings:

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

B. The portion of the \$10,448,972 fund balance in the Traffic Mitigation Fund that was at least five (5) years old as of June 30, 2020, totals \$3,912,522. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Traffic Mitigation Fund has projects scheduled in the current Capital Improvement Plan for the next five (5) years and depends upon additional fees and interest each year. Projects identified in Exhibit A which are funded at less than 100% with Traffic Mitigation Impact fees are funded by other sources totaling \$10,636,868. Remaining appropriations totaling \$6,081,007 from the other sources are as follows: Reimbursable Grants \$282,790; Vehicle Registration Fees \$189,182; Bonds Proceeds \$1,666,789; Gas Tax Revenue \$713,565; Electric Utility Contribution \$37,778; and Developer Contributions \$3,190,903. All payments have been received and are available except the Reimbursable Grants. The City expects to receive Grant repayments in fiscal year 2020-21.

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

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

D. The portion of the \$613,299 fund balance in the Storm Drain Impact Fee Fund that was at least five (5) years old as of June 30, 2020, totals \$226,974. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Storm Drain Impact Fee Fund has projects scheduled in the current Capital Improvement Plan for the next five (5) years and depends upon additional fees and interest each year. The project identified in Exhibit A which is funded at less than 100% with Storm Drain Impact Fees is funded by the General Fund Capital Project Reserve (CPR) totaling \$1,239,577. The remaining appropriation from the CPR is \$47,942.

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

F. The portion of the \$38,232,186 fund balance in the Sanitary Sewer Conveyance Fees Fund that was at least five (5) years old as of June 30, 2020, totals \$1,298,366. The City will use the entire fund balance for the projects identified in Exhibit A of the Report which are programmed in the Capital Improvement Plan. The Sanitary Sewer Conveyance Fee has projects scheduled in the current Capital Improvement Plan for the next five (5) years and depends upon additional fees and interest each year. These projects are entirely funded by this fee and do not receive funding from any other sources.

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

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

THEREOF HELD ON THE 9TH DAY OF FEBRUARY 2021, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

NORA PIMENTEL
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. AB1600 Report on Development Impact Fees FYE June 30, 2020



Agenda Report

21-1055

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on a Resolution Ordering the Vacation of the Sanitary Sewer Easement, Underground Electric Easements, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement at 2880 Northwestern Parkway

COUNCIL PILLAR

Promote and Enhance Economic and Housing Development

BACKGROUND

On January 18, 2017, the City's Architectural Committee approved the Building V5 Data Center project (Project), which includes a four-story, 109,000 square-foot data center, expansion of an electrical substation, and construction of a paved surface parking lot at 2880 Northwestern Parkway (Property).

DISCUSSION

Due to the redevelopment of the Property, the existing Sanitary Sewer Easement, Underground Electric Easements, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement encumbering the Property have been relocated or determined to be excess, and these easements are no longer necessary. The property owner has requested that the City vacate the subject easements to clear these unnecessary encumbrances on the Property. Any relevant facilities previously within the easement have been removed or abandoned and all of the departments and agencies having an interest in said easements concur that the easements are eligible to be vacated. Staff has reviewed this proposal and found that these easements are no longer necessary for public purposes and may be vacated according to subsection C of California Streets and Highways Code Section 8333.

ENVIRONMENTAL REVIEW

The Mitigated Negative Declaration prepared for the Project was approved by the City's Architectural Committee on January 18, 2017.

FISCAL IMPACT

There is no additional cost to the City other than staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney's Office, Water & Sewer Utilities Department and Silicon Valley Power (Electric 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. Adopt a Resolution Ordering the Vacation of the Sanitary Sewer Easement, Underground Electric Easements, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement at 2880 Northwestern Parkway [APN 216-28-132 and 216-28-133 (2020-21); SC 18,955]; and
2. Authorize the recordation of the Resolution.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

ATTACHMENT

1. Resolution

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

Recording Requested by:

Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:

Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, ORDERING THE VACATION OF THE
SANITARY SEWER EASEMENT, UNDERGROUND
ELECTRIC EASEMENT, GENERAL PURPOSE EASEMENT,
EMERGENCY ACCESS EASEMENT, INGRESS EGRESS
AND PUBLIC UTILITY EASEMENT AT 2880
NORTHWESTERN PARKWAY [APN 216-28-132 AND 216-
28-133 (2020-21)]**

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

WHEREAS, the City of Santa Clara currently possesses the Sanitary Sewer Easement, Underground Electric Easement, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement described in Exhibit A and shown on Exhibit B, which Exhibits are incorporated herein by reference. Said Easements were dedicated by that certain documents and maps as mentioned in said Exhibits; and,

WHEREAS, pursuant to Section 8333 of the California Streets and Highways Code, the City Council "may summarily vacate a public service easement" in any of the following cases:

(a) The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

(b) The date of dedication or acquisition is less than five years, and more than one year, immediately preceding the proposed vacation, and the easement was not used continuously since that date.

(c) The easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located within the easement.

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

1. That the Sanitary Sewer Easement, Underground Electric Easement, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement described in Exhibit A and shown on Exhibit B have been superseded by relocation, or determined to be excess by the easement holders, and there are no other public facilities located within the easements.

2. That the Sanitary Sewer Easement, Underground Electric Easement, General Purpose Easement, Emergency Access Easement, Ingress Egress and Public Utility Easement described and shown in said Exhibits in the City are hereby vacated pursuant to California Streets and Highways Code Section 8333.

3. That the vacation hereby releases all easement rights and interest of the City referred in said Exhibits to the current property owner(s).

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED
AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING
THEREOF HELD ON THE ____ DAY OF _____, 2021, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Exhibits A and B

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EXHIBIT "A"
LEGAL DESCRIPTION
FOR: EASEMENT VACATIONS

SANITARY SEWER EASEMENT (S.S.E.)

All of "Easement D" as described in that certain document recorded on May 3, 1971 in Book 9313 of Official Records at Page 621 (Document No. 3998401), Santa Clara County. (See Sheet 1 of Exhibit "B".)

INGRESS EGRESS AND PUBLIC UTILITY EASEMENT (I.E.E. & P.U.E.)

All of the reservations of an easement for ingress and egress, public and City utilities as described in that certain quitclaim document recorded on October 27, 1975 in Book B687 of Official Records at Page 130 (Document No. 5135443), Santa Clara County. (See Sheet 2 of Exhibit "B".)

UNDERGROUND ELECTRICAL EASEMENT (U.G.E.E.)

All of that U.G.E.E. as shown on that certain Parcel Map filed for record on May 2, 1977 in Book 394 of Maps at Page 27, Santa Clara County Records. (See Sheet 3 of Exhibit "B".)

UNDERGROUND ELECTRIC EASEMENT (U.G.E.E.)

All of that 10' x 20' U.G.E.E. as described in that certain document recorded on February 17, 1995 in Book N764 of Official Records at Page 509 (Document No. 12809448), Santa Clara County. (See Sheet 3 of Exhibit "B".)

UNDERGROUND ELECTRIC EASEMENT (U.G.E.E.)

All of that 10' U.G.E.E. and 15' U.G.E.E. as described in that certain document recorded on March 13, 1975 in Book B317 of Official Records at Page 97-101 (Document No. 4964048), Santa Clara County. (See Sheet 3 of Exhibit "B".)

GENERAL PURPOSE EASEMENT (G.P.E.)

All of that G.P.E. as shown on that certain Parcel Map filed for record on February 27, 1981 in Book 480 of Maps at Page 27, Santa Clara County Records. (See Sheet 4 of Exhibit "B".)

UNDERGROUND ELECTRIC EASEMENT (U.G.E.E.)

All of that U.G.E.E. as described in that certain documents recorded on October 20, 2004 in Document No. 18056744 and Document No. 18056745 of Official Records Santa Clara County. (See Sheet 5 of Exhibit "B".)

EMERGENCY ACCESS EASEMENT (E.A.E.)

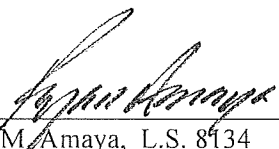
All of that E.A.E. as shown on that certain Parcel Map filed for record on November 20, 2013 in Book 866 of Maps at Pages 11-16, Santa Clara County Records. (See Sheet 6 of Exhibit "B".)

As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

10-29-2020

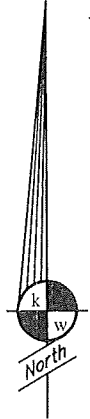
Date



Ryan M. Amaya, L.S. 8134



CENTRAL EXPRESSWAY



ADJUSTED
PARCEL TWO

(DOC. #23807618)
APN 216-28-133
(2020-21)

EASEMENT D
5.00' S.S.E.
(9313 OR 621)
BEING VACATED

EASEMENT D
5.00' S.S.E.
(9313 OR 621)
BEING VACATED

ADJUSTED
PARCEL ONE

(DOC. #23807618)
APN 216-28-132
(2020-21)

NORTHWESTERN PARKWAY

WALSH AVENUE

ABBREVIATION

S.S.E. SANITARY SEWER EASEMENT

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR: SANITARY SEWER EASEMENT VACATION

SANTA CLARA

CALIFORNIA

EXHIBIT "B"

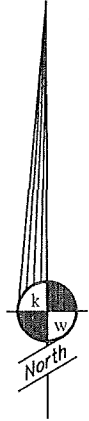


KIER & WRIGHT

CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22 (408) 727 6665
Santa Clara, California 95054 fax (408) 727 5641

DATE	OCT., 2020
SCALE	1" = 200'
DR. BY	CCB
JOB	A10015-29
SHEET NO.	1 OF 6

CENTRAL EXPRESSWAY



ABBREVIATION

I.E.E. INGRESS & EGRESS EASEMENT
P.U.E. PUBLIC UTILITY EASEMENT

55.00' I.E.E.
& P.U.E.

(B687 OR 130)
BEING VACATED

ADJUSTED PARCEL TWO

(DOC. #23807618)
APN 216-28-133
(2020-21)

ADJUSTED PARCEL ONE

(DOC. #23807618)
APN 216-28-132
(2020-21)

NORTHWESTERN PARKWAY

WALSH AVENUE

PLAT TO ACCOMPANY LEGAL DESCRIPTION

FOR: I.E.E. & P.U.E. EASEMENT VACATIONS

SANTA CLARA

CALIFORNIA

EXHIBIT "B"



KIER & WRIGHT

CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22 (408) 727 6665
Santa Clara, California 95054 fax (408) 727 5641

DATE OCT., 2020

SCALE 1" = 200'

DR. BY CCB

JOB A10015-29

SHEET NO.

2 OF 6

CENTRAL EXPRESSWAY

15.00' U.G.E.E.
(B317 OR 97)
BEING VACATED

ADJUSTED
PARCEL TWO

(DOC. #23807618)
APN 216-28-133
(2020-21)

10.00' U.G.E.E.
(B317 OR 97)
BEING VACATED

10.00'X20.00' U.G.E.E.
(N764 OR 509)
BEING VACATED

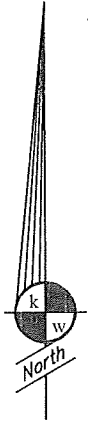
ADJUSTED
PARCEL ONE

(DOC. #23807618)
APN 216-28-132
(2020-21)

10.00' U.G.E.E.
(B317 OR 97)
BEING VACATED

NORTHWESTERN PARKWAY

WALSH AVENUE



ABBREVIATION

U.G.E.E. UNDERGROUND ELECTRIC EASEMENT

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR: U.G.E.E. VACATIONS

SANTA CLARA

CALIFORNIA

EXHIBIT "B"



KIER & WRIGHT

CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22 (408) 727 6665
Santa Clara, California 95054 fax (408) 727 5641

DATE OCT., 2020

SCALE 1" = 200'

DR. BY CCB

JOB A10015-29

SHEET NO.

3 OF 6

CENTRAL EXPRESSWAY

G.P.E.
(480 M 27)
BEING VACATED

ADJUSTED
PARCEL TWO

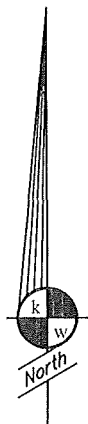
(DOC. #23807618)
APN 216-28-133
(2020-21)

ADJUSTED
PARCEL ONE

(DOC. #23807618)
APN 216-28-132
(2020-21)

NORTHWESTERN PARKWAY

WALSH AVENUE



ABBREVIATION

G.P.E. GENERAL PURPOSE EASEMENT

PLAT TO ACCOMPANY LEGAL DESCRIPTION

FOR: G.P.E. VACATION

SANTA CLARA

CALIFORNIA

EXHIBIT "B"

USER: cbeach I:\PROJECTS\A10015-29\DWG\SURVEY\PLATS\VACATION\IN FULL\C-PLAT.dwg JANUARY 16, 2017 12:11 PM



KIER & WRIGHT

CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22 (408) 727 6665
Santa Clara, California 95054 fax (408) 727 5641

DATE OCT., 2020

SCALE 1" = 200'

DR. BY CCB

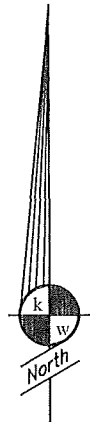
JOB A10015-29

SHEET NO.

4 OF 6

SC 18,955

CENTRAL EXPRESSWAY



55.00' U.G.E.E.
(DOC. NO. 18056744)
(DOC. NO. 18056745)
BEING VACATED

45'

ADJUSTED PARCEL TWO

(DOC. #23807618)
APN 216-28-133
(2020-21)

10.00' U.G.E.E.
(DOC. NO. 18056744)
(DOC. NO. 18056745)
BEING VACATED

10.00' U.G.E.E.
(DOC. NO. 18056744)
(DOC. NO. 18056745)
BEING VACATED

NORTHWESTERN PARKWAY

ADJUSTED PARCEL ONE

(DOC. #23807618)
APN 216-28-132
(2020-21)

34.00' U.G.E.E.
(DOC. NO. 18056744)
(DOC. NO. 18056745)
BEING VACATED

WALSH AVENUE



ABBREVIATION

U.G.E.E. UNDERGROUND ELECTRIC EASEMENT

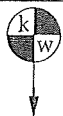
PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR: U.G.E.E. VACATIONS

SANTA CLARA

CALIFORNIA

EXHIBIT "B"

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KIER & WRIGHT

CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22 (408) 727 6665
Santa Clara, California 95054 fax (408) 727 5641

DATE OCT., 2020

SCALE 1" = 200'

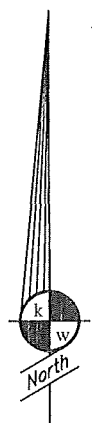
DR. BY CCB

JOB A10015-29

SHEET NO.

5 OF 6

SC18,955



ABBREVIATION

E.A.E. EMERGENCY ACCESS EASEMENT

CENTRAL EXPRESSWAY

22.00' E.A.E.
(866 M 11-16)
BEING VACATED

26.00' E.A.E.
(866 M 11-16)
BEING VACATED

ADJUSTED
PARCEL TWO
(DOC. #23807618)
APN 216-28-133
(2020-21)
22.00' E.A.E.
(866 M 11-16)
BEING VACATED

24.00' E.A.E.
(866 M 11-16)
BEING VACATED

ADJUSTED
PARCEL ONE
(DOC. #23807618)
APN 216-28-132
(2020-21)

31.00' E.A.E.
(866 M 11-16)
BEING VACATED

NORTHWESTERN PARKWAY

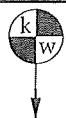
WALSH AVENUE

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR: EMERGENCY ACCESS EASEMENT VACATION

SANTA CLARA

CALIFORNIA

EXHIBIT "B"



KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22 (408) 727 6665
Santa Clara, California 95054 fax (408) 727 5641

DATE	OCT., 2020
SCALE	1" = 200'
DR. BY	CCB
JOB	A10015-29
SHEET NO.	6 OF 6

SC 18,955



City of Santa Clara

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

Agenda Report

21-1182

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on a Resolution Ordering the Vacation of an Underground Electric Easement at 2950-2970 Lakeside Drive

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

On December 10, 2015, the City's Planning Commission approved a Use Permit to allow a seven-story, 188-room hotel and 160 parking spaces (Project) at 2950-2970 Lakeside Drive (Property).

DISCUSSION

Due to the redevelopment of the Property, the existing Underground Electric Easement encumbering the Property has been relocated or determined to be excess, and this easement is no longer necessary. The property owner has requested that the City vacate the subject easement to clear this unnecessary encumbrance on the Property. Any relevant facilities previously within the easement have been removed or abandoned and Silicon Valley Power, the only agency having an interest in said easement, concurs that the easement is eligible to be vacated. Staff has reviewed this proposal and found that this easement is no longer necessary for public purposes and may be vacated according to subsection C of California Streets and Highways Code Section 8333.

ENVIRONMENTAL REVIEW

Categorically Exempt per Sec 15332, In-Fill Development Project.

FISCAL IMPACT

There is no additional cost to the City other than staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney's Office and Silicon Valley Power (Electric 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. Adopt a Resolution Ordering the Vacation of an Underground Electric Easement at 2950-2970 Lakeside Drive [APN 216-30-047 (2020-21); SC 19,353]; and
2. Authorize the recordation of the Resolution.

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

ATTACHMENTS

1. Resolution

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

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

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, ORDERING THE VACATION OF AN
UNDERGROUND ELECTRIC EASEMENT AT 2950-2970
LAKESIDE DRIVE [APN 216-30-047 (2020-21)]**

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

WHEREAS, the City of Santa Clara currently possesses the Underground Electric Easement described in Exhibit A and shown on Exhibit B, which Exhibits are incorporated herein by reference. Said Easement was dedicated by that certain document as mentioned in said Exhibits; and,

WHEREAS, pursuant to Section 8333 of the California Streets and Highways Code, the City Council "may summarily vacate a public service easement" in any of the following cases:

(a) The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

(b) The date of dedication or acquisition is less than five years, and more than one year, immediately preceding the proposed vacation, and the easement was not used continuously since that date.

(c) The easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located within the easement.

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

1. That the Underground Electric Easement described in Exhibit A and shown on Exhibit B has been superseded by relocation, or determined to be excess by the easement holders, and there are no other public facilities located within the easement.
2. That the Underground Electric Easement described and shown in said Exhibits in the City is hereby vacated pursuant to California Streets and Highways Code Section 8333.
3. That the vacation hereby releases all easement rights and interest of the City referred in said Exhibits to the current property owner(s).

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED
AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING
THEREOF HELD ON THE ____ DAY OF _____, 2021, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Exhibits A and B

K:\Engineering\Engineering\5-LPD\DOC\SC19353 Res vac UGEE.doc

EXHIBIT "A"
Legal Description

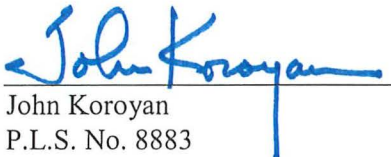
UNDERGROUND ELECTRIC EASEMENT VACATION
2950 Lakeside Drive, Santa Clara, CA 95054

All that real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

Being all of that Underground Electric Easement, as described in that certain Deed entitled "Electric Easement: Underground", recorded on January 31, 1980 in Book F115 at Page 281, Official Records of Santa Clara County.

The Underground Electric Easement being vacated is shown on the Site Plan attached hereto and made a part hereof as Exhibit "B".

This legal description was prepared by me, or under my direction, in conformance with the requirements of the Professional Land Surveyors' Act.

By: 
John Koroyan
P.L.S. No. 8883



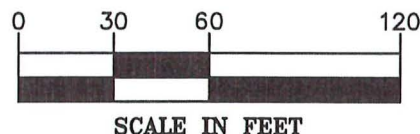
Date: Nov. 13, 2020

SURVEYOR'S STATEMENT

THIS SITE PLAN WAS PREPARED BY ME OR UNDER MY DIRECTION.

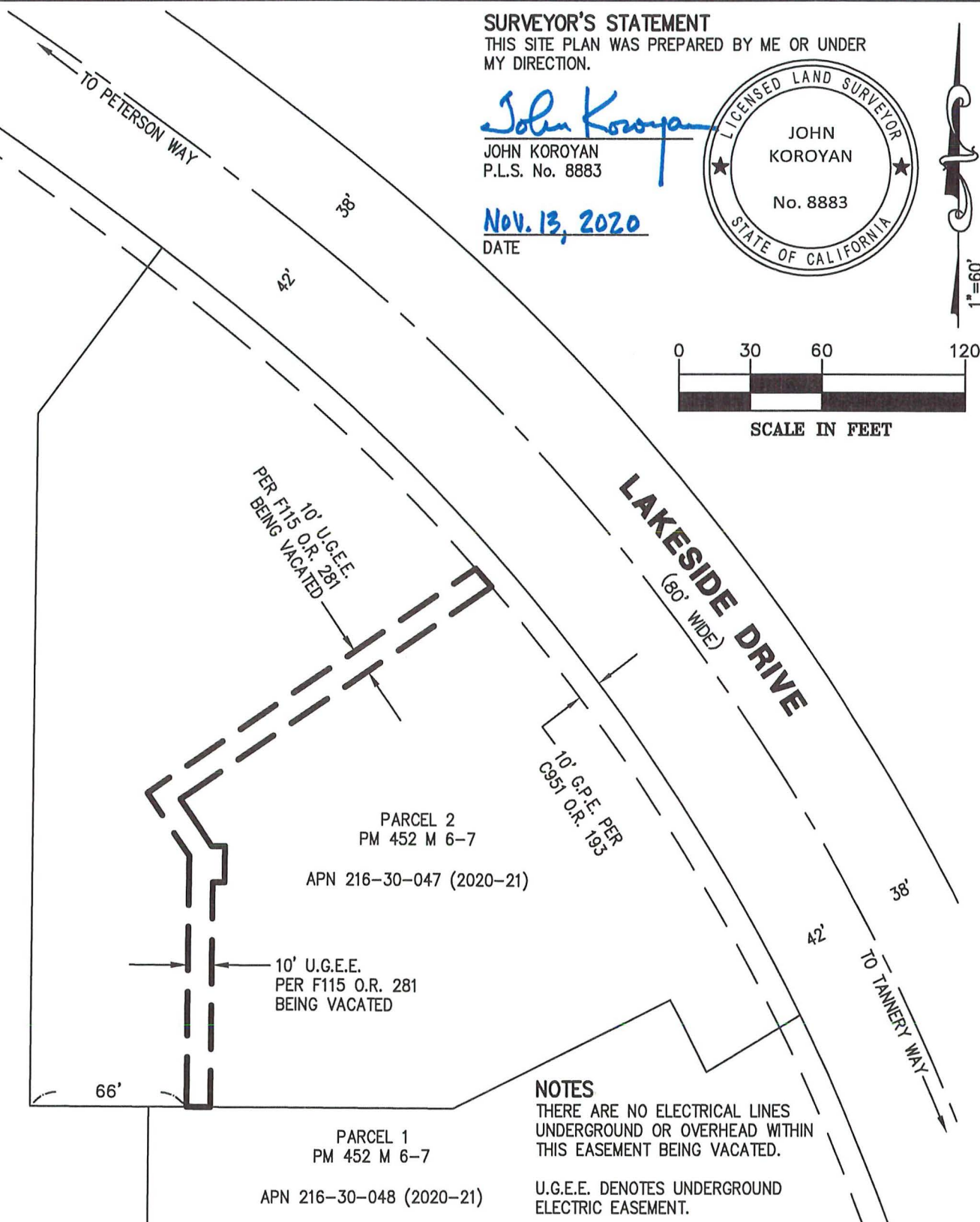
John Koroyan
JOHN KOROYAN
P.L.S. No. 8883

Nov. 13, 2020
DATE



SCALE IN FEET

APN 216-30-049 (2020-21)



NOTES

THERE ARE NO ELECTRICAL LINES UNDERGROUND OR OVERHEAD WITHIN THIS EASEMENT BEING VACATED.

U.G.E.E. DENOTES UNDERGROUND ELECTRIC EASEMENT.

G.P.E. DENOTES GENERAL PURPOSE EASEMENT.

K:\2015\156081 SANTA CLARA HOTEL\SUR\DWG\PLATS\UGEE_VACATION\SHEET 1.DWG



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
www.bkf.com

SC19,353

Subject SITE PLAN (EXHIBIT "B")
VACATION OF EASEMENT (U.G.E.E.)
Job No. 20156081 SANTA CLARA, CA
By CASC Date 11-13-2020 Chkd. JVK
SHEET 1 OF 1



Agenda Report

21-1183

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with Lee + Ro, Inc. for Design Professional Services for the Citywide Emergency Generator Replacement - Phase 2 Project (CE 20-21-10) and Related Budget Amendment

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The City requires emergency stand-by generators at critical buildings and equipment sites throughout the city to provide backup power in the event of a power outage. The City is also required to maintain Hazardous Materials Business Plans (HMBPs) and Spill Prevention, Control & Countermeasure (SPCC) plans for all generator locations, which requires sufficient secondary containment be provided for tanks of petroleum products. All generators and fuel tank configurations must meet the secondary containment and storage requirements of the SPCC and the Certified Unified Program Agency (CUPA) for oil-filled operational equipment and fuel holding tanks. In addition, the City maintains Permits to Operate (PTOs) from the Bay Area Air Quality Management District (BAAQMD) for all non-exempt portable and stationary generators currently in use.

The Department of Public Works (DPW) staff (Fleet Management and Facility Services Divisions) manages and maintains 35 generators at various facilities city-wide. The Water and Sewer Utility Department also manages and maintains 19 generators at water wells, storage tank sites, and sanitary sewer pump stations. The average age of the emergency generators is increasing, resulting in higher maintenance costs and decreased reliability. Staff performed an initial evaluation of the generators based on maintenance and repair costs, current locations, service logs, and service vendor's input. Since City facilities are considered critical operations, the generators were prioritized into a multi-phase detailed evaluation and replacement process in compliance with the regulatory agency requirements of SPCC, CUPA, and BAAQMD. Phase 1 of the project is currently in construction and includes DPW managed sites (Attachment 1) and is anticipated to be completed by Fall 2022. The next phase (Phase 2) of the project includes sites managed by DPW and Water and Sewer Utilities Department.

Based on the current budget, the Citywide Emergency Generator Replacement - Phase 2 Project (Project) includes four sites: Fairway Glenn and Freedom Circle Storm Drain pump stations and Water Well 15 and 28. The Project scope of work includes review of operational and regulatory performance of the existing generators at the four sites; recommendations for replacement/upgrade of generators and associated equipment such as fuel tanks and automatic transfer switches (ATS); design of security enclosure and monitoring systems; develop Plans, Specifications, and Engineer's Estimate (PS&E) for bidding and construction; coordinate and assist in permitting process; and

provide Bid, Award, Construction, and Post-Construction support services.

DISCUSSION

A formal selection process was utilized to solicit proposals from consultants to provide the required design professional services. On August 31, 2020, a Request for Proposals (RFP) was issued to solicit proposals from qualified consultants for the Citywide Emergency Generator Replacement - Phase 2 Project. Staff also conducted Pre-Proposal site visits for the four sites.

Staff received proposals from five firms: Kitchell, Lee + Ro, P2S, Inc., Salas O'Brien, and YEI Engineers, Inc. The proposals were evaluated based on the firm's responsiveness to requirements set forth in the RFP; qualifications and relevant experience; qualification of key staff and their availability; understanding of the Project, work approach, and quality assurance; and ability to complete the project within the proposed schedule. The proposals were reviewed by a panel consisting of staff from the Engineering and Fleet Management Divisions of the DPW and Water & Sewer Utilities Department. Based on the panel's evaluation, Lee + Ro, Inc.'s (Lee + Ro) proposal was unanimously ranked the highest based on several factors. Lee + Ro demonstrated significant experience in successfully performing similar services, and committed experienced, highly qualified, key staff to this Project. Lee + Ro also proposed a project approach and scope of services that committed to completing the Project in a timely and efficient manner.

Staff recommends entering into the Agreement with Lee + Ro, Inc. for Design Professional Services for the Citywide Emergency Generator Replacement - Phase 2 Project (Attachment 2). Approval of this agreement will provide the design professional services necessary to complete the design of the Project and proceed to construction in a timely manner. It is anticipated that the design of the Project will be completed by end of 2021. This timeframe is subject to change based on the current issues related to the COVID-19 pandemic. The Agreement includes a section covering prevailing wage requirements.

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 proposed Agreement is for a total not-to-exceed amount of \$294,000. This amount includes \$266,266 for Basic Services, plus a not-to-exceed amount of \$26,734 for Additional Services and \$1,000 Reimbursable Expenses. Funds for the Storm Drain Pump Station are available in the Stationary Standby Generators Capital Improvement Project, while funding for the Water Well sites will be covered by the fund balance available in the Water Utility Capital Fund. Staff recommends a transfer of \$231,050 from the fund balance in the Water Utility Capital Fund to the Standby Stationary Generators project, as detailed below. This will fund the share of the design consultant and other project costs including staff time, permit fees, and other related project expenses.

Budget Amendment FY 2020/21			
	Current	Increase/ (Decrease)	Revised
Water Utility Capital Fund			
<u>Fund Balance</u>			
Unrestricted Fund Balance	\$11,957,768	(\$231,050)	\$11,726,718
<u>Transfers To</u> Public Buildings Capital Fund - Standby Stationary Generators			
	\$0	\$231,050	\$231,050
Public Buildings Capital Fund			
<u>Transfers From</u>			
Water Utility Capital Fund	\$0	\$231,050	\$231,050
<u>Expenditures</u>			
Standby Stationary Generators	\$4,600,000	\$231,050	\$4,831,050

COORDINATION

This report has been coordinated with Water & Sewer Utilities Department, 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 and email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

RECOMMENDATION

1. Approve and authorize the City Manager to execute an Agreement with Lee + Ro, Inc. for the Citywide Emergency Generator Replacement - Phase 2 Project (CE 20-21-10) in the amount not-to-exceed \$294,000;
2. Authorize the City Manager make minor, non-substantive modifications, including time extensions, to the Agreement, if needed; and
3. Approve the related FY 2020/21 Budget Amendment in the Water Utility Capital Fund to reduce the Unrestricted Ending Fund Balance and establish a Transfer to the Public Buildings Capital Fund in the amount of \$231,050; in the Public Buildings Capital Fund, establish a Transfer from the Water Utility Capital Fund and increase the Standby Stationary Generators project in the amount of \$231,050.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Citywide Emergency Generator Replacement - Phase 1 Site List
2. Lee + Ro Agreement



City of Santa Clara

Attachment 1 Phase 1 Site List

21-1183

Council Date: 02/9/2021

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with Lee + Ro, Inc. for Design Professional Services for the Citywide Emergency Generator Replacement - Phase 2 Project (CE 20-21-10) and Related Budget Amendment

Site	Site Name	Address
1	City Hall (East Wing)	1500 Warburton
2	Emergency Operation Center	1990 Walsh Avenue
3	Radio Shop (Utility Corp Yard)	1715 Martin Avenue
4	Fire Station 8	2400 Agnew Road
5	Rambo Storm Drain Pump Station	4526 Lakeshore Drive
6	Fire Station 1	777 Benton Street
7	Parks Service Center	2600 Benton Street
8	Fire Station 7	3495 Benton Street
9	Lick Mill Storm Drain Pump Station	449 Montague Expressway

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
LEE + RO, INC.
FOR
CITYWIDE EMERGENCY GENERATORS REPLACEMENT – PHASE 2**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Lee + Ro, 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. City desires to secure the design professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. 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,
- D. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

Exhibit E – Project Management Documentation Software

Exhibit F – Equipment Matrix

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 February 1, 2021 and terminate on at the completion of work described in Exhibit A – Scope of Services.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Consultant shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

4. WARRANTY

Consultant 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

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Two Hundred Ninety-Four Thousand Dollars (\$294,000.00), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONSULTANT

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement,

including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

14. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Consultant, its employees, subconsultants, or agents in the performance, or non-performance, of Services under this Agreement.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Consultant shall provide and maintain in full force and effect, at no cost to City, insurance 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: Public Works Department – Design Division
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at engineering@santaclaraca.gov, and
manager@santaclaraca.gov

and to Consultant addressed as follows:

Lee + Ro, Inc.
Attention: Tony Park, Vice President
1199 S. Fullerton Road
City of Industry, CA 91748
and by e-mail at tony.park@lee-ro.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

CONTINUED ON PAGE 8

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

LEE + RO, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Tony Park

Title: Vice President

Principal Place of Business Address: 1199 S. Fullerton Road
City of Industry, CA 91748

Email Address: tony.park@lee-ro.com

Telephone: (925) 627-3382

Fax: ()

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

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

I. General

The City of Santa Clara (City) desires to engage Consultant to provide engineering design services to prepare bid documents (plans, specifications, and engineer's estimate - PS&E) for public works bidding of emergency stand-by generators replacement or upgrade.

It is important to note that City expects Consultant to evaluate each location in the Preliminary Engineering and Evaluation Task and develop the proposed improvements for each site.

Consultant shall be expected to provide complete, professional, high-quality services and products; to provide consultation and work with City personnel and others who are involved with the work; and to provide the expertise, guidance, advice, and assistance in accomplishing the work.

City discourages changes to the Scope of Services and Schedule of Fees after contract execution and expects that this project will be completed within the Scope and Fee for the Project. Any changes to the Scope of Services and Fee Schedule shall be addressed by City and Consultant prior to commencing the Construction Documents Task. Changes to the Scope of Services and Fee Schedule will be addressed in writing by an Additional Services Authorization to either add or delete Scope and Fee.

II. Background

The City has a fleet of emergency stand-by generators to provide backup power in the event of a power outage at critical facilities and equipment sites throughout the City. These locations include Fire Stations, Emergency Operation Center, City Hall, Police Headquarter, and critical facilities such as Storm Drain/Sanitary Sewer Pump Stations, Water Wells, and Corporation Yards.

City has a replacement program to replace or upgrade all current emergency generators. Phase 1 of the replacement program includes 9 sites and its construction is in progress. This Project, Phase 2 of the replacement program, includes 4 sites. Some of the generators require physical relocation and/or reconfiguration of fuel and power distribution lines.

The City maintains Hazardous Materials Business Plans (HMBPs) and Spill Prevention, Control & Countermeasure (SPCC) plans for some locations which

require sufficient secondary containment be provided for tanks of petroleum products such as diesel fuel. Engineering work will be required to ensure that all new generator and fuel tank configurations meet the secondary containment and storage requirements of the SPCC rule and the Certified Unified Program Agency (CUPA) for oil-filled operational equipment and fuel holding tanks.

The City also maintains Permits to Operate (PTOs) from the Bay Area Air Quality Management District (BAAQMD) for all non-exempt portable and stationary generators currently in use. Engineering work will be required to ensure that all decommissioned sources are properly removed from associated PTOs and that any new sources are added to the appropriate PTOs, as required by BAAQMD.

City's Building Department reviews and issues Building Permit for all on-site improvements. Engineering work will be required to design improvements to comply with California Building Codes.

City's Fire Department reviews and issues permit for Removal and Installation of above-ground fuel tanks. Engineering work will be required to ensure the removal and installation of generator's fuel tanks comply with Fire Department's requirements and Fire Codes.

City Electric Department (aka Silicon Valley Power – SVP) reviews and issues permit for generating facility interconnection to City's power grid. Engineering work will be required to design the emergency generator system to comply with SVP's requirement of non-parallel and "Break-Before-Make" operation mode.

III. Basic Scope of Services

The City's objective is to engage a qualified firm to provide engineering design services for the replacement of identified emergency generator. The engineering design services involve, but is not limited to: review of the City's existing emergency generators with regard to operational, regulatory performance, and security; perform an overall evaluation of the load requirements for all locations; provide recommendations and design for replacement/upgrade of generators and associated equipment such as fuel tanks, automatic transfer switches (ATS) with bypass isolation feature, block heater, remote annunciation panel, remote emergency manual switch, and portable load bank terminal box; design for security enclosure/remote fuel filling station (when required), remote monitoring, relocation of generator; prepare Construction Documents (Plans, Specifications, and Engineering Cost Estimate (PS&E)) for public works bidding; and provide support services during Bid and Award, Construction, and Post-Construction phases.

Below is the list of sites included in Phase 2 of the Project:

Site	Name	Address	Existing Model Year	Existing KW/HP	Fuel Type
1	Fairway Glenn Storm Drain Pump Station	4751 Lick Mill Boulevard	1988	855/1140	Diesel
2	Freedom Circle Storm Drain Pump Station	3905 Freedom Circle (@ Mission College Blvd.)	2000	440/587	Diesel
3	Water Well 15	657 Hubbard Avenue (north of Melody Ln.)	1984	300/375	Diesel
4	Water Well 28	1005 San Tomas Expressway (appr. 460' south of Benton St.)	1986	350/480	Diesel

Exhibit F – Equipment Matrix lists in detail of equipment and components to be provided by this Project.

Consultant shall coordinate and meet with City's staff and other Agencies; provide complete engineering evaluation, reports/recommendations, design, and provide support services for this Project, including:

Project Management:

Generally, Consultant shall perform the following for each major Phases listed below:

- A. Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City. Provide presentation materials (if needed) for all meetings and presentations.
- B. Manage its team and overall project activities consistent with directions from City in order to meet the Project goal within its schedule and budget.
- C. Conduct a quality assurance and quality control (QA/QC) review before every submittal.
- D. Coordinate with City, design team members, sub-consultants, utility companies, government agencies, and other affected parties as required throughout the duration of the Project.
- E. Provide Review/Plan Check Log (Response Matrix) summarizing comments received from various City Departments/Divisions and agencies. Response Matrix shall include, but not be limited to, commenting department/division or agency, comments, response to comments, action items, and person responsible for follow up. Consultant shall be responsible for resolving comments from each commenter and shall identify to City any comments that cannot be resolved to have final discussion and resolution. Submit Response Matrix in electronic format with each route of plan check submittal.
- F. Prepare, monitor, and update progress schedule in Microsoft (MS) Project format beginning at the kickoff meeting and ending at Post-Construction Phase. Schedule

shall show significant milestones for the project. Consultant shall notify City if there are delays in any phase of the project. In such cases, Consultant shall make up the schedule in subsequent phases of the Project or provide information to City substantiating a time extension. The schedule shall be maintained at all times and shall be updated each time progress and milestones are changed.

- G. Conduct Constructability review throughout the project, to determine the bid-ability and build-ability to ensure the Project will be constructed as economically and efficiently as possible. Constructability review shall include, but not be limited to, evaluate project duration, milestone dates, and other applicable construction parameters, such as construction duration, haul routes, availability of staging areas, ingress and egress of adjacent properties, etc. that will help in developing a clear, realistic, and reliable critical path method (CPM) project schedule.
- H. Submit Plans, drawn to scale, on D-size (24" X 36") sheets, at an engineering scale up to 1" = 40' maximum, conforming to City's Design Criteria. Plans are to be drawn by AutoCAD 2021 or earlier versions, using City-provided standard AutoCAD template with background layout from Consultant's topographic survey.
- I. Organize and attend project meetings with City and Agencies (if needed) to discuss project progress, decisions, and direction and to coordinate activities. Meetings (or conferences) shall be held at key project milestones and shall include, but not limited to:
 - 1. Kick-off and Field Visits Meeting
 - 2. Preliminary Engineering/Evaluation Meeting
 - 3. 35% Design Review Meeting
 - 4. 65% Design Review Meeting
 - 5. 95% Design Review Meeting
 - 6. 100% Design Review Meeting
 - 7. Bid Documents Review Meeting (if needed)
 - 8. Testing/Commissioning Meeting
 - 9. Punch List/Project Acceptance Meeting
- J. Return the previous check-print comments (redlines) from the City with next submittals.
- K. Provide monthly progress reports.
- L. Provide monthly invoice. Invoices submitted shall include, but not be limited to, description of work/task performed, budget allocation and percentage of completion for each task, amount for current invoice, invoiced-to-date amount, contract amount, and remaining contract amount (or in format acceptable to the City), and all supporting documentation for amount requested for payments.

Task 1.0: Preliminary Engineering/Evaluation

- 1.1 Attend Project Kick-Off Meeting and Field visits.
- 1.2 Contact all regulatory agencies that will affect the proposed works to determine applicable codes and ordinances. Visit Project's sites to inspect site conditions, existing equipment, and facilities to determine the existing conditions that will affect the Project.

- 1.3 Perform necessary evaluations of the sites, equipment and facilities to identify opportunities and constraints. Prepare an evaluation report for each site, noting condition of the generator set, code and regulatory issues. Provide upgrade or replacement recommendations, which will include, but are not limited to, the following:
 - 1.3.1 Evaluate condition of the existing equipment and other equipment associated with the generator. Determine whether it is optimal to reuse the existing equipment with or without modification, or to replace the existing equipment.
 - 1.3.2 Evaluate the existing physical location of the generator and determine if it complies with all current regulations. Determine whether it is economical to select a new location or to modify the existing location to accommodate new generator and equipment.
 - 1.3.3 Evaluate the existing power connection, load requirements, and required switching times, if any. Determine if a new power connection or a connection upgrade is needed to maintain power supply to the existing and new loads immediately after loss of power from an earthquake or extreme event.
 - 1.3.4 Evaluate remote monitoring and provide recommendations for central monitoring at City's Corporation Yard.
 - 1.3.5 All evaluation and recommendations shall consider compatibility of the new and existing equipment and facilities.
 - 1.3.6 Evaluate existing fuel type and available generator run times without requiring refueling and determine if alternative fuel types or different run times are better suited for the location and needs of the City.
- 1.4 Meet with City staff to obtain additional information and input as needed. Provide all necessary design services including but not limited to civil, structural, electrical, and mechanical design according to the evaluation and recommendations, and the following design criteria:
 - 1.4.1 The new Generators shall meet or exceed all necessary regulatory and emissions requirements.
 - 1.4.2 Master Programmable Logic Controller (PLC) for remote automated monitoring for all generators, with the following features:
 - a) Push Information: Email alarm notifications, to multiple City staffs at various locations, that would work on all generator's make and model.
 - b) Pull Information: Remote monitoring functions (that City staff, after receiving an alert notification, and log into generator monitoring software to see the overall general condition of the emergency generator) are, but not limited to, alarm date/time, alarm codes, run time, duration, fuel level, battery level, etc.
 - c) PLC monitoring system to be compatible with and can be integrated into the monitoring system in Phase 1.
 - 1.4.3 Remote annunciators: Determine if a remote annunciators is applicable for the application. If applicable, determine connection to exiting SCADA at the storm drain pump stations.

- 1.4.4 Remote Fueling Connection: Design for aboveground fuel tank's filling and withdrawal/vapor recovery connection to be outside of building for indoor generator.
- 1.4.5 Portable Load Bank Terminal Cabinet with circuitry for load test without shutting down power to facility and manual hookup.
- 1.4.6 Enclosure or shelter to protect the generator and associated equipment from the elements. Security enclosures addressing physical security of all major components: theft, vandalism, accidental damage, intentional damage, etc.
- 1.4.7 Compatibility between new and existing facilities.
- 1.4.8 Interconnections comply to SVP's requirement of non-parallel and "Break-Before-Make" operation mode.
- 1.4.9 New mounting pads' strength capable of supporting new generator and its fuel tank.
- 1.4.10 New generator's pad finish floor elevation must meet and comply with City's Building requirements regarding flood zone.
- 1.4.11 Decommissioning/Commissioning and Cut-Over plans complying with power and power outage requirements.
- 1.5 Consultant shall locate and verify depth of the City-owned utilities as necessary. As-built drawings (if available) for all sites will be provided by the City
- 1.6 Consultant shall work with City staff to develop Schematic Plans.
 - 1.6.1 Recommendation and design for new generators.
 - 1.6.2 Perform needed topographic survey for plans layout and final approved improvements (from the evaluation/recommendation) for use as base layout for the Project's Plans.
- 1.7 In order to achieve City's goals, Consultant shall work with City staff to develop basic scope for construction.
 - 1.7.1 Prepare bid documents with consideration for backup power during construction to serve the operation needs for particular sites.
 - 1.7.2 Furnish and install new generator and associated equipment.
 - 1.7.3 Install new recommended equipment and verify that they properly connect and function with the selected old equipment if any.
 - 1.7.4 Properly close up and dispose the removed generators and corresponding hazardous material.
- 1.8 Consultant shall provide construction estimate by each site. Estimates shall include, but not be limited to, structural generator/fuel tank, foundation/anchorage, ATS, load bank terminal box, security enclosure, remote fuel filling station, remote monitoring, traffic control, permits, etc.
- 1.9 Consultant shall develop Project Schedule. Schedule shall include all needed times to complete all tasks, including City's and other Agencies' review times, permitting process, and construction period.
- 1.10 Meet with City personnel to review City comments on schematic design, and gain concurrence
- 1.11 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.

Task 1 Deliverables – Electronic and hard copy format:

1. Evaluation Report (Draft and Final) – One (1) PDF of Draft Report; Five (5) hardbound copies, one (1) PDF, and one (1) Microsoft Word file of Final Report.
2. Schematic Plans: One (1) PDF and one (1) AutoCAD file.
3. Project Schedule – One (1) PDF and one (1) Microsoft Project file.
4. Engineering Cost Estimate – One (1) PDF and one (1) Microsoft Excel file.
5. Miscellaneous Project information (as requested).
6. Meeting minutes – one (1) PDF and one (1) Microsoft Word file.
7. Any required Project documentations for the public information.

Task 2.0: 35% Construction Documents

Based on the approved preliminary design documents and any adjustments authorized or directed by the City, the Consultant shall develop and refine the design, and prepare construction documents.

- 2.1 Prepare 35% construction documents and supporting information for the City's review, including, but not limited to:
 - 2.1.1 Consultants shall follow City's Design Criteria and plan format to prepare 35% Plans and supporting information for the City's review, including but not limited to the followings:
 - A. Plans with details of major design components as necessary such as:
 1. Site Plans
 2. Telecommunications/Data
 3. Electrical Drawings
 4. Mechanical Drawings
 5. Structural Drawings
 6. Civil Drawings
 - B. 35% Plans shall include all existing utilities on-site and immediate surrounding off-site areas. Pertinent background information as relating to proposed generator location such as, but not limited to, building layouts, doors/exists, property lines, site entrance/exist driveway, adjacent streets shall be shown. Plans set shall be organized into a combined set for bidding with sub-sets of each site for permitting (each site will require separate Building, Fire Removal, Fire Installation, and BAAQMD Permit).
 - C. Refer to the City website for building permit and fire department permit application package requirements.
- 2.2 Provide design for replacement generator, ATS, emergency shut off, power supply, and any other associated equipment if it is determined reusing the existing equipment is not optimal.
- 2.3 Provide design for new fuel tank, piping, and containment systems, if applicable.
- 2.4 Provide complete electrical design and/or any other required design determined by location. The design shall cover all details required for specifying and installing the generator and associated equipment.

- 2.5 Provide all necessary electrical, mechanical, telecommunication design for remote monitoring.
- 2.6 Provide all necessary design, including electrical and mechanical design, for proper connection between new equipment and existing equipment.
- 2.7 Design of associated equipment to be reconnected, replaced or upgraded, including but not limited to generator, ATS, emergency shut off, and power supply.
- 2.8 Provide a decommission and disposal plan for the existing generators and associated equipment to include but not limited to fuel storage tanks, ATS, and wiring.
- 2.9 Prepare an updated Engineering Cost Estimate. If 35% Engineering Cost Estimate prepared at this point exceeds the preliminary construction budget approved at the end of the Preliminary Engineering/Evaluation Phase, the Consultant shall explain and justify the increase and shall submit a list of proposed modifications to bring the cost within budget.
- 2.10 Prepare an updated Project Schedule.
- 2.11 Meet with City staffs as needed to review City comments on 35% submittal and gain concurrence.
- 2.12 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.
- 2.13 Provide written response matrix to City's comments on Preliminary Engineering/Evaluation.

Task 2 Deliverables – Electronic and hard copy format:

1. 35% Plans – One (1) PDF and one (1) AutoCAD file.
2. 35% Engineering Cost Estimate – One (1) PDF and one (1) Microsoft Excel file.
3. Updated Project Schedule – One (1) PDF and one (1) Microsoft Project file.
4. Quality control checklist for 35% PS&E submittal – One (1) PDF and one (1) Microsoft Word or Excel file.
5. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.
6. Miscellaneous Project information (as requested).
7. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.
8. Any required Project documentations for the public information.

Task 3.0: 65% Construction Documents

Based on City's comments and direction on the 35% PS&E, Consultant shall revise the 35% PS&E to produce the 65% PS&E. Consultant shall:

- 3.1 Prepare 65% construction documents and supporting documents
 - 3.1.1 Construction details of proposed improvements, decommissioning and commissioning details, and cutover details shall be included in the 65% Plans.
 - 3.1.2 Provide Technical Specifications (Division 3).
 - 3.1.3 Provide modified Sections to City Standard Specifications to suit Project. Modified Sections include, but not be limited to, General Information, Summary of Work, Measurement and Payment for Bid Items, Permitting

and Agency Regulatory Agency Requirements, Field Engineering, Decommissioning and Commissioning, Cut-Over and Temporary Power Requirements, etc.

- 3.1.4 Provide required information to the City's Project Specific Specification Book (Division 0, 1, and 2). Required information from Consultant for City's frontend specifications are, but not be limited to, the followings:
1. Description of work
 2. Type of Contractor's License required
 3. Construction Schedule
 4. Bid Schedule
 5. Requirements for Contractor's Statement of Qualifications (e.g. experience requirements for similar work and contract values)
 6. Identification of any changes to the City's standard specifications that are required.
- 3.2 Prepare an updated Engineering Cost Estimate.
- 3.3 Prepare an updated Project Schedule.
- 3.4 Meet with City staffs as needed to review City comments on 65% submittal and gain concurrence.
- 3.5 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.
- 3.6 Provide written response matrix to City's comments on 35% PS&E.

Task 3 Deliverables – Electronic and hard copy format:

1. 65% Plans – One (1) PDF and one (1) AutoCAD file.
2. 65% Specifications – One (1) PDF and one (1) Microsoft Word file.
3. 65% Engineering Cost Estimate – One (1) PDF and one (1) Microsoft Excel file.
4. Updated Project Schedule – One (1) PDF and one (1) Microsoft Project file.
5. All Permit application packages with all necessary supporting documentations.
6. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.
7. Quality control checklist for 65% design submittal.
8. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.

Task 4.0: 95% Construction Documents

Based on City's comments and direction on the 65% PS&E, Consultant shall revise the 65% PS&E to produce the 95% PS&E. Consultant shall:

- 4.1 Prepare 95% construction documents and supporting documents
- 4.2 Assist the City in applying for City's Building and Fire Department permits, including Fuel Tank Removal Permit, Above Ground Tank Installation Permit, Hazardous Material Closure Permit, BAAQMD permit and all other necessary permits. Consultant shall respond to permit reviewers' comments, revise, and resubmit permit packages as needed.
- 4.3 Prepare an updated Engineering Cost Estimate with backups and justifications for unit price.
- 4.4 Prepare an updated Project Schedule.

- 4.5 Prepare all supporting documents including Structure Calculations as required for Building Submittal.
- 4.6 Meet with City staffs as needed to review City comments on 95% submittal and gain concurrence.
- 4.7 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.
- 4.8 Provide written response matrix to City's comments on 65% PS&E.

Task 4 Deliverables – Electronic and hard copy format:

1. 95% Plans – One (1) PDF and one (1) AutoCAD file.
2. 95% Specifications – One (1) PDF and one (1) Microsoft Word file.
3. Structural Calculations – One (1) PDF.
4. 95% Engineering Cost Estimate – One (1) PDF and one (1) Microsoft Excel file.
5. Updated Project Schedule – One (1) PDF and one (1) Microsoft Project file.
6. All Permit application packages with all necessary supporting documentations.
7. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.
8. Quality control checklist for 95% design submittal.
9. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.

Task 5.0: 100% Construction Documents

Based on City's comments and direction on the 95% PS&E, Consultant shall revise the 95% PS&E to produce the 100% PS&E. Consultant shall:

- 5.1 Prepare 100% construction documents and supporting documents.
 - 5.1.1 Phase percentage statement such as "100% Plans. Not for Construction" shall be removed from the 100% Plans and each sheet of the plans set shall be stamped and signed by the Consultant's Engineer of appropriate discipline.
 - 5.1.2 Specifications shall be stamped and signed (on Document 00030 – Seal) by Consultant's Project Engineer.
- 5.2 Incorporate permit issuers' comments into P&S and coordinate with permitting departments and agencies to obtain acceptance of permit application package.
- 5.3 Prepare an updated Engineering Cost Estimate with backups and justifications for unit pricing.
- 5.4 Prepare an updated Project Schedule.
- 5.5 Provide Documents for City's PS&E approval process. Required documents are, but not be limited to, Engineer's estimate using the schedule of quantities format, Recent similar project bid summaries to validate engineer's estimate, Consultant Peer Review Certification, Consultant Lessons Learned from other similar projects that were applied to this Project.
- 5.6 100% PS&E shall be Peer reviewed and Certification of Peer Review shall be submitted with the 100% Submittal.

- 5.6.1 A statement (see statement in Sub-Section 5.6.2 below) to indicate Peer Review has been performed and signature of the Engineer who performed it shall be added to the Plans Cover Sheet.
- 5.6.2 Certification of Peer Review: The following paragraph shall be put on the company letter head, dated, and signed by the Peer Review Engineer.

“The undersigned hereby certifies that a professional peer review of these plans and the required designs was conducted by me, a professional engineer with expertise and experience in the appropriate fields of engineering equal to or greater than the Engineer of Record, and that appropriate corrections have been made.”
- 5.7 Meet with City staffs as needed to review City comments on 100% submittal and gain concurrence as to how the documents will be revised as appropriate to incorporate City comments.
- 5.8 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.
- 5.9 Provide written response matrix to City’s comments on 95% PS&E.

Task 5 Deliverables – Electronic and hard copy format:

- 1. 100% Plans – One (1) PDF and one (1) AutoCAD file.
- 2. 100% Specifications – one (1) PDF and one (1) Microsoft Word file.
- 3. Structural Calculations – One (1) PDF.
- 4. Consultant Lessons Learned – One (1) PDF.
- 5. Certification of Peer Review – One (1) PDF.
- 6. 100% Engineering Cost Estimate – One (1) PDF and one (1) Microsoft Excel file.
- 7. Updated Project Schedule – One (1) PDF and one (1) Microsoft Project file.
- 8. All Permit application packages with all necessary supporting documentations.
- 9. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.
- 10. Quality control checklist for 100% design submittal.
- 11. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file

Task 6.0: Bid Documents (P&S)

Based on City’s comments and direction on the 100% PS&E, Consultant shall revise the 100% PS&E to produce the Bid Documents. Consultant shall:

- 6.1 Incorporate City review comments of 100% PS&E into Bid Documents.
- 6.2 Incorporate permit issuers’ comments into P&S and coordinate with permitting departments and agencies to obtain acceptance of permit application package.
- 6.3 Prepare Bid Documents (P&S).
 - 6.3.1 Bid Plans shall be wet stamped and signed by the Consultant’s Engineer of appropriate discipline. Plans shall be drawn to scale and plotted onto D-size sheets.
 - 6.3.2 Bid Specifications shall be wet stamped and signed (on Document 00030 – Seal) by Consultant’s Project Engineer.

- 6.4 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.

Task 6 Deliverables – Electronic and hard copy format:

1. Bid Plans – One (1) PDF of wet-signed/stamped, D-size and one (1) AutoCAD file.
2. Bid Specifications – One (1) PDF of wet-signed/stamped, A-size and one (1) Word file.
3. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.
4. Quality control checklist for bit set submittal.
5. Final Building, Electrical, Fire, and BAAQMD permits.
6. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.

Task 7.0: Bid and Award Phase

Consultant shall provide assistance to the City during the bidding and award phase, answer questions from bidders, help and prepare exhibits for addenda when necessary, assist the City in evaluation of bids received, and provide a written recommendation for the award of contract, when requested.

Should the City, after receipt of bids, determine that it is not in its best interests to award the construction contract, the City may terminate the Agreement in accordance with Section 7 of the Agreement.

Consultant shall:

- 7.1 Attend and conduct Pre-Bid Conference/Sites Visit.
- 7.2 Assist the City with responses to bidder's inquiries through the City's Project Manager.
- 7.3 Assist the City with addenda to the construction documents as needed to respond to bidder's inquiries and clarify the intent of bid documents.
- 7.4 Assist the City in evaluating bids (if required by the City).
- 7.5 Within fourteen (14) days from the bid opening date, prepare and submit a conformed set of contract documents (Plans and Specifications) incorporating any and all addenda (if needed).

Task 7 Deliverables – Electronic and hard copy format:

1. Written response to bidder's inquiries – One (1) signed PDF.
2. Support information for addenda – One (1) signed PDF.
3. Written recommendation letter to award of contract for the Project – One (1) PDF.
4. Conformed Set (if needed) – One (1) PDF of Plans and Specifications, one (1) AutoCAD file of Plans, and one (1) Microsoft Word file of Specifications.

Task 8.0: Construction Phase

Consultant's responsibility to provide basic services for the construction phase under this Agreement commences with the "Notice to Proceed" (NTP) of the contract for construction and terminates on the date the City approves the certificate of completion of

the Project.

- 8.1 Consultant will assist the City in providing administration of the contract for construction. Duties, responsibilities and limitation of authority of Consultant shall not be restricted, modified, or extended without written agreement of the City.
- 8.2 Consultant shall attend the Pre-construction meeting.
- 8.3 Consultant shall visit the site as required for the benefit of the Project during this phase. During these site visits, Consultant shall attend job progress meetings, pre-submittal meetings, pre-installation meeting, and other meetings as required by the City. Consultant's structural, mechanical and electrical sub-consultants shall visit the site as required when work related to their discipline is in progress.
- 8.4 Consultant shall make construction observation visits throughout the construction phase, including witnessing systems testing, commissioning, and confirming the systems perform as designed. Consultant shall issue an observation report after each visit. Assume up to two (2) meeting per site.
- 8.5 In addition to the construction observation visits, Consultant shall review technical submittals, shop drawings, product data, product samples, and product warranties from the contractor for conformance with the specifications and drawings. The Consultant's action shall be taken with such reasonable promptness so as to cause no delay in the work, while allowing sufficient time in Consultant's judgment to permit adequate review. The Consultant will be allowed a maximum of seven (7) calendar days for review of submittals. Consultant's review shall not constitute review of safety precautions or, unless otherwise specifically stated by Consultant, of construction means, methods, techniques, sequences or procedures. Consultant's review of specific items shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the contract documents, Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the contract document.
- 8.6 Consultant shall respond to Contractor's Request for Information (RFI) and Request for Substitution (RFS). Interpretations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Consultant shall be allowed a maximum of seven (7) calendar days to respond to RFIs and RFSs that impact the Project schedule or a maximum of fourteen (14) calendar days to respond to RFIs and RFSs that do not impact the Project schedule.
- 8.7 The Consultant shall prepare the Scope of Work, including sketches, for Field Instructions issued to the Contractor. When requested by the City, Consultant shall review Change Order (CO) pricing and provide written responses for the City's review and finalizing said CO.

Task 8 Deliverables – Electronic and hard copy format:

1. Signed PDFs of Reviewed Contractor Submittals, Shop Drawings, RFIs, RFSs, and Field Instructions.
2. Signed PDFs of COs' recommendations.

3. Signed PDFs of Field reports by Consultant and sub-consultants.

Task 9.0: Post-Construction Phase

- 9.1 When requested by the City, Consultant shall conduct reviews to assist the City to determine the date or dates of Substantial Completion and the date of Final Completion. Consultant's decisions with City approval on matters relating to aesthetic effect may be final if consistent with the intent expressed in the Contract Documents.
- 9.2 Upon request by Contractor, in accordance with contract Specifications, for Substantial Completion and later Final Completion, Consultant shall assist City in determining if the Project is ready for the stage of completion requested by the Contractor. Consultant shall provide City with a written recommendation.
- 9.3 Consultant shall perform a walk-through of the Project site, review Contractor Punch List, and provide written response with status and action of items on the Punch List. Consultant shall attend final walk-through of the Project site with the City, verify Punch List completion, and provide written response with recommendation regarding Project acceptance and close-out.
- 9.4 Consultant shall review Contractor-supplied Operation and Maintenance manuals and Warranties to determine their completeness and compliance with Construction Contract and provide written recommendation for acceptance.
- 9.5 Consultant shall witness system testing, commissioning, and confirm system performs properly as required by the City and provide written report.
- 9.6 Consultant shall at completion of the Project provide City with one set of reproducible Record Drawings (RDs) that reflect the changes to the work during construction based upon marked up prints, drawings and other data furnished by the Contractor and City. Consultant shall use the original Title sheet for the RDs set. If Consultant adds additional sheets to the Plans, these shall be properly numbered, properly referenced on other affected drawings and included in the drawing index. Consultant may, at its own expense, prepare and retain a copy of each drawing for its permanent file.
- 9.7 At ten (10) months following the issuance of final completion and prior to the expiration of any guarantees, City and all its Consultants shall visit the Project with Contractor and: 1) Review the work and identify observable defects and deficiencies, 2) Evaluate the performance, durability and appearance of installed products, materials and system as they relate to suitability for the intended use; 3) Evaluate the Project's function and City's use of the Project as reflection of the original program intent; and 4) Submit a written memorandum to City concerning the foregoing no later than 210 days after issuance of final completion.

Task 9 Deliverables – Electronic and hard copy format:

1. Substantial Completion/Final Completion recommendations and Reviewed Punch List – One (1) signed PDF.
2. Record Drawings – One (1) PDFs and one (1) AutoCAD files on CD/DVD.
3. 210-Day Report – One (1) signed PDF.

Milestone Schedule:

Consultant shall have approximately up to eleven (11) months, including City's review time, from the Notice-to-Proceed to complete the Evaluation/Design and deliver the Bid Documents. The following is the Project's Milestone Schedule:

<u>TASK</u>	<u>WEEKS</u>
Preliminary Engineering/Evaluation	Eight (8)
35% Construction Documents (including 4 weeks City review).....	Ten (10)
65% Construction Documents (including 3 weeks City review).....	Nine (9)
95% Construction Documents (including 3 weeks City review).....	Eight (8)
100% Construction Documents (including 2 weeks City review).....	Five (5)
Bid Documents (including 2 weeks City review).....	Four (4)

EXHIBIT B

SCHEDULE OF FEES

Consultant will bill City on a monthly basis for Services provided by Consultant during the preceding month on an invoice. Invoices submitted shall include, but not be limited to, description of work/task performed, percentage of completion for each task, amount for current invoice, invoiced-to-date amount, contract amount, and remaining contract amount (or in format acceptable by the City), and all supporting documentation for amount requested for payments. Subject to verification and approval by City, City will pay Consultant within thirty (30) days of City's receipt of an approved invoice and all supporting documentations.

I. GENERAL PAYMENT

The total payment to the Consultant for all work necessary for performing all tasks, as stated in **Exhibit A**, shall be Two Hundred Sixty-Six Thousand Two Hundred Sixty-Six Dollars (\$266,266); plus Reimbursable Expenses, which shall not exceed the sum of One Thousand Dollars (\$1,000); plus Additional Services, which shall not exceed the sum of Twenty-Six Thousand Seven Hundred Thirty-Four Dollars (\$26,734). Billing shall be on a monthly basis proportionate to the services performed for each task completed. In no event shall the amount billed to City by Consultant for services under this Agreement exceed Two Hundred Ninety-Four Thousand Dollars (\$294,000), subject to budget appropriations.

II. BASIC SERVICES

Compensation shall be in proportion to services rendered and shall be billed monthly as percentages of completion for each phase listed below. Fees shall be lump sum and not-to-exceed per task as listed below. City may re-allocate remaining budget from any finished tasks to any un-finish tasks as need to complete works within the Basic Services.

1. Task 1 – Preliminary Engineering/Evaluation	\$42,392
2. Task 2 – 35% Construction Documents	\$35,696
3. Task 3 – 65% Construction Documents	\$35,880
4. Task 4 – 95% Construction Documents	\$36,910
5. Task 4 – 100% Construction Documents	\$25,654
6. Task 5 – Bid Documents	\$11,772
7. Task 6 – Bid and Award	\$4,448
8. Task 7 – Construction	\$60,148
9. Task 8 – Post-Construction	<u>\$13,366</u>
TOTAL (not-to-exceed)	\$266,266

III. REIMBURSABLE EXPENSES

Reimbursable Expenses shall not exceed \$1,000 and require prior written approval by the City. The amount allocated for Reimbursable Expenses shall be the

Consultant's full compensation for all Reimbursable Expenses required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services. The following is a sample of items that are included as part of the Basic Services and are not considered Reimbursable Expenses:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Travel Expenses (local and long distance)
- Faxes
- Local and Long Distance Telephone Expenses (land lines and cellular phones)
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

Reimbursable Cost may include:

- Outside Reproduction Cost for Plans and Reports as specified in Section III, Basic Scope of Services, of Exhibit A.
- Presentation Materials, when requested by City
- Overnight Delivery Services, when requested by City
- Courier Services, when requested by City

City may re-allocate remaining budget from reimbursable expenses to additional services. All reimbursable costs, other than those listed above, shall be approved in advance by City.

IV. ADDITIONAL SERVICES

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Additional Services shall be provided at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated price. Additional Services are allowed only if written proposal is received, reviewed, and written authorization is given by the Director of Public Works in advance of the work to be performed. Additional Services shall not exceed \$26,734 without approval by the City.

V. RATE SCHEDULE

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the Project. Rates by classification are listed below. No adjustment to the rates will be allowed during the term of this Agreement unless otherwise agreed in writing by City. Any classifications added, or staff members changing classifications, shall be approved in writing by City.

Name/Title	Rate/Hour
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Lee + Ro, Inc. – Civil/Electrical/Mechanical/Structural Engineer

1550 Parkside Dr., Suite 320

Walnut Creek, CA 94596

Tony Park – Principal-In-Charge	\$274
Kenneth Creager – Project Manager	\$249
Greg Debois – Technical Advisor	\$249
Richard David – QA/QC Manager	\$249
Rick Furnace – Mechanical Engineer	\$229
Nathan Reeve – Civil/Electrical Engineer	\$172
Alice Maupin – Structural Engineer	\$249
Robert Mercado – Constructability Reviewer.....	\$191
Associate Engineer.....	\$172
Junior Engineer	\$133
AutoCAD/Drafter	\$133
Administration Staff	\$149

Towill, Inc. – Surveyors

2300 Clayton Road, Suite 1200

Concord, CA 94520

Alex Martinez – Survey Project Manager	\$198
John T. May – Project Manager.....	\$220
Matt Vielbaum – Associate Surveyor	\$155
Two Person Field Crew	\$280
CAD Drafter	\$98

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance 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 Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

broad as, ISO form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subconsultants involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or ISO endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. 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 Consultant's work for City, using ISO Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnitied may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to 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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity

with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.

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

G. EVIDENCE OF COVERAGE

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

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of 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, Consultant 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 – Public Works Department

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

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

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.

J. Prevailing Wage Requirements

1. Consultant shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov 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.
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 contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All 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 you fail to register and maintain their status as a public works Consultant shall not be permitted to perform work on the project.
10. Should any Consultant or subconsultants not be a registered public works 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.

K. Audit Rights

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

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

L. Enforcement

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

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

EXHIBIT E

PROJECT MANAGEMENT DOCUMENTATION SOFTWARE

1.0 GENERAL

This section is intended to describe the use of e-Builder Enterprise™ (e-Builder) a web-base project management software, as the median for project documentation and reporting. All costs associated with the use of the software is inclusive of the Project Exhibit B – Schedule of Fees.

2.0 e-BUILDER PROJECT MANAGEMENT SOFTWARE PROGRAM

The City of Santa Clara is currently using e-Builder Project Management for all related project management tasks. Consultant is required to comply with all requirements specified in this Exhibit E – PROJECT MANAGEMENT DOCUMENTATION SOFTWARE.

3.0 REQUIREMENTS

A. General Requirements:

1. Consultant and Subconsultants shall provide at a minimum, the following to its staff:
 - a) Computer: Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher;
 - b) Computer Operation System: Windows 7 or later and OS X v10.8 or later;
 - c) Web Browser: Microsoft Internet Explorer 11.0 or later, Google Chrome v29.0.1 or later, Mozilla Firefox v35.0.1 or later, Safari v6.0.4 or later, Safari for iOS mobile v6.1 or later. Other browsers such as Microsoft Edge, Google Chrome for iOS, and Google Chrome for Android are available on e-Builder; however, but some features might not work as expected;
 - d) Work and Spreadsheet Processors: Microsoft Office Word, Excel and Outlook;
 - e) Scheduling Software: Microsoft Project or Primavera;
 - f) Internet Service Provider: A reliable ISP in the area of the Project;
 - g) Connection Speed/Minimum Bandwidth: DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream.
2. Consultant and Subconsultants shall provide its management personnel assigned to this Project with access to personal computers and the Internet on a daily basis

B. Project Web Requirements:

1. This project utilizes a web-based project management tool, e-Builder. This web-based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information.
2. Consultant and Subconsultants shall conduct Project controls, outlined by the City, utilizing e-Builder. This designated web-based application will be provided by the City at no costs to the Consultant and the Subconsultants. No additional software will be required. Furthermore, the City, through e-Builder, Project Manager will assist Consultant in providing training of Subconsultant's personnel.
3. Consultant and Subconsultants shall have the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully appraised of Project developments, for correspondence, assigned tasks and other matters that transpire on the site. These may include, but are not limited to: Contracts, Contract Exhibits, Contract Amendments, PS&E Comments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Construction Change Directives, Potential Change Orders, Change Order Requests, Change Orders, etc. All supporting data including, but not limited to, shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests, Submittals, etc. and the like will be submitted in digital format via e-Builder.

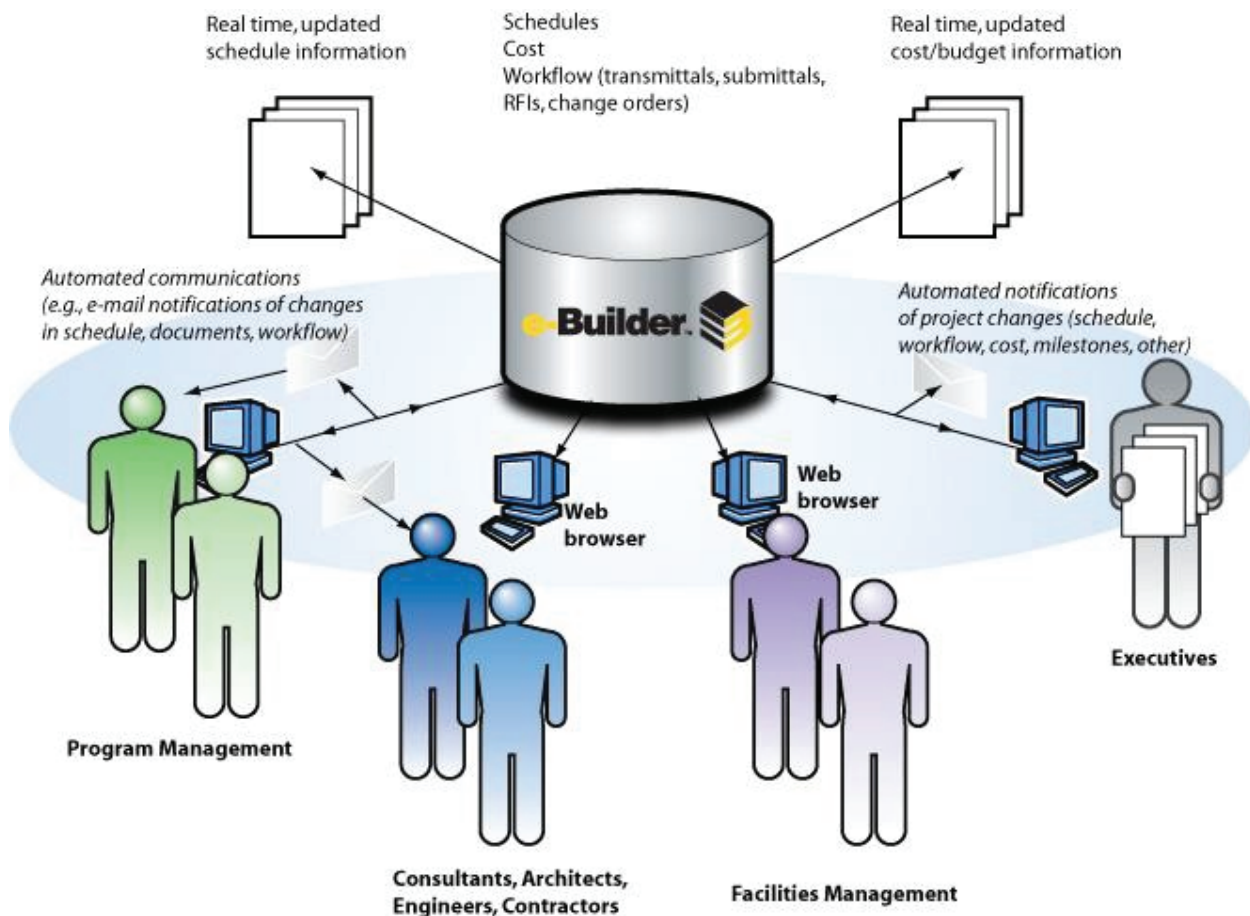
C. Electronic File Requirements:

1. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Consultant shall also submit all closeout documents including all Record Drawings and reports in digital format. All documents shall be converted or scanned into the Portable Document Format (PDF) file and uploaded to e-Builder.

4.0 IMPLEMENTATION REQUIREMENTS

- A. e-Builder is a comprehensive Project and Program Management system that will be implemented for managing documents, communications, and costs between the Contractor, Subcontractors, Design Consultants, and Owner. e-Builder includes extensive reporting capabilities to facilitate detailed.
- B. Project reporting in a web-based environment that is accessible to all parties and easy to use.

- C. Central Document Vault: e-Builder system includes a central database that maintains all project information and manages project communications amongst team members.
- D. Communication/Correspondence: e-Builder provides electronic routable communication forms that provide historical tracking, documentation, and increased accountability of project members.
- E. Project Calendars: Meetings will be scheduled and maintained centrally on e-Builder by the City.
- F. Reporting: All of the project and program data including documents, communications, and costs are accessible through integrated online reports. These reporting tools are completely configurable by each user. All reports can be exported to Excel for added flexibility.



5.0 LICENSING REQUIREMENT

- A. User Licenses: Each user license is for access to the site consisting of unlimited data storage. Users can be direct employees of the Consultant as well as its Subconsultants and/or Suppliers.

- B. Each user license includes full access to e-Builder, including all of the documents and reports mentioned above. Furthermore, each user license provides the e-Builder software as a service (SaS) including:
1. All hosting, operation, maintenance, and data backup of the e-Builder software and documents which are maintained in state-of-the-art data centers located throughout the United States.
 2. Quarterly e-Builder software enhancements.
 3. Unlimited phone, email, and web-based support 24-hours.
- C. e-Builder user licenses shall be obtained by the City, Owner Manager, and QA/QC Agencies for which the Design Consultants is not responsible.

EXHIBIT F - EQUIPMENT MATRIX

Site	Site Name	Address	Flood Zone	Existing Model Yr	Existing kW / hp	Fuel	Inside building?	Replace?	Relocate?	Security Enclosure?	Power Outage Hr Tolerate	Work Hrs Restriction	ATS w/ bypass. Replace?	Portable Hookup?	Load Bank Cabinet?	Block Heater?	Remote Monitoring?	Note
1	Fairway Glenn Storm Drain Pump Station	4751 Lick Mill Boulevard	X	1988	855 / 1140	Diesel	Y	Y	N	N	N/A	During dry months	Y	N	Y	Y	Y Connectivity ?	Load bank cabinet to be outside of the bldg. Remote monitoring via ex. SCADA. Remote fuel filling station required (Fire Dept. requirement)
2	Freedom Circle Storm Drain Pump Station	3905 Freedom Circle (@ Mission College Blvd.)	AE (Partial)	2000	440 / 587	Diesel	N	Y	N	N	N/A	During dry months	Y	N	Y	Y	Y Connectivity ?	Above Base Flood Elevation Certificate required. Remote monitoring via ex. SCADA.
3	Water Well 15	657 Hubbard Avenue (north of Melody Ln.)	X	1984	300 / 375	Diesel	N	Y	N	N	0 hr. Temp. power required	M - F 8 - 5	N?	N	Y	Y	Y Connectivity ?	Existing portable setup needs to change to permanent setup. ATS is 1 yr old; evaluation needed for replacement. Remote monitoring required (fire code violation).
4	Water Well 28	1005 San Tomas Expressway (approx. 460' south of Benton St.)	X	1986	350 / 480	Diesel	N	Y	N	N	24 hrs. max. No temp. power needed	M - F 8 - 5	N?	N	Y	Y	Y Connectivity ?	Existing portable setup needs to change to permanent setup. ATS is 1 yr old; evaluation needed for replacement. Remote monitoring required (fire code violation). County Permit needed.



Agenda Report

21-1286

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Adopt a Resolution Authorizing the City Manager to Execute the United States Department of Energy Western Area Power Administration Sierra Nevada Region Contract for Electric Service Base Resource Contract 20-SNR-02364 for Calendar Years 2025 through 2054

COUNCIL PILLAR

Promote Sustainability and Environmental Protection

BACKGROUND

The City of Santa Clara and its Electric Department, Silicon Valley Power (SVP) purchases power generated at federally owned facilities that make up the Central Valley Project (CVP Base Resource) through a contract with the United States Department of Energy's power market administrator, Western Area Power Administration (WAPA). The current Base Resource contract, which began in 2005, is scheduled to expire on December 31, 2024. In 2017, WAPA initiated a process for replacing the expiring contract. Over the last 3 years, WAPA and its customers, including SVP have been working towards the replacement contract covering the period January 1, 2025 through December 31, 2054. On September 16, 2020, WAPA sent out the final version of the replacement contract. It is substantially similar to the existing contract, with some notable changes discussed below.

The CVP Base Resource, during an average hydrological year, provides approximately 10% of the City's annual retail electricity sales. This energy comes from 100% carbon-free energy resources and helps maintain SVP's low carbon intensity of its energy supply portfolio.

DISCUSSION

The federal Department of Energy's power market administrator has completed all negotiations with the customer group that it intends to make on this agreement. All customers are signing the same form of the agreement. SVP's choice now is to approve the agreement as it is written now or to not sign the agreement. If SVP chooses not to sign, then SVP's portion of the hydro-electric resources will be allocated to other eligible customers in 2025 and SVP will not have rights to any future resources that become available. Also, SVP would then need to seek out other power purchases to replace the 10% of electricity sales currently served by the CVP Base Resource.

The final contract is similar to the contract the City approved in 2000. As mentioned above, all WAPA customers are signing the same form of agreement and therefore SVP had relatively little leverage in negotiating the terms. This notwithstanding, the proposed agreement does provide SVP with additional flexibility and clarity on how to administer its rights over the life of the agreement. Notable changes to the contract include:

- 30-year term

- In 2040, the customers' allocation of CVP Base Resource will be reduced by 2% to allow for new Western Customers. This is part of WAPA's marketing plan.
- SVP may opt out of contract at any time prior to June 30, 2024
- SVP may reduce the CVP Base Resource quantity or terminate the agreement when a new rate schedule is adopted or extended (at least every 5 years).
- Provision of 12-month rolling generation forecasts and five-years forecast updated annually.
- Addition of definition for Environmental Attributes and Capacity.
- Addition of requirement for WAPA to provide evidence of any environmental attribute.

The WAPA contract for CVP Base Resource is a take-or-pay resource. SVP pays its contractual base resource share of the annual revenue requirement to maintain and manage the CVP facilities that is determined by WAPA and the customers each year depending on particular capital project needs and maintenance requirements. The pricing of the CVP Base Resource is highly variable because the annual revenue requirement set by the federal government is not pre-determined or fixed, and because of the variability of energy produced by the project due to dependency on weather hydrology (wet versus drought).

The benefits of the CVP Base Resource are:

- Provides greenhouse gas free and schedulable energy to meet City's Climate Action Plan, and SVP's clean energy goals.
- Historically low average cost of energy compared to market price. In 2019, market prices to serve load averaged for the whole year at \$41 per MWh across all generation and all hours and the system grid operator has a hard energy bid cap of \$2000 per MWh. CVP Base Resource, which is shaped to serve demand, cost per MWh has ranged from as low as \$11 per MWh in 2006 and as high as over \$60 in 2015 (drought year) with historical annual average of \$30 per MWh since 2005.
- Customers have the ability to influence the cost of the power through its participation in various venues including Western customer meetings and congressional advocacy.

The risks of the CVP Base Resource are:

- Price and quantity are not fixed.
- Future costs are dependent on many factors including operation and maintenance, capital infrastructure projects, participation in wholesale energy imbalance market, and new environmental cost from changes to long-term operations.

The risks of the CVP Base Resource are managed through our coordinated efforts with the Northern California Power Agency (NCPA) and other customers receiving CVP Base Resource which has been successful at controlling cost increases and negotiating favorable terms in the contract.

Staff recommends authorizing the City Manager or her designee to execute the United States Department of Energy Western Area Power Administration Sierra Nevada Region Contract for Electric Service Base Resource with the City of Santa Clara for Calendar Year 2025 through 2054.

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 cost of the CVP Base Resource varies from year to year depending annual revenue requirement of the Central Valley Project. Staff currently budgets the cost of Western power on an annual basis taking into account forecasted hydrological conditions. The costs are currently forecasted at approximately \$13.0 million a year. Funding in the out years is subject to budget appropriations and will be incorporated into the budget development process for those years.

COORDINATION

This WAPA Contract and 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

Adopt a Resolution authorizing the City Manager to execute the United States Department of Energy Western Area Power Administration Sierra Nevada Region Contract for Electric Service Base Resource Contract 20-SNR-02364 for Calendar Years 2025 through 2054.

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

ATTACHMENTS

1. Resolution
2. Contract 20-SNR-02364 (WAPA)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
AUTHORIZING THE CITY MANAGER TO EXECUTE THE UNITED
STATES DEPARTMENT OF ENERGY WESTERN AREA POWER
ADMINISTRATION SIERRA NEVADA REGION CONTRACT FOR
ELECTRIC SERVICE BASE RESOURCE CONTRACT 20-SNR-
02364 FOR CALENDAR YEARS 2025 THROUGH 2054**

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

WHEREAS, the City of Santa Clara through its own Electric Department, Silicon Valley Power (SVP), purchases approximately 10% of its power needs from federally owned facilities that make up the Central Valley Project through a contract with the United States Department of Energy's power market administrator, Western Area Power Administration (WAPA);

WHEREAS, the energy generated by the Central Valley Project are 100% carbon-free energy resources and helps maintain SVP's low carbon intensity of its energy supply portfolio;

WHEREAS, the existing contract is set to expire on December 31, 2024; and

WHEREAS, WAPA and its customers including SVP have been working towards a replacement contract that is set to begin January 1, 2025 for a period of 30-years through December 31, 2054.

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

1. That the City Council authorizes the City Manager to execute the United States Department of Energy Western Area Power Administration Sierra Nevada Region Contract for Electric Service Base Resource Contract 20-SNR-02364 for Calendar Years 2025 through 2054.
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 _____, 2021, BY THE FOLLOWING VOTE:

AYES:

COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CONTRACT FOR ELECTRIC SERVICE
BASE RESOURCE
WITH

CITY OF SANTA CLARA, dba SILICON VALLEY POWER

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CONTRACT FOR ELECTRIC SERVICE
BASE RESOURCE
WITH

CITY OF SANTA CLARA, dba SILICON VALLEY POWER

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Signature Clause
Resolution/Certificate

General Power Contract Provisions

Exhibit A – Base Resource Percentage and Point(s) of Delivery

Exhibit B – Exchange Program

Exhibit C – Regulation and Reserves

Exhibit D – Rate Schedule

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CONTRACT FOR ELECTRIC SERVICE
BASE RESOURCE
WITH

CITY OF SANTA CLARA, dba SILICON VALLEY POWER

1. **PREAMBLE:** This Contract is made this _____ day of _____, 202____, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388); August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977, (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA (United States), acting by and through the Administrator, Western Area Power Administration, Department of Energy, hereinafter called WAPA, represented by the officer executing this Contract, or a duly appointed successor, hereinafter called the Contracting Officer; and CITY OF SANTA CLARA, dba SILICON VALLEY POWER, a municipality, organized and existing under the laws of the State of California, hereinafter called the Contractor or SVP, its successors and assigns; each sometimes hereinafter individually called the Party, and both sometimes hereinafter collectively called the Parties.

2. **EXPLANATORY RECITALS:**

2.1 WAPA markets the surplus generation from, and operates a high-voltage transmission system as a part of, the Central Valley Project (CVP).

///

///

1 2.2 WAPA and the U.S. Department of the Interior, Bureau of Reclamation
2 (Reclamation), have agreed to work together to efficiently serve Project Use and
3 Preference Customer loads.
4

5 2.3 On August 15, 2017, WAPA's final 2025 Power Marketing Plan (Marketing
6 Plan) was published in the Federal Register (82 FR 38675). The Marketing Plan
7 sets forth how WAPA's Sierra Nevada Region will market the power generated
8 from the CVP and Washoe Project.
9

10 2.4 The Marketing Plan provides that starting on January 1, 2025, WAPA will
11 provide 98 percent of available CVP power to its existing Customers. Existing
12 Customers will have the right to extend 98 percent of their current Base
13 Resource percentage as provided in the Marketing Plan and under the terms and
14 conditions of this Contract.
15

16 2.5 SVP desires to purchase and WAPA is willing to provide a percentage of
17 the Base Resource consistent with the Marketing Plan and the terms and
18 conditions of this Contract.
19

20 2.6 Under the Marketing Plan, WAPA requires that its Customers schedule
21 power in accordance with applicable operating requirements, including those of
22 the balancing authority area operator and WAPA's sub-balancing authority area
23 requirements.
24

25 2.7 WAPA markets power to Federal Preference Customers at the lowest
26 possible rates consistent with sound business principles pursuant to Section 1.1
27 of Delegation Order 00-037.00B.
28

///

1 3. **AGREEMENT:**

2 The Parties agree to the terms and conditions set forth herein.
3

4 4. **EFFECTIVE DATE AND TERM OF CONTRACT:**

5 4.1 This Contract shall become effective on the date of execution and shall
6 remain in effect until midnight of December 31, 2054, subject to prior termination
7 as otherwise provided for herein.
8

9 4.2 SVP may reduce its Base Resource percentage or terminate this Contract
10 for any reason through June 30, 2024.
11

12 4.3 The date of initial service under this Contract is January 1, 2025.
13

14 5. **DEFINITION OF TERMS:**

15 As used herein, the following terms whether singular or plural, or used with or without
16 initial capitalization, shall have the following meanings:

17 5.1 "Ancillary Services" means those services that are necessary to support
18 the transmission of capacity and energy from resources to loads while
19 maintaining reliable operation of the transmission system in accordance with
20 Good Utility Practice.
21

22 5.2 "BANC" means the Balancing Authority of Northern California or its
23 successor.
24

25 5.3 "Base Resource" means CVP and Washoe Project power (capacity and
26 energy) output determined by WAPA to be available for Customers, including the
27 Environmental Attributes, only after meeting the requirements of Project Use and
28 ///

1 First Preference Customers, and any adjustments for maintenance, reserves,
2 system losses, and certain ancillary services.

3
4 5.4 "Base Resource Operating Capability" means that portion of the Maximum
5 Operating Capability that WAPA determines to be available to Customers in any
6 hour.

7
8 5.5 "CAISO" means the California Independent System Operator or its
9 successor.

10
11 5.6 "Capacity" means the electrical capability of a generator, transformer,
12 transmission circuit or other equipment.

13
14 5.7 "Central Valley Project (CVP)" means the multipurpose Federal water
15 development project extending from the Cascade Range in northern California to
16 the plains along the Kern River, south of the City of Bakersfield.

17
18 5.8 "Custom Product" means a combination of products and services which
19 may be made available by WAPA per Customer request.

20
21 5.9 "Customer" means an entity with a contract and receiving electric service
22 from WAPA's Sierra Nevada Region.

23
24 5.10 "Energy" means capacity measured in terms of the work it is capable of
25 doing over a period of time; electric energy is usually measured in kilowatthours
26 or megawatthours.

27 ///

28 ///

1 5.11 "Environmental Attributes" means any and all credits, benefits, emissions
2 reductions, offsets, and allowances, howsoever entitled, attributable to the Base
3 Resource, and its avoided emission of pollutants.

4
5 5.12 "FERC" means the Federal Energy Regulatory Commission or its
6 successor.

7
8 5.13 "First Preference Customer" means a Preference Customer within a
9 county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity
10 River Division Act (69 Stat. 719) and the New Melones Project provisions of the
11 Flood Control Act of 1962 (76 Stat. 1173, 1191-1192).

12
13 5.14 "Full Load Service Customer" means a Customer that will have its entire
14 load at its delivery point(s) met by WAPA, and its Portfolio Manager functions for
15 those delivery point(s) performed by WAPA.

16
17 5.15 "Marketing Plan" means WAPA's final 2025 Power Marketing Plan for the
18 Sierra Nevada Region.

19
20 5.16 "Maximum Operating Capability" means the maximum electrical capability
21 from CVP generation available to produce energy, capacity and/or provide
22 ancillary services in any one or more hours.

23
24 5.17 "Minimum Base Resource" means the amount of Base Resource energy
25 generated each hour as a result of CVP minimum water releases.

26
27 5.18 "NERC" means the North American Electric Reliability Corporation or its
28 successor.

1 5.19 "Operating Reserves" means the combination of spinning and non-
2 spinning reserves required to meet WECC, NERC, and operating requirements,
3 including those of the balancing authority area or WAPA's sub-balancing
4 authority area.

5
6 5.20 "Portfolio Manager" means an entity responsible for determining balanced
7 hourly load and resource schedules for a Customer.

8
9 5.21 "Power" means capacity and energy.

10
11 5.22 "Preference" means the requirements of Reclamation Law that provide for
12 preference in the sale of Federal power be given to certain entities, such as
13 governments (state, Federal and Native American), municipalities and other
14 public corporations or agencies, and cooperatives and other nonprofit
15 organizations financed in whole or in part by loans made pursuant to the Rural
16 Electrification Act of 1936 (See, e.g., Reclamation Project Act of 1939,
17 Section 9(c), 43 USC 485h(c)).

18
19 5.23 "Primary Marketing Area" means the area generally encompassing
20 northern and central California, extending from the Cascade Range to the
21 Tehachapi Mountains and west-central Nevada.

22
23 5.24 "Project Use" means power as defined by Reclamation Law and/or used to
24 operate CVP and Washoe Project facilities.

25
26 5.25 "Rate" means the monetary charge or the formula for computing such a
27 charge for any electric service provided by WAPA, including but not limited to
28 charges for capacity (or demand), energy, or transmission service; however, it

1 does not include leasing fees, service facility charges, or other types of facility
2 use charges. A Rate will be set forth in a Rate Schedule or in a contract.

3
4 5.26 "Rate Adjustment" means a change in an existing Rate or Rates, or the
5 establishment of a Rate or Rates for a new service. It does not include a change
6 in Rate Schedule provisions or in contract terms, other than changes in the price
7 per unit of service, nor does it include changes in the monetary charge pursuant
8 to a formula stated in a Rate Schedule or a contract.

9
10 5.27 "Rate Adjustment Procedures" means those procedures for Rate
11 Adjustments developed by WAPA, Department of Energy (DOE) or FERC which
12 include DOE Order 00-037.00B, DOE Order RA 6120-2, 10 CFR 903, and
13 18 CFR 300, as may be amended.

14
15 5.28 "Rate Effective Date" means the first date of the billing period to which a
16 Rate Schedule or Rate Schedule extension applies. WAPA will provide notice to
17 the Customers of the Rate Effective Date.

18
19 5.29 "Rate Schedule" means a document identified such as a "Rate Schedule,"
20 "Schedule of Rates," or "Schedule Rate" which designates the Rate or Rates
21 applicable to a class of service specified therein and may contain other terms
22 and conditions relating to the service. On the effective date of this Contract,
23 18 CFR 300.1(b)(6) provides FERC may not approve a WAPA Rate Schedule for
24 a period that exceeds five (5) years. The Rate Schedule shall include the Rate
25 Effective Date and the effective period of the Rate Schedule.

26 ///

27 ///

28 ///

1 5.30 "Regional Transmission Organization (RTO)" means an organization that
2 meets the minimum characteristics and performs the minimum functions
3 specified in FERC Order 2000, as that order may be amended or superseded.
4

5 5.31 "Regulation" means the service provided by generating units equipped
6 and operating with automatic generation control which will enable such units to
7 respond to direct control signals in an upward or downward direction to match, on
8 a real time basis, demand and resources, consistent with WECC, NERC, and the
9 balancing authority area operator's criteria.
10

11 5.32 "Scheduling Coordinator" means an entity that is responsible for providing
12 hourly load and resource schedules to the balancing authority area operator or
13 WAPA's sub-balancing authority area, in accordance with a FERC-approved tariff
14 or WAPA's procedures and practices.
15

16 5.33 "Variable Resource Customer" means a Customer that is responsible for
17 managing its own energy portfolio.
18

19 5.34 "Washoe Project" means the Federal water project located in the
20 Lahontan Basin in west-central Nevada and east-central California.
21

22 5.35 "WECC" means the Western Electricity Coordinating Council or its
23 successor.
24

25 6. **BASE RESOURCE ESTIMATES AND AVAILABILITY FORECAST:**

26 6.1 At the beginning of each water year, WAPA will post to WAPA's external
27 website a five-year forecast of Base Resource Operating Capability estimated to
28 ///

1 be available, based on high, average, and low hydrological conditions. The
2 forecast will contain the following information:

3 6.1.1 Maximum Operating Capability of the CVP for each month;

4 6.1.2 Energy required for estimated Project Use loads, First Preference
5 Customers' loads, and ancillary service requirements.

6
7 6.2 Each month, WAPA will post to WAPA's external website a monthly Base
8 Resource forecast of Base Resource Operating Capability and energy estimated
9 to be available for each month on a rolling twelve-month basis, based on high,
10 average, and low hydrological conditions. The monthly forecast will contain the
11 following information:

12 6.2.1 Maximum Operating Capability of the CVP for each month;

13 6.2.2 Energy required for estimated Project Use loads, First Preference
14 Customers' loads, and ancillary service requirements.

15
16 6.3 WAPA shall make reasonable efforts, within its control, to ensure the
17 forecasted Base Resource will be available.

18
19 7. **ELECTRIC SERVICE FURNISHED BY WAPA:**

20 7.1 SVP will be entitled to receive a percentage of the Base Resource as set
21 forth in Exhibit A.

22
23 7.2 The estimated amount of energy available to SVP shall be determined by
24 multiplying its Base Resource percentage by the total amount of Base Resource
25 energy available during that period.

26
27 7.3 The minimum amount of energy SVP will be required to schedule for each
28 hour shall be determined by multiplying its Base Resource percentage by the

1 Minimum Base Resource, unless otherwise agreed to by WAPA. However, if
2 SVP does not have sufficient load to take its percentage of the Minimum Base
3 Resource, any excess energy shall be made available to WAPA for the
4 Exchange Program as described later in this Contract under Section 10 and
5 Exhibit B.
6

7 7.4 The maximum amount of energy SVP may schedule in any hour shall be
8 determined by multiplying its Base Resource percentage by the Base Resource
9 Operating Capability. However, SVP may schedule energy in excess of this
10 maximum, if approved by WAPA, to accommodate purchases or exchanges from
11 the Exchange Program.
12

13 7.5 SVP will be entitled to the benefit of available regulation and operating
14 reserves from the CVP in proportion to its Base Resource percentage. The
15 method for calculating regulation and operating reserves is set forth in Exhibit C.
16

17 7.6 WAPA's obligation to provide SVP's Base Resource is limited to the actual
18 CVP generation available on a real-time basis. WAPA shall have no obligation to
19 replace any Base Resource that is unavailable; for instance, Base Resource that
20 is unavailable due to scheduled maintenance, system emergencies, forced
21 outages, or other constraints. Any costs incurred by either Party as a result of
22 deviations between actual and scheduled Base Resource energy shall be the
23 responsibility of SVP. WAPA will notify SVP as soon as reasonably practicable
24 of any situation that will impact the availability of the Base Resource, and will
25 modify schedules accordingly, on a pro-rata basis.

26 ///

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1 7.7 Due to the variable nature of the Base Resource, WAPA may provide a
2 Custom Product upon a Customer's request. Any Custom Product will be the
3 subject of a separate contractual arrangement.
4

5 8. **DELIVERY ARRANGEMENTS:**

6 8.1 WAPA will make SVP's Base Resource available at the generator bus or
7 such other delivery point(s) on the CVP transmission system as the Parties will
8 mutually agree, as specified in Exhibit A. WAPA reserves Network Integration
9 Transmission Service for the delivery of Base Resource on the CVP transmission
10 system under its Open Access Transmission Tariff (OATT). The rates and terms
11 of this service shall be in accordance with WAPA's then-current rate schedule
12 and OATT.
13

14 8.2 If requested by WAPA, SVP must provide written notification to WAPA by
15 July 1, 2024, demonstrating that it has arranged for delivery of its Base Resource
16 energy to its load. Such notification shall include both transmission and
17 distribution level arrangements, as applicable. WAPA shall have no obligation to
18 make Base Resource available to SVP if delivery arrangements are not in effect.
19 However, SVP shall not be relieved of its obligation to pay its percentage share
20 of the Base Resource during the time in which delivery arrangements are not in
21 effect.
22

23 9. **SCHEDULING PROCEDURES, BUSINESS PRACTICES AND PROTOCOLS:**

24 9.1 All energy furnished by WAPA to SVP will be provided on a scheduled
25 basis. SVP agrees to abide by the scheduling procedures, business practices
26 and protocols of the applicable balancing authority area or WAPA's sub-
27 balancing authority area, as set forth on WAPA's website. The Parties recognize
28 that the scheduling procedures, business practices and protocols may require

1 modification from time-to-time to reflect updated operating procedures that may
2 become applicable to the Parties. In such event, WAPA will make such changes
3 in accordance with Section 17 of this Contract.
4

5 9.2 Designation of Scheduling Coordinator (SC): If SVP is required to have a
6 Scheduling Coordinator; SVP shall notify WAPA of its designated Scheduling
7 Coordinator not less than ninety (90) days prior to the date of initial service under
8 this Contract. In the event that SVP's Scheduling Coordinator arrangement
9 changes, SVP shall notify WAPA in writing, not less than thirty (30) days prior to
10 the change, unless a shorter notification period is agreed to by WAPA.
11

12 9.3 **If WAPA is SVP's Portfolio Manager, as set forth in a separate**
13 **Custom Product Contract, all scheduling activities and responsibilities will**
14 **be performed by WAPA on behalf of SVP.** At such time as WAPA is no longer
15 SVP's Portfolio Manager, then SVP will be responsible for performance of its
16 duties under this Section 9.
17

18 9.4 WAPA will provide Customers with the opportunity to comment on
19 WAPA's maintenance and operations plans. WAPA will facilitate Customer
20 meetings with the Bureau of Reclamation regarding cost and operation planning.
21

22 9.5 In the event that SVP does not abide by the protocols, business practices
23 and procedures and WAPA incurs costs as a result, SVP is responsible for and
24 shall pay such costs.

25 ///

26 ///

27 ///

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10. **EXCHANGE PROGRAM:**

10.1 WAPA will establish and manage an Exchange Program to allow all Customers to fully and efficiently use their Base Resource percentage. The Exchange Program is a mechanism to:

10.1.1 Make available to WAPA, for provision to other Customers, any Base Resource energy a Customer cannot use on a pre-scheduled basis due to insufficient load; and

10.1.2 Help mitigate the costs incurred by a Customer for the power it is obligated to pay for, but may not be able to use.

10.2 Under the Exchange Program, all Base Resource energy in excess of SVP's load will be retained by WAPA and offered by WAPA for sale to other Customers. SVP may purchase energy from the Exchange Program. While WAPA's retention of excess Base Resource is mandatory, purchasing from the Exchange Program is voluntary.

10.3 The Exchange Program procedures are set forth in Exhibit B. WAPA may change the program and procedures of the Exchange Program in accordance with Section 17 of this Contract.

10.4 WAPA will also offer a seasonal Exchange Program. Under the seasonal Exchange Program, SVP may elect to make available to WAPA that portion of its Base Resource percentage that it is unable to use due to insufficient load. SVP, through WAPA, will be able to exchange its unusable Base Resource percentage with other Customers. Any Customer may submit a request to WAPA to exchange or purchase energy through the seasonal Exchange Program. Details of a seasonal exchange will be developed with the Customer upon request by that Customer.

10.5 Exchanges of the Base Resource between SVP and others outside of the WAPA-managed Exchange Programs, or other WAPA-managed programs, are prohibited.

11. **INDEPENDENT SYSTEM OPERATOR OR REGIONAL TRANSMISSION ORGANIZATION:**

11.1 WAPA is a sub-balancing authority area within BANC. WAPA operates in conformance with its sub-balancing authority area and BANC's balancing authority area protocols, business practices and procedures. In the event of changes to any protocols, business practices and procedures, WAPA may make any changes necessary to this Contract to conform to the operating and scheduling protocols, business practices and procedures in accordance with Section 17 of this Contract.

11.2 The Parties understand that, in the future, WAPA may also change its operating configuration such as by: (1) joining an independent system operator or RTO or (2) participating in future markets such as energy imbalance markets; or (3) making system configurations to meet future operating requirements. In such an event, if WAPA is required to conform to the protocols, business practices or procedures, WAPA shall make changes to this Contract to conform to the terms and conditions required by such events in accordance with Section 17 of this Contract.

11.3 In the event that: 1) WAPA incurs costs from the balancing authority area, WAPA's sub-balancing authority area, CAISO, an RTO, or a different balancing authority area for serving SVP's load; or 2) SVP does not abide by the protocols business practices, or procedures of the balancing authority area, an RTO, or

///

1 other balancing authority area operator that are applicable to WAPA and WAPA
2 incurs costs as a result, SVP agrees to pay all such costs attributable to SVP.

3
4 12. **WAPA RATES:**

5 12.1 The Base Resource will be provided on a take-or-pay basis. SVP will be
6 obligated to pay its Base Resource percentage share in accordance with the
7 Rate Schedule attached hereto, whether or not it takes or uses its full Base
8 Resource percentage.

9
10 12.2 SVP shall pay for the electric service furnished hereunder in accordance
11 with the Rates, charges, and conditions set forth in the CVP Schedule of Rates
12 applicable to the Base Resource, effective January 1, 2025, or any superseding
13 Rate Schedule.

14
15 12.3 Rates applicable under this Contract shall be subject to change by WAPA
16 in accordance with appropriate Rate Adjustment Procedures. If, at any time,
17 WAPA announces that it has received approval of a Rate Schedule, or extension
18 of an existing Rate Schedule applicable to this Contract, or if a Rate Adjustment
19 Procedure is amended, WAPA will promptly notify SVP thereof.

20
21 12.4 SVP, by providing written notice to WAPA within ninety (90) days after the
22 Rate Effective Date of a Rate Schedule or Rate Schedule extension applicable to
23 this Contract, may elect to reduce its Base Resource percentage or terminate
24 this Contract. SVP shall designate a Base Resource percentage reduction or
25 termination effective date that will be effective on the last day of the billing month
26 not later than two (2) years after the Rate Effective Date. If the termination
27 effective date is after the Rate Effective Date, the new or extended Rates shall
28 apply for service taken by SVP until the termination effective date. Once SVP

provides notice to terminate or reduce its Base Resource percentage, WAPA will begin the process to reallocate the Base Resource to other Preference Customers. SVP may not revoke its notice to terminate or reduce its Base Resource unless WAPA provides written consent.

12.5 Rates shall become effective under this Contract on the Rate Effective Date stated in a Rate notice.

13. **INTEGRATED RESOURCE PLAN:**

13.1 In accordance with the Energy Policy Act of 1992, SVP is required to meet the requirements of WAPA's Energy Planning and Management Program (EPAMP). To fulfill the requirements of EPAMP, SVP must develop and submit an integrated resource plan or alternative report, as applicable. Specific EPAMP requirements are set forth in the Federal Register at (64 FR 62604) and may be found on WAPA's website. Failure to comply with WAPA's EPAMP requirements may result in penalties as specified therein. SVP understands that WAPA may re-evaluate its EPAMP requirements and change them from time-to-time as appropriate. Such changes will be subject to a public process and publication in the Federal Register.

13.2 Should the EPAMP requirements be eliminated, SVP shall have no responsibilities under Section 13.1.

14. **ADJUSTMENT OF BASE RESOURCE PERCENTAGE:**

14.1 Prior to the date of initial service, WAPA may adjust SVP's Base Resource percentage, as set forth in Exhibit A herein, if WAPA determines that SVP's Base Resource percentage is greater than its actual usage, as specified in the Marketing Plan.

1 14.2 After the date of initial service, WAPA may adjust SVP's Base Resource
2 percentage under any of the following conditions:

3 14.2.1 SVP sells energy associated with its Base Resource percentage
4 to another entity for resale by that entity;

5 14.2.2 SVP uses the energy associated with its Base Resource
6 percentage to serve loads outside of the Sierra Nevada Region's Primary
7 Marketing Area;

8 14.2.3 SVP's annual energy associated with its Base Resource
9 percentage, is ten percent or more than its actual annual energy usage.
10

11 14.3 If WAPA determines that SVP has met any of the conditions in
12 Section 14.2 above, WAPA will take the following steps:

13 14.3.1 Notify SVP of the nature of the concern;

14 14.3.2 Analyze SVP's usage of the energy associated with its Base
15 Resource percentage and determine if an adjustment is necessary on a
16 case-by-case basis, with due consideration of any circumstance that may
17 have temporarily altered SVP's energy usage;

18 14.3.3 If an adjustment is determined to be necessary, provide a 90-day
19 written notice of such adjustment; and

20 14.3.4 Reduce or rescind SVP's Base Resource percentage
21 permanently on the effective date specified in the notice.
22

23 15. **METERING AND POWER MEASUREMENT RESPONSIBILITIES:**

24 SVP shall be responsible for electric power metering equipment requirements and
25 power measurement data associated with the use of WAPA power under this Contract
26 as follows:

27 15.1 Unless previously installed and furnished by WAPA, SVP shall furnish,
28 install, operate, maintain, and replace, meters and associated metering

1 equipment required for deliveries of WAPA power scheduled to each delivery
2 point on the WAPA grid, the CAISO-controlled grid, a utility distribution company
3 grid, or other electrical system, as may be applicable. Such meters shall comply
4 with the all applicable meter requirements. For instance, meters on:

5 15.1.1 WAPA's system must meet WAPA's meter requirements;

6 15.1.2 CAISO's system must meet CAISO's meter requirements; and/or

7 15.1.3 Pacific Gas and Electric Company's (PG&E) system must meet
8 PG&E's meter requirements.

9
10 15.2 SVP shall measure power deliveries and provide certified settlement-
11 quality metering data to WAPA as requested. It is generally contemplated that
12 WAPA will require this data on a monthly basis.

13
14 15.3 If WAPA previously installed and furnished a meter to SVP, WAPA shall
15 be allowed unrestricted, unescorted access to its revenue meter equipment.
16 SVP shall provide a minimum of three (3) keys or the combination to SVP's
17 existing locks. Alternatively, WAPA may provide a WAPA-owned padlock(s).
18 Access shall include all gates and/or doors required to access the metering
19 equipment.

20
21 15.4 Upon request by SVP, to evidence receipt of the Environmental Attributes,
22 WAPA shall timely provide meter data or other mutually agreed upon data to
23 SVP measuring the amount of CVP energy that is generated and delivered to
24 SVP. Upon mutual agreement of Customers, WAPA and Reclamation, such
25 meters shall be modified or replaced to meet appropriate standards or
26 requirements to convey CVP Environmental Attributes to Customers.

27 ///

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16. **CHANGES IN ORGANIZATIONAL STATUS:**

16.1 If SVP changes its organizational status or otherwise changes its obligation to supply electric power to Preference loads, WAPA reserves the right to adjust WAPA's power sales obligations under this Contract or to terminate this Contract, as WAPA deems appropriate. Changes in organizational status include but are not limited to:

16.1.1 Merging with another entity;

16.1.2 Acquiring or being acquired by another entity;

16.1.3 Creating a new entity from an existing one;

16.1.4 Joining or withdrawing from a member-based power supply organization; or

16.1.5 Adding or losing members from its membership organization.

16.2 For the purposes of this Section 16, a member is any Preference entity that is included in a membership, which has the responsibility of supplying power to the end-use consumer or Customer. Memberships include but are not limited to:

16.2.1 Municipality;

16.2.2 Cooperative;

16.2.3 Joint powers authority; or

16.2.4 Governmental agency.

16.3 For purposes of this Section 16, participation in a State promulgated direct access program shall not be deemed to be a change in a Customer's organizational status or its obligation to supply electric power to Preference loads.

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1 16.4 Prior to making an organizational change, SVP may request an opinion
2 from WAPA as to whether SVP's proposed organizational change will result in an
3 adjustment of SVP's Base Resource percentage or termination under this
4 Section 16. SVP shall provide WAPA with all relevant documents and
5 information regarding the proposed organizational change. Based on the
6 documents and information furnished, WAPA will provide SVP with an opinion.
7

8 16.5 In addition to the above, if the change in organizational status results in a
9 proposed transfer of the Contract, or any portion thereof, Section 37 of the
10 General Power Contract Provisions (GPCP), "Transfer of Interest in Contract,"
11 generally requires the Customer to obtain prior written approval from WAPA's
12 Administrator. Organizational changes that typically propose transfer of the
13 Contract, or a portion of the Contract, and require prior written approval from
14 WAPA include but are not limited to:

15 16.5.1 Merging with another entity;

16 16.5.2 Acquiring or being acquired by another entity;

17 16.5.3 Joining an entity; and

18 16.5.4 Creating a new entity.
19

20 17. **PROTOCOLS, BUSINESS PRACTICES AND PROCEDURES:**

21 WAPA reserves the right to make changes to protocols, business practices and
22 procedures, as needed. Prior to making any changes, WAPA will provide notice to SVP
23 and provide SVP with an opportunity to comment on such changes. WAPA will
24 consider any comments made by SVP before making any changes, and shall provide a
25 written response to the comments. After a final decision is made by WAPA, if SVP is
26 not satisfied with the decision, SVP shall have thirty (30) days from the date of WAPA's
27 final decision to appeal the change to WAPA's Administrator. WAPA will not implement
28 a change that has been appealed until a final decision by the Administrator.

Notwithstanding the provisions within this Section 17, SVP shall retain its right to pursue other legal remedies available to it.

18. **ENFORCEABILITY:**

It is not the intent of the Parties that this Contract confer any rights on third parties to enforce the provisions of this Contract except as required by law or express provision in this Contract. Except as provided in this Section, this Contract may be enforced, or caused to be enforced, only by WAPA or SVP, or their successors or assigns.

19. **GENERAL POWER CONTRACT PROVISIONS:**

The GPCP, effective September 1, 2007, attached hereto, are hereby made a part of this Contract, the same as if they had been expressly set forth herein; Except Section 11 shall not be applicable to this Contract. In the event of a conflict between the GPCP and the provisions in the body of this Contract, the Contract shall control. The usage of the term "Contractor" in the GPCP shall mean SVP. The usage of the term "firm" in Articles 17 and 18 of the GPCP shall be deemed to be replaced with the words "Base Resource."

20. **EXHIBITS MADE PART OF CONTRACT:**

Exhibit A (Base Resource Percentage and Point(s) of Delivery), Exhibit B (Exchange Program), Exhibit C (Regulation and Reserves), and Exhibit D (Rate Schedule) existing under this Contract may vary during the term hereof. Each of said exhibits shall become a part of this Contract during the term fixed by its provisions. Exhibits A, B, C, and D are attached hereto, and each shall be in force and effect in accordance with its terms until respectively superseded by a subsequent exhibit.

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21. **EXECUTION BY COUNTERPARTS:**

This Contract may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Contract may be detached by any counterpart of the Contract without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Contract identical in form hereto, by having attached to it one or more signature pages.

22. **ELECTRONIC SIGNATURES:**

The Parties agree that this Contract may be executed by handwritten signature or digitally signed using Adobe Sign or Adobe E-Signature. An electronic or digital signature is the same as a handwritten signature and shall be considered valid and acceptable.

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1 **IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day
2 and year first above written.

3
4 WESTERN AREA POWER ADMINISTRATION

5
6 By: _____
7 Name: Arun K. Sethi
8 Title: Vice President of Power Marketing
9 for Sierra Nevada Region
Address: 114 Parkshore Drive
Folsom, CA 95630-4710

10
11
12 CITY OF SANTA CLARA
dba SILICON VALLEY POWER

13
14 Attest:

15 By: _____
16 Name: _____
17 Title: _____

14 By: _____
15 Name: Manuel Pineda
16 Title: Chief Electric Utility Officer
17 Address: 881 Martin Avenue
Santa Clara, CA 95050

CITY OF SANTA CLARA, dba SILICON VALLEY POWER

Resolution/Certificate

EXHIBIT A

(Base Resource Percentage and Point(s) of Delivery)

1. This Exhibit A, to be effective under and as part of Contract 20-SNR-02364 (Contract), shall become effective upon execution of the Contract; and shall remain in effect until either superseded by another Exhibit A or termination of the Contract.
2. Pursuant to the Marketing Plan, SVP's extended Base Resource percentage is 9.41134.
3. SVP's Base Resource percentage may be adjusted by WAPA as specified in the Contract.
4. SVP's Base Resource percentage will be adjusted effective January 1, 2040, in accordance with the Marketing Plan, to establish the 2040 Resource Pool for new power allocations.
5. The point(s) of delivery on the CVP transmission system for SVP's Base Resource shall be either WAPA's Tracy 230-kV or Tracy 500-kV or Cottonwood 230-kV Substations, or as requested by SVP and approved by WAPA.
6. All power deliveries provided under this Contract shall be adjusted for the applicable transformation and transmission losses on the 230-kV system. Additional transformation and/or transmission losses shall be applied to deliveries at other than the 230-kV level.
7. This Exhibit A shall be replaced by WAPA as necessary under the terms and conditions set forth in the Contract, and a signature is not required by either Party.

EXHIBIT B
(Exchange Program)

1. This Exhibit B, to be effective under and as a part of Contract 20-SNR-02364, (Contract) shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit B or termination of the Contract.
2. SVP is in agreement with the procedures set forth herein.
3. If necessary, WAPA retains the right to make subsequent revisions to Exhibit B after consultation with its Customers. At such time as WAPA promulgates a revision of this Exhibit B, SVP shall have the option of either accepting the new revision to this Exhibit B or opting out of making purchases from the Exchange Program. If WAPA does not receive notice from SVP opting out of making purchases from the Exchange Program within 30 days of SVP's receipt of a revised Exhibit B, SVP may automatically continue to make purchases from the Exchange Program if already participating.
4. Exchange Program:
 - 4.1 WAPA has established separate Exchange Program for the Full Load Service Customer group and the Variable Resource Customer group. A Customer cannot be in both the Full Load Service Customer group and the Variable Resource Customer group at the same time.
 - 4.2 The Exchange Program will take place on a pre-scheduled basis.
 - 4.3 Base Resource power in excess of a Customer's load in any hour will be distributed by WAPA in the applicable Exchange Program group (Full Load Service or Variable Resource).
 - 4.4 A Customer may choose whether to make purchases from the Exchange Program for its group. Participation in making purchases from the Exchange Program requires a Customer to accept Exchange Program power if it has load in that hour. However, even if a Customer chooses not to participate in making purchases, if that Customer's Base Resource amount exceeds its load in any hour, the excess will go into the Exchange Program for that Customer's group for that hour, for use by participating Customers with load not met by Base Resource power in that hour. In other words, the retention of Base Resource in excess of a Customer's load is mandatory, while participation in making purchases from the Exchange Program is voluntary.

4.5 If a Customer chooses not to make purchases from the Exchange Program, a written notice to that effect must be submitted to WAPA by November 1, 2024. Thereafter, a Customer must submit a written notice to WAPA at least one (1) month prior to changing its participation status; Except if a Customer has elected to make purchases from the Exchange Program and subsequently changes its participation status, the Customer must wait a minimum of one (1) year to again participate in the Exchange Program. Participation status will change on the first day of the month following the required notice period or the minimum one (1) year waiting period.

4.6 A Customer must use its Base Resource power prior to using any other source to meet its load, unless agreed to by WAPA in writing. A Customer participating in the Exchange Program must use Exchange Program power prior to any other source to meet its load, unless agreed to by WAPA in writing.

4.7 Each participating Customer in each group will receive an equal share in megawatts of that group's Exchange Program power available for that hour, up to the Customer's unmet load in that hour.

4.8 Any Exchange Program power that is excess to a Customer's unmet load will go back to the Exchange Program for the group to which the Customer belongs, for that same hour. This power will be reallocated to participating Customers in that group on an equal basis until either that group's Exchange Program has no remaining power in that hour, or no participating Customers in that group have unmet load in that hour.

4.9 If there is power remaining in the Full Load Service Exchange Program or the Variable Resource Exchange Program in any hour, and none of the participating Customers in that group have unmet load in that hour, the remaining power will go to the other group's Exchange Program for that same hour.

4.10 If, in any hour, no participating Customers have unmet load but there is power remaining in either group's Exchange Program, that power may be offered for sale by WAPA unless the amount of power is de minimis.

4.11 Customers' power bills will be adjusted to reflect transactions into and out of the Exchange Program.

EXHIBIT C
(Regulation and Reserves)

1. This Exhibit C to be effective under and as a part of Contract 20-SNR-02364 (Contract), shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit C or termination of the Contract.
2. Definitions of Terms:
 - 2.1 Contingency Reserve: An additional amount of operating reserves sufficient to reduce Area Control Error (ACE) to zero in ten minutes following loss of generating capacity, which would result from the most severe single contingency. Contingency Reserves will consist of Spinning and Nonspinning Reserves.
 - 2.2 Frequency Response Reserves: Spinning Reserves which provide the required Frequency Response needed for the reliable operation of an interconnection. The energy is provided by the generator's governor's response to a frequency deviation from scheduled system frequency.
 - 2.3 Nonspinning Reserve: That operating reserve not connected to the system but capable of serving demand within ten minutes, or interruptible load that can be removed from the system within ten minutes.
 - 2.4 Spinning Reserve: Unloaded generation which is synchronized and ready to serve additional demand.
3. WAPA's Disposition of Contingency Reserves and Regulation:
 - 3.1 Contingency Reserves: WAPA will provide all Base Resource schedules with Contingency Reserves, including Spinning, Nonspinning, and Frequency Response Reserves. Contingency Reserves will be provided from CVP generation as available, or procured from other sources as necessary.
 - 3.2 Regulation: WAPA will not provide Regulation with Base Resource schedules. Any sales of Regulation by WAPA will be credited against the Power Revenue Requirement.

EXHIBIT D
(Rate Schedule)

1. This Exhibit D to be effective under and as a part of Contract 20-SNR-02364 (Contract), shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit D or termination of the Contract.
2. The CVP Schedule of Rates for Base Resource and First Preference Power (CV-F13) begins on page 2 of this Exhibit D.
3. This Exhibit D shall be replaced by WAPA as necessary under the terms and conditions set forth in the Rate Schedule, and a signature is not required by either Party.



Agenda Report

21-1409

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on a Resolution Approving Purchase and Sale Agreements for Electric Utility Easements on the South Loop Reconfigure Project; 2755 Lafayette Street and 630 Martin Avenue

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), is proposing to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City. SVP's primary objective of the South Loop Reconfigure Project (Project) is to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

The City Council has previously taken a number of actions on this Project:

- June 16, 2015 - Adopted the FY 2015/16 Capital Improvement Program (CIP) Budget which included the initial funding for the engineering for this 60kV conductoring and upgrading project.
- July 12, 2016 - Approved a professional services agreement with Electrical Consultants, Inc. to provide transmission line engineering design services which included reconfiguring the south transmission loop.
- January 14, 2020 - Amended a service agreement with Valbridge Property Advisors to perform appraisal services as part of the easement acquisition for the Project.
- July 7, 2020 - Adopted the Negative Declaration and Mitigation, Monitoring and Reporting Program for the Project and increased the capital funding of the Transmission System Reinforcements Capital Improvement Program Project (No. 2124) by \$6,300,000.
- October 13, 2020 - Approved three Purchase and Sale Agreements for Electric Utility Easements
- November 10, 2020 - Approved two Purchase and Sale Agreements for Electric Utility Easements
- November 17, 2020 - Approved four Purchase and Sale Agreements for Electric Utility Easements
- December 16, 2020 - Approved one Purchase and Sale Agreement for Electric Utility Easement

The majority of the new 60 kV transmission line would be constructed along the following city streets in areas where existing power lines do not currently exist: Lafayette Street, Mathew Street, Martin Avenue and De La Cruz Boulevard. The Project requires the acquisition of thirty-seven (37) parcel

easements to facilitate construction of multiple new monopole steel structures and results in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements electrical facilities. Ten (10) Purchase and Sale Agreements for Electric Utility Easements have been approved by Council.

DISCUSSION

The City has negotiated the proposed purchase of the easements from the following two (2) property owners of certain parcels necessary for the Project, upon the terms set forth below.

Address	Grantors	APN	Purchase Price
2755 Lafayette St.	Witkin Properties, L.P.	224-04-062	\$180,000
630 Martin Avenue	D & R Miller Properties, LLC	224-35-014	\$8,800

ENVIRONMENTAL REVIEW

The potential impacts to the Project were addressed in the Mitigated Negative Declaration (MND) [SCH#2020-05-9009] prepared by the environmental consultant firm, Aspen Environmental Group and was adopted by Council on July 7, 2020 by Resolution No. 20-8869.

FISCAL IMPACT

The total cost of the easement purchases is \$188,800. Funds are available in the Adopted Biennial FY 2020/21 and FY 2021/22 Capital Improvement Program Transmission System Reinforcement Project's budget in the Electric Utility Capital Fund.

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

1. Adopt the Resolution approving the purchases of overhead electric easements at 2755 Lafayette Street [224-04-062], and 630 Martin Avenue [224-35-014]; and
2. Authorize the recordation thereof.

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

ATTACHMENTS

1. Resolution
2. Agreement for Purchase and Sale - 2755 Lafayette Street [224-04-062]
3. Agreement for Purchase and Sale - 630 Martin Avenue [224-35-014]

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, APPROVING PURCHASES OF OVERHEAD
ELECTRIC EASEMENTS**

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

WHEREAS, the City of Santa Clara, a chartered city and municipal corporation acting by and through its municipally owned utility, Silicon Valley Power (“City” or “SVP”) is engaged in a continuing effort to upgrade and enhance its overhead and underground distribution and transmission systems to meet new customer demand and to maintain the reliability of SVP’s systems. The South Loop Reconfigure Project (“Project”) is a keystone project for this effort; and

WHEREAS, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

WHEREAS, the Project was analyzed in accordance with the requirements of the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration (MND) [SCH# 2020-05-9009] was prepared for the project by the environmental consultant firm Aspen Environmental Group, and adopted by Council on July 7, 2020 by Resolution No. 20-8869; and

WHEREAS, City Council provided authority to negotiate Easements with owners of certain parcels required to construct the Project and the City has reached agreements with the two (2) property owners to purchase easements necessary for the Project, upon the terms set forth below.

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

1. That the purchase of the easements from the following two (2) property owners for the negotiated purchase prices are approved.

Address	Grantors	APN	Purchase Price
2755 Lafayette Street	Witkin Properties, L.P.	224-04-062	\$180,000
630 Martin Avenue	D & R Miller Properties, LLC	224-35-014	\$8,800

2. That the City Manager, or duly authorized designee, is hereby authorized and directed to execute the Purchase and Sale Agreements (Utility Easement) with each of the forgoing Grantors, which are attached to the Report to Council accompanying this Resolution and presented to the City Council on February 9, 2021, as incorporated by this reference.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, 2021, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. RTC 21-1409
2. Agreement for Purchase and Sale - 2755 Lafayette Street [224-04-062]
3. Agreement for Purchase and Sale – 630 Martin Avenue [224-35-014]

**AGREEMENT FOR PURCHASE AND SALE
(UTILITY EASEMENT)**

THIS AGREEMENT FOR PURCHASE AND SALE ("**Agreement**") is made and entered into as of _____, 20__ (the "**Effective Date**") by and between **CITY OF SANTA CLARA**, a municipal corporation ("Grantee" or "City"), and **Witkin Properties, L.P., a California limited partnership** ("Grantor") with regard to the purchase and sale of certain property interests, upon the terms and conditions set forth herein.

RECITALS

WHEREAS, The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), plans to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project ("Project") is accommodated to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

WHEREAS, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

WHEREAS, Grantee wishes to acquire from Grantor, and Grantor wishes to sell to Grantee certain property rights, as more particularly described in **Exhibit A** and **Exhibit B** (the "Easement") for the Project upon the terms and conditions set forth herein.

WHEREAS, Grantor and Grantee recognize that the sale of the Easement is subject to approval of the Santa Clara City Council and that this Agreement shall have no force or effect unless and until said City Council approval has been obtained, which approval shall be obtained before execution of the Agreement by Grantee.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

**ARTICLE 1
PURCHASE**

1.1. The Easement. Grantor is the fee owner of certain real property commonly known as **2755 Lafayette Street** APN: **224-04-062** located in the City of Santa Clara, California over which the Easement will cross.

1.2. Sale and Conveyance. Grantor shall sell to Grantee and Grantee shall purchase from Grantor, the Easement rights, subject to all of the terms and conditions set forth in Articles 2 and 3 hereof.

**ARTICLE 2
PURCHASE PRICE**

2.1. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be **One Hundred Eighty Thousand and no/100 Dollars (\$180,000.00)**.

2.2. Payment of Purchase Price. The purchase price shall be payable all in cash upon close of Escrow (as defined below) in accordance with Section 4.2.

ARTICLE 3 CONDITIONS TO PURCHASE AND SALE

3.1. Conditions Precedent to Purchase and Sale. The obligation of Grantee to purchase and Grantor to sell the Easement is expressly conditioned upon the satisfaction, prior to closing, of each of the conditions set forth in this Section 3.1 (the "Conditions Precedent").

3.2. Title. Grantee has obtained a preliminary title report dated April 24, 2020, from First American Title Company (the "Title Report"). Grantee acknowledges and agrees that all exceptions are approved by Grantee (the "Approved Exceptions").

3.3. Execution of Overhead Electric Easement Deed. Grantor shall be ready, willing and able to convey title to the Easement by Overhead Electric Easement Deed to Grantee in the form of **Exhibit C** attached hereto (the "Easement Deed") subject only to the Approved Exceptions.

3.4. Deposit of Grant Deed. Grantor shall have deposited into Escrow (as defined below) the Overhead Electric Easement Deed as provided for in Section 4.1.1, conveying title to the Easement (subject to the Approved Exceptions) to the Grantee.

3.5. Title Insurance. The Title Company shall be prepared to issue an ALTA Standard Owner Policy of Title Insurance in the amount of the purchase price insuring title to the Easement vested in Grantee subject only to the Approved Exceptions (the "Title Policy").

3.6. Certificate of Acceptance. Grantee has obtained a resolution of the City Council of the City of Santa Clara authorizing recordation of the Overhead Electric Easement Deed and has deposited a properly executed Certificate of Acceptance into Escrow.

3.7. No Breach. There shall be no material breach of any of Grantor's representations, warranties, or covenants set forth in Article 5.

3.8. Documentary Deposit. Grantor and Grantee shall have each deposited into Escrow all materials required to be deposited under Article 4.

3.9. Grantee's Remedies.

3.9.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantee are not satisfied, Grantee shall have the right either to waive the condition in question and proceed with the purchase of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any money deposited into Escrow by Grantee shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder, except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.9.2 Default. If Grantor fails to perform any of its obligations or is otherwise in default under this Agreement, Grantee shall have the right to give notice to Grantor specifically setting forth the nature of said failure and stating that Grantor shall have a period of ten (10) calendar days to cure such failure. If Grantor has not cured such failure within such period (or,

if such failure is not capable of being cured within ten (10) calendar days, and Grantor either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Closing Date, as may be extended under the terms of this Agreement), Grantee's sole and exclusive remedy shall be one of the following:

(a) Waiver. Waive such failure and proceed to the Closing pursuant to all of the other terms of this Agreement; or

(b) Terminate. Grantee may terminate this Agreement by notice to Grantor and Escrow Agent to that effect. Nothing herein shall be deemed a waiver by Grantor of its right or ability to exercise its power of eminent domain to acquire the Easement after a termination of this Agreement.

3.10. Grantor's Remedies.

3.10.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantor are not satisfied, Grantor shall have the right to either waive the condition in question and proceed with the sale of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any amounts deposited into Escrow shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

ARTICLE 4 CLOSING AND ESCROW

4.1. Deposits into Escrow. Grantee has established an escrow (the "Escrow") with First American Title, 1850 Mt. Diablo Blvd., Suite 530, Walnut Creek, California 94596. Attn.: Roni Sloan Loftin, telephone: (925) 927-2127 (the "Escrow Agent"). A copy of this Agreement, duly executed by both parties, shall be deposited therein within five (5) business days after the Effective Date. Subject to Section 4.2.2 below, this Agreement shall serve as escrow instructions to Escrow Agent, as escrow holder, for consummation of the purchase and sale contemplated hereby. Prior to or on the Closing Date, the Parties shall deposit the following into the Escrow:

4.1.1 Grantor. Grantor shall deposit the following into Escrow:

(a) The Overhead Electric Easement Deed, fully executed and suitable for recordation;

(b) If required by the Escrow Agent, a FIRPTA Affidavit stating Grantor's U.S. taxpayer identification number and that the Grantor is a "United States person" as defined by Internal Revenue Code sections 1445(f)(3) and 7701(b); and

(c) Such other documents and instruments as may be required by other provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

4.1.2 Grantee. Grantee shall deposit the following into Escrow:

(a) Cash or immediately available funds in the amount of the Purchase Price together with such additional cash in the amount necessary to pay Grantee's share of closing costs and prorations, as hereinafter set forth;

(b) An executed Certificate of Acceptance; and

(c) Such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required by Escrow Agent or otherwise to carry out the term and intent of this Agreement.

4.2. Close of Escrow.

4.2.1 Closing Date. Escrow shall close on or before the thirtieth (30th) day following execution of this Agreement by Grantee or upon such other date as is mutually agreed upon by Grantee and Grantor (the "Closing Date").

4.2.2 Closing of Escrow. When the Conditions Precedent listed in Section 3.1 have been satisfied or waived by Grantee and Grantor and Escrow Agent has received all necessary cash and documents and is in a position to issue the Title Policy, as provided in Section 3.1.4, Escrow Agent shall immediately close Escrow as provided below (the "Closing"). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement; provided however, that in the event of any conflict between the provisions of this Agreement and any such further documents or escrow instructions, the terms of this Agreement shall control.

4.2.3 Procedure. Escrow Agent shall close Escrow as follows:

4.2.3.1 Record Deed. Date and record the Overhead Electric Easement Deed in the Official Records of Santa Clara County.

4.2.3.2 Deliver Copies of Deed. Deliver one (1) certified copy of the recorded Deed to Grantee and to Grantor.

4.2.3.3 Pay to Grantor. Pay to Grantor the funds in Escrow equal to the Purchase Price, reduced only by the Grantor's share of closing costs and prorations, as hereinafter set forth in Section 4.2.4 below.

4.2.3.4 Deliver Title Policy. Deliver the Title Policy to Grantee.

4.2.3.5 Closing Statement. Prepare and deliver to Grantee and Grantor one signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

4.2.4 Closing Costs and Prorations.

4.2.4.1 Closing Costs. Grantee and Grantor shall each pay its own attorney's fees in connection with negotiating this Agreement and closing the Escrow. Grantee shall pay recording costs, if any, Escrow fees, the title insurance premium, and any documentary transfer taxes.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1. Grantor's Representations and Warranties. Grantor represents and warrants to Grantee that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

5.1.1 Organization Authority. **Witkin Properties, L.P.** is a **California limited partnership**, duly organized, validly existing and in good standing under the laws of the State of California and has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Grantor. The individuals executing this Agreement and the instruments referred to herein on behalf of Grantor, have the legal power, rights and actual authority to bind Grantor to the terms and conditions hereof and thereof;

5.1.2 No Violation of Agreement; Litigation. Neither the execution, delivery or performance of this Agreement by Grantor will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Grantor or the Easement is bound. Grantor has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Easement or Grantor's interest therein;

5.1.3 Compliance with Laws. Grantor has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Easement;

5.1.4 Existing Lease. There are no contracts or agreements with respect to the occupancy of the Easement which will be binding upon Grantee after Closing; and

5.1.5 Grantor Not a Foreign Person. Grantor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

ARTICLE 6 GENERAL PROVISIONS

6.1. Approval of City Council. Grantor and Grantee recognize that as of the execution of this Agreement by Grantor, this Agreement is subject to approval of the City Council of the City of Santa Clara and that this Agreement shall have no force or effect unless and until said City Council's approval has been obtained, but such approval shall be obtained before execution of this Agreement by Grantee.

6.2. Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.3. Entire Agreement. This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or

modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.

6.4. Brokers' Fees. Grantor and Grantee each represent and warrant to the other that, there are no brokers' fees or finders' fees arising out of this transaction and each shall indemnify, defend, and hold the other harmless from any claim, loss, cost, damage or expense including, without limitation, attorneys' and experts' fees and costs and court costs arising out of or incurred in connection with any claim by any other broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.

6.5. Attorney's Fees. In the event either party to this Agreement institutes an action to interpret or enforce the terms hereof, or to obtain money damages, the prevailing party, as determined by the court (whether at trial or upon appeal) shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding. In no event shall an attorney's fee award exceed \$5,000.00, whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions.

6.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.7. Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

6.8. Time. Time is of essence of every provision herein contained in this Agreement.

6.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

6.10. Survival. The terms, covenants and conditions of Articles 5, 6, and 7 shall remain true and correct as of the Closing Date, shall be deemed to be material and shall survive the execution and delivery of this Agreement, the delivery of the Grant Deed, and transfer of title.

6.11. Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Grantor:

Witkin Properties, L.P.
Attention: JM Witkin
188 Twin Oaks Drive
Los Gatos, California, 95032
Telephone: 408-640-0044

To Grantee: City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
Attn: City Manager
Telephone: 408-615-2210

With a copy to: City of Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, California 95050
Attn: City Attorney
Telephone: (408) 615-2230

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery. The foregoing addresses may be changed by notice to the other party as herein provided.

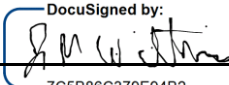
IN WITNESS WHEREOF, the parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written ("Effective Date").

GRANTOR

Witkin Properties, L.P.,
a California limited partnership

GRANTEE

City of Santa Clara,
a municipal corporation

By:  _____

By: _____

Title: managing partner

Title: _____

Date: 1/25/2021

Date: _____

APPROVED AS TO FORM

City Attorney

EXHIBIT A**(Description of Easement)**

SVP REF: SC 19-299

EXHIBIT "A"

POWERLINE EASEMENT ACROSS:
 WITKIN PROPERTIES L.P.
 2755 LAFAYETTE STREET
 SANTA CLARA, CALIFORNIA 95050
 APN: 224-04-062
 EASEMENT AREA: 8513 SQ. FT. ±

DESCRIPTION:

A portion of that parcel of land conveyed in that certain Grant Deed recorded May 16, 2011 as Document No. 21178877 in the Office of the Recorder of the County of Santa Clara (ORCSC), and herein after known as the Grantor's Parcel, being a Portion of Lots 12, 13, 14 and 15 in Block 2, as shown upon that certain Map entitled, "LAURELWOOD FARM SUBDIVISION", which Map was filed for record in the office of the Recorder of County of Santa Clara, State of California, on March 13, 1924, in Book "S" of Maps at page 7 and 8, located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

Commencing at the monument located at the intersection of Central Expressway and Lafayette Street; thence South 01°14'42" West 1,064.65 feet along the said centerline; thence South 88°45'18" East 50.00 feet to the northwesterly corner of said Grantor's Parcel and the **POINT OF BEGINNING**; thence South 01°14'42" West 516.10 feet along the easterly right-of-way of said Lafayette Street to the beginning of a curve concave northeasterly having a radius of 30.00 feet; thence southeasterly 31.63 feet along said curved right-of-way through a central angle of 60°24'26"; thence North 01°39'27" East 118.62 feet; thence North 00°14'52" East 134.42 feet; thence North 02°28'51" East 186.72 feet; thence North 01°19'50" East 104.69 feet to the northerly line of said Grantor's Parcel; thence South 84°11'42" West 18.02 feet along said northerly line to the **POINT OF BEGINNING**.

Containing 8,513 square feet, more or less.



REV: 3	DATE: 5/13/20	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
		WITKIN PROPERTIES L.P. 2755 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95050 APN: 224-04-062			
				SHEET: 2 OF 2	

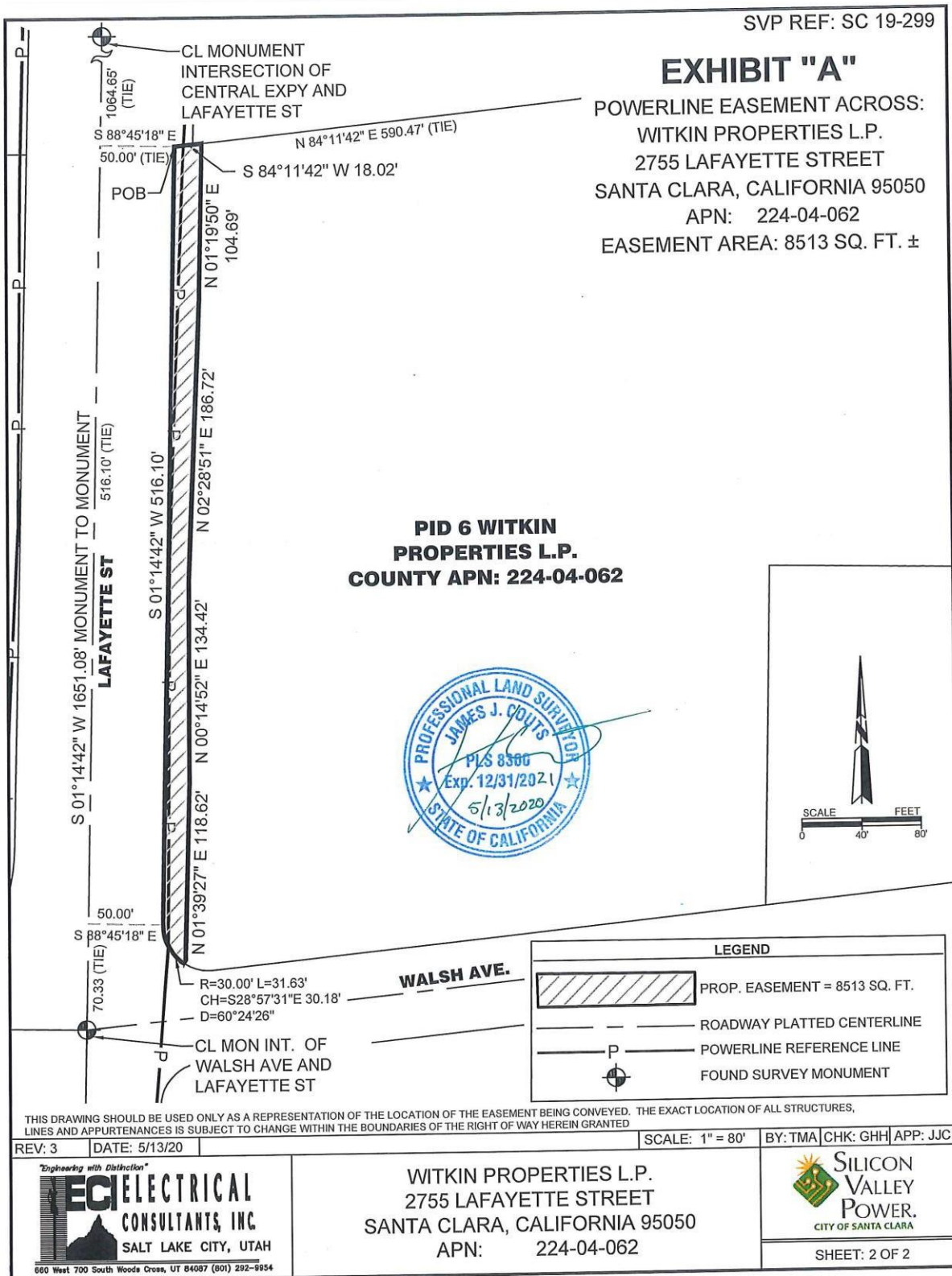


EXHIBIT B

SVP REF: SC 19-299

EXHIBIT "B"

TEMPORARY CONSTRUCTION EASEMENT ACROSS:
 WITKIN PROPERTIES L.P.
 2755 LAFAYETTE STREET
 SANTA CLARA, CALIFORNIA 95050
 APN: 224-04-062
 TCE AREA: 1284 SQ. FT. ±

DESCRIPTION:

A portion of that parcel of land conveyed in that certain Grant Deed recorded May 16, 2011 as Document No. 21178877 in the Office of the Recorder of the County of Santa Clara (ORCSC), and herein after known as the Grantor's Parcel, being a Portion of Lots 12, 13, 14 and 15 in Block 2, as shown upon that certain Map entitled, "LAURELWOOD FARM SUBDIVISION", which Map was filed for record in the office of the Recorder of County of Santa Clara, State of California, on March 13, 1924, in Book "S" of Maps at page 7 and 8, located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

The southerly 30 feet of a 40 feet wide strip of land lying easterly of and adjoining the easterly line of that certain Transmission Powerline Easment described in Exhibit A and as shown of page 2 of 2 of this Exhibit B.

Containing 1,284 square feet, more or less.



REV: 0	DATE: 5/13/2020	SCALE: N/A	BY: TMA	CHK: GHJ	APP: JJC
		TEMPORARY CONSTRUCTION EASEMENT WITKIN PROPERTIES L.P. 2755 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95050 APN: 224-04-062			
				SHEET: 1 OF 2	

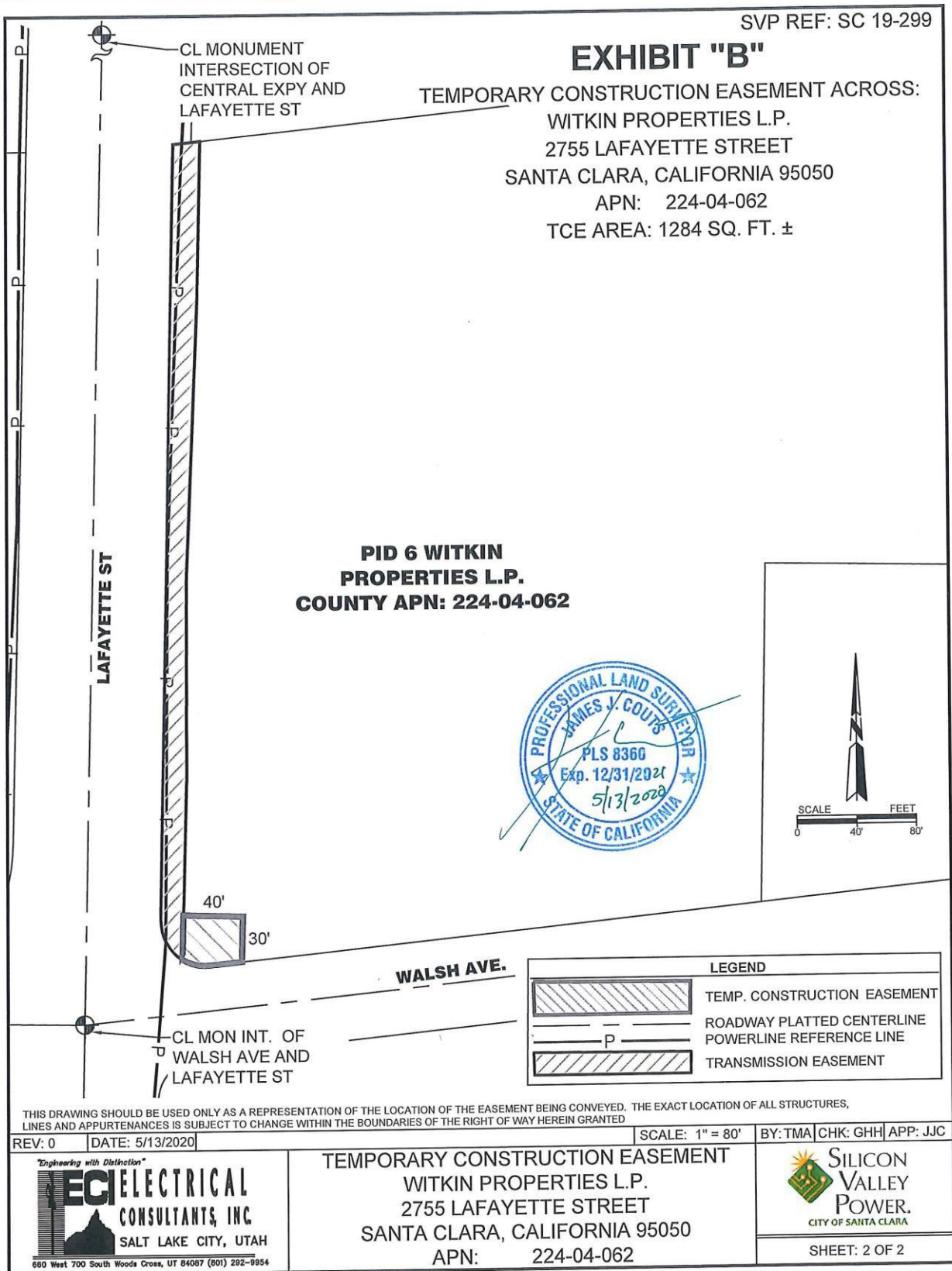


EXHIBIT C

(Overhead Electric Easement Deed)

Recording Requested by:

Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:

Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

APN: 224-04-062

EXEMPT FROM RECORDING FEE
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE
PER GOV'T CODE § 27388.1 (a)(2)(D)

OVERHEAD ELECTRIC EASEMENT DEED

**2755 Lafayette Street
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, **Witkin Properties, L.P., a California limited partnership** (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** and **Exhibit B** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement described in **Exhibit A** shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with

its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

The Easement described in **Exhibit B** shall be used by Grantee for construction purposes ("TCE") related to the Project, and all purposes related thereto, in, on, upon, over, under and across that real property described and depicted in Exhibit B ("TCE Area").

Actual physical use and occupation of the TCE Area will occur only intermittently and only for a timeframe not to exceed twenty-one (21) days total, each phase of which to commence following forty-eight (48) hours prior written notice to Property owner. Access and use of portions of the TCE Area by Property owner, tenants, invitees and guests will be allowed to the extent that said portion is not being used for Project construction or staging purposes at that time. Construction of the Project is expected to take no more than six months, and this TCE shall terminate upon written notice from easement holder that the TCE is no longer needed for the Project. Under all circumstances, unless it expires or is terminated earlier, the TCE term shall expire nine (9) months following the date the TCE is first used for the Project. Easement holder will stage and coordinate work in the TCE Area with the Property owner so as not to unreasonably impede/hinder access to/from and within the Property.

[SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, said grantor has hereunto set their hands this _____ day of _____, 20____.

**Witkin Properties, L.P.,
a California limited partnership**

By: _____

Title: _____

Date: _____

APPROVED FOR FORM:

Brian Doyle
City Attorney

ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT. IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.

CALIFORNIA NOTARY ACKNOWLEDGMENT

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

State of California

County of _____

On _____ before me, _____ (name and title of officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by Overhead Electric Utility Deed dated the _____ of _____, 20____, from Witkin Properties, L.P., a California limited partnership (Grantor) to the City of Santa Clara, California, a chartered California municipal corporation (City), is hereby accepted by the undersigned officer on behalf of the City Council of the City pursuant to authority conferred by Resolution No. 5600 of the City Council of the City of Santa Clara adopted on the 28 day of May, 1991, and the Resolution Approving Purchase of Overhead Electric Easement, Resolution No. _____ adopted on _____, 20____. The City, as Grantee, consents to recordation by its duly authorized officer, the City Clerk of the City of Santa Clara.

Re: APN 224-04-062

Dated: This _____ day of _____, 20____

DEANNA J. SANTANA
City Manager
City of Santa Clara

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

ATTEST: _____
NORA PIMENTEL, MMC
Assistant City Clerk

Exhibit A

SVP REF: SC 19-299

EXHIBIT "A"

POWERLINE EASEMENT ACROSS:
 WITKIN PROPERTIES L.P.
 2755 LAFAYETTE STREET
 SANTA CLARA, CALIFORNIA 95050
 APN: 224-04-062
 EASEMENT AREA: 8513 SQ. FT. ±

DESCRIPTION:

A portion of that parcel of land conveyed in that certain Grant Deed recorded May 16, 2011 as Document No. 21178877 in the Office of the Recorder of the County of Santa Clara (ORCSC), and herein after known as the Grantor's Parcel, being a Portion of Lots 12, 13, 14 and 15 in Block 2, as shown upon that certain Map entitled, "LAURELWOOD FARM SUBDIVISION", which Map was filed for record in the office of the Recorder of County of Santa Clara, State of California, on March 13, 1924, in Book "S" of Maps at page 7 and 8, located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

Commencing at the monument located at the intersection of Central Expressway and Lafayette Street; thence South 01°14'42" West 1,064.65 feet along the said centerline; thence South 88°45'18" East 50.00 feet to the northwesterly corner of said Grantor's Parcel and the **POINT OF BEGINNING**; thence South 01°14'42" West 516.10 feet along the easterly right-of-way of said Lafayette Street to the beginning of a curve concave northeasterly having a radius of 30.00 feet; thence southeasterly 31.63 feet along said curved right-of-way through a central angle of 60°24'26"; thence North 01°39'27" East 118.62 feet; thence North 00°14'52" East 134.42 feet; thence North 02°28'51" East 186.72 feet; thence North 01°19'50" East 104.69 feet to the northerly line of said Grantor's Parcel; thence South 84°11'42" West 18.02 feet along said northerly line to the **POINT OF BEGINNING**.

Containing 8,513 square feet, more or less.



REV: 3	DATE: 5/13/20	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
		WITKIN PROPERTIES L.P. 2755 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95050 APN: 224-04-062			
SHEET: 2 OF 2					

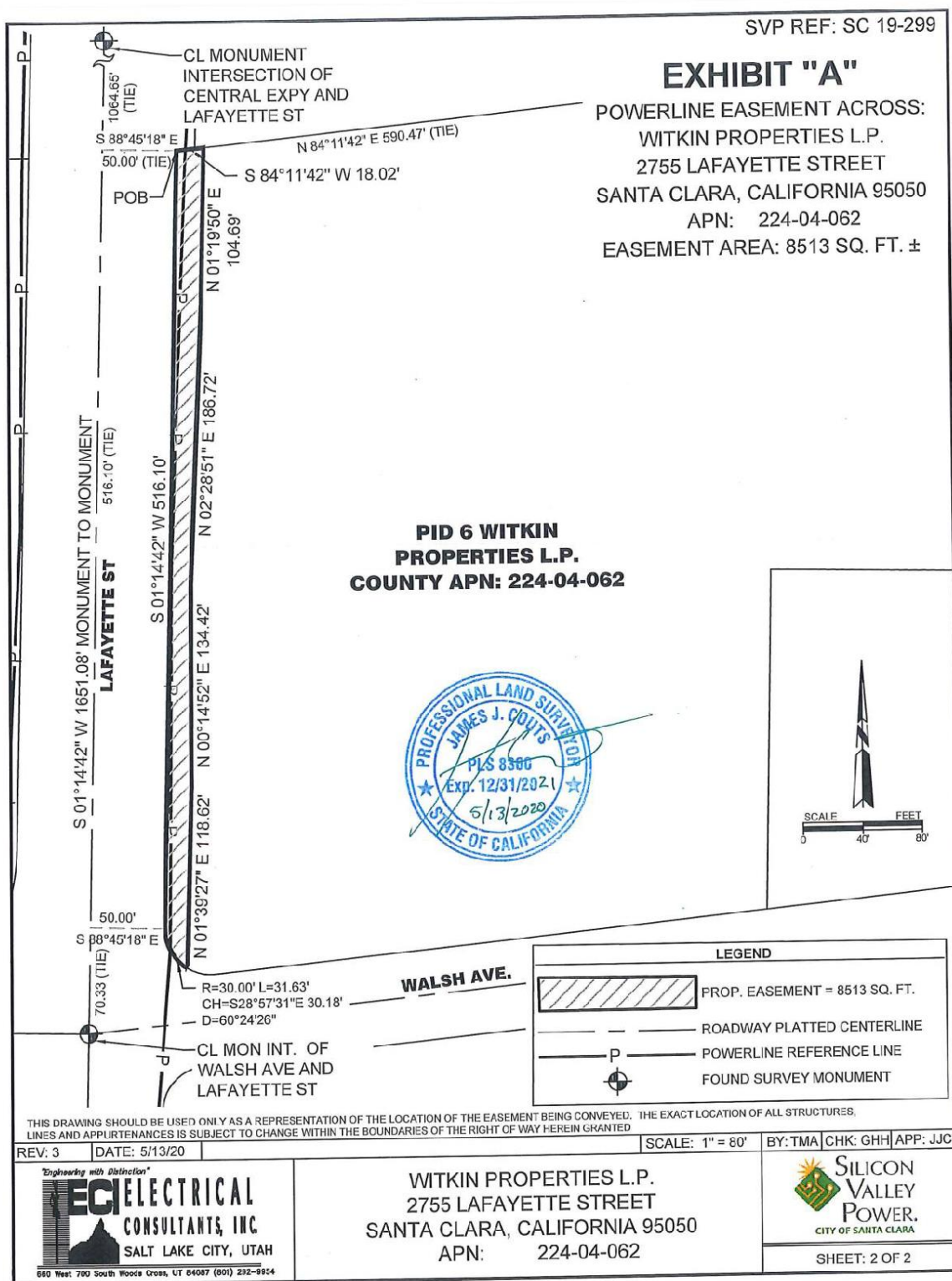


Exhibit B

SVP REF: SC 19-299

EXHIBIT "B"

TEMPORARY CONSTRUCTION EASEMENT ACROSS:
 WITKIN PROPERTIES L.P.
 2755 LAFAYETTE STREET
 SANTA CLARA, CALIFORNIA 95050
 APN: 224-04-062
 TCE AREA: 1284 SQ. FT. ±

DESCRIPTION:

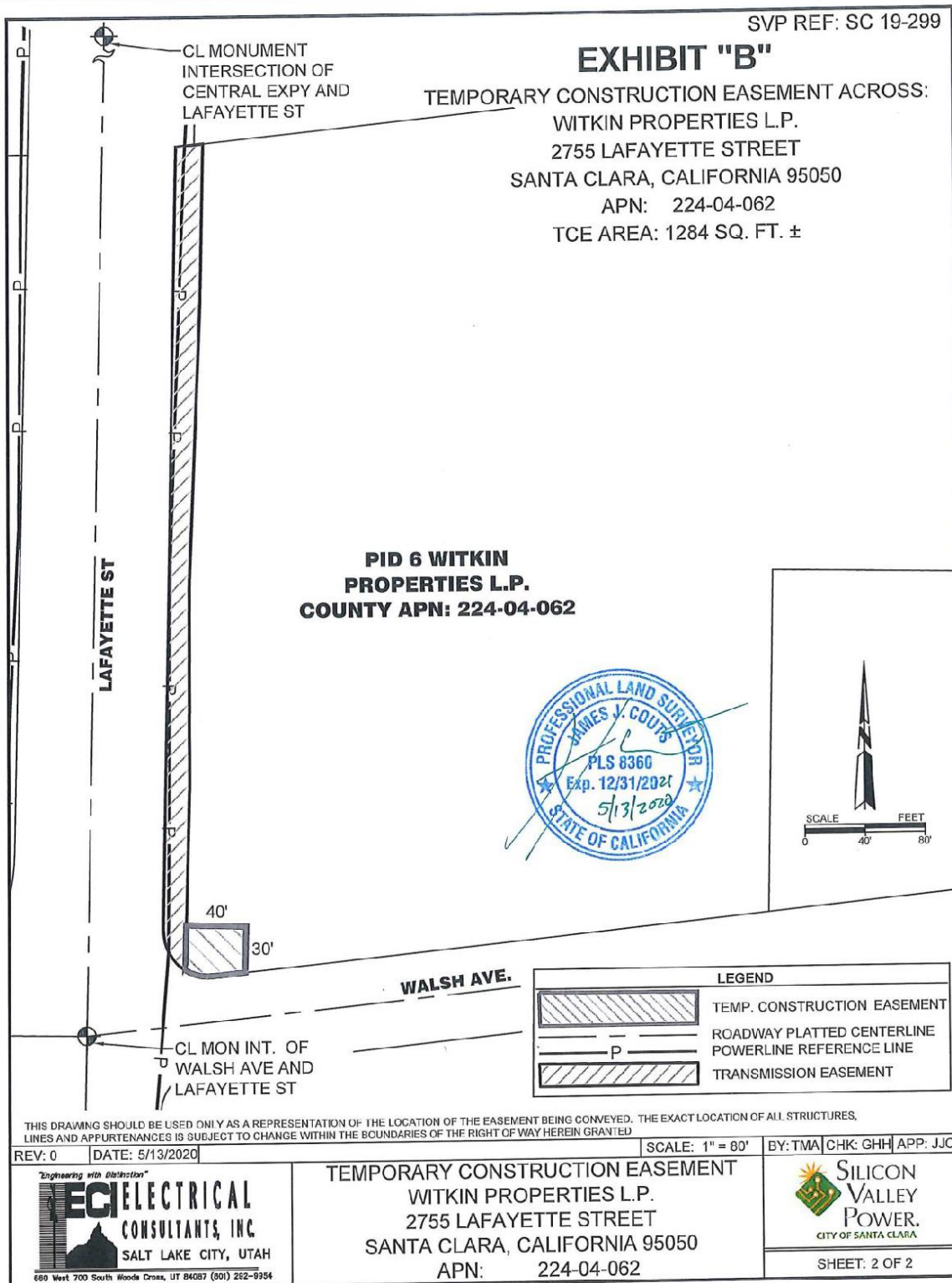
A portion of that parcel of land conveyed in that certain Grant Deed recorded May 16, 2011 as Document No. 21178877 in the Office of the Recorder of the County of Santa Clara (ORCSC), and herein after known as the Grantor's Parcel, being a Portion of Lots 12, 13, 14 and 15 in Block 2, as shown upon that certain Map entitled, "LAURELWOOD FARM SUBDIVISION", which Map was filed for record in the office of the Recorder of County of Santa Clara, State of California, on March 13, 1924, in Book "S" of Maps at page 7 and 8, located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

The southerly 30 feet of a 40 feet wide strip of land lying easterly of and adjoining the easterly line of that certain Transmission Powerline Easment described in Exhibit A and as shown of page 2 of 2 of this Exhibit B.

Containing 1,284 square feet, more or less.



REV: 0	DATE: 5/13/2020	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
		TEMPORARY CONSTRUCTION EASEMENT WITKIN PROPERTIES L.P. 2755 LAFAYETTE STREET SANTA CLARA, CALIFORNIA 95050 APN: 224-04-062			
				SHEET: 1 OF 2	



AGREEMENT FOR PURCHASE AND SALE (UTILITY EASEMENT)

THIS AGREEMENT FOR PURCHASE AND SALE ("**Agreement**") is made and entered into as of _____, 20____ (the "**Effective Date**") by and between CITY OF SANTA CLARA ("Grantee" or "City") and **D & R Miller Properties, LLC, a California limited liability company** ("Grantor) with regard to the purchase and sale of certain property interests, upon the terms and conditions set forth herein.

RECITALS

WHEREAS, The City of Santa Clara's Electric Utility, Silicon Valley Power (SVP), plans to construct approximately 3.5 miles of new single and double circuit 60 kilovolt (kV) overhead transmission lines within the northeastern area of the City of Santa Clara. SVP's primary objective of the South Loop Reconfigure Project ("Project") is accommodated to shift the electrical load demand that is currently being seen on the South Loop Circuit to the East Loop Circuit to increase capacity and system reliability.

WHEREAS, the Project will involve the placement of multiple new monopole steel structures and result in either the expansion of existing electric overhead and wire clearance easements or the acquisition of new easements; and

WHEREAS, Grantee wishes to acquire from Grantor, and Grantor wishes to sell to Grantee certain property rights, as more particularly described in **Exhibit A** and **Exhibit B** (the "Easement") for the Project upon the terms and conditions set forth herein.

WHEREAS, Grantor and Grantee recognize that the sale of the Easement is subject to approval of the Santa Clara City Council and that this Agreement shall have no force or effect unless and until said City Council approval has been obtained, which approval shall be obtained before execution of the Agreement by Grantee.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

ARTICLE 1 PURCHASE

1.1. The Easement. Grantor is the fee owner of certain real property commonly known as **630 Martin Avenue** APN: **224-35-014** located in the City of Santa Clara, California over which the Easement will cross.

1.2. Sale and Conveyance. Grantor shall sell to Grantee and Grantee shall purchase from Grantor, all of the terms and conditions set forth in Articles 2 and 3 hereof, the Easement.

ARTICLE 2 PURCHASE PRICE

2.1. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be **Eight Thousand Eight Hundred and no/100 Dollars (\$8,800.00)**.

2.2. Payment of Purchase Price. The purchase price shall be payable all in cash upon close of Escrow (as defined below) in accordance with Section 4.2.

ARTICLE 3 CONDITIONS TO PURCHASE AND SALE

3.1. Conditions Precedent to Purchase and Sale. The obligation of Grantee to purchase and Grantor to sell the Easement is expressly conditioned upon the satisfaction, prior to closing, of each of the conditions set forth in this Section 3.1 (the "Conditions Precedent").

3.2. Title. Grantee has obtained a preliminary title report dated November 18, 2020, from First American Title Company (the "Title Report"). Grantee acknowledges and agrees that all exceptions are approved by Grantee (the "Approved Exceptions").

3.3. Execution of Overhead Electric Easement Deed. Grantor shall be ready, willing and able to convey title to the Easement by Overhead Electric Easement Deed to Grantee in the form of **Exhibit C** attached hereto (the "Easement Deed") subject only to the Approved Exceptions.

3.4. Deposit of Grant Deed. Grantor shall have deposited into Escrow (as defined below) the Overhead Electric Easement Deed as provided for in Section 4.1.1, conveying title to the Easement (subject to the Approved Exceptions) to the Grantee.

3.5. Title Insurance. The Title Company shall be prepared to issue an ALTA Standard Owner Policy of Title Insurance in the amount of the purchase price insuring title to the Easement vested in Grantee subject only to the Approved Exceptions (the "Title Policy").

3.6. Certificate of Acceptance. Grantee has obtained a resolution of the City Council of the City of Santa Clara authorizing recordation of the Overhead Electric Easement Deed and has deposited a properly executed Certificate of Acceptance into Escrow.

3.7. No Breach. There shall be no material breach of any of Grantor's representations, warranties, or covenants set forth in Article 5.

3.8. Documentary Deposit. Grantor and Grantee shall have each deposited into Escrow all materials required to be deposited under Article 4.

3.9. Grantee's Remedies.

3.9.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantee are not satisfied, Grantee shall have the right either to waive the condition in question and proceed with the purchase of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any money deposited into Escrow by Grantee shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

3.9.2 Default. If Grantor fails to perform any of its obligations or is otherwise in default under this Agreement, Grantee shall have the right to give notice to Grantor specifically setting forth the nature of said failure and stating that Grantor shall have a period of ten (10) calendar days to cure such failure. If Grantor has not cured such failure within such period (or,

if such failure is not capable of being cured within ten (10) calendar days, Grantor either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Closing Date, as may be extended under the terms of this Agreement), Grantee's sole and exclusive remedy shall be one of the following:

(a) Waiver. Waive such failure and proceed to the Closing pursuant to all of the other terms of this Agreement; or

(b) Terminate. Grantee may terminate this Agreement by notice to Grantor and Escrow Agent to that effect. Nothing herein shall be deemed a waiver by Grantor of its right or ability to exercise its power of eminent domain to acquire the Easement after a termination of this Agreement.

3.10. Grantor's Remedies.

3.10.1 Conditions Precedent. If any of the foregoing Conditions Precedent which inure to the benefit of Grantor are not satisfied, Grantor shall have the right to either waive the condition in question and proceed with the sale of the Easement pursuant to all of the other terms of this Agreement, or, in the alternative, to terminate this Agreement and any amounts deposited into Escrow shall be returned to Grantee, and thereafter neither party shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

ARTICLE 4 CLOSING AND ESCROW

4.1. Deposits into Escrow. Grantee has established an escrow (the "Escrow") with First American Title, 1850 Mt. Diablo Blvd., Suite 530, Walnut Creek, CA 94596. Attn.: Roni Sloan Loftin, telephone: (925) 927-2127 (the "Escrow Agent"). A copy of this Agreement, duly executed by both parties, shall be deposited therein within five (5) business days after the Effective Date. Subject to Section 4.2.2 below, this Agreement shall serve as escrow instructions to Escrow Agent, as escrow holder, for consummation of the purchase and sale contemplated hereby. Prior to or on the Closing Date, the Parties shall deposit the following into the Escrow:

4.1.1 Grantor. Grantor shall deposit the following into Escrow:

(a) The Overhead Electric Easement Deed, fully executed and suitable for recordation;

(b) If required by the Escrow Agent, a FIRPTA Affidavit stating Grantor's U.S. taxpayer identification number and that the Grantor is a "United States person" as defined by Internal Revenue Code sections 1445(f)(3) and 7701(b); and

(c) Such other documents and instruments as may be required by other provisions of this Agreement or may be reasonably required by Escrow Agent or otherwise to carry out the terms and intent of this Agreement.

4.1.2 Grantee. Grantee shall deposit the following into Escrow:

(a) Cash or immediately available funds in the amount of the Purchase Price together with such additional cash in the amount necessary to pay Grantee's share of closing costs and prorations, as hereinafter set forth;

(b) An executed Certificate of Acceptance; and

(c) Such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required by Escrow Agent or otherwise to carry out the term and intent of this Agreement.

4.2. Close of Escrow.

4.2.1 Closing Date. Escrow shall close on or before the thirtieth (30th) day following execution of this Agreement by Grantee or upon such other date as is mutually agreed upon by Grantee and Grantor (the "Closing Date").

4.2.2 Closing of Escrow. When the Conditions Precedent listed in Section 3.1 have been satisfied or waived by Grantee and Grantor and Escrow Agent has received all necessary cash and documents and is in a position to issue the Title Policy, as provided in Section 3.1.4, Escrow Agent shall immediately close Escrow as provided below (the "Closing"). The parties to this Agreement shall cooperate with each other and the Escrow Agent in preparing and executing such further documents (including further escrow instructions) as may be reasonably necessary to close Escrow as contemplated by this Agreement; provided however, that in the event of any conflict between the provisions of this Agreement and any such further documents or escrow instructions, the terms of this Agreement shall control.

4.2.3 Procedure. Escrow Agent shall close Escrow as follows:

4.2.3.1 Record Deed. Date and record the Overhead Electric Easement Deed in the Official Records of Santa Clara County.

4.2.3.2 Deliver Copies of Deed. Deliver one (1) certified copy of the recorded Deed to Grantee.

4.2.3.3 Pay to Grantor. Pay to Grantor the funds in Escrow equal to the Purchase Price, reduced only by the Grantor's share of closing costs and prorations, as hereinafter set forth in Section 4.2.4 below.

4.2.3.4 Deliver Title Policy. Deliver the Title Policy to Grantee.

4.2.3.5 Closing Statement. Prepare and deliver to Grantee and Grantor one signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

4.2.4 Closing Costs and Prorations.

4.2.4.1 Closing Costs. Grantee and Grantor shall each pay its own attorney's fees in connection with negotiating this Agreement and closing the Escrow. Grantee shall pay recording costs, if any, Escrow fees, the title insurance premium, and any documentary transfer taxes.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1. Grantor's Representations and Warranties. Grantor represents and warrants to Grantee that the following matters are true and correct in all material respects as of the execution of this Agreement and will also be true and correct in all material respects as of the Closing:

5.1.1 Organization Authority. **D & R Miller Properties, LLC**, is a **California limited liability company**, duly organized, validly existing and in good standing under the laws of the State of California and has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Grantor. The individuals executing this Agreement and the instruments referred to herein on behalf of Grantor, have the legal power, rights and actual authority to bind Grantor to the terms and conditions hereof and thereof;

5.1.2 No Violation of Agreement; Litigation. Neither the execution, delivery or performance of this Agreement by Grantor will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness or any other agreement or instrument by which Grantor or the Easement is bound. Grantor has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Easement or Grantor's interest therein;

5.1.3 Compliance with Laws. Grantor has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Easement;

5.1.4 Existing Lease. There are no contracts or agreements with respect to the occupancy of the Easement which will be binding upon Grantee after Closing; and

5.1.5 Grantor Not a Foreign Person. Grantor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

ARTICLE 6 GENERAL PROVISIONS

6.1. Approval of City Council. Grantor and Grantee recognize that as of the execution of this Agreement by Grantor, this Agreement is subject to approval of the City Council of the City of Santa Clara and that this Agreement shall have no force or effect unless and until said City Council's approval has been obtained, but such approval shall be obtained before execution of this Agreement by Grantee.

6.2. Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6.3. Entire Agreement. This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or

modification of any term or provision shall be effective unless set forth in writing and signed by both Grantor and Grantee.

6.4. Brokers' Fees. Grantor and Grantee each represent and warrant to the other that, there are no brokers' fees or finders' fees arising out of this transaction and each shall indemnify, defend, and hold the other harmless from any claim, loss, cost, damage or expense including, without limitation, attorneys' and experts' fees and costs and court costs arising out of or incurred in connection with any claim by any other broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.

6.5. Attorney's Fees. In the event either party to this Agreement institutes an action to interpret or enforce the terms hereof, or to obtain money damages, the prevailing party, as determined by the court (whether at trial or upon appeal) shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney's fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding. In no event shall an attorney's fee award exceed \$5,000, whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions.

6.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.7. Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

6.8. Time. Time is of essence of every provision herein contained in this Agreement.

6.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

6.10. Survival. The terms, covenants and conditions of Articles 5, 6, and 7 shall remain true and correct as of the Closing Date, shall be deemed to be material and shall survive the execution and delivery of this Agreement, the delivery of the Grant Deed, and transfer of title.

6.11. Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Grantor:

D & R Miller Properties, LLC
Attention: Dana Miller
630 Martin Avenue
Santa Clara, CA, 95050
Telephone: 408-261-2595

To Grantee: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Manager
Telephone: 408-615-2210

With a copy to: City of Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Attorney
Telephone: (408) 615-2230

Notices which are delivered by hand shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery. The foregoing addresses may be changed by notice to the other party as herein provided.


IN WITNESS WHEREOF, the parties hereto have executed one (1) or more copies of this Agreement, on the date(s) set forth below, effective as of the day and year first above written ("Effective Date").

GRANTOR

D & R Miller Properties, LLC, a California
limited liability company

GRANTEE

City of Santa Clara,
a municipal corporation

By:  58DEF7E5B215417...

Title: Vice President

Date: 12/9/2020

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

City Attorney

EXHIBIT A**(Description of Easement)**

SVP REF: SC 19-188

EXHIBIT "A"

POWERLINE EASEMENT ACROSS:
 D & R MILLER PROPERTIES, LLC
 630 MARTIN AVENUE
 SANTA CLARA, CALIFORNIA 95050
 APN: 224-35-014
 NEW EASEMENT AREA: 190 SQ. FT. ±

DESCRIPTION:

A portion of that parcel of land conveyed in that certain Grant Deed recorded November 29, 2012 as Document No. 21974802, in the Office of the Recorder of the County of Santa Clara (ORCSC) and herein after known as the Grantor's Parcel, being a portion of Lots 2, 3, 4 and 5 in Block 2, as shown on that certain Map entitled, "Laurelwood Farm Subdivision", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 13, 1924, in Book "S" of Maps, page(s) 7 and 8, being located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

COMMENCING at a monument located at the intersection of the centerline of Martin Avenue and the westerly right-of-way line of the Southern Pacific Railroad; thence South 84°10'09" West 44.35 feet along said centerline; thence South 05°49'51" East 42.00 feet to the southerly right-of-way line of Martin Avenue and the **POINT OF BEGINNING**; thence South 84°10'09" West 19.40 feet along said southerly right-of-way line; thence South 47°00'21" East 26.01 feet to the westerly line of an existing Power Easement (Book 1339 Page 130 ORCSC); thence North 00°47'35" East 19.71 feet along said westerly line to the **POINT OF BEGINNING**.

Containing 190 square feet, more or less.



REV: 0	DATE: 4/8/20	SCALE: N/A	BY: TMA CHK: GHH APP: JJC
	D & R MILLER PROPERTIES, LLC APN: 224-35-014 630 MARTIN AVE SANTA CLARA, CALIFORNIA 95050		
		SHEET: 2 OF 2	

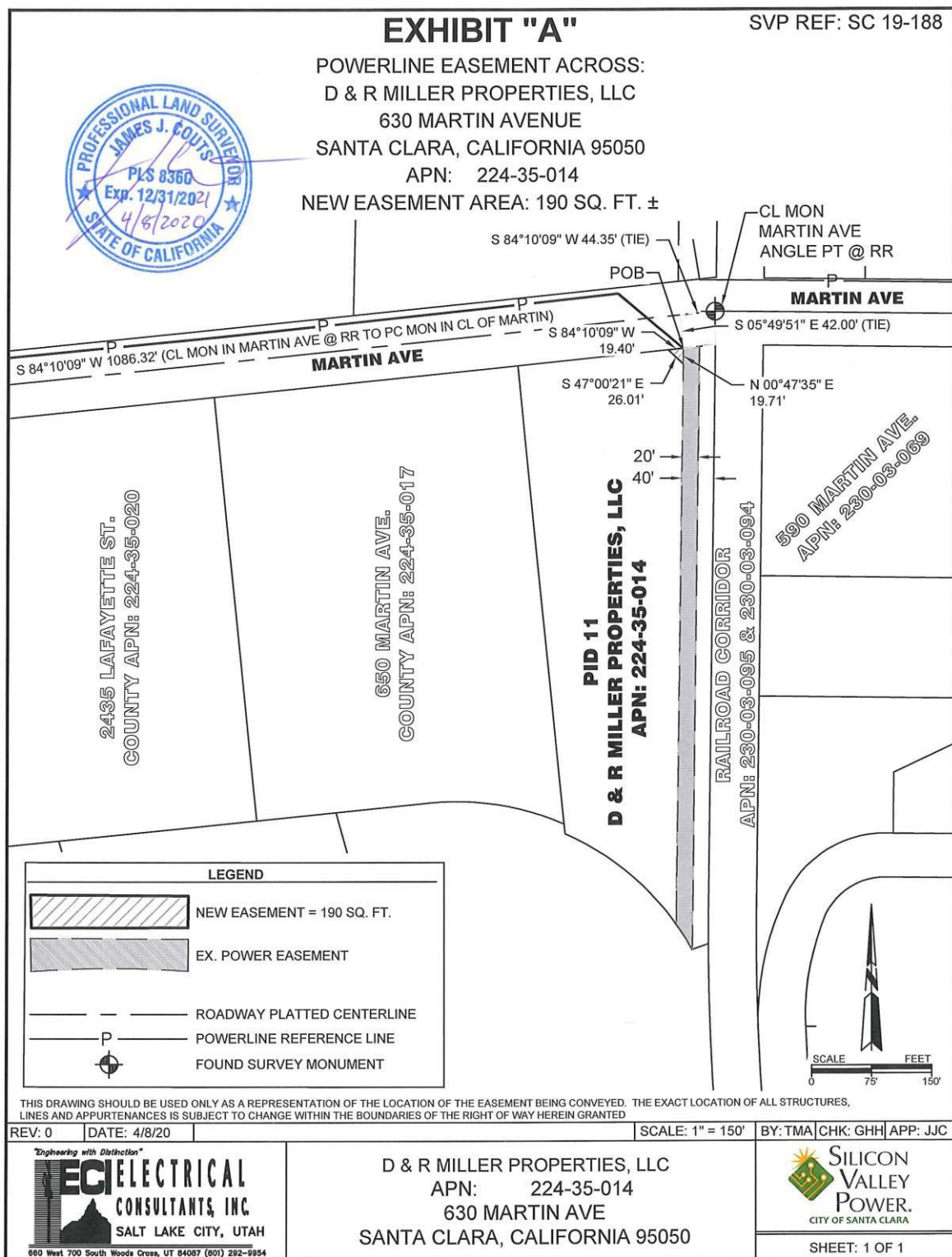


EXHIBIT B**EXHIBIT "B"**

SVP REF: SC 19-188

TEMPORARY CONSTRUCTION EASEMENT ACROSS:

D & R MILLER PROPERTIES, LLC
630 MARTIN AVENUE
SANTA CLARA, CALIFORNIA 95050
APN: 224-35-014
TCE AREA: 1823 SQ. FT. ±

DESCRIPTION:



A portion of that parcel of land conveyed in that certain Grant Deed recorded November 29, 2012 as Document No. 21974802, in the Office of the Recorder of the County of Santa Clara (ORCSC) and herein after known as the Grantor's Parcel, being a portion of Lots 2, 3, 4 and 5 in Block 2, as shown on that certain Map entitled, "Laurelwood Farm Subdivision", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 13, 1924, in Book "S" of Maps, page(s) 7 and 8, being located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

The westerly 42 feet of the easterly 97 feet of that portion of the Grantor's Parcel lying northerly of a line parallel with and 5 feet distant northerly of the existing building. Along with the easterly 55 feet of that portion of the Grantor's parcel lying northerly of the existing fence land gate line. As shown on page 2 of this exhibit.

Containing 1,823 square feet, more or less.

Less and excepting that portion of land described in the proposed Power Easement (Exhibit A).



REV: 1	DATE: 11/20/2020	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
 <p>ECI ELECTRICAL CONSULTANTS, INC. SALT LAKE CITY, UTAH 660 West 700 South Woods Cross, UT 84087 (801) 292-9954</p>		<p>TEMPORARY CONSTRUCTION EASEMENT D & R MILLER PROPERTIES, LLC APN: 224-35-014 630 MARTIN AVE SANTA CLARA, CALIFORNIA 95050</p>		 <p>SILICON VALLEY POWER CITY OF SANTA CLARA</p>	
SHEET: 1 OF 2					

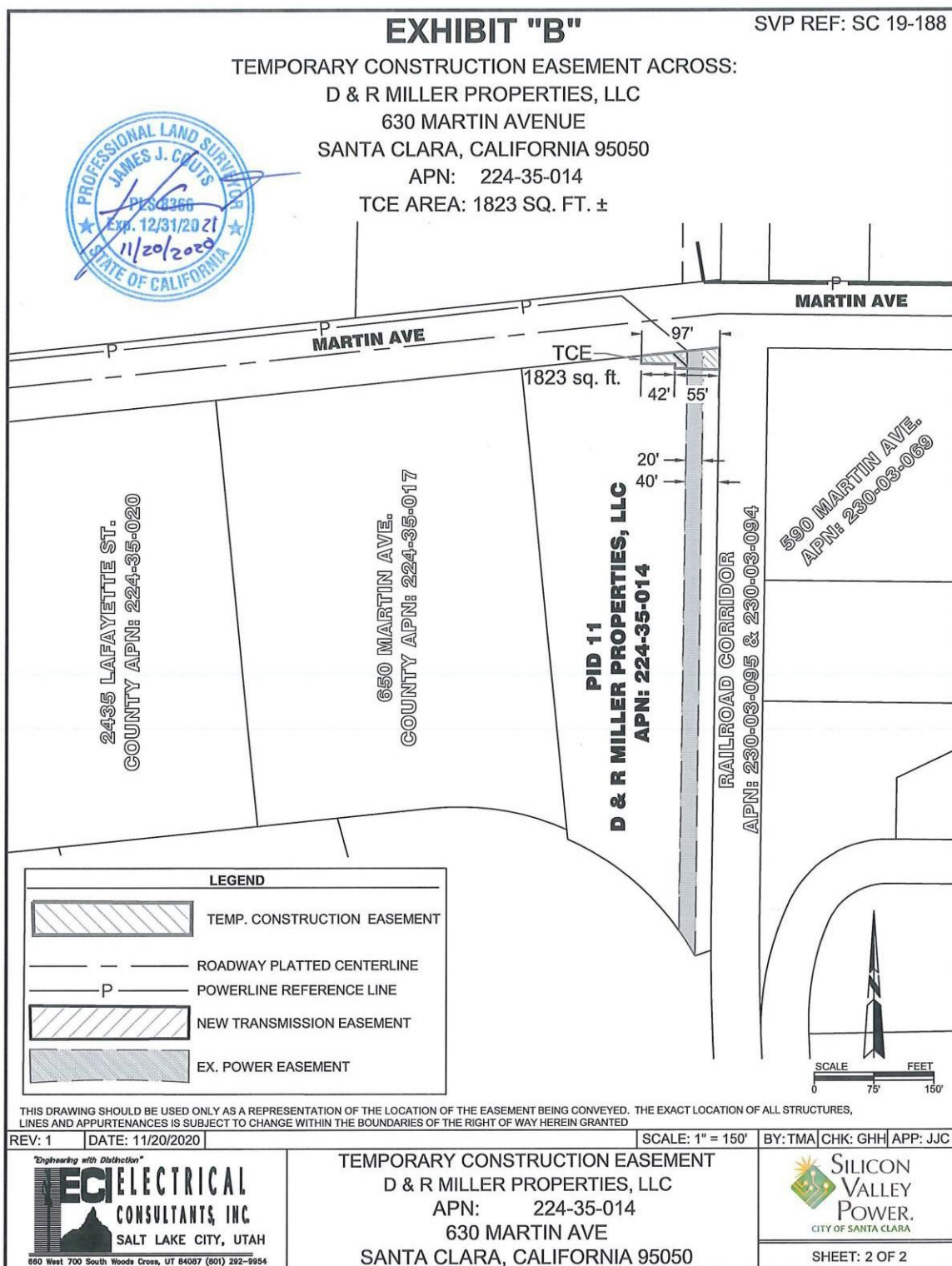


EXHIBIT C

(Overhead Electric Easement Deed)

Recording Requested by:

Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:

Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

APN: 224-35-014

EXEMPT FROM RECORDING FEE
PER GOV'T CODE §§ 6103 and 27383

EXEMPT FROM FEE
PER GOV'T CODE § 27388.1 (a)(2)(D)

OVERHEAD ELECTRIC EASEMENT DEED

**630 Martin Avenue
Santa Clara, California**

For valuable consideration, the receipt of which is hereby acknowledged, **D & R Miller Properties, LLC, a California limited liability company** (herein "**Grantor**"), hereby grants to the **CITY OF SANTA CLARA**, California, a chartered municipal corporation, (herein "**Grantee**"), an easement and right-of-way (herein "**Easement**") in, on, over, along and across the real property owned by Grantor in the City of Santa Clara, State of California, described in **Exhibit A** and **Exhibit B** attached hereto and incorporated herein by this reference ("**Easement Area**").

This Easement described in **Exhibit A** shall be used by Grantee for the purpose of constructing and reconstructing, installing, operating, inspecting, maintaining, repairing, removing and/or replacing overhead electrical transmission, distribution and/or communication systems, and appurtenances thereto, including a reasonable right of ingress and egress over adjoining lands of Grantor. In exercising said right of ingress and egress, Grantee shall, wherever practical, use existing roads and lanes across lands of Grantor, if such there be, and if not, by such route or routes as shall result in the least practicable inconvenience to Grantor and any occupants of Grantor's property.

The overhead system will consist of poles, wire supports, wires and conductors suspended from pole to pole, transformers and other equipment mounted on the poles, anchors, guy attachments, and other appurtenances.

Portions of the Easement Area may be used by the Grantor for driveway(s), landscaping (excluding trees), and parking, as will not interfere with the Grantee's use of the Easement. Any other use of the Easement Area by Grantor shall be subject to Grantee's express written consent and only after Grantee's review of plans and specifications and determination that such use will not interfere with

its use of the Easement. Grantee may trim any trees or remove any tree or structure which is in or adjacent to the Easement Area which, in its reasonable determination, interferes with its use of the Easement. Grantee may trim any trees or remove any tree which is in or adjacent to the Easement Area which exceeds a height of 20 Feet or poses a risk of falling onto the Grantee's facilities or equipment located within the Easement.

The Easement described in **Exhibit B** shall be used by Grantee for construction purposes ("TCE") related to the Project, and all purposes related thereto, in, on, upon, over, under and across that real property described and depicted in Exhibit B ("TCE Area").

Actual physical use and occupation of the TCE Area will occur only intermittently and only for a timeframe not to exceed twenty-one (21) days total, each phase of which to commence following forty-eight (48) hours prior written notice to Property owner. Access and use of portions of the TCE Area by Property owner, tenants, invitees and guests will be allowed to the extent that said portion is not being used for Project construction or staging purposes at that time. Construction of the Project is expected to take no more than six months, and this TCE shall terminate upon written notice from easement holder that the TCE is no longer needed for the Project. Under all circumstances, unless it expires or is terminated earlier, the TCE term shall expire nine (9) months following the date the TCE is first used for the Project. Easement holder will stage and coordinate work in the TCE Area with the Property owner so as not to unreasonably impede/hinder access to/from and within the Property.

[SIGNATURE(S) APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, said grantor has hereunto set their hands this _____ day of _____, 20____.

**D & R Miller Properties, LLC,
a California limited liability company**

By: _____

Title: _____

Date: _____

APPROVED FOR FORM:

Brian Doyle
City Attorney

ALL LEGAL OWNERS OF PROPERTY MUST EXECUTE THIS DOCUMENT. IF GRANTOR IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE GRANTOR.

CALIFORNIA NOTARY ACKNOWLEDGMENT

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

State of California

County of _____

On _____ before me, _____ (name and title of officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by Overhead Electric Utility Deed dated the _____ of _____, 20____, from **D & R Miller Properties, LLC, a California limited liability company** (Grantor) to the City of Santa Clara, California, a chartered California municipal corporation (City), is hereby accepted by the undersigned officer on behalf of the City Council of the City pursuant to authority conferred by Resolution No. 5600 of the City Council of the City of Santa Clara adopted on the 28 day of May, 1991, and the Resolution Approving Purchase of Overhead Electric Easement, Resolution No. _____ adopted on _____, 20____. The City, as Grantee, consents to recordation by its duly authorized officer, the City Clerk of the City of Santa Clara.

Re: **APN 224-35-014**

Dated: This _____ day of _____, 20____

DEANNA J. SANTANA
City Manager
City of Santa Clara

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

ATTEST: _____
NORA PIMENTEL, MMC
Assistant City Clerk

Exhibit A

SVP REF: SC 19-188

EXHIBIT "A"

POWERLINE EASEMENT ACROSS:
 D & R MILLER PROPERTIES, LLC
 630 MARTIN AVENUE
 SANTA CLARA, CALIFORNIA 95050
 APN: 224-35-014
 NEW EASEMENT AREA: 190 SQ. FT. ±

DESCRIPTION:

A portion of that parcel of land conveyed in that certain Grant Deed recorded November 29, 2012 as Document No. 21974802, in the Office of the Recorder of the County of Santa Clara (ORCSC) and herein after known as the Grantor's Parcel, being a portion of Lots 2, 3, 4 and 5 in Block 2, as shown on that certain Map entitled, "Laurelwood Farm Subdivision", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 13, 1924, in Book "S" of Maps, page(s) 7 and 8, being located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

COMMENCING at a monument located at the intersection of the centerline of Martin Avenue and the westerly right-of-way line of the Southern Pacific Railroad; thence South 84°10'09" West 44.35 feet along said centerline; thence South 05°49'51" East 42.00 feet to the southerly right-of-way line of Martin Avenue and the **POINT OF BEGINNING**; thence South 84°10'09" West 19.40 feet along said southerly right-of-way line; thence South 47°00'21 East 26.01 feet to the westerly line of an existing Power Easement (Book 1339 Page 130 ORCSC); thence North 00°47'35" East 19.71 feet along said westerly line to the **POINT OF BEGINNING**.

Containing 190 square feet, more or less.



REV: 0	DATE: 4/8/20	SCALE: N/A	BY: TMA	CHK: GHH	APP: JJC
<p>ECI ELECTRICAL CONSULTANTS, INC. SALT LAKE CITY, UTAH 550 West 700 South Woods Cross, UT 84007 (801) 292-8954</p>		<p>D & R MILLER PROPERTIES, LLC APN: 224-35-014 630 MARTIN AVE SANTA CLARA, CALIFORNIA 95050</p>		<p>SILICON VALLEY POWER, CITY OF SANTA CLARA</p>	
SHEET: 2 OF 2					

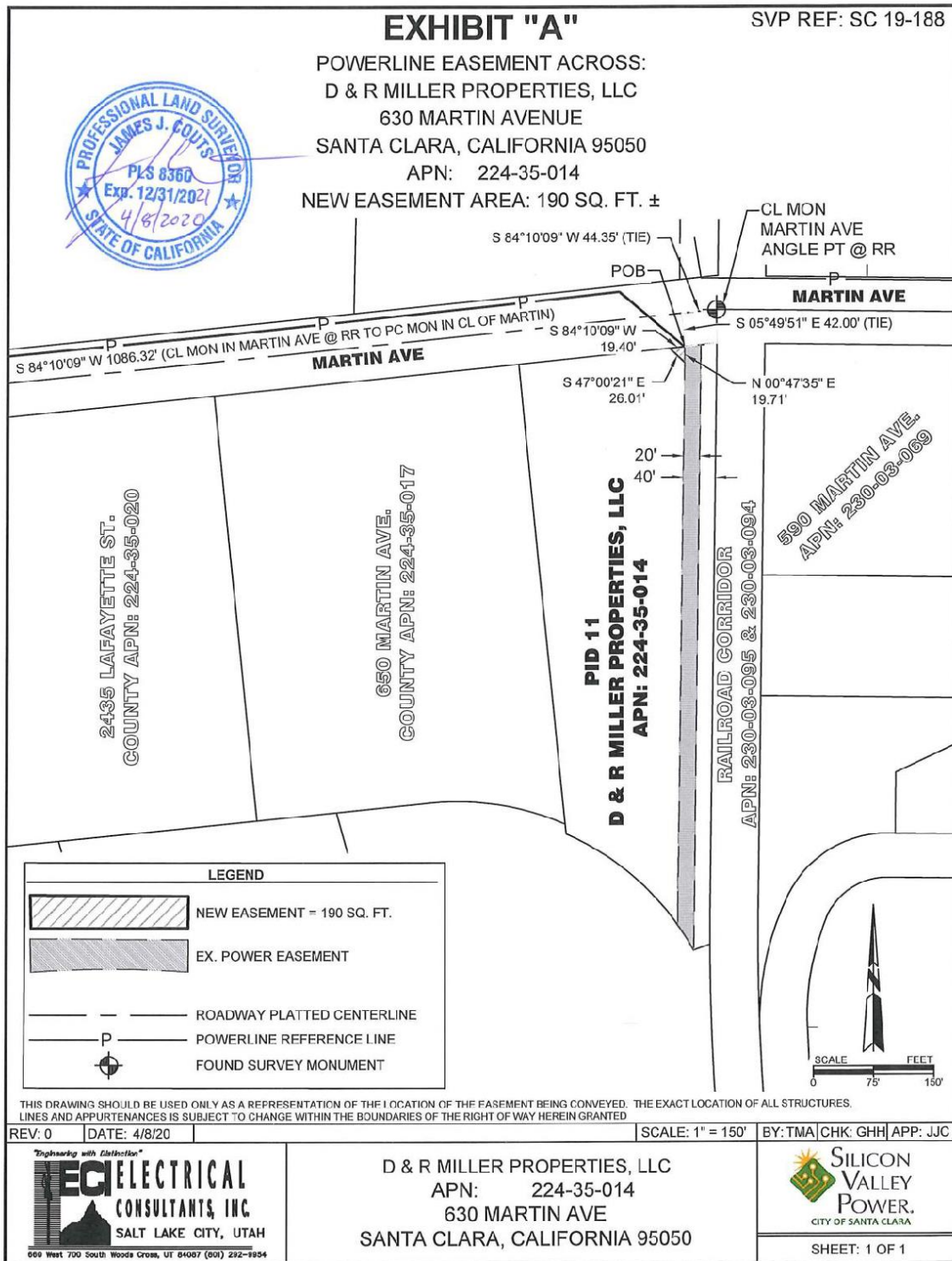


Exhibit B**EXHIBIT "B"**

SVP REF: SC 19-188

TEMPORARY CONSTRUCTION EASEMENT ACROSS:

D & R MILLER PROPERTIES, LLC
630 MARTIN AVENUE
SANTA CLARA, CALIFORNIA 95050
APN: 224-35-014
TCE AREA: 1823 SQ. FT. ±

DESCRIPTION:

A portion of that parcel of land conveyed in that certain Grant Deed recorded November 29, 2012 as Document No. 21974802, in the Office of the Recorder of the County of Santa Clara (ORCSC) and herein after known as the Grantor's Parcel, being a portion of Lots 2, 3, 4 and 5 in Block 2, as shown on that certain Map entitled, "Laurelwood Farm Subdivision", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 13, 1924, in Book "S" of Maps, page(s) 7 and 8, being located in the City of Santa Clara, County of Santa Clara, State of California and described as follows:

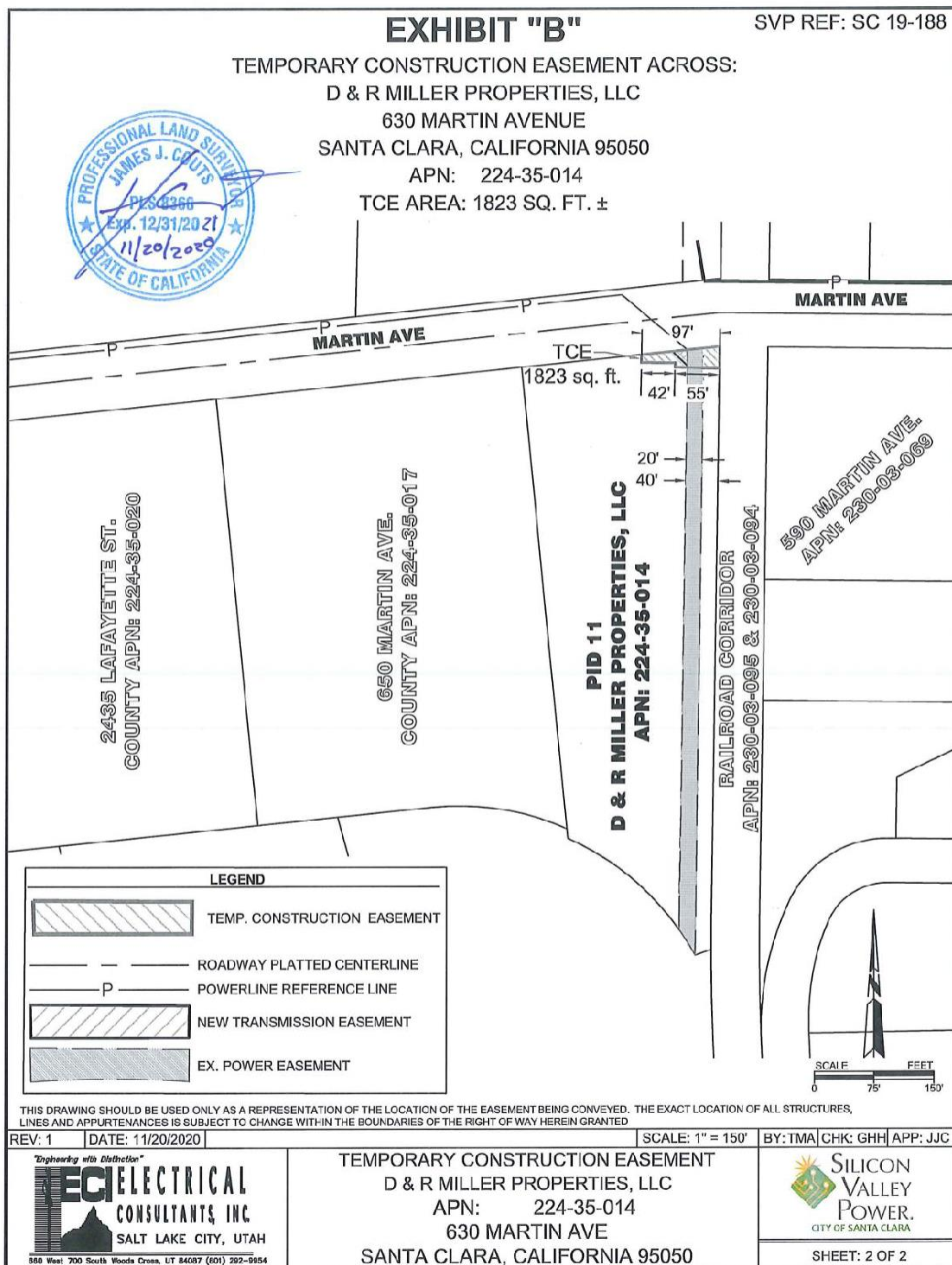
The westerly 42 feet of the easterly 97 feet of that portion of the Grantor's Parcel lying northerly of a line parallel with and 5 feet distant northerly of the existing building. Along with the easterly 55 feet of that portion of the Grantor's parcel lying northerly of the existing fence land gate line. As shown on page 2 of this exhibit.

Containing 1,823 square feet, more or less.

Less and excepting that portion of land described in the proposed Power Easement (Exhibit A).



REV: 1	DATE: 11/20/2020	SCALE: N/A	BY: TMA	CHK: GHJ	APP: JJC
		TEMPORARY CONSTRUCTION EASEMENT D & R MILLER PROPERTIES, LLC APN: 224-35-014 630 MARTIN AVE SANTA CLARA, CALIFORNIA 95050			
				SHEET: 1 OF 2	





Agenda Report

21-95

Agenda Date: 2/9/2021

REPORT TO CITY COUNCIL

SUBJECT

Action on Removal of Trustee Joshua Briefman from the Board of Library Trustees and Declaring a Vacancy

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

The Board of Library Trustees is a five-member body, appointed by the City Council, that is primarily responsible for the establishment, acceptance and continued supervision of the public library program. It makes and enforces by-laws, rules and regulations for the administration of the City's public library; approves or disapproves the appointment of the City Librarian; accepts donations into the library fund (subject to the approval of the City Council); and contracts with other governmental agencies to render or receive library services (also subject to the approval of the City Council).

Regular attendance at Board meetings is important to the functioning and effectiveness of the Board of Library Trustees. Section 1004 of the City Charter states that:

"If a member of a board or commission absents himself/herself from three regular meetings of such board or commission, consecutively, unless with permission of such board or commission expressed in its official minutes, or is convicted of a crime involving moral turpitude, or ceases to be a qualified elector of the City, his/her office shall be vacant and shall be so declared by the City Council."

The City Charter sets the standard of three consecutive absences, if unexcused by the Board, as cause for removal of an appointee of the Board of Library Trustees by the City Council.

DISCUSSION

On December 9, 2019, the City Council conducted Board of Library Trustee interviews to fill a partial term. At that meeting, the City Council interviewed two applicants (one additional applicant was unable to attend), and appointed Joshua Briefman to a partial term, expiring on June 30, 2021.

Following his appointment, Trustee Briefman missed three consecutive Board meetings on the dates identified:

- October 5, 2020
- November 2, 2020
- December 7, 2020

Neither the Board of Library Trustees nor staff were notified regarding these absences, and in one instance, Trustee Briefman verbally confirmed that he would be in attendance the day prior to missing the meeting.

On January 6, 2021, staff contacted Trustee Briefman to discuss the absences and was informed by the Trustee that due to work conflicts, it was his intent to resign. However, a written letter of resignation has not yet been received despite follow-up email efforts from staff. The City staff/secretary assigned to Library Board of Trustees has reviewed the minutes of each meeting to confirm the unexcused absences and has submitted a request to the City Clerk to remove the trustee and declare a vacancy. (Attachment 1)

In recognition of this, the City Clerk recommends that the City Council exercise its authority listed in City Charter Section 1004 and remove Trustee Briefman from the Board of Library Trustees due to three consecutive absences deemed as unexcused by the Board. If Council chooses to remove Trustee Briefman from the Board and declare his seat vacant, the Assistant City Clerk will include that seat in the annual Boards and Commissions recruitment process that will be initiated by the Assistant City Clerk in March 2021.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

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

COORDINATION

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

Remove Trustee Joshua Briefman from Board of Library Trustees and declare a vacancy on the Board.

Reviewed by: Cynthia Bojorquez, Acting City Librarian
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Memorandum to the City Clerk



Date: January 25, 2021

To: Nora Pimentel, City Clerk

From: Cynthia Bojorquez, Acting City Librarian/Assistant City Manager

Subject: Request to Remove Joshua Briefman as a Member of the Library Board of Trustees and Declare a Vacancy

The City Charter section 1004 sets the standard of three consecutive absences, if unexcused by the Board, as cause for removal of an appointee to the Board of Library Trustees by the City Council.

As the secretary to the Library Board of Trustees, I regret to inform you that Trustee Joshua Briefman was absent from the October 5, November 2 and December 7, 2020 Board of Trustee meetings. These absences were unexcused in violation of the Charter; and therefore, on behalf of the Board of Trustees, I would request that the City Clerk submit a request to the City Council to remove the Trustee and declare a vacancy.



Agenda Report

21-99

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age")

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On February 5, 2019, Council adopted Smoking and Tobacco Regulations Ordinance No. 1996 (Ordinance) (Attachment 1) to expand smoking restrictions in open air dining areas; public parks; service areas; public places when being used for public events; multi-unit residences; within 30 feet of any operable doorway, window opening, or vent into an enclosed area; and within 30 feet from any unenclosed areas. These regulations aim to protect Santa Clara residents, employees and visitors from the harmful effects of secondhand smoke.

Staff conducted extensive community outreach, to solicit input from the community and stakeholders through Open City Hall on-line surveys; community outreach meetings; and Parks & Recreation Commission meetings. The vast majority of survey respondents and community meeting participants supported the proposed changes to the Ordinance; however, several organizations expressed concern regarding Section 8.35.130 "Possession of Tobacco by Persons Under 21 years of Age".

Section 8.35.130, "Possession of Tobacco by Persons Under 21 Years of Age":

It shall be unlawful for persons under the age of twenty-one (21) years to possess tobacco or tobacco products (including electronic smoking devices and e-liquids whether or not they contain nicotine or tobacco), as defined in Penal Code §308 and Business and Professions Code §22950.5, in the City of Santa Clara. This section shall not apply to active duty military personnel of at least 18 years of age.

The addition of this section was a recommendation by the Police Department due to California Senate Bill 7 (Bill), which took effect June 9, 2016. Under the law, the age to purchase tobacco products increased from 18 to 21 for everyone except active duty military personnel. The Bill also changed Penal Code 308 by excising the prohibition of possession of tobacco by a minor. As a result, law enforcement agencies could no longer make contact with, or cite a minor in possession of tobacco. The intent of the provision was to provide the Police Department the ability to make contact with youth in possession, and their parents, to educate them on the health risks and environmental impacts of such use.

Subsequently, in 2019, the Police Department added Section 411.6 - Juvenile Citations to the 411

Cite and Release Policy (Attachment 2) to address contacts due to tobacco possession. Per the policy, violations of tobacco or tobacco product possession involving youth 17 years of age or younger, should be documented with an informational Juvenile Contact Report for referral to the Juvenile Probation Officer for education and diversion. No criminal or administrative citations shall be issued to juveniles for tobacco related violations.

Retired Chief of Police Michael J. Sellers facilitated several conversations on the proposed policy, procedure and training, with the Chief's Advisory Committee, Santa Clara Unified School District (SCUSD) school administrators, County Coalition Steering Committee and National Association for the Advancement of Colored People (NAACP). Although the Chief's Advisory Committee and SCUSD administrators were supportive of the policy, the County Coalition Steering Committee and NAACP expressed particular concerns related to the tobacco industry's history of targeting the African American community and youth through tailored branding, messaging and publications. While these groups were comfortable with the way the Santa Clara Police Department was addressing the implementation of Section 8.35.130 of the Ordinance, they expressed concern that other law enforcement organizations may not take the same thoughtful approach; therefore, resulting in the criminalization of youth in possession of tobacco products.

DISCUSSION

Tobacco use remains the number one preventable cause of death and disease in California, causing nearly 40,000 deaths in California every year. In Santa Clara County, one in eight deaths annually is attributed to smoking-related illness or disease, such as cancer, heart disease, and respiratory diseases. More than one in ten youth in the County currently use tobacco products, including electronic smoking devices, and nearly one in three Santa Clara County teens report that they have used an e-cigarette at least once.

The Police Department (Department) conducted a review of citation data related to Section 8.35.130 in the first year of implementation; which revealed only one instance in which Section 8.35.130 of the Ordinance was applied. The Department revisited the County Coalition Steering Committee and NAACP's concerns regarding the provision; and the need for more equitable policies. As such, staff recommends repealing Section 8.35.130 "Possession of Tobacco by Persons Under 21 years of Age."

The Department continues to invest in implementing strategies proven to reduce youth tobacco use. While the program is temporarily suspended due to the COVID-19 Pandemic, the Department values the curricula from Drug Abuse Resistance Education (D.A.R.E.); which develops basic core skills for making safe and responsible choices, particularly related to subjects such as bullying, internet safety, communication, conflict, membership in gangs, violent behavior and substance abuse.

The City is also pursuing tobacco prevention policies that have been shown to reduce youth access and exposure to tobacco products. In July 2020, the City executed a grant agreement with the Santa Clara County Public Health Department (PHD) to explore an ordinance to prohibit the sale of flavored tobacco products in the City. Such a prohibition would apply to flavored e-cigarettes, e-liquids, flavored cigars, little cigars, flavored hookah, and menthol cigarettes. Flavored tobacco products are considered "starter" products for youth who begin to use tobacco, establishing tobacco habits that can lead to long-term addiction.

The grant implementation includes a community outreach process prior to bringing an ordinance

forward for Council's consideration. The process is targeted to begin in late February 2021.

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 action.

COORDINATION

This report was coordinated with the Police 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 the Introduction of an Ordinance Repealing Section 8.35.130 ("Possession of Tobacco by Persons Under 21 Years of Age").

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager and Derek Rush, Assistant Chief of Police

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance - Repealing Section 8.35.130
2. SCPD Policy 411 Cite and Release Policy

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO REPEAL SECTION 8.35.130 ("POSSESSION OF TOBACCO AND CANNABIS BY PERSONS UNDER 21 YEARS OF AGE") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA"

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

WHEREAS, smoking remains the single largest cause of preventable disease and death in the United States;

WHEREAS, while smoking and exposure to secondhand smoke have decreased since 1965, both remain public health issues as there is no safe level of exposure and many continue to be affected by their adverse impacts;

WHEREAS, on February 5, 2019, City Council adopted Chapter 8.35 of the Code of the City of Santa Clara ("SCCC") addressing the regulations of smoking and tobacco to expand smoking restrictions in public spaces, multi-unit residents, and prohibit possession for persons under the age of 21;

WHEREAS, since the adoption of the ordinance, the Police Department conducted a review of citation data related to Section 8.35.130 in the first year of implementation; which revealed only one instance in which Section 8.35.130 was applied. The Police Department also revisited the County Coalition Steering Committee and NAACP's concerns regarding the provision; and the need for more equitable policies; and

WHEREAS, the City Council deems it to be in the best interests of the City to repeal SCCC section 8.35.130.

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

SECTION 1: That Section 8.35.130 (entitled " Possession of tobacco and cannabis by

persons under 21 years of age”) of Chapter 8.35 (entitled "Smoking and Tobacco Regulations") of Title 8 (entitled "Health and Safety") of "The Code of the City of Santa Clara, California" ("SCCC") is hereby repealed in its entirety.

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.

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

PASSED FOR THE PURPOSE OF PUBLICATION this day of 2021, by the following vote:

AYES : COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS: ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Cite and Release Policy

411.1 PURPOSE AND SCOPE

This policy provides guidance on when to release adults who are arrested for a criminal misdemeanor offense on a written notice to appear (citation) and when to hold for court or bail.

411.2 POLICY

It is the policy of the Santa Clara Police Department to release all persons arrested on misdemeanor or other qualifying charges on a citation with certain exceptions (Penal Code § 853.6).

If there is a reason for non-release, the Department's mission to protect the community will be the primary consideration when determining whether to release any individual in lieu of holding for court or bail.

411.3 RELEASE BY CITATION

Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private persons arrest, shall be released from custody on a citation (Penal Code § 853.6).

The citing officer shall, at the time the defendant signs the notice to appear, call attention to the time and place for appearance and take any other steps he/she deems necessary to ensure that the defendant understands his/her written promise to appear.

411.3.1 FIELD CITATIONS

In most cases an adult arrested for a misdemeanor offense may be released in the field on a citation in lieu of physical arrest when booking and fingerprinting is not practicable or immediately required provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the below described disqualifying circumstances are present (Penal Code § 853.6; Penal Code § 1270.1). In such cases the arresting officer should check the booking required box on the citation form to indicate that the person will be photographed and fingerprinted at a later time when ordered by the court.

When a booking photo or fingerprints are needed for the furtherance of any investigation, the person should be released on citation after booking instead of on a field citation.

411.3.2 RELEASE AFTER BOOKING

In some cases it may not be feasible or desirable to release a person in the field. The person should instead be released on citation after booking at the jail. All bookings shall be approved by the Watch Commander or the authorized designee.

411.4 NON-RELEASE

Cite and Release Policy

411.4.1 DISQUALIFYING OFFENSES

An adult arrested on any of the following disqualifying charges shall not be released on citation and shall be transported to the appropriate detention facility or held for court or bail after booking:

Disqualifying offenses include (Penal Code § 1270.1):

- (a) Misdemeanor domestic battery (Penal Code § 243(e)(1)).
- (b) Felony domestic battery (Penal Code § 273.5).
- (c) Serious or violent felonies (Penal Code § 1270.1(a)(1)).
- (d) Violation of a protective order and the arrested person has made threats, used violence or has gone to the protected person's workplace or residence (Penal Code § 273.6).
- (e) Stalking (Penal Code § 646.9).
- (f) Misdemeanor violations of a protective order relating to domestic violence if there is a reasonable likelihood the offense will continue or the safety of the individuals or property would be endangered (Penal Code § 853.6).

411.4.2 REASONS FOR NON-RELEASE

A person arrested for a misdemeanor shall be released on a citation unless there is a reason for non-release. The Watch Commander may authorize a release on citation regardless of whether a reason for non-release exists when it is determined to be in the best interest of the Department and does not present an unreasonable risk to the community (e.g., release of an intoxicated or ill person to a responsible adult).

Reasons for non-release include (Penal Code § 853.6(i)):

- (a) The person arrested is so intoxicated that he/she could be a danger to him/herself or to others. Release may occur as soon as this condition no longer exists.
- (b) The person arrested requires medical examination or medical care or is otherwise unable to care for his/her own safety
 - 1. The Santa Clara Police Department shall not release an arrestee from custody for the purpose of allowing that person to seek medical care at a hospital, and then immediately re-arrest the same individual upon discharge from the hospital, unless the hospital determines this action will enable it to bill and collect from a third-party payment source (Penal Code § 4011.10).
- (c) The person is arrested for one or more of the offenses listed in Vehicle Code §§ 40302, 40303 and 40305.
- (d) There are one or more outstanding arrest warrants for the person (see Misdemeanor Warrants elsewhere in this policy).
- (e) The person could not provide satisfactory evidence of personal identification.
 - 1. If a person released on citation does not have satisfactory identification in his/her possession, a right thumbprint or fingerprint should be obtained on the citation form.

Cite and Release Policy

- (f) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by the immediate release of the person arrested.
- (g) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested.
- (h) The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.
- (i) There is reason to believe that the person would not appear at the time and place specified in the notice to appear. The basis for this determination shall be specifically documented. Reasons may include:
 - (a) Previous failure to appear is on record
 - (b) The person lacks ties to the area, such as a residence, job or family
 - (c) Unusual circumstances lead the officer responsible for the release of prisoners to conclude that the suspect should be held for further investigation

When a person is arrested on a misdemeanor offense and is not released by criminal citation, the reason for non-release shall be noted on the booking form. This form shall be submitted to the Watch Commander for approval and included with the case file in the Records.

411.5 MISDEMEANOR WARRANTS

An adult arrested on a misdemeanor warrant may be released, subject to Watch Commander approval, unless any of the following conditions exist:

- (a) The misdemeanor cited in the warrant involves violence
- (b) The misdemeanor cited in the warrant involves a firearm
- (c) The misdemeanor cited in the warrant involves resisting arrest
- (d) The misdemeanor cited in the warrant involves giving false information to a peace officer
- (e) The person arrested is a danger to him/herself or others due to intoxication or being under the influence of drugs or narcotics
- (f) The person requires medical examination or medical care or was otherwise unable to care for his/her own safety
- (g) The person has other ineligible charges pending against him/her
- (h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person
- (i) The person refuses to sign the notice to appear
- (j) The person cannot provide satisfactory evidence of personal identification
- (k) The warrant of arrest indicates that the person is not eligible to be released on a notice to appear

Cite and Release Policy

Release under this section shall be done in accordance with the provisions of this policy.

411.6 JUVENILE CITATIONS

Completion of criminal citations for juveniles is generally not appropriate with the exception of misdemeanor traffic violations of the Vehicle Code.

Violations of tobacco or tobacco product possession (Santa Clara City Code § 8.25.130) by juveniles should be documented with an informational Juvenile Contact Report for referral to the Juvenile Probation Officer for education and diversion. No criminal or administrative citations shall be issued to juveniles for tobacco related violations. Under **NO** circumstances shall a juvenile be taken into custody for a violation of tobacco product possession.

All other misdemeanor violations for juveniles shall be documented in a Juvenile Contact Report and the case should be referred to the Investigations Division for further action including diversion.

411.7 REQUESTING CASE NUMBERS

Many cases involving a criminal citation release can be handled without requesting a case number. Traffic situations and local code violations can be documented on the reverse side of the records copy of the citation. Most Penal Code sections will require a case number to document the incident properly in a report. This section does not preclude an officer from requesting a case number if he/she feels the situation should be documented more thoroughly in a case report.



City of Santa Clara

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

Agenda Report

21-204

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on a Resolution Approving the 2021 Salary Setting Commission Calendar of Meetings, and Setting the Number and Start Time of Regular Meetings of the Salary Setting Commission

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

City Charter Section 1003 states that each of the boards and commissions of the City shall hold regular meetings as required by City Code. City Code Section 2.120.030 states that each board or commission shall hold regular meetings at the times and on the days indicated by resolution of the City Council, which resolutions may be amended from time to time by further resolution of the Council.

DISCUSSION

At the January 27, 2021 Salary Setting Commission meeting, the Commission recommended the proposed 2021 Schedule of Meetings, which includes twenty (20) regular meeting dates with a start time of 5:30 p.m.

The new resolution for City Council approval establishes the 5:30 p.m. Salary Setting Commission start time and twenty (20) regular meetings for the year (which may be cancelled at the discretion of the City Manager based upon best practices for agenda management) to be held weekly on Wednesdays, beginning on February 10, 2021.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

There is no fiscal impact other than administrative time and expense to set the meetings.

COORDINATION

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

PUBLIC CONTACT

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

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

RECOMMENDATION

Adopt a Resolution approving the 2021 Salary Setting Commission Calendar of Meetings, and setting the number and start time of regular Salary Setting Commission meetings.

Reviewed by: Aracely Azevedo, Director of Human Resources

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Salary Setting Commission 2021 Meeting Dates
2. Resolution Approving the 2021 Salary Setting Commission Calendar of Meetings, and Setting the Times and Days of Regular Meetings



**City of
Santa Clara**
The Center of What's Possible

**SALARY SETTING
COMMISSION**
ZOOM/CITY COUNCIL
CHAMBERS
1500 Warburton Avenue
Santa Clara, CA 95050

Schedule of Meetings
2021

Regular meetings are held weekly on Wednesdays of each month, beginning in February 2021 at 5:30 p.m., in the City Council Chambers at via Zoom or 1500 Warburton Avenue, Santa Clara, in accordance with the following schedule.

Meeting Dates

February 10, 2021
February 17, 2021
February 24, 2021
March 3, 2021
March 10, 2021
March 24, 2021
March 31, 2021
April 7, 2021
April 14, 2021
April 21, 2021
April 28, 2021
May 5, 2021
May 12, 2021
May 19, 2021
May 26, 2021
June 2, 2021
June 9, 2021
June 16, 2021
June 23, 2021
June 30, 2021

RESOLUTION NO. 21-

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA APPROVING THE 2021 SALARY SETTING
COMMISSION CALENDAR OF MEETINGS, AND
SETTING THE NUMBER AND START TIME OF
REGULAR SALARY SETTING COMMISSION MEETINGS**

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

WHEREAS, Section 2.120.030 of the Santa Clara City Code ("SCCC") requires City boards and commissions to hold regular meetings at the times and on the days indicated by resolution of the Council;

WHEREAS, the Salary Setting Commission, at its January 27, 2021, meeting recommended a regular meeting schedule for 2021, which proposes twenty (20) regular meetings and a start time of 5:30 p.m.

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

1. That the City of Santa Clara are hereby finds that the above Recitals are true and correct and by the reference makes them a part thereof.
2. That the City Council herby approves setting the Salary Setting Commission regular meeting start time at 5:30 p.m., and establishes twenty (20) meetings per year, set on every Wednesday of each month, beginning in February, as set forth in the attached Salary Setting Commission 2021 Meetings Dates document, which meetings may be cancelled at the discretion of the City Manager based upon best practices for agenda management.
3. Effective date: This resolution shall be effective February 9, 2021.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, 2021, BY THE FOLLOWING VOTE:

AYES:

COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference: Salary Setting Commission 2021 Meetings Dates



Agenda Report

21-218

Agenda Date: 2/9/2021

REPORT TO COUNCIL AND AUTHORITIES

SUBJECT

Adopt the following City of Santa Clara and related agencies' Resolutions Amending the Conflict of Interest Codes for Designated Positions as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission:

1. City of Santa Clara
2. Bayshore North Project Enhancement
3. Public Facilities Financing Corporation
4. Sports and Open Space Authority
5. Housing Authority

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

The California Political Reform Act requires all public officials, employees, and consultants who make or participate in the making of governmental decisions to disclose any economic interest that could be affected by those decisions. Under Government Code Section 87302 of the Political Reform Act, certain designated officials and employees of the City are required to file a Statement of Economic Interest (Form 700) because of the nature of their position with the public agency. These officials, staff members and consultants serve in positions that been designated by the City's Conflict of Interest Code as being required to file such statements.

Local agencies are required to conduct a periodic review their Conflict of Interest Codes to determine if they are accurate, or alternatively, if the Codes must be amended. Amendments are necessary periodically, particularly when anew official or employee positions are added, deleted, or responsibilities are changed.

DISCUSSION

The accompanying Resolutions provide that the City of Santa Clara's and Authorities' Conflict of Interest Codes be amended to include an updated List of Designated Positions Required to File. Changes that occurred from the prior version of the Conflict of Interest are redlined in the Attachments.

Below is a summary of the changes from the prior version:

1. Updated Designated Positions:

The list of Designated Positions have been updated to add new job classifications or titles and remove those no longer applicable to the City. We have also added the following Commissions and Boards to the Conflict of Interest Code due their involvement in making city decisions.

- Cultural Commission
- Board of Library Trustees
- Deferred Compensation Committee
- Parks and Recreation Commission
- Salary Setting Commission

2. Consolidation of Disclosure Categories

The City's prior Conflict of Interest Code contained approximately 22 different disclosure categories. The majority of these categories were redundant as each category related to a specific department's contracts. We have consolidated those categories by creating a general disclosure category that applies to each designated position applicable department's contracts. Also, we eliminated the disclosure categories that are no longer applicable for existing designated positions.

3. Update of Consultant and New Positions language:

Under the Political Reform Act, an individual consulting to a government agency is required to file a Form 700 when they assume office and annually thereafter if the consultant makes governmental decisions as defined in the FPPC regulations or when they serve in a staff capacity and participate in governmental decisions or performs the duties of an individual in the agency's conflict-of-interest code. Not every person that is subject to the Act has to file a Form 700, just statutory filers who are expressly listed in the Act and designated officials who the agency designate in the conflict of interest code, which includes new positions or consultants who meet the standard above.

We have included language regarding consultants and new positions that provides the City Manager or Executive Director, as applicable, have the authority to determine which consultants or new positions that will be subject to the Conflict of Interest Code and the ability to assign the applicable disclosure category.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Adopt the Resolutions amending the Conflict of Interest Code required by the Political Reform Act and Regulations of the Fair Political Practices Commission:

1. City of Santa Clara
2. Bayshore North Project Enhancement
3. Public Facilities Financing Corporation
4. Sports and Open Space Authority
5. Housing Authority

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna Santana, City Manager/Executive Director

ATTACHMENTS

1. Resolution of the City of Santa Clara and attached Conflict of Interest Code and Appendices (Redline)
2. Appendix A and B (Clean Versions)
3. Resolution of the Bayshore North Project Enhancement Authority and attached Conflict of Interest Code and Appendices
4. Resolution of the Public Facilities Financing Corporation and attached Conflict of Interest Code and Appendices
5. Resolution of the Sports and Open Space Authority and attached Conflict of Interest Code and Appendices
6. Resolution of the Housing Authority and attached Conflict of Interest Code and Appendices

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA AMENDING THE CONFLICT OF INTEREST CODE FOR DESIGNATED CITY POSITIONS AS REQUIRED BY THE POLITICAL REFORM ACT AND REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION

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

WHEREAS, the Political Reform Act of 1974, Government Code Sections 81000 et seq., requires certain public agency officials and employees to file economic disclosure forms ("Form 700") and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest;

WHEREAS, the Political Reform Act requires the City to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the City Council has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act; and,

WHEREAS, the City Council has reviewed and considered administratively suggested changes to the listing of designated positions of City officials and employees, along with assigned disclosure categories, in the Conflict of Interest Code.

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

1. That the City of Santa Clara Conflict of Interest Code, attached hereto and incorporated herein by reference, is hereby adopted and includes the following:

(a) The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair

Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Santa Clara, which is considered the agency within the purview of this code. The Conflict of Interest Code of the City of Santa Clara so adopted amends and replaces any Conflict of Interest Code of the City of Santa Clara previously in effect to conform to this newly adopted code.

(b) Designated officials, employees, and consultants shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara.

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 26th DAY OF JANUARY, 2021, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABTAINED: COUNCILORS:

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

Attachments incorporated by reference:

1. Conflict of Interest Code with Appendices A and B



**City of
Santa Clara**
The Center of What's Possible

CITY OF SANTA CLARA CONFLICT OF INTEREST CODE

SECTION 1: CONFLICT OF INTEREST CODE - ADOPTED

The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Santa Clara, which is considered the agency within the purview of this code. The Conflict of Interest Code of the City of Santa Clara so adopted amends and replaces any Conflict of Interest Code of the City of Santa Clara previously in effect to conform to this newly adopted code.

SECTION 2: CONFLICT OF INTEREST CODE - STATEMENTS

Designated employees shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara.

SECTION 3: SAVINGS CLAUSE

Any change provided for in this conflict of interest code shall not affect or excuse any offense or act committed or done or omission or any penalty or forfeiture incurred or accruing under any other conflict of interest code; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered in connection with any other conflict of interest code.

Appendix A: On file in City Clerk's Office

Appendix B: Attached

APPENDIX A
CITY OF SANTA CLARA CONFLICT OF INTEREST CODE
DESIGNATED POSITIONS REQUIRED TO FILE

<u>Governing Bodies/Commissions</u>	Disclosure Category
Mayor	1
City Councilmembers	1
Civil Service Commission	1
Cultural Commission	1
Bayshore Project Enhancement Authority	1
Board of Library Trustees	1
Deferred Compensation Committee	1
Housing Authority	1
Housing Rehabilitation Loan Committee	1
Industrial Development Authority	1
Joint Financing Authority	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	1
Parks and Recreation Commission	1
Planning Commission	1
Public Facilities Financing Corporation	1
Parks and Recreation Commission	1
Salary Setting Commission	1
Sports and Open Space Authority	1
Stadium Authority	1
<u>City Department</u>	
<u>City Attorney's Office</u>	
Assistant City Attorney	1
Chief Assistant City Attorney	1
City Attorney	1
Deputy City Attorney	1
Executive Assistant to City Attorney Legal Executive Assistant	1
<u>City Clerk's Office</u>	
Assistant City Clerk	1
City Clerk/ Auditor	1
Deputy City Clerk	1
<u>City Manager's Office</u>	
Assistant City Manager	1
Assistant to the City Manager	1
Chief Operating Officer	1
City Manager	1
Communications & Outreach Manager	1
Consultant	1
Deputy City Manager	1
Executive Assistant to the City Manager	1

APPENDIX A
CITY OF SANTA CLARA CONFLICT OF INTEREST CODE
DESIGNATED POSITIONS REQUIRED TO FILE

City Department	Disclosure Category
City Manager's Office cont'd	
Management Analyst	1
Public Information Officer	1
Risk Manager	1
Senior Management Analyst	1
Community Development	
Assistant Planner I	1
Assistant Planner II	1
Associate Planner	1
Building Official	1
Code Enforcement Technician	1
Combination Inspector	1
Consultant	1
Development Review Officer	1
Director of Community Development	1
Housing Development Officer	1
Housing Inspector	1
Inspection Manager	1
Management Analyst	1
Plan Review Manager	1
Planning Manager	1
Plans Examiner	1
Principal Planner	1
Senior Inspector	1
Senior Inspector (Building)	1
Senior Inspector (Electrical)	1
Senior Permit Technician	1
Senior Plans Examiner	1
Staff Analyst I	1
Staff Analyst II	1
Finance	
Accounting Division Manager	1
Acting Director of Finance	1
Assistant Director of Finance	1
Budget Manager	1
Budget and Treasury Division Manager	1
Buyer	1
Chief Storekeeper	2
Contracts Manager	1
Director of Finance	1
Management Analyst	1
Municipal Services Division Manager	1

APPENDIX A
CITY OF SANTA CLARA CONFLICT OF INTEREST CODE
DESIGNATED POSITIONS REQUIRED TO FILE

City Department	Disclosure Category
Finance Cont'd	
Principal Accountant	1
Principal Financial Analyst	1
Senior Management Analyst	1
City Auditor's Office	
Audit Manager	1
Management Analyst	1
Fire	
Assistant Fire Marshal	1
Assistant Training Officer	2
Battalion Chief - Suppression	2
Battalion Chief —24 HRS Training	2
Battalion Chief in EMS Fire Department	2
Deputy Fire Chief	1
Deputy Fire Marshal	1
Deputy Fire Marshal—Hazardous Materials-	1
Emergency Service Coordinator	2
Fire Chief	1
Fire Inspection Aide	2
Fire Marshal I/II/III	1
Fire Prevention Specialist I/II	2
Human Resources	
Assistant Director of Human Resources	1
Director of Human Resources/ MERO	1
Human Resources Division Manager	1
Management Analyst	1
Risk Manager	1,5
Information Technology	
Dir. of Information Technology/Chief Information Officer	1
Information Technology Service Manager	1
Management Analyst	1
Senior Information Technology Services Manager	1
Library	
Assistant City Librarian	1
City Librarian	1
Library Circulation Supervisor	4
Library Division Manager – Support Services	1
Library Program Coordinator—Branch Manager	4
Library Program Coordinator—Reference-	4

APPENDIX A
CITY OF SANTA CLARA CONFLICT OF INTEREST CODE
DESIGNATED POSITIONS REQUIRED TO FILE

City Department	Disclosure Category
Library Technology Assistant	4
Library Program Coordinator—Technical Services	4
Library Program Coordinator—Technology	4
Library Program Coordinator—Youth Services	4
Literacy Program Supervisor	4
Mayor and Council Office	
Executive Assistant to Mayor and City Council	1
Parks and Recreation	
Cemetery Operations Manager	2
Deputy Parks & Recreation Director	1
Management Analyst	1
Parks & Recreation Director	1
Parks Construction, Maintenance & Repair Supervisor	4
Recreation Manager	1
Police	
Assistant Police Chief - Sworn	1
Communications Operations Manager	1
Management Analyst – Non-Sworn	1
Police Captain - Sworn	3
Police Chief - Sworn	1
Police Officer—P.A.L. Director	1
Police Records Manager – Non-Sworn	1
Public Works	
Assistant Director of Public Works /City Engineer	1
Building Maintenance Manager	2
Code Enforcement Officer	1
Code Enforcement Technician	1
Compliance Manager	1
Deputy Public Works Director	1
Director of Public Works	1
Environmental Programs Manager	1
Fleet Manager	1
Management Analyst	1
Materials Testing Technician	2
Principal Engineer	2
Principal Planner	1
Public Works Inspector	2
Senior Engineer, Civil	2
Staff Analyst 1—Environmental Programs	1
Streets Superintendent	1

APPENDIX A
CITY OF SANTA CLARA CONFLICT OF INTEREST CODE
DESIGNATED POSITIONS REQUIRED TO FILE

City Department	Disclosure Category
Public Works Cont'd	
Traffic Engineer	2
Transportation Manager	2
Water and Sewer	
Assistant Director of Water & Sewer Utilities	1
Assistant Water and Sewer Superintendent	1
Code Enforcement Technician	1
Compliance Manager	1
Director of Water & Sewer Utilities	1
Management Analyst	1
Principal Engineer—Water	1
Utility Business Systems Manager	1
Utility Operations Engineer	1
Water and Operations Manager	1
Water and Sewer Superintendent	1
Silicon Valley Power	
Acting Electric Division Manager	1
Assistant Director of Electric Utility/ Energy Distribution	1
Assistant Director of Electric Utility/Planning & Strategic Services	1
Business Analyst/Fiber	4
Business Analyst/Public Benefits	4
Consultant	1
Chief Electric Utility Officer	1
Chief Operating Officer	1
Compliance Manager	1
Electric Division Manager - Engineering	1
Electric Division Manager - Generation	1
Electric Division Manager - Operations	1
Electric Division Manager - Substations	1
Electric Division Manager – Transm Distrib	1
Electric Division Mgr-Mkt A & P	1
Electric Division Manager	1
Electric Program Manager	4
Electric Utility Network Administrator	4
Key Customer Representative	4
Power Account Clerk I	1
Electric Utility Chief Operating Officer	1
Electric Utility Risk Control Analyst	1
Power Account Clerk III	1
Power Contract Specialist	1
Power System Scheduler/ Trader	1

APPENDIX A
CITY OF SANTA CLARA CONFLICT OF INTEREST CODE
DESIGNATED POSITIONS REQUIRED TO FILE

Power Trader	1
Principal Electric Utility Engineer	1
Principal Power Analyst	1
Principal Utility Information Systems Manager	4
Resource Analyst II	4
Risk Control Analyst	1
Senior Key Customer Representative	4
Senior Power System Scheduler/Trader	1
Senior Business Analyst	4
Senior Electric Division Manager	1
Other	
Consultant/ New Positions*	1, 5

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: the City Manager may determine in writing that a particular consultant or new position, although a “designated person,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties, and based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Sec. 81008)

In addition, Consultants include all natural persons who are independent contractor consultants or such members, officers or employees of companies who by contract with the City make decisions on behalf of the City that may foreseeably have a material effect on any of their financial interests.

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES

Category 1 - All designated employees in this category shall disclose all sources of income, investments, interests in real property owned in the City of Santa Clara, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 2 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 3 - All designated employees in this category shall disclose all interests in real property owned in the City of Santa Clara.

Category 4 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management if the business entity or source of income is of the type which provides services, equipment, lease space, materials or supplies to the City of Santa Clara.

Category 5 - All designated positions in this category shall disclose all investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from, sources that filed a claim with or against the City of Santa Clara during the previous two years, or have a claim pending with or against the City of Santa Clara.

1.	All investments and business positions in business entities, sources of income and interests in real property
2.	Investments and business positions in business entities, and all sources of income.
3.	Interests in real property
4.	Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit.
5.	Investment and business positions in, and income from entities which are book outlets, vendors or providers of business services.
6.	Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.
7.	Investments and business positions in business entities and income from sources which supply or manufacture solar energy systems
8.	Investments and business positions in business entities and income from source engaged in constructions or development
9.	Investments and business positions in, and income from sources engaged in construction, building, or material supply.

10.	Investments and business positions in business entities and income from construction companies or public works projects.
11.	Investments and business positions in, and income from construction firms involved in construction projects subject to acceptance by the City Council.
12.	Investments and business positions in business entities and income from entities of the type to provide bids, supplies, vehicles and equipment.
13.	Investments and business positions in, and income from entities which provide training, services or facilities of the type utilized by the City.
14.	Investments and business positions in business entities and source of income which provide services and supplies of the type used in emergency services coordination and training activities.
15.	Investments and business positions in, and income from, Union Pension Funds that may be affected by the outcome of negotiations involving monetary settlements and employer-employee memorandum.
16.	Investments and business positions in, and income from entities providing medical services or facilities of the type used by the City.
17.	Investments and business positions in, and income from business entities engaged in providing eye examinations and eye glasses, including but not limited to opticians, ophthalmologists, etc.
18.	Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.
19.	Investments and business positions in, and income from business entities providing supplies, services equipment or machinery of the type used by the City.
20.	Investments and business positions in, and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.
21.	Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.
22.	Investments and business positions in business entities, and income from sources which supply or manufacture firefighting equipment or supplies.

RESOLUTION NO. XX-X (BNPEA)

**A RESOLUTION OF THE SANTA CLARA BAYSHORE NORTH
PROJECT ENHANCEMENT AUTHORITY AMENDING THE CONFLICT
OF INTEREST CODE FOR DESIGNATED POSITIONS AS REQUIRED
BY THE POLITICAL REFORM ACT AND REGULATIONS OF THE FAIR
POLITICAL PRACTICES COMMISSION**

**BE IT RESOLVED BY THE SANTA CLARA BAYSHORE NORTH PROJECT ENHANCEMENT
AUTHORITY AS FOLLOWS:**

WHEREAS, the Political Reform Act of 1974, Government Code Sections 81000 et seq., requires certain public agency officials and employees to file economic disclosure forms ("Form 700") and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest;

WHEREAS, the Political Reform Act requires the Bayshore North Project Enhancement Authority to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the Bayshore North Project Enhancement Authority has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act; and,

WHEREAS, the Bayshore North Project Enhancement Authority has reviewed and considered administratively suggested changes to the listing of designated positions of Authority officials, along with assigned disclosure categories, in the Conflict of Interest Code.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA BAYSHORE NORTH
PROJECT ENHANCEMENT AUTHORITY AS FOLLOWS:**

1. That the Santa Clara Bayshore North Project Enhancement Authority Conflict of Interest Code, attached hereto and incorporated herein by reference, is hereby adopted and includes the following:

(a) The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Santa Clara Bayshore North Project Enhancement Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code so adopted amends and replaces any Conflict of Interest Code previously in effect to conform to this newly adopted code.

(b) Designated officials, employees, and consultants shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara Bayshore North Project Enhancement Authority.

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 SANTA CLARA BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF January 2021, BY THE FOLLOWING VOTE:

AYES:	AUTHORITY MEMBERS
NOES:	AUTHORITY MEMBERS:
ABSENT:	AUTHORITY MEMBERS:
ABSTAINED:	AUTHORITY MEMBERS:

ATTEST: _____
NORA PIMENTEL, MMC
SECRETARY
BAYSHORE NORTH PROJECT ENHANCEMENT
AGENCY OF THE CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Conflict of Interest Code with Appendices A and B

BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY CONFLICT OF INTEREST CODE

SECTION 1: CONFLICT OF INTEREST CODE - ADOPTED

The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the Bayshore North Project Enhancement Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code of the Bayshore North Project Enhancement Authority so adopted amends and replaces any Conflict of Interest Code of the Bayshore North Project Enhancement Authority previously in effect to conform to this newly adopted code.

SECTION 2: CONFLICT OF INTEREST CODE - STATEMENTS

Designated employees shall file statements of economic interests with the Santa Clara City Clerk, who shall be and perform the duties of filing officer for the Bayshore North Project Enhancement Authority.

SECTION 3: SAVINGS CLAUSE

Any change provided for in this conflict of interest code shall not affect or excuse any offense or act committed or done or omission or any penalty or forfeiture incurred or accruing under any other conflict of interest code; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered in connection with any other conflict of interest code.

Appendix A: On file in City Clerk's Office

Appendix B: Attached

**APPENDIX A TO CONFLICT OF INTEREST CODE BAYSHORE NORTH
PROJECT ENHANCEMENT AUTHORITY
DESIGNATED POSITIONS REQUIRED TO FILE**

Officials Who Manage Public Investments

Pursuant to Government Code section 87200, officials who manage public investments as defined by 2 California Code of Regulations § 18701(b) are also subject to the disclosure requirements of the Political Reform Act and are required to file full Statements of Economic Interests. It has been determined that the positions listed below manage public investments and will file a statement of economic interests pursuant to Government Code Section 87200. These positions are listed for informational purposes only:

- Authority Members
- Executive Director
- Authority General Counsel
- Authority Finance Director, Treasurer and Auditor

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

Department	Designated Position	Categories
Bayshore North Project Enhancement Authority	Consultant/ New Positions*	1, 5

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: the Executive Director may determine in writing that a particular consultant or new position, although a “designated person,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties, and based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Sec. 81008.)

In addition, Consultants include all natural persons who are independent contractor consultants or such members, officers or employees of companies who by contract with the Bayshore North Project Enhancement Authority make decisions on behalf of the Bayshore North Project Enhancement Authority that may foreseeably have a material effect on any of their financial interests.

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES

Category 1 - All designated employees in this category shall disclose all sources of income, investments, interests in real property owned in the City of Santa Clara, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 2 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 3 - All designated employees in this category shall disclose all interests in real property owned in the City of Santa Clara.

Category 4 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management if the business entity or source of income is of the type which provides services, equipment, lease space, materials or supplies to the Bayshore North Project Enhancement Authority..

Category 5 - All designated positions in this category shall disclose all investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from, sources that filed a claim with or against the Bayshore North Project Enhancement Authority during the previous two years, or have a claim pending with or against the Bayshore North Project Enhancement Authority.

1.	All investments and business positions in business entities, sources of income and interests in real property
2.	Investments and business positions in business entities, and all sources of income.
3.	Interests in real property
4.	Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit.
5.	Investment and business positions in, and income from entities which are book-outlets, vendors or providers of business services.
6.	Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.
7.	Investments and business positions in business entities and income from sources which supply or manufacture solar energy systems
8.	Investments and business positions in business entities and income from source engaged in constructions or development

9.	Investments and business positions in, and income from sources engaged in construction, building, or material supply.
10.	Investments and business positions in business entities and income from construction companies or public works projects.
11.	Investments and business positions in, and income from construction firms involved in construction projects subject to acceptance by the City Council.
12.	Investments and business positions in business entities and income from entities of the type to provide bids, supplies, vehicles and equipment.
13.	Investments and business positions in, and income from entities which provide training, services or facilities of the type utilized by the City.
14.	Investments and business positions in business entities and source of income which provide services and supplies of the type used in emergency services coordination and training activities.
15.	Investments and business positions in, and income from, Union Pension Funds that may be affected by the outcome of negotiations involving monetary settlements and employer-employee memorandum.
16.	Investments and business positions in, and income from entities providing medical services or facilities of the type used by the City.
17.	Investments and business positions in, and income from business entities engaged in providing eye examinations and eye glasses, including but not limited to opticians, ophthalmologists, etc.
18.	Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.
19.	Investments and business positions in, and income from business entities providing supplies, services equipment or machinery of the type used by the City.
20.	Investments and business positions in, and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.
21.	Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.
22.	Investments and business positions in business entities, and income from sources which supply or manufacture firefighting equipment or supplies.

RESOLUTION NO. XX-X (PFFC)

**A RESOLUTION OF THE SANTA CLARA PUBLIC FACILITIES
FINANCING CORPORATION AMENDING THE CONFLICT OF
INTEREST CODE FOR DESIGNATED POSITIONS AS REQUIRED BY
THE POLITICAL REFORM ACT AND REGULATIONS OF THE FAIR
POLITICAL PRACTICES COMMISSION**

**BE IT RESOLVED BY THE SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION AS
FOLLOWS:**

WHEREAS, the Political Reform Act of 1974, Government Code Sections 81000 et seq., requires certain public agency officials and employees to file economic disclosure forms ("Form 700") and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest;

WHEREAS, the Political Reform Act requires the Public Facilities Financing Corporation to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the Public Facilities Financing Corporation has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act; and,

WHEREAS, the Public Facilities Financing Corporation has reviewed and considered administratively suggested changes to the listing of designated positions of Authority officials, along with assigned disclosure categories, in the Conflict of Interest Code.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA PUBLIC FACILITIES
FINANCING CORPORATION AS FOLLOWS:**

1. That the Santa Clara Public Facilities Financing Corporation Conflict of Interest Code, attached hereto and incorporated herein by reference, is hereby adopted and includes the following:

(a) The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Santa Clara Public Facilities Financing Corporation, which is considered the agency within the purview of this code. The Conflict of Interest Code so adopted amends and replaces any Conflict of Interest Code previously in effect to conform to this newly adopted code.

(b) Designated officials, employees, and consultants shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara Public Facilities Financing Corporation.

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 SANTA CLARA PUBLIC FACILITIES FINANCING CORPORATION, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF JANUARY 2020, BY THE FOLLOWING VOTE:

AYES: PFFC DIRECTORS:

NOES: PFFC DIRECTORS:

ABSENT: PFFC DIRECTORS:

ABSTAINED: PFFC DIRECTORS:

ATTEST: _____
NORA PIMENTEL, MMC
SECRETARY OF THE SANTA CLARA PUBLIC
FACILITIES FINANCING CORPORATION

Attachments incorporated by reference:

1. Conflict of Interest Code with Appendices A and B

PUBLIC FACILITIES FINANCING CORPORATION CONFLICT OF INTEREST CODE

SECTION 1: CONFLICT OF INTEREST CODE - ADOPTED

The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Santa Clara Public Facilities Financing Corporation, which is considered the agency within the purview of this code. The Conflict of Interest Code of the City of Santa Clara so adopted amends and replaces any Conflict of Interest Code of the City of Santa Clara Public Facilities Financing Corporation previously in effect to conform to this newly adopted code.

SECTION 2: CONFLICT OF INTEREST CODE - STATEMENTS

Designated employees shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara.

SECTION 3: SAVINGS CLAUSE

Any change provided for in this conflict of interest code shall not affect or excuse any offense or act committed or done or omission or any penalty or forfeiture incurred or accruing under any other conflict of interest code; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered in connection with any other conflict of interest code.

Appendix A: On file in City Clerk's Office

Appendix B: Attached

**APPENDIX A TO CONFLICT OF INTEREST CODE BAYSHORE NORTH
PROJECT ENHANCEMENT AUTHORITY
DESIGNATED POSITIONS REQUIRED TO FILE**

Officials Who Manage Public Investments

Pursuant to Government Code section 87200, officials who manage public investments as defined by 2 California Code of Regulations § 18701(b) are also subject to the disclosure requirements of the Political Reform Act and are required to file full Statements of Economic Interests. It has been determined that the positions listed below manage public investments and will file a statement of economic interests pursuant to Government Code Section 87200. These positions are listed for informational purposes only:

- Directors
- Executive Director
- General Counsel
- Finance Director, Treasurer and Auditor

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

Department	Designated Position	Categories
Public Facilities Financing Corporation	Consultant/ New Positions*	1, 5

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: the Executive Director may determine in writing that a particular consultant or new position, although a “designated person,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties, and based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Sec. 81008.)

In addition, Consultants include all natural persons who are independent contractor consultants or such members, officers or employees of companies who by contract with the Bayshore North Project Enhancement Authority make decisions on behalf of the Bayshore North Project Enhancement Authority that may foreseeably have a material effect on any of their financial interests.

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES

Category 1 - All designated employees in this category shall disclose all sources of income, investments, interests in real property owned in the City of Santa Clara, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 2 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 3 - All designated employees in this category shall disclose all interests in real property owned in the City of Santa Clara.

Category 4 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management if the business entity or source of income is of the type which provides services, equipment, lease space, materials or supplies to the City of Santa Clara Public Facilities Financing Corporation.

Category 5 - All designated positions in this category shall disclose all investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from, sources that filed a claim with or against the Santa Clara Public Facilities Financing Corporation during the previous two years, or have a claim pending with or against the Santa Clara Public Facilities Financing Corporation .

1.	All investments and business positions in business entities, sources of income and interests in real property
2.	Investments and business positions in business entities, and all sources of income.
3.	Interests in real property
4.	Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit.
5.	Investment and business positions in, and income from entities which are book-outlets, vendors or providers of business services.
6.	Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.
7.	Investments and business positions in business entities and income from sources which supply or manufacture solar energy systems
8.	Investments and business positions in business entities and income from source engaged in constructions or development
9.	Investments and business positions in, and income from sources engaged in construction, building, or material supply.

10.	Investments and business positions in business entities and income from construction companies or public works projects.
11.	Investments and business positions in, and income from construction firms involved in construction projects subject to acceptance by the City Council.
12.	Investments and business positions in business entities and income from entities of the type to provide bids, supplies, vehicles and equipment.
13.	Investments and business positions in, and income from entities which provide training, services or facilities of the type utilized by the City.
14.	Investments and business positions in business entities and source of income which provide services and supplies of the type used in emergency services coordination and training activities.
15.	Investments and business positions in, and income from, Union Pension Funds that may be affected by the outcome of negotiations involving monetary settlements and employer-employee memorandum.
16.	Investments and business positions in, and income from entities providing medical services or facilities of the type used by the City.
17.	Investments and business positions in, and income from business entities engaged in providing eye examinations and eye glasses, including but not limited to opticians, ophthalmologists, etc.
18.	Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.
19.	Investments and business positions in, and income from business entities providing supplies, services equipment or machinery of the type used by the City.
20.	Investments and business positions in, and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.
21.	Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.
22.	Investments and business positions in business entities, and income from sources which supply or manufacture firefighting equipment or supplies.

RESOLUTION NO. XX-X (SOSA)

A RESOLUTION OF THE SANTA CLARA SPORTS AND OPEN SPACE AUTHORITY AMENDING THE CONFLICT OF INTEREST CODE FOR DESIGNATED POSITIONS AS REQUIRED BY THE POLITICAL REFORM ACT AND REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION

BE IT RESOLVED BY THE SANTA CLARA SPORTS AND OPEN SPACE AUTHORITY AS FOLLOWS:

WHEREAS, the Political Reform Act of 1974, Government Code Sections 81000 et seq., requires certain public agency officials and employees to file economic disclosure forms ("Form 700") and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest;

WHEREAS, the Political Reform Act requires the Sports and Open Space Authority to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the Sports and Open Space Authority has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act, Government Code §§ 81000 et seq.; and,

WHEREAS, the Sports and Open Space Authority has reviewed and considered administratively suggested changes to the listing of designated positions of Authority officials, along with assigned disclosure categories, in the Conflict of Interest Code.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA SPORTS AND OPEN SPACE AUTHORITY AS FOLLOWS:

1. That the Sports and Open Space Authority Conflict of Interest Code, attached hereto and incorporated herein by reference, is hereby adopted and includes the following:

(a) The Political Reform Act, Government Code Sections 81000 et seq., requires state and

local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the Sports and Open Space Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code so adopted amends and replaces any Conflict of Interest Code previously in effect to conform to this newly adopted code.

(b) Designated officials, employees, and consultants shall file statements of economic interests with the Santa Clara City Clerk, who shall be and perform the duties of filing officer for the Sports and Open Space Authority.

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 SANTA CLARA SPORTS AND OPEN SPACE AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF JANUARY 2021, BY THE FOLLOWING VOTE:

AYES: AUTHORITY MEMBERS:

NOES: AUTHORITY MEMBERS:

ABSENT: AUTHORITY MEMBERS:

ABSTAINED: AUTHORITY MEMBERS:

ATTEST: _____
NORA PIMENTEL, MMC
SECRETARY
SPORTS AND OPEN SPACE AUTHORITY
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Conflict of Interest Code with Appendices A and B

SANTA CLARA SPORTS AND OPEN SPACE AUTHORITY CONFLICT OF INTEREST CODE

SECTION 1: CONFLICT OF INTEREST CODE - ADOPTED

The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the Sports and Open Space Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code of the Sports and Open Space Authority so adopted amends and replaces any Conflict of Interest Code of Sports and Open Space Authority previously in effect to conform to this newly adopted code.

SECTION 2: CONFLICT OF INTEREST CODE - STATEMENTS

Designated employees shall file statements of economic interests with the Santa Clara City Clerk, who shall be and perform the duties of filing officer for the Sports and Open Space Authority.

SECTION 3: SAVINGS CLAUSE

Any change provided for in this conflict of interest code shall not affect or excuse any offense or act committed or done or omission or any penalty or forfeiture incurred or accruing under any other conflict of interest code; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered in connection with any other conflict of interest code.

Appendix A: On file in City Clerk's Office

Appendix B: Attached

**APPENDIX A TO CONFLICT OF INTEREST CODE SANTA
CLARA SPORTS AND OPEN SPACE AUTHORITY
DESIGNATED POSITIONS REQUIRED TO FILE**

Officials Who Manage Public Investments

Pursuant to Government Code section 87200, officials who manage public investments as defined by 2 California Code of Regulations § 18701(b) are also subject to the disclosure requirements of the Political Reform Act and are required to file full Statements of Economic Interests. It has been determined that the positions listed below manage public investments and will file a statement of economic interests pursuant to Government Code Section 87200. These positions are listed for informational purposes only:

- Authority Members
- General Counsel
- Director of Finance

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

Department	Designated Position	Categories
Sports and Open Space Authority	Contract Administrator	1
Sports and Open Space Authority	Consultant/ New Positions*	1,5

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: the Executive Director may determine in writing that a particular consultant or new position, although a “designated person,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties, and based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Sec. 81008.)

In addition, Consultants include all natural persons who are independent contractor consultants or such members, officers or employees of companies who by contract with the Sports and Open Space Authority make decisions on behalf of the Sports and Open Space Authority that may foreseeably have a material effect on any of their financial interests.

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES

Category 1 - All designated employees in this category shall disclose all sources of income, investments, interests in real property owned in the City of Santa Clara, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 2 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 3 - All designated employees in this category shall disclose all interests in real property owned in the City of Santa Clara.

Category 4 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management if the business entity or source of income is of the type which provides services, equipment, lease space, materials or supplies to the Sports and Open Space Authority.

Category 5 - All designated positions in this category shall disclose all investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from, sources that filed a claim with or against the Sports and Open Space Authority during the previous two years, or have a claim pending with or against the Sports and Open Space Authority.

1.	All investments and business positions in business entities, sources of income and interests in real property
2.	Investments and business positions in business entities, and all sources of income.
3.	Interests in real property
4.	Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit.
5.	Investment and business positions in, and income from entities which are book-outlets, vendors or providers of business services.
6.	Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.
7.	Investments and business positions in business entities and income from sources which supply or manufacture solar energy systems
8.	Investments and business positions in business entities and income from source engaged in constructions or development

9.	Investments and business positions in, and income from sources engaged in construction, building, or material supply.
10.	Investments and business positions in business entities and income from construction companies or public works projects.
11.	Investments and business positions in, and income from construction firms involved in construction projects subject to acceptance by the City Council.
12.	Investments and business positions in business entities and income from entities of the type to provide bids, supplies, vehicles and equipment.
13.	Investments and business positions in, and income from entities which provide training, services or facilities of the type utilized by the City.
14.	Investments and business positions in business entities and source of income which provide services and supplies of the type used in emergency services coordination and training activities.
15.	Investments and business positions in, and income from, Union Pension Funds that may be affected by the outcome of negotiations involving monetary settlements and employer-employee memorandum.
16.	Investments and business positions in, and income from entities providing medical services or facilities of the type used by the City.
17.	Investments and business positions in, and income from business entities engaged in providing eye examinations and eye glasses, including but not limited to opticians, ophthalmologists, etc.
18.	Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.
19.	Investments and business positions in, and income from business entities providing supplies, services equipment or machinery of the type used by the City.
20.	Investments and business positions in, and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.
21.	Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.
22.	Investments and business positions in business entities, and income from sources which supply or manufacture firefighting equipment or supplies.

RESOLUTION NO. XX-X (HA)

A RESOLUTION OF THE SANTA CLARA HOUSING AUTHORITY AMENDING THE CONFLICT OF INTEREST CODE FOR DESIGNATED POSITIONS AS REQUIRED BY THE POLITICAL REFORM ACT AND REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION

BE IT RESOLVED BY THE SANTA CLARA HOUSING AUTHORITY AS FOLLOWS:

WHEREAS, the Political Reform Act of 1974, Government Code Sections 81000 et seq., requires certain public agency officials and employees to file economic disclosure forms ("Form 700") and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest;

WHEREAS, the Political Reform Act requires the Santa Clara Housing Authority to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the Santa Clara Housing Authority has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act, Government Code §§ 81000 et seq.; and,

WHEREAS, the Santa Clara Housing Authority has reviewed and considered administratively suggested changes to the listing of designated positions of Authority officials, along with assigned disclosure categories, in the Conflict of Interest Code.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA HOUSING AUTHORITY AS FOLLOWS:

1. That the Santa Clara Housing Authority Conflict of Interest Code, attached hereto and incorporated herein by reference, is hereby adopted and includes the following:

(a) The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political

Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the Santa Clara Housing Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code so adopted amends and replaces any Conflict of Interest Code previously in effect to conform to this newly adopted code.

(b) Designated officials, employees, and consultants shall file statements of economic interests with the Santa Clara City Clerk, who shall be and perform the duties of filing officer for the Santa Clara Housing Authority.

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 SANTA CLARA HOUSING AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF JANUARY 2021, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

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

Attachments incorporated by reference:

1. Conflict of Interest Code with Appendices A and B

SANTA CLARA HOUSING AUTHORITY CONFLICT OF INTEREST CODE

SECTION 1: CONFLICT OF INTEREST CODE - ADOPTED

The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the Santa Clara Housing Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code of the Santa Clara Housing Authority so adopted amends and replaces any Conflict of Interest Code of Santa Clara Housing Authority previously in effect to conform to this newly adopted code.

SECTION 2: CONFLICT OF INTEREST CODE - STATEMENTS

Designated employees shall file statements of economic interests with the Santa Clara City Clerk, who shall be and perform the duties of filing officer for the Santa Clara Housing Authority.

SECTION 3: SAVINGS CLAUSE

Any change provided for in this conflict of interest code shall not affect or excuse any offense or act committed or done or omission or any penalty or forfeiture incurred or accruing under any other conflict of interest code; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered in connection with any other conflict of interest code.

Appendix A: On file in City Clerk's Office

Appendix B: Attached

**APPENDIX A TO CONFLICT OF INTEREST CODE
SANTA CLARA HOUSING AUTHORITY
DESIGNATED POSITIONS REQUIRED TO FILE**

Officials Who Manage Public Investments

Pursuant to Government Code section 87200, officials who manage public investments as defined by 2 California Code of Regulations § 18701(b) are also subject to the disclosure requirements of the Political Reform Act and are required to file full Statements of Economic Interests. It has been determined that the positions listed below manage public investments and will file a statement of economic interests pursuant to Government Code Section 87200. These positions are listed for informational purposes only:

- Commissioners
- Secretary and Executive Director
- Authority General Counsel
- Authority Treasurer

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

Department	Designated Position	Categories
Housing Authority	Consultant/ New Positions*	1, 5

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: the Executive Director may determine in writing that a particular consultant or new position, although a “designated person,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties, and based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Sec. 81008.)

In addition, Consultants include all natural persons who are independent contractor consultants or such members, officers or employees of companies who by contract with the Santa Clara Housing Authority make decisions on behalf of the Santa Clara Housing Authority that may foreseeably have a material effect on any of their financial interests.

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES

Category 1 - All designated employees in this category shall disclose all sources of income, investments, interests in real property owned in the City of Santa Clara, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 2 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 3 - All designated employees in this category shall disclose all interests in real property owned in the City of Santa Clara.

Category 4 - All designated employees in this category shall disclose all sources of income, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management if the business entity or source of income is of the type which provides services, equipment, lease space, materials or supplies to the Santa Clara Housing Authority.

Category 5 - All designated positions in this category shall disclose all investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from, sources that filed a claim with or against the Santa Clara Housing Authority during the previous two years, or have a claim pending with or against the Santa Clara Housing Authority.

1.	All investments and business positions in business entities, sources of income and interests in real property
2.	Investments and business positions in business entities, and all sources of income.
3.	Interests in real property
4.	Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit.
5.	Investment and business positions in, and income from entities which are book-outlets, vendors or providers of business services.
6.	Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.
7.	Investments and business positions in business entities and income from sources which supply or manufacture solar energy systems

8.	Investments and business positions in business entities and income from source engaged in constructions or development
9.	Investments and business positions in, and income from sources engaged in construction, building, or material supply.
10.	Investments and business positions in business entities and income from construction companies or public works projects.
11.	Investments and business positions in, and income from construction firms involved in construction projects subject to acceptance by the City Council.
12.	Investments and business positions in business entities and income from entities of the type to provide bids, supplies, vehicles and equipment.
13.	Investments and business positions in, and income from entities which provide training, services or facilities of the type utilized by the City.
14.	Investments and business positions in business entities and source of income which provide services and supplies of the type used in emergency services coordination and training activities.
15.	Investments and business positions in, and income from, Union Pension Funds that may be affected by the outcome of negotiations involving monetary settlements and employer-employee memorandum.
16.	Investments and business positions in, and income from entities providing medical services or facilities of the type used by the City.
17.	Investments and business positions in, and income from business entities engaged in providing eye examinations and eye glasses, including but not limited to opticians, ophthalmologists, etc.
18.	Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.
19.	Investments and business positions in, and income from business entities providing supplies, services equipment or machinery of the type used by the City.
20.	Investments and business positions in, and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.
21.	Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.
22.	Investments and business positions in business entities, and income from sources which supply or manufacture firefighting equipment or supplies.



Agenda Report

21-250

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on Request to Set March 9, 2021 for a Public Hearing to Consider the Appeal Submitted by Santa Clara Citizens for Sensible Industry c/o Legal Counsel for 1111 Comstock Street (PLN2019-13941; CEQ2020-01079)

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

At a publicly noticed meeting on November 4, 2020, following public testimony and deliberation, the Development Review Hearing officer adopted a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) and approved architectural review of a data center at 1111 Comstock Street (CEQ2020-01079 and PLN2019-13941). The approved project is for a new four-story, approximately 121,170 square-foot data center building, with surface parking, landscaping and site improvements on a 1.38-acre project site. The project includes the demolition of the existing 23,765 square foot one-story industrial building and the removal of surface paving and existing landscaping prior to project construction.

On November 12, 2020, Adams Broadwell Joseph & Cardozo, legal counsel for Santa Clara Citizens for Sensible Industry (SCSSI), filed an appeal of the Development Review Hearing approval of the data center. The appeal was referred to the Planning Commission, which conducted a public hearing on January 27, 2021, and at the conclusion of which, voted unanimously to deny the appeal and uphold the MND and architectural approval, with an added condition to make design revisions.

On February 2, 2021, SCSSI filed an appeal of the Planning Commission's January 27, 2021 action.

DISCUSSION

Pursuant to recent revisions to Chapter 18.76 of the City Code, all architectural decisions are appealable directly to the City Council, except those involving construction or alterations of single-family residences.

Prior to the March 2020 Code amendment, architectural review was the responsibility of the City's Architectural Committee, and Architectural Committee decisions were appealable to the Planning Commission. Planning Commission decisions, in turn, were appealable to the City Council. In many instances, this resulted in projects going through three different public hearings before reaching final approval. As a result, in early 2020, the City Council adopted an ordinance revising Chapter 18.76, Architectural Review. Initial architectural decisions for projects like the data center now take place at a Development Review Hearing (DRH) conducted by planning division staff, and DRH decisions are appealable directly to the City Council. The intent of the ordinance update was to expedite the appeal

process by limiting the types of development applications that involve the Planning Commission.

On November 12, 2020, SCSSI appealed the November 4, 2020 DRH decisions using the City's standard appeal form, and paid the applicable appeal fee. However, the appeal form had not been updated to align with the 2020 amendments to the Architectural Review chapter. As a result it still reflected the previous appeal process which included the interim appeal to the Planning Commission. Following the process reflected in the appeal form, City staff referred the appeal to the Planning Commission rather than directly to the City Council. On January 27, 2021, the Planning Commission conducted a public hearing and voted to uphold the DRH decision, with an added condition that the developer make additional revisions to the design. On February 2, 2021, SCSSI filed an appeal to the City Council of the Planning Commission action.

SCSSI's November 2020 appeal gives them a right to a *de novo* hearing before the City Council, which they still have not received. Because the Planning Commission appeal was not proper under the amended code, SCSSI was not charged a second appeal fee when they filed the February 2 appeal.

The action before the Council tonight is to set a hearing date to consider SCSSI's appeal of the November 4, 2020 DRH.

ENVIRONMENTAL REVIEW

An MND was prepared for the project by the environmental consultant firm David J. Powers & Associates, in accordance with the California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on the City's website at <https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/390/3649>, on September 18, 2020 and circulated for 20-day review from September 21, 2020 to October 13, 2020, in accordance with CEQA requirements.

The MND examined environmental impacts associated with project development and identified potentially significant cultural resources, biological resources, geology and soils, and noise impacts that with incorporation of mitigation measures identified in the MND and MMRP would reduce the potentially significant impacts to less than significant. A detailed discussion of the potential impacts and mitigation measures to be applied to the project are specified in the MND and would be implemented through project conditions of approval and the MMRP for the project.

FISCAL IMPACT

There is no impact to the City for processing the appeal application other than administrative staff time and expense typically covered by processing fees paid by the applicant.

COORDINATION

This report has been coordinated with the Community Development 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>> .

Prior to holding the March 9, 2021 appeal hearing, notices of the public hearing will be posted in the vicinity of the project site and mailed to neighboring properties, in accordance with City Code requirements.

RECOMMENDATION

Set March 9, 2021 for a Public Hearing to consider the Appeal submitted by Santa Clara Citizens for Sensible Industry c/o Legal Counsel of the Development Review Officer's November 4, 2020 adoption of the Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program and approval of the Architectural Review and Minor Modifications to increase the building height to 87 feet and reduce parking space requirements for the Comstock Data Center Project at 1111 Comstock Street.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Appeal Received on February 2, 2021

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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MARC D. JOSEPH
Of Counsel

*Not admitted in California
Licensed in Colorado.

February 2, 2021

By Hand-Delivery

Mayor Gillmor and City Council Members
Santa Clara City Council
c/o Planning Division
City Hall
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050



**Re: Appeal of Planning Commission Denial of Appeal of
Development Review Adoption of the Mitigated Negative
Declaration and Mitigation Monitoring and Reporting Program
for the 1111 Comstock Data Center (PLN2019-13941; CEQ2020-
01079)**

Dear Mayor Gillmor and Councilmembers:

We are writing on behalf of Santa Clara Citizens for Sensible Industry ("Santa Clara Citizens") to appeal the January 27, 2021 decision of the Santa Clara Planning Commission ("Commission") denying Santa Clara Citizens' appeal of the Santa Clara Development Review Officer's November 4, 2020 adoption of the Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program (collectively, with the Initial Study, "IS/MND") and approval of the Architectural Review and Minor Modifications to increase the building height to 87 feet and reduce the parking space requirements (collectively, "Permits") for the 1111 Comstock Data Center ("Project") (collectively, "Appeal").

Appellants Santa Clara Citizens is an unincorporated association of individuals and labor organizations directly affected by the Project. The association includes Santa Clara resident Mr. Long Vu, and other individuals and organization whose affiliates' members and their families live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County. Santa Clara Citizens includes residents of the City of Santa Clara. Accordingly, pursuant to the City's

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February 2, 2021
Page 2

Planning Application Fee Schedule, effective July 1, 2020, the applicable Appeal fee to file this Appeal should be "Non-Applicant, Resident \$469."¹

Enclosed is the following:

- Required Appeal form
- Appeal application fee for \$469 and any applicable associated charges for Santa Clara residents;
- Supporting evidence, including:
 - Exhibit A: Comments filed with the Planning Commission ahead of its January 27, 2021 hearing regarding our appeal, along with accompanying exhibits and expert comments in rebuttal to the City's Responses to Comments;
 - Exhibit B: Santa Clara Citizens' comments on the IS/MND, including expert comments;
 - Exhibit C: Santa Clara Citizens' November 11, 2020 appeal of the Development Review Officer's November 4, 2020 decision²;
 - Appellants' oral testimony from the January 27, 2021 Planning Commission hearing.

As all architectural review approvals are heard de novo, we reserve the right to supplement this appeal with additional written comments and supporting evidence prior to consideration by the City Council.

Sincerely,



Kendra Hartmann

KH:acp
Attachments

¹ See <https://www.santaclaraca.gov/home/showdocument?id=56997>.

² This appeal was originally addressed to the City Council. Per Santa Clara City Code Section 18.76.020(j), "For a project other than a single-family residential project, in the event the applicant or any interested party are not satisfied with the decision of the Director, they may, within seven days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b)."

4938-013acp



Planning and Inspection Department

Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050
Ph: (408) 615-2450

Appeal Form

Instructions

Use this form to appeal a decision of the Architectural Review Committee or Planning Commission. **All appeals must be filed in the Planning Division within seven calendar days of the action being appealed.**

Appeals from the Architectural Review Committee are made to the Planning Commission and will be set for hearing on the next available Planning Commission agenda. Appeals from the Planning Commission are made to the City Council and will be placed on the subsequent City Council Agenda to set a hearing date. Please contact the Planning Division at the number listed above with any inquiries about the process.

Please print, complete, and sign this form before mailing or delivering to the City, along with the fee payment, and supporting documentation, letters, etc. (if any).

Appeal Fees

Appeal Fees are set by the Municipal Code of the City of Santa Clara and are subject to annual review. Please call the Planning Division for the current Appeal Fee. **Fee payment must be received by the City of Santa Clara before this form submittal can be certified as complete.**

Appeal fees may be paid by cash, check, or with VISA, MasterCard, or American Express, at the Permit Center at City Hall. Alternatively, checks or money orders made payable to City of Santa Clara can be mailed or delivered to Planning Division, City Hall, 1500 Warburton Avenue, Santa Clara, California 95050.

Appellant Declaration

Name: Santa Clara Citizens for Sensible Industry c/o legal counsel
Street Address: Adams Broadwell Joseph & Cardozo, 601 Gateway Blvd., Ste. 1000
City, State, Zip Code: South San Francisco, CA 94080
Phone number: (650) 589-1660
E-mail address: khartmann@adamsbroadwell.com

In accordance with the provisions of the Municipal Code of the City of Santa Clara, I hereby appeal the following action of the:

☐ Architectural Review Committee ☒ Planning Commission

at it's meeting of January 27, 2021
(date)

Agenda Item No.: 2

File No.(s): (PLN2019-13941; CEQ2020-01079)

Address:/APN(s): 1111 Comstock Street, Santa Clara CA; APN 224-08-092

Appellant Statement

(If more space is required, attach a separate sheet of paper.)

Action being appealed:

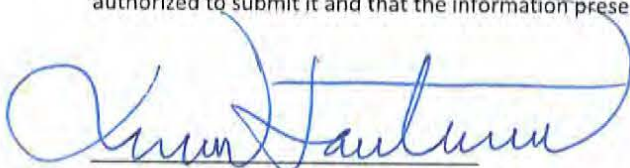
Please see attached letter and exhibits.

Reason for Appeal:

Please see attached letter and exhibits.

Certification of Authenticity

Beware, you are subject to prosecution if you unlawfully submit this form. Under penalty of law, transmission of this form to the City of Santa Clara is your certification that you are authorized to submit it and that the information presented is authentic.



Signature of Appellant

February 2, 2021

Date

EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

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MARC D. JOSEPH
Of Counsel

*Not admitted in California.
Licensed in Colorado.

January 27, 2021

Via Email Only

Chair Lance Saleme and Planning Commission Members
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Email: PlanningPublicComment@SantaClaraCA.gov;
PlanningCommission@santaclaraca.gov

**Re: Agenda Item No 2: Appeal of the Development Review Hearing
Adoption of a Mitigated Negative Declaration and Architectural
Approval of 1111 Comstock Data Center Project (PLN2019-13941;
CEQ2020-01079)**

Dear Chair Saleme and Planning Commission Members:

We are writing on behalf of Santa Clara Citizens for Sensible Industry ("Santa Clara Citizens") to request that the Planning Commission grant Santa Clara Citizens' appeal and reverse the November 4, 2020 decision of City of Santa Clara Development Review Officer to adopt a Mitigated Negative Declaration ("MND") and Mitigated Monitoring and Reporting Program (collectively, with the Initial Study, "IS/MND") and to approve the Architectural Review and Minor Modification to increase the building height to 87 feet and reduce the parking space requirements for the Project (collectively, "Permits") for the 1111 Comstock Street Data Center ("Project").

The Project, proposed by Prime Data Centers ("Applicant"), proposes to demolish an existing 23,765-square-foot industrial building and construct a four-story, 121,170-square-foot data center building on the 1.38-acre Project site (APN 224-08-092). The data center building would house computer servers designed to provide 10 megawatts ("MW") of information technology power; underground electrical conduit with concrete encasement would be installed onsite and would connect to an existing underground Silicon Valley Power ("SVP") electric line. Standby backup emergency electrical generators would be installed to provide for

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Page 2

an uninterrupted power supply. Six 3,000-KW diesel-fueled engine generators and one 500-kW diesel-fueled engine generator would be located within a generator room on the first floor of the building. Fuel for the generators would be stored in two 30,000-gallon underground storage tanks which would feed individual 160-gallon day tanks located adjacent to each generator. The site, zoned as Light Industrial with a General Plan designation of Low Intensity Office/R&D, is located north of Comstock Street, east of Kenneth Street, south of Bayshore Freeway, and west of Lafayette Street within the City of Santa Clara.

On October 13, 2020, we submitted comments on the IS/MND prepared for the Project ("Comment Letter"). Our comments were prepared with the assistance of technical expert James J.J. Clark, Ph.D. of Clark & Associates Environmental Consulting, Inc. As detailed therein, we identified potentially significant and unmitigated impacts from the Project due to emissions of toxic air contaminants ("TACs") from the Project's backup diesel generators, as well as other potentially significant impacts to air quality, public health, and from greenhouse gas ("GHG") emissions, which the IS/MND fails to adequately mitigate. Based on these potentially significant and unmitigated impacts, as well as other deficiencies in the Initial Study, Santa Clara Citizens' comments concluded that the IS/MND in its current form violates CEQA and that substantial evidence supports a fair argument that an environmental impact report ("EIR") is required for the Project.

At the November 4, 2020 public hearing, the Development Review Officer adopted the IS/MND and approved the Permits. Santa Clara Citizens timely appealed this decision on November 11, 2020 ("Appeal"). Citizens' representative was improperly charged \$10,203.26 to file the Appeal, an excessive and unconscionable fee which violated Citizens' due process rights and the City's own Fee Schedule for Santa Clara residents ("Appeal Fee"). Citizens paid the Appeal Fee in protest, and herein request that the Planning Commission order the City to reimburse Citizens for the excess fees it was charged.

The City prepared Responses to Comments ("Responses") which responded to some, but not all, of the issues raised in the Comment Letter. Review of the Responses, and further review of the IS/MND, demonstrates that the City failed to resolve many of the IS/MND's deficiencies identified by Citizens, and that the IS/MND still fails to address many of the Project's potentially significant impacts, including energy impacts, GHG emissions, and emissions from backup generators, in violation of CEQA. This letter addresses the Responses and additional deficiencies in the IS/MND which the City must correct before the Project can be approved.

January 27, 2021

Page 3

We respectfully request that the Planning Commission uphold this appeal and reverse the decision of the Director to adopt the IS/MND and approve the Permits. We reserve the right to supplement these comments at later hearings on this Project.¹

I. STATEMENT OF INTEREST

Santa Clara Citizens is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes City of Santa Clara resident Mr. Long Vu, and other individuals and organizations, including California Unions for Reliable Energy (“CURE”) and its local affiliates, and the affiliates’ members and their families, who live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County.

Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. Its members help solve the State’s energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. CURE members have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Individual members live, work, recreate, and raise their families in Santa Clara. They would be directly affected by the Project’s environmental and health and safety impacts. Its members may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

Santa Clara Citizens supports the development of data centers where properly analyzed and carefully planned to minimize impacts on the environment. Any proposed project should avoid impacts to public health, energy resources, sensitive species and habitats, and should take all feasible steps to ensure significant impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can development truly be sustainable.

Santa Clara Citizens and its members are concerned with projects that can result in serious environmental harm without providing countervailing economic

¹ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield (“Bakersfield”)* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
4938-012acp

benefits such as decent wages and benefits. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City and the surrounding region, and by making it less desirable for businesses to locate and people to live and recreate in the City, including in the vicinity of the Project. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities. Santa Clara Citizens' members therefore have a direct interest in enforcing environmental laws that minimize the adverse impacts of projects that would otherwise degrade the environment. CEQA provides a balancing process whereby economic benefits are weighted against significant impacts to the environment. It is for these purposes that we offer these comments

II. CEQA REQUIRES THE CITY TO PREPARE AN ENVIRONMENTAL IMPACT REPORT

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. The "fair argument" standard reflects this presumption. The fair argument standard is an exceptionally low threshold favoring environmental review in an EIR rather than a negative declaration.² This standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.³ As a matter of law, substantial evidence includes both expert and lay opinion based on fact.⁴ Even if other substantial evidence supports a different conclusion, the agency nevertheless must prepare an EIR.⁵ As we have shown in our two Comment Letters and Appeal Letter, there is substantial evidence that the Project **may** cause significant adverse environmental and public health effects.

The City has failed to comply with its duty under CEQA to evaluate *any* potential significant environmental impacts through an EIR. As explained in our Comment Letter and herein, as well as in the attached rebuttal of our technical expert, James Clark,⁶ the City must prepare an EIR for this Project.

² *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

³ 14 C.C.R. § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931.

⁴ PRC § 21080(e)(1) (For purposes of CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."); 14 C.C.R. § 15064(f)(5).

⁵ *Arviv Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

⁶ **Exhibit A:** James Clark Comments, January 26, 2021 ("Clark Comments").

A. The IS/MND's Emissions Calculations and Determinations of Significance Are Unsupported by Substantial Evidence

1. The IS/MND's Analysis of Greenhouse Gas Emissions Relies on an Unsupported Threshold

CEQA requires agencies to consider both direct and indirect GHG emissions and air quality impacts associated with a project.⁷ An agency's evaluation of the significance of the environmental impacts of a project requires "consideration of reasonably foreseeable indirect physical changes caused by the project."⁸ Substantial evidence must support an agency's conclusions regarding significance of impacts, even when a project appears consistent with state and regional emission reduction goals.⁹

The City argues that the Project would not generate significant GHG emissions, either directly or indirectly, because it 1) would receive electricity from a utility (Silicon Valley Power) which is on track to meet the SB 32 2030 GHG emission reduction target; 2) would result in lower emissions (43.5 percent) than the statewide average for an equivalent facility due to SVP's power mix; 3) would include energy efficiency measures to reduce emissions to the extent feasible; and 4) would be consistent with applicable plans and policies adopted to reduce GHG emissions.¹⁰ The qualitative threshold against which the City evaluates the Project's GHG emissions is unsupported, and its analysis flawed, for several reasons.

First, the City cannot rely on SVP's power mix to ensure that the Project will not contribute to GHG emissions. According to the IS/MND, 25% of SVP's power mix is generated by GHG-emitting natural gas (16%) and coal-fired (9%) sources.¹¹ Though the City asserts that SVP recently eliminated coal-fired power, and will increase its use of renewable sources of energy in the future, the Project will continue to draw energy from the grid throughout its life, which by the IS/MND's own admission includes GHG-emitting sources. Even with measures to increase reliance on renewables, fossil-fuel powered energy facilities will continue to provide

⁷ 14 C.C.R. § 15064(d).

⁸ *Id.*

⁹ *Ctr. for Biological Diversity v. Dept. of Fish & Wildlife* ("CBD") (2015) 62 Cal.4th 204, 225–229, 240–241.

¹⁰ Response A.8, p. 12.

¹¹ SVP's 2017 Power Mix included 9% from coal and 16% from natural gas, IS/MND, p. 68. 4938-012acp

power to California's energy grid until they are phased out, likely until at least 2045 according to the state's Renewables Portfolio Standards.¹²

The IS/MND discloses that at least 16% of the Project's energy at the time of approval will consist of GHG-emitting fossil-fuel energy from natural gas.¹³ The Project has a 10 MW capacity, meaning that a full 1.6 MW of energy used by the Project will have indirect GHG emissions. The IS/MND's reliance on SVP's power mix does nothing to reduce or eliminate this significant GHG impact. Indeed, the IS/MND states that Santa Clara offers SVP energy consumers a "carbon-free energy option," yet fails to require it for the Project.¹⁴ Thus, the IS/MND both fails to disclose a significant GHG impact, and fails to require reasonably feasible mitigation to reduce the impact to less than significant levels, by relying on an unsupported significance threshold related to SVP's illusory "power mix."¹⁵

Any GHG emissions resulting from the generation of energy to operate the Project's data center would be necessarily caused by the data center. In other words, the data center would contribute to GHG emissions. The City must prepare an EIR to disclose and mitigate these impacts.

Secondly, the IS/MND's claim that the incorporation of a "variety of energy efficiency measures" will contribute to reductions of GHG emissions is an overstatement and not legally supported. The Project in fact only lists 2 such measures, consisting of:

(1) Power Usage Effectiveness ("PUE"): The Project's PUE (the ratio of total power used by the facility to the power used exclusively for its information technology equipment) would be 1.2.¹⁶ This brings the Project into compliance with the City's Climate Action Plan Measure 2.3.¹⁷

¹² See IS/MND, p. 50 ("SB 100, passed in 2018, increased the 2030 renewable source requirement to 60%, and requires 100 percent of electricity in California to be provided by 100 percent renewable and carbon-free sources by 2045.").

¹³ IS/MND, p. 68.

¹⁴ IS/ MND, p. 52, FN 22.

¹⁵ Responses, p. 12.

¹⁶ IS/MND, p. 54.

¹⁷ We argued in our initial comments, and reiterate here, that because the CAP was adopted to achieve 2020 emissions reduction targets, consistency with the CAP does not support a determination that impacts will be less than significant beyond that year.

(2) Energy and Water Use Efficiency in Building Design: the project proposes to implement efficiency measures, including evaporative cooling instead of mechanical cooling for IT and electrical rooms; daylight penetration of common areas; reflective roof surface; meet or exceed Title 24 requirements; clean air vehicle parking; low-flow plumbing fixtures; low-water use landscaping.

This approach fails to comply with CEQA, which requires the lead agency to not only describe a project's impacts resulting from energy in an EIR, it must quantify them, and may not merely rely on energy efficiency measures to reduce energy-related impacts.¹⁸

Finally, the Project's consistency with state and local climate goals and regulations cannot substitute as evidence that the Project will have no significant impacts on GHG emissions, absent more than mere conclusory statements regarding the Project's consistency with regulations. The City must also provide a reasoned explanation supported by substantial evidence that the Project's consistency with state climate goals render its GHG impacts less than significant.¹⁹ The following illustrate the inadequacy of the IS/MND's discussion of the Project's qualitative threshold:

- The IS/MND states that the Project "would be required to comply with General Plan Policy 5.8.5-P1, which requires new development to implement [transportation demand management ("TDM")] programs that can include site-design measures, including preferred carpool and vanpool parking, enhanced pedestrian access, bicycle storage and recreational facilities."²⁰ It does not indicate, however, whether or how the Project intends to comply with this policy. It appears no TDM program has been prepared, and the IS/MND does not list

¹⁸ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65 (energy impact analysis requires clarification and technical information regarding project-related energy usage and conservation features); *Spring Valley Lake Association v. City of Victorville* (2016) 248 Cal.App.4th 91, 103 (EIR must show factual basis of its assumptions that both energy use and greenhouse gas emissions will be reduced); *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 210 ("CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount").

¹⁹ *Ctr. for Biological Diversity v. Dept. of Fish & Wildlife* ("CBD") (2015) 62 Cal.4th 204, 225-229, 240-241.

²⁰ IS/MND, p. 72.
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specific measures that it intends to implement to bring it into compliance with GP Policy 5.8.5-P1.

- The IS/MND asserts that implementation of General Plan policies that increase energy efficiency or reduce energy use would reduce the Project's indirect GHG emissions associated with the energy generation.²¹ Consistency with these policies will be achieved by the Project's proposal to use emergency generators with "advanced air pollution controls," as well as the implication that generator testing would be performed intermittently to reduce impacts from concurrent generator emissions. The IS/MND also states, however, that the Project's generators would use diesel-fueled engines that meet U.S. EPA Tier 2 emissions standards.²² A cleaner alternative, which would meet the GP's policy of minimizing public health hazards and reducing emissions, would be the use of Tier 4 engines, which have been recommended in similar data center projects by CARB.²³
- The IS/MND states that the Project is in compliance with the Bay Area 2017 Clean Air Plan's Energy Sector Control Measures. Analysis of its compliance, however, is limited to the statement that "energy efficiency measures have been included in the design and operation of the electrical and mechanical systems on the site."²⁴ What those measures are or how they ensure consistency with the Clean Air Plan is absent.
- Analysis of the Project's consistency with California's Climate Change Scoping Plan offers even less discussion. The IS/MND offers only the statement that the Project "would be generally consistent" with the Scoping Plan.²⁵

²¹ GP Policy 5.10.2-P3 encourages implementation of technological advances that minimize public health hazards and reduce the generation of air pollutants." IS/MND, pp. 72–73.

²² IS/MND Appendix A, p. 2.

²³ Comments by CARB on the California Energy Commission's Proposed Decision for the Proposed Sequoia Data Center Project (19-SPPE-03) (October 15, 2020).

²⁴ IS/MND, p. 72.

²⁵ IS/MND, p. 74.

Though the City may, at its discretion, choose to evaluate the Project's GHG emissions according to a qualitative threshold, the IS/MND's unsupported, conclusory statements do not qualify as adequate analyses of consistency with local, state, and regional plans because they lack any discussion of the plans' goals and policies as they apply to the Project.

An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.²⁶ While courts have found it could be reasonable to use consistency with AB 32 and other California climate goals as a measure of significance under CEQA, agencies must support their conclusions about a project's consistency with statewide emissions reduction goals with substantial evidence for CEQA to be satisfied. Absent clear evidence that the Project would, in fact, aid in the achievement of statewide emissions reductions goals, the City cannot properly conclude that GHG emissions impacts would be insignificant.

2. The IS/MND Fails to Consider Reasonably Foreseeable Impacts from Backup Generator Emergency Operations

In our Comments on the IS/MND, we asserted that the assumption in the IS/MND that the backup generators will only ever run for 50 hours per year ignores the reality of power failures, utility shutdowns, and the very purpose of a data center—to provide an uninterrupted power supply—in its emissions calculations.²⁷ The City's Response pointed out that CEQA does not require evaluation of emergency conditions.²⁸

CEQA requires that a Project's reasonably foreseeable impacts be assessed. As pointed out by CARB in its comments to the CEC, data centers market themselves on the premise that they will provide reliable, uninterrupted power at all times, even during power loss events.²⁹ "These obligations and operational realities mean forecasting a reasonable range of uses during power outages is appropriate. Such use is reasonably foreseeable. Although we recognize continuing work to limit reliability events and power shutoffs, data centers are constructed on the reasonable premise that such outages do occur, and that we must manage the

²⁶ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 520; *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

²⁷ Comments, p. 10.

²⁸ Response A.4, p. 8.

²⁹ Comments by CARB on the California Energy Commission's Proposed Decision for the Proposed Sequoia Data Center Project (19-SPPE-03) (October 15, 2020).

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continuing risks of a warming climate.”³⁰ CARB’s comments provide substantial evidence demonstrating that emergency operations are a common place operation of data centers, and a reasonably foreseeable use which requires analysis under CEQA.

The City argues that because of SVP’s record with respect to power outages and shutoffs (which it maintains is better than PG&E or San Jose Clean Energy) renders the possibility of emergency operations of backup generators remote, CARB’s assertion that weather events that lead to power shutoffs are likely to become more frequent, not less, means operation of backup generators is reasonably foreseeable.

“In CARB’s view, data center emergency operations are not speculative, and an evaluation of their operations during loss of power—for which the centers are being specifically designed, and for which they are marketed to customers—is also not speculative. CEQA requires an appropriate evaluation even of foreseeable impacts otherwise imprecise in scope or contingent in occurrence.”³¹

B. The Project Has Potentially Significant Operational Energy Impacts Which the IS/MND Fails to Disclose and Mitigate

The IS/MND concludes that though the Project will result in an increase in energy consumption at the site, its incorporation of energy efficiency measures and compliance with standards such as those in the Title 24 and the Green Building Standards Code will reduce its energy impacts to less than significant.³² This conclusion is clearly erroneous and unsupported when considering that the increase in energy use will be massive: 89,352 MWh per year compared to the 196 MWh that the current industrial site consumes yearly.³³ The IS/MND further claims that the Project’s energy impacts require no mitigation due to its consistency with various regulatory standards, such as the Renewables Portfolio Standards, building codes, Energy Star, and the Advanced Clean Cars Program.³⁴ The extent of its analysis of the Project’s consistency with any of these programs, however, consists of a reiteration of SVP’s role as supplier of Project energy; vague indications of lighting control, air economization, and low-flow plumbing fixtures; and conclusory

³⁰ Id.

³¹ Id.

³² IS/MND, p. 54.

³³ IS/MND, p. 54.

³⁴ IS/MND, pp. 50–51.

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statements regarding compliance with policies.³⁵ The IS/MND declares that compliance with these measures will account for the colossal 455-fold increase in energy use.³⁶

Courts have routinely rejected this approach to energy impact analysis. In *Ukiah Citizens*, the Court of Appeal held that the EIR inadequately described the energy impacts of a Costco project where the EIR relied on the project's compliance with energy conservation standards to conclude that energy consumption would be less than significant.³⁷ The Court determined that the EIR certified by the City of Ukiah failed to comply with CEQA's energy impacts analysis requirements because it failed to evaluate energy impacts from transportation, construction, or operation, relying instead on compliance with building codes and separate GHG emissions mitigation measures to conclude that impacts would be less than significant.³⁸ The Court concluded that the EIR failed to adequately describe or discuss the energy impacts of the project. Consequently, the Court ordered the City of Ukiah to recirculate the EIR for public comment with a legally adequate energy impacts analysis.³⁹

The City's reliance on compliance with standards such as Title 24 to replace a meaningful analysis of the Project's actual energy impacts violates CEQA. Just as the courts in *CCEC* and *Ukiah Citizens* held that the lead agencies could not rely on state-mandated Title 24 and CALGreen building codes as evidence to conclude that the projects' energy consumption impacts would be rendered less than significant, the City cannot merely point to Title 24 and California Green Building Standards to support the IS/MND's conclusion that the Project's energy impacts will not be significant.

C. Cumulative Impacts from Emissions Were Not Evaluated

CEQA Guidelines section 15064 specifies how to demonstrate consistency with a greenhouse gas reduction plan. That section states: "When relying on a plan, regulation or program [for the reduction of GHG emissions], the lead agency should explain how implementing the plan, regulation or program ensures that the

³⁵ *Id.*, p. 55.

³⁶ IS/MND, p. 54.

³⁷ *Ukiah Citizens for Safety First v. City of Ukiah* ("Ukiah Citizens") (2016) 248 Cal.App.4th 256, 263-266.

³⁸ *Id.*

³⁹ *Id.* at 266-267.

project's incremental contribution to the cumulative effect is not cumulatively considerable." Additionally, the consistency analysis "must identify those requirements specified in the plan that apply to the project, and if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project."⁴⁰

Rather than identifying explaining how implementation measures would result in less-than-significant cumulative impacts, the IS/MND merely makes the conclusory statement that due to such measures, "the proposed project would not result in substantial adverse effects on human beings, individually or cumulatively."⁴¹ The IS/MND wholly fails to explain how these measures will protect against cumulatively considerable impacts.

Furthermore, the region where the Project will be located has seen a proliferation of similar data center projects, all proposing to use backup diesel generators and most—including the Project at issue—proposing to use the dirtier Tier 2 engines, rather than the cleaner Tier 4.⁴² The increase has been such that CARB's recent comments to the California Energy Commission included the recommendation that data centers include in their emissions modeling estimates the simultaneous operation of backup generators during power outages. "The only purpose for the installation of the backup diesel generators for this proposed project is to operate and provide power to the data center due to a disruption in utility power. Modeling at least some impact from simultaneous operation of the backup generators is no more speculative than assuming no hours of simultaneous operation or even in modeling the permitted 50 hours annually of operation for maintenance, which requires a similar degree of CEC making reasonable assumptions."⁴³

⁴⁰ 14 C.C.R. § 15183.5(b)(2); BAAQMD CEQA Guidelines (May 2017), p. 4-4 ("A project must demonstrate its consistency by identifying and implementing all applicable feasible measures and policies from the GHG Reduction Strategy into the project.").

⁴¹ IS/MND, p. 145.

⁴² Comments by CARB on the California Energy Commission's Proposed Decision for the Proposed Sequoia Data Center Project (19-SPPE-03) (October 15, 2020).

⁴³ Id.

III. THE CITY'S UNREASONABLE FEE FOR FILING AN APPEAL VIOLATES SANTA CLARA CITIZENS' DUE PROCESS RIGHTS

The Courts have upheld the authority of agencies to charge reasonable fees for filing administrative appeals of decisions.⁴⁴ Agencies cannot, however, impose fees so excessive that they discourage the exercise of a party's due process rights to a hearing.⁴⁵ The fees an agency imposes may not preclude a party from filing an appeal, and they likewise cannot create "an incentive not to make such a demand and not to mount a rigorous defense."⁴⁶

CEQA's standing requirements do not require that a party reside in the region where a project is taking place in order to challenge an agency's findings of significant environmental impacts. A project's environmental impacts can be felt regardless of legislative boundaries: "Effects of environmental abuse are not contained by political lines; strict rules of standing that might be appropriate in other contexts have no application where broad and long-term effects are involved."⁴⁷

Though anyone can legally challenge the City's conclusions regarding the Project's environmental impacts contained in the IS/MND, the City's new fee schedule, adopted by the City Council on April 28, 2020 as Resolution 20-8839 and made effective July 1, 2020, imposes such an exorbitant fee upon nonresidents of Santa Clara who wish to file an appeal as to violate due process. Though residents of the City are required to pay \$469 to file an appeal, "all others" are now charged \$9,381.⁴⁸ "All others" includes anyone who does not reside within City limits—including nonresident neighbors who may live in much closer proximity to a project site than residents across the city. The fee is so high—20 times higher than what residents pay—as to be prohibitive.

Santa Clara Citizens' appeal, filed on November 12, 2020, was improperly assessed a \$10,203.26 fee,⁴⁹ despite the fact that Appellants members include Santa Clara residents. This was an illegal and unconscionable fee.

⁴⁴ See *Friends of Glendora v. City of Glendora* (2010) 182 Cal.App.4th 573, 579–80; see also *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 419.

⁴⁵ *California Teachers Association v. State of California* (1999) 20 Cal. 4th 327, 331.

⁴⁶ *Id.* at 352.

⁴⁷ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 272.

⁴⁸ **Exhibit B:** Santa Clara Planning Application Fee Schedule.

⁴⁹ **Exhibit C:** Itemized Receipt of Appeal Fees.

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In addition to the City's due process violations in the form of unconscionable fees, Santa Clara Citizens' membership rolls consist of many residents of the City, including Long Vu. This appeal of the Design Review Officer's decision clearly should not have been subject to the \$9,381 fee. A timely refund for the difference between the resident fee and the nonresident fee of \$8,912 is requested.⁵⁰

IV. RELIEF REQUESTED

Santa Clara Citizens requests that the Planning Commission grant its Appeal and reverse the November 4, 2020 decisions of the Development Review Officer to 1) adopt the Mitigated Negative Declaration and approve the Architectural Review for the Project. We further request that the City prepare an EIR which fully analyzes and mitigates the Project's potentially significant environmental impacts as described in our Comment Letters and this Appeal. By doing so, the City and public can ensure that all adverse environmental and public health impacts of the Project are adequately analyzed, disclosed, and mitigated, as required by law.

Finally, we request relief in the form of reimbursement of the excessive Appeal Fee paid.

Sincerely,

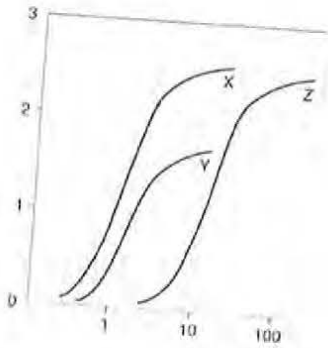


Kendra Hartmann

KH:acp
Attachment

⁵⁰ Santa Clara Citizens was also charged \$822.26 for a "Technology Surcharge"; the City's Fee Schedule states that the Technology Surcharge "will be assessed at 3.37% of the application fee for all applications except those that are collected 'at cost.'"

EXHIBIT A



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Environmental Consulting, Inc.

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January 26, 2021

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 100
South San Francisco, CA 94080

Attn: Ms. Kendra D. Hartmann

Subject: Comment Letter on Initial Study With Proposed Mitigated Negative Declaration (IS/MND) for 1111 Comstock Street Data Center, Santa Clara, California, PLN2019-13941 and CEQ2020-01079

Dear Ms. Hartmann:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the IS/MND for the above referenced project. The IS/MND was prepared by David J. Powers and Associates, Inc. for the City of Santa Clara Community Development Department.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the project record. If we do not comment on a specific item this does not constitute acceptance of the item.

General Comments:

The City's response to comments from ABJC and Clark analysis of the air quality impacts of emissions from the project are unsupported and flawed. The analysis used as the basis for determining that emissions from the Project are less than significant fails to address the true potential to emit (PTE) and is not in compliance with regulations about the use of backup power generators, nor is it in compliance with regulations regarding the use of Best Available Control Technology (BACT) for diesel back-up generators. These flaws are detailed below.

The City must update its analysis as an Environmental Impact Report (EIR) to correct the unsupported conclusions presented in the IS/MND.

Specific Comments:

1. The City's Response to Comments Ignores The Issues Identified Regarding The Impacts Of The Operational Phase of The Project

According to the City's response to comments from ABJC and Clark, the air quality analysis and risk analysis performed were appropriate since the City is assuming that testing can be performed once per month for up to one hour, or 12 hours per generator per year. The City claims that since this is less than the 50 hours per year modeled the IS overestimates the project's emissions.

This answer flies in the face of existing regulations from the Bay Area Air Quality Management District (BAAQMD) which require that the lead agency determine the potential to emit (PTE) for emergency backup power generators. This policy states that 100 hours of operation per year represents a reasonable worst-case scenario for the use of back-up generators at any site and will be used to determine the applicability of District permitting regulations (Attachment I to this letter). According to the policy, Facilities with one or more such generators are subject to the policy. Such facilities should presume that each of their generators will experience 100 hours per year of emergency operation when calculating their PTE for purposes of determining the applicability of the permitting regulations in Reg. 2 - including the District's New Source Review regulations (Reg. 2, Rule 2) and Title V Major Facility Review regulations (Reg. 2, Rule 6).

The policy's rationale includes the following statement: "This presumption of 100 hours per year of emergency operation is consistent with EPA's approach to calculating the PTE of such generators. EPA has recognized that emergency operations are unpredictable, and that they will be variable in duration but will probably not last more than one day (24 hours) per emergency event. Notwithstanding this likelihood that emergency conditions would not exceed 24 hours, EPA has suggested using a highly conservative assumption of 500 hours per year of emergency operation. EPA reasoned that even with this highly conservative number, most facilities with only a single

generator will remain below the agency's 'major source' regulatory applicability thresholds. But EPA also made clear that different presumptions may be appropriate based on other considerations."

The policy also prohibits the Air District from allowing a limit on owner/operator to accept a permit condition to limit emergency operations to less than 100 hours per year to reduce a source's PTE. An owner/operator may reduce a generator's PTE by accepting lower limits on testing and reliability-related operation or by installing an emissions control device, but not through accepting a limit on *emergency operation* (emphasis added). The City's response that the longest recorded outage in the last 10 years lasted roughly 7.5 hours fails to address the potential impacts based on the reasonable worst-case scenario as required by the BAAQMD permitting regulations.

Clearly this policy requires the Proponent and by extension the City to evaluate the emissions impacts from the generators for testing (assumed to be 12 hours per generator) and operation (100 hours per year per unit by BAAQMD policy) throughout the year. The assumption that the generators will only operate for 12 hours per year and will not be operated as designed (for emergency use) throughout the course of any given year clearly does not meet the requirements in CEQA to evaluate the operational impacts of the project. While the Proponent modeled 50 hours of testing, they have not modeled the additional 100 hours per year of operation. This underestimates the potential emissions by two-thirds (2/3), representing a very significant *underestimation* of the emissions from the Project. This failure clearly requires the City to prepare an Environmental Impact Report (EIR) to accurately assess the impacts of the project on the surrounding community.

2. The Method For Assessing The Project's Air Quality Impacts Fails To Compare The Emissions Against The BAAQMD's Applicable New Source Review Rule Regulations.

Per the December 21, 2020 letter from the BAAQMD to the California Energy Commission (CEC)¹, the BAAQMD has established a best available control technology (BACT) guideline for large

¹ BAAQMD. 2020. Letter To CEC, Re: BACT Determination For Diesel Back-Up Engines Greater Than or Equal To 1,000 Brake Horsepower. From Richard Corey, Executive Officer to Drew Bohan, Executive Director. Dated December 21, 2020

(greater or equal to 1,000 brake horsepower) diesel engines used for emergency standby power that requires them to meet the U. S. EPA's Tier 4 emissions standards (Attachment 2 to this letter). This determination will apply to any new and open permit application with a diesel backup engine ≥ 1000 bhp that is deemed complete after 1/1/2020. The project as designed has 6 diesel-fueled 3,000-kW generators (equal to 4,023 bhp) as an essential component of the project design.

As part of the BAAQMD's permitting processes, the Air District's New Source Review Rule (Regulation 2, Rule 2) requires that new or modified sources of air pollutants undergo permit review for Best Available Control Technology (BACT). BACT2 "Achieved-In-Practice" applies to the most effective emission controls already in use or the most stringent emission limit achieved in the field for the type and capacity of equipment comprising the source under review and operating under similar conditions.

BAAQMD Regulation 2, Rule 2, states that *any new or modified source* (emphasis added) which results in an increase in emissions of precursor organic compounds (POC), non-precursor organic compounds (NPOC), nitrogen oxides (NO_x), sulfur dioxide (SO₂), particulate matter (PM₁₀), or carbon monoxide (CO) in excess of 10 pounds per highest day must be reviewed for possible application of BACT. California Health and Safety Code Section 42300 authorizes delegation of stationary source permitting authority from the state to the local air pollution control districts, including the setting of rules and definitions

The CALEEMOD runs submitted in support of the IS/MND (mitigated operation) show that for the stationary sources of pollution at the site, the annual emissions of oxides of nitrogen (NO_x) and carbon monoxide (CO) are 4.8689 tons per year and 2.7661 tons per year, respectively. Multiplying the tons per year by 2000 lbs per ton and dividing the total by 365 days, the number of pounds per day of operational emissions may be calculated. This results in the calculation of 26.68 lbs per day of NO_x and 15.21 lbs per day of CO. Clearly, these emissions exceed the values detailed in BAAQMD Regulation 2, Rule 2. The Project will need a review therefore for BACT, a significant change in the air quality analysis performed for the Project. This deficiency in IS/MND analysis clearly requires the City to prepare an Environmental Impact Report (EIR) to accurately assess the impacts of the project on the surrounding community.

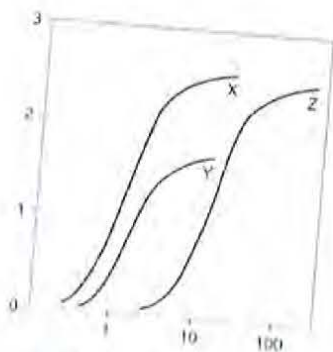
Conclusion

Clearly, the facts above present substantial evidence supporting a fair argument that the project would result in significant and unmitigated environmental impacts. The request for a EIR to quantify those impacts is warranted.

Sincerely,



JAMES J. J. CLARK, Ph.D.



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James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

Professional Experience:

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

LITIGATION SUPPORT

Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009

Client: Environmental Litigation Group, Birmingham, Alabama

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Summary judgment for defendants.

Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

Case Result: Settlement in favor of defendant.

Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247

Client: Richard G. Berger Attorney At Law, Buffalo, New York

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Judgement in favor of defendant.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client – Confidential

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model will be used to estimate acute and chronic exposure concentrations to multiple contaminants and will be incorporated into a comprehensive risk evaluation.

Client – Confidential

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client – City of Santa Monica, Santa Monica, California

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client: Omnitrans, San Bernardino, California

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

Client: Confidential, San Francisco, California

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

Client: Confidential, Minneapolis, Minnesota

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

Client – United Kingdom Environmental Agency

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom's Environment

Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use, chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: Ameren Services, St. Louis, Missouri

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Imminent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of perchlorate in environment. Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research

were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment*.

Client – Confidential, Los Angeles, California

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

Client: Confidential, San Francisco, California

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

Client: Confidential, San Francisco, California

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

Client: Confidential, San Francisco, California

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

Client: Covanta Energy, Westwood, California

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

Client – United Kingdom Environmental Agency

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (MtBE) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MtBE. The results of the evaluation have been used as a briefing tool for public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of *tertiary* butyl alcohol (TBA) in municipal drinking water system. TBA is the primary breakdown product of MtBE, and is suspected to be the primary cause of MtBE toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of TBA. The results of the evaluation were used as a briefing tool for non-public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been used as a briefing tool for non-public health professionals.

Client – Ministry of Environment, Lands & Parks, British Columbia

Dr. Clark assisted in the development of water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

Client: Confidential, Los Angeles, California

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client: Kaiser Venture Incorporated, Fontana, California

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Client: Confidential, Atlanta, Georgia

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.

Client: Confidential, Escondido, California

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

Client: Confidential, San Francisco, California

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

Client: Confidential, Bogotá, Columbia

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia. The risk assessment was used as the basis for the remedial goals and closure of the site.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client: Dominguez Energy, Carson, California

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

Kaiser Ventures Incorporated, Fontana, California

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

Kaiser Ventures Incorporated, Fontana, California

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

Unocal Corporation - Los Angeles, California

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

Client: Confidential, Los Angeles, California

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

Client: Confidential, San Francisco, California

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

Client: Confidential, San Francisco, California

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

IT Corporation, North Carolina

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

Professional Associations

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

California Redevelopment Association (CRA)

International Society of Environmental Forensics (ISEF)

Society of Environmental Toxicology and Chemistry (SETAC)

Publications and Presentations:

Books and Book Chapters

Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

Clark, J.J.J. 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.

Clark, J.J.J. 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.

Clark, J.J.J. 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
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- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
- Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

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- Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.
- Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.
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EXHIBIT 1

Policy: **Calculating Potential to Emit for Emergency Backup Power Generators**

Policy When determining the Potential to Emit (PTE) for an emergency backup power generator, **the District shall include emissions resulting from emergency operation of 100 hours per year**, in addition to the permitted limit for reliability-related and testing operation.

Applicability This assumption of 100 hours per year of emergency operation will be **used to determine the applicability of District permitting regulations**, such as New Source Review and Title V Major Facility Review. It will **not be used to determine the amount of emissions offsets required** for a project that triggers New Source Review. Emissions offsets represent ongoing emission reductions that continue every year, year after year, in perpetuity. As such, offsets are intended to counterbalance emissions that will occur every year, year after year, on a regular and predictable basis, to ensure Reasonable Further Progress towards attainment of the applicable ambient air quality standards. Accordingly, the PTE that a facility needs to offset is only its potential for such regular and predictable emissions – not any emissions that will only occur infrequently when emergency conditions arise.

In addition, **this policy does not apply to emergency fire pump engines**. The assumptions about potential emergency usage are different for emergency engines used to fight fires as compared to emergency engines use to provide backup power. The length of time that a facility may have to operate without grid power during any given year could be significantly longer than the amount of time it would take to put out a fire.

Finally, **this policy does not apply for purposes of the Toxics New Source Review requirements of District Reg. 2-5**. Pursuant to Reg. 2-5-111, Reg. 2-5 does not apply to emissions from emergency use of emergency standby engines.

Effective date This policy is effective when signed by the director and will not be applied retroactively to previous permitting actions. For existing permitted emergency generators, the policy will be implemented for the next permit application.

Policy: **Calculating Potential to Emit for Emergency Backup Power Generators**

Who is affected

This policy applies for calculating the PTE of emergency backup power generators for purposes of determining the applicability of District permitting regulations. Facilities with one or more such generators are subject to the policy. Such facilities should presume that each of their generators will experience 100 hours per year of emergency operation when calculating their PTE for purposes of determining the applicability of the permitting regulations in Reg. 2 – including the District’s New Source Review regulations (Reg. 2, Rule 2) and Title V Major Facility Review regulations (Reg. 2, Rule 6).

The permitting regulations covered by this policy include the “small facility” offsets provisions in Reg. 2-2-302.1. Reg. 2-2-302.1 provides that for facilities with a PTE of less than 35 TPY, (i) offsets are required only at a 1:1 ratio (as opposed to a 1.15:1 ratio for larger facilities); and (ii) the APCO will provide the offsets from the District’s Small Facility Banking Account (SFBA), subject to certain restrictions. Some facilities with emergency backup power generators may have been permitted in the past without taking any emergency operation into account, which may have kept their PTE below 35 TPY and rendered them eligible to take advantage of the SFBA. With 100 hours of emergency operation included, some of these facilities may have a PTE above 35 TPY, rendering them ineligible for SFBA credit. In such cases, the next time the facility applies for a permit, it will not be eligible for the “small facility” offsets provisions in Reg. 2-2-302.1, but will instead be subject to Reg. 2-2-302.2. Per Reg. 2-2-302.2, if such a facility has previously received credits from the SFBA, the owner/operator will be required to reimburse the SFBA for all credits received from the SFBA for each pollutant where the PTE exceeds 35 TPY, and it will have to provide any additional offsets for that pollutant at a 1.15:1 ratio.

This policy also applies for calculating a facility’s PTE for purposes of determining whether it is required to obtain a Title V permit or a Synthetic Minor Operating Permit (SMOP) under Reg. 2-6. Some facilities have been permitted in the past assuming 500 hours per year of emergency operation. For these facilities, their PTE will be lower using the presumption of 100 hours per year under this policy. If their PTE is reduced below the Title V applicability thresholds, they may no longer need a Title V permit or SMOP.

Note that certain District regulations include specific provisions that exempt emergency operation, including Reg. 2, Rule 5. This policy does not apply in situations covered by a specific regulatory exemption. This policy also does not apply for determining the amount of a facility’s cumulative increase that must be offset.

Policy: Calculating Potential to Emit for Emergency Backup Power Generators

Rationale

100 hours represents a reasonable worst-case assumption regarding the amount of time during any given year that a facility could have to operate without outside power, which would necessitate emergency operation of the facility's backup generator(s).

Emergency backup power generators are used to provide power in emergency situations where a facility loses its external power supply from the power grid. By its very nature, such emergency operation is unplanned and infrequent, and when it does occur it is impossible to predict how long it will last. Although it is foreseeable that an emergency backup power generator may have to operate to respond to emergency conditions at some point during its useful life, it is not possible to predict with any specificity exactly how frequently such operations will occur, or for what duration. 100 hours is a reasonable worst-case assumption of the longest a facility may need to operate on backup power in any given year in the event of a major power outage.

This presumption of 100 hours per year of emergency operation is consistent with EPA's approach to calculating the PTE of such generators. EPA has recognized that emergency operations are unpredictable, and that they will be variable in duration but will probably not last more than one day (24 hours) per emergency event. Notwithstanding this likelihood that emergency conditions would not exceed 24 hours, EPA has suggested using a highly conservative assumption of 500 hours per year of emergency operation. EPA reasoned that even with this highly conservative number, most facilities with only a single generator will remain below the agency's "major source" regulatory applicability thresholds. But EPA also made clear that different presumptions may be appropriate based on other considerations.

The District has found that 100 hours per year is a more appropriate presumption, for several reasons. For one, 500 hours – nearly 21 straight days – is an overestimate of the amount of time that any facility would reasonably be expected to have to operate without grid power, even in an extended emergency. For another, EPA's analysis focused on small facilities with a single generator and whether a 500-hour presumption was sufficiently low to keep such facilities from exceeding the "major source" thresholds. 500 hours may be sufficiently low for this purpose for facilities with only a single generator, but it leads to unintended consequences for larger facilities that may have multiple generators, or generators in conjunction with

**Policy: Calculating Potential to Emit for Emergency
Backup Power Generators**

other emitting sources. It is therefore more appropriate to use an alternative presumption – as specifically contemplated by EPA – to provide a more realistic estimate of reasonable worst-case emergency operations. 100 hours per year is a more appropriate presumption for this purpose.

This presumption is appropriate for calculating emergency backup power generators' PTE when determining whether a facility is subject to District permitting regulations. This is because the District generally looks to a facility's highest potential emissions in any given year to determine whether the facility should be subject to a particular regulation, even if the emissions will not reach that level in every year of operation. But the presumption is not appropriate for calculating the amount of emissions that need to be offset under Regs. 2-2-302 and 2-2-303. Offsets are required to counterbalance emissions that occur consistently and continuously every year, and thus hinder the region's ability to attain and maintain applicable ambient air quality standards on an ongoing basis. It is therefore appropriate to offset emissions from testing and reliability-related operation, which will occur year in and year out – but not emissions from emergency operation, which by their very nature will not occur at all during most years of a generator's life. Thus, in applying Reg. 2-2-606 and Reg. 2-2-607 to determine the cumulative increase that a facility must offset, emissions from an emergency backup power generator will be calculated based on its testing and reliability-related operation only, and not any emergency operation.

**Prohibition of
limit on
emergency
operation**

In implementing this policy, the Air District will not allow an owner/operator to accept a permit condition to limit emergency operation to less than 100 hours per year to reduce a source's PTE. The District does not impose limits on emergency operations because of the need to maintain flexibility to respond to emergency situations; and because such limits would not be practically enforceable in any event because if an emergency arises, most facilities would continue to operate to mitigate the emergency notwithstanding of the threat of District enforcement action for exceeding a permit limit. An owner/operator may reduce a generator's PTE by accepting lower limits on testing and reliability-related operation or by installing an emissions control device, but not through accepting a limit on emergency operation.

Policy: **Calculating Potential to Emit for Emergency Backup Power Generators**

Contact Greg Stone, Extension 4745

Approval


Name & Title	Signature	Date
Pamela Leong, Director of Engineering		6/3/2019

EXHIBIT 2

DOCKETED	
Docket Number:	19-SPPE-03
Project Title:	Sequoia Data Center
TN #:	236088
Document Title:	BAAQMD letter Re BACT Determination for Diesel Back-up Engines Greater Than or Equal to 1,000 Brake Horsepower
Description:	From Jack P. Broadbent, Executive Officer, APCO, Bay Area Quality Management District
Filer:	Lisa Worrall
Organization:	Bay Area Quality Management District
Submitter Role:	Public Agency
Submission Date:	12/22/2020 1:14:33 PM
Docketed Date:	12/22/2020



**BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT**

ALAMEDA COUNTY
John J. Bauters
Pauline Russo Cutter
Scott Haggerty
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
Karen Mitchoff
(Secretary)
Mark Ross

MARIN COUNTY
Katie Rice

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
VACANT
Shamann Walton
Tyrone Jue
(SF Mayor's Appointee)

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Davina Hurt

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez
(Vice Chair)
Liz Kniss
Rod G. Sinks
(Chair)

SOLANO COUNTY
James Spering
Lori Wilson

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:



12/21/2020

Mr. Richard Corey
Executive Officer *Richard*
California Air Resources Board
1001 I Street,
Sacramento, CA 95814

Mr. Drew Bohan
Executive Director *Drew*
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**RE: BACT Determination for Diesel Back-Up Engines Greater than or
equal to 1,000 Brake Horsepower**

Dear Mr. Corey and Mr. Bohan,

The purpose of this letter is to inform your agencies that the Bay Area Air Quality Management District (Air District) has established a best available control technology (BACT) guideline for large (greater or equal to 1,000 brake horsepower) diesel engines used for emergency standby power that requires them to meet the U. S. EPA's Tier 4 emissions standards. This determination will apply to any new and open permit application with a diesel backup engine ≥ 1000 bhp that is deemed complete after 1/1/2020.

The Air District is the entity charged with permitting for stationary sources of air pollution in the nine-county region surrounding the San Francisco bay. Air District permits are required by law for:

- Any stationary equipment that may cause air pollution;
- Modifications to existing permitted equipment or their permit conditions;
- Permitted equipment that is moved to a new location;
- Transfer of permitted equipment to new owners; and
- Installation of equipment used to control emissions.

As part of our permitting processes, The Air District's New Source Review Rule - Regulation 2, Rule 2 (Regulation 2, Rule 2) - requires that new or modified sources of air pollutants undergo permit review for Best Available Control Technology (BACT). BACT2 "Achieved-In-Practice", applies to the most effective emission controls already in use or the most stringent emission limit achieved in the field for the type and capacity of equipment comprising the source under review and operating under similar conditions.

Regulation 2, Rule 2, states that any new or modified source which results in an increase in emissions of precursor organic compounds (POC), non-precursor organic compounds (NPOC), nitrogen oxides (NO_x), sulfur dioxide (SO₂), particulate matter (PM₁₀), or carbon monoxide (CO) in excess of 10 pounds per highest day must be reviewed for possible application of BACT. California Health and Safety Code Section 42300 authorizes delegation of stationary source permitting authority from the state to the local air pollution control districts, including the setting of rules and definitions.


For the BACT Guideline, the Air District relied on its evaluations of the following projects, which are both emergency standby engines that are installed and operating in compliance with the U.S. EPA Tier 4 emissions standards:

- Air District Permit Application 27020 (San Jose – Santa Clara Regional Wastewater Facility, Four Emergency Diesel Standby Engines, each 4,376 BHP)
- Air District Permit Application 25115 (Sutro Tower, Inc., Emergency Diesel Standby Engine, 1,881 BHP).

The Air District also relied on an evaluation of the permit and source test results of the Microsoft – MWH Data Center, in Quincy, Washington. The permit limits that Microsoft complies with are in units of g/bhp-hr: 0.5 NO_x, 0.14 NMHC, 0.02 PM filterable, 2.6 CO. These emergency diesel standby engines ranged from 0.75 MWe to 3.0 MWe.

Thank you for your attention and If you have any questions regarding this letter, please contact Damian Breen, Senior Deputy Executive Officer at (415) 749-5041.

Sincerely,



Jack P. Broadbent
Executive Officer/APCO

EXHIBIT B

PLANNING APPLICATION FEE SCHEDULE

1500 Warburton Avenue, Santa Clara, California 95050

Ph: (408) 615-2450; Fax: (408) 247-9857; Email: planning@santaclaraca.gov

**Fees Effective
July 1, 2020**

Resolution 20-8839 adopted by the City Council on April 28, 2020 established the following Fee Schedule for Planning Applications. The fee shall be paid at the time of filing of these applications and no application will be considered until the fee is paid. No fee shall be refunded because of the denial of any application. No fee shall be charged for school districts, municipal corporations or agencies of the State of California and United States Government for public projects. Please contact Planning Staff for any questions related to these fees.

ABC REVIEW VERIFICATION ¹ \$533

ANNEXATION OF TERRITORY TO THE CITY OF SANTA CLARA
(Not under the Annexation Act of 1913) ¹ \$37,308

APPEALS

Non-Applicant, Resident ¹ \$469
All Others ¹ \$9,381

ARCHITECTURAL REVIEW

Staff Architectural Review over the counter No Charge
Minor Amendment to Approved Projects ¹ \$799
Single family residential going to DRH ¹ \$878
New Development/Non-Single Family ^{1,2} \$31,978
Design Consultant Review Contract Cost + Administration

CERTIFICATE OF COMPLIANCE

Pursuant to SCCC 17.10.280 ¹ \$2,132

CONTRACT ADMINISTRATION At Cost

DEVELOPMENT AGREEMENT

Pursuant to Chapter 17.10 SCCC ¹ \$31,978
Amendment or Cancellation ¹ \$10,660

ENVIRONMENTAL REVIEW (CEQA)

Environmental Impact Report (EIR) ^{1,2,4} \$31,978
Supplemental EIR ^{1,2,4} \$15,989
Initial Study and/or Negative Declaration ^{1,2} \$21,319
Exemption ¹ \$799
Exemption (Paperless) No Charge
Recordation of Exemption ¹ \$508
Re-Use of Prior Environmental Determination ¹ \$1,599
Addendum to Prior Environmental Determination ¹ \$4,263

FLOOD ZONE VERIFICATION ¹ \$266

GENERAL PLAN AMENDMENT

Single Family ^{1,2} \$2,664
Up to one acre ^{1,2} \$21,319
One to five acres ^{1,2} \$31,978
Over five acres ^{1,2} \$37,308

HERITAGE TREE REMOVAL ¹ \$745

HISTORICAL REVIEW

Significant Property Alteration – Major
Single Family ¹ \$878
All Others ¹ \$10,660
Significant Property Alteration – Minor
Single Family ¹ \$586
All Others ¹ \$1,861
HLC Review
Single Family ¹ \$878
All Others ¹ \$10,660
Non-Historical Referral to the HLC
Standard ¹ \$469
Comprehensive ¹ \$878

MILLS ACT APPLICATION ¹ \$7,564

MINOR MODIFICATIONS

Single Family ¹ \$533
All Others ¹ \$1,332

OFF-SITE PARKING PERMITS

Citywide ¹ \$1,332
Events North of 101 ¹ \$1,332
Off-Site Parking Facilities per Space/Event \$5.91

PRE-APPLICATION

Single Family ^{1,5} \$468
Planning Review ^{1,5} \$3,125
Project Clearance Committee Review ^{1,2,5} \$5,330

REPOSTING PUBLIC NOTIFICATION

Single family ¹ \$117
Non-Single Family ¹ \$1,066
Re-Noticing in Newspaper At Cost
(Note: This fee is charged for active projects when revised project descriptions require an additional public notice)

REZONING

Single lot to R1 ¹ \$8,197
Non-Planned Development (PD) ^{1,2} \$18,610
Planned Development (PD) ^{1,2} \$53,297
Planned Development Master Community (PD-MC) ^{1,2} \$63,957
Development Area Plan for PD-MC rezoning ^{1,2} \$34,643

SIGNS

Individual Sign (attached or ground) for 1st Sign ¹ \$312
Each Additional Sign ¹ \$77
Temporary Sign/Street Banner ¹ \$77
Temporary Sign Removal ¹ \$133
Master Sign Program ¹ \$3,997

SPECIAL PERMITS

Special Permit – Council Approval ¹ \$2,664
Special Permit – Non-Profit ¹ \$250
Special Permit – Admin Approval ¹ \$1,332

STORMWATER MANAGEMENT PLAN REVIEW ¹ \$799

TENTATIVE MAPS

4 or Fewer Lots ^{1,2} \$15,989
5 or More Lots ^{1,2} \$21,319
Lot Line Adjustment ^{1,2} \$5,330

TECHNOLOGY SURCHARGE

Applied to all fees except “at cost” fees 3.37% of Application Fee

TIME EXTENSIONS

Entitlement Extension ¹ 50% Application Fee
Reactivation of Inactive File ¹ 25% Application Fee
(Note: Expired permits must file a new application with 100% of applicable fees)

USE PERMITS

Minor Use Permit ^{1,3} \$5,628
Standard Use Permit ^{1,3} \$13,027

VARIANCE

Single family ¹ \$3,133
All others ^{1,2} \$9,313

ZONING CODE TEXT AMENDMENT ^{1,2} \$23,984

ZONING VERIFICATION ¹ \$455

¹. A Technology Surcharge will be assessed at 3.37% of the application fee for all applications except those that are collected “at cost.”

². DPW, Fire, and/or Water fees apply (these fees are collected only once if multiple applications are concurrently submitted for a single project).

³. DPW, Fire, and/or Water fees apply except for alcohol sales only without outdoor seating or tenant improvements.

⁴. Fire Department CEQA Review Fee applies.

⁵. 50% of the fees associated with a Pre-Application review will be applied towards a formal application if said application is submitted within three months of receiving the responses on the Pre-Application.

Other Departmental Review Fees

These fees are charged by Departments outside of the Community Development Department for certain Planning Applications

Department of Public Works

Architectural Review.....	\$846.86
EIR.....	\$4,385.45
IS/MND/ND.....	\$2,628.75
Lot Line Adjustment.....	\$677.91
Pre-Application.....	\$846.86
Rezone.....	\$846.86
Tentative Map (Less than 4).....	\$1,496.44
Tentative Map (4 or more).....	\$2,382.13
Use Permit.....	\$411.36
Variance.....	\$411.36
Traffic Study Report Review.....	\$2,636.09

Fire Department

CEQA Review (up to 6 hours).....	\$1,397.89
CEQA Review (each additional hour).....	\$212.83
Planning Application Review.....	\$617.20

Water & Sewer Utilities Department

Project Clearance Committee Review.....	\$591
-----------------------------------------	-------

Outside Agency Fees

These fees are subject to change by the jurisdiction assessing the fee and are provided here for convenience only.

CEQA Document Declarations & Dept. of Fish and Wildlife Fees

(Make Checks Payable To: Santa Clara County Clerk-Recorder; Deliver Checks to City of Santa Clara Planning)

Notice of Determination (EIR).....	\$3,343.25
Notice of Determination (ND) and (MND).....	\$2,406.75
Environmental Document Pursuant to a Certified Regulatory Program (CRP).....	\$1,136.50
County Administrative Fee (for all CEQA filings).....	\$50.00

Airport Land Use Commission (projects within ALUC boundaries)

(Make Checks Payable To: Santa Clara County-ALUC; Deliver checks to Santa Clara County Planning Department)

ALUC filing fee (Major projects).....	\$1,829
ALUC filing fee (Minor projects).....	\$1,067
ALUC filing fee (De Minimis projects)....	\$747

Frequently Asked Questions

What is the difference between a Minor Use Permit and a Standard Use Permit?

- Examples of a Minor Use Permit include: alcohol related uses, incidental entertainment uses, outdoor walk-up service facilities, etc.
- Examples of a Standard Use Permit include: auto sales car lots, auto-related uses, nightclubs, animal care uses, etc.

What kind of Architectural Review can be completed over the counter at no charge?

- Single-family detached reviews that do not go to a Development Review Hearing, installation of solar panels, interior remodels excluding 4 or more bedrooms, and roof replacements.

What types of projects qualify as a Minor Amendment to an Approved Project?

- Tree removals/landscape changes on commercial, industrial, or multi-family residential properties; restriping or reconfiguration of parking lots; minor architectural changes; off sale beer and wine licenses; DMV license for wholesale auto sales, etc.

What is a Reactivation of an Inactive File and what would cause me to be charged that fee?

- If an applicant fails to make progress on a Planning Application for more than six (6) months, a Processing Time Extension fee will be assessed at a rate of 25% of the initial application fee.

When does an hourly rate apply instead of one of the listed fees?

- Additional hourly fees may apply above and beyond those identified on the front of this application, e.g., if multiple community meetings are needed for a single application.
- For requests that do not fall under an identified application category, an hourly fee may be applicable.
- Please reference the most recent User Fee Study for current hourly rates and additional information.

EXHIBIT C



**Fees Associated With
Case #: PLN2019-13941**

11/12/2020

2:29:57PM

Fee Type	Start Date	End Date	Dept	Description	Trans Code	Revenue Account Number	Created By	Created Date	Amount	Due
PL54	7/8/2018	7/31/2019		Arch Review (all others)		001-5522-56700	JSCH	6/17/2019	2,768.00	0.00
P107	7/8/2018	7/31/2019		Minor Mod - All Others		001-5522-56700	JSCH	6/17/2019	1,419.00	0.00
PL78	7/8/2018	7/31/2019		Stormwater Mangement Rev		001-5522-56700	JSCH	6/17/2019	1,135.00	0.00
P117	7/1/2017	7/31/2019		Recalc--Advanced Planning		001-5522-56700-(I)3165	JSCH	6/17/2019	2,298.30	0.00
P118	7/8/2018	7/31/2019		Recalc--Fire Referral Fee		001-7832-56900-(I)7438	JSCH	6/17/2019	449.00	0.00
P126	7/1/2018	7/31/2019		Recalc--Technology Surchar		001-3611-56610	JSCH	6/17/2019	315.42	0.00
P117	7/1/2017	7/31/2019		Advanced Planning Surcha		001-5522-56700-(I)3165	JSCH	6/17/2019	2,298.30	0.00
PL35	7/8/2018	7/31/2019		Env. IS / Neg Dec		001-5522-56700	JSCH	6/17/2019	9,862.00	0.00
PL93	7/8/2018	6/30/2019		Env.FireDept.CEQA Rev(<		001-7833-56950	JSCH	6/17/2019	896.00	0.00
P117	7/1/2017	7/31/2019		Recalc--Advanced Planning		001-5522-56700-(I)3165	JSCH	6/17/2019	681.00	0.00
P126	7/1/2018	7/31/2019		Recalc--Technology Surchar		001-3611-56610	JSCH	6/17/2019	415.16	0.00
PL27	7/8/2018	7/31/2021		Appeal - All Others		001-5522-56700	REBU	11/12/2020	9,381.00	9,381.00
P126	1/1/2017	7/31/2021		Recalc--Technology Surchar		001-3611-56610	REBU	11/12/2020	822.26	822.26
Total Due:									<u>\$10,203.26</u>	



Planning and Inspection Department

Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050
Ph: (408) 615-2450



Appeal Form

Instructions

Use this form to appeal a decision of the Architectural Review Committee or Planning Commission. **All appeals must be filed in the Planning Division within seven calendar days of the action being appealed.**

Appeals from the Architectural Review Committee are made to the Planning Commission and will be set for hearing on the next available Planning Commission agenda. Appeals from the Planning Commission are made to the City Council and will be placed on the subsequent City Council Agenda to set a hearing date. Please contact the Planning Division at the number listed above with any inquiries about the process.

Please print, complete, and sign this form before mailing or delivering to the City, along with the fee payment, and supporting documentation, letters, etc. (if any).

Appeal Fees

Appeal Fees are set by the Municipal Code of the City of Santa Clara and are subject to annual review. Please call the Planning Division for the current Appeal Fee. **Fee payment must be received by the City of Santa Clara before this form submittal can be certified as complete.**

Appeal fees may be paid by cash, check, or with VISA, MasterCard, or American Express, at the Permit Center at City Hall. Alternatively, checks or money orders made payable to City of Santa Clara can be mailed or delivered to Planning Division, City Hall, 1500 Warburton Avenue, Santa Clara, California 95050.

Appellant Declaration

Name: Adams, Broadwell, Joseph & Cardozo
Street Address: 601 Gateway Blvd. Ste. 1000
City, State, Zip Code: South San Francisco, CA 94080
Phone number: (650) 589-1660
E-mail address: khartmann@adamsbroadwell.com

In accordance with the provisions of the Municipal Code of the City of Santa Clara, I hereby appeal the following action of the:

☒ Architectural Review Committee ☐ Planning Commission

at it's meeting of November 4, 2020
(date)

Agenda Item No.: 20-1088

File No.(s): PLN2019-13941 / CEQ2020-01079

Address:/APN(s): 224-08-092

Appellant Statement

(If more space is required, attach a separate sheet of paper.)

Action being appealed:

Please see attached letter.

Reason for Appeal:

Please see attached.

Certification of Authenticity

Beware, you are subject to prosecution if you unlawfully submit this form. Under penalty of law, transmission of this form to the City of Santa Clara is your certification that you are authorized to submit it and that the information presented is authentic.



Signature of Appellant

11/11/2020

Date

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-6062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
WILLIAM C. MUMBY

MARC D. JOSEPH
Of Counsel

*Not admitted in California.
Licensed in Colorado

November 12, 2020

By Hand-Delivery

Mayor Gillmor and City Council Members
Santa Clara City Council
City Hall
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

**Re: Appeal of the Mitigated Negative Declaration for 1111 Comstock
Data Center Project (PLN2019-13941; CEQ2020-01079)**

Dear City Council:

We are writing on behalf of Santa Clara Citizens for Sensible Industry ("Santa Clara Citizens") to appeal the November 4, 2020 decision of the City of Santa Clara Development Review Officer ("City") at a Development Review Hearing to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (collectively with the Initial Study, "IS/MND") for the 1111 Comstock Data Center Project ("Project") and approve the Architectural Review for the Project and Minor Modification to increase the building height to 87 feet and reduce the parking space requirements for the Project (collectively, "Permits").

The Project, proposed by Prime Data Centers ("Applicant"), proposes to demolish an existing 23,765-square-foot industrial building and construct a four-story, 121,170-square-foot data center building on the 1.38-acre Project site (APN 224-08-092). The data center building would house computer servers designed to provide 10 megawatts ("MW") of information technology power; backup generators; underground fuel storage containers; and mechanical cooling equipment on the building's roof. The site, zoned as Light Industrial with a General Plan designation of Low Intensity Office/R&D, is located north of Comstock Street, east of Kenneth

4938-007acp

Street, south of Bayshore Freeway, and west of Lafayette Street within the City of Santa Clara.

On October 13, 2020, we submitted comments on the IS/MND prepared for the Project ("Comment Letter"). Our comments were prepared with the assistance of technical expert James J.J. Clark, Ph.D. of Clark & Associates Environmental Consulting, Inc. As detailed therein, we identified potentially significant and unmitigated impacts due to emissions from the Project's backup diesel generators, as well as significant impacts to air quality, public health, and greenhouse gas ("GHG") emissions from the Project. Our Comment Letter also showed that the IS/MND fails as a matter of law to address energy impacts as required under CEQA. Based on these potentially significant and unmitigated impacts, as well as other deficiencies in the Initial Study, our comments concluded that the MND in its current form and substance violates CEQA and that substantial evidence supports a fair argument that an environmental impact report ("EIR") is required for the Project.

At the November 4, 2020 public hearing, the MND was adopted and the Permits were approved. We request that the City Council uphold this appeal and reverse the decision of the Director to adopt the IS/MND and approve the Permits.

I. STATEMENT OF INTEREST

Santa Clara Citizens is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes individuals and organizations, including California Unions for Reliable Energy ("CURE") and its local affiliates, and the affiliates' members and their families, who live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County.

Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. Its members help solve the State's energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. CURE members have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Individual members live, work, recreate, and raise their families in Santa Clara. They would be directly affected by the Project's environmental and health and safety impacts. Its members

may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

Santa Clara Citizens supports the development of data centers where properly analyzed and carefully planned to minimize impacts on the environment. Any proposed project should avoid impacts to public health, energy resources, sensitive species and habitats, and should take all feasible steps to ensure significant impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can development truly be sustainable.

Santa Clara Citizens and its members are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits such as decent wages and benefits. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City and the surrounding region, and by making it less desirable for businesses to locate and people to live and recreate in the City, including in the vicinity of the Project. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities. Santa Clara Citizens' members therefore have a direct interest in enforcing environmental laws that minimize the adverse impacts of projects that would otherwise degrade the environment. CEQA provides a balancing process whereby economic benefits are weighted against significant impacts to the environment. It is for these purposes that we submit this appeal.

II. BASIS FOR THE APPEAL

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. The "fair argument" standard reflects this presumption. The fair argument standard is an exceptionally low threshold favoring environmental review in an EIR rather than a negative declaration.¹ This standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.² As a matter of law, substantial evidence includes both expert and lay opinion based on fact.³

¹ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

² 14 C.C.R. § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931.

³ PRC § 21080(e)(1) (For purposes of CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."); 14 C.C.R. § 15064(f)(5). 4938-007acp

As we have shown in our Comment Letter, there is substantial evidence that the project may cause significant environmental effects requiring the City to prepare an EIR. The City's Response to Comments ("Response") failed to rebut this presumption, and instead attempted to dismiss our comments by stating that the City provides substantial evidence to support its conclusions. However, even if other substantial evidence supports a different conclusion, the City nevertheless must prepare an EIR under CEQA.⁴

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.⁵ "[S]ignificant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."⁶ An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial."⁷ Substantial evidence, for purposes of the fair argument standard, includes "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."⁸

Whether a fair argument exists is a question of law that the court reviews de novo, with a preference for resolving doubts in favor of environmental review.⁹ In reviewing a decision to prepare a negative declaration rather than an EIR, courts "do not defer to the agency's determination."¹⁰

The fair argument standard creates a "low threshold" for requiring preparation of an EIR and affords no deference to the agency's determination.¹¹ Where substantial evidence supporting a fair argument of significant impacts is presented, the lead agency must prepare an EIR "even though it may also be

⁴ *Arvin Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

⁵ Pub. Resources Code § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env't Dev. v. City of Chula Vista ("CREED")* (2011) 197 Cal.App.4th 327, 330-331; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 ("CBE v. SCAQMD").

⁶ Pub. Resources Code § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

⁷ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 fn. 16.

⁸ Pub. Resources Code § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

⁹ *CREED*, 197 Cal.App.4th at 331; *Pocket Protectors*, 124 Cal.App.4th at 927.

¹⁰ *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.

¹¹ *Pocket Protectors*, 124 Cal.App.4th at 928.

presented with other substantial evidence that the project will not have a significant effect.”¹² A reviewing court must require an EIR if the record contains any “substantial evidence” suggesting that a project “may have an adverse environmental effect”—even if contrary evidence exists to support the agency’s decision.¹³

Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR.¹⁴ In short, when “expert opinions clash, an EIR should be done.”¹⁵ “It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.”¹⁶ In the context of reviewing a mitigated negative declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.”¹⁷ Where such substantial evidence is presented, “evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact.”¹⁸

The fair argument test requires the preparation of an EIR whenever “there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.”¹⁹ Such substantial evidence is present here. The City Council should uphold this appeal and reverse the decision to approve Permits and adopt the IS/MND, and require the City to take a closer look at the Project’s potentially significant environmental impacts in an EIR.

¹² Pub. Resources Code § 21151(a); 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 927; *County Sanitation Dist. No. 2*, 127 Cal.App.4th at 1579 (“where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not appropriate.”) (quoting *Sierra Club*).

¹³ *Mejia*, 130 Cal.App.4th at 332–333.

¹⁴ *Pocket Protectors*, 124 Cal.App.4th at 935; *Sierra Club*, 6 Cal.App.4th at 1317–1318; CEQA Guidelines § 15064(f)(5).

¹⁵ *Pocket Protectors*, 124 Cal.App.4th at 928; *Sierra Club*, 6 Cal.App.4th at 1317–1318.

¹⁶ *Pocket Protectors*, 124 Cal.App.4th at 935.

¹⁷ *Id.* at 935.

¹⁸ *Sundstrom*, 202 Cal.App.3d at 310 (citation omitted).

¹⁹ 14 C.C.R. § 15063(b)(1) (emphasis added).

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a. The City Failed to Provide the Documents Referenced in the MND to the Public for the Entire Comment Period, as Required by CEQA

The City violated CEQA and improperly truncated the public comment period when it failed to make all documents referenced or relied on in the IS/MND available for public review during the entire public comment period.²⁰ As a result, Santa Clara Citizens and other members of the public were unable to complete a meaningful review and analysis of the IS/MND and its supporting evidence.

In its response to our Comment Letter, the City asserted that the CEQA Guidelines no longer require an agency to provide documents referenced in a negative declaration or mitigated negative declaration, but that the CEQA Guidelines only require that documents “incorporated by reference” be made available.²¹ This is an incomplete and inaccurate reading of the law. Though Section 15072 of the CEQA Guidelines was indeed amended to include documents “incorporated by reference” in its description of the required contents of a notice of intent to adopt a negative declaration, Section 21092 of the Act continues to require that notice of preparation of a CEQA document include “the address where copies of the draft environmental impact report or negative declaration, and *all documents referenced* in the draft environmental impact report or negative declaration, are available for review.”²²

The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.²³ It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.²⁴

²⁰ See Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4).

²¹ Response A.2, pg. 6; 14 C.C.R. § 15072(g)(4).

²² Pub. Resources Code § 21092(b)(1).

²³ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

²⁴ *Santiago Cty. Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

b. The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate the Project's Potentially Significant Public Health Impacts

The IS/MND concludes that the Project would not expose sensitive receptors to substantial pollutant concentrations.²⁵ As indicated in our Comment Letter, the IS/MND's Air Quality Assessment erroneously states that the "closest sensitive receptors to the proposed project site are existing residences about 3,315 feet north of the project site,"²⁶ while the Granada Islamic School is much closer—1,700 feet—to the Project site. The City responded that "[t]he IS states on pages 30 and 36 that the Granada Islamic School is the closest sensitive receptor to the project site, and so this comment is incorrect."²⁷ The comment's factual basis is clearly not incorrect (as evidenced by the statements on Page 10 of the Air Quality Assessment), but more importantly, the City appears to have missed the purpose of the comment: to point out that the Assessment does not include calculations of health impacts at the closest sensitive receptor.

Potential health impacts from operation of the Project's generators were evaluated using air quality dispersion modeling and applying BAAQMD recommended health impact calculation methods.²⁸ Though the IS/MND states that "[t]he maximum increased cancer risk at the closest sensitive receptor, Granada Islamic School, would be 0.02 in one million, and the maximum increased cancer risk at the closest residence would be 0.1 in one million," it is unclear where those numbers came from. Nothing in the Assessment indicates whether the evaluations of health impacts were actually performed at the Granada Islamic School or at the residences further away. The Assessment's initial erroneous assumption that the closest sensitive receptors were the residences more than 3,000 feet from the Project site does not appear to have been corrected during calculations of health risks, as Figure 2 in the Assessment does not include the Granada Islamic School in its display of sensitive receptors. As explained by Dr. Clark, such an oversight would significantly alter the assumptions and conclusions of the IS/MND. The City must re-analyze the Project's potentially significant impacts in an EIR.

²⁵ IS/MND, p. 36.

²⁶ IS/MND Appendix A, p. 5.

²⁷ Response A.5, p. 10.

²⁸ IS/MND Appendix A, p. 15.

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As required by CEQA, the City must prepare a site-specific baseline health risk assessment (“HRA”) that calculates the excess incremental lifetime risk for all of the nearby receptors. Though the City responded that the IS/MND included an HRA, the assessment,²⁹ as pointed out in our Comment Letter, does not include calculations for all of the nearby receptors. As Dr. Clark points out in his comments, “[t]he City’s emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation.”³⁰

c. Compliance with Plans and Policies Does Not Establish that the Project’s GHG Emissions Would Be Less Than Significant

As stated in our Comment Letter, the IS/MND relies on obtaining the status of less-than-significant for the Project’s emissions from a plan that is set to expire before the Project is implemented. The City’s Climate Action Plan, adopted in 2013, contains projected emissions and measures designed to help the City meet statewide 2020 goals established by AB 32.³¹ As acknowledged in the IS/MND, “consistency with the CAP cannot be used to determine significance under CEQA.”³² The City responded that because the Project would receive electricity from a utility on track to meet the SB 32 2030 GHG emission reduction target and would be consistent with applicable plans and policies adopted to reduce GHG emissions, “the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.”³³

This argument, however, ignores the clear mandate of CEQA and case law that an agency may only rely on a qualified GHG reduction plan that follows specific rules and guidelines set forth in Section 15183.5 of the CEQA Guidelines.³⁴ A CAP that is no longer valid to be used as a qualified GHG reduction plan clearly does not satisfy this requirement.

²⁹ Response A.7, p. 11.

³⁰ Dr. Clark Comments, pp. 9–10.

³¹ *Id.* at 67.

³² *Id.*

³³ Response A.10, p. 14.

³⁴ 14 C.C.R. § 15183.5; see *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204.

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The IS/MND argues that because electricity—by far the biggest source of the Project’s emissions—is provided by Silicon Valley Power, “a utility on track to meet the 2030 GHG emissions reductions target established by SB 32,” the Project would generate lower emissions than the statewide average for an equivalent facility.³⁵ The IS/MND fails, however, to establish that the Project’s consistency with these plans and programs will ensure that the Project’s contribution to global climate change is not significant. Case law demonstrates that limiting discussion to a project’s consistency with statewide goals is not sufficient by itself, and that substantial discussion of the applicability of the statewide goals to the specific project is required.³⁶

Furthermore, substantial evidence supports a fair argument that the Project’s GHG emissions are significant notwithstanding their consistency with local, regional, and state plans. As stated above, the Project’s total operational emissions amount of 10,323 MTCO_{2e} annually is significantly higher than the 1,100 MTCO_{2e}/year threshold established by BAAQMD. Though the City’s Response points out that BAAQMD’s CEQA guidelines no longer require the use of this threshold,³⁷ the huge disparity between the Project’s operational emissions and a threshold that until very recently was required to avoid significant impacts cannot be ignored. The IS/MND fails to describe how these operational emissions might be abated through the Project’s compliance with GHG reduction strategies.

III. THE DIRECTOR LACKS SUBSTANTIAL EVIDENCE TO MAKE THE FINDINGS REQUIRED TO GRANT ARCHITECTURAL APPROVAL UNDER THE SANTA CLARA CITY CODE

Santa Clara City Code Section 18.76.010 provides that one of the purposes of the architectural review process is to “[m]aintain the public health, safety and welfare.” Furthermore, Section 18.76.020, subsection (d)(4) provides that to approve a project, the Director must find that the Project cannot “[m]aterially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development.”³⁸

³⁵ *Id.*

³⁶ See, e.g., *Center for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204.

³⁷ Response A.8, p. 12.

³⁸ S.C.C.C. § 18.76.020(d).

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a. The Project's Failure to Demonstrate Less-Than-Significant Public Health Risks and GHG Emissions May Result in Adverse Impacts to Persons Residing or Working in the Area

The IS/MND's inconsistent calculations and statements with regard to health risks to nearby sensitive receptors make it impossible for the Director to unequivocally maintain the public health, safety, and welfare or guarantee that the Project will be consistent with Santa Clara City Code Section 18.76.020, subsection (d)(4).

Meanwhile, the Project's operational GHG emissions, which exceed BAAQMD's latest numeric threshold of significance for land use projects, will adversely affect those in the immediate vicinity of the Project, as well as all Californians in the form of increased drought, wildfires, and rising sea levels.

The Project is in close proximity to residences and schools and is surrounded by office buildings and other industry. The City's analysis in the IS/MND and Response to our Comment Letter do not support a finding that the Project approval will not materially affect adversely the welfare of persons residing or working in the neighborhood of the Project.

IV. RELIEF REQUESTED

Santa Clara Citizens requests that the City Council grant this appeal and rescind the November 4, 2020 decisions to 1) adopt the IS/MND and 2) approve the Permits. We further request that the City conduct further analysis on the Project's potentially significant environmental impacts in an EIR and correct the City's deficiencies in the CEQA process that prejudiced Santa Clara Citizens, as described above. By doing so, the City and public can ensure that all adverse environmental and public health impacts of the Project are adequately analyzed, disclosed, and mitigated as is required by law.

a. Procedural Requirements for Appeals

Santa Clara Citizens has satisfied the procedural requirements for an appeal of a decision of the Development Review Officer as set forth in the Santa Clara City Code. City Code sections 18.76.020(i) and (j) state:

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(i) In the event the applicant or any interested party are not satisfied with the decision of the Director or designee for a single-family residential project, they may, within seven days after such decision, appeal in writing to the Planning Commission.

(j) For a project other than a single-family residential project, in the event the applicant or any interested party are not satisfied with the decision of the Director, they may, within seven days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). In the event the applicant or any interested party are not satisfied with the decision of the Planning Commission for a single-family residential project, they may, within seven days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). Said appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk. All appeals of architectural review approvals will be heard de novo. The Director of Community Development may refer any application for architectural consideration to the City Council for its decision with the same effect as if an appeal had been taken.

Here, the Director made the decision on the adoption of the IS/MND and approval of the Permits on November 4, 2020. This letter and the attached appeal form constitute notice in writing of the appeal.

We have also enclosed a check for the appeal fee for non-applicants.

Thank you for your consideration of this appeal to the City Council.

Sincerely,



Kendra Hartmann
Tanya Gulesserian

KDH:acp

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EXHIBIT B

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October 13, 2020

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**Re: Initial Study/Mitigated Negative Declaration: 1111 Comstock
Data Center Project ((PLN2019-13941; CEQ2020-01079)**

Dear Mr. Haggag, Ms. Dhadli, Mr. Crabtree, Mr. Abbe and Ms. Bustos:

On behalf of Santa Clara Citizens for Sensible Industry ("Santa Clara Citizens"), we submit these comments on the Initial Study/Mitigated Negative Declaration ("IS/MND"), prepared pursuant to the California Environmental Quality Act ("CEQA") by the City of Santa Clara ("City") for the 1111 Comstock Data Center Project ("Project"), proposed by Prime Data Centers ("Applicant"). The Project proposes to demolish an existing 23,765-square-foot industrial building and

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construct a four-story, 121,170-square-foot data center building on the 1.38-acre project site (APN 224-08-092). The data center building would house computer servers designed to provide 10 megawatts ("MW") of information technology power; backup generators; underground fuel storage containers; and mechanical cooling equipment on the building's roof. The site, zoned as Light Industrial with a General Plan designation of Low Intensity Office/R&D, is located north of Comstock Street, east of Kenneth Street, south of Bayshore Freeway, and west of Lafayette Street within the City of Santa Clara.

The Project seeks from the City the following discretionary approvals: Architectural Review and Demolition Permit. The Architectural Review Process, found at Zoning Ordinance Chapter 18.76 of the Santa Clara City Code, requires that the Director of Community Development or a designee review plans and drawings prior to issuance of a building permit.¹ The review, which takes place at a publicly noticed Development Review Hearing, assesses design, aesthetics, and consistency with zoning standards.² Demolition permits require the following: PCB screening assessment, sewer cap permit, air quality permit from the Bay Area Air Quality Management District ("BAAQMD"), and planning clearance. All demolition of structures larger than 1,000 square feet must create and submit a recycling plan.³

Based on our review of the IS/MND, we have concluded that it fails to comply with CEQA. The IS/MND fails to accurately describe the existing environmental setting and underestimates and fails to adequately mitigate air quality, public health, and greenhouse gas ("GHG") impacts from the Project.

These comments were prepared with the assistance of James J.J. Clark, Ph.D. of Clark & Associates Environmental Consulting, Inc. Dr. Clark's comments and curricula vitae are attached to this letter as Attachment A.⁴ For the reasons discussed herein, and in the attached expert comments, Santa Clara Citizens urges

¹ Santa Clara City Code, Title 18: Zoning, Chap. 18.76.

² *Id.*

³ City of Santa Clara Requirements for Obtaining a Demolition Permit, July 1, 2019, <https://www.santaclaraca.gov/home/showdocument?id=66421>.

⁴ James J.J. Clark, Ph.D., Comment Letter on Initial Study with Proposed Mitigated Negative Declaration (IS/MND) for 1111 Comstock Data Center, Santa Clara, California (PLN2019-13941 and CEQ2020-01075), Clark and Associates, (Aug. 21, 2020) (hereafter "Dr. Clark Comments").

ATTACHMENT A.

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the City to remedy the deficiencies in the IS/MND by preparing a legally adequate environmental impact report (“EIR”) pursuant to CEQA.

I. STATEMENT OF INTEREST

Santa Clara Citizens is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes individuals and organizations, including California Unions for Reliable Energy (“CURE”) and its local affiliates, and the affiliates’ members and their families, who live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County.

Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. Its members help solve the State’s energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. CURE members have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Individual members live, work, recreate, and raise their families in Santa Clara. They would be directly affected by the Project’s environmental and health and safety impacts. Its members may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

Santa Clara Citizens supports the development of data centers where properly analyzed and carefully planned to minimize impacts on the environment. Any proposed project should avoid impacts to public health, energy resources, sensitive species and habitats, and should take all feasible steps to ensure significant impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can development truly be sustainable.

Santa Clara Citizens and its members are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits such as decent wages and benefits. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City and the surrounding region, and by making it less desirable for businesses to locate and people to live and recreate in the City, including in the vicinity of the Project. Continued degradation can, and has, caused

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construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities. Santa Clara Citizens' members therefore have a direct interest in enforcing environmental laws that minimize the adverse impacts of projects that would otherwise degrade the environment. CEQA provides a balancing process whereby economic benefits are weighted against significant impacts to the environment. It is for these purposes that we offer these comments.

II. LEGAL BACKGROUND

A. CEQA

CEQA is intended to provide the fullest possible protection to the environment. CEQA requires that a lead agency prepare and certify an EIR for any discretionary project that may have a significant adverse effect on the environment.⁵ In order to set an accurate foundation for the analysis, an EIR must include a description of the "existing physical conditions in the affected area."⁶ CEQA requires analysis of the "whole of an action," including the "direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."⁷ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment but also informed self-government."⁸

In addition, public agencies must adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts and describe those mitigation measures in the EIR.⁹ A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁰ "Feasible" means capable of successful accomplishment within a reasonable period of time, taking into account economic, environmental, legal, social, and technological

⁵ Pub. Resources Code §§ 21002.1(a), 21100(a), 21151(a); 14 C.C.R. §§ 15064(a)(1), (f)(1), 15367.

⁶ *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319–322; 14 C.C.R. § 15125.

⁷ Pub. Resources Code § 21065; 14 C.C.R. § 15378(a).

⁸ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal quotations omitted).

⁹ Pub. Resources Code §§ 21002, 21081(a), 21100(b)(3); 14 C.C.R. § 15126.4.

¹⁰ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.

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factors.¹¹ Mitigation measures must be enforceable through permit conditions, agreements, or other legally binding instruments.¹²

CEQA prohibits deferring identification of mitigation measures when there is uncertainty about the efficacy of those measures or when the deferral transfers authority for approving the measures to another entity.¹³ An agency may only defer identifying mitigation measures when practical considerations prevent formulation of mitigation measures at the usual time in the planning process, the agency commits to formulating mitigation measures in the future, and that commitment can be measured against specific performance criteria the ultimate mitigation measures must satisfy.¹⁴

B. An EIR is Required

The EIR is the very heart of CEQA.¹⁵ A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.¹⁶ “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”¹⁷ An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is

¹¹ 14 C.C.R. § 15364.

¹² *Id.* § 15126.4(a)(2).

¹³ *Id.* § 15126.4(a)(1)(B); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309.

¹⁴ *POET, LLC v. California Air Res. Bd.* (2013) 218 Cal.App.4th 681, 736, 739–740, *as modified on denial of reh’g* (Aug. 8, 2013), *review denied* (Nov. 20, 2013); see also *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (EIR deficient for failure to specify performance standards in plan for active habitat management of open space preserve); *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 (EIR’s deferral of acoustical report demonstrating structures designed to meet noise standards without setting the actual standards is inadequate for purposes of CEQA); *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1396 (negative declaration’s deferral of mitigation measure improper where the measure required applicant to comply with recommendations of a report that did not exist yet with no further guidance on what mitigation was necessary).

¹⁵ See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App.4th 903, 926–927; *Sundstrom v. County of Mendocino* (1974) 202 Cal.App.3d 296, 304.

¹⁶ Pub. Resources Code § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env’t Dev. v. City of Chula Vista (“CREED”)* (2011) 197 Cal.App.4th 327, 330–331; *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“*CBE v. SCAQMD*”).

¹⁷ Pub. Resources Code § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

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enough that the impacts are “not trivial.”¹⁸ Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”¹⁹

Whether a fair argument exists is a question of law that the court reviews de novo, with a preference for resolving doubts in favor of environmental review.²⁰ In reviewing a decision to prepare a negative declaration rather than an EIR, courts “do not defer to the agency’s determination.”²¹

The fair argument standard creates a “low threshold” for requiring preparation of an EIR and affords no deference to the agency’s determination.²² Where substantial evidence supporting a fair argument of significant impacts is presented, the lead agency must prepare an EIR “even though it may also be presented with other substantial evidence that the project will not have a significant effect.”²³ A reviewing court must require an EIR if the record contains any “substantial evidence” suggesting that a project “may have an adverse environmental effect”—even if contrary evidence exists to support the agency’s decision.²⁴

Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR.²⁵ In short, when “expert opinions clash, an EIR should be done.”²⁶ “It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.”²⁷ In the context of reviewing a mitigated negative declaration,

¹⁸ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 fn. 16.

¹⁹ Pub. Resources Code § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

²⁰ *CREED*, 197 Cal.App.4th at 331; *Pocket Protectors*, 124 Cal.App.4th at 927.

²¹ *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.

²² *Pocket Protectors*, 124 Cal.App.4th at 928.

²³ Pub. Resources Code § 21151(a); 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 927; *County Sanitation Dist. No. 2*, 127 Cal.App.4th at 1579 (“where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not appropriate.”) (quoting *Sierra Club*).

²⁴ *Mejia*, 130 Cal.App.4th at 332–333.

²⁵ *Pocket Protectors*, 124 Cal.App.4th at 935; *Sierra Club*, 6 Cal.App.4th at 1317–1318; CEQA Guidelines § 15064(f)(5).

²⁶ *Pocket Protectors*, 124 Cal.App.4th at 928; *Sierra Club*, 6 Cal.App.4th at 1317–1318.

²⁷ *Pocket Protectors*, 124 Cal.App.4th at 935.

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“neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.”²⁸ Where such substantial evidence is presented, “evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact.”²⁹

The fair argument test requires the preparation of an EIR whenever “there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.”³⁰ Such substantial evidence is present here and requires the preparers of this IS/MND to take a closer look at the environmental impacts of the Project in an EIR.

III. THE CITY FAILED TO PROVIDE THE DOCUMENTS REFERENCED IN THE IS/MND FOR THE ENTIRE COMMENT PERIOD

The City violated CEQA and improperly truncated the public comment period when it failed to make all documents referenced or relied on in the IS/MND available for public review during the entire public comment period.³¹ As a result, Santa Clara Citizens and other members of the public were unable to complete a meaningful review and analysis of the IS/MND and its supporting evidence. The City delayed providing the coalition access to responsive records, while denying the coalition’s request to extend the comment period. We therefore provide these initial comments on the IS/MND and reserve our right to submit supplemental comments at a future date.

CEQA and the CEQA Guidelines require that “all documents referenced” and “all documents incorporated by reference” in a negative declaration shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.³² The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be

²⁸ *Id.* at 935.

²⁹ *Sundstrom*, 202 Cal.App.3d at 310 (citation omitted).

³⁰ 14 C.C.R. § 15063(b)(1) (emphasis added).

³¹ See PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

³² Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

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remedied by permitting additional public comment.³³ It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.³⁴

On September 23, 2020, we submitted a request to the City for “immediate access to any and all documents referenced or incorporated by reference in the Initial Study/Mitigated Negative Declaration related to the 1111 Comstock Street Project” (Request No. 20-554).³⁵ On September 29, 2020, the City asked for clarification as to what records were sought, even though there was no ambiguity in such a basic request. In a follow-up letter to the City on October 1, 2020, we explained that our request included “all documents referenced and referred to throughout the MND and used to support conclusions reached in the MND, including any documents not made available in the Appendices.”³⁶

On October 5, the City stated that responsive documents would be provided by October 19, 2020—six days after the close of the comment period. The City then provided us with documents referenced in the IS/MND on October 9, four days before the public review and comment period ended. CURE and other members of the public have therefore been denied access to the relevant documents referenced and incorporated by reference in the MND during the entire public comment period in violation of CEQA.³⁷

IV. THE IS/MND FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

CEQA requires that an EIR “set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact.”³⁸

³³ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

³⁴ *Santiago Cty. Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

³⁵ Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to City of Santa Clara re Request for Immediate Access to Documents Referenced in the Mitigated Negative Declaration – 1111 Comstock Street Project by Prime Data Centers (PLN2019-13941; CEQ2020-01079) (September 23, 2020).

³⁶ Letter from ABJC to City of Santa Clara re FOLLOW-UP to Request for Immediate Access to Documents Referenced in Mitigated Negative Declaration – 1111 Comstock Street Project by Prime Data Centers (PLN2019-13941; CEQ2020-01079) (October 1, 2020).

³⁷ See *Ultramar*, 17 Cal.App.4th 689, 699.

³⁸ *San Joaquin Raptor Rescue Center v. County of Merced* 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

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Similarly, an IS/MND must present a complete and accurate description of the project under consideration.³⁹ “The scope of the environmental review conducted for the initial study must include the entire project. . . . [A] correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.”⁴⁰ A negative declaration is “inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency’s action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.”⁴¹

The IS/MND fails to provide a complete description of several of the Project’s components, including details of the demolition of the existing improvements on the site; specifications of the generators and other technology to be employed; and construction processes, schedules and details. Moreover, no description of critical processes that will take place throughout the Project’s lifetime—such as de-energizing of generators for maintenance and testing—is offered. In the absence of this crucial information, the public is precluded from meaningful review of the Project’s potential impacts.

V. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS

As noted above, under CEQA, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁴² The fair argument standard creates a “low threshold” favoring environmental review

³⁹ 14 C.C.R. § 15063(d)(1) (requiring an initial study to include a description of the project).

⁴⁰ *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267 (internal quotations and citations omitted).

⁴¹ *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (internal quotations and citations omitted).

⁴² Pub. Resources Code § 21082.2; CEQA Guidelines § 15064(f), (h); *Laurel Heights II*, *supra*, 6 Cal. 4th at p. 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical*, *supra*, 29 Cal.App.4th at pp. 1601-1602.

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through an EIR, rather than through issuance of a negative declaration.⁴³ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁴ Substantial evidence can be provided by technical experts or members of the public.⁴⁵ "If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect."⁴⁶

A. The IS/MND Fails to Adequately Disclose, Analyze and Mitigate the Project's Potentially Significant Air Quality Impacts

The IS/MND concludes that emissions from the Project will not have a significant impact on air quality.⁴⁷ Dr. Clark reviewed the IS/MND and provided substantial evidence that the City underestimated the Project's criteria pollutant emissions. Thus, substantial evidence demonstrates that the Project will have significant impacts beyond what is disclosed, analyzed and mitigated in the IS/MND.

1. The City Lacks Substantial Evidence that the Project's Backup Generators Will Run Only 50 Hours Each Year

The Project includes six 3,000-kW and one 500-kW backup diesel generators that the City assumed would run 50 hours per year, which is the Bay Area Air Quality Management District's ("BAAQMD") stationary source rule's maximum allowable run time.⁴⁸ The IS/MND notes that emergency situations, including

⁴³ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁴ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street, supra*, 106 Cal.App.3d at p. 1002 ("If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact").

⁴⁵ *See, e.g., Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); *see also Architectural Heritage Assn. v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

⁴⁶ CEQA Guidelines § 15062(f).

⁴⁷ IS/MND, p. 32.

⁴⁸ IS/MND, p. 34.

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power failures, as well as private utility work to restore services and protect property from damage, are exempt from the limits in BAAQMD's rules and that the City did not calculate or analyze emissions beyond the 50 hours.⁴⁹

The IS/MND also notes that data centers consume more energy than other land uses and require an uninterrupted power supply, thereby admitting that there will be significant emissions of criteria pollutants beyond what is modeled.⁵⁰ For example, public safety power shut offs are conducted by Pacific Gas & Electric, which are expected to cause power outages of 24 to 48 hours each.⁵¹ Nearby San Jose Clean Energy estimates that these outages may last several days a year, far beyond the 50 hours modeled in the IS/MND.⁵² The IS/MND must be withdrawn, and an EIR must be prepared that considers the emissions associated with running the backup diesel generators beyond 50 hours.

B. The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate the Project's Potentially Significant Public Health Impacts

The IS/MND concludes that the Project would not expose sensitive receptors to substantial pollutant concentrations.⁵³ This conclusion suffers from two errors: 1) the failure of the Air Quality and Greenhouse Gas Emissions Assessment (Appendix A) to include the most sensitive receptors in emissions modeling, and 2) the failure to model emissions beyond 50 hours of operation of the backup generators, noted above.⁵⁴

The IS/MND's Air Quality Assessment erroneously states that the "closest sensitive receptors to the proposed project site are existing residences about 3,315

⁴⁹ IS/MND, pp. 34; 105.

⁵⁰ See IS/MND, p. 6.

⁵¹ See Pacific Gas & Electric, Public Safety Power Shutoffs, available at https://www.pge.com/en_US/safety/emergency-preparedness/natural-disaster/wildfires/public-safety-power-shutoff-faq.page; Silicon Valley Power, PG&E's Public Safety Power Shutoffs, available at <https://www.siliconvalleypower.com/svp-and-community/safety/pg-e-s-public-safety-power-shutoff-program>.

⁵² See San Jose Clean Energy, PG&E Power Shutoffs, available at <https://sanjosecleanenergy.org/psps/>.

⁵³ IS/MND, p. 36.

⁵⁴ Dr. Clark Comments, p. 9.

feet north of the project site ...”⁵⁵ The Granada Islamic School is much closer—1,700 feet—to the Project site.

Potential health impacts from operation of the Project’s generators were evaluated using air quality dispersion modeling and applying BAAQMD recommended health impact calculation methods.⁵⁶ Though the IS/MND states that “[t]he maximum increased cancer risk at the closest sensitive receptor, Granada Islamic School, would be 0.02 in one million, and the maximum increased cancer risk at the closest residence would be 0.1 in one million,” it is unclear where those numbers came from. Nothing in the Assessment indicates whether the evaluations of health impacts were actually performed at the Granada Islamic School or at the residences further away. The Assessment’s initial erroneous assumption that the closest sensitive receptors were the residences more than 3,000 feet from the Project site does not appear to have been corrected during calculations of health risks, as Figure 2 in the Assessment does not include the Granada Islamic School in its display of sensitive receptors. As asserted by Dr. Clark, such an oversight would significantly alter the assumptions and conclusions of the IS/MND. The City must re-analyze the Project’s impacts in an EIR.

As required by CEQA, the City must prepare a site-specific baseline health risk assessment (“HRA”) that calculates the excess incremental lifetime risk for all of the nearby receptors. As Dr. Clark points out, “[t]he City’s emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation.”⁵⁷

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. It has been linked to a range of serious health problems, including an increase in respiratory disease, lung damage, cancer, and premature death.^{58,59} Dr. Clark

⁵⁵ IS/MND Appendix A, p. 5.

⁵⁶ IS/MND Appendix A, p. 15.

⁵⁷ Dr. Clark Comments, pp. 9–10.

⁵⁸ Dr. Clark Comments, p. 9.

⁵⁹ California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB4938-006acp>

asserts that, given the Project's proximity to sensitive receptors and the nature of the TACs emitted, an HRA, prepared in accordance with the Office of Environmental Health and Hazard Assessment and analyzing the Project's potentially significant public health impacts from TACs emitted from the diesel particulate matter, is essential.⁶⁰

C. The IS/MND Fails to Adequately Disclose, Analyze and Mitigate the Project's Potentially Significant Greenhouse Gas Impacts

The CEQA Guidelines require a lead agency to compare a project's GHG emissions against a threshold of significance that the agency determines applies to the Project, or to otherwise determine the extent to which the project complies with local regulations and requirements adopted to reduce GHG emissions, provided there is no evidence that GHG emissions would be cumulatively considerable.⁶¹ Here, the City chose to use a qualitative approach when considering GHG emissions. Rather than measure the Project's emissions against a numerical threshold, the IS/MND instead evaluated them based on whether they conflict with a plan, policy, or regulation adopted for the purpose of reducing GHG.⁶² Substantial evidence, however, supports a fair argument that the Project's emissions are significant.

1. Substantial Evidence Does Not Support the Conclusion that GHG Emissions Will Not Be Significant

Though BAAQMD provides clear thresholds to which emissions from both stationary and nonstationary sources can be compared,⁶³ the IS/MND fails to measure any of the Project's emissions against a numerical threshold, and fails, therefore, to demonstrate that Project impacts are less than significant.

%20identified%20DPM,and%20other%20adverse%20health%20effects; U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002; Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf, accessed July 5, 2020.

⁶⁰ Dr. Clark Comments, pp. 9–10.

⁶¹ CEQA Guidelines § 15064.4 subd. (b).

⁶² IS/MND, p. 66.

⁶³ BAAQMD identifies thresholds of significance for emissions from nonstationary operational sources as 1,100 MTCO₂e/yr or 4.6 MTCO₂e/service population/yr (in the absence of compliance with a qualified GHG reduction strategy). The Guidelines set the threshold for stationary operational sources at 10,000 MTCO₂e/yr. BAAQMD CEQA Guidelines (May 2017), p. 2-10.

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The IS/MND indicates that total Project emissions are calculated as 10,323 MTCO_{2e}/year. The BAAQMD CEQA Guidelines, meanwhile, provide the following thresholds of significance for operational-related GHG emissions for land use development projects: “Compliance with a qualified GHG Reduction Strategy; or annual emissions less than 1,100 MTCO_{2e}/yr; or 4.6 MTCO_{2e}/SP/yr (residents + employees).”⁶⁴

Even subtracting from the total emissions the 522 MTCO_{2e}/year attributed to generators (since stationary sources are subject to different thresholds than nonstationary sources), Project emissions are significant. As stated in BAAQMD’s CEQA Guidelines, “[i]f annual emissions of operational-related GHGs exceed [threshold] levels, the proposed project would result in a cumulatively considerable contribution of GHG emissions and a cumulatively significant impact to global climate change.”⁶⁵

2. Compliance with Plans and Policies Does Not Establish that the Project’s GHG Emissions Would Be Less Than Significant

The IS/MND concludes that the Project’s GHG emissions would not have a significant impact on the environment because the Project is consistent with the City of Santa Clara Climate Action Plan (“CAP”), as well as other plans, policies, and regulations adopted for the purpose of reducing GHG emissions.⁶⁶ Substantial evidence, however, supports a fair argument that the Project’s GHG emissions are significant notwithstanding their consistency with local, regional, and state plans.

As stated above, the Project’s total operational emissions amount to 10,323 MTCO_{2e} annually—significantly higher than the 1,100 MTCO_{2e}/year threshold established by BAAQMD. The IS/MND fails to describe how this might be abated through the Project’s compliance with GHG reduction strategies.

Furthermore, the IS/MND relies on obtaining the status of less-than-significant for the Project’s emissions from a plan that is set to expire before the Project is implemented. The City’s Climate Action Plan, adopted in 2013, contains projected emissions and measures designed to help the City meet statewide 2020

⁶⁴ BAAQMD CEQA Guidelines (May 2017), p. 2-4.

⁶⁵ *Id.*

⁶⁶ IS/MND, p. 70–71.

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goals established by AB 32.⁶⁷ As acknowledged in the IS/MND, “consistency with the CAP cannot be used to determine significance under CEQA.”⁶⁸

The IS/MND argues that because electricity—by far the biggest source of the Project’s emissions—is provided by Silicon Valley Power, “a utility on track to meet the 2030 GHG emissions reductions target established by SB 32,” the Project would generate lower emissions than the statewide average for an equivalent facility.⁶⁹ Additionally, because the Project would allegedly comply with several applicable City and state plans, including green building and energy efficiency measures, and policies adopted to reduce GHG emissions, the IS/MND concludes that “the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.”⁷⁰

The IS/MND fails, however, to establish that the Project’s consistency with these plans and programs will ensure that the Project’s contribution to global climate change is not significant. Despite compliance with these plans, Dr. Clark reiterates that calculations of the Project’s total emissions provided in the IS/MND nevertheless surpass BAAQMD’s thresholds, demonstrating that emissions would be significant. The City must prepare an EIR that analyzes and mitigates these significant GHG emissions.

V. CONCLUSION

CEQA requires that an EIR be prepared if there is substantial evidence that a project, either individually or cumulatively, may have a significant impact on the environment.⁷¹ As discussed above, there is substantial evidence supporting a fair argument that the Project would result in significant adverse impacts that were not identified or adequately analyzed in the IS/MND.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter. Only by complying with all

⁶⁷ *Id.* at 67.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Pub. Resources Code § 21151; 14 CCR §15063(b)(1).
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applicable laws will the City and the public be able to ensure that the Project's environmental impacts are mitigated to less than significant levels.

Sincerely,



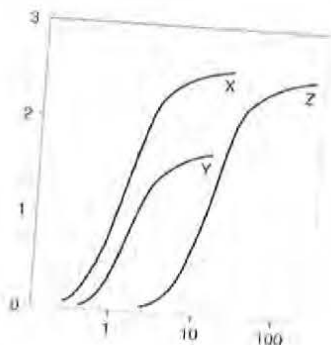
Kendra Hartmann
Tanya Gulesserian

Attachments

KDH:acp

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ATTACHMENT A



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October 12, 2020

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 100
South San Francisco, CA 94080

Attn: Ms. Kendra D. Hartmann

Subject: Comment Letter on Initial Study With Proposed Mitigated Negative Declaration (IS/MND) for 1111 Comstock Street Data Center, Santa Clara, California, PLN2019-13941 and CEQ2020-01079

Dear Ms. Hartmann:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the IS/MND for the above referenced project. The IS/MND was prepared by David J. Powers and Associates, Inc. for the City of Santa Clara Community Development Department.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the project record. If we do not comment on a specific item this does not constitute acceptance of the item.

General Comments:

The City's analysis of the air quality impacts of emissions from the construction and operational phases of the project are unsupported and flawed. The analysis in the IS/MND fails to quantify the total emissions in a meaningful manner in which yearly and daily emissions may be compared to relevant and appropriate standards, fails to address necessary mitigation measures to reduce significant impacts, and makes assertions about the impacts to the surrounding communities without a clear and reproducible methodology. Several mitigation measures outlined in the DEIR are merely aspirational and may not effectively reduce emissions from the project. These flaws are detailed below,

making the conclusions in the IS/MND unsupported. The City must update their analysis as an Environmental Impact Report (EIR) to correct the unsupported conclusions presented in the IS/MND.

Project Description

According to the IS/MND, the approximately 1.38-acre project site, located at 1111 Comstock Street (APN 224-08-092) in Santa Clara, is currently developed with a one-story, 23,765 square foot (sf) industrial building and a paved parking lot. The site is zoned as Light Industrial, and has a General Plan designation of Low Intensity Office/R&D. The project proposes to demolish the existing improvements on the site to construct a four-story, 121,170 sf data center building. The data center building would house computer servers for private clients in a secure and environmentally controlled structure and would be designed to provide 10 megawatts (MW) of information technology (IT) power. Mechanical equipment for building cooling would be located on the roof. Standby backup emergency electrical generators would be installed to provide for an uninterrupted power supply. Six 3,000-KW diesel-fueled engine generators and one 500-kW diesel-fueled engine generator would be located within a generator room on the first floor of the building. Fuel for the generators would be stored in two 30,000-gallon underground storage tanks which would feed individual 160-gallon daytanks located adjacent to each generator.

The data center building would be approximately 80 feet in height, with parapets extending to a height of 87.5 feet. A metal roof screen would extend to a height of 98 feet to shield mechanical equipment. The building would be located in the southern, central portion of the site and set back approximately 15 feet from the southern property line on Comstock Street, 45 feet from the northern property line, 50 feet from the western property line, and 25 feet from the eastern property line.

Access to the site would be provided by a primary driveway on Comstock Street. The primary driveway would be approximately 26 feet wide and would be located in the southwestern portion of the site in the same location as the existing driveway entrance. A secondary driveway entrance for emergency access would be constructed on Comstock Street in the southeastern portion of the site and would be approximately 22 feet wide. The emergency driveway would wrap around the perimeter of the building and would include a curb and handicap ramp. The project would provide approximately 24 parking spaces, including one accessible space and two clean air/vanpool/EV spaces, located along the western side of the building.

Generator Testing Schedule

The seven emergency backup generators would each be tested once per month for up to one hour. Tests would be conducted with no load for 11 months out of the year, and at with full load one month out of the year.

Existing Project Site

The existing improvements on the site would be demolished to allow for construction of the project. Demolition and construction activities would last approximately 12 months. Excavation for utilities would extend to depths of up to eight feet. Roughly 860 cubic yards of soil would be removed from the site as a result of excavation activities. Augered foundation piles would extend to a depth of 80 feet. The site would be graded to direct stormwater flows towards the biotreatment area located along the western boundary of the site.

The project proposes to remove approximately 24 existing trees on-site and plant five replacement trees. New landscaping consisting of trees, shrubs, sedge, perennials, bulbs, annuals and groundcover would be installed in the northeastern, northwestern, and southwestern corners of the site, as well as the southern perimeter of the site, and the western side of the proposed building.

The project proposes to construct a stormwater treatment area between the west side of the building and the parking lot. The existing storm drain line on the site would be removed and a new 12-inch storm drain line would connect the treatment area to the existing storm drain line in Comstock Street. Pedestrian walkways would be composed of permeable pavers. The site would have a total of approximately 28,337 sf of pervious surface, which would be an increase compared to existing condition.

Specific Comments:

1. The IS/MND Fails To Model The Diesel Particulate Matter (DPM) Concentration At the Closest Sensitive Receptor To The Site

According to the IS/MND the project will be a source of air pollutant emissions during construction and operation, with the main source being backup generator testing and maintenance. The diesel-fueled generators emit diesel particulate matter (DPM), which is a known toxic air contaminant

(TAC). The generators are also a source of PM_{2.5}, which is also known to induce adverse health effects.

Based on the assumption that each of the six 3000-kW generators and one 500-kW generator would operate up to 50 hours a year during testing and maintenance, the City calculated that approximately 49 lbs of DPM per year would be emitted. Dispersion modeling in the IS/MND attempts to define the concentration of DPM to which sensitive receptors would be exposed over time.

The IS/MND defines Sensitive Receptors as persons who are most likely to be affected by air pollution: infants, children under 18, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, churches and places of assembly, and parks. According to the IS/MND the closest sensitive receptors to the proposed project site are the Granada Islamic School, located about 1,700 feet (approximately 536 meters) northwest of the project site; existing residences about 3,315 feet north of the project site; and additional residences about 4,330 and 4,590 feet south of the project site.¹ The maximum average annual off-site DPM concentrations were used to calculate potential increased cancer risks from the project. Average annual DPM concentrations were used as being representative of long-term (30-year) exposures for calculation of cancer risks.²

According to the Proponent, the maximum modeled annual DPM and PM_{2.5} concentration from operation of the generators at the data center was 0.0001 µg/m³ at several residential receptors north of the project site on Lafayette Street. Concentrations at all other existing residential locations would be lower than the maximum concentration.³

¹ Powers. 2020. *Initial Study 1111 Comstock Data Center*. Prepared by David J. Powers and Associates, Inc. for the City of Santa Clara Community Development Department. Page 36

² Powers. 2020. *Initial Study 1111 Comstock Data Center*. Prepared by David J. Powers and Associates, Inc. for the City of Santa Clara Community Development Department. Page 36

³ Powers. 2020. *Initial Study 1111 Comstock Data Center*. Prepared by David J. Powers and Associates, Inc. for the City of Santa Clara Community Development Department. Page 37

Based on the maximum modeled DPM concentrations that assume operation for 50 hours per year per generator, maximum increased cancer risks and non-cancer health impacts were calculated using BAAQMD recommended methods. The maximum increased cancer risk at the closest sensitive receptor, Granada Islamic School, would be 0.02 in one million, and the maximum increased cancer risk at the closest residence would be 0.1 in one million.⁴ These conclusions are not supported by the data presented within the report.

A review of Appendix A to the IS/MND, the Air Quality and GHG Emissions Assessment prepared by the Illingworth and Rodkin, Inc., shows that the closest sensitive receptor (Granada Islamic School) and all of the closest worker receptors are not included in the AERMOD model of the emissions from the site. The report within Appendix A is originally dated November 11, 2019 and was updated May 19, 2020. On pages 6 and 15 of the Illingworth and Rodkin report, it states that the closest sensitive receptors to the proposed project site and additional residences are about 4,330 and 4,590 feet south of the project site. DPM and PM_{2.5} concentrations were calculated at the locations of existing residences in the project area. The report does not indicate if any other receptors are included in the analysis. Figure 2 of Appendix A clearly indicates the nearest sensitive receptors identified by the proponent. What the figure does not identify is the location of the Granada Islamic School.

⁴ Powers. 2020. *Initial Study 1111 Comstock Data Center*. Prepared by David J. Powers and Associates, Inc. for the City of Santa Clara Community Development Department. Page 37

Figure 2— Project Site, Influence Area (red circle) and Nearest Sensitive Receptors (yellow +) and Location of Maximum TAC Impact and PM2.5 Concentration

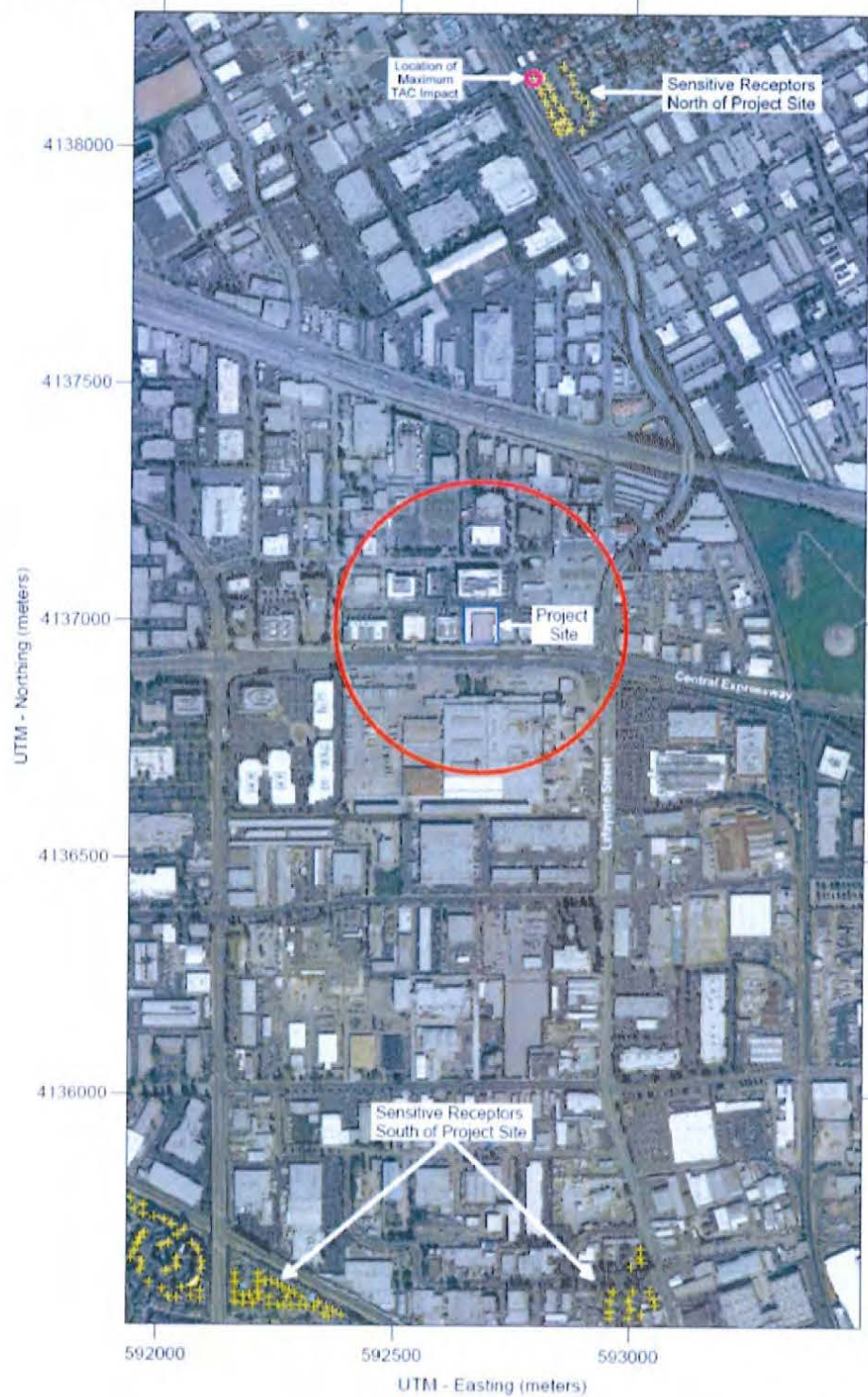


Figure 2– Project Site, Influence Area (red circle) and Nearest Sensitive Receptors (yellow +) and Location of Maximum TAC Impact and PM2.5 Concentration



The figure above clearly indicates the location of the Granada Islamic School, which is much closer than the residences indicated by the yellow crosses on the figures above. This oversight significantly alters the assumptions and conclusions contained within the IS/MND. The City must re-analyze the project impacts and present them in an EIR for the site.

2. The IS/MND's Analysis of Risk Fails to Meet Its Obligation to Calculate the Risk from Emissions to the Maximum Exposed Individual (MEI).

According to the BAAQMD CEQA Guidelines,⁵ emissions from a new source or emissions affecting a new receptor would be considered significant where ground-level concentrations of carcinogenic TACs from any source result in an increased cancer risk greater than 10.0 in one million, assuming a 70-year lifetime exposure. The Maximum Exposed Individual (MEI) is normally defined as an individual who is present at the point of maximum impact (PMI) as outlined in the Office of Environmental Health and Hazard Assessment's (OEHHA's) Air Toxic Hot Spots Program Risk Assessment Guidelines⁶ (Toxic Hot Spots). Under Section 4.7.1 of the OEHHA Guidance, the modeling analysis should contain a network of receptor points with sufficient detail (in number and density) to permit the estimation of the maximum concentrations. Locations that must be identified include:

- The maximum estimated off-site impact or point of maximum impact (PMI),
- The maximum exposed individual at an existing residential receptor (MEIR),
- The maximum exposed individual at an existing occupational worker receptor (MEIW).

The modeling performed for the IS/MND fails to identify the PMI and the MEIW. This oversight significantly alters the assumptions and conclusions contained within the IS/MND. The City must re-analyze the project impacts and present them in an EIR for the site.

⁵ BAAQMD. 2017. California Environmental Quality Act Air Quality Guidelines. Bay Area Air Quality Management District (BAAQMD). May 2017. Page D-40

⁶ OEHHA. 2015. Air Toxic Hot Spots Program Risk Assessment Guidelines. Guidance Manual For Preparation of Health Risk Assessments at pdf page 99.

3. The Proposed Emission Controls Assumes that Testing and Maintenance Operations Can Be Performed in Approximately One-Fourth of the Normally Required Time

Emissions from combustion engines for stationary uses, including diesel generators, are generally regulated by the U.S. Environmental Protection Agency (U.S. EPA) and the California Air Resources Board (CARB). Engine emission standards are promulgated in a tiered system that designates maximum pollutant emissions. Unlike Off-Road Diesel-Powered Engines for Mobile Sources (currently utilizing Tier 4 Interim and Final technology which reduce PM_{2.5} emissions by 90% and more) all new generators have U.S. EPA Tier II rating and need to be outfitted with diesel particulate filters. Diesel-powered generator engines should be fueled using ultra-low sulfur diesel fuel with a maximum sulfur content of 15 parts per million (ppm). According to the City, all generator engines would be equipped with California Air Resources Board (CARB) Level 3 verified diesel particulate filters (DPFs) with a minimum control efficiency of 85 percent removal of particulate matter.

In the absence of stricter emission control devices, the City is proposing to reduce the number of hours of potential operation for testing and maintenance on an annual basis. Rather than assuming testing would occur for up to 50 hours per year for each generator, the City is assuming that the same types of maintenance and testing that needs to be performed to ensure the operations of the generators can be accomplished in 24% of the time generally assumed to be required (12 hours instead of 50 hours). Given the complexity of the equipment, reducing the maintenance and testing period by 76% seems like an illogical and unsustainable mitigation measure. The proponents must evaluate the emissions again considering the required maintenance period and include all of the maintenance for the whole campus in this evaluation.

4. The City Must Prepare A Site-Specific Baseline Health Risk Assessment Using Methods from the Office of Environmental Health and Hazard Assessment to Analyze Diesel Particulate Matter Emissions

The City has failed in its obligation to perform a site-specific health risk assessment (HRA) for the project that calculates the excess incremental lifetime risk for all of the nearby receptors, as required by CEQA. The City's emissions estimates for criteria pollutants do not substitute for a health risk

analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation. Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.^{7,8,9} Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.¹⁰ Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.¹¹ DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM_{2.5} and PM₁₀.¹²

⁷ California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM.and%20other%20adverse%20health%20effects>.

⁸ U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

⁹ Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf, accessed July 5, 2020.

¹⁰ California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

¹¹ Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

¹² Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

The IS/MND fails to include a site-specific analysis of the Project's construction or operational health risk posed by DPM emissions. Given the proximity of sensitive receptors to the site and the nature of the TACs emitted, a health risk assessment, prepared in accordance with OEHHA guidance for the baseline, construction, and future years of the project, is essential.

5. The IS/MND's Greenhouse Gas Emissions Analysis Is Unsupportable and Flawed

In its analysis of the Project's greenhouse gas (GHG) emissions the City ignores the 1,100 MT CO_{2e}-per-year threshold contained in BAAQMD's CEQA Air Quality Analysis; the IS/MND indicates, however, that operational emissions from area sources, water, solid waste and energy demand total 10,323 MT CO_{2e} per year— higher than the 10,000 MT CO_{2e} per year threshold for new stationary sources. The cumulative estimate of 10,323 MT CO_{2e} per year makes the project a significant emitter of GHGs based on BAAQMD's guidance. Since the City's Climate Action Plan (CAP) does not have quantitative thresholds for GHG emissions, the BAAQMD's threshold will remain in effect. The City must revise its analysis and present a correct assessment of total GHG emissions from the project as significant. The results should be presented in an EIR along with mitigation measures to correct the impacts.

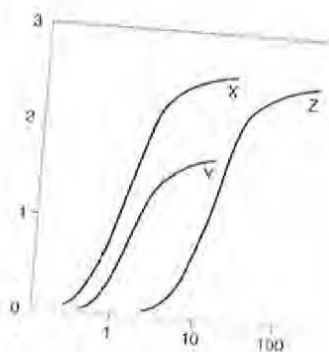
Conclusion

The facts identified and referenced in this comment letter lead me to conclude that the Project could result in significant unmitigated impacts if the air quality analysis is not corrected and the conditions of approval are not binding.

Sincerely,



JAMES J. J. CLARK, Ph.D.



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James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

Professional Experience:

Dr. Clark is a well-recognized toxicologist, air modeler, and health scientist. He has 30 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling, RESRAD, GENII); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

LITIGATION SUPPORT

Case: Pamela Butler Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01701 United States District Court Eastern District of Missouri Eastern Division

Case: Kenneth Edward Koterba Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01702 United States District Court Eastern District of Missouri Eastern Division

Case: Anthony Hines Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01703 United States District Court Eastern District of Missouri Eastern Division

Case: Emery David Walick, III Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01704 United States District Court Eastern District of Missouri Eastern Division

Client: Humphrey, Farrington & McClain, P.C., Independence, Missouri

Dr. Clark performed a historical dose reconstruction for community members exposed to radioactive waste released into the environment from the St. Louis Air Port Site (SLAPS) and the Hazelwood Interim Storage Site (HISS). The releases resulted in impacts to soils, sediments, surface waters, and groundwater in the vicinity of the SLAPS and HISS sites. The analysis was performed in general accordance with the methods outlined by the Agency for Toxic Substances Control (ATSDR) for assessing radiation doses from historical source areas in North St. Louis County, Missouri.

Case Result: Trial Pending

Case: Don Strong, et al. vs. Republic Services, Inc., Bridgeton Landfill, LLC, vs. Cotter Corporation, N.S.L., Case No.: 17SL-CC01632-01 Circuit Court of St. Louis County, State of Missouri, Division 17

Client: Humphrey, Farrington & McClain, P.C., Independence, Missouri

Dr. Clark performed a historical dose reconstruction for community members from radiologically impacted material (RIM) releases from the adjacent West Lake Landfill. The analysis was performed in general accordance with the methods outlined by the Agency for Toxic Substances Control (ATSDR) for assessing radiation doses from historical source areas in North St. Louis County, Missouri.

Case Result: Settlement in favor of plaintiff.

Case: Arnold Goldstein, Hohn Covas, Gisela Janette La Bella, et al. vs. Exxon Mobil Corporation, PBF Energy Inc., Torrance Refining Company LLC, et al., Case No.: 2:17-cv-02477DSF United States District Court for the Central District of California

Client: Sher Edlging, LLP, San Francisco, California and Matern Law Group , PC., El Segundo, California

Dr. Clark performed a historical dose reconstruction for community members from an active 700 acre petroleum refinery in Los Angeles. The analysis included a multi-year dispersion model was performed in general accordance with the methods outlined by the U.S. EPA and the SCAQMD for assessing the health impacts in Torrance, California. The results of the analysis are being used as the basis for injunctive relief for the communities surrounding the refinery.

Case Result: Trial Pending

Case: Scott D. McClurg, et al. v. Mallinckrodt Inc. and Cotter Corporation.

Lead Case No.: 4:12CV00361 AGF United States District Court Eastern District of Missouri Eastern Division

Client: Environmental Law Group, Birmingham, AL.

Dr. Clark performed a historical dose reconstruction for community members and workers exposed to radioactive waste released into the environment from the St. Louis Air Port Site (SLAPS) and the Hazelwood Interim Storage Site (HISS). The releases resulted in impacts to soils, sediments, surface waters, and groundwater in the vicinity of the SLAPS and HISS sites. The analysis included the incorporation of air dispersion modeling across the community to determine ground-level air concentrations and deposition of thorium and uranium isotopes and their respective daughter products. The dose reconstruction considered all relevant pathways to determine total doses of radiation received across the community from 1946 through 2017.

Case Result: Settlement in favor of plaintiff.

Case: Mary Ann Piccolo V. Headwaters Incorporated, et al. Seventh Judicial Court In and For Carbon County, State of Utah. Case No. 130700053

Client: Law Offices of Roy L. Mason. Annapolis, MD

Dr. Clark performed a dose assessment of an individual occupationally exposed to metals and silica from fly ash who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding his exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

**Case: Tracey Coleman V. Headwaters Incorporated, et al. Seventh Judicial Court
In and For Carbon County, State of Utah. Case No. 140902847**

Client: Law Offices of Roy L. Mason. Annapolis, MD

Dr. Clark performed a dose assessment of an individual occupationally exposed to metals and silica from fly ash who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding his exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

**Case: David Dominguez and Amanda Dominguez V. Cytec Industries, Inc et al.
Superior Court of the State Of California for the County Of Los Angeles – Central
Civil West. Civil Action. BC533123**

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to hexavalent chromium who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding her exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client(s) – Multiple

Indoor Air Evaluations, California: Performed multiple indoor air screening evaluations and risk characterizations consistent with California Environmental Protection Agency's (Cal/EPA) Department of Toxic Substances Control (DTSC) and Regional Water Quality Control Board (RWQCB) methodologies. Characterizations included the use of DTSC's modified Johnson & Ettinger Model and USEPA models, as well as the attenuation factor model currently advocated by Cal/EPA's Office of Environmental Health and Hazard Assessment (OEHHA).

Client – Confidential

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model were used to estimate acute and chronic exposure concentrations to multiple contaminants and were be incorporated into a comprehensive risk evaluation.

Client – Confidential

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark managed the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Imminent and Substantial Endangerment Order. Dr. Clark assisted the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

Client – Confidential, Los Angeles, California

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

Client: Covanta Energy, Westwood, California

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

Client: Kaiser Venture Incorporated, Fontana, California

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Kaiser Ventures Incorporated, Fontana, California

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

Kaiser Ventures Incorporated, Fontana, California

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

Unocal Corporation - Los Angeles, California

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

Client: Confidential, Los Angeles, California

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

Client: Confidential, San Francisco, California

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

Client: Confidential, San Francisco, California

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

IT Corporation, North Carolina

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

Professional Associations

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

International Society of Environmental Forensics (ISEF)

Society of Environmental Toxicology and Chemistry (SETAC)

Publications and Presentations:

Books and Book Chapters

Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

Clark, J.J.J. 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.

Clark, J.J.J. 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.

Clark, J.J.J. 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
- Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
- Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

- Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.
- Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.
- Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.
- Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.
- Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. *Toxicologist*. 30(1):14.
- Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. *Toxicologist*. 30(1):117-118.
- Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratropium Bromide in COPD Patients Exposed to Ozone. *American Review of Respiratory Disease*. 145(4):A96.
- Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. *American Review of Respiratory Disease*. 145(4):A88.
- McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. *American Review of Respiratory Disease*. 143(4):A91.
- Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute

Ozone Exposures in Residents of Los Angeles County. American Review of Respiratory Disease. 141(4):A70.

Tierney, D.F. and **J.J.J. Clark.** (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.

EXHIBIT C



Planning and Inspection Department

Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050
Ph: (408) 615-2450

Appeal Form

Instructions

Use this form to appeal a decision of the Architectural Review Committee or Planning Commission. **All appeals must be filed in the Planning Division within seven calendar days of the action being appealed.**

Appeals from the Architectural Review Committee are made to the Planning Commission and will be set for hearing on the next available Planning Commission agenda. Appeals from the Planning Commission are made to the City Council and will be placed on the subsequent City Council Agenda to set a hearing date. Please contact the Planning Division at the number listed above with any inquiries about the process.

Please print, complete, and sign this form before mailing or delivering to the City, along with the fee payment, and supporting documentation, letters, etc. (if any).

Appeal Fees

Appeal Fees are set by the Municipal Code of the City of Santa Clara and are subject to annual review. Please call the Planning Division for the current Appeal Fee. **Fee payment must be received by the City of Santa Clara before this form submittal can be certified as complete.**

Appeal fees may be paid by cash, check, or with VISA, MasterCard, or American Express, at the Permit Center at City Hall. Alternatively, checks or money orders made payable to City of Santa Clara can be mailed or delivered to Planning Division, City Hall, 1500 Warburton Avenue, Santa Clara, California 95050.

Appellant Declaration

Name: Adams, Broadwell, Joseph & Cardozo
Street Address: 601 Gateway Blvd. Ste. 1000
City, State, Zip Code: South San Francisco, CA 94080
Phone number: (650) 589-1660
E-mail address: khartmann@adamsbroadwell.com

In accordance with the provisions of the Municipal Code of the City of Santa Clara, I hereby appeal the following action of the:

☒ Architectural Review Committee ☐ Planning Commission

at it's meeting of November 4, 2020
(date)

Agenda Item No.: 20-1088
File No.(s): PLN2019-13941 / CEQ2020-01079
Address:/APN(s): 224-08-092

Appellant Statement

(If more space is required, attach a separate sheet of paper.)

Action being appealed:

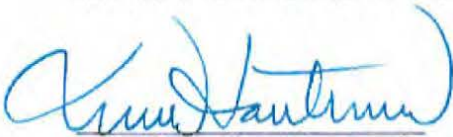
Please see attached letter.

Reason for Appeal:

Please see attached.

Certification of Authenticity

Beware, you are subject to prosecution if you unlawfully submit this form. Under penalty of law, transmission of this form to the City of Santa Clara is your certification that you are authorized to submit it and that the information presented is authentic.



Signature of Appellant

11/11/2020

Date

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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KYLE C. JONES
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NIRIT LOTAN
WILLIAM C. MUMBY

MARC D. JOSEPH
Of Counsel

Not admitted in California
Licensed in Colorado

November 12, 2020

By Hand-Delivery

Mayor Gillmor and City Council Members
Santa Clara City Council
City Hall
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

**Re: Appeal of the Mitigated Negative Declaration for 1111 Comstock
Data Center Project (PLN2019-13941; CEQ2020-01079)**

Dear City Council:

We are writing on behalf of Santa Clara Citizens for Sensible Industry ("Santa Clara Citizens") to appeal the November 4, 2020 decision of the City of Santa Clara Development Review Officer ("City") at a Development Review Hearing to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (collectively with the Initial Study, "IS/MND") for the 1111 Comstock Data Center Project ("Project") and approve the Architectural Review for the Project and Minor Modification to increase the building height to 87 feet and reduce the parking space requirements for the Project (collectively, "Permits").

The Project, proposed by Prime Data Centers ("Applicant"), proposes to demolish an existing 23,765-square-foot industrial building and construct a four-story, 121,170-square-foot data center building on the 1.38-acre Project site (APN 224-08-092). The data center building would house computer servers designed to provide 10 megawatts ("MW") of information technology power; backup generators; underground fuel storage containers; and mechanical cooling equipment on the building's roof. The site, zoned as Light Industrial with a General Plan designation of Low Intensity Office/R&D, is located north of Comstock Street, east of Kenneth

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Street, south of Bayshore Freeway, and west of Lafayette Street within the City of Santa Clara.

On October 13, 2020, we submitted comments on the IS/MND prepared for the Project ("Comment Letter"). Our comments were prepared with the assistance of technical expert James J.J. Clark, Ph.D. of Clark & Associates Environmental Consulting, Inc. As detailed therein, we identified potentially significant and unmitigated impacts due to emissions from the Project's backup diesel generators, as well as significant impacts to air quality, public health, and greenhouse gas ("GHG") emissions from the Project. Our Comment Letter also showed that the IS/MND fails as a matter of law to address energy impacts as required under CEQA. Based on these potentially significant and unmitigated impacts, as well as other deficiencies in the Initial Study, our comments concluded that the MND in its current form and substance violates CEQA and that substantial evidence supports a fair argument that an environmental impact report ("EIR") is required for the Project.

At the November 4, 2020 public hearing, the MND was adopted and the Permits were approved. We request that the City Council uphold this appeal and reverse the decision of the Director to adopt the IS/MND and approve the Permits.

I. STATEMENT OF INTEREST

Santa Clara Citizens is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes individuals and organizations, including California Unions for Reliable Energy ("CURE") and its local affiliates, and the affiliates' members and their families, who live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County.

Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. Its members help solve the State's energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. CURE members have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Individual members live, work, recreate, and raise their families in Santa Clara. They would be directly affected by the Project's environmental and health and safety impacts. Its members

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may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

Santa Clara Citizens supports the development of data centers where properly analyzed and carefully planned to minimize impacts on the environment. Any proposed project should avoid impacts to public health, energy resources, sensitive species and habitats, and should take all feasible steps to ensure significant impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can development truly be sustainable.

Santa Clara Citizens and its members are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits such as decent wages and benefits. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City and the surrounding region, and by making it less desirable for businesses to locate and people to live and recreate in the City, including in the vicinity of the Project. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities. Santa Clara Citizens' members therefore have a direct interest in enforcing environmental laws that minimize the adverse impacts of projects that would otherwise degrade the environment. CEQA provides a balancing process whereby economic benefits are weighted against significant impacts to the environment. It is for these purposes that we submit this appeal.

II. BASIS FOR THE APPEAL

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. The "fair argument" standard reflects this presumption. The fair argument standard is an exceptionally low threshold favoring environmental review in an EIR rather than a negative declaration.¹ This standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.² As a matter of law, substantial evidence includes both expert and lay opinion based on fact.³

¹ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

² 14 C.C.R. § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931.

³ PRC § 21080(e)(1) (For purposes of CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."); 14 C.C.R. § 15064(f)(5).
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As we have shown in our Comment Letter, there is substantial evidence that the project may cause significant environmental effects requiring the City to prepare an EIR. The City's Response to Comments ("Response") failed to rebut this presumption, and instead attempted to dismiss our comments by stating that the City provides substantial evidence to support its conclusions. However, even if other substantial evidence supports a different conclusion, the City nevertheless must prepare an EIR under CEQA.⁴

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.⁵ "[S]ignificant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."⁶ An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial."⁷ Substantial evidence, for purposes of the fair argument standard, includes "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."⁸

Whether a fair argument exists is a question of law that the court reviews de novo, with a preference for resolving doubts in favor of environmental review.⁹ In reviewing a decision to prepare a negative declaration rather than an EIR, courts "do not defer to the agency's determination."¹⁰

The fair argument standard creates a "low threshold" for requiring preparation of an EIR and affords no deference to the agency's determination.¹¹ Where substantial evidence supporting a fair argument of significant impacts is presented, the lead agency must prepare an EIR "even though it may also be

⁴ *Arvin Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

⁵ Pub. Resources Code § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env't'l Dev. v. City of Chula Vista* ("CREED") (2011) 197 Cal.App.4th 327, 330-331; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 ("CBE v. SCAQMD").

⁶ Pub. Resources Code § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

⁷ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 fn. 16.

⁸ Pub. Resources Code § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

⁹ *CREED*, 197 Cal.App.4th at 331; *Pocket Protectors*, 124 Cal.App.4th at 927.

¹⁰ *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.

¹¹ *Pocket Protectors*, 124 Cal.App.4th at 928.

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presented with other substantial evidence that the project will not have a significant effect.”¹² A reviewing court must require an EIR if the record contains any “substantial evidence” suggesting that a project “may have an adverse environmental effect”—even if contrary evidence exists to support the agency’s decision.¹³

Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR.¹⁴ In short, when “expert opinions clash, an EIR should be done.”¹⁵ “It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.”¹⁶ In the context of reviewing a mitigated negative declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.”¹⁷ Where such substantial evidence is presented, “evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact.”¹⁸

The fair argument test requires the preparation of an EIR whenever “there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.”¹⁹ Such substantial evidence is present here. The City Council should uphold this appeal and reverse the decision to approve Permits and adopt the IS/MND, and require the City to take a closer look at the Project’s potentially significant environmental impacts in an EIR.

¹² Pub. Resources Code § 21151(a); 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 927; *County Sanitation Dist. No. 2*, 127 Cal.App.4th at 1579 (“where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not appropriate.”) (quoting *Sierra Club*).

¹³ *Mejia*, 130 Cal.App.4th at 332–333.

¹⁴ *Pocket Protectors*, 124 Cal.App.4th at 935; *Sierra Club*, 6 Cal.App.4th at 1317–1318; CEQA Guidelines § 15064(f)(5).

¹⁵ *Pocket Protectors*, 124 Cal.App.4th at 928; *Sierra Club*, 6 Cal.App.4th at 1317–1318.

¹⁶ *Pocket Protectors*, 124 Cal.App.4th at 935.

¹⁷ *Id.* at 935.

¹⁸ *Sundstrom*, 202 Cal.App.3d at 310 (citation omitted).

¹⁹ 14 C.C.R. § 15063(b)(1) (emphasis added).

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a. The City Failed to Provide the Documents Referenced in the MND to the Public for the Entire Comment Period, as Required by CEQA

The City violated CEQA and improperly truncated the public comment period when it failed to make all documents referenced or relied on in the IS/MND available for public review during the entire public comment period.²⁰ As a result, Santa Clara Citizens and other members of the public were unable to complete a meaningful review and analysis of the IS/MND and its supporting evidence.

In its response to our Comment Letter, the City asserted that the CEQA Guidelines no longer require an agency to provide documents referenced in a negative declaration or mitigated negative declaration, but that the CEQA Guidelines only require that documents “incorporated by reference” be made available.²¹ This is an incomplete and inaccurate reading of the law. Though Section 15072 of the CEQA Guidelines was indeed amended to include documents “incorporated by reference” in its description of the required contents of a notice of intent to adopt a negative declaration, Section 21092 of the Act continues to require that notice of preparation of a CEQA document include “the address where copies of the draft environmental impact report or negative declaration, and *all documents referenced* in the draft environmental impact report or negative declaration, are available for review.”²²

The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.²³ It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.²⁴

²⁰ See Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4).

²¹ Response A.2, pg. 6; 14 C.C.R. § 15072(g)(4).

²² Pub. Resources Code § 21092(b)(1).

²³ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

²⁴ *Santiago Cty. Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

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b. The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate the Project's Potentially Significant Public Health Impacts

The IS/MND concludes that the Project would not expose sensitive receptors to substantial pollutant concentrations.²⁵ As indicated in our Comment Letter, the IS/MND's Air Quality Assessment erroneously states that the "closest sensitive receptors to the proposed project site are existing residences about 3,315 feet north of the project site,"²⁶ while the Granada Islamic School is much closer—1,700 feet—to the Project site. The City responded that "[t]he IS states on pages 30 and 36 that the Granada Islamic School is the closest sensitive receptor to the project site, and so this comment is incorrect."²⁷ The comment's factual basis is clearly not incorrect (as evidenced by the statements on Page 10 of the Air Quality Assessment), but more importantly, the City appears to have missed the purpose of the comment: to point out that the Assessment does not include calculations of health impacts at the closest sensitive receptor.

Potential health impacts from operation of the Project's generators were evaluated using air quality dispersion modeling and applying BAAQMD recommended health impact calculation methods.²⁸ Though the IS/MND states that "[t]he maximum increased cancer risk at the closest sensitive receptor, Granada Islamic School, would be 0.02 in one million, and the maximum increased cancer risk at the closest residence would be 0.1 in one million," it is unclear where those numbers came from. Nothing in the Assessment indicates whether the evaluations of health impacts were actually performed at the Granada Islamic School or at the residences further away. The Assessment's initial erroneous assumption that the closest sensitive receptors were the residences more than 3,000 feet from the Project site does not appear to have been corrected during calculations of health risks, as Figure 2 in the Assessment does not include the Granada Islamic School in its display of sensitive receptors. As explained by Dr. Clark, such an oversight would significantly alter the assumptions and conclusions of the IS/MND. The City must re-analyze the Project's potentially significant impacts in an EIR.

²⁵ IS/MND, p. 36.

²⁶ IS/MND Appendix A, p. 5.

²⁷ Response A.5, p. 10.

²⁸ IS/MND Appendix A, p. 15.

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As required by CEQA, the City must prepare a site-specific baseline health risk assessment (“HRA”) that calculates the excess incremental lifetime risk for all of the nearby receptors. Though the City responded that the IS/MND included an HRA, the assessment,²⁹ as pointed out in our Comment Letter, does not include calculations for all of the nearby receptors. As Dr. Clark points out in his comments, “[t]he City’s emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation.”³⁰

c. Compliance with Plans and Policies Does Not Establish that the Project’s GHG Emissions Would Be Less Than Significant

As stated in our Comment Letter, the IS/MND relies on obtaining the status of less-than-significant for the Project’s emissions from a plan that is set to expire before the Project is implemented. The City’s Climate Action Plan, adopted in 2013, contains projected emissions and measures designed to help the City meet statewide 2020 goals established by AB 32.³¹ As acknowledged in the IS/MND, “consistency with the CAP cannot be used to determine significance under CEQA.”³² The City responded that because the Project would receive electricity from a utility on track to meet the SB 32 2030 GHG emission reduction target and would be consistent with applicable plans and policies adopted to reduce GHG emissions, “the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.”³³

This argument, however, ignores the clear mandate of CEQA and case law that an agency may only rely on a qualified GHG reduction plan that follows specific rules and guidelines set forth in Section 15183.5 of the CEQA Guidelines.³⁴ A CAP that is no longer valid to be used as a qualified GHG reduction plan clearly does not satisfy this requirement.

²⁹ Response A.7, p. 11.

³⁰ Dr. Clark Comments, pp. 9–10.

³¹ *Id.* at 67.

³² *Id.*

³³ Response A.10, p. 14.

³⁴ 14 C.C.R. § 15183.5; see *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204.

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The IS/MND argues that because electricity—by far the biggest source of the Project's emissions—is provided by Silicon Valley Power, “a utility on track to meet the 2030 GHG emissions reductions target established by SB 32,” the Project would generate lower emissions than the statewide average for an equivalent facility.³⁵ The IS/MND fails, however, to establish that the Project's consistency with these plans and programs will ensure that the Project's contribution to global climate change is not significant. Case law demonstrates that limiting discussion to a project's consistency with statewide goals is not sufficient by itself, and that substantial discussion of the applicability of the statewide goals to the specific project is required.³⁶

Furthermore, substantial evidence supports a fair argument that the Project's GHG emissions are significant notwithstanding their consistency with local, regional, and state plans. As stated above, the Project's total operational emissions amount of 10,323 MTCO₂e annually is significantly higher than the 1,100 MTCO₂e/year threshold established by BAAQMD. Though the City's Response points out that BAAQMD's CEQA guidelines no longer require the use of this threshold,³⁷ the huge disparity between the Project's operational emissions and a threshold that until very recently was required to avoid significant impacts cannot be ignored. The IS/MND fails to describe how these operational emissions might be abated through the Project's compliance with GHG reduction strategies.

III. THE DIRECTOR LACKS SUBSTANTIAL EVIDENCE TO MAKE THE FINDINGS REQUIRED TO GRANT ARCHITECTURAL APPROVAL UNDER THE SANTA CLARA CITY CODE

Santa Clara City Code Section 18.76.010 provides that one of the purposes of the architectural review process is to “[m]aintain the public health, safety and welfare.” Furthermore, Section 18.76.020, subsection (d)(4) provides that to approve a project, the Director must find that the Project cannot “[m]aterially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development.”³⁸

³⁵ *Id.*

³⁶ *See, e.g., Center for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204.

³⁷ Response A.8, p. 12.

³⁸ S.C.C.C. § 18.76.020(d).

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a. The Project's Failure to Demonstrate Less-Than-Significant Public Health Risks and GHG Emissions May Result in Adverse Impacts to Persons Residing or Working in the Area

The IS/MND's inconsistent calculations and statements with regard to health risks to nearby sensitive receptors make it impossible for the Director to unequivocally maintain the public health, safety, and welfare or guarantee that the Project will be consistent with Santa Clara City Code Section 18.76.020, subsection (d)(4).

Meanwhile, the Project's operational GHG emissions, which exceed BAAQMD's latest numeric threshold of significance for land use projects, will adversely affect those in the immediate vicinity of the Project, as well as all Californians in the form of increased drought, wildfires, and rising sea levels.

The Project is in close proximity to residences and schools and is surrounded by office buildings and other industry. The City's analysis in the IS/MND and Response to our Comment Letter do not support a finding that the Project approval will not materially affect adversely the welfare of persons residing or working in the neighborhood of the Project.

IV. RELIEF REQUESTED

Santa Clara Citizens requests that the City Council grant this appeal and rescind the November 4, 2020 decisions to 1) adopt the IS/MND and 2) approve the Permits. We further request that the City conduct further analysis on the Project's potentially significant environmental impacts in an EIR and correct the City's deficiencies in the CEQA process that prejudiced Santa Clara Citizens, as described above. By doing so, the City and public can ensure that all adverse environmental and public health impacts of the Project are adequately analyzed, disclosed, and mitigated as is required by law.

a. Procedural Requirements for Appeals

Santa Clara Citizens has satisfied the procedural requirements for an appeal of a decision of the Development Review Officer as set forth in the Santa Clara City Code. City Code sections 18.76.020(i) and (j) state:

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(i) In the event the applicant or any interested party are not satisfied with the decision of the Director or designee for a single-family residential project, they may, within seven days after such decision, appeal in writing to the Planning Commission.

(j) For a project other than a single-family residential project, in the event the applicant or any interested party are not satisfied with the decision of the Director, they may, within seven days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). In the event the applicant or any interested party are not satisfied with the decision of the Planning Commission for a single-family residential project, they may, within seven days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). Said appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk. All appeals of architectural review approvals will be heard de novo. The Director of Community Development may refer any application for architectural consideration to the City Council for its decision with the same effect as if an appeal had been taken.

Here, the Director made the decision on the adoption of the IS/MND and approval of the Permits on November 4, 2020. This letter and the attached appeal form constitute notice in writing of the appeal.

We have also enclosed a check for the appeal fee for non-applicants.

Thank you for your consideration of this appeal to the City Council.

Sincerely,



Kendra Hartmann
Tanya Gulesserian

KDH:acp

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Agenda Report

21-169

Agenda Date: 2/9/2021

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Action on Agreement with Contractor Compliance and Monitoring, Inc. for Labor Compliance Consulting Services

BOARD PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

On September 17, 2019, the Stadium Authority Board (Board) approved the introduction of Ordinance No. 2005, which rescinded the Executive Director's delegated signature authority on agreements for services and required Board approval of contracts or agreements, by amending Chapter 17.30 of the City of Santa Clara City Code (SCCC). As of the effective date of the Ordinance (November 8, 2019), all Stadium Authority contracts and agreements for services, supplies, materials, and equipment require approval of the Stadium Authority Board. In addition to Ordinance No. 2005, Stadium Authority staff complies with the procurement requirements outlined under Chapter 2.105 of the City of Santa Clara City Code.

Contractor Compliance and Monitoring, Inc. (CCMI) is a trusted legal and compliance partner to publicly funded construction projects. Founded in 2002, the firm is nationally renowned for its expertise in prevailing wage law and labor compliance programs. Unique among labor compliance vendors, the firm combines in-house legal counsel with an understanding of industry and government. CCMI's staff has more than 75 years of combined experience in public works contracting and the implementation of local, state, and federal prevailing wage requirements.

The core of CCMI's experience involves the monitoring of certified payrolls, including the proper use of wage determinations, compliance with overtime, weekend, shift and special wage requirements, as well as the proper use of required apprenticeship requirements. Their staff has been involved in over 1,000 audits-including both a "paper audit" of the certified payroll and related forms, as well as investigation of claims or charges of impropriety brought by third parties.

The Executive Director is requesting authorization to execute an agreement with CCMI for an amount not-to-exceed \$20,000 for labor compliance consulting services. The City of Santa Clara has a much larger agreement with CCMI with a maximum compensation amount of \$145,000. CCMI has agreed to extend the same terms and conditions, scope of work, and pricing to the proposed Stadium Authority agreement.

DISCUSSION

The Stadium Authority's Stadium Manager, Forty Niner Stadium Management Company LLC, engage in various public works projects throughout the fiscal year, which require prevailing wages to be paid

to workers under State law. As the Stadium Authority continues to provide oversight of the Stadium Manager's procurement activity, there is a need for labor compliance services to ensure that the Stadium Manager and its contractors are complying with local, state and federal prevailing wage laws and regulations.

During this fiscal year, at least one Stadium project has required such labor compliance services. In April 2020, the Stadium Manager notified the Stadium Authority of a recycled water line that ruptured underground beneath the structural slab inside the Stadium. Forty Niners SC Stadium Company LLC (StadCo), which leases Levi's Stadium, ultimately claimed the project as an emergency capital repair made by the Stadium's Tenant (StadCo) under the Stadium Lease Agreement and procured a contractor for the repairs.

The repair services did not require Board approval since they were claimed as StadCo's emergency repair. However, since the reimbursement of costs would come from Stadium Authority, Stadium Authority staff requested for and reviewed supporting documents that StadCo submitted for the project for prevailing wage compliance throughout the procurement and permitting process. On December 22, 2020, StadCo invoiced the Stadium Authority \$217,004 for the total cost of the repairs. Stadium Authority staff requested certified payroll records as supporting documentation from StadCo, which were submitted on January 21, 2021. CCMI's services are required to complete review of the certified payroll records before the Stadium Authority can proceed with reimbursing StadCo for the recycled water line repair costs. Staff is also aware of two additional forthcoming projects that the Stadium Manager has notified the Stadium Authority of and that may require prevailing wages and CCMI's services.

The Stadium Authority's agreement with CCMI includes an extensive scope of work relating to labor compliance, including but not limited to, providing advice on prevailing wage projects and issues, verifying contractors' eligibility to work, licenses, and other labor compliance requirements, certified payroll review, and responding to any inconsistencies on the part of contractors. CCMI's services will be used to support Stadium Authority with labor compliance monitoring and oversight.

This recommendation meets Section 2.105.330(e)(1) of the City's purchasing code that exempts following a competitive process when the service of a licensed professional is required. As discussed above, CCMI provides legal compliance services. Additionally, as mentioned above, CCMI agreed to extend the same terms and conditions, scope of work, and pricing to the Stadium Authority, which is allowed under Section 2.105.290(b)(3).

ENVIRONMENTAL REVIEW

The actions being considered do not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment or pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

There are existing appropriations in the Stadium Authority FY 2020/21 Adopted Budget under the Operating Budget to cover the costs of Executive Director and Board directives.

COORDINATION

This report has been coordinated with the City's Purchasing Manager, Stadium Authority Treasurer, and Stadium Authority Counsel.

PUBLIC CONTACT

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

RECOMMENDATION

1. Authorize the Executive Director to execute an agreement with Contractor Compliance and Monitoring, Inc. in an amount not-to-exceed \$20,000 for labor compliance consulting services; and
2. Authorize the Executive Director to amend the agreement to increase maximum compensation by up to \$20,000 in the event additional services are required, not to exceed \$40,000 during the one-year term of the agreement, subject to the appropriation of funds.

Prepared by: Christine Jung, Assistant to the City Manager (Executive Director)

Approved by: Deanna J. Santana, Executive Director

ATTACHMENTS

1. Agreement with Contractor Compliance and Monitoring, Inc.

**AGREEMENT FOR SERVICES
BETWEEN THE
SANTA CLARA STADIUM AUTHORITY,
AND
CONTRACTOR COMPLIANCE AND MONITORING, INC.**

PREAMBLE

This Agreement is entered into between the Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code (Authority) and Contractor Compliance and Monitoring, Inc., a California corporation, (Contractor). Authority and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. Authority desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of Authority; 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 Authority and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

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

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

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on February 10, 2021 and terminate on February 9, 2022.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, Authority shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is twenty thousand dollars (\$20,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in

excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF AUTHORITY TO INSPECT RECORDS OF CONTRACTOR

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

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify Authority, its respective governing boards, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by Authority 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 Authority; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full Authority and Authority's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against Authority (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless Authority for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Contractor agrees that waiver by Authority 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 Authority'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 Authority addressed as follows:

Santa Clara Stadium Authority
Attention: Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050

And to Contractor addressed as follows:

Contractor Compliance and Monitoring, Inc.
635 Mariners Island Blvd., Suite 200
San Mateo, CA 94404
Or by facsimile at (650) 522-4402

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

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

which would violate these code provisions. Contractor will advise Authority if a conflict arises.

20. FAIR EMPLOYMENT

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

21. NO USE OF AUTHORITY NAME OR EMBLEM

Contractor shall not use Authority'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 Authority.

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

SANTA CLARA STADIUM AUTHORITY
a California Joint Power Agency

Approved as to Form:

Dated: _____

BRIAN DOYLE
Stadium Authority Counsel

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

“AUTHORITY”

CONTRACTOR COMPLIANCE AND MONITORING, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Deborah E.G. Wilder

Title: President

Principal Place of Business Address: 635 Mariners Island Blvd., Suite 200
San Mateo, CA 94404

Email Address: dwilder@ccmilcp.com

Telephone: (650) 522-4403

Fax: (650) 522-4402

“CONTRACTOR”

EXHIBIT A

SCOPE OF SERVICES

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

1. Product Description Work Plan or Proposal

Listed below is a scope of services. It includes special reporting and requirements for Prop 84 projects as well as special requirements for federally funded project. A project which does not have Prop 84 funding nor any federal funding would exclude those items from the scope of work. The scope of work below assigns approximate times to each task to be performed.

- A typical project starts with preconstruction tasks of reviewing contracts and providing the correct language and information in the bid documents. (Items 1-6)
- Once a successful bidder is chosen, CCMI can help file the PWC-100 form and verify critical information about the contractors doing the work such as contractor registration, CSLB licensing and worker's compensation. (Items 7-8, 11)
- CCMI attends a preconstruction conference to review the Labor Compliance requirements for the project. (Item 9)
- The auditing onsite interviewing and monthly reports are performed each month during the project, including any additional investigations verification of corrections and restitution. (Items 10, 12-21, 25)
- The close out process is accomplished at the end of the project. (Items 21-24)

Work Plan: California and Davis Bacon Prevailing Wage Project

1. Assist Authority in obtaining LCP approval from the DIR for Proposition 84 projects. Requesting a formal LCP approval from the DIR includes: 1) a 4-page application detailing the expertise of the Authority and how the LCP will be administered; 2) a Resolution from your Stadium Authority Board approving the LCP and adopting the program; and, 3) an administrative manual which includes in great details the components of a Labor Compliance plan which essentially meets the requirements of operating an LCP. The Administrative Manual is typically around 30-35 pages. The forms and attachments run another 30-35 pages. Completing this application process includes the Authority gaining understanding of all the LCP requirements and establishing best practice protocols to adopt it. This takes approximately 90 days to obtain approval. The DIR requires up to 60 days to review and approve the LCP. The Stadium Authority Board must adopt an applicable resolution, so CCMI allocates up to 30 days to have that item agendaized on the Stadium Authority Board calendar. Annual reports are completed each August for the prior fiscal year.

2. Provide required language and prevailing wage documentation to the Client for prevailing wage compliance. 29 CFR Part 5.5 REQUIRES that certain mandated prevailing wage language be included in the bid specifications and contract whenever federal Davis-Bacon requirements apply to a project. Usually takes about 30-60 minutes to provide required language and to review any contracts or specifications.
3. Pull applicable Davis Bacon Wage determination for project and provide to Client. A hard copy of the applicable federal wage determination is required to be included in the bid specifications and the contract. A mere reference to the wage determination and MOD number or to the website www.wdol.gov is insufficient to meet this requirement and can result in the Client being subject to additional change order costs. Usually takes 30-60 minutes.
4. Review the specification to ensure that the requirements of California prevailing wage are included. Usually takes 30-60 minutes
5. Assist the Client, as required, in requesting additional federal wage determinations through the conformance process. Depending on the need, a conformance typically takes 1-3 hours per conformance
6. Create project files upon award of the project. 130 minutes
7. Assist the Client with completion and filing of PWC-100 form (required on all State prevailing wage projects in excess of \$15,000 or maintenance and in excess of \$25,000 for construction). The PWC-100 form is to be filed within 30 days of contract award, but not later than the first day worked. Approximately 30 minutes
8. Verify contractor's eligibility to work by checking the contracting status with both California and Federal lists, including the California Department of Industrial Relations (www.dir.ca.gov) and the Federal Excluded Parties list (www.sam.gov). Once subcontractors are identified, also verify the eligibility of all subcontractors. Depending on number of contractors on the project 15-90 minutes
9. Attend Preconstruction conference or conduct a separate labor compliance webinar, including providing a checklist of laws and regulations which need to be followed to comply with state and federal prevailing wage requirements as well as all forms required for labor compliance. Depends on the complexity of the project and experience of contractors. 1-3 hours.
10. Provide a phone line and e-mail contact where contractors and subcontractors can contact CCMI for clarification on prevailing wage, certified payrolls, apprenticeship and compliance issues. On an as needed basis throughout the project.

11. License check and confirmation with California Contractor's State License Board of current and active license status, as well as worker's compensation coverage of all contractors and all listed subcontractors. Confirmation that contractors are currently registered as "public works contractors" with the State of California. Depending on number of contractors on the project 15-90 minutes
12. Review and comparison of work classification with California prevailing wage classification and Davis-Bacon wage classifications to ensure the contractor is paying the correct prevailing wage rate. 30-60 minutes
13. Monitoring of all weekly certified payroll, including, but not limited to: correct classification of workers, proper wages being paid, proper calculation and payment of fringe benefits and training contributions, review overtime, shift pay, weekend and holiday work/pay, only permissible deductions will be allowed, cross reference of onsite interviews with certified payrolls to verify all workers are listed and review the "certification" or "Statement of Compliance" is complete and properly signed by an individual with knowledge and authority to act on behalf of the company. This time frame depends on the size of the project and number of workers employed. An audit could take 1 hour or 40 hours a month.
14. Monitoring of all Apprenticeship Requirements. Collection and review of all DAS-140 and DAS-142 forms. Review of applicable apprenticeship ratios, correct wages paid, training contributions (CAC2 forms). Verification that all apprentices also have an active Apprenticeship Certificate (U.S. Department of Labor, Office of Apprenticeship) certificate. This time is included in item 13 above.
15. Verification that apprentices are properly supervised and employed in approved ratios as required by both California and Federal apprenticeship regulations applicable to Davis-Bacon projects. This time is included in item 13 above
16. Jobsite audits and random interview of workers will be conducted by CCMI (to determine veracity of certified payroll information, compliance with anti-kickback, equal employment opportunity requirements, jobsite posting requirements, etc.). CCMI will cross reference the interviews with certified payroll information. CCMI will also confirm that required posters and wage rates are posted on the project. (required on Proposition 84 and Davis Bacon funded projects). The onsite interviews typically take 1 hour on site plus related travel of 1-2 hours
17. Proof of Payment: Monthly verification of payment of wages to workers by all contractors and subcontractors on the project (required by Prop 84 funding only). This again is determined by the number of contractors on the project. The request is typically 10 minutes per contractor. However, if the contractor

does not provide the information requested or the information does not match the certified payroll, follow up could take 30-120 minutes

18. Respond to any inconsistencies or deliberate deceptions on the part of contractors through additional detailed audit of contractors through review of cancelled checks, timecards, and related records (as needed) and seek appropriate resolution consistent with California and Davis Bacon regulations. This is handled on a case by case basis. An inquiry for additional information and review of additional documents could take one hour or several hours depending on the information provided and any underpayment identified
19. Communication of potential violations will be provided promptly to the Client with recommended action. In the event paperwork or compliance issues with a contractor cannot be resolved quickly, the Client will be notified of this potential problem and a recommendation will be made to the Client to retain a certain portion of the scheduled progress payment until the issue is resolved. The Authority will receive a monthly report by contractor. This is included in the time allocated in item 20 below. However, communication of serious violations is usually transmitted via email or by phone call and typically can take 30-90 minutes depending on the seriousness of the violation.
20. Communications with Contractors. CCMI will work with all contractors and subcontractors with the goal of amicable agreement on resolving issues related to violations, penalties and compliance. All meetings and calls with contractors will be documented in the project folder maintained by CCMI. After the audit is completed, reports are prepared for each contractor and subcontractor on the project who worked in that month. Reports typically take 10 minutes each.
21. Collect Section 3 reporting information and prepare annual reporting (applies to CDBG funding or other federal funding requiring Section 3 reporting) Usually 20 minutes per month to collect and review the data and one hour to prepare the Annual Report.
22. Provide Final Wage Compliance Report within 30 days of completion of project. Final close of project including imposition of penalties and reports to Labor Commissioner; issuing of Request for Forfeitures/Notices to Withhold and other close out documentation. Such report shall include: start and completion of project, services provided, summary of discrepancies, violations, corrective action and restitution of any underpayment of wages and any other documentation requested by the Client. Final Close-Out Report will also include a review of any imposition of penalties and reports to California Labor Commissioner; and US DOL, as required. Depending on the funding source, the number of reports to be completed and number of violations which remain outstanding, the close out procedure can take 1-10 hours
23. Maintain all records for a period of five (5) years. 30 minutes to archive folder

24. Attend any compliance or auditing meeting with the State or federal agencies relating to the labor compliance on this project. Typically, this does not occur on purely State funded projects. Federal audit are typically 4-8 hours.
25. Provide other assistance relating to labor compliance as requested by the Client. On an as needed basis
26. Provide updates to the Authority on labor compliance trainings conducted by the DIR. CCMI staff attends periodic LCP training conducted by the DIR. CCMI staff regularly attends training conducted every year or two by the U.S. Department of Labor on Davis Bacon compliance. In addition, CCMI prcsidc.mt Deborah Wilder conducts her own in-house staff training on new and updated regulations and implementations on a regular basis and will pass this information on to the Authority.
27. Provide prevailing wage training to staff. CCMI also provides training to public agencies and contractors on meeting prevailing wage requirements. This can include a single 1-hour session or informational training or sessions spread over several weeks to provide more hands-on detail of full labor compliance training.
28. Serve as an expert witness in state and federal labor compliance and prevailing wage violations. Sec Exhibit 13 for hourly rate.

CCMI prides itself in taking a proactive, educational/team approach in working with Clients and contractors before problems arise. Wilder's extensive experience in this area over the last 35 years has given her particular insight into spotting potential problems early on during project construction. CCMI is committed to implementing and enforcing a program that is fair to all contractors, but one which requires strict adherence to the requirements of prevailing wage and Labor Compliance. Our breadth of experience and expertise cannot be matched by any other LCP firm in the State.

2. Project Schedule

Please see the explanation and timeline identified in item 1 above. The timeline for completing a project depends on several factors which include the length of the construction package. As the audits are taking place throughout the project, the close out of the project typically takes 30-45 days after completion of the project.

The start date is when the Authority identifies the project to us and either requests our assistance with pre bid documents or informs us of an upcoming preconstruction conference. Each month we audit the project. Typically, in reviewing the payrolls once a month, we only anticipate a 2-week time lag. For example, if we review CPRs on the 1st of the month, we would expect payrolls and labor compliance documents through the 15th of the prior month. There are no order dates or installation time for this work. We seek to close the project promptly once we are notified of its completion.

EXHIBIT B

SCHEDULE OF FEES

In no event shall the amount billed to Authority by Contractor for services under this Agreement exceed twenty thousand dollars (\$20,000), subject to budget appropriations.

Contractor shall provide a schedule of rates and fees which includes all billing amounts and costs as follows:

CCMI typically bills for its services in one of two ways, by hourly rates or project based.

1. Hourly Rates*

- Technician: \$75.00
- Analyst: \$95.00
- Manager: \$125.00
- Principal: \$350.00
- Onsite Interviews: \$200 per project per visit
- Expert Testimony: \$450 per hour (Wilder only)

Note: CCMI's can bill based on hourly rates with a NTE cap on the work.

2. Project Based

To quote a flat fee price, CCMI needs the following information: Funding source, dollar value of project, anticipated number of work days on the project, approximate number of subcontractors on the project. We then will provide a single flat fee for all services and payment is made in even monthly amounts over the course of the project. Below are some examples using the proposed scope of work as set forth in Exhibit A:

- The flat fee price for obtaining an LCP for Prop 84 projects is \$1500.
- Annual Report to DIR each year is billed at \$300 a year.
- A \$2.5 million project with Prop 84 funding to be completed in 10 months with between 8-10 subcontractors would likely be billed as a flat fee of \$12,500. An hourly NTE price would be capped at \$15,500. It should be noted that when we provide a NTE price, it does not mean that we will reach that final price. The project could well come in under that NTE price.
- A \$400,000 project with CA and Federal Davis Bacon requirements to be completed over 4 months would be billed at a flat fee of \$3000 and with an hourly NTE of \$4,000.
- A \$12 million project with CA and CDBG funding and Section 3 hiring requirements to be completed over 18 months would likely be a flat fee of \$27,000 with an hourly NTE of \$33,000

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the Santa Clara Stadium Authority ("Stadium Authority"), and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the Stadium Authority, 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 Stadium Authority so that any other coverage held by the Stadium Authority shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than

one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or 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 Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the Stadium Authority, its governing board, subordinate boards, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the Stadium Authority General Counsel'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. The Santa Clara Stadium Authority, its governing board, subordinate boards, officers, employees, volunteers and agents ("Indemnified Parties") are hereby added as additional insureds in respect to liability arising out of Consultant's work for the Stadium Authority, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnified Parties may possess, including any self-insurance or self-insured retention they may have. Any other insurance that the Indemnified Parties may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to the Stadium Authority 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 the Stadium Authority at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and the Stadium Authority agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by the Stadium Authority, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to the Stadium Authority for review.
2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge the Stadium Authority or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the Stadium Authority. It is not the intent of the Stadium Authority to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the Stadium Authority for payment of premiums or other amounts with respect thereto.
3. The Stadium Authority reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

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

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage, and be delivered to the Stadium Authority through its representative as set forth below, at or prior to execution of

this Agreement. Upon the Stadium Authority's request, Consultant shall submit to the Stadium Authority 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 the Stadium Authority pursuant to this Agreement shall be mailed to:

Santa Clara Stadium Authority

c/o Ebix, Inc.

P.O. Box 100085 – S2

Duluth, GA 30096

or 1 Ebix Way

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



Agenda Report

21-1304

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Public Hearing: Action on the Comprehensive Sign Program for Parcels 4 and 5 for the Related Santa Clara Project

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

The Related Santa Clara project (Project) is planned as a dynamic, mixed use, pedestrian friendly district located on an approximately 240-acre site north of Tasman Drive. As required by the Master Community Plan (MCP), the Project developer is now requesting approval of a Comprehensive Sign Program (CSP) for Parcels 4 and 5 (the first four phases of) the Project (Attachment #5).

On June 28, 2016, in addition to certifying the Project Environmental Impact Report (EIR) prepared for the Project, the City Council adopted the following entitlements:

- General Plan Text and Map Amendments, approved to reflect a new Urban Center/Entertainment designation and to amend the City's Climate Action Plan to address the new designation and establish respective minimum vehicle miles traveled (VMT) reduction requirements.
- Rezoning of the 240-acre Project site from Public/Quasi-Public (B) and Commercial Park (CP) to Planned Development - Master Community (PD-MC), and approval of an accompanying Master Community Plan (MCP) and conditions of approval as the implementing zoning documents for the Project.
- A Disposition and Development Agreement (DDA) between the City and Related Santa Clara, LLC, as the Master Developer. The DDA contains lease conveyance terms, including ground lease conveyances that may begin following approval of the first Development Area Plan (DAP) and each DAP thereafter. The schedule of performance for commencement and timing of construction are captured in the DDA.
- A Development Agreement between the City and Related Santa Clara, LLC, establishing the terms and obligations of development as well as the order and timing of these obligations.

In accordance with the procedures set forth in Appendix C of the MCP, Development Area Plans (DAP) were submitted and approved by the City Council for the first two phases of the Project. To date, the City Council approved Addendums to the previously-certified Project EIR and approved the

DAP for Phase I, addressing development in Parcel 5, on March 24, 2020 and the DAP for Phase II, addressing development in Parcel 4, on July 13, 2020.

Master Community Plan (MCP):

As noted above, the City Council adopted the MCP on June 28, 2016 (Attachment #3). The MCP was updated on April 5, 2017 as required by the conditions of approval to reflect the City's other final approvals. The MCP is intended to ensure a) that development within the planning area will be consistent with the General Plan; and b) that development of the planning area's private and public realms will be in accord with the MCP's vision and design intent. The MCP provides a comprehensive program to govern the use of land and provides for orderly development of the Project site. As such, it incorporates a conceptual development framework, and other development regulations in the form of standards and guidelines; it also identifies and coordinates necessary infrastructure improvements, addresses public and private financing for infrastructure improvements and describes development phasing. The Development Agreement that the City Council approved vests the MCP, which means that the terms, conditions, and requirements of the MCP cannot be changed without mutual agreement between the City and the Project developer. Under the terms of the Development Agreement, the City Council may only evaluate subsequent approvals such as the CSP for consistency with the MCP.

Section 7 of the MCP calls out the vision and sign typologies for project, tenant, and advertising/sponsorship signage within Related Santa Clara. MCP Section 7 also creates specific, limited exceptions to the City's general prohibition on adding new billboards or other forms of large-format off-site advertising. Specifically, the MCP authorizes the Project developer to install outdoor off-site advertising for advertising within the Project that faces inward into the Project site and large-format signs along Tasman Drive, facing toward Levi's Stadium, that may be used in part for off-site advertising.

The authorization for certain signage types granted by the MCP requires further refinement and implementing regulations. In particular, the MCP requires that specific design, placement, and numerical standards for signage be developed through subsequent Comprehensive Sign Programs (CSPs), including one CSP for Parcels 4 and 5 (portions of the project site west of Lafayette), which constitute the City Center and is the subject of this Council report and hearing, and subsequent CSPs for Parcels 1 and 2 (portions of the project site east of Lafayette).

The Planning Commission considered the proposed CSP for Parcels 4 and 5 at its November 18, 2020 meeting. The staff report to the Planning Commission (Attachment #1) discusses the types of signs included in the proposed CSP and its conformance to the MCP. The Discussion section below summarizes the Planning Commission consideration of the item at their November hearing.

DISCUSSION

After the staff presentation, Planning Commissioners Biagini, Cherukuru, Jain, and Chair Saleme asked clarifying questions and staff provided responses related to:

- the types and symbology used for wayfinding signs;
- the definition of off-site signage/digital billboards (which include messages for activities, services, or products that occur outside of the Project); and
- methods to ensure illumination of signs would conform to mitigation measures called out in the EIR.

Commissioner Jain also expressed an interest, based on his recollection of previous off-site sign proposals that came before the Planning Commission's consideration, to include a requirement for a percentage of the time on the project's large-format digital signs with off-site content be made available to program with Public Service Announcements (PSA).

The applicant then provided a presentation displaying examples that exemplified signs that could be achieved through the CSP. In the presentation, the applicant also addressed a question received in advance of the hearing from Commissioner Jain, regarding concerns of potential bird strike from digital signs. The applicant explained that LED digital signs have a built in baffle at the top to prevent sun from hitting the signage and that prevents the light from the sign going upwards into the sky, thereby providing protection to reduce the potential for birds flying into the signage.

Planning Commissioners Cherukuru, Biagini, Jain, Ikezi, and Chair Saleme made various requests, including:

- the use of universal symbology for wayfinding signs;
- public art that includes local artists that connects to the identity of the City of Santa Clara; and
- time on the programmable signs for public service announcements.

The applicant responded that they would consider prior to the City Council hearing how to address the questions on wayfinding, and that the CSP will govern signage and not art, but that the Project would include significant art installations and programming that would utilize and promote local artists.

Commissioner Jain also had a clarifying question on what was depicted as Digital Art/Landmark along Avenue C on Exhibit 03d of the CSP. The applicant explained that that was proposed as a digital mesh screen of parking structures that would be art, and not signage, to provide a point of arrival for those arriving to the Project by car.

The Planning Commission unanimously approved a motion (7-0-0) made by Commissioner Jain, which was seconded by Commissioner Ikezi, to adopt a resolution to recommend the City Council adopt the CSP for Parcels 4 and 5, with an additional recommendation that Council consider requiring up to 10% per hour of screen time of the large format signs on Tasman to play Public Service Announcements from the City or nonprofits within the City. Commissioner Cherukuru moved to include a friendly amendment, which was accepted and included in the motion, for the applicant to work with staff for the CSP to include wayfinding signs with universal symbols and information in up to three languages, and to incorporate solar power and biophilic design elements.

Following the Planning Commission meeting, the applicant has addressed requests made by the Planning Commission and outlined those changes in a Memorandum dated December 23, 2020 (Attachment #4) and updated the draft CSP (Attachment #5) as described in the December 23, 2020 Memorandum.

Regarding the request to require time be made available for Public Service Announcements, the City has previously required time allocated for Public Service Announcements under the City's 2011 Billboard relocation policy. Under that policy, billboard relocation agreements allow for new digital billboards to be sited in exchange for the removal of existing billboards; however, the context for the

CSP is different. First, as part of the MCP approval in 2016, the City Council already approved the digital large format signs along Tasman Drive under discussion in the proposed CSP, and the developer's rights to those signs is vested. Second, while the digital signs on Tasman are allowed to contain off-site advertising, they will very likely also include a substantial component of advertising for on-site uses, businesses and events. These signs are thus different than those addressed in the billboard relocation agreements, since all advertising on such billboards is inherently of an off-site nature. The Billboard Relocation policy is not applicable or directly comparable to the new off-site digital billboards.

However, after hearing the Planning Commission's recommendation for PSAs, the applicant worked with City Staff to address the Commission's recommendation, and the draft CSP has now been updated accordingly. Specifically, pages 10 and 24 of the CSP now provide that the Tasman-oriented large format sign faces will, in the aggregate, provide the opportunity for up to 10% Public Service Announcement use, free of charge to the City, of one full face of copy exposure based on daily use (e.g. 36.5 days per year), and at least 50% of such Public Service Announcement use shall occur during the hours of 6:00 a.m. and 9:00 p.m. daily. The PSAs would be coordinated and provided to the applicant through the City Manager's Office in accordance with a policy concerning PSAs for broader applicability that the City staff intends to bring forward for Council consideration/adoption later this year, and scheduled and coordinated through an agreement to be agreed upon by the City Manager and the applicable ground lessee.

Regarding the Planning Commission's recommendation to address universal symbology, accessibility of wayfinding signs and the incorporation of biophilic design within the wayfinding system, the CSP has been updated on page 19 to change the heading of Section 3.5 to "Directional/Wayfinding Standards and Typology" and add as a new Subsection 3.5.1 (Overall Standards for Wayfinding Signs). New standards for wayfinding signs were added so that the Project's wayfinding system follows national and state accessibility standards to provide ease-of-use to all visitors across multiple languages through the use of internationally recognized symbols. Digital screen content programmability will also allow for multiple languages to be linked to wayfinding digital display maps by touch and by voice. In addition, a requirement was added so that the majority of static and digital wayfinding components be located within the public realm and integrated into the public realm landscape environment, using biophilic design principles, as appropriate.

Regarding the Planning Commission's recommendation to incorporate solar power in the design guidelines, Paragraph 5 of CSP Section 2.3 requires illuminated signs to incorporate energy-efficient fixtures to the greatest extent possible, including deriving energy from solar power where practicable.

ENVIRONMENTAL REVIEW

The EIR certified for the Project on July 28, 2016 (PLN2014 10554/ CEQ 2014 01180/ SCH 2014072078) analyzed the impacts associated with the implementation of the Master Community Plan, including signage, and thus the EIR addresses any impacts associated with the Comprehensive Signage Program (Attachment #3). Light and glare from signage was considered a significant impact under the category of Aesthetics in the EIR (Impact AES-2) because the Project would add exterior lighting to the project site, where there currently is little or no lighting. With mitigation measure AES-2.1 (installation of low-profile, low-intensity lighting directed downward to minimize light and glare), the impact was reduced to less than significant. The CSP implements the

MCP and was sufficiently analyzed through the EIR.

FISCAL IMPACT

There is no fiscal impact to the City for processing the requested application other than administrative staff time and expense.

As was previously considered by the Council in the decisions to offer development of the project site and subsequent approval of the initial land use entitlements, it was noted there will be social and economic benefits that will accrue to the City and region in terms of new retail and entertainment opportunities not readily found in the South Bay area, as well as creation of jobs, property tax and sales tax revenues, and land lease revenues. Development of the Project will provide substantial land lease revenues to the City. Development fees and other exactions paid for and provided by the Project will also benefit the City.

COORDINATION

The report was coordinated with the City Attorney's Office and City Manager's Office.

PUBLIC CONTACT

A notice of this hearing was mailed to properties within 1,000 feet and posted in three conspicuous locations within 300 feet of the project. Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

ALTERNATIVES

1. Adopt a resolution approving the Comprehensive Signage Program for Parcels 4 & 5.
2. Adopt a resolution approving the Comprehensive Signage Program for Parcels 4 & 5 with minor modifications.
3. Any other alternative as directed by Council.

RECOMMENDATION

Alternative 1: Adopt a resolution approving the Comprehensive Signage Program for Parcels 4 & 5.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. November 18, 2020 Planning Commission Report
2. Web Link Slip Sheet - 5155 Stars and Stripes Drive City Place FEIR and MMRP
3. Web Link Slip Sheet - Master Community Plan (MCP) Volume I
4. December 23, 2020 Memorandum from Related Santa Clara addressing Planning Commission recommendation
5. Draft Comprehensive Sign Program for Parcels 4 and 5
6. Resolution to approve Comprehensive Sign Program for Parcels 4 and 5



Agenda Report

20-1023

Agenda Date: 11/18/2020

REPORT TO PLANNING COMMISSION

SUBJECT

Action on the Comprehensive Sign Program for Parcels 4 and 5 for the Related Santa Clara Project

BACKGROUND

The Related Santa Clara project (Project) is planned as a dynamic, mixed use, pedestrian friendly district located on an approximately 240-acre site north of Tasman Drive. The Project developer is now requesting approval of a Comprehensive Sign Program (CSP) for the Project (Attachment #3).

On June 28, 2016, in addition to certifying the Project Environmental Impact Report (EIR) prepared for the Project, the City Council adopted the following entitlements:

- General Plan Text and Map Amendments, approved to reflect a new Urban Center/Entertainment designation and to amend the City's Climate Action Plan to address the new designation and establish respective minimum vehicle miles traveled (VMT) reduction requirements.
- Rezoning of the 240-acre Project site from Public/Quasi-Public (B) and Commercial Park (CP) to Planned Development - Master Community (PD-MC), and approval of an accompanying Master Community Plan (MCP) and conditions of approval as the implementing zoning documents for the Project.
- A Disposition and Development Agreement (DDA) between the City and Related Santa Clara, LLC, as the Master Developer. The DDA contains lease conveyance terms, including ground lease conveyances that may begin following approval of the first Development Area Plan (DAP) and each DAP thereafter. The schedule of performance for commencement and timing of construction are captured in the DDA.
- A Development Agreement between the City and Related Santa Clara, LLC, establishing the terms and obligations of development as well as the order and timing of these obligations.

In accordance with the procedures set forth in Appendix C of the MCP, Development Area Plans (DAP) were submitted and approved by the City Council for the first two phases of the Project. To date, the City Council approved Addendums to the previously-certified Project EIR and approved the DAP for Phase I addressing development in Parcel 5 on March 24, 2020 and the DAP for Phase II addressing development in Parcel 4 on July 13, 2020.

Master Community Plan (MCP):

As noted above, the City Council adopted the MCP on June 28, 2016 (Attachment #2). The MCP was

updated on April 5, 2017 as required by the conditions of approval to reflect the City's other final approvals. The MCP is intended to ensure a) that development within the planning area will be consistent with the General Plan; and b) that development of the planning area's private and public realms will be in accord with the MCP's vision and design intent. The MCP provides a comprehensive program to govern the use of land and provides for orderly development of the Project site. As such, it incorporates a conceptual development framework, and other development regulations in the form of standards and guidelines; it also identifies and coordinates necessary infrastructure improvements, addresses public and private financing for infrastructure improvements and describes development phasing.

Section 7 of the MCP calls out the vision and sign typologies for project, tenant, and advertising/sponsorship signage within Related Santa Clara; however, the MCP requires that specific design, placement, and numerical standards for signage be developed through subsequent Comprehensive Sign Programs (CSP), calling out one CSP for Parcels 4 and 5 (portions of the project site west of Lafayette), which constitute the City Center, and subsequent CSPs for Parcels 1 and 2 (portions of the project site east of Lafayette).

DISCUSSION

In accordance with the requirements of the MCP, the applicant has submitted the proposed CSP for Parcels 4 and 5 of the Project site. The MCP states that the CSP is to be approved in conjunction with the issuance of the first DAP; however, while the applicant was working closely with staff on the development of CSP concurrently with the City's review of DAP 1 and DAP 2, the document was not ready for review or approval when the City Council took action on DAP 1 and DAP 2. Conditions of Approval were included in both DAP 1 and DAP 2 to require the applicant to apply for and receive subsequent approval of the corresponding CSP prior to the issuance of the first building permit for development within DAP 1 or DAP 2 for any above grade buildings but excluding the below grade Tasman garage.

The MCP states that conformance to the MCP should guide the City's approval of the CSP, and provides that the City's sign ordinance found in Chapter 18.80 of the Santa Clara City Code is not applicable to the Project. Chapter 7 of the MCP outlines the Project signage requirements and allowances (MCP, page 181). While the CSP sets the standards for City approval, the approval of individual signs will follow the permitting process outlined in the CSP and included in the Discussion section below. Section 7.1 of the MCP defines seven Signage Design Principles, which the CSP is intended to implement:

1. Coordinated Project Signage.
2. Complementary Tenant Signage.
3. Wayfinding System.
4. High-Quality Signage.
5. Legible Signage.
6. Durable Signage.
7. Civic Art Potential.

More specifically, signage within the Project is intended to further the City's objective to create a vibrant mixed-use, urban core, creating a pedestrian friendly "live, work, and play" environment. Parcels 4 and 5 include the "City Center" component of the Related Santa Clara site, which is the most pedestrian oriented area of the Project. As such, diverse and dynamic signage is proposed to

be permitted throughout the Project within the parameters defined in the CSP.

Types of Signs

The CSP covers primarily three types of signage:

- 1) Project signage, which announces the entire Related Santa Clara project site;
- 2) Tenant signage, which is signage to call out the occupants of buildings; and
- 3) Sponsorship and Advertising Signs, which are limited areas and circumstances where off-site advertising is permitted.

In keeping with the dynamic, vibrant environment planned, all signs, except Major Gateway, supergraphics, & temporary signs, are allowed to be digital but need to meet the lighting criteria in the CSP (Section 7.11 of CSP, page 38). Digital signs are prohibited in MCP Lighting Character Zone A and Zone B (Exhibit 7-3 of the MCP, page 200). All signs are to be constructed with high quality, durable materials that are weather- and vandal-resistant.

Project Signage

Project signs include highly visible gateway markers, traffic control, and vehicular and pedestrian wayfinding. Gateway signs, in addition to advertising the Project and/or its districts, will enhance project identity and establish a welcoming point of arrival. Exhibits labelled “Project Identity Typology” on page 185 of the MCP and further by Exhibit 03A on page 15 of the CSP show the locations of different Gateway signage, and Section 7 beginning on page 26 of the CSP defines sign dimension criteria.

Gateways are classified as Major Gateways and Minor Gateways. The Major Gateway signs identify the Project at vehicular points of entry and provide information (or place identification). They are scaled to their surroundings and in accordance with their function as primarily vehicular-oriented project identifiers. The Major Gateway elements may include landscape, hardscape and light displays and establish the overall character of the signage program. Major Gateways may also include “ceremonial gateways,” which combine sculpture, lighting and/or signage in concert with adjacent architecture and landscape to create a sense of arrival. Minor Gateways identify important Project features and districts within the Project, and would be smaller in scale than Major Gateway signage. Off-site advertising is not permitted on Gateway Signage.

Traffic control and pedestrian and vehicular directional signs serve the main purpose of orientating and directing pedestrians and vehicles throughout the project site. Wayfinding signs/information kiosks are to be located in high pedestrian traffic or gathering locations and may include maps to locate points of interests and essential services. The wayfinding signs/information kiosks can also include advertising, public service announcements, retail engagement (information to engage customers in specific retail activities), parking, and/or sustainability information. They can also serve as community boards to highlight upcoming events.

Tenant Signage

In keeping with the vibrant districts created throughout the Related Santa Clara site, tenant signage is available in a variety of formats including: freestanding/monument signage; building mounted signage; store-front signage; projecting signage; and rooftop signage. The size and placement criteria of tenant signs are found in Section 7 of the CSP (CSP, page 26).

In addition to these more common sign types, Section 7 of the CSP also permits

supergraphic/building integrated signage. Supergraphics are identified as a potential signage type on page 192 of the MCP. Supergraphics are a modern signage application, where a sign is adhered through vinyl or a mesh application or projected onto a building wall. As further explained on page 36 of the CSP, permissible supergraphics are temporary in nature with specific regulations dependent on whether the subject supergraphic is applied for a shorter-term in connection with events, and being limited in duration to no more than 35 calendar days, or for a longer term, being limited in duration for no more than 120 calendar days.

Sponsorship and Advertising Signage

Off-site advertising and billboards are by and large prohibited in the Related Santa Clara project, with limited exceptions. Section 7.1 of the MCP states on page 182:

“By adopting this MCP, the City Council finds that creating a specific, limited exception to the limitations on outdoor advertising (billboards) for outdoor advertising in City Center that faces inward into City Center or faces toward Levi’s Stadium on Tasman Drive pursuant to a Comprehensive Signage Program approved by the City Council will facilitate the City’s objective to establish a vibrant mixed-use, urban core, creating a pedestrian friendly “live, work, and play” environment that will function as a well-defined center for the Santa Clara community.”

As proposed, off-site advertising signs that are within the City Center Core Sub-District (illustrated in Exhibit 01B of the CSP) and face inward toward City Center are permissible provided that they must adhere to all other applicable standards for signage in Chapters 2, 5, & 7 of the CSP and may not exceed 40 feet in height. If these permitted off-site advertising signs are within 100 linear feet of a residential building or include animation, they are further restricted and may not exceed 12 feet in height. Off-site advertising signs that are located outside of the City Center Core Sub-District are only permitted if they face toward City Center, meet all applicable CSP criteria, do not display animation, and are limited to 12 feet in height.

Consistent with Section 7.1 of the MCP, up to four Billboards or Large Format Wall Signs are permitted to include off-site advertising along Tasman Drive. Section 5.3.3 of the CSP includes height, size, and display restrictions for these four off-site signs. For instance, they may display animation, but only on event days at Levi’s Stadium when there is no through traffic on Tasman Drive between Lafayette Street and Great America Parkway.

Permitting Process

Section 1.4 of the draft CSP provides the permitting processes for the City’s future review and approval of signs within Parcels 4 and 5 of the Project (CSP, page 7). A separate sign permit shall be required for each sign, except for temporary signs governed by Chapter 8 of the CSP, which include signs for construction, real estate sales and leasing, pre-opening, and fewer than 10 event signs associated with a Special Event. Sign permit applications shall be approved at an administrative staff level and shall be reviewed for conformance to the CSP, as adopted.

An applicant may also submit a Building Signage Plan application for individual buildings or groups of buildings in accordance with Section 1.4.3 of the CSP (CSP, page 7). The purpose of the Building Signage Plan process is to allow for City review and approval of an entire package of signs associated with a particular building or group of buildings. A Building Signage Plan application may

be included with a DAP application that includes Architectural Materials as provided in Exhibit 2 to MCP Appendix C, in which case, it will be reviewed and approved as part of the DAP following the procedures outlined in MCP Appendix C; or (ii) submitted to the City as a separate package of materials concurrently with, or after, the applicant submits the Architectural Review Application for the applicable building.

Temporary Event Signs are required to be submitted and approved by the Director of Community Development for Special Events that includes ten (10) or more signs.

ENVIRONMENTAL REVIEW

The EIR certified for the Project on July 28, 2016 (PLN2014 10554/ CEQ 2014 01180/ SCH 2014072078) analyzed the impacts associated with the implementation of the Master Community Plan, including signage, and thus the EIR addresses any impacts associated with the Comprehensive Signage Program (Attachment #1). Light and glare from signage was considered a significant impact under the category of Aesthetics in the EIR (Impact AES-2) because the Project would add exterior lighting to the project site, where there currently is little or no lighting. With mitigation measure AES-2.1 (installation of low-profile, low-intensity lighting directed downward to minimize light and glare), the impact was reduced to less than significant. The CSP implements the MCP and was sufficiently analyzed through the EIR.

FISCAL IMPACT

There is no fiscal impact to the City for processing the requested application other than administrative staff time and expense.

As was previously considered by the Council in the decisions to offer development of the project site and subsequent approval of the initial land use entitlements, it was noted there will be social and economic benefits that will accrue to the City and region in terms of new retail and entertainment opportunities not readily found in the South Bay area, as well as creation of jobs, property tax and sales tax revenues, and land lease revenues. Development of the Project will provide substantial land lease revenues to the City. Development fees and other exactions paid for and provided by the Project will also benefit the City.

COORDINATION

The report was coordinated with the City Attorney's Office and City Manager's Office.

PUBLIC CONTACT

A notice of this hearing was mailed to properties within 1,000 feet and posted in three conspicuous locations within 300 feet of the project. Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Adopt a resolution recommending that the City Council approve the Comprehensive Signage

Program for Parcels 4 & 5.

2. Recommend the City Council deny the Comprehensive Signage Program for Parcels 4 & 5.

RECOMMENDATION

Alternative 1:

Adopt a resolution recommending that the City Council approve the Comprehensive Signage Program for Parcels 4 & 5.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Web Link Slip Sheet - 5155 Stars and Stripes Drive City Place FEIR and MMRP
2. Web Link Slip Sheet - Master Community Plan (MCP) Volume I
3. Draft Comprehensive Signage Program (CSP) for Parcels 4 & 5 of Related Santa Clara Project
4. Resolution to approve Comprehensive Signage Program

**5155 Stars and Stripes Drive – Web Link Slip Sheet to
City Place Final Environmental Impact Report
and
Mitigation Monitoring or Reporting Program**

<https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/135/3650?npag=2>

**Related Santa Clara Project – Web Link Slip Sheet to
Master Community Plan (MCP) Volume I**

<https://www.santaclaraca.gov/home/showdocument?id=58715>



CityPlace Santa Clara

COMPREHENSIVE SIGN PROGRAM

October 30, 2020

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1 OVERVIEW

1.1 INTRODUCTION

The CityPlace Santa Clara Master Community Plan, dated April 5, 2017 (as amended from time to time) (the “MCP”), serves as the comprehensive program that governs land use and development within the Planned Development – Master Community (PD-MC) zoning designation for the CityPlace project site (“CityPlace”). The MCP is intended to provide for the orderly development of the Project, and incorporates development regulations in the form of standards and guidelines to ensure Project development that is consistent with the General Plan. The MCP includes design guidelines that are intended to ensure high-quality development and architectural design, as well as specific guidelines for signage and lighting. Section 7.1 of the MCP requires City Council approval of a Comprehensive Sign Program for the City Center (Parcels 4 and 5) in connection with the Development Area Plans for those Parcels, and requires separate comprehensive Sign Programs to be submitted for City Council approval in conjunction with the approval of the Development Area Plans for each of Parcels 1 and 2. This Comprehensive Sign Program (the “CSP”) fulfills the requirement for a Comprehensive Sign Program for Parcels 4 and 5.

In the event of a conflict between this CSP and the other Development Requirements, the standards under this CSP will control with respect to signs. Capitalized terms not defined in this CSP have the meaning specified in the MCP.

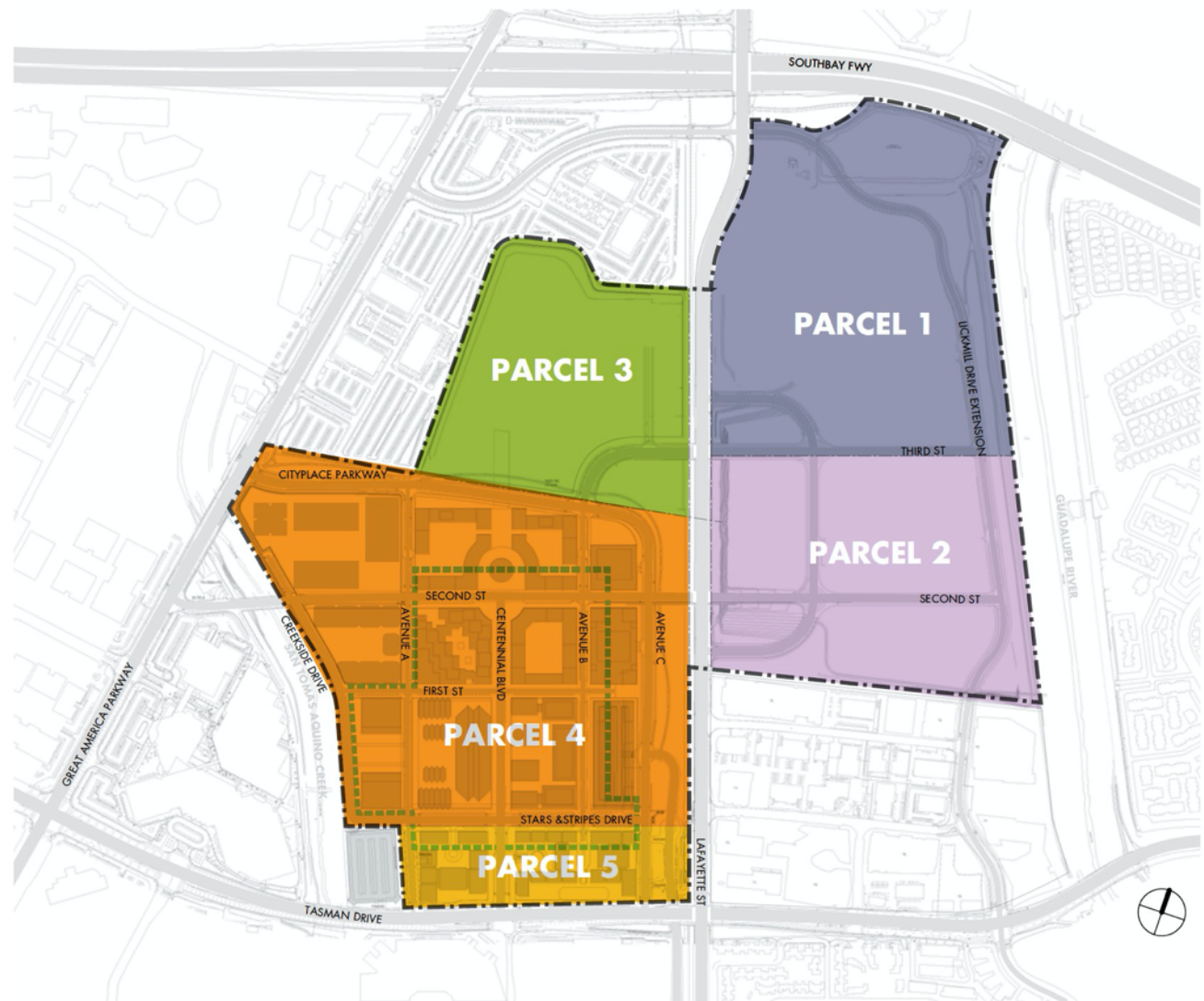


Exhibit 01A *Parcels 1–5 (CityPlace)*

1.2 PURPOSE

The purpose of the Comprehensive Sign Program is to establish the standards for the design and placement of exterior signs located within Parcels 4 and 5 of CityPlace, to ensure that the signage is appropriate for the surrounding context, is visually attractive and meets the seven Signage Design Principles set forth in Section 7.1 of the MCP, as follows:



Principle No. 1: Coordinated Project Signage: Use coordinated signage to promote the CityPlace identity. Signage based on a consistent unified design motif will add to a cohesive consistent look at CityPlace.



Principle No. 2 - Complementary Tenant Signage: Integrate tenant signage with the site design, building architecture and design theme of the district. Ensure signage is compatible in scale and character with the building and storefront.



Principle No. 3 - Wayfinding System: Wayfinding serves to orient visitors and offers a sense of familiarity to returning customers. Wayfinding will create a superior level of comfort for visitor orientation.



Principle No. 4 - High-Quality Signage: High quality signage materials will offer an elevated aesthetic for tenants but also should reflect the overall high quality of design at CityPlace.



Principle No. 5 - Legible Signage: Create signs that present a clear and simple message. Concise signage with few words tends to convey the best message.



Principle No. 6 - Durable Signage: Construct signs of durable, high quality materials that withstand weathering. Durable signage will create a feeling of permanence throughout CityPlace.



Principle No. 7 - Civic Art Potential: Civic art will provide the opportunity to enrich the environment. Civic art may be used to highlight special locations such as gateways and public plazas, or to enrich architectural and landscape details.

Signage within CityPlace is one of a series of unifying elements that will help to distinguish the community and create a strong and memorable identity in its overall scale as well as in the scale of its various districts and neighborhoods. The purpose of signage within the community is to provide efficient and clear communication to its daily users and visitors. Successfully integrated within the site, building and tenant signage will immediately inform the visitor that they have entered CityPlace.

The CSP has been designed to ensure that exterior signage will add vibrancy and energy to the community and its streetscapes through the use of materials, graphics, and forms that promote a strong identity, character, and image.

1.3 CSP ORGANIZATION

The MCP provides that the Comprehensive Signage Programs will be broken into three major categories, consisting of Project Signage, Tenant Signage, and Sponsorship and Advertising. This CSP governs certain types of Project Signage, as well as Tenant Signage and Sponsorship and Advertising Signage. At the City's direction, applicable City standards will govern Project Signage related to pedestrian and vehicular traffic control, including parking, on public streets, as well as street name signs. This CSP will govern other types of Project Signage that are intended to enhance Project identity and user experience, including gateway markers, wayfinding directories, and informational kiosks.

Applicable City standards will govern signage within City-owned parks and open space.

Artwork will be subject to the City's regular permit process, such as encroachment or building permits, but will not be governed under the CSP as signage. This CSP is organized as follows:

1. Overview (Chapter 01)
2. General Sign Design Standards (Chapter 02): sets forth general signage standards, including allowed construction and materials, signage illumination, and exempt and prohibited signs.
3. Project Signage (Chapter 03): includes wayfinding and district-wide project identity, major and minor gateways, information kiosks, and certain types of digital signage.
4. Tenant Signage (Chapter 04): identifies particular businesses and institutions within the project area, including freestanding, building mounted, and storefront signage types.
5. Sponsorship and Advertising (Chapter 05): sets forth standards for sponsorship and advertising signs, including specific limitations on the placement of Off-Site Signs, and sets forth sponsorship and advertising sign

characteristics, such as the use of interactive technologies and animated signage, light and sound towers, rooftop signage, and naming rights.

6. Placemaking & Amenities (Chapter 06): Identifies elements within the public realm that reinforce the identity and character of the place, using permanent or transient features.
7. Signage Calculation and Diagrams (Chapter 07): sets forth more fine-grained standards for specific types of signs.
8. Temporary Signage (Chapter 08): sets forth standards for temporary signs, such as construction barricades and leasing signs, and signs for temporary events.

1.4 PERMITTING PROCESS

The permitting process will differ depending on the type of sign package to be submitted, and when in the process, the approval is sought.

1.4.1 1.4.1 Sign Permits

Unless expressly exempted by the terms hereof, no sign governed by this CSP shall be erected, re-erected, constructed, or structurally altered or maintained until a sign permit for the same has been issued by the Director. The Director shall not deny a sign permit application for any sign that complies with the applicable standards outlined in this CSP (or, in the case of an approved Building Signage Plan approved under Section 1.4.3 hereof, that complies with the approved Building Signage Plan). Alteration or maintenance of a legal sign by painting, repainting, or cleaning thereof, or the changing of the advertising copy or message thereon shall not be considered an erection or alteration which requires a sign permit unless a structural change is made. A separate sign permit shall be required for each sign, except that temporary signs governed by Chapter 8 of this CSP do not need a sign permit unless expressly required thereunder. An electrical permit shall be required for any connection to an electrical sign.

In addition, any signs proposed to be located on non-leased City property within the Project, including within a public right-of-way, shall require an encroachment permit or other form of license or lease from the City. Identification of potential sign locations in this CSP does not constitute consent by the City to use such locations.

1.4.2 1.4.2 Fees – Generally

Except for official signs posted by a governmental body, a fee for each sign permit shall be paid to the Community Development Department according to the sign permit fees established from time to time by City Council resolution.

1.4.3 1.4.3 Building Signage Plans (Optional).

An applicant may, at its option, submit a building signage plan application for individual buildings or groups of buildings in accordance with this Section 1.4.3 (each, as approved, a “Building Signage Plan”). The purpose of the Building Signage Plan process is to allow for City review and approval of an entire package of signs associated with a particular building or group of buildings. A Building Signage Plan application may be (i) included with a DAP application that includes Architectural Materials as provided in Exhibit 2 to MCP Appendix C, in which case, it will be reviewed and approved as part of the DAP following the procedures outlined in MCP Appendix C; or (ii) submitted to the City as a separate package of materials concurrently with, or after, the applicant submits the Architectural Review Application for the applicable building. If a Building Signage Plan application is submitted, the application will include (i) concept level plans for signage associated with the relevant building, including the size, number, quality and general location of On-Site Signs, Off-Site Signs, and Billboards and Large Off-Site Wall Signs (if applicable), (ii) a table describing how the signage outlined in the Building Signage Plan complies with the requirements of this CSP; and (iii) a request for any modifications to the standards set forth herein under Section 1.5 hereof. If submitted after the DAP Application, the City will review and approve the Building Signage Plan application in the same manner as the Architectural Review Application outlined in MCP Appendix C, Section 3.3. Whether considered through the DAP Application process, or as a separate package, the City shall approve the Building Signage Plan application if the decision-maker finds that the application conforms to and is consistent with the applicable design requirements and standards of the Development Requirements and this CSP. Signs approved under a Building Signage Plan application must still obtain a sign permit to the extent required under Section 1.4.1;

however, the Community Development Director’s scope of the review will be limited to the consistency of the sign permit application with the approved Building Signage Plan, and the Community Development Director or their designee shall not deny a sign permit for any sign that complies with an approved Building Signage Plan.

1.5 MAJOR AND MINOR MODIFICATIONS

“Major Modification” means a deviation of twenty-five percent (25%) or more from any dimensional or numerical standard in this CSP or a departure from any non-numerical standards in this CSP that is not otherwise listed as a minor modification.

“Minor Modification” means a deviation of less than twenty-five percent (25%) of the dimensions of an area, space, height, or other requirement provided for in this CSP, or a deviation from any non-numerical standard in the CSP determined by the Community Development Director to be minor or non-material, or to be otherwise consistent with the overall intent of the CSP.

For all signs other than Billboards or Large Off-Site Wall Signs, nothing herein shall preclude an applicant from requesting in its sign permit application a Major Modification or Minor Modification from the provisions of this CSP, which request shall be considered in accordance with this Section 1.5. A Minor Modification may be considered and approved by the Community Development Director or their designee, in his or her discretion, based upon a finding that the sign, subject to such conditions as may be imposed thereon by the Community Development Director or their designee: (i) will not impair the utility or value of adjacent properties or the general welfare of the neighborhood; (ii) will not impair the integrity and character of the zoning district in which the subject property is located; (iii) will not materially add to visual clutter; and (iv) will not create visual blight. The applicant or Others Affected may appeal a denial of a Minor Modification to the Planning Commission according

to the procedures set forth in the Zoning Code. If the applicant requests a Major Modification, it shall be considered by the Planning Commission pursuant to and by the procedure set forth for variances in the Zoning Code, except that the findings required for issuance of a sign modification shall be as outlined in the preceding paragraph. The applicant or Others Affected may appeal an approval or denial of a Major Modification to the City Council pursuant to the procedures set forth in the Zoning Code.

This CSP provides standards regulating the types of signage that would typically be expected within projects of this type and scale. In certain exceptional cases, the requirements of desirable anchor tenants and other major tenants may necessitate signage that does not strictly conform to the signage standards in the CSP, such as standards for quantitative allowances or sign types. Examples could include: a multi-story retail or food and beverage tenant larger than 10,000 sf.; entertainment uses, such as a cinema multiplex which may require traditional cinema marquee or other similar exceptional tenants. In such an event, the major modifications procedures in this Section would be used to address these exceptional conditions.

“Others Affected” means anyone with a property interest in land located within 1,000 feet (but outside the boundaries of the MCP) of the site for which a Major or Minor Modification is approved.

1.6 RELATIONSHIP TO FUTURE PHASES

This CSP is intended to govern sign standards for Parcels 4 and 5, as shown in the MCP. Future Phases of development within Parcels 1 and 2 will submit with their DAP Application a separate CSP, setting forth the signage standards and guidelines applicable to the Phase.

1.7 AUTHORITY AND APPLICABILITY

1.7.1 1.7.1 Authority

As noted in the MCP, notwithstanding the provisions of SCCC 18.80 SIGNAGE REGULATIONS, the City Signage Code regulations do not apply to the CityPlace Project, including but not limited to the provisions of Sections 18.80.050 related to height limitations, 18.80.090 related to design and location, 18.80.200 related to limitations on total sign area in residential, professional, office, and public building zoning districts and 18.80.220 related to Outdoor Advertising. By adopting the MCP, the City Council approved a specific and limited exception to the Citywide prohibition on billboards on Parcels 4 and 5, provided that outdoor advertising faces inward into the City Center or faces toward Levi’s Stadium on Tasman Drive pursuant to this CSP.

1.7.2 1.7.2 Relationship to State or Federal Laws

Nothing in this CSP is intended to supersede or affect the applicability of state or federal laws that may apply to signage within the CityPlace project, and the City recognizes that other state or federal approvals or laws may apply for certain types of signs. Compliances with ADA standards will be addressed during the production of all signage elements.

1.7.3 1.7.3 Applicability

This CSP applies to all Signs that are Project Signage, Tenant Signage, and Sponsorship and Advertising Signage that are Exterior Signs installed or erected within Parcels 4 and 5.

1.7.4 1.7.4 Severability

SEVERABILITY CLAUSE. Should any section or provision of this CSP be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the rest of this CSP as a whole or any part thereof, other than the part so declared to be invalid.

1.8 DEFINITIONS

- **A-Frame Sign.** A freestanding sign usually hinged at the top, or attached similarly, and widening at the bottom to form a shape similar to the letter “A.” These signs are usually designed to be portable.¹
- **Animated Sign.** A sign with motion, flashing lights, video, color or intensity changes requiring electrical energy or electronic or manufactured sources of supply with copy or display material that moves or changes more than once every 8 seconds. Animated sign does not include a sign which tells only time and temperature in alternating sequence.
- **Awning, Canopy, Marquee sign.** A nonelectric sign that is printed on, painted on, or attached to an awning, canopy or marquee and is only permitted on the vertical surface or flap. (Chapter 7.3)
- **Billboard.** An Off-Site Free-Standing Sign that is both located along Tasman Drive and exceeds 12 feet in height, which may include, without limitation, a Pylon Sign or Digital Display.
- **Building Frontage.** The side of the building facing and measured parallel to the street for a single tenant. On a corner parcel or full block parcel, each frontage shall be considered independently. Either side may be considered for the structure frontage. (Chapter 7.1)
- **Building Official** is the officer or chief building inspector charged with the administration and enforcement of appropriate provisions of this CSP, or his/her regularly authorized deputy.
- **City Center Core Sub-District.** The area designated as such on Exhibit 01B.
- **Digital Art and Landmarks.** Non-advertising-centric displays or structures intended to add vibrancy to a location.
- **Digital Display.** A sign face, building face, and/or any building or structural component

capable of displaying still images, scrolling images, moving images, or flashing images, including video, animation and audio, through the use of grid lights, cathode ray projections, light emitting diode displays, plasma screens, liquid crystal displays, fiber optics, or other electronic media or technology that is either independent of or attached to, integrated into, or projected onto a building or structural component, and that may be changed remotely through electronic means.

- **Digital Signs.** Signs that contain digital displays that are refreshed no more than once every 8 seconds.
- **Directory Sign.** A sign for listing the tenants or occupants of a structure or center. This sign may be combined with a logo sign that is displayed for the purpose of indicating where customers or clients may visit.
- **Directional Sign.** A sign indicating where customers or clients are directed by means of arrows.
- **Eaveline.** The lowest level of a roof, eave or parapet
- **Exterior Sign.** A sign that is located outside of or on the exterior of any building structure, excluding Private Exterior Signs.
- **Foot-candle.** A unit of luminance or illumination, equivalent to the illumination produced by a source of one candle at a distance of one foot and equal to one lumen incident per square foot.
- **Freestanding Sign.** A sign which is supported by one or more uprights, braces, poles, or other similar structural components that are not attached to a structure. (Chapter 7.6)
- **Gobo Lighting.** “GOes Before Optics” projection technology for image projection onto pavement in pedestrian zones.

- **Graphics.** Decorative portion of a sign not containing a commercial message, trademark or logo-type brand name.
- **Height.** Wherever specified, height shall be measured from the top of the nearest street curb.
- **High Wall Sign.** A sign mounted near the top of a building.
- **Inward-facing Signs.** An Off-Site Sign the content of which is neither facing nor easily discernible by pedestrians or occupants of automobiles from Great America Parkway, Lafayette Street, Tasman Drive, or CityPlace Parkway.
- **Large Off-Site Wall Sign.** An Off-Site Wall Sign affixed to, or integrated into the architecture of, a building along Tasman, which may include, without limitation, Digital Displays, Supergraphics and Window Signs.
- **Light and Sound Towers.** Artful structures intended to add ambiance, attraction and orientation.
- **Logo Sign.** A trademark or symbol of any business or organization. This sign may be combined with a directory sign.
- **Mixed Media Sign.** A sign that contains both static and digital or animated imagery.
- **Movable, Promotional Kiosk Signs.** Small, attended structures with branded graphics and contents.
- **Monument Sign.** A sign that is erected directly upon the existing or artificially created grade, or that is raised no more than 12 inches from the existing or artificially created grade to the bottom of the sign, and which has a horizontal dimension equal to or greater than its vertical dimension. (Chapter 7.7)
- **Off-Site Sign:** A sign that displays any commercial message directing attention to a business, product, service, profession, commodity, activity, event, person, institution

or any other activity that does not occur or is not sold, manufactured or produced within the CityPlace project limits. “Off-Site Sign” also includes a sign that consists principally of brand name, trade name or other commercial advertising where the business, product, service, profession, commodity, activity, event, person, institution or other activity so advertised is only incidental to the principal activities that occur within the CityPlace project limits.

- On-Site Sign. A sign that is other than an Off-Site Sign.
- Parapet Sign. A sign mounted on top of the parapet of a building.
- Private Exterior Sign. A sign that is located on the exterior of a building within a private plaza or private open space (such as a courtyard, patio or deck) provided primarily for the benefit of residents, employees or paying customers, not generally open to the public, and is not easily discernible from the public right-of-way or other public areas.
- Public Street. Those streets shown as Public Streets on Exhibit 01B.
- Private Street. Those streets shown as Private Streets on Exhibit 01B.

- Project Signage. Project identity signage, transportation and traffic control signage, parking access and availability and wayfinding signage regulated under this CSP, including Chapter 3.
- Pylon Sign. A freestanding sign with its base being a smaller dimension than its height.
- Special Events. Any commercial, non-profit, educational or civic gathering of people assembled with a common purpose, including without limitation concerts or other types of performance, fairs, carnivals, parades, farmers markets, flea markets, arts and craft fairs, food and drink festivals, sporting events, retail promotions, and celebrations or any other gathering or event of similar nature.
- Supergraphic. A sign consisting of an image projected onto a wall or printed on vinyl, mesh or other material with or without written text, supported and attached to a wall by an adhesive and/or by using stranded cable and eyebolts and/ or other materials or methods
- Temporary Event Signs. Any Temporary Sign associated with Special Events that are within Parcels 4 or 5 as shown on Exhibit 01A of this CSP and have been ground leased to a private party. Temporary Event Signs do not include Window Signs or Supergraphics.

- Tenant Signage. Tenant identity signage regulated under this CSP, including Chapter 4.
- Temporary Barricades. Temporary walls, barriers and other structures intended to delineate and secure construction areas within the Project site.
- Temporary Sign. Any sign that is to be maintained for a limited duration, not to exceed 60 days (inclusive of set-up and take-down times), including paper signs and other signs that are not permanently affixed to the ground or building. (Chapter 8.0)
- Wall Sign. A sign fastened to an exterior wall within the basic structure form. (Chapter 7.2)
- Wayfinding and Information Kiosk. A small structure in a public area used for providing information and/or displaying advertisements, often incorporating an interactive display screen or screens.
- Window Sign. A sign that is architecturally integrated, applied or attached to a window and located in such a manner that it can be seen from the exterior of the structure. (Chapter 7.8) A light box that meets these criteria will be classified as a Window Sign.

1.9 PUBLIC & PRIVATE STREETS

As stated in the MCP, throughout each Phase of the Project, the Developer will construct all on-site improvements. The on-site improvements include public facilities, such as public streets, public parks

and public infrastructure. All other areas will be private facilities. Designations for public streets, public parks, private streets, private realm and the location of

the City Center Core Sub-District are shown on Exhibit 01B.

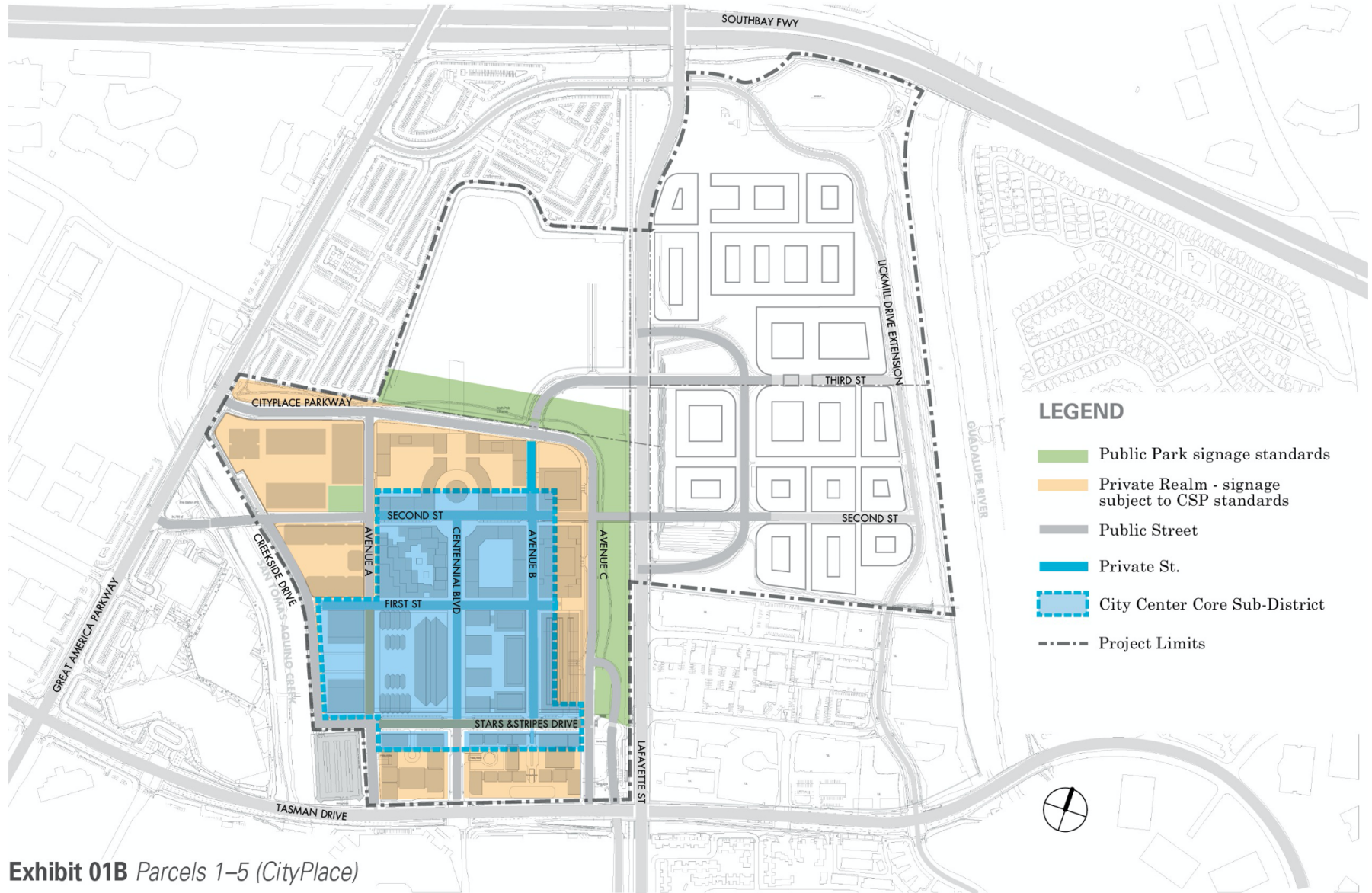


Exhibit 01B Parcels 1-5 (CityPlace)

Public & Private Streets

2 GENERAL SIGN DESIGN STANDARDS

2.1 GENERAL SIGNAGE STANDARDS

1. The color, material, lettering and lighting shall thoughtfully complement the surrounding street environment and building(s) that the sign addresses.
2. Materials should be constructed of the highest colorfast materials to minimize fading, cracking and deterioration.
3. Each sign shall comply with the limitations on size as set forth in this CSP.
4. Signs shall comply with all local Fire and Building Safety codes and regulations.
5. Signs shall not impede pedestrian traffic, block vehicular sight lines along streets or disturb adjacent residential uses.
6. Signs shall not cover doors, vents, rescue windows or other openings that serve building occupants, except to the extent permitted for supergraphics in Section 7.11.
7. Signs shall not encroach into a private or public street as applicable, except for: (a) a Projecting or Canopy/Awning sign to the extent permitted under Section 7.4.4, or (b) Temporary Signs or A-Frame signs.
8. Signs shall be designed with durable materials and be well maintained.
9. Painting, repainting, or cleaning of a sign shall not be considered erecting or altering a sign.
10. Nothing herein is intended to exempt any sign, including temporary signs or other signs otherwise exempt from the sign permit requirements of this CSP from obtaining a Building Permit, Electrical Permit or

Encroachment Permit to the extent required by the uniform codes adopted by the City.

2.2 ALLOWED CONSTRUCTION AND MATERIALS

1. Mixed media signs incorporating multi-dimensional forms and combinations of colors, shapes, materials and lighting;
2. Dimensional individual letterforms with acrylic or metal faces;
3. Reverse channel letterforms with halo illumination;
4. Open channel letterforms; Cut or fabricated metals;
5. Etched or sandblasted metals and glass;
6. Permanent materials such as metal, stone, ceramic tile or glass;
7. Dimensional geometric shapes and three-dimensional forms;
8. Light transmitting acrylic letterforms;
9. Sustainable design elements such as recycled and other materials with a low environmental impact; and
10. Painted or digitally produced supergraphics which are artfully designed and composed on large blank surfaces.

2.3 SIGNAGE ILLUMINATION

1. External light sources shall be directed and shielded at the sign to limit direct illumination of any other object and the surrounding area.
2. Illumination for each sign type shall comply with the express requirements of this CSP, or if standards for illumination are not specifically addressed for a particular sign type, shall be of an intensity or brightness that

will not negatively impact immediate surroundings.

3. Signs shall not incorporate blinking, flashing or fluttering lights or other devices that rapidly change a light's intensity or brightness.
4. Colored lights which may be confused with traffic-control devices are prohibited.
5. Illuminated signs shall incorporate energy-efficient fixtures to the greatest extent possible.
6. Hot spots and light leaks are prohibited in all signs.
7. Illuminated signs shall comply with the national and/or local building and electrical codes having jurisdiction over the Project and shall bear the Underwriter's Laboratories ("U.L.") label to conform to U.L. codes.
8. Illuminated signs shall have all labels, conduit, J-boxes, transformers and wires concealed from view.

2.4 EXEMPT SIGNS

1. The following signs are allowed without a Sign Permit and shall not be included in the determination of type, number, or area or signs allowed on each parcel or within the Project. Exempted signs shall be required to adhere to the regulations established for each sign type as provided in this Section and shall be subject to any other permits required by the City as set forth in Section 2.1(10) of this CSP.
 - a. Signs required by Federal/State law;
 - b. Official signs posted by a governmental body, including, flags, banners, emblems, or signs issued by a government body including notices, traffic or highway signs, railroad crossing signs, or similar

- regulatory or warning devices and legal notices;
- c. Seasonal displays and decorations, only when not creating a traffic hazard or located within any visual setback area in the sight distance triangle;
- d. Temporary Signs, subject to the size and quantity limitations of Chapter 8 of this CSP. All Temporary Signs shall be removed or replaced within 60 days following the placement.
- e. Commemorative plaques, tablets, date of construction, and similar signs constructed of permanent material. Only one sign for each structure, not to exceed two square feet in area for each sign is allowed.
- f. Signs located inside a structure.
- g. Murals or other artistic paintings on walls, provided no names, information, logos, emblems or other similar information or illustrations of activities associated with uses on the Project Site or in the vicinity are included in the mural or painting;
- h. “No Trespassing” signs. Each sign limited to one square foot in area. Signs may be placed at each corner and each entrance to a parcel and at intervals of not less than 50 feet or in compliance with legal requirements.
- i. Signs placed by utilities or other publicly regulated service providers indicating location of underground facilities, danger, and aids to service or safety, including official advisory and signal flags;
- j. Copy changes in approved changeable copy signs.
- k. Signs or notices incidental to a commercial, mixed-use, or industrial establishment (e.g., hours of operation, credit card information, emergency contact information, help wanted, open-close) provided the signs do not contain any

commercial messages or the establishment logo, and in total do not exceed four square feet in area per tenant for all incidental signs.

- l. Memorial tablets or signs that commemorate historical events or people.
- m. Private Exterior Signs

2.5 PROHIBITED SIGNS

1. Animated Signs (except as described by Ch. 5 of this CSP).
2. Banners, pennants, statuary, streamers, whirligigs, displays, signs placed on architectural projections and merchandise primarily designed and used for sign purposes located outside of structures (except as described by Ch. 6 of this CSP or Temporary Signs in connection with special events that are otherwise exempt under Ch. 8 of this CSP).
3. Billboards and Large Off-Site Wall Signs, except for the special, limited exception authorized by Section 5.3 of this CSP.
4. Red, green, or amber lights or illuminated signs that could interfere with or be confused with any official traffic control device or traffic signal or official directional guide signs.
5. Signs emitting foreign material or sound, except as described in Chapter 7 of this CSP.
6. Signs on a natural feature (i.e., rock, tree, mound, hill, or mountain).
7. Signs on roof, parapet, or wall above the eave line, except in conformance with the requirements of Chapter 7 of this CSP.
8. Tethered balloon(s) or other inflatable(s) used to draw attention to a use or event except for Temporary Signs in connection with special events that are otherwise exempt under Ch. 8 of this CSP).

3 PROJECT SIGNAGE

Project signage will enhance project identity at CityPlace and create a cohesive graphic family of signs for getting around CityPlace. Project signage will include project identity signage, transportation and traffic control signage, parking access and availability, and wayfinding signage.

3.1 PROJECT SIGNAGE DESIGN INTENT

Project and district identifiers will include highly visible gateway markers. In addition to advertising the Project and/or its districts, these signs should enhance project identity and establish a welcoming point of arrival. Wayfinding signs will be especially useful in orienting first-time visitors, while offering a sense of familiarity to returning customers.

3.2 PROJECT SIGNAGE DESIGN GUIDELINES

1. Develop a “family” of signage that creates a graphic continuity throughout the Project. In CityPlace, districting concepts may require individualized district signage “families”.
2. Provide vehicular directionals consistent with City requirements that guide motorists to important destinations on-site, including major attractions, parks and parking facilities.
3. Include directional signs and maps that guide persons on foot and bicycle to important public services and facilities, parks, outdoor gathering areas, and major tenants.
4. Avoid signage in corner/driveway sight clearance areas

3.3 PROJECT SIGNAGE CHARACTERISTICS

3.3.1 Major Gateway Signage (Exhibit 03A)

Summary Description:

1. Gateway signage clearly identifies the Project at vehicular points of entry and provides information (or place identification).
2. Signs are scaled to their surroundings and in accordance with their function as primarily vehicular-oriented project identifiers.
3. Gateway elements may include landscape, hardscape and light displays.
4. Gateways enhance the Project and establish the overall character of the signage program.
5. Signs are constructed of high quality and durable materials that are weather and vandal resistant.
6. Major Gateway signs are primarily for project name or logo. Off-Site content and Digital Signs are prohibited.
7. Ceremonial Gateways are experiential areas that will combine sculpture, lighting and/or signage in concert with adjacent architecture and landscape to create a sense of arrival. Off-Site advertising is prohibited.

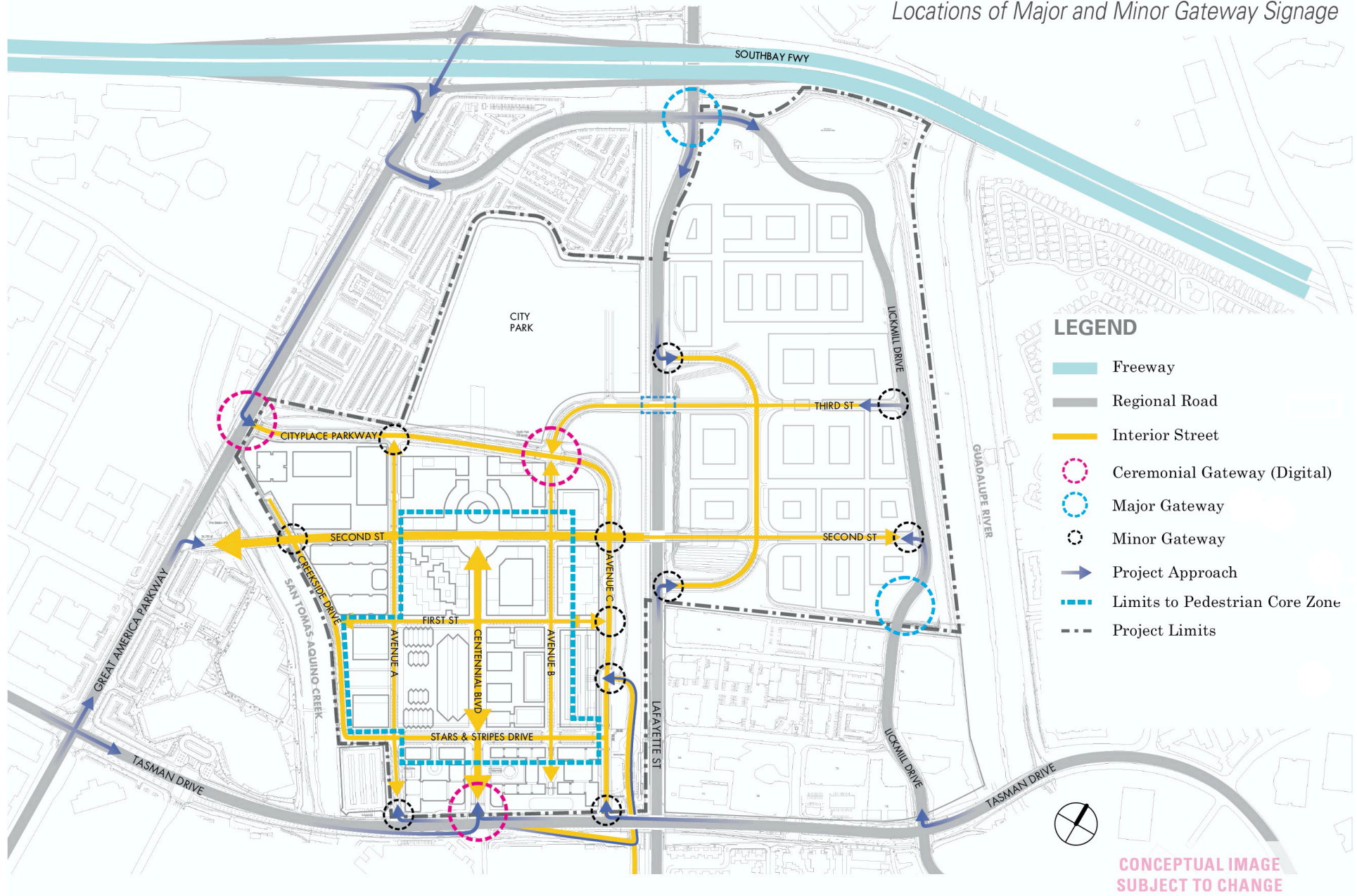
3.3.2 Minor Gateway Signage (Exhibit 03A)

Summary Description:

1. Minor gateway signage identifies important project features, districts within the Project or, in the case of office campuses, corporate identity.
2. Minor gateway signage is smaller in scale than major gateway signage and placed at secondary points of entry or subdistrict entries.
3. Minor gateway signage emphasizes bold, highly legible graphic design providing information to vehicles, pedestrians, and cyclists.
4. Signs are constructed of high quality and durable materials that are weather and vandal resistant.

Exhibit 03A Phase 1-4 (CityPlace)

Locations of Major and Minor Gateway Signage



3.4 TRANSPORTATION / TRAFFIC CONTROL TYPOLOGY

3.4.1 Street Name

Summary Description:

1. Signs and typefaces are kept simple to augment readability for users.
2. Contrast of colors is especially important to the functionality and legibility of street name signage.

3.4.2 Parking Identity & Regulation

Summary Description:

1. Signage is strategically placed to guide visitors toward their preferred destination.
2. Highly legible lettering is used to ensure clear and concise direction for vehicular traffic. Typefaces are made simple to ensure user readability.
3. Incorporate real time Vehicle Management Signage (VMS) into parking facility identity and into associated, off-site wayfinding elements.

3.5 DIRECTIONAL / WAYFINDING TYPOLOGY

3.5.1 Vehicular Directional (Exhibit 03B)

Summary Description:

1. Directionals are located at or near project entrances and key intersections, and other locations that will serve to guide motorists to their destination. Signs direct motorists toward parking, and major destinations and attractions, including the larger tenants.
2. Vehicular directionals are freestanding or mounted on light poles and scaled to their surroundings for a comfortable read by slow moving vehicles and cyclists.
3. Materials for vehicular directionals are similar to those making up other project signage and compatible with the overall signage program.
4. Signs are visually engaging with highly legible text and graphics.





3.5.2 Pedestrian Directional (Exhibit 03B)

Summary Description:

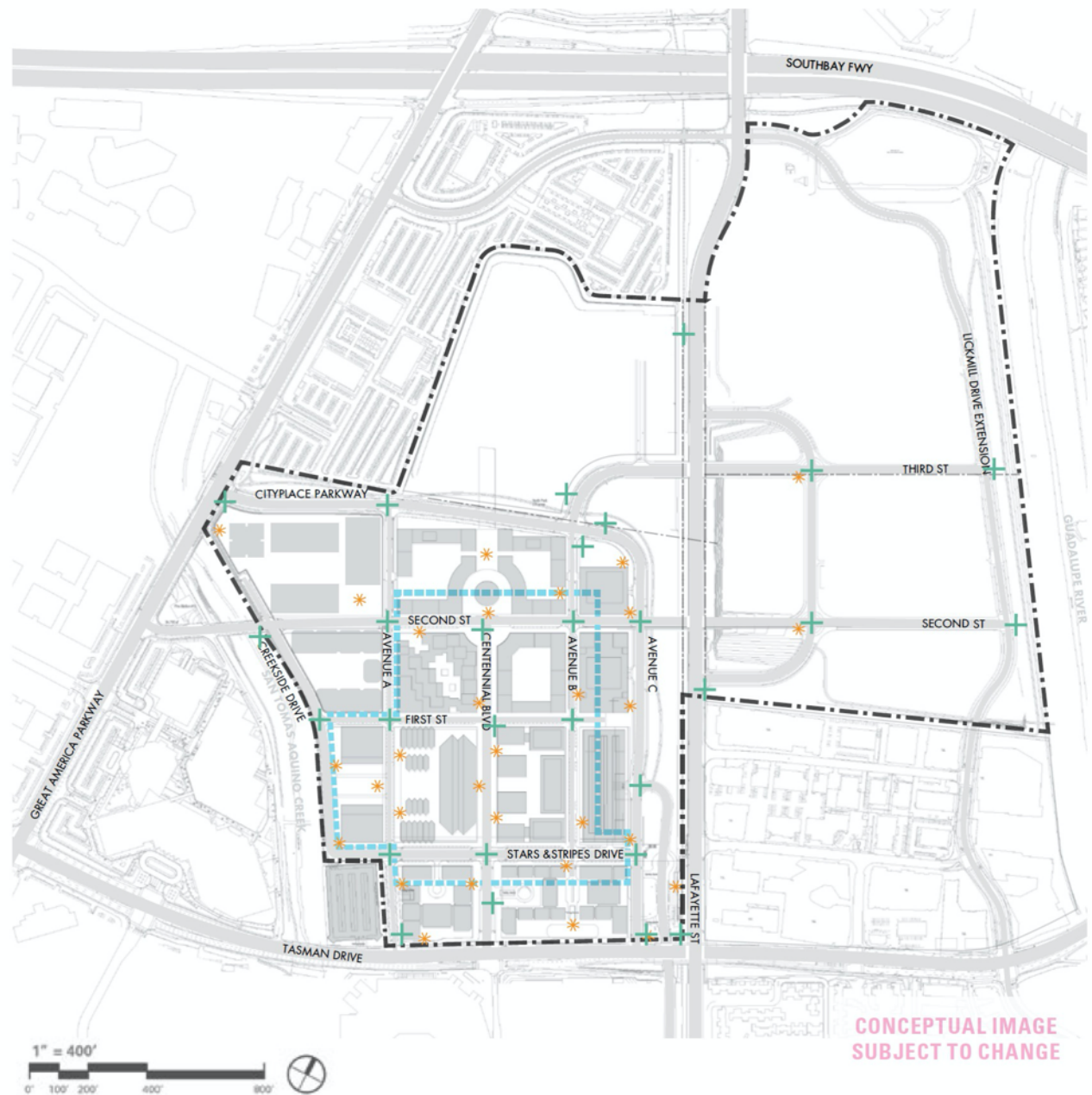
1. Directionals are located along major pedestrian circulation routes and other locations that will serve to guide the pedestrians toward public and/ or guest services and amenities.
2. Pedestrian directionals maintain pedestrian flows and sight lines.
3. Signs are scaled to their surroundings for a comfortable read by pedestrians and bicyclists.
4. Signs are created from high quality and durable materials that are weather and vandal resistant.
5. Enhance project identity and maintain compatibility with overall signage program.

Exhibit 03B

Vehicular & Pedestrian Directionals

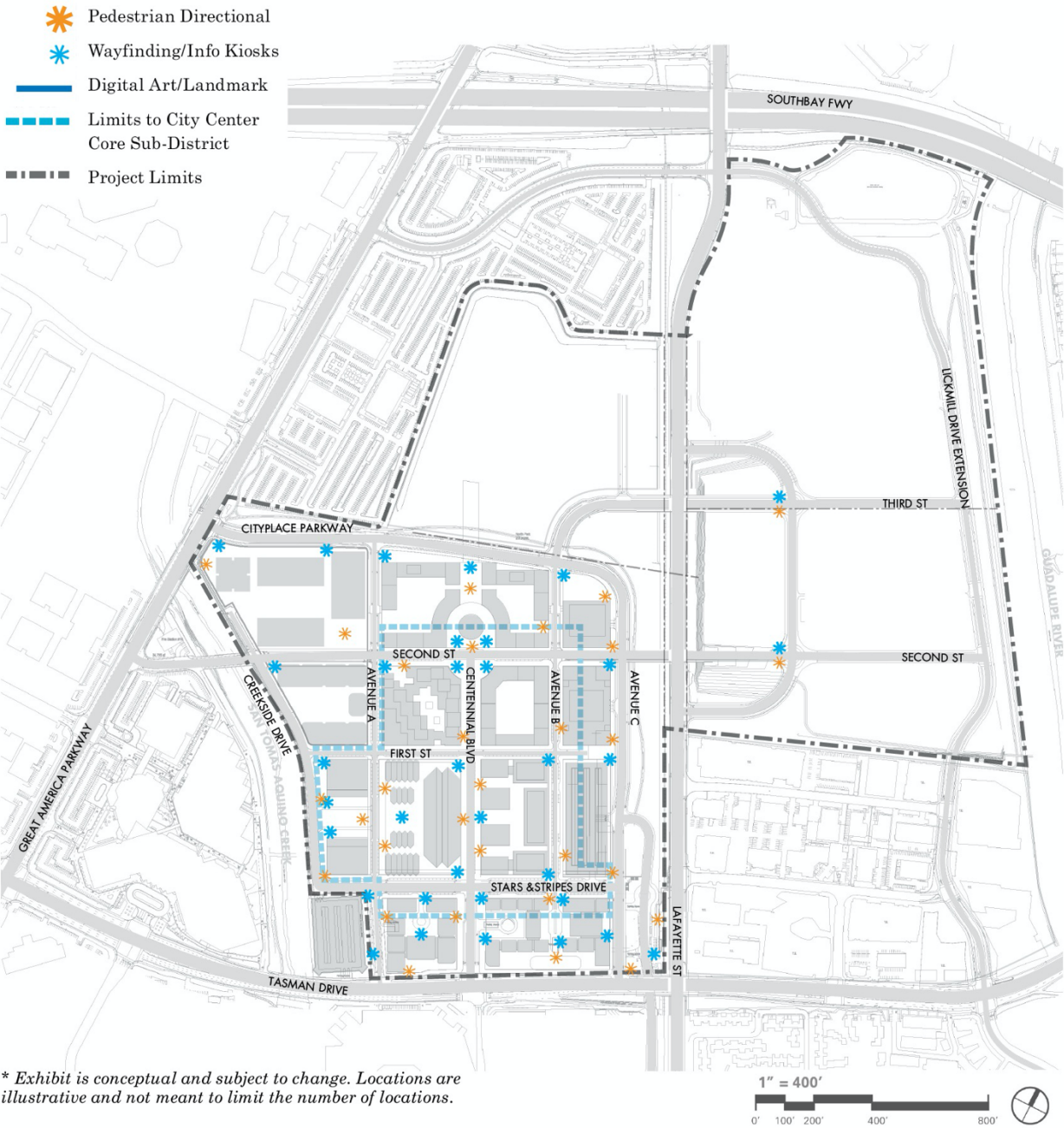
-  Vehicle Directional
-  Pedestrian Directional
-  Limits to City Center Core Sub-District
-  Project Limits

** Exhibit is conceptual and subject to change. Locations are illustrative and not meant to limit the number of locations*



**CONCEPTUAL IMAGE
SUBJECT TO CHANGE**

Exhibit 03C Wayfinding & Information Kiosks

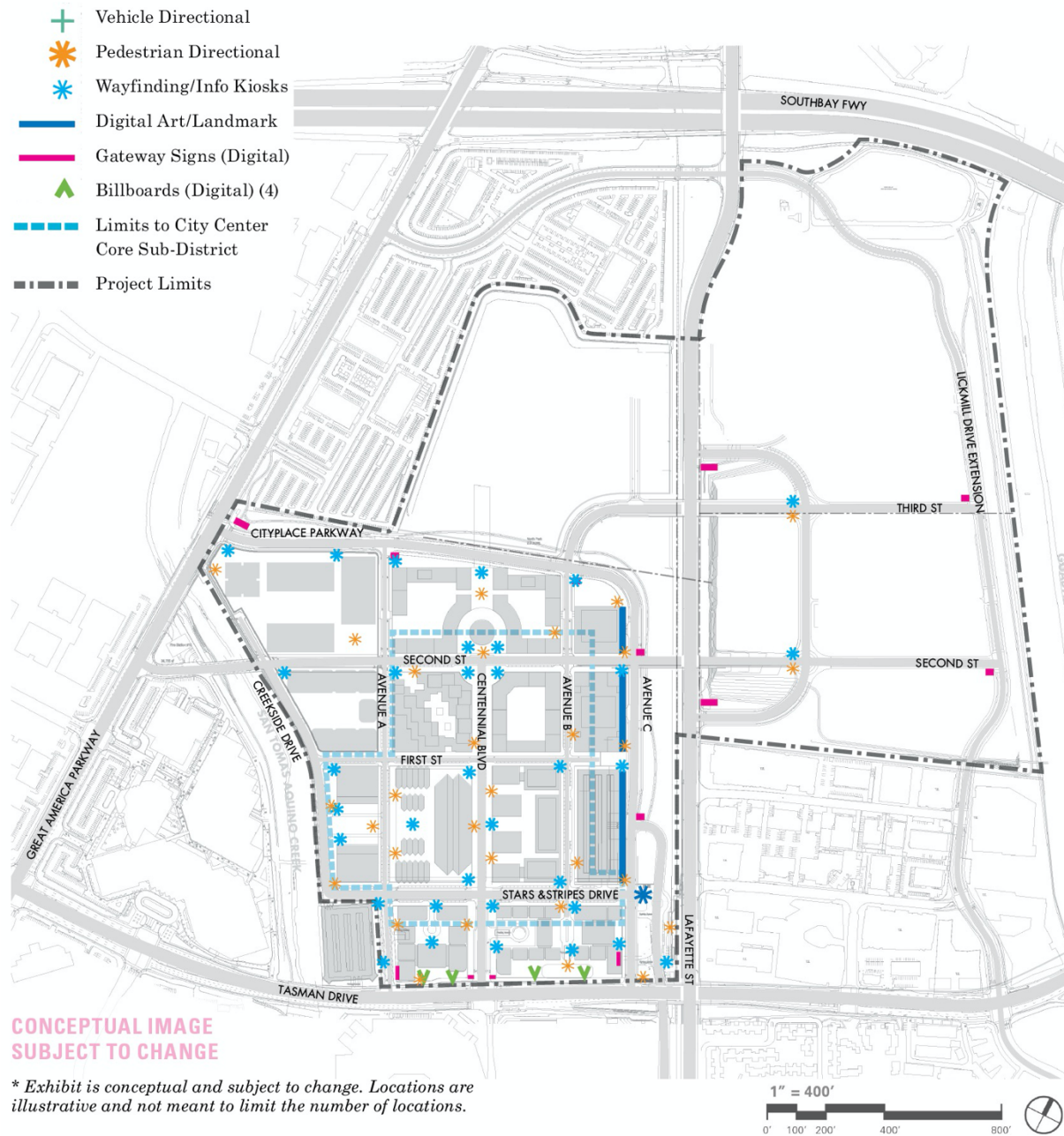


3.6 WAYFINDING / INFORMATION KIOSKS (EXHIBIT 03C)

Summary Description:

1. Wayfinding/Info Kiosks are located within or near major pedestrian gathering spaces and key intersections subject to heavy pedestrian flow.
2. Wayfinding/Info Kiosks present essential information needed to navigate the Project.
3. Kiosks are made from high quality durable materials, as these elements are exposed to the weather and will receive an especially high degree of contact with the public.
4. Wayfinding/Info Kiosks and maps may also locate points of interests and essential services provided.
5. Wayfinding/Info Kiosks may include features such as ADA Compliance Voice activation,
6. Advertising / PSA / Retail engagement, Parking, and/or Sustainability information.
7. Information is intended to be presented in a clear and highly graphic manner, and locates project tenants, major destinations, and public and/or guest services.
8. Kiosks are situated to maintain pedestrian flows and preserve sight lines.
9. Kiosks can also function as “community boards” that advertise upcoming events.

Exhibit 03D Digital Wayfinding and Landmarks



3.7 PROJECT DIGITAL SIGNAGE

Summary Description:

1. Subject to the regulations and limitations of this CSP, all Project Signage may be Digital Signs or Mixed-Media Signs.
2. Digital Art and Landmarks to contain artful content and lighting expressions to enhance the experience of entering CityPlace. Project Identity and On-Site content may also be displayed.
3. Digital Wayfinding/Info Kiosks can include data such as interactive maps, bus schedules, community functions and temporary directional signage for special events.
4. Digital displays may be freestanding or integrated into architecture. On-Site Sign (and Off-Site Sign, where permitted) content to be photography, videos (in instances where Animated Signs are permitted) or sponsored artistic imagery that is subject to regulations described in Chapter 5 of this document.
5. With merging combinations of digital signage, wayfinding and advertising, a single signage element may host multiple expressions.

4 TENANT SIGN TYPES

Tenant signage quality will be measured through its compatibility with the building architecture, its level of integration with the storefront design, and the ability to clearly communicate.

4.1 TENANT SIGNAGE DESIGN INTENT

High quality, innovative, and expressive tenant signage will create a cohesive look and feel at City-Place. A tenant's primary signage will consist of the name of the business and/or logo depicted on a wall sign and will be designed to comfortably fit the building and storefront. Signage should reflect the character of the tenant and services provided, while clear and legible to passing pedestrian, bicycle and automotive traffic consistent with size restrictions noted in chapter 7.

4.2 TENANT SIGNAGE CRITERIA

1. Locate and design tenant identity signs to complement the building architecture and storefront design.
2. Restrict tenant identification signs to the business name, simple logo or other elements typically used to depict their brand.
3. Ensure that window signage and graphics augment and obscure display areas by no more than 15% of the overall window area.
4. Office buildings and associated parking structures facing major streets are allowed to have:
 - a. Identity signage near the top of their buildings that is sufficiently scaled to be readable from adjacent arterial roads and freeway.
 - b. Signage is limited to the corporate entity name and/or logo, and/or the name of a company that occupies the building.
 - c. Up to four identity signs shall be allowed per building.
5. Tenant wall signs should be located on flat, unadorned surfaces. This is generally a panel or band above the storefront entrance, although alternative locations may be considered.
6. Coordinate sign placement with the arrangement of bays, windows, and other

architectural features while remaining consistent with the standards.

7. The overall size, materials and graphic composition of a tenant sign should be coordinated with architectural character of the project district and storefront design.
8. Encourage pedestrian-scaled projecting signs (overhead mounted, projecting blade signs, etc.) along pedestrian sidewalks and pathways.

4.3 TENANT SIGNAGE - CHARACTERISTICS

4.3.1 Freestanding/Monument Signage

Summary Description:

1. Freestanding signage (affixed to the ground or connected to supports affixed to ground, and not affixed to a building) includes architectural details, quality materials, and colors compatible with the associated buildings.
2. Signage incorporates durable sign materials that can withstand exposure to the elements.
3. Freestanding signage should be easily and comfortably read by both pedestrians and by vehicular traffic.

4.3.2 Building-Mounted Signage

Summary Description:

1. Building-mounted signs are conceived as an integral part of the building façade, placed in accordance with façade rhythm, scale and proportion.
2. Signs do not obscure architectural features such as vertical piers, trim work, ornamental features, etc.
3. Parapet / High Wall Signs are mounted above windows and below parapet top and are consistent with the requirements of Section 7.5.

4.3.3 Storefront Signage

Summary Description:

1. Storefront signage is integrated with the design of the building, compatible with the architectural details and color scheme of the building.
2. Storefront signage may include a Window Sign that is located on or within 6 feet in any direction of the edge of the window plane, painted or attached.
3. Little to no impact to residences.

4.3.4 Projecting Signage

Summary Description:

1. Projecting signage is integrated with the design of the building, coordinating with the architectural details and color scheme of the building.
2. Projecting signs are placed perpendicular to the building.

4.3.5 Supergraphic / Building Integrated Signage

Summary Description:

1. Supergraphics are integrated with the building architecture, coordinating with the overall design.
2. Large-scale painted or applied decorative art in bold colors and typically in geometric or typographic designs.
3. May be permanent or temporary and used over walls or windows to create an illusion of expanded or altered space.
4. Use of Supergraphics may be static imagery or displayed digitally and may serve a broader set of purposes including holidays, celebrations, advertising and sponsor promotions.

4.3.6 Rooftop Signage

Summary Description:

1. Signage is integrated with the design of the building, coordinating with the architectural details and color scheme of the building.
2. Signs are considerate of nearby uses.
3. Signs are applied or placed upon the roof surface, visible from a distance, yet not prominently visible from the adjacent public right-of-way.

5 SPONSORSHIP & ADVERTISING SIGN TYPES

Sponsorship and advertising will enhance the identity of CityPlace and create an active, unique core, thereby serving the City's objective to create a vibrant mixed-use, urban core, creating a pedestrian friendly "live, work, and play" environment that will function as a well-defined center for the Santa Clara community.

5.1 SPONSORSHIP & ADVERTISING SIGNAGE - DESIGN INTENT

The types of sponsorship and advertising signs used at CityPlace are restricted by viewable location, "off-site" advertising content, levels of animation, event duration, and hours of operation. Buildings and plazas may be named after companies or individuals who have purchased naming rights. The signage may also include digital displays, reader boards and other graphics that may enhance the functions held within CityPlace. Refer to Exhibit 05A for preliminary locations and quantities of Sponsorship and Advertising Signage.

5.2 SPONSORSHIP & ADVERTISING SIGNAGE STANDARDS

1. Locate and design signs to be freestanding, integrated into building architecture or storefront design.
2. Coordinate signage placement with the arrangement of bays, windows, and other architectural features.
3. Locate Animated and Digital Signs on flat, unadorned surfaces.
4. Design digital signs as clean, simple, attractive, appropriate and brief messages.
5. Ensure that signage and interactive technologies augment and minimally obscure display areas of storefronts.
6. Off-Site Signs must be located in the City Center Core Sub-district and be Inward-facing Signs, except Billboards and Large Off-Site Wall signs consistent with CSP Section 5.3.

5.3 SPECIFIC LIMITATIONS ON OFF-SITE ADVERTISING DISPLAYS

Off-Site Signs are prohibited with the exception of the following:

1. **Inward-facing Signs within the City Center Core Sub-District.** Inward-facing Signs within the City Center Core Sub-District are permitted consistent with all applicable standards in Chapters 2, 5 and 7, subject to the following limitations:
 - a. Limited to 12' in height if the sign is either (i) facing the building with a residential use that is located within 100 linear feet of the sign, or (ii) utilizing animation
 - b. Limited to 40' in height if the sign does not meet the criteria in subsection 5.3.1.a(i) or (ii).
2. **Inward-facing Signs outside of the City Center Core Sub-District.** Inward-facing Signs consistent with all applicable standards in Chapters 2, 5 and 7 are permitted outside of

the City Center Core Sub-District subject to the following limitations:

- a. Limited to 12' in height
 - b. No animation allowed
3. **Billboards and Large Off-Site Wall Signs along Tasman Drive.** Consistent with Section 7.1 of the MCP, Billboards and Large Off-Site Wall Signs along Tasman Drive are permitted subject to the following numerical, height, and size restrictions:
- a. No more than a total of four (4) Billboards and/or Large Off-Site Wall Signs are permitted along Tasman, in any combination (for example, two Billboards and two Large Off-Site Wall Signs)
 - b. Billboards may be multi-sided with up to four separate faces and must be no taller than 50 feet.
 - c. Large Off-Site Wall Signs may be multi-sided (e.g., a single sign having two exposures wrapping the corner of a building) and must be located within Vertical Zone Levels 1, 2 or 3, as shown in Section 7.1 of this CSP.
 - d. Any Billboard is limited to 700 sf of sign area per side of the Billboard, per Section 7.11.8 and must not exceed a maximum width of 48 feet.
 - e. Any single-sided Large Off-Site Wall Sign is limited to 1,400 sf of sign area; sign area on a multi-sided corner Large Off-Site Wall Sign is limited to a maximum sign area per side of 1,400 sf. of sign area in total that may be distributed over the two corner facades in any proportion (e.g., 50/50; 70/30, etc.)
 - f. A Billboard or Large Off-Site Wall Sign may display animation, but it may only display video animated content on event days with events at Levi's Stadium when there is no through traffic on Tasman Drive between Lafayette Street and Great

America Parkway, and may be further limited by agreement between The City and the developer.

- g. No Major or Minor Modifications are allowed for Billboards or Large Wall Signs
4. In the event of a conflict between the numerical, height and size restrictions applicable to Off-Site Signs set forth in this Section 5.3 and the general standards set forth in Chapter 7 hereof, the provisions of this Section 5.3 will control.

5.4 SIGNAGE CHARACTERISTICS

5.4.1 Animated / Digital / Interactive Technologies

Summary Description:

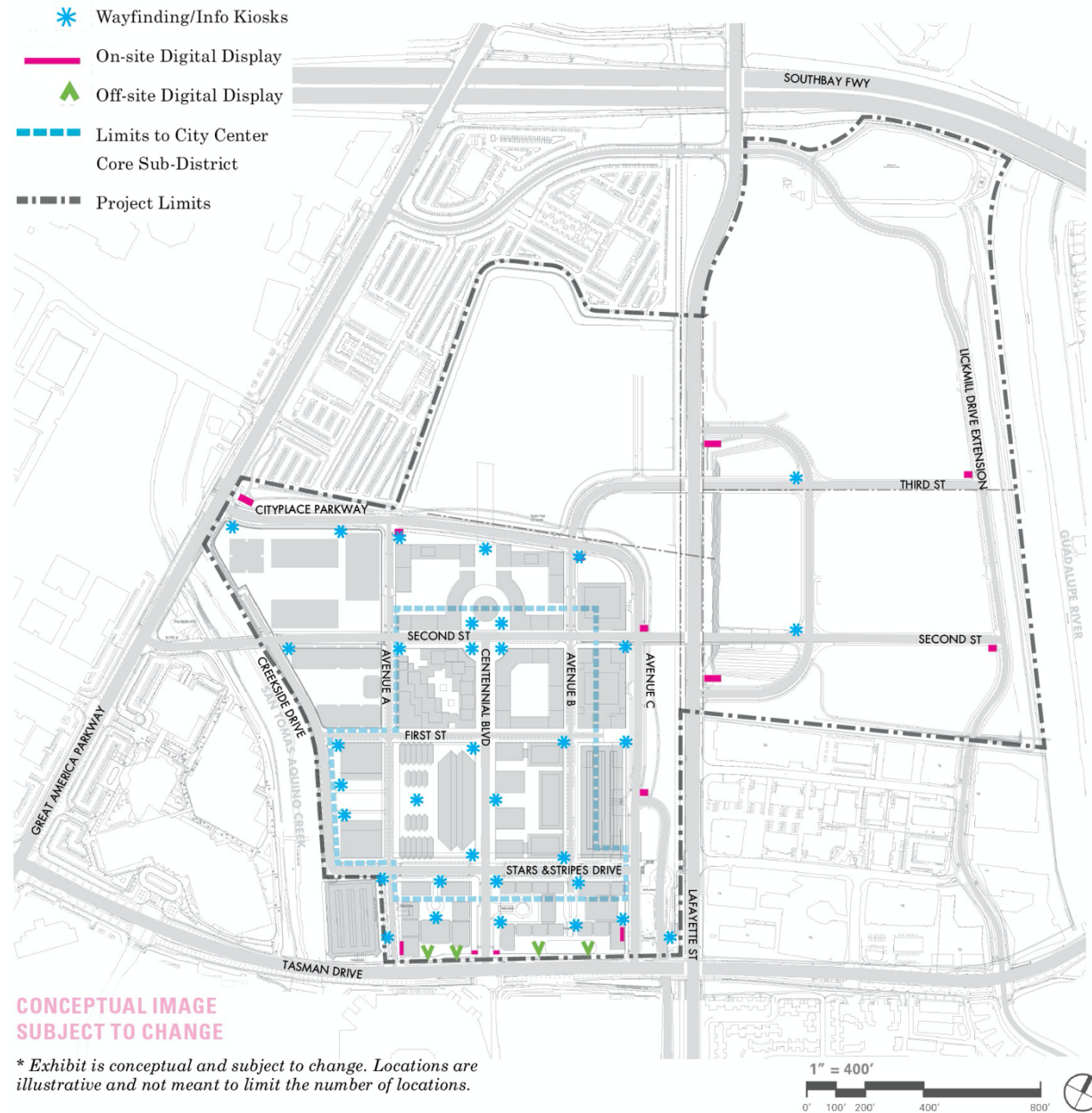
1. Signage has Digital Displays.
2. Signage incorporates durable sign materials that withstand exposure to the elements.
3. Animated signage shall only be permitted if they meet the requirements of Section 5.3.
4. Interactive technologies can include areas subject to projected images containing GOBO lighting solutions.

5.4.2 Light & Sound Pylons

Summary Description:

1. Freestanding multi-sided structures may include animated and/or non-animated signs and are permitted if they meet the requirements of Sections 5.3 and 7.6.
2. Includes architectural details, quality materials, and relates spatially to its surroundings.
3. Light and sound towers are conceived as an integral part of the outdoor space, placed in accordance with façade rhythm, scale and proportion.
4. Sound shall be subject to and comply with SCCC9.10.040.
5. Lighting must not compete with or mimic traffic signal devices that may confuse motorists.

Exhibit 05A Sponsorship & Advertising



5.4.3 Rooftop Signage

Summary Description:

1. Rooftop signs identifying a structure are an important sponsorship opportunity for purchasers of naming rights that occupy buildings on Parcels 4 and 5.
2. Signage is integrated with the design of the building, coordinating with the architectural details and color scheme of the building.
3. Signs are considerate of nearby uses.
4. Within the limitations set in Section 5.3, Rooftop signs are located upon the roof surface, visible from a distance, yet not prominently visible from the adjacent public right-of-way.

5.4.4 Naming Rights

Summary Description:

1. An area at the top of a building face dedicated to sponsorship of an organization, typically displaying the organization's logo and brand.
2. Tenants must occupy space on Parcels 4 or 5 and are typically the major lessees of a multi-tenant building.

6 PLACEMAKING & AMENITIES

CityPlace will allow for a great opportunity to further enrich the environment with various artistic design elements that may be used to highlight special locations such as gateways and public plazas, or simply enrich architectural and landscape details.

6.1 PLACEMAKING DESIGN INTENT

Designed elements will enhance the visual environment, making a more memorable place, enhance wayfinding, reinforce the overall image and project identity, and even function as a conceptual link to disparate parts of the Project. It is important to consider how the design element might serve as a local landmark, delineate outdoor space, add richness to the landscape, or create an expression of local history and culture.

6.2 PLACEMAKING DESIGN ELEMENTS

6.2.1 Custom Identity

Explore opportunities to tastefully incorporate a project logo or similar graphic element as decorative sidewalk plaques or integral to on-site furnishing and landscape features, such as benches, trash receptacles, tree grates, etc.

6.2.2 Site Banners

Colorful banners applied to light poles or building facades may advertise CityPlace and local events. A seasonal banner program that lines main thoroughfares in procession will create a sense of arrival. These are especially appropriate for gateways and streets with retail frontages, where they will contribute to a festive environment. Banners are not intended for the display of tenant identity but may include a sponsor logo that does not fill more than 25% of the banner area. Banners will be mounted to banner poles or light poles with wind-resistant brackets. Banners are permitted within the City Center Core Sub-District without a sign permit. Banners on light poles or otherwise within a public right-of-way will be permitted as provided by this Section 6.2.2 and will be subject to the City's permitting procedures.

6.2.3 Event Signage

Temporary signage may be installed prior to event opening consistent with the Temporary Sign requirements in Chapter 8 of this CSP.

7 SIGNAGE CALCULATION AND DIAGRAMS

MASTER PLAN STANDARDS

All exterior signs on a development parcel shall be included in the calculation of maximum allowed combined sign area except for the following signs:

1. Temporary Signs (section 8.0)
2. Supergraphic Signs (section 7.9)
3. Billboards and Large Off-Site Wall Signs (section 7.11)

MAXIMUM ALLOWED SIGN AREA

The maximum allowed combined sign area on a building elevation is **four (4) square feet of signage per linear foot of block frontage** with the lot/block frontage being measured along the block line on which the building elevation is located. Unused allowable square footage is not allowed to be transferred to a different building elevation within the development parcel. Refer to Figure 7.1 for frontage delineation information. Additional square footage may be allowed via the modification process outlined in Section 1.5.

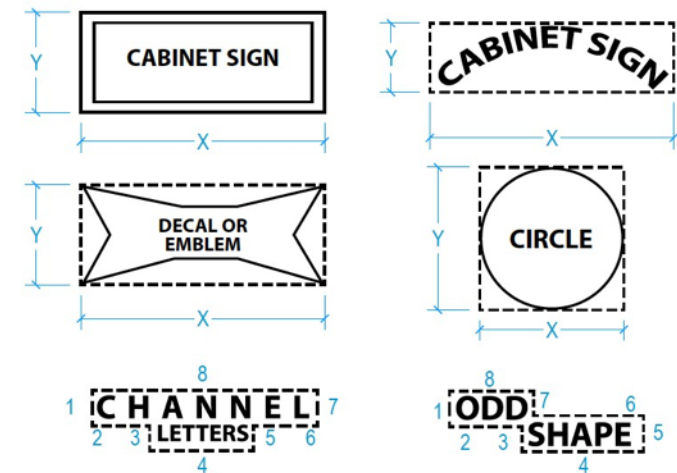
ALLOWED SIGN TYPES

The following sign types are allowed throughout the entire CityPlace area. Refer to specific sign type requirements in this chapter for additional information on allowed sign types by land use.

- Wall Sign
- Pylon Sign
- Monument Sign
- Projecting Sign
- Awning / Canopy Sign
- Parapet Sign
- Window Sign
- Supergraphic Sign
- Rooftop Sign

SIGN AREA

1. Allowable Sign Square Footage. All signs are measured based on every linear foot of structure frontage to determine the maximum allowable sign square footage, unless noted otherwise in Section 18.42.110 (Standards for Specific Types of Signs).
2. Sign Area Calculations. Sign area calculation is based on every linear foot of structure frontage, to a specified amount of sign square footage. For example, if a structure has 100 feet of linear frontage, and one foot of sign area is allowed for every foot of linear frontage, the maximum allowable sign square footage would be 100 square feet.
3. Sign Surface Area Calculation. The sign surface area shall be calculated by enclosing the extreme limits of framing, emblem, logo, representation, letters applied to the structure without a distinctive background (e.g., painted wall sign, channel letter), or other display with a single continuous perimeter composed of the smallest square, circle, rectangle, triangle, or combination thereof. See Figure 7a.
4. Additional sign area and/or sign types may be permitted. See Chapter 1.5 “Major and Minor Modifications”



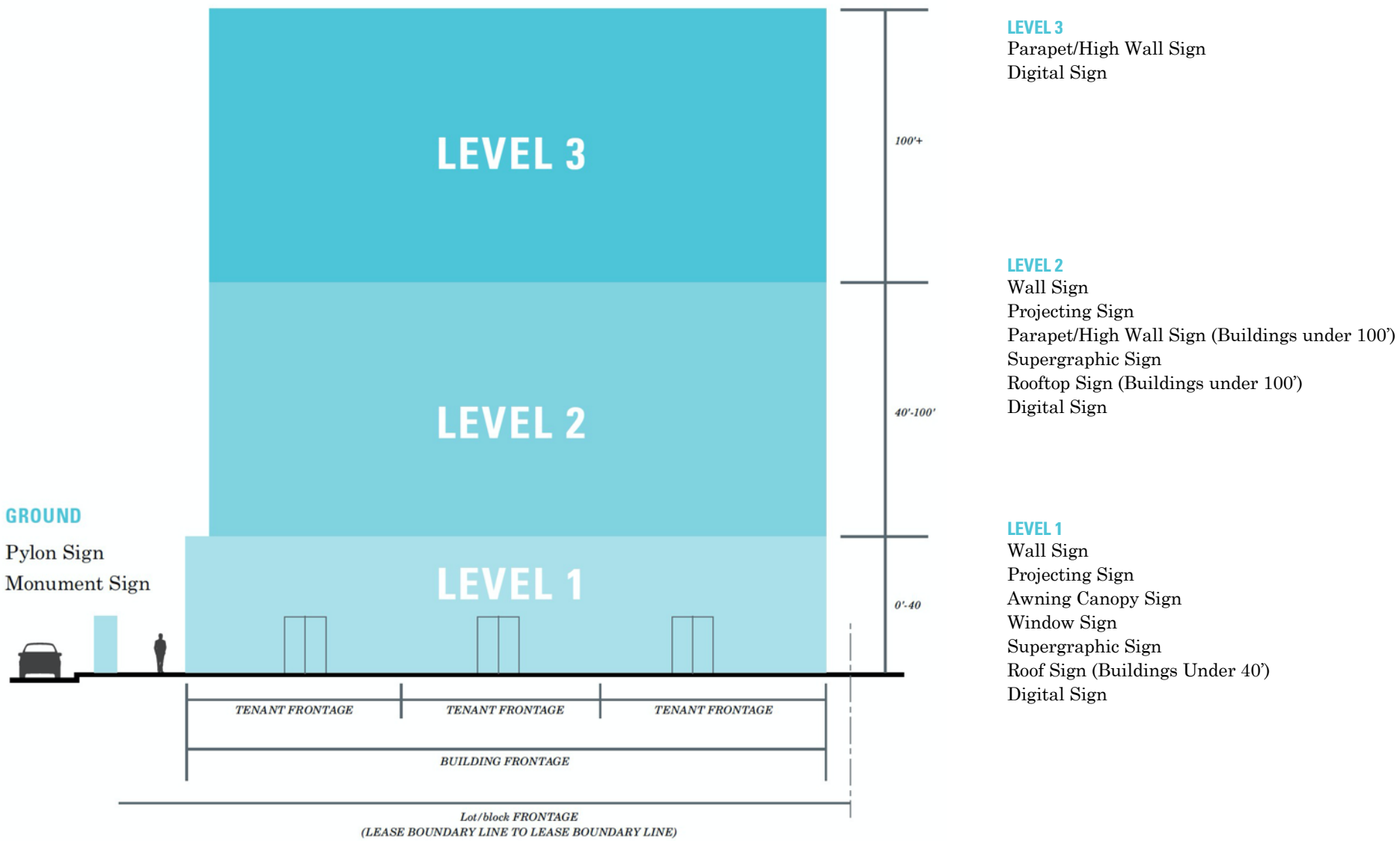
Numbers on the Channel Letters and Odd Shape sign graphics represent the sides that are measured to calculate the allowable sign area.

Figure 7a: Vertical Sign Zones & Frontage Delineations

7.1 VERTICAL ZONES & FRONTAGE DELINEATIONS

7.1.1 ALLOWED SIGN TYPES BY VERTICAL ZONE

Refer to expanded requirements for each sign type for Allowed Sign Types by Character Zone



7.2 WALL SIGNS

7.2.1 General Requirements

1. Any number of Wall Signs is allowed, provided that the sum of all sign areas does not exceed the maximum allowed sign area for the lot/block frontage.
2. Any building containing leased space for multiple tenants is considered a single establishment for the purpose of computing the sign area allowed on the exterior walls of such building.
3. Retail/Restaurant Tenants are allowed as many Wall Signs as desired per block frontage where their establishment is located as long as it does not exceed the maximum, calculated total square footage.

7.2.2 Sign Area

The sign area for a Wall Sign shall be included in the total allowed area for the lot/block frontage along which it is located.

7.2.3 Height

Wall Signs shall not exceed the height of the top of any roof or parapet line.

7.2.4 Projection

Signs may project a **maximum of two (2) feet** from the building wall, parapet or roof structure to which they are attached.

MULTI-TENANT BUILDING

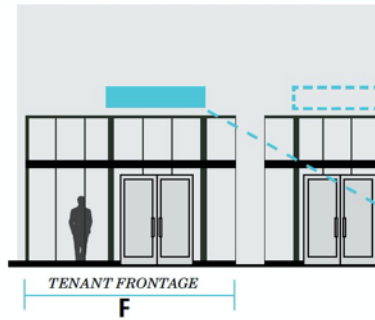


Figure 7.2a

SINGLE TENANT BUILDING

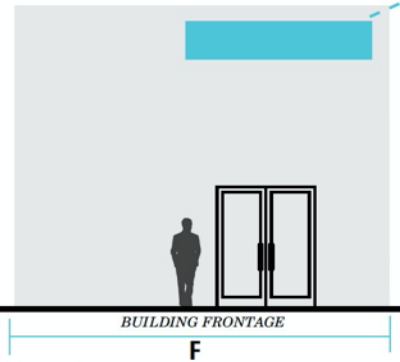


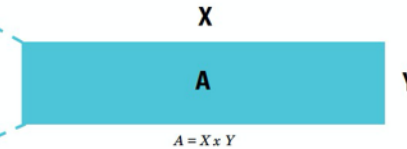
Figure 7.2b

ALLOWED SIGN AREA

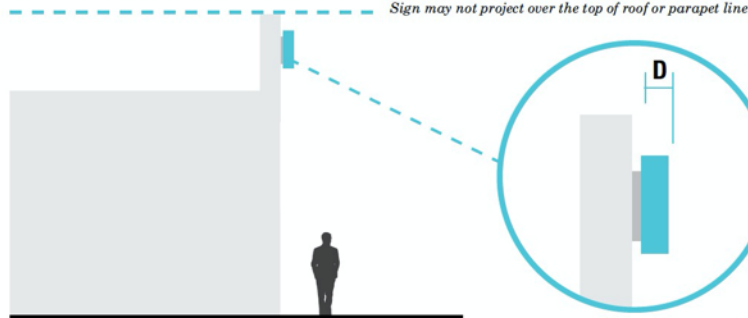
$$F \times 2 = A$$

MAX SQ. FOOTAGE

$$A < 300\text{sf}$$



ALLOWED SIGN PROJECTION



Sign may not project over the top of roof or parapet line

$$D < 2\text{ ft}$$

Figure 7.2c

7.3 AWNING/CANOPIES

7.3.1 General Requirements

1. Any number of Awning/Canopy Signs is allowed, provided that the sum of the sign areas does not exceed the maximum allowed sign area for the lot/block frontage
2. Retail/Restaurant Tenants are allowed as many Awning/Canopy Signs as desired per lot/block frontage, as long as it does not exceed the maximum, calculated total square footage.
3. Each corner tenant may incorporate an Awning/ Canopy Sign at both of its frontages but shall distinguish its entry with a unique sign design.
4. All Awning/Canopy Signs shall align with major building elements such as cornices, string courses, window banding or vertical changes in material or texture and shall be thoughtfully integrated into the building design.
5. Signs may be integrated into the face of an awning or canopy.
6. Letterforms, logos and other graphic elements may be mounted to either the top or bottom edge of a canopy or thoughtfully integrated into the faces of the canopy.
7. Awnings shall be regularly maintained and kept in good condition.

7.3.2 Sign Area

1. The sign area for an Awning/Canopy sign shall be included in the total allowed area for the lot/block frontage along which it is located.
2. Signs incorporated into the front of a canopy shall be limited to **1.5 square feet per linear foot of canopy**. See Figure 7.3a
3. Signs incorporated into the side of a canopy shall be a **maximum of eight (8) square feet**.

7.3.3 Height

All Canopy/Awning Signs mounted to the bottom of a canopy structure shall be a **minimum of eight (8) feet above grade** for letterforms, logos and other graphic elements. See Figure 7.3b

7.3.4 Location & Projection

Awning/Canopy Signs are allowed to project over the lease boundary line into a private or public street as applicable, a **maximum of four (4) feet from the building but shall be a minimum of two (2) feet from the face of the curb**. See Figure 7.3b.

ALLOWED SIGN AREA

$$F \times 1.5 = A$$

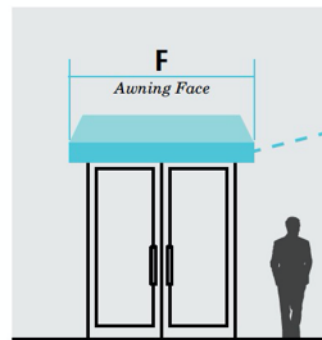
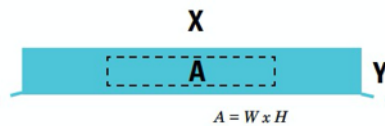


Figure 7.3a

MAX. SQ. FOOTAGE

$$A < 100sf$$



MIN. HEIGHT
 $H > 8ft$

MAX. PROJECTION

$$C > 2f$$

$$D < 4f$$

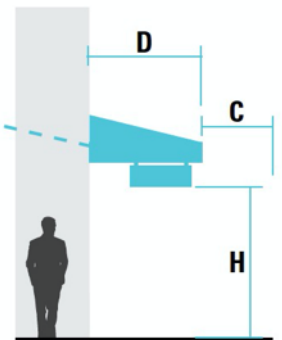


Figure 7.3b

7.4 PROJECTING SIGNS

7.4.1 General Requirements

1. Any number of Projecting Signs is allowed, provided that the sum of the sign areas does not exceed the maximum allowed sign area for the lot/block frontage.
2. Retail/Restaurant Tenants are allowed one Projecting Sign per lot/block frontage where their establishment is located, as long as it does not exceed the maximum, calculated total square footage.
3. Corner tenants may incorporate a Projecting Sign on the building corner with an angle of projection from the building facade between 135 and 150 degrees. Refer to Figure 7.4c.
4. The planes of Projecting Sign faces shall be between 75 and 90 from the building facade on which it is mounted. Refer to Figure 7.4c.
5. The planes of Projecting Sign faces shall be parallel to each other unless approved as an integral design element by the Community Development Director or the Planning Commission as provided under Section 1.5 of this CSP.
6. Projecting Signs shall align with major building elements such as cornices, string courses, window banding or vertical changes in material or texture.
7. No text, messages or logos shall be allowed on the portion of the sign parallel to the building face.
8. Projecting Signs shall be a minimum of 15 feet from another Projecting Sign.

7.4.2 Sign Area

1. The sign area for Projecting Signs shall be included in the total allowed area for the lot/block frontage along which it is located. The Sign Area for one (1) sign face only shall be counted towards this total.
2. Sign Area of all projecting signs visible to the same direction of traffic shall not exceed **one (1) square foot per linear foot of lot/block frontage up to 300 square feet.**

7.4.3 Height

1. A Projecting Sign may extend above the top of the roof or parapet of the wall in which it is located. **The extension shall not exceed 33 percent of the total vertical height of the sign.**
2. All Projecting Signs shall be a **minimum of eight (8) feet** above sidewalk grade.

7.4.4 Location & Projection

1. Projecting Signs are allowed to project over the lot/block line into a private or public street, as applicable, but shall be a minimum of two (2) feet from the face of the curb.
2. The distance in which a Projecting Sign is allowed over a private or public street, as applicable, shall be determined based on the mounting height of the sign. Refer to Figure 7.4a.
3. Placement must not conflict with utility boxes, fire hydrants, or light poles.

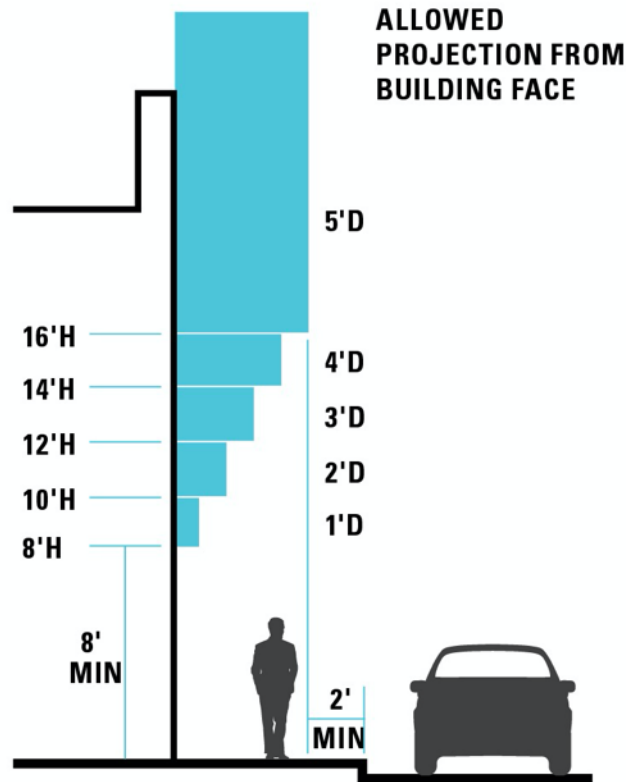


Figure 7.4a

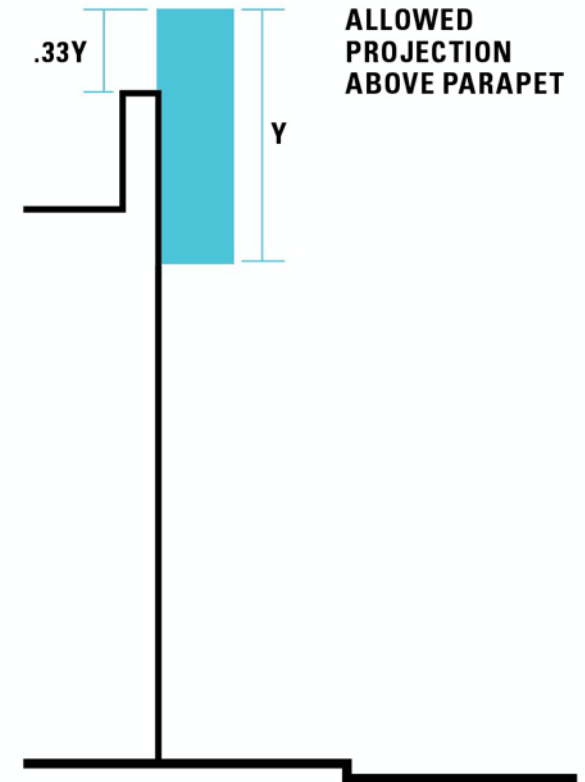


Figure 7.4b

ALLOWED ANGLE OF PROJECTION FROM BUILDING FACE (PLAN VIEW)

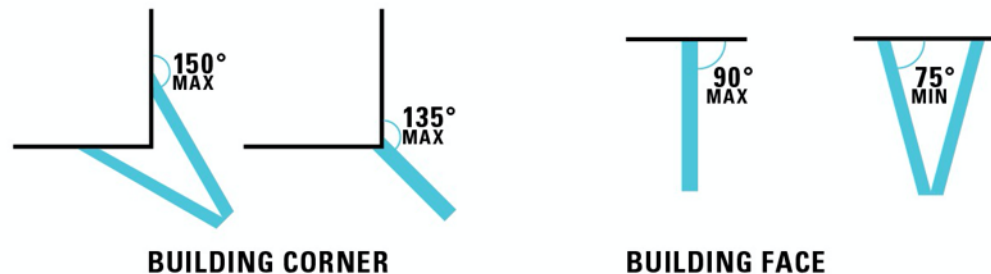


Figure 7.4c

7.5 PARAPET / HIGH WALL SIGNS

7.5.1 General

1. Two (2) Parapet/High Wall Signs shall be allowed per street-facing building elevation. Up to 4 Parapet/High Wall Signs are allowed per building. These signs are not allowed on alley-facing building elevations.
2. Parapet/High Wall Signs shall be wall mounted and shall not break the plane of the roof or parapet of the building face on which they are mounted.
3. Parapet/High Wall Signs shall display the name and/or logo of one (1) tenant only.
4. Parapet/High Wall Signs shall be thoughtfully integrated into the building design, placed with ample space around their perimeter and shall align with major building elements such as cornices, string courses, window banding.
5. Parapet/High Wall Signs may be Digital Displays provided content is restricted to the tenant's brand identity. No advertising imagery content will be allowed.

7.5.2 Sign Area

As corporate logos vary in size and proportion, modifications in square footage and height allowances may be allowed if the overall allowed square footage for the lot/block frontage on which it is located is not exceeded. Drawings shall be

submitted as provided in Section 1.5 of this CSP demonstrating that a square footage and/or height exceeding the maximum allowed numbers outlined below will be necessary for clear viewing at a distance of 1/2 mile.

1. The sign area for a Parapet/High Wall Sign shall be included in the total allowed area for the lot/block frontage along which it is located.
2. Parapet/High Wall Signs shall not exceed 350 square feet in area without an approved variance as described above.

7.5.3 Height

Parapet/High Wall Signs shall not exceed **15 feet in height** without an approved modification as described in Section 1.5 of this CSP.

7.5.4 Projection

Parapet/High Wall Signs are allowed to project over the lot/block line into a private or public street or the public right-of-way, as applicable, a **maximum of two (2) feet from the building face** on which it is mounted.

ALLOWED SIGN AREA, HEIGHT & PROJECTION

$$Y < 15\text{ft}$$

$$A < 350\text{sf}$$

$$D < 2\text{ft}$$

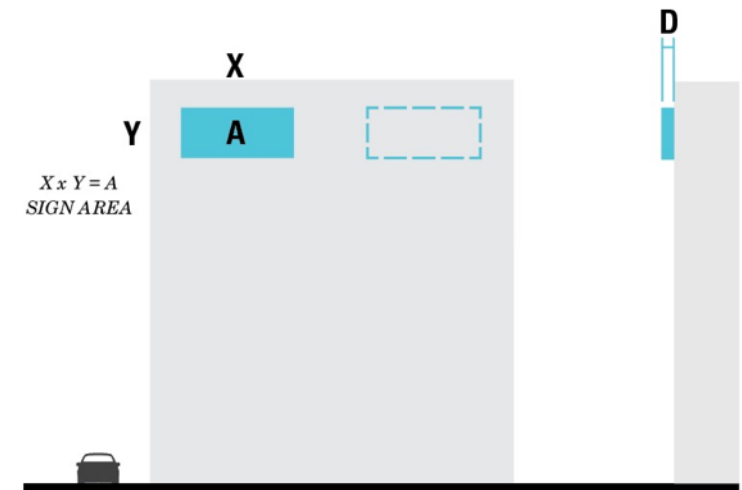


Figure 7.5a

7.6 FREESTANDING PYLON SIGNS

7.6.1 General

1. Prohibited
 - a. Pylon Signs are not allowed for in-line retail businesses within a multi-use building.
 - b. Pylon Signs may be Digital Displays, provided that any Pylon Sign that is an Off-Site Sign shall be prohibited unless the Pylon Sign complies with the requirements set forth in Section 5.3 hereof
 - c. Pylon Signs shall not be allowed on a lot/block having less than 50 feet of frontage.
2. Location
 - a. Pylon Signs shall be set back at least five (5) feet from the intersection of a driveway and a private or public street or easement or the public right-of-way, as applicable, and shall not interfere with or present a hazard to pedestrian or vehicular traffic including required vehicular site distance triangles.
 - b. Pylon Signs shall not project over an established lease boundary line.
 - c. Pylon Signs shall be located at least 7.5 feet from interior lot/block lines and at least 15 feet from any other Pylon Sign, Monument Sign or Projecting Sign.
 - d. Sight Vision Safety Clearance Triangles need to be considered with any sign placed in sidewalk areas and evaluated in the

context of traffic speed or other traffic control measures.

- e. Pylon Signs shall not be placed within a 25-foot visibility triangle at corners.
- f. There shall be no more than one Pylon Sign for every 150 feet of lot/block frontage.

7.6.2 Dimensions

1. Height
 - a. Pylon Signs shall not exceed a **height of 30 feet** above the sidewalk grade or edge of roadway grade nearest the sign, as measured from the grade to the top of the sign.
 - a. The top of a Pylon Sign shall be at least three feet below the height of any adjacent building elevation on the lot/block where the Pylon Sign is located.
2. Width
 - b. Pylon Signs shall not exceed a **width of seven (7) feet**.
 - c. Pylon Signs shall not have a horizontal dimension that exceeds **35 percent** of the length of the vertical dimension.

ALLOWED SIGN DIMENSIONS

$$X < 7 \text{ ft}$$

$$Y < 30 \text{ ft}$$

ALLOWED SIGN PROPORTION

$$X < .35Y$$

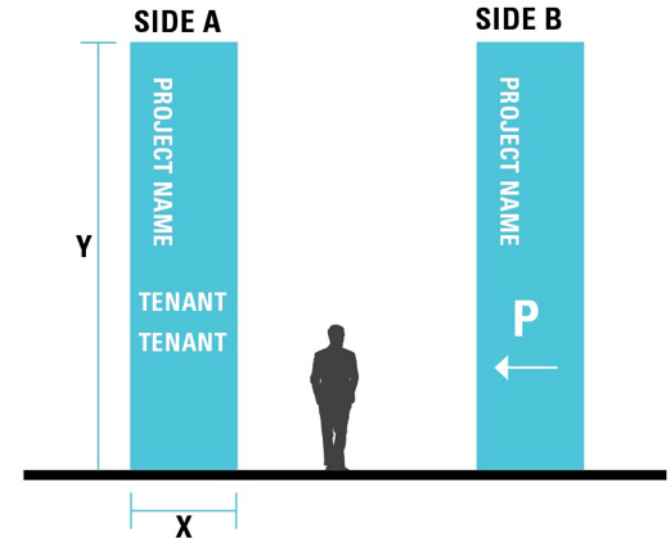


Figure 7.6a

7.7 MONUMENT

7.7.1 General

1. Prohibited
 - a. Monument Signs may be Digital Displays provided it is an On-Site Sign restricted to the tenant's brand identity.
 - b. Monument Signs are not allowed on that portion of a lot/block having less than 50 feet of lot/block frontage.
2. Location
 - a. Monument Signs shall be set back at least 10 feet from the intersection of a driveway and a private or public street, or the public right-of-way, as applicable, and shall not interfere with or present a hazard to pedestrian or vehicular traffic, including required site distance triangles.
 - b. Monument Signs shall not project over an established lease boundary line.
 - c. Monument Signs shall be at least 7.5' from interior lot/block lines and 15 feet from another Monument Sign, Pylon Sign or Projecting Sign.
 - d. Monument Signs shall not be placed within a 25-foot visibility triangle at corners.
 - e. Sight Vision Safety Clearance Triangles need to be considered with any sign placed in sidewalk areas and evaluated in the context of traffic speed or other traffic control measures.

7.7.2 Dimensions

1. Monument Signs shall not exceed a **height of eight (8) feet** above the sidewalk grade or edge of roadway grade nearest the sign, as measured from the grade to the top of the sign.
2. The horizontal dimension of a Monument Sign shall be **equal to or greater** than its vertical dimension.

7.7.3 Sign Area

1. The sign area for a Monument Sign shall be included in the total allowed area for the lot/block frontage along which it is located.
2. Area of all Monument Signs shall not exceed
3. 1.5 square feet per linear foot of Building Frontage nor a maximum of 300 square feet for the sign face visible to the same direction of traffic.
4. The sign area for a Monument Sign shall be calculated as the combined area of each primary sign face with graphics and/or messaging. Blank sign faces do not count towards sign area.

ALLOWED SIGN DIMENSIONS

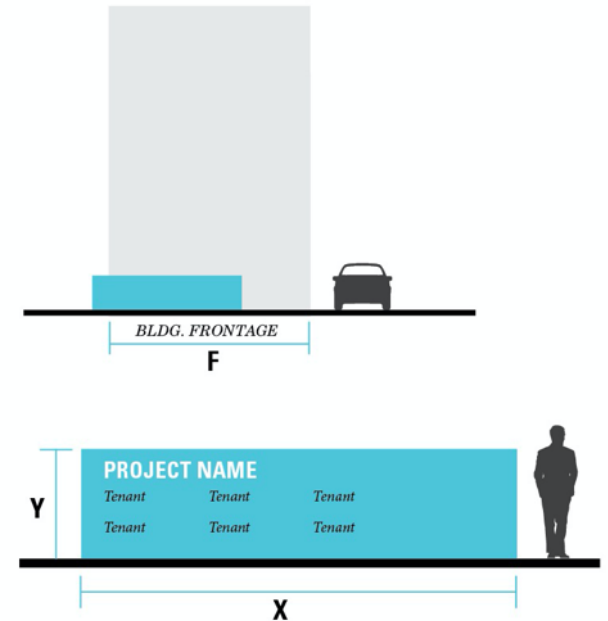
$$Y < 8 \text{ ft}$$

$$Y \leq X$$

ALLOWED SIGN AREA

$$F \times 1.5 = A$$

$$A < 300 \text{sf}$$



7.8 WINDOW SIGNS

7.8.1 General

1. No portion of any Window Sign shall be located above the second story of the building on which it is placed or higher than 40 feet above grade, whichever is lower.
2. Window Signs shall not exceed 15 percent of the cumulative glassed area of all windows on the building elevation. The area of a window signs on any given window may be further restricted by the Building Code or the Fire Code.
3. The aggregate area of all Window Signs shall be included as part of the Maximum Permitted Sign Area.

7.9 SUPERGRAPHICS

7.9.1 Longer Term Duration Supergraphic Signage:

1. One supergraphic sign may be allowed on each non-residential building having a Building Height of at least sixty-five (65) feet or on a parking garage with three or more parking levels above grade, subject to the following:
 - a. No supergraphic sign shall cover any portion of a door, and also windows unless perforated allowing at least 35% vision area.
 - b. Any supergraphic sign shall be displayed for no more than one hundred twenty consecutive days and no more than one hundred twenty days in a calendar year.

7.9.2 Shorter Term Duration Supergraphic Signage

1. In addition to the longer-term duration supergraphics addressed in Section 7.9.1, one supergraphic sign may be allowed on each non-residential building having a building height of at least sixty-five (65) feet in connection with no more than forty special events per calendar year, subject to all of the following:
 - a. The shorter-term supergraphic sign shall be displayed in connection with a special event for a duration not to exceed a total of thirty-five consecutive days, and no building shall be allowed to display a Shorter-Term Duration Supergraphic Sign for more than 120 days total in a calendar year.
 - b. No supergraphic sign shall cover any portion of a door, and also windows unless perforated allowing at least 35% vision area.

7.9.3 All Supergraphic signs shall conform to all of the following:

1. All supergraphic signs must obtain a sign permit;
2. A supergraphic sign shall be located on no more than one building facade and the sign area shall not exceed the area of the building facade on which it is located, except that such sign may be located on two building facades provided the total sign area is not greater than would otherwise be allowed on the larger of the two building facades;
3. A supergraphic sign may consist of non-contiguous segments;
4. No supergraphic sign shall be illuminated;
5. No supergraphic sign shall be a roof sign;
6. A supergraphic sign shall comply with all life safety requirements, including but not limited to all requirements of the City of Santa Clara Fire and Building Codes;
7. A supergraphic sign shall be maintained in good condition at all times and the sign surface shall be free of dirt, rips and tears;
8. A supergraphic sign shall not reduce otherwise allowable sign area for a building or parcel.
9. A supergraphic sign shall be in conformance with any requirements applicable under state or federal law or regulations including but not limited to height, separation, or other location requirements;
10. A supergraphic sign authorized by the Longer Duration Supergraphics section shall not be displayed on a building concurrent with the display of a supergraphic sign authorized by Shorter Duration Supergraphics section;
11. Supergraphic signs are encouraged to have a translucent background but may have an opaque background.

7.10 ROOFTOP SIGNS

7.10.1 General Requirements

1. All Rooftop Signs shall be thoughtfully integrated into the architecture of the building.
2. Rooftop signs shall be appropriately scaled for the building and street on which they are located.
3. Rooftop Signs are not allowed to block views of other buildings.
4. Rooftop signs are not allowed to project over any facade of the building on which they are located.
5. Rooftop Signs may extend beyond the frame or structure to which they are attached.
6. FAA clearance may be required for rooftop signs.

7.10.2 Sign Area

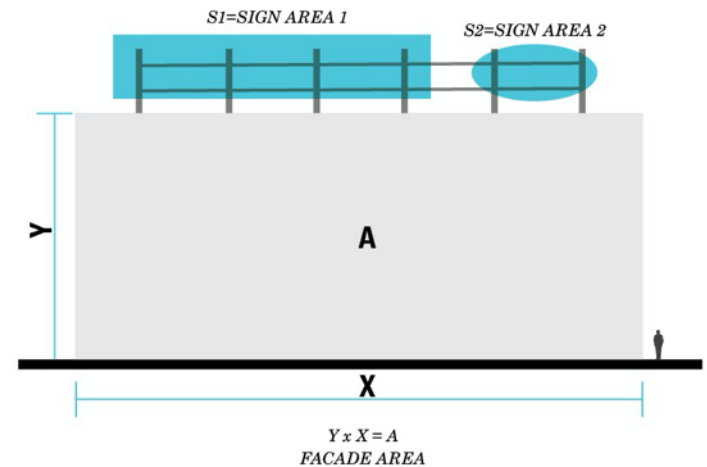
1. The sign area for a Rooftop Sign shall be included in the total allowed area for the lot/ block frontage along which it is located.
2. The sign area of a Rooftop Sign shall be calculated as the total area of letters, logos and other design elements attached to the supporting structure.
3. The sign area for a Rooftop Sign shall be included in the total allowed area for the lot/ block frontage along which it is located.
4. The sign area of a Rooftop Sign shall **not exceed 25 percent** of the area of the building elevation on which it is located.

7.10.3 Projection

Rooftop Signs are allowed to project a **maximum of two (2) feet from their supporting structure**. Signs may not project beyond building face.

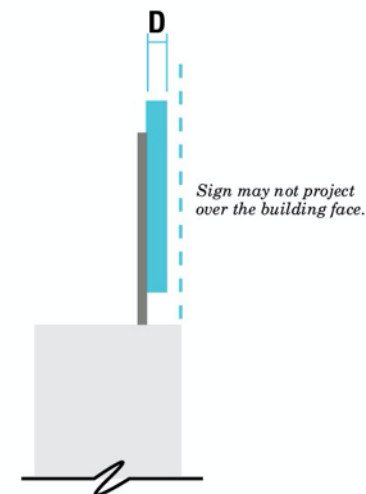
ALLOWED SIGN AREA

$$S1 + S2 < .25 A$$



ALLOWED SIGN PROJECTION

$$D < 2 \text{ ft}$$



7.11 DIGITAL SIGNS

7.11.1 General Requirements

In consideration of advancements in technology and affordability, Digital Signs shall be allowed that promote cutting-edge technology and reinforce the identity of CityPlace.

1. Digital Signs are prohibited in MCP Lighting Character Zone A and Zone B (see Exhibit 7-3 of the MCP). Where allowable, all sign types permitted in this Sign Program can use Digital Displays, except Supergraphics, Gateway Signs, and Temporary Signs.
2. Locations and design of Digital Signs shall be approved by the City consistent with this CSP.
3. Digital Signs shall be thoughtfully integrated into the architecture and appropriately scaled for the building and street on which they are located.
4. Content displayed on Digital Signs facing public streets shall take at least one (1) second to fade into the content from the immediately prior content and shall take at least one (1) second to fade out of the content to the immediately succeeding content for a total maximum transition period of two (2) seconds.
5. Sound shall be allowed only during special events, for example, celebrations, festivals, or Stadium-sponsored events.
6. Digital Signs shall not use stroboscopic or flashing elements which rapidly change direction, oscillate, flash or reverse in contrast.
7. Digital Signs shall not incorporate driver interaction features.
8. Digital Signs that are architecturally integrated into buildings may cover windows provided they use mesh, blade or louver technology which allows transparency through the windows.

7.11.2 Digital Signage within City Center Core Sub-District

1. Pedestrian scale signs (below 12 feet) within the City Center Core Sub-District are permitted and may be Digital Signs and/or Animated Signs, subject to limitations on Off-Site Signs set forth in Section 5.3. Animated Signs may not be used in locations that could be a distraction to motorists.

7.11.3 Design Approach

1. Content for digital signage is often provided in fixed proportion ratios. A unique and creative approach for Digital Signs is encouraged with the following types of elements included:
 - a. Specialized lighting, audio and other effects for use in special events;
 - b. Curved and/or multi-planar forms and projection surfaces;
 - c. Integration of live action for special events; Thematic lighting;
 - d. Sustainable technologies;
 - e. Control systems which allow for social media/mobile device interaction between pedestrians and the Digital Sign

7.11.4 LED Display Standards

1. All Digital Signs are required to be:
 - a. exterior grade LED RGB displays
 - b. Remote and scheduled dimming capable

7.11.5 Lighting Standards

1. All digital signs must meet the following luminance limits based on time of day and ambient lighting conditions:
2. Weekdays (Sunday-Wednesday)
 - a. Daytime: From sunrise until 20 minutes prior to sunset, luminance shall not exceed 6,000 candelas per meter squared.
 - b. Evening: From sunset until 20 minutes prior to 10:00 p.m., luminance shall not exceed 300 candelas per meter squared.
3. Weekends (Thursday-Saturday, New Year's Eve, July 4th, Days with Events at Levi's Stadium)
 - a. Daytime: From sunrise until 20 minutes prior to sunset, luminance shall not exceed 6,000 candelas per meter squared.
 - b. Evening: From sunset until 20 minutes prior to 2:00 a.m., luminance shall not exceed 300 candelas per meter squared.
 - c. Digital Signs shall not operate from 2:00 a.m. until sunrise.
4. Sign luminance shall transition smoothly between the designated levels listed above. The sign luminance transition shall occur over a time period of no less than 20 minutes.
 - a. Digital Signs shall include a programmable control system to automatically reduce the luminance level as necessary.

7.11.6 Sign Area for Digital Billboards and Large Off-Site Wall Signs

1. The sign area for Billboards and Large Off-Site Wall Signs that include Digital Display shall be governed by Section 5.3 of this CSP.

8 TEMPORARY SIGNAGE

Individual projects within CityPlace are encouraged to implement highly creative and well-designed project-related temporary signs prior to opening and for leasing after opening. Bold and eye-catching temporary signs that are graphic in nature serve to:

- a. Create excitement and anticipation for a project's completion;
- b. Provide information on the project development and design teams;
- c. Provide leasing information; and
- d. Reinforce CityPlace's brand principles and commitment to design excellence.

8.1 CONSTRUCTION WALLS AND PHASE DEVELOPMENT BARRICADES

The following approaches to design and materials are encouraged for Temporary Barricades:

1. Props and extensions over the top edge of the barricade to add a varied profile, improving interest and character
2. Cut-outs and windows in the wall with views into the construction site
3. Integrated thematic lighting
4. Hand-painted graphics or graphics crafted on-site alternative textures and materials
5. Professional graphics used to promote project uses, branding and lifestyle

8.2 LEASING GENERAL

1. "For Rent", "For Sale", and "For Lease" signs shall be posted on the subject parcel that is being advertised by an authorized agent.
2. Real estate signs shall not exceed 32 square feet for multi-family or non-residential for each side of a double-sided sign.
3. There shall be no more than one sign per street frontage.
4. Illuminated real estate signs are prohibited.

8.3 LEASING SIGNS (PRE-OPENING)

The following types of pre-opening leasing signs outlined in the MCP document shall be used prior to project opening:

1. 4' W x 8' H Panel Sign for leasing information.
2. 12' W x 8' H Panel Sign for either leasing or project team information.

8.4 LEASING SIGNS (POST-OPENING)

All post-opening temporary leasing signs shall conform to the requirements outlined in Section 3: General Design Standards. In addition, Leasing Signs shall:

1. Be designed by a professional graphic design or marketing firm;
2. Artfully combine typography, color, graphics and/ or photography
3. Be constructed of durable, non-fading materials
4. Be securely fastened, anchored and/or applied to the building face; and
5. Be removed within thirty (30) days after leased space is not available.

Post-opening temporary Leasing Signs shall not be counted in the overall lot/block frontage based square footage.

8.5 TEMPORARY SIGNAGE FOR SPECIAL EVENTS

1. Temporary Event Signs are permitted in accordance with this Section 8.5. Temporary Event Signs that advertise Special Events or that include Special Event sponsor information shall not be classified as Off-Site Signs.
2. Temporary Event Signs may take many forms depending on the type of Special Event, but may include, without limitation, free-standing digital and static signs, portable or A-Frame Signs, banners and flags affixed to permanent or temporary structures, removable decals and paper or cardboard posters affixed to buildings, inflatable signs (such as balloons and tube signs), stages with integrated or attached signage, digital projection, and other forms of non-permanent static signs for event vendors, sponsors and retail center event promotion.
3. Temporary Event Signs must comply with the City's regular permit processes applicable to construction or encroachments, to the extent applicable, (*e.g.*, signs requiring electrical permits, located on structures requiring building permits, or located on light poles within the public right-of-way).
4. Individual Temporary Event Signs associated with a Special Event that includes fewer than ten (10) signs shall not require a sign permit or City approval unless the Temporary Event Sign (i) requires a power source or building permit, (ii) is located within the public right-of-way, or (iii) faces or is easily discernible by pedestrians or occupants of automobiles from Great America Parkway, Lafayette Street, Tasman Drive, or CityPlace Parkway. Temporary Event Signs associated with a Special Event that includes ten (10) or more signs shall be processed in accordance with Section 8.5(5) of this CSP.
5. Temporary Event Signs associated with a Special Event that includes ten (10) or more signs will require Director approval of a Temporary Event Sign Program. At least thirty (30) days prior to the applicable Special Event (or such shorter period of time if approved by the Director in his discretion), the sponsor shall submit to the Director for approval a Temporary Event Sign Program that sets forth the nature and duration of the Special Event, and the general type and approximate location and number of Temporary Event Signs proposed, including the number and general location of illuminated signs. The Director shall approve the Temporary Event Sign Program within fifteen (15) business days of the request if he or she is satisfied upon investigation as to the safety, compatibility and aesthetics of the Temporary Event Signs proposed in a Temporary Event Sign Program and finds that the proposed Temporary Event Sign Program is generally consistent with the overall intent of this CSP. If the Director rejects the Temporary Event Sign Program, he or she shall provide reasonably detailed findings supporting the rejection, and the applicant may submit a new or amended application addressing the reasons for rejection. Sign permits for individual Temporary Event Signs that are consistent with an approved Temporary Event Sign Program will not be required. If the Director fails to respond to a request for approval within fifteen (15) business days, the sponsor may submit a second request for approval and to meet and confer with the Director.

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF SANTA CLARA, CALIFORNIA, RECOMMENDING THE
CITY COUNCIL APPROVE A COMPREHENSIVE SIGNAGE
PROGRAM FOR PARCELS 4 AND 5 OF THE RELATED SANTA
CLARA PROJECT LOCATED AT 5155 STARS AND STRIPES
DRIVE (APN 104-03-036)**

SCH#2014072078
CEQ2014-11180 (EIR)

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

WHEREAS, on June 28, 2016, the Santa Clara City Council approved a number of entitlements for the proposed construction by Related Santa Clara, LLC (the "Applicant") of a new multi-phased, mixed-use development known as the Related Santa Clara Project (the "Project");

WHEREAS, the Project entitlements approved by the City Council on June 28, 2016, included Resolution No. 16-8339, which rezoned the Project site to the PD-MC (Planned Development-Master Community) zoning district;

WHEREAS, on June 28, 2016, the City Council adopted Resolution No. 16-8337, certifying a Final Environmental Impact Report ("Final EIR") pursuant to the provisions of the California Environmental Quality Act (Cal. Pub. Res. §§ 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (14 CCR § 15000 et seq.) ("CEQA Guidelines") and adopting CEQA findings and a Mitigation Monitoring and Reporting Program ("MMRP") in accordance with CEQA and the CEQA Guidelines;

WHEREAS, pursuant to Resolution No. 16-8339, buildout of the Project is governed by a Master Community Plan (the "MCP") dated April 5, 2017, which anticipates three Comprehensive Signage Programs (CSP), with one CSP required to regulate signage within Parcels 4 and 5 and separate CSPs required to regulate signage within each of Parcels 1 and 2;

WHEREAS, the MCP establishes that CSPs shall establish standards for signage and the

Citywide standards in 18.80 of the Santa Clara City Code shall not be applicable;

WHEREAS, the MCP requires that the CSP establish specific limitations on sign height, sign location, sign quantities, and total sign areas, and the proposed CSP contains such limitations in Chapter 7 (“Signage Calculation and Diagrams”);

WHEREAS, the MCP requires that CSPs establish regulations for sign characteristics including illumination and electronic imagery, and the proposed CSP contains such regulations in Sections 2.3 (“Signage Illumination”) and 7.11 (“Digital Signs”);

WHEREAS, the MCP requires that CSPs establish regulations for seasonal and temporary signage, and the proposed CSP contains such regulations in Chapter 8 (“Temporary Signage”);

WHEREAS, in adopting the MCP, the City Council found that creating a specific, limited exception to the limitations on outdoor off-site advertising for advertising within the Project that faces inward into the Project site or faces toward Levi’s Stadium on Tasman Drive will facilitate the City’s objective to create a vibrant mixed-use urban core, creating a pedestrian-friendly “live, work, and play” environment that will function as a well-defined center for the Santa Clara Community (MCP § 7.1, p. 182);

WHEREAS, the City Council further found that creating the specific limited exception described above in an adopted CSP would not weaken the direct link between the City’s objectives and its general prohibition of new billboards, and will not denigrate the City’s interests in reducing visual clutter and blight to the appearance of the City, and in promoting traffic safety and reducing traffic hazards (MCP § 7.1, p. 182);

WHEREAS, subject to the foregoing, the MCP provides that CSPs may allow for outdoor advertising (billboards) in the City Center (Parcels 4 and 5), provided that such outdoor advertising face inward into the City Center, except outdoor advertising may face outward toward Levi’s Stadium on Tasman Drive, and the proposed CSP contains provisions regulating such outdoor advertising within the prescribed limitations in Chapter 5 (“Sponsorship & Advertising Sign Types”);

WHEREAS, the impacts of the proposed Comprehensive Signage Program for Parcels 4 and 5 implement the MCP which was analyzed within the Final EIR;

WHEREAS, prior to taking action on this Resolution, the Planning Commission has exercised its independent judgment and reviewed and considered the Final EIR and determined that no further environmental review is required for the proposed Comprehensive Signage Program for Parcels 4 and 5 of the Project; and

WHEREAS, on November 18, 2020, the Planning Commission held a duly noticed public hearing to consider CSP for Parcels 4 and 5, at which time interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed CSP for Parcels 4 and 5.

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

1. Recitals. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. Findings. Pursuant to Section 2.7.2.6 of the DAP Procedures, the Planning Commission finds that the Comprehensive Signage Program for Parcels 4 and 5 is consistent with the MCP.
3. Approval Recommendation. That the Planning Commission hereby recommends that the City Council approve the Comprehensive Signage Program for Parcels 4 and 5, as set forth in Attachment 1, which is attached hereto and incorporated herein by this reference.
4. Effective Date. This resolution shall become effective immediately.

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I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED
AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA,
CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 18TH DAY OF
NOVEMBER, 2020, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST: _____
ANDREW CRABTREE
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SANTA CLARA

Attachment Incorporated by Reference:
1. Comprehensive Signage Program for Parcels 4 and 5

**5155 Stars and Stripes Drive – Web Link Slip Sheet to
City Place Final Environmental Impact Report
and
Mitigation Monitoring or Reporting Program**

<https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/135/3650?npag=2>

**Related Santa Clara Project – Web Link Slip Sheet to
Master Community Plan (MCP) Volume I**

<https://www.santaclaraca.gov/home/showdocument?id=58715>



December 23, 2020

By Email and Overnight Mail, Next Business Day

Reena Brilliot
Planning Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Related Santa Clara – Comprehensive Sign Program for Parcels 4 and 5

Dear Reena,

As you know, on November 18, 2020, the Planning Commission found that the Comprehensive Sign Program for Parcels 4 and 5 of the Related Santa Clara project (“CSP”) is consistent with the project’s Master Community Plan and recommended that the City Council approve the CSP with three recommendations. We propose to address those recommendations by making the following additions to the CSP in the locations specified below:

1. PSA

Add the following to Section 1.8 (Definitions), approx. pg. 10:

“Public Service Announcements (PSA). Messages, created by the City Manager’s Office, to notify residents and visitors of matters pertinent to the City of Santa Clara within the parameters defined by City Council policy adopted for the City Place project site.”

Add to Section 5.3 (Specific Limitations on Off-Site Advertising Displays), approx. pg. 24:

“Public Service Announcements on Tasman-Oriented Billboard Faces. Tasman-oriented Billboard faces will, in the aggregate, provide the opportunity for up to 10% Public Service Announcement use, free of charge to the City, of one full face of copy exposure based on daily use (e.g. 36.5 days per year), and at least 50% of such Public Service Announcement use shall occur during the hours of 6:00 a.m. and 9:00 p.m. daily. Public Service Announcements must be requested, scheduled and coordinated with the applicable ground lessee (or its designee) by the City Manager’s Office pursuant to procedures to be agreed upon by the City Manager and such ground lessee.”

2. Wayfinding; Design Guidelines

Add to Section 3.4.2 (Parking Identity & Regulation), clause (3), approx. pg. 16:

“The Parking Vehicle Management Signage will guide drivers to parking garage locations using digital “available parking spaces” indicators and will be supplemented inside the garages with “green light / red light” systems that locate open parking stalls.”

Change the heading of Section 3.5 to “Directional/Wayfinding Standards and Typology” and add as a new Subsection 3.5.1 (Overall Standards for Wayfinding Signs), approx. pg. 16:

- “1. Wayfinding signage typologies in Sections 3.5.2, 3.5.3 and 3.6 shall comply with the applicable wayfinding signage standards set forth in this Section 3.5.1.
2. Wayfinding systems for City Place orientation and navigation will follow national and state accessibility standards and will provide ease-of-use to all visitors across multiple languages; achieved in part through extensive use of internationally recognized graphic symbols and pictographs. Such wayfinding symbols will be used in static signs, digital screens and printed materials and will be incorporated into both vehicular and pedestrian wayfinding. Where appropriate for enhanced navigation, written descriptors will accompany the symbols.
3. Digital screen content programmability will allow multiple languages to be linked to wayfinding digital display maps accessed by touch and by voice.
4. The majority of static and digital wayfinding components will be located within public realm sidewalks, parks and plazas and will be carefully integrated into the public realm landscape environment, utilizing biophilic design principles as appropriate.”

3. Solar

Amend and restate Section 2.3 (Signage Illumination), clause (5), approx. pg. 12 as follows:

- “5. Illuminated signs shall incorporate energy-efficient fixtures to the greatest extent possible, including deriving energy from solar power where practicable.”

Please confirm this is acceptable to the City, and we will promptly prepare an updated CSP which incorporates the additions described above.

Very truly yours,

RELATED SANTA CLARA, LLC,
a Delaware limited liability company

By: 

Name: Steve Eimer

Title: Executive Vice President

Cc: Ruth Shikada
Andrew Crabtree
Alexander Abbe, Esq.
Elizabeth Klotz, Esq.
Anna Shimko, Esq.
Eric Phillips, Esq.
Neil Sehkhri, Esq.
Jennifer Jiang, Esq.
Kevin Ryan



CityPlace Santa Clara

COMPREHENSIVE SIGN PROGRAM

December 23, 2020

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1 OVERVIEW

1.1 INTRODUCTION

The CityPlace Santa Clara Master Community Plan, dated April 5, 2017 (as amended from time to time) (the “MCP”), serves as the comprehensive program that governs land use and development within the Planned Development – Master Community (PD-MC) zoning designation for the CityPlace project site (“CityPlace”). The MCP is intended to provide for the orderly development of the Project, and incorporates development regulations in the form of standards and guidelines to ensure Project development that is consistent with the General Plan. The MCP includes design guidelines that are intended to ensure high-quality development and architectural design, as well as specific guidelines for signage and lighting. Section 7.1 of the MCP requires City Council approval of a Comprehensive Sign Program for the City Center (Parcels 4 and 5) in connection with the Development Area Plans for those Parcels, and requires separate comprehensive Sign Programs to be submitted for City Council approval in conjunction with the approval of the Development Area Plans for each of Parcels 1 and 2. This Comprehensive Sign Program (the “CSP”) fulfills the requirement for a Comprehensive Sign Program for Parcels 4 and 5. In the event of a conflict between this CSP and the other Development Requirements, the standards under this CSP will control with respect to signs. Capitalized terms not defined in this CSP have the meaning specified in the MCP.

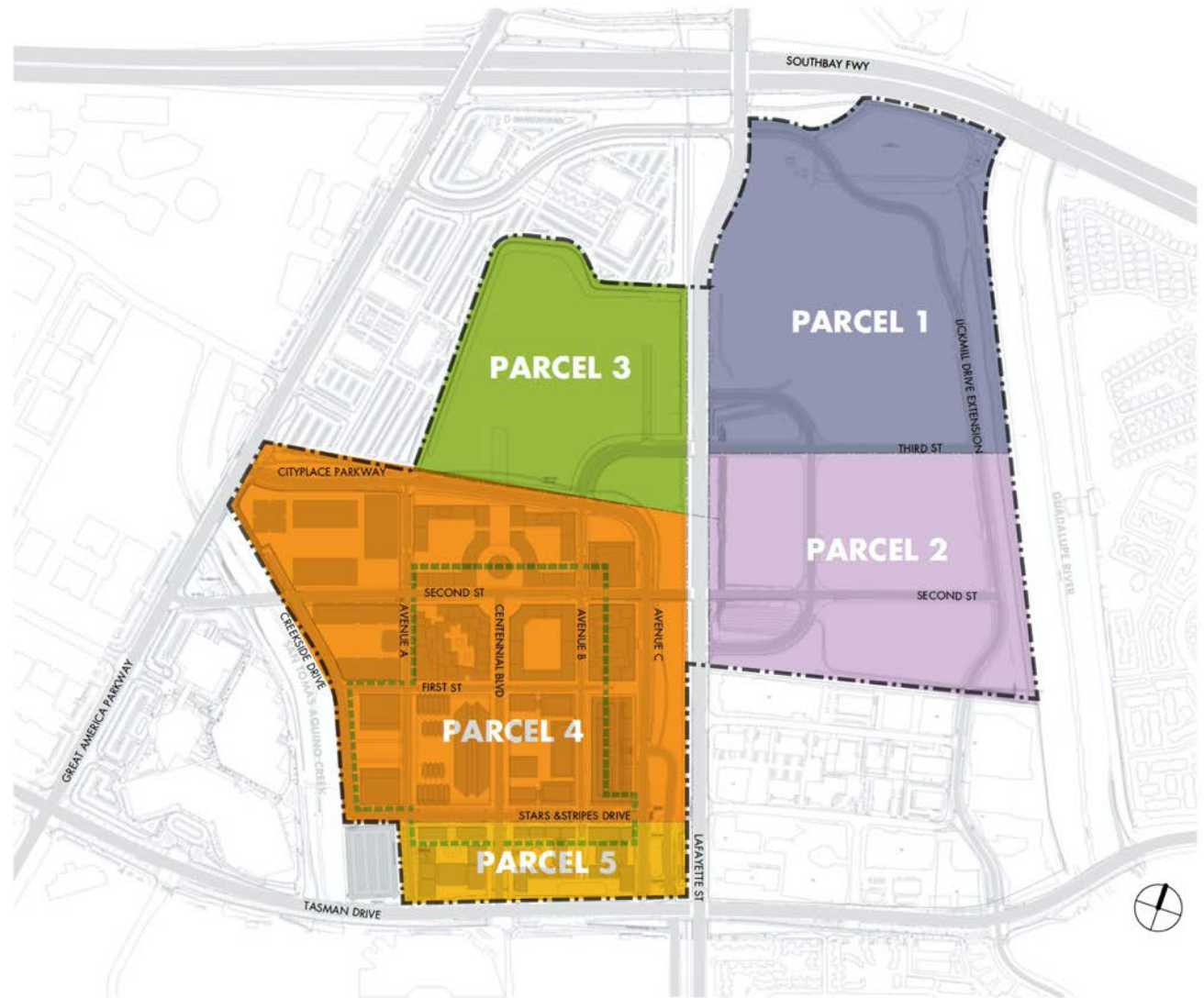


Exhibit 01A *Parcels 1–5 (CityPlace)*

1.2 PURPOSE

The purpose of the Comprehensive Sign Program is to establish the standards for the design and placement of exterior signs located within Parcels 4 and 5 of CityPlace, to ensure that the signage is appropriate for the surrounding context, is visually attractive and meets the seven Signage Design Principles set forth in Section 7.1 of the MCP, as follows:



Principle No. 1: Coordinated Project Signage: Use coordinated signage to promote the CityPlace identity. Signage based on a consistent unified design motif will add to a cohesive consistent look at CityPlace.



Principle No. 2 - Complementary Tenant Signage: Integrate tenant signage with the site design, building architecture and design theme of the district. Ensure signage is compatible in scale and character with the building and storefront.



Principle No. 3 - Wayfinding System: Wayfinding serves to orient visitors and offers a sense of familiarity to returning customers. Wayfinding will create a superior level of comfort for visitor orientation.



Principle No. 4 - High- Quality Signage: High quality signage materials will offer an elevated aesthetic for tenants but also should reflect the overall high quality of design at CityPlace.



Principle No. 5 - Legible Signage: Create signs that present a clear and simple message. Concise signage with few words tends to convey the best message.



Principle No. 6 - Durable Signage: Construct signs of durable, high quality materials that withstand weathering. Durable signage will create a feeling of permanence throughout CityPlace.



Principle No. 7 - Civic Art Potential: Civic art will provide the opportunity to enrich the environment. Civic art may be used to highlight special locations such as gateways and public plazas, or to enrich architectural and landscape details.

Signage within CityPlace is one of a series of unifying elements that will help to distinguish the community and create a strong and memorable identity in its overall scale as well as in the scale of its various districts and neighborhoods. The purpose of signage within the community is to provide efficient and clear communication to its daily users and visitors. Successfully integrated within the site, building and tenant signage will immediately inform the visitor that they have entered CityPlace.

The CSP has been designed to ensure that exterior signage will add vibrancy and energy to the community and its streetscapes through the use of materials, graphics, and forms that promote a strong identity, character, and image.

1.3 CSP ORGANIZATION

The MCP provides that the Comprehensive Signage Programs will be broken into three major categories, consisting of Project Signage, Tenant Signage, and Sponsorship and Advertising. This CSP governs certain types of Project Signage, as well as Tenant Signage and Sponsorship and Advertising Signage. At the City's direction, applicable City standards will govern Project Signage related to pedestrian and vehicular traffic control, including parking, on public streets, as well as street name signs. This CSP will govern other types of Project Signage that are intended to enhance Project identity and user experience, including gateway markers, wayfinding directories, and informational kiosks.

Applicable City standards will govern signage within City-owned parks and open space.

Artwork will be subject to the City's regular permit process, such as encroachment or building permits, but will not be governed under the CSP as signage. This CSP is organized as follows:

1. Overview (Chapter 01)
2. General Sign Design Standards (Chapter 02): sets forth general signage standards, including allowed construction and materials, signage illumination, and exempt and prohibited signs.
3. Project Signage (Chapter 03): includes wayfinding and district-wide project identity, major and minor gateways, information kiosks, and certain types of digital signage.
4. Tenant Signage (Chapter 04): identifies particular businesses and institutions within the project area, including freestanding, building mounted, and storefront signage types.
5. Sponsorship and Advertising (Chapter 05): sets forth standards for sponsorship and advertising signs, including specific limitations on the placement of Off-Site Signs, and sets forth sponsorship and advertising sign

characteristics, such as the use of interactive technologies and animated signage, light and sound towers, rooftop signage, and naming rights.

6. Placemaking & Amenities (Chapter 06): Identifies elements within the public realm that reinforce the identity and character of the place, using permanent or transient features.
7. Signage Calculation and Diagrams (Chapter 07): sets forth more fine-grained standards for specific types of signs.
8. Temporary Signage (Chapter 08): sets forth standards for temporary signs, such as construction barricades and leasing signs, and signs for temporary events.

1.4 PERMITTING PROCESS

The permitting process will differ depending on the type of sign package to be submitted, and when in the process, the approval is sought.

1.4.11.4.1 Sign Permits

Unless expressly exempted by the terms hereof, no sign governed by this CSP shall be erected, re-erected, constructed, or structurally altered or maintained until a sign permit for the same has been issued by the Director. The Director shall not deny a sign permit application for any sign that complies with the applicable standards outlined in this CSP (or, in the case of an approved Building Signage Plan approved under Section 1.4.3 hereof, that complies with the approved Building Signage Plan). Alteration or maintenance of a legal sign by painting, repainting, or cleaning thereof, or the changing of the advertising copy or message thereon shall not be considered an erection or alteration which requires a sign permit unless a structural change is made. A separate sign permit shall be required for each sign, except that temporary signs governed by Chapter 8 of this CSP do not need a sign permit unless expressly required thereunder. An electrical permit shall be required for any connection to an electrical sign.

In addition, any signs proposed to be located on non-leased City property within the Project, including within a public right-of-way, shall require an encroachment permit or other form of license or lease from the City. Identification of potential sign locations in this CSP does not constitute consent by the City to use such locations.

1.4.2 1.4.2 Fees – Generally

Except for official signs posted by a governmental body, a fee for each sign permit shall be paid to the Community Development Department according to the sign permit fees established from time to time by City Council resolution.

1.4.3 1.4.3 Building Signage Plans (Optional).

An applicant may, at its option, submit a building signage plan application for individual buildings or groups of buildings in accordance with this Section 1.4.3 (each, as approved, a “Building Signage Plan”). The purpose of the Building Signage Plan process is to allow for City review and approval of an entire package of signs associated with a particular building or group of buildings. A Building Signage Plan application may be (i) included with a DAP application that includes Architectural Materials as provided in Exhibit 2 to MCP Appendix C, in which case, it will be reviewed and approved as part of the DAP following the procedures outlined in MCP Appendix C; or (ii) submitted to the City as a separate package of materials concurrently with, or after, the applicant submits the Architectural Review Application for the applicable building. If a Building Signage Plan application is submitted, the application will include (i) concept level plans for signage associated with the relevant building, including the size, number, quality and general location of On-Site Signs, Off-Site Signs, and Billboards and Large Off-Site Wall Signs (if applicable), (ii) a table describing how the signage outlined in the Building Signage Plan complies with the requirements of this CSP; and (iii) a request for any modifications to the standards set forth herein under Section 1.5 hereof. If submitted after the DAP Application, the City will review and approve the Building Signage Plan application in the same manner as the Architectural Review Application outlined in MCP Appendix C, Section 3.3. Whether considered through the DAP Application process, or as a separate package, the City shall approve the Building Signage Plan application if the decision-maker finds that the application conforms to and is consistent with the applicable design requirements and standards of the Development Requirements and this CSP. Signs approved under a Building Signage Plan application must still obtain a sign permit to the extent required under Section 1.4.1; however, the Community Development Director’s

scope of the review will be limited to the consistency of the sign permit application with the approved Building Signage Plan, and the Community Development Director or their designee shall not deny a sign permit for any sign that complies with an approved Building Signage Plan.

1.5 MAJOR AND MINOR MODIFICATIONS

“Major Modification” means a deviation of twenty-five percent (25%) or more from any dimensional or numerical standard in this CSP or a departure from any non-numerical standards in this CSP that is not otherwise listed as a minor modification.

“Minor Modification” means a deviation of less than twenty-five percent (25%) of the dimensions of an area, space, height, or other requirement provided for in this CSP, or a deviation from any non-numerical standard in the CSP determined by the Community Development Director to be minor or non-material, or to be otherwise consistent with the overall intent of the CSP.

For all signs other than Billboards or Large Off-Site Wall Signs, nothing herein shall preclude an applicant from requesting in its sign permit application a Major Modification or Minor Modification from the provisions of this CSP, which request shall be considered in accordance with this Section 1.5. A Minor Modification may be considered and approved by the Community Development Director or their designee, in his or her discretion, based upon a finding that the sign, subject to such conditions as may be imposed thereon by the Community Development Director or their designee: (i) will not impair the utility or value of adjacent properties or the general welfare of the neighborhood; (ii) will not impair the integrity and character of the zoning district in which the subject property is located; (iii) will not materially add to visual clutter; and (iv) will not create visual blight. The applicant or Others Affected may appeal a denial of a Minor Modification to the Planning Commission according to the procedures set forth in the Zoning Code.

If the applicant requests a Major Modification, it shall be considered by the Planning Commission pursuant to and by the procedure set forth for variances in the Zoning Code, except that the findings required for issuance of a sign modification shall be as outlined in the preceding paragraph. The applicant or Others Affected may appeal an approval or denial of a Major Modification to the City Council pursuant to the procedures set forth in the Zoning Code.

This CSP provides standards regulating the types of signage that would typically be expected within projects of this type and scale. In certain exceptional cases, the requirements of desirable anchor tenants and other major tenants may necessitate signage that does not strictly conform to the signage standards in the CSP, such as standards for quantitative allowances or sign types. Examples could include: a multi-story retail or food and beverage tenant larger than 10,000 sf.; entertainment uses, such as a cinema multiplex which may require traditional cinema marquee or other similar exceptional tenants. In such an event, the major modifications procedures in this Section would be used to address these exceptional conditions.

“Others Affected” means anyone with a property interest in land located within 1,000 feet (but outside the boundaries of the MCP) of the site for which a Major or Minor Modification is approved.

1.6 RELATIONSHIP TO FUTURE PHASES

This CSP is intended to govern sign standards for Parcels 4 and 5, as shown in the MCP. Future Phases of development within Parcels 1 and 2 will submit with their DAP Application a separate CSP, setting forth the signage standards and guidelines applicable to the Phase.

1.7 AUTHORITY AND APPLICABILITY

1.7.1 1.7.1 Authority

As noted in the MCP, notwithstanding the provisions of SCCC 18.80 SIGNAGE REGULATIONS, the City Signage Code regulations do not apply to the CityPlace Project, including but not limited to the provisions of Sections 18.80.050 related to height limitations, 18.80.090 related to design and location, 18.80.200 related to limitations on total sign area in residential, professional, office, and public building zoning districts and 18.80.220 related to Outdoor Advertising. By adopting the MCP, the City Council approved a specific and limited exception to the Citywide prohibition on billboards on Parcels 4 and 5, provided that outdoor advertising faces inward into the City Center or faces toward Levi’s Stadium on Tasman Drive pursuant to this CSP.

1.7.2 1.7.2 Relationship to State or Federal Laws

Nothing in this CSP is intended to supersede or affect the applicability of state or federal laws that may apply to signage within the CityPlace project, and the City recognizes that other state or federal approvals or laws may apply for certain types of signs. Compliances with ADA standards will be addressed during the production of all signage elements.

1.7.3 1.7.3 Applicability

This CSP applies to all Signs that are Project Signage, Tenant Signage, and Sponsorship and Advertising Signage that are Exterior Signs installed or erected within Parcels 4 and 5.

1.7.4 1.7.4 Severability

SEVERABILITY CLAUSE. Should any section or provision of this CSP be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the rest of this CSP as a whole or any part thereof, other than the part so declared to be invalid.

1.8 DEFINITIONS

- **A-Frame Sign.** A freestanding sign usually hinged at the top, or attached similarly, and widening at the bottom to form a shape similar to the letter “A.” These signs are usually designed to be portable.¹
- **Animated Sign.** A sign with motion, flashing lights, video, color or intensity changes requiring electrical energy or electronic or manufactured sources of supply with copy or display material that moves or changes more than once every 8 seconds. Animated sign does not include a sign which tells only time and temperature in alternating sequence.
- **Awning, Canopy, Marquee sign.** A nonelectric sign that is printed on, painted on, or attached to an awning, canopy or marquee and is only permitted on the vertical surface or flap. (Chapter 7.3)
- **Billboard.** An Off-Site Free-Standing Sign that is both located along Tasman Drive and exceeds 12 feet in height, which may include, without limitation, a Pylon Sign or Digital Display.
- **Building Frontage.** The side of the building facing and measured parallel to the street for a single tenant. On a corner parcel or full block parcel, each frontage shall be considered independently. Either side may be considered for the structure frontage. (Chapter 7.1)
- **Building Official** is the officer or chief building inspector charged with the administration and enforcement of appropriate provisions of this CSP, or his/her regularly authorized deputy.
- **City Center Core Sub-District.** The area designated as such on Exhibit 01B.
- **Digital Art and Landmarks.** Non-advertising-centric displays or structures intended to add vibrancy to a location.
- **Digital Display.** A sign face, building face, and/or any building or structural component capable of displaying still images, scrolling images, moving images, or flashing images, including video, animation and audio, through the use of grid lights, cathode ray projections, light emitting diode displays, plasma screens, liquid crystal displays, fiber optics, or other electronic media or technology that is either independent of or attached to, integrated into, or projected onto a building or structural component, and that may be changed remotely through electronic means.
- **Digital Signs.** Signs that contain digital displays that are refreshed no more than once every 8 seconds.
- **Directory Sign.** A sign for listing the tenants or occupants of a structure or center. This sign may be combined with a logo sign that is displayed for the purpose of indicating where customers or clients may visit.
- **Directional Sign.** A sign indicating where customers or clients are directed by means of arrows.
- **Eaveline.** The lowest level of a roof, eave or parapet
- **Exterior Sign.** A sign that is located outside of or on the exterior of any building structure, excluding Private Exterior Signs.
- **Foot-candle.** A unit of luminance or illumination, equivalent to the illumination produced by a source of one candle at a distance of one foot and equal to one lumen incident per square foot.
- **Freestanding Sign.** A sign which is supported by one or more uprights, braces, poles, or other similar structural components that are not attached to a structure. (Chapter 7.6)
- **Gobo Lighting.** “GOes Before Optics” projection technology for image projection onto pavement in pedestrian zones.
- **Graphics.** Decorative portion of a sign not containing a commercial message, trademark or logo-type brand name.
- **Height.** Wherever specified, height shall be measured from the top of the nearest street curb.
- **High Wall Sign.** A sign mounted near the top of a building.
- **Inward-facing Signs.** An Off-Site Sign the content of which is neither facing nor easily discernible by pedestrians or occupants of automobiles from Great America Parkway, Lafayette Street, Tasman Drive, or CityPlace Parkway.
- **Large Off-Site Wall Sign.** An Off-Site Wall Sign affixed to, or integrated into the architecture of, a building along Tasman, which may include, without limitation, Digital Displays, Supergraphics and Window Signs.
- **Light and Sound Towers.** Artful structures intended to add ambiance, attraction and orientation.
- **Logo Sign.** A trademark or symbol of any business or organization. This sign may be combined with a directory sign.
- **Mixed Media Sign.** A sign that contains both static and digital or animated imagery.
- **Movable, Promotional Kiosk Signs.** Small, attended structures with branded graphics and contents.
- **Monument Sign.** A sign that is erected directly upon the existing or artificially created grade, or that is raised no more than 12 inches from the existing or artificially created grade to the bottom of the sign, and which has a horizontal dimension equal to or greater than its vertical dimension. (Chapter 7.7)
- **Off-Site Sign:** A sign that displays any commercial message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other activity that does not occur or is not sold, manufactured or produced within the CityPlace project limits. “Off-Site Sign” also includes a sign that consists principally of

brand name, trade name or other commercial advertising where the business, product, service, profession, commodity, activity, event, person, institution or other activity so advertised is only incidental to the principal activities that occur within the CityPlace project limits.

- On-Site Sign. A sign that is other than an Off-Site Sign.
- Parapet Sign. A sign mounted on top of the parapet of a building.
- Private Exterior Sign. A sign that is located on the exterior of a building within a private plaza or private open space (such as a courtyard, patio or deck) provided primarily for the benefit of residents, employees or paying customers, not generally open to the public, and is not easily discernible from the public right-of-way or other public areas.
- Public Service Announcements (PSA). Messages, created by the City Manager's Office, to notify residents and visitors of matters pertinent to the City of Santa Clara within the parameters defined by City Council policy adopted for the CityPlace project site.
- Public Street. Those streets shown as Public Streets on Exhibit 01B.

- Private Street. Those streets shown as Private Streets on Exhibit 01B.
- Project Signage. Project identity signage, transportation and traffic control signage, parking access and availability and wayfinding signage regulated under this CSP, including Chapter 3.
- Pylon Sign. A freestanding sign with its base being a smaller dimension than its height.
- Special Events. Any commercial, non-profit, educational or civic gathering of people assembled with a common purpose, including without limitation concerts or other types of performance, fairs, carnivals, parades, farmers markets, flea markets, arts and craft fairs, food and drink festivals, sporting events, retail promotions, and celebrations or any other gathering or event of similar nature.
- Supergraphic. A sign consisting of an image projected onto a wall or printed on vinyl, mesh or other material with or without written text, supported and attached to a wall by an adhesive and/or by using stranded cable and eyebolts and/ or other materials or methods
- Temporary Event Signs. Any Temporary Sign associated with Special Events that are within Parcels 4 or 5 as shown on Exhibit 01A of this CSP and have been ground leased to a private

party. Temporary Event Signs do not include Window Signs or Supergraphics.

- Tenant Signage. Tenant identity signage regulated under this CSP, including Chapter 4.
- Temporary Barricades. Temporary walls, barriers and other structures intended to delineate and secure construction areas within the Project site.
- Temporary Sign. Any sign that is to be maintained for a limited duration, not to exceed 60 days (inclusive of set-up and take-down times), including paper signs and other signs that are not permanently affixed to the ground or building. (Chapter 8.0)
- Wall Sign. A sign fastened to an exterior wall within the basic structure form. (Chapter 7.2)
- Wayfinding and Information Kiosk. A small structure in a public area used for providing information and/or displaying advertisements, often incorporating an interactive display screen or screens.
- Window Sign. A sign that is architecturally integrated, applied or attached to a window and located in such a manner that it can be seen from the exterior of the structure. (Chapter 7.8) A light box that meets these criteria will be classified as a Window Sign.

1.9 PUBLIC & PRIVATE STREETS

As stated in the MCP, throughout each Phase of the Project, the Developer will construct all on-site improvements. The on-site improvements include public facilities, such as public streets, public parks

and public infrastructure. All other areas will be private facilities. Designations for public streets, public parks, private streets, private realm and the location of

the City Center Core Sub-District are shown on Exhibit 01B.

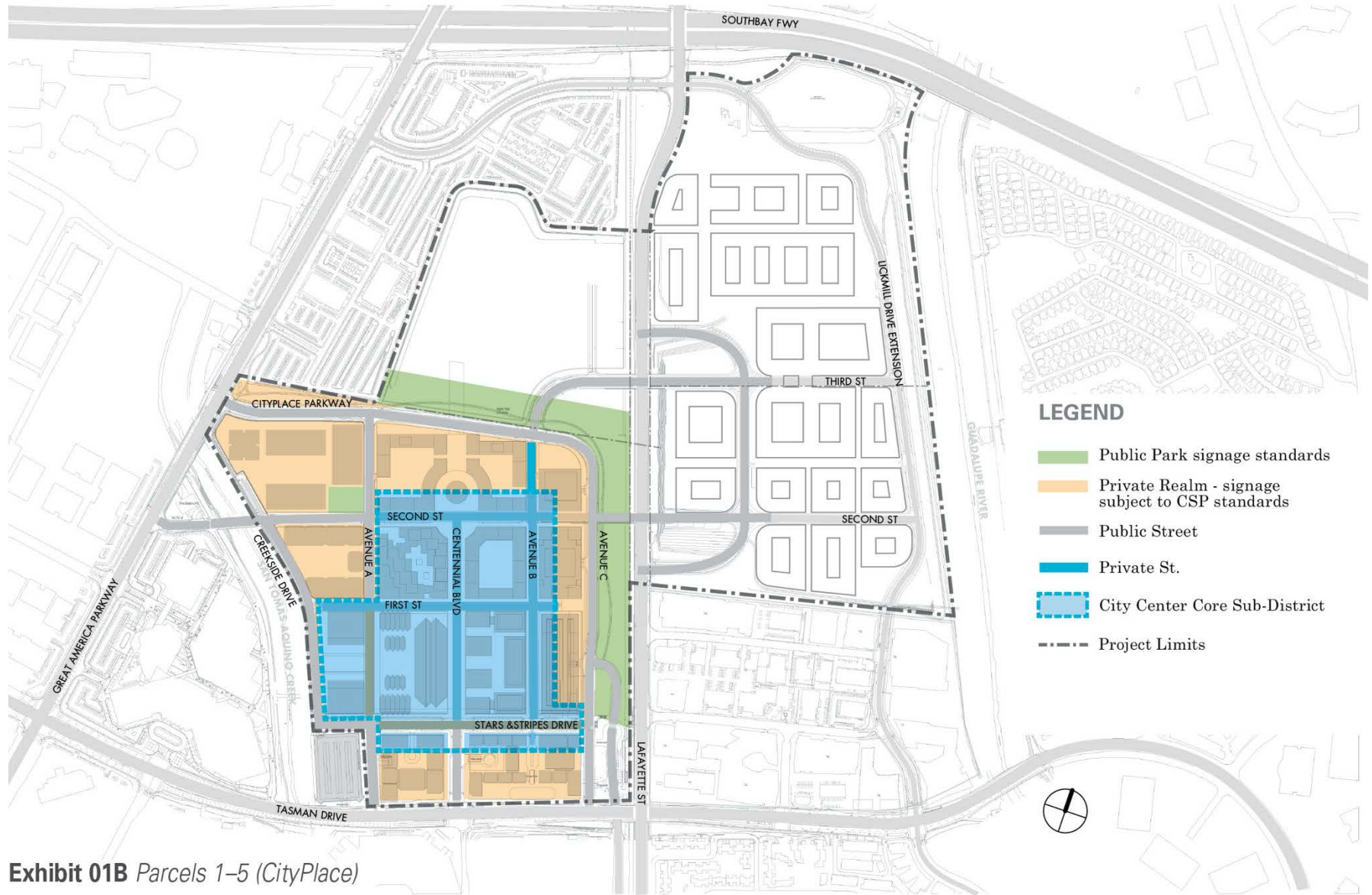


Exhibit 01B Parcels 1-5 (CityPlace)

Public & Private Streets

2 GENERAL SIGN DESIGN STANDARDS

2.1 GENERAL SIGNAGE STANDARDS

1. The color, material, lettering and lighting shall thoughtfully complement the surrounding street environment and building(s) that the sign addresses.
2. Materials should be constructed of the highest colorfast materials to minimize fading, cracking and deterioration.
3. Each sign shall comply with the limitations on size as set forth in this CSP.
4. Signs shall comply with all local Fire and Building Safety codes and regulations.
5. Signs shall not impede pedestrian traffic, block vehicular sight lines along streets or disturb adjacent residential uses.
6. Signs shall not cover doors, vents, rescue windows or other openings that serve building occupants, except to the extent permitted for supergraphics in Section 7.11.
7. Signs shall not encroach into a private or public street as applicable, except for: (a) a Projecting or Canopy/Awning sign to the extent permitted under Section 7.4.4, or (b) Temporary Signs or A-Frame signs.
8. Signs shall be designed with durable materials and be well maintained.
9. Painting, repainting, or cleaning of a sign shall not be considered erecting or altering a sign.
10. Nothing herein is intended to exempt any sign, including temporary signs or other signs otherwise exempt from the sign permit requirements of this CSP from obtaining a Building Permit, Electrical Permit or Encroachment Permit to the extent required by the uniform codes adopted by the City.

2.2 ALLOWED CONSTRUCTION AND MATERIALS

1. Mixed media signs incorporating multi-dimensional forms and combinations of colors, shapes, materials and lighting;
2. Dimensional individual letterforms with acrylic or metal faces;
3. Reverse channel letterforms with halo illumination;
4. Open channel letterforms; Cut or fabricated metals;
5. Etched or sandblasted metals and glass;
6. Permanent materials such as metal, stone, ceramic tile or glass;
7. Dimensional geometric shapes and three-dimensional forms;
8. Light transmitting acrylic letterforms;
9. Sustainable design elements such as recycled and other materials with a low environmental impact; and
10. Painted or digitally produced supergraphics which are artfully designed and composed on large blank surfaces.

2.3 SIGNAGE ILLUMINATION

1. External light sources shall be directed and shielded at the sign to limit direct illumination of any other object and the surrounding area.
2. Illumination for each sign type shall comply with the express requirements of this CSP, or if standards for illumination are not specifically addressed for a particular sign type, shall be of an intensity or brightness that

will not negatively impact immediate surroundings.

3. Signs shall not incorporate blinking, flashing or fluttering lights or other devices that rapidly change a light's intensity or brightness.
4. Colored lights which may be confused with traffic-control devices are prohibited.
5. Illuminated signs shall incorporate energy-efficient fixtures to the greatest extent possible, including deriving energy from solar power where practicable.
6. Hot spots and light leaks are prohibited in all signs.
7. Illuminated signs shall comply with the national and/or local building and electrical codes having jurisdiction over the Project and shall bear the Underwriter's Laboratories ("U.L.") label to conform to U.L. codes.
8. Illuminated signs shall have all labels, conduit, J-boxes, transformers and wires concealed from view.

2.4 EXEMPT SIGNS

1. The following signs are allowed without a Sign Permit and shall not be included in the determination of type, number, or area or signs allowed on each parcel or within the Project. Exempted signs shall be required to adhere to the regulations established for each sign type as provided in this Section and shall be subject to any other permits required by the City as set forth in Section 2.1(10) of this CSP.
 - a. Signs required by Federal/State law;
 - b. Official signs posted by a governmental body, including, flags, banners, emblems, or signs issued by a government body including notices, traffic or highway signs, railroad crossing signs, or similar

- regulatory or warning devices and legal notices;
- c. Seasonal displays and decorations, only when not creating a traffic hazard or located within any visual setback area in the sight distance triangle;
- d. Temporary Signs, subject to the size and quantity limitations of Chapter 8 of this CSP. All Temporary Signs shall be removed or replaced within 60 days following the placement.
- e. Commemorative plaques, tablets, date of construction, and similar signs constructed of permanent material. Only one sign for each structure, not to exceed two square feet in area for each sign is allowed.
- f. Signs located inside a structure.
- g. Murals or other artistic paintings on walls, provided no names, information, logos, emblems or other similar information or illustrations of activities associated with uses on the Project Site or in the vicinity are included in the mural or painting;
- h. “No Trespassing” signs. Each sign limited to one square foot in area. Signs may be placed at each corner and each entrance to a parcel and at intervals of not less than 50 feet or in compliance with legal requirements.
- i. Signs placed by utilities or other publicly regulated service providers indicating location of underground facilities, danger, and aids to service or safety, including official advisory and signal flags;
- j. Copy changes in approved changeable copy signs.
- k. Signs or notices incidental to a commercial, mixed-use, or industrial establishment (e.g., hours of operation, credit card information, emergency contact information, help wanted, open-close) provided the signs do not contain any

commercial messages or the establishment logo, and in total do not exceed four square feet in area per tenant for all incidental signs.

- l. Memorial tablets or signs that commemorate historical events or people.
- m. Private Exterior Signs

2.5 PROHIBITED SIGNS

1. Animated Signs (except as described by Ch. 5 of this CSP).
2. Banners, pennants, statuary, streamers, whirligigs, displays, signs placed on architectural projections and merchandise primarily designed and used for sign purposes located outside of structures (except as described by Ch. 6 of this CSP or Temporary Signs in connection with special events that are otherwise exempt under Ch. 8 of this CSP).
3. Billboards and Large Off-Site Wall Signs, except for the special, limited exception authorized by Section 5.3 of this CSP.
4. Red, green, or amber lights or illuminated signs that could interfere with or be confused with any official traffic control device or traffic signal or official directional guide signs.
5. Signs emitting foreign material or sound, except as described in Chapter 7 of this CSP.
6. Signs on a natural feature (i.e., rock, tree, mound, hill, or mountain).
7. Signs on roof, parapet, or wall above the eave line, except in conformance with the requirements of Chapter 7 of this CSP.
8. Tethered balloon(s) or other inflatable(s) used to draw attention to a use or event except for Temporary Signs in connection with special events that are otherwise exempt under Ch. 8 of this CSP).

3 PROJECT SIGNAGE

Project signage will enhance project identity at CityPlace and create a cohesive graphic family of signs for getting around CityPlace. Project signage will include project identity signage, transportation and traffic control signage, parking access and availability, and wayfinding signage.

3.1 PROJECT SIGNAGE DESIGN INTENT

Project and district identifiers will include highly visible gateway markers. In addition to advertising the Project and/or its districts, these signs should enhance project identity and establish a welcoming point of arrival. Wayfinding signs will be especially useful in orienting first-time visitors, while offering a sense of familiarity to returning customers.

3.2 PROJECT SIGNAGE DESIGN GUIDELINES

1. Develop a “family” of signage that creates a graphic continuity throughout the Project. In CityPlace, districting concepts may require individualized district signage “families.”
2. Wayfinding sign messaging shall be accessible for non-English-speaking visitors by including pictograms to communicate a typical destination.
3. Provide vehicular directionals consistent with City requirements that guide motorists to important destinations on-site, including major attractions, parks and parking facilities.
4. Include directional signs and maps that guide persons on foot and bicycle to important public services and facilities, parks, outdoor gathering areas, and major tenants.
5. Avoid signage in corner/driveway sight clearance areas

3.3 PROJECT SIGNAGE CHARACTERISTICS

3.3.1 Major Gateway Signage (Exhibit 03A)

Summary Description:

1. Gateway signage clearly identifies the Project at vehicular points of entry and provides information (or place identification).
2. Signs are scaled to their surroundings and in accordance with their function as primarily vehicular-oriented project identifiers.
3. Gateway elements may include landscape, hardscape and light displays.
4. Gateways enhance the Project and establish the overall character of the signage program.
5. Signs are constructed of high quality and durable materials that are weather and vandal resistant.
6. Major Gateway signs are primarily for project name or logo. Off-Site content and Digital Signs are prohibited.
7. Ceremonial Gateways are experiential areas that will combine sculpture, lighting and/or signage in concert with adjacent architecture and landscape to create a sense of arrival. Off-Site advertising is prohibited.

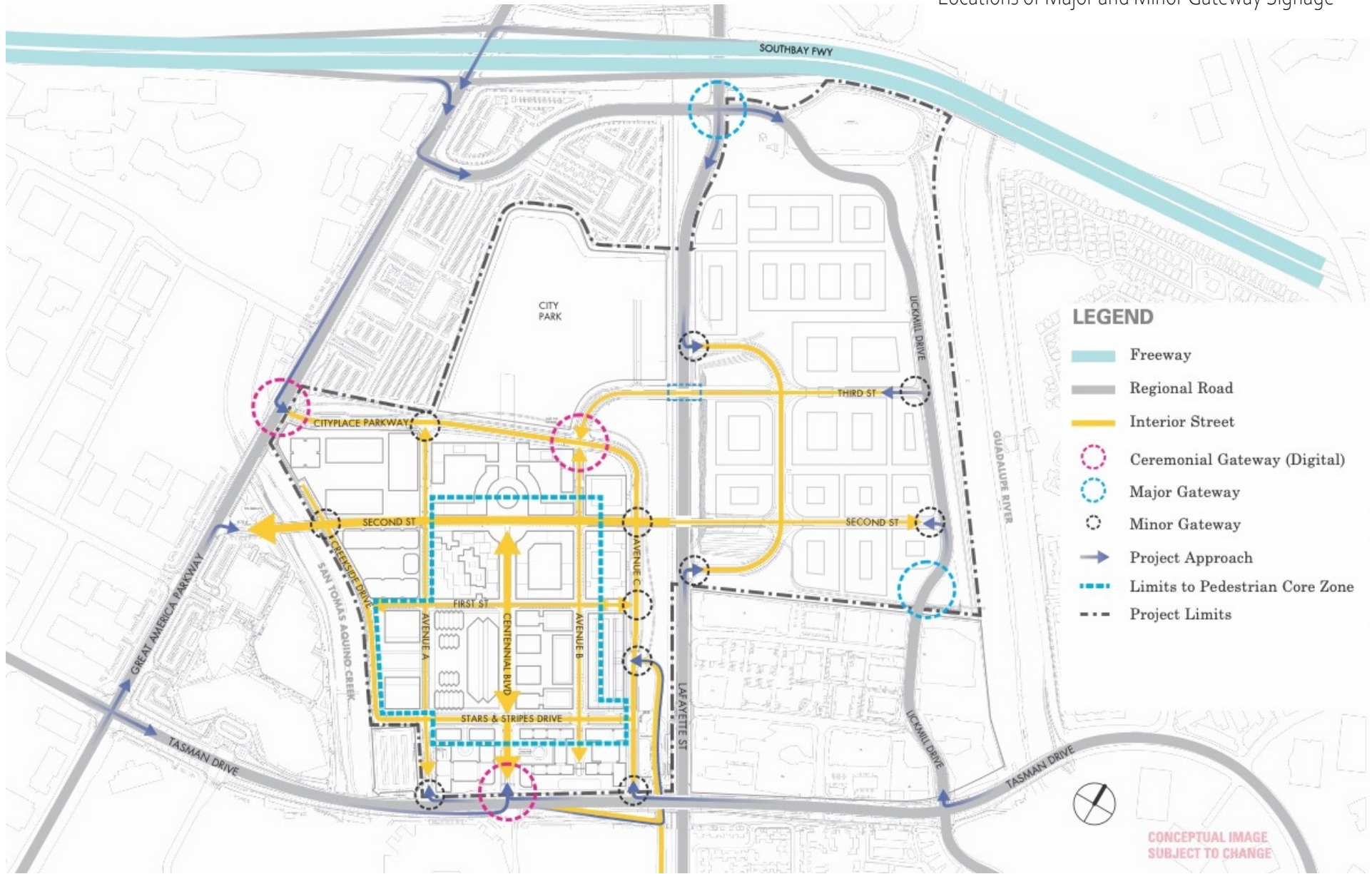
3.3.2 Minor Gateway Signage (Exhibit 03A)

Summary Description:

1. Minor gateway signage identifies important project features, districts within the Project or, in the case of office campuses, corporate identity.
2. Minor gateway signage is smaller in scale than major gateway signage and placed at secondary points of entry or subdistrict entries.
3. Minor gateway signage emphasizes bold, highly legible graphic design providing information to vehicles, pedestrians, and cyclists.
4. Signs are constructed of high quality and durable materials that are weather and vandal resistant.

Exhibit 03A Phase 1-4 (CityPlace)

Locations of Major and Minor Gateway Signage



3.4 TRANSPORTATION / TRAFFIC CONTROL TYPOLOGY

3.4.1 Street Name

Summary Description:

1. Signs and typefaces are kept simple to augment readability for users.
2. Contrast of colors is especially important to the functionality and legibility of street name signage.

3.4.2 Parking Identity & Regulation

Summary Description:

1. Signage is strategically placed to guide visitors toward their preferred destination.
2. Highly legible lettering is used to ensure clear and concise direction for vehicular traffic. Typefaces are made simple to ensure user readability.
3. Incorporate real time Vehicle Management Signage (VMS) into parking facility identity and into associated, off-site wayfinding elements. The Parking Vehicle Management Signage will guide drivers to parking garage locations using digital “available parking spaces” indicators and will be supplemented inside the garages with “green light / red light” systems that locate open parking stalls.

3.5 DIRECTIONAL / WAYFINDING STANDARDS & TYPOLOGY

3.5.1 Overall Standards for Wayfinding Signs

1. Wayfinding signage typologies in Sections 3.5.2, 3.5.3 and 3.6 shall comply with the applicable wayfinding signage standards set forth in this Section 3.5.1.
2. Wayfinding systems for CityPlace orientation and navigation will follow national and state accessibility standards and will provide ease-of-use to all visitors across multiple languages; achieved in part through extensive use of internationally recognized graphic symbols and pictographs. Such wayfinding symbols will be used in static signs, digital screens and printed materials and will be incorporated into both vehicular and pedestrian wayfinding. Where appropriate for enhanced navigation, written descriptors will accompany the symbols.
3. Digital screen content programmability will allow multiple languages to be linked to wayfinding digital display maps accessed by touch and by voice.
4. The majority of static and digital wayfinding components will be located within public realm sidewalks, parks and plazas and will be carefully integrated into the public realm landscape environment, utilizing biophilic design principles as appropriate.

3.5.2 Vehicular Directional (Exhibit 03B)

Summary Description:

1. Directionals are located at or near project entrances and key intersections, and other locations that will serve to guide motorists to their destination. Signs direct motorists toward parking, and major destinations and attractions, including the larger tenants.
2. Vehicular directionals are freestanding or mounted on light poles and scaled to their

surroundings for a comfortable read by slow moving vehicles and cyclists.

3. Materials for vehicular directionals are similar to those making up other project signage and compatible with the overall signage program.
4. Signs are visually engaging with highly legible text and graphics





3.5.3 Pedestrian Directional (Exhibit 03B)

Summary Description:

1. Directionals are located along major pedestrian circulation routes and other locations that will serve to guide the pedestrians toward public and/ or guest services and amenities.
2. Pedestrian directionals maintain pedestrian flows and sight lines.
3. Signs are scaled to their surroundings for a comfortable read by pedestrians and bicyclists.
4. Signs are created from high quality and durable materials that are weather and vandal resistant.
5. Enhance project identity and maintain compatibility with overall signage program.

Exhibit 03B

Vehicular & Pedestrian Directionals

-  Vehicle Directional
-  Pedestrian Directional
-  Limits to City Center Core Sub-District
-  Project Limits

** Exhibit is conceptual and subject to change. Locations are illustrative and not meant to limit the number of locations*

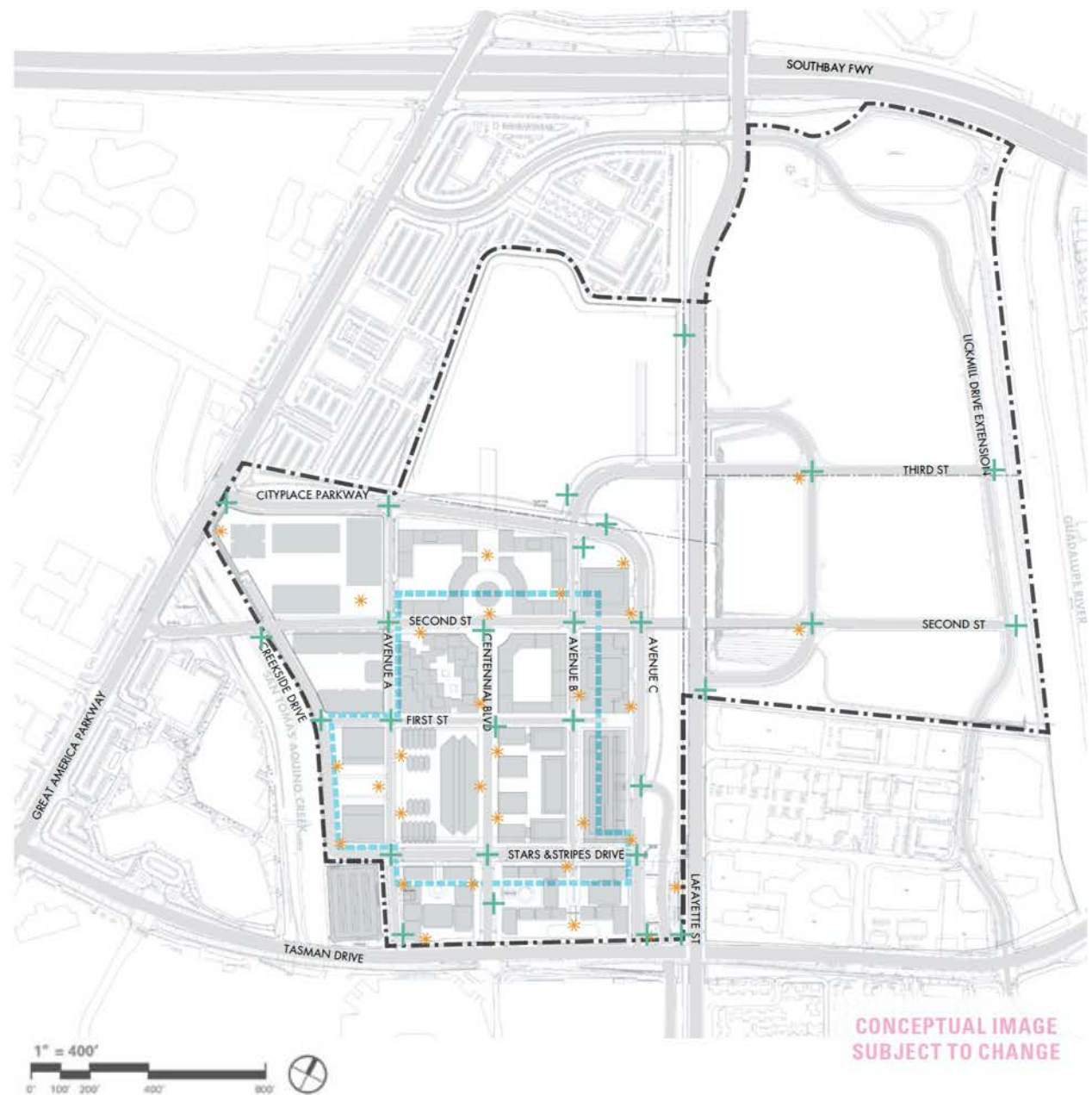
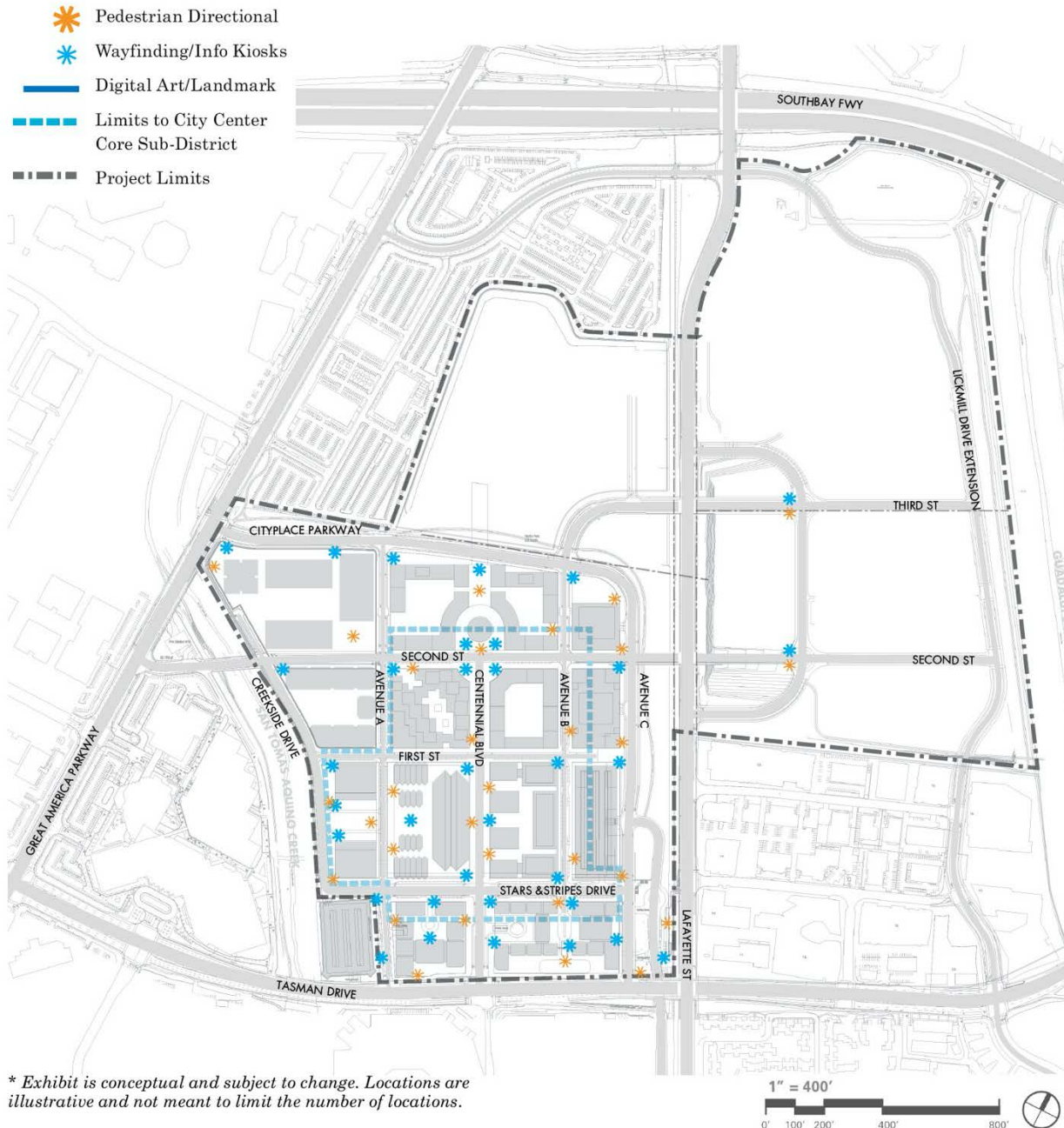


Exhibit 03C Wayfinding & Information Kiosks



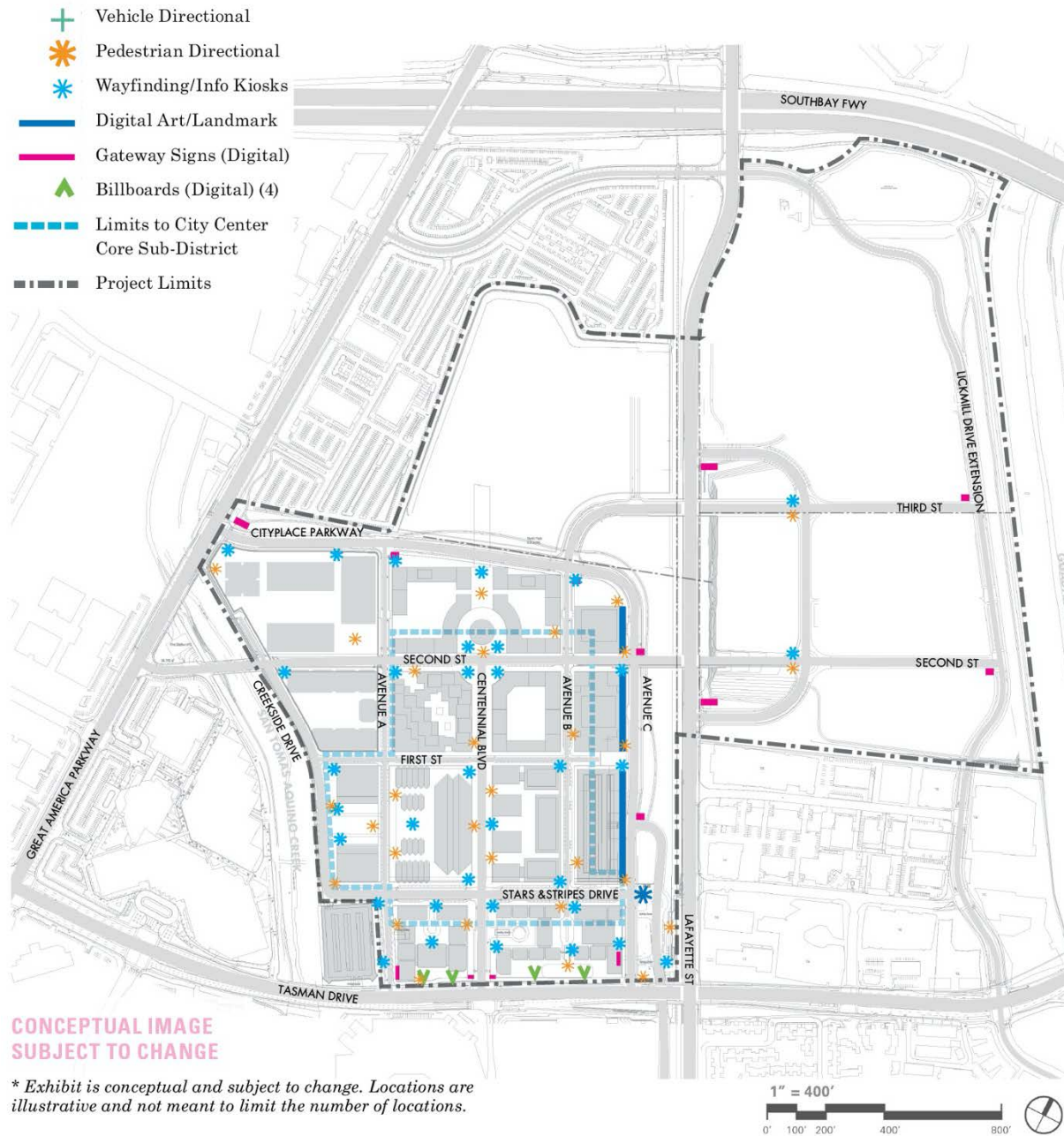
* Exhibit is conceptual and subject to change. Locations are illustrative and not meant to limit the number of locations.

3.6 WAYFINDING / INFORMATION KIOSKS (EXHIBIT 03C)

Summary Description:

1. Wayfinding/Info Kiosks are located within or near major pedestrian gathering spaces and key intersections subject to heavy pedestrian flow.
2. Wayfinding/Info Kiosks present essential information needed to navigate the Project.
3. Kiosks are made from high quality durable materials, as these elements are exposed to the weather and will receive an especially high degree of contact with the public.
4. Wayfinding/Info Kiosks and maps may also locate points of interests and essential services provided.
5. Wayfinding/Info Kiosks may include features such as ADA Compliance Voice activation,
6. Advertising / PSA / Retail engagement, Parking, and/or Sustainability information.
7. Information is intended to be presented in a clear and highly graphic manner, and locates project tenants, major destinations, and public and/or guest services.
8. Kiosks are situated to maintain pedestrian flows and preserve sight lines.
9. Kiosks can also function as “community boards” that advertise upcoming events.

Exhibit 03D Digital Wayfinding and Landmarks



3.7 PROJECT DIGITAL SIGNAGE

Summary Description:

1. Subject to the regulations and limitations of this CSP, all Project Signage may be Digital Signs or Mixed-Media Signs.
2. Digital Art and Landmarks to contain artful content and lighting expressions to enhance the experience of entering CityPlace. Project Identity and On-Site content may also be displayed.
3. Digital Wayfinding/Info Kiosks can include data such as interactive maps, bus schedules, community functions and temporary directional signage for special events.
4. Digital displays may be freestanding or integrated into architecture. On-Site Sign (and Off-Site Sign, where permitted) content to be photography, videos (in instances where Animated Signs are permitted) or sponsored artistic imagery that is subject to regulations described in Chapter 5 of this document.
5. With merging combinations of digital signage, wayfinding and advertising, a single signage element may host multiple expressions.

4 TENANT SIGN TYPES

Tenant signage quality will be measured through its compatibility with the building architecture, its level of integration with the storefront design, and the ability to clearly communicate.

4.1 TENANT SIGNAGE DESIGN INTENT

High quality, innovative, and expressive tenant signage will create a cohesive look and feel at City-Place. A tenant's primary signage will consist of the name of the business and/or logo depicted on a wall sign and will be designed to comfortably fit the building and storefront. Signage should reflect the character of the tenant and services provided, while clear and legible to passing pedestrian, bicycle and automotive traffic consistent with size restrictions noted in chapter 7.

4.2 TENANT SIGNAGE CRITERIA

1. Locate and design tenant identity signs to complement the building architecture and storefront design.
2. Restrict tenant identification signs to the business name, simple logo or other elements typically used to depict their brand.
3. Ensure that window signage and graphics augment and obscure display areas by no more than 15% of the overall window area.
4. Office buildings and associated parking structures facing major streets are allowed to have:
 - a. Identity signage near the top of their buildings that is sufficiently scaled to be readable from adjacent arterial roads and freeway.
 - b. Signage is limited to the corporate entity name and/or logo, and/or the name of a company that occupies the building.
 - c. Up to four identity signs shall be allowed per building.
5. Tenant wall signs should be located on flat, unadorned surfaces. This is generally a panel or band above the storefront entrance, although alternative locations may be considered.
6. Coordinate sign placement with the arrangement of bays, windows, and other architectural features while remaining consistent with the standards.
7. The overall size, materials and graphic composition of a tenant sign should be

coordinated with architectural character of the project district and storefront design.

8. Encourage pedestrian-scaled projecting signs (overhead mounted, projecting blade signs, etc.) along pedestrian sidewalks and pathways.

4.3 TENANT SIGNAGE - CHARACTERISTICS

4.3.1 Freestanding/Monument Signage

Summary Description:

1. Freestanding signage (affixed to the ground or connected to supports affixed to ground, and not affixed to a building) includes architectural details, quality materials, and colors compatible with the associated buildings.
2. Signage incorporates durable sign materials that can withstand exposure to the elements.
3. Freestanding signage should be easily and comfortably read by both pedestrians and by vehicular traffic.

4.3.2 Building-Mounted Signage

Summary Description:

1. Building-mounted signs are conceived as an integral part of the building façade, placed in accordance with façade rhythm, scale and proportion.
2. Signs do not obscure architectural features such as vertical piers, trim work, ornamental features, etc.
3. Parapet / High Wall Signs are mounted above windows and below parapet top and are consistent with the requirements of Section 7.5.

4.3.3 Storefront Signage

Summary Description:

1. Storefront signage is integrated with the design of the building, compatible with the architectural details and color scheme of the building.
2. Storefront signage may include a Window Sign that is located on or within 6 feet in any direction of the edge of the window plane, painted or attached.
3. Little to no impact to residences.

4.3.4 Projecting Signage

Summary Description:

1. Projecting signage is integrated with the design of the building, coordinating with the architectural details and color scheme of the building.
2. Projecting signs are placed perpendicular to the building.

4.3.5 Supergraphic / Building Integrated Signage

Summary Description:

1. Supergraphics are integrated with the building architecture, coordinating with the overall design.
2. Large-scale painted or applied decorative art in bold colors and typically in geometric or typographic designs.
3. May be permanent or temporary and used over walls or windows to create an illusion of expanded or altered space.
4. Use of Supergraphics may be static imagery or displayed digitally and may serve a broader set of purposes including holidays, celebrations, advertising and sponsor promotions.

4.3.6 Rooftop Signage

Summary Description:

1. Signage is integrated with the design of the building, coordinating with the architectural details and color scheme of the building.
2. Signs are considerate of nearby uses.
3. Signs are applied or placed upon the roof surface, visible from a distance, yet not prominently visible from the adjacent public right-of-way.

5 SPONSORSHIP & ADVERTISING SIGN TYPES

Sponsorship and advertising will enhance the identity of CityPlace and create an active, unique core, thereby serving the City's objective to create a vibrant mixed-use, urban core, creating a pedestrian friendly "live, work, and play" environment that will function as a well-defined center for the Santa Clara community.

5.1 SPONSORSHIP & ADVERTISING SIGNAGE - DESIGN INTENT

The types of sponsorship and advertising signs used at CityPlace are restricted by viewable location, "off-site" advertising content, levels of animation, event duration, and hours of operation. Buildings and plazas may be named after companies or individuals who have purchased naming rights. The signage may also include digital displays, reader boards and other graphics that may enhance the functions held within CityPlace. Refer to Exhibit 05A for preliminary locations and quantities of Sponsorship and Advertising Signage.

5.2 SPONSORSHIP & ADVERTISING SIGNAGE STANDARDS

1. Locate and design signs to be freestanding, integrated into building architecture or storefront design.
2. Coordinate signage placement with the arrangement of bays, windows, and other architectural features.
3. Locate Animated and Digital Signs on flat, unadorned surfaces.
4. Design digital signs as clean, simple, attractive, appropriate and brief messages.
5. Ensure that signage and interactive technologies augment and minimally obscure display areas of storefronts.
6. Off-Site Signs must be located in the City Center Core Sub-district and be Inward-facing Signs, except Billboards and Large Off-Site Wall signs consistent with CSP Section 5.3.

5.3 SPECIFIC LIMITATIONS ON OFF-SITE ADVERTISING DISPLAYS

Off-Site Signs are prohibited with the exception of the following:

1. **Inward-facing Signs within the City Center Core Sub-District.** Inward-facing Signs within the City Center Core Sub-District are permitted consistent with all applicable standards in Chapters 2, 5 and 7, subject to the following limitations:
 - a. Limited to 12' in height if the sign is either (i) facing the building with a residential use that is located within 100 linear feet of the sign, or (ii) utilizing animation
 - b. Limited to 40' in height if the sign does not meet the criteria in subsection 5.3.1.a(i) or (ii).
2. **Inward-facing Signs outside of the City Center Core Sub-District.** Inward-facing Signs consistent with all applicable standards in Chapters 2, 5 and 7 are permitted outside of the City Center Core Sub-District subject to the following limitations:
 - a. Limited to 12' in height
 - b. No animation allowed
3. **Billboards and Large Off-Site Wall Signs along Tasman Drive.** Consistent with Section 7.1 of the MCP, Billboards and Large

Off-Site Wall Signs along Tasman Drive are permitted subject to the following numerical, height, and size restrictions:

- a. No more than a total of four (4) Billboards and/or Large Off-Site Wall Signs are permitted along Tasman, in any combination (for example, two Billboards and two Large Off-Site Wall Signs)
- b. Billboards may be multi-sided with up to four separate faces and must be no taller than 50 feet.
- c. Large Off-Site Wall Signs may be multi-sided (e.g., a single sign having two exposures wrapping the corner of a building) and must be located within Vertical Zone Levels 1, 2 or 3, as shown in Section 7.1 of this CSP.
- d. Any Billboard is limited to 700 sf of sign area per side of the Billboard, per Section 7.11.8 and must not exceed a maximum width of 48 feet.
- e. Any single-sided Large Off-Site Wall Sign is limited to 1,400 sf of sign area; sign area on a multi-sided corner Large Off-Site Wall Sign is limited to a maximum sign area per side of 1,400 sf. of sign area in total that may be distributed over the two corner facades in any proportion (e.g., 50/50; 70/30, etc.)
- f. A Billboard or Large Off-Site Wall Sign may display animation, but it may only display video animated content on event days with events at Levi's Stadium when there is no through traffic on Tasman Drive between Lafayette Street and Great America Parkway, and may be further limited by agreement between The City and the developer.
- g. No Major or Minor Modifications are allowed for Billboards or Large Wall Signs
- h. Public Service Announcements on Tasman-Oriented Billboard Faces.

Tasman-oriented Billboard faces will, in the aggregate, provide the opportunity for up to 10% Public Service Announcement use, free of charge to the City, of one full face of copy exposure based on daily use (e.g. 36.5 days per year), and at least 50% of such Public Service Announcement use shall occur during the hours of 6:00 a.m. and 9:00 p.m. daily. Public Service Announcements must be requested, scheduled and coordinated with the applicable ground lessee (or its designee) by the City Manager's Office pursuant to procedures to be agreed upon by the City Manager and such ground lessee.

4. In the event of a conflict between the numerical, height and size restrictions applicable to Off-Site Signs set forth in this Section 5.3 and the general standards set forth in Chapter 7 hereof, the provisions of this Section 5.3 will control.

5.4 SIGNAGE CHARACTERISTICS

5.4.1 Animated / Digital / Interactive Technologies

Summary Description:

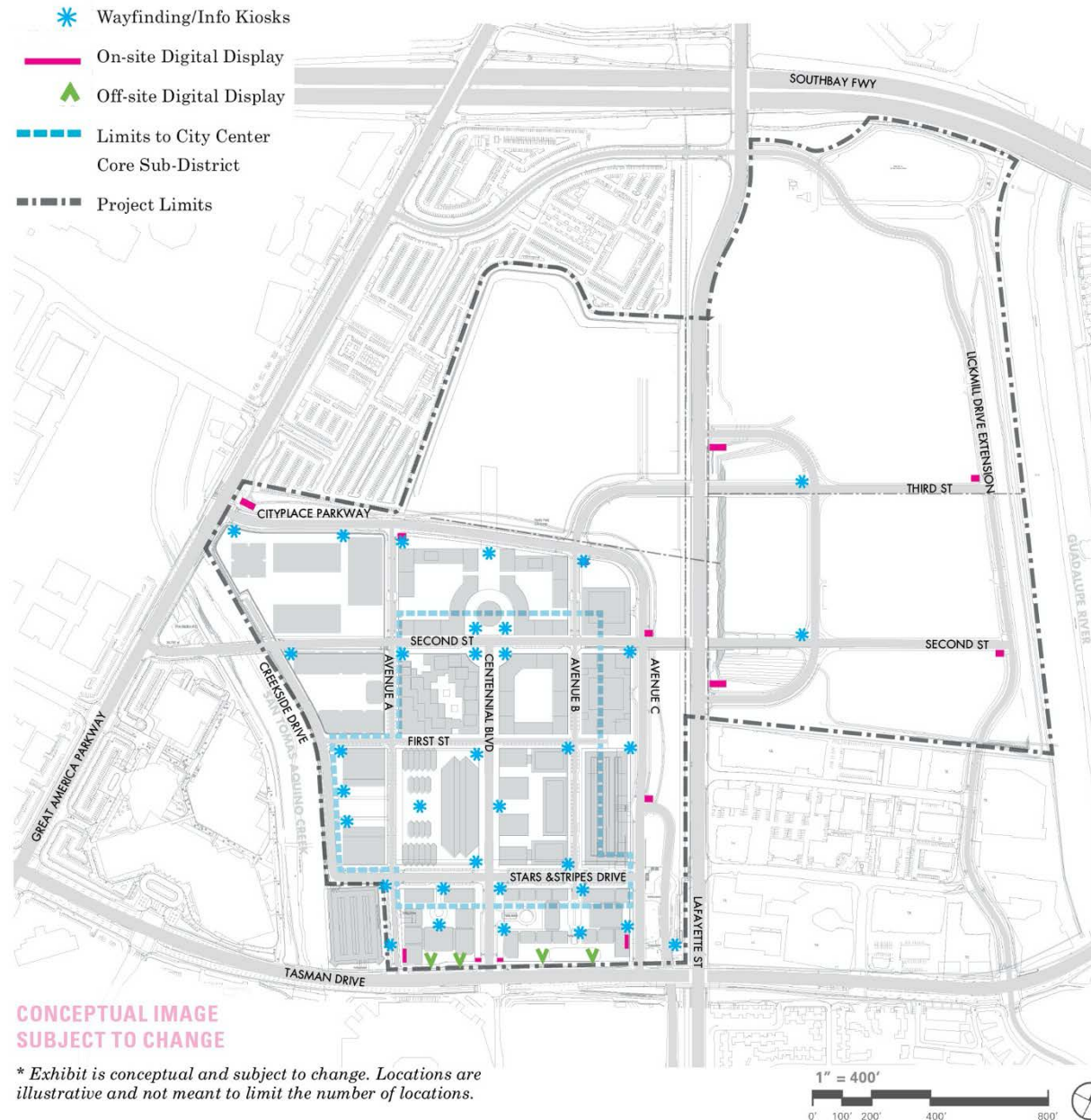
1. Signage has Digital Displays.
2. Signage incorporates durable sign materials that withstand exposure to the elements.
3. Animated signage shall only be permitted if they meet the requirements of Section 5.3.
4. Interactive technologies can include areas subject to projected images containing GOBO lighting solutions.

5.4.2 Light & Sound Pylons

Summary Description:

1. Freestanding multi-sided structures may include animated and/or non-animated signs and are permitted if they meet the requirements of Sections 5.3 and 7.6.
2. Includes architectural details, quality materials, and relates spatially to its surroundings.
3. Light and sound towers are conceived as an integral part of the outdoor space, placed in accordance with façade rhythm, scale and proportion.
4. Sound shall be subject to and comply with SCCC9.10.040.
5. Lighting must not compete with or mimic traffic signal devices that may confuse motorists.

Exhibit 05A Sponsorship & Advertising



5.4.3 Rooftop Signage

Summary Description:

1. Rooftop signs identifying a structure are an important sponsorship opportunity for purchasers of naming rights that occupy buildings on Parcels 4 and 5.
2. Signage is integrated with the design of the building, coordinating with the architectural details and color scheme of the building.
3. Signs are considerate of nearby uses.
4. Within the limitations set in Section 5.3, Rooftop signs are located upon the roof surface, visible from a distance, yet not prominently visible from the adjacent public right-of-way.

5.4.4 Naming Rights

Summary Description:

1. An area at the top of a building face dedicated to sponsorship of an organization, typically displaying the organization's logo and brand.
2. Tenants must occupy space on Parcels 4 or 5 and are typically the major lessees of a multi-tenant building.

6 PLACEMAKING & AMENITIES

CityPlace will allow for a great opportunity to further enrich the environment with various artistic design elements that may be used to highlight special locations such as gateways and public plazas, or simply enrich architectural and landscape details.

6.1 PLACEMAKING DESIGN INTENT

Designed elements will enhance the visual environment, making a more memorable place, enhance wayfinding, reinforce the overall image and project identity, and even function as a conceptual link to disparate parts of the Project. It is important to consider how the design element might serve as a local landmark, delineate outdoor space, add richness to the landscape, or create an expression of local history and culture.

6.2 PLACEMAKING DESIGN ELEMENTS

6.2.1 Custom Identity

Explore opportunities to tastefully incorporate a project logo or similar graphic element as decorative sidewalk plaques or integral to on-site furnishing and landscape features, such as benches, trash receptacles, tree grates, etc.

6.2.2 Site Banners

Colorful banners applied to light poles or building facades may advertise CityPlace and local events. A seasonal banner program that lines main thoroughfares in procession will create a sense of arrival. These are especially appropriate for gateways and streets with retail frontages, where they will contribute to a festive environment. Banners are not intended for the display of tenant identity but may include a sponsor logo that does not fill more than 25% of the banner area. Banners will be mounted to banner poles or light poles with wind-resistant brackets. Banners are permitted within the City Center Core Sub-District without a sign permit. Banners on light poles or otherwise within a public right-of-way will be permitted as provided by this Section 6.2.2 and will be subject to the City's permitting procedures.

6.2.3 Event Signage

Temporary signage may be installed prior to event opening consistent with the Temporary Sign requirements in Chapter 8 of this CSP.

7 SIGNAGE CALCULATION AND DIAGRAMS

MASTER PLAN STANDARDS

All exterior signs on a development parcel shall be included in the calculation of maximum allowed combined sign area except for the following signs:

1. Temporary Signs (section 8.0)
2. Supergraphic Signs (section 7.9)
3. Billboards and Large Off-Site Wall Signs (section 7.11)

MAXIMUM ALLOWED SIGN AREA

The maximum allowed combined sign area on a building elevation is **four (4) square feet of signage per linear foot of block frontage** with the lot/block frontage being measured along the block line on which the building elevation is located. Unused allowable square footage is not allowed to be transferred to a different building elevation within the development parcel. Refer to Figure 7.1 for frontage delineation information. Additional square footage may be allowed via the modification process outlined in Section 1.5.

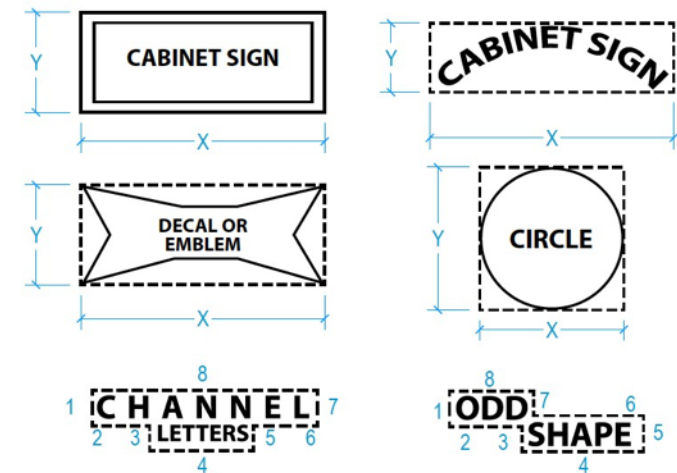
ALLOWED SIGN TYPES

The following sign types are allowed throughout the entire CityPlace area. Refer to specific sign type requirements in this chapter for additional information on allowed sign types by land use.

- Wall Sign
- Pylon Sign
- Monument Sign
- Projecting Sign
- Awning / Canopy Sign
- Parapet Sign
- Window Sign
- Supergraphic Sign
- Rooftop Sign

SIGN AREA

1. Allowable Sign Square Footage. All signs are measured based on every linear foot of structure frontage to determine the maximum allowable sign square footage, unless noted otherwise in Section 18.42.110 (Standards for Specific Types of Signs).
2. Sign Area Calculations. Sign area calculation is based on every linear foot of structure frontage, to a specified amount of sign square footage. For example, if a structure has 100 feet of linear frontage, and one foot of sign area is allowed for every foot of linear frontage, the maximum allowable sign square footage would be 100 square feet.
3. Sign Surface Area Calculation. The sign surface area shall be calculated by enclosing the extreme limits of framing, emblem, logo, representation, letters applied to the structure without a distinctive background (e.g., painted wall sign, channel letter), or other display with a single continuous perimeter composed of the smallest square, circle, rectangle, triangle, or combination thereof. See Figure 7a.
4. Additional sign area and/or sign types may be permitted. See Chapter 1.5 “Major and Minor Modifications”



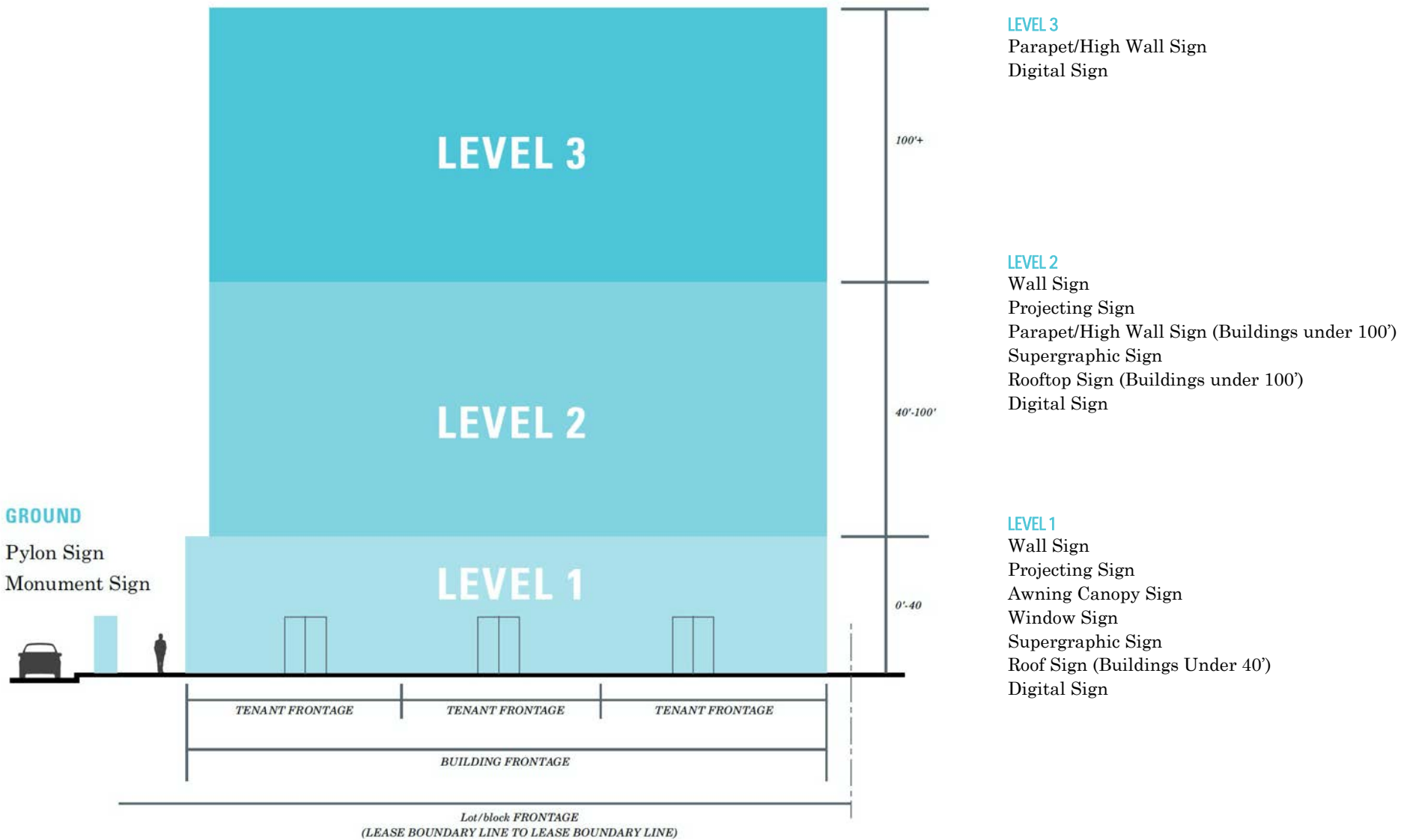
Numbers on the Channel Letters and Odd Shape sign graphics represent the sides that are measured to calculate the allowable sign area.

Figure 7a: Vertical Sign Zones & Frontage Delineations

7.1 VERTICAL ZONES & FRONTAGE DELINEATIONS

7.1.1 ALLOWED SIGN TYPES BY VERTICAL ZONE

Refer to expanded requirements for each sign type for Allowed Sign Types by Character Zone



7.2 WALL SIGNS

7.2.1 General Requirements

1. Any number of Wall Signs is allowed, provided that the sum of all sign areas does not exceed the maximum allowed sign area for the lot/block frontage.
2. Any building containing leased space for multiple tenants is considered a single establishment for the purpose of computing the sign area allowed on the exterior walls of such building.
3. Retail/Restaurant Tenants are allowed as many Wall Signs as desired per block frontage where their establishment is located as long as it does not exceed the maximum, calculated total square footage.

7.2.2 Sign Area

The sign area for a Wall Sign shall be included in the total allowed area for the lot/block frontage along which it is located.

7.2.3 Height

Wall Signs shall not exceed the height of the top of any roof or parapet line.

7.2.4 Projection

Signs may project a **maximum of two (2) feet** from the building wall, parapet or roof structure to which they are attached.

MULTI-TENANT BUILDING

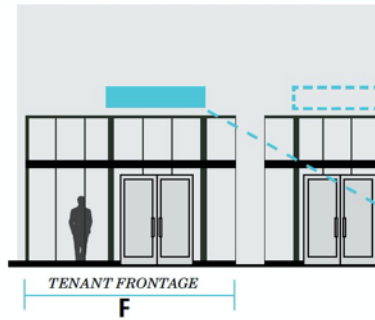


Figure 7.2a

SINGLE TENANT BUILDING

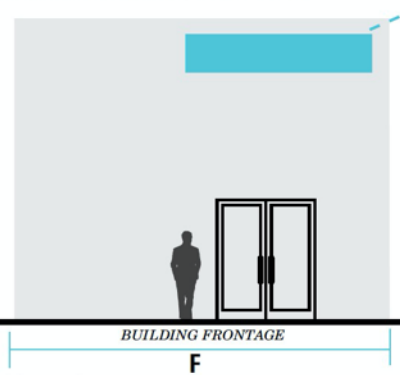


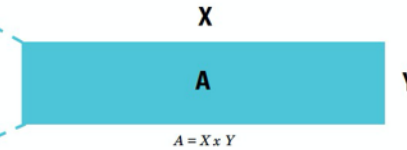
Figure 7.2b

ALLOWED SIGN AREA

$$F \times 2 = A$$

MAX SQ. FOOTAGE

$$A < 300\text{sf}$$



ALLOWED SIGN PROJECTION

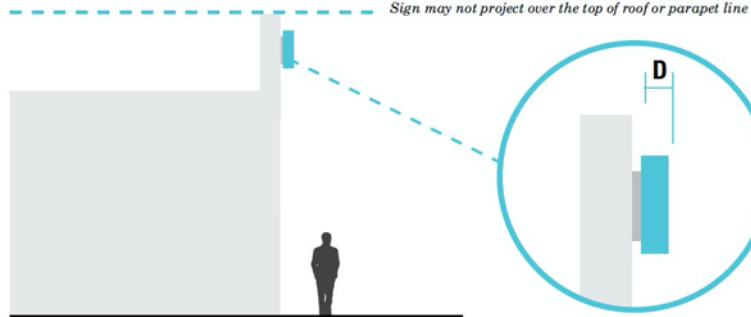


Figure 7.2c

$$D < 2\text{ ft}$$

7.3 AWNING/CANOPIES

7.3.1 General Requirements

1. Any number of Awning/Canopy Signs is allowed, provided that the sum of the sign areas does not exceed the maximum allowed sign area for the lot/block frontage
2. Retail/Restaurant Tenants are allowed as many Awning/Canopy Signs as desired per lot/block frontage, as long as it does not exceed the maximum, calculated total square footage.
3. Each corner tenant may incorporate an Awning/ Canopy Sign at both of its frontages but shall distinguish its entry with a unique sign design.
4. All Awning/Canopy Signs shall align with major building elements such as cornices, string courses, window banding or vertical changes in material or texture and shall be thoughtfully integrated into the building design.
5. Signs may be integrated into the face of an awning or canopy.
6. Letterforms, logos and other graphic elements may be mounted to either the top or bottom edge of a canopy or thoughtfully integrated into the faces of the canopy.
7. Awnings shall be regularly maintained and kept in good condition.

7.3.2 Sign Area

1. The sign area for an Awning/Canopy sign shall be included in the total allowed area for the lot/block frontage along which it is located.
2. Signs incorporated into the front of a canopy shall be limited to **1.5 square feet per linear foot of canopy**. See Figure 7.3a
3. Signs incorporated into the side of a canopy shall be a **maximum of eight (8) square feet**.

7.3.3 Height

All Canopy/Awning Signs mounted to the bottom of a canopy structure shall be a **minimum of eight (8) feet above grade** for letterforms, logos and other graphic elements. See Figure 7.3b

7.3.4 Location & Projection

Awning/Canopy Signs are allowed to project over the lease boundary line into a private or public street as applicable, a **maximum of four (4) feet from the building but shall be a minimum of two (2) feet from the face of the curb**. See Figure 7.3b.

ALLOWED SIGN AREA

$$F \times 1.5 = A$$

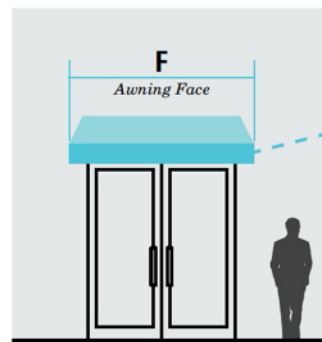
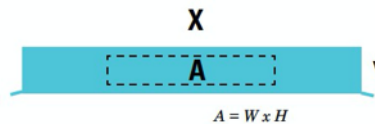


Figure 7.3a

MAX. SQ. FOOTAGE

$$A < 100sf$$



MIN. HEIGHT
 $H > 8ft$

MAX. PROJECTION

$$\begin{aligned} C &> 2f \\ D &< 4f \end{aligned}$$

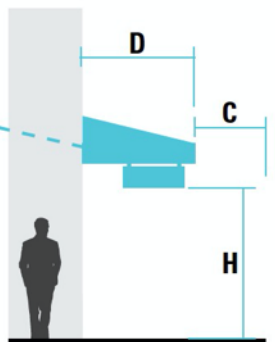


Figure 7.3b

7.4 PROJECTING SIGNS

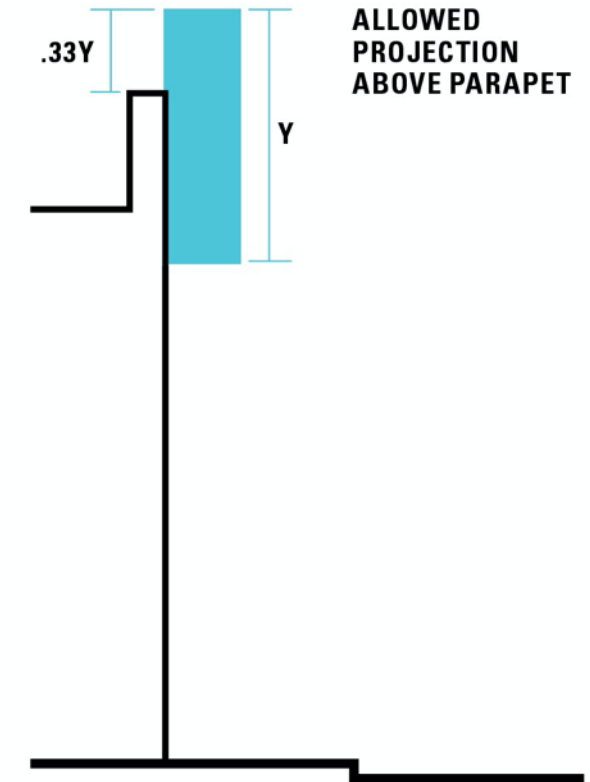
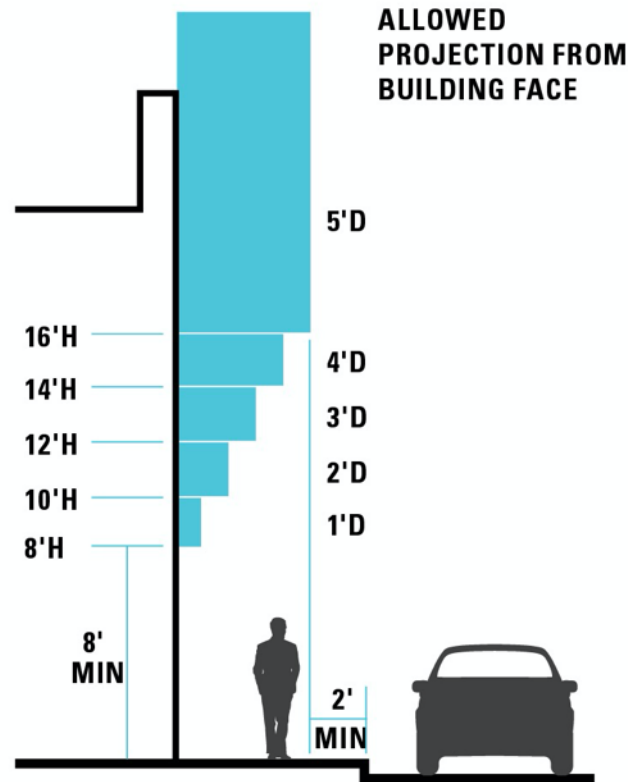
7.4.1 General Requirements

1. Any number of Projecting Signs is allowed, provided that the sum of the sign areas does not exceed the maximum allowed sign area for the lot/block frontage.
2. Retail/Restaurant Tenants are allowed one Projecting Sign per lot/block frontage where their establishment is located, as long as it does not exceed the maximum, calculated total square footage.
3. Corner tenants may incorporate a Projecting Sign on the building corner with an angle of projection from the building facade between 135 and 150 degrees. Refer to Figure 7.4c.
4. The planes of Projecting Sign faces shall be between 75 and 90 from the building facade on which it is mounted. Refer to Figure 7.4c.
5. The planes of Projecting Sign faces shall be parallel to each other unless approved as an integral design element by the Community Development Director or the Planning Commission as provided under Section 1.5 of this CSP.
6. Projecting Signs shall align with major building elements such as cornices, string courses, window banding or vertical changes in material or texture.
7. No text, messages or logos shall be allowed on the portion of the sign parallel to the building face.
8. Projecting Signs shall be a minimum of 15 feet from another Projecting Sign.

1. The sign area for Projecting Signs shall be included in the total allowed area for the lot/block frontage along which it is located. The Sign Area for one (1) sign face only shall be counted towards this total.
2. Sign Area of all projecting signs visible to the same direction of traffic shall not exceed **one (1) square foot per linear foot of lot/block frontage up to 300 square feet.**

1. A Projecting Sign may extend above the top of the roof or parapet of the wall in which it is located. **The extension shall not exceed 33 percent of the total vertical height of the sign.**
2. All Projecting Signs shall be a **minimum of eight (8) feet** above sidewalk grade.

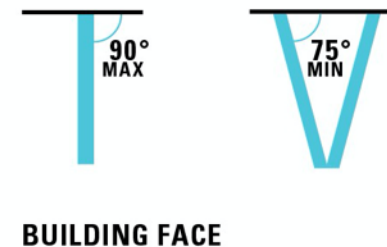
1. Projecting Signs are allowed to project over the lot/block line into a private or public street, as applicable, but shall be a minimum of two (2) feet from the face of the curb.
2. The distance in which a Projecting Sign is allowed over a private or public street, as applicable, shall be determined based on the mounting height of the sign. Refer to Figure 7.4a.
3. Placement must not conflict with utility boxes, fire hydrants, or light poles.



150° MAX

135° MAX

BUILDING CORNER



7.5 PARAPET / HIGH WALL SIGNS

7.5.1 General

1. Two (2) Parapet/High Wall Signs shall be allowed per street-facing building elevation. Up to 4 Parapet/High Wall Signs are allowed per building. These signs are not allowed on alley-facing building elevations.
2. Parapet/High Wall Signs shall be wall mounted and shall not break the plane of the roof or parapet of the building face on which they are mounted.
3. Parapet/High Wall Signs shall display the name and/or logo of one (1) tenant only.
4. Parapet/High Wall Signs shall be thoughtfully integrated into the building design, placed with ample space around their perimeter and shall align with major building elements such as cornices, string courses, window banding.
5. Parapet/High Wall Signs may be Digital Displays provided content is restricted to the tenant's brand identity. No advertising imagery content will be allowed.

7.5.2 Sign Area

As corporate logos vary in size and proportion, modifications in square footage and height allowances may be allowed if the overall allowed square footage for the lot/block frontage on which it is located is not exceeded. Drawings shall be

submitted as provided in Section 1.5 of this CSP demonstrating that a square footage and/or height exceeding the maximum allowed numbers outlined below will be necessary for clear viewing at a distance of 1/2 mile.

1. The sign area for a Parapet/High Wall Sign shall be included in the total allowed area for the lot/block frontage along which it is located.
2. Parapet/High Wall Signs shall not exceed 350 square feet in area without an approved variance as described above.

7.5.3 Height

Parapet/High Wall Signs shall not exceed **15 feet in height** without an approved modification as described in Section 1.5 of this CSP.

7.5.4 Projection

Parapet/High Wall Signs are allowed to project over the lot/block line into a private or public street or the public right-of-way, as applicable, a **maximum of two (2) feet from the building face** on which it is mounted.

ALLOWED SIGN AREA, HEIGHT & PROJECTION

$$Y < 15\text{ft}$$

$$A < 350\text{sf}$$

$$D < 2\text{ft}$$

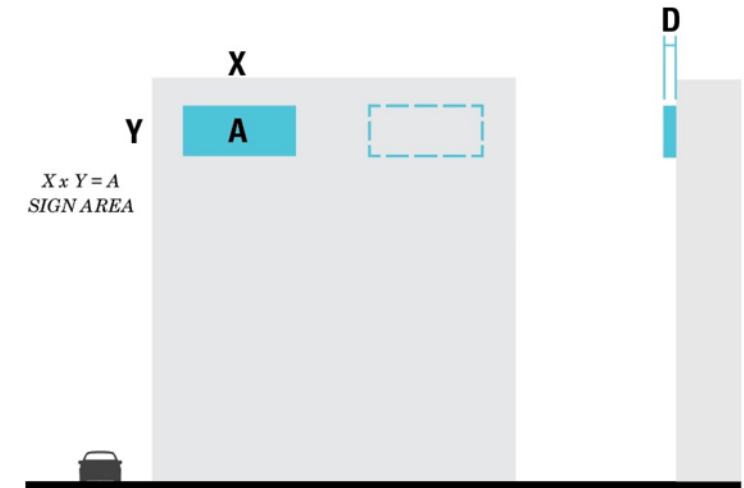


Figure 7.5a

7.6 FREESTANDING PYLON SIGNS

7.6.1 General

1. Prohibited
 - a. Pylon Signs are not allowed for in-line retail businesses within a multi-use building.
 - b. Pylon Signs may be Digital Displays, provided that any Pylon Sign that is an Off-Site Sign shall be prohibited unless the Pylon Sign complies with the requirements set forth in Section 5.3 hereof
 - c. Pylon Signs shall not be allowed on a lot/block having less than 50 feet of frontage.
2. Location
 - a. Pylon Signs shall be set back at least five (5) feet from the intersection of a driveway and a private or public street or easement or the public right-of-way, as applicable, and shall not interfere with or present a hazard to pedestrian or vehicular traffic including required vehicular site distance triangles.
 - b. Pylon Signs shall not project over an established lease boundary line.
 - c. Pylon Signs shall be located at least 7.5 feet from interior lot/block lines and at least 15 feet from any other Pylon Sign, Monument Sign or Projecting Sign.
 - d. Sight Vision Safety Clearance Triangles need to be considered with any sign placed in sidewalk areas and evaluated in the

context of traffic speed or other traffic control measures.

- e. Pylon Signs shall not be placed within a 25-foot visibility triangle at corners.
- f. There shall be no more than one Pylon Sign for every 150 feet of lot/block frontage.

7.6.2 Dimensions

1. Height
 - a. Pylon Signs shall not exceed a **height of 30 feet** above the sidewalk grade or edge of roadway grade nearest the sign, as measured from the grade to the top of the sign.
 - a. The top of a Pylon Sign shall be at least three feet below the height of any adjacent building elevation on the lot/block where the Pylon Sign is located.
2. Width
 - b. Pylon Signs shall not exceed a **width of seven (7) feet**.
 - c. Pylon Signs shall not have a horizontal dimension that exceeds **35 percent** of the length of the vertical dimension.

ALLOWED SIGN DIMENSIONS

$$X < 7 \text{ ft}$$

$$Y < 30 \text{ ft}$$

ALLOWED SIGN PROPORTION

$$X < .35Y$$

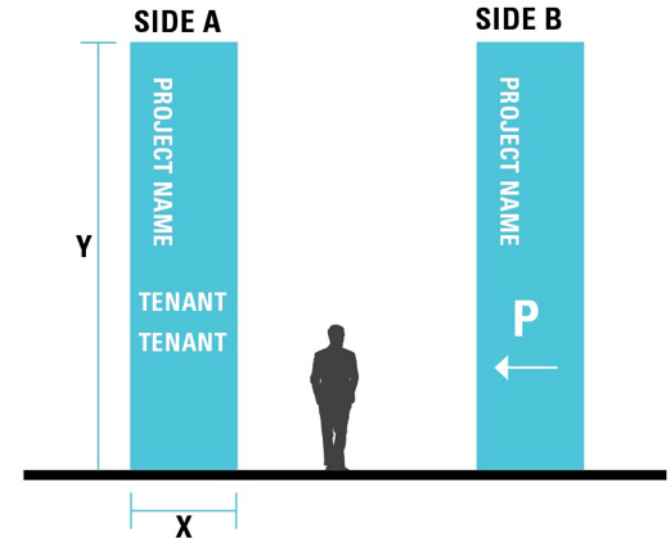


Figure 7.6a

7.7 MONUMENT

7.7.1 General

1. Prohibited
 - a. Monument Signs may be Digital Displays provided it is an On-Site Sign restricted to the tenant's brand identity.
 - b. Monument Signs are not allowed on that portion of a lot/block having less than 50 feet of lot/block frontage.
2. Location
 - a. Monument Signs shall be set back at least 10 feet from the intersection of a driveway and a private or public street or the public right-of-way, as applicable, and shall not interfere with or present a hazard to pedestrian or vehicular traffic, including required site distance triangles.
 - b. Monument Signs shall not project over an established lease boundary line.
 - c. Monument Signs shall be at least 7.5' from interior lot/block lines and 15 feet from another Monument Sign, Pylon Sign or Projecting Sign.
 - d. Monument Signs shall not be placed within a 25-foot visibility triangle at corners.
 - e. Sight Vision Safety Clearance Triangles need to be considered with any sign placed in sidewalk areas and evaluated in the context of traffic speed or other traffic control measures.

7.7.2 Dimensions

1. Monument Signs shall not exceed a **height of eight (8) feet** above the sidewalk grade or edge of roadway grade nearest the sign, as measured from the grade to the top of the sign.
2. The horizontal dimension of a Monument Sign shall be **equal to or greater** than its vertical dimension.

7.7.3 Sign Area

1. The sign area for a Monument Sign shall be included in the total allowed area for the lot/block frontage along which it is located.
2. Area of all Monument Signs shall not exceed
3. 1.5 square feet per linear foot of Building Frontage nor a maximum of 300 square feet for the sign face visible to the same direction of traffic.
4. The sign area for a Monument Sign shall be calculated as the combined area of each primary sign face with graphics and/or messaging. Blank sign faces do not count towards sign area.

ALLOWED SIGN DIMENSIONS

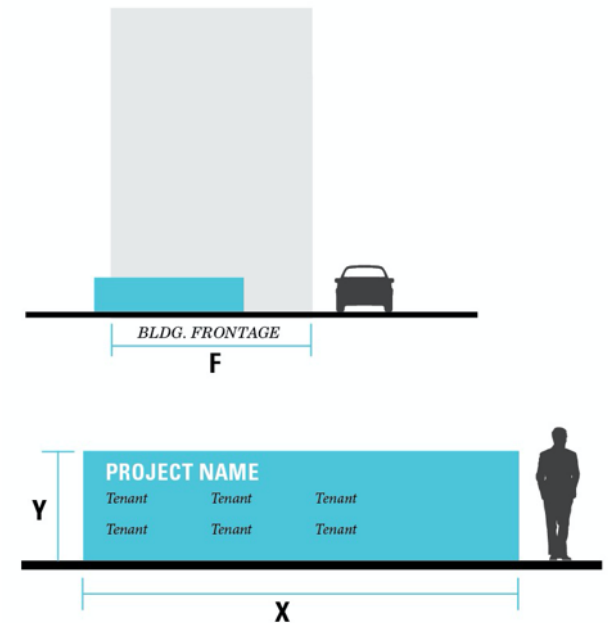
$$Y < 8 \text{ ft}$$

$$Y \leq X$$

ALLOWED SIGN AREA

$$F \times 1.5 = A$$

$$A < 300 \text{ sf}$$



7.8 WINDOW SIGNS

7.8.1 General

1. No portion of any Window Sign shall be located above the second story of the building on which it is placed or higher than 40 feet above grade, whichever is lower.
2. Window Signs shall not exceed 15 percent of the cumulative glassed area of all windows on the building elevation. The area of a window signs on any given window may be further restricted by the Building Code or the Fire Code.
3. The aggregate area of all Window Signs shall be included as part of the Maximum Permitted Sign Area.

7.9 SUPERGRAPHICS

7.9.1 Longer Term Duration Supergraphic Signage:

1. One supergraphic sign may be allowed on each non-residential building having a Building Height of at least sixty-five (65) feet or on a parking garage with three or more parking levels above grade, subject to the following:
 - a. No supergraphic sign shall cover any portion of a door, and also windows unless perforated allowing at least 35% vision area.
 - b. Any supergraphic sign shall be displayed for no more than one hundred twenty consecutive days and no more than one hundred twenty days in a calendar year.

7.9.2 Shorter Term Duration Supergraphic Signage

1. In addition to the longer-term duration supergraphics addressed in Section 7.9.1, one supergraphic sign may be allowed on each non-residential building having a building height of at least sixty-five (65) feet in connection with no more than forty special events per calendar year, subject to all of the following:
 - a. The shorter-term supergraphic sign shall be displayed in connection with a special event for a duration not to exceed a total of thirty-five consecutive days, and no building shall be allowed to display a Shorter-Term Duration Supergraphic Sign for more than 120 days total in a calendar year.
 - b. No supergraphic sign shall cover any portion of a door, and also windows unless perforated allowing at least 35% vision area.

7.9.3 All Supergraphic signs shall conform to all of the following:

1. All supergraphic signs must obtain a sign permit;
2. A supergraphic sign shall be located on no more than one building facade and the sign area shall not exceed the area of the building facade on which it is located, except that such sign may be located on two building facades provided the total sign area is not greater than would otherwise be allowed on the larger of the two building facades;
3. A supergraphic sign may consist of non-contiguous segments;
4. No supergraphic sign shall be illuminated;
5. No supergraphic sign shall be a roof sign;
6. A supergraphic sign shall comply with all life safety requirements, including but not limited to all requirements of the City of Santa Clara Fire and Building Codes;
7. A supergraphic sign shall be maintained in good condition at all times and the sign surface shall be free of dirt, rips and tears;
8. A supergraphic sign shall not reduce otherwise allowable sign area for a building or parcel.
9. A supergraphic sign shall be in conformance with any requirements applicable under state or federal law or regulations including but not limited to height, separation, or other location requirements;
10. A supergraphic sign authorized by the Longer Duration Supergraphics section shall not be displayed on a building concurrent with the display of a supergraphic sign authorized by Shorter Duration Supergraphics section;
11. Supergraphic signs are encouraged to have a translucent background but may have an opaque background.

7.10 ROOFTOP SIGNS

7.10.1 General Requirements

1. All Rooftop Signs shall be thoughtfully integrated into the architecture of the building.
2. Rooftop signs shall be appropriately scaled for the building and street on which they are located.
3. Rooftop Signs are not allowed to block views of other buildings.
4. Rooftop signs are not allowed to project over any facade of the building on which they are located.
5. Rooftop Signs may extend beyond the frame or structure to which they are attached.
6. FAA clearance may be required for rooftop signs.

7.10.2 Sign Area

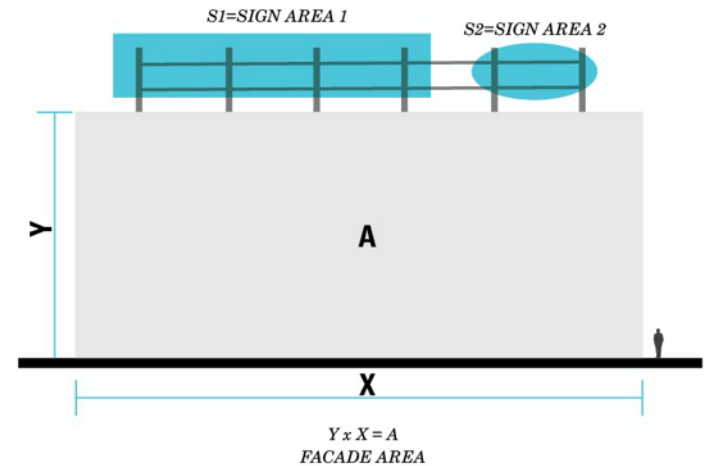
1. The sign area for a Rooftop Sign shall be included in the total allowed area for the lot/ block frontage along which it is located.
2. The sign area of a Rooftop Sign shall be calculated as the total area of letters, logos and other design elements attached to the supporting structure.
3. The sign area for a Rooftop Sign shall be included in the total allowed area for the lot/ block frontage along which it is located.
4. The sign area of a Rooftop Sign shall **not exceed 25 percent** of the area of the building elevation on which it is located.

7.10.3 Projection

Rooftop Signs are allowed to project a **maximum of two (2) feet from their supporting structure**. Signs may not project beyond building face.

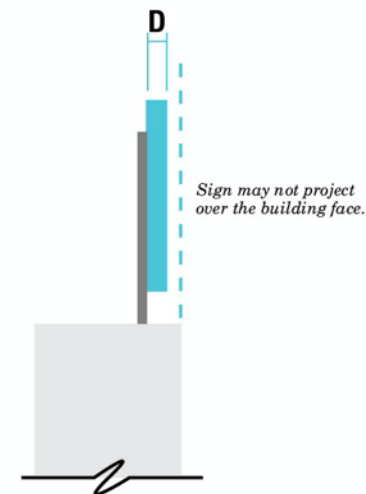
ALLOWED SIGN AREA

$$S1 + S2 < .25 A$$



ALLOWED SIGN PROJECTION

$$D < 2 \text{ ft}$$



7.11 DIGITAL SIGNS

7.11.1 General Requirements

In consideration of advancements in technology and affordability. Digital Signs shall be allowed that promote cutting-edge technology and reinforce the identity of CityPlace.

1. Digital Signs are prohibited in MCP Lighting Character Zone A and Zone B (see Exhibit 7-3 of the MCP). Where allowable, all sign types permitted in this Sign Program can use Digital Displays, except Supergraphics and Major Gateway Signs as shown on Exhibit 03A .
2. Locations and design of Digital Signs shall be approved by the City consistent with this CSP.
3. Digital Signs shall be thoughtfully integrated into the architecture and appropriately scaled for the building and street on which they are located.
4. Content displayed on Digital Signs facing public streets shall take at least one (1) second to fade into the content from the immediately prior content and shall take at least one (1) second to fade out of the content to the immediately succeeding content for a total maximum transition period of two (2) seconds.
5. Sound shall be allowed only during special events, for example, celebrations, festivals, or Stadium-sponsored events.
6. Digital Signs shall not use stroboscopic or flashing elements which rapidly change direction, oscillate, flash or reverse in contrast.
7. Digital Signs shall not incorporate driver interaction features.
8. Digital Signs that are architecturally integrated into buildings may cover windows provided they use mesh, blade or louver technology which allows transparency through the windows.

7.11.2 Digital Signage within City Center Core Sub-District

1. Pedestrian scale signs (below 12 feet) within the City Center Core Sub-District are permitted and may be Digital Signs and/or Animated Signs, subject to limitations on Off-Site Signs set forth in Section 5.3. Animated Signs may not be used in locations that could be a distraction to motorists.

7.11.3 Design Approach

1. Content for digital signage is often provided in fixed proportion ratios. A unique and creative approach for Digital Signs is encouraged with the following types of elements included:
 - a. Specialized lighting, audio and other effects for use in special events;
 - b. Curved and/or multi-planar forms and projection surfaces;
 - c. Integration of live action for special events; Thematic lighting;
 - d. Sustainable technologies;
 - e. Control systems which allow for social media/mobile device interaction between pedestrians and the Digital Sign

7.11.4 LED Display Standards

1. All Digital Signs are required to be:
 - a. exterior grade LED RGB displays
 - b. Remote and scheduled dimming capable

7.11.5 Lighting Standards

1. All digital signs must meet the following luminance limits based on time of day and ambient lighting conditions:
2. Weekdays (Sunday-Wednesday)
 - a. Daytime: From sunrise until 20 minutes prior to sunset, luminance shall not exceed 6,000 candelas per meter squared.
 - b. Evening: From sunset until 20 minutes prior to 10:00 p.m., luminance shall not exceed 300 candelas per meter squared.
3. Weekends (Thursday-Saturday, New Year's Eve, July 4th, Days with Events at Levi's Stadium)
 - a. Daytime: From sunrise until 20 minutes prior to sunset, luminance shall not exceed 6,000 candelas per meter squared.
 - b. Evening: From sunset until 20 minutes prior to 2:00 a.m., luminance shall not exceed 300 candelas per meter squared.
 - c. Digital Signs shall not operate from 2:00 a.m. until sunrise.
4. Sign luminance shall transition smoothly between the designated levels listed above. The sign luminance transition shall occur over a time period of no less than 20 minutes.
 - a. Digital Signs shall include a programmable control system to automatically reduce the luminance level as necessary.

7.11.6 Sign Area for Digital Billboards and Large Off-Site Wall Signs

1. The sign area for Billboards and Large Off-Site Wall Signs that include Digital Display shall be governed by Section 5.3 of this CSP.

8 TEMPORARY SIGNAGE

Individual projects within CityPlace are encouraged to implement highly creative and well-designed project-related temporary signs prior to opening and for leasing after opening. Bold and eye-catching temporary signs that are graphic in nature serve to:

- a. Create excitement and anticipation for a project's completion;
- b. Provide information on the project development and design teams;
- c. Provide leasing information; and
- d. Reinforce CityPlace's brand principles and commitment to design excellence.

8.1 CONSTRUCTION WALLS AND PHASE DEVELOPMENT BARRICADES

The following approaches to design and materials are encouraged for Temporary Barricades:

1. Props and extensions over the top edge of the barricade to add a varied profile, improving interest and character
2. Cut-outs and windows in the wall with views into the construction site
3. Integrated thematic lighting
4. Hand-painted graphics or graphics crafted on-site alternative textures and materials
5. Professional graphics used to promote project uses, branding and lifestyle

8.2 LEASING GENERAL

1. "For Rent", "For Sale", and "For Lease" signs shall be posted on the subject parcel that is being advertised by an authorized agent.
2. Real estate signs shall not exceed 32 square feet for multi-family or non-residential for each side of a double-sided sign.
3. There shall be no more than one sign per street frontage.
4. Illuminated real estate signs are prohibited.

8.3 LEASING SIGNS (PRE-OPENING)

The following types of pre-opening leasing signs outlined in the MCP document shall be used prior to project opening:

1. 4' W x 8' H Panel Sign for leasing information.
2. 12' W x 8' H Panel Sign for either leasing or project team information.

8.4 LEASING SIGNS (POST-OPENING)

All post-opening temporary leasing signs shall conform to the requirements outlined in Section 3: General Design Standards. In addition, Leasing Signs shall:

1. Be designed by a professional graphic design or marketing firm;
2. Artfully combine typography, color, graphics and/ or photography
3. Be constructed of durable, non-fading materials
4. Be securely fastened, anchored and/or applied to the building face; and
5. Be removed within thirty (30) days after leased space is not available.

Post-opening temporary Leasing Signs shall not be counted in the overall lot/block frontage based square footage.

8.5 TEMPORARY SIGNAGE FOR SPECIAL EVENTS

1. Temporary Event Signs are permitted in accordance with this Section 8.5. Temporary Event Signs that advertise Special Events or that include Special Event sponsor information shall not be classified as Off-Site Signs.
2. Temporary Event Signs may take many forms depending on the type of Special Event, but may include, without limitation, free-standing digital and static signs, portable or A-Frame Signs, banners and flags affixed to permanent or temporary structures, removable decals and paper or cardboard posters affixed to buildings, inflatable signs (such as balloons and tube signs), stages with integrated or attached signage, digital projection, and other forms of non-permanent static signs for event vendors, sponsors and retail center event promotion.
3. Temporary Event Signs must comply with the City's regular permit processes applicable to construction or encroachments, to the extent applicable, (*e.g.*, signs requiring electrical permits, located on structures requiring building permits, or located on light poles within the public right-of-way).
4. Individual Temporary Event Signs associated with a Special Event that includes fewer than ten (10) signs shall not require a sign permit or City approval unless the Temporary Event Sign (i) requires a power source or building permit, (ii) is located within the public right-of-way, or (iii) faces or is easily discernible by pedestrians or occupants of automobiles from Great America Parkway, Lafayette Street, Tasman Drive, or CityPlace Parkway. Temporary Event Signs associated with a Special Event that includes ten (10) or more signs shall be processed in accordance with Section 8.5(5) of this CSP.
5. Temporary Event Signs associated with a Special Event that includes ten (10) or more signs will require Director approval of a Temporary Event Sign Program. At least thirty (30) days prior to the applicable Special Event (or such shorter period of time if approved by the Director in his discretion), the sponsor shall submit to the Director for approval a Temporary Event Sign Program that sets forth the nature and duration of the

Special Event, and the general type and approximate location and number of Temporary Event Signs proposed, including the number and general location of illuminated signs. The Director shall approve the Temporary Event Sign Program within fifteen (15) business days of the request if he or she is satisfied upon investigation as to the safety, compatibility and aesthetics of the Temporary Event Signs proposed in a Temporary Event Sign Program and finds that the proposed Temporary Event Sign Program is generally consistent with the overall intent of this CSP. If the Director rejects the Temporary Event Sign Program, he or she shall provide reasonably detailed findings supporting the rejection, and the applicant may submit a new or amended application addressing the reasons for rejection. Sign permits for individual Temporary Event Signs that are consistent with an approved Temporary Event Sign Program will not be required. If the Director fails to respond to a request for approval within fifteen (15) business days, the sponsor may submit a second request for approval and to meet and confer with the Director.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
APPROVING A COMPREHENSIVE SIGNAGE PROGRAM FOR
PARCELS 4 AND 5 OF THE RELATED SANTA CLARA PROJECT
LOCATED AT 5155 STARS AND STRIPES DRIVE (APN 104-03-
036)**

SCH#2014072078
CEQ2014-11180(EIR)

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

WHEREAS, on June 28, 2016, the Santa Clara City Council approved a number of entitlements for the proposed construction by Related Santa Clara, LLC (the “Applicant”) of a new multi- phased, mixed-use development known as the Related Santa Clara Project (the “Project”);

WHEREAS, the Project entitlements approved by the City Council on June 28, 2016, included Resolution No. 16-8339, which rezoned the Project site to the PD-MC (Planned Development- Master Community) zoning district; and,

WHEREAS, on June 28, 2016, the City Council adopted Resolution No. 16-8337, certifying a Final Environmental Impact Report (“Final EIR”) pursuant to the provisions of the California Environmental Quality Act (Cal. Pub. Res. §§ 21000 et seq.) (“CEQA”) together with the State CEQA Guidelines (14 CCR § 15000 et seq.) (“CEQA Guidelines”) and adopting CEQA findings and a Mitigation Monitoring and Reporting Program (“MMRP”) in accordance with CEQA and the CEQA Guidelines;

WHEREAS, pursuant to Resolution No. 16-8339, buildout of the Project is governed by a Master Community Plan (the “MCP”) dated April 5, 2017, which anticipates three Comprehensive Signage Programs (CSP), with one CSP required to regulate signage within Parcels 4 and 5 and separate CSPs required to regulate signage within each of Parcels 1 and 2;

WHEREAS, the MCP establishes that CSPs shall establish standards for signage and the Citywide standards in 18.80 of the Santa Clara City Code shall not be applicable;

WHEREAS, the MCP requires that the CSP establish specific limitations on sign height, sign location, sign quantities, and total sign areas, and the proposed CSP contains such limitations in Chapter 7 (“Signage Calculation and Diagrams”);

WHEREAS, the MCP requires that CSPs establish regulations for sign characteristics including illumination and electronic imagery, and the proposed CSP contains such regulations in Sections 2.3 (“Signage Illumination”) and 7.11 (“Digital Signs”);

WHEREAS, the MCP requires that CSPs establish regulations for seasonal and temporary signage, and the proposed CSP contains such regulations in Chapter 8 (“Temporary Signage”);

WHEREAS, in adopting the MCP, the City Council found that creating a specific, limited exception to the limitations on outdoor off-site advertising for advertising within the Project that faces inward into the Project site or faces toward Levi’s Stadium on Tasman Drive will facilitate the City’s objective to create a vibrant mixed-use urban core, creating a pedestrian-friendly “live, work, and play” environment that will function as a well-defined center for the Santa Clara Community (MCP § 7.1, p. 182);

WHEREAS, the City Council further found that creating the specific limited exception described above in an adopted CSP would not weaken the direct link between the City’s objectives and its general prohibition of new billboards, and will not denigrate the City’s interests in reducing visual clutter and blight to the appearance of the City, and in promoting traffic safety and reducing traffic hazards (MCP § 7.1, p. 182);

WHEREAS, subject to the foregoing, the MCP provides that CSPs may allow for outdoor advertising (billboards) in the City Center (Parcels 4 and 5), provided that such outdoor advertising face inward into the City Center, except outdoor advertising may face outward toward Levi’s Stadium on Tasman Drive, and the proposed CSP contains provisions regulating such outdoor advertising within the prescribed limitations in Chapter 5 (“Sponsorship & Advertising Sign Types”);

WHEREAS, the impacts of the proposed Comprehensive Signage Program for Parcels 4 and 5 implement the MCP which was analyzed within the Final EIR;

WHEREAS, on November 18, 2020, the Planning Commission held a duly noticed public hearing to consider CSP for Parcels 4 and 5, at which time interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed CSP for Parcels 4 and 5;

WHEREAS, after consideration of the CSP, the Planning Commission unanimously voted to recommend that the City Council approve the CSP, with three additional recommendations that have been incorporated into the current version of the CSP;

WHEREAS, prior to taking action on this Resolution, the City Council has exercised its independent judgment and reviewed and considered the Final EIR and determined that no further environmental review is required for the proposed Comprehensive Signage Program for Parcels 4 and 5 of the Project; and

WHEREAS, on January 12, 2021, the City Council held a duly noticed public hearing to consider CSP for Parcels 4 and 5, at which time interested persons were given an opportunity to give testimony and provide evidence in support of and in opposition to the proposed CSP for Parcels 4 and 5.

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

1. Recitals. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. Findings. Pursuant to Section 2.7.2.6 of the DAP Procedures, the City Council finds that the Comprehensive Signage Program for Parcels 4 and 5 is consistent with the MCP.
3. Approval. That the City Council hereby approves the Comprehensive Signage Program for Parcels 4 and 5, as set forth in Attachment 1, which is attached hereto and incorporated herein by this reference.
4. Effective Date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED
AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING
THEREOF HELD ON THE ____ DAY OF _____, 2021, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

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

Attachments incorporated by reference:

1. Draft Comprehensive Sign Program for Parcels 4 and 5 for the Related Santa Clara Project

S:\Attorney\RESOLUTIONS\Form Resolution-City.doc



Agenda Report

21-110

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Public Hearing: Adoption of a Resolution Ordering the Abatement of a Nuisance Consisting of Growing Weeds in Association with the County Weed Abatement Program for 2020-2021

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

On January 12, 2021, the Council adopted a resolution declaring weeds a nuisance in accordance with Chapter 8.15 of the City code, setting February 9, 2021 as the Public Hearing for citizens to bring forward their concerns or objections to the Weed Abatement Program.

The City of Santa Clara contracts with the Santa Clara County Agricultural Commissioner's Office Weed Abatement Program to manage the inspection and abatement of noncompliant parcels within the City of Santa Clara. A list of City parcels in the program is published annually by the County in the form of the 2021 Weed Abatement Commencement Report. A copy of this report is available in the City of Santa Clara City Clerk's Office as well as on the City website.

DISCUSSION

The objective of the City's Weed Abatement program is to eliminate fires whenever possible, and to reduce the severity of such fires where they cannot be eliminated. Each year, improperly managed vegetation is the cause of destructive fires that adversely impact communities throughout the State. In cooperation with the City of Santa Clara, the Santa Clara County Agricultural Commissioner's Office has developed regulations governing hazardous vegetation which can be found on the County's website.

The abatement process is most often initiated by members of the community, or by City staff proactively making referrals. Once inspection personnel verify that a hazard exists, the hazardous condition is documented, and the noncompliant parcel recorded. Following the inspection, the property owner is responsible for removing the hazard(s). If the property owner does not voluntarily abate the noted hazard(s) within the designated 15 day period, the work will be completed by the County of Santa Clara Abatement contractor. The cost of the abatement work and administrative oversight will be included as a special assessment on the property owner's property tax bill.

Property owners who fail to abate their own properties are placed in the abatement program for a three-year term in order to ensure ongoing compliance. For each year in the program the property owner will be subject to an annual inspection fee. If no hazards are found and/or abated by the County during that three-year term, the property will be removed from the program.

The public hearing provides an opportunity for the property owner to raise any objections.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

The County's cost for the destruction or removal, including administrative fees, will be assessed upon the lot or land from which weeds have been destroyed or removed, and such costs shall constitute a lien upon said lots until paid, or will be collected upon the next tax roll when general municipal taxes are collected. In accordance with the 2016 ninth amendment to the agreement, if the tax assessments are insufficient to cover the costs of the program, the County will invoice the City for their pro-rata share of the programs' shortfall every December. To date, the County has been able to recover all costs. At this time, there is no fiscal impact to Fire Department's budget.

COORDINATION

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

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>. The notice of Public Hearing was published in the Santa Clara Weekly newspaper on January 20, 2021 and January 27, 2021 in accordance with SCCC 8.15.080.

RECOMMENDATION

Adopt a Resolution ordering the abatement of a nuisance consisting of growing weeds in the City.

Reviewed by: Ruben Torres, Fire Chief

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Resolution Ordering the Abatement of Weeds

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
ORDERING THE ABATEMENT OF A NUISANCE CONSISTING OF
GROWING WEEDS IN THE CITY OF SANTA CLARA**

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

WHEREAS, at a public hearing on February 9, 2021, the City Council of the City of Santa Clara ordered the abatement of weeds growing in the City of Santa Clara, which was previously declared a nuisance on January 12, 2021, in the manner provided in Chapter 8.15 of the Santa Clara City Code;

WHEREAS, the City has entered into an agreement with the County of Santa Clara entitled, "Agreement between the County of Santa Clara and the City of Santa Clara for Abatement of Weeds," most recently amended on December 13, 2016, a copy of which is on file in the Office of the City Clerk;

WHEREAS, in accordance with Chapter 8.15 of the Santa Clara City Code and Resolution No. 7286 of the City of Santa Clara, the Agricultural Commissioner of the County of Santa Clara ("County Agricultural Commissioner") has given notices prior to the abatement of the nuisance by the City; and,

WHEREAS, no protests have been received by the City Council protesting the abatement of the nuisance, so the County Agricultural Commissioner should abate the nuisance of weeds growing in the City of Santa Clara.

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

1. That the County Department of Agriculture abates the nuisance in the manner provided by the ordinances, rules and regulations of the City. The County Department of Agriculture is hereby directed to give notice by mail to the owner or owners of each individual parcel of land upon which weeds will be abated by the City at least ten (10) days before abatement. The notice shall be given by mail, addressed to the owner at their last known address, as shown on

the last County equalized assessment roll. If the address of the owner is unknown, then the notice shall be sent to the owner by mailing it via the Fire Marshal's Office at 1675 Lincoln Street, Santa Clara, CA 95050. Meanwhile, and before the expiration of the ten-day period, any owner may voluntarily abate the nuisance.

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 _____, 2021, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

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

Attachments incorporated by reference: None



Agenda Report

21-1315

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on 2021 Legislative Advocacy Positions

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On October 9, 2018, Council adopted Resolution No. 18-8611 to approve a Legislative Advocacy Position (LAP) Policy (Attachment 1). The purpose of the LAP Policy is to establish clear guidelines for advancing City goals and positions through legislative review and advocacy at the regional, State, and federal levels of government and to provide guidance for City officials who serve on regional, State, and national boards, committees, and commissions when they are asked to review public policy matters and issues. The LAP Policy requires Council to adopt or update the LAPs at the beginning of the calendar year to identify specific legislative priorities outside of the legislative guiding principles listed below:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara
- Protect local revenue sources and prevent unfunded mandates
- Protect and/or increase funding for specific programs and services
- Protect and/or increase local government discretion
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan

Staff is presenting 12 2021 LAPs for the Council's consideration (Attachment 2). If approved, staff and the City's legislative consultant, Townsend Public Affairs, LLC (Townsend), will use these LAPs to track, monitor and advocate for legislation that is consistent with the City's outlined priorities and provide quarterly legislative updates to the Council on those efforts as required by the LAP Policy.

DISCUSSION

In late 2020 and January 2021, Townsend conducted legislative briefings with staff and Councilmembers to provide updates on current state and federal legislative activity and to identify legislative priorities for 2021. The proposed 2021 LAPs reflect staff and Councilmembers' feedback and will provide guidance during a legislative year that is anticipated to be busy with new policy changes and new opportunities for local government.

At the state level, the Legislature returned to Sacramento from recess on January 11th to resume the business of the 2021-22 Legislative Session. With the resumption of the Legislative Session,

legislators can resume introducing legislation in the new session. While the official deadline to introduce new legislation is February 19th, many legislators are taking the opportunity to introduce bills early which need to be acted upon in an expedited fashion, bills that reflect issues that were raised in campaigns, or to just introduce legislation that is a priority for them for the coming year. In general, bills that are introduced early in the legislative session are not heard before bills that are introduced closer to bill introduction deadline.

Once the bill introduction period has passed, it is likely that the Legislature will introduce in excess of two thousand bills, which will cover a broad range of issues. Based on comments from legislative leadership, as well as early bill introductions, it is likely that there will be a significant focus placed on bills that attempt to address issues related to the coronavirus pandemic, including support for small businesses, facilitating schools' return to in-person instruction, vaccine distribution and administration, and expanding access to broadband internet so people can more reliably work/educate at home. Additionally, the Legislature is likely to place an emphasis on bills related to affordable housing and homelessness; police reform and issues of social justice; preparing for, and responding to, wildfires; and issues related to the State Budget.

In Washington D.C., the focus remains on the response to the coronavirus pandemic, and how best to get relief to individuals, businesses, schools and state/local governments. To date, Congress has approved four phases of coronavirus relief, with the most recent legislation being approved in late-December. While significant resources have already been dedicated to the pandemic response, additional legislative efforts are already being developed.

It is expected that lawmakers in Sacramento, and Washington D.C., will consider many issues in the areas that are covered by the proposed 2021 LAPs. While there will be significant focus, at the State and Federal levels, on the response to the coronavirus pandemic, it is anticipated that the Legislature and Congress will also be pay significant attention to other areas that can impact the City, including: affordable housing, public safety, environmental sustainability, and transportation.

The Council approved 13 LAPs in 2020, 12 of which have been reformatted to make the City's policy stances more transparent and updated to reflect current stances on key policy issues. The 2020 Santa Clara Federal Legislative Priorities LAP was not included with the 2021 LAPs because the content of that LAP has been incorporated into the other 12 that are being brought forth for consideration. Staff recommends that Council approve the proposed 2021 LAPs (Attachment 2) to provide staff and Townsend with direction on future legislation.

The 2021 LAPs are summarized below:

COVID-19 Legislation

The City continues to closely monitor county, state and federal COVID-19 related orders and legislation to see how they apply to Santa Clara. City resources and personnel are working to continue providing essential governmental functions and assistance to residents and businesses that have been impacted by COVID-19-related disruptions, while navigating the response necessary to contain the COVID-19 outbreak and complying with the requirements for social distancing and self-quarantining.

The 2020 version of this LAP outlined the following positions: Support continued efforts to stop the spread of COVID-19, provide direct relief funding to local jurisdictions, especially small and medium-

sized cities, and the temporary suspension of certain time-specific statutory requirements.

Recommended Updates: Staff recommends updating this LAP to include positions to:

- Support for allowing local jurisdictions to use direct relief funding to offset lost revenue, federal and state efforts to help mitigate the economic impacts from COVID-19 on businesses and residents, efforts to assist small businesses, tenants, and landlords through eviction moratoriums, and other assistance programs during the pandemic, efforts to establish protocols and provide funding that will allow schools to safely resume in-person instruction; and
- Oppose efforts to shift programmatic responsibilities to the City that have been traditionally carried out or funded by other agencies.

Energy Legislation, Regulations and Issues

The City's electric utility, Silicon Valley Power (SVP) has a mission to be a progressive, service-oriented utility, offering reliable, competitively priced services for the benefit of Santa Clara and its customers. Additionally, SVP has an adopted Strategic Plan that is intended to address the challenges facing the utility over a ten-year period. This LAP works to further the objectives outlined in the Strategic Plan, complements the other LAPs adopted by the City, and ensures that the City can provide safe, reliable, and affordable energy to ratepayers, while operating in an environmentally and fiscally conscious manner.

The 2020 version of this LAP outlined the following positions:

- Monitor the PG&E bankruptcy proceeding and associated legislation, and energy regulations and participate in the development of new energy related products to mitigate ratepayer impacts; and
- Support efforts to align wildfire-related liability with fault to safeguard public utility customers against exorbitant rate increases, policies that will help ensure transmission level Public Safety Power Shut-offs (PSPS) events do not unnecessarily burden local communities that are dependent on investor owned utility (IOU) transmission infrastructure, and safe and reliable operations of the grid in relation to wildfire mitigation.

Recommended Updates: Staff recommends updating this LAP to include:

- An updated position to monitor PG&E's rate-making regulatory activities to ensure it meets its obligations and agreements and advocate for changes that would mitigate adverse impacts to Silicon Valley Power (SVP) and other publicly owned utilities (POUs);
- Monitor the development of new market initiatives from state and regional grid operators and advocate for changes that would benefit or protect SVP ratepayers; and
- Support legislation that would provide local public agencies with financial resources to prepare for, and mitigate the impacts from, planned power outage events.

Engagement with Federal Aviation Administration Regarding Airplane Noise

In Santa Clara, the source of air noise comes from various activities from regional international

airports, general aviation airports, and Moffett Federal Airfield. While the City does not have direct authority over air space, City staff will continue to work with regional agencies, including the Santa Clara/Santa Cruz Airport Roundtable, and federal representatives and authorities to mitigate the effect of airplane noise on our residents.

The 2020 version of this LAP outlined the City's position to support regional efforts to work with local agencies and federal representatives to mitigate the effects of aircraft noise, efforts to engage local public agencies, and members of the community, prior to any changes in flight paths, or airport operations, that may impact surrounding areas, and legislation that provides funding to assist with the mitigation of impacts from aircraft noise.

Recommended Updates: There are no substantial updates aside from reformatting the LAP.

Housing (*previously titled Affordable Housing and Homelessness*)

The City is committed to being a leader at the local level in providing affordable housing, as well as making a fair share contribution to the overall need for housing production within Silicon Valley, and will continue to proactively take concrete steps to realize new housing production within the City. Santa Clara is also prepared to participate in broader regional efforts that are collaborative, recognize the unique characteristics of local jurisdictions, and provide opportunities for local representation. The City is monitoring potential measures imposed at the State or regional level that can reduce local control, recognizing that in some instances such measures can be necessary or helpful to advance common goals across multiple jurisdictions, but is also aware that such efforts may have unintended consequences, limited effectiveness, or create inequities due to a lack of accountability to localized circumstances.

The 2020 version of this LAP outlined the following positions:

- Support new housing production, preservation of various housing tax credits and tax exemptions for private activity bonds, state and local taxes, and efforts to collaborate with the County, local jurisdictions, the business sector, and non-profit and philanthropic partners to leverage available resource and bring in new funding streams to expand the reach of the supportive housing system;
- Advocate for local authority over land use decisions and more state and federal resources, including entitlement grants, to address local housing needs;
- Engage with the State to develop realistic solutions for challenges in meeting local affordable housing goals; and
- Monitor and support ongoing efforts at the State level to reform the California Environmental Quality Act (CEQA) to support the production of affordable housing or to reduce the potential for unmerited CEQA litigation, among other housing issues.

Recommended Updates: Staff recommends updating the title of this LAP to reflect alignment with existing positions on housing legislation that are not limited to affordable housing and homelessness, and updating the LAP to include positions to support legislation and efforts that provide resources to address the needs of the most vulnerable residents through shelter, supportive housing, and homelessness prevention services; and oppose efforts to reduce federal funding for federal entitlement programs.

Human Resources and Public Sector Employment

The City of Santa Clara provides a myriad of services to the community, including Police, Fire, Public Works, Electric Utility, Planning, Parks and Recreation, and Library Services. The City employs over 1,100 part-time/seasonal and full-time employees that provide these and other services to the community. These services provide opportunities and careers for all types of interests, and the City should endeavor to leverage the rewards and benefits that come with working for the City.

The 2020 version of this LAP outlined the following positions:

- Support efforts to preserve local government's ability to manage its own employment issues, working with City bargaining units in finding solutions to address the service delivery needs of the community while being mindful of the City's revenue, expenditures, and recruitment and retention of the City's workforce, efforts to increase the long-term financial stability of CalPERS, federal and state efforts to create a more informed, engaged, and welcoming experience for immigrants, comprehensive immigration reform which provides opportunities to achieve economic and educational success and contribute to our community, an increase in work visas allowing employers to hire foreign workers that require advanced technical skills, as well as support programs that stimulate the economy through job creation and capital investment by foreign investors, and efforts that protect children, including undocumented children, with the continuation of the Deferred Action for Childhood Arrivals (DACA) Program and the Dream Act; and
- Oppose new federal or state unfunded mandates that would increase the City's post-employment obligations.

Recommended Updates: There are no substantial updates aside from reformatting the LAP.

Local Authority over Wireless Telecommunications Facilities and Cable Services

The wireless telecommunications industry has made efforts to limit or preempt local control over placement of wireless facilities and supporting structures in and outside the rights-of-way. Over the past several years, actions by federal and state lawmakers have resulted in the adoption of regulations and orders controlling local authority over placement of wireless facilities, including the adoption of "shot clocks" requiring local agencies to complete review of projects within a specified time period.

Additionally, through the Federal Communications Commission's proposed rulemaking, there have been efforts in recent years to address whether local franchising authorities (LFAs) can regulate incumbent cable operators and cable television services. The City has its own government access channel (Santa Clara City Television on Comcast cable channel 15 and AT&T U-verse 99), which may be negatively impacted by such rulings and similar legislation and activities. Santa Clara City Television is used to provide important information to the public, such as live and recorded airings of Council meetings, City special events, programs, and public service announcements.

The 2020 version of this LAP outlined the following positions:

- Oppose efforts to preempt local authority over the placement of wireless telecommunication facilities and efforts to limit the amount of time, or scope, of local review of the placement of wireless facilities; and

- Support efforts to provide for local control of permitting wireless telecommunications and non-cable services facilities in the public-right-of-way.

Recommended Updates: Staff recommends updating this LAP to include positions to:

- Support efforts to increase access to broadband, while ensuring the placement of installation of needed equipment does not undermine local permitting authority and does not pose an undue nuisance for residents; and
- Monitor legislation related to distributed energy generation via back-up power at wireless telecommunications facilities.

Public Safety

As a City that is consistently named one of the safest cities in the country, Santa Clara is committed to promoting a living and working environment that allowed for the best quality of life. The City believes that crime prevention and enforcement efforts are integral to creating and maintaining a safe environment for residents and visitors. At the same time, the City recognizes that crime prevention and enforcement efforts alone cannot foster community safety and wellness; education, intervention and prevention efforts on various public safety topics, such as gun violence, gang activity, alcohol and tobacco use, driver and bicycle safety, and driving under the influence, are equally important.

As the State and region continues to experience civil unrest and an unprecedented number of natural and man-made disasters, the City recognizes the importance of a comprehensive risk management approach to emergency preparedness.

The 2020 version of this LAP outlined the following positions:

- Support legislation that seeks to impose stricter gun violence laws and/or requires the safe storage of unattended firearms, legislation that toughens penalties for chronic criminals, efforts to reduce the list of who can seek early parole and re-classify some theft crimes from misdemeanors to felonies, expansion on the number of crimes where DNA is collected, legislation that preserves funding levels for existing public safety programs, services and equipment and identifying new funding sources to promote public safety, wellness and employee training, legislation that addresses crime trends and attempts to curb illegal activity, efforts to test speed enforcement cameras and corresponding legislation, community risk reduction strategies including but not limited to community education programs, legislation and initiatives that aim to allocate funding for staff training, interagency cooperation and enhanced equipment/technology, legislation and efforts that recognizes the importance of a comprehensive risk management approach to emergency preparedness, fire prevention, fire suppression, and emergency medical services, legislation that expands the implementation and testing of emergency alerts, measures that aim to return revenue generated from the enforcement of crimes back to the originating agency to sustain their efforts, measures that provide local agencies with financial relief (reimbursement) when the state legislature or any state agency mandates a new program or increased level of service, legislation that improves infrastructure and technology, which will enhance public safety professionals' ability to respond to all types of emergencies and communicate within and across jurisdictions, local regulation of Unmanned Aircraft Systems (UAV), and legislation that aims to support individuals in crisis, reduce and address homelessness, human trafficking and domestic violence victims and

survivors, and other vulnerable populations.

Recommended Updates: Staff recommends updating this LAP to include a position to support legislation that enhances public safety professionals' ability to respond to all types of emergencies and communicate within, and across, jurisdictions.

Regional and State-wide Water Supply and Conservation

The City of Santa Clara operates 26 wells that tap the underground aquifers and make up about 62% of the City's potable water supply. The underground aquifers are replenished from local reservoirs by the Santa Clara Valley Water District (SCVWD) water recharge program. The remaining water is supplied by water imported from the SCVWD and the San Francisco Public Utilities Commission (SFPUC) through the Hetch-Hetchy Reservoir.

For certain approved non-potable uses, recycled water from the San Jose/Santa Clara Regional Wastewater Facility's South Bay Water Recycling (SBWR) facility is used. This highly treated water delivered through separate pipelines makes up about 19% of the water sales in the City. Recycled water offsets the use of potable sources in drought-prone California and is a reliable source for conservation of potable sources. The City continues to work closely with SBWR in order to increase recycled water supplies in order to meet existing demands within the City. Currently, SBWR is updating the Recycled Water Master Plan.

The 2020 version of this LAP outlined the following positions:

- Monitor regional water projects like the Bay-Delta Plan;
- Support and implement water conservation measures and efforts working in cooperation with key partner agencies;
- Support funding through alternative funding solutions that don't involve a statewide tax on local water bills, efforts by Santa Clara's wholesalers and other State and Federal agencies to deliver water to Santa Clara customers using clean energy, and a comprehensive Bay-Delta watershed voluntary settlement agreement between stakeholders;
- Coordinate with water agencies to stay current on water resource issues and initiatives as they progress, and in order to lend support and input wherever needed by the suppliers and meet the requirements set forth by the new legislation; and
- Oppose any future drinking water taxes.

Recommended Updates: Staff recommends updating this LAP to include a position to support legislation and funding to protect the health of children who might be exposed to lead in drinking water at school facilities, which was previously included in the 2020 Sustainability and Environmental LAP.

Regional Issues and Collaboration

While the City of Santa Clara is unique in many ways, it experiences many of the same issues that other cities in the region experience. As described in other LAPs, the City works closely with other jurisdictions to address a variety of issues that impact residents in the San Francisco Bay Area, such

as affordable housing, transportation, and water conservation. The City recognizes the importance of regional collaboration and participates in various regional organizations to not only advance the City's goals but to contribute to regional work efforts.

The 2020 version of this LAP outlined the following positions:

- Participate in regional organizations to advance City goals and contribute to regional work efforts; and
- Monitor regional issues and new legislation to ensure that they benefit the region and its residents.

Recommended Updates: Staff recommends updating this LAP to include a position to support federal and state legislation that will provide funding for regional solutions to problems, such as housing, homelessness, emergency response, and transportation.

Regional Transportation Issues

The City works with the federal government, state government, and regional stakeholders to ensure that residents and businesses have access to traditional modes of transportation and promote alternative modes that would alleviate traffic congestion and pollution. Additionally, it is important for the City's transportation network to continue to evolve to best serve the future needs of the community.

The 2020 version of this LAP outlined the following position: Support legislative, regulatory, and regional efforts to reduce the amount of traffic congestion on area freeways and regional efforts that will alleviate traffic congestion and promote alternative modes of transportation that benefit Santa Clara residents and businesses.

Recommended Updates: Staff recommends updating this LAP to include positions to:

- Support efforts to ensure accountability and fairness during the implementation of regional transportation ballot measures, and legislation that provides funding for diverse transportation projects;
- Oppose efforts to reduce local government access to SB 1 funding; and
- Monitor efforts to place regional transportation funding measures on the ballot for consideration by voters.

School Mitigation Fees

State law authorizes school districts to levy development fees to pay for new school facilities and establishes the maximum fees that can be charged to developers that are building new residential and non-residential projects. This fee is updated every two years, as adjusted for inflation. Once the maximum rate is set by the State, it is the responsibility for each school district to establish its own rate.

The school fees are earmarked for improving and expanding school facilities to serve the school-age population that would be generated from new development. Land values and construction costs have dramatically increased since 1986 and the current adjusted maximum rate does not adequately mitigate the school impacts from new development.

The 2020 version of this LAP included the following position: support flexibility to consider increasing the allowable school mitigation fee level, efforts by the State Legislature, and/or the State Allocation Board, to increase the rates to more realistically reflect current school facility costs, and other provisions to allow school districts to effectively mitigate the impacts of new development.

Recommended Updates: Staff recommends updating this LAP to include a position to support efforts to index school mitigation fees, to ensure that the funding remains at a stable level.

Sustainability and Environmental Legislation, Regulations and Issues

The City of Santa Clara is committed to creating a sustainable city for residents and businesses. The City strives to conduct its operations in a way that is environmentally conscious and promotes sustainability. The City is dedicated to collaborating with regional stakeholders to improve the air quality, water quality, and overall environmental quality of life for the residents and businesses of the City. Interest in sustainability and environmental issues, at both the State and federal levels, will likely result in new legislation and regulation changes that could significantly impact the City. Monitoring and advocacy efforts will be geared towards ensuring that emerging legislation and regulations align with the City's interests in providing sustainable services to its residents and businesses.

The 2020 version of this LAP outlined the following positions under many areas of interest:

- California Environmental Quality Act Reform: Support opportunities to further reform the California Environmental Quality Act process that support greater efficiency and transparency and alignment with objective environmental goals while protecting local land use authority.
- Clean Energy and Energy Conservation: Monitor legislation related to energy related issues including renewable energy, energy efficiency and conservation, resiliency, smart grid solutions, energy storage, distributed energy and transportation electrification; advocate for goals and policies that remain technology agnostic and commercially available, and avoid policies that choose specific technologies or energy procurement mandates that can lead to increased customer costs while discouraging innovation; and support legislation that removes barriers to the electrification of buildings and transportation and legislation that provides regulatory streamlining of reporting and other actions that also preserves local decision-making authority.
- Contaminants of Emerging Concern: Monitor legislation and water quality regulations related to contaminants of emerging concern.
- Green House Gas (GHG) Emission Reductions: Monitor legislation that may have a regional and local impact on greenhouse gas emissions and advocate for effective and equitable approaches to emission reduction; support a comprehensive approach to climate policy that optimizes GHG reductions across multiple sectors (transportation, electricity, buildings, etc.), and advocate for the flexibility to optimize the portfolio of GHG emission reduction opportunities identified in the City's Climate Action Plan and includes but not limited to new renewable energy and storage procurement, water conservation and energy efficiency, smart grid solutions, increase waste diversion, sustainable land use, increase tree canopy, building decarbonization, transportation electrification among other actions in the portfolio.
- Lead Testing of Drinking Water in California Schools: Support legislation and funding to protect children who might be exposed to lead in drinking water at school facilities.
- Per- and Poly-fluoroalkyl Substances (PFASs): Monitor research and regulations on PFASs and their impacts on the environment and drinking water.
- Prohibition of Oil Drilling off the California Coast: Oppose federal or state efforts to permit

additional oil drilling off the California coast.

- Recycling and Solid Waste Diversion: Monitor legislation and regulatory efforts related to recycling and solid waste and advocate for legislation and regulations that enable mixed waste processing and composting to remain viable pathways for waste compliance.
- Sanitary Sewer Overflows (SSOs): Support legislation and regulatory efforts that aid the City's Pretreatment Program, Fats, Oils & Grease (FOG) Inspection Program, and Operations and Maintenance of the sanitary sewer collections system.
- South Bay Salt Ponds Restoration Project: Track the progress of the South Bay Salt Ponds Restoration Project and its proximity and potential impacts to the Regional Wastewater Facility, which Santa Clara jointly owns with the City of San Jose.
- South San Francisco Bay Shoreline Study: Track the progress of the South Bay Shoreline Study and support associated regional resiliency planning efforts to ensure that Santa Clara's infrastructure and community assets are considered and protected as the Bay Area plans and constructs resiliency projects.
- Urban Runoff Pollution Prevention: Support urban runoff pollution regulations, water conservation and recycling, and pollution controls that benefit the City
- Vegetation and Forest Management: Support legislation, regulations, and funding to strengthen forest management and fire prevention activities and improve emergency preparedness and response.
- Wastewater Regulation: Monitor legislation and regulations related to the National Pollutant Discharge Elimination System and the San Jose/Santa Clara Regional Wastewater Facility (RWF), the largest discharger to the San Francisco Bay.
- Water Sustainability: Work with regional partners to maintain the reliability of the water supply and water sustainability to support current customers and to allow for expected growth in the near future and beyond.

Recommended Updates: Staff recommends moving the position on supporting legislation and funding to protect children who might be exposed to lead in drinking water at school facilities to the 2021 Regional and State-wide Water Supply and Conservation LAP and to update the LAP to include the following position:

- Monitor legislation related to vehicle miles traveled, in lieu of level of service, in relation to transportation impacts of projects.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

The City has an existing three-year agreement with Townsend Public Affairs for state and federal legislative advocacy services in an amount not-to-exceed \$252,000, which includes conducting detailed orientations and developing and implementing a legislative strategy. Funding for FY2020/21 is included in the Adopted Budget. Funding for future fiscal years is subject to annual appropriation of funds.

COORDINATION

This report was coordinated with Townsend and the City Attorney's Office. The LAPs were coordinated with Townsend, Silicon Valley Power and the Community Development, Fire, Human Resources, IT, Police, Public Works, and Water & Sewer Utilities Departments.

PUBLIC CONTACT

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

ALTERNATIVES

1. Adopt the 2021 Legislative Advocacy Positions on COVID-19 Legislation; Energy Legislation, Regulations and Issues; Engagement with the Federal Aviation Administration Regarding Airplane Noise; Housing; Human Resources and Public Sector Employment; Local Authority over Wireless Telecommunications Facilities and Cable Services; Public Safety; Regional and State-wide Water Supply and Conservation; Regional Issues and Collaboration; Regional Transportation Issues; School Mitigation Fees; and Sustainability and Environmental Legislation, Regulations and Issues.
2. Do not adopt the 2021 Legislative Advocacy Positions on COVID-19 Legislation; Energy Legislation, Regulations and Issues; Engagement with the Federal Aviation Administration Regarding Airplane Noise; Housing; Human Resources and Public Sector Employment; Local Authority over Wireless Telecommunications Facilities and Cable Services; Public Safety; Regional and State-wide Water Supply and Conservation; Regional Issues and Collaboration; Regional Transportation Issues; School Mitigation Fees; and Sustainability and Environmental Legislation, Regulations and Issues.

RECOMMENDATION

Alternative 1: Adopt the 2021 Legislative Advocacy Positions on COVID-19 Legislation; Energy Legislation, Regulations and Issues; Engagement with the Federal Aviation Administration Regarding Airplane Noise; Housing; Human Resources and Public Sector Employment; Local Authority over Wireless Telecommunications Facilities and Cable Services; Public Safety; Regional and State-wide Water Supply and Conservation; Regional Issues and Collaboration; Regional Transportation Issues; School Mitigation Fees; and Sustainability and Environmental Legislation, Regulations and Issues.

Reviewed by: Christine Jung, Assistant to the City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Legislative Advocacy Position Policy
2. 2021 Legislative Advocacy Positions



LEGISLATIVE ADVOCACY POSITION POLICY

PURPOSE

To establish clear guidelines for advancing City goals and positions through legislative review and advocacy at the regional, state, and federal levels of government and to provide guidance for City officials who serve on regional, state, and national boards, committees, and commissions when they are asked to review public policy matters and issues.

POLICY

To attain a comprehensive review of legislation affecting cities, to obtain the Council position on proposed legislation, to make the City's position known, and to maintain a record of pertinent information, the following guidelines shall be followed.

All legislative reviews are to be made on the basis of the effect on the City and citizens as a whole, and taking into account existing City positions, policies, or goals, rather than on the individual's personal feelings.

The guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Annually, Legislative Advocacy Positions (LAP) shall be adopted or updated by the City Council at the beginning of the calendar year to identify specific legislative priorities outside of the legislative guiding principles listed above and posted on the City's website.

PROCEDURE FOR EVALUATING AND SUPPORTING LEGISLATIVE ADVOCACY

Legislation and issues of interest are brought to the City's attention through several means: the League of California Cities, the National League of Cities, the Cities Association of Santa Clara County, Council Members, city staff, citizens, and professional or governmental organizations and legislators. All legislation or issues of interest are to be referred to the City Manager's Office.

1. City Manager's Office (CMO) reviews the proposed legislation and, if warrants, requests assistance from one or more departments.

LEGISLATIVE ADVOCACY POSITION POLICY (cont.)

2. CMO/Department evaluates the bill for its impact upon Santa Clara, recommends a position and potential action, and drafts a position statement or support/opposition letter.
3. If Council has previously adopted a policy directly relevant to the legislation or the proposed legislation is generally consistent with the City's overall guiding principles for legislative advocacy or LAP, the Mayor or City Manager may sign a letter supporting or opposing legislation on behalf of the city as further detailed below.
4. If a Council policy relative to the legislation does not exist, the issue is politically controversial, or there is significant local interest in the issue, the proposed legislation including a recommendation to support, remain neutral, or not support the legislation is brought to Council for consideration.
5. Letters and other communications expressing the City's position on legislation will customarily bear the signature of the Mayor in accordance with City Charter Section 704.2 – 704.3. If the legislation's principal impact affects the City's operation, the communication may be signed by the City Manager.
6. In order to keep the Council informed of all City communications on legislation, copies of the letter or summary of actions will be distributed to the City Council as information items in the Council Meeting Agendas.
7. Staff will provide and/or coordinate quarterly legislative updates on public policy items of interest to Council and departments.

RESOLUTION NO. 18-8611

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
ADOPTING A LEGISLATIVE ADOVACY POSITION POLICY AND
RESCINDING COUNCIL POLICY 018 POSITION ON NON-CITY-
RELATED ISSUES**

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

WHEREAS, establishing a Legislative Advocacy Position Policy will provide guidelines for advancing City goals and positions through legislative review and advocacy at the regional, state, and federal levels of government; and,

WHEREAS, establishing a Legislative Advocacy Position Policy will provide guidance for City officials who serve on regional, state, and national boards, committees, and commission when they are asked to review public policy matters and issues; and,

WHEREAS, the Legislative Advocacy Position Policy, attached hereto as Attachment 1, will expedite and streamline the City of Santa Clara's legislative advocacy processes.

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

1. That the Legislative Advocacy Position Policy, attached hereto as Attachment 1, is hereby approved and adopted, and the City Manager is directed to number (and renumber, as appropriate) the Council Policy Manual such that they are organized in a logical fashion.
2. That Council Policy 018 Position on Non-City-Related Issues is hereby rescinded.

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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 9th DAY OF OCTOBER, 2018, BY THE FOLLOWING VOTE:

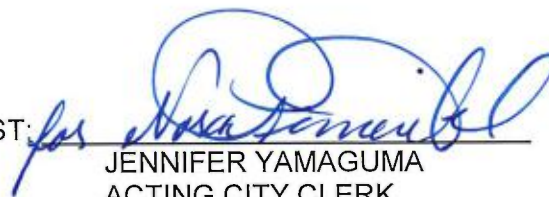
AYES:	COUNCILORS:	Davis, Kolstad, Mahan, O'Neill, and Watanabe and Mayor Gillmor
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NOES:	COUNCILORS:	None
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ABSENT:	COUNCILORS:	None
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ABSTAINED:	COUNCILORS:	None
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ATTEST:



JENNIFER YAMAGUMA
ACTING CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Legislative Advocacy Position Policy



COVID-19 LEGISLATION

Overview

The outbreak of a respiratory illness caused by a novel coronavirus was first identified in Wuhan, Hubei Province, China in 2019. The disease, now commonly known as COVID-19, has since spread globally, resulting in the 2019–2020 coronavirus pandemic. The first case in the United States was announced on January 21, 2020. Since then, there has been much effort at the local, state and federal levels of government to stop the spread of the disease. Additionally, the state and federal governments have been working to provide economic relief to individuals, businesses, and local and state governments that have been impacted by COVID-19-related disruptions.

The City of Santa Clara proclaimed a local state of emergency on March 11, 2020 and continues to closely monitor county, state and federal orders, guidance and legislation to see how they apply to Santa Clara. City resources and personnel are working to continue to provide essential governmental functions to residents and businesses, while navigating the response necessary to contain the COVID-19 outbreak, providing assistance to individuals and businesses that have been negatively impacted by the pandemic, and complying with the requirements for social distancing and self-quarantining/isolating.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities' and National League of Cities' positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

In order to adequately protect the public health and safety of the COVID-19 outbreak, the City of Santa Clara:

- Supports efforts to provide direct relief funding to local jurisdictions, especially small and medium-sized cities, which can be utilized in response to the COVID-19 pandemic, including to offset lost revenue.
- Supports the temporary suspension of certain time-specific statutory requirements.
- Supports federal and state efforts to help mitigate the economic impacts from the coronavirus on the City's businesses and residents,
- Supports public health efforts to help mitigate the spread of COVID-19, including providing access to personal protective equipment.
- Opposes efforts to shift responsibility, to the City, of programs that have traditionally been carried out, or funded, by federal, state, or county governments.

- Supports efforts to assist small businesses, tenants, and landlords through eviction moratoriums, and other assistance programs, during the pandemic. These efforts should consider the needs of all stakeholders, including tenants, landlords, and those with unstable housing situations.
- Supports efforts to establish protocols, and provide funding, that will allow schools to resume in-person instruction in a safe manner.



ENERGY LEGISLATION, REGULATIONS AND ISSUES

Overview

The City's electric utility, Silicon Valley Power (SVP) has a mission to be a progressive, service-oriented utility, offering reliable, competitively priced services for the benefit of Santa Clara and its customers. Additionally, SVP has an adopted Strategic Plan that is intended to address the challenges facing the utility over a ten-year period. The Strategic Plan contains over thirty strategic initiatives in four distinct areas: Utility Performance Excellence; Customer Engagement and Satisfaction; Progress and Innovation Focus; and Community and Environmental Stewardship. The Legislative Advocacy Position works to further the objectives outlined in the Strategic Plan, and complements the other Legislative Advocacy Positions adopted by the City.

Guiding Principles

The City follows the below guiding principles for all areas of legislative advocacy:

- Support the positions of the League of California Cities, and National League of Cities, on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services that benefit the City of Santa Clara and its residents.
- Protect and/or increase local government discretion.
- Advance approved policies, such as the City's Statement of Values, the General Plan, and the Climate Action Plan.

Legislative Advocacy Position

In order to ensure the City can provide safe, reliable, and affordable energy to ratepayers, while operating in an environmentally and fiscally conscious manner, the City will:

- Monitor PG&E's rate-making and regulatory activities to ensure it meets its obligations and agreements and advocate for changes that would mitigate adverse impacts to SVP and other publicly owned utilities (POUs).
- Support policies that will help ensure that transmission level Public Safety Power Shut-offs (PSPS) events do not unnecessarily burden local communities that are dependent on investor owned utility (IOU) transmission infrastructure.
- Support legislation that would provide local public agencies with financial resources to prepare for, and mitigate the impacts from, planned power outage events.
- Support efforts to align wildfire-related liability with fault, safeguarding public utility customers against exorbitant rate increases when their utility acts prudently.
- Monitor the development of new market initiatives from state and regional grid operators which may result in new energy-related products and changes to electric grid operations. Staff will advocate for changes that would benefit or protect SVP ratepayers.
- Monitor and participate with federal, state and local governments and stakeholders in the development of new regulations and advocate for changes that enhance system reliability and mitigate operational and ratepayer impacts.



**ENGAGEMENT WITH THE FEDERAL AVIATION ADMINISTRATION REGARDING
AIRPLANE NOISE**

Overview

In Santa Clara, the source of air noise comes from various activities from regional international airports, general aviation airports, and Moffett Federal Airfield. Ultimately, the Federal Aviation Administration (FAA) is primarily responsible for air traffic control, and our region continues to advocate for air noise mitigation.

In June 2017, the Cities Association of Santa Clara County (CASCC) received a Congressional request from Representatives Eshoo, Khanna and Panetta asking the CASCC to take a leadership role in forming a regional aircraft noise roundtable. The CASCC formed an Ad Hoc Committee to build the framework of forming a roundtable that works for the region. Since 2018, the Santa Clara/ Santa Cruz Roundtable, which includes local jurisdictions of Santa Clara and Santa Cruz Counties, has been working together with San Francisco Airport, Minéta San José Airport, and the FAA to address the growing concern of aircraft noise.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

In order to mitigate the impacts of air noise on the residents and businesses of the community, the City:

- Continue to support regional efforts to work with local agencies and federal representatives to mitigate the effects of aircraft noise.
- Support efforts to engage local public agencies, and members of the community, prior to any changes in flight paths, or airport operations, that may impact surrounding areas.
- Support legislation that provides funding to assist with the mitigation of impacts from aircraft noise.



HOUSING

Overview

The lack of affordable housing in the State and region continues to have an increasingly profound impact on the City of Santa Clara. In January 2019, Santa Clara County conducted its biennial Point-in-Time Count and found that there were over 9,700 individuals were living on the streets, in shelters, or in transitional housing across the county, reflecting a more than 200% increase in the homeless population over a two year period. As cities across the state struggle to address the growing affordable housing and homelessness crisis as housing prices continue to soar, housing continues to be a key legislative priority for the State Legislature and regional agencies.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

The City of Santa Clara is committed to being a leader at the local level in providing affordable housing, as well as making a fair share contribution to the overall need for housing production within Silicon Valley, and will continue to proactively take concrete steps to realize new housing production within the City. Santa Clara is also prepared to participate in broader regional efforts that are collaborative, recognize the unique characteristics of local jurisdictions, and provide opportunities for local representation.

The City is concerned about potential measures imposed at the State or regional level that reduce local control, recognizing that in some instances such measures can be necessary or helpful to advance common goals across multiple jurisdictions, but is also aware that such efforts may have unintended consequences, limited effectiveness, or create inequities due to a lack of accountability to localized circumstances.

In an effort to achieve these goals, the City will:

- Support legislation and efforts that provide resources to address the needs of the most vulnerable residents through shelter, supportive housing, and homelessness prevention services.

- Support efforts to collaborate with the County, local jurisdictions, the business sector, and non-profit and philanthropic partners to leverage available resource and bring in new funding streams to expand the reach of the supportive housing system.
- Oppose efforts to reduce federal funding for federal entitlement programs that are used to promote affordable housing, rehabilitate substandard housing, build new park facilities, provide neighborhood improvements, and fund public services.
- Advocate for more state and federal resources (e.g., funding, legal authority, technical support, streamlining administrative processes) to address local housing needs.
- Support federal efforts to preserve and strengthen the low-income housing tax credit program and federal tax exemptions for private activity bonds.
- Support legislation preserving, and expanding, federal tax exemptions for state and local taxes, including state and local property, sales, and income taxes, and maintaining federal tax exemptions for mortgage interest payments on primary residences.
- Support legislation that provides local jurisdictions with authority over land use decisions and fully incorporates the involvement of local community members and an understanding of the conditions unique to the community.
- Oppose measures that reduce local control and are punitive in nature.
- Support efforts to streamline California Environmental Quality Act provisions to facilitate the production of affordable housing and reduce delays due to unmerited litigation.



HUMAN RESOURCES AND PUBLIC SECTOR EMPLOYMENT

Overview

The City of Santa Clara provides a myriad of services to the community, including Police, Fire, Public Works, Electric Utility, Planning, Parks and Recreation, and Library Services. The City employs over 1,100 part-time/seasonal and full-time employees that provide these and other services to the community. These services provide opportunities and careers for all types of interests, and the City should endeavor to leverage the rewards and benefits that come with working for the City.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

In order to ensure that the City can compete with other local municipalities, and the private sector, to attract, hire and retain a talented workforce, the City:

- Supports efforts to preserve local government's ability to manage its own employment issues, including, but not limited to, hiring, evaluating, disciplining, and negotiating collective bargaining agreements.
- Supports working with City bargaining units in finding solutions to address the service delivery needs of the community while being mindful of the City's revenue and expenditures, and recruitment and retention of the City's workforce.
- Supports efforts to increase the long-term financial stability of CalPERS.
- Opposes new federal or state unfunded mandates that would increase the City's post-employment obligations.
- Supports federal and state efforts to create a more informed, engaged, and welcoming experience for immigrants.
- Supports comprehensive immigration reform which provides opportunities to achieve economic and educational success and contribute to our community.
- Supports and increase in work visas allowing employers to hire foreign workers that require advanced technical skills, as well as support programs that stimulate the economy through job creation and capital investment by foreign investors.

- Supports efforts that protect children, including undocumented children, with the continuation of the Deferred Action for Childhood Arrivals (DACA) Program and the Dream Act.



LOCAL AUTHORITY OVER WIRELESS TELECOMMUNICATIONS FACILITIES AND CABLE SERVICES

Overview

The wireless telecommunications industry has made efforts to limit or preempt local control over placement of wireless facilities and supporting structures in and outside the rights of way. Over the past several years, actions by federal and state lawmakers have resulted in the adoption of regulations and orders controlling local authority over placement of wireless facilities, including the adoption of “shot clocks” requiring local agencies to complete review of projects within a specified time period.

Additionally, through the Federal Communications Commission’s proposed rulemaking, there have been efforts in recent years to address whether local franchising authorities (LFAs) can regulate incumbent cable operators and cable television services. The City has its own government access channel (Santa Clara City Television on Comcast cable channel 15 and AT&T U-verse 99), which may be negatively impacted by such rulings and similar legislation and activities. Santa Clara City Television is used to provide important information to the public, such as live and recorded airings of Council meetings, City special events, programs, and public service announcements.

Guiding Principles

The City of Santa Clara’s guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City’s Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

The City believes that it should maintain local authority over the placement of wireless telecommunications facilities, in order to ensure that a balance is reached between the infrastructure needs and the needs of the community. As such, the City:

- Opposes federal or state efforts to preempt local authority of the placement of wireless telecommunication facilities.
- Supports efforts to provide for local control of permitting wireless telecommunications and non-cable services facilities in the public-right-of-way.
- Supports legislation that provides opportunity for public input on the placement of wireless telecommunications facilities.
- Opposes efforts to limit the amount of time, or scope, of local review of the placement of wireless facilities.

- Monitors legislation related to distributed energy generation via back-up power at wireless telecommunications facilities.
- Supports efforts to increase access to broadband, while ensuring the placement and installation of needed equipment does not undermine local permitting authority and does not pose an undue nuisance for residents.



PUBLIC SAFETY

Overview

As a city that is consistently named one of the safest cities in the country, Santa Clara is committed to promoting a living and working environment that allows for the best quality of life. The City believes that crime prevention and enforcement efforts are integral to creating and maintaining a safe environment for residents and visitors. At the same time, the City recognizes that crime prevention and enforcement efforts alone cannot foster community safety and wellness; education, intervention and prevention efforts on various public safety topics, such as gun violence, gang activity, alcohol and tobacco use, pedestrian, driver and bicycle safety, and driving under the influence, are equally important.

As the State and region continues to experience civil unrest and an unprecedented number of natural and man-made disasters, the City recognizes the importance of a comprehensive risk management approach to emergency preparedness.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

In order to maintain public health and safety, and promote the best quality of life, the City will:

- Support legislation that seeks to impose stricter gun violence laws and/or requires the safe storage of unattended firearms.
- Support legislation that toughens penalties for chronic criminals.
- Support efforts to reduce the list of who can seek early parole and re-classify some theft crimes from misdemeanors to felonies by reforming Assembly Bill 109 (approved by the Legislature in 2011), Proposition 47 (approved by voters in 2014) and Proposition 57 (approved by voters in 2016).
- Support the expansion of the number of crimes where DNA is collected, a list that was limited when some crimes were reclassified from felonies to misdemeanors.
- Support legislation that preserves, or expands, funding levels for public safety programs, services, and equipment, such as the Edward Byrne Memorial Justice Assistance Grants.
- Support legislation that addresses crime trends and attempts to curb illegal activity, including but not limited to, illegal street racing and sideshow activity and thefts from automobile burglaries, all of which are growing trends in our region.

- Support efforts to test speed enforcement cameras and corresponding legislation to mitigate traffic-related injuries and deaths.
- Oppose public safety legislation that imposes unfunded mandates on local agencies for new programs or increased service levels.
- Support legislation that identifies new funding sources for fire and law enforcement agencies to promote public safety, wellness and employee training.
- Support legislation that recognizes the importance of a comprehensive risk management approach to emergency preparedness, fire prevention, fire suppression, and emergency medical services.
- Support legislation that provides funding for emergency preparedness, including community risk reduction strategies like community education programs (e.g., CERT, CPA), staff training, interagency cooperation, and enhanced equipment and technology.
- Support legislation that expands the implementation and testing of emergency alert systems.
- Support legislation that enhances public safety professionals' ability to respond to all types of emergencies and communicate within, and across, jurisdictions.
- Support measures that aim to return revenue generated from the enforcement of crimes back to the originating agency to sustain their efforts.
- Support the local regulation of Unmanned Aircraft Systems (UAVs), including the right to authorize use of UAVs by public safety agencies and the right to restrict or prohibit UAV use that interferes with, or poses a threat to, emergency operations or public safety.
- Support legislation that aims to assist individuals in crisis, including those who may be homeless, be the victim of human trafficking, domestic violence victims and survivors, and other vulnerable populations.
- Support legislation and efforts that recognizes the importance of developing a comprehensive preparedness strategy (e.g. mutual aid, unified command, interoperability, cyber disobedience, critical infrastructure, social media, etc.) to respond to civil unrest with input from emergency responders and allied stakeholders for local response.



REGIONAL AND STATE-WIDE WATER SUPPLY AND CONSERVATION

Overview

The City of Santa Clara operates 26 wells that tap the underground aquifers and make up about 62% of the City's potable water supply. The underground aquifers are replenished from local reservoirs by the Santa Clara Valley Water District (SCVWD) water recharge program. The remaining water is supplied by water imported from the SCVWD and the San Francisco Public Utilities Commission (SFPUC) through the Hetch-Hetchy Reservoir.

For certain approved non-potable uses, recycled water from the San Jose/Santa Clara Regional Wastewater Facility's South Bay Recycled Water (SBWR) facility is used. This highly treated water delivered through separate pipelines makes up about 19% of the water sales in the City. Recycled water offsets the use of potable sources in drought-prone California and is a reliable source for conservation of potable sources. The City continues to work closely with SBWR in order to increase recycled water supplies in order to meet existing demands within the City. Currently, SBWR is updating the Recycled Water Master Plan.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

In order to ensure that the City is able to maintain an affordable and reliable supply of quality water, the City maintains the following advocacy positions:

- Support and implement water conservation measures for businesses and residents including state regulatory efforts which build on ongoing efforts to "make water conservation a California way of life."
- Support regional water conservation including potable and recycled water supply efforts in cooperation with agencies such as Santa Clara Valley Water District, City of San Jose, San Francisco Public Utilities Commission (SFPUC), and the Bay Area Water Supply and Conservation Agency.
- Monitor federal, state, and regional activity related to the Bay-Delta Plan Phase 1 & 2. Support a comprehensive Bay-Delta watershed voluntary settlement agreement between stakeholders that includes SFPUC.
- Oppose legislative efforts to impose new taxes or fees on drinking water.
- Support efforts to establish alternative funding sources for water infrastructure and improved water quality projects.

- Support state and regional efforts to delivery water to Santa Clara customers using clean energy and other environmentally sustainable practices.
- Support legislation and funding to protect the health of children who might be exposed to lead in drinking water at school facilities.



REGIONAL ISSUES AND COLLABORATION

Overview

While the City of Santa Clara is unique in many ways, it experiences many of the same issues that other cities in the region experience. The City works closely with other jurisdictions to address a variety of issues that impact residents in the San Francisco Bay Area, such as affordable housing, transportation, and water conservation.

Guiding Principles

The City follows the below guiding principles for all areas of legislative advocacy:

- Support the positions of the League of California Cities, and National League of Cities, on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services that benefit the City of Santa Clara and its residents.
- Protect and/or increase local government discretion.
- Advance approved policies, such as the City's Statement of Values, the General Plan, and the Climate Action Plan.

Legislative Advocacy Position

The City recognizes the importance of regional collaboration and, as such, the City:

- Contribute to, and support the efforts of, regional organizations such as Santa Clara County Cities Association, Silicon Valley Economic Development Alliance, and the Santa Clara/Santa Cruz Airport Community Roundtable to advance the regional goals.
- Monitor regional issues, and new legislation, to ensure that they benefit the region and its residents.
- Support federal and state legislation to provide funding for regional solutions to problems, such as housing, homelessness, emergency response, and transportation.



REGIONAL TRANSPORTATION ISSUES

Overview

The City of Santa Clara believes that a robust transportation network, and related infrastructure, is a critical element to a successful and thriving community. The City works with the federal government, state government, and regional stakeholders to ensure that residents and businesses have access to traditional modes of transportation and promote alternative modes to alleviate traffic congestion and pollution. Additionally, it is important for the City's transportation network to continue to evolve to best serve the future needs of the community. To that end, local efforts are underway to promote and provide funding for alternative modes of transportation, such as updates to the City's Traffic Impact Fee program, the City's Multimodal Improvement Plan, Bicycle Master Plan Update 2018, Pedestrian Master Plan, and Creek Trail Network Expansion Master Plan. Additionally, City staff is working with other transportation agencies to support their significant regional projects, including BART Phase II (VTA), Caltrain Electrification and Caltrain Business Plan, and the High Speed Rail.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

To ensure that the City, and greater region, are able to meet the current transportation needs of the community, as well as plan for future needs, the City is advocating for the following positions:

- Support legislative, regulatory, and regional efforts to reduce the amount of traffic congestion on area freeways and County expressways.
- Support legislation that provides regional and local funding for diverse transportation projects, such as local streets and roads improvements, public transit, bicycle and pedestrian projects, intelligent transportation system improvements, corridor capacity improvements, and highway interchange improvements.
- Oppose efforts to reduce local government access to SB 1 local streets and roads funding.
- Support efforts to ensure accountability and fairness during the implementation of regional transportation ballot measures such as the VTA's 2016 Measure B program.
- Support regional efforts that will alleviate traffic congestion and promote alternative modes of transportation that benefit Santa Clara residents and businesses and that support the City's commitment to environmental sustainability.
- Monitor efforts to place regional transportation funding measures on the ballot for consideration by voters.



SCHOOL MITIGATION FEES

Overview

State law authorizes school districts to levy development fees to pay for new school facilities and establishes the maximum fees that can be charged to developers that are building new residential and non-residential projects. This fee is updated every two years, as adjusted for inflation. Once the maximum rate is set by the State, it is the responsibility for each school district to establish its own rate.

The school fees are earmarked for improving and expanding school facilities to serve the school-age population that would be generated from new development. Land values and construction costs have dramatically increased since 1986 and the current adjusted maximum rate does not adequately mitigate the school impacts from new development.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

Santa Clara is committed to the ongoing production of needed housing within the City and ensuring the ability of school districts to meet the facility needs for a growing school-age population. As such, the City:

- Supports flexibility to consider increasing the allowable school mitigation fee level.
- Supports efforts by the State Legislature, and/or the State Allocation Board, to increase the rates to more realistically reflect current school facility costs.
- Supports efforts to index school mitigation fees, to ensure that the funding remains at a stable level.
- Supports other provisions to allow school districts to effectively mitigate the impacts of new development.



SUSTAINABILITY AND ENVIRONMENTAL LEGISLATION, REGULATIONS AND ISSUES

Overview

The City of Santa Clara is committed to creating a sustainable city for residents and businesses. The City strives to conduct its operations in a way that is environmentally conscious and promotes sustainability. The City is dedicated to collaborating with regional stakeholders to improve the air quality, water quality, and overall environmental quality of life for the residents and businesses of the City.

Guiding Principles

The City of Santa Clara's guiding principles for legislative advocacy include and are not limited to:

- Support the League of California Cities and National League of Cities positions on priority bills that benefit Santa Clara.
- Protect local revenue sources and prevent unfunded mandates.
- Protect and/or increase funding for specific programs and services.
- Protect and/or increase local government discretion.
- Advance approved policies such as the City's Statement of Values, the General Plan, or the Climate Action Plan.

Legislative Advocacy Position

Interest in sustainability and environmental issues, at both the state and federal levels, will likely result in new legislation and regulation changes that could significantly impact the City. Monitoring and advocacy efforts will be geared towards ensuring that emerging legislation and regulations align with the City's interests in providing sustainable services to its residents and businesses through the following:

- Support opportunities to further reform the California Environmental Quality Act process that support greater efficiency and transparency and alignment with objective environmental goals while protecting local land use authority.
- Monitor legislation related to vehicle miles traveled, in lieu of level of service, in relation to transportation impacts of projects.
- Monitor legislation related to energy related issues including renewable energy, energy efficiency and conservation, resiliency, smart grid solutions, energy storage, distributed energy and transportation electrification, among other things.
- Advocate for goals and policies that remain technology agnostic and commercially available, and avoid policies that choose specific technologies or energy procurement mandates that can lead to increased customer costs while discouraging innovation.
- Support legislation that removes barriers to the electrification of buildings and transportation and legislation that provides regulatory streamlining of reporting and other actions that also preserves local decision-making authority.

- Monitor legislation that may have a regional and local impact on greenhouse gas (GHG) emissions and advocate for effective and equitable approaches to emissions reduction.
- Support a comprehensive approach to climate policy that optimizes GHG reductions across multiple sectors (transportation, electricity, buildings, etc.)
- Advocate for the flexibility to optimize the portfolio of GHG emissions reduction opportunities identified in the City's Climate Action Plan and includes but not limited to new renewable energy and storage procurement, water conservation and energy efficiency, smart grid solutions, increase waste diversion, sustainable land use, increase tree canopy, building decarbonization, transportation electrification among other actions in the portfolio.
- Monitor legislation and water quality regulations related to contaminants of emerging concern.
- Monitor research and regulations on Per-and Poly-fluoroalkyl Substances (PFASs) and their impacts on the environment, drinking water, and firefighting foam.
- Oppose federal or state efforts to permit additional oil drilling off the California coast.
- Monitor legislation and regulatory efforts related to recycling and solid waste and advocate for legislation and regulations that enable mixed waste processing and composting to remain viable pathways for waste compliance.
- Support legislation and regulatory efforts that aid the City's Pretreatment Program, Fats, Oils & Grease (FOG) Inspection Program, and Operations and Maintenance of the sanitary sewer collections system.
- Support urban runoff pollution regulations, water conservation and recycling, and pollution controls that benefit the City.
- Monitor legislation and regulations related to the National Pollutant Discharge Elimination System and support efforts that are attainable and reflect local conditions and circumstances.
- Track the progress of the South Bay Salt Ponds Restoration Project and its proximity and potential impacts to the Regional Wastewater Facility, which Santa Clara jointly owns with the City of San Jose.
- Track the progress of the South San Francisco Bay Shoreline Study and support associated regional resiliency planning efforts to ensure that Santa Clara's infrastructure and community assets are considered and protected as the Bay Area plans and constructs resiliency projects.
- Support legislation, regulations, and funding to strengthen forest management and fire prevention activities and improve emergency preparedness and response. These include, but are not limited to, the modernization of vegetation and forest management practices for wildfire prevention and carbon sequestration and biomass production for energy, forest thinning, and other activities to improve the health of forests damaged by infestation of bark beetles, plant pathogens, drought, or other hazards that exponentially increase wildfire dangers.
- Work with regional partners to maintain the reliability of the water supply and water sustainability to support current customers and to allow for expected growth in the near future and beyond.

- Monitor legislation and regulations related to the San Jose/Santa Clara Regional Wastewater Facility (RWF) being the largest discharger to the San Francisco Bay. The RWF is regulated by the National Pollutant Discharge Elimination System permit under the Clean Water Act administered by San Francisco Bay Regional Water Quality Control Board. New regulations are focused on Contaminants of Emerging Concern, Toxicity, and Nutrient Reduction.



Agenda Report

21-152

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with Jones Lang LaSalle Americas, Inc. (JLL) for Consulting Services for the Development, Implementation and Operation of Comprehensive Tourism Strategy and Response to Council Questions

COUNCIL PILLARS

Promote and Enhance Economic, Housing and Transportation Development
Enhance Community Engagement and Transparency

BACKGROUND

In November 2020, staff completed a competitive Statement of Qualifications (SOQ) procurement process for Consulting Services for the Development, Implementation, and Operation of a Comprehensive Tourism Strategy which resulted in the selection of consultant Jones Lang LaSalle Americas, Inc. (JLL). The SOQ was publicly posted and after proposals were received, an interview panel was convened. JLL was selected as the most qualified firm to provide the services requested by the City.

On January 12, 2021, Council deferred action on the proposed Agreement with JLL and directed staff to return with additional information for Council's consideration. Staff was directed to:

1. Return with opinions from the Chamber, DMO, TID and others on the need for the services provided in the agreement and having the infrastructure in place. What would it cost them to do it themselves and how would they envision moving forward if City did not approve the agreement;
2. Return with incremental milestone completion reports from JLL regarding project milestones from previous agreements; and
3. Return with full previously completed TAP audit of Convention Center Visitors Bureau.

DISCUSSION

Staff has compiled the information and various documents as requested by Council. Attachments to this staff report include:

- Letters/statements received from the Santa Clara Tourism Improvement District, Silicon Valley/Santa Clara DMO, Inc. California's Great America, Silicon Valley Central Chamber of Commerce, Levy, and Spectra Venue Management;
- Copies of available presentations, reports and work products by JLL, and
- Copies of CVB-related audit reports completed by TAP International.

The letters from these outside groups indicate that there is a need for ongoing industry-related expertise to assist staff as the efforts continue to form Convention Center and DMO governance,

policies and procedures to address recommendations in the TAP-audit and to develop a new Santa Clara business model based on key performance indicators to bring convention, large group and leisure business to the City which in turn supports the Convention Center and hotel transient occupancy. The letters also indicate that these organizations do not have the ability/capacity to take on the scope of services being provided by JLL.

Further, as there were several Council questions about the services provided by JLL, additional background is provided below.

Previous JLL Contract

The City initially contracted with JLL in January 2017 to conduct research and provide Council with an overview of Convention Center and Convention-Visitor Bureau (CVB) models of operation that would increase business and visitors, maximize fiscal performance, and enhance the community. At the time, the City had been advised by the Santa Clara Chamber of Commerce that it no longer wanted to manage/operate the Santa Clara Convention Center requiring the City to determine a strategy for the continuing operation of the Center.

In April 2017, Council approved Amendment No. 1 and revised the scope of work to include a stakeholder engagement process and to prepare a plan for the identification and implementation of a new operating model for the Santa Clara Convention Center and a governance structure for overall convention and visitor services.

In September 2018, based on findings of a performance audit conducted by TAP International, Council directed the City Manager to issue a 180-day notice to the Santa Clara Chamber of Commerce terminating the Convention Center Management Agreement effective March 18, 2019, and to engage in a competitive RFP to secure the services of a firm for the management and operations of the Convention Center. Without staff expertise in convention and hospitality industry, JLL provided critical assistance to City staff in the procurement process including in the preparation of the RFP scope of services; potential vendor outreach; and preparation of technical analysis of the submitted proposals for the benefit of the RFP review panel.

In February 2019, Council approved Amendment No. 2 to extend the contract term to continue ongoing services related to finalizing the new management agreement with Spectra, the new Convention Center operator, and to assist in the operational transition of convention center management. With JLL's assistance, the new management agreement provided for key performance indicators which incentivizes the Center to work collaboratively with the new Destination Marketing Organization (successor to CVB) and the Tourism Improvement District (TID) to grow the overall convention, group meeting, and leisure markets in Santa Clara.

In April 2019, Council directed the City Manager to commence work efforts to form a new Destination Marketing Organization (DMO) to provide convention and visitor services such as a Convention-Visitors Bureau (CVB). Concurrently, the Center's food and beverage provider, ARAMARK, terminated its contract at the Convention Center. JLL again provided critical assistance to City staff in the procurement process including in the preparation of the RFP scope of services; potential vendor outreach; and preparation of technical analysis of the submitted proposals for the benefit of the food and beverage RFP review panel.

In January 2020, Council approved Amendment No. 3 to extend the contract term to continue

services related to the development of the new DMO, including access to an executive recruitment firm for the hiring of the new Chief Executive Officer, and to provide industry specific guidance on Convention Center and food and beverage services operations.

Table A provides a summary of costs related to the JLL contract.

Table A - JLL Contract Summary

Summary	Contract Amount	JLL Services	CEO Recruitment	Other ¹	Contract Balance
Original Agreement (1/5/17 - 6/30/17)	\$9,500	\$9,500	-	-	-
Amendment No. 1 (4/25/17 - 6/30/19)	\$170,000	\$165,000	-	-	\$5,000
Amendment No. 2 (5/6/19 - 1/31/20)	\$175,000	\$175,000	-	-	-
Amendment No. 3 (1/30/20 - 12/31/20)	\$194,500	\$137,500	\$40,000	-	\$17,000
Total	\$549,000	\$487,000	\$40,000	-	\$22,000

¹ Amendment No. 3 'Other' were funds budgeted for associated recruitment candidate and JLL associate (Bethanie DeRose) travel costs as needed.

The total contract amount was \$549,000. Of that amount, \$527,000 was expended; \$487,000 for JLL services and \$40,000 for the executive recruitment firm subcontracted by JLL, leaving a contract balance of \$22,000.

Cost-Benefit to City

The cost for consulting services for the proposed agreement with JLL is a monthly retainer of \$12,500. This is the same fee as in the previous agreement and is the most cost-effective approach for direct access to the specialized services and expertise the City requires. When evaluating the fee on a cost per hour basis, the City receives the advantage of a reduced hourly cost.

The established hourly rates for JLL team members, Dan Fenton - Executive Vice President and Bethanie DeRose - Vice President, are \$275/hour and \$225/hour respectively. From February 2020 - December 2020, JLL reported a total of 590.75 combined hours which equals to \$232.75/hour (\$137,500 / 590.75 hours).

Retainers generally provide the consultant with a monthly fixed fee for services recognizing that some months there will be a greater need and other months the need may be significantly less. The retainer contract allows the City to call on/utilize services as much as required. The retainer has proven to be very cost effective to the City.

The proposed new contract however also allows for the City to compensate JLL on a time and materials basis if hourly services provided are not equivalent to the monthly retainer. In other words the terms of the proposed agreement allows the City to pay an amount less than retainer in the event JLL services for any particular month are not required or necessary while caps the compensation to JLL in the event services are needed beyond the equivalent time/materials calculation. Over the past

year, the City's use of services has exceeded the equivalent retainer amount therefore has received additional value for the industry expertise provided.

Action on a New Agreement

As stated in the attached staff report, RTC 21-1084, staff initiated a competitive SOQ process in preparation for the expiration of the JLL agreement on December 31, 2020. The action being considered is not for a contract extension of an existing agreement with JLL or a contract renewal but for a new agreement in which JLL was selected through a competitive procurement process.

Proposals were evaluated and scored independently by a three-member evaluation team with representation from the City Manager's Office, Hyatt Regency Santa Clara (representing the Tourism Improvement District), and California's Great America (representing the new Destination Marketing Organization).

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

A 60/40 cost share strategy will be utilized for this agreement. Sufficient funding is available in the Santa Clara Convention Center Contingency Fund and in the TID/DMO FY 2020/21 Operating Budget.

Sixty percent of the contract amount, \$180,000, will be funded by the Santa Clara Convention Center Contingency Fund and 40%, \$120,000, will be funded by TID/DMO Funds. The TID/DMO funds are generated by self-assessment of the TID hotels and are not City/General Fund dollars. The total cost for services will not exceed \$300,000. The TID/DMO will follow the appropriate process to allocate funding for FY 2021/22.

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 with Jones Lang LaSalle Americas, Inc. to provide consulting services for the development, implementation and operation of a comprehensive tourism strategy retroactive to January 1, 2021 and ending on or about December 31, 2023 for a total maximum amount not-to-exceed \$300,000 subject to the appropriation of funds;

2. Authorize the City Manager to execute any minor or administrative amendments to the Agreement which do not increase the compensation for the Agreement; and
3. Authorize the City Manager to execute up to three one-year options to extend the term of the agreement after the initial term through December 31, 2026 for ongoing consulting services, subject to the appropriation of funds.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. RTC 21-1084
2. Agreement with Jones Lang LaSalle Americas, Inc.
3. Partner Letters/Statements
4. JLL Presentations, Reports and Work Products
5. Audit - "Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations Can Strengthen Accountability, Performance and Revenue"
6. Audit - "Contract Close-Out Review of Convention and Visitors Bureau"



Agenda Report

21-1084

Agenda Date: 1/12/2021

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with Jones Lang LaSalle Americas, Inc. (JLL) for Consulting Services for the Development, Implementation and Operation of Comprehensive Tourism Strategy

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development
Enhance Community Engagement and Transparency

BACKGROUND

For more than two decades, the City provided funding to the Santa Clara Chamber of Commerce (Chamber) to manage and operate the Santa Clara Convention Center and to provide Convention and Visitors' Bureau (CVB) services. In 2017, Council reviewed Convention Center and CVB models of operation that could help to increase business and visitors, maximize fiscal performance, and enhance the community. Council's vision was to promote the City as a premiere Silicon Valley destination for business and leisure travel which in turn would bring economic benefit to the City overall.

By 2018, Council authorized a series of actions which has allowed for a complete restructure of Convention Center and convention-visitor marketing operations. Since that time a number of significant steps have been taken to create and implement a new operating model for the Convention Center and a new governance structure for overall destination marketing services. These milestones include:

- September 2018 - Completion of TAP audit titled "Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations Can Strengthen Accountability, Performance and Revenue".
- February 2019 - Completion of a competitive RFP process for the management and operation of the Santa Clara Convention Center and development of a Management Agreement. This resulted in the successful selection of Global Spectrum L.P. dba Spectra Venue Management (Spectra).
- April 2019 - Council approved a governance model that established the City as the authority to have direct oversight of Spectra (as the Convention Center operator; the CVB (as the official Destination Marketing Organization/DMO); and the Santa Clara Tourism Improvement District (TID) (as the principal funding source of the CVB).
- May 2019 - Council approved of the continued formation of the new DMO entity and appointed the final composition of the initial Board of Directors.
- July 2019 - Execution of a short-term interim agreement for food and beverage services with Spectra Food Services & Hospitality (previously known as Ovations).

- August 2019 - Completion of a competitive RFP process for food and beverage operations resulting in the successful selection of Levy Premium Foodservice Limited Partnership (Levy).
- August 2019 - The new DMO entity, Silicon Valley/Santa Clara DMO, Inc. incorporated as a California nonprofit mutual benefit corporation.
- September 2019 - Appointment of Silicon Valley/Santa Clara DMO, Inc. Board of Directors and Officers.
- April 2020 - Release of SOQ for Consultant Services for Customer Satisfaction Surveys, Analysis and Reporting. This process completed in June 2020 with the successful selection of Mercantile Systems, Inc.
- November 2020 - Execution of an agreement with Silicon Valley/Santa Clara DMO, Inc. for destination marketing services.

While significant progress has been made to restructure and create a new operating model for convention and visitor-related business and marketing, the work is not complete. Staff requires assistance from industry experts in order to assure that Santa Clara positions itself to maximize our ability capture convention, meeting and leisure business. In addition, there is still much work to be done in the areas of governance and organizational development; finance, operations and service delivery; policy development; sales and marketing; and future goal setting.

DISCUSSION

The support provided by a tourism and hospitality consultant to date has proven to be highly beneficial to the City during the significant transition that has occurred over the past several years. The current contract with the City's tourism and hospitality consultant (Jones Lang LaSalle - JLL) expires on December 31, 2020. To that end, staff initiated a competitive SOQ process.

In September 2020, staff issued a Statement of Qualifications (SOQ) for Consulting Services for the Development, Implementation, and Operation of Comprehensive Tourism Strategy using Periscope S2G (formerly BidSync), the City's e-procurement system. A total of 84 firms viewed the SOQ and four proposals were received by the submittal deadline from:

- Coraggio Group (Portland, OR)
- Jones Lang LaSalle Americas, Inc. (JLL) (San Francisco, CA)
- Resonance Consultancy (Vancouver, BC) and HVS (Chicago, IL)
- The Research Associates (New York, NY)

Proposal Responsiveness: Staff determined all proposals were responsive and met the initial pass/fail review of the stated submittal requirements.

Evaluation Process: Proposals were evaluated and scored independently by a three-member evaluation team (including internal and external representation) from the City Manager's Office, Hyatt Regency Santa Clara (representing the Tourism Improvement District), and California's Great America (representing the new destination marketing organization). The evaluation scores are summarized in the table below:

Criteria	Maximum Points	Corragio Group	JLL	Resonance Consultancy	The Research Associates
Experience/Skills	50	37	42	37	25
Project Approach/Availability	25	18	20	14	6
Fees	25	15	20	20	10
TOTAL	100	70	82	71	41

Award Recommendation: Staff recommends award of agreement to Jones Lang LaSalle Americas, Inc. as the most advantageous and best value proposal per the evaluation criteria set forth in the SOQ. JLL demonstrated a high level of expertise and a long history of providing tourism support for destinations throughout the Country. JLL proposed a detailed and seamless approach to the work, a high level of understanding of the needs and interest of the City, and had successfully advised several destinations of similar size and focus such as Charlotte NC, Philadelphia PA, and Miami Beach FL.

References were checked with City of Rochester, Experience Rochester Corporation, and Greater Raleigh Convention & Visitors Bureau. All references came back positive.

Notice of Intended Award: A Notice of Intended Award (NOIA) announcing the City's recommended consultant was published November 20, 2020. The SOQ process included a ten-day protest period; no protests were received.

Term of Agreement: The initial term of the proposed agreement will be two years. The City may exercise up to three one-year options to extend the agreement at the end of the initial term, at the sole discretion of the City and subject to the appropriation of funds.

Summary of Agreement: The scope of work for the proposed Agreement includes activities related to the continued organizational, operational and policy development of the DMO; DMO CEO leadership development; strengthening Convention Center operations, strategic planning, goal setting and performance measure reporting, completing mid-year and year-end operations assessments of the DMO and the Convention Center, and ongoing support and advisement to the City. Additionally, JLL will assist the City in implementing an effective Customer Satisfaction Survey Program (CSSP), support a new proactive sales approach for all partners, and provide support to the Santa Clara Tourism Improvement District (TID).

Cost Summary: The initial term of the Agreement is for a total not-to-exceed amount of \$300,000 (\$150,000 annually) inclusive of all expenses. All consultant hourly rates and fees are firm-fixed for the Initial Term of the Agreement.

The cost for the option years after the initial two-year term shall be based on renewal quotes from JLL and any requests for compensation increases must be justified by JLL and are subject to City's acceptance.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

A 60/40 cost share strategy will be utilized for this agreement. Sufficient funding is available in the Santa Clara Convention Center Contingency Fund and in the TID/DMO FY 2020/21 Operating Budget. Sixty percent of the contract amount, \$180,000, will be funded by the Santa Clara Convention Center Contingency Fund and 40%, \$120,000, will be funded by TID/DMO Funds. The total cost for services will not exceed \$300,000. The TID/DMO will follow the appropriate process to allocate funding for FY 2021/22.

COORDINATION

The report has been coordinated with the Finance Department and the City Attorney’s Office.

PUBLIC CONTACT

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

RECOMMENDATION

1. Approve and authorize the City Manager to execute an agreement with Jones Lang LaSalle Americas, Inc. to provide consulting services for the development, implementation and operation of a comprehensive tourism strategy retroactive to January 1, 2021 and ending on or about December 31, 2023 for a total maximum amount not-to-exceed \$300,000 subject to the appropriation of funds;
2. Authorize the City Manager to execute any minor or administrative amendments to the Agreement which do not increase the compensation for the Agreement.
3. Authorize the City Manager to execute up to three one-year options to extend the term of the agreement after the initial term through December 31, 2026 for ongoing consulting services, subject to the appropriation of funds.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J, Santana, City Manager

ATTACHMENTS

1. Agreement with Jones Lang LaSalle Americas, Inc.

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
JONES LANG LASALLE AMERICAS, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Jones Lang LaSalle Americas, 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. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- 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

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Notice of Exercise of Option to Extend Agreement

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

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

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on January 1, 2021 and terminate on December 31, 2023.
- B. After the initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to three (3) additional one-year terms through December 31, 2026 ("Option Periods"), subject to the appropriation of funds. See Exhibit D for Notice of Exercise of Option to Extend Agreement Form.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

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

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is **Three Hundred Thousand Dollars (\$300,000)**, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONSULTANT

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

- A. 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 third party 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.
- B. 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, Consultants, subconsultants 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.
- C. 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: City Manager's Officer
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at rshikada@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Jones Lang LaSalle Americas, Inc.
1 Front Street
San Francisco, CA 94111
and by e-mail at dan.fenton@am.jll.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST (FORM 700)

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

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

JONES LANG LASALLE AMERICAS, INC.
a California corporation


Dated: 12/8/2020 _____
By (Signature): _____  _____
Name: Daniel Fenton _____
Title: Executive Vice President _____
Principal Place of
Business Address: 1 Front Street #2100 San Francisco, CA 94111 _____
Email Address: dan.fenton@am.jll.com _____
Telephone: () 831-298-7215 _____
Fax: () _____
"CONSULTANT"

EXHIBIT A SCOPE OF SERVICES

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

The Scope of Services, including Exhibit A and Consultant's proposal, are incorporated by reference to the extent not inconsistent with the Agreement.

1. GENERAL INFORMATION

- 1.1. Consultant shall work with the City, DMO, Santa Clara Convention Center and TID to guide the City and key stakeholders in the development and implementation of a renewed and comprehensive tourism strategy to increase sustainable economic growth and development and increase visitor and group business in Santa Clara. Focus areas include but are not limited to organizational development; strengthening operations and service delivery; policy development; sales and marketing efforts; and enhancing collaboration with all stakeholders. Additionally, Consultant shall work with the City, DMO, Santa Clara Convention Center, and TID to identify key niches and gaps in the local and greater surrounding areas that will help to differentiate the Santa Clara community and its tourism assets from other destination locations.
- 1.2. Consultant services shall be performed under the direction of the City Manager's Office.

2. DESCRIPTION OF SERVICES

- 2.1. Consultant shall provide professional consulting services, including but not limited to analysis and benchmarking based on best practices across all markets, to the City on an as-needed basis. Under this agreement, Consultant shall perform the following services (collectively referred to as "Services") under the direction of the City Manager's Office:
 - 2.1.1. Destination Marketing Organization (DMO)
 - 2.1.1.1. Assist the DMO with continued operational and policy development. Areas of focus include, but is not limited to, governance, administration, and finance.
 - 2.1.1.2. Work with City's contract administrator with initial oversight of service agreement including the development of effective and efficient reporting mechanisms for the DMO to report on progress of key performance indicators such as budget, and sales and marketing goals.

- 2.1.1.3. Work with City and key stakeholders to develop first-year goals; assist the DMO with the creation of an actionable strategic plan for the next three to five years.
- 2.1.1.4. Work with the new CEO to lead DMO efforts and formalize staffing plan.
- 2.1.1.5. Work with the DMO to develop initial marketing plan, including providing assistance with and facilitation of a Request for Proposal process for branding/website and marketing services.
- 2.1.1.6. Provide functional organization support and guidance; perform other duties as needed to support the successful development and implementation of the new DMO; act as an overall advisor in this effort.
- 2.1.1.7. Represent the City's interest in supporting DMO operations and advise City on any issues that arise.
- 2.1.1.8. Once an agreement is established between the City and the DMO, provide a mid-year and year-end assessment report on the DMO's progress, success measures and pace for future goals.
- 2.1.1.9. Review and report back to City on DMO's performance measures.
- 2.1.2. Santa Clara Convention Center
 - 2.1.2.1. Review Convention Center (venue operator and food and beverage operator) monthly and quarterly narrative and financial reports and work with City contract administrator on performance improvements as needed.
 - 2.1.2.2. Provide functional operational support and guidance; perform other duties as needed to support successful operations, event management and sales at the Center.
 - 2.1.2.3. Represent the City's interest in supporting Convention Center operations and capital improvement projects and advise City on any issues that arise.
 - 2.1.2.4. Conduct mid-year and year-end operational assessment and provide a summary report to the City on operational standards, service levels and overall Convention Center operational performance.

2.1.2.5. Review and report back to City on Convention Center performance measures.

2.1.3. Meetings and Communication

2.1.3.1. Regular communication and interface with collaborative partners: City, DMO, Convention Center, TID, etc.

2.1.3.2. Active attendance, participation and/or facilitation at related meetings included Board of Directors meetings, planning meetings, capital project meetings, and City Council meetings.

EXHIBIT B
SCHEDULE OF FEES

1. MAXIMUM COMPENSATION

- 1.1. The maximum compensation the City will pay the Consultant for all professional fees, costs, and expenses provided under this Agreement shall not exceed **Three Hundred Thousand Dollars (\$300,000)** during the Initial Term of the Agreement.
- 1.2. Any additional professional fees, costs, and expenses requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement. No additional services shall be performed unless both Parties execute an Amendment outlining the services requested and compensation agreed for such services.

2. FEES

- 2.1. The City will pay Consultant based on the fees below for services provided.

Description	Hourly Rate
Dan Fenton – Executive Vice President	\$275/HR
Bethanie DeRose – Vice President	\$225/HR

- 2.2. Monthly compensation shall not exceed a total of \$12,500.
- 2.3. Pricing shall be firm fixed for the Initial Term of the Agreement.
- 2.4. Price Adjustments: Consultant may request adjustments to compensation rates prior to any one-year option to renew the Agreement after the Initial Term. Price increase requests must be tied to CPI, PPI, living wage, or relevant industry specific index. Request for increase must be fully documented by Consultant. Price adjustments are subject to City's approval.

3. INVOICING

- 3.1. Consultant shall invoice the City on a monthly basis for Services provided by Consultant during the preceding month and shall provide the invoice in an format approved by the City, supporting narrative documentation, and is subject to verification and approval by City.
- 3.2. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance 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 Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subconsultants 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 Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Consultant or any subconsultant under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. 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 Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnitieds may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice, from Consultant, 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, from Consultant, notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

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

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

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

G. EVIDENCE OF COVERAGE

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

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant 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 emailed to:

ctsantaclara@ebix.com

Or mail to:

EBIX Inc.
City of Santa Clara City Manager's Office
P.O. Box 100085 – S2
Duluth, GA 30096

Telephone number: 951-766-2280
Fax number: 770-325-0409

I. QUALIFYING INSURERS

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

EXHIBIT D
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONSULTANT:	
DATE:	

Pursuant to Section ___ of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

OPTION NO.	# of #
-------------------	---------------

NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	
----------------------------------------------------------	--

Pursuant to Section ___ of the Agreement the rates of compensation are hereby adjusted as follows:

(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--------------------------------------------------	--

For the option term exercised by this Notice, City shall pay Consultant an amount not to exceed the amount set forth above for Consultant's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

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



HYATT REGENCY SANTA CLARA
5101 GREAT AMERICA PARKWAY
SANTA CLARA, CA 95054- US
Telephone: (408) 510-6410
Fax: (408) 510-6449

January 18, 2021

Dear Mayor and Council:

On January 12, 2021 action regarding a consultative agreement between Jones Lang LaSalle (JLL) and the City of Santa Clara was deferred so that Council could understand more about the consultation objectives and to learn more from any relevant parties being impacted. To help provide clarity and recommended direction, I serve as Chair of the Board for the Santa Clara Tourism Improvement District and am qualified to represent our position on behalf of the advisory board.

As you know, the TID hotels have been in a transition period without a CVB/DMO going back to June of 2018. During that same window of time the TID has also been engaged in the process of attempting to change our self-assessment model with the City of Santa Clara while supporting the processes of creating a new DMO. Multiple organizations inclusive of JLL have assisted in a myriad of ways in helping with this process and there is still much to be accomplished. The JLL team has been very collaborative with the hotels, Spectra, Levy and the City of Santa Clara and has helped to incorporate the DMO, identify and interview candidates for the DMO CEO selection committee, establish new KPI's, collaborate on a new booking strategy for the hotels and convention center, create new Bylaws for the DMO, enforce a governance model and formulate administrative responsibilities to name a few.

It is our opinion there is still much to be accomplished with the DMO as it gets off the ground and will require much more assistance and consultation specific to marketing efforts, phasing of staffing, budget modifications, adaptation of business mix in a changed business environment and eventual fine-tuning of the recently adopted KPI's. JLL's role is to help support the City, the convention center and the hotels and we believe their role is critical at a time of great change. Moreover, the DMO is currently a staff of one employee and until future budgets can allow for increased resources it is imperative the organization have the support of JLL while this transition occurs. For the cost of consultative services being proposed, the DMO could not hire internally and be able to save cost while providing the level of service and experience being provided by JLL at this time. They play an important role at this critical juncture and we believe it would be prohibitive to not support the consultative efforts of JLL for the term proposed.

Thank you for your serious consideration to this very important agreement. More importantly, thank you for all you are doing during these unprecedented times in our history to support all of the people living and working in Santa Clara. On behalf of the SCTID hotels we are grateful for your sacrifice and hope that you are all safe and healthy!

With my best regards,

Mr. Eron Hodges
General Manager, Hyatt Regency Santa Clara
Board Chair, SCTID Advisory Board
5101 Great America Parkway
Santa Clara, 95054



January 22, 2021

Dear Mayor Gillmor and Santa Clara City Councilmembers:

At a recent meeting, the City Council deferred a decision regarding the continuation of a consulting agreement between Jones Lang LaSalle (JLL) and the City of Santa Clara. This deferment was made to provide our community's stakeholders with an opportunity to voice their opinions on the matter.

I am writing to express my support—and the backing of California's Great America—in extending the agreement between JLL and the City of Santa Clara. As Vice Chair of the Santa Clara DMO/CVB and General Manager of Santa Clara's largest tourist destination, I stand united with my colleagues who serve on the Board for the Santa Clara Tourism Improvement District in endorsing the extension of the agreement with JLL.

For nearly three years, the destinations and attractions of Santa Clara have been in a transition period as our industry navigates business in the absence of a well-established DMO/CVB. JLL's support has proven to be valuable and beneficial during this time for not only California's Great America but also our City's hoteliers and our industry partners. To date, JLL has registered our new organization, recruited a CEO and helped develop comprehensive bylaws for our newly formed DMO/CVB, among other impactful work.

There is still much to be accomplished as the new DMO/CVB becomes more established. This work will require additional consulting specific to our City inclusive of marketing, staffing, finance and our response and recovery to changing business environments. JLL's existing work with the City toward our objectives and their history with TID stakeholders positions their firm an exceptional fit for the task at hand. Their institutional knowledge and experience within the Silicon Valley environment will continue to provide value to our emerging DMO/CVB. I believe JLL is poised to assist the City, the convention center, and the hotels and attractions of Santa Clara in a way that makes them the logical selection for this partnership. They play a critical role at a pivotal time in our City's effort to launch a new DMO, and it would be in the best interest of all involved to support JLL's consultative services for the proposed term.

Thank you for your consideration and for your continuing support of our organization during this challenging time. We are grateful to call Santa Clara home, and we are eager to begin the exciting work of building back stronger than ever before.

With warm regards,

A handwritten signature in black ink, appearing to read "Manny Gonzalez".

Manny Gonzalez
Vice President and General Manager, California's Great America
Vice Chair, Santa Clara CVB/DMO

As the CEO of the newly formed DMO, I'd like to offer my support of the ongoing consultative services of Jones Lang LaSalle (JLL). JLL is proving to be a valuable resource to me, in not only setting up the new DMO, but providing expertise in the DMO space (what works and doesn't), and is well regarded in DMO circles around the country. JLL, from an ex-hotelier lens, is spearheading what I believe are truly innovative, forward-thinking ideas & future solutions to how Convention Centers and their food operators work with DMO's. Just a few benefits of these ideas and solutions are 1) more collaboration, 2) greater efficiencies, with less duplication & cost and 3) greater accountability with shared KPI's that benefit both the City of Santa Clara & the TID Hotels.

The true reality is that I am only a staff of one, and depend on JLL to assist me in laying the groundwork for the long-term success of the DMO.

Thank you in advance for your support!



Matt Stewart

President & CEO
Silicon Valley/Santa Clara DMO, Inc.

Mobile: 925-588-9439

Phone: 408-748-7076

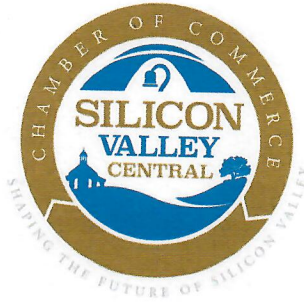
Email: matt.stewart@discoversantaclara.org

<https://www.linkedin.com/in/mattstewartsf/>

5001 Great America Pkwy.
Santa Clara, CA 95054

www.santaclara.org





Christian Pellecchia
Silicon Valley Central Chamber of Commerce
3350 Scott Blvd. Build. 54
Santa Clara CA. 95051

January 26, 2021

Santa Clara City Council
1500 Warburton Ave.
Santa Clara CA. 95050

Dear Mayor Gillmor, City Council and Staff,

On behalf of the SVC Chamber of Commerce, we recommend that the city approve the renewal of the contract with JLL for the consulting services as stated in Exhibit A. We make this recommendation for the following three reasons:

1. It would not be prudent or economically efficient to change course before we are able to witness the comprehensive results of the work JLL has done thus far.
2. It is our understanding that the contracted amount is capped at \$150k per year. If so, then acquiring another qualified candidate to replace JLL would surely cost as much, if not more, than this amount. Additionally, the costs to get the new employee/vendor current with the history and objectives for the newly established DMO would certainly be wasteful.
3. Finally, JLL is a well qualified and highly reputable company, particularly within the services that the city is requesting from them. In turn, for a nominal \$150k a year, the city receives a team of highly regarded experts to provide the infrastructure and direction needed to help Santa Clara become more of a destination for visitors, and to help our city become more economically viable.

Thank you for requesting the opinion of the Chamber on this matter, and we hope that our argument is useful for your continued discussions.

Sincerely,

Christian Pellecchia
Interim CEO

A handwritten signature in black ink, reading "C. Pellecchia", written over a horizontal line.

From: [Chris Bupp](#)
To: [Nancy Thome](#)
Subject: Requested feedback
Date: Thursday, January 28, 2021 9:12:35 AM
Attachments: [image001.png](#)

Nancy,

Thank you for reaching out and on behalf of our group, I wanted to share some of our thoughts on your agreement of services and the infrastructure that is part of the scope of the agreement.

As we went through the RFP process, we understood the creation of a new DMO/CVB was important to the city of Santa Clara. If that remains a goal for the city, it is important to recognize that this is a big task. We as your food service provider play an important role in supporting this effort however it is important to have someone working with us and the other supporting organizations as a project manager or lead to bring the collective vision together.

We look forward to continuing to support the city and helping to grow Santa Clara as a destination for meetings and conventions.

Myself and Joiel Alexander from our business development team are happy to discuss further if you'd like to have a call.

Thanks!

Christopher Bupp | Regional Director of Operations
cbupp@levyrestaurants.com



1001 Avenida de Las Americas
Houston, TX 77010

Cell: 216-789-8920
www.levyrestaurants.com

From: [Anderson, Dave](#)
To: [Nancy Thome](#)
Subject: Feedback
Date: Wednesday, February 3, 2021 9:37:48 AM
Attachments: [image001.png](#)

Hi Nancy,
Hope all is well. Below is the feedback you requested. Let me know if you need anything else.
Regards, Dave A.

"Spectra Venue Management regularly works with industry consultants such as JLL around the globe on facility and industry related projects that vary greatly in scope, complexity and long term vision. Our specific roles in each of these processes may vary, but our goal is always to work collaboratively with the consultant and our clients to assure a positive outcome for our facilities and markets.

The reimagination of the Santa Clara CVB is a very complex initiative that requires a credentialed industry expert or consultant with prior experience to manage the overall process and bring all the partners (City, Spectra, Levy, Hotels) together to collaborate on the vision, create and execute the plan, and monitor the performance to assure its long term success. While all of us individually bring our own expertise to the project, JLL is ultimately the one that efficiently manages the process, creates the environment for collaborative discussion, and assures that we are all working together and staying focused on the goal.

We had a very productive experience with JLL during our onboarding process in Santa Clara last year and are extremely excited to be working with them, the City of Santa Clara, Levy and the local hotel community to help plan the future of conventions and meetings in the City Santa Clara."

Dave Anderson
General Manager-Palm Beach County Convention Center
Regional Vice President-Spectra Venue Management
O: 561.366.3006
Dave.anderson@spectrarp.com



Presentations on Convention Center to Committees/Council

February 16, 2017 – presentation to Economic Development Committee

Santa Clara Convention Center.

Overview of Issue. Interim City Manager provided an overview of the current status of the City's discussions related to the Convention Center regarding operations/management; annual Convention-Visitors Bureau (CVB) contract; and the ownership of the facility. He indicated that there is a tentative goal to implement a new plan for the management of the Convention Center by June 2018.

Presentation on Overview of Operating Models. Dan Fenton, JLL Hotels & Hospitality Group (JLL), provided an electronic presentation including the following: an overview of JLL, current model under Santa Clara Chamber Convention-Visitors Bureau (SCCCVB), five alternative Convention Center operating models together with a general advantages/challenges and example locations where the operating models exist. The Committee, staff and attendee discussion followed, with Mr. Fenton answering questions. The Committee directed staff to provide a report on the current processes of the SCCCVB, its strengths and challenges, its financial performance and financial impact to the City, and an evaluation of the SCCCVB since the establishment of Levi's Stadium at the next meeting on April 27, 2017. Vice Mayor/Chair Caserta indicated that the Committee would provide staff a list of suggested stakeholders to possibly work with and to invite before the next meeting.

April 4, 2017 - Study Session: Presentation on Overview of Convention Center Operating Models

April 18, 2017 – Amendment #1 to Agreement w/ JLL approved for engagement of stakeholders and development plan for new operations model for Santa Clara Convention Center and CVB (\$170k); May 2017 – Sept. 2018 with target to finish June 2018.

Amended Contract Timeline

Phase One: May – July 2017 (3 months)

- Stakeholder outreach meetings (May)
- Recommendations presented to Economic Development Committee (June)
- Recommendations to City Council and finalize timeline for phase two (July)

Phase Two: July– Sept 2018 (approx. 15 months)

- Based on Council direction of new model
- Includes presentations to EDC and meetings with City Council

April 27, 2017 – Economic Development Committee Meeting

Santa Clara Convention Center Follow up from Previous Meeting. As a response to the Committee's question from the previous meeting (February 16, 2017), City Manager, Rajeev Batra provided a brief overview of the current status of the City's discussions related to the Convention Center. He indicated

that the Council just approved a contract with Jones Lang LaSalle (JLL) and that the Council's direction is to narrow down the potential operating models outlined by JLL to determine which model might work best for the City. City Manager Batra indicated that the Chamber has requested to separate from the management duties of the Convention Center in June 2018. In addition to addressing this matter, City Manager Batra outlined other issues to be addressed including redevelopment, parking, property ownership, structural analysis of the Convention Center building and the size of the Convention Center. He stated that once these issues have been analyzed and addressed then the City can move forward about the discussions on the expansion of the Convention Center.

Current Processes of SCCCVB. Assistant City Manager Alan Kurotori provided an electronic presentation regarding the history, functions, and organization of the Santa Clara Convention Center and the City's role in the management and operations of the Convention Maintenance District which includes the common areas and the Capital Improvements which includes the funding and designing.

Strength and Challenges. Lisa Moreno, SCCCVB, provided an electronic presentation regarding the processes, operations, sources of revenues and marketing efforts of the Convention Center.

Financial Performance and Financial Impact to City. Assistant City Manager Alan Kurotori provided an electronic presentation regarding the funding, financial performance and the different financial information related to the Convention Center and its financial impact to the City.

Status since opening of Levi's Stadium. Assistant City Manager Kurotori provided a brief overview of the Convention Center's infrastructure grade, current conditions and reinvestment needs for proposed and unmet needs of \$10.50 million as indicated in the infrastructure report; which does not include the structural assessment of the systems. He indicated that on April 28, 2017, Staff will be opening proposals from providers and consultants and the Staff will bring recommendations to move forward with the feasibility study. Chair Caserta requested the Staff to bring their recommendations pertaining to the expansion of the Convention Center to the Council.

JLL Contract and Next Steps . Assistant City Manager Kurotori provided an electronic presentation pertaining to the updates on the JLL Contract as approved by Council and the next steps relative to the Convention Center. He indicated that the Staff added a building assessment and an in-depth marketing analysis for JLL review. City Manager Batra explained that the JLL contract is divided into two phases. Phase I includes reviewing and recommending an operating model for Santa Clara. This scope is anticipated to take three to four (3-4) months. Phase II begins after a model is selected and approved by Council. JLL will assist in the organizational preparation and assist in the RFP process as needed. He indicated that JLL's schedule was to complete the work by September 2018 but Staff will be working with JLL to move the completion date to June 2018.

July 17, 2017 – Economic Development Committee Meeting

Update on JLL Analysis. Director of Public Works Alan Kurotori provided an electronic presentation and handouts on the Convention Center Status Update. JLL is conducting an outreach process including

stakeholder interviews and focus groups to help identify a potential future Convention Visitors Bureau and Santa Clara Convention Center operating model best suited for Santa Clara. Other future outreach opportunities include getting input from meeting planners and clients. In response to an interest in potentially expanding the convention center, JLL provided estimated expansion costs (included in handout). Staff plans to bring the Convention Center discussion back to Council at the end of August.

Update on other Convention Center issues. The electronic presentation showed a chart of the Convention Center's operating history. Lisa Moreno from the Convention Center and her team put together a budget for the next five years and identified \$10 million worth of (re)investments in the Convention Center.

Director Kurotori provided an overview on parking issues for the Convention Center. The Public Works Department has done a RPF and the contract recently was approved for the structural aspects of the garage and convention center.

August 29, 2017 – Closed Session, Council Meeting

October 3, 2017 – Economic Development Committee Meeting

Presentation on Jones Lang LaSalle (JLL) Analysis on Convention Center Operating Model and Marketing Strategy.

Dan Fenton provided an electronic presentation on JLL's assessment of the Convention Center thus far. JLL conducted meetings with various convention center stakeholders. The list of stakeholders is listed on the presentation. The stakeholders like the idea of seamlessness – the idea of creating goals that are all aligned. They also want to remain engaged going forward (industry engagement). Based on the feedback JLL received from stakeholders, JLL feels an authority model is the best option for managing the Convention Center in the future.

Council Member Mahan asked whether or not CVB will be the managing authority. JLL recommends a new authority. The new authority would be formed as part of the process. Mahan asked about the membership of the new authority. Dan Fenton responded that it would be a mix of different stakeholders – representatives from stakeholder groups. An Executive Director would be hired, and the funding would be similar to the current model. The Committee would like to make a recommendation as to who would comprise of the new membership of new authority. Council Member Mahan would like to hear from these stakeholders directly. Vice Mayor/Chair Caserta asked staff to schedule a meeting sometime in the next month with JLL, city staff, and stakeholders to go over the different options.

Dan Fenton presented on the overview of the Convention Center's current operations, and provided a summary of the need to increase the number of conventions that are coming to Santa Clara Convention Center to make it more profitable. Scenarios discussed were the optimal number of "citywide" events and how that creates an increase in overnight stays at hotels which in turn creates revenue for the city through TOT taxes. JLL will keep working with the convention center and CVB to create a strategy to

improve current operations. Hyatt is a key partner and a presentation slide shows the amount of booking that they have generated. Dan Fenton highlighted the importance of optimization of the current convention center facility and generating more of these citywide events.

Council Member Mahan posed a question about JLL's target of increasing events to 10 or 20 a year from the current 3 a year -- how do we coordinate with Levi's Stadium because of the scarcity of parking and hotel rooms? Dan Fenton stated hotels will commit a certain amount of block for a future convention, however coordinating the logistics would have to be worked out amongst the different parties. Council Member Mahan has a concern that conventions are booked a year or two out in advance, but Levi's Stadium schedule is contingent on the 49ers football game schedule which is not confirmed until a few months before the start of the season. Lisa Moreno, from the Santa Clara Convention Center and Convention & Visitors Bureau, brought up that the Convention Center has a good working relationship with the Stadium and its other neighbors and are able to accommodate competing events on the same day usually without issue. For example, the U2 concert was held on the same day as a large convention and they were able to work out the details easily. The Convention Center is continually inserting the Levi's stadium events in their calendar so that they let their customers know when this is the case. Currently, they don't let Levi's Stadium know about the Convention Center events.

JLL provided a high level multi-year plan to optimize the building. If the City moves towards a more optimized building, more taxes and jobs are generated. However, Convention Center operations traditionally run on a deficit. Optimization of the building also requires some renovation of the current building. Renovation is a higher priority than expansion. JLL spoke to some contractors and architects to get an idea of the range for a full renovation and the estimated cost is \$71 million.

Parking – parking needs to be increased in order to accommodate the competing needs in the convention center complex. JLL and City's consultant think that 1000 new spaces would be sufficient. JLL also looked at sharing parking instead of building parking.

Expansion – based on numbers on slide 20 of the presentation, the estimate is \$235 million for a 100,000 square feet expansion which would put Santa Clara amongst the largest convention centers in the region.

A key consideration is that revenue funding strategy is tied to increased tax with hotel community. In order to raise enough funds to expand the convention center the City should consider multiple avenues to raise money i.e. transient occupancy tax, tourism improvement district, and community facilities district tax. Refer to summary of estimated costs and funding page as well as key considerations page.

Update on Convention Center assessments

Director of Public Works, Alan Kurotori, provided an electronic presentation and handout of EMG's August 23, 2017 building system analysis for the Convention Center. Further structural review is ongoing and will be included in EMG's final report. EMG was hired as a consultant by the City to perform an assessment of the Convention Center building and parking garage on July 31, 2017. The building was constructed in the 1980s so its systems have aged beyond their reasonable life. The HVAC system has

exceeded its estimated useful life and will cost \$17.5 million to replace. The existing equipment can be maintained for a few more years but will have increasing maintenance costs. Other findings included a lot of aging materials, such as the third floor of parking garage, interior and exterior lighting and interior finishes. EMG projects that the required repairs will cost \$40 million over the span of 10 years. The City's current Convention Center Capital Improvement Plan has allocated \$10 million for repairing existing material or equipment that is old. However, only \$2 million is funded of the current \$10 million CIP.

Council Member Mahan asked if the different assessment numbers (expansion \$235 mil, full renovation \$71 mil, EMG repairs \$40 mil, current City CIP \$10 mil) are inclusive of each other. Alan Kurotori stated that they are not and therefore the numbers are likely to change based on analysis of where the assessments overlap and do not.



City of Santa Clara

*Convention & Visitors Bureau,
Convention Center Organizational Model Research
DRAFT*

Prepared by:
Jones Lang LaSalle Tourism Group
Submitted January 13, 2017



0

■ Introduction

Jones Lang LaSalle (JLL) was retained to research and develop an overview of the potential organizational models for the Convention & Visitors Bureau. JLL has prepared background information, laid out the model options and organized key principles for consideration in determining the most effective approach for highly effective destination marketing organization and convention center operation.

JLL has performed tourism related advisory services in over 250 destinations. The information contained in this presentation is derived from JLL's experience with different models across the country and research to confirm current practices.

The goal of this presentation is to inform the City of Santa Clara about the potential model options that are most commonly practiced in the tourism industry.

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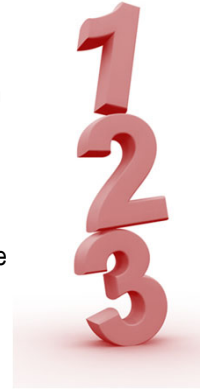
1

■ Guiding Principles in Determining Model Outcomes

The following are guiding principles that should be considered when evaluating the most effective direction for Santa Clara:

1. “One size **does not** fit all” - There are examples of success with each of the models that will be presented.
2. The most effective model is one that will work best for **Santa Clara**.
3. Success measures should be determined in conjunction with the final direction.

After input is received by Council, further investigation should be conducted to determine which model is the best fit for Santa Clara.



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■ CVB Background Information

Destination Marketing Association International (DMAI) conducts an annual survey of CVBs in the US and Canada. The following information is from the latest available year (2014):

- 60% of CVBs in the US are private 501(c)6 organizations.
- 10% of CVBs in the US are quasi-government (authority) organizations.
- 10% of CVBs in the US are city or county agencies.
- 4% of CVBs in the US are part of their chamber of commerce.

There are four model approaches that are most commonly utilized in the US. JLL's model options slides that follow will layout all four models plus three additional models including the current Chamber model and the pros and cons of each for the Council to consider.

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Source: DMAI Annual Compensation and Benefits Study

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■ Effective Governance Considerations

In developing the most effective approach, key governance considerations should be taken into account. These considerations apply to all models:

- Quality and expertise of oversight
- Accountability of governing body
- Flexibility of governance practices
- Customer centric focus
- Focused mission
- Agreed upon effective metrics

{ One **fundamental principle** of success in developing an effective governance model is the importance of all parties have the same overall **mission and metrics** when determining success. This can be accomplished with the models that are presented and must be a **foundation of how the model is determined.** }

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■ Key Considerations for All Models

All of the models that will be presented have the ability to be successful with these considerations in place. The inclusion of the following in the final selection is critical for an organization to thrive.

Transparency

- Common reporting
- Engagement of the broader stakeholder community

Mission of both entities (Center/CVB) must be the same

- Regardless of Model - a balanced scorecard must be developed that includes
 - Economic Impact (room nights)
 - Fiscal performance (Center financial results)
 - Community engagement

Accountability must be high

- Agreed upon common metrics – CVB and Convention Center

Environment needs to support mission

- Stimulate sales, marketing and operational success
- Highly functional
 - Support quality operations
 - Dynamic sales and marketing environment

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■ Public/City Run Model Implications

While the public sector models afford the City the most control, it is important to establish the level of flexibility that should exist in a public sector model. The following are examples:

- Examples of required flexibility
 - The ability to establish flexible pricing options for clients when negotiating convention center contracts.
 - The ability to streamline an effective and flexible process for purchasing and procurement when an operational needs arise.
 - The ability to create a compensation plan that that encourages and rewards sales professionals for their effectiveness and results.
 - The ability to sell direct to customers and deliver high customer engagement in the selling process should be supported.

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■ Private, Non-Profit Model Implications

Private, non-profit models engage private sector professionals in the industry, which directly supports the effectiveness of an destination marketing organization. The following are examples:

- Examples of private sector engagement
 - With individuals from the private sector involved in the board the specific skill sets and industry knowledge base should be the primary selection criteria.
 - The City must create an oversight model with private sector engagement that will support the overall mission and not favor one business line due to board makeup.
 - The talent pool in the stakeholder community must be strong enough to support effective oversight.
 - A contract must be developed between the City and the board that creates an ongoing check and balances.

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■ CVB/Convention Center Models

The following models will be reviewed:

1. Current model under Chamber of Commerce
2. City Run Convention Center and CVB
3. City Run Convention Center with a Private Non-Profit CVB
4. Private For-Profit Center Operator with a City Run CVB
5. Private For-Profit Center Operator with a Private Non-Profit CVB
6. Quasi Public-Private Non-Profit Authority Operating Both the Center & CVB
7. City Run Convention Center and CVB with a Private "Fiduciary" Board

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1 Current Model: CVB and Center as Divisions of the Chamber of Commerce

Model Description:

In this model the Convention & Visitors Bureau and the Convention Center are part of the Santa Clara Chamber of Commerce and the employees are Chamber employees. The structure is unified under one department as "Visit Santa Clara" with a close working relationship between the Center and CVB.

Potential Advantages

- Maintains a singular team environment
- Private sector engagement
- Ability to expand relationships in the business community

Potential Disadvantages

- Loss of direct oversight (by City)
- Large responsibility for singular board
- Can be less nimble as other private models

Sample destination with this model:
Venice, CA
Lake George, NY

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2 City Run Convention Center and CVB



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2 City Run Convention Center and CVB

Model Description:

In this model the Convention & Visitors Bureau and the Convention Center would be part of the City of Santa Clara and the employees would be City employees. The departmental structure could be unified under one department or housed in separate departments with a close working relationship, as described in the prior slides. In this model an advisory board is often created to promote stakeholder involvement. The director or directors would report to the City Managers office.

Potential Disadvantages

- Nimbleness and flexibility (purchasing and client negotiations)
- Expertise needed to oversee all aspects of operation
- Lack of insulation from community on space management and rental decisions
- Difficulty developing an incentive based sales operation.

Potential Advantages

- Direct oversight and control of sales and marketing and asset management
- Transparency in reporting
- Ease of engaging other city departments to provide support.

Sample destination with this model:
San Antonio, TX*
Waco, TX

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*Effective 1/17 CVB is transitioning to a private, non-profit model.

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3 City Run Convention Center with a Private Non-Profit CVB



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3 City Run Convention Center with a Private Non-Profit CVB

Model Description:

In this model the Convention & Visitors Bureau would be a private, typically non profit organization, that would have a contract with the City of Santa Clara to provide sales, marketing and other services. The Convention Center would be a City department with City employees.

Potential Disadvantages

- Loss of direct control/oversight
- Reliance on sustainability and continuity of governance model
- Separate Center and CVB may have inefficiencies and mission conflict

Potential Advantages

- Engagement of stakeholder/industry brings expertise and accountability
- Flexible Sales and Marketing environment without purchasing/policy restraints
- Accountable staff environment created through incentives and performance management plans

Sample destinations with this model
New Orleans, LA*
Rochester, MN

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*state run center

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Private For-Profit Center Operator with a City Run CVB

Model Description:
In this model the Convention & Visitors Bureau would be part of the City while the Convention Center would be a private, for-profit management company that would have a contract with the City of Santa for services. In most cases the employees of the Convention Center would be the employees of the private management company. An option in this model is to have an advisory board engaged for the Convention Center.

- Potential Disadvantages**

 - Loss of direct control/oversight at Center
 - Reliance on sustainability and continuity of governance model
 - Separate Center and CVB may have inefficiencies and mission conflict
- Potential Advantages**

 - Ease of engaging other city departments to provide support for CVB.
 - Direct oversight and control of sales and marketing

Sample destinations with this model
Bakersfield, CA
Broward County (Fort Lauderdale), FL

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5 Private For-Profit Center Operator with a Private Non-Profit CVB

Model Description:

In this model the Convention & Visitors Bureau would be a private typically non-profit with a contractual relationship with the City of Santa Clara. The Convention Center would be operated by a private (for profit) management company. In most cases the employees of the Convention Center would be the employees of the private management company. The private management company would typically have a direct contractual relationship with the City of Santa Clara. An option in this model is to have an advisory board engaged for the convention center.

Potential Disadvantages

- Two entities need to be collaborative and engaged
- Ability to maintain alignment in mission
- Administration of two contracts
- Relationship with two boards of directors if a separate oversight board is appointed for the convention center

Potential Advantages

- Ability to develop common metrics in City contracts
- Increased Stakeholder engagement
- Expertise of a private convention center management company

Sample destinations with this model
San Francisco, CA
Fresno, CA
Miami, FL
Long Beach, CA

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6 Quasi Public-Private Non-Profit Authority Operating Both the Center & CVB



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6 Quasi Public-Private Non-Profit Authority Operating Both the Center & CVB

Model Description:

In this model a non profit Authority would be formed to oversee the Convention & Visitors Bureau and the Convention Center. The Authority would have a contractual relationship with the City of Santa Clara. Within the Authority model there are options including the CVB and Convention Center to be staffed by Authority employees or having the Convention Center managed by a private operator.

Potential Advantages

- Can be structured with more public involvement – increased oversight through agreements and appointments
- Maintains a singular team environment
- Private sector engagement
- Direct accountability to City
- Ability to expanding relationships to include other important venues

Potential Disadvantages

- Loss of direct oversight
- Large responsibility for singular board
- Can be less nimble as other private models

Sample destinations with this model
Houston, TX
San Jose, CA
Pasadena, CA
Charlotte, NC

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7 City Run Convention Center and CVB with a Private “Fiduciary” Board



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City Run Convention Center and CVB with a Private “Fiduciary” Board

Model Description:

In this rare model the convention center and CVB are departments of the City of Santa Clara. A board is developed that has authority similar to one with fiduciary responsibilities. The board's oversight includes direct supervision of the executive director and budget development responsibility.

Potential Disadvantages

- Private Sector Board overseeing public employees can be challenging
- Solidifying board's role in conjunction with City administration can be complex.

Potential Advantages

- Public Sector environment remains
- Private sector engagement with accountability
- Executive Director receives direct guidance from private sector

Sample destinations with this model
Irving, TX*

*City has chosen to contract out Convention Center management

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■ Criteria for Consideration

Which model best fits the City of Santa Clara and achieves the overall objectives? Which model will...

- Most effectively drive conventions and leisure visitors
- Maximize convention center fiscal performance
- Reduce cost/risk to City
- Positively impact the community

As previously noted, all of the models presented can deliver the desired outcomes. The question for Council is to consider is which approach will be most successful for **Santa Clara.**

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■ Conclusion

- Further research should be conducted to determine the most effective approach for the City of Santa Clara.
- Key stakeholders should be included in the process.
- The full implementation of the agreed upon model should be done in parallel with developing key elements i.e. goals and metrics to support success.
- A full goal setting process should be undertaken with the next phase in conjunction with the development and implementation of the final model.
- The next step should also include a review of the potential relationship of the TBID with the selected model.
- The future of Santa Clara is exciting and the significant development that has been completed and is still underway should be a consideration. The selected model must support the new developments.

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■ Thank You

JLL would like to thank the City Council of Santa Clara for the thoughtful approach to supporting the City's tourism and convention future. JLL can be available for questions as the City navigates through the next steps of the process.



Daniel Fenton
Executive Vice President, Tourism
JLL Hotels & Hospitality Group



Bethanie Parker
Associate, Tourism
JLL Hotels & Hospitality Group

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City of Santa Clara

*Convention & Visitors Bureau,
Convention Center Organizational Model Research*

Prepared by:
Jones Lang LaSalle Tourism Group
February 16, 2017



■ Introduction

Jones Lang LaSalle (JLL) was retained to research and develop an overview of the potential organizational models for the Convention & Visitors Bureau. JLL has prepared background information, laid out the model options and organized key principles for consideration in determining the most effective approach for highly effective destination marketing organization and convention center operation.

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The goal of this presentation is to inform the City of Santa Clara about the potential model options that are most commonly practiced in the tourism industry.

■ Guiding Principles in Determining Model Outcomes

The following are guiding principles that should be considered when evaluating the most effective direction for Santa Clara:

1. "One size **does not** fit all" - There are examples of success with each of the models that will be presented.
2. The most effective model is one that will work best for **Santa Clara**.
3. Success measures should be determined in conjunction with the final direction.

After input is received by Council, further investigation should be conducted to determine which model is the best fit for Santa Clara.



■ CVB Background Information

Destination Marketing Association International (DMAI) conducts an annual survey of CVBs in the US and Canada. The following information is from the latest available year (2014):

- 60% of CVBs in the US are private 501(c)6 organizations.
- 10% of CVBs in the US are quasi-government (authority) organizations.
- 10% of CVBs in the US are city or county agencies.
- 4% of CVBs in the US are part of their chamber of commerce.

There are four model approaches that are most commonly utilized in the US. JLL's model options slides that follow will layout all four models plus three additional models including the current Chamber model and the pros and cons of each for the Council to consider.

Source: DMAI Annual Compensation and Benefits Study

■ Convention Center Background Information

JLL has been engaged in consulting with over 100 convention centers. Convention centers are operated under three typical models. Convention Centers are primarily owned by the public sector directly or through an authority that owns the asset on behalf of a public entity. Operating models include:

1. Publicly Operated
 - Publicly operated convention centers are staffed with public employees and function as a division or part of a larger public department.
2. Privately Operated – For Profit Operator
 - A privately operated convention center is often managed by a for profit third party operator through a contract with a public entity
3. Privately Operated – Not for Profit Operator
 - Some Convention Centers are operated by non profit organizations as operators. In many cases these are "authorities" and are 5013c corporations.

Of the most common models, approximately 125, or roughly 20%, convention centers in the US are privately operated by a for profit operator.

■ Effective Governance Considerations

In developing the most effective approach, key governance considerations should be taken into account. These considerations apply to all models:

- Quality and expertise of oversight
- Accountability of governing body
- Flexibility of governance practices
- Customer centric focus
- Focused mission
- Agreed upon effective metrics

*One **fundamental principle** of success in developing an effective governance model is the importance of all parties have the same overall **mission and metrics** when determining success. This can be accomplished with the models that are presented and must be a **foundation of how the model is determined.***

■ Key Considerations for All Models

All of the models that will be presented have the ability to be successful with these considerations in place. The inclusion of the following in the final selection is critical for an organization to thrive.

Transparency

- Common reporting
- Engagement of the broader stakeholder community

Mission of both entities (Center/CVB) must be the same

- Regardless of Model - a balanced scorecard must be developed that includes
 - Economic Impact (room nights)
 - Fiscal performance (Center financial results)
 - Community engagement

Accountability must be high

- Agreed upon common metrics -- CVB and Convention Center

Environment needs to support mission

- Stimulate sales, marketing and operational success
 - A compensation plan that encourages and rewards sales professionals
- Customer Centric
 - Ability to negotiate to secure a variety of business -- need for fluid environment
- Highly functional
 - Support quality operations
 - Dynamic sales and marketing environment

■ Public/City Run Model Implications

While the public sector models afford the City the most control, it is important to establish the level of flexibility that should exist in a public sector model. The following are examples:

- Examples of required flexibility
 - The ability to establish flexible pricing options for clients when negotiating convention center contracts.
 - The ability to streamline an effective and flexible process for purchasing and procurement when an operational needs arise.
 - The ability to create a compensation plan that that encourages and rewards sales professionals for their effectiveness and results.
 - The ability to sell direct to customers and deliver high customer engagement in the selling process should be supported.

■ Private, Non-Profit Model Implications

Private, non-profit models engage private sector professionals in the industry, which directly supports the effectiveness of a destination marketing organization. The following are examples:

- Examples of private sector engagement
 - With individuals from the private sector involved in the board the specific skill sets and industry knowledge base should be the primary selection criteria.
 - The City must create an oversight model with private sector engagement that will support the overall mission and not favor one business line due to board makeup.
 - The talent pool in the stakeholder community must be strong enough to support effective oversight.
 - A contract must be developed between the City and the board that creates an ongoing check and balances.

8

■ CVB/Convention Center Models

The following models will be reviewed:

1. Current model under Chamber of Commerce
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4. Private For-Profit Center Operator with a City Run CVB
5. Private For-Profit Center Operator with a Private Non-Profit CVB
6. Quasi Public-Private Non-Profit Authority Operating Both the Center & CVB

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1 Current Model: CVB and Center as Divisions of the Chamber of Commerce



1 Current Model: CVB and Center as Divisions of the Chamber of Commerce

Model Description:

In this model the Convention & Visitors Bureau and the Convention Center are part of the Santa Clara Chamber of Commerce and the employees are Chamber employees. The structure is unified under one department as "Visit Santa Clara" with a close working relationship between the Center and CVB.

Potential Advantages

- Maintains a singular team environment
- Private sector engagement
- Ability to expand relationships in the business community

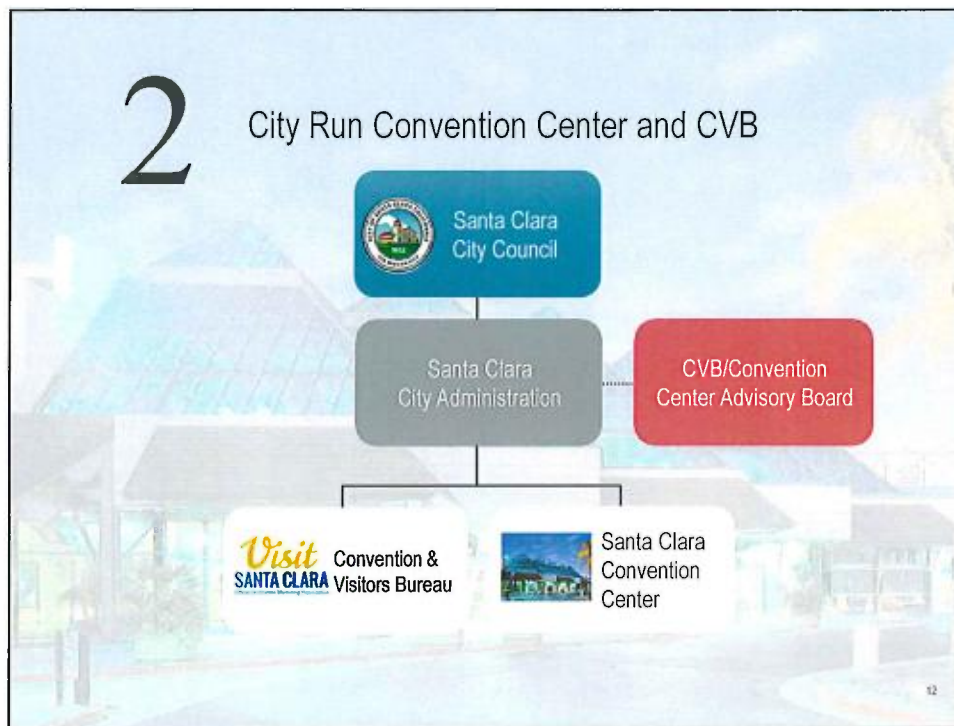
Potential Disadvantages

- Loss of direct oversight (by City)
- Large responsibility for singular board
- Can be less nimble as other private models

Sample destination with this model:
Venice, CA
Lake George, NY

2

City Run Convention Center and CVB



2

City Run Convention Center and CVB

Model Description:

In this model the Convention & Visitors Bureau and the Convention Center would be part of the City of Santa Clara and the employees would be City employees. The departmental structure could be unified under one department or housed in separate departments with a close working relationship, as described in the prior slides. In this model an advisory board is often created to promote stakeholder involvement. The director or directors would report to the City Managers office.

Potential Disadvantages

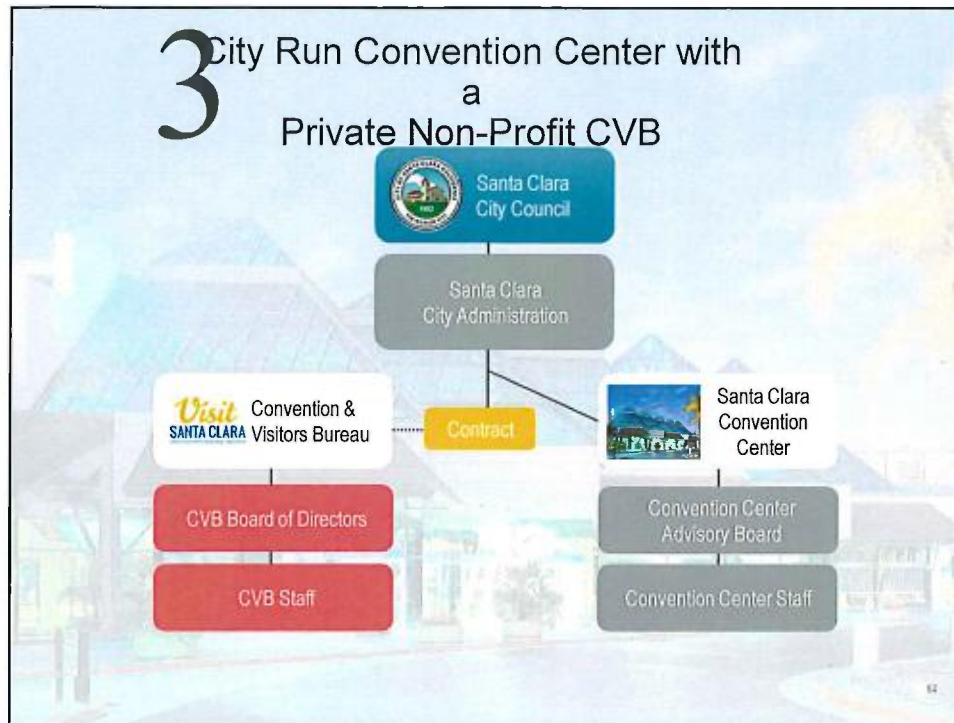
- Nimbleness and flexibility (purchasing and client negotiations)
- Expertise needed to oversee all aspects of operation
- Lack of insulation from community on space management and rental decisions
- Difficulty developing an incentive based sales operation.

Potential Advantages

- Direct oversight and control of sales and marketing and asset management
- Transparency in reporting
- Ease of engaging other city departments to provide support.

Sample destination with this model:
San Antonio, TX*
Waco, TX

*Effective 1/17 CVB is transitioning to a private, non-profit model.



3 City (Publicly) Run Convention Center with a Private Non-Profit CVB

Model Description:

In this model the Convention & Visitors Bureau would be a private, typically non profit organization, that would have a contract with the City of Santa Clara to provide sales, marketing and other services. The Convention Center would be a City department with City employees.

Potential Disadvantages

- Loss of direct control/oversight
- Reliance on sustainability and continuity of governance model
- Separate Center and CVB may have inefficiencies and mission conflict

Potential Advantages

- Engagement of stakeholder/industry brings expertise and accountability
- Flexible Sales and Marketing environment without purchasing/policy restraints
- Accountable staff environment created through incentives and performance management plans

Sample destinations with this model
New Orleans, LA*
Rochester, MN

*state run center



4 Private For-Profit Center Operator with a City Run CVB

Model Description:

In this model the Convention & Visitors Bureau would be part of the City while the Convention Center would be a private, for-profit management company that would have a contract with the City of Santa for services. In most cases the employees of the Convention Center would be the employees of the private management company. An option in this model is to have an advisory board engaged for the Convention Center.

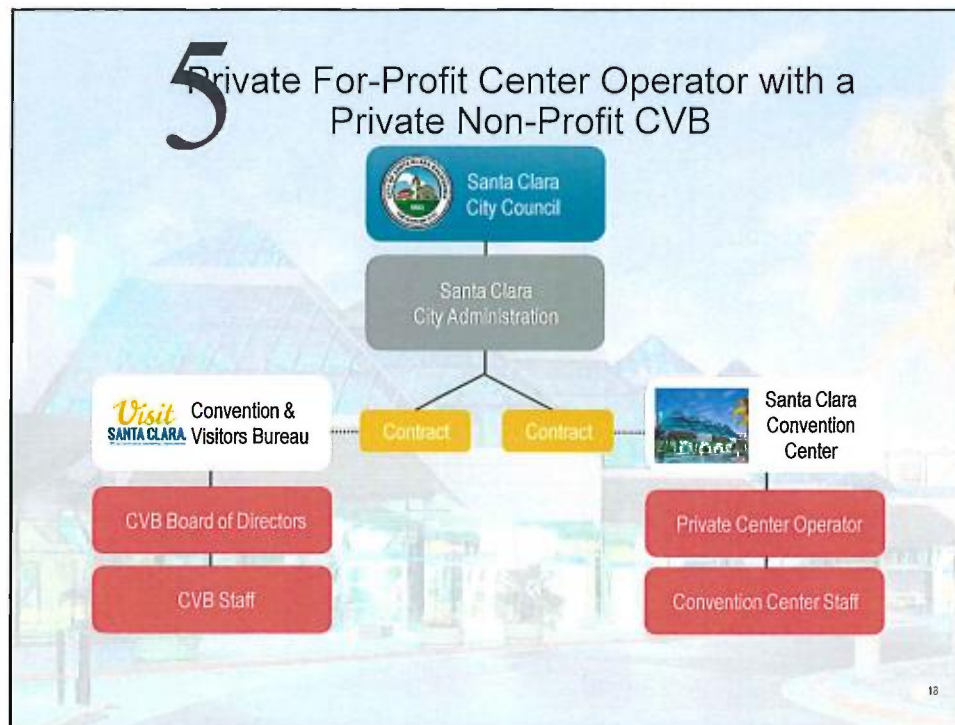
Potential Disadvantages

- Loss of direct control/oversight at Center
- Reliance on sustainability and continuity of governance model
- Separate Center and CVB may have inefficiencies and mission conflict
- Challenge of developing flexible compensation plans for sales teams

Potential Advantages

- Ease of engaging other city departments to provide support for CVB.
- Direct oversight and control of sales and marketing
- Expertise of private center operator

Sample destinations with this model
Bakersfield, CA
Broward County (Fort Lauderdale), FL



5 Private For-Profit Center Operator with a Private Non-Profit CVB

Model Description:

In this model the Convention & Visitors Bureau would be a private typically non-profit with a contractual relationship with the City of Santa Clara. The Convention Center would be operated by a private (for profit) management company. In most cases the employees of the Convention Center would be the employees of the private management company. The private management company would typically have a direct contractual relationship with the City of Santa Clara. An option in this model is to have an advisory board engaged for the convention center.

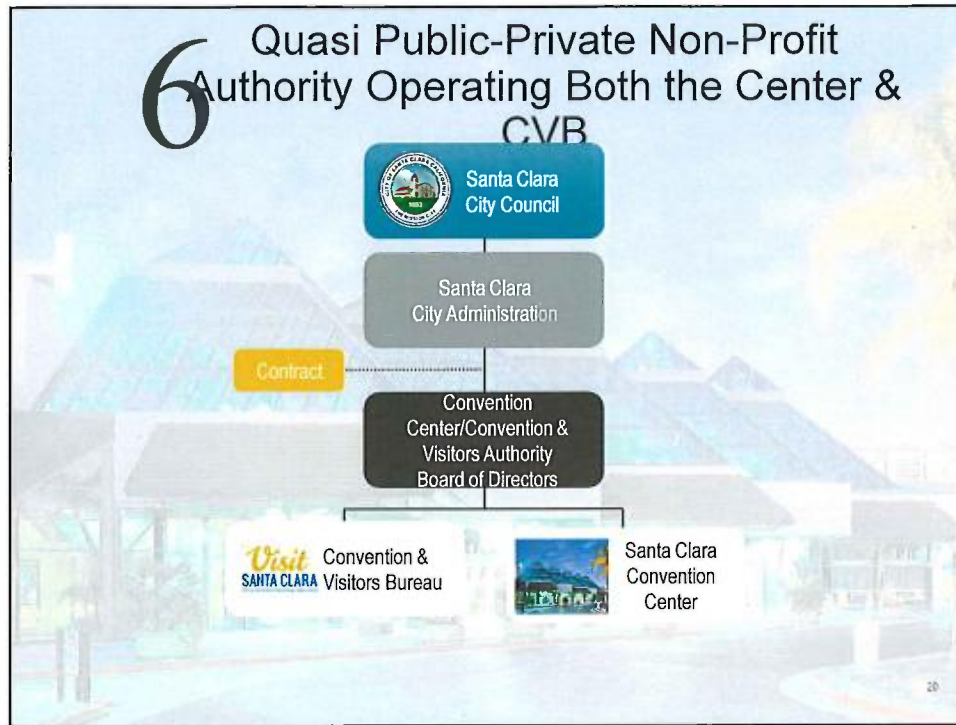
Potential Disadvantages

- Two entities need to be collaborative and engaged
- Ability to maintain alignment in mission
- Administration of two contracts
- Relationship with two boards of directors if a separate oversight board is appointed for the convention center

Potential Advantages

- Ability to develop common metrics in City contracts
- Increased Stakeholder engagement
- Expertise of a private convention center management company

Sample destinations with this model
 San Francisco, CA
 Fresno, CA
 Miami, FL
 Long Beach, CA



6 Quasi Public-Private Non-Profit Authority Operating Both the Center & CVB

Model Description:

In this model a non profit Authority (non-profit) would be formed to oversee the Convention & Visitors Bureau and the Convention Center. The Authority would have a contractual relationship with the City of Santa Clara. Within the Authority model there are options including the CVB and Convention Center to be staffed by Authority employees or having the Convention Center managed by a private operator.

Potential Advantages

- Can be structured with more public involvement – increased oversight through agreements and appointments
- Maintains a singular team environment
- Private sector engagement
- Direct accountability to City
- Ability to expanding relationships to include other important venues

Potential Disadvantages

- Loss of direct oversight
- Large responsibility for singular board
- Can be less nimble as other private models

Sample destinations with this model
Houston, TX
San Jose, CA
Pasadena, CA
Charlotte, NC

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■ Criteria for Consideration

Which model best fits the City of Santa Clara and achieves the overall objectives? Which model will...

- Most effectively drive conventions and leisure visitors
- Maximize convention center fiscal performance
- Reduce cost/risk to City
- Positively impact the community

As previously noted, all of the models presented can deliver the desired outcomes. The question for Council is to consider is which approach will be most successful for **Santa Clara.**

22

■ Conclusion

- Further research should be conducted to determine the most effective approach for the City of Santa Clara.
- Key stakeholders should be included in the process.
- The full implementation of the agreed upon model should be done in parallel with developing key elements i.e. goals and metrics to support success.
- A full goal setting process should be undertaken with the next phase in conjunction with the development and implementation of the final model.
- The next step should also include a review of the potential relationship of the TBID with the selected model.
- The future of Santa Clara is exciting and the significant development that has been completed and is still underway should be a consideration. The selected model must support the new developments.

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■ Thank You

JLL would like to thank the City Council of Santa Clara for the thoughtful approach to supporting the City's tourism and convention future. JLL can be available for questions as the City navigates through the next steps of the process.



Daniel Fenton
Executive Vice President, Tourism
JLL Hotels & Hospitality Group



Bethanie Parker
Associate, Tourism
JLL Hotels & Hospitality Group

24

Approve Reported Time

Timesheet

Timesheet

RUTH SHIKADA
ASST. CITY MANAGER

Employee ID 05711
Empl Record 0

Earliest Change Date 12/03/2017

Select Another Timesheet

*View By Calendar Period

*Date 12/03/2017

Previous Period Next Period

Previous Employee Next Employee

Punch Timesheet

Scheduled Hours 80.000

Reported Hours 80.000

From Sunday 12/03/2017 to Saturday 12/16/2017

Sun 12/3	Mon 12/4	Tue 12/5	Wed 12/6	Thu 12/7	Fri 12/8	Sat 12/9	Sun 12/10	Mon 12/11	Tue 12/12	Wed 12/13	Thu 12/14	Fri 12/15	Sat 12/16	Total	Time Reporting Code	Business Unit	Combination Code	ChartFields
8.000	4.000	4.000	4.000	3.000	6.000			5.000	5.000	6.000	7.000	7.000		55.000	R - REGULAR	CSC01		
		4.000	4.000	4.000				2.000	3.000	2.000	1.000	1.000		21.000	R - REGULAR	CSC01	1012000011	
				1.000	2.000			1.000						4.000	R - REGULAR	CSC01	1012000093	

Submit Apply Rules

Summary Leave / Compensatory Time Reported Time Status

Reported Time Summary

Personalize Find 1-5 of 5

Category	Total	Week 1 (12/3-12/9)	Week 2 (12/10-12/16)
Base	80.000	40.000	40.000
Total Reported Hours	80.000	40.000	40.000
Total Scheduled Hours	80.000	40.000	40.000
Schedule Deviation			
Time with no Category			

Return to Select Employee

Manager Self Service

Time Management

Westin Verasa Napa
1314 McKinstry St.
Napa, CA 94559
United States
Tel: 707-257-1800 Fax: 707-257-1200

WESTIN®

HOTELS & RESORTS

Raania Mohsen

Page Number : 1 Invoice Nbr : 259122
Guest Number : 419893
Folio ID : A
Arrive Date : 16-NOV-17
Depart Date : 16-NOV-17
No. Of Guest : 1
Room Number :
Club Account :

Copy Invoice

Tax ID :

Westin Verasa Napa DEC-05-2017 16:06 VANDUA

Date	Reference	Description	Charges (USD)	Credits (USD)
16-NOV-17	VI	Visa-6004	293.46	
16-NOV-17	MC	MasterCard/Euro-8247		-293.46
** Total			293.46	-293.46
*** Balance			0.00	

As a Starwood Preferred Guest, you could have earned 0 Starpoints for this visit. Please provide your member number or enroll today.

Signature_____



City of Santa Clara

*Convention & Visitors Bureau,
Convention Center Organizational Model Research*

Prepared by:
Jones Lang LaSalle Tourism Group
April 4, 2017



■ Industry Overview

CVB Background

1. Private 501(c)6 organizations
 - 60% of all CVBs
2. Quasi-government (authority) organizations
 - 10% of all CVBs
3. City or county agencies
 - 10% of all CVBs
4. Chamber of commerce
 - 4% of all CVBs

JLL's model options slides that follow will layout all four models plus three additional models including the current Chamber model.

Convention Center Background

1. Publicly Operated
 - Staffed with public employees and function as a division of the municipality.
2. Privately Operated – For Profit Operator
 - Managed by a for profit third party operator through a contract with the municipality.
3. Privately Operated – Not for Profit Operator
 - Operated by non profit organizations as operators. In many cases these are “authorities” and are 5013c corporations.

Of the most common models, approximately 125, or roughly 20%, convention centers are privately operated by a for profit operator.

■ CVB/Convention Center Models

The following models will be reviewed:

1. Current model under Chamber of Commerce
2. City Run Convention Center and CVB
3. City Run Convention Center with a Private Non-Profit CVB
4. Private For-Profit Center Operator with a City Run CVB
5. Private For-Profit Center Operator with a Private Non-Profit CVB
6. Private Non-Profit Authority Operating Both the Center & CVB

1

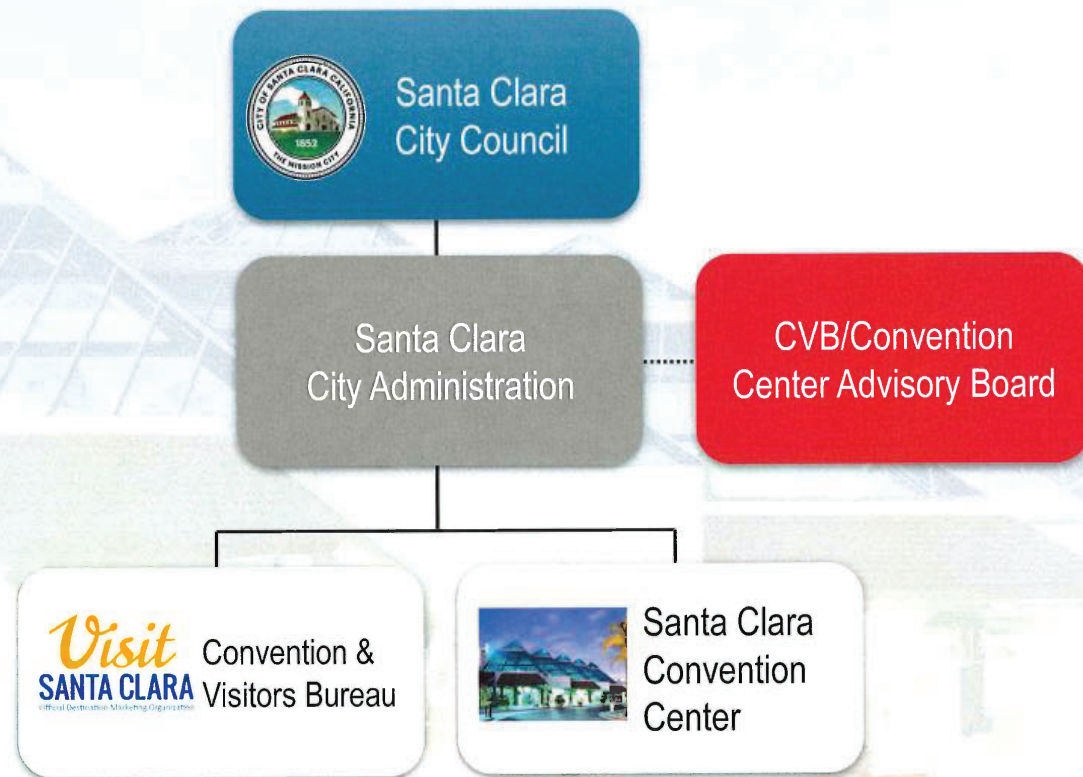
Current Model: CVB and Center as Divisions of the Chamber of Commerce



Sample models:
Lake George, NY

2

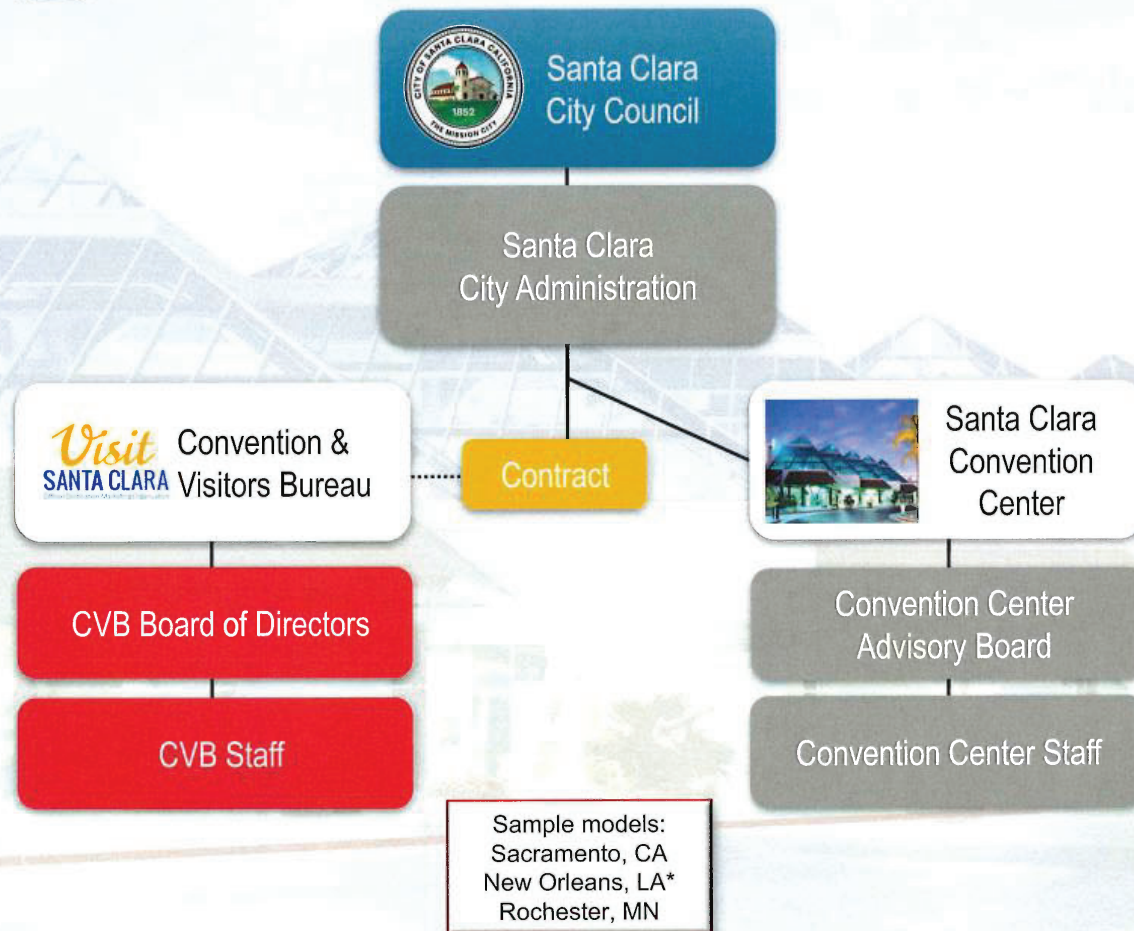
City Run Convention Center and CVB



Sample model:
Waco, TX

3

City Run Convention Center with a Private Non-Profit CVB



4 Private For-Profit Center Operator with a City Run CVB



Sample models:
Bakersfield, CA
Broward County, FL

5 Private For-Profit Center Operator with a Private Non-Profit CVB



*San Diego Convention Center Corporation is not for profit. Has separate Board of Directors.

6 Private Non-Profit Authority Operating Both the Center & CVB



Sample models:
Houston, TX
San Jose, CA
Pasadena, CA
Charlotte, NC

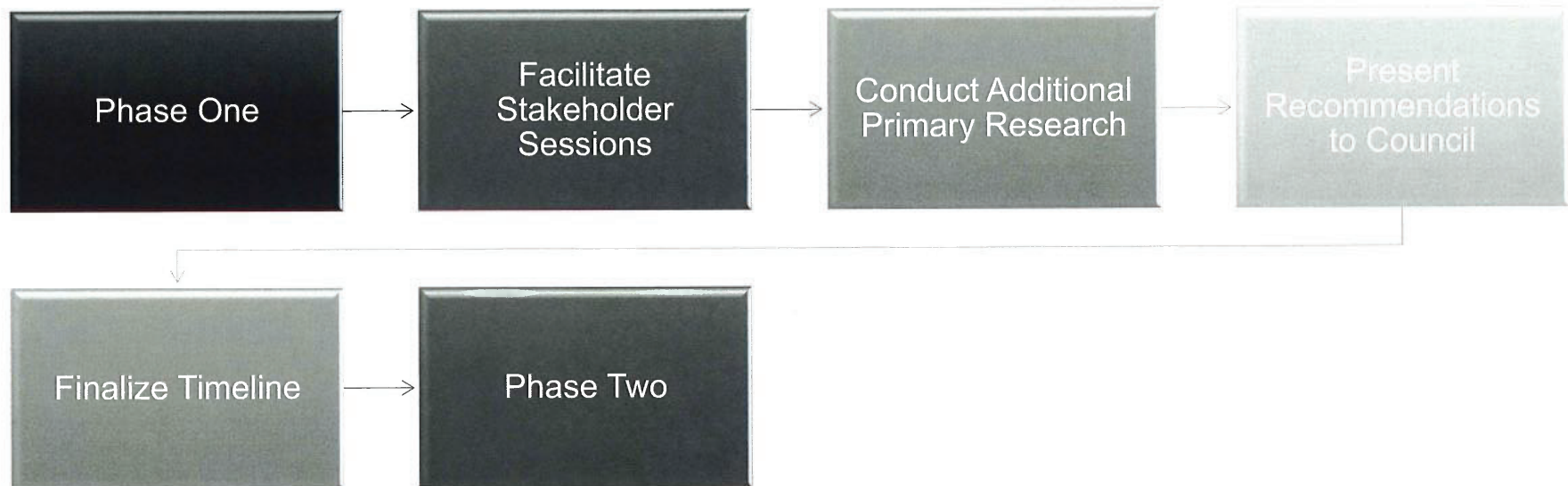
■ Criteria for Consideration

*Which model best fits the City of Santa Clara and achieves the overall objectives?
Which model will...*

- Most effectively drive conventions and leisure visitors
- Maximize convention center fiscal performance
- Reduce cost/risk to City
- Positively impact the community

As previously noted, all of the models presented can deliver the desired outcomes. The question for Council is to consider is which approach will be most successful for ***Santa Clara***.

■ Draft Process



■ Draft Timeline

Project Timeline and Milestones

		2017												2018		
Task /	Month	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June
Phase One																
Facilitate Stakeholder Sessions																
Additional Primary Research																
Present Recommendation to Council																
Finalize Timeline																
Phase Two - If Council Deems Necessary																
Draft Mission and Vision																
Develop Staffing Plan																
Develop and Finalize Budget																
Complete Bylaws																
Hire ED/CEO																
Complete Articles of Incorporation																
Develop Metrics																
Nominate and Approve Board																
Draft and Approve CVB Contract																
Advise on RFP																
Develop Marketing Plan																
Develop Goals																
Secure Office Space																
Hire Staff																
Conduct First Board Meeting																

Questions?

Thank You

Jones Lang LaSalle Tourism Group
April 4, 2017

Santa Clara Convention Center & CVB Phase One Presentation

Governance Model and Expansion Update
August 29, 2017



1

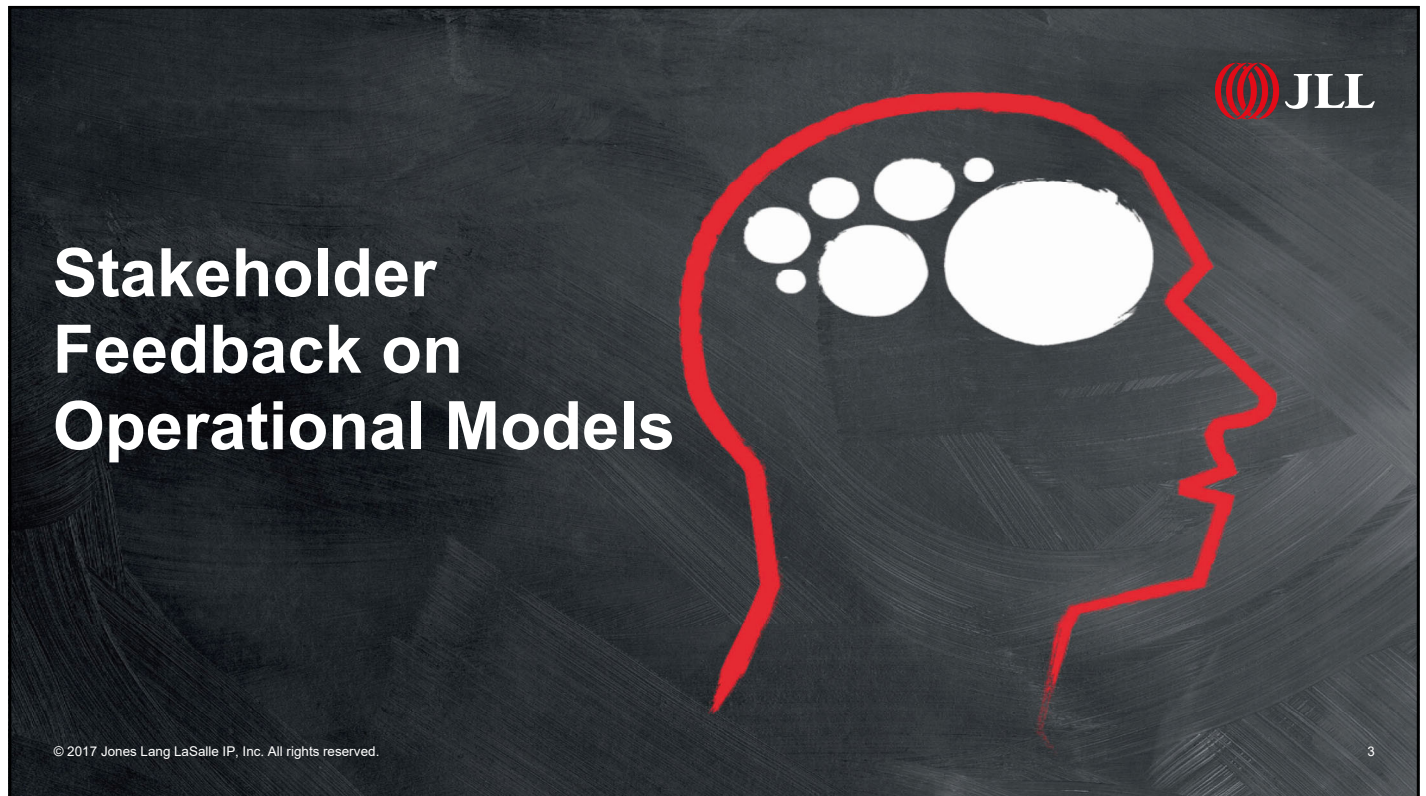
Overview of Today's Presentation




Update on the Santa Clara Convention Center and CVB Assessment

- Stakeholder feedback on current model and future opportunities
- Current utilization of the SCCC including business mix
- Potential SCCC renovations needed and costs associated
- SCCC expansion potential including range of square footage and costs
- Potential parking needs for expansion and other City-related projects
- Possible funds raised through hotel tax and other potential sources

2



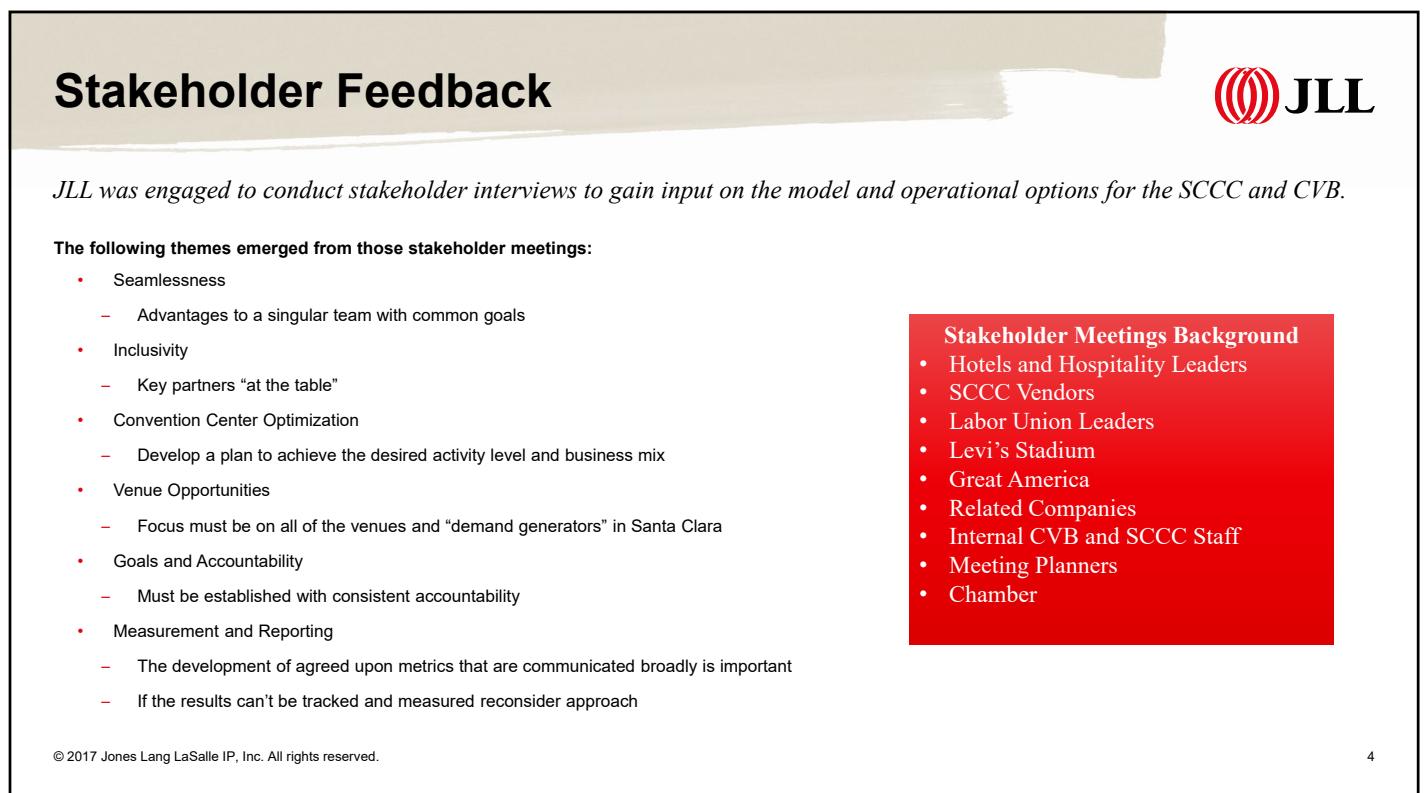
Stakeholder Feedback on Operational Models




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Stakeholder Feedback



JLL was engaged to conduct stakeholder interviews to gain input on the model and operational options for the SCCC and CVB.

The following themes emerged from those stakeholder meetings:

- Seamlessness
 - Advantages to a singular team with common goals
- Inclusivity
 - Key partners “at the table”
- Convention Center Optimization
 - Develop a plan to achieve the desired activity level and business mix
- Venue Opportunities
 - Focus must be on all of the venues and “demand generators” in Santa Clara
- Goals and Accountability
 - Must be established with consistent accountability
- Measurement and Reporting
 - The development of agreed upon metrics that are communicated broadly is important
 - If the results can’t be tracked and measured reconsider approach

Stakeholder Meetings Background

- Hotels and Hospitality Leaders
- SCCC Vendors
- Labor Union Leaders
- Levi’s Stadium
- Great America
- Related Companies
- Internal CVB and SCCC Staff
- Meeting Planners
- Chamber

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Model Options and Direction



Which model best fits the City and achieves the overall objectives from the stakeholder sessions?

- **Most effectively drive conventions and individual visitors**
- **Maximize convention center fiscal performance**
- **Mitigate cost/risk to City**
- **Positively impact the community**
- **Function seamlessly and engage stakeholders**
- **Provide transparency in measurement and reporting**

JLL reviewed the following models:

1. Current model under Chamber of Commerce
2. City Run Convention Center and CVB
3. City Run Convention Center with a Private Non-Profit CVB
4. Private For-Profit Center Operator with a City Run CVB
5. Private For-Profit Center Operator with a Private Non-Profit CVB
6. Private Non-Profit Authority Operating Both the Center & CVB

It was determined that an “authority model” with specific objectives would be the best fit for Santa Clara.

- **There is an opportunity to include a private operator within this authority model to streamline operational effectiveness**

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Model Considerations



Model Description:

- **In this model a non-profit Authority would be formed to oversee the Convention & Visitors Bureau and the Convention Center as a singular, stand alone organization. The Authority would have a contractual relationship with the City of Santa Clara.**
- **This differs from the current model in that the Authority would be its own 501(c)6 and have a fiduciary representative Board of Directors.**

Key Considerations:

- **Management contract for a private operator is still under consideration**
 - Potential value includes operational efficiency, resource opportunities as well as potential loss of operational control, financial guarantee and others.
 - Management contracts can reduce costs in some cases. However this should be reviewed with the current operation's finances
- **Meeting planner and client engagement should be a part of the future direction**
 - Clients should have input when it comes to trends, layouts and future space planning opportunities
 - The recommended model should consider a client advisory council or leadership group to provide regular feedback moving forward
- **Importance of an engaged and effective Board**
 - An effective Board is critical to the success of a new organization
 - It will be important for the City Council to conduct due diligence to appoint or support viable and engaged Board members with industry/related expertise

Key priorities for the new organization should be what is most important for Santa Clara.

- Ongoing engagement will solidify these priorities.

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Authority Model



The Santa Clara Model:
Non-Profit Authority Operating Both the Convention Center & CVB



Similar Models exist in:

1. San Jose
2. Charlotte
3. Houston
4. St. Paul, Minn

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Santa Clara Convention Center Utilization & Optimization

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SCCC Current Utilization

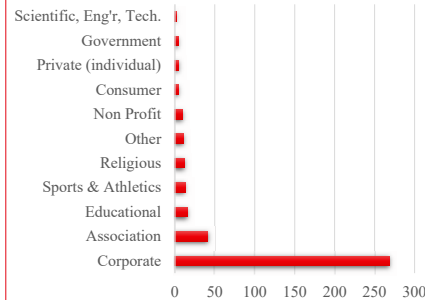


JLL worked with the SCCC and CVB to understand how the SCCC is currently being booked and utilized.

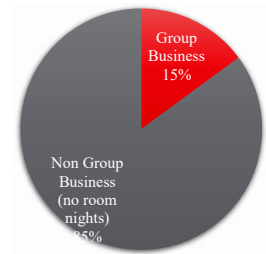
Cumulative Findings

- **FY 2015 – 422 total events**
 - 18% of all events had room nights
 - 85 events with room nights – 51,959
 - 3 citywide conventions
 - 611 room nights average per room night generating event
- **FY 2016 – 447 total events**
 - 18% of all events had room nights
 - 70 events with room nights – 41,049
 - 3 citywide conventions
 - 586 room nights average per room night generating event
 - Super Bowl 50 accounted for 9,200+ rooms

Average Number of Events by Market



Average Utilization by Event Type



Citywide event is defined as an event with 600 rooms on peak or greater

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SCCC Group Level of Activity

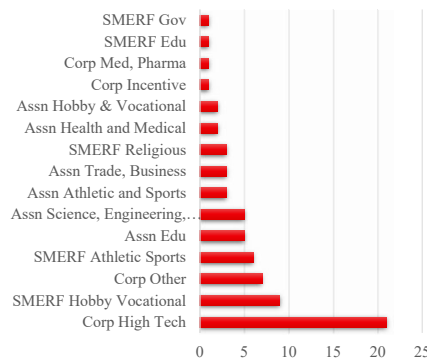


Currently there are over 400 total events annually. Of those, 77 on average generate room nights annually.

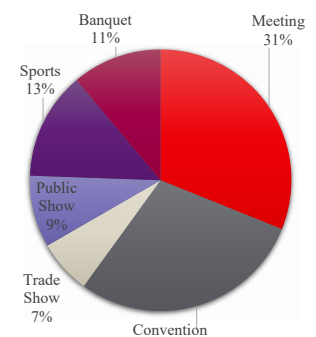
Group Business Findings

- **FY 2015 – 85 group business events**
 - 51,959 room nights
 - 611 average total room nights per event
 - 187 average peak room nights per event
 - 3 citywide conventions
- **FY 2016 – 70 group business events**
 - 41,049 room nights
 - 586 average total room nights per event
 - 194 average peak room nights per event
 - 3 citywide conventions
- **Markets**
 - Corporate tech and hobby/vocational are the top markets
 - Meetings and conventions drive 50% of the group business

Average Number of Events by Market



Average Number of Events by Type



Citywide event is defined as an event with 600 rooms on peak or greater

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Hyatt Bookings



The Hyatt's agreement includes control of 6 of 8 sections in the ballroom and the ability to book G & H.

The Hyatt's bookings generate room nights as well as rental revenue to the SCCC.

- **FY 2015 – 22 additional bookings**

- 5% of all events
 - 10,728 additional room nights generated

- **FY 2016 – 24 additional bookings**

- 5% of all events
 - 10,666 additional room nights generated

Without the ballroom these bookings would not have been achieved

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SCCC Optimization - Overview



JLL's optimization process considers the total space available at the SCCC and how best to fill it based on a priority to maximize economic impact.

- **The SCCC is currently "busy" with an average of 471 events annually**

- 77 events on average have room nights associated with them.
- 3 events on average (<1%) are citywide events, meaning they impact multiple hotels and generate significant economic impact
- The most important shift to optimize the SCCC will be to grow the room night generating business from 22% to over 50% of the available space
 - Potential goal would be to increase the number of citywides from 1% to 20%* or from 3 to a range of 10-20*
 - The consideration for hotel inventory will impact the actual goal for future citywide events annually
 - JLL will finalize this goal in the next phase of the process
- Initial multiyear goal could potentially be 190 room night generating events per year and 15 citywide events per year

- **How do we get there?**

- Validate the sales and marketing resources needed
- Develop focused prospecting approach to increase sales activity
- Determine opportunities to increase overall competitiveness

*Based on average business mix from competitive national convention centers

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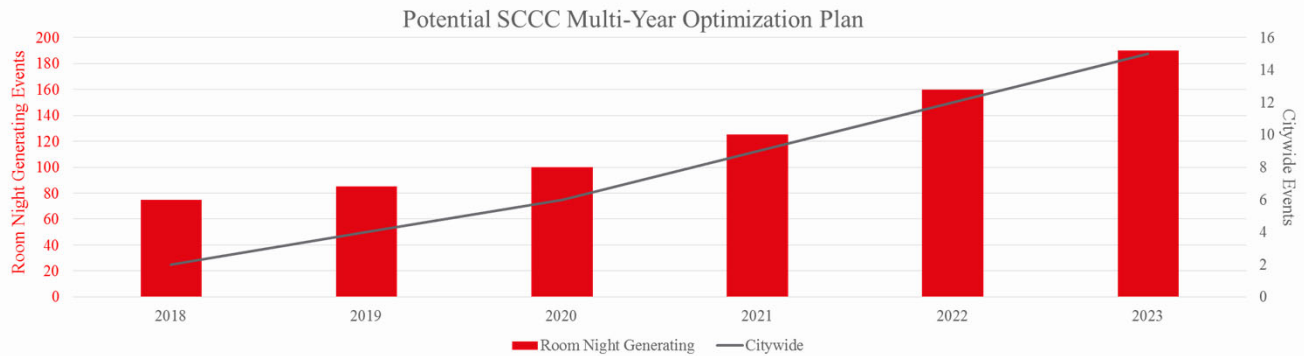
12

Multi-year Plan to Optimize the Building



Growing the room night generating events and citywides will generate increased economic impact.

- Potential shift in the mix of business in the SCCC will be an outcome of achieving the
- Growing to a minimum of 50% room night generating events could deliver 20,000+ new rooms on an annual basis
 - This potential equates to \$4 million in new rooms revenue and \$380,000 in new TOT collected annually*
 - The shift in business mix could affect the SCCC's bottom line revenue



*based on a \$200 market ADR – STR Source

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Impact of Optimization



An optimized SCCC will potentially have operating costs, but will generate the desired economic impact.

The SCCC should target a 70% occupancy level with the right mix of room night generating business

- The mix of business will need to balance bottom line revenue with economic impact

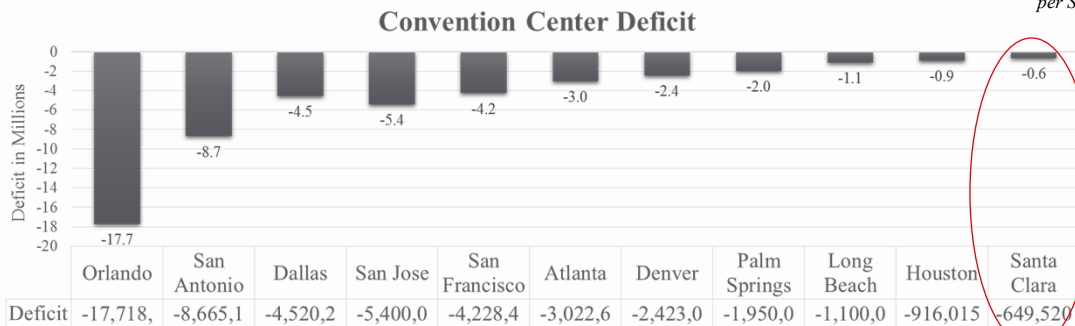
Running a Deficit

Active convention centers will run a deficit to achieve the occupancy and economic engine goals

- The average convention center averages a negative \$6.41 per exhibit square foot
- Using this average the Santa Clara Convention Center would run a \$649,000 deficit

-\$7.06

Average Convention Center Deficit per Square Foot



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Potential Renovations

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Renovations



JLL worked with the SCCC leadership on desired building improvements that would help convert business.

The SCCC staff has a six year Capital Improvement Plan (CIP) budget totaling over \$10 million

- The items included are both capital requests as well as furniture, fixtures and equipment (FF&E)
- Most of the items requested are repairs for existing material or equipment that is old needs to be replaced
 - Tables
 - Chairs
 - Podiums
 - Roll and Set Stage Units
 - Floor Boxes

JLL also interviewed clients that stated improvements to the building's functionality would vastly improve the experience

- Improved divisibility and flexibility – increase and improve air walls
- Improved technology
- Improved lighting
- Improved public areas and prefunction space as well as ingress/egress points
- Replace carpet and wall fixtures
- Redo all bathrooms
- Replace all finishes

Initial estimate for full renovation is \$71 million including the items requested in the CIP. JLL recommends funding this as a high priority.

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Renovation Conclusion



The renovation of SCCC is a higher priority than expansion.

A full renovation would support optimizing the current building as discussed earlier and confirming the market potential for Santa Clara.

- The current utilization does not validate the need for expansion.
 - However, lost business reports should be analyzed in Phase Two to determine what could be captured based on size.
- Client feedback supported the need to renovate as a first step.

Parking Considerations



Parking Considerations



JLL has worked with the City's former engineer and current consultant on the parking issues.

Current situation

- Current parking deck is shared with the Hyatt, Techmart and the SCCC
- Need increased and dedicated parking for Convention Center

Parking needs with Expansion

- Typical parking needs is 1 space per 200 net square feet of exhibit space
 - 500 new spaces with 100,000 net square feet of expansion is sufficient
 - Assumes future mix of business is as stated earlier in report
- SCCC & CVB suggests 2,250 new spaces - Solve current issues and new add new spaces
- JLL and the City's consultant estimated that 1,000 new spaces is sufficient

Options

- Buy out Techmart's spaces – 1,000+ spaces in the existing garage
 - Accommodate Techmart parking offsite
- Build a deck on the surface lot adjacent to the stadium – Estimated \$25 million
 - Question of land ownership after the settlement agreement?
 - 18 months to build a parking deck - considerations for the NFL schedule
- Tear down and rebuild the existing garage during the expansion
 - This would enable the existing garage space to be captured for expansion
 - 18+ months – displaced hotel, Techmart and SCCC parking in the interim
 - Develop a shared parking approach that would include Related



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Expansion Potential



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Expansion Potential



JLL worked with clients and the SCCC staff on the potential expansion to determine ranges of space needed.

Based on discussions with clients, JLL determined that between 100,000 and 200,000 gross square feet should be considered after renovation.

- This would achieve a maximum of 100,000 new net square feet of space doubling the current exhibit/flex space capacity

Santa Clara Convention Center Estimated Expansion Costs				
Gross Square Feet*	Cost per Square Foot**	Parking Spaces Needed	Cost per Space	Total Estimated Cost
200,000	\$600	1,000	\$25,000	\$145,000,000

*To achieve 100,000 net square, building 200,000 gross square feet is typically required.

**Cost per square foot is estimated based on current San Francisco/Bay Area and Silicon Valley construction rates.

Final finishing and materials may effect the cost per square foot.

***does not include demolition of existing garage.

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Key Considerations for Expansion



The following are key considerations for a potential expansion at the Santa Clara Convention Center:

1. The addition of 100,000 net square feet will require 200,000 gross square feet. The exact configuration should be determined during a full feasibility study.
2. This would put Santa Clara in the top 100 national convention centers based on current actual square footage.
3. Full feasibility should be conducted to determine addition details including site selection and viability as well as parking implications.
4. A typical expansion would require 12 to 18 months to complete and require closure of the SCCC for a period of time.
5. The most common funding strategies for convention center expansions are increased fees and/or taxes as a revenue stream for borrowing.
6. As stated earlier the renovation of the current building should be considered as a first step.

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Funding Options

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Required Funding

In order to raise enough funds to expand the SCCC, the City should consider multiple avenues to raise money.

JLL has reviewed the following fee options:

- Existing Transient Occupancy Tax (TOT)
- Existing Tourism Improvement District (TID)
- Community Facilities District (CFD/Mello-Roos)

The existing taxes raise approximately \$22 million annually.

- The existing CFD is dedicated to the stadium

With 11.5% tax on hotel rooms already in existence, what is feasible to add?

- The typical range is between 10% and 16%

Additional potential to monetize parking should be considered.

Tax	Rate	Annual Average Raised
Transient Occupancy Tax	9.5%	\$17,160,000 (5 year history)
Tourism Improvement District	\$1/night	\$1,000,000
Community Facilities District Tax	2%	\$4,500,000
Total Taxes and Fees on Hotel Rooms*	11.5% +\$1	\$22,660,000

*Excludes the California Assessment at \$0.50 per night.

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Funding Capacity



How much could be raised to finance an expansion?

The current taxes on hotel rooms totals 11.5% and could be increased or added to in order to raise new funds.

- JLL recommends staying within 15% in order to not negatively impact the market's desirability from a pricing standpoint
- JLL estimates that adding 2.5% through a new tax (CFD, TID, etc.) could potentially raise \$6,527,660 annually

	Rooms	Average Occupancy	ADR	New Tax Amount	Estimated Total Raised Annually
Existing Inventory	3,908	80%	\$200	2.50%	\$5,705,680.00
Planned New Inventory	563	80%	\$200	2.50%	\$821,980.00
Total Estimated Raised Annually					\$6,527,660.00

This takes into account the current hotel inventory and hotels that are planned to open.
Based on a 30 year term at an interest rate 5% this could raise 190,000,000

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Estimated Project Cost and Funding



Given the hard costs of expansion and the estimated parking needs.

JLL has estimated the total project costs and the funding that could be raised in the added tax scenario below.

- Based on this scenario, it is feasible at the estimated costs shown to raise enough funds over 30 years to pay for an expansion at the SCCC

Expansion Project Funding		Renovation Project Funding		Expansion Project Funding	
Expansion Costs (construction and FF&E)	\$125,000,000	Renovation Costs (construction and FF&E)	\$71,000,000	Parking Costs	\$25,000,000
Reserves Needed	\$10,000,000	Reserves Needed	\$10,000,000	Demolition Costs	\$3,000,000
Issuance Costs and other Fees	\$5,488,243	Issuance Costs and other Fees	\$2,891,311	Issuance Costs and other Fees	\$1,017,835
Total Project Cost	\$140,332,883	Total Project Cost	\$73,891,311	Total Project Cost	\$29,138,278

Potential Total Raised	
Total Raised with New 2.5% Tax	\$195,829,800
Total Raised Through Existing TOT	\$514,800,000
Total Funds Raised (over 30 years including new inventory)	\$710,629,800

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Summary of all future funding requirement



The following is a summary of the important future expenditures

1. Renovation and FF&E needs - \$73 million
2. Parking - \$29 million
3. Expansion - \$140 million

Total – \$242+ million

Funding capacity

Over the course of a 30-year loan, the new 2.5% tax combined with the existing TOT would raise over \$700 million.

- The existing CFD is the only dedicated fund to the stadium.
- Current TOT goes to the general fund.
- Could a future tax/assessment be dedicated?

Potential Total Raised	
Total Raised with New 2.5% Tax	\$195,829,800
Total Raised Through Existing TOT	\$514,800,000
Total Funds Raised (over 30 years including new inventory)	\$710,629,800

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Key Considerations



The City should consider the following implications:

- Space for an expansion is limited
 - Potential need to tear down the existing parking structure to capture that space
- Parking will remain an issue without additional spaces allocated to the SCCC
 - Could the Techmart parking agreement be bought out?
 - This could open up 1,000+ spaces without new construction and relocate the Techmart parking
 - Could a parking deck be built on the surface lot?
 - Is there additional land available to purchase for parking?
- Cost to demolish the existing garage is not included in the estimates
- The renovation is an important first step

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Thank you

*Dan Fenton, Executive Vice President
Global Tourism*

dan.fenton@am.jll.com

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MONTHLY REPORT

*Santa Clara CVB Citywide Report
October 2017*





Monthly Report

The Santa Clara CVB Monthly Report Citywide Event Goals

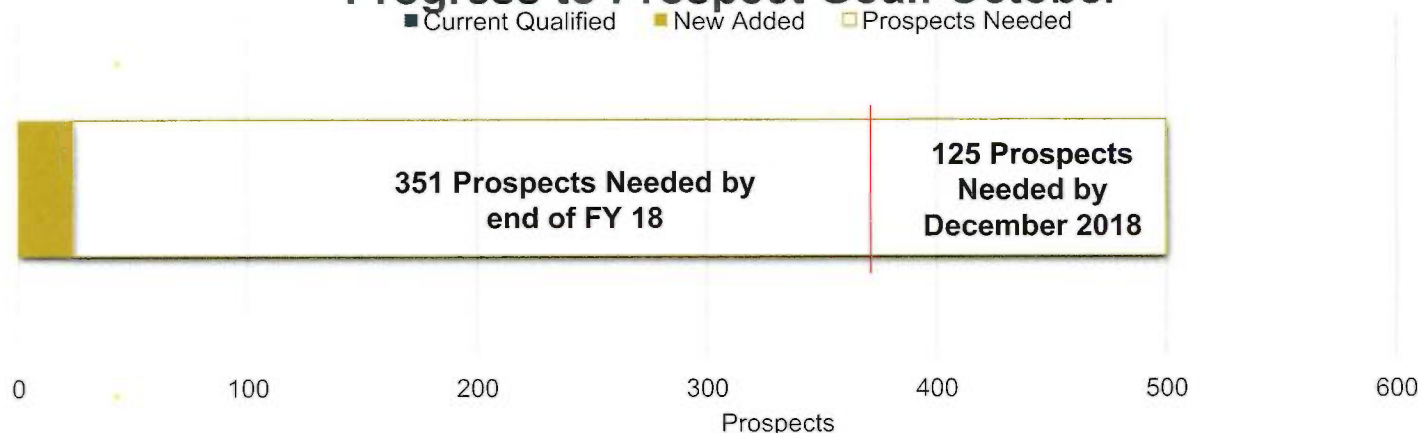
The Santa Clara CVB is currently implementing the activity goals from the JLL 2017 August report.

Prospects

This requires an ongoing 500 prospects being “worked” by the sales team. For purposes of this report the threshold includes all events with 600 peak room nights or greater.

The Santa Clara CVB has added 24 new prospects as of October 2017. This equates to 6% of the fiscal year goal to achieve 375 new SCCC prospects. At this pace, the Santa Clara CVB will add a total of 198 prospects or 53% of the goal by the end of the fiscal year. The total prospect activity goal of 500 is targeted to be achieved by December 2018.

Progress to Prospect Goal: October



From the start of the fiscal year and as of October 2017, 33 additional prospects have become lost business.



JLL

Monthly Report

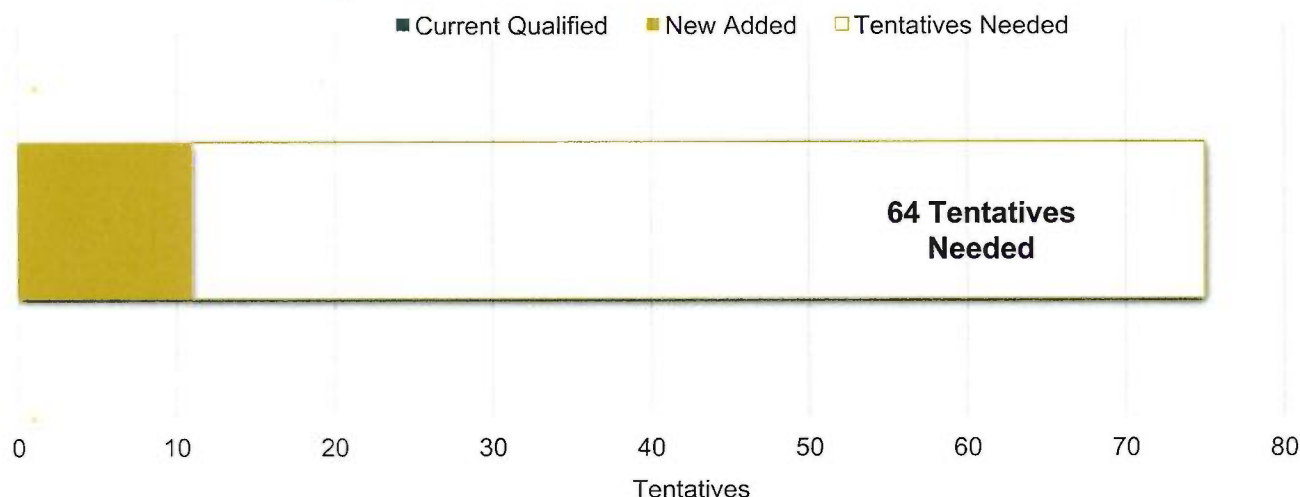
Tentative Lead

The activity goals include having 75 tentatives in play on an ongoing basis.

The Santa Clara CVB has added 11 tentative leads in October. This equates to 15% of the one-year goal.

At this pace, The Santa Clara CVB is on track to add 99 new tentatives by the end of the fiscal year. At this pace, The Santa Clara CVB will achieve 132% of the goal.

Progress to Tentative Goal: October

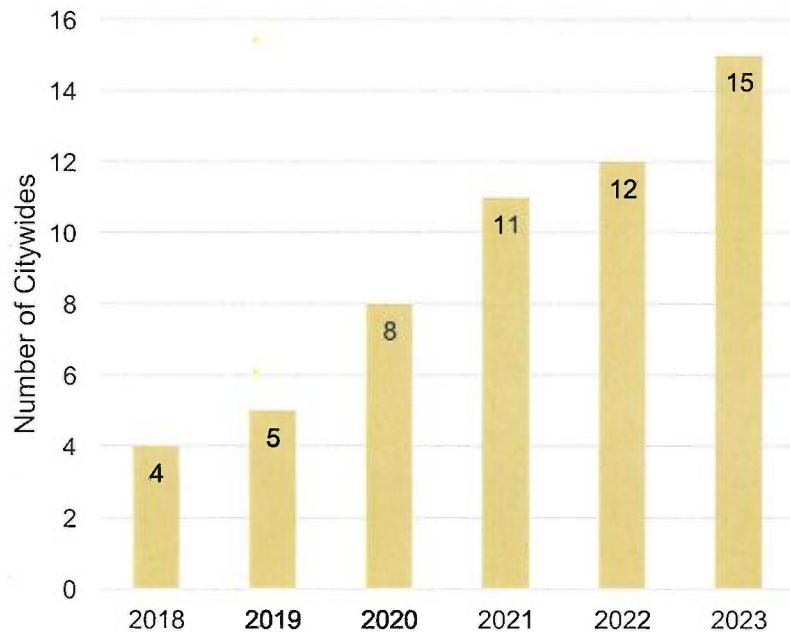


Definites

The goal is to have 15 Citywides on the calendar for every year from 2023 onward. To meet this goal, the Santa Clara CVB must book 54 incremental definite Citywides over the next 5 years.

As of October 2017, there are four Citywides booked into future years. This equates to 7% of the overall goal.

Citywides Booked into Future Years



Citywides Convened Each Year





Monthly Report

Next Steps

Set goals by sales manager:

- Prospects by quarter
- Prospects by month
- Definites by quarter
- Definites by month

Sample Sales Manager Goals Breakdown

Prospects									
FY 2018									
Sales Manager	Q2			Q3			Q4		
	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June
SM 1	8	8	8	8	8	8	9	9	9
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SM 5	8	8	8	8	8	8	9	9	9
Total	375								
Prospects									



JLL

Monthly Report

Questions?

Thank you.

Santa Clara Convention Center & CVB Phase One Presentation

Governance Model and Expansion Update
October 3, 2017



Overview of Today's Presentation



Update on the Santa Clara Convention Center and CVB Assessment

- **Stakeholder feedback on current model and future opportunities**
- **Current utilization of the SCCC including business mix**
- **Potential SCCC renovations needed and costs associated**
- **SCCC expansion potential including range of square footage and costs**
- **Potential parking needs for expansion and other City-related projects**
- **Possible funds raised through hotel tax and other potential sources**

Stakeholder Feedback on Operational Models



Model Options and Direction



Which model best fits the City and achieves the overall objectives from the stakeholder sessions?

- **Most effectively drive conventions and individual visitors**
- **Maximize convention center fiscal performance**
- **Mitigate cost/risk to City**
- **Positively impact the community**
- **Function seamlessly and engage stakeholders**
- **Provide transparency in measurement and reporting**

Stakeholder Meetings Background

- Hotels and Hospitality Leaders
- SCCC Vendors
- Labor Union Leaders
- Levi's Stadium
- Great America
- Related Companies
- Internal CVB and SCCC Staff
- Meeting Planners
- Chamber

It was determined that an “authority model” with specific objectives would be the best fit for Santa Clara.

- **There is an opportunity to include a private operator within this authority model to streamline operational effectiveness**

Model Options and Direction



Which model best fits the City and achieves the overall objectives from the stakeholder sessions?

- **Most effectively drive conventions and individual visitors**
- **Maximize convention center fiscal performance**
- **Mitigate cost/risk to City**
- **Positively impact the community**
- **Function seamlessly and engage stakeholders**
- **Provide transparency in measurement and reporting**

JLL reviewed the following models:

1. Current model under Chamber of Commerce
2. City Run Convention Center and CVB
3. City Run Convention Center with a Private Non-Profit CVB
4. Private For-Profit Center Operator with a City Run CVB
5. Private For-Profit Center Operator with a Private Non-Profit CVB
6. Private Non-Profit Authority Operating Both the Center & CVB

It was determined that an “authority model” with specific objectives would be the best fit for Santa Clara.

- **There is an opportunity to include a private operator within this authority model to streamline operational effectiveness**

Model Considerations



Model Description:

- **In this model a non-profit Authority would be formed to oversee the Convention & Visitors Bureau and the Convention Center as a singular, stand alone organization. The Authority would have a contractual relationship with the City of Santa Clara.**
- **This differs from the current model in that the Authority would be its own 501(c)6 and have a fiduciary representative Board of Directors.**

Key Considerations:

- **Management contract for a private operator is still under consideration**
 - Potential value includes operational efficiency, resource opportunities as well as potential loss of operational control, financial guarantee and others.
 - Management contracts can reduce costs in some cases. However this should be reviewed with the current operation's finances
- **Meeting planner and client engagement should be a part of the future direction**
 - Clients should have input when it comes to trends, layouts and future space planning opportunities
 - The recommended model should consider a client advisory council or leadership group to provide regular feedback moving forward
- **Importance of an engaged and effective Board**
 - An effective Board is critical to the success of a new organization
 - It will be important for the City Council to conduct due diligence to appoint or support viable and engaged Board members with industry/related expertise

Key priorities for the new organization should be what is most important for Santa Clara.

- Ongoing engagement will solidify these priorities.

Authority Model



The Santa Clara Model: Non-Profit Authority Operating Both the Convention Center & CVB



Similar Models exist in:

1. San Jose
2. Charlotte
3. Houston
4. St. Paul, Minn



Santa Clara Convention Center Utilization & Optimization

SCCC Current Utilization

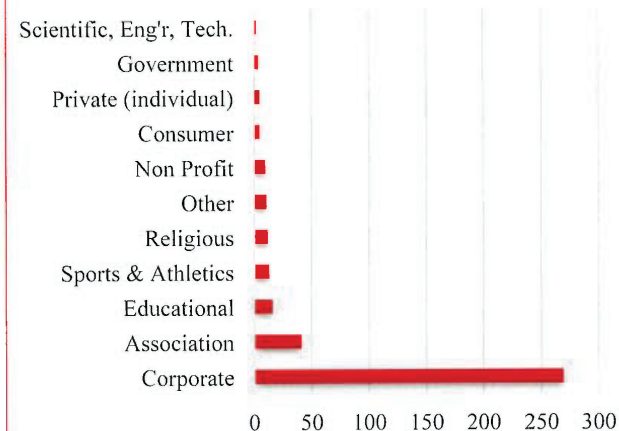


JLL worked with the SCCC and CVB to understand how the SCCC is currently being booked and utilized.

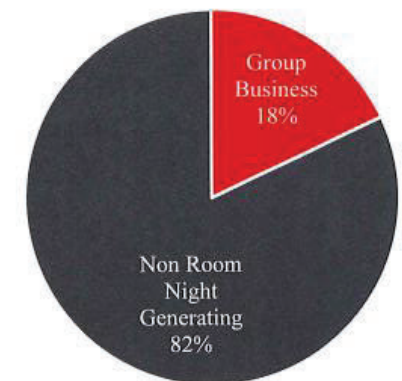
Cumulative Findings

- **FY 2015 – 422 total events**
 - 20% of all events had room nights
 - 85 events with room nights – 51,959
 - 3 citywide conventions
 - 611 room nights average per room night generating event
- **FY 2016 – 447 total events**
 - 16% of all events had room nights
 - 70 events with room nights – 41,049
 - 3 citywide conventions
 - 586 room nights average per room night generating event
 - Super Bowl 50 accounted for 9,200+ rooms

Average Number of Events by Market



Utilization



Citywide event is defined as an event with 600 rooms on peak or greater

SCCC Group Level of Activity

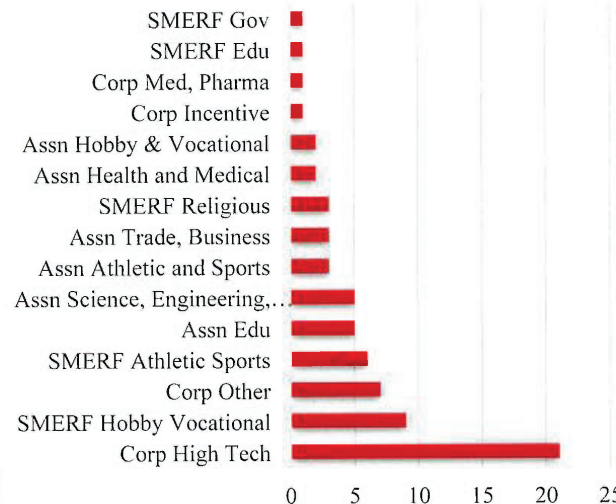


Currently there are over 400 total events annually. Of those, 77 on average generate room nights annually.

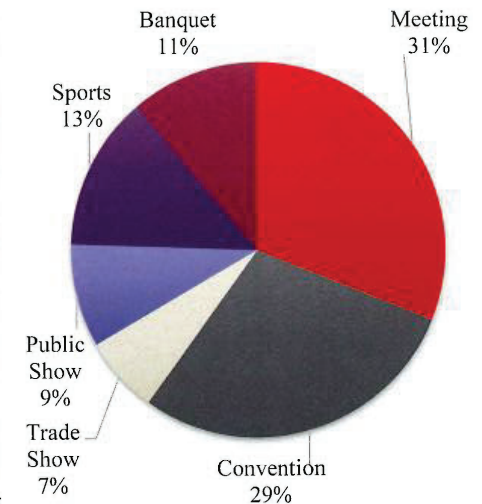
Group Business Findings

- **FY 2015 – 85 group business events**
 - 51,959 room nights
 - 611 average total room nights per event
 - 187 average peak room nights per event
 - 3 citywide conventions
- **FY 2016 – 70 group business events**
 - 41,049 room nights
 - 586 average total room nights per event
 - 194 average peak room nights per event
 - 3 citywide conventions
- **Markets**
 - Corporate tech and hobby/vocational are the top markets
 - Meetings and conventions drive 50% of the group business

Average Number of Events by Market



Average Number of Events by Type



Citywide event is defined as an event with 600 rooms on peak or greater

Hyatt Bookings



The Hyatt's agreement includes control of 6 of 8 sections in the ballroom and the ability to book G & H.

The Hyatt's bookings generate room nights as well as rental revenue to the SCCC.

- **FY 2015 – 22 additional bookings**
 - 5% of all events
 - 10,728 additional room nights generated
- **FY 2016 – 24 additional bookings**
 - 5% of all events
 - 10,666 additional room nights generated

Without the ballroom these bookings would not have been achieved

SCCC Optimization - Overview



JLL's optimization process considers the total space available at the SCCC and how best to fill it based on a priority to maximize economic impact.

- **The SCCC is currently “busy” with an average of 471 events annually**
 - 77 events on average have room nights associated with them.
 - 3 events on average (<1%) are citywide events, meaning they impact multiple hotels and generate significant economic impact
 - The most important shift to optimize the SCCC will be to grow the room night generating business from 22% to over 50% of the available space
 - Potential goal would be to increase the number of citywides from 1% to 20%* or from 3 to a range of 10-20*
 - The consideration for hotel inventory will impact the actual goal for future citywide events annually
 - JLL will finalize this goal in the next phase of the process
 - Initial multiyear goal could potentially be 190 room night generating events per year and 15 citywide events per year
- **How do we get there?**
 - Validate the sales and marketing resources needed
 - Develop focused prospecting approach to increase sales activity
 - Determine opportunities to increase overall competitiveness

*Based on average business mix from competitive national convention centers

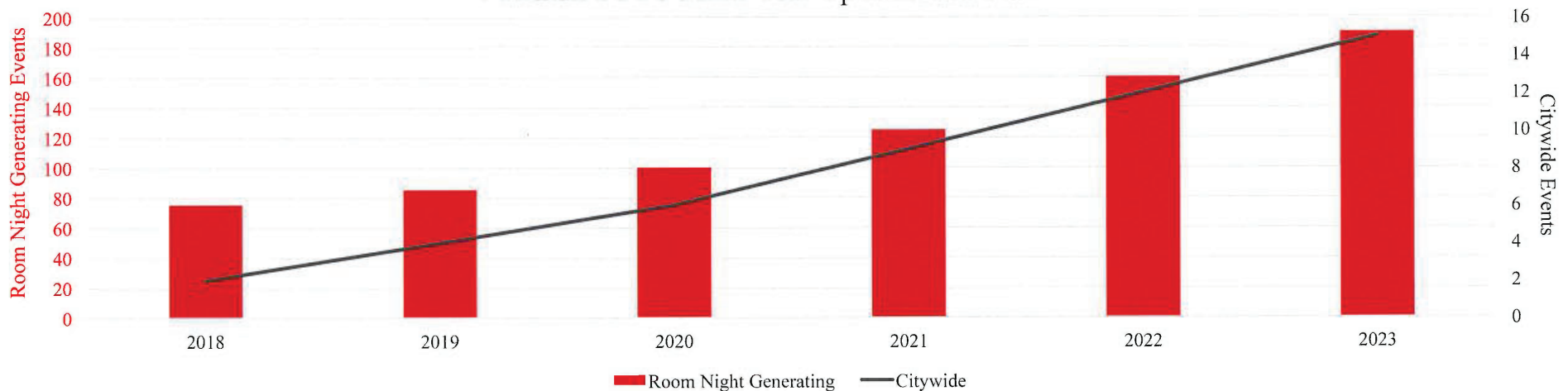
Multi-year Plan to Optimize the Building



Growing the room night generating events and citywides will generate increased economic impact.

- **Potential shift in the mix of business in the SCCC will be an outcome of achieving the**
- **Growing to a minimum of 50% room night generating events could deliver 20,000+ new rooms on an annual basis**
 - This potential equates to \$4 million in new rooms revenue and \$380,000 in new TOT collected annually*
 - The shift in business mix could affect the SCCC's bottom line revenue

Potential SCCC Multi-Year Optimization Plan



*based on a \$200 market ADR – STR Source

Impact of Optimization



An optimized SCCC will potentially have operating costs, but will generate the desired economic impact.

The SCCC should target a 70% occupancy level with the right mix of room night generating business

- The mix of business will need to balance bottom line revenue with economic impact

Potential to Run a Deficit

Active convention centers will run a deficit to achieve the occupancy and economic engine goals

- Typical convention centers averages a negative \$7.06 per exhibit square foot
- Using this average the Santa Clara Convention Center would run a \$649,520 deficit

-\$7.06

Average Convention Center Deficit per Square Foot



Potential Renovations

Renovations



JLL worked with the SCCC leadership on desired building improvements that would help convert business.

The SCCC staff has a six year Capital Improvement Plan (CIP) budget totaling over \$10 million

- The items included are both capital requests as well as furniture, fixtures and equipment (FF&E)
- Most of the items requested are repairs for existing material or equipment that is old needs to be replaced
 - Tables
 - Chairs
 - Podiums
 - Roll and Set Stage Units
 - Floor Boxes

JLL also interviewed clients that stated improvements to the building's functionality would vastly improve the experience

- Improved divisibility and flexibility – increase and improve air walls
- Improved technology
- Improved lighting
- Improved public areas and prefunction space as well as ingress/egress points
- Replace carpet and wall fixtures
- Redo all bathrooms
- Replace all finishes

Initial estimate for full renovation is \$71 million including the items requested in the CIP. JLL recommends funding this as a high priority.

Renovation Conclusion



The renovation of SCCC is a higher priority than expansion.

A full renovation would support optimizing the current building as discussed earlier and confirming the market potential for Santa Clara.

- The current utilization does not validate the need for expansion.
 - However, lost business reports should be analyzed in Phase Two to determine what could be captured based on size.
- Client feedback supported the need to renovate as a first step.



Parking Considerations

Parking Considerations



JLL has worked with the City's former engineer and current consultant on the parking issues.

Current situation

- Current parking deck is shared with the Hyatt, Techmart and the SCCC
- Need increased and dedicated parking for Convention Center

Parking needs with Expansion

- Typical parking needs is 1 space per 200 net square feet of exhibit space
 - 500 new spaces with 100,000 net square feet of expansion is sufficient
 - Assumes future mix of business is as stated earlier in report
- SCCC & CVB suggests 2,250 new spaces - Solve current issues and new add new spaces
- JLL and the City's consultant estimated that 1,000 new spaces is sufficient



Expansion Potential

Expansion Potential



JLL worked with clients and the SCCC staff on the potential expansion to determine ranges of space needed.

Based on discussions with clients, JLL determined that between 100,000 and 200,000 gross square feet should be considered after renovation.

- This would achieve a maximum of 100,000 new net square feet of space doubling the current exhibit/flex space capacity

Santa Clara Convention Center Estimated Expansion Costs

Gross Square Feet*	Cost per Square Foot**	Parking Spaces Needed	Cost per Space	Total Estimated Cost
200,000	\$1,000	1,000	\$35,000	\$235,000,000

*To achieve 100,000 net square, building 200,000 gross square feet is typically required.

**Cost per square foot is estimated based on Santa Clara historic construction rates combined with soft costs and ownership costs.

Final finishing and materials may effect the cost per square foot.

Key Considerations for Expansion



The following are key considerations for a potential expansion at the Santa Clara Convention Center:

1. The addition of 100,000 net square feet will require 200,000 gross square feet. The exact configuration should be determined during a full feasibility study.
2. This would put Santa Clara in the top 100 national convention centers based on current actual square footage.
3. Full feasibility should be conducted to determine addition details including site selection and viability as well as parking implications.
4. A typical expansion would require 12 to 18 months to complete and require closure of the SCCC for a period of time.
5. The most common funding strategies for convention center expansions are increased fees and/or taxes as a revenue stream for borrowing.
6. As stated earlier the renovation of the current building should be considered as a first step.

Funding Options

Taxes & Fees on Current Hotel Rooms



In order to raise enough funds to expand the SCCC, the City should consider multiple avenues to raise money.

JLL has reviewed the current assessments and fees levied on hotel rooms in Santa Clara:

- Existing Transient Occupancy Tax (TOT)
- Existing Tourism Improvement District (TID)
- Community Facilities District (CFD/Mello-Roos)

The existing taxes raise approximately \$22 million annually.

- The existing CFD is dedicated to the stadium
- The existing TOT flows into the City's General Fund

With 11.5% tax on hotel rooms already in existence, what is feasible to add?

- The typical range is between 10% and 16%

Additional potential to monetize parking should be considered.

Tax	Rate	Annual Average Raised
Transient Occupancy Tax	9.5%	\$17,160,000 (5 year history)
Tourism Improvement District	\$1/night	\$1,000,000
Community Facilities District Tax	2%	\$4,500,000
Total Taxes and Fees on Hotel Rooms*	11.5% +\$1	\$22,660,000

*Excludes the California Assessment at \$0.50 per night.

Funding Capacity



How much could be raised to finance an expansion?

The current taxes on hotel rooms totals 11.5% and could be increased or added to in order to raise new funds.

- JLL recommends staying within 15% in order to not negatively impact the market's desirability from a pricing standpoint
- JLL estimates that adding 2.5% through a new tax (CFD, TID, etc.) could potentially raise \$6,527,660 annually

	Rooms	Average Occupancy	ADR	New Tax Amount	Estimated Total Raised Annually
Existing Inventory	3,908	80%	\$200	2.50%	\$5,705,680.00
Planned New Inventory	563	80%	\$200	2.50%	\$821,980.00
Total Estimated Raised Annually					\$6,527,660.00
Total Estimated Raised Over 30 Years					\$195,829,800

This takes into account the current hotel inventory and hotels that are planned to open.
Based on a 30 year term at an interest rate 5% this could raise over \$195 million.

Estimated Project Cost and Funding



Given the hard costs of expansion and the estimated parking needs.

JLL has estimated the total project costs and the funding that could be raised in the added tax scenario below.

- Based on this scenario, it is feasible at the estimated costs shown to raise enough funds over 30 years to pay for an expansion at the SCCC

Expansion Project Funding		Renovation Project Funding		Parking Project Funding	
Expansion Costs (construction and soft costs)	\$200,000,000	Renovation Costs (construction and FF&E)	\$71,000,000	Parking Costs (construction)	\$50,000,000
Reserves Needed	\$10,000,000	Reserves Needed	\$10,000,000	Demolition Costs	\$7,000,000
Issuance Costs & Other Fees	\$9,338,243	Issuance Costs & Other Fees	\$2,891,311	Issuance Costs & Other Fees	\$1,140,000
Total Project Cost	\$219,338,243	Total Project Cost	\$73,891,311	Total Project Cost	\$58,140,000
Cost of Inflation	3% every year	Cost of Inflation	3% every year	Cost of Inflation	3% every year
Project Cost in 5 Years	246,867,124	Project Cost in 5 Years	\$85,660,281	Project Cost in 5 Years	\$67,400,195
Project Cost in 10 Years	286,186,657	Project Cost in 10 Years	\$99,303,743	Project Cost in 10 Years	\$78,135,298

Summary of Estimated Costs and Funding



The following is a summary of the important future expenditures

1. Renovation and FF&E needs - \$73 million
2. Parking - \$58 million
3. Expansion - \$219 million

Total – \$350+ million

Funding capacity

Over the course of a 30-year loan, the new 2.5% tax would raise over \$195 million.

- The existing CFD is the only dedicated fund to the stadium.
- Current TOT goes to the general fund.
 - If TOT is raised, the CFD would receive incremental funds to reimburse the hotels per the CFD contract.
 - This would impact the ability to raise the full \$195 million through a new 2.5% assessment as shown previously.
 - This would be negotiated if it moved forward.
- The process to dedicate the funds will be reviewed.

Key Considerations



The City should consider the following implications:

- Space for an expansion is limited
 - Potential need to tear down the existing parking structure to capture that space
- Parking will remain an issue without additional spaces allocated to the SCCC
 - Could the Techmart parking agreement be bought out?
 - This could open up 1,000+ spaces without new construction and relocate the Techmart parking
 - Could a parking deck be built on the surface lot?
 - Is there additional land available to purchase for parking?
- Cost to demolish the existing garage is not included in the estimates
- The renovation is an important first step



Thank you

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Global Tourism*

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MONTHLY REPORT

*Santa Clara CVB Citywide Report
November 2017*





Monthly Report

The Santa Clara CVB Monthly Report Citywide Event Goals

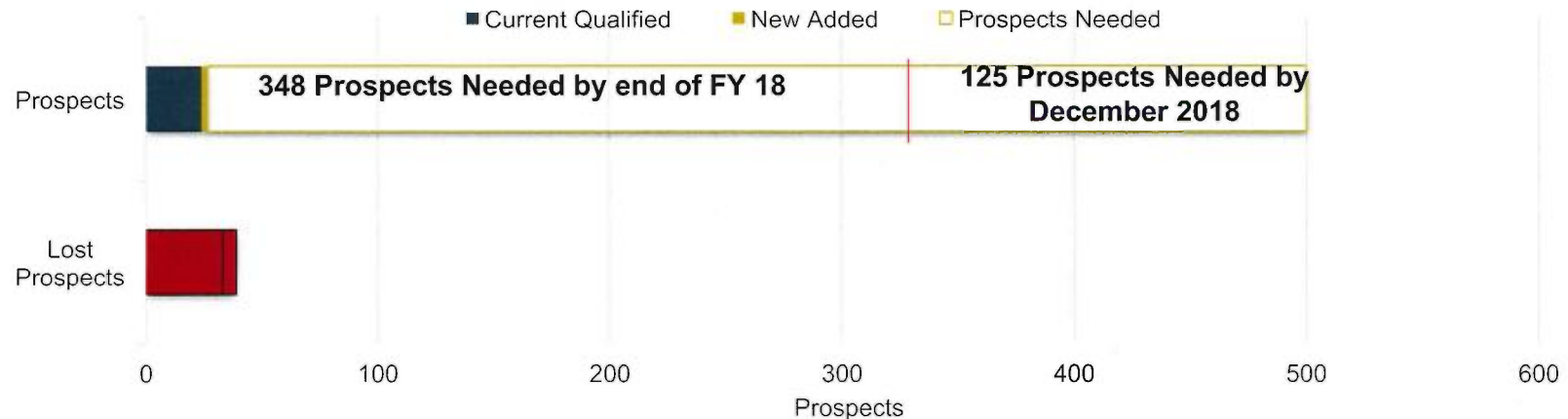
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Prospects

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Progress to Prospect Goal: November



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Monthly Report

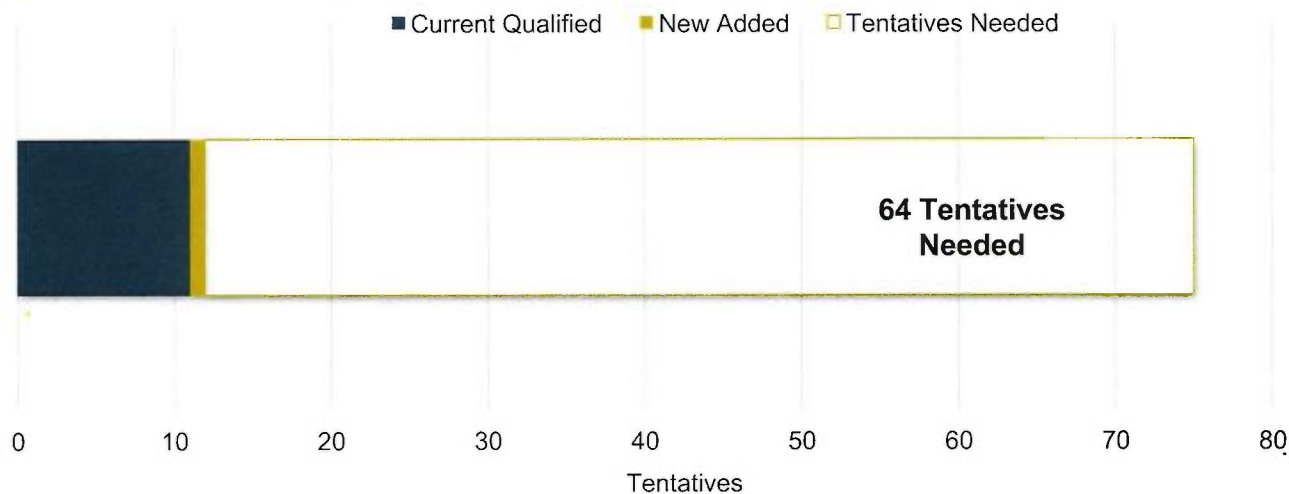
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Progress to Tentative Goal: November





JLL

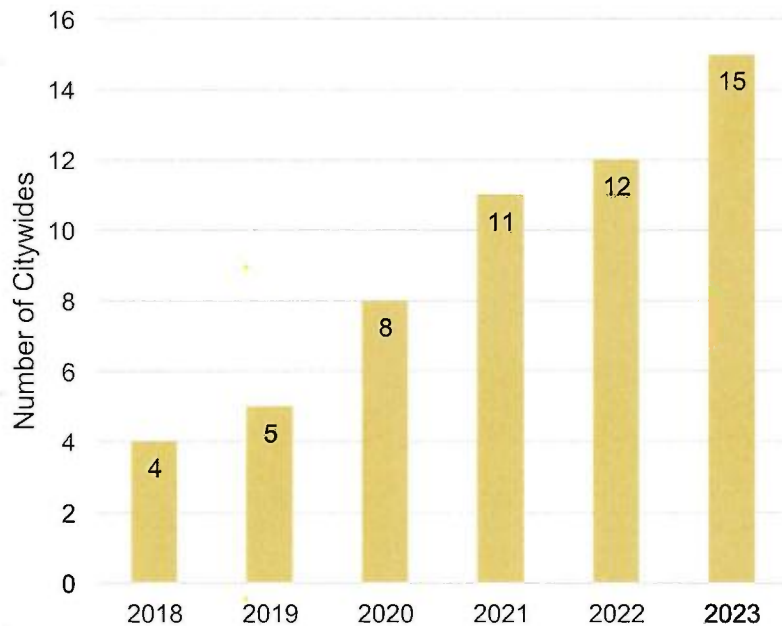
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Citywides Booked into Future Years



Citywides Convened Each Year





Monthly Report

Next Steps

Set goals by sales manager:

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Total	375								
Prospects									



Monthly Report

Questions?

Thank you.

Impact of Grand Ballroom Sections G & H

November 1, 2017

The nature of the Santa Clara Convention Center (SCCC) booking capabilities and its tenants is complex and unique in this industry. A typical convention center has one primary sales engine and a secondary short term supplemental sales effort which are collaborating under the same booking policy or guideline. The SCCC has three sales entities that can book space into the building and each have unique access and terms by which this is accomplished. These entities include the Santa Clara Convention & Visitors Bureau (CVB), the SCCC in-house sales staff and the Hyatt Regency Santa Clara (Hyatt). The booking policies and parameters for each entity is laid out below:

- Santa Clara CVB
 - The CVB has 1st option holds more than a year out from the meeting date for groups with 800 or more Santa Clara hotel room nights using a minimum of 50,000 square feet of exhibit or combined exhibit and Mission City Ballroom space. In addition, there must be a minimum revenue production of \$91,000 if convening mid-week.
 - The CVB also has 1st option holds 2 years out if Santa Clara hotel room nights are more than 500 and less than 800 with a minimum of 25,000 square feet of exhibit space or Mission City Ballroom. In addition, the minimum revenue production of \$71,000 to \$90,000 is required when convening midweek.
- Santa Clara Convention Center
 - The SCCC sales effort can secure space within six months for meeting rooms 201-212, Great America Ballrooms J-K, Great America Meeting Rooms 1-3 and the Grand Ballrooms G-H. In addition, space can be secured further out when booked in conjunction with exhibit halls. Also, space can be secured beyond these guidelines once the exhibit halls and Mission City Ballroom are contracted.
 - Within one year the SCCC sales staff can book the Theatre, Exhibit Halls A-D, and the Mission City Ballroom. Space can be secured up to 14 months out if event is a B level piece of business and 18 months out if it is an A level piece of business.
- Hyatt Hotel
 - The Hyatt has the authority to reserve/contract Grand Ballroom sections G & H via the SCCC up to four years into the future based on availability. The Hyatt is given preferential booking opportunities in the policy that the SCCC makes every effort to first book the new ballroom space whenever possible to give the Hyatt an increased opportunity to book Grand Ballroom sections G & H.

The purpose of a booking policy is to establish the priorities for the Convention Center and focus the sales and marketing efforts on securing the “highest and best” use meetings and conventions for Santa Clara. JLL is developing long term goals for “Citywide” groups that have the highest overall impact for Santa Clara and positively impact multiple Santa Clara hotels. This must be taken into consideration when assessing the impact of reducing the space that is available for these highly-coveted conventions. These groups will most likely require all of the available space at the convention center to accommodate their needs. JLL is currently working on a goal setting process with a likely

goal of convening 15 to 20 of these Citywide group as a target on an annual basis. The elimination of G & H as available space will impact the number of high priority groups. On average a citywide group brings over \$150,000 in gross to the center and roughly over \$578,000 in economic impact to the City.

Calendar Data Review

JLL has also reviewed recent calendar data to understand the impact of G & H when booked by the SCCC or the CVB. In accordance with the booking policy, all SCCC bookings are contracted within six months for G & H and the CVB can book a year to two years out, while the Hyatt can book up to four years out from the date of the contracted event.

Using the full calendar year of 2015 as the sample year, the SCCC and CVB booked G & H a total of 35 times. This equated to \$2.9 million in gross revenue and over 3,700 hotel room nights in Santa Clara. Of the \$2.9 million in gross revenue just over \$1 million would flow directly back to the SCCC. The remaining revenue would impact the partner vendors for food and beverage, audio visual, IT, electrical and others. In addition, the hotel rooms associated with these bookings represent nearly \$800,000 in hotel room revenue. Without the SCCC and CVB bookings in G&H on a short-term basis, the net loss would represent over a \$1 million in revenue to the center and nearly \$800,000 in hotel room revenue impact to the city annually.

Grand Ballroom spaces G & H are a "last resort" booking location for the SCCC sales effort in accordance with the booking policy and often actively sells other spaces ahead of G & H. However, as stated above, without the ability to sell and book G & H, the SCCC would not be a competitive meeting and event package with the larger, more desirable groups. Grand Ballroom sections G & H gives the SCCC facility the square footage needed to compete with other regional centers including the San Jose Convention Center and the Moscone Center in San Francisco, which keeps local, short term business in the City of Santa Clara.

Future Potential

In addition, the CVB has booked Grand Ballroom sections G & H in future years representing over 44,000 hotel room nights and \$8.9 million in hotel rooms revenue to the City and potentially over \$4 million in revenue to the SCCC. Understanding what is currently on the books and the potential of the facility in the future under the new guidance that JLL is implementing with the sales staff, the space at the SCCC including G & H is virtually untapped. If the proposed goal of growing citywide events from three to 15 annually is adopted and achieved an additional 17,000 room nights and \$5.1 million in SCCC gross revenue could be at risk annually if the booking policy for G & H is changed.

Grand Ballroom sections G & H are valuable spaces in the SCCC to all parties currently utilizing the facility. At this point, the synergistic relationship between the SCCC and the Hyatt has worked well when booking G & H.

SCCC G & H Bookings Impact					
	Total Events	Total Hotel Rooms	Hotel Rooms Revenue	SCCC Gross Revenue	Economic Impact
Current Impact	35	3,745	\$800,000	\$2.9 million	\$995,100
Future Impact	47	61,000	\$8.9 million	\$5.1 million	\$8.6 million

Conclusion

As the above table indicates, lost SCCC revenue and associated rooms nights based on based on historic usage would be \$2.9 million and 3,745 hotel rooms annually. The potential lost revenue based on the new goals for the center equates to \$5.1 million and a generation of 61,000 new hotel room nights over the next five years. The combination

of these two data points demonstrate that the removal of the G & H space will have a substantial impact on Santa Clara and its key stakeholders.

Santa Clara Convention Center Utilization & Optimization

SCCC Current Utilization

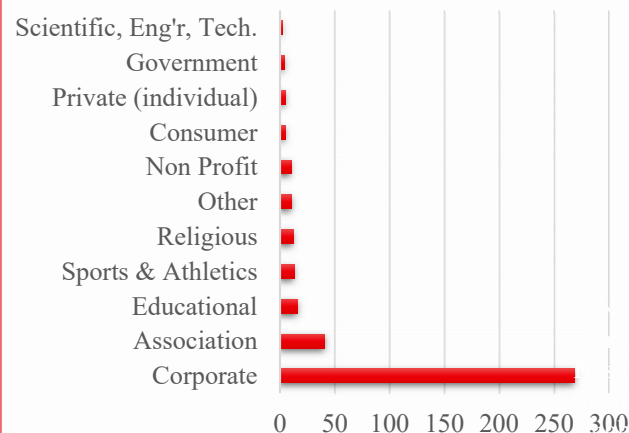


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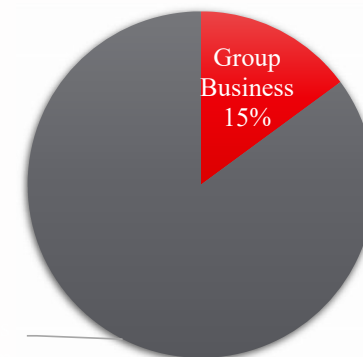
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- **FY 2015 – 422 total events**
 - 18% of all events had room nights
 - 85 events with room nights – 51,959
 - 3 citywide conventions
 - 611 room nights average per room night generating event
- **FY 2016 – 447 total events**
 - 18% of all events had room nights
 - 70 events with room nights – 41,049
 - 3 citywide conventions
 - 586 room nights average per room night generating event
 - Super Bowl 50 accounted for 9,200+ rooms

Average Number of Events by Market



Average Utilization by Event Type



Citywide event is defined as an event with 600 rooms on peak or greater

SCCC Group Level of Activity



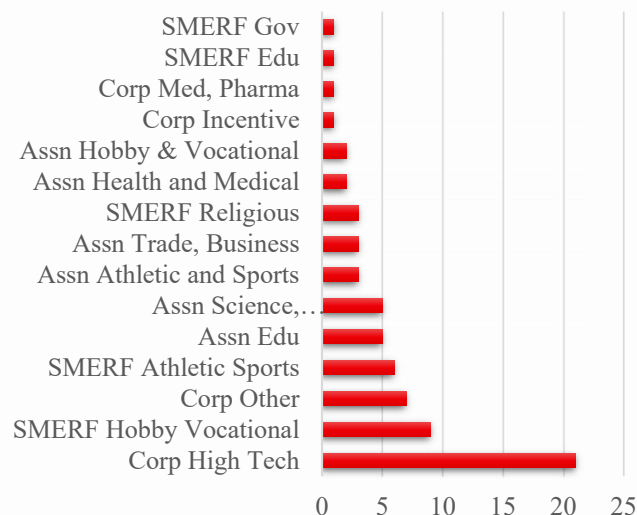
Currently there are over 400 total events annually. Of those, 77 on average generate room nights annually.

Group Business Findings

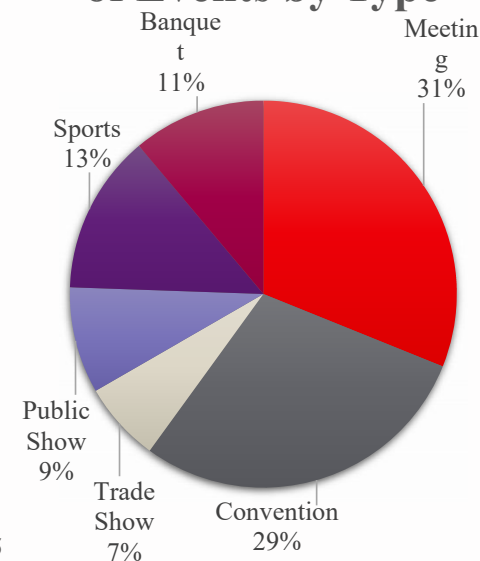
- **FY 2015 – 85 group business events**
 - 51,959 room nights
 - 611 average total room nights per event
 - 187 average peak room nights per event
 - 3 citywide conventions
- **FY 2016 – 70 group business events**
 - 41,049 room nights
 - 586 average total room nights per event
 - 194 average peak room nights per event
 - 3 citywide conventions
- **Markets**
 - Corporate tech and hobby/vocational are the top markets
 - Meetings and conventions drive 50% of the group business

Citywide event is defined as an event with 600 rooms on peak or greater

Average Number of Events by Market



Average Number of Events by Type



Hyatt Bookings



The Hyatt's agreement includes control of 6 of 8 sections in the ballroom and the ability to book G & H.

The Hyatt's bookings generate room nights as well as rental revenue to the SCCC.

- **FY 2015 – 22 additional bookings**
 - 5% of all events
 - 10,728 additional room nights generated
- **FY 2016 – 24 additional bookings**
 - 5% of all events
 - 10,666 additional room nights generated

Without the ballroom these bookings would not have been achieved

SCCC Optimization - Overview



JLL's optimization process considers the total space available at the SCCC and how best to fill it based on a priority to maximize economic impact.

- **The SCCC is currently “busy” with an average of 471 events annually**
 - 77 events on average have room nights associated with them.
 - 3 events on average (<1%) are citywide events, meaning they impact multiple hotels and generate significant economic impact
 - The most important shift to optimize the SCCC will be to grow the room night generating business from 22% to over 50% of the available space
 - Potential goal would be to increase the number of citywides from 1% to 20%* or from 3 to a range of 10-20*
 - The consideration for hotel inventory will impact the actual goal for future citywide events annually
 - JLL will finalize this goal in the next phase of the process
 - Initial multiyear goal could potentially be 190 room night generating events per year and 15 citywide events per year
- **How do we get there?**
 - Validate the sales and marketing resources needed
 - Develop focused prospecting approach to increase sales activity
 - Determine opportunities to increase overall competitiveness

*Based on average business mix from competitive national convention centers

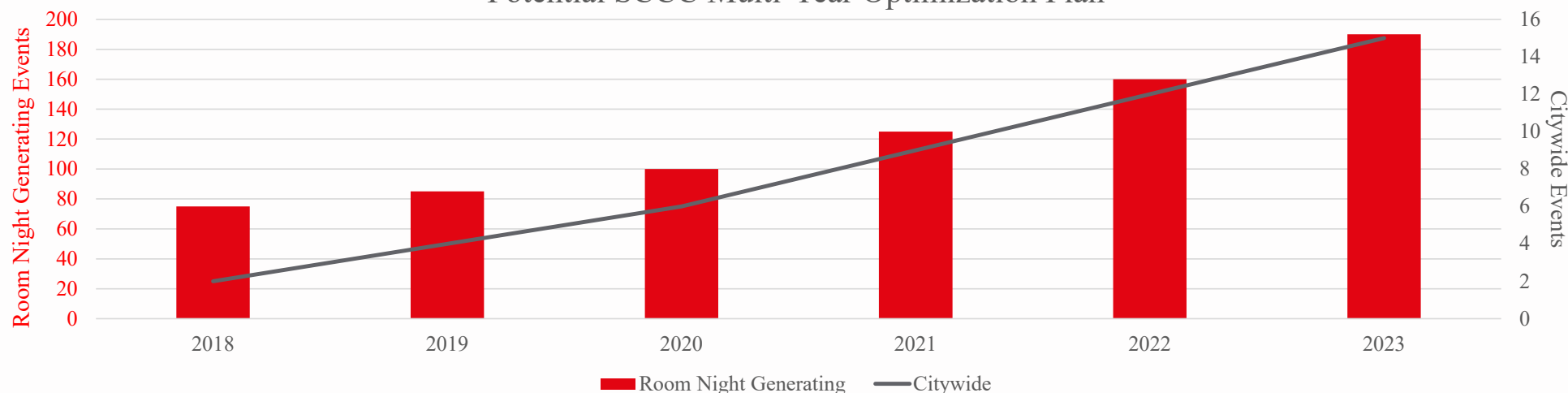
Multi-year Plan to Optimize the Building



Growing the room night generating events and citywides will generate increased economic impact.

- **Potential shift in the mix of business in the SCCC will be an outcome of achieving the**
- **Growing to a minimum of 50% room night generating events could deliver 20,000+ new rooms on an annual basis**
 - This potential equates to \$4 million in new rooms revenue and \$380,000 in new TOT collected annually*
 - The shift in business mix could affect the SCCC's bottom line revenue

Potential SCCC Multi-Year Optimization Plan

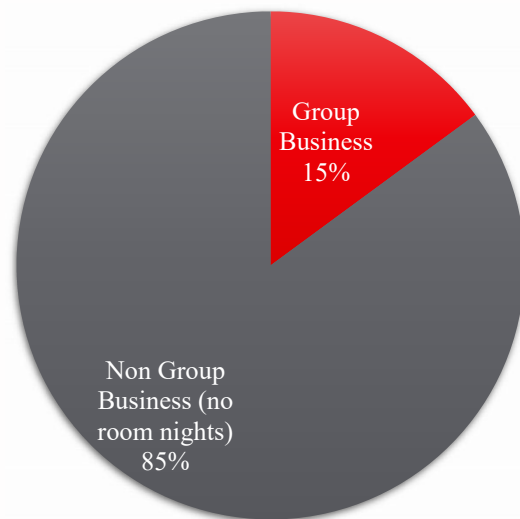


*based on a \$200 market ADR – STR Source

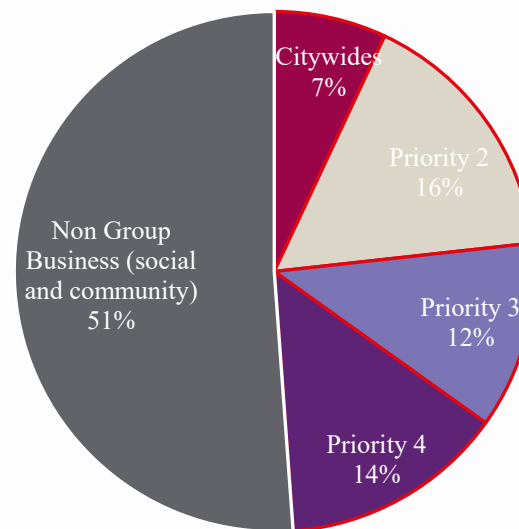
SCCC Optimization Before & After



SCCC Current Utilization Utilization by Event Type



SCCC Optimization Utilization by Event Type



Group business grows to **49%** of the mix of business

Impact of Optimization



An optimized SCCC will potentially have operating costs, but will generate the desired economic impact.

The SCCC should target a 70% occupancy level with the right mix of room night generating business

- The mix of business will need to balance bottom line revenue with economic impact

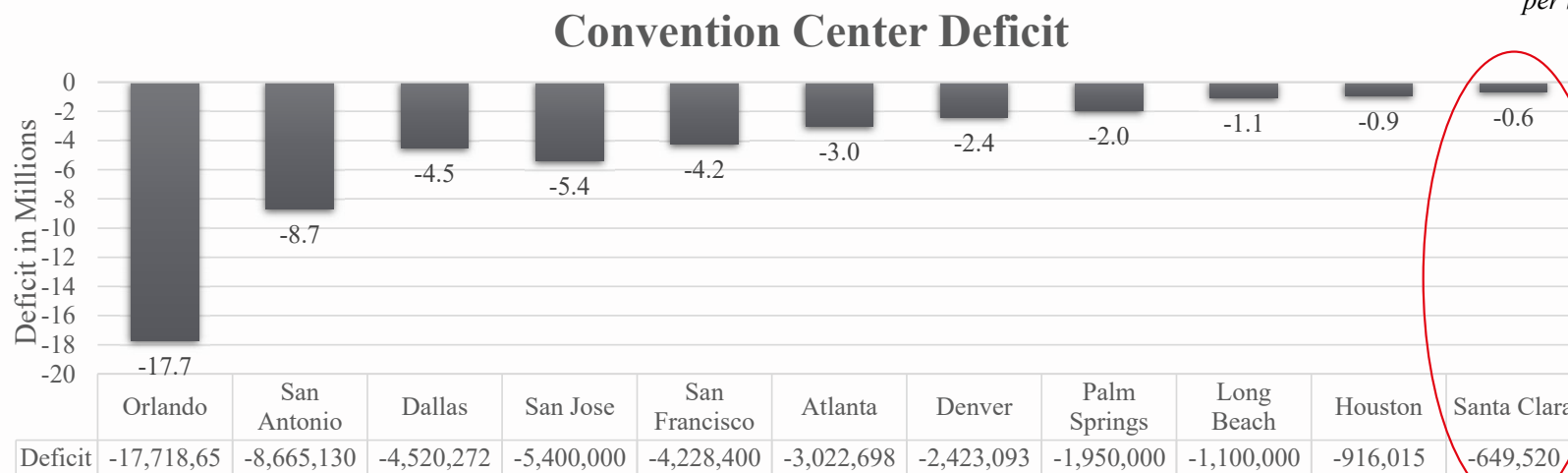
Running a Deficit

Active convention centers will run a deficit to achieve the occupancy and economic engine goals

- The average convention center averages a negative \$6.41 per exhibit square foot
- Using this average the Santa Clara Convention Center would run a \$649,000 deficit

-\$6.41

*Average Convention Center Deficit
per Square Foot*





City of Santa Clara

Convention Center & CVB Structure

Update on Governance,
Models & Funding
Phased Plan



Goals

Objective for today's session is to gain consensus on:

- ✓ Structure
- ✓ Governance
- ✓ Funding

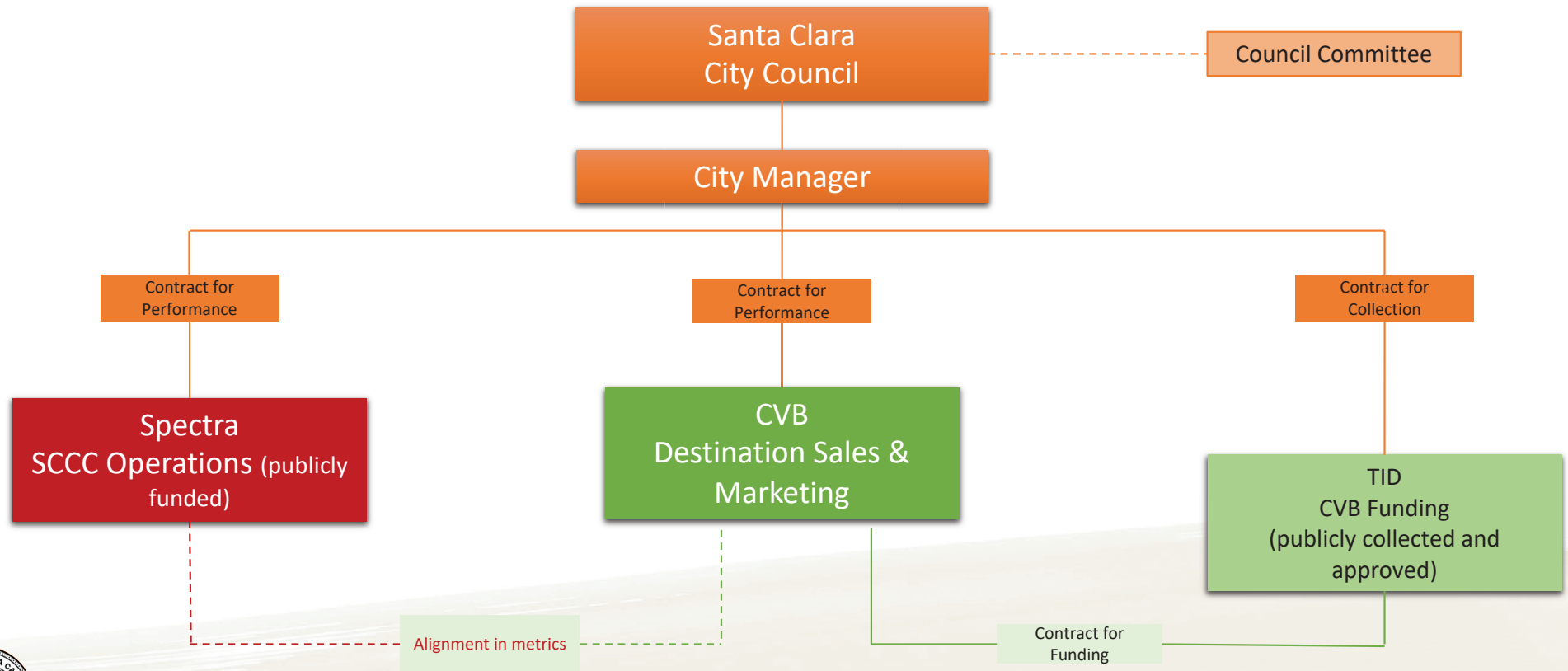


Agenda

- Historical Model
- Potential Structures
- Foundational Considerations
 - Governance, compliance and accountability
 - Responsibilities and synergies between partners
 - Metrics
 - Balanced scorecard
- Steps to Formation
 - Board structure
 - Initial phase
- Funding
 - Access to reserves
 - TID contract with entity



Potential Model: City Maintains Contracts with All SCCC Related Entities & Has Marketing Committee TID Funds CVB



Model: Contracts with Private For-Profit Center Operator & a Private Non-Profit CVB

Model Description:

In this model the Convention & Visitors Bureau would be a private, non-profit with a contractual relationship with the City of Santa Clara with funding coming from the TID exclusively. The Convention Center would be operated by a private (for profit) management company (Spectra). The employees of the SCCC would be the employees of Spectra. The private management company would have a direct contractual relationship with the City of Santa Clara.

Potential Disadvantages

- Two entities need to be collaborative and engaged
- Ability to maintain alignment in mission
- Administration of multiple contracts

Potential Advantages

- Ability to develop common metrics in City contracts
- Expertise of a private convention center management company

Sample destinations with this model
San Francisco, CA*
Fresno, CA
Miami, FL
Long Beach, CA

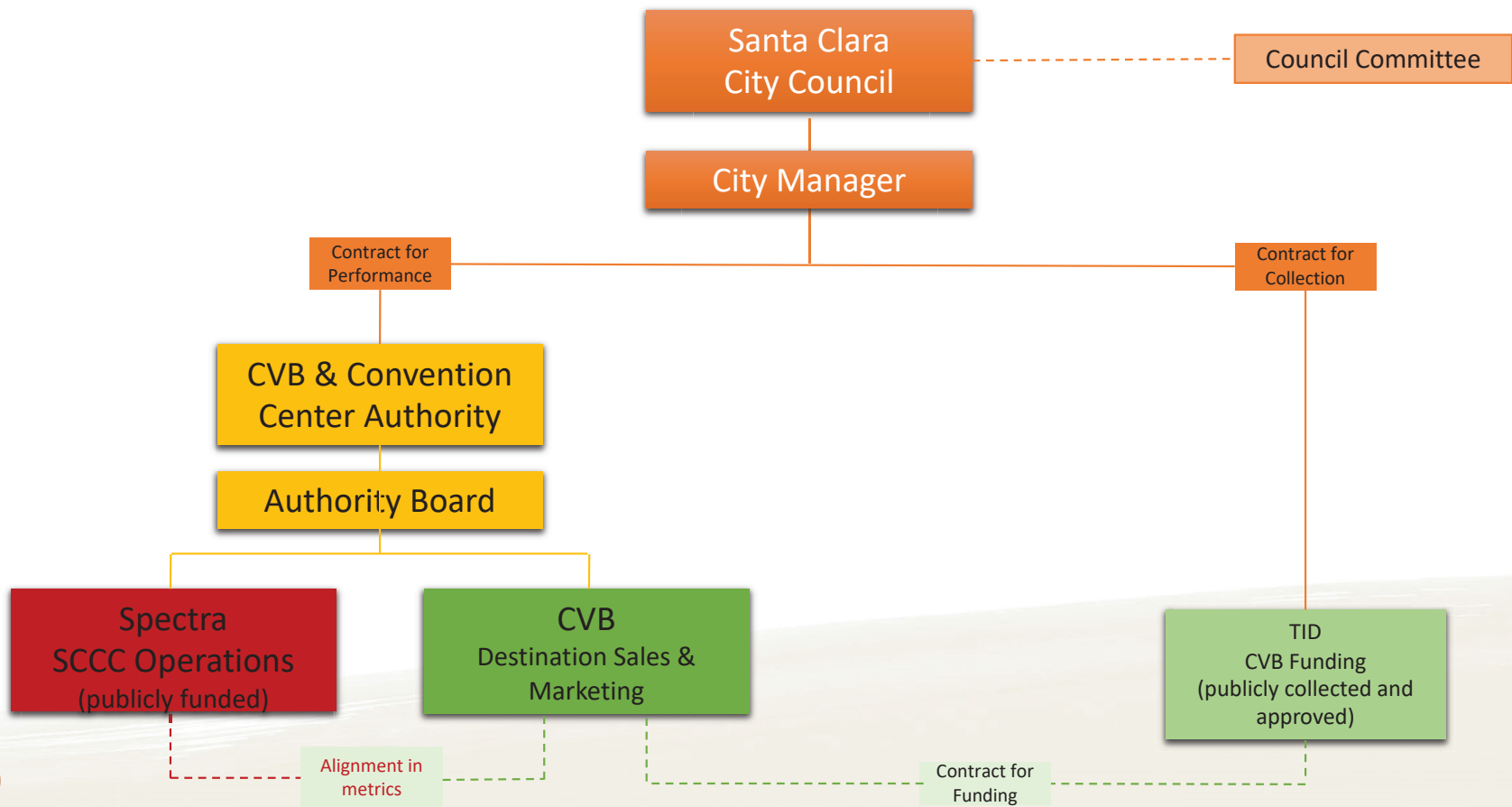
*funded exclusively through district



Potential Model: Authority over SCCC & CVB

One Contract for Performance with Authority & Has Marketing Committee

TID Funds CVB



Model: Non-Profit Authority Operating Both the Center & CVB



Model Description:

In this model a non-profit Authority would be formed to oversee the Convention & Visitors Bureau and the Convention Center. The Authority would have a contractual relationship with the City of Santa Clara. Within the Authority model a private third party operator (Spectra) would manage the convention center under the Authority leadership. The Convention Center would be private operator employees and the CVB staff would be authority employees.

Potential Advantages

- Can be structured with more public involvement – increased oversight through agreements and appointments
- Maintains a singular team environment through contracts
- Private sector engagement
- Direct accountability to City
- Ability to expanding relationships to include other important venues

Potential Disadvantages

- Large responsibility for singular board
- Governance and accountability can get confused due to various governing bodies
- City responsible for overall financials with SCCC and TID, role of Authority requires clear and specific goals

Sample destinations with this model
Houston, TX
San Jose, CA
Pasadena, CA
Charlotte, NC



Foundational Components

Sales & Marketing Relationship

Synergy Between CVB & Spectra



Spectra

Responsibilities

- Operation & Management of the SCCC
- Maintenance
- Budget revenue and expenses related to the SCCC
- Local sales (social events, small meetings, all events without room nights)

Sample Markets

- Local social
- Local corporate
- Local business meetings

CVB

Responsibilities

- Destination marketing and sales efforts
- National & Regional sales – events with room nights
- Coordinating room blocks for SCCC events
- Delivering incremental room nights into the community from SCCC related events
- Coordinating with SCCC staff on building events

Sample Markets

- Science and Technology
- Medical and Pharmaceutical
- National corporate
- Regional corporate



Proposed Metrics

1

Overall CVB

- I. Economic Impact
- II. Room Nights
- III. Marketing Efforts
- IV. Number of Weeks impacted (Citywide level impact)
- V. Customer Service
 - I. Minimum response rates and minimum performance thresholds
 - II. Third party administered

2

Sales and Marketing (five-year glide path)

- I. Definite Bookings
- II. Sales Activity
 - I. Prospect Totals (Based on goals set)
- III. Conversion percentage
- IV. Room Nights Consumed and Booked
- V. Production by Market

3

Revenue Growth

- I. Revenue generated in the SCCC
- II. Incremental hotel tax generated from CVB related events at SCCC

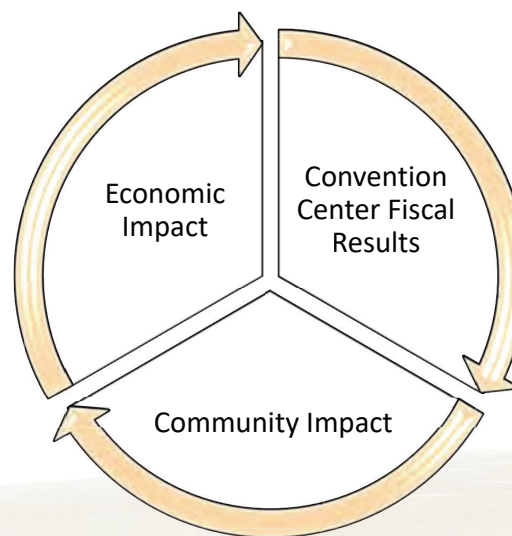


Balanced Scorecard Approach

In determining the most effective approach for the Santa Clara CVB, it is important to understand the complexity of determining success.

Three key components of success need to be factored in:

1. Economic Impact
 - Overnight visitors - convention and leisure
 - Direct spending
 - Day trippers
2. Convention Center Fiscal Results
 - Profit and loss
 - Asset management
 - Reduce risk to City with oversight
3. Community Impact
 - Use by local community (access to facility)
 - Booking other City/regional venues



Formation



Steps to Formation of CVB

- Draft Mission and Vision
- Complete Bylaws
- Complete Articles of Incorporation
- Develop Staffing Plan
- Develop and Finalize Budget
- Determine direction with TID
- Nominate and Approve Board
- Hire ED/CEO
- Develop Metrics
- Develop MOU between CVB and Spectra for performance measures
- Draft and Approve CVB Contract
- Develop Marketing Plan
- Develop Goals
- Hire Staff (Phase One Staff)
- Phase One Implementation



Timing

- Original objective to align formation and initial staffing with SCCC Operator Stub Year – June 30th
 - Updated timeline projection is pushed one month
 - Board appointed before May 15th
 - Executive Director/CEO on board by June 30th
 - Initial Sales Staff on board by July 31st
 - Entity begins functioning FY August 1st
- TID Funding adjustments may accelerate positions added

Project Timeline and Milestones															
		2019												2020	
Task /	Month	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	
CVB Formation															
Draft Mission and Vision															
Complete Bylaws															
Complete Articles of Incorporation															
Develop Staffing Plan															
Develop and Finalize Budget															
Nominate and Approve Board															
Hire ED/CEO															
Develop Metrics															
Draft MOU for CVB and Spectra															
Draft and Approve CVB Contract															
Develop Marketing Plan															
Develop Goals															
Hire Staff (Phase One Staff)															





Proposed CVB Board Positions

Recommendation: Self Nomination with Council Approval

Cedar Fair

Related

Large Business
• Example: 49ers Management Company, Stadium Authority

Hotel

Hotel

Spectra
• Ex Officio

City Manager (or designee)
• Ex Officio

Other potential positions: Labor, Higher Education, General Business



Funding

Key Considerations

- Funding
 - Immediate-term - \$1/room – existing funds (through October 2019)
 - Short-term growth - \$4/room (target growth after October 2019)
 - Finalize approach with TID-City
 - Use of current reserves (TID)



CVB Org Chart: Phase One (Short-Term Through October)

Built on existing fund collection level & reserves

TID funds entity in full at \$1/room
\$900k total budget
\$150k in TID reserves
\$35k potential in overhead costs
(reserves)



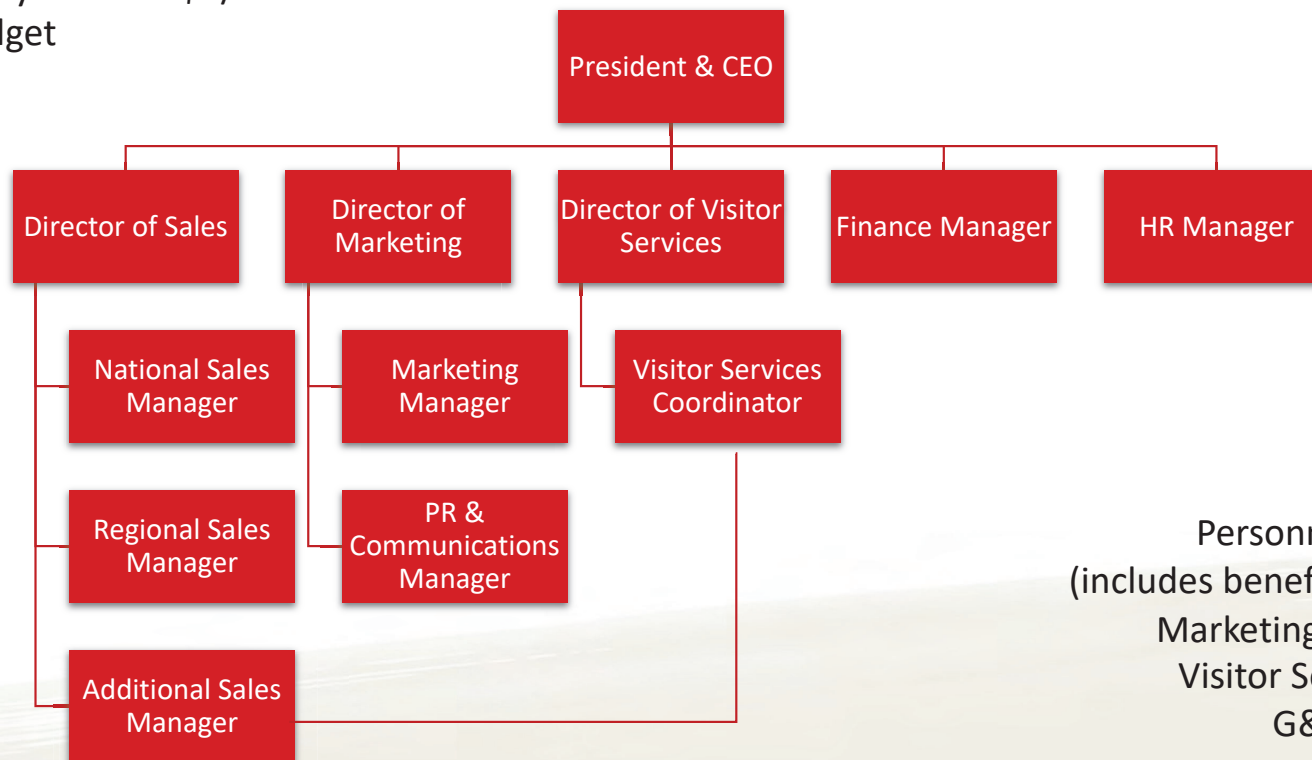
NOTES

Personnel Costs = \$700k
(includes benefits, taxes, insurance, etc.)
Marketing Budget = \$115k
Additional costs \$35k = rental, overhead,
equipment, legal



CVB Org Chart: Phase Two

TID funds entity in full at \$4/room
\$3M total budget



NOTES

Personnel Costs = \$1.5M
(includes benefits, taxes, insurance, etc.)
Marketing Budget = \$540,000
Visitor Services = \$225,000
G&A = \$45,000

Opportunity Fund/Incentives



Phase One Budget



Santa Clara CVB Budget

Revenue	\$	900,000.00
Expense		
Personnel		
Salaries		\$445,000.00
Benefits		\$133,500.00
Payroll Taxes		\$40,050.00
Insurance		\$2,225.00
Commissions		\$110,750.00
Other (PT, catchall)		\$17,800.00
Subtotal		\$749,325.00
Marketing Expenses	\$	115,675.00
Admin/Overhead	\$	35,000.00
Total		\$900,000.00

Admin Budget	Salary	Bonus	Comp
President & CEO		\$175,000	\$35,000.00
		\$175,000	\$210,000
% of Personnel		19%	

Sales Personnel	Salary	Bonus	Comp
DOS	\$115,000.00	\$40,250.00	\$155,250.00
National Sales Manager	\$80,000.00	\$28,000.00	\$108,000.00
	\$195,000.00	\$68,250.00	\$263,250.00
% of Personnel		22%	

Marketing	Salary	Bonus	Comp
Marketing Manager	\$75,000.00	\$7,500.00	\$82,500.00
% of Personnel		8%	





Considerations & Next Steps

Key Considerations

- Speed to market
 - Sales activity in place ASAP
- Governance Makeup
 - Additional participants (labor)
- Approval Process
 - Council engagement
 - Key dates
- CVB Office Location
 - Housing within SCCC?



Next Steps

- Council involvement
 - Presentation on April 9th
 - Present recommended direction
 - Obtain additional input on models
- Begin to form entity
 - Articles of Incorporation
 - Bylaws
 - Mission and Vision
 - Appoint Board





Thank You

JLL Tourism & Destination Advisory

Next Presentation to Council:
April 9th

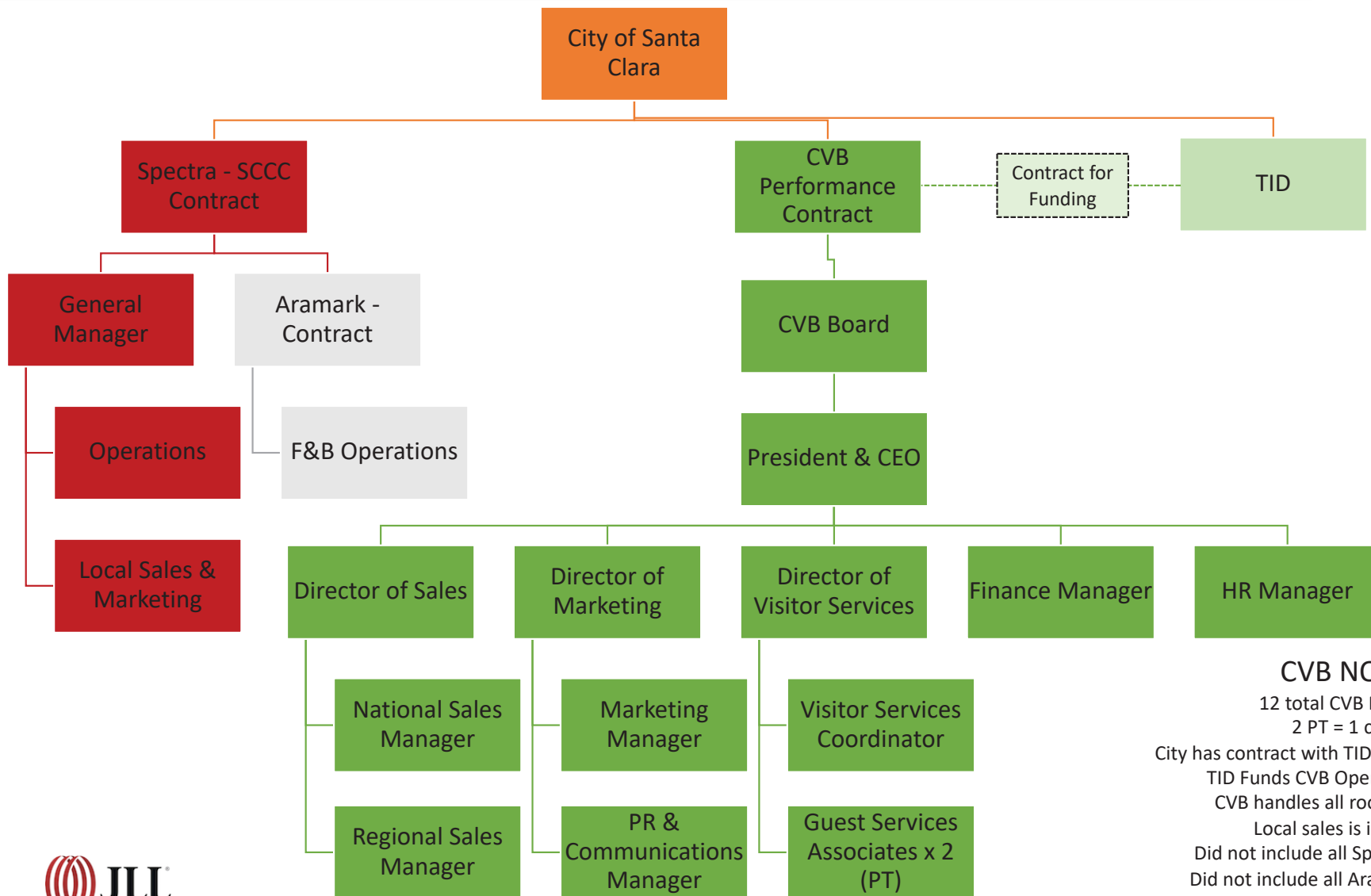
Appendix



Full Staffing Chart

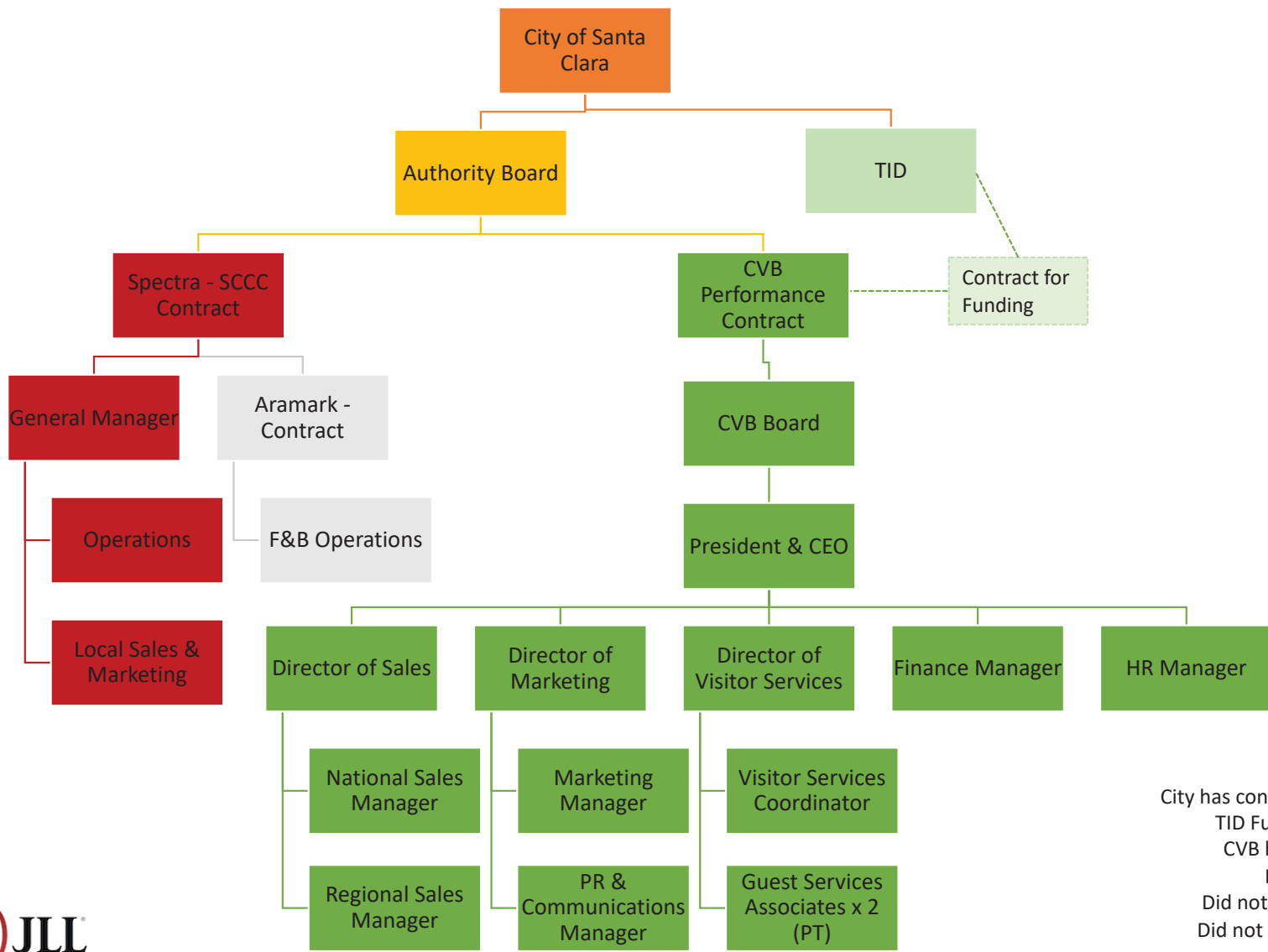
Draft - if needed





CVB NOTES

12 total CVB Positions
2 PT = 1 count
City has contract with TID and CVB or just TID?
TID Funds CVB Operations Entirely
CVB handles all room night sales
Local sales is in Spectra
Did not include all Spectra's positions
Did not include all Aramark's positions



CVB NOTES

- 12 total CVB Positions
- 2 PT = 1 count
- City has contract with TID and CVB or just TID?
- TID Funds CVB Operations Entirely
- CVB handles all room night sales
- Local sales is in Spectra
- Did not include all Spectra's positions
- Did not include all Aramark's positions



SILICON VALLEY/SAN JOSE DMO – MISSION STATEMENT SUGGESTIONS

1. To promote, develop and sell Santa Clara as a meetings, business and leisure destination while concurrently supporting quality of life for residents.
2. To increase the economic and social impact of tourism for Santa Clara by developing and promoting it as a world class destination.
3. To promote Santa Clara as the Silicon Valley destination of choice for meetings, business and leisure travel.

SILICON VALLEY/SAN JOSE DMO – VISION STATEMENT SUGGESTIONS

1. Be the place that gives people an amazing opportunity to share, collaborate, and innovate great ideas.
2. Develop a “heart of Silicon Valley” experience that will stimulate creativity and innovation.
3. To be the destination of choice for the exchange of ideas in Silicon Valley.
4. To inspire creativity and innovation in Silicon Valley.



Hotel Room Block Survey

Santa Clara Hotel Results

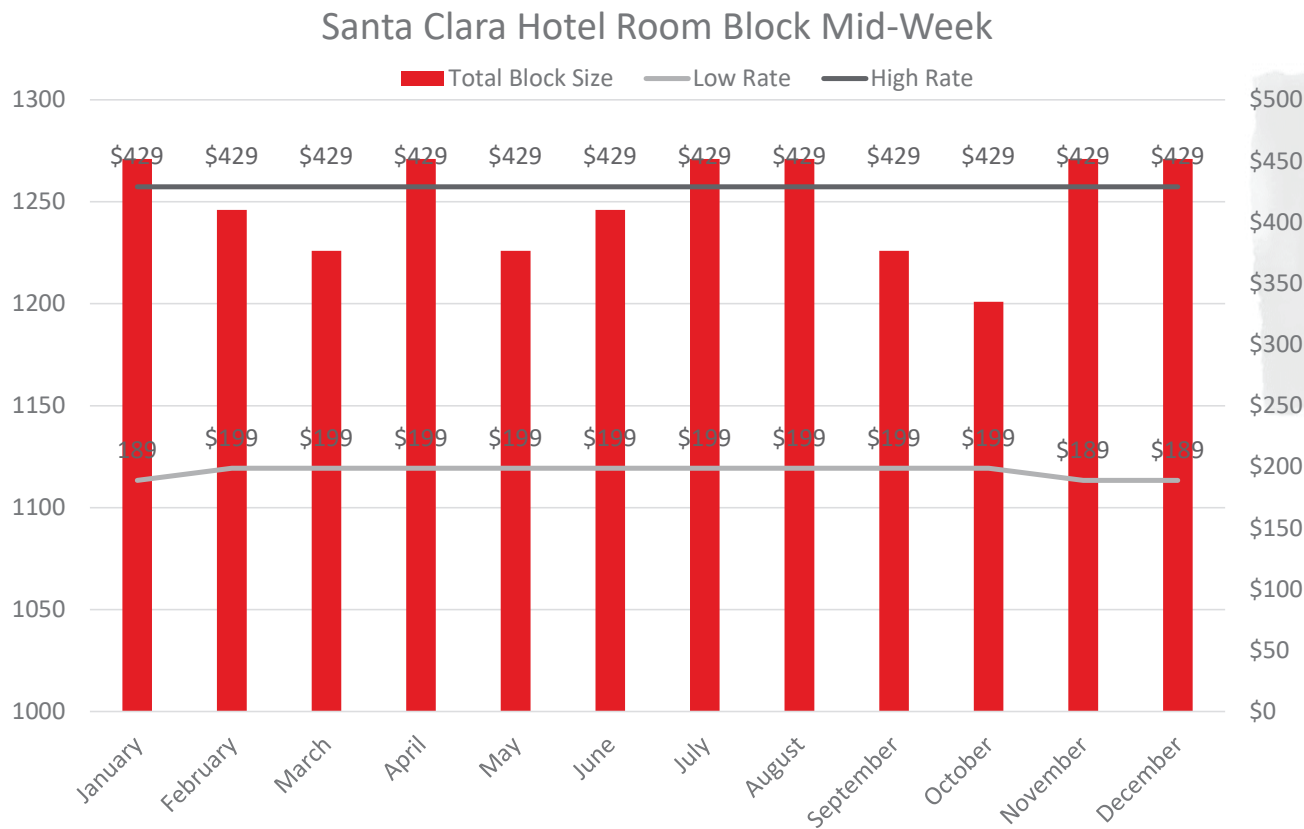
November 18, 2019



Overview

- Outreach to all 11 properties in the Tourism Improvement District
- 10 properties participated
 1. Hilton Santa Clara
 2. Embassy Suites Santa Clara Silicon Valley
 3. Hyatt Regency Santa Clara
 4. The Plaza Suites Hotel Silicon Valley
 5. AC Hotel by Marriott Santa Clara
 6. Element Santa Clara
 7. Santa Clara Marriott
 8. Avatar Hotel Great America Santa Clara
 9. Biltmore Hotel & Suites
 10. One chose to remain anonymous
- Room blocks range from 1,200 to 1,900 depending on weekday vs. weekend
- Rates ranged from \$189-\$429 mid week and \$99-\$259 on weekends

Mid-Week Considerations



Takeaways

Block is stable at 1,200 rooms

Max participation is 1,270

Max participation months are

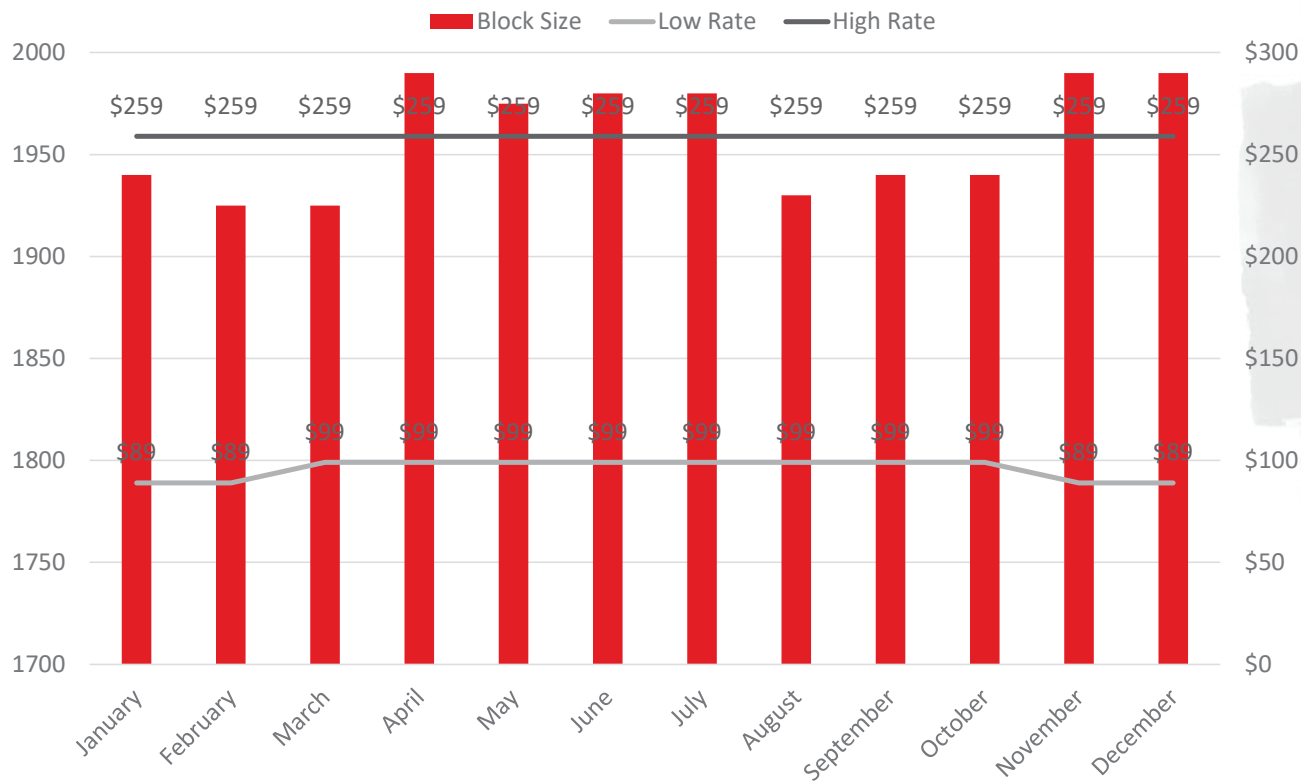
January, April, July, August,

November and December

Room rates range from \$189-\$429

Weekend Considerations

Santa Clara Hotel Room Block Weekend



Takeaways

Block is stable at 1,900 rooms

Max participation is 1,990

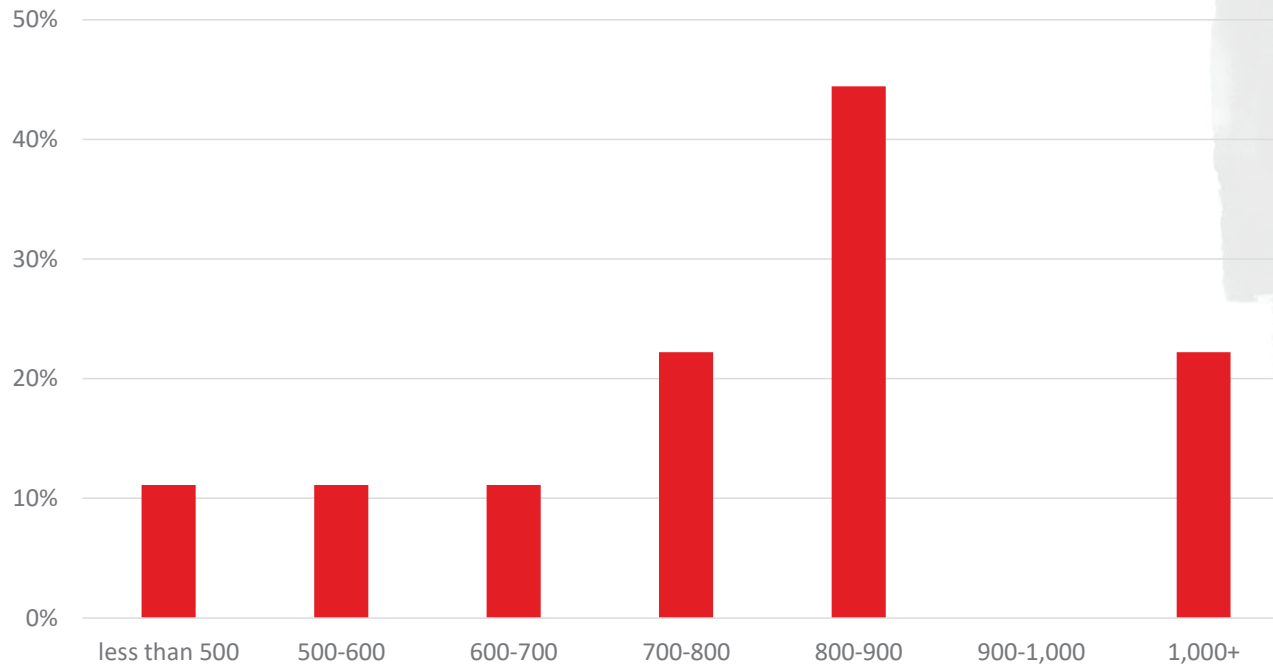
Max participation months are:

April-July and November-
December

Room rates range from \$89-\$259

Participation Thresholds

What is the Minimum Peak Block Size for Your Hotel to Participate?

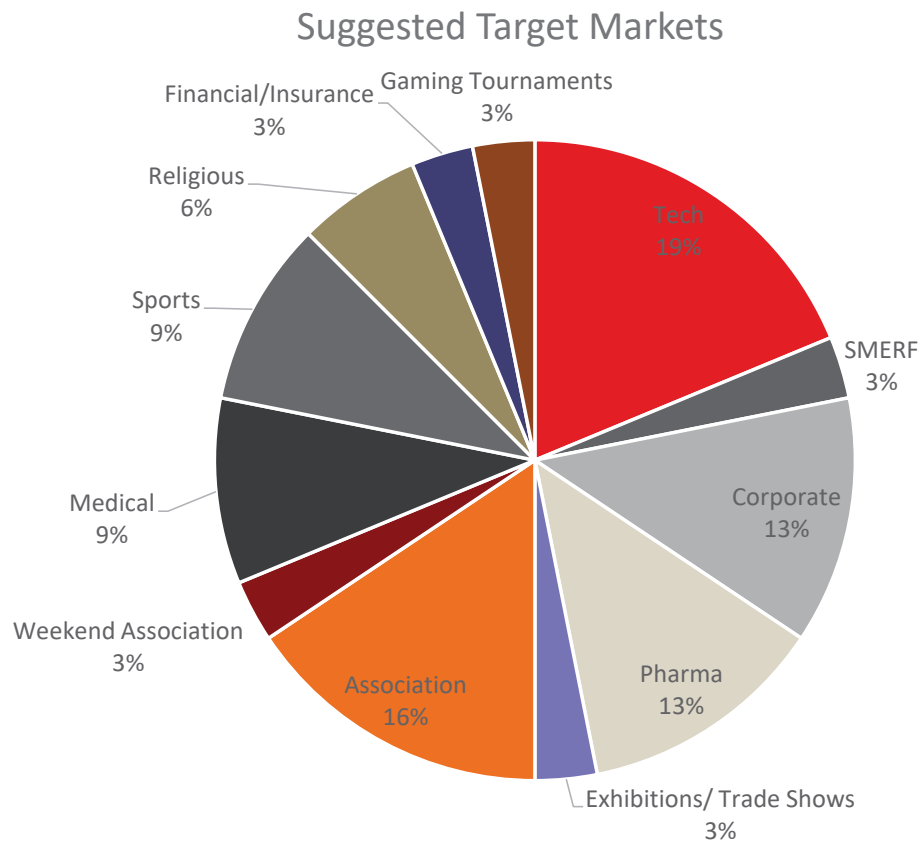


Takeaways

Over 60% of hotels surveyed will not participate unless the group peak is 800+

Citywide threshold considerations for 1,200 rooms on peak

Target Markets



Takeaways

Top suggested markets include:

Tech (including bio) – 19%

Associations (state and national) – 16%

Pharma – 13%

Corporate – 13%

Additional Comments

- Day of week pattern is extremely critical - pure midweek (Mon-Thurs) is not overly valuable, whereas a Sunday arrival with Thursday contribution will increase our participation
- Priorities should be SCCC food sales and hotel rates.
- Weekend business is highly preferable.
- Groups/Conventions during weekday would need to show strong historical figures backing up the room blocks requested.



Questions?

Thank You

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Santa Clara Convention Center Booking Strategy

May 22, 2020

Overview

A primary objective and high priority of the Santa Clara Convention Center (SCCC) is to host multi-day National/Regional Conventions, Conferences, Meetings and Events that will generate the greatest economic impact for the TBID while also generating revenue for the Center. These conventions will bring attendees primarily from out of town and generate a positive impact for the SCCC and Santa Clara businesses.

The following guidelines give priority to Events, (Conventions, Conferences, Meetings, etc.) that will generate the greatest hotel room usage, economic benefit through direct spending as well as revenue for SCCC. These guidelines are general in nature and are intended to serve as a consistent basis for decision making. Consideration of events not conforming to the stated schedule can be made on a group-by-group basis to determine the extent to which they concur with the DMO's and the Convention Center's primary objectives. This approach also lays the groundwork for developing sales and marketing strategies to focus on attracting the highest priority groups to Santa Clara.

Booking Priorities (Weekday and Weekend)

Priority One Weekday: Priority 1 (P1) events would have a minimum peak (highest number of rooms per day) of 900 rooms at hotels located within the Santa Clara TID. These events would typically include conventions and/or trade shows that are regional, national, or international in scope. P1 events may book space at SCCC including all ballrooms at any time. The calendar would essentially be held exclusively for P1 events 18 months and out. Only P1 events will be issued license agreements more than 18 months in advance of the event unless approved by the City of Santa Clara (City), the DMO and Spectra. P1 events are expected to produce significant revenue for SCCC. The target is \$650,000 in overall gross revenue to SCCC.

Priority One Weekend: Priority 1 (P1) events would have a peak (highest number of rooms per day) of 400 rooms at hotels located within the Santa Clara TID. These events would typically include conventions and/or trade shows that are regional, national, or international in scope. P1 events may book space at SCCC including all ballrooms at any time. The calendar would essentially be held exclusively for P1 events 18 months and out. Only P1 events will be issued license agreements more than 18 months in advance of the event unless approved by the City, the DMO and Spectra. P1 events are expected to produce significant revenue for SCCC. The target for weekend P1 events is \$450,000 in overall gross revenue to the SCCC.

Priority Two Weekday: Priority 2 (P2) events would have a peak of 600-899 room nights at hotels located within the Santa Clara TID. These events would typically include regional multiple-day corporate meetings, trade shows, etc. P2 events may book space between 13-18 months. P2 events can only book space beyond 18 months on a "1st Option" basis and only with approval from the DMO and Spectra.



License agreements for P2 events will only be issued within the 13-18-month window. P2 events are expected to generate \$250,000 – \$649,000,000 in overall gross revenue to SCCC.

Priority Two Weekend: Priority 2 (P2) events would have a peak of 100-399 room nights at hotels located within the Santa Clara TID. These events would typically include regional multiple-day SMERF or Association meetings, trade shows, etc. P2 events may book space between 13-18 months. P2 events can only book space beyond 18 12 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P2 events will only be issued within the 13-18 month window. P2 weekend events are expected to generate \$250,000 – \$449,999 in overall gross revenue to SCCC.

Priority Three Weekday: Priority 3 (P3) events would have a peak of 150-599 Room Nights at hotels located within Santa Clara. These events would typically include local or regional meetings or trade shows. P3 events may book space within 0-13 months. P3 events may book space beyond 13 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P3 events will only be issued within the 0-13-month window. P3 events are expected to generate \$150,000 – \$249,000 in overall gross revenue to SCCC.

Priority Three Weekend: Priority 3 (P3) events would have a peak of 50-99 Room Nights at hotels located within Santa Clara. These events would typically include local or regional meetings or trade shows. P3 events may book space within 0-13 months. P3 events may book space beyond 13 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P3 events will only be issued within the 0-13 month window. P3 weekend events are expected to generate \$100,000 - \$249,999 in overall gross revenue to SCCC.

Priority Four Weekday: Priority 4 (P4) events would have a peak of less than 149 room nights. These events typically include consumer shows, one day meetings and larger social events. P4 events can only book space within 9 months. P4 events may book space beyond 9 months on a “1st Option” basis and only with approval from the DMO and Spectra. P4 events are expected to deliver \$50,000 - \$149,000 in overall gross revenue to SCCC. License agreements for P4 events will only be issued within the 0-9 month window.

Priority Four Weekend: Priority 4 (P4) events would have a peak of less than 50 room nights. These events typically include consumer shows, one day meetings and larger social events. P4 events can only book space within 6 months. P4 events may book space beyond 6 months on a “1st Option” basis and only with approval from the DMO and Spectra. P4 weekend events are expected to generate \$50,000 – \$99,999 in overall gross revenue to SCCC.

Priority Five Weekday: Priority 5 (P5) events would have no room night requirements. These events typically include social events and day meetings. P5 events can only book space within 3 months. P5 events may book space beyond 3 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P5 events will only be issued within the 3-month window. P5 events are expected to generate \$10,000 – \$49,000 in overall gross revenue.



Priority Five Weekend. Priority 5 (P5) events would have no room night requirements. These events typically include social events and day meetings. P5 events can only book space within 3 months. P5 events may book space beyond 3 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P5 events will only be issued within the 3-month window. P5 events are expected to generate \$10,000 – \$49,000 in overall gross revenue to SCCC.

Ineligible Events: In keeping with the three overarching measurements of success, an event will be deemed ineligible for SCCC if it does not produce sufficient economic impact, SCCC revenue (less than \$10,000) or have a meaningful impact on the Santa Clara community.

Overview

Weekday Groups

Priority	Booking Window	Minimum Room Nights on peak
P1	18-months +	900
P2	13-18 months	600-899
P3	0-13 months	150-599
P4	0-9 months	0-149
P5	0-3 months	N/A

Weekend Groups (Friday-Sunday & Holidays)

Priority	Booking Window	Minimum Room Nights on peak
P1	18-months +	400
P2	13-18 months 0-12 months	100-399
P3	0-13 months	0-99
P4	0-6 months	N/A
P5	0-3 months	N/A

In reference to the criteria established within in each Booking Priority category, DMO and Spectra have discretion to consider the following factors when booking an event. These factors may support an event’s case for flexibility in the booking policy based on recommendation from Spectra’s GM, the DMO and ultimately approval by the City:

- Economic impact on the City of Santa Clara
- Hotel room utilization
- Revenue to SCCC
- Time of year (peak vs. non-peak seasons and what year)
- How short term it is, and does it fill a slow period
- Number of days of use
- Potential for repeat booking



- Applicant's event history and experience
- Compatibility with concurrent facility users
- Community Impact

Events are booked on a first-come, first-serve basis within the criteria established in the Booking Priority categories noted above. Event bookings are not considered "Definite" until both Spectra and the Licensee have executed the license agreement. For P1 and P2 bookings, a signed hotel contract must also be completed.

Gross Revenue Variances – Upgrading Priorities

Events listed as P2, P3 or P4 may be upgraded to a higher priority based on estimated Gross Revenue with a lesser room block commitment to the Center.

Events that are estimated to generate:

- \$1M or more to the Center may be upgraded to P2 and may be booked 13-18 months in advance of the event start date.
- \$750k-\$1M may be upgraded to P3/P4 and may be booked 0-13 months in advance of the event start date.
- \$500k-\$749k may be upgraded to P5 and may be booked 0-12 months in advance of the event start date

***Overview Chart – Included as Attachment A**

Event Type - Definitions

Tradeshows: An exhibition of products and/or services held for members of a common or related industry. Not open to the general public.

Conventions: An event where the primary activity of the attendees is to attend educational sessions, participate in meetings/discussions, socialize or attend other organized events of which the attendees are primarily from out of town. Sometimes there is a secondary exhibit component.

Consumer Shows: An exhibition that is open to the public, usually requiring an entrance fee. Common examples of consumer shows include auto shows, bridal shows, boat shows, flower and garden shows, craft shows and festivals.

Banquets/Social Events: Formal, often ceremonial, dinner for a select group of people, often in honor of a particular person. The meal is the primary component of the event, consisting of a sit-down breakfast, lunch or dinner.



Meetings & Seminars: An event where the primary activity of the attendees is to attend educational sessions, participate in meetings/discussions, socialize, or attend other organized events. There is no exhibit component to this event.

Sporting Events: An event where athletes or individuals compete, and spectators view the event activities and/or ceremonies.

Community Based Event: An event that has been designed to encourage community participation at the SCCC. These could be in conjunction with the City or designated non-profit organizations.

Attachment A – Overview Chart

Priority	Peak Room Nights	Combined Building Spend	Economic Impact	Convention Center Impact	Community Impact	Booking Window
Priority 1 (full center user)	1,100 rooms on peak or greater	\$1,000,000+	High	High	Medium	18+ months
Priority 2	600-1,099 rooms on peak	\$750,000-\$1,000,000	High	Medium	Low	13-18 months
Priority 3	100-599 rooms on peak	\$500,000-\$750,000	Medium	Medium	Medium	0-13 months
Priority 4	< 100 rooms on peak	\$200,000-\$500,000	Medium	High	Low	0-13 months
Priority 5 (social events)	Non room night generating	\$90,000 - \$199,000	Low	High	Medium	0-12 months
Priority 6	Non room night generating	\$10,000 – \$89,000	Low	Medium	Medium	Within six months
Community	Non room night generating	N/A	Low	Low	High	0-6
Non-Eligible Events	Non room night generating	<\$10,000	Low	Low	Low	Not eligible

Tourism Improvement District Annual Report Overview

Budget Presentation

Key Accomplishments

2019/2020 has been a challenging yet productive year.

- Funded administrative expenses for the formation of the new DMO
- Formation of the new DMO Board of Directors with guidance from Council.
- Identified and solicited bids for insurance coverage of the DMO operation.
- Execution of a hotel room block survey
- Development of a new Booking Strategy for the DMO and SCCC to follow jointly.
- Development of a year-1 budget for the DMO.
- Development of the recruitment materials for the executive search to begin for a new industry professional to be the CEO of the DMO - The DMO has finalized candidates.
- Development of an organizational chart for initial phase
- Identified sales and marketing programs for future planning
- Solidified a website maintenance agreement

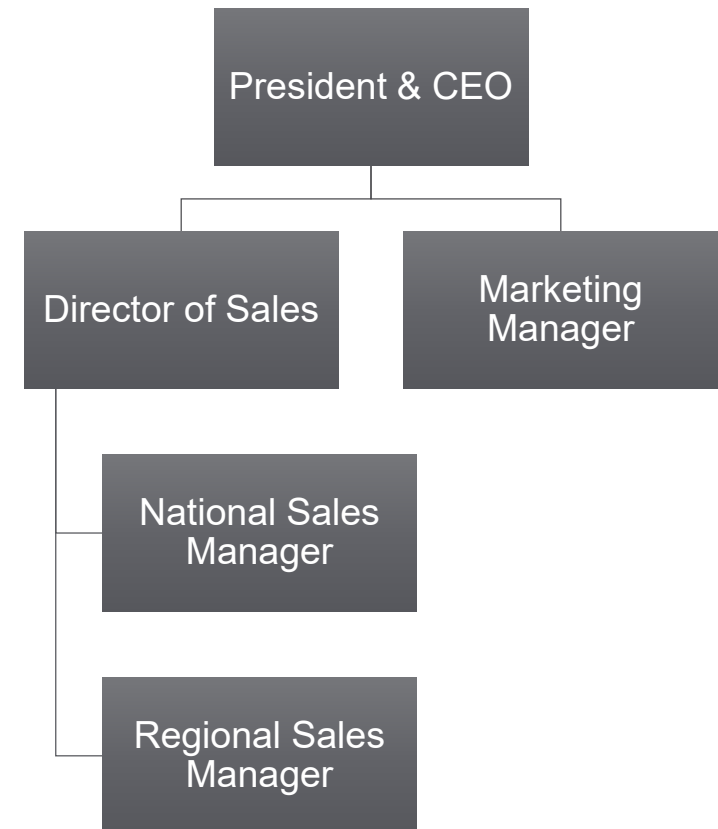
Budget Overview

In light of recent developments the TID and newly formed CVB have developed a budget for FY2020/2021, which was approved by both the TID and CVB boards.

Budget Highlights

- Includes CEO coming on at beginning of fiscal year
- Includes the initial sales team with marketing support
- Initial focus on placing “priority one” business into the convention center.
- Multiple hotel usage
- Material Revenue to the SCCC
- Marketing resources to reintroduce key convention clients to Santa Clara and the SCCC.
- Full administrative functionality of the new DMO

Staffing

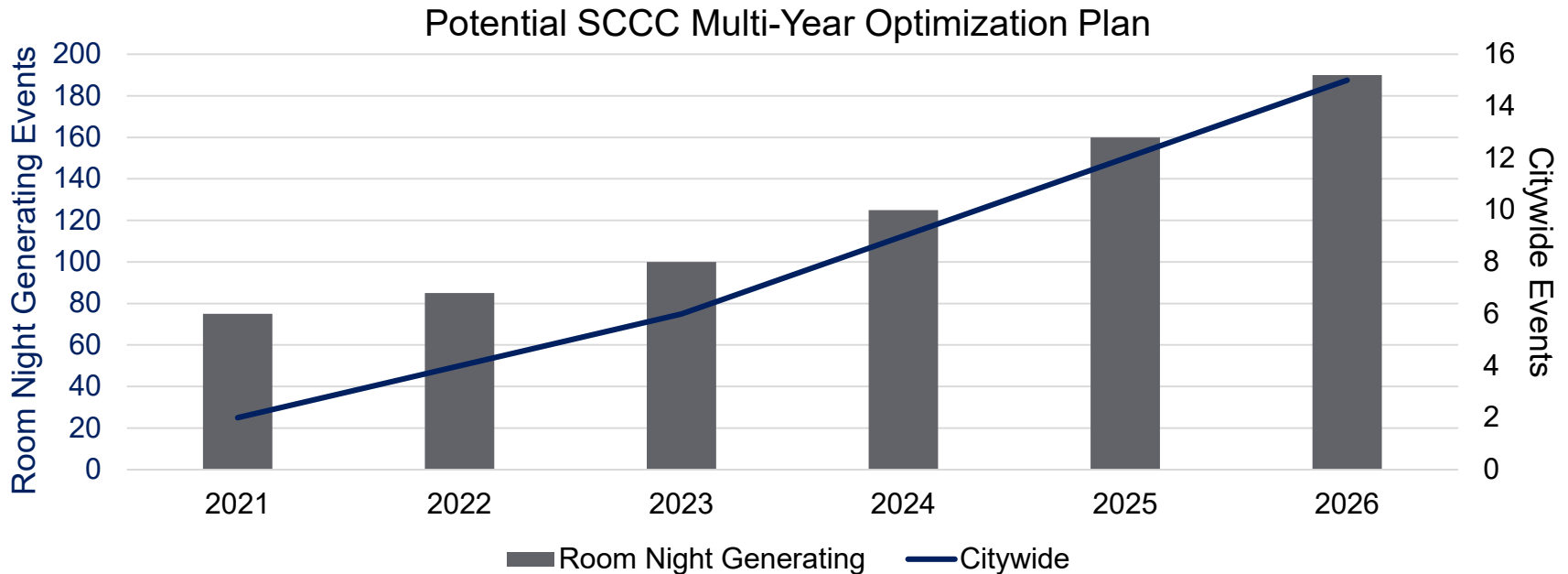


Multi-year Plan to Optimize the Building

Goal Setting

Growing the room night generating events and citywides will generate increased economic impact.

- Mix of business in the SCCC will shift to be focused on overnight business
- Growing to a minimum of 50% room night generating events could deliver 20,000+ new rooms on an annual basis
 - This potential equates to \$4 million in new rooms revenue and \$380,000 in new TOT collected annually*
 - The shift in business mix could affect the SCCC's bottom line revenue



*based on a \$200 market ADR – STR Source

Competing Facilities & Destinations

Surrounding regional facilities are active and competing for business.

Team San Jose sold
40 citywide events
at the SJMCC last year

TID contributes
\$3.5 million to a
\$11 million annual budget*

Moscone Center hosts
50+ citywides
annually

TID contributes
\$24 million to a
\$35 million annual budget*

While the industry resets for post COVID-19 operations, we can strategically capture business and reintroduce Santa Clara to our target markets.

*estimated

Importance of Sustainable Funding



\$1.6 million reserve
balance



Year-1 Budget of
\$1.25 million



Requires \$720,000
of reserves



Covid-19 Limits
Collection -
\$600,000



Year-2 Budget Flat
- \$1.25 million



Year-2 Budget
requires additional
reserves



Reserve Balance
Year-End -
\$295,250



**Funding Model
Needs to be
Sustainable for
Success**

Questions?

The TID Board thanks you for your time and consideration on our budget and the future of sales and marketing for the tourism and meetings industry in Santa Clara.

Santa Clara TID Interim Booking Policy Review

June 11, 2020

Original Proposed Mid-Week Booking Policy

Priority	Peak Room Nights	Combined Building Spend	Economic Impact	Convention Center Impact	Community Impact	Booking Window
Priority1 (full center user)	1,100 roomson peak or greater	\$1,000,000+	High	High	Medium	18+months
Priority2	600-1,099 roomson peak	\$750,000- \$1,000,000	High	Medium	Low	13-18 months
Priority3	100-599 roomson peak	\$500,000- \$750,000	Medium	Medium	Medium	0-13 months
Priority4	<100 roomson peak	\$200,000- \$500,000	Medium	High	Low	0-13 months
Priority5 (socialevents)	Nonroom night generating	\$90,000- \$199,000	Low	High	Medium	0-12 months
Priority6	Nonroom night generating	\$10,000- \$89,000	Low	Medium	Medium	Withinsix months
Community	Nonroom night generating	N/A	Low	Low	High	0-6
Non-Eligible Events	Nonroom night generating	<\$10,000	Low	Low	Low	Not eligible



Original Proposed Weekend Policy

Priority	Peak Room Nights	Combined Building Spend	Economic Impact	Convention Center Impact	Community Impact	Booking Window
Priority 1 (full center user)	400 room on peak or greater	\$450,000+	High	High	Medium	18+ months
Priority 2	200-399 room on peak	\$200,000-\$449,000	High	Medium	Low	13-18 months
Priority 3	50-199 room on peak	\$100,000-\$199,000	Medium	Medium	Medium	0-13 months
Priority 4	<50 room on peak	\$50,000-\$99,000	Medium	High	Low	0-12 months
Priority 5 (social events)	Non room night generating	\$10,000-\$49,000	Low	High	Medium	0-6 months
Community	Non room night generating	N/A	Low	Low	High	0-6
Non-Eligible Events	Non room night generating	<\$10,000	Low	Low	Low	Not eligible



Interim Mid-Week Policy

Post Covid-19 for 6 Months

Priority	Peak Room Nights	Combined Building Spend	Economic Impact	Convention Center Impact	Community Impact	Booking Window
Priority 1 (full center user)	800 roomson peak or greater	\$600,000+	High	High	Medium	18+months
Priority 2	500-799 roomson peak	\$250,000- \$599,000	High	Medium	Low	13-18 months
Priority 3	100-599 roomson peak	\$150,000- \$249,000	Medium	Medium	Medium	0-13 months
Priority 4	<100 roomson peak	\$50,000- \$149,000	Medium	High	Low	0-12 months
Priority 5 (social events)	Nonroomnight generating	\$15,000- \$49,000	Low	High	Medium	0-6 months
Priority 6	Nonroomnight generating	\$10,000- \$89,000	Low	Medium	Medium	Within six months
Community	Nonroomnight generating	N/A	Low	Low	High	0-6
Non-Eligible Events	Nonroomnight generating	<\$10,000	Low	Low	Low	Not eligible



Interim Weekend Policy

Post Covid-19 for 6 Months

Priority	Peak Room Nights	Combined Building Spend	Economic Impact	Convention Center Impact	Community Impact	Booking Window
Priority1 (fullcenter user)	400 roomson peak or greater	\$400,000+	High	High	Medium	18+months
Priority2	150-399 roomson peak	\$200,000- \$399,000	High	Medium	Low	13-18 months
Priority3	50-149roomson peak	\$100,000- \$199,000	Medium	Medium	Medium	0-13 months
Priority4	<100rooms on peak	\$50,000- \$99,000	Medium	High	Low	0-12 months
Priority5 (socialevents)	Nonroomnight generating	\$10,000- \$49,000	Low	High	Medium	0-12 months
Community	Nonroomnight generating	N/A	Low	Low	High	0-6
Non-Eligible Events	Nonroomnight generating	<\$10,000	Low	Low	Low	Not eligible



Proposed Policy Comparison

Mid-Week vs. Weekend

Mid-Week

Priority	Booking Window	Minimum Room Nights on peak	Combined Building Spend
P1	18-months +	800	\$600,000+
P2	13-18 months	500-799	\$250,000-\$599,000
P3	0-13 months	100-499	\$150,000-\$249,000
P4	0-9 months	99	\$50,000-\$149,000
P5	0-3 months	N/A	\$15,000-\$49,000

Weekend

Priority	Booking Window	Minimum Room Nights on peak	Combined Building Spend
P1	18-months +	400	\$400,000+
P2	13-18 months 0-12 months	150-399	\$200,000-399,000
P3	0-13 months	50-149	\$100,000-\$199,000
P4	0-6 months	49	\$50,000-\$99,000
P5	0-3 months	N/A	\$10,000-\$49,000



*Achieve
Ambitions*

Key Considerations

1. 6 months as a trial and a formal review should be conducted at that time
2. We are not in a normal market, so we need to experiment.
3. One alternative approach is that P1 and subsequent peak night room totals for each priority booking should remain the same
4. The targeted revenues for the SCCC took a big shift in the newly proposed models.
5. Should we anticipate having the same influx of business demand albeit likely later in the year when restrictions ease and gathering begins to strengthen?
6. In practice Priority 3 Weekday and Priority 5 Weekday space can be booked on 1st option beyond 13 month and 6 months respectively with approval
7. As the DMO emerges, we need to work collaboratively on what is the deciding factor on business approval in this process.
8. We need to ensure we are keeping the door open to the best possible business and 9 months out may be prohibitive.
9. How do we vet applicant's event history as criteria and seek out the best possible business for the time period in review?
10. Event Upgrading Priorities should be a well thought out decision with the engagement of the DMO for approval. Any upgrading of an event must have significant value or be in a historical need period that justifies the priority upgrade.

Key Performance Indicators Workshop

July 29, 2020

KPI - Workshop overview



- Outline
 - Purpose of today's workshop
 - Purpose of KPIs
 - Shared KPIs
 - Aspirational Booking Policy Review
 - DMO KPIs
 - Spectra KPIs
 - Levy KPIs

Purpose of KPI's



- Key Purpose of KPI's
 - Metrics design to take a holistic view of success
 - Not just Room Nights and Revenue
 - Create success measures that “tell the whole story”
 - Create a common approach to determining success
 - Create a reporting plan that keeps elected officials, board and stakeholders informed

KPI Overview



*Overlapping KPIs support synergy
Creates shared accountability to
achieve success

KPI	DMO	Spectra	Levy
Convention Center Revenue	X	X	
Event Mix	X	X	
Net Income - SCCC	X	X	
Economic Impact	X	X	X
Community Benefits		X	X
Customer Service	X	X	X
Room Nights Generated/Consumed	X	X	X
Net Profit - F&B			X
Sustainability			X
Workforce Development			X
Local Purchasing			X
Sales Activity/Prospects	X		X
Retail Revenue/Public Space			X
Number of Weeks Impacted	X		
Definite Events Booked	X		

Booking Priority Definitions & Criteria



Priority	Peak Room Nights	Combined Building Spend	Booking Window
Priority 1 (full center user)	1,100 rooms on peak or greater	\$1,000,000+	18+ months
Priority2	600-1,099 rooms on peak	\$750,000-\$1,000,000	13-18 months
Priority 3	100-599 rooms on peak	\$500,000-\$750,000	0-13 months
Priority 4	<100 rooms on peak	\$200,000-\$500,000	0-13 months
Priority 5 (social events)	Non room night generating	\$90,000-\$199,000	0-12 months
Priority6	Non room night generating	\$10,000-\$89,0000	Within 6 months

DMO

Key Performance Indicators

Number of Weeks Impacted



- **Number of Weeks Impacted**
 - Defined as the number of weeks throughout the year where a P1 event, citywide or a combination of events positively impacts the destination's local economy.
 - Using the Convention Center calendar and the target number of P1 events, Contractor shall establish the target number of weeks impacted by P1 (or a combination of P2's) events.

Number of Definite Events



- Number of Definite Events

- A “definite” event is a future event confirmed with a signed executed SCCC contract between an authorized agent of the event organizer and the Convention Center and at least one TID lodging business for event room blocks.
- This also includes documented history of the group’s performance.

Convention Center Gross Revenue



- Convention Center Gross Revenue

- It is expected that P1 and P2 events will generate a certain level of Gross Revenue at the Convention Center. Contractor (DMO) shall establish target revenue projections for P1 and P2 events in accordance to the *Convention Center Booking Policy Guidelines* and by using historical information of group/client actual event spend including rental, food and beverage services, audio-visual services, information technology services and other event related services.

Number of Room Nights Booked



- Number of Room Nights Booked

- The total number of room nights booked is the total number of rooms blocked at Santa Clara lodging businesses for P1 or P2 events, multiplied by the number of nights each room is reserved.
- The target number of room nights blocked shall be established in accordance to the *Convention Center Booking Policy Guidelines* and by using group/client room block history.

Number of Room Nights Consumed



- Number of Room Nights Consumed
 - The total number of nights consumed (at the SCCC) is the total number of rooms occupied at Santa Clara lodging businesses for a P1 or P2 event, multiplied by the number of nights each room is occupied.
 - The target number of room nights consumed will be validated by Santa Clara lodging businesses providing reports to Contractor with supporting client data.

Event Mix

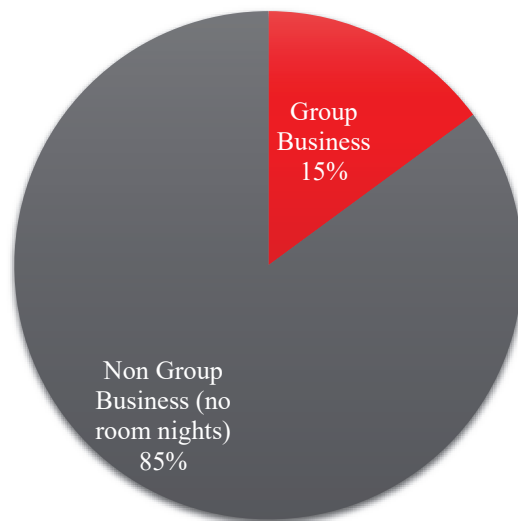


- A Center optimization analysis has been completed to determine the target mix of convention/meeting types (P1, P2, P3, etc.) that will deliver the **best financial and economic results** for the City. Optimization indicates how effectively the physical space at the Center is utilized.
 - Event Mix targets shall be established with the Contractor based on the output of the optimization exercise. Contractor shall develop a model that shows how many P1, P2, P3, etc. events are optimal for the Center annually and a multiyear approach to achieve the optimal business mix as determined by the optimization exercise.
 - Contractor shall be evaluated on its rate of success in meeting annual event mix targets. The average percentages of all the P1, P2, P3, etc., combined will determine the overall success rating.

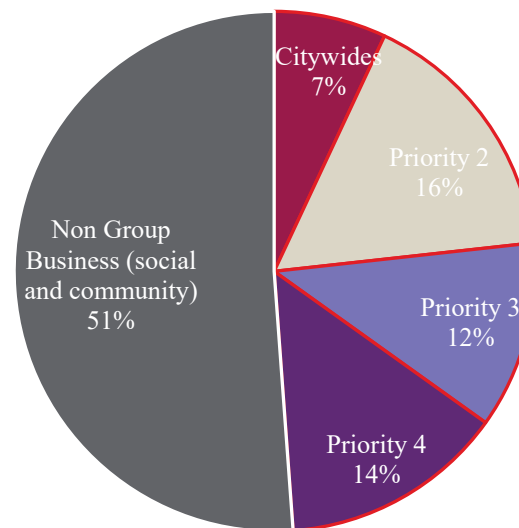
SCCC Optimization Before & After



SCCC Current Utilization Utilization by Event Type



SCCC Optimization Utilization by Event Type



Group business grows to **49%** of the mix of business

Prospects



- **Prospects**

- Prospects are any person or entity that is potentially interested in booking an event at the Convention Center.
- Contractor shall develop and maintain a Customer Relations Management System (CRMS), a database of prospects, and engage in sales activities to convert potential customers to current customers.
- The target number of prospects shall be determined by the optimization process and Contractor shall be evaluated on the number new prospects Contractor adds to the CRMS. Contractor shall be evaluated on its rate of success on meeting the target number for new prospects.

Economic Impact



- **Economic Impact**

- Defined as the total value of an event, including indirect spending, on the host destination's local economy over and above the original direct spending.
- The target economic impact of the P1 and P2 events booked by Contractor will be established using the Economic Impact Calculator (EIC), an industry standard for measuring how events impact destinations.

Customer Service Survey Results



- **Customer Service Survey Results**

- Customer service is the direct interaction and assistance provided by Contractor to individuals or groups looking to hold an event in Santa Clara.
- Customer service satisfaction surveys shall be administered by a third-party administrator to Convention Center meeting planners, clients and attendees. The survey instrument shall measure the overall customer satisfaction with the Contractor's performance in providing services and survey results shall be provided directly to City.

DMO KPI Weights



Key Performance Indicator	Weight
Number of Definite Events	15%
Number of Weeks Impacted	15%
SCCC Gross Revenue	15%
Number of Room Nights Booked	10%
Number of Room Nights Consumed	5%
Prospects	15%
Economic Impact	5%
Customer Service Survey Results	10%
Event Mix	10%

Spectra

Key Performance

Indicators

Convention Center Gross Revenue



- Convention Center Gross Revenue
 - Defined as the total amount of sales recognized for a report period, prior to any deductions including the total amount of all revenues including rental income, service income which includes AV, IT, food & beverage, and other (advertising/sponsorship, business services, event cancellations, interest, miscellaneous).

Event Mix



- Event Mix
 - A Center optimization exercise shall be completed to determine the target mix of convention/meeting types (P1, P2, P3, etc.) that will deliver the best financial and economic results for the City. Optimization indicates how effectively the physical space at the Center is utilized.

Net Income



- Net Income
 - Defined as the Gross Revenue minus the cost of goods sold, expenses and taxes for an accounting period.

Economic Impact



- Economic Impact
 - Defined as the direct sales, jobs, tax revenues, and income in Santa Clara causing impact to lodging, restaurants, retail, recreation, transportation and other businesses.
 - The target economic impact of each event booked by Spectra will be established using the Economic Impact Calculator (EIC), an industry standard for measuring how events impact destinations.

Community Benefits



- Community Benefits
 - Community benefits are programs or activities that serve the community and citizenry of Santa Clara, City/community use of the Center, and enhanced community partnerships and local contracting/hiring.
 - Spectra shall be evaluated on the number of collaborative, community-based events, coordinated and hosted at the Center and shall be evaluated on its rate of success on meeting the target number of events.
 - Spectra shall report on the its efforts to engage in local hiring, and with local businesses and vendors on a monthly basis. Spectra shall be evaluated on monthly engagement activities and use of local businesses reported to the City

Customer Service Survey Results



- Customer Service Survey Results
 - Customer service is the direct interaction and assistance provided by Contractor to individuals or groups looking to hold an event and holding an event in Santa Clara at the Center.
 - Customer service satisfaction surveys shall be administered by a third-party administrator to Convention Center meeting planners, clients and attendees. The survey instrument shall measure the overall customer satisfaction with Spectra's performance in providing services and survey results shall be provided directly to City.

Weights



Key Performance Indicator	Weight
Gross Revenue	15%
Net Income	50%
Number of Room Nights Consumed	10%
Economic Impact	10%
Customer Service Survey Results	5%
Event Mix	5%
Community Benefits	5%



Levy Key Performance Indicators

Room Nights Generated



- Room Nights Generated
 - The total number of room nights generated is the total number of additional room nights booked at Santa Clara lodging businesses for P1 or P2 events at the Convention Center.
 - The target number of room nights booked shall be established in accordance with the Convention Center Booking Policy Guidelines and by using group/client room block history.
 - Levy shall be evaluated on the extent of its contribution and active (actual) participation in sales activities that generate room nights blocked for P1 and P2 events.

Net Profit – Food and Beverage



- Net Profit
 - Defined as the Gross Receipts less (i) all Allowable Expenses, including the Management Fee, and (ii) the items specifically identified elsewhere in the Agreement as being reimbursable out of or chargeable against the Gross Receipts.

Community Impact – Community Accessibility



- Community Impact – Community Accessibility
 - Community impact is the impact that many different partners, working in collaboration, have on a specific population (i.e. community, town, state, etc.).
 - Levy shall be evaluated on the number of collaborative, community-based events developed and executed, and its rate of success on meeting the target number of events.
 - Levy will also report on the number of Santa Clara residents impacted, the overall attendance and the number of people served at each of the events.

Sustainability



- Sustainability

- Sustainability is operating in a way that protects, preserves or restores the natural environment, promotes social equity, enhances the lives of people and communities and contributes to economic prosperity.
- The sustainability goal is set annually with a target to achieve a “zero waste” operation during the life of the Agreement. - Ex. Composting

Workforce Development/Training



- **Workforce Development/Training**

- Defined as the activities, policies and programs established to create, sustain and retain a viable workforce that can support current and future business and industry.
- Levy shall develop and submit a specific workforce training and development programs and quantify the participation level and impact of the training.
- Levy shall be evaluated on its rate of success by the number of people who have been trained and placed into employment at the Convention Center or with other employers.

Local Purchasing



- Local Purchasing
 - Defined as Northern California grown and produced food, beverages, and supplies.
 - Levy shall report on its overall purchasing volume and detail the local purchases including local vendor names to demonstrate a minimum of 25% of local purchasing

Sales Activity – New Business Development



- Sales Activity – New Business Development
 - Prospects are any person or entity that is potentially interested in booking an event at the Convention Center and is deemed as having potential by Levy.
 - Levy shall develop and maintain a Customer Relations Management System (CRM), including a database of prospects, and engage in sales activities to convert potential customers to current customers or definite bookings
 - The target number of prospects shall be determined by the optimization process and Levy shall be evaluated on the number new social business prospects Levy adds to the CRM. Levy shall be evaluated on its rate of success on meeting the target number for new prospects

Retail Revenue – Public Space Activation



- Retail Revenue – Public Space Activation
 - Public space activation provides for social/public gathering places and retail opportunities outside of the formal meeting spaces.

Customer Service Survey Results



- Customer Service Survey Results
 - Customer service is the direct interaction and assistance provided by Levy to individuals or groups looking to hold an event and holding an event in the Santa Clara Convention Center.
 - Customer service satisfaction surveys shall be administered by a third-party administrator to Convention Center meeting planners, clients and attendees. The survey instrument shall measure the overall customer satisfaction with Levy's products and services and survey results shall be provided directly to City.

Weights



Key Performance Indicator	Weight
Customer Service Survey Results	10%
Local Purchasing Requirement	5%
Room Nights Generated	5%
Net Profit	40%
Community Impact Scores – Community Accessibility (number of events, community outreach)	10%
Sustainability Goals	10%
Workforce Development/Training	7.5%
Sales Activity – New Business Development	7.5%
Retain Revenue – Public Space Activation	5%

Conclusion



- There is a broad spectrum of KPIs for the three contributors
- Success in moving all the metrics forward = broad based success
- Next steps
 - Produce draft reports
 - Set future goals

Questions?



The Importance of Prospecting

Santa Clara

September 1, 2020



Why Prospect?

- Sets the stage...
 - Prospecting builds awareness and plants the seeds for future business
 - Build early stage pipeline to expand your customer base and build the funnel
 - Improves your calling skills/confidence in later stage opportunities
 - If done right, positions you as a trusted advisor
 - Builds/expands your contact database for use in ongoing campaigns to drive increased activity
 - Get in front of competition and guide the sales process from the beginning

Meeting/Event Planner behavior

- Not everyone will be interested in speaking
 - At any given time, only 3% of the market will be in an active buying cycle
 - 40% will be susceptible/open to change but not in a buying cycle
 - This will be your sweet-spot
 - 57% will not be open to change
 - If the timing is not right, accept it and move to the next.

Outbound Prospecting Acquire Accounts

- Who to Target...
- Define your target audience:
 - Industry/Vertical
 - Size – P1, P2, P3 or Social
 - SCCC Revenue and Room Nights
 - Their Industry/Company Trends
- Building the list:
 - A-List – Dream accounts with known activity
 - Bread & Butter - # Employees, vertical market, event history
 - Consider account types which have been successful in the past... “rinse and repeat”
 - Compelling Events – Industry events/trends driving known issues and opportunities
 - Dead Ends – Accounts who are active but will never commit

Prospecting Pyramid

Understand your prospect's current level



Getting Started

- Have a strategy and prospect with a purpose
- Block uninterrupted time for prospecting
 - Get in the groove
 - Assign yourself “power-hours” for dialing
- Allow time for pre-call research
- Avoid the trap of making excuses for not prospecting
- Break your call-lists out by vertical/industry
 - Helps you get into a rhythm and flow
- Have a plan/objective
 - Call top priority prospects first
 - Know who and why you are calling

Pre-Call Research

- Understand your ideal customer contact persona:
 - Influencers
 - Economic Buyer – All about the ROI and hold the keys to the vault
 - Technical Buyer – Wants to understand the feasibility/ROI
 - This person can also be a key barrier
 - Coach – This resource will be your advocate and guide in the process
 - For success, you must find at least one
 - Not all prospect contacts are decision-makers... that doesn't mean they aren't important to breaking down the door
 - Understand your prospect's role in the business
 - Titles do not necessarily define role responsibilities

Pre-Call Research – Be knowledgeable

- Avoid paralysis by analysis in your pre-call research activities
 - 3X3 Research
 - 3 key pieces of information in three minutes
 - 3 sources – LinkedIn, CRM, MINT, general web-search
 - Focus on the 3Cs
 - Company – News, Events, Growth, Reviews
 - Contact – Contact info, persona, LinkedIn profile, time in role, etc.
 - Conversation Starter – Recent award, social media post, new industry trend/challenge
- Be prepared to answer the question, “what do you know about me and/or my company?”

Pre-Call Research

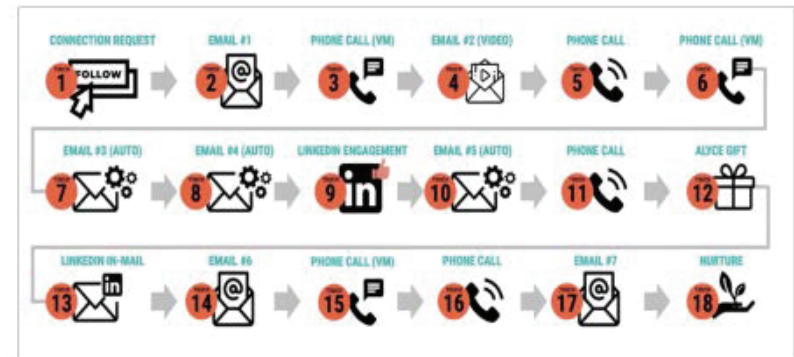
Key Items to look for in your pre-call research

1. Relevant social media posts
2. Quotes from an article or video
3. The prospect's previous employer(s)
4. Current projects or initiatives
5. The account's business/mission?
6. Executive changes
7. Number of Meetings/Event and size
8. Referral or other names in the org
9. News events

The Prospecting Cadence

- It's not a “one-and-done” process
 - Statistics show it takes 7 to 12 contact attempts to make successful engagement
 - Combination of phone, email, social media over a defined period of time
 - 50%+ of steps should be based on direct phone outreach
 - Include phone calls, emails, social media (InMail, etc) and voicemail
- Building your prospecting cadence

Touch Cadence



Preparing to Make the Introductory Call

- Why do planner choose Santa Clara
 - How is the customer addressing challenges and how could they address these at SCCC?
 - What customer trigger events create a need?
 - What red flags exist that may identify a bad fit?
- Be prepared to answer the “5 Whys”
 - Why listen
 - Why care
 - Why change
 - Why you
 - Why now

	PROSPECT BEFORE	PROSPECT AFTER	CORRESPONDING SALES STAGE
WHY LISTEN?	Crazy busy	Curious	Introductory meeting
WHY CARE?	Curious	Interested	Discovery call
WHY CHANGE?	Interested	Active	Pipeline opportunity
WHY YOU?	Active	Committed to you	Forecast opportunity
WHY NOW?	Committed to you	Committed to now	A win

Preparing to Make the Introductory Call

- Useful Methodologies
 - Active Listening
 - Hear what the prospect is saying rather than planning for your next question
 - Critical information is often slipped in by mistake and is commonly missed
 - We've been stuck with the way San Jose does it for years, so we are used to it.
 - Pattern Interrupt
 - Change the momentum and direction of the interaction to keep the prospect off auto-pilot
 - Respond in a manner the prospect is not expecting
 - Statement - *I hear Santa Clara is expensive and inflexible*
 - Response - *So, you prefer value customized approaches*
 - Two-Nos Rule
 - If the prospect fits the model, get "no" responses from two separate contacts within the organization before moving on

Making the Introductory Call

- The first call is focused on getting information, not giving
 - Remember, it's the first call... avoid jumping to meeting questions
 - Use basic probing questions. Examples include:
 - What's your biggest headache as it relates to your events/meetings?
 - That's interesting, can you tell me more?
 - How long have you had this challenge?
 - What have you done to resolve this challenge?
 - What has prevented you from making a destination or venue change?
 - What would it mean to you and your organization if you found a new approach to this challenge?
 - If you did find a new approach that you believe could resolve these issues, would it be worth spending some time to learn more?

Getting Past the Gatekeeper – Listening

- Gatekeepers can be your friend or the ultimate block
 - Establish trust by mentioning something learned in your research of the prospect
 - Do your research
 - Getting past a gatekeeper will improve if you know and understand the prospect's specific pain points.
 - Highlight their importance in the organization
 - Ask for their help
 - *I'm hoping you can help me...*
 - *Based on your experience, do you believe John Doe is the best person to speak with?*
 - Always remain polite... What's the magic word?
 - Thank them for taking your call
 - Ask if they could "*please*" help direct you
 - By showing you are listening, you demonstrate that you are not there to sell, but are there to understand challenges and present an actual solution

The Outbounding Process

- Engaging your contact for the first time
 - It's all about them... not you
 - Introduce yourself and use the prospect's name, "Hi Mike, my name is Eric and I am calling from Santa Clara... move directly into your opening statement
 - Opening statement should be about/relevant to the customer
 - Use your pre-call research to reference something important to the prospect's business
 - Example 1: I see you have been holding these types of meetings/events. I bet there are some unique challenges. Walk me through what you are dealing with to really be successful?
 - Example 2: I see on your website that "customer experience" is critical to the success of your business and leading edge technology is a big part of that. I am interested to understand what initiatives are top of mind in your company/association/organization to support this.

Overcoming Objections

- LAER
 - Listen
 - Take the time to listen to the objection without interruption
 - This demonstrates you are interested in their concern
 - Acknowledge
 - Validate the concern
 - Acknowledging the concern shows you are actively listening
 - Explore
 - Ask follow-up/clarification questions
 - It is imperative that you understand exactly what your customer meant by what they said
 - Respond
 - Once you have a clear understanding, you can provide a response to the objection
- Make it clear you understand their challenges, or are at least trying to

Overcoming Objections

- Don't avoid the objection
- Address objections early so there are no surprises late in the sales process
- Hit objections head-on
 - Do you have any concerns around Santa Clara?
 - Are there any obstacles that would stop you from considering Santa Clara for your next meeting?
 - You seem a little worried about _____. Can you help me understand this?
- Always thank the prospect for the objection as this provides an opportunity to address the challenge
 - I appreciate you providing clarity on your concerns

Common Objections

- No Budget/Too Expensive
 - It's too early in the process to get into pricing discussions
 - Acknowledge the concern and work to redirect until the specific requirement(s) have been defined
 - Confirm whether price is the driving motivation or are capabilities important
- Competition
 - Ask what made them select their current location/venue
 - Confirm what the prospect likes about their current location, followed by what they would like to see improved
 - Listen for key words that could indicate dissatisfaction...
 - Ex. We are *locked* into a contract with another destination/venue
- No Authority
 - Simply ask who is responsible for the decision-making
- Happy with current solution
 - There is always something that could be improved.
 - Do some light probing to find the chinks in the armor

Common Objections – Cont'd

- Too busy to get into anything new
 - Explain that you're not looking to have an extended conversation, just have a quick chat about whether a longer discussion is appropriate
- Just send me some information
 - Let the prospect know you are happy to send information but want to make sure the information is relevant
 - Ask what the prospect is interested in learning about
 - This will often help understand where challenges exist
- Call me later in the year
 - Ask what will be different later in the year that will make it a better time to talk
 - Confirm a date that they would like you to follow up.

The Voicemail

- Leaving a quality voicemail
 - Voicemail is a valuable tool and should not be overlooked
 - Do not leave a voicemail with an expectation of a return call
 - Lead with who you are and your phone number, then roll into the reason for your call and close with repeating your contact information
 - Hi, this is Bill from SCCC and my phone number is...
 - The reason for my call is...
 - Again, this is Bill and my phone number is...
 - Close your voicemail letting the prospect know you will call again soon if you do not hear back from them in X amount of time
 - Use the WIIFM (what's in it for me) concept
 - Be topical and have a reason for leaving the message – have new Santa Clara developments ready



Email Strategy

- Email #1 - Why You, Why Now
 - Highly personalized – Be unique
 - Short... no more than three paragraphs
 - Intro Paragraph – Reference something about them identified in pre-call research
 - Paragraph 2 – Reference how SCCC/DMO has helped groups like theirs (WIIFM)
 - Paragraph 3 – Call to action/offer
 - The subject line is critical and should reference the prospect
 - Contact name
 - News item reference
 - Direct reference subject
- Email #2 & 3
 - Progress the story
 - Provide relevant reference material related to what you found in pre-call research
- Email #4 – The Strip-line
 - Letting the prospect go – final attempt
 - Summarize the information provided – here is what I have shared about our great experience

Email Strategy

- The Four Elements of an Effective Prospecting Email*
 - Hook – Get their attention with a compelling sentence and subject line
 - Relate – Demonstrate you understand them and their challenge
 - Bridge – Connect the dots between their needs and how you can help
 - Explain the WIIFM
 - Ask – Have a clear and straightforward action you want the prospect to take
- A/B Test Your Prospecting Emails
 - Not everything is going to work on the first try or every time
 - Mix up your subject lines to identify which gain attention and which fall flat
- Be Very Aware of Spelling and Grammar
 - You will lose credibility very fast if your email is riddled with errors
 - ALWAYS make sure the prospect's name is spelled correctly

** Fanatical Prospecting, Jeb Blount*

Practice

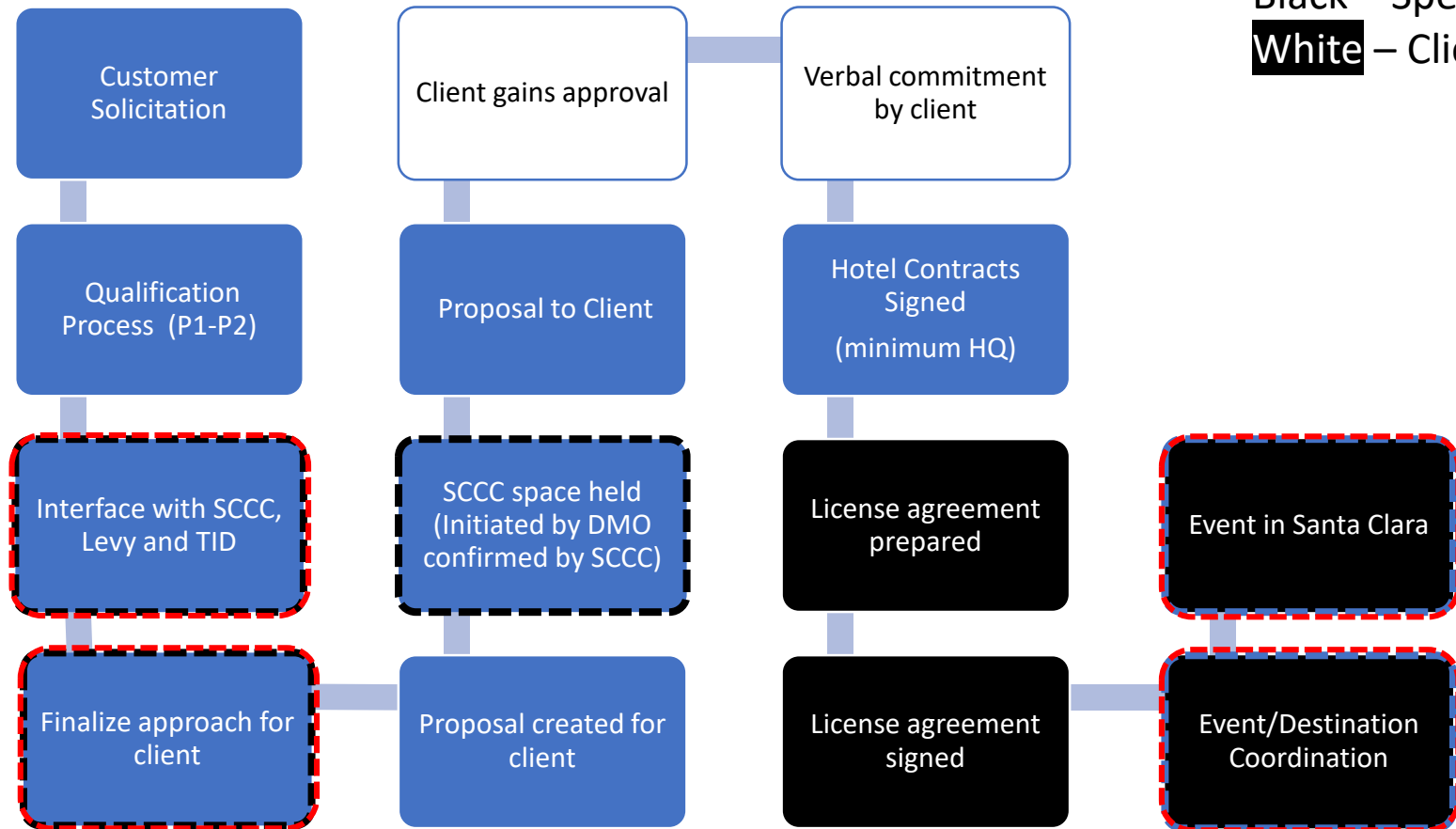
- Practice doesn't make perfect, but it does make you better than the day before
- Schedule peer-to-peer roleplays
 - Switch out who is the customer and who is the seller
 - Practice differing scenarios
 - Gatekeeper
 - Influencer
 - Decision Maker
- Embrace the value of roleplays
 - Use real world examples for roleplays
 - Good to practice before making calls to critical targets
 - Whenever possible, record your roleplay for further review/feedback

A large abstract graphic on the left side of the slide, featuring a solid red vertical bar and a large, light gray triangle pointing to the right.

Questions?

DMO/SCCC Future Booking Process

Blue – DMO
Red – Levy
Black – Spectra
White – Client





Santa Clara Convention Center

Monthly Sales Progress Report

September 2020

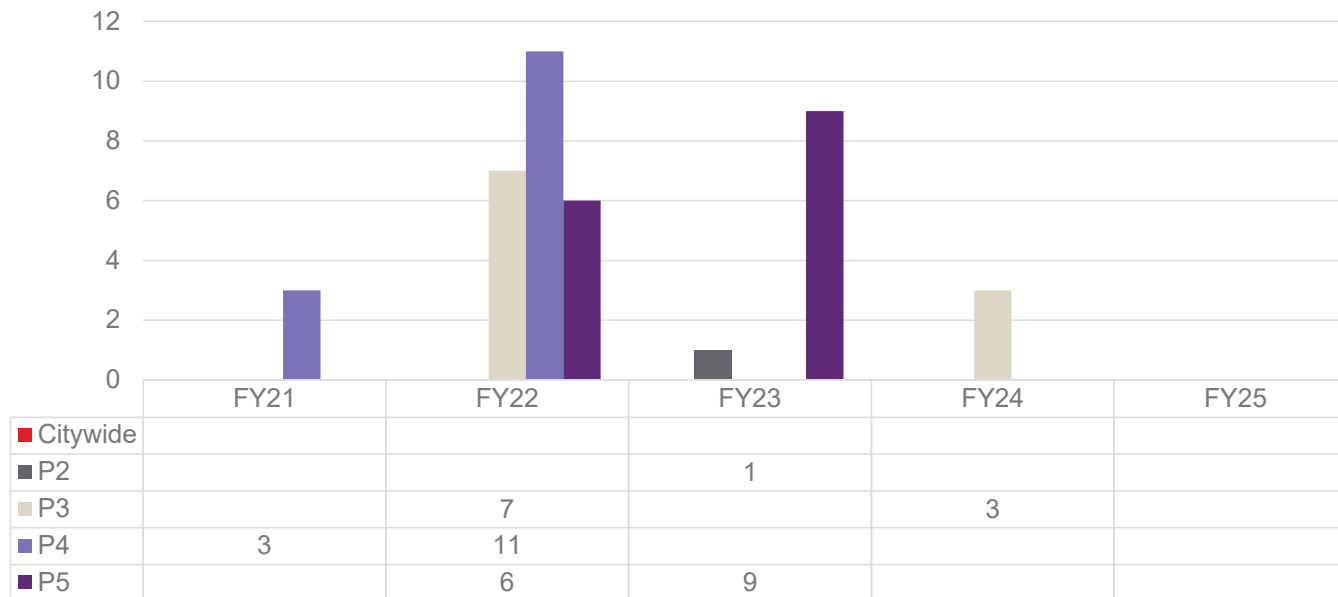


SCCC Sales Prospects



The sales teams across all partners added 38 new prospects for the SCCC in the month of September.

Prospects by Priority by Fiscal Year

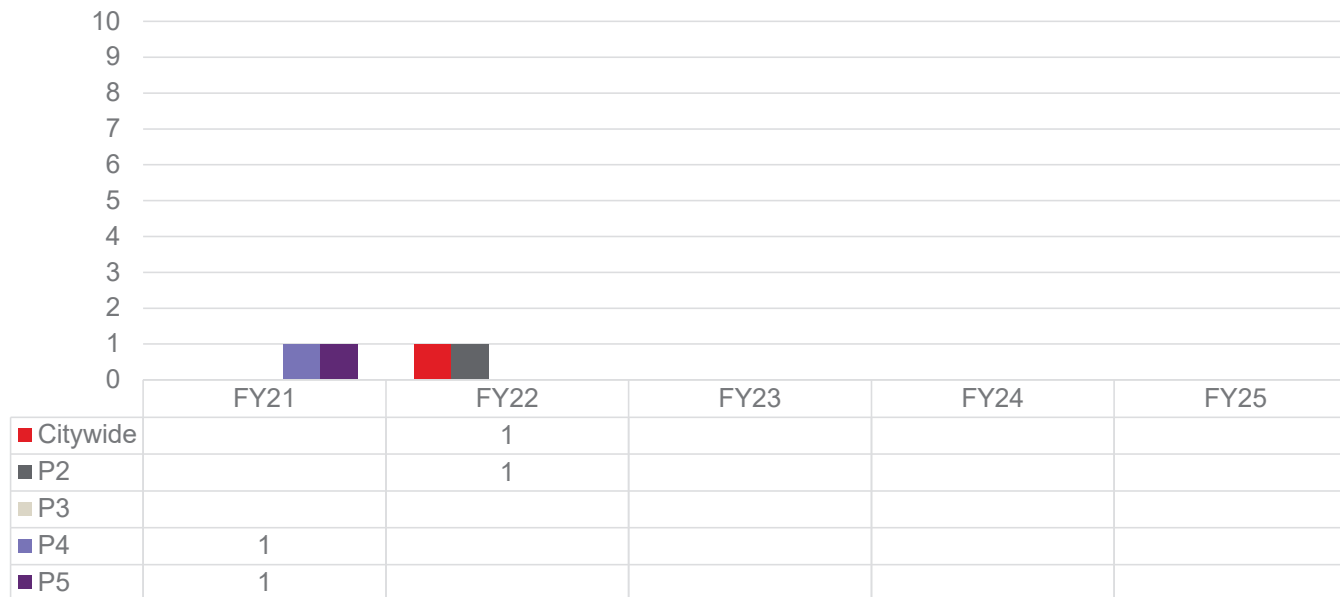


SCCC Sales Tentatives



The sales teams across all partners added 10 new tentatives for the SCCC in the month of September. This represents all events where a proposal was sent or a contract was sent. Four of the tentatives were classified by priority (see below). These events represent roughly \$1.25M in SCCC revenue.

Tentatives by Priority by Fiscal Year



SCCC Sales Definites

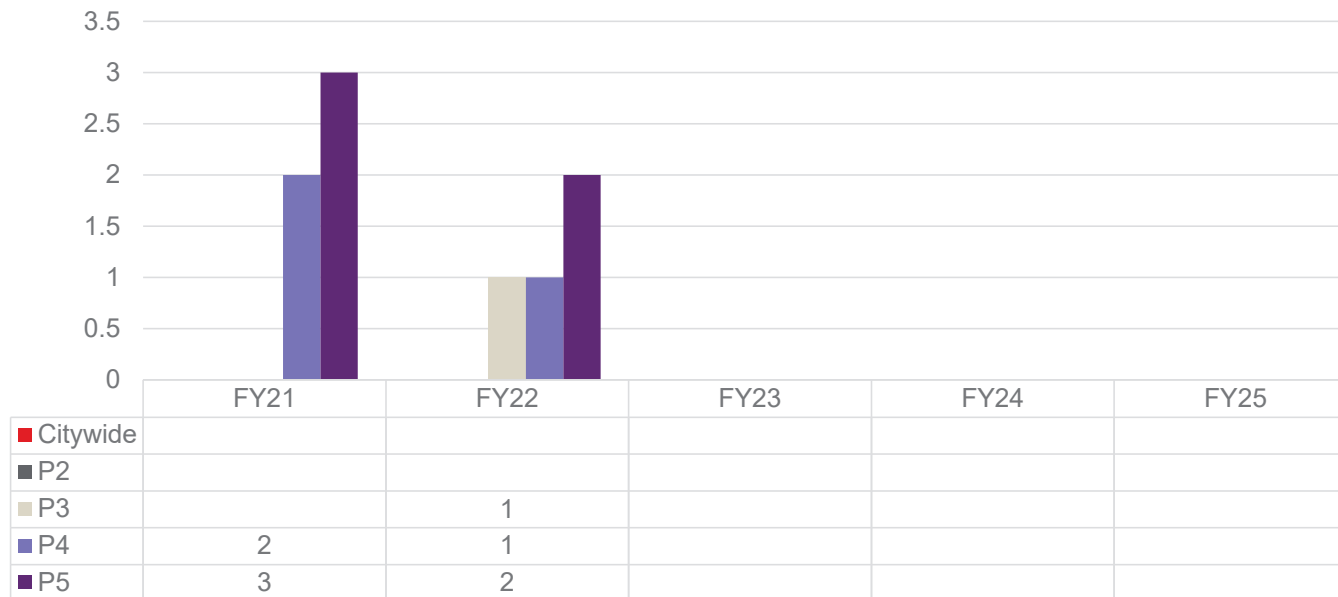


The sales teams across all partners added 9 new definites for the SCCC in the month of September. This represents all events where a contract was received.

These events represent roughly \$700,000 in SCCC revenue.

All of the events were repeat pieces of business. They were all P3-P5 and occur in the current or next fiscal year.

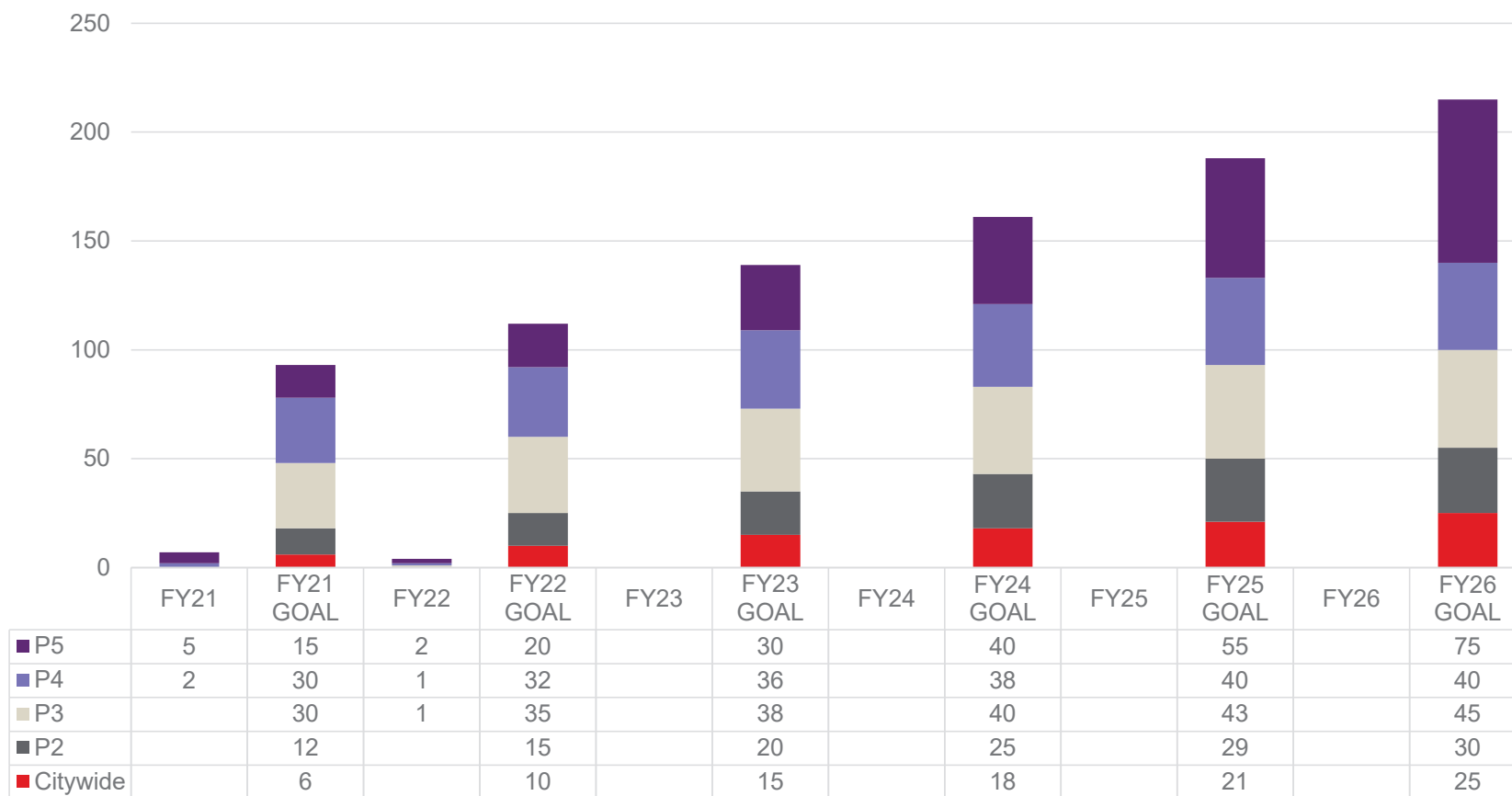
Definites by Priority by Fiscal Year



Progress to Goals: Five-Year Path



Progress to Goals





Santa Clara Convention Center

Monthly Sales Progress Report

November 2020

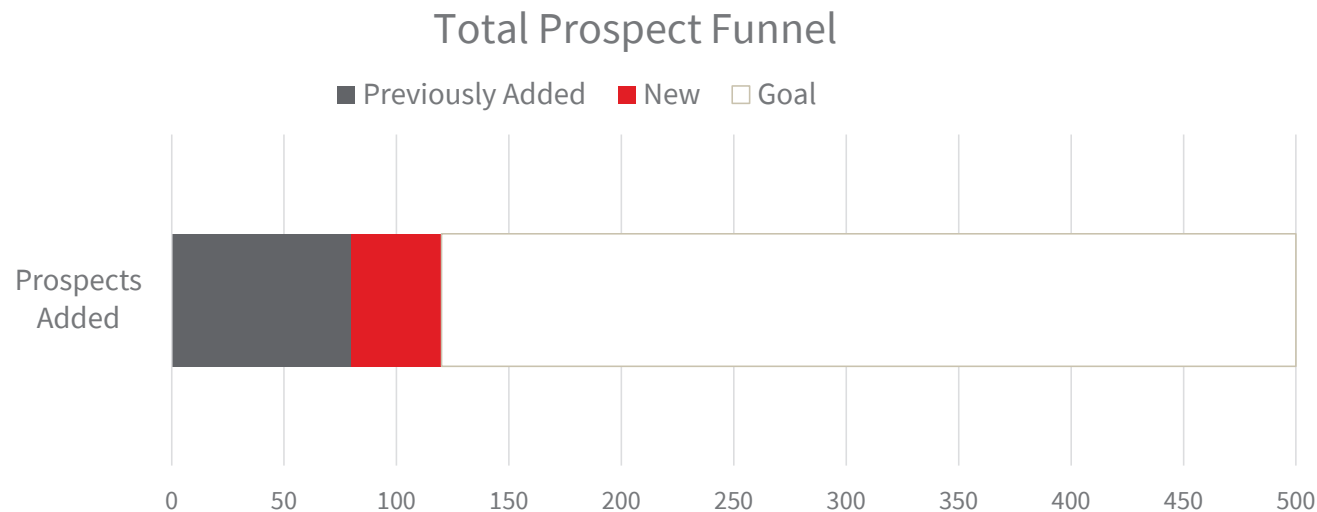


SCCC Sales Prospects



The sales teams across all partners added **40** new prospects for the SCCC in the month of November, down 9% from last month. All prospects added were categorized as “warm” or “hot”.

- There is a goal to achieve **500** prospects in the fiscal year, which equates to **42** total prospects per month.
- The sales team exceeded the monthly goal by **5%** and has achieved **16%** of the total prospecting goal for the year.
- 10 prospects became hot leads or tentatives, equating to a 14% conversion rate from prospect to tentative.



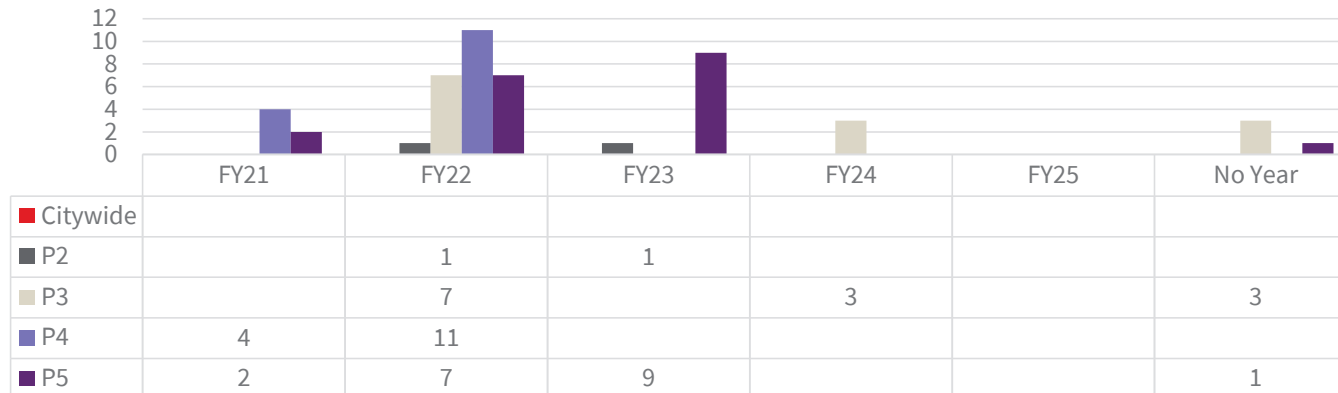
SCCC Sales Prospects



The sales teams across all partners added **44** new prospects for the SCCC in the month of October. All prospects added were categorized as “warm” or “hot”. There is a goal to achieve **500** prospects in the fiscal year, which equates to **42** total prospects per month.

*The sales team exceeded the monthly goal by **5%** and has achieved **16%** of the total prospecting goal for the year.*

Prospects by Priority by Fiscal Year

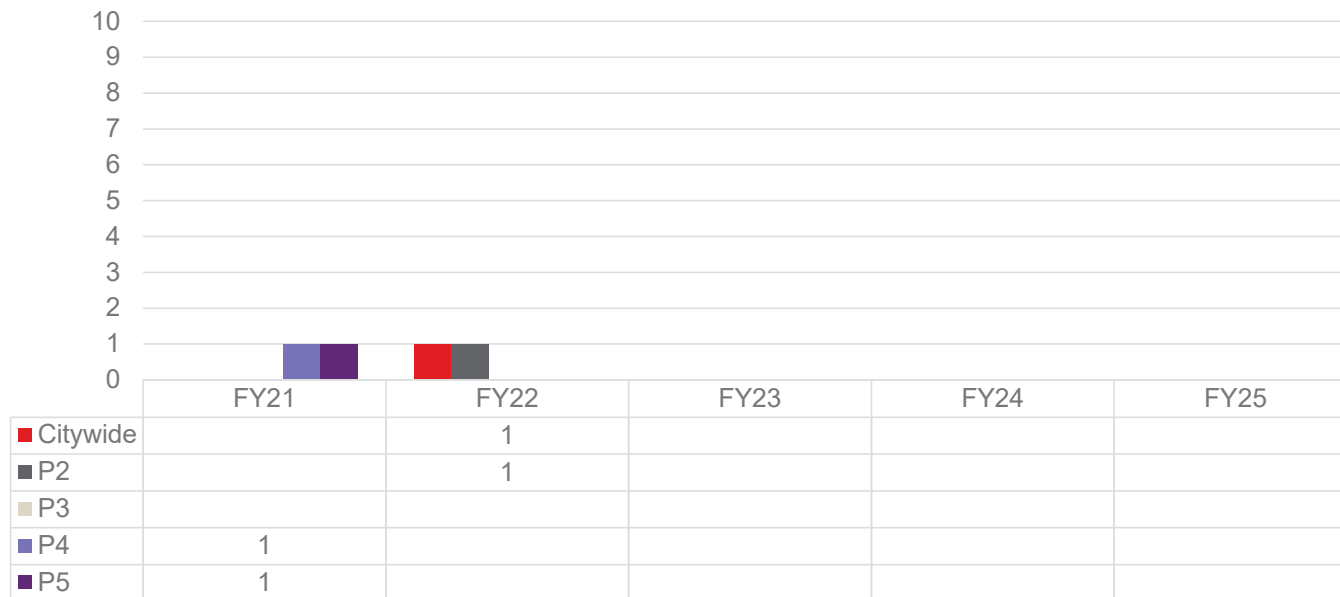


SCCC Sales Tentatives



The sales teams across all partners added 10 new tentatives for the SCCC in the month of September. This represents all events where a proposal was sent or a contract was sent. Four of the tentatives were classified by priority (see below). These events represent roughly \$1.25M in SCCC revenue.

Tentatives by Priority by Fiscal Year

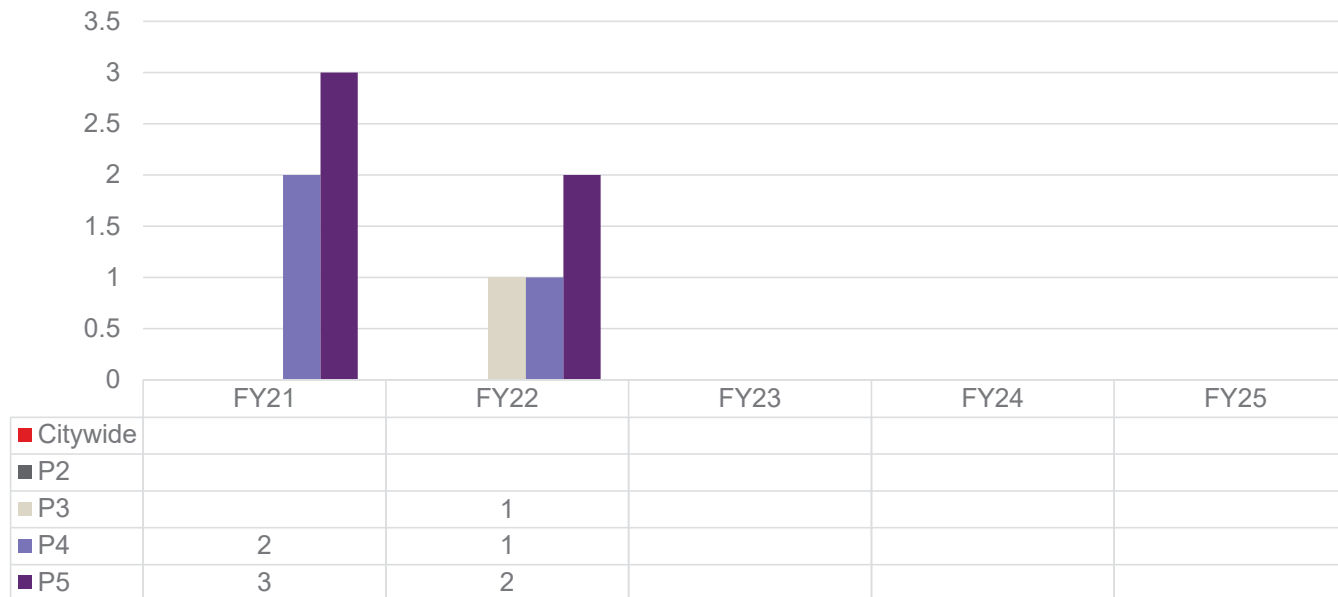


SCCC Sales Definites



The sales teams across all partners added 9 new definites for the SCCC in the month of September. This represents all events where a contract was received. These events represent roughly \$700,000 in SCCC revenue. All of the events were repeat pieces of business. They were all P3-P5 and occur in the current or next fiscal year.

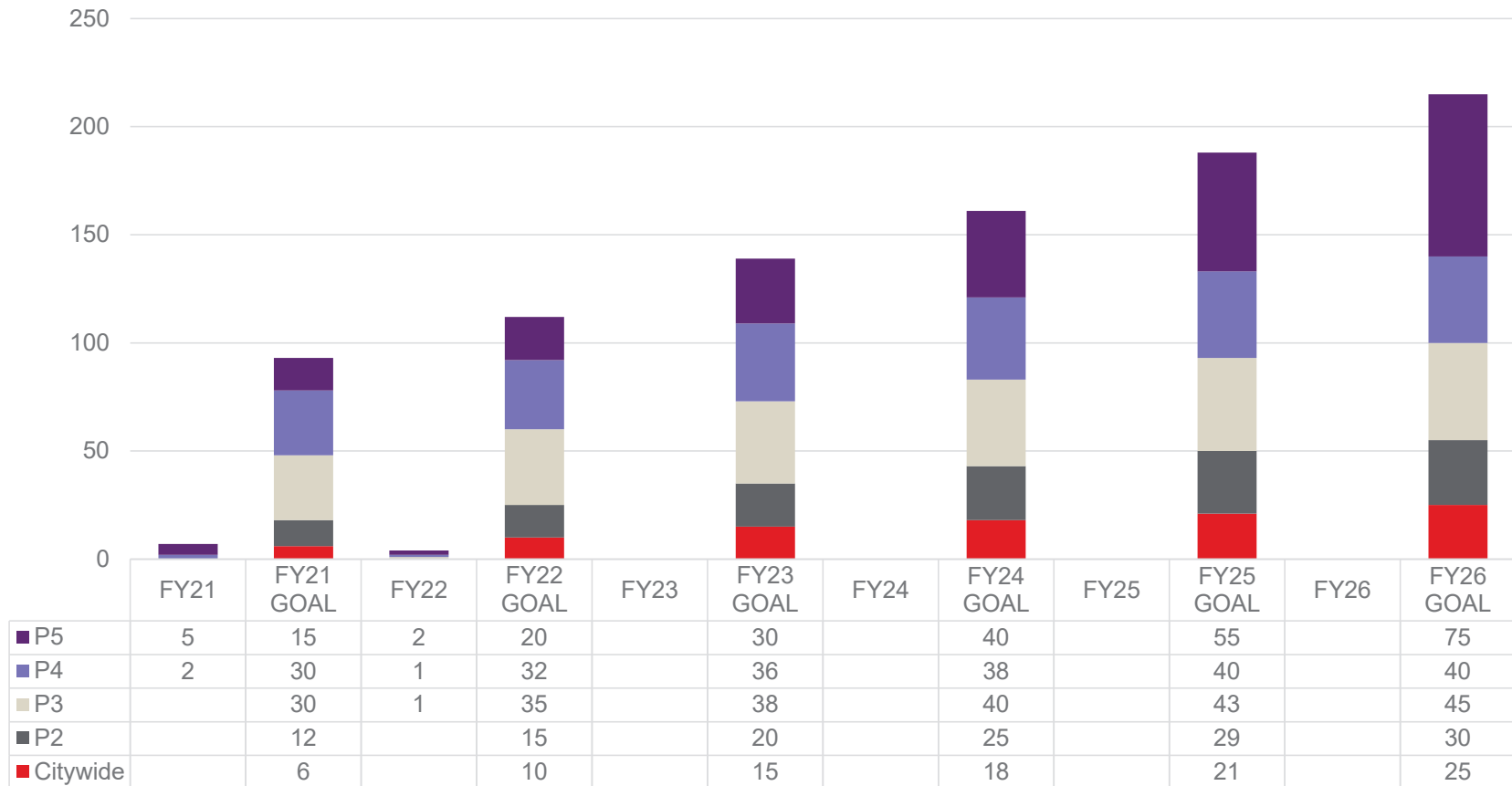
Definites by Priority by Fiscal Year



Progress to Goals: Five-Year Path



Progress to Goals





*Achieve
Ambitions*

Santa Clara Convention Center

Monthly Sales Progress Report

November 2020

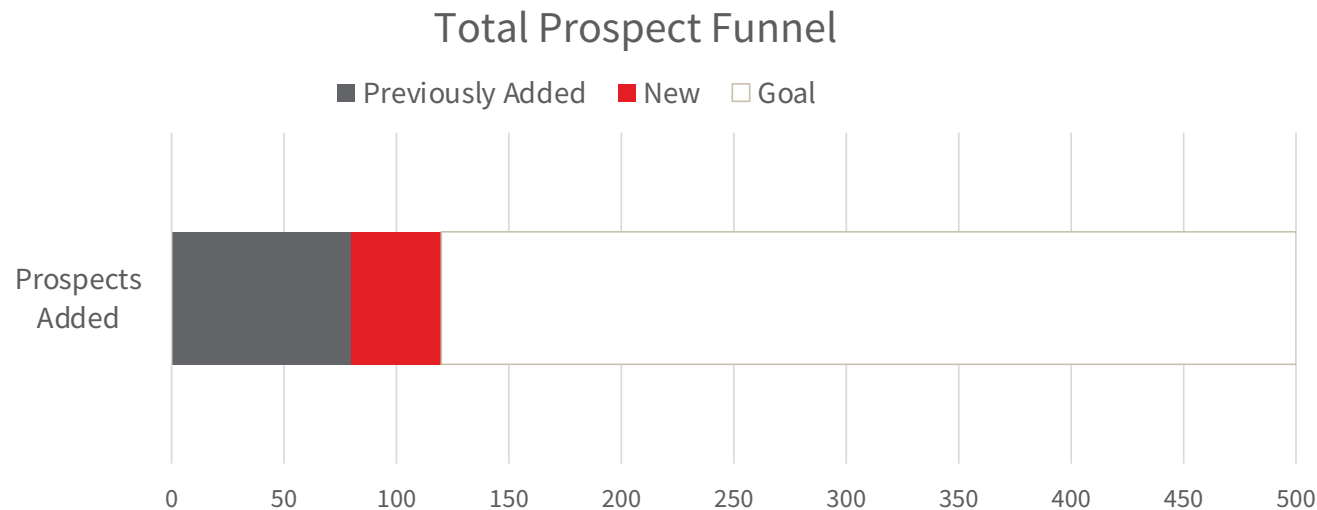


SCCC Sales Prospects



The sales teams across all partners added **40** new prospects for the SCCC in the month of November, down 9% from last month. All prospects added were categorized as “warm” or “hot”.

- There is a goal to achieve **500** prospects in the fiscal year, which equates to **42** total prospects per month.
- The sales team was below the monthly goal by **5%** and has achieved **24%** of the total prospecting goal for the year.
- The conversion rate into the pipeline remains at about **25%**..

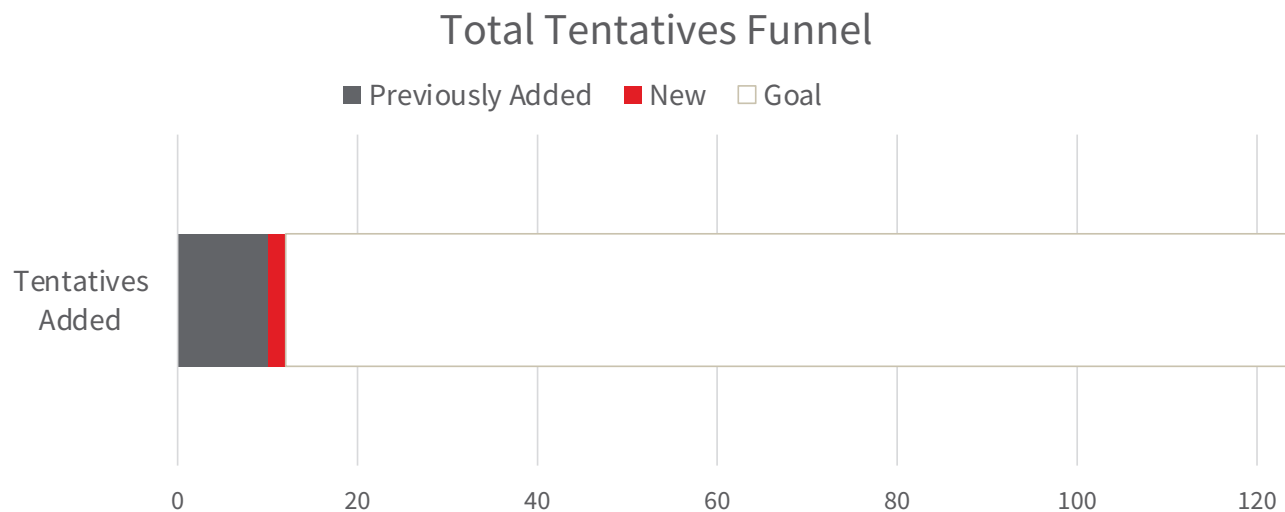


SCCC Sales Tentatives



The sales teams across all partners added 2 new tentative events for the SCCC in the month of November.

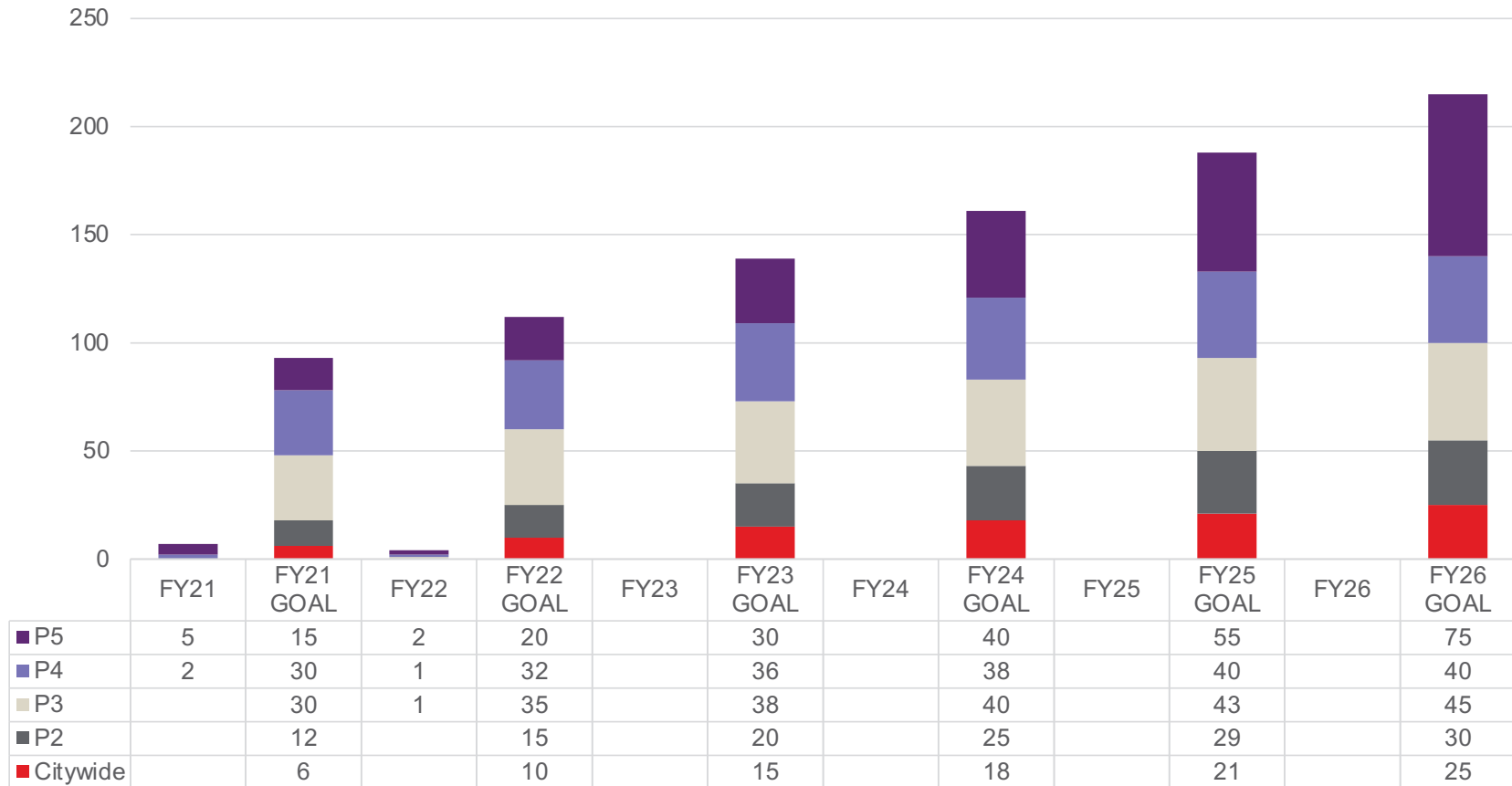
- There is a goal to achieve 125 tentative events in the fiscal year, which equates to 10 total tentative events per month.
- The sales team was below the monthly goal by 80% and has achieved 10% of the total tentative goal for the year.
- The conversion rate from prospect to tentative is about 15%..



Progress to Goals: Five-Year Path



Progress to Goals





Santa Clara Convention Center

Monthly Sales Progress Report

December 2020

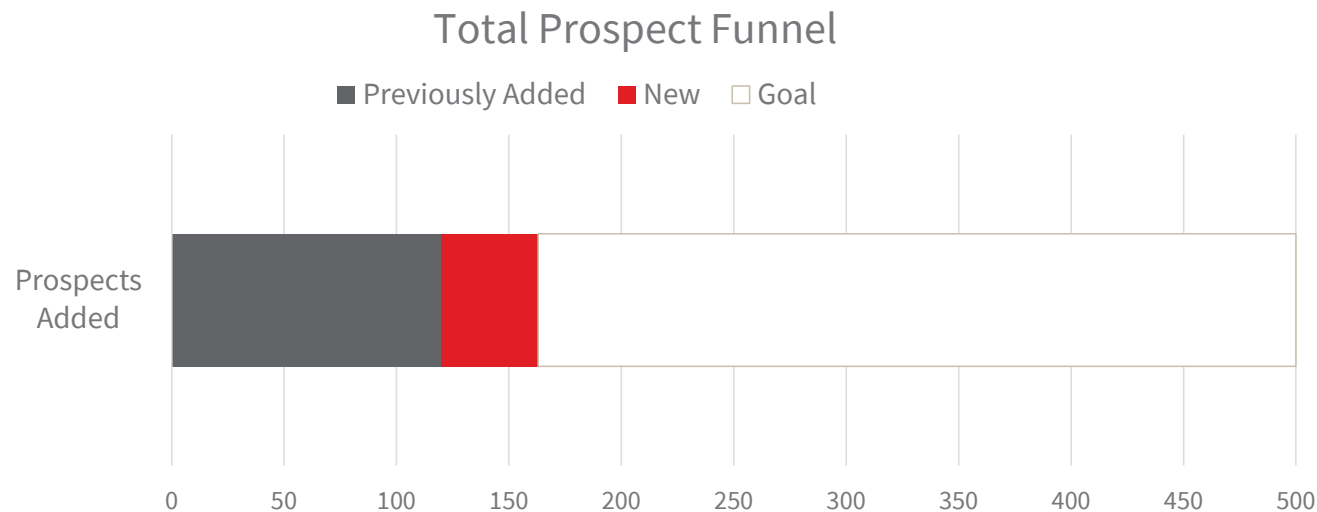


SCCC Sales Prospects



The sales teams across all partners added **43** new prospects for the SCCC in the month of December, up 7.5% from last month. All prospects added were categorized as “warm” or “hot”.

- There is a goal to achieve **500** prospects in the fiscal year, which equates to **42** total prospects per month.
- The sales team was above the monthly goal by **2%** and has achieved **33%** of the total prospecting goal for the year.
- The conversion rate into the pipeline remains at about **20-25%** YTD.

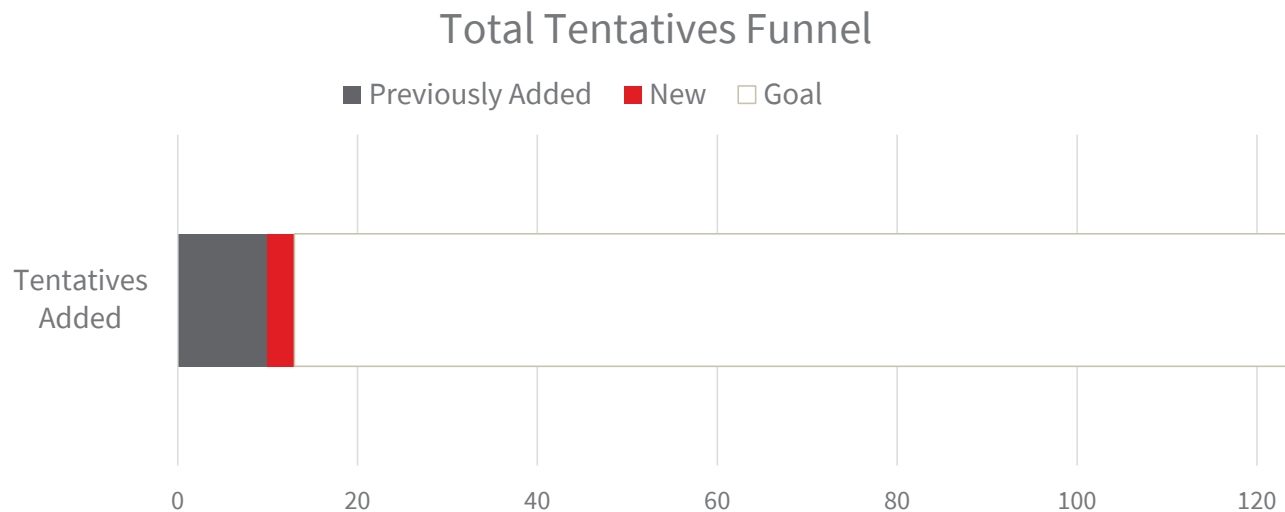


SCCC Sales Tentatives



The sales teams across all partners added **3** new tentative events for the SCCC in the month of December.

- There is a goal to achieve **125** tentative events in the fiscal year, which equates to **10** total tentative events per month.
- The sales team was below the monthly goal by **70%** and has achieved **10%** of the total tentative goal for the year.
- Of existing tentatives, **2** were lost and **3** converted to definite.
- The conversion rate from prospect to tentative is just under **10%**.



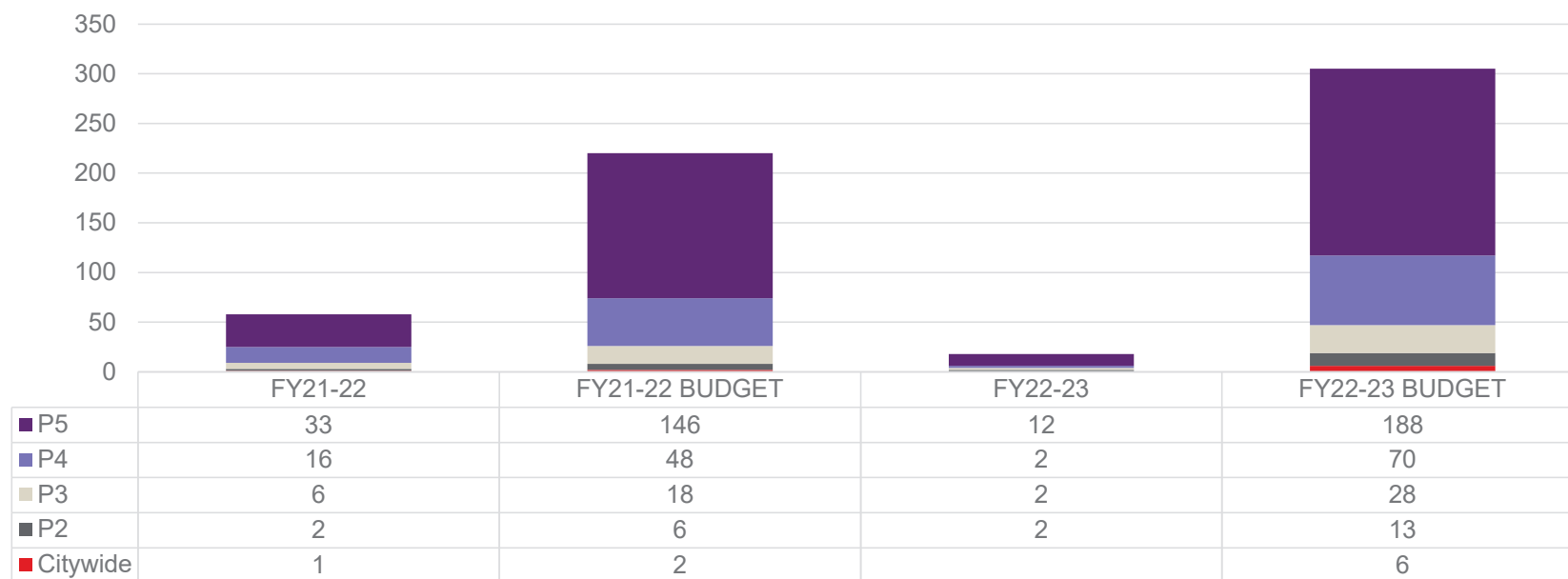
FY Budget Events



The sales teams are working towards a total of **220** events at the SCCC for FY21-22 and **305** events for FY22-23.

- The following chart displays goal booked events by priority type against the FY budget.
- The sales team has booked **4** new definites that impact FY21-22 and FY22-23.

FY Events vs. Budget



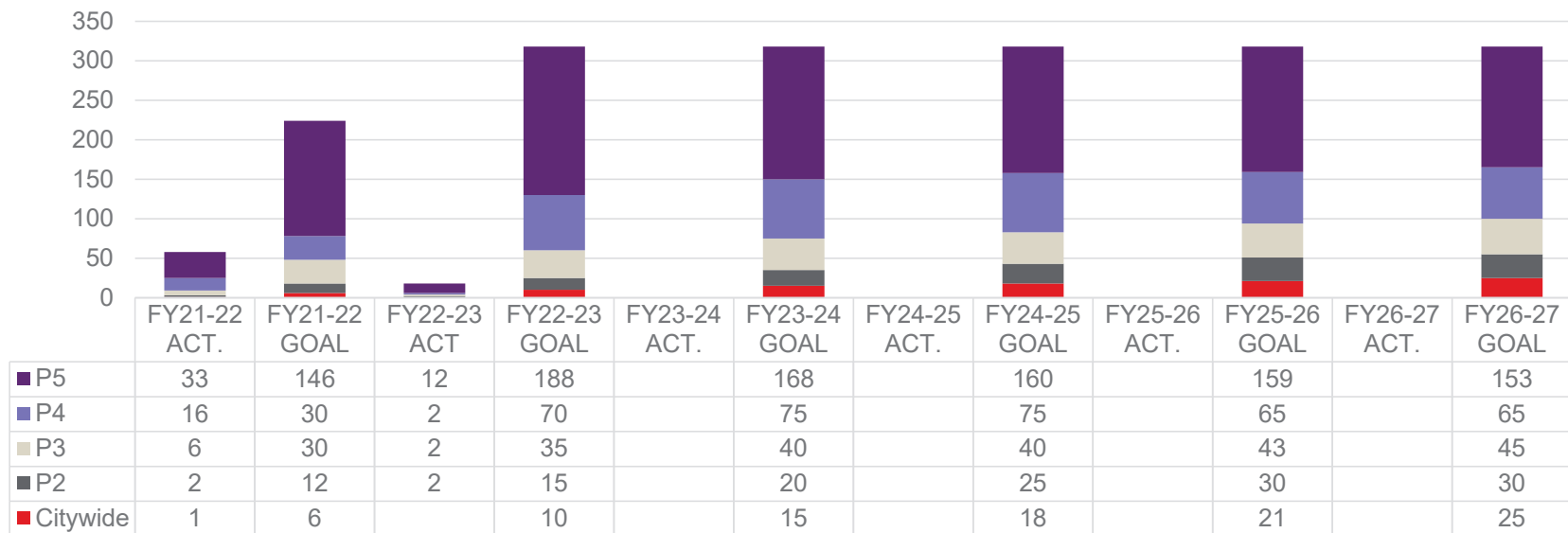
Booked Definites Goals: Five-Year Path



The collective sales teams are striving to book business in this fiscal year that will have an **impact on future years**.

- The following chart displays goal events by priority type for the next six years (including the current FY).
- This is not reflective of the current FY budget for number of events hosted.
- The optimized goal for the SCCC in a stabilized year (FY26 below) is 25 P1, 30, P2, 45 P3, 40 P4, 75 P5 events.
- The sales team has booked **4** new definites that impact FY21 and FY22. The four definites are P3-P5.

Progress to Booking Goals



Santa Clara

Subsidy Strategy & Policy Discussion



Overview

1. Requests for financial support or other supporting resources are a competitive factor in the decision-making process.
2. Subsidy requests are a common practice in the meetings/convention industry
3. A process and guidelines must be developed with criterion to be adopted by the TID and DMO boards.
4. Input today to determine the most efficient, fiscally responsible approach to determining subsidies for groups deciding on SCCC or Santa Clara as a destination

Proposed Request Process

- The DMO and SCCC can request financial support on behalf of clients. These requests will be presented to the TID and DMO (or designated committee for expediency) for formal approval.
 - An expedited process must be developed, when needed.
 - Subcommittee created and able to meet with short notice
 - An Executive Summary form will be created that outlines the core requirements, e.g. event history, "Direct" financial impact to the City, competition, PR value, etc.
- If possible, the review and approvals would occur at board meetings

Core Requirements

- Room Nights
 - Three years history (minimum)
- Fiscal impact on SCCC (or other Santa Clara venues)
 - Rental Revenue
 - F and B Revenue
 - Other revenue (includes AV and IT)
- Economic Impact
 - Determine “quality” of group in terms of direct spending when possible

Additional Considerations

- Community Benefit
 - Does the event have an impact into the community beyond economic value?
 - Examples
 - Volunteering/community activity
 - Donate food
 - Scholarship/Education programs
 - PR Value
- Repeat business potential
 - Positive repeat business – is it a new event contracting for multiple years? Or could it become a repeat event?
- Where and what are the other offers?
 - What are the terms of the competition?
- What will the dollars be used for?
 - Funds can be an offset to an expense the group will incur, or a “cash offer” or SCCC offset.



Sample Incentive Calculation



Sample: TID & Occupied Rooms Revenue

Estimated TID/Occupancy Revenue

Type	Room Nights on Peak	Est. Avg. Total Rooms	Est. Daily Rate	Total Hotel Revenue	TID @ \$1/per room	Occupancy Tax @ 9.5%	Stadium Tax @ 2%
P1 Midweek	900 LOS 2.5-days	2,250	\$175.00	\$393,750	\$2,250	\$37,406	\$7,875
P1 Weekend	400 LOS 1.5-days	600	\$150.00	\$90,000	\$600	\$8,550	\$1,800
P2 Midweek	600-899 LOS 2.5-days	1,873	\$175.00	\$327,688	\$1,873	\$31,130	\$6,554
P2 Weekend	100-399 LOS 1.5-days	375	\$150.00	\$56,175	\$375	\$5,337	\$1,124
P3 Midweek	150-599 LOS 2.5-days	987	\$175.00	\$172,725	\$987	\$16,409	\$3,455
P3 Weekend	50-99 LOS 1.5-days	113	\$150.00	\$16,875	\$113	\$1,603	\$338

Sample: Economic Impact

Estimated Economic Impact

Type	Est. Daily Attendance	# of Show Days	Est. Total Attendance	Est. Daily Spend per person	Est. Economic Impact per Event*
P1 Midweek	1,200	2	2,400	\$1,183	\$1,419,352
P1 Weekend	600	2	1,200	\$1,242	\$745,465
P2 Midweek	950	2	1,900	\$1,076	\$1,021,782
P2 Weekend	350	2	700	\$1,315	\$460,377
P3 Midweek	525	2	1,050	\$1,086	\$570,268
P3 Weekend	150	2	300	\$1,367	\$204,975

*Based on DI Event Impact Calculator amounts, includes both outside and Center/Hotel economic impact



Sample: Sales Tax

Estimated Sales Tax Collection

Type	Est. Daily Attendance	# of Days	Est. Total Attendance	Est. Daily Spend per person	Est. Outside	Est. Sales City SC Sales Tax	City Share of Sales Tax
					Facility Revenue per Event		
P1 Midweek	1,200	2.5	2,400	\$280	\$336,515	\$30,286	\$3,029
P1 Weekend	600	1.5	1,200	\$210	\$126,128	\$11,352	\$1,135
P2 Midweek	950	2.5	1,900	\$238	\$225,702	\$20,313	\$2,031
P2 Weekend	350	1.5	700	\$220	\$77,289	\$6,956	\$696
P3 Midweek	525	2.5	1,050	\$270	\$141,756	\$12,758	\$1,276
P3 Weekend	150	1.5	300	\$173	\$25,961	\$2,336	\$234

*Based on DI Event Impact Calculator amounts, includes both outside and Center/Hotel economic impact



Sample: Direct Revenue to City of Santa Clara

Estimated Direct Revenue to the City

P1 Midweek

Revenue Stream	Amount
TID	\$2,250
Occupancy Tax	\$37,406
Stadium Tax	\$7,875
Sales Tax	\$3,029
Est. Total	\$50,560

P1 Weekend

Revenue Stream	Amount
TID	\$600
Occupancy Tax	\$8,550
Stadium Tax	\$1,800
Sales Tax	\$1,135
Est. Total	\$12,085

P2 Midweek

Revenue Stream	Amount
TID	\$1,873
Occupancy Tax	\$31,130
Stadium Tax	\$6,554
Sales Tax	\$2,031
Est. Total	\$41,588

Estimated Direct Revenue to the City

P2 Weekend

Revenue Stream	Amount
TID	\$375
Occupancy Tax	\$5,337
Stadium Tax	\$1,124
Sales Tax	\$696
Est. Total	\$7,530

P3 Midweek

Revenue Stream	Amount
TID	\$987
Occupancy Tax	\$16,409
Stadium Tax	\$3,455
Sales Tax	\$1,276
Est. Total	\$22,126

P3 Weekend

Revenue Stream	Amount
TID	\$113
Occupancy Tax	\$1,603
Stadium Tax	\$338
Sales Tax	\$234
Est. Total	\$2,287

Proposed Methodology

- Subsidies should not exceed estimated "Direct Revenue" to the City.
- Adjustment factor may be needed for weekend business (2X)
- All event qualifications must have direct SCCC revenue thresholds included
- Committee should be formed to accommodate short term requests
- Annual budget will be developed and monitored
 - Future subsidies will be treated as liabilities and budgets established for future years.
 - Multiple year subsidies could be awarded however the group would have to “perform” as anticipated
- Citywide groups could use other Santa Clara venues and potentially be eligible for subsidy

Sample

Sample DMO Executive Summary



Name of the Event	ABC Event
Date of the Event	7/11-14/2021

Previous Locations

Location	Year	Room Nights Generated
Ft. Lauderdale, FL	2014	1340
Des Moines, IA	2013	1260
Salem, OR	2015	1315
Average Room Nights		1305

Estimated TOT

Estimated Room Nights	Room Rate	TOT Tax	Total
1300	\$175	9.50%	\$21,612.50

Estimated Sales Tax

Estimated Attendees	Daily Spending	Number of Days	Salex Tax	Total
500	\$116 (Average spending P1-P3)	3	9.00%	\$15,660.00

Direct Revenue Totals

Estimated TOT	\$21,612.50
Estimated Sales Tax	\$15,660.00
TID Assessment @ \$1/per room	\$1,300.00
Total TOT-Sales Tax-TID	\$38,572.50

Subsidy Evaluation

Estimated Total Direct Revenue	\$38,572.50
Requested Subsidy	(\$25,000.00)
Estimated Event P&L	\$13,572.00
Other Benefits	
Committee Recommendation	YES / NO

Next Steps

- Gain feedback from TID and DMO Board
- Finalize and detail approach and methodology
- Create Forms
- Present at next meeting for final approval

Thank You

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Bethanie DeRose
Vice President
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bethanie.derose@am.jll.com



City of Santa Clara



DMO & Convention Center Structure Work

March 1, 2020

Billing Status Update: January & February

This update is to support the invoices for JLL's work completed in January and February of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Vice President as the project support.

Specifically, JLL has:

1. Prepared materials for Santa Clara City Council meetings
2. Projected and forecasted hotel TID revenues for the DMO budget
3. Built and forecasted a high level DMO allocation budget
4. Built and refined organizational charts with DMO positions identified
5. Worked with the search firm partner to prepare for the CEO search by refining the job description, budgets, forecasts and other relevant information for CEO candidates to understand
6. Kicked off the CEO search for the DMO with the search partner
7. Interviewed initial candidates for CEO
8. Worked with the insurance broker to detail out coverage levels and finalize package based on DMO information
9. Developed and work with City, Santa Clara Convention Center GM and the DMO Board on a booking strategy document
10. Attended and facilitated in-person and conference call meetings with the TID and DMO Boards

Combined hours worked for Dan Fenton and Bethanie DeRose:

- January – 42.25
- February – 48.75

City of Santa Clara

DMO & Convention Center Structure Work



March 1, 2020

Billing Status Update: March

This update is to support the invoice for JLL's work completed in March of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Vice President as the project support.

Specifically, JLL has:

1. Projected and forecasted hotel TID revenues with the City related to COVID-19 impact and impact on the DMO budget previously developed
2. Built and forecasted a detailed DMO line item budget including COVID-19 implications
3. Rebuilt staffing plans for the DMO in light of the COVID budget scenario
4. Worked with the search firm on the CEO search and interviewed and screened six candidates for consideration
5. Worked with members of the DMO board to facilitate video interviews with potential contract sales hires for remote sales work
6. Worked with the insurance broker to detail out coverage levels and finalize package based on DMO information
7. Refined and finalized the booking strategy document
8. Participated with the City, SCCC and Levy on their operational and financial meetings leading up to and during the COVID scenario
9. Attended and facilitated conference call meetings with the TID and DMO Boards

Combined hours worked for Dan Fenton and Bethanie DeRose:

- March – 46

City of Santa Clara

DMO & Convention Center Structure Work



April 24, 2020

Billing Status Update: April

This update is to support the invoice for JLL's work completed in April of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Vice President as the project support.

Specifically, JLL has:

1. Built out and detailed the forecasts for both hotel collection at \$1 and adjusted for COVID-19 impacts
2. Additionally, detailed the budget scenarios with the City and TID Board
3. Supported both TID and DMO Board meetings related to budget considerations and the impacts on hiring CEO and staff including the impact on reserves
4. Worked with the City, Spectra and Levy on preparing and supporting the COVID-19 operation taking over the SCCC and provided operational guidance where possible
5. Analyzed the previous SCCC utilization work conducted in 2018 to bring it current for operational considerations post COVID to set goals for SCCC building goals and potential DMO sales goals
6. Worked with the insurance broker to detail out coverage levels and finalize package based on DMO information and new budget scenarios
7. Reviewed categories of metrics for the DMO to potentially include in a future contract/agreement with the City and TID for services related to sales and marketing
8. Identified areas of the organization that would move to contract services rather than employees in a post COVID budget
9. Liaised with the search firm on the finalists' candidates and strategized on video interview potential for the coming weeks
10. Attended and facilitated in-person and conference call meetings with the TID and DMO Boards

Combined hours worked for Dan Fenton and Bethanie DeRose:

- March – 54

City of Santa Clara

DMO & Convention Center Structure Work



July 15, 2020

Billing Status Update: May & June

This update is to support the invoice for JLL's work completed in May and June of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Vice President as the project support.

Specifically, JLL has:

1. Supported the Customer Service Satisfaction RFP process and response evaluation
2. Supported and worked with City and SCCC on financial oversight on a monthly basis, capital improvements strategy and priorities, procurement needs, sales activity and metrics development
3. JLL has also work through COVID-19 staffing plans with Spectra and Levy
4. Additionally, detailed the budget scenarios further with the City and TID Board to the most current level for the May City Council meeting
5. Supported both TID and DMO Board meetings related to budget considerations and the impacts on hiring CEO and staff including the impact on reserves
6. Facilitated several video interviews with small group panels for the CEO candidates to virtually meet the Board
7. Facilitated and engaged in the in-person interviews for the CEO candidates in June
8. Review the SCCC and Spectra's Standard Operating Procedures and discussed needs and gaps to be worked through
9. Worked with the insurance broker to detail out coverage levels and finalize package based on DMO information and new budget scenarios – presented that material to the Board in May and refined the request in June. Prepared packages for decision in the July meeting.
10. Prepared detailed KPIs for the CVB contract with the City and reviewed those KPIs with TID and CVB Board as well as all CEO candidates
11. Updated and refined the booking policy to adapt to short-term COVID-19 needs once the SCCC can host new events.

12. Developed a new subsidy/incentive proposal for groups requiring or requesting funds from the TID and how those TID funds would formally be processed and distributed
13. Attended and facilitated in-person and conference call meetings with the TID and DMO Boards

Combined hours worked for Dan Fenton and Bethanie DeRose:

- May – 58
- June – 62

City of Santa Clara



DMO & Convention Center Structure Work

September 17, 2020

Billing Status Update: July & August

This update is to support the invoice for JLL's work completed in July and August of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Vice President as the project support.

Specifically, JLL has:

1. Supported the Customer Service Satisfaction RFP process and response evaluation to now include finalizing selection and award
2. Supported and worked with City and SCCC on financial oversight on a monthly basis, capital improvements strategy and priorities, procurement needs, sales activity and metrics development
3. JLL has also continued to work through COVID-19 staffing plans with Spectra and Levy
4. Supported both TID and DMO Board meetings related to budget considerations and the impacts on hiring CEO and staff including the impact on reserves
5. Facilitated the in-person interview with the CEO candidate and the Board of Directors
6. Worked on the terms of the potential offer for the CEO candidate with the search firm as well as engaged with the selected candidate for CEO
7. Worked with the insurance broker to detail out coverage levels and finalize package based on DMO information and new budget scenarios and providing insurance plans for Board selection
8. Worked with the insurance broker to identify and confirm the DMO's required entity insurance and facilitated the Board's binding coverage
9. Prepared detailed KPIs for the CVB contract with the City and reviewed those KPIs with TID and CVB Board as well as all CEO candidates
10. Reviewed and facilitated discussions with the Board on KPIs and structure for all partners involved
11. Updated and refined the booking policy to adapt to short-term COVID-19 needs once the SCCC can host new events.

12. Refined a new subsidy/incentive proposal for groups requiring or requesting funds from the TID and how those TID funds would formally be processed and distributed
13. Attended and facilitated in-person and conference call meetings with the TID and DMO Boards

Combined hours worked for Dan Fenton and Bethanie DeRose:

- July – 55
- August – 59

City of Santa Clara



DMO & Convention Center Structure Work

October 20, 2020

Billing Status Update: September

This update is to support the invoice for JLL's work completed in September of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Vice President as the project support.

Specifically, JLL has:

1. Supported and worked with City and SCCC on financial oversight on a monthly basis, capital improvements strategy and priorities, procurement needs, sales activity and metrics development
2. JLL has also continued to work through COVID-19 staffing plans with Spectra and Levy
3. Supported both TID and DMO Board meetings related to budget
4. Continued to work through the terms of the potential offer for the CEO candidate with the search firm as well as engaged with the selected candidate for CEO
5. Finalized CEO offer and terms of the CEO's individual health care plan and DMO's contribution
6. Continued to work with the insurance broker to detail out coverage levels and finalize package based on DMO information and new budget scenarios and providing insurance plans for Board selection
7. Worked with the insurance broker to identify and confirm the DMO's required entity insurance and facilitated the Board's binding coverage
8. Worked with Spectra and Levy on the KPIs for sales at the SCCC and facilitated multiple meetings with the sales side of the SCCC team
9. Built tracking methodology for biweekly and monthly sales reporting and planning distribution to both TID and DMO Boards
10. Attended and facilitated in-person and conference call meetings with the TID and DMO Boards

Combined hours worked for Dan Fenton and Bethanie DeRose:

- September - 52

City of Santa Clara



DMO & Convention Center Structure Work

November 16, 2020

Billing Status Update: October

This update is to support the invoice for JLL's work completed in October of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Vice President as the project support.

Specifically, JLL has:

1. Supported and worked with City and SCCC on financial oversight on a monthly basis, capital improvements strategy and priorities, procurement needs, sales activity and metrics development
2. JLL has facilitated and participated in the interviews for the SCCC vendors in the last month related to procurement for capital improvements
3. JLL has also continued to work through COVID-19 staffing plans with Spectra and Levy
4. Supported both TID and DMO Board meetings related to implementing the recommendations of the planning and development process
5. Finalized CEO offer, start date and terms of the CEO's individual health care plan and DMO's contribution
6. Continued to meet and engage with the new CEO in advance of the start date related to prep materials and answer questions in advance of the CEO coming on board.
7. Continued to work with the insurance broker to detail out coverage levels and finalize package based on DMO information and new budget scenarios and providing insurance plans for Board selection
8. Worked with the insurance broker to identify and confirm the DMO's required entity insurance and facilitated the Board's binding coverage to comply with the City's risk management
9. Worked with Spectra and Levy on the KPIs for sales at the SCCC and facilitated multiple meetings with the sales side of the SCCC team
10. Built tracking methodology for biweekly and monthly sales reporting and planning distribution to both TID and DMO Boards
11. Facilitated in-person and conference call meetings with the TID and DMO Boards

12. Reviewed and sought approval at the TID Board level for the subsidy policy for business at the SCCC

13. Finalized, reviewed and sought approval by both boards for the final booking policy and strategy document

Combined hours worked for Dan Fenton and Bethanie DeRose:

- September - 55

City of Santa Clara



DMO & Convention Center Structure Work

December 28, 2020

Billing Status Update: November & December

This update is to support the invoice for JLL's work completed in November and December of 2020. JLL has diligently been working with City staff, Tourism Improvement District (TID) Board and the Santa Clara/Silicon Valley Destination Marketing Organization (DMO) Board to further the work plan related to the formation, development and structural support for the DMO. This project is serviced by Dan Fenton, Executive Vice President and practice lead and Bethanie DeRose, Senior Vice President as the project support.

Specifically, JLL has:

1. Supported and worked with City and SCCC on financial oversight on a monthly basis, capital improvements strategy and priorities, procurement needs, sales activity and metrics development
2. JLL has facilitated and participated in the interviews for the SCCC vendors in the last month related to procurement for capital improvements
3. JLL has also continued to work through COVID-19 staffing plans with Spectra and Levy
4. Supported both TID and DMO Board meetings related to implementing the recommendations of the planning and development process
5. Worked through the DMO's new CEO onboarding process including regular weekly calls as well as ad-hoc calls to bring the CEO up to speed
6. Worked with Spectra and Levy on the KPIs for sales at the SCCC and facilitated multiple meetings with the sales side of the SCCC team
7. Built tracking methodology for biweekly and monthly sales reporting and planning distribution to both TID and DMO Boards
8. Brought the new DMO CEO into the sales side work, updated reporting and presented that information jointly to the Board
9. Facilitated in-person and conference call meetings with the TID and DMO Boards

Combined hours worked for Dan Fenton and Bethanie DeRose:

- November – 50
- December – 51



CITY OF SANTA CLARA AGREEMENT PROGRESS REPORT

Date: 8/20/2020

City Contact: Nancy M. Thome	Department City Manager's Office	Phone Number: (408) 615-2294
Contractor's Name: Jones Lang LaSalle Americas, Inc. (JLL)		Agreement Term: January 5, 2017 – December 20, 2020
Contractor's Address: 1 Front Street, #1100, San Francisco, CA 94111		Reporting Period: July 1, 2019 – June 30, 2020
Agreement: Agreement for the Performance of Services (Amendment # 3)		
Contact Person's Name, Phone Number, Email: Dan Fenton, Executive Vice President, (408) 309-3450, dan.fenton@am.jll.com		

SCOPE OF SERVICES

1. Ongoing CVB Development

1.1. Develop Metrics – JLL shall develop and gain approval on new metrics for the organization's success. These metrics will support transparency and clarity around the direction and mission of the new organization.

JLL worked closely with the City to develop and finalize detailed metrics or Key Performance Indicators (KPI's) for the new DMO, Spectra and Levy. This has included the establishment of and continued development of annual targets as COVID-19 has impacted the ability to finalize these targets. JLL continues to work with City on establishing consistent reporting and evaluation tools and ensuring common understanding and a consistent approach among collaborative partners. JLL facilitated a KPI Workshop on July 28, 2020 for all key stakeholders which received positive feedback. The workshop was attended by representatives of the City, Spectra, Levy, TID hotels and the DMO Board of Directors.

1.2. Develop Goals – JLL shall develop and propose the first-year goals as well as five-year goals for the new entity. JLL shall engage key stakeholders in this process to gain consensus. This will include the key metrics and direction from the initial phase of this process.

The new DMO is still in its early organizational development stages. The DMO's KPIs have been identified and defined, and JLL will develop first year targets upon the hiring of the new CEO and execution of a service agreement with the City. Additionally, JLL developed a five-year "glide path" for achieving optimization at the Convention Center which will serve as the baseline for the Convention Center and the DMO. The glide path was developed approximately one year ago and JLL, working with Spectra and the DMO, will update and refine the glide path as post COVID-19 plans are solidified and new forecasting is finalized. JLL continues to work with the City, DMO, Spectra and Levy to refine first year targets for the KPIs.

1.3. Draft and Approve Contract – JLL shall develop the contract with the City and the new entity sales and marketing of the SCCC and overall tourism efforts for the City of Santa Clara. JLL shall ensure that the new organization has a contract that works for the City and creates an overall alignment of direction.

JLL has worked closely with the City to develop and finalize the contract for the new DMO. This included providing agreement examples, finalizing agreement terms, finalizing KPI's, and collaborating with the City on the insurance and liability areas. The contract is currently under review with the City Attorney's Office and will be presented to the DMO attorney and Board of Directors for final approval. This contract includes a thorough description of the agreed upon KPI's and an evaluation approach.

1.4. Finalize Staffing Plan – JLL shall finalize a staffing plan based on the initial development work in 2019. The final staffing plan will have positions with market focus, compensation and incentive plans and position descriptions. JLL's staffing plan shall also include a recommended number of total staff positions.

The Phase One staffing plan as developed by JLL and recommended to City Council in May 2019 is ready for implementation. JLL worked with the City and the TID to develop the proposed FY 20/21 and FY 21/22 Operating Budget for the DMO which includes the initial staffing of four staff: President/CEO, director of sales, sales manager and a marketing manager. JLL is currently working with the City to develop the compensation incentive plans and the position descriptions.

1.5. Finalize Budget – JLL shall develop and finalize a singular budget based on available funding and alignment with objectives previously determined. JLL shall prepare a line item budget with allocations for personnel, sales, marketing, administration and other key needs.

JLL worked with the City and the TID to prepare the DMO budget, including the final budget, which was approved by the TID, DMO Board and City Council. JLL will continue to facilitate ongoing adjustments to the DMO budget as current economic conditions evolve.

1.6. Recruit and Hire Executive Director – JLL shall support the search process. JLL shall partner with a subcontractor in this effort to source and recommend top candidates. JLL shall review candidates in conjunction with the board members and City and give recommendations to support a successful transition into the new organization's leadership.

Recruitment efforts have been underway since January 2020 to fill the CEO position. JLL worked with the City and the DMO Board to develop and finalize the CEO position description and recruitment material. JLL engaged SearchWide Global, a full-service executive recruitment firm primarily for companies in the travel, tourism, hospitality, convention, association, and venue management industries to conduct the search.

By April 2020, JLL and Searchwide Global contacted over 100 potential candidates. JLL completed over 20 Skype interviews that produced four potential finalist candidates. In June, JLL coordinated and facilitated DMO Board of Directors informational meetings with three candidates which resulted to the selection of in-person interviews with two of

the candidates. At that time, the Board of Directors elected to continue seeing other potential candidates. An in-person interview with one finalist is scheduled on August 26, 2020.

1.7. Develop Marketing Plan – JLL shall develop the initial marketing plan for the CVB in conjunction with the new Executive Director and Board. This will include how the CVB should allocate marketing funding.

As the DMO organization is still in the development phase and the CEO recruitment still active, efforts to develop the initial marketing plan has not begun. Key marketing areas were identified during the development of the DMO's annual operating budget and will be further detailed with the new DMO CEO, once hired.

1.8. Hire Staff – JLL shall work with the Executive Director to support the hiring and recruiting process. JLL shall work with the City approved Staffing Plan, mentioned above, to ensure all existing employees are handled appropriately regardless of their role in the new entity.

Recruitment efforts for the executive director/CEO is currently underway. Once the CEO is hired, activities to engage additional staffing per the approved Phase Once staffing plan can be initiated.

1.9. Provide Functional Organization Support and Guidance – JLL shall perform other duties as needed to support the successful development and implementation of the new CVB. We will act as an overall advisor in this effort.

JLL has worked with the City on many aspects of the DMO organizational support, including, but not limited to:

- Identified potential legal firms to assist the DMO with their legal affairs. One of the firms was selected and is currently retained by the DMO: Thoits Law;
- Worked in conjunction with City and DMO attorney to review and finalize organization bylaws and amendment, and review of IRS application and IRS compliance with 501(c) 6 requirements;
- Researched and obtained insurance quotes and medical plan quotes for the Board of Directors to review;
- Participation in agenda planning, attendance and participation/facilitation at monthly DMO Board of Director regular meetings and special meetings;
- Regular consultation, advisement and meetings with City staff to discuss and develop policy and operational areas;
- Led process in the completion of the TID room survey and the development of the Santa Clara Convention Center Booking Strategy;
- Worked with City in the development of the CEO employment agreement;

2. Transition Support

2.1. JLL shall provide support on behalf of the City to ensure a smooth transition for both the SCCC and the new CVB. JLL shall work with the center operator and new CVB to develop a “transition checklist” that encompasses all aspect of developing a seamless and effective operation.

JLL has been working closely with Spectra to create an effective booking strategy and process that is a core strategic piece for a successful relationship between the Convention Center and DMO. Additional transitional items to be developed including the booking process and joint Customer Relations Management System (CRMS) are in progress.

JLL participates in regular meetings with Levy and advises on sales, community engagement and staffing implications of COVID-19.

2.2. Initial oversight of both Operator Contract and CVB Contract – JLL shall develop templates for reports with key metrics and implement these reports and analysis with the city contract administrator to ensure effective oversight of both contracts.

JLL provides a review of Spectra's reports and financials on a monthly basis, and reviews potential concerns with the City. JLL works directly with the City and Spectra to address any operational issues. JLL assisted the City to develop detailed KPIs and facilitates discussion around annual targets (performance and financial). Upon initiation by the City, JLL provided input to updates quarterly, monthly and KPI reporting templates.

3. City Representation and Asset Management Recommendations

3.1. JLL shall continue to represent the City's interest in supporting both the CVB and SCCC operations. JLL shall work with leadership at both entities to provide monthly reporting and make recommendations for how the City should proceed on any issues that arise.

JLL assisted with the review of the final agreement with Destination Advantage. An agreement was finalized to restructure the agreement and continue with base maintenance support.

JLL worked with the City and Spectra to develop and finalize the temporary sales position for the DMO. The decision was made not to proceed.

JLL worked with the City and Spectra to review Spectra's proposed FY 2020/21 budget. JLL has met with City and Spectra to support the ongoing refinement of the budget with COVID-19 challenges.

3.2. JLL shall review, and report back to the City on a monthly basis, on specific convention center performance measures. This would include financial performance, reviewing the operators profit and loss statement, reviewing the food and beverage provider's financial reports.

JLL and the City review reports from both Levy and Spectra. Follow up calls are scheduled with provider for additional information and clarification as needed. JLL has been instrumental in working with Spectra to assess and review budget impacts due to COVID-19. Additionally, JLL participates in meetings as needed with City finance staff to review financial reports.

3.3. JLL shall conduct an operational assessment at the midway and year-end points of the 2020 calendar year and provide a summary report to the City as it relates to operational standards, service levels and overall convention center operational performance.

JLL has been involved in regular discussions with the City and Spectra regarding operational standards, appropriate service levels and staffing and operation performance and regularly attends the City/Convention Center bi-weekly meetings. The City has requested that JLL submit an operational assessment summary report.

3.4. JLL shall provide a summary report at the midway and year-end points on the CVB's progress, success measures and pace for future goals.

As the DMO is currently not operational, JLL continues to assist the City and the Board of Directors to develop organizational policies, procedures, and metrics.

4. Team

4.1. JLL Executive Vice President Dan Fenton shall lead the overall engagement and be ultimately responsible for service delivery. Mr. Fenton will be assisted by appropriate members of the JLL team based on the expertise required.

Dan Fenton is regularly engaged with City staff and partners, including Spectra, Levy, the DMO and the TID, in all aspects of the destination marketing collaboration.



SANTA CLARA CONVENTION CENTER AND
CONVENTION-VISITORS BUREAU:
RESTRUCTURING OPERATIONS CAN
STRENGTHEN ACCOUNTABILITY,
PERFORMANCE AND REVENUE

FINAL REPORT

September 18, 2018

ACKNOWLEDGEMENTS

TAP International, Inc. appreciates the assistance and cooperation received by City staff and all of the Contractor's CVB and SCCC employees who contributed to this review.

CONTACT

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Report Brief

Why the Assessment was Conducted

The City of Santa Clara (City) has contracted with a local non-profit business organization (Contractor) since 1975 to operate and manage the Convention and Visitors Bureau (CVB) and since 1984 to manage the Santa Clara Convention Center (SCCC) that opened in 1986. The City raised concerns about the Contractor's operations, practices, and financial performance of the CVB and the SCCC. Other concerns include delays in information submitted to the City by the Contractor, hindering the City's ability to perform its own full assessment of the Contractor's operations of the CVB and the SCCC.

In May 2018, the City contracted with TAP International, Inc. to conduct an assessment of the Contractor-operated SCCC and the CVB. This review did not encompass all operations or all financial management activities of these entities. This report describes the fiscal health of each entity, the nature of revenues collected, and their spending. This report also assesses the adequacy of structures, systems, operations, and the processes in place by the Contractor and finally, evaluates the potential changes needed to enhance the SCCC's sustainability and overall performance.

Summary of Key Results

The SCCC has satisfactory fiscal health because it can support operations using its own operating revenues. Across a ten-year period ending in FY 2016-17, revenues cumulatively totaled about \$60.4M¹ and expenses cumulatively totaled about \$55.8M, resulting in net income levels of \$4.7M. Had the SCCC assume responsibility for the CVB's operation, the SCCC could not have supported itself, resulting in a \$9.4M net income loss by the end of the ten-year time period. By factoring into the analysis other sources of revenue that other cities allocated to convention centers and visitors bureaus, such as Transient Occupancy Taxes (TOT), Tourism Improvement District (TID) fees, and Sales Tax, then the SCCC may have had mixed financial performance, ending the nine-year period² with about \$310,000 net income.³ The fiscal health of the SCCC could have been stronger if it had reduced the frequency and the amount of the discounts offered to event sponsors. Facility discounts totaled \$14.7M between FYs 2011-12 to 2016-17. Issuing discounts is allowable under some circumstances in accordance with SCCC's booking policies.

The CVB's year-end fiscal performance was satisfactory. While losses occurred in six of the past ten years, none of the losses exceeded ten percent of its budget. In the past ten years, total revenues cumulatively totaled \$15.8M and expenses cumulatively totaled \$15.5M, resulting in

¹ Excludes Restricted Revenue

² Nine-year period was used as Capital expenditure information from FY 2007-08 was unavailable.

³ TOT tax, TID fees, and Sales Tax projections based on CVB revenue estimates. It would be assumed that sales tax generated from Convention Center partners would be included in Sales Tax estimates.

excess revenue of about \$278,000. The CVB reported revenue surpluses in four of ten years – FYs 2011-12, 2012-13, 2015-16, and 2016-17.

While the types of revenues and expenses incurred by the SCCC and the CVB are aligned with their mission and purpose, each entity paid added compensation to its sales staff that needs further review. The SCCC paid commissions and the CVB paid bonuses, referred to as incentive pay. The sales industry uses this form of compensation. However, the City Council should have provided approval of the commissions because the added pay was not addressed in the City’s agreement with the Contractor nor clearly identified in the SCCC’s operating budget. Further review is needed for the incentive payments to the CVB staff because the payments were funded by the Santa Clara Tourism Improvement District without a formal contract or agreement.

The Contractor could have had better structures, systems, controls, and processes to support the SCCC and the CVB operations. The Contractor’s governance structures and business activities have created the appearance of, and actual, conflicts of interests, mis-use of government assets, and mis-use of government-sponsored resources while other concerns present may need further review by other agencies. In addition, the Contractor’s financial management of the CVB’s operations has weaknesses in its internal controls, especially in the area of bill payment, while its information management activities have structural gaps that if addressed, could enhance managerial decision-making. The Contractor and the City each share responsibility for the issues described in this report. The City, which is responsible for ensuring that outsourced operations provide services in a transparent and accountable manner, did not have strong agreements in place nor implemented effective contract oversight until recently with the hiring of a new City Manager. The Contractor’s implementation of operations led to accountability and compliance concerns.

A key change needed to increase the SCCC’s operational sustainability and performance is to update the overall marketing strategy. Several operational challenges hinder the ability of the CVB to enhance their own overall performance and to increase the financial performance of the SCCC. These challenges include: (1) scheduling more events that last less than a day versus scheduling events longer in duration that would also need hotel room nights; (2) the rising number of potential clients (also known as leads) required to schedule an event, as the total number of leads received has declined; (3) inefficient utilization of staff time to work leads because an inordinate amount of time is spent entering information into various databases; (4) not dedicating multiple sales staff in successful target areas, such as the corporate sector; and (5) a limited advertising budget. Both the SCCC and the CVB operate as separate entities and could benefit from an integrated and comprehensive marketing plan.

In June 2018, the Santa Clara City Council directed City management to retain assistance in the development of options for the provision of convention and visitor services. The development of these options should include analysis of varying business structures to operate the SCCC that would result in the strongest level of accountability over operations. Business structures used in other California convention centers and CVB’s differed. These business structures included a city-

established nonprofit organization, city-established districts, authorities, and out-sourcing operations to a third-party.

Conclusions

The City's Contractor was instrumental over 40 years ago in working with the City to establish the CVB and to serve as the first operator of the SCCC. The Contractor had key successes, especially with the overall satisfaction of the CVB and the SCCC employees and the financial performance of the SCCC. The Contractor, however, also had key accountability problems and could have had implemented a better strategy to maximize the SCCC's financial potential. Should the City implement changes to the SCCC's and the CVB's operations, including how the City conducts contract oversight over these operations, the potential changes should include sound governance coupled with effective and strong leadership that would ensure administration of a transparent and accountable business environment.

Recommendations

1. The City Manager, in response to prior City Council direction to develop options for the SCCC and the CVB operations, should include a feasibility study to assess the advantages and disadvantages of various business structures to run each or both operations. The feasibility study should include analysis of financial projections in the short and long term for each option.
2. Regardless of any change in the business structure, the City Manager should consider implementing the following activities to ensure better accountability of operations and to build on the financial performance of the SCCC:
 - a. Develop a comprehensive and integrated business and marketing strategy.
 - b. Develop better event scheduling policies that address renting SCCC facilities to nonprofit organizations, the use of discounts, and document specific criteria for prioritizing event scheduling.
 - c. Transition into booking more same day events to area hotels to allow greater availability of calendar time for multi-day events at the SCCC.
 - d. Reduce the SCCC's scheduling of events to six months in advance.
 - e. Strategically align more sales staff to industries that frequently rent the SCCC.
 - f. Integrate all marketing and sales activities between the SCCC and the CVB.
 - g. Consolidate accounting systems used between the SCCC and the CVB.
 - h. Consider elimination of Sales Commissions.
 - i. Modernize the SCCC.
 - j. Prohibit comingling of City funds with other nongovernmental revenue sources.
 - k. Establish a clear leadership structure and team to administer effective City oversight of operations.
 - l. Establish requirements to avoid, disclose, and mitigate conflict of interests.

- m. Establish financial disclosure requirements for the SCCC and the CVB contractors who make decisions on the behalf of the City.
 - n. Establish requirements that describe and define appropriate and reasonable expenditures.
 - o. Establish requirements and controls for purchasing, including the use of the credit cards and purchase cards.
 - p. Establish contracting and contract management requirements for the SCCC and the CVB.
 - q. Establish stronger requirements for financial reporting on operations.
 - r. Establish the requirement to develop, track, and report on progress in meeting key performance benchmarks for the SCCC and the CVB operations.
 - s. Establish employee compensation policies.
 - t. Establish controls that ensure accuracy and completeness of the SCCC and the CVB performance reporting.
 - u. Establish requirements for the storage and archiving of financial and operational data.
 - v. Conduct ethics and conflicts of interest training to the SCCC and the CVB employees.
 - w. Conduct training on the principles of good governance to the SCCC and the CVB employees.
3. The City Manager should review the accountability issues and concerns described in this report and refer them, if needed, for further review by the City or by other agencies.
4. The City should conduct contract oversight activities by reconciling (a) the Contractor's allocation of CVB's revenues and expenses and (b) the Contractor's credit card statements.

Background

City Agreements Guide Operations at the Convention Visitor's Bureau and the Santa Clara Convention Center

The City did not have a CVB organization until a local nonprofit organization approached the City with the concept as a way to help area businesses. Since 1975, the City authorized the local nonprofit organization (referred to herein as the Contractor) to operate the Convention and Visitors Bureau (CVB). The CVB is a destination marketing, sales and service organization whose purpose is to promote the City of Santa Clara as a destination point and to promote the City's hotels and convention center. The agreement, referred to as the CVB Agreement, was updated in 2017. According to the CVB agreement, the City expects the CVB to increase City revenues by increasing visitor and convention spending in hotels, the Convention Center, visitor attractions, restaurants, and other businesses in the City as measured by Transient Occupancy Tax (TOT), Tourism Improvement District (TID), and retail sales tax.⁴

The City also expects the Contractor to:

- Target sales and promotion efforts to various market sectors (e.g. corporate business, association and SMERF (social, military, educational, religious, fraternal) and sports groups)
- Generate “mid-week” for the Convention center and hotels that will pay the mid-week hotel room rates, including holiday and weekend business in selected months
- Attract City-wide groups as newly defined by the CVB as needing 750 hotel room nights per event at the event's peak. (City-wide groups were historically defined as needing 600 hotel room nights at the event's peak).
- Perform sales calls and city bid presentations to prospective businesses and organizations
- Conduct city site inspections showcasing the City of Santa Clara, hotels, convention center, stadium, entertainment and attraction venues, and local businesses
- Sponsor exhibits in key tradeshows, attend industry related meetings and sponsor special industry related events
- Implement direct mail, e-marketing/social media and e-blasts
- Advertise in key trade publications, newsletters, directories, and social media platforms

⁴ The City requires that any person or business engaged in the renting of any number of rooms for lodging, dwelling, or sleeping purposes, must collect, report and remit 9.5 percent of the lodging fee per night. In FY 2016-17, the City collected about \$20M in TOT tax. The City assesses an added \$1 per room night among the eight (at the time of our review) participating hotels that comprise the Tourism Improvement District. These same hotels contribute an extra two percent to help pay off \$40M used by the Community Facilities District for infrastructure to facility the Stadium project.

- Develop convention sales and marketing materials
- Advertise and promote the City and Convention Center.

The City also works with the same Contractor to manage the SCCC. Owned by the City of Santa Clara, the SCCC is located on just over 25 acres and provides 302,000 square feet of meeting and exhibit space. The SCCC hosts conventions, trade shows, weddings, receptions, corporate meetings, banquets, and any type of special occasion. The SCCC's purpose is to maximize revenue and economic impact to the City of Santa Clara.

In 1984, a contract (referred to as the Management Agreement) was entered between the City and the Contractor to manage the SCCC. The contract required the Contractor, among other activities, to:

- Operate and maintain the SCCC in a first-class matter
- Advertise and promote the Convention Center
- Coordinate the use of the SCCC
- Book events, theatre performances, shows, conventions, exhibitions, and meetings
- Schedule and administer daily operations as required.

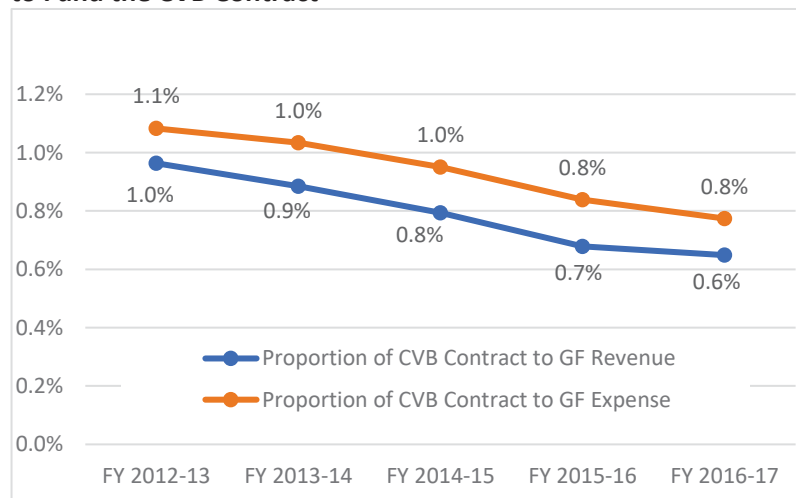
Any excess operating revenues generated from the SCCC operations are deposited to a City enterprise fund account.

City's General Fund Supports Contractor's Activities

Under the terms of the 1984 Management Agreement, the City is to pay the Contractor for the management of the SCCC. The fee ranged from \$45,000 to \$50,000 annually. The increase in this fee is later discussed in this report. Under the 2017 CVB agreement, the City is to pay the Contractor no more than nearly \$1.5M annually for its operations of the CVB.

City funds supporting the Contractor's activities equal less than one percent of the City's General Fund revenues and expenses, as shown in Figure 1. Over time, as the City's revenue and expenses increased, the proportion of all General Fund revenues appropriated to the Contractor has declined. Figure 1 shows only the direct financial impact of the contractual agreements and excludes the City's funding for maintenance

Figure 1. Proportion of General Fund Revenues and Expenses to Fund the CVB Contract



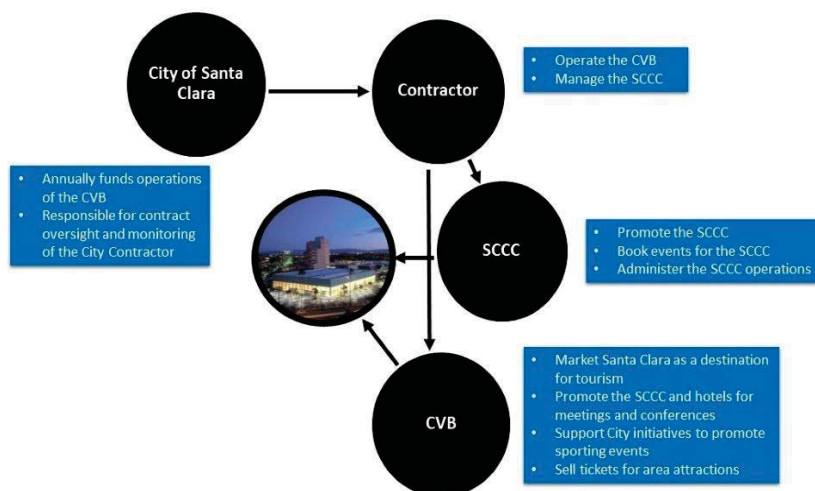
Source of data: TAP International, Inc. analysis based on the CVB and City of Santa Clara financial data.

district expenses and other capital project improvement plans.

The CVB and the SCCC are Managed Separately

Organizationally, the CVB has two Vice-Presidents (VPs) who serve as National Sales Managers. One National Sales Manager oversees convention sales and marketing while the other oversees marketing and advertising. These two VPs are supported by 11 other Contractor/CVB employees. The SCCC has a General Manager/CEO overseeing its operations supported by 43 other Contractor/SCCC employees.

Figure 2: Role of the City, Contractor, the SCCC and the CVB



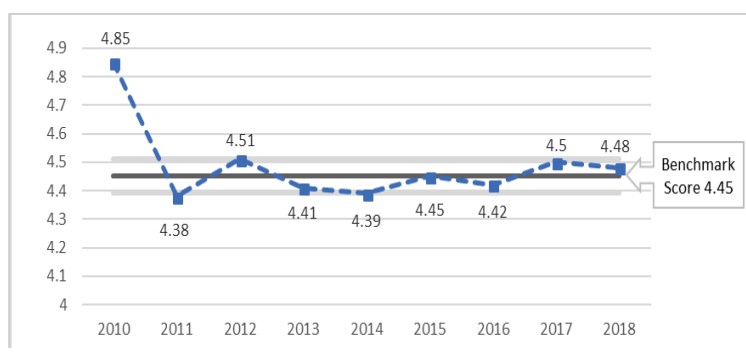
The President and Chief Executive Officer (CEO) of the Contractor's organizations is responsible for operations of the CVB and the SCCC. In recent years, the Contractor's CEO position has experienced frequent turnover. In 2017, the SCCC's General Manager/CEO assumed management of the CVB until the Contractor's Board formally hired a new Executive Director, who accepted the position in June 2018.

Figure 2 illustrates the roles and relationships between the City, the Contractor, the CVB and the SCCC.

The CVB and the SCCC Receive High Customer Satisfaction Scores

Guests of the SCCC and clients of the CVB have high satisfaction over operations. Based on a total of 322 surveys spanning from 2010 to date, the average annual performance is a satisfaction score of 4.45, as illustrated in Figure 3. A score of "1" is low satisfaction and a score of "5" is high satisfaction. The SCCC and CVB met or exceeded its own

Figure 3: Average Annual Customer Satisfaction Score



Source of data: TAP International, Inc. analysis of 322 customer satisfaction surveys administered by the SCCC, 2010 to date.

performance benchmark in five of the ten years.

As described in Figure 4, guests gave their **highest scores** to the SCCC and the CVB Professionalism. Although high marks, guests gave their **lowest scores** to:

- SCCC facility (condition)⁵
- Catering Services (pricing and food quality).

Figure 4: Annual Guest Satisfaction Score, SCCC and CVB

Survey Category	Average Score
Convention Center Administration	4.66
Convention Visitor Bureau	4.64
Int'l Alliance of Theatrical & Stage Employee's (Local 134)	4.62
Event Management	4.58
Telecommunications	4.58
Booking & Scheduling	4.57
Room Set Up & Housekeeping	4.52
Audio/Visual Services	4.47
Engineering Services	4.45
The UPS Store	4.43
Building Security	4.39
Facility	4.31
Catering Services	4.28
Grand Total	4.49

Source of Data: TAP International, Inc. analysis of 322 individual customer satisfaction surveys administered by the SCCC, 2010 to date.

Recent City Council Action Stopped Contractor Payments

In recent City Council meetings, the Santa Clara City Council acted to temporarily end Contractor payments. In May 2018, the Santa Clara City Council (City Council) directed the City Manager to suspend the Contractor's management fee for the SCCC. In June 2018, the City Council did not approve a \$1.5M request to fund a FY 2018-19 contract with the Contractor to operate the CVB, and instead, directed the City Manager to provide funds to the Contractor for the sole purpose of funding salaries and specific related costs for up to 60 days. In July 2018, the Contractor's Executive Director addressed the revenue cuts by requesting the CVB employees to vacate the Contractor's office and then issuing termination notices.

⁵ The Management Agreement states the Contractor is to maintain the Convention Center, the equipment and furniture situated therein, and related facilities in good order and repair and to request such repairs in the SCCC's annual budget or separate City Council action.

Objective, Scope and Methodology

Objectives

The City contracted with TAP International to address the following questions:

- (1) Assess the fiscal health, including the nature of revenues and spending by the SCCC and the CVB.
- (2) Assess the adequacy of structures, systems, controls, and processes that affect financial management of the Convention Center, especially whether the City reviewed and approved the contract increases.
- (3) Determine the types of changes needed, if any, to enhance Convention Center sustainability and performance.

Scope

The time period covered by this review varied depending on the type of analysis. Where data was available, TAP International analyzed data based on the prior Fiscal Year (FY) only or up to ten years of operations, beginning in FY 2007-08. We describe throughout this report, the time period covered in our analysis. The availability of complete and reliable information determined the time period of analysis.

For our review of structures, systems, controls and processes, the business functions reviewed included governance, financial management, information management, and contract management..

Our scope of work did not include an assessment of the operations of the TID. A separate performance audit of the TID is underway.

The scope of work did not include:

- An assessment of the SCCC's security operations. In FY 2017-18, the SCCC had 62 total incidents, or about five per month related to visitor health issues, fire alarms, visitor and worker injuries, and parking lot related thefts. The low level of incidents precluded further review.
- An assessment of human resources management by the Contractor or on the staffing assignment and reassignment decisions by the Contractor's Board of Directors.
- An assessment of contract compliance with the Management Agreement and the CVB Agreement.
- An evaluation of how the Contractor serves its members and member organizations. Where necessary, transaction activity resulting from the Contractor's core services were reviewed to assess the effectiveness of internal controls governing the CVB.

Methodology

To assess the fiscal health of the Convention Center and the CVB, TAP International computed and analyzed eight key metrics: quick ratio, current ratio, operating margin, net income ratio, days cash on hand, days payable outstanding, debt service coverage ratio, and operating cash flow. These metrics assess the ability of these entities to generate revenue and pay bills and debt, and their ability to generate a profit including cash flow. The sources of data relied upon for the analysis included the City's consolidated audited financial statements and the Contractor's audited financial statements from Fiscal Years (FYs) 2007-08 to 2016-17. Because the Contractor's audited financial statements combines its financial reporting with that of the CVB, we further analyzed the ability of the Contractor to manage the CVB within the contract amount provided by the City. The sources of data relied upon for this analysis were the Contractor's audited financial statements and other financial reports generated by the Contractor from FYs 2007-08 to 2016-17.

To assess the nature of revenues and spending by the SCCC and the CVB, TAP International examined each entity's check register and general ledger, which show in detail the payments made to vendors. The period of the review covered was FYs 2007-08 through 2016-17. We further examined the Contractor's core organization and the CVB documentation to verify the accuracy of the CVB's financial transactions reported in its financial system.

To assess the adequacy of structures, systems, controls, and processes of the Convention Center and the CVB, TAP International analyzed data and conducted interviews with key City, SCCC, CVB, and Contractor staff to discuss operation related to:

- Governance structure and activities
- Use of information systems
- Internal control structure to ensure compliance and effective information sharing, fiscal monitoring, and review and authorization
- Purchasing and contracting activities to ensure compliance to policies and procedure.

TAP International reviewed City documents and interviewed City employees to assess internal controls, contract management, and oversight activities of the City's Contractor.

For all audit activities, TAP International collected and analyzed:

- Advertisements
- Contracts
- Guest satisfaction surveys
- Organizational charts
- Marketing materials
- Performance measurement reports
- Policies and procedures for financial management, procurement, and contracting

- Purchase orders
- Strategy and marketing plans
- Training programs
- Reports and data given to the City by the entities.

To determine the types of changes needed, if any, to enhance the sustainability of the SCCC, TAP International reviewed the SCCC's and the CVB's marketing operations and performance. We independently computed various performance metrics using leads, bookings, and cancellation data provided by the Convention Center and the CVB. Finally, we collected information on the business structures of other convention centers and convention-visitors bureaus in California. The convention centers selected for this analysis were the Cities of San Jose, Sacramento, Stockton, San Francisco, Fresno, and Oakland.

Finally, to adhere to generally accepted government auditing standards, TAP International assessed the reliability of the financial and marketing data collected by the SCCC and the CVB. Data that was reliable is included in this report.

This audit is known as a performance audit. A performance audit evaluates the economy, efficiency and effectiveness of programs, services, and operations. We conducted this performance audit from May through July 2018, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. A draft report was provided to the City and the Contractor for review. Comments were incorporated as applicable throughout the report.

Principle Results




Section 1A: The City Can Build on the Financial Performance of the SCCC and the CVB

SCCC's Fiscal Health is Good Although can be Made Stronger

A fiscal health assessment serves to determine whether it is a self-sustaining operation. As an enterprise operation of the City, the SCCC needs to generate enough revenues to fully cover its expenses. If an enterprise operation has a healthy operating position, then fee increases are not needed. Conversely, if an enterprise operation cannot sustain itself, then fee increases may be needed, or the City may need to provide added financial support. TAP International analyzed the fiscal health of the Convention Center using four different approaches: (1) calculating the Convention Center's fiscal health based on its own operating revenues and expenses; (2) comparing trends in operating revenues and expenses; (3) determining the impact on the SCCC's net income if it assumed responsibility for the CVB's operations; and (4) forecasting SCCC's future fiscal health. It is important to note that the convention center industry is influenced by the general economy.

Under the first approach—assessment of fiscal health indicators—the SCCC is a self-sustaining operation and performs well among seven of eight fiscal health indicators across each of the five years from FY 2012-13 to 2016-17, as shown in Figure 5. The most recent five-year period was used in order to provide a more current assessment of fiscal performance. Periods beyond five years may incorporate business operations and environments that are no longer a factor to current performance. These eight indicators measure fiscal health of enterprise operations. Most notably, the SCCC increased its profit level to 18 percent, the highest level among the five years examined and more than nine times the common benchmark. The SCCC also has cash available to pay its bills for more than six months (193 days) if operations were to suddenly shut down. The SCCC continued to perform well financially in FY 2017-18 with over \$2.2M in net income.

Figure 5: SCCC Fiscal Health Indicators**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	Benchmark	Performance
Ability to pay short-term bills (Current Ratio)	2.6	2.2	1.0	1.7	3.1	> 1.0	
Ability to pay short term bills with available cash (Quick Ratio)	202	1.9	0.8	1.5	2.3	> 1.0	
Profit margin (Operating Margin using operating revenues and expense)*	16%	16%	12%	14%	18%	> 2%	

Net Income Ratio (Same as Profit Margin/Operating Margin)*	16%	16%	12%	14%	18%	> 2%	●
Number of days cash available to pay bills	135	149	21	120	193	60-90	●
Number of days it takes to pay bills	24	44	17	21	19	< 30	●
Ability to pay debt (Debt Service Coverage Ratio)	No debt	No debt	No debt	No debt	No debt	> 1.0	●
Operating Cash Flow Ratio*	1.0	0.7	0.7	0.7	0.8	> 1.0	●

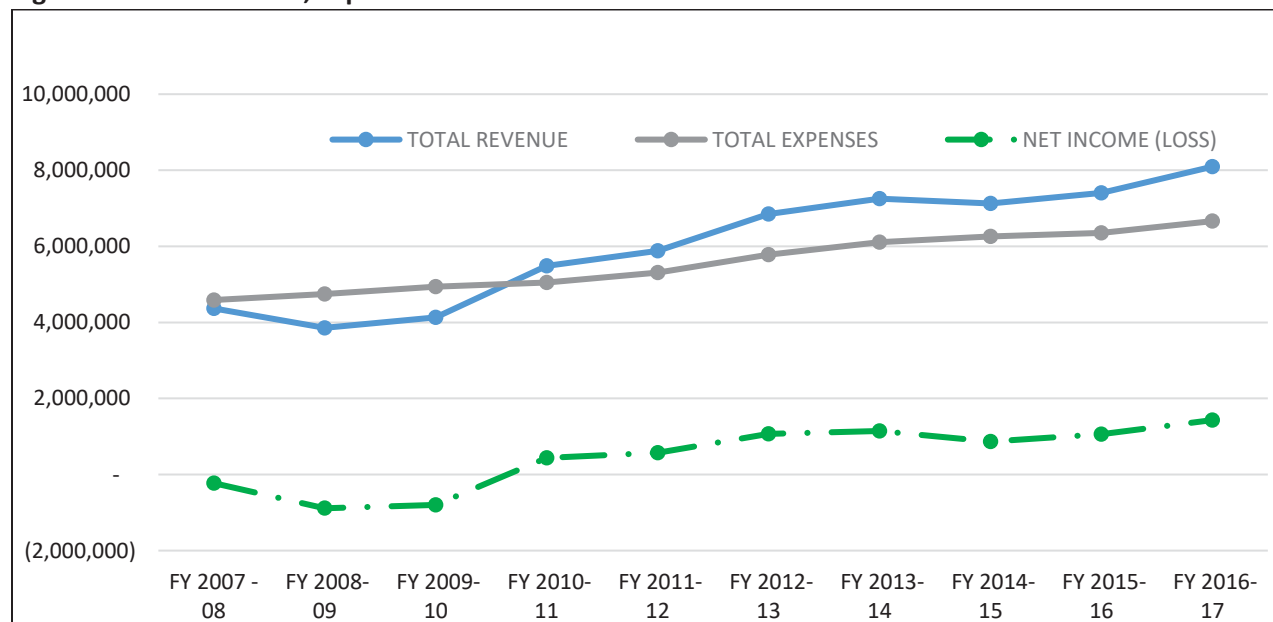
*Excludes restricted income.

** A five-year trend analysis is customarily used in fiscal health analysis because it provides a better assessment of current fiscal health versus examining fiscal health over a 10 year period.

Source: TAP International, Inc. analysis based on the SCCC financial data.

We further examined net income levels for SCCC over a ten-year period to provide a long-term historical look back at SCCC's fiscal health. As shown in Figure 6, the SCCC has slowly improved on its net income levels over a long period of time after three years of profit losses beginning in FY 2007-08.

Figure 6: SCCC Revenue, Expenses and Net Income



Source: TAP International, Inc. analysis based on the SCCC financial data.

At the end of the ten-year period, the SCCC's collected cumulative total revenues of about \$60.4M and spent about \$55.8M, resulting in net income of nearly \$4.7M, as shown in Figure 7.

Figure 7: SCCC Net Income Analysis

	SCCC TOTAL REVENUE	SCCC TOTAL EXPENSES	SCCC TOTAL NET INCOME
FY 2007-08	4,365,268	4,588,650	(223,383)
FY 2008-09	3,856,929	4,744,350	(887,421)
FY 2009-10	4,135,023	4,937,619	(802,597)
FY 2010-11	5,482,042	5,045,617	436,425
FY 2011-12	5,881,508	5,313,299	568,209
FY 2012-13	6,849,158	5,783,261	1,065,897
FY 2013-14	7,254,188	6,106,561	1,147,627
FY 2014-15	7,122,815	6,260,284	862,531
FY 2015-16	7,406,668	6,350,233	1,056,435
FY 2016-17	8,093,763	6,662,438	1,431,326
Cumulative Total	\$60,447,363	\$55,792,312	\$4,655,050

Source: TAP International, Inc. analysis based on the SCCC financial data.

Under the second approach—comparing trends in operating revenues and expenses—TAP International assessed two other measures of fiscal health. The first measure compares the change over time in operating revenues to the change over time in operating expenses. Over the past ten years, the SCCC has sufficiently increased its operating revenue to fully cover the growth in operating expenses. Since FY 2007-08, operating revenues increased by 85 percent to outpace the SCCC’s 45 percent increase in operating expenses as shown in Figure 8.⁶

Figure 8: Percent Change in SCCC Operating Revenue and Expenses

	FY 2007-08	FY 2016-17	% Change
Total Revenues	4,365,268	8,093,764**	85%
Total Expenses*	4,588,650	6,662,438	45%
Revenue Less Expenses	(\$223,383)	\$1,431,326	741%

*Includes City Admin Fee

**Excluding restricted revenue

Source: TAP International, Inc. analysis based on the SCCC financial reports.

Under the third approach—determining the impact on net income if the SCCC assumed responsibility for the CVB’s operations—the SCCC’s fiscal health would have been poor. As shown in Figure 9, if the SCCC had assumed CVB operations, then the SCCC would have operated within its means only for the most recent fiscal year (2016-17),⁷ incurring losses of \$9.4M over the ten-year period. SCCC’s financial performance could have been stronger if it had reduced the amount

⁶ Another City-sponsored report that analyzed the fiscal impact of the SCCC showed net losses for most of the last ten years because the report used a different method of analysis that included the City’s Maintenance District expenses.

⁷ The financial analysis excludes the fees paid to the City’s Contractor for operation of the CVB and the management of the SCCC.

and the frequency of facility discounts given to SCCC customers. The discounts totaled \$14.7M between FYs 2010-11 and 2016-17,⁸ which is discussed in detail later in this report. SCCC management explained that the use of discounts is a marketing tool and that business may have been lost to other convention centers if discounts were not provided.

Figure 9: SCCC and CVB Net Income Analysis

	TOTAL SCCC NET INCOME*	CVB TOTAL REVENUE**	CVB TOTAL EXPENSE	CONSOLIDATED SCCC and CVB NET INCOME
FY 2007-08	(178,383)	163,205	1,608,754	(1,623,932)
FY 2008-09	(842,421)	125,256	1,641,564	(2,358,729)
FY 2009-10	(757,596)	159,875	1,727,812	(2,325,533)
FY 2010-11	481,425	191,344	1,655,725	(982,956)
FY 2011-12	613,209	55,331	1,573,924	(905,384)
FY 2012-13	1,110,897	46,256	1,526,693	(369,540)
FY 2013-14	1,192,627	45,065	1,598,128	(360,436)
FY 2014-15	909,781	42,673	1,605,055	(652,601)
FY 2015-16	1,106,435	62,929	1,218,106	(48,742)
FY 2016-17	1,568,024	21,591	1,360,207	229,408
Cumulative Total	\$5,203,999	\$913,525	\$15,515,968	(9,398,444)

*Less City Admin Fee expense

**Less City Contract revenue

Source: TAP International, Inc. analysis based on the SCCC and the CVB financial reports.

Other cities and counties dedicate a portion of the tax revenue generated by out-of-town visitors attending convention center events to fund their local convention and visitor's bureau. The sources of tax revenues and fees are from transient occupancy taxes (TOT), Tourism Improvement District (TID) fees, and sales taxes. Presently, the City does not allocate (TOT) revenue, sales tax revenue, or (TID) fees to the SCCC or to the CVB.

In the City of Santa Clara, hotel lodging expenses include a 9.5 percent transient occupancy tax (TOT) paid by hotel guests staying overnight. Eight hotels participating in the Tourism Improvement District at the time our review also pay \$1 per lodging night to the City. Had the City allocated a portion of these taxes and fees been to the SCCC based on the number of hotel lodgings generated for SCCC and hotel events, the SCCC would have made a small profit of about \$310,000, as shown in Figure 10 below. This analysis of fiscal health assumes that trends in operating revenues and expenses would continue with operating expenses growing much slower than operating revenues.

⁸ Only years in which data was available.

Figure 10: SCCC and CVB Financial Value Analysis

	CONSOLIDATED SCCC and CVB NET INCOME	TOT REVENUE	TID FEES	CITY SALES TAX	GENERAL FUND CAPITAL EXPENSES	TOTAL FINANCIAL VALUE
FY 2008-09	(2,358,729)	571,716	49,930	60,181	222,065	(1,898,967)
FY 2009-10	(2,325,533)	568,589	49,297	59,851	59,629	(1,707,426)
FY 2010-11	(982,956)	719,750	56,071	75,763	202,642	(334,014)
FY 2011-12	(905,384)	842,820	60,299	88,718	222,508	(136,055)
FY 2012-13	(369,540)	1,089,660	69,398	129,039	165,059	753,498
FY 2013-14	(360,436)	1,241,427	70,260	163,346	573,225	541,372
FY 2014-15	(652,601)	1,547,325	76,457	203,595	431,966	742,810
FY 2015-16	(48,742)	1,244,804	59,791	163,790	7,426	1,412,217
FY 2016-17	229,408	995,760	45,640	131,021	464,687	937,142
Cumulative Total	(\$7,774,513)	\$8,821,851	\$537,143	\$1,075,304	\$2,349,207	\$310,578

Source: TAP International, Inc. analysis based on the SCCC and the CVB financial reports.

Note: The time period of FY 2008-09 to 2016-17 was used as General Fund Capital Expense information was not available prior to FY 2008-09.

Under the fourth approach – forecasting the SCCC’s future fiscal health – TAP International forecasted net income based on two different scenarios.

Under the first scenario, which forecasts net income based on the SCCC’s own operating revenue and expenses, the projections forecast between \$2.2M and \$3.5M over the next four years, as shown Figure 11. Both operating revenues and expenses are expected to grow over the next four years with operating revenue projected to grow at 24 percent over the four years compared to 12 percent for expenses, if operations continue with the same level of service.

Under the second scenario, the analysis includes capital expenditure estimates and projections of potential allocations of TOT tax and TID revenues if the CVB continues its same level of bookings for hotel rooms. As shown in Figure 11 below, projections show an estimated net income between \$1.5M and \$2.2M across the four-year projections. A four-year time horizon was selected to provide a reasonable projection period without introducing unknown variables. The greater the projection period, the increased likelihood of a changing business economy and environment.

Figure 11: SCCC Fiscal Forecasts

Scenario 1	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	Cumulative Four-Year Forecast
Convention Center Revenue	9,047,604	9,726,174	10,455,637	11,239,810	40,469,226
Convention Center Expenses	6,820,238	7,086,227	7,362,590	7,649,731	28,918,787
Projected Net Income	\$2,227,366	\$2,639,947	\$3,093,047	\$3,590,079	\$11,550,439

Scenario 2	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	Cumulative Four-Year Forecast
Convention Center Revenue	9,047,604	9,726,174	10,455,637	11,239,810	40,469,226
Convention Center Expenses	6,820,238	7,086,227	7,362,590	7,649,731	28,918,787
CVB Expenses	1,545,246	1,605,511	1,668,126	1,733,182	6,552,065
TOT Revenue	995,760	995,760	995,760	995,760	3,983,040
TID Revenue	45,640	45,640	45,640	45,640	182,560
City Sales Tax Revenue	131,021	131,021	131,021	131,021	524,084
Capital Expenditures- GF Expense	304,000	131,800	4,292,000	800,000	5,527,800
Projected Net Income	\$1,550,541	\$2,075,057	(\$1,694,657)	\$2,229,318	\$4,160,259

Source: TAP International, Inc. analysis based on SCCC financial data.







Table notes:

1. Projections for Convention Center revenue and expenses are based on ten-year averages, discounting the high and low values.
2. TAP International applied the same rate of expense increase by the SCCC to the CVB. The actual average CVB rate of expense increase was not applied because of the value variability and the overall decrease in expenses experienced over the past ten years.
3. TAP International applied the same forecast for TOT, TID, and sales tax revenue, which expect to remain constant. Actual rates of change varied between -20% to +45%.
4. Capital Expenditures are based on City budget forecasts. Projected capital project expenditure of \$4.3M in FY 2019-20 is primarily for exhibit halls and grand ballroom air wall replacements and carpet replacement.

Contractor/CVB Fiscal Health is Satisfactory Although Cost Allocation Activities Need Attention

The CVB's revenues and expenses are captured in the Contractor's consolidated financial statement. The results of six fiscal health indicators show the Contractor/CVB meets industry benchmarks for five of them, as shown in Figure 12. Warning signs are present because the strength of Contractor's operating cash flow ratio fell below the benchmark between FYs 2015-16 and 2016-17 because of larger than expected spending by the Contractor's core organization. The Contractor/CVB also had declining financial performance across four other indicators. The Contractor/CVB did reduce the number of days it takes to pay bills to under the benchmark of 30 days.

Figure 12: Fiscal Health Indicators of the City's Contractor/CVB

	FY 2015-16	FY 2016-17	Benchmark	Performance
Ability to pay short term bills with available cash (Quick Ratio)	2.3	0.9	> 1.0	
Ability to pay short-term bills (Current Ratio)	2.8	0.9	> 1.0	
Number of days cash is available to pay bills (Cash on Hand)	123	110	60-90	
Number of days it takes to pay bills (Days Payable Outstanding)	31	22	< 30	
Ability to pay debt (Debt Service Coverage Ratio)	9.6	2.2	> 1.0	
Operating Cash Flow Ratio	1.8	0.03	> 1.0	

Source of Data: TAP International, Inc. analysis based on Contractor's audited financial statements.

Table Note:

1. Financial data required to calculate the fiscal ratios was not provided by the Contractor prior to FY 2015-16.

CVB's Year End Fiscal Performance Varied but Within Ten Percent of Total Budget

The Contractor had satisfactory performance in fiscally managing the CVB's total revenue, comprised of the City's contract, ticket sales, and other service fees. As shown in Figure 13, the Contractor's CVB operations had positive net income for four of the past ten years and incurred year-end losses for the remaining six years. None of these year-end deficits exceeded ten percent of the total budget.

Over the ten-year period, revenues for the CVB totaled about \$15.8M and expenses totaled about \$15.5M, showing that the Contractor was ultimately successful in accomplishing a \$278K revenue surplus because the Contractor reduced the CVB's operating expenses at a rate greater than the reductions in its revenues.

Figure 13: Comparison of CVB Operating Revenues and Expenses

	CVB OPERATING REVENUES	CVB OPERATING EXPENSES	CVB NET INCOME
FY 2007-08	1,575,000	1,609,000	(34,000)
FY 2008- 09	1,572,000	1,642,000	(69,000)
FY 2009- 10	1,628,000	1,728,000	(99,000)
FY 2010- 11	1,648,000	1,656,000	(8,000)
FY 2011- 12	1,577,000	1,574,000	3,000
FY 2012- 13	1,568,000	1,527,000	41,000
FY 2013- 14	1,567,000	1,598,000	(32,000)
FY 2014- 15	1,564,000	1,605,000	(41,000)
FY 2015- 16	1,584,000	1,218,000	366,000
FY 2016- 17	1,511,000	1,360,000	151,000
Total for the ten year period*	\$15,794,000	\$15,516,000	\$278,000
Percent Change**	(4.1%)	(15.4%)	545%

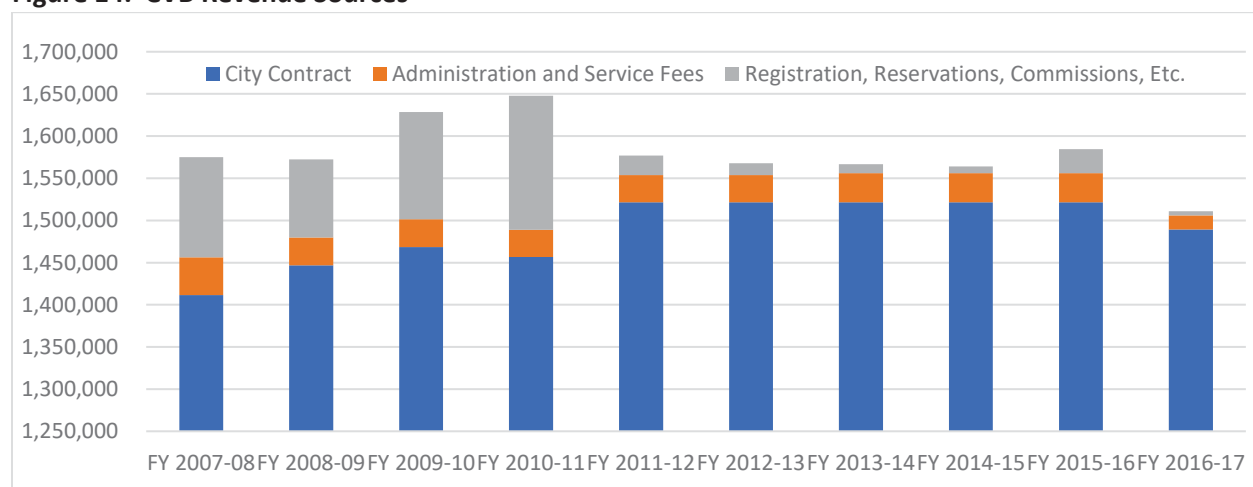
Note: *Revenue and expense amounts rounded to the nearest thousand. **Percent Change based on actual values from CVB financial statements.

Source: TAP International, Inc. analysis based on CVB financial data.

Contractor Opted Against Continuing Conference Registration Services

As illustrated in Figure 14, the CVB's primary source of revenue is the City's contract payments to support operations. Another large source of revenue was registration services. Allowing event sponsors to register their participants for conferences generated up to \$149,000 for the CVB until FY 2010-11 when the CVB chose not to renew services. The City had offset the loss in revenue but not at an amount to fully compensate the loss. The SCCC did not assume event registration operations for its clients.

Figure 14. CVB Revenue Sources



Source: TAP International, Inc. analysis based on CVB financial data.

The CVB's Revenue and Expense Allocations Need Reconciliation

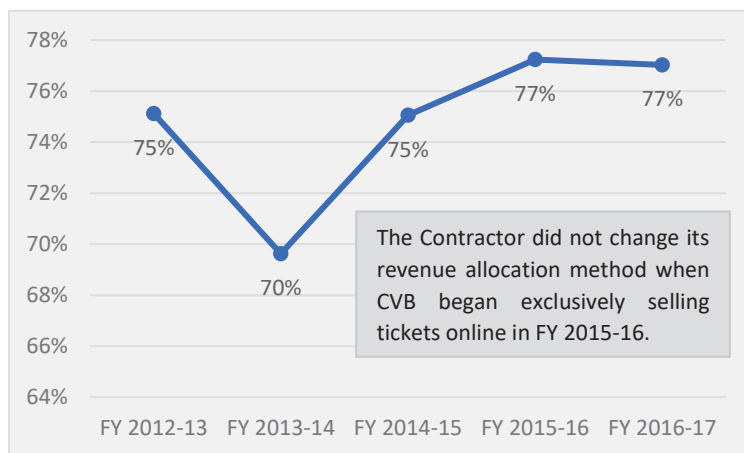
Generally, when administrative services are shared among entities or different business functions, the expenses incurred from performing these services are allocated and charged to each entity or business function. The allocation of these expenses is usually based on a cost accounting study or a corporate policy that shows a reasonable basis for the allocations.

While the contractor does not have a written cost allocation policy, in practice, the allocations differed depending on the type of expense. The Contractor's SCCC and CVB staff reported that it has been a long-standing practice to allocate 80 percent of overhead expenses to the CVB and 20 percent to the Contractor. Our analysis, however, shows that the CVB paid between 70 and 85 percent of the expenses for office supplies and maintenance and between 79 and 86

percent of telephone expenses over the past five years. For accounting services, the Contractor reportedly allocates 85 percent of these expenses to the CVB. However, the Contractor's staff reported that the CVB's accounting activities require less time to complete than the accounting activities for the Contractor's own organization.

When the CVB generates revenue involving Contractor resources, then cost allocation policies can include methods for dividing revenue. Similarly, the contractor does not have a documented policy for revenue allocations, but the Contractor's CVB officials reported that prior to FY 2015-16, the CVB was to retain 70 percent of revenue from ticket sales for area attractions while the Contractor was to retain the remaining 30 percent. In practice, however, as shown in Figure 15, the Contractor allocated between 70 and 77 percent to the CVB. The Contractor's CVB officials explained that beginning in FY 2015-16 when the CVB began selling tickets online exclusively, the CVB should have received all \$4,626 in fees collected, but the CVB received \$3,569 from FYs 2015-16 to 2016-17.

Figure 15: CVB Ticket Sales Allocation Percentage



Source of Data: TAP International, Inc. analysis based on the CVB financial data.

The CVB's Value is Generating Tax Revenue for the City

One of the key's goals of the CVB is to promote the SCCC and the City as a destination area. These efforts result in generating several types of tax revenue when visitors use the SCCC, area hotels, businesses, and restaurants. These taxes include transient occupancy taxes that collect 9.5 percent on hotel lodgings; sales tax of nine percent when purchases are made; and other revenue

in the form of TID fees which assess \$1 per room night among eight participating hotels in the Tourism Improvement District.

The CVB's marketing and promotion efforts on behalf of the City directly led to 441,716 hotel room nights between FYs 2010-11 and 2016-17, resulting in added tax revenue and fees for the City. Had the City allocated a performance-based portion of TOT tax, TID fees, and sales tax to the CVB, the CVB's net financial impact over ten years could have been an estimated \$11.5M, as shown in Figure 16.

Figure 16: Net CVB Financial Impact

	TOTAL CVB REVENUES	TOTAL CVB EXPENSES	CVB NET INCOME (LOSS)	TOT REVENUE	TID REVENUE	CITY SALES TAX REVENUE	NET CVB IMPACT
FY 2007- 08	1,574,883	1,608,754	(33,871)	710,498	51,117	74,789	802,533
FY 2008- 09	1,572,218	1,641,564	(69,346)	571,716	49,930	60,181	612,481
FY 2009- 10	1,628,401	1,727,812	(99,411)	568,589	49,297	59,851	578,326
FY 2010- 11	1,647,870	1,655,725	(7,855)	719,750	56,071	75,763	843,729
FY 2011- 12	1,576,857	1,573,924	2,933	842,820	60,299	88,718	994,770
FY 2012- 13	1,567,782	1,526,693	41,089	1,089,660	69,398	129,039	1,329,186
FY 2013- 14	1,566,591	1,598,128	(31,537)	1,241,427	70,260	163,346	1,443,496
FY 2014- 15	1,564,199	1,605,055	(40,856)	1,547,325	76,457	203,595	1,786,521
FY 2015- 16	1,584,455	1,218,106	366,349	1,244,804	59,791	163,790	1,834,734
FY 2016- 17	1,510,906	1,360,207	150,699	995,760	45,640	131,021	1,323,120
Total for the ten year period	\$15,794,162	\$15,515,968	\$278,194	\$9,532,349	\$588,260	\$1,150,093	\$11,548,896

Source: TAP International, Inc. analysis based on SCCC and CVB financial data. It is assumed that SCCC partner's sales tax is included in the City Sales Tax Revenue.

Section 1B: SCCC's and CVB's Revenue Sources and Spending Generally Align with Missions

The SCCC and the CVB Have Customary Revenue Sources

The SCCC generates income customary for their mission, collecting revenue from 23 general sources. As highlighted in Figure 17, the SCCC's largest revenue sources are:

- Space Rentals (Exhibit Halls, Ballrooms, Meeting Rooms, Great America, and Theater)
- Catering Commissions
- Audio-Visual Commissions
- Telecommunication Commissions.

Since FY 2007-08, 16 of the 23 revenue sources experienced an increase in revenue, ranging from 4 to 515 percent. Another six revenue sources experienced declines, ranging from -4 to -68 percent.

Figure 17: SCCC Revenue Sources

Revenue Source	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	% Change FY 2008-09 to 2016-17
Space-Exhibit Halls	1,265,660	1,194,129	1,113,905	1,090,620	1,142,031	1,352,496	1,261,166	1,337,354	1,416,000	1,353,372	7%
Space-Ballrooms	209,948	221,195	488,060	622,105	598,929	711,857	823,143	801,308	873,944	915,085	336%
Space-Meeting Rooms	207,984	194,893	180,207	219,685	207,900	239,957	237,630	237,580	262,125	275,466	32%
Space-Great America	286,623	271,593	220,997	214,889	274,632	291,742	360,661	385,969	358,770	404,850	41%
Space-Theater	193,640	189,026	151,590	208,620	203,376	211,483	218,644	200,892	208,720	201,000	4%
Space-Cancellation	63,650	163,594	76,138	24,641	15,899	111,523	72,799	77,641	95,995	60,810	(4%)
Merchant Fees			(25,191)	(34,347)	(38,468)	(54,177)	(60,668)	(58,205)	(63,372)	(79,196)	---
Labor-Miscellaneous	10,933	8,915	9,565	19,270	11,168	6,825	5,420	9,139	8,655	8,400	(23%)
Equipment Rental	64,854	58,374	55,466	99,048	55,400	92,744	76,773	120,308	106,638	123,897	91%
Electrical Comm.	107,391	159,844	105,585	140,410	192,214	222,042	184,879	222,373	203,486	277,045	158%
Electrical Services In-House	94,506	53,573	66,840	164,515	156,749	117,605	107,866	111,470	133,650	58,485	(38%)
Audio-Visual Comm.	270,992	271,929	362,512	395,825	411,300	462,273	605,755	594,217	609,736	638,611	136%
Services - Misc.	5,810	18,472	4,360	6,525	5,773	5,658	7,100	639	3,930	3,495	(40%)
Incoming Freight	3,690	3,675	3,175	6,065	9,543	3,764	3,314	2,631	3,423	6,649	80%
Cell Site Revenue	23,009	17,794	17,794	17,794	17,980	18,233	18,936	18,090	26,236	33,039	44%
Telecomm Commission	175,127	127,363	175,520	295,797	327,993	447,915	446,187	432,566	527,971	638,933	265%
Catering Commission	1,262,009	800,499	1,037,616	1,900,070	2,195,799	2,509,846	2,809,971	2,566,610	2,572,066	3,060,064	142%
Insurance Revenue	2,610	2,245	2,085	2,170	2,135	2,853	3,115	1,995	1,750	2,030	(22%)
Interest Revenue	72,998	65,877	57,670	42,934	43,423	20,004	14,025	10,752	7,175	23,689	(68%)
Advertising Comm.	25,154	26,015	15,976	26,009	32,254	32,536	30,449	26,983	29,658	35,644	42%
Sponsorship Revenue	2,300	1,600	1,800	5,550	5,700	16,500	10,950	4,000	2,800	14,150	515%
Business Center Comm.	5,324	4,123	4,481	5,220	5,645	6,710	12,502	14,802	12,682	10,088	89%
Other Income	11,057	2,204	8,874	8,629	4,134	18,771	3,572	3,702	4,629	28,158	155%
TOTAL	4,365,268	3,856,929	4,135,023	5,482,042	5,881,508	6,849,158	7,254,188	7,122,815	7,406,668	8,093,763	85%
TOTAL FY 2007-08 to 2016-17											\$60,447,362

Source: TAP International, Inc. analysis based on CVB financial data.

The CVB also generates income customary for their mission, collecting revenue from nine general sources between FYs 2007-08 and 2016-17. Total revenues from these sources declined by four percent over a ten-year period, as shown in Figure 18. The CVB's Admin and Service Fees include TID revenue, which declined in FY 2016-17. TID revenues received should be reported under a separate income account for better transparency.

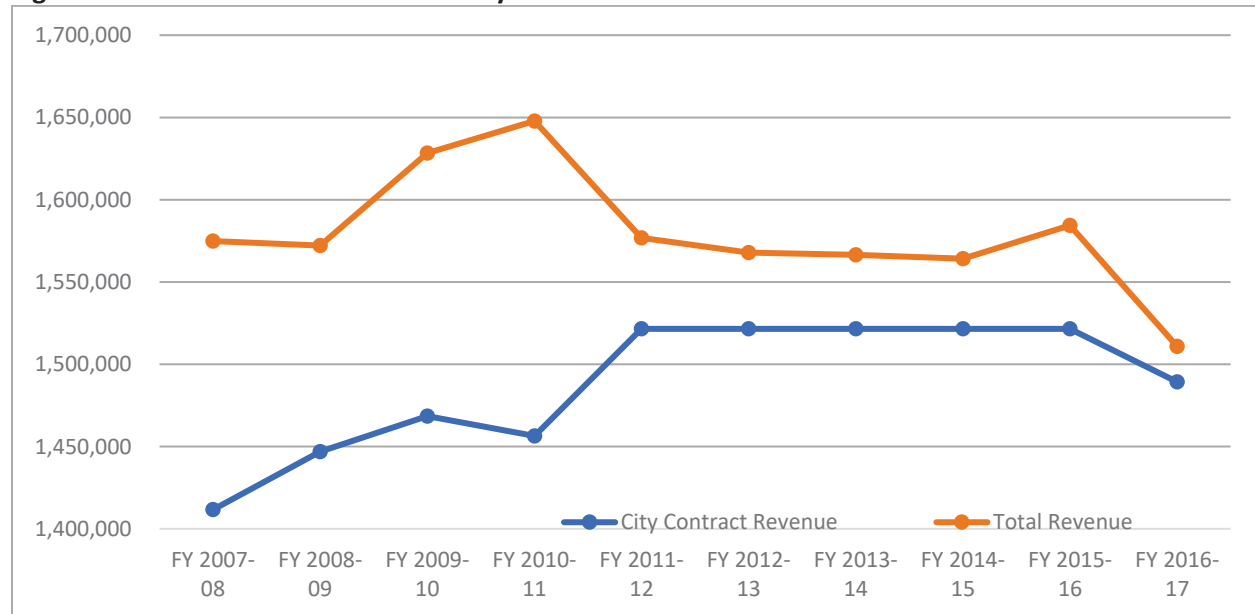
Figure 18: CVB Revenue Sources

Revenue Source	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	% Change FY 2008-09 to 2016-17
Admin and Service Fees	44,580	32,882	32,893	32,265	32,265	32,160	34,500	34,500	34,500	16,750	(62%)
Program Services									50	300	---
On-Line Hotel Reservations	8,111	6,467	2,071	2,261	2,443	2,284	2,625	1,856	1,987	1,047	(87%)
City Contract	1,411,678	1,446,962	1,468,526	1,456,526	1,521,526	1,521,526	1,521,526	1,521,526	1,521,526	1,489,315	5%
Discount Ticket Sales	2,099	3,529	1,983	7,195	13,049	11,274	7,149	5,812	2,114	1,455	(31%)
Registration Services	107,393	81,731	122,351	149,400	7,389	399	735	458			(100%)
Commission Revenue									22,431	1,946	---
Banner Ads									1,800		---
Interest Income	1,022	647	577	223	185	139	56	47	47	93	(91%)
TOTAL	1,574,883	1,572,218	1,628,401	1,647,870	1,576,857	1,567,782	1,566,591	1,564,199	1,584,455	1,510,906	(4%)
TOTAL FY 2007-08 to 2016-17											\$15,794,162

Source: TAP International, Inc. analysis based on SCCC financial data.

Figure 19 highlights that the Contractor by FY 2016-17 became dependent on the contract funds to support operations.

Figure 19: CVB Revenue Reliance on City Contract Funds



Source: TAP International, Inc. analysis based on CVB financial data.

Nearly All SCCC and the CVB Expenses are Customary, Except for Bonuses and Commissions

The SCCC has customary expenses for its mission. As highlighted in Figure 20, the SCCC spent the most on salaries and benefits (reported under labor) at about \$5M followed by utilities at \$732,000. Labor and utility expenses rose the most in comparison to other expenses. The SCCC reduced its spending in four areas – professional association dues, advertising and promotion activities, telephone charges, and parking fees.

Figure 20: Changes in SCCC Spending

Convention Center Expenses	FY 2007-08	FY 2016-17	\$ Increase (Decrease)	% Change
Labor Related	3,530,564	4,983,964	1,453,400	41%
Parking Fees	16,165	8,550	(7,615)	(47%)
City Admin Fee	45,000	136,699	91,699	204%
Other Operating	2,297	39,500	37,203	1620%
Professional Associations	9,525	9,152	(373)	(4%)
Advertising and Promotion	6,447	970	(5,477)	(85%)
Telephone	38,317	8,568	(29,749)	(78%)
Office Expense	55,708	111,525	55,817	100%
Insurance	86,365	169,206	82,841	96%
Employee Expenses (payroll, training, etc.)	41,998	72,780	30,782	73%
Maintenance	135,467	244,576	109,109	81%
Janitorial and Cleaning	90,082	144,713	54,631	61%
Utilities	530,715	732,235	201,520	38%
Total Expense	\$4,588,650	\$6,662,438	\$2,073,788	45%

Source: TAP International, Inc. analysis based on the SCCC's financial data.

The CVB also has customary expenses for its mission. As highlighted in Figure 21, the CVB spent the most on salaries and wages at nearly \$790,000 followed by advertising and marketing related expenses for the SCCC and the CVB totaling about \$179,000 in FY 2016-17. Over time, the CVB reduced its spending in 17 areas with its largest declines in Salaries and Wages and Employee Benefits, respectively.

Figure 21: Changes in CVB Spending

CVB Expenses	FY 2007-08	FY 2016-17	\$ Increase (Decrease)	% Change
Salaries and Wages	937,383	787,658	(149,725)	(16%)
Payroll Taxes	76,040	55,347	(20,693)	(27%)
Employee Benefits	174,188	102,194	(71,994)	(41%)
Depreciation/Amort.	10,300	5,093	(5,207)	(51%)
Office Supplies/Maintenance	27,639	17,143	(10,496)	(38%)
Computer Service/Maintenance	0	33,500	33,500	---
Accounting and Audit	27,845	35,320	7,475	27%
Legal Fees	0	10,174	10,174	---
Office Equipment.	1,228	1,356	128	10%
Rent	88,575	91,232	2,657	3%
Telephone	22,292	17,039	(5,253)	(24%)
Insurance and Taxes	7,874	3,448	(4,426)	(56%)
Administrative Meeting	2,893	1,981	(912)	(32%)
Postage	18,590	6,298	(12,292)	(66%)
Mileage	3,059	1,443	(1,616)	(53%)
Payroll Service fee	4,499	5,854	1,355	30%
Inside Santa Clara Newsletter	10,500	7,949	(2,551)	(24%)
Advertising-Convention Marketing	0	4,204	4,204	---
Advertising-Travel Marketing	19,709	17,914	(1,795)	(9%)
Marketing-Servicing	550	0	(550)	(100%)
Marketing-Convention Center Marketing/Sales	103,799	99,086	(4,713)	(5%)
Marketing-Visitors Bureau	52,571	49,620	(2,951)	(6%)
Outside Services	6,242	0	(6,242)	(100%)
Expense Reimbursement	11,015	0	(11,015)	(100%)
Miscellaneous	1,963	6,354	4,391	224%
Total Expense	\$1,608,754	\$1,360,207	(\$248,547)	(15%)

Source: TAP International, Inc. analysis based on the Contractor's audited financial statements.

The Contractor Improperly Paid Commissions

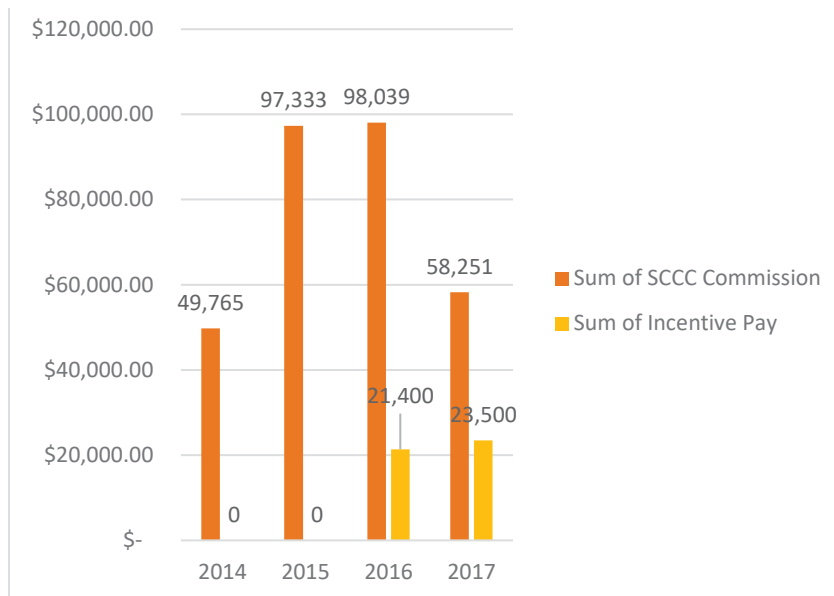
Although the Management Agreement does not contain terms or conditions governing the payment of sales commissions, the SCCC Sales Director received commissions based on the number of events scheduled at the Convention Center, the services sold, and the level of new and repeat business that was brought to the facility. In two full calendar years and another two partial years between 2014 and 2017, the SCCC paid its Sales Director approximately \$303,000 in commissions in addition to a low base annual salary. Generally, in a sale driven environment, sales staff are provided financial incentives to meet sales goals and targets that can be in the

form of commissions or bonuses. The added compensation can be viewed as opportunity costs for businesses if it leads to revenue growth. Because commissions are not offered in publicly funded operations, the commissions should have been included in the Contractor's formal agreement with the City for subsequent review and approval by the City Council. SCCC management explained that there was no direction by the City to submit employment-related decisions to City Management or City Council for approval.

SCCC management said that the use of commissions has been a long-time practice. The Contractor included the commissions in the SCCC's operating budget under a General Management category although the commission appropriations should have been presented as Commissions in a separate budget category. This absence of transparency led the City Council to inadvertently approve the appropriations for the commissions without policy deliberations. Moreover, offering commissions prevented the full coordination and

cooperation between the SCCC and CVB sales staff. CVB sales staff reported that the scheduling of events with lower economic value by SCCC staff received preference over higher valued events. SCCC management disagrees with CVB's assertion. Event scheduling is later discussed in this report.

Figure 22: SCCC Commission and CVB Incentive Pay Expenses



Source of Data: TAP International, Inc. analysis based on SCCC salary reports and CVB incentive pay computation reports.

Table Note: Data was available only for the SCCC Commission payments for six months only for calendar year 2014 and for 2017

Bonus Payments Need Further Review

The Contractor's CVB staff was paid bonuses, referred to as incentive pay, that needs further review. The Contractor paid the CVB's sales staff incentive pay provided that the employees met individual quarterly sales goals and targets. The amount of incentive pay varied by sales manager. We did not have complete data to determine the full amount of incentive pay paid to the Contractor's CVB employees, but for calendar year 2017, incentive pay totaled \$23,500. Included

in the payments were amounts for events scheduled in future years like in 2021, but offsets in incentive payments did not occur if events were cancelled. CVB staff explained that event sponsors are required to pay a deposit in the event of a future cancellation, and thus fees are available for the incentive payments.⁹ The absence of pay offsets for cancelled events contradicts the purpose of giving performance bonuses. In FY 2016-17, the SCCC collected about \$60,000 in cancellation fees.

How the Contractor paid for the incentive payments is of concern. The incentive payments were not paid for by the City's monthly contractual payments, but instead were paid for by funds from another public entity – the Santa Clara Tourism Improvement District (TID)¹⁰ – without a formal contract or written legal agreement in place. Incentives payments could be appropriate if the TID competitively bid for marketing and promotion services and then entered into a formal agreement that contained provisions to pay performance incentives if goals were met. In the absence of a formal agreement, the funds appropriated to the Contractor by the TID need further examination by the City to determine if the TID was in violation of public law that prohibits the giving or lending of public to any person or entity, public or private organizations, except under certain circumstances.¹¹

There were no disclosures about the use of incentive pay although the City had imposed oversight requirements on the TID that provided some accountability and transparency over operations. These requirements include submissions of annual reports and an annual financial audit. The TID's operating budget did contain funds for bonuses in its annual operating budget but no disclosure was evident that the bonuses were for another organization. As the City did not require the TID to submit budget documents for review, incentive pay provided to the Contractor's organization would have remained unknown unless direct communication occurred. None of the current City management staff were aware of the incentive pay or of the commission payments.

⁹ Incentive payments are actually paid by the TID. The point made by the CVB staff is that when events are cancelled, revenue is recovered, so there is no direct revenue loss to the City.

¹⁰ The TID, established to promote tourism and enhance marketing activities, received \$1 per room night from eight participating hotels that comprise the TID. In FY 2016-17, TID estimated fees totaled \$759,009. The Contractor for the SCCC and CVB also managed the TID.

¹¹ California's Constitution Article XVI, Section 6.

Section 2: Structures, Systems, and Operations Need Strengthening

Contractor Does Not Implement Strong Financial Management Activities

This section describes the activities of the Contractor to administer financial management of the SCCC and CVB.

Financial Management Policies and Procedures Need to Address Content Gaps

Important to an effective financial management structure is the development of policies and procedures. Policies and procedures serve the purpose of:

- Protecting the assets of the organization
- Providing a framework for the organization's financial decision making
- Establishing operating standards and behavioral expectations
- Ensuring compliance with regulations.

In the two agreements between the Contractor and the City, the City required that the Contractor separate its accounting activities for the SCCC and CVB operations and perform other financial management related tasks. The City did not require the development of financial management policies. However, the Contractor had developed two sets of financial management policies. One set governs the CVB and the other governs the SCCC.

TAP International evaluated the content of the SCCC's financial management policies and procedures against guidance issued by the Government Finance Officers Association (GFOA) because SCCC is an enterprise operation and publicly owned. Of 11 financial management areas most applicable to the SCCC, the SCCC had gaps in content among six of them, as shown in Figure 23.

The five areas that need policy development include:

- Reserves
- Contract
- Risk Management and Internal Controls
- Long Term Financial Management Planning
- Capital Management Policies.

Figure 23: SCCC Financial Policies and Procedures Development

Policy Area	Policy Developed by SCCC
Reserves in other funds. Policies that set how much revenue to set aside for later use.	No
Contract: Policies that deal with the administration of contract revenue.	No
Accounting: Policies that address the basis of accounting, the process for implementing journal entries, requirements for bank reconciliation, monthly closing, and recordkeeping.	Partially ¹²
Financial reporting: Address procedures and controls for internal financial reporting, tax compliance and tax returns, and payroll reporting.	Partially ¹³
Risk management and internal controls: Policies that address risk management and internal control.	No
Procurement: Policies to encourage efficient, effective, and fair procurement.	Partially ¹⁴
Long-term financial planning: A policy that commits the organization to taking a long-term approach to financial health.	No ¹⁵
Capital: Policies that cover the lifecycle of capital assets, including capital improvement planning, capital budgeting, project management, and asset maintenance.	No
Revenues: Policy guidance through the designing of efficient and effective revenue systems that guarantee the generation of adequate public resources to meet expenses.	Partially ¹⁶
Expenditures: Policies addressing a range of issues around how the money is expended, including personnel, outsourcing, and funding long-term liabilities.	Partially ¹⁷
Operating budget: Policies that describe essential features of the budget development process and form, as well as principles that guide budgetary decision making.	Partially ¹⁸

Source: TAP International, Inc. analysis of SCCC financial policies.

TAP International evaluated the content of the CVB's financial management policies and procedures against guidance issued by the National Council for Nonprofits for six key areas for

¹² SCCC policy does not define responsible parties to conduct activities and oversight controls.

¹³ SCCC policy does not define procedures or controls to ensure accuracy and completeness of internal financial reports.

¹⁴ SCCC policy does not address proposal and bid process that should ensure fair purchasing and contracting, only Purchase Orders

¹⁵ SCCC policy address bi-annual budget process, but not long-term planning.

¹⁶ SCCC policies have been developed for Revenue Recognition and Cash Receipting, but revenue generation systems and controls are not defined.

¹⁷ SCCC policy address the cash disbursement process, but not management long term liabilities, which is currently not applicable to the SCCC because it does not have long term debt on its accountings records.

¹⁸ SCCC policy does not include a description of budget assumptions to be used the preparation of the budget or the type of budgeting methodology to use.

nonprofit organizations, as described in Figure 24. The CVB’s financial policies also had some gaps in each area.

Figure 24: Contractor development of Financial Policies for the CVB

Policy Area	Policy developed for CVB
Accounting: Address the basis of accounting, the process for implementing journal entries, requirements for bank reconciliations, monthly closing, and recordkeeping.	Partially ¹⁹
Financial Planning & Reporting: Address procedures and controls for internal financial reporting, tax compliance and tax returns, and payroll reporting.	Partially ²⁰
Budgeting Process: Policies that describe essential features of the budget development process and form, as well as principles that guide budgetary decision making.	Partially ²¹
Revenue and Accounts Receivable: Policies guiding invoice preparation, revenue recognition, cash receipts, and deposits.	Partially ²²
Expense and Accounts Payable: Policies describing Purchases & Procurement and the use of Independent Contractors.	Partially ²³
Invoice Approval and Processing: Procedures describing how cash will be disbursed, petty cash procedures and amounts, use of credit card, and employee reimbursements.	Partially ²⁴

Source: TAP International, Inc. analysis of CVB financial policies.

SCCC and CVB Could Benefit from an Integrated Financial Accounting System

An important financial management tool is the use of accounting systems to collect, store, and process financial and accounting data and produce informational reports for managerial review and decision-making. The Contractor uses two different accounting systems – one for the CVB and the other for the SCCC. Without an integrated accounting system, financial reports must be

¹⁹ CVB policy does not define responsible parties to conduct activities and oversight controls.

²⁰ CVB policy does not define procedures or controls to ensure accuracy and completeness of internal financial reports.

²¹ CVB policy does not include a description of budget assumptions to be used the preparation of the budget or the type of budgeting method to use.

²² CVB policies defines payment types and bank deposits but does not address invoice preparation or how information is used to create journal entries.

²³ CVB cash disbursement policy provides overview of payment types and check processing but does not address use of independent contractors.

²⁴ CVB policy does not define spending limits and authorization for use of credit cards.

prepared and reviewed separately, and errors must be manually identified and corrected.²⁵ Our review found CVB financial reports did not include adequate detail about transaction history. For example, the CVB did not have explanations of gaps in check numbers or check numbers found out of sequence. The Contractor explained that the printer damaged the subject check numbers. In comparison, the SCCC's financial data system kept a detailed record of all voided checks even those destroyed by printing—a standard internal control activity. The SCCC's General Manager/CEO sought to integrate the two accounting systems in FY 2016-17 without success after a Board member of the Contractor's organization opted against system integration.

“Separate Accounting” Activities between the Contractor’s Organization and the CVB Needs Stronger Internal Controls

The updated 2017 CVB agreement between the City and the Contractor requires “separate accounting” between the CVB and the Contractor. The agreement does not include a definition of “separate accounting” or clarifies the City's intent on whether the City intended to require separate accounting systems or separate bank accounts. The absence of specificity in the agreements has led the Contractor to deposit into the same bank account all revenues received for its own organization (including member dues and donations), the City's contract revenue, other CVB revenue, TID revenue, and SCCC payroll payments into one bank account. In FY 2016-17, the SCCC's General Manager/CEO, sought to appropriately establish separate checking accounts for the CVB and for the Tourism Improvement District. A former Board member of the Contractor's organization gave authorization only to set up a separate bank account for the Tourism Improvement District.

To comply with the requirement to provide “separate accounting”, the Contractor records financial transactions on either the CVB's General Ledger or on the Contractor's own General Ledger depending on which entity incurred the expense. A general ledger holds account information on individual financial transactions and contains data on revenues, expenses, assets, liabilities, and equity for use in financial reporting. The recording of these transactions on the correct general ledger is vital to ensuring accounting financial reporting.

Our review of 49 financial transactions between FY 2006-2007 and FY 2017-2018 showed that the Contractor recorded about half (24) of the transactions correctly. Another 11 transactions had some type of exception. For these exceptions, the Contractor did not effectively implement internal controls. The exceptions we noted are as follows:

- The absence of an account code that would describe whether to post the expense on the CVB or the Contractor's ledger

²⁵ SCCC's financial reports and disbursements are provided to the City for the City to manually perform enterprise accounting activities. The accounting of fixed assets for the SCCC is captured separately on an MS Excel spreadsheet.

- Different expense amounts shown on the General Ledger in comparison to payment documentation and the invoice amount
- Approval of purchase orders after incurring the expense. A purchase order describes the purpose of the expected expense and the proposed vendor so that management can review and approve the expense prior to its occurrence.

For the remaining 14 transactions, it was not possible to determine whether the Contractor posted the expenses to the correct general ledger because of the unavailability of invoices and records that show accounting instructions. The weaknesses in internal controls did not materially affect the Contractor's audited financial statements because these statements combined the CVB's and the Contractor's financial position.

Our sample of SCCC financial transactions did not find exceptions to internal controls.

TAP International further examined the Contractor's controls governing the use of credit cards. The Contractor managed one credit card account for use by seven employees working for the Contractor, CVB staff, and SCCC staff. Using the same credit card account for three entities needs to have strong business processes to reconcile receipts to the expenses on a timely and accurate basis. However, the Contractor did not implement uniform credit card reconciliation processes or implement other internal controls, as follows.

- The SCCC requires receipts to be given to its accounting department immediately after the purchase but the Contractor does not consistently collect these receipts for the CVB. Missing receipts were clear across the three credit card statements selected for review. Without receipts, the Contractor cannot review the allowability of the expenses incurred.
- Travel request forms that show the planned dates of the trip, the purpose of the trip, and expected expenditures can allow Contractor staff to cross-check dates of approved travel with corresponding credit card expenses. Neither the SCCC nor the CVB require travel requests to be prepared so that credit cards could be effectively reconciled. Without the approved travel requests, Contractor staff do not have a basis to determine whether executive management had given approval of the travel related charge prior to its

An effective internal control requires submission of receipts or expense reports immediately after purchases or at month-end.

Another control is to prepare travel request forms for pre-approval of expected expenses.

A third control is to prepare purchase orders. A purchase order describes the purpose of the expense and the estimated costs for review and approval by management prior to incurring the expense.

occurrence. SCCC management explained that their employees do not perform out of town travel and would not need to prepare travel orders. However, travel to attend future training, seminars or conferences should be authorized through a travel order.

- While the SCCC requires purchase orders for internal needs such as printing, office supplies, and small equipment items; the CVB did not consistently use them. Without purchase orders, the CVB staff are making purchases without advance knowledge by management. The Contractor's financial policies do not comprehensively address credit card use or identify spending limits subject to purchase orders.

Information Management Could be Used More Effectively

This section describes how well the CVB and SCCC manage and uses the information it collects on performance.

The SCCC Has an Opportunity to Fully Leverage the Information it Collects

Information management is the planning, organizing, collecting, analyzing, evaluation, and reporting of information. Vital to information management is performance measurement, which allows development and reporting on key metrics using operational information collected by an organization. The information, when analyzed, can identify when work processes break down or where work processes can be improved for better service delivery. Performance measures can address the timeliness of program activities conducted (process), the direct products and services delivered by the process (outputs), or the results of those processes (outcomes).²⁶ Effective information management supports better and quicker managerial decisions that increase overall operating effectiveness.

The CVB implements a satisfactory information management system in place. The CVB routinely tracks, collects, and reviews its progress at selling and marketing both the SCCC and area hotels. In addition, the CVB routinely reviews the accuracy of the data captured in its computer systems. The CVB management staff analyzes output measures to identify trends, compute performance bonuses, and to assess progress at meeting annual performance targets.

Examples of the types of performance measures tracked by the CVB are primarily output measures, such as:

- Number of leads
- Number of leads lost
- Number of events booked
- Number of events cancelled
- Number of room nights
- Number of guests.

²⁶ MANAGING FOR RESULTS: Data-Driven Performance Reviews Show Promise but Agencies Should Explore How to Involve Other Relevant Agencies, February 2013. U.S. Government Accountability Office
PERFORMANCE MEASUREMENT AND EVALUATION, May 2011, US. Government Accountability Office.

The CVB also collects and monitors a key outcome measure – economic impact – to assess the effectiveness of its sales and marketing efforts. The CVB computes this metric using an industry formula that considers lodging revenue, TOT revenue, TID revenue, sales tax, and tourism activities among other things. In FY 2016-17, the total economic impact for SCCC events totaled \$122.3M, exceeding its annual performance benchmark of \$88M.²⁷

The SCCC collects multiple types of data but could do more to analyze the information to assess overall performance. For example, the SCCC administers customer satisfaction surveys, but it does not collectively analyze the surveys to assess overall performance effectiveness and efficiency. In another area, the SCCC collects information on event bookings but does not routinely use the data to assess booking patterns and trends.

The SCCC does not have same level of information management in comparison to the CVB.

Neither the CVB nor the SCCC have developed benchmarks from which to assess their own annual performance. Benchmarks are a standard of performance using the SCCC's and the CVB's own information. Having this information available could allow the Contractor to align sales and promotion efforts with the SCCC rental needs.

Examples of benchmarks and performance measures include:

5-year Average Benchmark	Annual Performance Measure
Facility use rate	% of calendar days that the Convention Center facilities are used
Space utilization	% of SCCC square footage used
Revenue per event	Average direct revenue per event
Total events booked	Total events booked
# of same day bookings	Annual # of same day bookings
# of multi-day bookings	Annual # of multi-day bookings
Total events booked by partner	Average Total events booked by CVB Total events booked by SCCC Total events booked by SCCC partners

The Contractor could benefit from other information to measure business process efficiency. For example, the CVB implements business processes to work leads and to book events with its clients. The CVB staff said that the time required to complete these activities consume about three hours to prepare required forms; time that could be spent working other leads. Changes could be made with how their activities are administered, such as having support staff prepare required forms, but the CVB requests for support staff have been denied. Tracking the efficiency

²⁷ TAP International, Inc analysis of 10 years of CVB booking data.

or cost-effectiveness of the SCCC and the CVB operations can drive changes to increase productivity.

Another business process that could have better cost data and performance information is how the SCCC administers maintenance operations. Presently, tracking and monitoring of maintenance operations is a manual process that require supervisors to prepare a one-page log for each shift, describing all the items that need repair. For FY 2017-18, the logs contained 2,893 items across two shifts per day. The completion status of each items described on the log was unknown because the SCCC does not record when a work order is completed, or what was done to repair the item. Better information management, including implementation of a formal work order system that can track individual work items, the amount of time and resources spent on each work item, and the completion status of each item could facilitate effective management of maintenance operations.

Contractor's Governance and Other Activities Do Not Facilitate Public Trust

The National Council of Nonprofits states there is no cookie cutter approach to governance of nonprofit organizations, but there are basic activities that help nonprofit organizations accomplish good governance. Good governance in the nonprofit sector promotes the proper use of resources consistent with the organization's mission and applicable laws and it is about maintaining trust and confidence of those the organization serves. This section describes the activities of the Contractor to provide a compliant and accountable operations for the SCCC and the CVB.

The Contractor Had Not Developed Key Governance Policies and Procedures

The Contractor is organized as a 501(c)(6). The U.S. Internal Revenue Services (IRS) describe basic governance activities it desires for nonprofit organizations. Basic governance activities are those described on the IRS Form 990, which is subject to annual filing by nonprofit organizations. Six areas described on the Form 990 assess governance activities. TAP International found the Contractor implemented three of the six activities recommended, as shown in Figure 25.

Figure 25: Contractor Implementation of Basic Governance Activities

Requirements	Implemented
Maintain minutes of all board meetings (and committee meetings for committees that are authorized to act on behalf of the board, such as an executive committee). (See IRS Form 990, Part VI, Section A, line 8)	Yes
Complete a questionnaire about conflicts of interest. (See IRS Form 990, Part VI, Section B, Line 12)	Yes
Disclose to the public the nonprofit's three most recently filed annual returns with the IRS, as well as its application for tax-exemption and related correspondence and attachments.	Yes
Maintain a written whistleblower protection policy (Part VI, Section B, line 13)	No

Maintain a written document retention/destruction policy (Part VI, Section B, line 14)	No
Maintain a written gift acceptance policy to govern the receipt of "non-cash" gifts, such as gifts-in-kind, and unusual gifts (land, vehicles, artwork etc.)	No

Source: TAP International, Inc. analysis of Contractor Form 990 Filings

The Contractor Has Several Self-Disclosed Conflicts of Interests

We further examined the effectiveness of the Contractor's efforts to implement one of the three basic governance activities – conflict of interest forms. For any organization, officials and employees are expected to use good judgment, to adhere to high ethical standards, and to act in such a manner as to avoid any actual or potential conflict of interest. A conflict of interest occurs when the personal, professional, or business interests of an employee or Board member conflict with the interests of the organization. Both the fact and the appearance of a conflict of interest should be avoided.

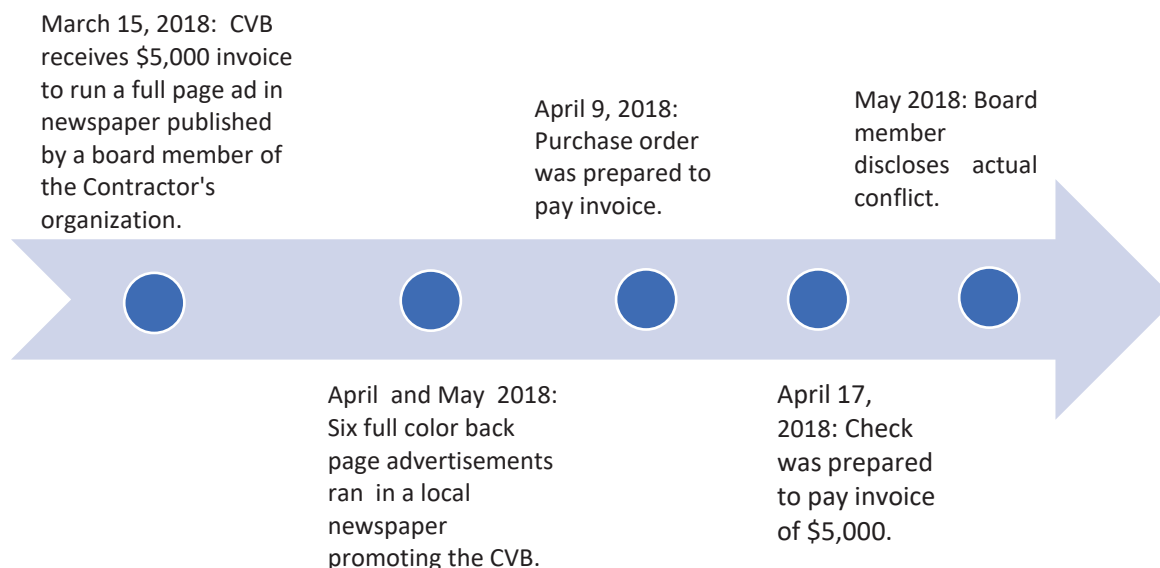
Our review of 19 conflict of interest forms submitted by Contractor officers and employees identified the following:

- The Contractor's employees working for the CVB and the SCCC, and who make decisions on behalf of the City, did not complete the forms because they were not requested to do so by the Contractor.
- Of the 19 forms submitted, three had contained disclosures of conflicts of interest. One of these forms, submitted by a Board Director who is also serving on the Contractor's committee overseeing the CVB, disclosed an actual conflict of interest regarding a business relationship between his company, a local newspaper, and the Contractor's organization. The disclosure occurred in May 2018, after a conflict had occurred, preventing the Contractor's Board or Executive Director from resolving the issue. As shown in Figure 26, the conflict was related to ads purchased in a local newspaper by the CVB.

"A conflict of interest exists when officers, board members, and staff has a direct or indirect business, professional, or personal relationship that may influence or be perceived to influence the judgement or action of the Officer, Board member, or staff serving the Santa Clara Chamber of Commerce and Convention Visitors Bureau. Such conflict of interests include, but are not limited to, personal and professional affiliations, and business dealings. All real and perceived conflicts of interest will be disclosed to the appropriate level necessary for consideration, resolution, and direction."

Source: Contractor Conflict of Interest Statement

Figure 26: Timeline on Conflict of Interest Disclosure



Although the CVB's National Advertising Manager raised concern about the value of running the ads in that particular local newspaper, the Contractor stated that the CVB staff, without influence from the Board of Directors, believed that it was better business decision to advertise in a more cost-effective media outlet that targets Santa Clara corporations.

In another example of a self-disclosed conflict of interest, a current Board member, reported in April 2018 of future plans to replace a current SCCC vendor responsible for mailing and shipping services. The SCCC General Manager/CEO explained that the current vendor did not comply with contract terms and conditions and the vendor contacted the Board member to serve a replacement, who was subsequently brought to the SCCC's attention.

The SCCC General Manager/CEO further reported the Board member is currently in the process of purchasing the contract from the current vendor. The SCCC did not issue a competitive bid and has not prepared a new contract, noting that it was important to resume business. The lack of an open and competitive bidding process puts SCCC at risk of not securing the lowest pricing for the services. In addition, this practice puts SCCC at cross purposes with public operated entities. The standard practice for publicly supported operations is to prepare new contracts upon changes in corporate ownership requiring a new vendor to complete tax forms, business requirements and insurance requirements.

The Management Agreement does not require the Contractor to follow City procurement policies. However, allowing a Board member of the Contractor's organization to assume mailing and shipping operations gives the appearance of financial self-dealing on a personal and organizational level. It also raises questions about the strength of the Contractor's contracting processes and related decision-making. Going forward, the Contractor's CEO reported that the Board member would have to abstain from any future decisions regarding the SCCC only and

disagreed with our assessment that allowing a Board member to assume the contract without a competitive bid gives the appearance of financial self-dealing.

Other members (and former members) of the Contractor's organization had key²⁸ contracts for services with the SCCC. One SCCC partner, who has not paid membership dues since 2016 but is still listed on the Contractor's membership directory, provides catering services. The caterer has been a partner for the SCCC since 2008. Another member of the Contractor's organizations provides audio-visual services. Catering and audio-visual are two of the revenue producing services for the SCCC. The SCCC bidding documents we reviewed did not contain any preference of vendors being members of the Contractor's organization, as appropriate. SCCC management explained that these businesses became a member of the Contractor's organization as a business choice on their behalf.

For a third disclosed conflict, an employee of the Contractor, which is not the current or former Executive Director, reported in May 2018 serving as an officer in a risk management association. There was no other information documented on the form that described the circumstances of the reported conflict.

Finally, one of the 19 forms reviewed and submitted by the (former) Chair of the Contractor's Board of Directors in April 2018 was partially completed, neither confirming or denying that a conflict of interest is present.

According to the National Council of Nonprofits, a key part in implementing conflict of interest activities is to manage the conflict. After the Board member and officer made the Contractor aware of their conflicts, consideration should be documented on what action, if any, was taken to resolve the conflict. The Contractor's (new) Executive Director had no prior knowledge if action was taken.

A goal of many organizations when addressing potential or actual conflicts of interests is to raise awareness of the types of situations that may be a conflict and the steps needed to encourage transparency with management when situations arise. The Contractor's CVB and SCCC employees had not received conflict of interest training although the Contractor's newly hired Executive Director began a training on basic governance for nonprofit organizations for the organization's Board of Directors.

The Contractor Appears to Have Misused Government Assets

Our review of the Contractor's conflict of interest activities led to the identification of other serious concerns about its management of the SCCC. The first concern is the Contractor's

²⁸ (As defined by largest generation of revenue at the SCCC from its vendors.)

frequency and extent of applying discounts on facility charges for use of the SCCC.²⁹ The Contractor's SCCC management staff explained that the use discounts largely serve to attract events and to be competitive with other convention centers. Offering discounts is common for the convention center industry.

As shown in Figure 27, from FY 2011-12 through April FY 2017-18, the SCCC discounted (i.e. adjusted fees) for more than half of all events that occurred at the SCCC. Throughout the six plus years, the value of the adjustments totaled \$16.1M, about half of the \$36M gross facility charges. The SCCC's Assistant General Manager approves of all financial adjustments given to event sponsors.

Figure 27: Number of SCCC events (aka bookings) with Fee Discounts (Adjustments)*

Year	Total Scheduled Events	# of Bookings with Discounts	% of Bookings with Discounts	Total Value of Discounts (Adjustments)
FY 2011-12	465	273	59%	(2,756,338.40)
FY 2012-13	513	294	58%	(3,031,425.75)
FY 2013-14	501	287	57%	(2,358,153.08)
FY 2014-15	464	227	49%	(2,385,939.00)
FY 2015-16	422	217	51%	(2,067,983.50)
FY 2016-17	447	228	51%	(2,051,815.12)
FY 2017-18 (April)	395	194	49%	(1,463,526.00)
Total	3,207	1,720		(\$16,115,180.85)

Source: TAP International, Inc. analysis of SCCC booking data.

*SCCC management explained that discounts are applied to some event sponsors if food and beverage sales or hotel room exceed a minimum level of purchases.

Per the SCCC's booking policy, discounts can be applied when charges from catering services reach a specified level. However, the SCCC did not fully comply with its own policy because the SCCC allowed use of the SCCC facilities to organizations that did not purchase catering services. For instance, in 2012, 2013, and 2015, the SCCC allowed a summer-long event sponsored by a faith-based organization that did not purchase catering services, or any other services offered by the SCCC, and therefore should not have been eligible for a discount. Across the three years, the gross charges totaled about \$1.1M and discounts given to the faith-based organization totaled about \$1.02M. The Contractor's SCCC staff explained that even though the organization did not purchase catering services, the event came with a substantial need for hotel rooms (450 rooms at the conference's peak) at a time when the hotel industry was suffering from an economic downturn. The TID paid the Contractor \$51,000 in subsidies to help offset the facility

²⁹ When the SCCC facilities are used for events, the related charges are public revenues because the SCCC is a publicly owned facility.

rental charges lost by the SCCC. Further review is needed to determine the allowability of the TID payment. The City should assess legal compliance with laws governing prohibition of gifts of public funds.³⁰ SCCC management reported that coordination between the SCCC and the TID is an important component in booking future business.

The SCCC's booking policy does not state that the SCCC is prohibited from fully discounting facility rental charges. However, as shown in Figure 28, event sponsors hosting a total of 353 events (or 11 percent of all SCCC events) received a full adjustment on gross charges equaling \$2.8M. Allowing full rental facility discounts on a publicly owned facility without official City authorization is potentially misusing government owned assets.

Figure 28: Number of SCCC Events Without Facility Rental Fees

Year	Number of Events with 100% Discount on Rental Fees	Total Discounts Applied
FY 2011-12	64	651,125
FY 2012-13	75	595,848
FY 2013-14	56	319,785
FY 2014-15	42	377,380
FY 2015-16	40	456,140
FY 2016-17	46	226,025
FY 2017-18 (April)	30	205,500
Total	353	\$2,831,803

Source of Data: TAP International, Inc. analysis on SCCC booking data.

On average, the Contractor fully discounted facility charges about 50 times per year and over a long period of time which led to a direct financial loss to the City on facility rental charges. We could not determine the full loss of rental revenue because some organizations that received a full discount on rental facilities in any one year and used the facility the following year, had gross charges applied of \$0; therefore, technically, no discount was applied. This happened 31 times in a six year plus period of our analysis.

The types of event sponsors that used the SCCC facilities with no facility charge include:

- City agencies³¹
- Contractor's employees
- Contractor's organization
- County agencies
- Local businesses

³⁰ There was no violation of the SCCC collective bargaining agreement in allowing the event sponsor to perform their own set up and cleaning of meeting facilities.

³¹ City of Santa Clara should pay a fee or a service charge to use the SCCC's facilities given that the convention center is a public enterprise operation.

- Nonprofit organizations that are members of the Contractor's organization
- Individuals and organizations that are members of or who have business ties to the Contractor's organization
- Political action committee associated with the contractor's organization³²
- SCCC contracted vendors.

The nature of events that took place were birthday parties, wedding receptions, general meetings, parties, and networking events. SCCC management also reported its contracted vendors sometimes use space for employee training.

Further legal analysis is needed to determine if the Contractor: (1) violated its 501(c)(6) tax exempt status when it provided full facility discounts to its members, and (2) engaged in self-dealing when it used its personal or organizational relationships to offer free use of publicly owned facilities, and allowed the Contractor's Board member to assume SCCC services without implementing a competitive bid.

Investigation is needed by the California Fair Political Practices Commission to determine if violation of state law occurred when the Contractor allowed the Santa Clara Chamber Political Action Committee to use SCCC facilities free of rental charges.

Finally, when the SCCC applied full discounts to the Contractor's members and member organizations, the SCCC did not comply with the Contractor's own policy of applying a 20 percent discount up to \$1,000 per member. The SCCC management said that full discounts were applied to incentivize membership enrollment to the Contractor's organization and began at the direction of the Contractor's (former) Executive Director although TAP International could not verify this statement. The Contractor does not presently advertise or promote the discount on its website or other materials.

The Contractor's CVB Improperly Issued a Donation Check to a Political Action Committee

In 2012, the Contractor sponsored a web-based fundraising event for a political action committee. During the campaign, the Contractor received checks that totaled about \$8,000 made payable to the CVB. Rather than returning the political donors' checks, the Contractor deposited the checks and recorded the deposit on the CVB's accounting records. The Contractor then recorded and issued a check on May 8, 2012 under the CVB accounting records for about \$8,000 to the Political Action Committee. Contractor management attributed the problem to donor confusion about to whom to make the check payable. When the CVB sent the payment to the Political Action Committee, it provided a gift for political purposes that needs further review by the California Fair Political Practices Commissions for potential violation of State law. In addition,

³² The SCCC reported that the Political Action Committee (PAC) received discounts for its food and beverage purchases. Our analysis shows that the PAC was a member of the Contractor's organization and per the Contractor's policy should have received a 20 percent discount on rental charges only.

because the Contractor facilitated the fundraising activity for the Political Action Committee, it may have jeopardized its 501(c)(6) tax exempt status.

The Contractor Misused Government Sponsored Resources

Under California Government Code 8314, using public resources for either personal or political purposes is illegal. Public resources can be classified as: money, staff time, equipment, technology, telephones, furniture, computers, and office supplies, if public funds were used in their purchase. The use of public resources would need to be enough to result in a gain for the user and a loss to the agency that can be estimated as a monetary value. As previously discussed in the report, the City virtually funds all of the operations of the CVB, paying about \$1.5M annually to the Contractor.

The CVB shares the same web domain name—santaclara.org—with the Contractor’s organization and the City pays for 80 percent of its share of costs although the Contractor does not provide detailed financial reporting on the costs for computer and related services. In early and mid-2018, the Contractor sent email blasts and newsletters (using the web domain name) to the surrounding community in support of its organization’s core mission. The newsletters also contained promotional ads for fundraising events by the Santa Clara

The Contractor is primarily responsible for the issues described in this section, jeopardizing the level of trust that Contractor decisions are made in the City’s best interest. The issues could have been prevented had the Contractor’s Board members and Contractor employees received training on the governance, ethics, conflict of interest, use of public resources, and proper internal controls. In July 2018, the Contractor’s new Executive Director, implemented a training program in place that is a good first step in conveying the basics of nonprofit governance.

Chamber Political Action Committee. The shared use of the domain name sent mixed messages to the public because the Contractor is holding the CVB name out to the public as its own entity, thereby benefitting from the lack of distinction between the private and public supported resource.

Other Business and Marketing Structures Govern Local Convention Centers and Visitors Bureaus

In June 2018, the City Council directed the City Manager to develop options for the provision of convention and visitor services. Of the six convention and event centers located within a 250 miles range of the SCCC whose cities also have visitors’ bureaus, none are managed by a Chamber of Commerce. These cities have used other types of business structures, such as a City formed nonprofit organization, third-party corporation, and formation of a district or authority to operate both the CVB and the convention center.

The fact that other convention centers and CVBs are not operated by a Chamber of Commerce does not necessarily mean that the City should change contractors because other considerations should be factored in, such as overall operating and financial performance, City satisfaction with services, and cost. Nevertheless, the CVB and the SCCC management said that alternative business structures could work well for their operations. The CVB Sales Director explained that the CVB has always operated as a separate entity even though it was under the umbrella of the Contractor's organizational structure and should be organized as a separate entity in the future to fully promote the City as a destination area. The SCCC management reported that integrating the CVB with the Convention Center would work well, promoting coordination between the CVB and the SCCC. Both the CVB and the SCCC management reported that the Contractor's role in their operations had no influence over their performance because of the separation by each from the Contractor's core business.

Contract Management Needs Reform by Both the City and the Contractor

This section describes the level of Contractor oversight by the City and the Contractor's use of the City's budget policies to increase its fees.

The City and the Contractor Share Responsibility for Contractor Issues

Cities routinely contract with vendors to provide services to its residents and taxpayers. The International City Manager's Association (ICMA) writes that public contract management should include key activities, such as the development of metrics to check, track and report on vendor performance.³³ When the City originally drafted the agreements with its Contractor, in the 1970's and 1980's, the agreements primarily addressed financial requirements.³⁴ The two agreements, however, do not have other key terms and conditions, such as:

- Accomplishment of clear financial and operating performance benchmarks. This information allows the City to monitor the Contractor's progress towards its financial and operational goals and to identify early warning signs of negative performance trends.
- Implementation of key internal controls. These internal controls include (1) prohibition on co-mingling of public and private funds; (2) City review of financial transactions; (3) safe data storage;³⁵ and (4) development of facility use policies.
- Implementation of financial disclosures rules. Presently, the City does not require the Contractor to submit financial disclosure forms that help identify and to avoid any potential or appearance of a conflict of interest.³⁶ The Contractor and its employees, who make decisions about on behalf of the City, have not been required to file the California

The two agreements between the City and the Contractor did not contain key terms and conditions. The absence of these requirements coupled with City's lack of past oversight of the Contractor allowed the Contractor to make questionable decision-making about the CVB's and the SCCC's operations.

³³ Contract Management: A Risk-Based Approach for Local Governments, January 2018, by Kyle O'Rourke, Baker Tilly Virchow Krause, LLP, and Frank Girgenti.

³⁴ The two agreements have provisions for the Contractor to administer separate accounting activities between the CVB and the SCCC and from its core operations, proper documentation for reimbursements, budget submissions, and annual financial audits.

³⁵ Both the City's Management Agreement and the CVB Agreement state that the Contractor shall maintain accounting records for the life of the agreement and for three beyond the term of the agreement upon its expiration. However, the agreements do not include requirements for the safeguarding of information. Protecting financial records ensures that the information and data they hold is available any time for review and evaluation. The contractor's absence of strong controls over the maintenance of financial records pose a high risk for the City because the Contractor does not safely safeguard CVB accounting records, storing records below a water pipe that had previously leaked and damaged some of the accounting records. We did not determine the extent of the damage.

³⁶ The California Fair Political Practices Act requires that a city's conflict of interest code reflect the current structure of the organization and properly identify officials, consultants, and employees who should be filing Statements of Economic Interests (Form 700s). The Form 700 provides necessary information to the public about an officials or consultant's (contractor) personal financial interests to ensure that they are making decisions in the best interest of the public and not enhancing their personal finances. Consultants and contractors must file Form 700s if they make or participate in making governmental decisions.

Form 700 – Statement of Economic Interest – because the City did not identify in its conflict of interest policy that the Contractor would be subject to annual filing.

Without these requirements, the City does not have assurance of proper risk mitigation, which had partly led to the issues described in this report. The Contractor’s lack of effective administration over operations discussed throughout this report is also a primary factor.

The absence of key contract requirements can be addressed, in part, by active contract monitoring. The City Manager’s Office is responsible for contract oversight although there are no documents available to support any historical activities.³⁷ Without active contract oversight by the City, the City had historically placed too much reliance on the Contractor to deliver services efficiently and effectively, and in compliance with applicable laws and regulations.

In 2017 and 2018, the City’s newly hired City Manager implemented efforts to strengthen the City’s contract oversight activities, assigning the City’s Finance Director as Contracts Manager, recruiting for a City-wide contracts manager, and implementing activities to enhance and assess the Contractor’s performance. These activities include hiring a consultant to enhance marketing activities, implementing monthly oversight of the SCCC accounting activities, and requesting this audit.

Former City Officials Did Not Use the Contracting Process to Change Management Fees

Under the terms of the Management Agreement, the City is to provide an annual management fee to be included in the SCCC’s annual operating budget. The payment amount ranged from \$45,000 to \$50,000 until 2016 when the management fee was increased to two percent of the SCCC’s gross sales revenues. In FY 2016-17, these fees totaled \$136,699.

Changes in payment terms, like the one requested by the Contractor, are typically subject to contract amendments. Contractor documents show that in March 2017, the City provided instructions to the Contractor to use the budgeting process to change its management fees. However, in April 2017, the City met with the Contractor in budget meetings and a decision was reached that a formal amendment was needed. The Contractor’s Board of Directors was to draft an amendment/letter regarding the management fee and that the City would prepare a letter establishing the new payment term of two percent of gross sales. There was no information provided that either the Contractor or the City followed through on these tasks. Having a contract amendment would have allowed for proper discussion and deliberation by the City Council on the merit of the fee increase. The City Council, upon learning that it inadvertently approved the fee increase through the City’s budgeting process, voted to suspend payment of the management fee.

³⁷ The Contractor’s CVB management said that City management had historically held frequent progress meetings with a former and long-time Executive Director. These weekly meetings reportedly stopped after the Contractor’s Executive Director left the organization in 2015.

Section 3: Changes are Needed to Enhance SCCC Sustainability and Overall Performance

This section discusses three areas of the Convention Center and the CVB operations that have hampered the CVB efforts to enhance sustainability and overall performance. These areas are:

1. Event Scheduling
2. Marketing and Sales Operations
3. Facility Needs

New Strategies are Needed for Event Scheduling

More Multi-Day Events Should Fill Convention Center Calendar

An important measure to assess marketing effectiveness includes monitoring the number of available dates for potential events. In FY 2016-17, the SCCC event calendar was nearly filled, with few dates available throughout the year to book events. Only about ten percent of the SCCC's calendar was available for events, showing the popularity of the facility.

Another measure is the monitoring of facility space available for potential events. However, the SCCC does not maintain this data to determine the percentage of space available to potentially schedule other events. Monitoring these types of measures can allow the SCCC and the CVB staff to tailor their marketing activities to fully maximize the space offered by the SCCC.

The SCCC, nonetheless, collects other data to assess marketing effectiveness, such as the number of events scheduled, the duration and type of each scheduled event, and gross and net charges resulting from the event. However, as previously discussed in this report, the SCCC does not routinely analyze the information it collects to monitor performance. Our analysis, however, examined the presence of patterns in event scheduling. For instance, as shown in Figure 29, the number of events scheduled at the SCCC has not increased over time other than some fluctuations up and down. However, as shown in Figure 30, the total net financial value of the SCCC events scheduled increased over time.

Same day events average \$1,865 in fees per event between FY 2011-12 and FY 2016-17.

Multi-day events averaged \$12,000 in fees per event between FY 2011-12 and FY 2016-17.

Figure 29: Total Events Scheduled at the SCCC

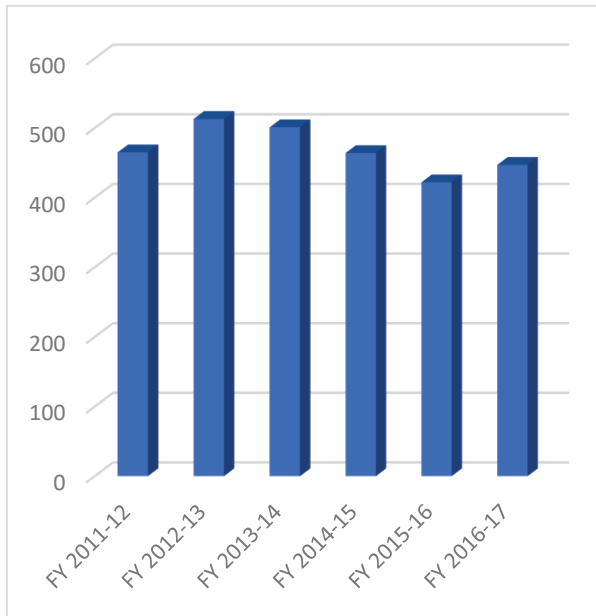


Figure 30: Net Financial Value of Events Scheduled at the SCCC

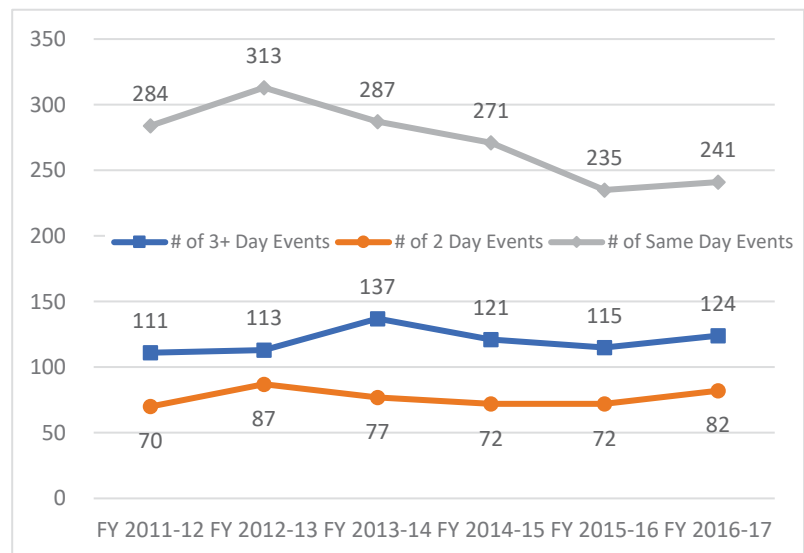


Source: TAP International, Inc. analysis of SCCC booking data

In addition, of the 2,812 total events hosted by the SCCC in the past six years, 58 percent of them began and ended on the same day (herein referred to as same day events). Same day events result in less revenue for the City in comparison to events that span several days.

Nearly 42 percent of the total events hosted over the past six years by the SCCC required two or more days (herein referred to as multi-day events). As shown in Figure 31, events that require three or more days occur more often than events that require two days. The CVB staff have primary responsibility for scheduling multi-day events at the SCCC because these types of events generally need hotel lodging.

Figure 31: Total Convention Center Events by Event Length and Fiscal Year



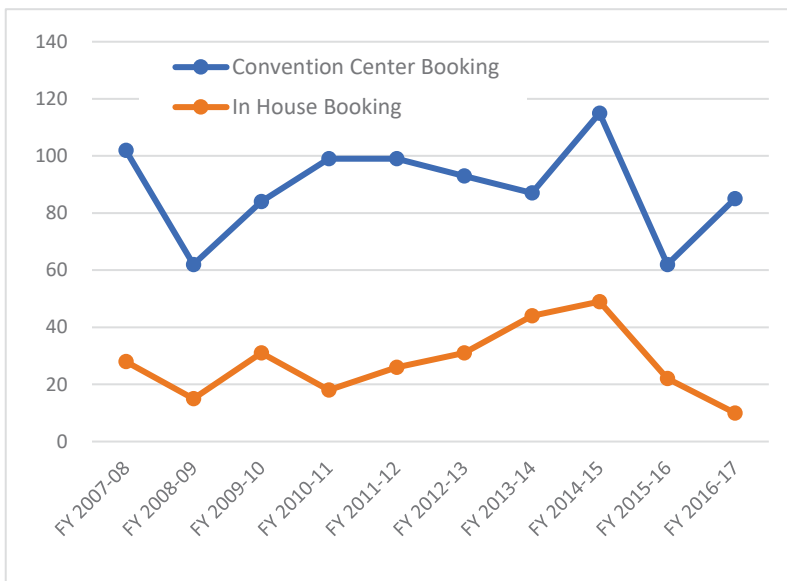
Source of Data: TAP International, Inc. analysis of SCCC booking data.

Our analysis of data further shows the CVB has increased its activities to scheduled SCCC events while its scheduling of hotel meeting space (herein referred to as in-house bookings) has declined. Figure 32 suggests that hotels may have the space available to host one-day events that are generally scheduled at the SCCC.

Better Guidance is Needed in Scheduling Events

The SCCC, SCCC partners, and the CVB are all responsible for scheduling events at the SCCC. With the involvement of multiple entities, guidance should be available to help in decision-making on the types of events to receive priority scheduling. Although the SCCC has available booking policies, the policies do not address event coordination. SCCC management explained that the practice is for CVB's multi-day events to receive priority scheduling and the SCCC to fill the gaps in the event calendar with same-day events. It is unclear whether the SCCC consistently applies this guidance because the SCCC can schedule same day events up to 18 months in advance. The SCCC also reserves the month of December for its clients because SCCC management explained it was a profitable time of year for them, but that it would accommodate if CVB presented a substantial piece of business. CVB staff reported multiple instances of multi-day events that were turned down by the SCCC over the years. In FY 2017-18, there were 32 potential multi-day events with over 55,000 participants (see Figure 33) that had to look elsewhere because proposed dates were unavailable at the SCCC, creating lost economic opportunities for the City (based on the assumption that at least three of 32 potential multi-day events could have been scheduled if the dates were available).

Figure 32: Number of CVB Events Scheduled at the SCCC and at Area Hotels



Source of Data: TAP International, Inc. analysis of CVB booking data.

Figure 33: Top Reasons for Losing Multi-Day Events at the SCCC, FY 2017-18

	Meetings	Attendees	Requested Rooms
Convention Center dates unavailable	32	55,168	42,544
Convention Center too small	12	48,816	56,536
Better attendance in another city	45	42,065	40,291
Rates too high	50	36,776	39,178
Event postponed/cancelled	30	30,942	15,467

Source of Data: TAP International, Inc. analysis of CVB Lead and Booking Reports

In addition, the SCCC could develop policies that guide scheduling events requested by nonprofit organizations. For example, some convention centers set aside a limited number of dates to offer facilities at discounted rates or set aside dates that historically have had low facility utilization. Without established guidance, the City does not have assurance that the SCCC event space is leveraged to the maximum economic benefit possible.

In the absence of guidance for scheduling events by nonprofit organizations, the review and approval of potential events takes on greater importance. The review process could consider any number of factors all with the purpose of maximizing potential convention center revenue. For the CVB to successfully confirm a multi-day event, the Contractor's CVB employees prepare a multiple page letter of intent that describes the nature of the event, the services requested, and a preliminary financial analysis. The CVB staff reported that the approval process for each potential booking requires up to three hours. The Contractor's SCCC employees, however, are not subject to the same process even though same-day events have lower potential for revenue generation. The absence of implementing parallel processes raised questions by some CVB employees about whether the SCCC was effectively making decisions on event scheduling. Without documentation on why the SCCC or the CVB events were approved or denied, TAP International had no basis to determine if booking principles regarding allowing priority booking to the highest revenue generating events were consistently applied by the SCCC management. However, given that same-day bookings comprise over half of SCCC events, the City does not have assurance that the review process gives top priority to events with greater economic benefit.

Marketing and Sales Operations can be Enhanced

Marketing Plans Need to be Comprehensive and Integrated

The purpose of a comprehensive marketing plan is to give strategic direction for the success of the SCCC and the CVB. It serves to describe the leadership role for the marketing of meetings and conventions, leisure travelers, and business and cultural events that lead to economic growth for

the City and the surrounding region, including describing how the SCCC and the CVB can distinguish itself from its competitors.

The City hired an industry consultant to determine how best to shape the SCCC and the CVB for the future. The industry consultant, among other activities, held meetings with the CVB and the SCCC to establish new strategies for generating leads and sales goals. In addition, the Contractor had set up its own committee to offer leadership direction for marketing activities. In 2018, the Contractor's committee discussed the need for an updated marketing strategy, but a comprehensive and integrated marketing plan has not yet been prepared. In lieu of an integrated plan, the CVB had developed its own five-year strategic plan and other annual business plans to market and promote the city. These plans included analysis of strengths and weaknesses, development of sales goals, and description of action plans for each market sector. Without a marketing plan that addresses the sales and marketing activities of both the SCCC and the CVB, effective coordination was hampered. The Contractor allowed each entity to generally operate independent of each other.

Staffing Could Be Re-Structured

Staffing is an essential function in any organization. Hiring staff with the right skills, knowledge, and abilities for the role to be performed can contribute to the organization's success. At the CVB, the Contractor hired five sales managers with extensive experience in the tourism and hotel industry. The CVB's two Vice-Presidents also possess extensive experience in the Convention and Visitors Bureau industry. In comparison, the SCCC hired one Sales Director who does not have the same level of experience as the CVB staff at the time of hiring. Experience was developed on the job because the Contractor did not invest in continuous professional training to either the CVB or the SCCC sales staff nor did the City require professional development.

The differences in experience levels did not result in significant differences in performance levels relative to total event bookings by each entity. The CVB books about 42 percent of the events held at the SCCC while the SCCC staff book the remaining 58 percent of all events, on average. It takes the CVB more work and effort to book multi-day events, thus the need for more employees.

The Contractor for the CVB and the SCCC divided the supervision of sales activities. The SCCC's Assistant General Manager oversees its one Sales Director. Two CVB Vice-Presidents oversee five sales managers and six other support staff. The CVB and the SCCC staff reported the absence of effective communication and other information sharing activities because of the fragmented structures. As a result, none of the entities were fully aware of how well the others performed relative to meeting sales goals and targets.

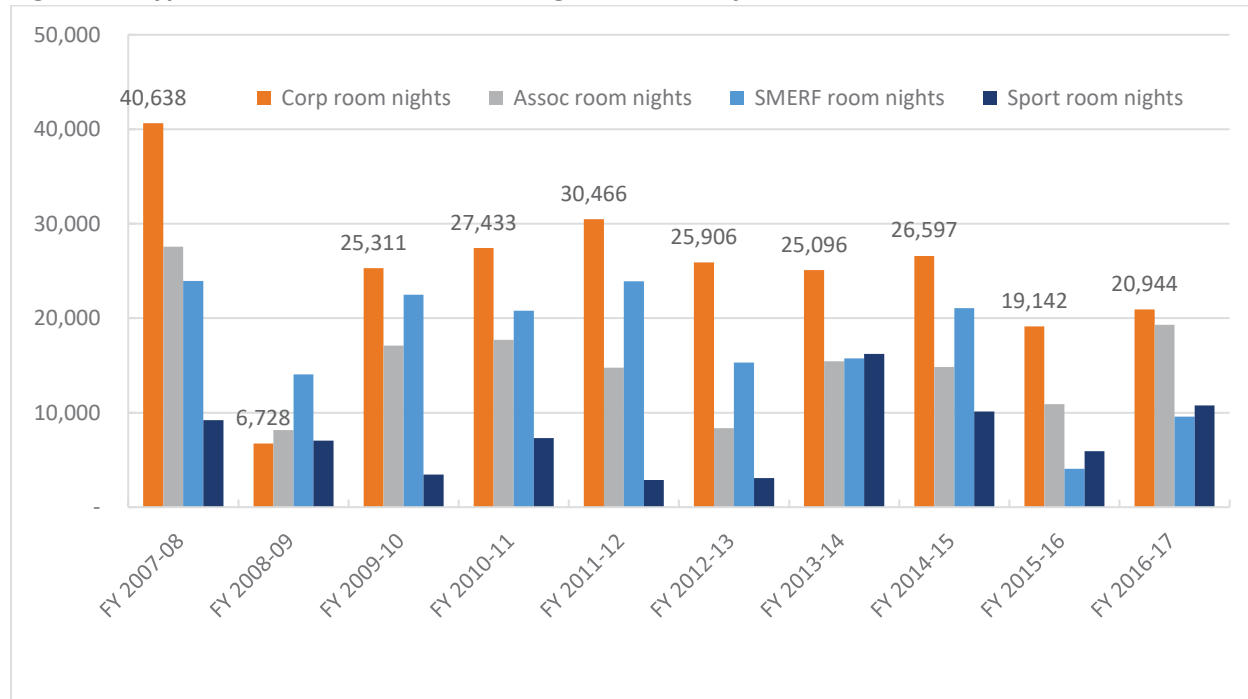
Given that the CVB employs five sales managers, we examined the extent that the CVB strategically utilizes these resources to maximize its performance. Each Sales Manager is

responsible for one of five market areas included in the Contractor's scope of work with the City. These market areas are:

- Corporations
- Social, military, education, religious, and fraternal associations (SMERFs)
- Sports
- Associations
- City-wide events

As illustrated in Figure 34, the CVB books more corporate events in comparison to its other market areas. Given that corporate scheduled events represent the most common type of multi-day event hosted at the SCCC, assigning more staff in this area to work leads could likely result in more events. The CVB could also assign a sales manager to more than one market area that have fewer potential leads and events, such as the Sports and SMERF areas. The CVB management explained that sales managers are reassigned when workloads increase among other managers, but that the CVB needs more support staff to generate and process leads, freeing sales manager to devote their attention to working with the potential client directly. While additional staff have been requested in the budget, the contractor's CVB management explained there was low likelihood the positions would be approved. In FY 2015-16 and FY 2016-17, the CVB did not spend all of its contract funds from the City, leaving up to \$517,000 on the balance and enough to hire support personnel.

Figure 34: Type of Events and Hotel Room Nights Secured by the CVB



Source of Data: TAP International, Inc. analysis of CVB booking

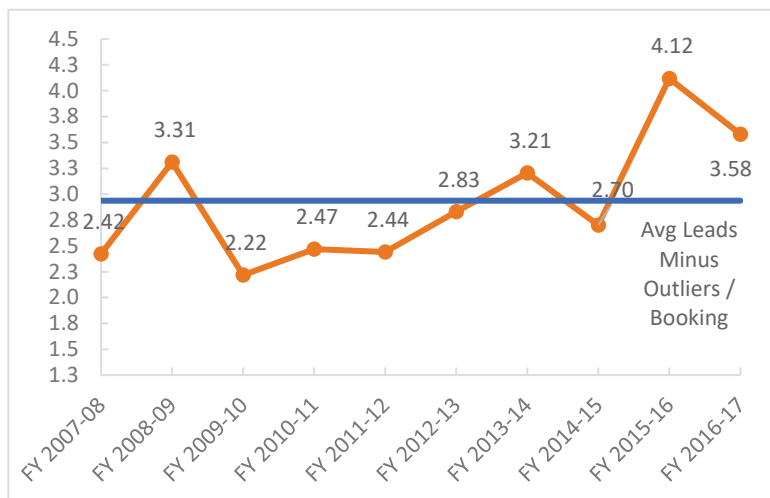
More Leads are Needed to Successfully Book One Event

California has 20 Convention and Event Centers with seven of them located within a 200-mile radius of the SCCC, creating a competitive environment for the CVB to book multi-day events. A key success factor in scheduling the SCCC is generating enough interest, or leads, from potential clients that could result in a scheduled event. A large availability of leads provides ample opportunity for staff to promote the SCCC and area hotels to potential clients. The CVB's own benchmark over a ten-year history averages three leads to schedule one event, but recently, the CVB needs more leads to do so (See Figure 35). Complicating matters is the slight downward trend in total leads available for the CVB in recent years. (See Figure 36). The CVB management reported efforts to pursue other types of lead generation activities that could result in city-wide events, at the recommendation of a City consultant hired to develop enhancements to CVB operations. A city-wide event was originally defined by the CVB as a goal of scheduling events that need 600 room nights at the event's peak. CVB staff explained that this goal was ultimately adjusted to 750 room nights at the time of our review.

Leads that involve a substantial amount of room nights require more time to identify and to pursue, said CVB management. At the time of our review, the CVB scheduled two of 22 "city-wide" events targeted.

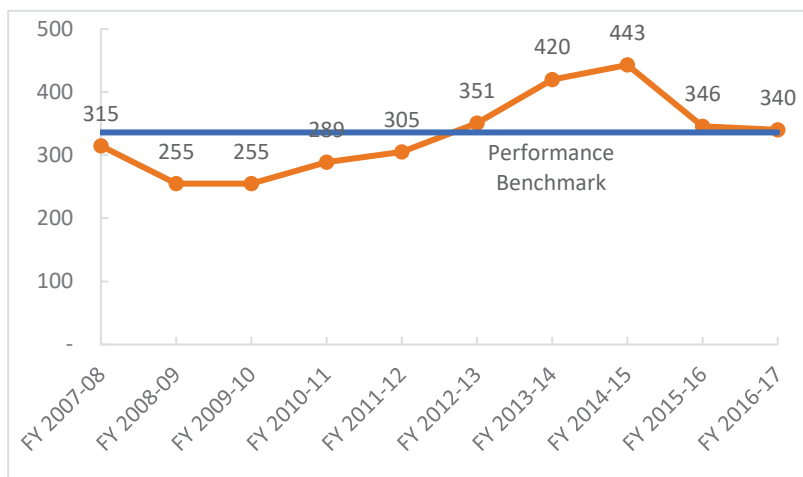
It is uncertain as to whether the CVB can meet its "city-wide" event goal. Assuming that the SCCC and the CVB operations remain unchanged, three challenges are present. First, as shown in Figure 37, the CVB, historically exceeded its new city-wide goal of 750 room nights per event in one of the last ten years, suggesting that establishing 22 "city-wide" events with 750 room nights at its

Figure 35: Number of Leads per CVB Booking, Ten-year History



Source of Data: TAP International, Inc. analysis of CVB booking

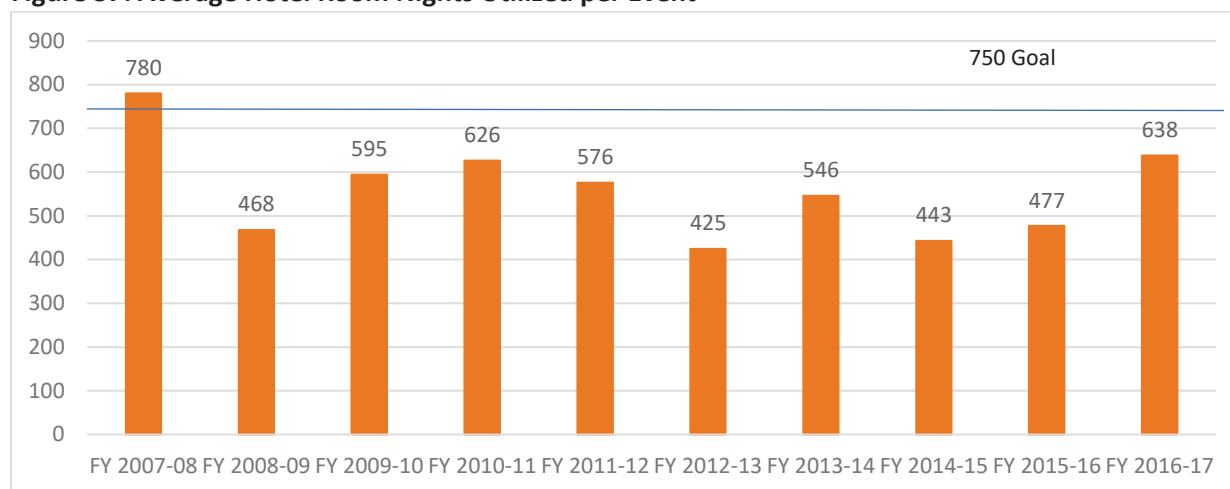
Figure 36: Number of Total CVB Leads, Ten-Year History



Source of Data: TAP International, Inc. analysis of CVB booking

peak may be an ambitious goal. Second, CVB employees reported that the surrounding area has a total of 3,800 hotel rooms. To have 750 of these rooms, or 20 percent of all City hotel rooms, available at the same time for any one event, is challenging. Third, the SCCC calendar is nearly full and may not have available dates for these very large events.

Figure 37: Average Hotel Room Nights Utilized per Event



Source of Data: TAP International, Inc. analysis of CVB financial data.

The CVB may not have to focus efforts on scheduling city-wide events. Our analysis of Figure 31 and 32, the SCCC could work towards shifting its one-day events to area hotels resulting in more available dates to schedule multi-day events. The SCCC could also schedule one-day events when needed at the SCCC six months in advance versus 18 months. Had at least three of the 32 potential events that were lost due to unavailable dates (See Figure 33) been successfully scheduled, it could have led up to an additional 4,000 room nights that could have (1) increased the annual overall average per booking for the SCCC; (2) helped the CVB meet its city-wide goal; and, (3) increased the economic impact to the City.

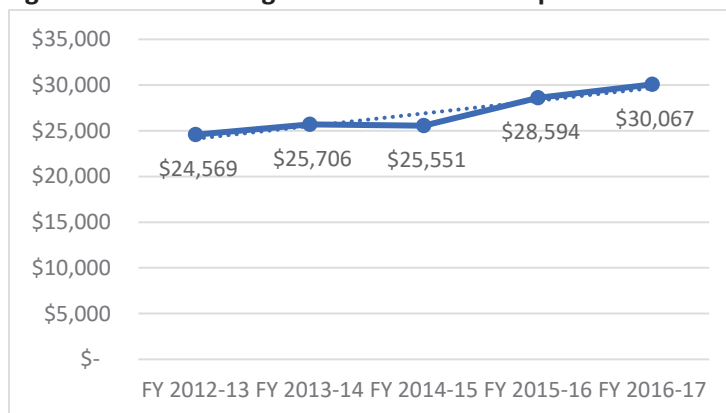
Robust and Strategic Advertising Is Needed

The International Association of Venue Planners state that event planners and attendees are looking for centers that offer unique features, reporting that differentiation is key to attracting more business and larger events. The CVB is implementing current industry marketing strategies to promote the surrounding areas by highlighting restaurants and nightlife, local tours, museums, shops, and outdoor activities, largely through its website. Technology is also leading the way for the SCCC to market itself on the web, by incorporating an interactive map and virtual tour platform, providing useful resources to help in the planning process, making the selection process experience easier for potential clients. Through interactive digital mapping, potential guests can familiarize themselves with the center, as well as the surrounding area, before they arrive.

The CVB also implements direct advertising. While no benchmarks have been established on suggested advertising budgets, the CVB’s advertising expenditures ranged between \$24,569 to \$30,067, as illustrated in Figure 38.³⁸ Having a small budget for advertising and marketing requires strategic decision-making to leverage limited resources. CVB management explained that it had two goals for advertising and marketing activities: (1) to make the CVB known as a local resource for area businesses to handle its event needs, and (2) to promote the area as a destination for local businesses. At the time of our review, the CVB had:

- Subscribed to various publications and trade tools as well as enrolled in trade and industry associations to help receive leads on prospective clients.
- Performed its own online marketing of the City as a destination area, providing vast information on potential tourist attractions in the local area.
- Received local news coverage to promote its activities.
- Dedicated some of its limited budget to direct advertising and promotion.³⁹

Figure 38: Advertising Dollars of the CVB Expenditures



Source of Data: TAP International, Inc. analysis of CVB financial data.

A potential outcome from these activities would be the generation of leads and/or scheduling of events at area hotels or the SCCC. Figure 29 and Figure 36 largely shows an unchanged performed in bookings and in lead generation over time with some fluctuation between the years, suggesting are needed in marketing and advertising strategies.

SCCC Needs Modernizing

The International Association of Venue Planners report that planners do a lot of research before deciding on the best venue, considering factors such as catering services, technology, facility size, and building modernization. As evidenced by Figure 33, the CVB has lost potential clients because the SCCC is too small and both the SCCC and the CVB staff said that condition of the facility needs attention.⁴⁰ Figure 39 shows the condition of SCCC’s carpeting in place throughout the facility.

³⁸ TAP International, Inc. could not develop an apples to apples comparison of CVB’s advertising budget with other convention centers.

³⁹ In the Spring 2018, the CVB spent \$5,000 to run six full-page ads in a local newspaper that we discussed earlier in this report as a self-reported conflict of interest.

⁴⁰ The Management Agreement states the Contractor is to maintain the Convention Center, the equipment and furniture situated therein, and related facilities in good order and repair and to request such repairs in the SCCC’s annual budget or separate City Council action.

The SCCC management explained that the carpeting needs replacement and the kitchen in the Mission City Ballroom requires repair and updating.

The City recognized the need for facility modernization and commissioned a facility assessment in 2017. The facility assessment identified 11 areas that require immediate replacement or modernization.

These areas are:

1. Redesign location of Mission City Ballroom, HVAC equipment so that the MCG kitchen becomes functional
2. Replace carpets (Main Building and Great America)
3. Replace tile at base of columns
4. Replace acoustic tile ceiling finishes (Main Building and Great America)
5. Replace fabric faced interior finished (Main Building and Great America)
6. Redesign functionality and replace “air walls”
7. Install reflective coating on flat roofs
8. Provide weather protection for south facing MCG exterior doors
9. Complete replacement of HVAC system
10. Modernization of elevators
11. Provide safety railing at roof perimeters

Figure 39: SCCC Carpet Condition



Photograph by TAP International, Inc.

The 2017 study estimated replacement and modernization costs for these short-term repairs at \$5.3M and other long-term repair costs at \$57.7M over the next ten years. The City and the SCCC budgeted over \$1M to replace the carpeting and budgeted over \$4M to update the kitchen in FY 2020-21. Updating the kitchen will likely lead to deficit spending for that year if the SCCC cannot better leverage its bookings. However, in the absence of modernizing the facility, the CVB would be hampered in its ability to attract large events that would require at least 750 room nights.

Appendix A: CVB Revenue, Expenses and Net Income

Figure A1. CVB Revenue, Expenses and Net Income

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
CVB Revenue										
Admin and Service Fees	44,580	32,882	32,893	32,265	32,265	32,160	34,500	34,500	34,500	16,750
Program Services									50	300
On-Line Hotel Reservations	8,111	6,467	2,071	2,261	2,443	2,284	2,625	1,856	1,987	1,047
City Contract	1,411,678	1,446,962	1,468,526	1,456,526	1,521,526	1,521,526	1,521,526	1,521,526	1,521,526	1,489,315
Discount Ticket Sales	2,099	3,529	1,983	7,195	13,049	11,274	7,149	5,812	2,114	1,455
Registration Services	107,393	81,731	122,351	149,400	7,389	399	735	458		
Commission Revenue									22,431	1,946
Banner Ads									1,800	
Interest Income	1,022	647	577	223	185	139	56	47	47	93
All Other Program Services										
CVB TOTAL REVENUE	1,574,883	1,572,218	1,628,401	1,647,870	1,576,857	1,567,782	1,566,591	1,564,199	1,584,455	1,510,906
CVB Expenses										
Salaries and Wages	937,383	945,167	1,006,243	1,018,335	900,904	888,877	937,577	918,150	651,150	787,658
Payroll Taxes	76,040	76,234	81,779	83,422	72,967	69,595	70,925	74,100	51,603	55,347
Employee Benefits	174,188	194,517	207,536	202,165	200,299	194,472	208,035	220,383	126,274	102,194
Depreciation/Amort.	10,300	14,994	16,043	9,213	5,963	5,093	5,900	5,093	5,093	5,093
Office Supplies/Maint.	27,639	25,756	24,035	26,104	27,268	26,036	28,207	29,911	25,168	17,143
Computer Service/Maint			1,750	1,094	1,269	958	240	21,810	41,575	33,500
Accounting and Audit	27,845	30,640	31,520	31,150	31,520	32,815	32,656	33,430	34,395	35,320
Legal Fees								35,080	42,894	10,174
Office Equip.	1,228	885	95	722	1,807	360	1,050	1,063		1,356
Rent	88,575	91,232	91,232	91,232	91,232	91,232	91,232	91,232	91,232	91,232
Telephone	22,292	18,899	21,147	21,879	20,079	18,391	17,994	18,634	18,591	17,039

Insurance and Taxes	7,874	10,572	10,904	14,949	17,275	7,994	14,444	11,776	4,633	3,448
Administrative Meeting	2,893	1,952	1,809	1,307	2,479	2,345	1,482	1,739	2,500	1,981
Postage	18,590	15,284	16,660	11,445	13,043	13,283	12,169	14,128	8,176	6,298
Mileage	3,059	3,021	3,102	2,915	2,997	3,192	2,719	2,593	2,332	1,443
Payroll Service fee	4,499	4,347	3,673	7,047	5,896	5,408	6,472	7,091	12,194	5,854
Inside Santa Clara Newsletter	10,500	10,500	10,500	8,000	8,000	8,000	8,000	8,000	6,275	7,949
Advertising-Convention Marketing		17,150	13,177	9,664	3,557	450	3,309	2,951	3,813	4,204
Advertising-Travel Marketing	19,709	17,007	17,461	14,883	15,833	16,119	14,397	14,600	18,506	17,914
Marketing-Servicing	550	330			250					
Marketing-CC Marketing/Sales	103,799	112,744	100,916	50,009	97,735	85,416	90,808	48,895	35,046	99,086
Marketing-Visitors Bureau	52,571	47,626	52,610	48,421	49,102	53,435	47,932	40,335	32,912	49,620
Loss on Disposal of Equipment			8,117							
Outside Services	6,242	200	6,849							
Expense Reimbursements	11,015									
Miscellaneous	1,963	2,507	654	1,769	4,449	3,222	2,580	4,061	3,744	6,354
CVB TOTAL EXPENSES	1,608,754	1,641,564	1,727,812	1,655,725	1,573,924	1,526,693	1,598,128	1,605,055	1,218,106	1,360,207
CVB TOTAL NET INCOME (LOSS)	(33,871)	(69,346)	(99,411)	(7,855)	2,933	41,089	(31,537)	(40,856)	366,349	150,699
TOTAL FY 2007-08 TO 2016-17	\$278,194									

Appendix B: SCCC Revenue, Expenses and Net Income

Figure B1. SCCC Revenue, Expenses and Net Income

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
SCCC Revenue										
Space-Exhibit Halls	1,265,660	1,194,129	1,113,905	1,090,620	1,142,031	1,352,496	1,261,166	1,337,354	1,416,000	1,353,372
Space-Ballrooms	209,948	221,195	488,060	622,105	598,929	711,857	823,143	801,308	873,944	915,085
Space-Meeting Rooms	207,984	194,893	180,207	219,685	207,900	239,957	237,630	237,580	262,125	275,466
Space-Great America	286,623	271,593	220,997	214,889	274,632	291,742	360,661	385,969	358,770	404,850
Space-Theater	193,640	189,026	151,590	208,620	203,376	211,483	218,644	200,892	208,720	201,000
Space-Cancellation	63,650	163,594	76,138	24,641	15,899	111,523	72,799	77,641	95,995	60,810
Merchant Fees			(25,191)	(34,347)	(38,468)	(54,177)	(60,668)	(58,205)	(63,372)	(79,196)
Labor-Miscellaneous	10,933	8,915	9,565	19,270	11,168	6,825	5,420	9,139	8,655	8,400
Equipment Rental	64,854	58,374	55,466	99,048	55,400	92,744	76,773	120,308	106,638	123,897
Electrical Comm.	107,391	159,844	105,585	140,410	192,214	222,042	184,879	222,373	203,486	277,045
Electrical Services In-House	94,506	53,573	66,840	164,515	156,749	117,605	107,866	111,470	133,650	58,485
Audio-Visual Comm.	270,992	271,929	362,512	395,825	411,300	462,273	605,755	594,217	609,736	638,611
Services - Misc.	5,810	18,472	4,360	6,525	5,773	5,658	7,100	639	3,930	3,495
Incoming Freight	3,690	3,675	3,175	6,065	9,543	3,764	3,314	2,631	3,423	6,649
Cell Site Revenue	23,009	17,794	17,794	17,794	17,980	18,233	18,936	18,090	26,236	33,039
Telecomm Commission	175,127	127,363	175,520	295,797	327,993	447,915	446,187	432,566	527,971	638,933
Catering Commission	1,262,009	800,499	1,037,616	1,900,070	2,195,799	2,509,846	2,809,971	2,566,610	2,572,066	3,060,064
Insurance Revenue	2,610	2,245	2,085	2,170	2,135	2,853	3,115	1,995	1,750	2,030
Interest Revenue	72,998	65,877	57,670	42,934	43,423	20,004	14,025	10,752	7,175	23,689
Advertising Comm.	25,154	26,015	15,976	26,009	32,254	32,536	30,449	26,983	29,658	35,644
Sponsorship Revenue	2,300	1,600	1,800	5,550	5,700	16,500	10,950	4,000	2,800	14,150
Business Center Comm.	5,324	4,123	4,481	5,220	5,645	6,710	12,502	14,802	12,682	10,088
Other Income	11,057	2,204	8,874	8,629	4,134	18,771	3,572	3,702	4,629	28,158

SCCC TOTAL REVENUE	4,365,268	3,856,929	4,135,023	5,482,042	5,881,508	6,849,158	7,254,188	7,122,815	7,406,668	8,093,763
SCCC Expenses										
Labor Related	3,530,564	3,659,221	3,766,957	3,866,593	4,059,755	4,408,338	4,595,404	4,778,024	4,818,759	4,983,964
Parking Fees	16,165	8,925	15,720	26,145	38,865	25,320		6,901	36,982	8,550
City Admin Fee	45,000	45,000	45,000	45,000	45,000	45,000	45,000	47,250	50,000	136,699
Other Operating	2,297	196	2,220	8,546	12,463	25,823	10,490	76	3,760	39,500
Professional Associations	9,525	9,884	10,450	7,522	6,555	8,854	6,945	8,846	8,364	9,152
Advertising and Promotion	6,447	6,677	1,593	3,959	2,520	1,844	1,245	1,567	998	970
Telephone	38,317	37,901	29,812	21,706	19,905	5,693	5,072	4,799	6,951	8,568
Office Expense	55,708	79,755	107,015	78,843	61,358	87,511	169,619	146,692	89,810	111,525
Insurance	86,365	98,905	110,509	106,457	122,635	138,012	163,734	169,868	166,849	169,206
Employee Expenses (payroll, training, etc.)	41,998	39,188	39,856	45,346	40,836	45,244	51,004	53,715	57,088	72,780
Maintenance	135,467	143,632	134,231	135,042	158,071	177,577	247,704	209,468	237,890	244,576
Janitorial and Cleaning	90,082	83,373	83,326	89,032	108,849	146,616	133,914	138,593	152,630	144,713
Utilities	530,715	531,693	590,929	611,426	636,488	667,429	676,428	694,485	720,152	732,235
SCCC TOTAL EXPENSES	4,588,650	4,744,350	4,937,619	5,045,617	5,313,299	5,783,261	6,106,561	6,260,284	6,350,233	6,662,438
SCCC TOTAL NET INCOME (LOSS)	(223,383)	(887,421)	(802,597)	436,425	568,209	1,065,897	1,147,627	862,531	1,056,435	1,431,325
TOTAL FY 2007-08 TO 2016-17	\$4,655,050									

Figure B2. SCCC Revenue, Expenses and Net Income for FY 2017-18

The SCCC provided the full FY 2017-18 Income Statement after our financial analysis was completed. It is included here to show the SCCC ended the year with \$2.2M in revenue.

	FY 2017-18
SCCC Revenue	
Space Rental	3,718,344
Event Revenue	592,910
Audio-Visual	853,587
Catering	2,874,957
Telecommunications	559,546
Other	448,259
SCCC TOTAL REVENUE	\$9,047,603
SCCC Expenses	
Labor Related	5,020,837
Insurance	174,206
JLL Evaluation	89,375
Maintenance & Supplies	234,521
Management Fee	133,184
Monthly Service Contracts	146,575
Office & Legal	268,886
Parking Fees & Rentals	6,000
Utilities	746,653
TOTAL SCCC EXPENSES	6,820,237
SCCC TOTAL NET INCOME	\$2,227,366



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Date: November 6, 2019

Memorandum For: Deanna J. Santana, City Manager, City of Santa Clara

From: Denise Callahan, President, TAP International, Inc.

Subject: Transmittal of Contract Close-Out Review of Convention Visitors Bureau

Attached is our report, Contract Close-Out Review of Convention Visitors Bureau: Reimbursements are Needed from Various Funding Sources.

Our review found that reimbursements are needed from either the City Chamber of Commerce (Contractor), the Convention Visitors Bureau reserves, or the Tourism Improvement District reserves based on the nature of the expenditures and the balances at the end of the Contractor's agreement with the City.

The report contains nine recommendations for the City applicable to the final close-out of the City's Agreement with the Contractor. The City generally agreed with these recommendations. The City's full response to the audit recommendations is enclosed in the attached report. The findings have been discussed with the Contractor and a copy of the draft report has been provided.

If you have questions about the audit report, please contact me at (916) 333-3401 or denise@tapinternational.org.

TAP International, Inc.



**CONTRACT CLOSE-OUT REVIEW OF
CONVENTION AND VISITORS BUREAU:
REIMBURSEMENTS ARE NEEDED FROM
VARIOUS FUNDING SOURCES**

**FINAL REPORT
NOVEMBER 2019**



November 6, 2019

Deanna Santana, City Manager, City of Santa Clara, CA
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana:

This report presents the results of the contract close-out activities that TAP International completed related to the 2017 Agreement between the City of Santa Clara (City) and the Santa Clara Chamber of Commerce (Contractor) to operate and administer the Convention and Visitors Bureau (CVB).¹

Table 1 below summarizes the outcomes of the contract close-out activities.

Table 1: Close-Out Amounts by Reimbursement Source

Close-Out Activity	Reimbursement Source		
	Contractor	CVB Cumulative Reserves	Tourism Improvement District (TID) Reserves
1. Annual Spending of CVB Funds (Revenue vs. Expense Analysis, Through FY 2016-17)	\$448,068		
2. Allocation of General Overhead Expenses to CVB and Vendor (Cost Allocation)	\$60,819 ^a	\$10,552 ^b	
3. Allocation of Revenue from Ticket Sales (Revenue Allocation)	\$704		
4. Review of Credit Card Purchases (Credit Card Transaction Analysis)	\$52,940 ^c		
5. Review of Four CVB Invoices	\$0		
6. Annual Spending of CVB Funds (2017-18 Fiscal Year-End Analysis)		\$57,885	
7. Verification of Expenses Incurred for July-August 2018 and \$80,000 Supplemental City 6/29/18 Payment		\$78,079	
8. Review of TID Invoices Submitted for Reimbursement			\$4,993
Total	\$562,531	\$146,516	\$4,993

^a Based on the proportion of full-time equivalents (FTEs) assigned to the CVB.

^b Based on the Vendor's cost allocation practice.

^c Includes reduction of \$1,265 for unused gift cards returned to the City. Details provided on pages 8 and 9 of the report and Appendix D. The amount also does not include the credit card transactions reviewed as part of item 8 below, Review of TID Invoices Submitted for Reimbursement.

¹ *Agreement for the Operation of a Convention and Visitors Bureau*, dated July 3, 2017. Referred to as "2017 Agreement" in this report.

Recommendations

1. The City should consider whether it wants to pursue \$448,068 in cumulative CVB reserves retained by the Contractor through Fiscal Year (FY) 2016-17.
2. The City should determine whether it wants to allow the Contractor to use the CVB reserves for operating expenses incurred in FY 2017-18 and 2018-19 that exceeded the contract's "not to exceed" amounts of \$57,885 and \$78,079, respectively.
3. The City should seek reimbursement from the Contractor for shared operating costs of \$50,267 (\$60,819 less \$10,552).
4. The City should seek reimbursement of \$704 for its portion of the revenue generated from the sale of tickets for area attractions.
5. The City should seek reimbursement of \$52,940 in net credit card expenses that were identified as "not allowable," "questionable," or "not verifiable." (This amount includes a reduction of the value of the purchased gift cards returned to the City by the Contractor of \$1,265.)
6. The City should seek a refund from merchants for the purchased gift cards in its possession that were returned from the Contractor.
7. The City should release \$4,993 from the held TID funds to reimburse expenses on the outstanding TID invoices submitted by the Contractor.
8. Because the Contractor could not provide documentation to support its claim that TID-funded Contractor employees were actively engaged in TID activities between July and August 2018, the City should withhold reimbursement to the Contractor for \$61,092 in TID expenditures for employee salary, benefits, taxes, bonuses, vacation payouts, and payroll processing fees incurred during this period. The City should also not reimburse \$2,372 in other credit card and employee expense reimbursement requests.
9. The City should conduct further review for any potential violation of laws for the use of public funds to support Contractor member recruiting and Contractor use of gift cards.

TAP International would like to thank the Contractor and City staff for their assistance in this review. If you have questions concerning this report, please do not hesitate to contact Denise Callahan, TAP International.

Sincerely,

TAP International, Inc.

Section A: Background

Introduction

Since 1975, the Contractor has administered an agreement for the operations of the local Convention Visitors Bureau (CVB) for Convention and Visitor Services. The Contractor, in its administration of the CVB, was to, among other things:

- market, promote, and book the Convention Center to potential local, state and national users;
- provide services to conventions and groups with events at the Convention Center and Tourism Improvement District (TID) hotels;
- market and promote tourism and commerce within the City; and
- provide services to large scale events held at Levi's® Stadium.

In June 2018, the City did not renew its Agreement for the Operation of a Convention and Visitors Bureau (2017 Agreement) with the Contractor to operate the CVB.

It is customary for public agencies to conduct close-out reviews at the end of multi-million-dollar public contracts. This process involves several tasks, such as comparing funds received against expenditures, verifying that expenses reimbursed were allowed under the contract, reconciling contract payments made by the City to the Contractor against actual expenses, and reconciling excess revenue. Contract close-out audits provide one of the last opportunities to ensure that public agencies have received what they contracted and to detect and recover erroneous payments.

Objectives, Scope and Methodology

The objective of our review was to determine whether the City funds were properly spent and accounted for by the Contractor in accordance with requirements specified in the 2017 Agreement. To complete our work, TAP International:

- Completed a revenue versus expenditure analysis for the time period FY 2015-16 to FY 2017-18.
- Verified the Contractor's allocation of shared revenue and expenses to the CVB and compared the results to standard allocation methods for the time period FY 2013-14 to FY 2017-18.
- Examined \$311,858 in credit card purchases for the time period FY 2015-16 to FY 2017-18 for compliance to the City's 2017 Agreement with the Contractor. These purchases included CVB and TID employee-related purchases on the Contractor's credit card account. Purchases made on an employee's personal credit card account and submitted for reimbursement were excluded from the scope of this review.
- Examined four monthly invoices submitted by the Contractor to the City in FY 2017-18.
- Reviewed documentation intended to support \$80,000 in supplemental expenditures by the Contractor.
- Examined additional invoices submitted to the City by the Contractor for payment of the TID expenses for June to July 2018.

Our review was performed in accordance with the International Internal Auditing Standards. TAP International discussed the findings in detail with the Contractor and the City. Comments by each entity, where applicable, were incorporated into the report. The City generally agreed with the recommendations. See Appendix F to view the City’s response to the audit recommendations.

Section B: Key Findings

Finding 1: Contractor Likely Owes the City \$448,068 in Unspent Public Funds Through FY 2016-17

The 2017 Agreement between the City and the Contractor, which continues an Agreement that was executed in 1975, is a “not to exceed” government contract. Under this type of government contract, the contractor cannot keep any unspent funds provided by the public agency. However, should expenditures by the Contractor exceed the contract amount, the contracting public agency has the discretion to reimburse the vendor for the additional expenses.

Between FY 2013-14 and FY 2016-17, the Contractor did not spend all the funds provided by the City. The City remitted about \$6.1M in funds to the Contractor to support CVB operations and the Contractor spent \$5.8M, leaving a cumulative total of \$448,068 in unspent funds, as shown in Table 2.² These unspent funds are referred to in this report as “CVB cumulative reserves”. The Contractor’s current president explained that these cumulative reserves were carried over to subsequent years for spending by the CVB. However, our review included the analysis of the CVB’s audited financial statements, which confirmed that not all reserve funds were spent.

In response to our finding, the Contractor’s current president submitted additional documentation for the purpose of reducing the amount of cumulative reserves. These expense items were for “Management Fee for CC”,³ expenses for FY 2018-19, and TID accounts receivable. However, documentation for the “Management Fee for CC” of \$133,144 was not provided, and thus a reduction was not applied against the cumulative reserve owed by the Contractor. Documentation submitted by the Contractor for other expenditures incurred in FY 2018-19 totaling \$178,328, and for TID accounts receivable amounting to \$68,645, are addressed later in this report.

Table 2: Results of Revenue Versus Expenditure Analysis

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
TOTAL REVENUES	\$1,566,591	\$1,564,199	\$1,584,455	\$1,510,906	Addressed later in this report
TOTAL EXPENDITURES	\$1,598,128	\$1,605,055	\$1,218,106	\$1,360,207	Addressed later in this report
BALANCE REMAINING	(\$31,537)	(\$40,856)	\$366,349	\$150,699	Addressed later in this report
NET ASSETS (RESERVES), Beginning of Year	\$3,413	(\$28,124)	(\$68,980)	\$297,369	

² Our audit period was from FY 2015-16 through FY 2016-17. However, we noted that the Contractor had exceeded its contract amount for FY 2013-14 and FY 2014-15 and therefor opted to include this time period in our analysis in the interest of fairness.

³ Convention Center.

TOTAL NET ASSETS (CVB RESERVES - CUMULATIVE)	(\$28,124)	(\$68,980)	\$297,369	\$448,068
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Finding 2: Amounts Charged Differ for Shared General Overhead Expenses

A September 2018 performance audit report of the Convention Center and CVB stated that “when administrative services are shared among entities or different business functions, the expenses incurred from performing these services are allocated and charged to each entity or business function. The allocation of these administrative expenses is usually based on a cost accounting study or a business policy that shows a reasonable basis for the allocations. While the Contractor did not have a formal allocation study or policy, Contractor staff reported it is long-standing practice to allocate 80 percent of overhead (administrative) expenses to the CVB and 20 percent to the Contractor.”⁴ The 2018 audit report found that the Contractor did not consistently apply this allocation criterion – the actual allocation of expenses ranged from 70 and 85 percent of the expenses for office supplies and maintenance and between 79 and 86 percent of telephone expenses.

This audit report further examined the Contractor’s method of allocating expenses to the CVB. The Contractor both overcharged and undercharged expenses to the CVB across the time period shown in Table 3. Overall, the Contractor’s cost allocation method led to undercharging the CVB by \$10,552.

Table 3: Results of the Expense Allocation Based on the Contractor’s Practices⁵

Fiscal Year	Contractor Allocation of Expenses to the CVB	Expenses that Should Have Been Allocated to the CVB	Expense Amount Overcharged to the CVB	Expense Amount Overcharged to the Contractor
2013-14	\$92,316	\$95,219		\$2,903
2014-15	\$118,976	\$116,895	\$2,081	
2015-16	\$127,905	\$121,137	\$6,768	
2016-17	\$110,656	\$115,550		\$4,894
2017-18	\$89,456	\$101,060		\$11,604
Total	\$539,309	\$549,861	\$8,849	\$19,401
Net Expense Amount Overcharged to the Contractor				\$10,552

When we applied a standard methodology for allocating expenses based on the proportion of Full-Time Equivalents (FTEs) assigned to different entities (i.e. Contractor and the CVB), the CVB was charged more than its share of expenses, as shown in Table 4. This method suggests the Contractor had charged the CVB \$60,819 more than it should have. We recommend on page 2 of this report that the City should seek reimbursement of \$50,267. (\$60,819 less \$10,552).

⁴ Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations can Strengthen Accountability, Performance and Revenue, TAP International, Inc. September 2018.

⁵ The overhead related expenses examined were accounting and audit services, office supplies/maintenance, office equipment, computer services/maintenance, telephone, and postage.

Table 4: Results of the Expense Analysis Based on Standard Cost Allocation using Full Time Equivalent Employees

Fiscal Year	Contractor Allocation of Expenses to the CVB	Overhead that Should Have Been Charged to the CVB Applying Standard Allocation Methods	Expense Amount Overcharged to the CVB	Expense Amount Overcharged to the Contractor
2013-14	\$92,316	\$83,655	\$8,661	
2014-15	\$118,976	\$101,864	\$17,112	
2015-16	\$127,905	\$101,092	\$26,813	
2016-17	\$110,656	\$100,958	\$9,698	
2017-18	\$89,456	\$90,921		\$1,465
Total	\$539,309	\$478,490	\$62,248	\$1,465
Net Expense Amount Overcharged to the CVB			\$60,819	

Finding 3: Contractor Owes \$704 to the CVB in Additional Revenue from the Sale of Tickets to Area Attractions

A 2018 audit report⁶ to the City found that that the Contractor did not allocate all revenue due to the CVB for ticket sales over two fiscal years. When the CVB collected revenue from the sale of tickets to area attractions, the Contractor allocated 70 percent of the ticket sales revenue to the CVB prior to FY 2015-16 and 30 percent to the Contractor. In FY 2015-16 and FY 2016-17, the CVB began selling tickets online exclusively. As a result, the Contractor should have allocated to the CVB 100 percent of the revenue generated from ticket sales, thus owing additional revenue to the CVB of about \$1,000.

This audit examined the allocation of revenue over five fiscal years, FY 2013-14 to FY 2017-18. The CVB should have received an additional net amount of \$704 from the Contractor, as shown in Table 5.⁷ We recommend on page 2 of this report that the City should seek reimbursement from the Contractor for this amount.

Table 5: Revenue Allocation Between CVB and the Contractor

Fiscal Year	Total Revenue Received from Ticket Sales	Amount the Contractor Allocated to the CVB	Amount That Should Have Been Allocated to the CVB	Amount Under Allocated to the CVB	Amount Under Allocated to the Contractor
2013-14	\$10,268	\$7,149	\$7,188	\$39	
2014-15	\$7,743	\$5,812	\$5,420		\$392
2015-16	\$2,737	\$2,114	\$2,737	\$623	
2016-17	\$1,889	\$1,455	\$1,889	\$434	

⁶ Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations can Strengthen Accountability, Performance and Revenue, TAP International, Inc., September 2018.

⁷ The 2019 TAP International 2018 Performance Audit report said the CVB should have received \$4,626 in collected fees but received only \$3,569 for FYs 2015-16 to 2016-17. Table 5 of this report reflects a different time period, FY 2013-14 to 2017-18.

Fiscal Year	Total Revenue Received from Ticket Sales	Amount the Contractor Allocated to the CVB	Amount That Should Have Been Allocated to the CVB	Amount Under Allocated to the CVB	Amount Under Allocated to the Contractor
2017-18 ⁸	0	0	0	0	
Total	\$22,637	\$16,530	\$17,234	\$1,096	\$392
Net Amount Under Allocated to the CVB				\$704	

Finding 4: Contractor Overcharged the City \$52,940 for Credit Card Purchases

The Contractor allowed its employees to use the Contractor's credit card account to purchase goods and services for travel and operations. The City's expectation, as established in the 2017 Agreement, was for the Contractor to provide documentation that allows for the determination of whether expenses are necessary and reasonable.

Analysis of \$311,858 in credit card charges showed that about 17 percent or \$54,205 were either "not allowable," "questionable," or "not verifiable." See Table 6 below. The Contractor was provided the opportunity to review all the transactions that had some type of exception. No additional documentation had been submitted to support their allowability. We recommend on page 2 of this report that the City seek reimbursement of \$52,940 from the Contractor (\$54,205 less \$1,265 for unused gift cards returned to the City).

Table 6: Credit Card Transaction Review Results⁹

	Total Credit Card Expenses Reviewed ^a	Not Allowable Expenses	Questionable Expenses	Not Verifiable Expenses	Exception Rate
FY 2015-16	\$43,655	\$3,180	\$2,268	\$167	
FY 2016-17	\$91,554	\$4,983	\$9,524	\$451	
FY 2017-18	\$176,649	\$17,100	\$16,224	\$308	
Sub Total	\$311,858	\$25,263^b	\$28,016	\$926	\$54,205 (17%)
Returned Gift Cards					(\$1,265)
Total					\$52,940

^a Purchases that were clearly marked as overhead and split between the Contractor and CVB were excluded from this analysis to avoid double-counting in the results reported under Finding 2.

^b Includes \$6,072 in gift card expenses.

Not Allowable Expenses - \$25,263

The City's 2017 Agreement with the Contractor says that the City's funds provided to support CVB operations should be usefully and properly expended by the Contractor in accordance with the stated purposes. These purposes include:

- Information services to carry out its duties.

⁸ For FY 2017-18, there were no recorded revenue receipts from the sale of tickets to area attractions under the CVB account.

⁹ Excludes credit card transactions reviewed and reported on pages 12 and 13 of this report to avoid double-counting.

- Target sales and promotion efforts across various market sectors, e.g. corporate business, association and SMERF (social, military, educational, religious, fraternal), and sports groups.
- Attract city-wide groups.
- Research and prospect new client opportunities.
- Perform sales calls and City bid presentations to prospective businesses and organizations.
- Conduct site inspections showcasing the City of Santa Clara hotels, convention center, stadium, entertainment and attraction venues, and local businesses.
- Sponsor exhibits in key tradeshows, attend industry-related meetings, and sponsor special industry-related events.
- Implement direct mail, e-marketing/social media, and e-blasts.
- Advertise in key trade publications, newsletters, directories, and social media platforms.
- Develop convention sales and marketing materials.
- Advertise and promote the City of Santa Clara and Santa Clara Convention Center.
- Sponsor memberships in various hospitality associations.
- Attend association chapter meetings, trade shows, luncheons, and sponsorships.
- Hold monthly group sales/client luncheons/breaks/breakfasts.

Credit card purchases that did not meet the above stated purposes of the Agreement, or the supporting documentation provided did not support the expense, were identified as “not allowable.”

Examples of credit card purchases by the CVB and Contractor employees that were identified as “not allowable” are as follows:

- Repeated repair of personal cell phone glass covers.
- Purchase of an Apple Watch[®].
- Cell phone supplies, such as repeated purchases of cell phone chargers.
- Tools.
- Seat upgrades on flights.
- Dinner meetings (Contract specifies breakfasts and lunch only).
- Administrative lunch and dinner meetings with other CVB staff and TID participating hotels.
- Lunch meeting paid for by public funds to recruit Contractor members (isolated incident). This transaction needs further review by the City for potential violation of state law.¹⁰
- Contractor-related expenses that were paid for by CVB funds (See footnote 10).
- Gift related expenses. About 24 percent of the \$25,263 in unallowable expenses are for the purchase of gift cards. These gift cards had a monetary cash value from \$10 to \$100 each and is equivalent to providing a gift of public funds, which is a potential violation of state law that needs further review by the City.¹¹ Although the CVB reportedly used these for marketing purposes, these gift cards did not have the logo or brand of the CVB and/or Convention Center affixed to the gift card for it to be considered a marketing expense and

¹⁰ CA Government Code § 8314 states it is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

¹¹ Cal. Const., art. XVI, § 6b prohibits the giving or lending public funds to any person or entity, public or private.

justify the use of public funds. In addition, the Contractor/CVB did not establish controls to govern the distribution of the gift cards. We could not determine the recipients of the gift cards except in one instance. Upon termination of the Agreement by the City, the City found 66 gift cards valued at \$1,265 while cleaning CVB inventory. See Appendix D for a complete list of gift cards returned to the City.

A complete list of “not allowable” expenses is shown in Appendix A.

Questionable Expenses - \$28,016

The City’s Agreement with the Contractor states that any expenses related to travel or entertainment shall be verified by a statement and invoice. Credit card purchases were found “questionable” when expenses did not contain supporting documentation or other detailed information on the credit card statement to clearly verify the nature or allowability of the expense. Other credit card purchases for Contractor related operations were also determined to be “questionable” if an expense was incurred by a Contractor (and not a CVB) employee and we could not locate the posting of the expense in the Contractor’s general ledger. Therefore, raising the risk that the purchase may have been paid for by the CVB public funds.

Common examples of credit card related purchases by the CVB and Contractor employees that were identified as “questionable” are as follows:

- Restaurant expenses without information on the purpose of the expense.
- Contractor related expenses where we could not locate the account posting in the Contractor’s general ledger.
- Local Starbucks charges from CVB staff without any detail on the purpose of the expense.
- Amazon charges by the CVB without detailing the purpose of the expense.

A complete list of questionable expenses is shown in Appendix B.

Not Verifiable Expenses - \$926

Under Section 2 of the Agreement, the Contractor was to provide reporting and accounting to enable the City to determine and verify that the money paid by the City to the Contractor was “usefully” and “properly” expensed. There were some credit card transactions that we did not have any information about the credit card charge to draw any type of conclusion about its allowability or proper accounting. These transactions were classified as “non-verifiable.” Examples of “non-verifiable” expenses include only a name, such as Walmart, Hyatt, or Target.

A complete list of “not verifiable” expenses is shown in Appendix C.

Finding 5: Review of Contractor's Monthly Invoices Identified \$201 in Overbilling

In FY 2017-18, the City requested that the Contractor begin to submit monthly invoices for reimbursement for CVB expenses. The Contractor sent four invoices totaling \$395,907 for the five-month period of July to October 2017. The City requested we review these four invoices for accuracy.

We determined that the Contractor overbilled the City by a small amount of \$201, but the expenses were allowable. The data for this analysis was incorporated into Finding 6 of this report to avoid the double-counting of expenses.

Table 7: Review of Four Monthly Invoices Submitted to the City^a

Month of Invoice	Invoice Amount Submitted to the City by the Contractor	Amount that Should have been Billed to the City
July-17	\$96,892	\$98,395
August-17	\$87,444	\$92,812
September-17	\$119,419	\$105,036
October-17	\$92,151	\$99,462
Total	\$395,907	\$395,706
Net Amount Overcharged to the City.		\$0
Difference of \$201 is part of overall Finding 6, below.		

^a Numbers were rounded.

Finding 6: The CVB Spent \$57,885 More than it Received in Funding from the City for FY 2017-18

When we analyzed whether there were unspent public funds as of June 30, 2018 for FY 2017-18, CVB expenditures exceeded CVB revenues by \$57,885, as shown in Table 8. When the City did not renew the Contractor's contract to operate the CVB in June 2018, the Contractor opted to terminate the CVB employees, which led to one-time payments for unused vacation time for CVB employees at fiscal year-end and contributed to nearly all of the \$57,885 in cost overruns for FY 2017-18. We included the vacation pay-outs as a reimbursable item for two reasons.

1. Vacation pay-outs issued to terminated CVB employees were appropriately accounted for in the year the pay-out occurred (FY 2017-18). See Appendix E for detailed vacation pay-out information.
2. A vacation pay-out is a component of salary and benefit expenses. Payroll related expenses are allowed under the 2017 Agreement between the Contractor and the City.

Table 8: Results of FY 2017-18 Revenues versus Expenditure Analysis

Contracted Not to Exceed Amount	\$1,461,601
FY 2017-18 CVB Related Expenditures	\$1,476,476^a
Less CVB Revenue (Hotel Reservations, Service Commissions, TID Reimbursements, Interest)	(\$18,635)
Net FY 2017-18 CVB Related Expenditures	\$1,457,841
City Funding Remitted to the Contractor to support CVB Operations	\$1,399,956^b
Net Reduction in CVB Reserves (Expenses Exceeding City Funding)	\$57,885

^aPer Contractor's 2017-18 General Ledger (not audited). Includes vacation pay-outs for terminated CVB employees.

^bDoes not include the June 29, 2018 City payment of \$80,000 for CVB payroll expenses to cover 60 days following contract termination.

Finding 7: Contractor Incurred Another \$158,079 in Allowable CVB Expenses from July to August 2018

On June 29, 2018, the City issued an additional payment of \$80,000 to the Contractor. This amount, along with the current CVB reserves of \$390,183 (at fiscal year-end 2017-18 per the CVB general ledger) already in the Contractor's possession, were to cover payroll expenses and related costs¹² for CVB employees for the 60 days following the contract termination date of June 30, 2018. When the City issued the supplemental payment, a request to the Contractor was made to submit a reconciliation and detailed accounting of its expenditures by September 2018. The Contractor submitted the requested documentation in May 2019.

The Contractor reported spending \$158,079 on CVB payroll activities between July and August 2018, exceeding the City's \$80,000 payment by \$78,079¹³ and were considered allowable, as shown in Table 9. The Contractor's current reserves for the CVB funded these additional \$78,079 expenses, which were for:

- Employee salaries
- Employee accrued vacation
- Employee benefits
- Payroll and human resources service fees
- Employer taxes

In response to the findings of the report, the Contractor provided other documentation for \$20,242 in expenses, in addition to the \$158,079 for allowable CVB payroll activities, incurred between July and August 2018. These additional expenses were for a Convention Center Management Fee, Accounting/Audit expenses, and Technical Support/Computer Upgrades. However, these additional expense items are not allowed under the terms of the supplemental payment and thus were considered unallowable.

¹² <https://santaclaralegistar.com/LegislationDetail.aspx?ID=3538163&GUID=0D2E7E69-1B4D-42C3-A829-EA6957C20C53&Options=&Search=>

¹³ Payroll expenses included salary expenses, payroll taxes, benefits, payroll vendor fees, and vacation pay-outs of \$8,885 paid on August 29, 2018.

Table 9: Analysis of the City's Additional Payment of \$80,000 to the Contractor

June 29, 2018 City Payment	\$80,000
Allowable Expenses for July to August 2018^a	\$158,079
CVB Expenses Covered by Reserves Held by Contractor	\$78,079

^a 60-day period after June 29, 2018.

Finding 8: The Contractor Has Not Provided Sufficient Documentation to Support Payment by the City of \$63,464 in Other TID Expenses Submitted for Reimbursement

On August 3, 2018, the City provided direction to the TID Advisory Board to temporarily freeze its cash reserve account and all transactions, including payment of any outstanding invoices, until resolution of open TID and Santa Clara Convention Center (SCCC) issues.

On January 9, 2019, the TID Advisory Board, whose operations were supported by the Contractor, submitted invoices for reimbursement to the City. These invoices totaled \$132,642. The Contractor requested the City to use the TID reserves, whose cash reserve balance was estimated to be \$390,183 at the end of FY 2017-18.

The City had previously reviewed and initially approved \$64,185 of the \$132,642 in outstanding invoices. At the time of this audit, another six invoices totaling \$68,457 were awaiting approval by the City for reimbursement to the Contractor.

For one invoice, totaling \$6,427.89 for credit card expenses, the Contractor had provided sufficient documentation to support \$4,993.45. For the remaining \$1,434.44 in expenses, the Contractor had not provided adequate documentation to support the charges, as shown in Table 10.

For another three invoices totaling \$61,091.98 for employee salaries, benefits, vacation pay-outs, bonuses, employer taxes, and payroll processing fees incurred between July and August 2018, the Contractor had not provided adequate documentation to support reimbursement. The Contractor provided payroll processing reports only, but no other documentation to support that two TID funded employees were actively working to promote TID interests during the two-month period.

For the remaining two invoices totaling \$937.22 for credit card charges and employee expense reimbursements, the Contractor had not provided adequate documentation to support reimbursement. Table 10 provides a summary of all six invoices that we reviewed.

Table 10: Review of Outstanding Contractor Invoices for TID Operations

Item #	Vendor	Invoice Date	Invoice Amount	Description	Allowable Expenses	Unable to Support
1	Contractor	6/20/18	\$6,427.89 ^a	American Express credit card charges from 5/3/18 to 6/30/18.	\$4,993.45	\$1,434.44
2	Contractor	6/20/18	\$15,964.21	TID accrued vacation payout expense for pay period ending 6/24/18. 391 vacation hours.	0	\$15,964.21
3	Contractor	7/31/18	\$18,954.31	TID Payroll expense for pay period ending 7/13/18 and 7/27/18.	0	\$18,954.31
4	Contractor	7/31/18	\$26,173.46	TID Payroll expense and bonus payout for pay period ending 8/10/18, 8/24/18, and 8/29/18.	0	\$26,173.46
5	Contractor	8/31/18 ^c	\$335.86	Credit card expenses charged on the June 2018 statement.	0	\$335.86
6	Contractor	8/31/18 ^c	\$601.36	Employee expense reimbursements.	0	\$601.36
		TOTAL^b	\$68,457		\$4,993	\$63,464

^a Amount excluded from credit card expense analysis discussed in Finding 4.

^b Rounded.

^c Date of email request from Contractor.

Section C: Appendixes

Appendix A: List of “Not Allowable” Expenses

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
7/1/2015	250.00	7330	Macy’s gift cards
7/21/2015	2.75	7330-0	Hyatt Regency bottled water
7/21/2015	13.51	7330-0	Hyatt Regency bottled water
7/28/2015	39.71	Unable to Locate Account Posting (ULAP)	Administrative meeting with staff
8/5/2015	18.50	7380-0	Budget meeting with internal staff
8/15/2015	55.94	CVB	Hyatt - administrative meeting
8/23/2015	29.35	7894-0	UBreakiFix - replacement of cell phone glass cover
8/25/2015	450.00	6548	Starbucks - 8 multipack gift cards
8/27/2015	75.00	6256/7303-1	See’s candies - appreciation gifts
8/30/2015	87.18	6526	dinner meeting
8/31/2015	25.00	6548	American Airlines - upgrade
9/2/2015	127.93	7370-0	Mission City Grill - administrative lunch meeting with staff
9/5/2015	76.36	7485-0	Hyatt Regency food expense
9/22/2015	35.62	ULAP	Administrative meeting with staff
9/23/2015	42.62	6280-0	Mission City Grill - staff lunch
9/30/2015	27.98	ULAP	Administrative meeting with Hyatt
10/7/2015	19.26	7370-0	Hyatt lunch
10/14/2015	35.37	ULAP	Costco client gift
10/15/2015	110.33	6540	Administrative lunch meeting at Piatti’s
10/29/2015	1.85	6280-0	CSU Dept of Transportation
11/4/2015	39.50	6280-0	Nothing But Bundt Cakes
11/5/2015	167.85	6694	Safeway - 3 \$50 gift cards
11/19/2015	1.95	6280-0	Starbucks - cookie, Santa Clara
11/19/2015	359.70	6280-0/6511	PayPal - rhinestone lanyard gifts
1/16/2016	24.46	7894-0	Verizon wireless charger
1/19/2016	169.65	7520-0	Bourbon Steak lunch for potential chamber member attended by CVB and Contractor staff. Thank you note indicated that a gift was also provided.
2/2/2016	100.00	6507	Macy's \$100 gift card
2/3/2016	57.06	7370-0	See’s Candies - gifts
2/9/2016	5.38	6530	DollarTree - gift wrap
2/15/2016	25.25	6512	Target - food for TID staff mtg
2/17/2016	11.66	6530	Walmart - gift wrap
2/19/2016	68.64	7520-0	Bourbon Steak - administrative meeting with TID participating hotel
2/23/2016	30.00	6540	Starbucks gift cards

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
3/1/2016	26.25	8100	Target - Administrative meeting
3/1/2016	19.95	CVB	Starbucks administrative meeting
3/10/2016	35.37	8100	Vespa restaurant - mtg with Hyatt house – administrative meeting
3/10/2016	75.08	8100/7520-0	Bourbon Steak - dinner
3/27/2016	24.46	7894-0	Verizon wireless - vehicle charger
3/27/2016	30.98	7894-0	UBreakiFix - PHONE tempered glass
5/10/2016	50.43	6540	Costco gifts
5/12/2016	8.54	6507	Wal mart - gift supplies
5/12/2016	3.21	6507	Marshalls - gift supplies
5/18/2016	90.00	ULAP	Macy's - gift cards
6/7/2016	18.00	ULAP	Sutter Club
6/11/2016	20.00	ULAP	Starbucks card reload
6/21/2016	47.65	8100	Piatti's Ristorante - administrative meeting at Hyatt
6/22/2016	300.00	ULAP	Starbucks gift cards
6/28/2016	20.00	1150-0	Chevron - charged as Accounts Receivable
6/29/2016	73.89	8100	Hyatt - Santa Clara - Administrative Budget meeting with staff
7/5/2016	43.98	ULAP	Hyatt - administrative lunch meeting
7/21/2016	72.91	ULAP	Birks - administrative lunch meeting
8/4/2016	732.84	6212	Hyatt – Sacramento
8/23/2016	400.00	6548	Starbucks - 40 Gift cards for connect marketplace
9/7/2016	200.00	6519	American Airlines - change fee
10/1/2016	63.18	6540	Wal Greens - gifts
10/7/2016	214.67	ULAP	TID participating hotel administrative meeting
10/19/2016	200.00	ULAP	Starbucks gift cards
10/24/2016	23.87	6540	Target gifts
11/1/2016	200.70	6694	Safeway Store - 6 visa gift cards
11/7/2016	15.00	7520-0	Southwest - Early bird check-in
11/7/2016	15.00	7520-0	Southwest - Early bird check-in
11/29/2016	11.80	ULAP	Grocery outlet - Wine - Gift bag donation
12/1/2016	21.70	ULAP	Starbucks - internal staff meeting
2/16/2017	66.00	6280-0	Aldos Ristorante - Dinner
2/22/2017	56.66	6512-0	Il Fornaio Cucina - administrative meeting with TID participating hotel
2/22/2017	696.000	6530-0	Cirquesoleil - Tickets
3/2/2017	40.87	1150-0	Enterprise
3/13/2017	357.61	1150-0	Six Flags Discovery
3/30/2017	67.34	7370-0	Il Fornaio Cucina - Santa Clara - administrative lunch meeting with TID participating hotel
4/19/2017	495.00	1150-0	Crime Stoppers

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
4/20/2017	89.47	1150-0	VTs San Diego
5/4/2017	166.52	ULAP	Il Fornaio Cucina - Santa Clara - dinner
5/20/2017	23.09	1150-1	Enterprise Rental Cars (coded to CVB on GL)
5/22/2017	23.09	1150-0	Enterprise rental charged by Contractor employee and posted to CVB
5/24/2017	19.99	2100-0	Safeway coded to CVB on GL
5/25/2017	35.26	1150-0	Enterprise rental
5/26/2017	32.25	6512-0	Xanh Restaurant - dinner
6/7/2017	450.00	6530-0	Macy's - Gift Cards (9)
6/10/2017	10.00	ULAP	Starbucks Gift Cards
6/14/2017	55.87	7370-0	Il Fornaio - administrative lunch meetup with TID participating hotel
6/16/2017	50.00	6521	Starbucks cards
6/19/2017	150.00	7380-0	\$25 Starbuck cards
6/23/2017	160.23	6221	Education summit
6/23/2017	200.00	6530/TID	Starbucks 50 cards
6/24/2017	720.53	6530/TID	Firebirds
6/28/2017	125.00	6530	Starbucks gift cards
7/8/2017	119.92	6301	Amazon computer mouses and computer sleeves (gifts)
7/15/2017	19.78	ULAP	Amazon I-phone cases
7/16/2017	11.90	ULAP	Amazon
7/19/2017	96.17	ULAP	Amazon I-phone cases
7/28/2017	65.29	ULAP	Hyatt meal
8/1/2017	12.15	6214	Deli food for CVB staff in Santa Clara
8/12/2017	79.40	ULAP	Il-Fornaio - dinner
8/15/2017	25.00	ULAP	Airline upgrade
8/18/2017	315.00	7381-0	Collinson Media
8/18/2017	24.05	7370-0	Specialty's Café - Administrative staff meeting to discuss marketing
8/19/2017	52.00	7381-0	Taxi
8/24/2017	14.98	7830-0	UBER
8/25/2017	22.08	7830-0	Sushi King
8/25/2017	7.62	7830-0	Subway
8/25/2017	12.96	7830-0	Silver Street Market
8/25/2017	15.42	7381-0	Taxi
8/25/2017	50.00	7381-0	Taxi
8/26/2017	13.21	7830-0	Little Anitas
8/27/2017	8.77	7830-0	Seven Eleven
8/27/2017	7.62	7830-0	Subway
8/27/2017	16.98	7830-0	Farina Downtown

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
8/28/2017	741.41	7830-0	Andaluz Hotel
8/28/2017	18.47	7830-0	Comida Buena
8/28/2017	11.78	7830-0	Burrito Company
8/28/2017	104.00	7830-0	Laz Parking
8/28/2017	14.54	7830-0	LYFT
8/30/2017	85.95	7498-0	Southwest
9/2/2017	153.96	7498-0	Southwest
9/2/2017	627.45	CVB	Starbucks - 90 cards PO was for \$55 worth
9/2/2017	30.00	ULAP	Airline
9/14/2017	22.52	6209-0	Gift baskets
9/20/2017	94.83	6290-0	Computer Mouses - gifts
9/27/2017	536.82	ULAP	Zoro Tools
10/15/2017	19.71	CVB	UBER eats
10/18/2017	92.33	6209-0	Computer Mouses (gifts)
10/27/2017	147.46	ULAP	Fleming's - Dinner
10/30/2017	221.75	6694-0	Visa gift cards - Reception
10/31/2017	25.00	ULAP	Starbucks gift card reload
11/5/2017	16.56	1150-0	UBER - personal, Accounts Receivable noted
11/9/2017	10.71	6209-0	Mouse
11/21/2017	1,200.00	6693-0	The Portofino (On G/I shows CC advance - special ops)
12/6/2017	290.00	ULAP	Starbucks gift cards
1/5/2018	143.13	6220-0	Amazon purchase - gift bags
1/18/2018	119.29	CVB	Hardware
2/7/2018	78.56	CVB	Construction
2/8/2018	14.01	6507	Dollar tree gift wrap
2/13/2018	11.06	7370-0	Michael's gift wrap
3/6/2018	165.00	7370-0	Restaurant, Santa Clara, client dinner
3/10/2018	2,226.54	ULAP	Zoro tools
3/13/2018	120.00	ULAP	TRAK chain service
3/17/2018	92.55	7495-0	QVC gifts
3/17/2018	97.55	7495-0	QVC gifts
3/19/2018	446.89	7382-0	Apple WATCH
3/21/2018	52.02	6301-0	Ubreak cell phone repair
3/22/2018	70.63	ULAP	Air purifier
3/28/2018	28.96	6230-0 ; 6209-0;	Amazon purchase - cell phone cases
3/29/2018	144.80	6529	Airline
4/7/2018	6.54	6209-0	Amazon phone card
4/13/2018	26.80	1156-2	Groceries
4/13/2018	83.73	6507	Starbucks card
4/18/2018	233.05	ULAP	Stop signs

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
4/24/2018	10.78	8100	Target soda
4/25/2018	11.96	8100	Smart and final soda
4/26/2018	373.09	ULAP	Michigan company
4/26/2018	25.95	CVB	Safeway muffins
4/27/2018	30.81	6209-0	Airline charge
4/27/2018	18.04	ULAP	Cal steam
5/1/2018	93.30	7370-0	Flemings (dinner)
5/1/2018	330.25	ULAP	Zoro tools
5/4/2018	265.52	ULAP	Zoro tools
5/8/2018	350.00	7361-0/7361-1	Sierra Elk Grove- event table for Chamber and split charge with CVB
5/19/2018	68.57	7370-0	Flemings - lunch with Hyatt
5/19/2018	5.99	6209-0	Amazon bags
5/22/2018	92.12	7370-0	Piatti's - administrative meeting with TID participating hotel
5/23/2018	64.37	7370-0	OPA - dinner
5/23/2018	98.21	6540	Starbucks
5/30/2018	32.48	6512	Breakfast mtg with CVB staff at Hilton
5/30/2018	72.88	6512	Hilton - Lunch mtg with CVB staff
5/30/2018	205.86	6512	Dinner mtg
5/30/2018	25.17	6512	Peets
6/10/2018	11.00	6512	Starbucks reload
6/12/2018	43.58	7361-0	Amazon
6/13/2018	11.74	7361-0	Hyatt
6/13/2018	320.00	7361-0	Macy's gift cards
6/13/2018	91.83	CVB	Cell phone supplies
6/15/2018	70.00	7096-0	Starbucks gift cards
6/16/2018	161.31	1176-0	Zoro tools
6/26/2018	350.00	7361-0	Starbuck gift cards
6/29/2018	3.48	6512	Hyatt regency
6/29/2018	220.00	7330-0	Starbucks gift cards
6/29/2018	659.95	7096-0	Starbucks gift cards
6/30/2018	273.08	7330-0	Paul Martins
7/3/2018	1,441.26	1176-0	Zoro tools
7/4/2018	78.09	1176-0	Wal Mart

Appendix B: List of “Questionable” Expenses

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
9/5/2015	100.05	ULAP	Go daddy - domain renewal for silicon valley professionals
9/6/2015	30.59	ULAP	Go daddy
9/9/2015	49.99	ULAP	Adobe
10/17/2015	1,000.00	ULAP	Great America online
11/6/2015	20.97	ULAP	Safeway Peets coffee
2/5/2016	40.00	ULAP	Contractor expense. Next generation - unable to locate in Contractor GL
2/15/2016	89.94	ULAP	Contractor expense Meet up (unable to locate in Contractor general ledger
2/8/2016	260.45	7520-0	Hilton
2/11/2016	70.74	7520-0	Piatti's
7/3/2015	19.75	7330-0	Hyatt Santa Clara
7/2/2015	161.70	7370-0	Bourbon Steak
7/10/2015	30.61	7370-0	Hyatt Santa Clara
12/2/2015	158.29	7370-0	Birks restaurant
10/23/2015	37.99	ULAP	Amazon
10/27/2015	49.69	ULAP	Amazon
2/16/2016	22.80	7370-0	Cost Plus donation basket to SC Schools Foundation
4/4/2016	73.18	6512	Hyatt Regency
4/19/2016	14.14	6230-0	Hyatt
2/19/2016	5.95	6530	Starbucks
2/21/2016	5.90	6530	Starbucks
4/4/2016	10.00	1015-0	PayPal - Silicon Valley score
12/4/2015	5.25	6511	Bottom up
8/5/2015	9.79	6209-0/1	Keys for Contractor's office
2/14/2017	23.93	ULAP	Libero 7
2/14/2017	113.22	ULAP	Amazon
2/14/2017	52.61	ULAP	Amazon
2/14/2017	28.32	ULAP	Amazon
2/15/2017	25.32	ULAP	Amazon
2/16/2017	108.47	ULAP	Amazon
2/20/2017	2,000.00	ULAP	2017 Spring Advo San Francisco
2/24/2017	20.30	ULAP	Chipotle
2/24/2017	25.00	ULAP	Starbucks
2/26/2017	224.04	ULAP	Southwest
2/26/2017	139.94	ULAP	Southwest
2/26/2017	245.44	ULAP	Southwest
2/27/2017	50.97	ULAP	Amazon

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
2/28/2017	25.00	ULAP	Starbucks
3/7/2017	33.75	ULAP	Enterprise
3/7/2017	26.50	ULAP	Amazon
3/7/2017	63.98	ULAP	Amazon
3/8/2017	42.00	ULAP	Peet's
3/9/2017	38.46	ULAP	Amazon
3/9/2017	245.46	ULAP	Amazon
3/13/2017	36.79	ULAP	Enterprise
3/13/2017	33.61	ULAP	Amazon
3/13/2017	31.45	ULAP	Amazon
3/14/2017	11.91	ULAP	Bold Bite Dogs
3/14/2017	9.16	ULAP	Peet's
3/15/2017	5.46	ULAP	Uber
3/15/2017	4.85	ULAP	Uber
3/15/2017	7.64	ULAP	Uber
2/14/2017	3.00	ULAP	CSJ 3rd Street Parking - unable to locate in GL
4/20/2017	7.70	ULAP	Starbucks
4/26/2017	9.65	ULAP	Starbucks
4/27/2017	9.20	ULAP	Starbucks
5/2/2017	7.40	ULAP	Starbucks
5/5/2017	6.00	ULAP	Laz Parking
5/10/2017	8.70	ULAP	Starbucks
5/13/2017	34.00	ULAP	Starbucks
7/28/2016	236.61	ULAP	La Quinta
7/31/2016	313.64	ULAP	Plus Scotts
8/9/2016	49.99	6485-1	Adobe Creative Cloud - software subscription
7/1/2016	577.44	ULAP	Scotts Valley
7/12/2016	2,215.32	ULAP	Scotts Valley
7/12/2016	194.79	ULAP	Scotts Valley
1/31/2017	3.22	ULAP	Dollartree - gift wrap for silent auction donation
6/2/2017	39.70	6512-0	Hyatt - Santa Clara
5/18/2017	29.42	6280-0	Vino Locale
5/26/2017	45.24	6280-0	Vino Locale
6/2/2017	15.25	8100-0	Hyatt - Santa Clara
5/30/2017	15.00	7380-0	Southwest - unknown reason
6/5/2017	29.00	6507-0	Amazon
6/7/2017	25.70	6507-0	Amazon
6/8/2017	36.90	7380-0	Amazon
6/8/2017	223.45	6543-0	Sisco Breakers

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
3/15/2017	20.96	6209-0	Amazon
2/18/2017	25.16	6280-0	Hyatt - Santa Clara - Lunch
3/14/2017	597.59	ULAP	Industrial Equipment Houston
4/28/2017	47.94	ULAP	Safeway Store
4/30/2017	58.14	ULAP	Hyatt - Santa Clara
5/12/2017	146.30	ULAP	Kelly Moore Paint
5/13/2017	9.35	ULAP	David's Restaurant
3/15/2017	55.79	6209-0	Amazon
4/4/2017	41.72	7370-0	Mission City Grill - Santa Clara
10/13/2016	313.19	6540	Hyatt - Santa Clara
11/3/2016	52.50	6540	Il Fornaio
11/10/2016	110.20	6540	Il Fornaio
7/16/2016	61.66	8100	Village Café
7/15/2016	27.26	6540	Hyatt
8/10/2016	146.36	6220-0	Best Buy
6/3/2017	25.00	ULAP	Starbucks
6/15/2017	50.08	ULAP	Cell phone
6/21/2017	35.00	ULAP	Starbucks
7/8/2017	2.00	ULAP	Amazon
9/12/2017	748.51	ULAP	Facebook Ads
8/31/2017	134.92	ULAP	Linq Adv Rsvn
5/17/2018	12.00	7370-0	Santa Clara hotel
2/6/2018	124.20	7370-0	Playing with dough cookies
2/15/2018	60.72	7370-0	Lunch items
2/6/2018	3.19	6209-0	Walmart sympathy card
2/8/2018	20.00	6507	Dante club with clients
2/8/2018	7.00	6507	Dante club drinks with clients
12/23/2017	436.99	6295-0	Electronics
12/27/2017	217.99	6693	Best buy electronic
3/4/2018	34.99	ULAP	Amazon books
6/19/2017	256.31	6540/TID	Specialty Café
4/4/2018	174.37	6544	Restaurant
4/7/2018	10.90	6544	Starbucks
4/7/2018	24.00	6544	Starbucks
5/8/2018	2,725.30	6507	Bourbon steak for MPI SNN retreat
4/18/2018	100.00	ULAP	Triton museum chairs
5/1/2018	22.95	ULAP	Safeway
4/21/2018	72.96	ULAP	Airlines
5/8/2018	7.00	ULAP	LYFT
5/9/2018	88.52	6544/6507	Budget

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
6/8/2018	32.07	7330-0	Penny's
6/9/2018	169.99	6230-0	Amazon
6/11/2018	320.87	6230-0	Amazon
6/12/2018	72.00	7361-0	Yiannis
6/6/2018	150.71	7823-0	Panera bread
6/7/2018	42.00	7823-0	Spa
5/24/2018	33.11	7823-1	Amazon
6/9/2018	3.96	6209-0	Target
6/11/2018	32.81	6209-0	Michael's
6/12/2018	473.65	7361-0	Amazon
6/22/2018	138.76	7370-0	Hyatt Regency
7/15/2018	70.06	6230-0	Amazon books
6/19/2018	1,152.71	7331-0	Party concierge
6/14/2018	43.49	6209-0	Ross
6/19/2018	55.86	7370-0	Village café
6/15/2018	26.15	7361-0	Michaels - party supplies
6/9/2017	8.13	ULAP	Target - Stationery
7/14/2017	152.95	ULAP	Plumbing/heating
7/19/2017	81.73	ULAP	Verizon
7/25/2017	5.45	ULAP	Verizon
7/25/2017	284.00	ULAP	Hyatt
7/28/2017	1,636.11	CVB	Asian Auto Clinic
9/1/2017	15.00	ULAP	Southwest
9/1/2017	153.96	ULAP	Southwest
9/1/2017	15.00	ULAP	Southwest
8/16/2018	10.53	ULAP	Hyatt
8/30/2017	8.04	ULAP	Hyatt
8/31/2017	33.25	ULAP	Hyatt
9/1/2017	192.23	ULAP	Hyatt
9/4/2017	123.46	ULAP	Hilton
9/7/2017	145.97	ULAP	OPA Authentic Greek
9/8/2017	63.87	ULAP	Mission City Grill
9/9/2017	76.22	ULAP	Jang Su Jang
9/13/2017	11.00	ULAP	Fairmont
9/30/2017	70.86	7370-0	Il Fornaio lunch
10/1/2017	4.32	6544-0	Michael's
9/27/2017	13.06	ULAP	Amazon
9/28/2017	32.54	ULAP	Amazon
10/13/2017	354.25	ULAP	Sisco Breakers
10/14/2017	71.09	ULAP	TAP Plastics

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
10/14/2017	973.88	ULAP	TAP Plastics
10/31/2017	189.00	ULAP	ID Zone
11/22/2017	10.75	ULAP	Hyatt
11/28/2017	599.00	ULAP	CA Travel Summit - Conference
11/29/2017	8.17	4297-0	GoDaddy - Webdomain
11/30/2017	505.82	6693-0	Facebook Ads
11/25/2017	15.59	ULAP	Michaels Stores
11/29/2017	22.92	ULAP	Amazon
11/29/2017	27.98	ULAP	Amazon
12/3/2017	911.00	ULAP	STL, LTD
12/8/2017	1,026.03	ULAP	The Party Concierge
6/15/2018	70.96	CVB	Amazon
6/13/2018	12.51	7361-0	Amazon
4/24/2018	74.69	ULAP	Groceries

Appendix C: List of “Non-Verifiable” Expenses

Date of Charge	Charge Amount	Charged to Contractor/CVB or TID	Description
3/23/2016	37.20	ULAP	Target
3/29/2017	6.25	ULAP	Hyatt Regency
4/30/2016	14.14	ULAP	Hyatt
2/15/2016	86.45	ULAP	Hyatt
10/13/2015	3.25	7370-0	Plummbiner
10/27/2015	19.76	7370-0	Target
5/25/2017	17.63	6280-0	Cape EPI
5/20/2017	103.79	6543-0	RSD
12/9/2016	50.00	6511-0	STL
12/13/2016	279.20	7410-0, 6544-0	EAX World Wide
1/5/2018	17.80	6512	Walmart
3/17/2018	75.00	ULAP	Certifyme
5/11/2018	215.25	ULAP	Smart city networks

Appendix D: Inventory of Gift Cards

Source: City of Santa Clara

STARBUCKS		AMOUNT ON CARD	
#1	\$5.00	#26	\$5.00
#2	\$5.00	#27	\$5.00
#3	\$5.00	#28	\$5.00
#4	\$5.00	#29	\$5.00
#5	\$5.00	#30	\$5.00
#6	\$5.00	#31	\$5.00
#7	\$5.00	#32	\$10.00
#8	\$5.00	#33	\$10.00
#9	\$5.00	#34	\$10.00
#10	\$5.00	#35	\$10.00
#11	\$5.00	#36	\$10.00
#12	\$5.00	#37	\$10.00
#13	\$5.00	#38	\$10.00
#14	\$5.00	#39	\$10.00
#15	\$5.00	#40	\$10.00
#16	\$5.00	#41	\$10.00
#17	\$5.00	#42	\$10.00
#18	\$5.00	#43	\$10.00
#19	\$5.00	#44	\$10.00
#20	\$5.00	#45	\$10.00
#21	\$5.00	#46	\$10.00
#22	\$5.00	Subtotal	\$305.00
#23	\$5.00		
#24	\$5.00		
#25	\$5.00		

BOURBON STEAK & PUB		AMOUNT ON CARD
#1		\$60.00
#2		\$60.00
#3		\$60.00
#4		\$60.00
#5		\$60.00
#6		\$60.00
#7		\$60.00
#8		\$60.00
#9		\$60.00
#10		\$60.00
#11		\$60.00
#12		\$60.00
#13		\$60.00
#14		\$60.00
#15		\$60.00
#16		\$60.00
Subtotal		\$960.00

RESTAURANT	TOTAL AMOUNT
STARBUCKS	\$305.00
BOURBON STEAK & PUB	\$960.00
Subtotal	\$1,265.00

Appendix E: CVB Employee Vacation Payouts

CVB	FY 2018-19				FY 2017-18		
Employee	Pay Date	Vacation Pay Amount (\$)	Payout Hours		Pay Date	Vacation Pay Amount (\$)	Payout Hours
CVB Employee 1	8/29/2018	2,162.77	46.15		6/29/2018	9,700.84	207.0
CVB Employee 2	8/29/2018	495.69	15.4		6/29/2018	1,939.99	41.4
CVB Employee 3	8/29/2018	333.10	15.4		6/29/2018	812.21	17.3
CVB Employee 4	8/29/2018	481.25	15.4		6/29/2018	724.76	15.5
CVB Employee 5	8/29/2018	989.77	30.75		6/29/2018	3,758.61	80.2
CVB Employee 6	8/29/2018	761.37	30.75		6/29/2018	2,502.59	53.4
CVB Employee 7	8/29/2018	1,790.32	30.75		6/29/2018	6,423.42	137.1
CVB Employee 8	8/29/2018	703.37	15.4		6/29/2018	1,182.99	25.2
CVB Employee 9	8/29/2018	457.69	15.4		6/29/2018	1,839.14	39.2
CVB Employee 10	8/29/2018	342.65	15.4		6/29/2018	801.97	17.1
CVB Employee 11	8/29/2018	367.29	15.4		6/29/2018	637.37	13.6
		\$8,885.27				\$30,323.89	

Appendix F: City Response to Report Recommendations



**City of
Santa Clara**
The Center of What's Possible

City Manager's Office

October 30, 2019

Ms. Denise Callahan
President & Principal Consultant
TAP International, Inc.
3436 American River Drive, Suite 9
Sacramento, CA 95864

Re: Contract Close Out Review: Convention and Visitor's Bureau Draft Report August 2019

Dear Ms. Callahan:

Thank you for your final draft audit report. Staff has had the opportunity to review the key findings of your audit and has prepared the following responses to your nine Recommendations. As requested under your audit requirements, the City has provided a response to each Recommendation with one of three possible options:

1. City provides response and outlines corrective action plan to address the recommendations;
2. City can agree or disagree and have no other narrative; or
3. City does not agree or disagree and will take recommendations under advisement.

For clarification, it should be noted that the audit refers to the Contractor throughout the audit and that this response refers to the "Contractor" as the Santa Clara Chamber of Commerce (Chamber).

This letter, along with proposed responses from staff (through a staff report), will be presented to the City Council on November 12, 2019 for their consideration. Following the presentation of your report to the City Council, the Council will make the final determination on the proposed responses and any next steps:

Recommendation 1

The City should consider whether it wants to pursue \$448,068 in cumulative CVB reserves retained by the Contractor through Fiscal Year (FY) 2016-17.

Response to Recommendation 1: Staff agrees with the calculation of the unspent funds in the CVB reserves and will seek Council direction regarding the return of funds.

Recommendation 2

The City should determine whether it wants to allow the Contractor to use the CVB reserves for operating expense incurred in FY 2017-18 and 2018-19 that exceeded the contract's "not to exceed" amounts of \$57,885 and \$78,079, respectively.

Response to Recommendation 2: Staff agrees with the calculation of overspent funds. Staff will seek Council direction regarding whether expenditures should be offset by the CVB reserves retained by the Chamber.

1500 Warburton Avenue • Santa Clara, CA 95050 • Phone: (408) 615-2210 • Fax: (408) 241-6771 • www.santaclaraca.gov

TAP International, Inc.

Subject: Contract Close Out Review: Convention and Visitor's Bureau Draft Report August 2019

October 30, 2019

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Recommendation 3

The City should seek reimbursement from the Contractor for shared operating costs of \$50,267.

Response to Recommendation 3: Staff agrees with the calculation of shared operating costs and will request Council direction regarding reimbursement.

Recommendation 4

The City should seek reimbursement of \$704 for its portion of the revenue generated from the sale of tickets for area attractions.

Response to Recommendation 4: Staff agrees with the calculation of the ticket sale revenues and will request Council direction regarding reimbursement.

Recommendation 5

The City should seek reimbursement of \$52,940 in net credit card expenses that were identified as "not allowable", "questionable" or "not verifiable." (This amount includes a reduction of the value of the purchased gift cards returned to the City by the Contractor of \$1,265.)

Response to Recommendation 5: Staff agrees with the calculation that \$52,940 in net credit card expenses were determined to be as "not allowable", "questionable" or "not verifiable" and will request Council direction regarding reimbursement.

Recommendation 6

The City should seek a refund from merchants for the purchased gift cards in its possession that were returned from the Contractor.

Response to Recommendation 6: Staff agrees with the calculation but given the time and effort that would be required to contact and engage merchants to request a refund, believe that the total staff cost outweigh the value of the gift cards. Accordingly, staff recommends we assess future opportunities on how to utilize the gift cards as a community benefit.

Recommendation 7

The City should release \$4,993 from the held TID funds to reimburse expenses on the outstanding TID invoices submitted by the Contractor.

Response to Recommendation 7: Staff agrees with the calculation. Staff will seek Council direction regarding reimbursement.

Recommendation 8

Because the Contractor could not provide documentation to support its claim that TID-funded Contractor employees were actively engaged in TID activities between July and August 2018, the City should withhold reimbursement to the Contractor for \$61,092 in TID expenditures for employee salary, benefits, taxes, bonuses, vacation payouts and payroll processing fees incurred during this period. The City should also not reimburse \$2,372 in other credit card and employee expense reimbursement requests.

TAP International, Inc.

Subject: Contract Close Out Review: Convention and Visitor's Bureau Draft Report August 2019

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Response to Recommendation 8: Staff agrees that any expenses that cannot be verified, whether it be staff time and or other, should not be reimbursed.

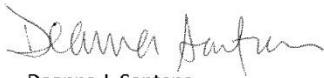
Recommendation 9

The City should conduct further review for any potential violation of laws for the use of public funds to support Contractor member recruiting and Contractor use of gift cards.

Response to Recommendation 9: Staff agrees with this recommendation and have submitted a copy of the August 2019 draft report "Contract Close Out Review: Convention and Visitor's Bureau" to the City Attorney's Office for review to assess if there are any potential violation of the law regarding the use of public funds. Determination is pending review.

Staff has provided responses based on instructions provided. Staff will seek City Council direction on reimbursements and policy directions regarding next steps. The decision to pursue funds owed to the City may entail legal action and as such would be directed by City Council.

Sincerely,



Deanna J. Santana
City Manager

cc: Brian Doyle, City Attorney



Agenda Report

21-219

Agenda Date: 2/9/2021

REPORT TO THE STADIUM AUTHORITY

SUBJECT

Adopt the Stadium Authority's Resolution Amending the Conflict of Interest Codes for Designated Positions as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

The California Political Reform Act requires all public officials, employees, and consultants who make or participate in the making of governmental decisions to disclose any economic interest that could be affected by those decisions. Under Government Code Section 87302 of the Political Reform Act, certain designated officials and employees of the City are required to file a Statement of Economic Interest (Form 700) because of the nature of their position with the public agency. These officials, staff members and consultants serve in positions that have been designated by the Stadium Authority's Conflict of Interest Code as being required to file such statements.

Under the Political Reform Act, an individual consulting to a government agency is required to file a Form 700 when they assume office and annually thereafter if the consultant makes governmental decisions as defined in the FPPC regulations or when they serve in a staff capacity and participate in governmental decisions or performs the duties of an individual in the agency's conflict-of-interest code. Not every person that is subject to the Act has to file a Form 700, just statutory filers who are expressly listed in the Act and designated officials who the agency designate in the conflict of interest code, which includes new positions or consultants who meet the standard above.

DISCUSSION

All public officials, including "consultants," are prohibited from making, participating in making, or influencing any government decision having a foreseeable, material financial effect on their economic interests. This conflict of interest prohibition applies irrespective of whether an individual is designated in a conflict of interest code. This means that Stadium Manager's employees still had an obligation to comply with state law even when they were not expressly listed in the Authority's conflict of interest code.

On March 7, 2018, Stadium Authority Counsel requested advice from the FPPC regarding its designation of ManCo employees as consultants who are required to file Form 700 financial disclosure statements. Following receipt of FPPC Advice Letter A-18-039, the Stadium Authority Secretary notified the one individual official (Jim Mercurio) who ManCo's General Counsel had identified as performing the contracting function on behalf of the Stadium Authority under the Management Agreement that he must file a Form 700 as a consultant under the Stadium Authority's

Conflict of Interest Code. Mr. Mercurio filed his initial Form 700 and has since filed annual statements.

The reason that Mr. Mercurio was the only person initially identified as a consultant under the Stadium Authority Conflict of Interest Code is that Management Company actively thwarted access to the Stadium Authority's financial and contractual records. As Stadium Authority staff gained knowledge of which Management Company officials were actually exercising the public agency authority that had been delegated, staff sent additional notifications to those officials to file Form 700's as consultants under the Conflict of Interest Code.

Instead of complying with the notices, Management Company retained counsel, Ms. Ruthann Ziegler, to try to convince the FPPC staff that the Stadium Authority's notifications to file were not proper. In a letter dated March 20, 2020, the FPPC suggest that the Code Reviewing Body, the City Council acting as the Stadium Authority Board, to make the determination as to who is responsible for filing Form 700s. Subsequently, the City Clerk sent filing notices to those ManCo positions the City determined required to file Form 700s. On March 23, 2020, ManCo sent a letter that it was evaluating the notices.. Stadium Authority Counsel followed-up with a letter explaining how staff came to this determination, and made the City available for a discussion with ManCo regarding the designation of consultants and applicable conflict provisions. On May 5, 2020, Ms. Ziegler subsequently responded in writing that without any explanation ManCo had determined that Mr. Schoeb and Mr. Mercurio were required to file Form 700s. That same day Stadium Authority Counsel followed up with an email requesting additional information regarding how they came to that determination.

Having heard nothing from ManCo for more than 7 months, the Stadium Authority prepared this report to update the Authority's Conflict of Interest Code with the ManCo positions that are required to file Form 700 as consultants under applicable state laws and regulations.

The 2018 amendment to the Stadium Authority's Conflict of Interest Code in adding the consultant designation is legally sufficient to create a duty to file a Form 700 on the part of individual 49ers Stadium Management Company (Management Company) officers who are performing decision-making functions on behalf of the Stadium Authority. In an effort to make such designations even clearer, staff recommends that the Stadium Authority's Board include in the resolution that designation of the Management Company's an agent for the Stadium Authority which is subject the code.

In addition, the Board should adopt a Resolution amending Appendix A of the Code to revise the position for Consultant to Consultant/New Positions and providing the Executive Director with the authority to determine when a consultant or a new position is required to comply with the disclosure requirements described in the Code. The new positions are subject to the broadest disclosure category in the code, unless the Executive Director authorizes a narrower disclosure for new positions with limited duties.

The following individual officials of Stadium Manager and their respective positions have been determined to meet the consultant designation and are required to file a Form 700 under the Stadium Authority's Conflict of Interest Code:

President
Executive Vice President & General Manager

Chief Financial Officer
Chief Revenue Officer
General Counsel

We have included language that provides the Executive Director with the authority to determine which consultants or new positions that will be subject to the Conflict of Interest Code and the ability to assign the applicable disclosure category. This procedure is fully authorized under the regulations and is the proper way to identify those positions that may be required to file a Form 700 between the times the Code is updated biennially.

ManCo submitted a letter from Ms. Ziegler six minutes before the January 26, 2021 Stadium Authority meeting requesting a continuance of the Board's action on adopting the resolution amending its Conflict of Interest Code and challenged the Stadium Authority's designation of ManCo positions. Neither Ms. Ziegler nor any other ManCo representative appeared at the meeting to explain why the period from May 5, 2020 to January 26, 2021 had not been sufficient opportunity for having a "meaningful discussion" of their concerns.

The Stadium Authority Board directed Stadium Counsel to meet with ManCo regarding their concerns regarding the designations under the Stadium Authority Conflict of Interest Code. Neither Ms. Ziegler nor Ms. Gordon has responded to Stadium Authority's Counsel's request to have a discussion. Instead, Ms. Ziegler sent another letter at 4:45 PM on January 29, 2021, the date set by the Board. Ms. Ziegler's letter reiterated that two positions should be designated, the Executive Vice President and General Manager and the Chief Revenue Officer but failed to explain her rationale for objecting to the designation of the other ManCo officials that staff has identified as consultants who required to file Form 700, nor did the letter explain why she could not actually discuss her concerns with staff or appear at the Board meeting to answer the Board's questions.

On February 1, 2020, Stadium Authority Counsel sent a letter responding to Ms. Ziegler's letter. The following is a summary of the legal support for the recommended action by the Board and summary of Stadium Manager's contract, legal, and fiscal actions taken on behalf of the Stadium Authority- each clearly qualifying for Form 700 completion.

The Basic Rule and Guide to Conflict of Interest Regulations is set forth in subsection (a) of Section 18700 of the FPPC Regulations (2 Cal. Code Regs. Sec. 18700):

A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103).

Under subsection (c) of Section 18700, public official includes consultants of a local government agency such as the Stadium Authority.

Section 18700.3 provides the guidance as to whether a particular officer of a consultant company in

contract with a public agency is acting as a consultant within the meaning of the Act. A simple reading of subsections (D) and (E) must lead to the conclusion that Mr. Guido is indeed acting as a public official in that he is both authorizing the booking of event contracts and executing sponsorship revenue agreements on behalf of the Stadium Authority, such as the Title Sponsorship Agreement for the Redbox Bowl signed by Mr. Guido as Management Company President and Mr. Schoeb as VP, Corporate Partnerships.

Perhaps more relevant to the question of which Management Company officers are subject to state conflict of interest law is subsection (a)(2) of Section 18700.3. Under that subsection a consultant includes an individual who, pursuant to a contract with a local agency:

Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Section 87302.

The Management Agreement and its amendments delegated an extraordinary degree of governmental decision-making authority from the Stadium Authority to Management Company. The Board delegated virtually all of its authority to book non-NFL events and receive sponsorship revenue and charge expenses for those events to Management Company. Thus, Management Company officials who exercise that delegated authority are both making governmental decisions and performing the same or substantially all the same duties for the agency as agency officials. For this reason as well, Mr. Guido is properly designated as a consultant under the Stadium Authority's Conflict of Interest Code.

Ms. Gordon's letter explaining Mr. Guido's divestiture of his position in KORE Software Holdings, LLC that contracted for Stadium Authority non-NFL customer services relationship service is further acknowledgement of Mr. Guido's status as being subject to conflict of interest law. If Mr. Guido were not subject to conflict law, why would he have had to undo his financial arrangement with KORE? And, why did Ms. Gordon disclose this action to the Stadium Authority?

Another instance in which Management Company officials have been making governmental decisions and performing substantially the same duties as agency officials is with regard to the Stadium Authority budget. Management Company Chief Financial Officer Scott Sabatino has consistently asserted his authority to override direction from the Stadium Authority Treasurer with regard to myriad budgetary decisions such as the allocation of Shared Expenses including expenditures to third party contractors and vendors, allocation of payroll time of ManCo employees between NFL activities and non-NFL activities, setting of commission structures for ManCo employees who book non-NFL events, allocation of non-NFL revenue to StadCo for advertising and "rental" of equipment and space. But most of all, it is Mr. Sabatino's more recent usurpation of the Stadium Authority Board's budget approval process, to the degree that he issues Stadium Authority debt in the form of Revolving Loan draws and repayments, that requires us to conclude that he is making governmental decisions and acting in a Stadium Authority staff capacity. Mr. Sabatino cannot both usurp the Stadium Authority's governmental power and deny that that usurpation does not subject him to the legally mandated ethical standards that go along with the exercise of that power.

Likewise, Management Company's General Counsel, and for that matter Deputy General Counsel,

have usurped the role of Stadium Authority Counsel. They have provided legal advice contrary to Stadium Authority's clear direction not just with regard to the actions taken by Mr. Guido and Mr. Sabatino with regard to the governmental decisions that they are making and the extent of their authority as agents acting in the role of Stadium Authority officials; they have directly refused to follow clear legal guidance with respect to the Stadium Authority's contractual and financial records. They have against the advice and direction of the Authority's Counsel prevented the Authority from possessing its own records. The General Counsel's actions of providing Stadium Manager legal advice on fiscal, operational, and potential/actual conflicts of interests are yet more examples of their activity taken on behalf of the Stadium Authority. Again, Management Company's General Counsel and Deputy General Counsel cannot now disavow the state laws governing exercise of the power of agency authority that they have usurped.

In response to Ms. Ziegler's objection to the Resolution providing the Executive Director with the authority to designate other individuals as consultants, it should be noted that the FPPC advises local agencies to take this approach. See slide 27 of the FPPC's training to local agencies:

https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Training-and-Outreach/Local_Agency_Code_Video.pdf.

The detail into which the proposed resolution goes in amending the Stadium Authority's Code in specifically identifying individuals who are subject to the Code is not strictly required because the law already requires consultants like the 49ers to comply with the Act. However, in an effort to ensure that 49ers officials comply with the law, staff is recommending a more specific statement of the designation by identifying individuals who are subject to the Code. It should be pointed out that the City has not had to go to this extent because no other consultants - unlike the 49ers - have been so uncooperative in fulfilling their obligations to comply with state law.

The recommended action will ensure compliance with the California Political Reform Act and updates the list of positions who are required to fill the California Fair Political Practice Commission Form 700 - Statement of Economic Interests for the Stadium Authority.

ENVIRONMENTAL REVIEW

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

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

COORDINATION

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

PUBLIC CONTACT

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

RECOMMENDATION

Adopt the Resolution amending the Stadium Authority Conflict of Interest Code required by the Political Reform Act and Regulations of the Fair Political Practices Commission.

Approved by: Brian Doyle, City Attorney

ATTACHMENTS

1. Resolution of the Stadium Authority and attached Conflict of Interest Code and Appendices
2. 04.18.18 FPCC Advice Stadium Authority Consultant in its Conflict of Interest Code
3. 07.22.19 Ziegler Letter to Brian Doyle
4. 02.10.20 Letter to D.Santana re KORE
5. 03.20.20 FPPC Letter re ManCo Consultants
6. 03.23.20 Letter re Form 700 Notices
7. 03.30.20 SCSA Response to 03.23.20 Letter Requesting Determination
8. 05.05.20 Reply to Letter to D. Santana
9. 01.26.21 Public Comment by Forty Niners Stadium Management Company to Agenda Item 2.K (January 26, 2021 Stadium Authority Meeting)
10. 01.27.21 City Attorney Reply Forty Niners Management Company Public Comment_ Santa Clara Stadium Authority- Agenda Item 2.K- January 26, 2021 meeting
11. 01.29.21 Response by Forty Niners Stadium Management Company to Stadium Authority's Request for Additional Information at its January 26, 2021 Meeting
12. 02.01.21 Letter to Ruthann Ziegler re Jan. 29, 2021 Response by Forty Niners Stadium Management Company to Stadium Authority
13. City Clerk Form 700 Letter Notices

RESOLUTION NO. XX-X (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY
AMENDING THE CONFLICT OF INTEREST CODE FOR DESIGNATED POSITIONS
AS REQUIRED BY THE POLITICAL REFORM ACT AND
REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION**

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, the Political Reform Act of 1974, Government Code Sections 81000 et seq., requires certain public agency officials and employees to file economic disclosure forms ("Form 700") and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest;

WHEREAS, the Political Reform Act requires the Stadium Authority to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the Stadium Authority has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act;

WHEREAS, the Stadium Authority's 2018 amendment to the Conflict of Interest Code specifically added the consultant designation to create a duty on the part of the 49ers Stadium Management Company, as the City's consultant in managing the stadium operations, to require its officers to file a Form 700;

WHEREAS, when a consultant is given influence or authority with regard to local agency decisions or serves in a staff capacity, that consultant is generally considered a public official. Such consultants are subject to conflict of interest laws to ensure that their governmental actions

do not improperly benefit their financial interests; and

WHEREAS, on March 20, 2020 the Stadium Authority received additional advice from the Fair Political Practices Commission (FPPC) and has reviewed and considered suggested changes to the listing of designated positions of Stadium Authority officials including consultants, along with assigned disclosure categories, in the Conflict of Interest Code; and

WHEREAS, while not required, the Stadium Authority proposes to amend its Conflict of Interest Code to expressly list those positions within the Management Company that are required to file a Form 700 in accordance with the Political Reform Act;

WHEREAS, consistent with FPPC advice and the Political Reform Act, the determination regarding whether or not a consultant is a public official is made by the designated agency, or delegated employee or department that hires the consultant, in consultation with its legal counsel. A consultant does not have authority to decide whether or not they are a public official; and

WHEREAS, the Stadium Authority also hereby provides the Executive Director with the authority to add any new positions when required under the Political Reform Act.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

1. That the Santa Clara Stadium Authority's Conflict of Interest Code, attached hereto and incorporated herein by reference, is hereby adopted and includes the following:

(a) The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings.

Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the Stadium Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code so adopted amends and replaces any Conflict of Interest Code previously in effect to conform to this newly adopted code.

(b) Designated officials, employees, and consultants shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara and its authorities.

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 SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 26th DAY OF JANUARY 2021, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:
ABSTAINED:	BOARD MEMBERS:

ATTEST: _____
NORA PIMENTEL, MMC
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

1. Santa Clara Stadium Authority Conflict of Interest Code with Appendices A and B

SANTA CLARA STADIUM AUTHORITY CONFLICT OF INTEREST CODE

SECTION 1: CONFLICT OF INTEREST CODE - ADOPTED

The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the Santa Clara Stadium Authority (Stadium Authority), which is considered the agency within the purview of this code. The Conflict of Interest Code of the Stadium Authority so adopted amends and replaces any Conflict of Interest Code of the Stadium Authority previously in effect to conform to this newly adopted code.

SECTION 2: CONFLICT OF INTEREST CODE - STATEMENTS

Designated employees shall file statements of economic interests with the Santa Clara City Clerk, who shall be and perform the duties of filing officer for the Stadium Authority.

SECTION 3: SAVINGS CLAUSE

Any change provided for in this conflict of interest code shall not affect or excuse any offense or act committed or done or omission or any penalty or forfeiture incurred or accruing under any other conflict of interest code; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered in connection with any other conflict of interest code.

Appendix A: On file in City Clerk's Office

Appendix B: Attached

APPENDIX A
DESIGNATED POSITIONS REQUIRED TO FILE

Officials Who Manage Public Investments

Pursuant to Government Code section 87200, officials who manage public investments as defined by 2 California Code of Regulations § 18701(b) are also subject to the disclosure requirements of the Political Reform Act and are required to file full Statements of Economic Interests. It has been determined that the positions listed below manage public investments and will file a statement of economic interests pursuant to Government Code Section 87200. These positions are listed for informational purposes only:

- Board Members
- Executive Director
- Stadium Authority General Counsel
- Stadium Authority Finance Director, Treasurer and Auditor

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

Designated Positions	Disclosure Categories
Senior Management Analyst	1
Consultant/New Positions*	1, 5

*Consultants/New Positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: the Executive Director may determine in writing that a particular consultant or new position, although a “designated person,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties, and based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Sec. 81008.)

In addition, Consultants include all natural persons who are independent contractor consultants or such members, officers or employees of companies who by contract with the Stadium Authority make decisions on behalf of the Stadium Authority that may foreseeably have a material effect on any of their financial interests as further specified in 2 Cal. Code Regs. Sec.

18700.3. Consultant specifically includes, but is not limited to, such members, officers or employees of the Forty Niners Stadium Management Company, LLC who pursuant to a contract with the Santa Clara Stadium Authority have made or continue to make decisions on behalf of the Stadium Authority which may foreseeably have a material effect on any of their financial interests. This designation includes the following officers or employees of Forty Niners Stadium Management Company, LLC:

Consultant	Position	Categories
Forty Niners Stadium Management Company, LLC	President	1, 5
Forty Niners Stadium Management Company, LLC	Executive Vice President and General Manager	1, 5
Forty Niners Stadium Management Company, LLC	Chief Financial Officer	1, 5
Forty Niners Stadium Management Company, LLC	Chief Revenue Officer	1, 5
Forty Niners Stadium Management Company, LLC	General Counsel	1, 5
Forty Niners Stadium Management Company, LLC	Any other individual officer or employee who is determined by the Executive Director as satisfying the definition of consultant in 2 Cal. Code of Regs. Section 18700.3	1, 5

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES

Category 1 - All designated positions in this category shall disclose all sources of income, including receipt of gifts, loans, and travel payments, investments, interests in real property within the jurisdiction of the Stadium Authority, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 2 - All designated positions in this category shall disclose all sources of income, including receipt of gifts, loans, and travel payments, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management.

Category 3 - All designated positions in this category shall disclose all interests in real property within the jurisdiction of the Stadium Authority.

Category 4 - All designated positions in this category shall disclose all sources of income, including receipt of gifts, loans, and travel payments, investments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management if the business entity or source of income is of the type which provides services, equipment, lease space, materials or supplies to the Stadium Authority.

Category 5 - All designated positions in this category shall disclose all investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from, sources that filed a claim with or against the Stadium Authority during the previous two years, or have a claim pending with or against the Stadium Authority.



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

April 18, 2018

RECEIVED

APR 20 2018

CITY OF SANTA CLARA
CITY ATTORNEY'S OFFICE

Brian Doyle
City Attorney Stadium Authority Counsel
Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Your Request for Advice
Our File No. A-18-039

Dear Mr. Doyle:

This letter responds to your request for advice on behalf of the Santa Clara Stadium Authority ("Authority") regarding the conflict of interest code provisions of the Political Reform Act (the "Act").¹ This advice solely pertains to the conflict of interest code provisions of the Act, and does not address other conflict of interest prohibitions such as common law conflict of interest or Section 1090. Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. Please also note that we do not provide advice regarding past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

Does the Act require the Authority to include as a "consultant" in its Conflict of Interest Code an individual who works for the Forty Niners Stadium Management Company LLC ("Stadium Manager" or "ManCo") and makes procurement decisions on behalf of the Authority pursuant to the amended Stadium Management Agreement?

CONCLUSION

Yes. The Act requires the Authority to include that individual as a "consultant" in its Conflict of Interest Code.²

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Section 87302(b) requires a "designated employee," as defined in Section 82019, to file Statements of Economic Interests ("Form 700") as required by the Act.

FACTS AS PROVIDED BY REQUESTOR

You are the City Attorney for the City of Santa Clara and the Stadium Authority Counsel for the Authority, a joint powers agency established pursuant Section 6500 et seq. On March 28, 2012, the Authority, ManCo, and the Forty Niners SC Stadium Company, LLC ("StadCo") entered into the Stadium Management Agreement. The purpose of the Stadium Management Agreement was to secure management services for the then-under-construction Levi's Stadium. Completed in 2014, Levi's Stadium is located in the City of Santa Clara, owned by the Authority, managed by ManCo, and leased to StadCo.

On November 13, 2012, the Authority approved the First Amendment to the Stadium Management Agreement, authorizing ManCo to enter into contracts on behalf of the Authority for the purchase of supplies, materials and equipment, and services relating to the Levi's Stadium and its operations. You note that it appears that the Authority did not examine the issue of whether the Act's conflict of interest provisions applied to any individuals that work for ManCo at that time. The Authority's initial Conflict of Interest Code did not include a consultant designation, and no individual who worked for ManCo was designated in that Code.

The Authority recently amended its Code to include a consultant designation. You have requested formal written advice confirming the accuracy of your analysis that an individual who works for ManCo and makes procurement decisions on behalf of the Authority pursuant to the amended Stadium Management Agreement is a "consultant" under the Act, required to be included in the Authority's Code and to file Form 700.

ANALYSIS

Section 87100 of the Act prohibits a public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. Section 82048 defines "public official" as "every member, officer, employee or consultant of a state or local government agency." Regulation 18700.3 defines "consultant" for purposes of Section 82048 and provides in pertinent part as follows:

- (a) For purposes of Sections 82019 and 82048, "consultant" means an individual who, pursuant to a contract with a state or local government agency:
 - (1) Makes a governmental decision whether to:
 - (A) Approve a rate, rule, or regulation;
 - (B) Adopt or enforce a law;
 - (C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (D) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
 - (E) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
 - (F) Grant agency approval to a plan, design, report, study, or similar item;
 - (G) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(2) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Section 87302.

Thus, there are two ways that an individual may become a "consultant" under the Act. First, an individual is a "consultant" if he or she, pursuant to a contract with a state or local government agency, makes a governmental decision described in Regulation 18700.3(a)(1). Alternatively, an individual is a "consultant" if he or she, pursuant to a contract with a state or local government agency, (1) serves in a staff capacity and (2) either participates in governmental decisions, as defined,³ or performs the same or substantially all the same duties that would otherwise be performed by an individual in a position listed in the agency's code.

Section 2.1 of the of the amended Stadium Management Agreement delegates substantial procurement authority to ManCo and provides as follows:

2.1 Stadium Procurement Contracts. In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("Stadium Procurement Contracts"), as and to the extent the Executive Director has authority to enter in such Stadium Procurement Contracts pursuant to Sections 17.30.180 of the Santa Clara City Code ("SCCC"), as approved on first reading by the Santa Clara City Council on November 13, 2012.

Thus, the amended Stadium Management Agreement delegates to ManCo the full authority of the Authority's Executive Director under the Santa Clara City Code to approve and enter into "Stadium Procurement Contracts" for the purchase of supplies, materials and equipment, and services relating to Levi's Stadium and its operations.

ManCo is not a "consultant" for purposes of the Act because only an individual may be a "consultant" under Regulation 18700.3(a). An individual who works for ManCo is a "consultant" if that individual meets that regulation's definition of the term.

As noted above, Regulation 18700.3(a)(1) provides that an individual is a "consultant" if he or she makes a governmental decision pursuant to a contract with a local government agency to,

³ Regulation 18704(a) provides that an official "makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency," and Regulation 18704(b) states that an "official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review."

among other things, enter into a contract of the type requiring agency approval (subparagraph (D)), or grant agency approval to a contract—or the specifications for a contract—which requires agency approval and to which the agency is a party (subparagraph (E)).

An individual who works for ManCo and exercises the authority granted to ManCo pursuant to Section 2.1 of the amended Stadium Management Agreement makes governmental decisions pursuant to a contract with the Authority, including decisions to approve and enter into contracts of the types described in Regulation 18700.3(a)(1)(D) and (E). Therefore, that individual is a “consultant” under the Act, the Authority must include that individual as a “consultant” in its Conflict of Interest Code, and that individual must file Form 700 as required by the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Brian G. Lau
Assistant General Counsel

A handwritten signature in black ink, appearing to read 'Matthew F. Christy', is written over the typed name.

By: Matthew F. Christy
Counsel, Legal Division

MFC:jgl

Law Office of

Ruthann G. Ziegler

3308 El Camino Avenue

Suite 300, #427

Sacramento CA 95821

916-330-3170

rziegler@rzieglerlaw.com

<https://www.rzieglerlaw.com/>

July 22, 2019

VIA EMAIL; bdoyle@santaclaraca.gov

Brian Doyle, Stadium Authority Counsel

Santa Clara Stadium Authority

1500 Warburton Avenue

Santa Clara, CA 95050

RE: Stadium Procurement Contracts

Dear Mr. Doyle:

Thank you for your June 10, 2019, letter to which this letter responds.

I appreciate your calling my attention to Section 2.1 of the First Amendment to the Stadium Management Agreement. That section delegates various authority and discretion held by the Stadium Authority in regard to the Stadium. Your letter requests: "All records prepared, owned, used, or retained by ManCo related to the exercise of the procurement authority delegated to it in section 2.1 of the First Amendment to the Management Agreement." The Management Company has provided all documents it is legally obligated to provide with regard to any outstanding requests under the California Public Records Act ("CPRA").

Please note that Section 2.1 is not the only delegation of authority to the Stadium Manager. For example, Section 2.6 delegates a variety of functions to the Stadium Manager and Section 2.3 allows the Stadium Manager to obtain services from its affiliates. Therefore, not every agreement or action taken by the Stadium Manager is pursuant to the authority delegated under Section 2.1.

Please note also that the Management Company, as a private entity, is not subject to the CPRA. Your letter references the FPPC and the applicability of conflict of interest laws to James Mercurio. I am unaware of any applicable law which finds that a private entity is subject to the CPRA merely because one of its representatives may be subject to conflict of interest provisions. Your letter also references *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017). That case addressed whether writings in the possession of public officials and employees were not public records merely because the writings were on privately owned electronic devices. The case did not address writings in the possession of private employees of a private entity.

As stated previously, the Management Company is willing to continue to provide materials in its possession consistent with the terms of the Stadium Management Agreement, including Section 15.12 and Section 7 of the First Amendment.

Sincerely,



Ruthann G. Ziegler

cc: Hannah Gordon, Chief Administrative Officer and General Counsel

Jihad Beauchman, Vice-President, Deputy General Counsel

Larry MacNeil, Compliance Manager



February 10, 2020

VIA EMAIL-DSantana@SantaClaraCA.gov

Deanna J. Santana
Executive Director
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana,

Since 2014, Stadium Manager has licensed customer relationship management software from KORE Software Holdings, LLC ("KORE") for use at the Stadium. The annual expense has been allocated between StadCo and SCSA as a Shared Stadium Expense.

In September 2018, Al Guido, the San Francisco Forty Niners President, accepted KORE's invitation to join its Board of Directors. KORE paid Mr. Guido an annual retainer, and gave him the option (which he did not exercise) to purchase shares in KORE. Following our internal review, Mr. Guido has resigned from the Board, and he retains no connection with that company. Mr. Guido has returned the money KORE paid to him as an annual retainer. As noted, Mr. Guido never exercised any stock options, and has not otherwise invested in KORE at any point.

To eliminate any potential concerns, Stadium Manager is also returning to SCSA all payments allocated to it for KORE CRM software as a Shared Stadium Expense, before, during and after Mr. Guido's service on its Board. Stadium Manager will make a wire transfer next week to SCSA in the amount of \$ 115,773.29, which is the total amount charged to SCSA funds in connection with the KORE relationship from 2014 through the present. In addition, any future payments to KORE pursuant to existing contracts will not be charged to SCSA as a Shared Stadium Expense.

Copies of Mr. Guido's termination documents are included with this letter.

Please feel free to contact me if you have any questions.

Sincerely,

DocuSigned by:

A handwritten signature in blue ink, appearing to read 'H. Gordon'.

0B36ED2B93AA45B...

Hannah Gordon

Chief Administrative Officer & General Counsel

From: Guido, Al
Sent: Saturday, January 4, 2020 9:10 AM
To: Lance Felton
Subject: KORE Board Resignation - Al Guido

Dear Lance,

I write to confirm my resignation from the KORE board, effective as of December 15, 2019. KORE was a longtime provider of services and a leader in the industry for many years before I joined the board in October 2018 and will undoubtedly continue as such. For various reasons, I have decided to both step down from the board and return the funds that I received. (Please provide the wire information at your convenience.) As you know, I never purchased any KORE stock or options or received any other financial benefit.

Yours truly,

Al Guido

Al Guido
President
San Francisco 49ers



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

March 20, 2020

Nora Pimentel
Stadium Authority Secretary
City of Santa Clara Stadium Authority
npimentel@santaclaraca.gov

**Re: Filing Officer Referrals COM-02222020-00564 (Guido); COM-02222020-00565 (Schoeb)
COM-02222020-00566 (Ernstrom); COM-02222020-00567 (Oppelt)**

Dear Ms. Pimentel,

This letter is in response to the non-filer referrals you submitted to the Enforcement Division of the Fair Political Practices Commission regarding the above-referenced individuals. Your referral alleges that Mr. Guido, Mr. Schoeb, Ms. Ernstrom, and Mr. Oppelt have failed to file Statements of Economic Interests ("SEI") as "consultants" with your agency. However, there is no evidence to suggest that these individuals qualify as consultants and are required to file SEIs under the Political Reform Act (the "Act").¹

Under Regulation 18329.5, when the Commission is not the code reviewing body for a conflict of interest code, the Commission will not render assistance regarding the interpretation of an agency's conflict of interest code or the application of that code to a specific individual unless specific criteria are met. Subsection(a)(3)(B) requires an agency to request a determination from the code reviewing body first. The code reviewing body for the Authority is the Santa Clara City Council.

If you disagree with the determination of the code reviewing body, you may request advice from the Commission's Legal Division. Because it is not clear whether the above-named individuals are required to file SEIs, we are rejecting these referrals at this time. If the City Council determines that these individuals must file SEIs, or you receive advice from the Commission's Legal Division that they must file SEIs, please re-refer the matters to the Enforcement Division if the individuals do not file in response to at least two written notifications. If you have any questions, please contact Ginny Lambing at glambing@fppc.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "G West".

Galena West
Chief, Enforcement Division
GW:gal

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

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rziegler@rzieglerlaw.com

<https://www.rzieglerlaw.com/>

March 23, 2020

By email and by U.S. mail

Nora Pimentel, Stadium Authority Acting Secretary
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
NPimentel@SantaClaraCA.gov

RE: Response to February 11, 2020 Notices
Filing of Form 700

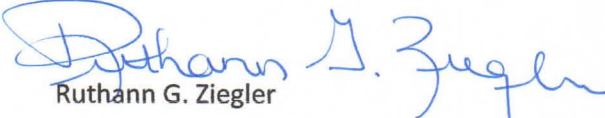
Dear Ms. Pimentel:

This letter is on behalf of the San Francisco Forty Niners Management Company ("Management Company") which is the authorized representative of Al Guido, Brent Schoeb, Jim Mercurio, Patricia Ernstrom, and Ryan Oppelt (collectively, "Affected Parties") in the matter described below. This letter relates to your December 18 and December 24, 2019 notices ("First Notices") and your February 11, 2020 Notices ("Second Notices") to the Affected Parties.

Please be aware that the Management Company and the Affected Parties are reviewing issues relating to the Notices including, but not limited to, the request for determination sent to you today, the validity of seven years of retroactive application of a conflict of interest code, and the validity of retroactive application of a conflict of interest code to a consultant when the code did not include that category. We have also sought guidance from the Fair Political Practices Commission.

The Affected Parties intend to fully comply with applicable portions of the Fair Political Practices Act and FPPC Regulations.

Sincerely,


Ruthann G. Ziegler

Cc: Deanna Santana, SCSA Executive Director

Brian Doyle, SCSA General Counsel

Hannah Gordon, CAO and General Counsel
San Francisco Forty Niners Management Company

March 30, 2020

Via Email and U.S. Mail
rziegler@rzieglerlaw.com



Law Office of Ruthann G. Ziegler
3308 El Camino Avenue
Suite 300, #427
Sacramento, CA 95821

Re: Response to March 23, 2020 letter – FPPC Regulation 18329.5

Dear Ms. Ziegler:

I am writing in response to your March 23, 2020 letter to Nora Pimentel regarding FPPC Regulation 18329.5. Specifically, you question the designation of Al Guido, Brent Schoeb, Jim Mercurio, Patricia Ernstrom, and Ryan Oppelt as Consultants under the Santa Clara Stadium Authority's Conflict of Interest Code (Code), based on the fact that the term "execution of contracts" was used in the letter informing them of that determination.

There is history to the Stadium Authority's effort to properly designate individual Management Company's officers and employees as subject to the Code, an effort that that has been met with apparent bad faith by Management Company at every turn.

When I became Interim City Attorney at the beginning of February 2017 I began to examine the various documents that constitute the agreements regarding the leasing and management of the Stadium by the 49ers. Not very far into my examination I began to realize that a less-than-adequate analysis of the various potential conflicts of interests had been performed. On May 26, 2017 I sent an email to the 49ers' General Counsel Hannah Gordon advising her of my concerns. On June 28, 2017, I followed up on my previous email as I had not heard back from Ms. Gordon. Copies of those emails are attached. (Attachment #1) In my June 28, 2017 email I advised Ms. Gordon of the California Supreme Court's then-recent ruling in *People v. Sahlolbei* concerning possible criminal liability for consultants who violate Government Code Section 1090.

I was appointed as the permanent City Attorney in December 2017.

I did not hear again from Ms. Gordon on my concerns about conflicts of interest until we began corresponding in March 5, 2018 when I advised her that I would be seeking an advice letter from the FPPC. On March 6, 2018 Ms. Gordon informed me that Mr. Jim Mercurio performs the procurement functions that had been delegated to the Management Company. Copies of the emails are attached as Attachment #2.

My request for advice resulted in Advice Letter A-18-039.

Following the receipt of the Advice Letter we informed Mr. Mercurio of his need to file a Form 700, and Mr. Mercurio has partially complied, but has not yet filed the required statements for prior years dating back to when he began his procurement duties.

In December 2019, the Stadium Manager provided the Stadium Authority with the attached Venue Use Agreement (Attachment #3) which included a Sponsorship Agreement with Red Box Bowl. (Attachment #4) Mr. Al Guido signed the Venue Use Agreement with the two conferences as well as the Sponsorship Agreement with Red Box. Mr. Guido as president of the Management Company signed on behalf of the Stadium Authority as this event is a non-NFL event under the Management Agreement. Under the Agreement the revenue and expenses of the events belong to the Stadium Authority, a JPA that is subject to the Political Reform Act and Government Code Section 1090.

Despite a demand by me for an unredacted copy of the Sponsorship Agreement, the 49ers supplied the Stadium Authority only with a redacted version. In a conversation with the 49ers Deputy General Counsel Jihad Beauchman, Mr. Beauchman told me that the Stadium Manager received \$900,000 for the first year of the agreement and \$927,000 for the second year. These were the numbers that have apparently been redacted from Section 8 of the Sponsorship Agreement. When I questioned Mr. Beauchman about why the Stadium Authority had only received less than \$500,000 in sponsorship revenue for each of those years, Mr. Beauchman told me that Stadium Manager had made the decision to transfer a little more than \$400,000 in sponsorship funding to Stadium Company for them to provide NFL signage for the event.

It is our belief that Mr. Guido has a financial interest in Stadium Company and that he participated in the decision to negotiate the receipt of the \$900,000 from Red Box and to assign \$400,000 to Stadium Company in which we believe he has an interest. Prior to receipt of this set of documents the Stadium Authority was unaware that Mr. Guido was executing contracts on the Stadium Authority's behalf. Because of the 49ers' refusal to provide us with our records, we do not know the extent of Mr. Guido's participation in the making of contracts or other decisions that would be subject to State conflict of interest law. The email in which Management Company's General Counsel informed me only that Mr. Jim Mercurio was procuring contracts is contained within Attachment #2.

Based upon the recently received documents we determined that Mr. Guido and the others also have contracting authority on behalf of the Stadium Manager. Consequently, the Stadium Authority Secretary advised Mr. Guido and the others of their need to file a Form 700. A copy of the letter to Mr. Guido is attached as Attachment #5.

We require your good faith assistance in determining whether Mr. Guido's execution of contracts has been merely ministerial, secretarial, or clerical. We assumed that because he is indeed President and that the contracts were significant that he was authorizing and approving the terms of the contracts that he was executing within the meaning of Regulation 18700.3.

Indeed, on February 10, 2020, Management Company's General Counsel Hannah Gordon sent a letter to Stadium Authority Executive Director disclosing Mr. Guido's undoing of a financial interest in KORE Software Holdings, LLC in apparent acknowledgement of Mr. Guido's status as a Consultant under the Stadium Authority's Conflict of Interest Code.

Given your clients' history of noncooperation in determining the status of Management Company's officers and employees status as Consultants, I must look at your letter's phrasing ("Executing a contract can be ministerial...") with a jaundiced eye. Clearly, virtually all of the Stadium Authority's contracting and spending authority was delegated to Management Company, and several people have been making contracting decisions and authorizing the expenditure of public money which are decisions subject to state conflict of interest law.

If you are suggesting that our assumption that the individuals that Ms. Pimentel designated as consultants were authorizing and approving Stadium Authority contracts because they were executing them is incorrect, then please provide us with the names of the Management Company's officers and employees who have been exercising the authority to make these decisions and we will formally designate them.

This is not a game of darts. Liability under Government Code Section 1090 and the Political Reform Act can have serious liability for the individuals who are found to violated the law. I don't see how you are doing these folks any favors by playing these word games. Of course, I would be happy to discuss the facts and my assumptions about those with both you and Ms. Gordon so that we can make sure that everyone understands their responsibilities, but it will require your forthright cooperation. Sadly, that is something that has been lacking since I first raised these issues with Ms. Gordon three years ago.

Very truly yours,



Brian Doyle
Stadium Authority Counsel

BD:omc

I:\STADIUM AUTHORITY\Letter to Ziegler - Response to 3-23-20 letter FPPC 18329.5.docx

cc: Deanna J. Santana, Executive Director
Hannah Gordon, CAO and General Counsel

From: Brian Doyle
Sent: Tuesday, May 5, 2020 2:52 PM
To: Ruthann Ziegler
Cc: Deanna Santana; Nora Pimentel
Subject: RE: San Francisco Forth Niners Management Company--Form 700s
Attachments: Letter to D.Santana 02.10.20.pdf

Ms. Ziegler:

Can you please explain how you determined that Mr. Schoeb is a consultant as defined by defined by FPPC Regulation 18700.3? Also please explain how Mr. Guido, who was impliedly identified by Hannah Gordon as being subject to state conflict of interest law (see attached letter), was determined by you not to be a consultant as defined by FPPC Regulation 18700.3. Please provide copies of all records by which you made those determinations.

Thank you,

Brian Doyle | City Attorney
City Attorney's Office
1500 Warburton Avenue | Santa Clara, CA 95050
D: 408.615.2234 | F: 408.249.7846



**City of
Santa Clara**
The Center of What's Possible

From: Ruthann Ziegler <rziegler@rzieglerlaw.com>
Sent: Tuesday, May 5, 2020 10:06 AM
To: Brian Doyle <BDoyle@SantaClaraCA.gov>
Subject: San Francisco Forth Niners Management Company--Form 700s

Thank you for your March 30 letter. The individuals who are "consultants", as that term is defined by FPPC Regulation 18700.3, on behalf of the Management Company are Brent Schoeb and Jim Mercurio. Mr. Schoeb will file a combined assuming office and annual Statement of Economic Interest and Mr. Mercurio will [file](#) an annual Statement of Economic Interest.

Ruthann G. Ziegler
Attorney at Law

Law Office of Ruthann G. Ziegler
3308 El Camino Avenue
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916-330-3170
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January 26, 2021

By email

Santa Clara Stadium Authority
PublicComment@santaclaraca.gov

RE: January 26, 2021 Meeting of Santa Clara Stadium Authority
Agenda Item 2K re Conflict of Interest Codes for Designated Positions

Dear Authority Members:

On behalf of the Forty Niners Stadium Management Company ("Management Company"), I am writing to express concern about two issues in regard to Agenda Item 2.K of today's meeting relating to the adoption by the Santa Clara Stadium Authority ("Authority") of a resolution amending the Authority's Conflict of Interest Code. The issues are: (1) designating several new positions to file Form 700 Statements of Economic Interests ("Form 700") without adequate basis and (2) delegation of discretionary decision-making authority to the Authority's Executive Director. I want to respectfully alert you that it may be prudent for these matters, currently calendared on the Authority's consent calendar, to be continued for further review and discussion.

1. Designation of Additional Management Company Employees and Officers to File Form 700s

The Staff Report for Agenda Item 2K indicates that Management Company employees or officers "who are performing decision-making functions on behalf of the Stadium Authority" must file a Form 700. (See Staff report, item 4, second paragraph.) However, that is not the legal standard established by the Political Reform Act. Rather, Fair Political Practices Commission Regulation 18700.3 identifies when a consultant is, in fact, subject to conflict of interest rules.

§ 18700.3. Consultant, Public Official Who Manages Public Investments: Definitions.

(a) For purposes of Sections 82019 and 82048, "consultant" means an individual who, pursuant to a contract with a state or local government agency:

(1) Makes a governmental decision whether to:

...

(D) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;

(E) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

(F) Grant agency approval to a plan, design, report, study, or similar item;

... or

(2) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code....

The above definition does not rely on mere decision-making as the basis for finding a consultant subject to the Political Reform Act or being designated in a conflict of interest code to file a Form 700.

The Management Company agrees that the positions and related duties of Management Company's Executive Vice President and General Manager and Chief Revenue Officer of the Management Company should be designated positions and the individual in each of those two positions file a Form 700.

Currently, Jim Mercurio is the Executive Vice President & General Manager of the Management Company. His role includes leading the maintenance and operation of Levi's Stadium, including any construction or other capital expenditure projects and procurement of any and all vendor agreements related to the maintenance and operation of the stadium. Mr. Mercurio has filed a Form 700 for several years and will continue to do so.

Brent Schoeb is the current Chief Revenue Officer for the Management Company. His role includes the booking of all Non-NFL Events and the servicing of all Stadium Builder License accounts, as well as the sales and service of the Stadium's naming rights partner. Mr. Schoeb will file a Form 700.

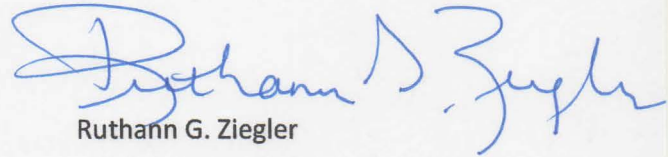
However, the staff report for Item 2.K also designates, without providing any detail, the positions of President, Chief Financial Officer, and General Counsel with the Management Company to file Form 700s. We ask the Authority to continue this matter so there can be meaningful discussions between the Management Company and the Authority as to the role of those three positions and whether they fit within the definition of "consultant" under § 18700.3.

2. Delegation of Authority to Executive Director for Determining Form 700 Filing Requirement

The Political Reform Act requires local agencies, including cities, to review and update as necessary their conflict of interest code. This biennial update includes the review of new or substantially changed positions which may trigger the addition or deletion of a position to file a Form 700. (Government Code §87306.5.) The discretion and obligation to review such positions rests with the governing body. (See Government Code §87306 which specifies that the agency (here, the Authority Board) "shall amend its Conflict of Interest Code, subject to the provisions of Section 87303, when change is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to subdivision (a) of Section 87302 and relevant changes in the duties assigned to existing positions." Here, Agenda Item 2.K purports to delegate that authority to the Stadium Authority's Executive Director, which is inconsistent with the clear direction of §87306. We ask that this decision-making role remain with the Stadium Authority Board, as is consistent with past practice of the Stadium Authority, the City Council, and local agencies throughout California, as well as consistent with the clear direction of Government Code §87306.

I respectfully ask that Agenda Item 2K be considered for further review and discussion. Thank you for your attention to this matter.

Sincerely,



Ruthann G. Ziegler

Cc: MayorAndCouncil@santaclaraca.gov

Deanna Santana, Executive Director

Brian Doyle, Authority Counsel

Hannah Gordon, General Counsel, Management Company

From: [Brian Doyle](#)
To: [Ruthann Ziegler](#)
Cc: [Gordon, Hannah](#); [Ona Claney](#); [Elizabeth Klotz](#); [Sujata Reuter](#)
Subject: RE: Forty Niners Management Company Public Comment: Santa Clara Stadium Authority- Agenda Item 2.K- January 26, 2021 meeting
Date: Wednesday, January 27, 2021 11:37:45 AM
Attachments: [RE_San Francisco Forth Niners Management Company--Form 700s.pdf](#)
[image003.png](#)

Good Morning Ms. Ziegler,

It is unfortunate that you did not make the effort last night to speak to the Stadium Authority Board directly to elaborate on your concerns about their adoption of the Stadium Authority's conflict of interest code. The Board Members had many questions that remained unanswered due to the Management Company's failure to send a representative to explain your last-minute request for a continuance.

In order to hear the 49ers' "side of the story", however, the Board continued their consideration of the resolution for two weeks with the direction that you provide a response to my May 5, 2020 email. I had hoped that if you had responded within the past 7 months, it would have provided us with an opportunity to have a "meaningful discussion" of the 49ers' concerns in plenty of time to allow the Board to act.

Hopefully you or someone in the 49ers' organization watched the Board's discussion and is aware of the deadlines for providing the Board with feedback on your concerns.

I invite you and Ms. Gordon to set up a time for us to discuss how best to get the appropriate Management Company officials in compliance with their obligations to file Form 700s in accordance with California law.

Thank you for your anticipated cooperation.

Brian Doyle | City Attorney
City Attorney's Office
1500 Warburton Avenue | Santa Clara, CA 95050
D: 408.615.2234 | F: 408.249.7846



From: Ruthann Ziegler <rziegler@rzieglerlaw.com>
Sent: Tuesday, January 26, 2021 3:53 PM
To: Public Comment <PublicComment@santaclaraca.gov>

Cc: Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>; Deanna Santana <DSantana@SantaClaraCA.gov>; Brian Doyle <BDoyle@SantaClaraCA.gov>; Gordon, Hannah <hannah.gordon@49ers.com>

Subject: Forty Niners Management Company Public Comment: Santa Clara Stadium Authority- Agenda Item 2.K- January 26, 2021 meeting

Attached please find public comment on behalf of the Forty Niners Management Company regarding Agenda Item 2.K on the January 26, 2021 agenda of the Stadium Authority.

Please contact me if you have any questions.

Ruthann G. Ziegler

Attorney at Law

Law Office of Ruthann G. Ziegler

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January 29, 2021

By email

Brian Doyle, General Counsel
Santa Clara Stadium Authority

RE: Forty Niners Management Company
Response to January 26, 2021 Direction of Stadium Authority
Form 700s and Potential Conflicts of Interest

Dear Mr. Doyle:

On behalf of the Forty Niners Stadium Management Company ("Management Company"), we appreciate the opportunity to provide additional information to the Stadium Authority regarding the issues raised in my January 26, 2021 letter.

The Management Company takes seriously its responsibility to the Stadium Authority and to the Santa Clara community to be ethically and legally compliant in the management of Levi's Stadium. We have worked with our staff and advisors, Authority representatives, and FPPC staff to understand that responsibility and comply with applicable rules and regulations.

1. Prior Communications

Your May 5, 2020 email to me was discussed at the January 26 meeting. It is helpful to put that email into context. As you may recall, on December 18 and 24, 2019, Nora Pimentel as Acting Secretary of the Stadium Authority sent notices to various officers and employees of the Management Company, informing each that he or she had to file a Form 700. Each notice indicated the date of assuming office was March 28, 2012¹, the date when the Stadium Authority and the Management Company executed the Management Agreement. Each notice also directed the recipient to file retroactively a Form 700 for

¹ The FPPC requires a Form 700 for assuming office to be filed within 30 days of assuming that office or otherwise be subject the filer to penalties for late filing. Therefore, direction in 2019 to file a Form 700 with an assuming office date of seven years earlier is designed to put the filer at immediate risk of penalties.

2013, 2014, 2015, 2016, 2017, and 2018.² Interestingly, the Authority did not add the category of “consultant” to its conflict of interest code until February 2018.

As noted above, the Management Agreement between the Stadium Authority and the Management Company was executed in March 2012. No one in the City nor the Stadium Authority, and not even the Fair Political Practices Commission, raised any issues about potential conflicts of interest until 2017 when you became City Attorney and Stadium Authority counsel and made this your focus.^{3, 4}

In response to the notices sent by Ms. Pimentel, I submitted a March 23, 2020 letter pursuant to FPPC Regulation §1832.59(a)(3)(A) raising two questions: (1) the Stadium Authority’s use of a standard to determine who constituted a consultant which differed from the standard established by the FPPC and (2) rationale for the use of a retroactive date of seven years for assuming office, when such date preceded the addition of “consultant” to the Authority’s conflict of interest code. My letter also asked for the responses to be in the context of how the Authority had handled other consultants and their Form 700 filings. (A copy of my letter is attached.)

You responded in a March 30, 2020 letter (copy attached, without referenced exhibits). The second-to-the-last paragraph of your letter asked me to provide the names of Management Company officers and employees who had been exercising certain decision making authority. I did so in my May 5 email to you. Please recognize that the timing of my responses reflects the in-depth discussions with the Management Company on these important matters.

Your response to my May 5 email rejected our position that Mr. Schoeb was a consultant and our position that Mr. Guido was not. Furthermore, you requested “all records by which [I] made those determinations”, which I could not do as providing such materials would violate attorney-client privilege. Unfortunately, both your March 30 and May 5 responses failed to address the two questions I raised in my March 23 letter to Ms. Pimentel.

2. Proposed changes to the Stadium Authority’s Conflict of interest Code

a. *Designation of Management Company officers and employees as consultants*

The January 26, 2021 staff report recommended adding the positions of Executive Director, Chief Revenue Office, President, Chief Financial Officer, and General Counsel to the list of consultants who must file Form 700s pursuant to the Authority’s conflict of interest code. We agree that the first two could be characterized as consultants but fail to understand why the last three would be included. As stated in our January 26 letter, it would be helpful for either you as Authority Counsel or Authority staff

² The same risk applies to the notice’s direction that each individual should file seven years of retroactive Form 700s.

³ During the January 26, 2021, joint meeting of the City Council and the Stadium Authority, you stated: “Pretty much the first thing I did [when I became City Attorney and Authority Counsel] was to read the agreements between the Stadium Authority and the Management Company, as well as the lease. And particularly in regard to the Management Agreement, when I read it, I determined that it was absolutely riddled and fraught with possibilities for violations of state law with respect to conflicts of interest.” This was the first time such issues were raised; they were not raised by the prior City Attorney or Authority Counsel or outside counsel.

⁴ You stated more than once during the January 26 meeting that the Management Company and/or its General Counsel had agreed that the Management Company or its representatives had violated conflict of interest provisions. That is not an accurate characterization.

to identify which decisions each of those last three positions are making which come within the scope of FPPC Regulation § 18700.3. Since the City and the Stadium Authority use many third party consultants and contractors, such as Spectra, it would appear likely that the City/Authority have also determined some of them to be Form 700 filers. Identifying those to us would help us better understand your position.

b. Delegation of authority to Executive Director for determining Form 700 filing requirement

The Political Reform Act requires local agencies, including cities, to review and update as necessary their conflict of interest code. This biennial update includes the review of new or substantially changed positions which may trigger the addition or deletion of a position to file a Form 700. (Government Code §87306.5.) The discretion and obligation to review such positions rests with the governing body. (See Government Code §87306 which specifies that the agency (here, the Authority Board) "shall amend its Conflict of Interest Code, subject to the provisions of Section 87303, when change is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to subdivision (a) of Section 87302 and relevant changes in the duties assigned to existing positions." The January 26 staff report recommended the delegation of that authority to the Stadium Authority's Executive Director, which is inconsistent with the clear direction of §87306.

3. Applicable rules and regulations

The question is whether officers and employees of the Management Company are "consultants" as defined by the Political Reform Act and thus required to file a Statement of Economic Interests, commonly referred to as "Form 700." Fair Political Practices Commission Regulation 18700.3 identifies when a consultant is, in fact, subject to conflict of interest rules.

§ 18700.3. Consultant, Public Official Who Manages Public Investments: Definitions.

(a) For purposes of Sections 82019 and 82048, "consultant" means an individual who, pursuant to a contract with a state or local government agency:

(1) Makes a governmental decision whether to:

...

(D) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;

(E) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

(F) Grant agency approval to a plan, design, report, study, or similar item;

... or

(2) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code....

The above definition does not rely on mere decision-making as the basis for finding a consultant subject to the Political Reform Act or for being designated in a conflict of interest code to file a Form 700.⁵

⁵ During the January 26, 2021 joint meeting of the City Council and the Stadium Authority, Mayor Gillmor indicated several times that the signing of contracts by a Management Company representative triggered the label of

Rather, an individual must engage in a specified type of decision-making to be considered a "consultant" and be required to file a Form 700.

4. Role of Management Company Representatives

The Management Company agrees that the positions and related duties of the Management Company's Executive Vice President and General Manager and of Chief Revenue Officer could be designated as consultants subject to Form 700 filing requirements.

Jim Mercurio is the Executive Vice President and General Manager of the Management Company. His role oversees the maintenance and operation of Levi's Stadium, including any construction or other capital expenditure projects as well as the procurement of all vendor agreements related to the maintenance and operation of the Stadium. Mr. Mercurio has filed a Form 700 for several years and will continue to do so.

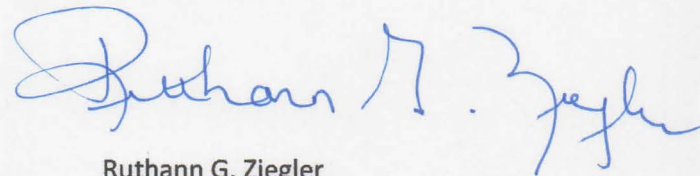
Brent Schoeb is the current Chief Revenue Officer for the Management Company. His role includes the booking of Non-NFL Events and servicing of Stadium Builder License accounts (although the Stadium Authority determines the price and contract terms), as well as the sales and service of the Stadium's naming rights partner. Mr. Schoeb can file a Form 700.

The Management Company has almost 100 full-time employees. Each has various duties and obligations, which may include some degree of decision-making. However, again, please note that the mere act of making a decision does not trigger the Form 700 requirement; rather, it is only a specific type of decision-making, as outlined above, which results in the Form 700 requirement.

5. Conclusion

Again, we appreciate the opportunity to respond to the Stadium Authority pursuant to its January 26 meeting. If you have further questions or wish to discuss, please feel free to contact me so that we can set up a meeting as soon as possible.

Sincerely,



Ruthann G. Ziegler

Cc: MayorAndCouncil@santaclaraca.gov

Deanna Santana, Executive Director

Hannah Gordon, General Counsel, Management Company

"consultant" and triggered the obligation to file a Form 700. However, that is not the standard set forth in §18700.3.



February 1, 2021

Via email
rziegler@rzieglerlaw.com

Law Office of Ruthann G. Ziegler
3308 El Camino Avenue
Suite 300, #427
Sacramento, CA 95821

RE: Your January 29, 2021 Letter disputing Consultant designation of 49ers Stadium Management Company officials

Dear Ms. Ziegler:

Your January 29, 2021 letter to me (delivered via email at 4:45 pm) completely side-steps answering the central question at hand: whether Al Guido, President of the Forty-Niners Stadium Management Company LLC, is subject to California conflict of interest law (the "Political Reform Act or "Act" and FPPC Regulations), and secondarily whether he is properly designated as a Consultant under the Stadium Authority's Conflict of Interest Code.

The basic rule and guide to the Conflict of Interest Regulations is set forth in subsection (a) of Section 18700 of the FPPC Regulations (2 Cal. Code Regs. Sec. 18700):

A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103).

Under subsection (c) of Section 18700, public official includes consultants of a local government agency such as the Stadium Authority.

As you correctly cite, Section 18700.3 provides the guidance as to whether a particular officer of a consultant company in contract with a public agency is acting as a consultant within the meaning of the Act. A simple reading of subsections (D) and (E) must lead one to the conclusion that Mr. Guido is indeed acting as a public official in that he is both authorizing the booking of event contracts and executing sponsorship revenue

agreements on behalf of the Stadium Authority, such as the Title Sponsorship Agreement for the Redbox Bowl signed by Mr. Guido as Management Company President and Mr. Schoeb as VP, Corporate Partnerships.

The statement in your letter that I “rejected our (the 49ers’) position that Mr. Schoeb was a consultant and our position that Mr. Guido was not” is simply incorrect. In my May 5, 2020 email I stated:

Can you please explain how you determined that Mr. Schoeb is a consultant as defined by defined by FPPC Regulation 18700.3? Also please explain how Mr. Guido, who was impliedly identified by Hannah Gordon as being subject to state conflict of interest law (see attached letter), was determined by you not to be a consultant as defined by FPPC Regulation 18700.3. Please provide copies of all records by which you made those determinations.

By requesting your rationale for accepting the Stadium Authority’s designation of Mr. Schoeb as a consultant under Section 18700.3 when the evidence for that was that he had signed the Redbox Bowl sponsorship agreement, I was trying to determine the basis for your refusal to recognize the designation of Mr. Guido as a consultant given that he co-signed the same agreement. Both were acting in the same capacity.

Perhaps more relevant to the question of which Management Company officers are subject to state conflict of interest law is subsection (a)(2) of Section 18700.3 which you also cite in your letter. Under that subsection a consultant includes an individual who, pursuant to a contract with a local agency:

Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency’s Conflict of Interest Code under Section 87302.

As you are aware, the Management Agreement and its amendments delegated an extraordinary degree of governmental decision-making authority from the Stadium Authority to Management Company. The Board delegated virtually all of its authority to book non-NFL events and receive sponsorship revenue and charge expenses for those events to Management Company. Thus, Management Company officials who exercise that delegated authority are both making governmental decisions and performing the same or substantially all the same duties for the agency as agency officials. For this reason as well, Mr. Guido is properly designated as a consultant under the Stadium Authority’s Conflict of Interest Code.

Ms. Gordon’s letter explaining Mr. Guido’s divestiture of his position in KORE Software Holdings, LLC that contracted for Stadium Authority non-NFL customer relationship services is further acknowledgement of Mr. Guido’s status as being subject to conflict of

interest law. If Mr. Guido were not subject to conflict law, why would he have had to undo his financial arrangement with KORE?¹

Another instance in which Management Company officials have been making governmental decisions and performing substantially the same duties as agency officials is with regard to the Stadium Authority budget. Management Company Chief Financial Officer Scott Sabatino has consistently asserted his authority to override direction from the Stadium Authority Treasurer with regard to myriad budgetary decisions such as the allocation of Shared Expenses including expenditures to third party contractors and vendors, allocation of payroll time of Management Company employees between NFL activities and non-NFL activities, setting of commission structures for Management Company employees who book non-NFL events, allocation of non-NFL revenue to Stadium Company for advertising and “rental” of equipment and space. But most of all, it is Mr. Sabatino’s more recent usurpation of the Stadium Authority **Board’s** budget approval process, to the degree that he issues Stadium Authority debt in the form of Revolving Loan draws and repayments, that requires us to conclude that he making governmental decisions and acting in a Stadium Authority staff capacity. Mr. Sabatino cannot both usurp the Stadium Authority’s governmental power and deny that that usurpation does not subject him to the legally mandated ethical standards that go along with the exercise of that power.

Likewise, Management Company’s General Counsel, and for that matter Deputy General Counsel, have usurped the role of Authority Counsel. They have provided legal advice contrary to my clear direction not just with regard to the actions taken by Mr. Guido and Mr. Sabatino with regard to the governmental decisions that they are making and the extent of their authority as agents acting in the role of Stadium Authority officials; they have directly refused to follow clear legal guidance with respect to the Stadium Authority’s contractual and financial records. They have against the advice and direction of the Authority’s Counsel prevented the Authority from possessing its own records. Again, Management Company’s General Counsel and Deputy General Counsel cannot now disavow the state laws governing exercise of the power of agency authority that they have usurped.

Although not relevant to the issue of the Stadium Authority Board’s consideration of consultant designation under Santa Clara’s Conflict of Interest Code, I will address a few other statements in your letter.

You state that the delegation of authority to Executive Director for determining Form 700 filing requirement is inconsistent with Government Code section 87306. However, the FPPC itself advises local agencies to take this approach. See slide 27 of the FPPC's training to local agencies: https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Training-and-Outreach/Local_Agency_Code_Video.pdf.

¹ This is another question which you have side-stepped in your belated response to my May 5, 2020 email.

Additionally, your letter raises the issue of timing of an inquiry into the issue of which Management Company officials are subject to state conflict of interest law. You imply that no one bothered to consider the issue until I entered the stage in 2017. I cannot explain why the 49ers' attorneys who drafted the Management Agreement failed in their responsibilities to perform due diligence on whether the delegated authority that they were building into to the public-private arrangement would require adherence to conflict of interest regulations. But I was certainly not alone in identifying the defect. In his testimony at the Tax Appeals Board, Mr. Frank Wisehart identified the potential conflict of interests inherent in how the Agreement had been set up. Regardless of when or how it finally dawned on Management Company that these laws applied to the performance of the contract, the individuals who were subject to the law were subject to it from the time they began exercising the public decision-making authority.

The experience with Ms. Gordon and Ms. Ingalls refusing to even respond to my invitation to discuss the matter, resulted in my having to seek an advice letter from the FPPC which found no difficulty in arriving at the conclusion that I had come to a year earlier.

The date upon which individuals must file an Assuming Office Statement of Financial Interest is set at 30 days from the date of assumption. The Stadium Authority amended its Conflict of Interest Code to include the Consultant designation on February 27, 2018. The reason that Santa Clara's Clerk initially notified only Mr. Mercurio that he was required to file a Form 700 was because he was the only individual identified by Ms. Gordan as exercising the delegated authority that would make him subject to the Code. You will recall that the 49ers have fiercely defended their position of not releasing copies of contracts and other financial records relating to non-NFL revenue and expenses to the Stadium Authority. For this reason, Stadium Authority staff was not able to identify the other individuals who should have also been subject to the Conflict of Interest Code.

I should note here that in my more than 30 years in the practice of municipal law, I have never encountered a consultant who so actively thwarted a good faith, open discussion of designation as a Form 700 filer. In my experience, this has always been a routine matter that results in a common understanding. As a recent example, the designated officials of the City's Convention Center manager have been regularly filing their Form 700's.

In many ways the detail into which the proposed resolution goes in amending the Stadium Authority's Conflict of Interest Code in specifically identifying individuals who are subject to the Code is overkill because the law already requires consultants like the 49ers to comply with the Act. However, in an effort to ensure that 49ers officials comply with the law, the Stadium Authority is being forced by the 49ers' obstinance to expressly identify individuals who are subject to the Code. It should be pointed out that the City has not had to go to this extent because no other consultants – unlike the 49ers - have been so uncooperative in fulfilling their obligations to comply with state law.

One advantage in the 49ers' having so strenuously resisted being subjected to the law is that the public can clearly see that the 49ers are not committed to transparently demonstrating the ethical handling public finances.

I will make myself available to have a meaningful discussion with you of any lingering questions that you have.

Sincerely,



Brian Doyle
Stadium Authority Counsel

cc: Board Chair and Boardmembers
Deanna Santana, Executive Director
Hannah Gordon, General Counsel, Management Company



December 18, 2019

Brent Schoeb, Vice President, Corporate Partnership
Forty Niners Stadium Management Company, LLC
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

SUBJECT: Statement of Economic Interest Form 700 Filing

Dear Mr. Schoeb:

Based upon recent disclosure that you are executing contracts on behalf of the Stadium Authority; the Stadium Authority has determined that you are a "Consultant" under the Stadium Authority's Conflict of Interest Code (see attached). Therefore, you are required to file a Statement of Economic Interest Form 700.

Every elected official and public employee who makes or influences governmental decisions is required to submit a Statement of Economic Interest, also known as the Form 700. The Form 700 provides transparency and ensures accountability in two ways:

1. It provides necessary information to the public about an official's personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances.
2. It serves as a reminder to the public official of potential conflicts of interest so the official can abstain from making or participating in governmental decisions that are deemed conflicts of interest

An individual must file the Form 700 within 30 days of assuming office and an annual statement for each calendar year of the contract. At the conclusion of services, a leaving office statement is required. The Political Reform Act requires certain public agency officials and employees to file economic disclosure forms (Form 700) and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest.

Under separate cover you will receive an email from my staff, Sophia Smith who will provide you with a link to file electronically. You will be filing an assuming office as of March 28, 2012

Mr. Schoeb, Vice President, Corporate Partnership
Re: Statement of Economic Interest Form 700 Filing
December 18, 2019
Page 2 of 2

and provide full disclosure of all investments, business positions, and interests in real property held on the date of assuming office and income received during the 12 months immediately preceding assuming office.

Your filing position is "Consultant" and the department your filing under is the Stadium Authority Executive Director. Please let me know if you have any questions about your requirements.

Cordially



Nora Pimentel,
Stadium Authority Secretary

CC: Deanna Santana, Executive Director
Brian Doyle, Stadium Authority Counsel

Attachment



February 11, 2020

Mr. Jim Mercurio, Executive Vice President
Forty Niners Stadium Management Company, LLC
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

SUBJECT: Statement of Economic Interest Form 700 Filing- 2nd Notification

Dear Mr. Mercurio:

In a letter dated December 24, 2019 the Stadium Authority notified you of its determination that you are a "Consultant" under the Stadium Authority's Conflict of Interest Code (see attached) and that therefore you are required to file a Statement of Economic Interest Form 700 within 30 days of assuming office and an annual statement for each calendar year of the contract.

Please be advised that any current efforts to resign from boards or withdraw from financial activity will not absolve you from the requirement to report and disclose a past financial interest on a Form 700 applicable to the reporting period in which the original financial interest existed.

As of today, the City has not received your outstanding statements, please file them by February 21, 2020. If you do not file all the required statements by that date, I will make a referral to the appropriate agencies for enforcement.

Please file the years that you would have been executing contracts on behalf of the Stadium authority. I forwarded pdfs of Form 700 for the filing years of 2012 through 2018. Please let me know if you need me to resubmit.

The annual filing for 2020 is coming up on April 1, 2020. You will receive an email 30 days in advance of the April 1 filing deadline and will be able to file electronically.

The Form 700 provides transparency and ensures accountability in two ways:

1. It provides necessary information to the public about an official's personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances.

Mr. Mercurio, Executive Vice President

Re: Statement of Economic Interest Form 700 Filing-2nd Notification

February 11, 2020

Page 2 of 2

2. It serves as a reminder to the public official of potential conflicts of interest so the official can abstain from making or participating in governmental decisions that are deemed conflicts of interest

The Political Reform Act requires certain public agency officials and employees to file economic disclosure forms (Form 700) and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest.

Your filing position is "Consultant" and the department your filing under is the Stadium Authority Executive Director. Please let me know if you have any questions about your requirements.

Cordially



Nora Pimentel,

Stadium Authority Secretary

CC: Deanna Santana, Executive Director
Brian Doyle, Stadium Authority Counsel

Attachment

RESOLUTION NO. 18-1 (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY
AMENDING THE CONFLICT OF INTEREST CODE FOR
DESIGNATED POSITIONS AS REQUIRED BY THE POLITICAL
REFORM ACT AND REGULATIONS OF THE FAIR POLITICAL
PRACTICES COMMISSION**

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, the Political Reform Act requires certain public agency officials and employees to file economic disclosure forms ("Form 700") and abstain from making or participating in governmental decisions which have a reasonably foreseeable material effect on an economic interest;

WHEREAS, the Political Reform Act requires the City and its various authorities to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the Stadium Authority has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act, Government Code §§ 81000 et seq.; and,

WHEREAS, the Stadium Authority has reviewed and considered administratively suggested changes to the listing of designated positions of Authority officials, along with assigned disclosure categories, in the Conflict of Interest Code.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY
AS FOLLOWS:**

1. That the City of Santa Clara Conflict of Interest Code, attached hereto and incorporated herein by reference, is hereby adopted and includes the following:

(a) The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which

contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Santa Clara Stadium Authority, which is considered the agency within the purview of this code. The Conflict of Interest Code so adopted amends and replaces any Conflict of Interest Code previously in effect to conform to this newly adopted code.

(b) Designated officials, employees, and consultants shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara and its authorities.

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 SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 27th DAY OF FEBRUARY 2018, BY THE FOLLOWING VOTE:

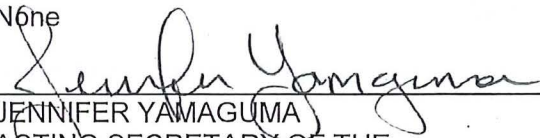
AYES: BOARD MEMBERS: Caserta, Davis, Mahan, and Watanabe and Mayor Gillmor

NOES: BOARD MEMBERS: None

ABSENT: BOARD MEMBERS: Kolstad and O'Neill

ABSTAINED: BOARD MEMBERS: None

ATTEST:


JENNIFER YAMAGUMA
ACTING SECRETARY OF THE
STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

1. Conflict of Interest Code with Appendices A and B



**City of
Santa Clara**
The Center of What's Possible

CITY OF SANTA CLARA CONFLICT OF INTEREST CODE

SECTION 1: CONFLICT OF INTEREST CODE - ADOPTED

The Political Reform Act, Government Code Sections 81000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which officials and employees are designated and Appendix B in which disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Santa Clara, which is considered the agency within the purview of this code. The Conflict of Interest Code of the City of Santa Clara so adopted amends and replaces any Conflict of Interest Code of the City of Santa Clara previously in effect to conform to this newly adopted code.

SECTION 2: CONFLICT OF INTEREST CODE - STATEMENTS

Designated employees shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara.

SECTION 3: SAVINGS CLAUSE

Any change provided for in this conflict of interest code shall not affect or excuse any offense or act committed or done or omission or any penalty or forfeiture incurred or accruing under any other conflict of interest code; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered in connection with any other conflict of interest code.

Appendix A: On file in City Clerk's Office

Appendix B: Attached

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Bayshore North Project Enhancement Authority	Acting Executive Director	1
Bayshore North Project Enhancement Authority	Acting Treasurer	1
Bayshore North Project Enhancement Authority	Authority Counsel	1
Bayshore North Project Enhancement Authority	Board Member	1
Bayshore North Project Enhancement Authority	Executive Director	1
Bayshore North Project Enhancement Authority	Treasurer	1
City Attorney's Office	Assistant City Attorney	1
City Attorney's Office	City Attorney	1
City Attorney's Office	Consultant	1
City Attorney's Office	Deputy City Attorney	1
City Attorney's Office	Executive Assistant to City Attorney	1
City Attorney's Office	Senior Deputy City Attorney	1
City Clerk's Office	Assistant City Clerk	1
City Clerk's Office	City Clerk/Auditor	1
City Clerk's Office	Consultant	1
City Clerk's Office	Management Analyst	1
City Manager's Office	Assistant City Manager	1
City Manager's Office	Chief Operating Officer	1
City Manager's Office	City Manager	1
City Manager's Office	Community Relations Manager	1
City Manager's Office	Consultant	1
City Manager's Office	Deputy City Manager	1
City Manager's Office	Executive Assistant to City Manager	1
City Manager's Office	Management Analyst	1
City Manager's Office	Assistant to the City Manager	1
City Manager's Office	Chief Stadium Authority Officer	1
Civil Service Commission	Commissioner	1
Department of Community Development	Assistant Planner I	1
Department of Community Development	Assistant Planner II	1
Department of Community Development	Associate Planner	1
Department of Community Development	Building Official	1
Department of Community Development	Code Enforcement Technician	1
Department of Community Development	Combination Inspector	1
Department of Community Development	Consultant	1
Department of Community Development	Development Review Officer	1
Department of Community Development	Director of Community Development	1
Department of Community Development	Housing & Community Services Division Manager	1
Department of Community Development	Housing Inspector	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Department of Community Development	Inspection Manager	1
Department of Community Development	Management Analyst	1
Department of Community Development	Plan Review Manager	1
Department of Community Development	Planning Manager	1
Department of Community Development	Plans Examiner	1
Department of Community Development	Principal Planner	1
Department of Community Development	Senior Inspector	1
Department of Community Development	Senior Inspector (Building)	1
Department of Community Development	Senior Inspector (Electrical)	1
Department of Community Development	Senior Permit Technician	1
Department of Community Development	Senior Plans Examiner	1
Department of Community Development	Staff Analyst I	1
Department of Community Development	Staff Analyst II	1
Department of Electric Utility	Assistant Director of Electric Utility/Energy Distribution	1
Department of Electric Utility	Assistant Director of Electric Utility/Planning & Strategic Services	1
Department of Electric Utility	Business Analyst/Fiber	4,8
Department of Electric Utility	Business Analyst/Public Benefits	4,8
Department of Electric Utility	Consultant	1
Department of Electric Utility	Chief Electric Utility Officer	1
Department of Electric Utility	Chief Operating Officer	
Department of Electric Utility	Electric Division Manager	1
Department of Electric Utility	Electric Program Manager	4,8
Department of Electric Utility	Electric Utility Network Administrator	4
Department of Electric Utility	Key Customer Representative	4,8
Department of Electric Utility	Power Account Clerk I	1
Department of Electric Utility	Power Account Clerk III	1
Department of Electric Utility	Power Contract Specialist	1
Department of Electric Utility	Power System Scheduler Trader	1
Department of Electric Utility	Power Trader	1
Department of Electric Utility	Principal Electric Utility Engineer	1
Department of Electric Utility	Principal Engineering Aide	4,8
Department of Electric Utility	Principal Power Analyst	1
Department of Electric Utility	Principal Utility Information Systems Manager	4
Department of Electric Utility	Resource Analyst II	4
Department of Electric Utility	Risk Control Analyst	1
Department of Electric Utility	Senior Key Customer Representative	4,8
Department of Electric Utility	Senior Power System Scheduler Trader	1
Department of Electric Utility	Sr. Business Analyst	4,8
Department of Electric Utility	Sr. Electric Division Manager	1
Department of Finance	Accounting Division Manager	1
Department of Finance	Acting Director of Finance	1
Department of Finance	Assistant Director of Finance	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Department of Finance	Business Analyst	1
Department of Finance	Budget and Treasury Division Manager	1
Department of Finance	Buyer	1
Department of Finance	Chief Storekeeper	2
Department of Finance	Director of Finance	1
Department of Finance	Management Analyst	1
Department of Finance	Municipal Services Division Manager	1
Department of Finance	Principal Accountant	1
Department of Finance	Principal Financial Analyst	1
Department of Finance	Purchasing Division Manager	1
Department of Human Resources	Assistant Director of Human Resources/EEO Officer	1
Department of Human Resources	Consultant	1
Department of Human Resources	Director of Human Resources/MERO	1
Department of Human Resources	Human Resources Division Manager	1
Department of Human Resources	Management Analyst	1
Department of Information Technology	Dir. Of Information Technology/Chief Information Officer	1
Department of Information Technology	Information Technology Services Manager	1
Department of Information Technology	Management Analyst	1
Department of Information Technology	Senior Information Technology Services Manager	1
Department of Parks & Recreation	Cemetery Operations Manager	2
Department of Parks & Recreation	Deputy Parks & Recreation Director	1
Department of Parks & Recreation	Management Analyst	1
Department of Parks & Recreation	Parks & Recreation Director	1
Department of Parks & Recreation	Parks Construction, Maintenance & Repair Supervisor	4
Department of Parks & Recreation	Recreation Manager	1
Department of Public Works	Assistant Public Works Director/City Engineer	1
Department of Public Works	Code Enforcement Officer	1
Department of Public Works	Building Maintenance Manager	2
Department of Public Works	Code Enforcement Technician	1
Department of Public Works	Compliance Manager	1
Department of Public Works	Consultant	1
Department of Public Works	Deputy Public Works Director	1
Department of Public Works	Director of Public Works	1
Department of Public Works	Environmental Program Manager	1
Department of Public Works	Fleet Manager	1
Department of Public Works	Materials Testing Technician	2
Department of Public Works	Principal Engineer	2
Department of Public Works	Principal Planner	1
Department of Public Works	Public Works Inspector	2

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Department of Public Works	Senior Engineer, Civil	2
Department of Public Works	Staff Analyst I - Environmental Programs	1
Department of Public Works	Traffic Engineer	2
Department of Water & Sewer Utilities	Assistant Director of Water & Sewer Utilities	1
Department of Water & Sewer Utilities	Assistant Water and Sewer Superintendent	1
Department of Water & Sewer Utilities	Code Enforcement Technician	1
Department of Water & Sewer Utilities	Compliance Manager	1
Department of Water & Sewer Utilities	Director of Water & Sewer Utilities	1
Department of Water & Sewer Utilities	Management Analyst	1
Department of Water & Sewer Utilities	Principal Engineer - Water	1
Department of Water & Sewer Utilities	Utility Business Systems Manager	1
Department of Water & Sewer Utilities	Water and Sewer Superintendent	1
Fire Department	Assistant Fire Marshal	1
Fire Department	Assistant Training Officer	2
Fire Department	Battalion Chief - Suppression	2
Fire Department	Battalion Chief - Training	2
Fire Department	Battalion Chief in EMS	2
Fire Department	Deputy Fire Chief	1
Fire Department	Deputy Fire Marshal	1
Fire Department	Deputy Fire Marshal - Hazardous Materials	1
Fire Department	Emergency Service Coordinator	2
Fire Department	Fire Chief	1
Fire Department	Fire Inspection Aide	2
Fire Department	Fire Marshal I/II/III	1
Fire Department	Fire Prevention Specialist	2
Fire Department	Fire Prevention Specialist I	2
Fire Department	Fire Prevention Specialist II	2
Housing Authority	Acting Treasurer	1
Housing Authority	Authority Counsel	1
Housing Authority	Board Member	1
Housing Authority	Secretary and Executive Director	1
Housing Authority	Treasurer	1
Housing Rehabilitation Loan Committee	Chair	1
Housing Rehabilitation Loan Committee	Committee Member	1
Industrial Development Authority	Board Member	1
Joint Financing Authority	Acting Chief Financial Officer	1
Joint Financing Authority	Chief Financial Officer	1
Joint Financing Authority	City Attorney	1
Joint Financing Authority	Director	1
Joint Financing Authority	Executive Director	1
Library Department	Assistant City Librarian	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Library Department	City Librarian	1
Library Department	Library Circulation Supervisor	4
Library Department	Library Division Manager - Support Services	1
Library Department	Library Program Coordinator - Branch Manager	4
Library Department	Library Program Coordinator - Reference	4
Library Department	Library Program Coordinator - Technical Services	4
Library Department	Library Program Coordinator - Technology	4
Library Department	Library Program Coordinator - Youth Services	4
Library Department	Library Technology Assistant	4
Library Department	Literacy Program Supervisor	4
Mayor and City Council	Council Member	1
Mayor and City Council	Mayor	1
Mayor and Council Office	Executive Assistant to Mayor & City Council	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Acting Board Member	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Board Member	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Board Member - Alternate	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Chair	1
Planning Commission	Commissioner	1
Police Department	Assistant Police Chief	1
Police Department	Communications Operations Manager	1
Police Department	Management Analyst	1
Police Department	Police Captain	3
Police Department	Police Chief	1
Police Department	Police Officer - P.A.L. Director	1
Police Department	Police Records Manager	1
Police Department	Staff Analyst I	1
Public Facilities Financing Corporation	Acting Director of Finance	1
Public Facilities Financing Corporation	Director	1
Public Facilities Financing Corporation	Director of Finance	1
Public Facilities Financing Corporation	Executive Director	1
Public Facilities Financing Corporation	General Counsel	1
Sports and Open Space Authority	Acting Treasurer	1
Sports and Open Space Authority	Board Member	1
Sports and Open Space Authority	Contract Administrator	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Sports and Open Space Authority	General Counsel	1
Sports and Open Space Authority	Treasurer	1
Stadium Authority	Acting Stadium Authority Finance Director, Treasurer and Auditor	1
Stadium Authority	Board Member	1
Stadium Authority	Executive Director	1
Stadium Authority	Stadium Authority Counsel	1
Stadium Authority	Consultant	1
Stadium Authority	Stadium Authority Finance Director, Treasurer and Auditor	1

"Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
5. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code Section 87302.

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES SPECIFICATION SHEET REPORTABLE INVESTMENTS, INTERESTS IN REAL PROPERTY AND INCOME

Disclosure
Category

1.	All investments and business positions in business entities, sources of income and interests in real property.
2.	Investments and business positions in business entities, and all sources of income.
3.	Interests in real property.
4.	Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit.
5.	Investments and business positions in, and income from entities which are book outlets, vendors or providers of business services.
6.	Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.
7.	Investments and business positions in business entities and income from sources which supply or manufacture solar energy systems.
8.	Investments and business positions in business entities and income from sources engaged in construction or development.
9.	Investments and business positions in, and income from sources engaged in the construction of public works projects.
10.	Investments and business positions in business entities and income from construction companies involved in progress payments.
11.	Investments and business positions in, and income from construction firms involved in construction projects subject to acceptance by the City Council.
12.	Investments and business positions in business entities and income from business entities of the type to provide bids, supplies, vehicles and equipment.
13.	Investments and business positions in, and income from entities which provide training, services or facilities of the type utilized by the City.
14.	Investments and business positions in business entities and sources of income which provide services and supplies of the type used in emergency services coordination and training activities.
15.	Investments and business positions in, and income from, Union Pension Funds that may be affected by the outcome of negotiations involving monetary settlements and employer-employee memorandum.
16.	Investments and business positions in, and income from entities providing medical services or facilities of the type used by the City.

17.	Investments and business positions in, and income from business entities engaged in providing eye examinations and eye glasses, including but not limited to opticians, ophthalmologists, etc.
18.	Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.
19.	Investments and business positions in, and income from business entities providing supplies, services, equipment or machinery of the type used by the City.
20.	Investments and business positions in, and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.
21.	Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.
22.	Investments and business positions in business entities, and income from sources which supply or manufacture firefighting equipment or supplies.



February 11, 2020

Al Guido, President
Forty Niners Stadium Management Company, LLC
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

SUBJECT: Statement of Economic Interest Form 700 Filing- 2nd Notification

Dear Mr. Guido:

In a letter dated December 18, 2019 the Stadium Authority notified you of its determination that you are a "Consultant" under the Stadium Authority's Conflict of Interest Code (see attached) and that therefore you are required to file a Statement of Economic Interest Form 700 within 30 days of assuming office and an annual statement for each calendar year of the contract.

Please be advised that any current efforts to resign from boards or withdraw from financial activity will not absolve you from the requirement to report and disclose a past financial interest on a Form 700 applicable to the reporting period in which the original financial interest existed.

As of today, the City has not received any of the required filings. Please file your outstanding statements by February 20, 2020. If you do not file all the required statements by that date, I will make a referral to the appropriate agencies for enforcement.

Please file the years that you would have been executing contracts on behalf of the Stadium authority. I forwarded pdfs of Form 700 for the filing years of 2012 through 2018. Please let me know if you need me to resubmit.

The annual filing for 2020 is coming up on April 1, 2020. You will receive an email 30 days in advance of the April 1 filing deadline and will be able to file electronically.

The Form 700 provides transparency and ensures accountability in two ways:

1. It provides necessary information to the public about an official's personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances.

Mr. Guido, President

Re: Statement of Economic Interest Form 700 Filing-2nd Notification

February 11, 2020

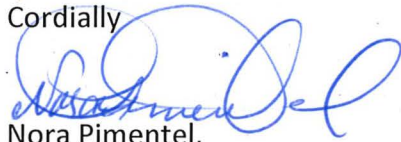
Page 2 of 2

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Your filing position is "Consultant" and the department your filing under is the Stadium Authority Executive Director. Please let me know if you have any questions about your requirements.

Cordially



Nora Pimentel,
Stadium Authority Secretary

CC: Deanna Santana, Executive Director
Brian Doyle, Stadium Authority Counsel

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WHEREAS, the Political Reform Act requires the City and its various authorities to adopt a local conflict of interest code that enumerates specific official and employee positions other than those specified in Government Code § 87200 which involve making or participating in making decisions which have a reasonably foreseeable material effect on an economic interest, and to designate for each position the types of investments, business positions, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position;

WHEREAS, the Stadium Authority has adopted a Conflict of Interest Code in compliance with the provisions of the Political Reform Act, Government Code §§ 81000 et seq.; and,

WHEREAS, the Stadium Authority has reviewed and considered administratively suggested changes to the listing of designated positions of Authority officials, along with assigned disclosure categories, in the Conflict of Interest Code.

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(b) Designated officials, employees, and consultants shall file statements of economic interests with the City Clerk, who shall be and perform the duties of filing officer for the City of Santa Clara and its authorities.

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 SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 27th DAY OF FEBRUARY 2018, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS: Caserta, Davis, Mahan, and Watanabe and Mayor Gillmor

NOES: BOARD MEMBERS: None

ABSENT: BOARD MEMBERS: Kolstad and O'Neill

ABSTAINED: BOARD MEMBERS: None

ATTEST:


JENNIFER YAMAGUMA
ACTING SECRETARY OF THE
STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

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**City of
Santa Clara**
The Center of What's Possible

CITY OF SANTA CLARA CONFLICT OF INTEREST CODE

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DESIGNATED POSITIONS REQUIRED TO FILE**

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Bayshore North Project Enhancement Authority	Authority Counsel	1
Bayshore North Project Enhancement Authority	Board Member	1
Bayshore North Project Enhancement Authority	Executive Director	1
Bayshore North Project Enhancement Authority	Treasurer	1
City Attorney's Office	Assistant City Attorney	1
City Attorney's Office	City Attorney	1
City Attorney's Office	Consultant	1
City Attorney's Office	Deputy City Attorney	1
City Attorney's Office	Executive Assistant to City Attorney	1
City Attorney's Office	Senior Deputy City Attorney	1
City Clerk's Office	Assistant City Clerk	1
City Clerk's Office	City Clerk/Auditor	1
City Clerk's Office	Consultant	1
City Clerk's Office	Management Analyst	1
City Manager's Office	Assistant City Manager	1
City Manager's Office	Chief Operating Officer	1
City Manager's Office	City Manager	1
City Manager's Office	Community Relations Manager	1
City Manager's Office	Consultant	1
City Manager's Office	Deputy City Manager	1
City Manager's Office	Executive Assistant to City Manager	1
City Manager's Office	Management Analyst	1
City Manager's Office	Assistant to the City Manager	1
City Manager's Office	Chief Stadium Authority Officer	1
Civil Service Commission	Commissioner	1
Department of Community Development	Assistant Planner I	1
Department of Community Development	Assistant Planner II	1
Department of Community Development	Associate Planner	1
Department of Community Development	Building Official	1
Department of Community Development	Code Enforcement Technician	1
Department of Community Development	Combination Inspector	1
Department of Community Development	Consultant	1
Department of Community Development	Development Review Officer	1
Department of Community Development	Director of Community Development	1
Department of Community Development	Housing & Community Services Division Manager	1
Department of Community Development	Housing Inspector	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Department of Community Development	Inspection Manager	1
Department of Community Development	Management Analyst	1
Department of Community Development	Plan Review Manager	1
Department of Community Development	Planning Manager	1
Department of Community Development	Plans Examiner	1
Department of Community Development	Principal Planner	1
Department of Community Development	Senior Inspector	1
Department of Community Development	Senior Inspector (Building)	1
Department of Community Development	Senior Inspector (Electrical)	1
Department of Community Development	Senior Permit Technician	1
Department of Community Development	Senior Plans Examiner	1
Department of Community Development	Staff Analyst I	1
Department of Community Development	Staff Analyst II	1
Department of Electric Utility	Assistant Director of Electric Utility/Energy Distribution	1
Department of Electric Utility	Assistant Director of Electric Utility/Planning & Strategic Services	1
Department of Electric Utility	Business Analyst/Fiber	4,8
Department of Electric Utility	Business Analyst/Public Benefits	4,8
Department of Electric Utility	Consultant	1
Department of Electric Utility	Chief Electric Utility Officer	1
Department of Electric Utility	Chief Operating Officer	
Department of Electric Utility	Electric Division Manager	1
Department of Electric Utility	Electric Program Manager	4,8
Department of Electric Utility	Electric Utility Network Administrator	4
Department of Electric Utility	Key Customer Representative	4,8
Department of Electric Utility	Power Account Clerk I	1
Department of Electric Utility	Power Account Clerk III	1
Department of Electric Utility	Power Contract Specialist	1
Department of Electric Utility	Power System Scheduler Trader	1
Department of Electric Utility	Power Trader	1
Department of Electric Utility	Principal Electric Utility Engineer	1
Department of Electric Utility	Principal Engineering Aide	4,8
Department of Electric Utility	Principal Power Analyst	1
Department of Electric Utility	Principal Utility Information Systems Manager	4
Department of Electric Utility	Resource Analyst II	4
Department of Electric Utility	Risk Control Analyst	1
Department of Electric Utility	Senior Key Customer Representative	4,8
Department of Electric Utility	Senior Power System Scheduler Trader	1
Department of Electric Utility	Sr. Business Analyst	4,8
Department of Electric Utility	Sr. Electric Division Manager	1
Department of Finance	Accounting Division Manager	1
Department of Finance	Acting Director of Finance	1
Department of Finance	Assistant Director of Finance	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Department of Finance	Business Analyst	1
Department of Finance	Budget and Treasury Division Manager	1
Department of Finance	Buyer	1
Department of Finance	Chief Storekeeper	2
Department of Finance	Director of Finance	1
Department of Finance	Management Analyst	1
Department of Finance	Municipal Services Division Manager	1
Department of Finance	Principal Accountant	1
Department of Finance	Principal Financial Analyst	1
Department of Finance	Purchasing Division Manager	1
Department of Human Resources	Assistant Director of Human Resources/EEO Officer	1
Department of Human Resources	Consultant	1
Department of Human Resources	Director of Human Resources/MERO	1
Department of Human Resources	Human Resources Division Manager	1
Department of Human Resources	Management Analyst	1
Department of Information Technology	Dir. Of Information Technology/Chief Information Officer	1
Department of Information Technology	Information Technology Services Manager	1
Department of Information Technology	Management Analyst	1
Department of Information Technology	Senior Information Technology Services Manager	1
Department of Parks & Recreation	Cemetery Operations Manager	2
Department of Parks & Recreation	Deputy Parks & Recreation Director	1
Department of Parks & Recreation	Management Analyst	1
Department of Parks & Recreation	Parks & Recreation Director	1
Department of Parks & Recreation	Parks Construction, Maintenance & Repair Supervisor	4
Department of Parks & Recreation	Recreation Manager	1
Department of Public Works	Assistant Public Works Director/City Engineer	1
Department of Public Works	Code Enforcement Officer	1
Department of Public Works	Building Maintenance Manager	2
Department of Public Works	Code Enforcement Technician	1
Department of Public Works	Compliance Manager	1
Department of Public Works	Consultant	1
Department of Public Works	Deputy Public Works Director	1
Department of Public Works	Director of Public Works	1
Department of Public Works	Environmental Program Manager	1
Department of Public Works	Fleet Manager	1
Department of Public Works	Materials Testing Technician	2
Department of Public Works	Principal Engineer	2
Department of Public Works	Principal Planner	1
Department of Public Works	Public Works Inspector	2

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Department of Public Works	Senior Engineer, Civil	2
Department of Public Works	Staff Analyst I - Environmental Programs	1
Department of Public Works	Traffic Engineer	2
Department of Water & Sewer Utilities	Assistant Director of Water & Sewer Utilities	1
Department of Water & Sewer Utilities	Assistant Water and Sewer Superintendent	1
Department of Water & Sewer Utilities	Code Enforcement Technician	1
Department of Water & Sewer Utilities	Compliance Manager	1
Department of Water & Sewer Utilities	Director of Water & Sewer Utilities	1
Department of Water & Sewer Utilities	Management Analyst	1
Department of Water & Sewer Utilities	Principal Engineer - Water	1
Department of Water & Sewer Utilities	Utility Business Systems Manager	1
Department of Water & Sewer Utilities	Water and Sewer Superintendent	1
Fire Department	Assistant Fire Marshal	1
Fire Department	Assistant Training Officer	2
Fire Department	Battalion Chief - Suppression	2
Fire Department	Battalion Chief - Training	2
Fire Department	Battalion Chief in EMS	2
Fire Department	Deputy Fire Chief	1
Fire Department	Deputy Fire Marshal	1
Fire Department	Deputy Fire Marshal - Hazardous Materials	1
Fire Department	Emergency Service Coordinator	2
Fire Department	Fire Chief	1
Fire Department	Fire Inspection Aide	2
Fire Department	Fire Marshal I/II/III	1
Fire Department	Fire Prevention Specialist	2
Fire Department	Fire Prevention Specialist I	2
Fire Department	Fire Prevention Specialist II	2
Housing Authority	Acting Treasurer	1
Housing Authority	Authority Counsel	1
Housing Authority	Board Member	1
Housing Authority	Secretary and Executive Director	1
Housing Authority	Treasurer	1
Housing Rehabilitation Loan Committee	Chair	1
Housing Rehabilitation Loan Committee	Committee Member	1
Industrial Development Authority	Board Member	1
Joint Financing Authority	Acting Chief Financial Officer	1
Joint Financing Authority	Chief Financial Officer	1
Joint Financing Authority	City Attorney	1
Joint Financing Authority	Director	1
Joint Financing Authority	Executive Director	1
Library Department	Assistant City Librarian	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Library Department	City Librarian	1
Library Department	Library Circulation Supervisor	4
Library Department	Library Division Manager - Support Services	1
Library Department	Library Program Coordinator - Branch Manager	4
Library Department	Library Program Coordinator - Reference	4
Library Department	Library Program Coordinator - Technical Services	4
Library Department	Library Program Coordinator - Technology	4
Library Department	Library Program Coordinator - Youth Services	4
Library Department	Library Technology Assistant	4
Library Department	Literacy Program Supervisor	4
Mayor and City Council	Council Member	1
Mayor and City Council	Mayor	1
Mayor and Council Office	Executive Assistant to Mayor & City Council	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Acting Board Member	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Board Member	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Board Member - Alternate	1
Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency	Chair	1
Planning Commission	Commissioner	1
Police Department	Assistant Police Chief	1
Police Department	Communications Operations Manager	1
Police Department	Management Analyst	1
Police Department	Police Captain	3
Police Department	Police Chief	1
Police Department	Police Officer - P.A.L. Director	1
Police Department	Police Records Manager	1
Police Department	Staff Analyst I	1
Public Facilities Financing Corporation	Acting Director of Finance	1
Public Facilities Financing Corporation	Director	1
Public Facilities Financing Corporation	Director of Finance	1
Public Facilities Financing Corporation	Executive Director	1
Public Facilities Financing Corporation	General Counsel	1
Sports and Open Space Authority	Acting Treasurer	1
Sports and Open Space Authority	Board Member	1
Sports and Open Space Authority	Contract Administrator	1

**APPENDIX A TO CONFLICT OF INTEREST CODE
CITY OF SANTA CLARA
DESIGNATED POSITIONS REQUIRED TO FILE**

Department	Position	Categories
Sports and Open Space Authority	General Counsel	1
Sports and Open Space Authority	Treasurer	1
Stadium Authority	Acting Stadium Authority Finance Director, Treasurer and Auditor	1
Stadium Authority	Board Member	1
Stadium Authority	Executive Director	1
Stadium Authority	Stadium Authority Counsel	1
Stadium Authority	Consultant	1
Stadium Authority	Stadium Authority Finance Director, Treasurer and Auditor	1

"Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
5. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code Section 87302.

APPENDIX B

MASTER LIST OF DISCLOSURE CATEGORIES SPECIFICATION SHEET REPORTABLE INVESTMENTS, INTERESTS IN REAL PROPERTY AND INCOME

Disclosure
Category

1.	All investments and business positions in business entities, sources of income and interests in real property.
2.	Investments and business positions in business entities, and all sources of income.
3.	Interests in real property.
4.	Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit.
5.	Investments and business positions in, and income from entities which are book outlets, vendors or providers of business services.
6.	Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.
7.	Investments and business positions in business entities and income from sources which supply or manufacture solar energy systems.
8.	Investments and business positions in business entities and income from sources engaged in construction or development.
9.	Investments and business positions in, and income from sources engaged in the construction of public works projects.
10.	Investments and business positions in business entities and income from construction companies involved in progress payments.
11.	Investments and business positions in, and income from construction firms involved in construction projects subject to acceptance by the City Council.
12.	Investments and business positions in business entities and income from business entities of the type to provide bids, supplies, vehicles and equipment.
13.	Investments and business positions in, and income from entities which provide training, services or facilities of the type utilized by the City.
14.	Investments and business positions in business entities and sources of income which provide services and supplies of the type used in emergency services coordination and training activities.
15.	Investments and business positions in, and income from, Union Pension Funds that may be affected by the outcome of negotiations involving monetary settlements and employer-employee memorandum.
16.	Investments and business positions in, and income from entities providing medical services or facilities of the type used by the City.

17.	Investments and business positions in, and income from business entities engaged in providing eye examinations and eye glasses, including but not limited to opticians, ophthalmologists, etc.
18.	Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.
19.	Investments and business positions in, and income from business entities providing supplies, services, equipment or machinery of the type used by the City.
20.	Investments and business positions in, and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, job classification studies and salary surveys.
21.	Investments and business positions in, and income from, business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.
22.	Investments and business positions in business entities, and income from sources which supply or manufacture firefighting equipment or supplies.



City of Santa Clara

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Agenda Report

21-170

Agenda Date: 2/9/2021

REPORT TO COUNCIL

SUBJECT

Update on City Council and Stadium Authority Staff Referrals

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND AND DISCUSSION

During Council and Stadium Authority meetings, the City Council or Stadium Authority Board provide direction on policy issues or refer information requests to staff for follow-up.

The purpose of the City Council and Stadium Authority Referrals Update is to provide the City Council/Stadium Authority Board and the public a current status report. Completion of the referrals may be communicated by various means such as: Report to Council, Information Memorandum provided through a Council Agenda, City Manager Biweekly Report/Blog, or a City Manager/Executive report out during a future Council meeting.

The Referrals list will be published in the Council agenda packet under the "City Manager/Executive Director Report" section of the Council Agenda. Reports will include both open and closed referrals.



**City of
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The Center of What's Possible

**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 2/4/21



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
1.	1/26/21	Council Meeting	Annual Investment Policy Statement – continue this item and return to Council with an analysis on investments, including sustainability investments	Finance	TBD	
2.	1/26/21	Council Meeting	Conflict of Interest Code – continue this item to 2/9/21 to provide Stadium Management Company attorney the opportunity to provide the City/Stadium Authority information on why the Stadium Management Company individuals listed in the staff report should not be included in the Conflict of Interest Code	City Manager/ City Attorney	2/9/21	
3.	1/26/21	Council Meeting	Council Committee Assignments – Council established an ad hoc committee comprised of Mayor Gillmor, Councilmember Park and Councilmember Jain to review committee assignments and return to Council with a revised plan (current committee assignments will remain in place until a new appointment list is approved by Council)	Council Ad Hoc Committee	TBD	
4.	1/26/21	Council Meeting	Regarding a written petition on Loyaltan Ranch Property – staff to agendize this item for a Council meeting in March	SVP	March 2021	
5.	1/26/21	Council Meeting	Regarding a written petition on Franklin mall Maintenance District Number 22 – staff to agendize this item for a future Council meeting after receiving a response back from the FPPC	Public Works	TBD	
6.	1/12/21	Council Meeting	Provide a Study Session on pros/cons lifecycle cost/benefits of artificial surfacing including turf	Parks & Rec	TBD	
7.	1/12/21	Council Meeting	Defer approval of the 1205 Coleman Gateway neighborhood park design to work with the developer within current project approvals to receive additional community input including the Old Quad on park design	Parks & Rec	TBD	
8.	1/12/21	Council Meeting	Provide quarterly information reports on progress of Task Force on Diversity, Equity and Inclusion	City Manager	March 2021	
9.	1/12/21	Council Meeting	Staff to return with an Information Memo regarding the legal process of increasing utility rates	SVP	TBD	
10.	1/12/21	Council Meeting	Communicate to the State Historic Preservation Office the City Council's conditional support for the nomination of the Pomeroy Green Townhouses contingent upon completion of the following conditions: signed petition from a majority of Pomeroy Green Co-op members; provision of resolution of support from the Co-op board; completion of an analysis by a qualified historian, preferably local; City Attorney review and comments on the application; notification of all shareholders and owners of neighboring homes within a 200 foot radius including information on the process to object to the nomination	Community Development	TBD	



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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 2/4/21



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
11.	1/12/21	Council Meeting	Staff to provide opinions from Chamber, DMO, TID and others on the need for of the services provided in the agreement and having the infrastructure in place. What would it cost to do it themselves and how would they envision this moving forward if City did not approve the agreement.	City Manager	2/9/21	
12.	1/12/21	Council Meeting	Provide Incremental Milestone Completion Reports from JLL regarding project milestones from previous agreements	City Manager	2/9/21	
13.	1/12/21	Council Meeting	Provide Council with previously completed TAP audit of Convention Center Visitors Bureau	City Manager	2/9/21	
14.	12/16/20	Council Meeting	Regarding a written petition from Sam Liu concerning a 10' CMU wall with project at 3200 Scott Blvd., staff to return on 1/26/21 with possible options for Council consideration	Community Development	1/26/21	1/26/21
15.	10/13/20	Stadium Authority	Stadium Bills and Claims – Return on a future agenda with an informational report on the on the Stadium Authority's responsibility of unfunded liability	Finance	April 2021	
16.	10/13/20	Council Meeting	Noise Monitoring at Levi's Stadium – Return to Council with a revised scope of work that includes a monthly consultant report with data related to all noise, including airplane noise by Levi's Stadium. Report should include data on peak noise, how many days we exceed the noise ordinance, etc. and notify Council regarding excessive noise complaints.	Community Development	2/23/21	
17.	10/13/20	Council Meeting	Community Input Policy – Return to the Governance Committee with potential models of a Community Benefits Policy with feedback from various Community groups (i.e. CatalyzeSV) and best practices from other Cities	Community Development	TBD	
18.	7/14/20	Council Meeting	Garbage Rates – explore long-term rate assistance programs for solid waste	Public Works	March 2021	
19.	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	
20.	10/29/19	Council Meeting	Provide options for the \$750,000 commitment from Levy for community enrichment	City Manager	May 2021	
21.	9/24/19	Council Meeting	Staff to review the Ordinance and enforcement of illegal street food vendors. At the 9/25/20 Council meeting, Council asked staff to review enforcement of vendors outside of Levi's Stadium	Police	Summer 2021	
22.	7/9/19	Council Meeting	Add Lawn Bowl Clubhouse Project to a future agenda and return with information on costs of installation of module. Staff to notify Lawn Bowl Club of Council meeting date so they may update Council on their fundraising efforts.	Parks & Rec	TBD	
23.	7/9/19	Council Meeting	Update on age-friendly activities per commission annual Work Plan	Parks & Rec	TBD	



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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 2/4/21



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
24.	6/4/19	Council Meeting	Regarding bicycle and scooter share devices: staff to bring back final plan for Council approval – Council asked staff to further look into items such as outreach events, insurance, speed monitoring, data, fee structure and drop-off locations (Per the City Attorney's Office this item was placed on hold – pending the outcome of other public entities' litigation)	Public Works	TBD	11/17/20
25.	4/30/19	Council Meeting	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
26.	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	
27.	10/9/18	Council Meeting	Dedicate Jerry Marsalli Community Center at grand opening of the facility	Parks & Rec	TBD	
28.	10/2/18	Council Meeting	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	TBD	
29.	3/13/18	Council Meeting	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	Summer 2021	



**City of
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COMPLETED 2021
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION
Updated 2/2/21



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
1.	8/25/20	Council Meeting	Staff to return on 12/15/20 regarding a written petition from Joseph Ducato requesting changes to the sewer ordinance whereby the City reassumes responsibility for maintenance and or/replacement of the sewer laterals located in the public right-of-way. (The Report to Council for this item was scheduled to be presented to Council on 12/15/20, however, due to a very heavy agenda it was moved to 1/12/21.)	Water & Sewer	1/12/21	1/12/21	Reported at Council Meeting



City of Santa Clara

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Agenda Report

21-255

Agenda Date: 2/9/2021

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.



City of Santa Clara

Tentative Meeting Agenda Calendar

Tuesday, February 16, 2021 Stadium Authority Meeting

Closed Session 4:00-4:30 PM

21-187 Conference with Legal Counsel Existing Litigation

Public Hearing/General Business

21-496 Agenda Items Pending – To Be Scheduled

Tuesday, February 23, 2021 Council and Authorities Concurrent Meeting

Public Hearing/General Business

21-43 FY 2020/21 Budget Rebalancing Actions to Address COVID-19 Pandemic Impacts

21-806 Review of Sanitary Sewer Services in the City and Discussion of Private Sewer Lateral Responsibilities

21-974 Actions for Target Setting and Priority Strategies for Climate Action Plan (CAP) Update

Tuesday, March 2, 2021 Santa Clara Stadium Authority Meeting

Public Hearing/General Business

21-50 **Study Session:** Draft 2021 Non-NFL Events Marketing Plan for Levi's Stadium in Accordance with Section 4.10 of the Stadium Management Agreement

21-44 Discussion of the: (a) Proposed Santa Clara Stadium Authority Fiscal Year 2021/22 Budget; (b) Stadium Authority Budget; and (c) Compliance and Management Policies

Tuesday, March 8, 2021 Council Closes Session Meeting 4:00 PM

21-186 Conference with Legal Counsel-Existing Litigation

Tuesday, March 9, 2021 Council and Authorities Concurrent Meeting

Public Hearing/General Business

- 21-918** **Study Session:** Housing Element Update/Affordable Housing Ordinance Feasibility Analysis
- 21-96** **Public Hearing:** 906 Monroe Initial Feedback
- 21-1170** Presentation of Solid Waste Rate Study Findings and Recommendations for FY 2021/22 Rates
- 21-96** Informational Report to Council on Status of a Residential Mixed-use Redevelopment Project located at 906, 930, and 950 Monroe within the Downtown Precise Plan boundary

Tuesday, March 16, 2021 Santa Clara Stadium Authority Meeting

Public Hearing/General Business

- 21-46** Action on the (a) Proposed Santa Clara Stadium Authority Fiscal Year 2021/22 Budget; (b) Stadium Operations and Maintenance Plan; and (c) 2021 Marketing Plan

Tuesday, March 23, 2021 Council and Authorities Concurrent Meeting

Special Order of Business

- 21-171** Task Force on Diversity, Equity, and Inclusion Update

Public Hearing/General Business

- 21-1146** El Camino Real Specific Plan Study Session on the Draft Plan for Adoption
- 21-496** Written Petition by Councilmember Jain on Loyalton Ranch Property – Staff Report

Tuesday, April 6, 2021 Council and Authorities Concurrent Meeting

Special Order of Business

- 21-235** Recognize Local Author M.J. Sung

Public Hearing/General Business

- 21-496** Agenda Items Pending – To Be Scheduled

Tuesday, April 13, 2021 Santa Clara Stadium Authority Meeting

Public Hearing/General Business

21-496 Agenda Items Pending – To Be Scheduled

Tuesday, April 20, 2021 Council and Authorities Concurrent Meeting

Public Hearing/General Business

20-1156 **Study Session:** Overview of Patrick Henry Drive Specific Plan

21-154 Public Meeting on the Formation of the Santa Clara Tourism Improvement District and the Levy of Assessments on Affected Lodging Businesses

Tuesday, May 25, 2021 Council and Authorities Concurrent Meeting

Public Hearing/General Business

21-155 **Public Hearing:** Adoption of a Resolution of Formation of the Santa Clara Tourism Improvement District under the Property and Business Improvement District Law of 1994

21-150 **Public Hearing:** Action on Resolutions Approving Water, Sewer and Recycled Water Rates to be Effective July 1, 2021

AGENDA ITEMS TO BE SCHEDULED TO A FUTURE DATE

21-496 Written Petition by Councilmember Jain on Franklin Mall Maintenance District 122 – Staff Report

21-1318 Action on Amendment No. 1 to the Agreement for Services with NewGen Strategies and Solutions LLC to Perform a Cost of Service Analysis and Rate Study for Silicon Valley Power